

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

CITY OF BEAUMONT, TEXAS,

Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:15CV201

PARTIAL CONSENT, PARTIAL OPPOSED MOTION FOR LEAVE TO INTERVENE
BY ALISSA HUMPHREY, LAURA ODOM, AND TODD HICKS

CHRISTOPHER P. MCGREAL
TX State Bar No. 24051774
DISABILITY RIGHTS TEXAS
1420 Mockingbird Lane, Suite 450
Dallas, Texas 75247
(214) 845-4056 (Phone)
(214) 630-3472 (Fax)
cmcgregal@drtx.org

LISA SNEAD
TX State Bar No. 24062204
DISABILITY RIGHTS TEXAS
2222 W. Braker Lane
Austin, Texas 78758
(512) 454-4816 (Phone)
(512) 454-3999 (fax)
lsnead@drtx.org

SEAN A. JACSON
TX State Bar No. 24057550
DISABILITY RIGHTS TEXAS
1500 McGowen, Ste. 100
Houston, TX 77004
(713) 974-7691 (Phone)
(713) 974-7695 (Fax)
sjackson@drtx.org

GARTH CORBETT
TX State Bar No. 04812300
DISABILITY RIGHTS TEXAS
2222 W. Braker Lane
Austin, Texas 78758
(512) 454-4816 (Phone)
(512) 454-3999 (Fax)
gcorbett@drtx.org

DATED: August 5, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
MOTION FOR LEAVE TO INTERVENE BY ALISSA HUMPHREY, LAURA ODOM, AND TODD HICKS	1
MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' MOTION TO INTERVENE	
PRELIMINARY STATEMENT	5
ARGUMENT	6
I. Petitioners Satisfy the Requirements of Federal Rule of Civil Procedure 24(a)(1)	6
A. Petitioners' motion to intervene is timely	6
B. Petitioners have an unconditional right granted by federal statute	9
II. Alternatively, Petitioners Satisfy the Requirements of Federal Rule of Civil Procedure 24(a)(2)	11
III. Alternatively, Petitioners Satisfy the Requirements of Federal Rule of Civil Procedure 24(b)(1)(A) and 42(b)(1)(B)	13
CONCLUSION	14
CERTIFICATE OF SERVICE	166
CERTIFICATE OF CONFERENCE	177
Petitioners' Complaint in Intervention (Exhibit A)	188
Proposed Order Granting Petitioners' Motion for Leave to Intervene	

TABLE OF AUTHORITIES

Cases

<i>Atlantis Dev. Corp. v. United States</i> , 379 F.2d 818 (5th Cir. Fla. 1967)	8, 12
<i>Bloomfield v. Dodd</i> , 749 F.3d 339 (5th Cir. 2014)	12
<i>Brotherhood of Railroad Trainmen v. Baltimore & O.R. Co. et. al.</i> , 331 U.S. 519, 67 S.Ct. 1387 (1947).....	9
<i>CBOCS West, Inc. v. Humphries</i> , 533 U.S. 442, 128 S. Ct. 1951 (2008).....	11
<i>Ceres Gulf v. Cooper</i> , 957 F.2d 1199 (5th Cir. 1992)	8, 11, 12
<i>Chiles v. Thornburgh</i> , 865 F.2d 1197 (11th Cir. 1989)	7
<i>Diaz v. Southern Drilling Corp.</i> , 427 F.2d 1118 (5th Cir. Tex. 1970)	7
<i>Edwards v. City of Houston</i> , 78 F.3d 983 (5th Cir. 1996)	8
<i>Ford v. City of Huntsville</i> , 242 F.3d 235 (5th Cir. 2001)	6, 11
<i>Georgia v. U.S. Army Corps of Engineers</i> , 302 F.3d 1242 (11th Cir. 2002)	7
<i>Great American Fed. Sav. & Loan Assoc. v. Novotny</i> , 442 U.S. 366, 99 S. Ct. 2345 (1979).....	12
<i>Hopwood v. Texas</i> , 21 F.3d 603 (5th Cir. 1994)	12
<i>John Doe No. 1 v. Glickman</i> , 256 F.3d 371 (5th Cir. 2001)	6, 8

<i>McDonald v. E.J. Lavino Co.</i> , 430 F.2d 1065 (5th Cir. 1970)	6, 7
<i>Ross v. Marshall</i> , 426 F.2d 745, 754 (5th Cir. 2005)	passim
<i>Ruiz v. Estella</i> , 161 F.3d 814, 828 (5th Cir. 1998)	9, 10
<i>San Juan County v. U.S.</i> , 504 F.3d 1163, 1228 (10th Cir. 2007)	13
<i>Sierra Club v. Espy</i> , 18 F.3d 1202, 1205 (5th Cir. 1994)	6, 7, 8, 12
<i>Southeast Center for Biological Diversity v. Berg</i> , 268 F.3d 810, n. 823 (9th Cir. 2001)	13
<i>Stallworth v. Monsanto Co.</i> , 558 F.2d 257, 267 (5th Cir. Fla. 1977)	6, 7, 8
<i>Trafficante v. Metropolitan Life Ins. Co.</i> , 409 U.S. 205, 209-11 (1972)	12
<i>Trbovich v. United Mine Workers of Am.</i> , 404 U.S. 528, 529 n. 10 (1972).....	12
<i>U.S. v. California Mobile Home Park Mgmt. Co.</i> , 107 F.3d 1374, 1377 (9th Cir. 1997)	10
<i>U.S. v. Country Club Garden Owners Ass’n, Inc.</i> , 159 F.R.D. 400, 403 (E.D. N.Y. 1995)	10
<i>U.S. v. Henry</i> , 519 F. Supp. 2d 618, 621 (E.D. Va. 2007)	10
<i>United States v. Marsten Apartments, Inc.</i> , 175 F.R.D. 265, 268-69 (E.D. Mich. 1997)	10, 11
<i>United States v. Oregon</i> , 839 F.2d 635, 638 (9th Cir. 1988)	9

Statutes

Fair Housing Act ("FHA"), Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631	passim
Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131-12134, 12203, and 28 C.F.R. Part 35.....	passim

Rules

Federal Rules of Civil Procedure 24(a)(2), <i>et seq.</i>	passim
Federal Rules of Civil Procedure 24(b)(1), <i>et seq.</i>	passim
Federal Rules of Civil Procedure 24(c)	4
Federal Rule of Civil Procedure 26(f)	2, 3
Local Rule CV-7	5

Other Authorities

Barron & Holtzoff, <i>Federal Practice and Procedure</i> § 594, at 366 (Wright ed. 1969)	7
--	---

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff	§	
	§	
v.	§	CIVIL ACTION NO. 1:15CV201
	§	
CITY OF BEAUMONT, TEXAS,	§	
	§	
	§	
Defendant.	§	

**PARTIAL CONSENT, PARTIAL OPPOSED MOTION FOR LEAVE TO INTERVENE
BY ALISSA HUMPHREY, LAURA ODOM, AND TODD HICKS**

Alissa Humphrey, by and through her legal guardian Barbara Beauchamp, Laura Odom, and Todd Hicks (“Petitioners”), by and through their undersigned attorneys, respectfully move for an order permitting them to intervene as plaintiffs in the above-captioned action pursuant to Federal Rule of Civil Procedure 24(a)(1) or 24(a)(2) as a matter of right or, alternatively, permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(A) and/or 24(b)(1)(B). As grounds in support of this motion, the Petitioners state as follows:

1. Petitioners are the charging party in the United States Civil Action No. 1:15CV201, and are the individuals damaged as a result of the Defendant’s unlawful conduct. Petitioners all timely filed housing discrimination complaints with the U.S. Department of Housing and Urban Development (“HUD complaints”) concerning Defendant’s conduct.

