

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

JOHN GILL SMITH, )  
)  
Plaintiff, )  
) No. 03-6494  
and )  
)  
THE UNITED STATES OF AMERICA, )  
)  
Plaintiff-Intervenor, )  
)  
v. )  
)  
THE CITY OF PHILADELPHIA, )  
)  
Defendant. )  
\_\_\_\_\_ )

UNITED STATES' OPPOSITION TO DEFENDANT'S  
MOTION FOR JUDGMENT ON THE PLEADINGS

Introduction

In this action, Mr. Smith alleges that the City of Philadelphia violated the Americans with Disabilities Act, 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, the Pennsylvania Human Relations Act, 43 P.S. § 951 et seq., and the Human Relations Fair Practices Ordinance, The Philadelphia Code § 9-1105 et seq., when its paramedics failed to provide appropriate care to him because of his HIV disease.

On August 17, 2004, the United States moved to intervene in this action pursuant to Rules 24(a) and 24(b) of the Federal Rules of Civil Procedure. Defendant then filed this motion for judgment on the pleadings, arguing that plaintiff Smith's federal claims are barred by Pennsylvania's two year statute of limitations, and that the United States' motion to intervene is, therefore, moot. The Court granted the United States' motion to intervene without prejudice to

defendant's assertion that the action is barred by the statute of limitations.

However the Court resolves defendant's motion with regard to Mr. Smith, the United States may still pursue its action in this Court because it has independent jurisdiction to sue the City under title II of the ADA and Section 504 of the Rehabilitation Act. Then, if the United States' claims go forward, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Mr. Smith's state claims. Therefore, while the configuration of this case may change, this Court's jurisdiction to hear the federal and state claims pending in this action remains.

### Argument

#### I. The United States Has An Independent Basis for Jurisdiction in this Action.<sup>1</sup>

If the Court determines that plaintiff Smith's federal claims must be dismissed, it is well settled that the United States can pursue its action where, as here, it has a "separate and independent basis for jurisdiction." Fuller v. Volk, 351 F.2d 323, 328 (3d Cir. 1965). In Fuller, plaintiffs challenged the constitutionality of a school redistricting plan by seeking to enjoin an allegedly unconstitutional use of funds. Another group of parents intervened in the action, also to challenge the redistricting plan, alleging that their children were being compelled to attend schools solely on the basis of race. The Court dismissed the claims of each of the original plaintiffs because none satisfied the \$10,000 jurisdictional amount in controversy required of their claims. Even though the original plaintiffs were dismissed, the Court permitted the intervening parties to pursue their constitutional challenge:

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<sup>1</sup> State statutes of limitation do not run against the federal government where, as here, it is enforcing a public right or protecting a private interest. United States v. Summerlin, 310 U.S. 414, 416 (1940) ("It is well settled that the United States is not bound by state statute of limitation or subject to the defense of laches in enforcing its rights."); Chesapeake & Delaware Canal Co. v. United States, 250 U.S. 123, 125 (1919).

However, a court has discretion to treat the pleading of an intervenor as a separate action in order that it might adjudicate the claims raised by the intervenor. [Citations omitted]. This discretionary procedure is properly utilized in a case in which it appears that the intervenor has a separate and independent basis for jurisdiction and in which failure to adjudicate the claim will result only in unnecessary delay. By allowing the suit to continue with respect to the intervening party, the court can avoid the senseless ‘delay and expense of a new suit, which at long last will merely bring the parties to the point they are now.’

Fuller, 351 F.2d at 328-29, quoting Hackner v. Guar. Trust Co., 117 F.2d 95, 98 (2d Cir.), cert. denied, 313 U.S. 559 (1941). Accord U.S. Steel Corp. v. EPA, 614 F.2d 843, 845-46 (3d Cir. 1979) (“The weight of authority in the United States Courts of Appeals supports the principle that an intervenor can continue to litigate after dismissal of the party who originated the action.”); Hunt Tool Co. v. Moore, Inc., 212 F.2d 685, 688 (5<sup>th</sup> Cir. 1955).

The United States has statutory authority to bring an independent action under both title II of the ADA and Section 504 of the Rehabilitation Act. Each of these statutes is based on title VI of the Civil Rights Act of 1964. 42 U.S.C. § 2000d, and each incorporates the “remedies, procedures and rights” set forth in title VI. See Barnes v. Gorman, 536 U.S. 181, 185 (2002).

