

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**VS.**

**NO. 4:10CV0327 SWW**

**STATE OF ARKANSAS, et al**

**DEFENDANTS**

**ANSWER**

Come now Defendants, State of Arkansas; Governor Mike Beebe, in his official capacity only; John Selig, in his official capacity only; James Green, in his official capacity only; and Gene Gessow, in his official capacity only; by and through their attorneys, and for their Answer, state:

With regard to the introductory paragraph in the Complaint, Defendants admit that the Americans with Disabilities Act of 1990 (“ADA”) and its implementing regulations prohibit discrimination against individuals with disabilities. Defendants deny all allegations of discrimination, all allegations of violations of the ADA and all remaining allegations set forth by Plaintiff in the introductory paragraph. With regard to the findings of Congress cited in the introductory paragraph, Defendants assert that the statute speaks for itself; moreover, Defendants affirmatively plead that the State of Arkansas does not isolate, segregate or discriminate against individuals with disabilities.

The State of Arkansas and the named officials firmly believe in serving individuals with developmental disabilities in the most integrated setting possible that is appropriate for the individuals’ needs as determined by treatment professionals and the individuals’ families or guardians. The State of Arkansas has established a continuum of services to assist individuals

with disabilities in a variety of settings and to ensure that these individuals are appropriately placed.

In contravention of its own internal policies and Executive Orders of the President, the United States Department of Justice has filed this lawsuit without negotiating with the State of Arkansas. Without regard to binding Supreme Court precedent in *Olmstead v. Zimring*, the United States Department of Justice seeks to displace and move to settings not appropriate to their needs the hundreds of individuals who currently reside and are appropriately placed in human development centers and who are receiving appropriate and active treatment and personal care.

1. Paragraph 1 of the Complaint is jurisdictional in nature and as such requires no response. Insofar as paragraph 1 alleges that this action is properly before this Court, that a valid cause of action has been stated, or that Plaintiff is entitled to any relief, it is denied.
2. Paragraph 2 of the Complaint cites the United States Code provisions regarding venue and as such requires no response. Insofar as paragraph 2 alleges that this action is properly before this Court, that a valid cause of action has been stated, or that Plaintiff is entitled to any relief, it is denied.
3. With regard to paragraph 3 of the Complaint, Defendants admit that the United States of America is the named Plaintiff in this action but Defendants deny that Plaintiff's allegations are entitled to any special deference or credence.
4. With regard to paragraph 4 of the Complaint, the cited statutes and regulations speak for themselves and require no response. Insofar as paragraph 4 alleges that this action

is properly before this Court, that a valid cause of action has been stated, or that Plaintiff is entitled to any relief, it is denied.

5. With regard to paragraph 5 of the Complaint, Defendants admit that Governor Mike Beebe has been sued in his official capacity. Many duties and responsibilities are associated with the Office of Governor of Arkansas as set forth in various statutes and constitutional provisions. Those statutes speak for themselves and require no restatement or characterization. The remaining allegations in paragraph 5 are denied.
6. With regard to paragraph 6 of the Complaint, Defendants admit that John Selig has been sued in his official capacity. Many duties and responsibilities are associated with the Office of Director of the Arkansas Department of Human Services as set forth in various statutes. Those statutes speak for themselves and require no restatement or characterization. The remaining allegations in paragraph 6 are denied.
7. With regard to paragraph 7 of the Complaint, Defendants admit that James C. Green is sued in his official capacity. Many duties and responsibilities are associated with the office of Director of the Division of Developmental Disabilities of the Arkansas Department of Human Services as set forth in various statutes. Those statutes speak for themselves and require no restatement or characterization. The remaining allegations of paragraph 7 are denied.
8. With regard to paragraph 8 of the Complaint, Defendants admit that Gene Gessow is sued in his official capacity. Many duties and responsibilities are associated with the office of Director of the Division of Medical Services of the Arkansas Department of Human Services as set forth in various statutes. Those statutes speak for themselves

and require no restatement or characterization. The remaining allegations of paragraph 8 are denied.

