

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

AMERICAN COUNCIL OF THE BLIND OF  
METROPOLITAN CHICAGO, ANN BRASH,  
MAUREEN HENEGHAN, and RAY  
CAMPBELL, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

CITY OF CHICAGO,

Defendant.

No. 19 C 6322

Judge Bucklo

**UNITED STATES' UNOPPOSED MOTION TO INTERVENE AS A PLAINTIFF**

The United States of America moves, unopposed by the parties and pursuant to Fed. R. Civ. P. 24, to intervene as a plaintiff, as of right or by permission, and in support states as follows:

1. This civil rights action was brought by the American Council of The Blind of Metropolitan Chicago (“ACBMC”) and three of its individual members, alleging that the City of Chicago’s failure to implement accessible pedestrian signals—meaning signals that provide safe crossing information for those who are blind or have low vision in the same way a “walk/don’t walk” sign does to a sighted pedestrian—violates Title II of the Americans with Disabilities Act (“Title II” and “ADA”), 42 U.S.C. §§ 12131 *et seq.*, and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794. Plaintiffs seek injunctive and declaratory relief on behalf of all persons with vision-related disabilities who use, or seek to use, pedestrian signals in Chicago. Dkt. 15. Further, plaintiffs seek “the implementation of a remedial plan to make signalized intersections across the City systemically accessible to blind pedestrians.” Dkt. 40 at 14.

2. The plaintiffs also filed a complaint with the Department of Justice regarding their allegations, which the government diligently investigated. The United States' investigation substantiated the plaintiffs' allegations that Chicago violated Title II, Section 504, and their implementing regulations by failing to provide pedestrians who are blind, deaf-blind, or have low vision<sup>1</sup> with accessible street-crossing signal information at over 99 percent of the city's street intersections currently equipped with visual-only pedestrian signal devices. The United States notified the City of its determination on April 6, 2021. As a result, the United States seeks to file a complaint in intervention, attached as Exhibit A, which seeks declaratory relief and an injunction requiring defendant to provide individuals who are blind equal access to pedestrian signal safety information, as well as compensatory damages in an appropriate amount for injuries, including emotional distress, suffered as a result of Chicago's failure to comply with Title II and Section 504.

3. The United States seeks to intervene in this matter to ensure that Chicago complies with Title II and Section 504 by providing individuals who are blind, deaf-blind, or have low vision equal access to pedestrian signal safety information. The United States seeks intervention as of right because it has a significantly protectable interest in the enforcement of Title II and Section 504, which is not adequately represented by the existing parties and which may as a practical matter be impaired if intervention is denied. Fed. R. Civ. P. 24(a)(2). Alternatively, the United States asks the Court to exercise its discretion to allow permissive intervention, because its claims against the defendant present questions of law and fact in common with the main action,

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<sup>1</sup> Hereinafter, the term "blind" is meant to encompass individuals who are entirely without sight, those who are legally blind or have low vision, and those who are "deaf-blind," meaning that they have both little to no vision and little to no hearing.

and the main action involves the interpretation of statutes which the Attorney General is entrusted by Congress to administer. Fed. R. Civ. P. 24(b)(1), (2).

4. To intervene as of right, Rule 24(a)(2) states that, upon a timely motion, the Court must permit anyone to intervene who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.”

5. As an initial matter, the Court should find this motion timely. *See* Fed. R. Civ. P. 24(a), (b). The Seventh Circuit looks at four factors to determine whether a motion is timely: “(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; (4) any other unusual circumstances.” *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797-98 (7th Cir. 2013) (internal quotation and citation omitted). Upon receipt of the complaint by the plaintiffs, the government diligently investigated these allegations and now moves to intervene to allege violations of Title II and Section 504 upon substantiating the complaint allegations. There is no prejudice to the original parties, who were aware of and participated in the United States’ investigation, and do not oppose intervention. Further, fact discovery remains open and expert discovery has yet to begin. And as explained below, the United States would be prejudiced if the motion were denied.