2. As a result of Petitioners’ HUD complaints, on May 26, 2015, the United States brought this action for declaratory and injunctive relief, monetary damages and civil penalties against Defendant under the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C.

§§ 3601-3631, and Titles II and V of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131-12134, 12203, as well as 28 C.F.R. Part 35.

3. On July 17, 2015, Defendant filed a motion to dismiss the United States’ complaint.

4. On August 6, 2015, the existing parties will hold a Federal Rule of Civil Procedure 26(f) attorney call pursuant to the Court’s July 20, 2015 order.

5. A Federal Rule of Civil Procedure 16 Management/Scheduling call with the Court is set for October 14, 2015 at 9:00 a.m. in Courtroom No. 2.

6. Petitioners meet the requirement to intervene under Federal Rule of Civil Procedure 24(a)(1). Under Federal Rule of Civil Procedure 24(a)(1), intervention shall be granted to anyone who upon timely motion “is given an unconditional right to intervene by a federal statute.”

7. Under 42 U.S.C. § 3614(e) of the Fair Housing Act, “[u]pon timely application, any person may intervene in a civil action commenced by the Attorney General under [42 U.S.C. § 3614(a)] which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved party.” The United States, by and through the U.S. Attorney General, initiated suit against Defendants pursuant to 42 U.S.C. 3614(a). Petitioners are aggrieved persons under 42 U.S.C. 3602(i) for purposes of 42 U.S.C. 3614(e).

8. Further, Petitioners’ motion to intervene is timely. Petitioners timely sought intervention after becoming aware or should have been aware of this action. The existing parties will not experience any harm. As discussed *infra* below, Plaintiff United States does not oppose the motion and has not asserted any prejudice with this intervention. The pending litigation is in its infancy as only the initial complaint and Defendants’ motion to dismiss are before the court. The government is set to respond to this motion by August 17, 2015. Further, no discovery has been conducted. A Rule of Federal Civil Procedure 26(f) attorney call is scheduled for Thursday,

August 6, 2015 at 1:30 EST/ 12:30 CST between the existing parties. Petitioners will defer to the scheduling decided by the existing parties if any results from the pretrial conference in accordance with Federal Rule of Civil Procedure 26(f). Petitioners may suffer harm if they are not allowed to intervene. Some of Petitioners' claims and facts overlap with the government's allegations. Petitioners' interests could be adversely impacted if they were to file their own lawsuit in a separate action if there are any adverse rulings against the government involving their claims in this action. Additionally, unusual factors weigh in favor of Petitioners intervening as they seek to advocate and protect their unique civil rights under the Fair Housing Act and the Americans with Disabilities Act.

9. Alternatively, Petitioners have a right to intervene Pursuant to Federal Rule of Civil Procedure 24(a)(2). Under Federal Rule of Civil Procedure 24(a)(2), upon timely motion, intervention shall be granted to a party 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."

10. As discussed above, Petitioners' motion to intervene is timely. Petitioners have a central interest relating to the subject of this action as the Defendant's conduct was perpetrated against them in violation of the Fair Housing Act and Americans with Disabilities Act. Petitioners' interests are not economic, but rather involve substantive civil rights granted to them by Congress. Additionally, disposition of the action without Petitioners' participation may impede their ability to ensure Defendant's conduct is redressed adequately for them personally. For example, Petitioner seek specific injunction in their complaint in intervention so that they do not experience any retaliation for having sought to enforce their rights through the HUD complaints process.

Further, as mentioned *supra*, some of Petitioners' claims and facts overlap with the government's allegations. Petitioners' interests could be adversely impacted if they were to file their own lawsuit in a separate action if there are any adverse rulings against the government involving their claims in this action. Further, Petitioners' interests may not be adequately protected by the United States. Because the United States represents the public interest on a national scale, their interests differ from the Petitioners' personal and singular situations relating to certain relief they request in addition to what the United States seeks.

11. Alternatively, Petitioners satisfy the requirements of permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(A). Under Federal Rule of Civil Procedure 24(b)(1)(A), the court may, upon timely application, permit intervention to a party that has a conditional right granted under a federal statute.

12. As mentioned *supra*, Petitioners are granted a right under the FHA to intervene. 42 U.S.C. § 3614(e). Further, permitting intervention will not cause undue delay or prejudice the adjudication of the original parties' rights. FED. R. CIV. P. 24(b)(3). Petitioners are filing their motion to intervene only two months after the litigation commenced. The original parties have not begun any substantive proceedings as only the complaint and a motion to dismiss have been filed. Further, if Petitioners are not allowed to intervene, they will have to file a separate cause of action against Defendant. This would result in additional costs to both parties and duplicative discovery efforts.

13. Alternatively, Petitioners satisfy the requirements of permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B). Under Federal Rule of Civil Procedure 24(b)(1)(B), the court may, upon timely application, permit intervention to a party that "has a claim or defense that shares with the main action a common question of law or fact." Petitioners' claims of

disability discrimination under the FHA and ADA form common questions of law and fact underlining the government's complaint. For the reasons discussed *supra*, Petitioners' intervention is timely and would not cause undue delay or prejudice to this case. FED. R. CIV. P. 24(b)(3).

14. A copy of Petitioners' proposed complaint in intervention is attached to this motion as Exhibit A. *See* FED. R. CIV. P. 24(c).

15. Pursuant to Local Rule CV-7(i) & (h), Petitioners conferred in good faith with counsel for the parties. Plaintiff United States does not oppose intervention. Defendant City of Beaumont opposes intervention by Petitioners. *See* Attached Certificate of Conference.

16. As further support for this Motion, Petitioners respectfully direct the Court to following Memorandum of Law and Brief, which is attached hereto and incorporated by reference. *See* Local Rule CV-7(c).

**MEMORANDUM OF LAW IN SUPPORT OF
PETITIONERS' MOTION TO INTERVENE**

PRELIMINARY STATEMENT

Alissa Humphrey, Laura Odom, and Todd Hicks ("Interveners") respectfully submit this memorandum of law in support of their motion to intervene in the action entitled United States of America, v. City of Beaumont, Civil Action No. 1:15CV201. Interveners seek intervention in this case pursuant to Federal Rules of Civil Procedure 24(a), 24(b), and 42 U.S.C. § 3614(e) of the Fair Housing Act. For the reasons set forth below, Interveners satisfy the requirements of intervention as of right under Federal Rule of Civil Procedure 24(a)(1) as they are provided an unconditional right to intervene pursuant to 42 U.S.C. § 3614(e). In the alternative, Interveners satisfy the requirements for intervention as a matter of right under Federal Rules of Civil Procedure 24(a)(2) and permissive intervention under 24(b).