9. With regard to paragraph 9 of the Complaint, Defendants admit that State-delivered developmental disability services are delivered primarily through DHS and DDS, but deny that developmental disability services in the State of Arkansas are primarily delivered by the State.
10. Defendants deny the allegations contained in paragraph 10 of the Complaint. Affirmatively pleading, Defendants assert that most persons with developmental disabilities receive community services and those persons and their care providers mutually determine their plans of care. Defendants further assert that the “Board of Developmental Disabilities Services has primary control over the operations, maintenance, policies, and procedures within a human development center.” Ark. Op. Att’y Gen. No. 2002-103. Defendants assert DDS responsibilities do not include management of “Home and Community-Based Services” because such services are managed and furnished by providers that are not DDS employees or agents. Defendants admit that DDS oversees the Alternative Community Services Waiver eligibility determination process and waiting list, but deny that a “federal Medicaid Waiver Program” exists.
11. With regard to paragraph 11 of the Complaint, Defendants deny that “DMS overseas [sic]” the State’s Medicaid Program because DHS is the single state Medicaid agency in Arkansas under 42 U.S.C. § 1396a(a)(5). Defendants admit that DMS staff is primarily responsible for the content of and compliance with the Alternative

Community Services Waiver but deny that a “federal Medicaid Waiver Program” exists.

12. With regard to paragraph 12 of the Complaint, Defendants admit that DDS and DMS are divisions of DHS and that DHS oversees DDS and DMS. Defendants deny the remaining allegations contained in paragraph 12 of the Complaint. Affirmatively pleading, Defendants assert that neither the State nor any of the executive departments are “responsible for providing health and human services” to Arkansans because such services are primarily provided by persons and entities who are not state actors.
13. Defendants admit the allegations contained in paragraph 13 of the Complaint.
14. Defendants admit the allegations contained in paragraph 14 of the Complaint with the exception that the Alexander Human Development Center will not be Medicaid certified as of June 1, 2010 and will not receive Medicaid funds after July 1, 2010.
15. With regard to paragraph 15 of the Complaint, Defendants admit that HDCs are congregate institutions but deny the remaining allegations of paragraph 15. Affirmatively pleading, Defendants assert that HDC residents are not segregated from the community and HDC residents interact with people without disabilities on a daily basis.
16. With the understanding that as used in paragraph 16 of the Complaint “primarily” means 51% or more of the public funds administered by DHS for individuals with developmental disabilities are expended in the Alternative Community Services Waiver, Defendants admit the allegations contained in paragraph 16 of the Complaint.

17. With regard to the allegations contained in paragraph 17 of the Complaint, Defendants admit that all individuals served by the HDCs are persons with developmental disabilities. Defendants deny that “developmental disability” is a diagnosis.
18. With regard to paragraph 18 of the Complaint, Defendants admit that each of the residents of the HDCs has a developmental disability that substantially limits his or her major life activities and that each resident is a qualified individual with a disability. Defendants deny that “developmental disability” is a diagnosis.
19. Defendants deny the allegations contained in paragraph 19 of the Complaint.
20. Defendants deny the allegations contained in paragraph 20 of the Complaint.
21. Defendants deny the allegations contained in paragraph 21 of the Complaint.
22. Defendants deny the allegations contained in paragraph 22 of the Complaint.
23. Defendants deny the allegations contained in paragraph 23 of the Complaint.
24. Defendants deny the allegations contained in paragraph 24 of the Complaint.
25. Defendants deny the allegations contained in paragraph 25 of the Complaint.
26. Defendants deny the allegations contained in paragraph 26 of the Complaint.
27. Defendants deny the allegations contained in paragraph 27 of the Complaint.
28. Defendants deny the allegations contained in paragraph 28 of the Complaint.
29. Defendants deny the allegations contained in paragraph 29 of the Complaint.
30. Defendants deny the allegations contained in paragraph 30 of the Complaint.
31. Defendants deny the allegations contained in paragraph 31 of the Complaint.
32. Defendants deny the allegations contained in paragraph 32 of the Complaint.
33. Defendants deny the allegations contained in paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in paragraph 34 of the Complaint.
35. Defendants deny the allegations contained in paragraph 35 of the Complaint.
36. Defendants deny the allegations contained in paragraph 36 of the Complaint.
37. Defendants deny the allegations contained in paragraph 37 of the Complaint.
38. Defendants deny the allegations contained in paragraph 38 of the Complaint.
39. With regard to the allegations contained in paragraph 39 of the Complaint, Defendants admit that some admissions to the HDCs start as respite admissions and become regular admissions. Defendants deny the remaining allegations contained in paragraph 39 of the Complaint.
40. Defendants deny the allegations contained in paragraph 40 of the Complaint.
41. Defendants admit that there is a current waiting list for Home and Community-Based waiver slots. Defendants deny the remaining allegations contained in paragraph 41 of the Complaint.
42. Defendants incorporate by reference paragraphs 1-41 of this Answer as if fully set forth herein.
43. Defendants deny the allegations contained in paragraph 43 of the Complaint.
44. Defendants deny the allegations contained in paragraph 44 of the Complaint.
45. Defendants deny that Plaintiff is entitled to relief as set forth in paragraph 45 of the Complaint.
46. Defendants deny that Plaintiff is entitled to relief as set forth in paragraph 46 of the Complaint.
47. Defendants deny that Plaintiff is entitled to any relief from Defendants.
48. All material facts not specifically admitted herein are denied.