6. The United States’ interest in the matter is significant. The Department of Justice is the federal agency charged with enforcing the ADA and Section 504, and it issues the ADA’s implementing regulations. *See* Fed. R. Civ. P. 24(a)(2). It has a substantial interest in the subject matter of the pending litigation. Underlying the enactment of the ADA was Congress’s intent to

“provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities . . . .” 42 U.S.C. § 12101(b)(1). Congress sought “clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities,” 42 U.S.C. § 12101(b)(2), and explicitly stated that one of the purposes of the ADA was “to ensure that the Federal Government plays a central role in enforcing the standards established [in the Act] on behalf of individuals with disabilities . . . .” 42 U.S.C. § 12101(b)(3).

7. In this case, the United States’ interest is in enforcing the ADA and Section 504 and their implementing regulations in the context of the accessibility of pedestrian signals. The private plaintiffs do not and cannot represent the United States’ views on the proper interpretation and application of Title II, Section 504, and the relevant implementing regulations in this context. *Cf.* Fed. R. Civ. P. 24(a)(2). Furthermore, if this case proceeds to a remedy phase (as the United States expects it will), the United States’ participation will be important to assure that the remedial plan for Chicago, a large municipality, comports with those interpretations. Conversely, if intervention is denied and the United States is not a party to the process, the United States’ interests and responsibilities will be impaired. Therefore, the Court should grant the United States intervention as of right.

8. Alternatively, the Court should exercise its discretion to permit the United States to intervene as a plaintiff under Fed. R. Civ. P. 24(b)(1)(B) and/or (b)(2). Under Rule 24(b), the Court may allow intervention, on a timely motion, by:

(1)(B) Anyone who “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1); and

(2) A governmental officer or agency “if a party’s claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or (B) any

regulation, order, requirement, or agreement issued or made under the statute or executive order.” Fed. R. Civ. P. 24(b)(2).

9. The United States satisfies Rule 24(b)(1)(B), because the proposed complaint in intervention implicates several questions of fact and law that are not only common but identical to those already in the case. Indeed, the most essential questions—whether and to what extent Chicago has provided pedestrian signals for sighted pedestrians but failed to do so for pedestrians who are blind, and whether that violates Title II and Section 504—are identical.

10. The United States also satisfies Rule 24(b)(2), because the parties’ claims and defenses entirely concern Title II and Section 504 and their implementing regulations, and the Department of Justice is a federal agency that administers and enforces the ADA and Section 504, and issues the ADA’s implementing regulations. *See* 42 U.S.C. § 12101(b)(3) (“the Federal Government plays a central role in enforcing the [ADA’s] standards”); 42 U.S.C. § 12134(a) (directing the Attorney General to promulgate ADA regulations); Executive Order 12250 (45 FR 72995) (delegating to the Attorney General leadership and coordination of Section 504 implementation and enforcement by Executive agencies); *cf. Steward v. Abbott*, 189 F. Supp. 3d 620, 626 (W.D. Tex. 2016) (the parties’ Title II and Section 504 claims and defenses were based on “a statutory and regulatory regime that the Attorney General has been charged by Congress with administering.”); *see also Disability Advocates, Inc. v. Paterson*, No. 03-cv-3209, 2009 WL 4506301, at \*2 (E.D.N.Y. Nov. 23, 2009) (permitting intervention by the United States under Rule 24(b)(2) in a Title II and Section 504 case).

11. Having met those requirements, permissive intervention is in the case management discretion of the Court. *Planned Parenthood of Wisconsin, Inc. v. Kaul*, 942 F.3d 793, 803 (7th Cir. 2019). The Court must weigh “whether the intervention will unduly delay or prejudice the

adjudication of the original parties' rights," Fed. R. Civ. P. 24(b)(3), but otherwise does not place any restraints on the Court's discretion. As discussed above, the United States' participation as intervenor would neither unduly delay the proceedings nor prejudice the adjudication of the rights of the original parties. On the contrary, the United States anticipates that its participation will further the goal of appropriate remediation of the violations and efficient resolution of this matter. Therefore, the Court should allow intervention here.

12. Attorneys for the United States have consulted with counsel for all parties, and no party opposes the United States' intervention as plaintiff.

WHEREFORE, the United States should be allowed to intervene as a plaintiff in this case.

Respectfully submitted,

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