ARGUMENT

I. Petitioners Satisfy the Requirements of Federal Rule of Civil Procedure 24(a)(1)

Rule 24(a)(1) of the Federal Rules of Civil Procedure permits as a matter of right anyone to intervene who, upon timely motion, has an unconditional right to intervene given by federal statute. Petitioners meet the standard for Rule 24(a)(1) of the Federal Rules of Civil Procedure.

A. Petitioners' motion to intervene is timely

The Fifth Circuit uses a four factor test in determining whether a motion intervene is timely: (1) how long the interveners knew or reasonably should have known of their stake in the case into which they seek to intervene, (2) the prejudice, if any, the existing parties may suffer because the interveners failed when they knew or reasonably should have known of their stake in the case, (3) the prejudice, if any, the potential interveners may suffer if the court does not let them intervene; and (4) any unusual circumstances that weigh in favor of or against a finding of timeliness. *See e.g., Ross v. Marshall*, 426 F.2d 745, 754 (5th Cir. 2005); *Ford v. City of Huntsville*, 242 F.3d 235, 239 (5th Cir. 2001). In fact, “[a] motion to intervene may still be timely even if all the factors do not weight in favor of a finding of timeliness.” *John Doe No. 1 v. Glickman*, 256 371, 376 (citing *Stallworth v. Monsanto Co.*, 558 F.2d 257, 267 (5th Cir. Fla. 1977); *see also Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994) (“The analysis is contextual; absolute measures of timeliness should be ignored [as] [t]he requirement of timeliness is not a tool of retribution to punish the tardy would-be intervenor, but rather a guard against prejudicing the original parties by the failure to apply sooner.”).

Further, as the Fifth Circuit recognized in *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065 (5th Cir. 1970), when evaluating timeliness in connection with motion intervene as a matter of right under Federal Rule of Civil Procedure 24(a) versus timeliness under motion intervene as permissive under Federal Rule of Civil Procedure 24(b), “the would-be intervenor may be

seriously harmed if he is not permitted to intervene, courts should be reluctant to dismiss such a request for intervention as untimely, even though they might deny the request if the intervention were merely permissive.” 430 F.2d at 1073 (quoting 2 Barron & Holtzoff, *Federal Practice and Procedure* § 594, at 366 (Wright ed. 1969)). The timeliness requirement “must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice.” *Georgia v. U.S. Army Corps of Engineers*, 302 F.3d 1242, 1259 (11th Cir. 2002) (quoting *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. Ala. 1970))

The first factor of the timeliness test set forth by the Fifth Circuit considers how long the interveners knew or should have known of their interest in the litigation. *Marshall*, 426 F.2d at 754. Petitioners became aware of their interests in the pending litigation on May 26, 2015, the day the government filed suit. Approximately two months later, Petitioners filed their motion to intervene. *See Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1125-26 (5th Cir. Tex. 1970) (motion to intervene more than a year after the action was commenced was timely when there had been no legally significant proceedings other than the completion of discovery and intervention would not cause any delay in the process of the overall litigation); *see also Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989) (A motion to intervene in an 11th circuit case was timely “only seven months after [the plaintiff] filed his original complaint, three months after the government filed its motion to dismiss, and before any discovery had begun.”). Petitioners diligently pursued their motion to intervene, when factoring in time to identify counsel, counsel to research the claims of the case, and then file the motion to intervene.

The second factor of the timeliness evaluation is for the Court to determine the prejudice, if any, which the existing parties because interveners failed to intervene when they became aware

of should have been aware of their stake in the pending litigation. *Marshall*, 426 F.2d at 754. “This factor is concerned only with the prejudice caused by the applicants’ delay, not that prejudice which may result if intervention is allowed.” *Id.* at 755 (quoting *Edwards v. City of Houston*, 78 F.3d 983, 1002 (5th Cir. 1996) (citing *Stallworth*, 558 F.2d at 265; accord *Sierra Club*, 18 F.3d at 1206; *Ceres Gulf v. Cooper*, 957 F.2d 1199, 1203 (5th Cir. 1992))). Here, Plaintiff United States does not oppose the motion and has not asserted any prejudice with this intervention. The pending litigation is in its infancy as only the initial complaint and Defendants’ motion to dismiss are before the court. Further, no discovery has been conducted. To any extent Defendants will contend that they will be burdened with additional discovery from Interveners; this would be the case regardless if Interveners pursued their own separate lawsuit, which they can. *Marshall*, 426 F.3d at 756 n.41 (citing *John Doe No.1*, 256 F.3d at 378; *Stallworth*, 558 F.2d at 265 (“[T]o take any prejudice that the existing parties may incur if intervention is allowed into account under the rubric of timeliness would be to rewrite Rule 24 by creating an additional prerequisite to intervention as of right.”)).

The next factor is the prejudice Interveners may suffer if the Court does not allow them to intervene. *Marshall*, 426 F.3d at 754. Petitioners can file their own lawsuit. Their interests could be adversely impacted in a separate action if there are any adverse rulings against the government involving their claims. See *Atlantis Dev. Corp. v. United States*, 379 F.2d 818, 829 (5th Cir. Fla. 1967) (recognizing that potential for a negative stare for a negative *stare decisis* effect may “supply that practical disadvantage which warrants intervention of right”); *Sierra Club*, 18 F.3d at 1207 (quoting *Ceres Gulf*, 957 at 1204) (impairment of an “intervener’s interest includes “the *stare decisis* of the district court’s judgment”).

Further, by being authorized to intervene, Petitioners would be able to advocate for their own unique interests. For instance, Petitioners intend to seek specific injunctive relief against

Defendants to ensure Defendant will not retaliate against them for filing administrative and judicial complaints. In addition, there is a likelihood this lawsuit could be resolved through a settlement agreement or other monetary disposition. However, such a result would not compel the City to implement changes necessary to ensure that key employees are trained on how to accommodate persons with disabilities under the ADA. Further, Petitioners seek injunctive relief requiring for Defendant to create a Fair Housing coordinator to ensure future reasonable accommodation requests are considered as required under both state and federal FHAs and the ADA. Finally a *stare decisis* effect is an important consideration in determining the extent to which an applicant's interest may be impaired. *See United States v. Oregon*, 839 F.2d 635, 638 (9th Cir. 1988). That is, rulings of law made on the factual record in this case may have an impact on subsequent enforcement actions these Petitioners and other persons with similar disabilities may be able to bring.

The final factor in the timeliness test, the Court must determine whether there are any unusual factors weigh in favor of timeliness. *Marshall*, 426 F.3d at 754. While Petitioners contend their motion to intervene is timely, regardless, there are unusual factors that weigh in their favor for intervention if the Court determines the motion is untimely. The Interveners allege they are victims of housing and disability discrimination. Their involvement in the pending litigation is necessary to protect their private interests and to ensure they have the opportunity to present all of relevant arguments that are unique and particularized to individual interests.

