

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 11-2215 Caption [use short title]

Motion for: Two-day extension of filing time Mary Jo C. v. New York State and Local Retirement System, Central Islip Public Library

Set forth below precise, complete statement of relief sought:

Two-day extension, until January 11, 2012, of time for the United States to file supplemental brief.

Two-day extension, until February 15, 2012, of time for the State to respond

MOVING PARTY: United States (Intervenor) OPPOSING PARTY: New York State and Local Retirement Sy
Plaintiff Defendant
Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Sasha Samberg-Champion OPPOSING ATTORNEY: Laura R. Johnson
United States Department of Justice, Civil Rights Division Office of the Attorney General of the State of New York
Ben Franklin Station / P.O. Box 14403 120 Broadway Avenue, 25th Floor
Washington, DC 20044-4403 New York, NY 10271
(202) 307-0714 / sasha.samberg-champion@usdoj.gov (212) 416-6184 / laura.johnson@ag.ny.gov

Court-Judge/Agency appealed from: U.S. District Court for the Eastern District of NY - Judge Feuerstein

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No
Requested return date and explanation of emergency:

Opposing counsel's position on motion:
Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date:

Signature of Moving Attorney: 57 Sasna Samberg-Champion Date: 1/5/12 Has service been effected? Yes No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: By:

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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No. 11-2215

MARY JO C.,

Plaintiff-Appellant

v.

NEW YORK STATE AND LOCAL RETIREMENT SYSTEM, CENTRAL ISLIP  
PUBLIC LIBRARY,

Defendants-Appellees

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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INTERVENOR UNITED STATES' MOTION FOR TWO-DAY EXTENSION OF  
BRIEFING SCHEDULE REGARDING STATE'S CONSTITUTIONAL  
CHALLENGE

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The United States intervened in this case to defend the constitutionality of the abrogation of state sovereign immunity accomplished by Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131 *et seq.* It now asks for a two-day extension of the briefing schedule this Court set for the State's constitutional challenge, such that the United States has until January 11, 2012, to file a supplemental brief and the State has until February 15, 2012, to respond. In

support of this motion, the United States submits the following:

1. This appeal arises out of a claim by plaintiff-appellant that both defendants—the New York State and Local Retirement System (the“State”) and the Central Islip Public Library (the“Library”)—violated her rights under Title II. The district court dismissed her complaint, finding that she had failed to state a claim against either party. It also found that Title II does not validly abrogate the State’s sovereign immunity, simply because of that failure to state a claim.

2. Plaintiff appealed, and the United States intervened in defense of the constitutionality of Title II’s abrogation of sovereign immunity.<sup>1</sup> When the State raised new arguments on the subject in its response brief, the United States requested permission to file a supplemental brief. This Court granted the United States until January 9, 2012, to file that brief, and the State until February 13, 2012, to respond.

3. The workload of the Civil Rights Division makes it difficult for the United States to meet its January 9 deadline. Accordingly, the United States asks this Court for two additional days, until January 11, 2012. It does not anticipate asking for further time.

4. The State consents to this relief, so long as its time to respond also is

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<sup>1</sup> The United States also filed as *amicus curiae* in support of plaintiff’s Title II claim against the State. The United States does not seek to file anything further in that capacity.

extended two days, until February 15, 2012.

5. Accordingly, the United States asks this Court to extend by two days its briefing schedule for the State's constitutional challenge to Title II of the ADA, such that the United States has until January 11, 2012, to file a supplemental brief, and the State has until February 15, 2012, to respond.

Respectfully submitted,

THOMAS E. PEREZ  
Assistant Attorney General

s/ SASHA SAMBERG-CHAMPION  
JESSICA DUNSAY SILVER  
SASHA SAMBERG-CHAMPION  
Attorneys  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on January 5, 2012, I electronically filed the foregoing INTERVENOR UNITED STATES' MOTION FOR TWO-DAY EXTENSION OF BRIEFING SCHEDULE REGARDING STATES CONSTITUTIONAL CHALLENGE with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ SASHA SAMBERG-CHAMPION  
SASHA SAMBERG-CHAMPION  
Attorney