

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: participation in oral argument as amicus curiae Mary Jo C. v. New York State and Local Retirement System, Central Islip Public Library

Set forth below precise, complete statement of relief sought:

The United States moves to participate in oral argument as amicus curiae.

MOVING PARTY: United States -- Intervenor-amicus

- Plaintiff Defendant
Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY:

MOVING ATTORNEY: Sasha Samberg-Champion

[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY:

U.S. Department of Justice, Civil Rights Division
Appellate Section, Ben Franklin Station, P.O. Box 14403
Washington, D.C. 20044-4403
sasha.samberg-champion@usdoj.gov (202) 307-0714

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

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
Yes No (explain): No real opposing counsel.
Plaintiff-appellant, whose time would be split with the Un

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

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

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:

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: May 3, 2012

Signature of Moving Attorney: 57 Sasna Samberg-Champion Date: 4/24/2012

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

No. 11-2215

MARY JO C.,

Plaintiff-Appellant

v.

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

Defendants-Appellees

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

UNITED STATES' MOTION TO PARTICIPATE IN ORAL ARGUMENT AS
AMICUS CURIAE

The United States intervened as of right in this appeal, pursuant to 28 U.S.C. 2403(a), 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.* Additionally, it filed a brief in this appeal as amicus curiae in support of plaintiff-appellant. The United States, which is entitled by statute to participate in oral argument as intervenor, now moves this Court for leave to also participate in oral argument as amicus curiae. In support of that

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 here.

2. Plaintiff appealed. The United States filed a brief as amicus curiae in support of appellant, and also intervened in defense of the constitutionality of Title II’s abrogation of sovereign immunity. When the State raised new arguments regarding sovereign immunity in its response brief, the United States, with this Court’s permission, filed a supplemental brief devoted to that subject.

3. Having intervened and filed a brief in defense of the constitutionality of Title II’s abrogation of sovereign immunity, the United States is entitled to “all the rights of a party * * * to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.” 28 U.S.C. 2403(a). These rights include the right to participate in oral argument. The United States, like the other parties to this appeal, preserved that right by timely filing an oral argument statement.

4. The United States now asks this Court for permission to additionally

participate in oral argument as amicus curiae. The United States believes its views regarding the proper application of Title II in this case will be helpful to the Court in resolving the dispute between the parties.

5. The plaintiff-appellant, with whom the United States will share 12 minutes of argument time, agrees to this request. The United States and Appellant have agreed that the Appellant will use 7 minutes and the United States will use 5.

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 April 24, 2012, I electronically filed the foregoing UNITED STATES' MOTION TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE 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