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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO (a/k/a MASON EDMO),

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTIONS, ET AL.,

Defendants.

Case No. 1:17-CV-00151-BLW

**ACKNOWLEDGMENT OF
CONSTITUTIONAL CHALLENGE AND
REQUEST FOR AN EXTENSION OF
TIME TO INTERVENE**

Pursuant to Federal Rules of Civil Procedure 5.1 and 6(b), and Local Rule 6.1(a), the United States, which is not a party to this case, respectfully requests that the Court extend by

sixty days the United States' time to intervene under Fed. R. Civ. P. 5.1 until March 23, 2018.

Good cause exists for the requested extension, as discussed below.

On November 22, 2017, Plaintiff filed a Notice of Constitutional Question (the "Notice") in this case pursuant to Federal Rule of Civil Procedure 5.1(a). *See* ECF No. 45. In that Notice, Plaintiff stated that in her brief opposing Defendants' Motion to Dismiss, she was calling into question the constitutionality of 42 U.S.C. § 12211(b)(1) ("GID Exclusion") of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12191, *et seq.* The Court has not yet certified the constitutional question. *See* 28 U.S.C. § 2403; Fed. R. Civ. P. 5.1(b). Moreover, the Notice was not properly served as required under Rule 5.1 and the undersigned has been informed that the Attorney General did not actually receive the Notice until December 13, 2017. The United States is authorized to intervene in any federal court action in which the constitutionality of an Act of Congress is called into question. *See* 28 U.S.C. § 2403(a). By operation of Rule 5.1, unless this Court sets a later date, the 60-day time period for the United States to intervene begins running on the date the Notice is filed, and thus it appears to have run this past Monday, January 22, 2018. *See* Fed. R. Civ. P. 5.1(c). The undersigned counsel, however, was not assigned to this case until the following day, Tuesday, January 23, 2018.

Counsel for the United States respectfully asks the Court to extend the time for the Government to decide whether to intervene. Under Rule 5.1, the 60-day time period operates as a *minimum* before which the Court may not hold a statute unconstitutional, and it explicitly contemplates that the Court may, as appropriate, set a longer time for intervention than the minimum provided under the rule. *See* Fed. R. Civ. P. 5.1(c). Such action is warranted here. As noted, the Court has not yet certified under 28 U.S.C. § 2403, and the undersigned was only just assigned to the case late yesterday. Moreover, while Plaintiff's Notice was filed on the docket

on November 22, 2017 (causing the 60-day minimum time period under the Rule to begin running), the undersigned has been informed that the Attorney General did not actually receive the Notice until some weeks later, on December 13, 2017 – shortly before the intervening Winter holidays and government shutdown. Further, the Notice was not properly served as required under Rule 5.1(a)(2), because it was sent via regular mail.¹ Most importantly, consistent with its usual approach, the United States must now engage in the process of deciding whether to intervene in this action pursuant to Section 2403(a). That established process requires internal deliberations, recommendations, and ultimately, a decision by the Solicitor General, which takes some time. *See* 28 C.F.R. § 0.21 (“The Solicitor General may in consultation with each agency or official concerned, authorize intervention by the Government in cases involving the constitutionality of acts of Congress.”). Consequently, there is ample good cause for the sixty-day extension sought here.

The Court has not previously granted the United States an extension of time in this action.

Accordingly, counsel for the United States hereby submits this request to extend the time period during which the United States may intervene for the limited purpose of defending the constitutionality of the GID Exclusion to March 23, 2018.

¹ Although the certificate of service states that the Notice was sent via certified mail, *see* ECF No 45, as required by Rule 5.1(a)(2), Department of Justice records indicated that it was received by regular mail. Plaintiff’s counsel has now reviewed their records and acknowledged to the undersigned via email that the Notice was inadvertently sent regular mail.

Dated: January 24, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2018, the foregoing **ACKNOWLEDGMENT OF CONSTITUTIONAL CHALLENGE AND REQUEST FOR AN EXTENSION OF TIME TO INTERVENE** was electronically filed with the Clerk of Court using the CM/ECF system, which sent a Notice of Electronic Filing to the following:

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