B. Petitioners have an unconditional right granted by federal statute

“Intervention under [Federal Rule of Civil Procedure] 24(a)(1) is ‘absolute and unconditional.’” *Ruiz v. Estella*, 161 F.3d 814, 828 (5th Cir. 1998) (citing *Brotherhood of Railroad Trainmen v. Baltimore & O.R. Co. et. al.*, 331 U.S. 519, 67 S.Ct. 1387, 1393 (1947)). Indeed,

under this Rule, “‘statutory intervenors’ need not show inadequacy of representation or that their interests may be impaired if not allowed to intervene.” *Ruiz*, 161 F.3d at 828 (cf. citation omitted). Moreover, “[u]nder [Federal Rule of Civil Procedure] 24(a)(1), intervenors need not even prove a ‘sufficient interest relating to the subject matter of the controversy, since Congress has already declared that interest sufficient by granting the statutory right to intervene.” *Ruiz*, 161 F.3d at 828. Here, Petitioners have an unconditional right to intervene in this action pursuant to the Federal Rules of Civil Procedure under 42 U.S.C. § 3614(e).¹

As discussed in their motions, Petitioners can under 42 U.S.C. § 3614(e) of the Fair Housing Act, “[u]pon timely application . . . intervene in a civil action commenced by the Attorney General under [42 U.S.C. § 3614(a)] which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved party.” The United States commenced this litigation pursuant to 42 U.S.C. 3614(a). Petitioners are also aggrieved persons under 42 U.S.C. 3602(i) for purposes of 42 U.S.C. 3614(e) as they are one of the subjects of the lawsuit.

Other courts have determined that 42 U.S.C. § 3614(e) conveys an unconditional right for aggrieved persons to intervene under Federal Rule of Civil Procedure 24(a)(1). *See U.S. v. Henry*, 519 F. Supp. 2d 618, 621 (E.D. Va. 2007) (“The Infants have an unconditional right to intervene under 42 U.S.C. § 3614(e)) (citing *United States v. Marsten Apartments, Inc.*, 175 F.R.D. 265, 268-69 (E.D. Mich. 1997)); *see e.g., U.S. v. California Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1377 (9th Cir. 1997); *U.S. v. Country Club Garden Owners Ass’n, Inc.*, 159 F.R.D. 400, 403 (E.D. N.Y. 1995); *see also Ruiz*, 161 F.3d at 828 (where the Fifth Circuit held that individual

¹ 42 U.S.C. § 3614(e) states: “Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted plaintiff in a civil action under 3613 of this title.”

legislators had an unconditional right to intervene under the Prisoner Litigation Reform Act). In *Marsten*, the Court held that although the use of the word “may” conferred a discretionary right, that discretion – whether or not to intervene – was specifically vested in the aggrieved party. 175 F.R.D. at 269.

II. Alternatively, Petitioners Satisfy the Requirements of Federal Rule of Civil Procedure 24(a)(2)

There are four elements of Federal Rule Civil Procedure 24(a)(2): (1) the motion is timely, (2) the intervening party asserts related to the property or transaction of the pending litigation, (3) the disposition of the case into which the party seeks to intervene may impair or impede the party’s ability to protect their interest, and (4) the existing parties do not adequately represent the intervening party’s interest. *Marshall*, 426 F.3d at 753-761. Petitioners meet all four of these elements.

For the reasons discussed *supra*, Section I.A., Petitioners’ motion to intervene is timely for the purposes of Federal Rule of Civil Procedure 24(a)(2). In terms of 24(a)(2)’s second intervention element Petitioner is required to have an interest relating to the property or transaction that is the subject of the underlying action. *Ford v. City of Huntsville*, 242 F.3d 235 (5th Cir. 2001). However, the Fifth Circuit has “warned against defining “property or transaction” too narrowly. *Ceres Gulf*, 957 F.2d 1199 at 1203. Rather, the Fifth Circuit “observed that the interest ‘test’ is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Marshall*, 426 F.3d at 757 (internal citations and quotations omitted).

Petitioners meet this interest requirement as their substantive civil rights as persons with disabilities are protected under and recognized by major federal civil rights litigation in the form of the Fair Housing Act and Americans with Disabilities Act. *See CBOCS West, Inc. v. Humphries*,

533 U.S. 442, 456-57, 128 S. Ct. 1951, 1961-62 (2008) (citing *Great American Fed. Sav. & Loan Assoc. v. Novotny*, 442 U.S. 366, 377, 99 S. Ct. 2345 (1979)). Put bluntly, Petitioners have a substantive federal right not to be discriminated against because of their disabilities. See *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209-11 (1972) (The Civil Rights Act of 1968 created a legally protected interest in ensuring fair housing).

Additionally, Petitioners satisfy the criterion that the disposition of this litigation may, as a practical matter, impair or impede their ability to protect their civil rights interests. *Marshall*, 426 F.3d at 760. Petitioners' potential injuries are unique and particularized and the disposition of their interests may in some respects may be different then the government's interest. Additionally, as discussed *supra*, the outcome of this case, including the potential for appeals by existing parties, implicates *stare decisis* concerns that warrant Petitioners' intervention. See *Atlantis Dev. Corp. v. United States*, 379 F.2d 818, 829 (5th Cir. Fla. 1967) (recognizing that potential for a negative stare for a negative *stare decisis* effect may "supply that practical disadvantage which warrants intervention of right"); *Sierra Club*, 18 F.3d at 1207 (quoting *Ceres Gulf*, 957 at 1204) (impairment of an "intervener's interest includes "the *stare decisis* of the district court's judgment").

The final requirement for intervention under Federal Rule of Civil Procedure 24(a)(2) is that the interest is inadequately represented by the existing parties to the litigation. The applicant for intervention bears the burden of demonstrating inadequate representation. See *Hopwood v. Texas*, 21 F.3d 603, 605 (5th Cir. 1994). This burden is "minimal," however, and is satisfied if the applicant shows that representation of his interest "may be" inadequate. *Bloomfield v. Dodd*, 749 F.3d 339, 345 (5th Cir. 2014) (quoting *Sierra Club*, F.3d at 1207 (citing *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 529 n. 10 (1972))). The United States may not be able to

adequately protect the private Petitioners' interests. As the Ninth Circuit recognized in a case allowing private parties to intervene alongside government agency defendants, "[t]he interest of government and the private sector may diverge." *Southeast Center for Biological Diversity v. Berg*, 268 F.3d 810, n. 823 (9th Cir. 2001); *see also San Juan County v. U.S.*, 504 F.3d 1163, 1228 (10th Cir. 2007).

III. Alternatively, Petitioners Satisfy the Requirements of Federal Rule of Civil Procedure 24(b)(1)(A) and 42(b)(1)(B).

Rule 24(b)(1) of the Rules of Civil Procedure provide an alternative basis for Petitioners' intervention in this action. This rule is considered permissive intervention, as opposed to intervention as of right under Federal Rule of Civil Procedure 24(a). For all requests of permissive intervention, the "court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." FED. R. CIV. P. 24(b)(3). For the reasons discussed *supra*, Section I.A., Petitioners' motion to intervene is timely for the purposes of Federal Rule of Civil Procedure 24(b)(1)(A) and 24(b)(1)(B).