Section 602 of Title VI (42 U.S.C. 2000d-1), in turn, authorizes the Attorney General to enforce compliance with Title VI by filing an action in federal court. Section 602 further provides that no action can be brought by the Department of Justice until it has notified the appropriate persons of the violation and determined that compliance cannot be secured by voluntary means.<sup>2</sup>

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<sup>2</sup> Title VI of the Civil Rights Act authorizes the Attorney General to bring a lawsuit to enforce title VI, United States v. Marion County Sch. Dist., 625 F.2d 607, 612, n.12 (5<sup>th</sup> Cir. 1980), cert. denied, 451 U.S. 910 (1981), Nat’l Black Police Officer Ass’n, Inc. v. Velde, 712 F.2d 569, 575 & n.33 (D.C. Cir. 1983), cert. denied, 466 U.S. 963 (1984), and, by extension, those statutes which adhere to the enforcement scheme set forth in title VI. See, e.g., Cannon v. Univ. of Chicago, 441 U.S. 677, 704 n.36 (1979) (referencing relevant language from title VI legislative history in context of challenge to title IX enforcement scheme); United States v.

In the instant case, the United States notified the City of Philadelphia of its investigation of the events set out in plaintiff Smith's complaint. See letter from Allison Nichol to Deputy Solicitor Lynn Sitarski, dated March 4, 2004, attached hereto as Exhibit 1. Subsequently, the United States informed the City by telephone and letter that the United States had determined that the City had violated title II of the ADA and Section 504 of the Rehabilitation Act in the City's treatment of Mr. Smith, and that the United States intended to intervene in the pending matter. The United States further inquired if the City had an interest in resolving the matter. See letter from Harold Jackson to Deputy Solicitor Lynn Sitarski, dated July 28, 2004, attached hereto as Exhibit 2. The City never indicated an interest in resolving this matter; indeed, the City's pending motion reinforces that it continues to reject a settlement at this time.<sup>3</sup> The City did not respond to the United States' July 28 letter, and, after waiting three weeks, the United States filed its motion to intervene.

In sum, where, as here, the United States has an independent basis for jurisdiction, it can pursue its claims in this action, even if the Court dismisses plaintiff's federal claims.

II. This Court Continues to Have Supplemental Jurisdiction Over Mr. Smith's State and City Claims.

Even if the Court dismisses Mr. Smith's federal claims, the Court must retain jurisdiction over his state and local claims under 28 U.S.C. § 1367, which provides in pertinent part:

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Baylor Univ. Med. Ctr., 736 F.2d 1039, 1050 (5<sup>th</sup> Cir. 1984) (recognizing United States' authority to sue to enforce Section 504), cert. denied, 469 U.S. 1189 (1985).

<sup>3</sup> The United States remains open to settlement negotiations at any time that the City expresses an interest to participate.

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts *shall* have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties. . . .

(c) The district courts *may* decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367 (emphasis added).

Inasmuch as the United States has an independent basis to pursue this action, and is permitted to remain in this action, then 28 U.S.C. § 1367(a) requires this Court to confer supplemental jurisdiction over Mr. Smith’s state and local claims. See Growth Horizons Inc. v. Delaware County, 983 F.2d 1277, 1284 (3d Cir. 1993) (discussing effect of Section 1367). All of the factors in Section 1367(a) are met here: the Court has original jurisdiction over the United States’ claims, 28 U.S.C. §§ 1343, 1345; Mr. Smith’s state and local claims are based on the same set of facts as the United States’ claims under title II of the ADA and Section 504 of the Rehabilitation Act; and Mr. Smith and the United States seek the same kind of compensatory and injunctive relief. See Lyon v. Whisman, 45 F.3d 758, 761 (3d Cir. 1995) (“[W]hen the same acts violate parallel federal and state laws, the common nucleus of operative facts is obvious . . .”). Indeed, the last sentence of subdivision (a) of § 1367 provides that supplemental jurisdiction

shall include claims that involve the joinder or intervention of additional parties, thus codifying the principle of “pendent party” jurisdiction, i.e., the court’s jurisdiction over a matter where a third party raises the related state claims. See, e.g., Borough of West Mifflin v. Lancaster, 45 F.3d 780, 788 (3d Cir. 1995).

Likewise, none of the exceptions set forth in Section 1367(c) applies here. Mr. Smith’s state and local claims do not raise a novel or complex issue of state law. They track exactly the claims raised under title II of the ADA and Section 504 of the Rehabilitation Act. See Lyon, 45 F.3d at 761. For the same reason, it cannot be said that the state claims “predominate” over the claims over which the Court has original jurisdiction; the state claims raise the same issues as the federal claims. The Court has original jurisdiction over the United States’ federal claims. Finally, the United States cannot conceive of any exceptional circumstances or compelling reasons to deny supplemental jurisdiction.

Thus, if the United States remains in this case, the Court must confer supplemental jurisdiction over Mr. Smith’s state and local claims.

#### Conclusion

For the foregoing reasons, defendant’s motion for judgment on the pleadings should be denied. The Court continues to have jurisdiction over the United States’ claims, and supplemental jurisdiction over Mr. Smith’s state and local claims.

Respectfully submitted,

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