

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**MARY TROUPE, ET AL.**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO.: 3:10CV00153-HTW-LRA**

**GOVERNOR HALEY BARBOUR, ET  
AL.**

**DEFENDANTS**

**MOTION FOR CONSOLIDATION**

Under Fed. R. Civ. P. 42(a), the State of Mississippi (State) moves to consolidate this case with *The United States of America vs. The State of Mississippi*, No. 3:16cv622 (S.D. Miss., Aug. 11, 2016) (DOJ Lawsuit).

1. This matter involves common issues of fact and law with the DOJ Lawsuit. Both lawsuits involve nearly identical *Olmstead* challenges against the State of Mississippi. Both are filed in the Southern District of Mississippi. The Department of Justice is actively involved in both, having initiated the DOJ Lawsuit and having filed “Statements of Interest” in this case in support of the plaintiffs. Any remedy that may ultimately come out of either litigation will necessarily overlap with any proposed remedy from the other. While this case involves children and the DOJ Lawsuit involves adults, there is no legitimate dispute that any alleged needed changes in the State’s care of individuals with mental illness would necessarily involve changes for the care of both children and adults.

2. Under Rule 42(a), the court may consolidate actions that involve a “common question of law or fact.” As many as eight different factors may be considered by the Court in determining if consolidation is appropriate. Here, all eight factors favor consolidation.

3. For these reasons the State respectfully requests that the Court consolidate the DOJ Lawsuit with this case.

4. This Motion is based on the State's supporting Memorandum and the following Exhibits:

Exhibit 1: Letter from Gupta to Hood (August 8, 2016).

Exhibit 2: Press Release (August. 11, 2016).

5. Pursuant to Local Rule 7(b)(10), the State has conferred with the United States and the *Troupe* plaintiffs as to this motion. The United States objects to consolidation, and the *Troupe* plaintiffs state that they have no position on whether the Court consolidates the two actions.

### **Request for Relief**

This matter should be consolidated with the DOJ Lawsuit. Among all of the reasons set forth above, both lawsuits involve nearly identical *Olmstead* challenges against the State of Mississippi, both involve the United States and the State, both involve similar witnesses and evidence, and there is a distinct threat for inconsistent results. Consolidation is appropriate.

The State of Mississippi respectfully requests that the Court consolidate this matter with *The United States of America vs. The State of Mississippi*, No. 3:16cv622 (S.D. Miss., Aug. 11, 2016).

THIS, the 24th day of October, 2016.

Respectfully submitted,

PHELPS DUNBAR LLP

BY: /s/ R. Gregg Mayer

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**CERTIFICATE OF SERVICE**

I certify that on October 24, 2016, I electronically filed this document with the Clerk of the Court using the ECF system, which sent notification of such filing to all ECF counsel of record in this action.

*/s/ R. Gregg Mayer*

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R. GREGG MAYER



U.S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

Jim Hood  
Attorney General  
Office of the Attorney General  
Walter Sillers Building, Suite 1200  
550 High Street  
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AUG 08 2016

Dear Mr. Hood:

We are writing to notify you that we have determined that we are unable to secure compliance by voluntary means to remedy the violations of Title II of the Americans with Disabilities Act outlined in our December 22, 2011, Letter of Findings. Therefore, the Attorney General has authorized a lawsuit against the State of Mississippi under the ADA and the Civil Rights of Institutionalized Persons Act to obtain a remedy for the State's unnecessary institutionalization of adults with mental illness in its state psychiatric hospitals and placing adults with mental illness at risk of unnecessary institutionalization.

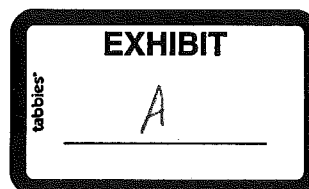
As you know, we have been engaged with the State in a series of negotiations since early 2012. Most recently, we made a final offer to the State that would have resolved all of our claims, including claims related to adults with mental illness; however, the State rejected that offer. Though we prefer to resolve our claims without the need for litigation because of the potential to bring remedies to individuals who need them quickly and to avoid the costs associated with litigation, we have determined that is not possible in this case. As a result, the United States will be filing the abovementioned litigation.