Under Federal Rule of Civil Procedure 24(b)(1)(A), the court may, upon timely application, permit intervention to a party that has a conditional right granted under a federal statute. Even if the court were to determine that Petitioners do not have an unconditional right to intervene under 42 § 3614(e), they have a conditional right granted by the Federal Fair Housing Act. Additionally, for similar reasons identified in the analysis of Federal Rule of Civil Procedure 24(a) *supra*, Section I.A., Petitioners intervention in this litigation is timely and would not cause undue delay to the proceedings or prejudice the adjudication of the original parties. FED. R. CIV. P. 24(b)(3).

Under Federal Rule of Civil Procedure 24(b)(1)(B), "[o]n timely motion, the court may permit anyone to intervene who has a claim or defense that shares with the main action a common question of law." Petitioners' claims and experiences of disability discrimination under the FHA

and ADA by Defendant's actions form central common questions of law and fact underlining the government's complaint. Additionally, for similar reasons identified in the analysis of Federal Rule of Civil Procedure 24(a) *supra*, Section I.A., Petitioners' intervention in this litigation is timely and would not cause undue delay to the proceedings or prejudice. FED. R. CIV. P. 24(b)(3).

CONCLUSION

For the foregoing reasons, the Court should grant Petitioners' motion for leave to intervene and orders their intervention in this action.

Respectfully submitted,

s/ Christopher P. McGreal
CHRISTOPHER P. MCGREAL
TX State Bar No. 24051774
DISABILITY RIGHTS TEXAS
1420 Mockingbird Lane, Suite 450
Dallas, Texas 75247
(214) 845-4056 (Phone)
(214) 630-3472 (Fax)
cmcgreal@drtx.org

LISA SNEAD
TX State Bar No. 24062204
DISABILITY RIGHTS TEXAS
2222 W. Braker Lane
Austin, Texas 78758
(512) 454-4816 (Phone)
(512) 454-3999 (Fax)
lsnead@drtx.org

SEAN A. JACKSON
TX State Bar No. 24057550
DISABILITY RIGHTS TEXAS
1500 McGowen, Ste. 100
Houston, Texas 77004
(713) 974-7691 (Phone)
(713) 974-7695 (Fax)
sjackson@drtx.org

GARTH A. CORBETT
TX State Bar No. 04812300
DISABILITY RIGHTS TEXAS
2222 W. Braker Lane
Austin, Texas 78758
(512) 454-4816 (Phone)
(512) 454-3999 (Fax)
gcorbett@drtx.org

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2015, a true and correct copy of the foregoing document, in electronic form, was sent to the person listed below in accordance with the Local Rules for the U.S. District Court for the Eastern District of Texas via the CM/ECF System:

Michael Wayne Lockhart
U S Attorney's Office - Beaumont
350 Magnolia
Suite 150
Beaumont, TX 77701-2237

Aurora R. Bryant
US Department of Justice - 006
1800 G Street NW, Room 7119
Washington, DC 20006

Max P Lapertosa
US Department of Justice - 006
1800 G Street NW, Room 7119
Washington, DC 20006

William Michael McKamie
McKamie Krueger, LLP
941 Proton Road
San Antonio, TX 78258

/s/ Christopher McGreal

Christopher McGreal

CERTIFICATE OF CONFERENCE

Undersigned counsel hereby certifies that he has complied with the meet and confer requirement of Local Rule CV-7(h). This Motion to Intervene is opposed by Defendant City of Beaumont, Texas. This motion is not opposed by Plaintiff United States. A personal conference was held on August 5, 2015 between counsel for Petitioners, led by Christopher McGreal, and counsel for Defendants, led by Barbara Quirk. No agreement could be reached between Defendants and Petitioners because the parties differ on whether Petitioners should be able to intervene. Discussions have reached an impasse, leaving an open issue for the court to resolve.

/s/ Christopher McGreal_____

Christopher McGreal

Exhibit A

Petitioners' Complaint in Intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 1:15-cv-00201
v.	§	
	§	JUDGE: Ron Clark
CITY OF BEAUMONT, TEXAS	§	MAGISTRATE:
	§	
Defendant.	§	

**COMPLAINT IN INTERVENION FOR ALISSA HUMPHREY,
LAURA ODOM, AND TODD HICKS**

Pursuant to Federal Rule of Civil Procedure 24, Ms. Alissa Humphrey, by and through her legal guardian Barbara Beauchamp, Ms. Laura Odom, and Mr. Todd Hicks respectfully file this complaint in intervention in the United States Civil Action No. 1:15CV201. By this filing, Ms. Humphrey, Ms. Odom, and Mr. Hicks appear in this case as plaintiffs to the claims filed by Plaintiff United States of America against Defendant City of Beaumont, Texas, seeking declaratory and injunctive relief to prevent further discrimination on the basis of their disabilities as well as compensatory damages and attorney fees. Intervenor Ms. Humphrey, Ms. Odom, and Mr. Hicks allege as follows:

I. INTRODUCTION

1. Alissa Humphrey, Laura Odom, and Todd Hicks bring this complaint in intervention for declaratory and injunctive relief, monetary damages and attorney fees against the City of Beaumont, Texas (the “City”), under the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended (“FHA”), 42 U.S.C. §§ 3601-3631, and Titles II and V of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131-12134, 12203, as well as Title II’s

implementing regulation, 28 C.F.R. Part 35. The City discriminated against Ms. Humphrey, Ms. Odom, and Mr. Hicks on the basis of their disability by preventing or inhibiting the operation of small community homes for persons with intellectual or developmental disabilities, as follows: 1) by imposing a one-half mile spacing requirement for such homes, and 2) by imposing restrictive fire code requirements that are not imposed on similarly situated property uses and that exceed the State of Texas' requirements for community homes. Relying on these discriminatory policies, the City forced several community homes to close, including those occupied by the Intervenors, and forced residents to move to a nursing home.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and may grant the relief sought herein pursuant to 28 U.S.C. § 1331; 42 U.S.C. § 3613(a); 42 U.S.C. §§ 12133 and 12134; and 28 U.S.C. § 2201 and 2202.¹

3. Venue is proper under 28 U.S.C. § 1391 because the events or omissions giving rise to the claims alleged herein occurred in this district and because the Defendant is located there.

III. PARTIES

4. Plaintiff is the United States of America who brought suit against the Defendant City of Beaumont for declaratory and injunctive relief, monetary damages and civil penalties against Defendant under the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631, and Titles II and V of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131-12134, 12203, as well as 28 C.F.R. Part 35

5. Defendant is the City of Beaumont, a unit of government organized under the Constitution and laws of the State of Texas. *See* Tex. Local Gov't Code § 5.004. Under the City's

¹ The United States of America also commenced this action under 28 U.S.C. § 1345 in addition to the statutory provisions referenced by Intervenors.

Home Rule Charter, the City has the capacity to sue or be sued. Charter of the City of Beaumont, Tex., Art. 1, Sec. 2. The City – including but not limited to the City Council, the Community Development Advisory Committee, the Fire Department, and the Zoning Board (Zoning) – is a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131(1), 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35.

