No. 26-1095

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

UNITED STATES,

Plaintiff – Appellee

v.

STATE OF MAINE,

Defendant – Appellant

On Appeal from the
United States District Court
for the District of Maine

No. 1:24-cv-00315

DISABILITY RIGHTS MAINE, AMERICAN CIVIL LIBERTIES UNION OF MAINE, GLAD LAW AND THE CENTER FOR PUBLIC REPRESENTATION'S MOTION FOR LEAVE TO INTERVENE ON APPEAL AS INTERVENOR-APPELLEE OR, IN THE ALTERNATIVE, MOTION TO BE APPOINTED AS AMICI CURIAE

CORPORATE DISCLOSURE

As required by Federal Rule of Appellate Procedure 26.1, Disability Rights Maine, the American Civil Liberties Union of Maine, GLAD Law, and the Center for Public Representation state that they are non-profit entities that do not have parent corporations. No publicly held corporation owns ten percent or more of any interest or stock in Disability Rights Maine, the American Civil Liberties Union of Maine, GLAD Law, or the Center for Public Representation.

INTRODUCTION

This appeal presents an unusual circumstance. No party will defend the order below. The United States and the State of Maine both seek reversal of the district court's finding that they failed to demonstrate the changed circumstances necessary to modify a court-approved settlement agreement remedying violations of the Americans with Disabilities Act (ADA). Disability Rights Maine, American Civil Liberties Union of Maine, GLAD Law, and the Center for Public Representation (collectively, the Coalition) respectfully move to intervene in this appeal or, in the alternative, to be appointed amici curiae to defend the district court's order denying the Joint Motion to Modify the Settlement Agreement. *See* Order, ECF No. 58 (Nov. 24, 2025).[1]

The Settlement Agreement at issue concerns children with serious emotional disabilities who require community-based behavioral health services to avoid unnecessary institutionalization. Many of these children are clients or constituents of the Coalition. In 2024, the United States filed this action, alleging that Maine's failure to provide those services violated Title II of the ADA, and the parties soon thereafter entered into a Settlement Agreement to resolve those claims. At their request, the district court approved the Agreement, incorporated it into its dismissal order, and retained jurisdiction to enforce its terms.

[1] Citations to "ECF No." refer to the district-court docket.

Nine months later—without identifying any material change in circumstances—the United States and Maine jointly moved to modify that court-approved Agreement. The proposed amendments would limit the children eligible for relief, weaken substantive protections, and eliminate the Independent Reviewer responsible for evaluating Maine's compliance. Recognizing that "any opposition to or comments on the details of the Proposed Amended Agreement [we]re unrepresented by the existing parties," the district court permitted the Coalition—organizations with longstanding expertise in disability rights and Maine's behavioral-health system—to submit briefing and participate in oral argument opposing modification. ECF No. 35 at 5. After full consideration, the court denied the motion, concluding that the Parties had not shown changed circumstances sufficient to justify altering the Agreement. *See* ECF No. 58 at 24.

The Coalition has a direct and substantial interest in ensuring the continued enforcement of the Agreement and in safeguarding the rights of the children it serves. It presented the only opposition to the proposed modification below and fully briefed and argued the legal framework that the district court adopted. With both original parties aligned on appeal, the district court's decision will otherwise go undefended.

Intervention is therefore warranted as of right under Federal Rule of Civil Procedure 24(a)(2). At a minimum, permissive intervention under Rule 24(b) is

appropriate. And if the Court concludes that intervention is unavailable at this stage, it should appoint the Coalition as amicus curiae to ensure adversarial presentation of the issues on appeal.

BACKGROUND

Title II of the ADA prohibits public entities from denying services, programs, and other activities on the basis of disability. 42 U.S.C. § 12132. The Supreme Court has held that this mandate forbids the "unjustified institutional isolation of persons with disabilities." *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999). Disability Rights Maine (DRM) is Maine's congressionally designated Protection and Advocacy agency and is charged with monitoring the State's compliance with these requirements, including in its behavioral-health system. *See* Reilly Decl. ¶ 3 (attached as Exhibit A). The children and families harmed by the lack of integrated behavioral health services—and who stand to benefit from enforcement of the Agreement at issue—are among DRM's clients and constituents. *See id.* ¶ 5.

In 2019, DRM submitted a complaint to the U.S. Department of Justice documenting systemic ADA violations in Maine's children's behavioral health system. That complaint led to a federal investigation, a formal finding of violations, and ultimately this enforcement action on behalf of children who were unnecessarily institutionalized—or placed at serious risk of

institutionalization—because the State failed to provide adequate community-based services. *See* ECF No. 1.