49. Affirmatively pleading, Plaintiff fails to state a cause of action for which relief can be granted.
50. Affirmatively pleading, the court lacks subject matter jurisdiction to grant the relief requested by the Plaintiff.
51. Affirmatively pleading, the State of Arkansas provides a range of options for the care and treatment of individuals with developmental disabilities and administers these services appropriately and equitably.
52. Affirmatively pleading, the appropriate placement for each resident of an HDC is based on a plan determined in consultation among the resident, guardians, and various treatment professionals.
53. Affirmatively pleading, the residents of the HDCs and their families or guardians have sought placement in the HDCs believe the placement to be the most appropriate placement for the individual.
54. Affirmatively pleading, HDCs provide information to residents and their families or guardians regarding Home and Community Based placements.
55. Affirmatively pleading, the waiting list for residents of the HDCs for Home and Community-Based placement via the waiver moves at a reasonable pace.
56. Affirmatively pleading, the relief sought by the United States would constitute a fundamental alteration of the services provided by the State of Arkansas to its citizens.

WHEREFORE, Defendants, having fully responded to Plaintiff's Complaint, respectfully requests that this Court dismiss the Complaint with prejudice and for all other just and proper relief to which they are entitled.



Respectfully submitted,

DUSTIN McDANIEL  
Attorney General

By: /s/ Sherri L. Robinson  
Sherri L. Robinson, #97194  
Brandon C. Robinson, #2006031  
Assistant Attorneys General  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201  
(501) 682-8219  
Fax: (501) 682-2591  
[sherri.robinson@arkansasag.gov](mailto:sherri.robinson@arkansasag.gov)

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on May 26, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

Vincent P. Herman  
[Vincent.Herman@usdoj.gov](mailto:Vincent.Herman@usdoj.gov)

Matthew J. Donnelly  
[matthew.donnelly@usdoj.gov](mailto:matthew.donnelly@usdoj.gov)

Laura L. Coon  
[Laura.Coon@usdoj.gov](mailto:Laura.Coon@usdoj.gov)

Benjamin O. Tayloe, Jr.  
[benjamin.tayloe@usdoj.gov](mailto:benjamin.tayloe@usdoj.gov)

Jacqueline K. Cuncannan  
[Jacqueline.Cuncannan@usdoj.gov](mailto:Jacqueline.Cuncannan@usdoj.gov)

Samuel R. Bagenstos  
U. S. Department of Justice - Civil Rights  
Employment Litigation Section, PHB  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Thomas E. Perez  
U. S. Department of Justice - Civil Rights  
Employment Litigation Section, PHB  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Judy C. Preston  
U. S. Department of Justice - Civil Rights  
Employment Litigation Section, PHB  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

/s/ Sherri L. Robinson  
SHERRI L. ROBINSON