6. Intervenor Ms. Humphrey, Ms. Odom, and Ms. Hicks are part of the charging parties in this case, and are individuals damaged as a result of the Defendant’s unlawful conduct.

IV. Factual Allegations

A. Community Homes for Persons with Intellectual or Developmental Disabilities

7. The State of Texas (“Texas”), through Medicaid, provides community residential services for persons with intellectual or developmental disabilities through small group homes and apartments (“community homes”). The Intervenor resided in community homes and received Medicaid funding through an HCS waiver program. Texas receives federal financial assistance to run the HCS waiver program as codified by 42 U.S.C.A. § 1396-1.

8. Texas, through the Department of Aging and Disability Services, regulates, certifies and oversees community homes run by service providers for persons with intellectual or developmental disabilities. Oversight of the community homes includes regular inspections to ensure compliance with Medicaid requirements and state regulations, including fire safety requirements.

B. Beaumont’s Spacing Requirement

9. The City of Beaumont enforces a one-half mile spacing rule for community homes through its Community Development Department.

10. Beaumont applies the spacing requirement to community homes of all sizes, including homes and/or apartments with three or fewer residents.

11. Beaumont's one-half mile spacing rule applies only to community homes for persons with disabilities. Beaumont's Zoning Code allows three unrelated persons to live together as of right in residential districts; there is no spacing rule for any housing for persons without disabilities.

12. State regulations governing community homes do not impose any specific spacing requirements. In fact, the regulations promote integration of community homes with housing for persons without disabilities. Specifically, the regulations state that an individual or applicant is ineligible for HCS Program services if he or she resides in a dwelling that creates "a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability," or where "most of the residents of the dwellings are persons with an intellectual disability." 40 Tex. Admin. Code. § 9.155(a)(5)(H).

13. The one-half mile spacing requirement is not codified in the City's ordinances. Beaumont based this rule on the Texas Community Homes for Disabled Persons Location Act, which Beaumont erroneously held as establishing a mandatory spacing rule for small community homes. Tex. Hum. Res. Code §§ 123.001-123.010.

C. Beaumont's Fire Code Requirements

14. The City of Beaumont states that it has adopted the 2009 International Building Code, a large portion of which deals with fire prevention. Thus, the City of Beaumont has required community homes for persons with intellectual or developmental disabilities to install various fire safety measures, including: automatic sprinkler systems; commercial ventilated kitchen hoods with sprinkler systems; lighted exit signs on every bedroom and exit door; "hard-wired" fire alarm

systems with a direct connection to the fire department; key boxes; and lowered windows. Community homes of all sizes, even an individual apartment unit where only one person with a disability may live, must comply with these fire safety requirements.

15. Beaumont does not impose similar fire safety measures on single-family residences and apartments occupied by persons who are not related and who do not have intellectual or developmental disabilities. The City also does not impose these requirements for in-home child care providers that serve up to 12 children.

16. Beaumont's requirements for community homes are more stringent than those required by the State of Texas. The State requires community homes serving persons with disabilities to conduct fire drills and to have smoke detectors and alarms, among other requirements. Additionally, Texas requires community homes with four persons to have a sprinkler system, but only if fire drills indicate that residents cannot evacuate within three minutes with staff assistance.

17. The City did cease requiring community homes to have most of these fire safety measures in 2013, but continued to require automatic sprinkler systems for all community homes, regardless of home's size or the residents' abilities.

18. Automatic sprinkler systems are expensive, approximately \$30,000, and require annual maintenance and servicing. Thus, automatic sprinkler systems are cost-prohibitive for many service providers and companion care providers. Furthermore, because of the high maintenance cost of the sprinkler systems, landlords may refuse to allow them to be installed or may demand their removal at the conclusion of a lease, which is also cost-prohibitive for many service providers. Sprinkler systems may also be difficult to install in apartments homes in multifamily buildings. Therefore, the requirement of automatic sprinkler systems prohibits or significantly

limits the ability of community homes for persons with intellectual or developmental disabilities to operate in Beaumont.

D. Beaumont's Enforcement of the Half-Mile and Fire Safety Requirements

19. As a result of Beaumont's fire safety requirements and the half-mile spacing rule, several community homes have been forced to close and residents with disabilities have been forced to move, either to institutional settings or out of Beaumont.

1. Alissa Humphrey

20. Ms. Humphrey, an individual with intellectual, developmental, and physical disabilities, was a resident of Breakwater Bay Apartments in Beaumont, Texas. Ms. Humphrey lived with two other persons with intellectual or developmental disabilities in a first-floor, accessible unit operated by Texas HCS, a service provider agency located in Beaumont, TX that is licensed by the Texas Department of Aging and Disability Services ("DADS"). On June 12, 2012, officials from the City of Beaumont conducted a surprise inspection of her apartment.

21. Because the Texas HCS was unable to implement the required fire safety features, including a sprinkler system, a fire alarm system, and a commercial ventilated hood, and Ms. Humphrey's community home was within one-half mile of another community home, the City ordered the community home closed. Ms. Humphrey and her roommates were told to vacate the apartment within 30 days.

22. Ms. Humphrey did not want to move out of her home of seven years. Her mother asked the City's Fire Marshal to let Ms. Humphrey stay in her home. The Fire Marshal, Jack Mattox, responded that Ms. Humphrey "was not supposed to be in that apartment" due to her disabilities, or words to that effect.

23. Texas HCS was unable to find another community home for Ms. Humphrey that met the demands of the City of Beaumont. Consequently, Ms. Humphrey was transferred to an institutional nursing facility in Beaumont, where she lived for 13 months.

24. Ms. Humphrey did not want to live in a nursing facility, a segregated environment in which she lacked the opportunity to interact with non-disabled persons in the community. She was unable to move her furniture and other personal items into the nursing home, including a waterbed that she used to prevent bedsores. Additionally, while in the nursing home, Ms. Humphrey was unable to attend her community-based day program.

25. In October 2013, Disability Rights Texas helped Ms. Humphrey move into an existing four-person community home in Beaumont. However, this home is also within one-half mile of another small group home for persons with disabilities. Therefore, Ms. Humphrey's current home is under threat of closure due to Beaumont's one-half mile spacing rule.

2. Laura Odom and Todd Hicks

26. Mr. Hicks and Ms. Odom are persons with intellectual or developmental disabilities who each live in a three-bedroom apartment at Eagles Landing, an apartment complex in Beaumont, TX located at 3950 Major Drive. Each apartment unit is a community home that is operated by Jubilee Group Homes, Inc. ("Jubilee"), a service provider agency located in Beaumont, TX that is licensed by the Texas Department of Aging and Disability Services ("DADS"). Both Ms. Odom and Mr. Hicks have lived at Eagles Landing since March 2009.

27. Prior to residing in Eagles Landing, Mr. Hicks lived with two other residents with disabilities in a single-family home in Beaumont. Ms. Odom also lived in a single-family home in Beaumont. Both residences were staffed and operated by Jubilee.