Finally, the United States will continue to evaluate its options with regard to its claims related to children with mental health conditions and individuals with intellectual and developmental disabilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanita Gupta", with a long horizontal flourish extending to the right.

Vanita Gupta  
Principal Deputy Assistant Attorney General  
Civil Rights Division



## JUSTICE NEWS

Department of Justice

Office of Public Affairs



FOR IMMEDIATE RELEASE

Thursday, August 11, 2016

**Justice Department Sues Mississippi for Discriminating Against Adults with Mental Illness**

The Justice Department today filed a complaint against the state of Mississippi, alleging that it violates the Americans with Disabilities Act (ADA) and Civil Rights of Institutionalized Persons Act (CRIPA) by failing to provide adults with mental illness with necessary integrated, community-based mental health services. The community integration mandate of the ADA and the Supreme Court's decision in *Olmstead v. L.C.* require states to make services available to people with disabilities – including people with mental illness – in the most integrated setting appropriate to their needs.

The state's failure to provide services in community settings forces adults with mental illness to access services and care in segregated state hospitals, including the Mississippi State Hospital, East Mississippi State Hospital, North Mississippi State Hospital and South Mississippi State Hospital. Under *Olmstead*, unnecessarily forcing people with disabilities to enter institutions to get services constitutes unlawful discrimination.

In December 2011, after conducting a comprehensive investigation, the department found that the state's system for serving individuals with mental health disabilities violates the ADA. The department found that the state unnecessarily institutionalizes adults and children with disabilities and fails to ensure that they have access to necessary services and supports in the community. The state has recognized these failures but has not yet implemented the required reforms to meet the needs of persons with disabilities.

"When individuals with mental illness receive the services they need, they are better able to find meaningful work, secure stable housing, build personal relationships, and avoid involvement with the criminal justice system," said Attorney General Loretta E. Lynch. "For far too long, Mississippi has failed people with mental illness, violating their civil rights by confining them in isolating institutions. Our lawsuit seeks to end these injustices, and it sends a clear signal that we will continue to fight for the full rights and liberties of Americans with mental illness"

"When individuals with mental illness get the services they need and the care they deserve, they can live and work in their own communities," said Principal Deputy Assistant Attorney General Vanita Gupta, head of the Justice Department's Civil Rights Division. "Mississippi violates the ADA by denying residents with disabilities the services the law requires and the support they deserve, forcing them to cycle in and out of state hospitals, emergency rooms and jails. The Justice Department's lawsuit demonstrates our firm commitment to vindicate the rights of people with mental illness."

"In Mississippi, adults with mental illness receive inadequate mental health care – care that is too often in segregated, institutional placements," said U.S. Attorney Gregory Davis of the Southern District of Mississippi. "Mississippi has not developed the necessary supports in the community to prevent unnecessary institutionalization as required by the ADA."

The complaint alleges that gaps and weaknesses in the state's mental health system too often subject adults with mental illness to needless trauma, especially during a crisis. According to the complaint, adults with mental illness who experience a crisis in Mississippi often spend days in local emergency rooms and jail holding facilities that are ill-equipped to address their needs, before ultimately being transported to the state's psychiatric hospitals. This costly and traumatic process could be avoided if adults with mental illness received proven and effective services in the

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community to prevent and deescalate crises, enable them to maintain safe housing and assist them in finding and holding employment.

Since issuing its findings letter, the department engaged in discussions with the state to reach a settlement resolving the violations the department identified. The parties, however, were ultimately unable to come to an agreement that would ensure the needed services and supports for people with disabilities in Mississippi. In order to vindicate the rights of adults with mental illness under the ADA, the United States has filed this lawsuit under the ADA and CRIPA. The United States is also participating as amicus in ongoing litigation against Mississippi in *Troupe v. Barbour*, a case that addresses the state's ADA obligations toward children with mental health disabilities. The United States remains committed to resolving all of the violations the department identified in its findings letter.

For more information on the department's Civil Rights Division, please visit [www.justice.gov/crt](http://www.justice.gov/crt).

Mississippi Olmstead Complaint

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16-936

Civil Rights Division

Civil Rights - Special Litigation

USAO - Mississippi, Southern

**Topic:**

Civil Rights

*Updated August 11, 2016*