28. On November 21, 2008, the City's Community Development Department notified Jubilee that Ms. Odom's and Mr. Hicks' community homes violated the City's one-half mile spacing requirement because each was within one-half mile of another community home. The City demanded that the "violation" be corrected by December 9, 2008.

29. Furthermore, in 2008 the City filed multiple criminal complaints and charges in Beaumont Municipal Court against Jubilee's Program Director, Arvy McKinney, for alleged fire code violations at four community homes operated by Jubilee, including Mr. Odom's and Mr. Hicks' homes.

30. On December 9, 2008, after the City filed multiple identical criminal complaints against Jubilee's program director for alleged fire code violations, the City Fire Department threatened to disconnect all utilities from Jubilee's community homes, including the homes were Ms. Odom and Mr. Hicks reside, if the alleged violations were not resolved within five days.

31. On December 19, 2008, the City informed Jubilee that it would have until March 1, 2009 either to close these community homes or to bring them into compliance with "the codes of the City of Beaumont." The City stated that because of the spacing rule, it would not be possible to continue operating these homes as homes for persons with disabilities.

32. In order to comply with the City's demand, Jubilee closed Ms. Odom's and Mr. Hicks' homes in March 2009. Mr. Hicks and Ms. Odom were moved to the two apartments Jubilee leased at Eagles Landing.

33. On January 25, 2011, Ms. Lois Balka, Code and Enforcement Officer for the City of Beaumont, inspected the current homes of Mr. Hicks and Ms. Odom at Eagles Landing.

34. After the inspection, Ms. Balka wrote a letter to Jubilee stating that the homes of Mr. Hicks and Ms. Odom were being illegally operated as a business. Ms. Balka alleged that the

City of Beaumont never received a certificate of occupancy to operate the homes as businesses in an area that was zoned as GCMD (General Commercial-Multiple Family Dwelling). Ms. Balka further contended that the zoning district prohibited business activity without a certificate of occupancy.

35. The City also alleged that Ms. Odom's and Mr. Hicks' homes at Eagles Landing violated the City's one half mile spacing restriction and the required fire safety requirements.

36. City officials met with the on-site manager at Eagles Landing and demanded that Eagles Landing evict Jubilee and its residents, including Ms. Odom and Mr. Hicks. In a subsequent meeting with the CEO of Eagles Landing, the City threatened to declare the entire complex out of code if Jubilee and its residents were not evicted. Eagles Landing complied and on February 1, 2011, gave Jubilee and the residents at Eagles Landing, including Mr. Hicks and Ms. Odom, a five-day notice of eviction, though an eviction suit has yet to be filed.

E. Attempts to Seek Reasonable Accommodation

37. The City of Beaumont maintained that persons with disabilities may seek a reasonable accommodation from the one-half mile spacing requirement by applying to the Zoning Board of Adjustments of the City of Beaumont ("Zoning Board") for a variance. Additionally, reasonable accommodations of the City's fire safety rules may be sought by application to the City's Construction Zoning Board and Appeals ("Construction Board").

38. The City's website simply lists the Construction Board, but provides no further information on how to contact the Construction Board or request a reasonable accommodation. The Construction Board is not referenced in City ordinances.

39. The City of Beaumont Code of Ordinances prohibits the Zoning Board from granting an appeal if the resulting interpretation of the City's zoning code "grant[s] a special

privilege to one property inconsistent with other properties or uses similarly situated.” Beaumont Code § 28.02.005(e)(1)(B).

40. The City’s ordinances contain no other mechanism for requesting a reasonable accommodation for zoning, building and fire code rules, regulations, and decisions.

41. On February 24, 2011, Disability Rights Texas (“DRTx”), the State-designated Protection and Advocacy agency for persons with intellectual or developmental disabilities, on behalf of Mr. Hicks and Ms. Odom, appealed Zoning Board the determinations of the City to the Zoning Board. DRTx also made a request for a variance of the City’s spacing requirement as a reasonable accommodation under the FHA on their behalf in the appeal.

42. On May 2, 2011, DRTx, on behalf of Mr. Hicks and Ms. Odom, submitted a “Board of Adjustment Application Form City of Beaumont (Codes Section 30-37)” as part of an application for a variance and appeal. In this application, DRTx renewed the reasonable accommodation request under the FHA that was previously submitted on February 24, 2011.

43. On June 10, 2011, the City of Beaumont acknowledged that the previously filed appeal/variance was timely filed with the Zoning Board.

44. The Zoning Board held a hearing on July 7, 2011 in response to DRTx’s request and application. However, the Zoning Board refused to consider Ms. Odom’s and Mr. Hicks’ reasonable accommodation request. Instead, the Board’s inquiry was limited to whether Ms. Odom’s and Mr. Hicks’ homes were covered under the Community Homes Act’s spacing requirement and erroneously determined that their homes were covered by the Act. On this basis, the Zoning Board rejected the application.

45. In a letter dated on July 8, 2011, Stephen C. Richardson, Planning Manager for the City of Beaumont, indicated to DRTx that the variance was denied.

46. Additionally, on July 8, 2011, DRTx requested that the Zoning Board rule on the reasonable accommodation request under the FHA.

47. On July 19, 2011, Mr. Richardson stated that the accommodation request under the FHA was denied as part of the variance.

48. On May 31, 2011, DRTx submitted a reasonable accommodation request to the Construction Board to waive or relax the City's fire safety regulations in order to allow Ms. Odom and Mr. Hicks to remain in their homes. DRTx has not received a response to this request.

F. HUD Complaints

49. Ms. Humphrey, Ms. Odom and Mr. Hicks timely filed discrimination complaints with the U.S. Department of Housing and Urban Development ("HUD"), pursuant to 42 U.S.C. § 3610(a).

50. Pursuant to 42 U.S.C. § 3610(e)(2), HUD referred these complaints to the U.S. Department of Justice.

V. CLAIMS FOR RELIEF

A. Violations of the Fair Housing Act

51. The allegations listed above are incorporated herein by reference.

52. Community homes, including those listed above, are "dwellings" within the meaning of 42 U.S.C. § 3602(b). The residents of these homes are persons with disabilities within the meaning of 42 U.S.C. § 3602(h).²

53. Defendant City of Beaumont's actions described above constitute:

² The Fair Housing Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

a. discrimination in the sale or rental, or otherwise making unavailable or denying, a dwelling because of disability, in violation of the FHA, 42 U.S.C. § 3604(f)(1);

b. discrimination in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling because of disability, in violation of the FHA, 42 U.S.C. § 3604(f)(2);

c. a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person an equal opportunity to use and enjoy a dwelling, in violation of the FHA, 42 U.S.C. § 3604(f)(3)(B);

d. making requests for accommodations in rules, policies, practices, or services would be futile under 42 U.S.C. § 3604(f)(3)(B);

e. interference with the rights of persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged persons with disabilities in the exercise or enjoyment of rights granted or protected by the FHA, in violation of 42 U.S.C. § 3617.

54. Defendant City of Beaumont acted intentionally, willfully, and in disregard for the rights of others.

55. Defendant City of Beaumont's actions described above constitute a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, or a denial of rights protected by the Fair Housing Act to a group of persons, which denial raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

56. Intervenor Alissa Humphrey, Laura Odom, and Todd Hicks are “aggrieved persons’ within the meaning of 42 U.S.C. §§ 3602(i) and 3614(d)(1)(B), and have suffered harm and damages as a result of Defendant’s conduct.

57. Ms. Humphrey, Ms. Odom, and Mr. Hicks are also qualified individuals with disabilities within the mean of 42 U.S.C. § 3602(h)(1).

B. Violations of Title II of the Americans with Disabilities Act

58. The allegations listed above are incorporated herein by reference.

59. Residents of community homes are “qualified individuals with disabilities” within the meaning of the ADA, 42 U.S.C. §§ 12102 and 12131(2) and 28 C.F.R. § 35.104.

60. Defendant City of Beaumont is a public entity within the meaning of the ADA, 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104.

61. Intervenor Ms. Humphrey, Ms. Odom, and Mr. Hicks are authorized to bring this action under 42 U.S.C. § 12133 and 29 U.S.C. § 794a(a)(2). The Intervenor seeks declaratory and injunctive relief and compensatory damages against the City.

62. The Intervenor and Plaintiff DOJ have unsuccessfully attempted informal resolution of this matter and have exercised good faith concerted efforts to seek the City of Beaumont’s voluntary compliance with the ADA. All conditions precedent to the filing of this complaint have occurred or been performed.

63. Defendant City of Beaumont’s actions described above:

a. constitute discrimination in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. Part 35;

b. exclude individuals with disabilities from participation in and deny them the benefits of the services, programs, or activities of a public entity on the basis of

disability, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(a);

c. afford qualified individuals with disabilities an opportunity to participate in or benefit from the services of a public entity that are not equal to those afforded others, in violation of Title II of the ADA, 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(b)(1)(ii);

d. otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(b)(1)(vii);

e. fail to make reasonable modifications in policies, practices, or procedures necessary to avoid discrimination on the basis of disability, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(b)(7);

f. making requests for modifications in policies, practices, or procedures would be futile under the ADA futile;

g. utilize methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(b)(3);

h. exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association, in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130(g); and

i. interfere with an individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the ADA, in violation of Title V of the ADA, 42 U.S.C. § 12203(b).

64. Defendant City of Beaumont acted intentionally, willfully, and in disregard for the rights of others.

65. Intervenors Alissa Humphrey, Laura Odom, and Todd Hicks are “aggrieved persons” under the ADA. 42 U.S.C. § 12203(c).

VI. RELIEF REQUESTED

66. WHEREFORE, Intervenors Ms. Humphrey, Ms. Odom, and Mr. Hicks pray that the Court enter an ORDER:

a. Declaring that the Defendant’s actions violate the Fair Housing Act and the Americans with Disabilities Act and its implementing regulations;

b. Enjoining the Defendant, its officers, employees, agents, successors and all other persons in active concert or participation with it, from enforcing the City’s one-half mile spacing rule for community homes for persons with intellectual or developmental disabilities;

c. Enjoining the Defendant, its officers, employees, agents, successors and all other persons in active concert or participation with it, from enforcing the City’s fire, building and other codes in a manner that discriminates because of disability in violation of the Fair Housing Act and the Americans with Disabilities Act;

d. Enjoining the Defendant, its officers, employees, agents, successors and all other persons in active concert or participation with it, from requiring that community homes install sprinklers, except when required under applicable State regulations and/or the applicable provisions of Chapters 32 and 33 of the National Fire Prevention Association 101 Life Safety Code;

e. Enjoining the Defendant from retaliating against them for having pursued their housing discrimination complaints under the Fair Housing Act and the Americans with Disabilities Act;

f. Ordering the Defendant to create a Fair Housing coordinator to ensure future reasonable accommodation requests are considered as required under both the Fair Housing Act and the Americans with Disabilities Act;

g. Ordering that key personnel of the Defendant undergo ADA and federal FHA training;

h. Ordering the Defendant to take all affirmative steps to ensure its compliance with the Fair Housing Act and Americans with Disabilities Act, including steps necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate to the extent practicable the effects of its unlawful housing practices as described herein;

i. Ordering the Defendant to adopt procedures to handle requests for accommodations and modifications pursuant to the ADA and federal FHA;

j. Ordering the Defendant to take all affirmative steps to restore, as nearly as practicable, the Intervenor to the position they would have been in but for the Defendant's discriminatory conduct;

k. Awarding monetary damages, pursuant to the FHA, 42 U.S.C. § 3614(d)(1)(B), and the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, to Intervenor Ms. Humphrey, Ms. Odom, and Mr. Hicks; and

l. Assessing a civil penalty against the Defendant in an amount authorized by 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest.

Intervenor Ms. Humphrey, Ms. Odom, and Mr. Hicks further pray for such additional relief as the interests of justice may require.

Respectfully submitted,

s/ Christopher P. McGreal
CHRISTOPHER P. MCGREAL
TX State Bar No. 24051774
DISABILITY RIGHTS TEXAS
1420 Mockingbird Lane, Suite 450
Dallas, Texas 75247
(214) 845-4056 (Phone)
(214) 630-3472
(Fax)cmcgreal@drtx.org

LISA SNEAD
TX State Bar No. 24062204
DISABILITY RIGHTS TEXAS
2222 W. Braker Lane
Austin, Texas 78758
(512) 454-4816 (Phone)
(512) 454-3999 (fax)
lsnead@drtx.org

SEAN A. JACKSON
TX State Bar No. 24057550
DISABILITY RIGHTS TEXAS
1500 McGowen, Ste. 100
Houston, Texas 77004
(713) 974-7691 (Phone)
(713) 974-7695 (Fax)
sjackson@drtx.org

GARTH A. CORBETT
TX State Bar No. 04812300

DISABILITY RIGHTS TEXAS
2222 W. Braker Lane
Austin, Texas 78758
(512) 454-4816 (Phone)
(512) 454-3999 (fax)
gcorbett@drtx.org

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff	§	
	§	
v.	§	CIVIL ACTION NO. 1:15CV201
	§	
CITY OF BEAUMONT, TEXAS,	§	
	§	
	§	
Defendant.	§	

ORDER GRANTING PETITIONERS' MOTION FOR LEAVE TO INTERVENE

On this day came to be considered Petitioners' Motion to Intervene, seeking leave to intervene in this action as of right pursuant to Federal Rule of Civil Procedure 24(a)(1), alternatively, intervene in this action as of right pursuant to Federal Rule of Civil Procedure 24(a)(2), or alternatively, in permissive intervention pursuant to Federal Rule of Civil Procedure 24(b)(1)(A) and/or 24(b)(1)(B). Having carefully reviewed the motion, any response thereto, and the applicable law, this Court finds that Petitioners Alissa Humphrey, Laura Odom, and Todd Hicks shall be permitted to intervene and file their complaint in intervention.

WHEREFORE, PREMISES CONSIDERED, it is hereby ORDERED, ADJUDGED, and DECREED that the Petitioner's Motion to Intervene is hereby GRANTED. United States District Court, Eastern District of Texas