On November 22, 2024, the Parties entered into the Agreement to resolve those violations. *See* ECF No. 17-2. Under its terms, Maine committed to significant reforms, including assessing children's behavioral health needs (including youth referred to Long Creek Youth Development Center), coordinating care, expanding community-based services, conducting public outreach about available services, and initiating reintegration planning for youth at Long Creek. *Id.* §§ III, IV, V, IX. Central to the Agreement was the appointment of an Independent Reviewer—an expert responsible for evaluating the State's implementation plan, establishing compliance metrics, monitoring service delivery, and providing technical assistance. *Id.* §§ III, IX, XI, XIV. The Agreement would take effect only upon the district court's approval and retention of jurisdiction to enforce the Agreement's terms. *See id.* § XII(D). The district court then granted such approval and expressly retained jurisdiction. *See* ECF Nos. 20, 20-1, 21.

Less than a year later, on September 2, 2025, the Parties jointly moved to modify the Agreement after the United States "reconsidered its earlier position" and elected to "support[] self-reporting by Maine." ECF No. 31 at 3. The proposed amendments would have reduced reporting requirements, weakened

outreach and training provisions, and eliminated the Independent Reviewer altogether. *See* ECF No. 58 at 2–3.

Recognizing both the complexity of the issues and the absence of any party opposing the proposed changes, the district court granted the Coalition leave to file a brief in opposition and to participate in oral argument. *See* ECF No. 35. After oral argument and two rounds of supplemental briefing from the Parties and the Coalition, the court denied the joint motion without prejudice. *See* ECF No. 58 at 24. The court explained that the Parties sought "to alter terms that were plainly bargained for and incorporated into the original Settlement Agreement," yet failed to demonstrate changed circumstances sufficient to justify modification or to overcome "the strong public interest in finality." *Id.*

The State filed a notice of appeal on January 23, 2026. *See* ECF No. 59. The United States filed its notice of appeal on February 13, 2026, after obtaining an extension. *See* ECF No. 65.[2] On February 17, the Coalition informed the Parties of its intention to file this motion. Maine responded that it was unable to provide a position by the time of filing, but would review the motion when filed and respond in due course. The United States responded that it did not object to the Coalition participating as amicus but opposes any intervention on appeal

[2] The United States's cross-appeal has been assigned number 26-1171.

and appointment as amicus.

ARGUMENT

This appeal proceeds without a party to defend the district court's ruling. Both original parties seek reversal of the court's determination that they failed to demonstrate the changed circumstances necessary to modify a court-approved settlement. The Coalition therefore seeks intervention or, alternatively, appointment as amicus curiae.

Intervention as of right is warranted under Rule 24(a). The Coalition has a substantial, legally protectable interest in the continued enforcement of the Agreement and in safeguarding the rights of Maine children it is designed to protect; reversal would impair that interest; and no existing party adequately represents its interests. At minimum, permissive intervention is appropriate under Rule 24(b). And if formal intervention is denied, the Court should exercise its inherent authority to appoint the Coalition to defend the district court's order so that the issues are fully and fairly presented.

I. The Coalition Is Entitled To Intervene As Of Right.

Rule 24(a)(2) permits intervention where the movant (1) claims a cognizable interest relating to the action, (2) is so situated that disposition may impair that interest as a practical matter, and (3) is not adequately represented by existing parties. *Antilles Cement Corp. v. Acevedo Vila*, 408 F.3d 41, 45 (1st Cir.

2005). The rule applies on appeal. *See id.*; *Ruthardt v. United States*, 303 F.3d 375, 386 (1st Cir. 2002). The Coalition satisfies each requirement.

A. The Coalition has a direct and legally protectable interest.

This litigation concerns enforcement of the ADA rights of children with behavioral health disabilities in Maine. The Coalition's member organizations are dedicated to protecting those children and their rights.

DRM is Maine's federally designated Protection and Advocacy agency, charged by Congress with safeguarding individuals with disabilities from unlawful treatment and monitoring state compliance with federal disability law. *See* Reilly Decl. ¶¶ 3-4. Many of the children who stand to benefit from the Agreement are DRM's clients, and all are among the population it is statutorily authorized to represent. *See id.* ¶ 5. The ACLU of Maine, GLAD Law, and the Center for Public Representation likewise advocate for enforcement of federal disability rights and, over several decades, have successfully litigated similar cases in this Circuit. *See, e.g.*, *Rosie D. v. Baker*, 958 F.3d 51 (1st Cir. 2020).

The Agreement governs both the provision of behavioral health services to these children and the mechanisms for ensuring Maine's compliance with the ADA. The substantive provisions that the Parties seek to alter would deprive vulnerable children of the very benefits of the Agreement, would deny their parents and guardians key information necessary to understand the Agreement

and access its services, and would substantially reduce the training requirements for the providers of these services. *See* Reilly Decl. ¶¶ 5–6. The Agreement's oversight and enforcement mechanisms—including the Independent Reviewer—directly determine whether children receive services in the most integrated setting appropriate to their needs, as required by *Olmstead* and Title II. *See* Reilly Decl. ¶¶ 5–6. The district court recognized that the proposed amendments were not technical adjustments but provisions "intrinsic to the nature of the Agreement … which seeks to protect the rights of underprivileged children under the [ADA]." ECF No. 58 at 18–19.

Because the Agreement dictates both the delivery of services to identifiable children and the mechanisms for assessing Maine's compliance, its enforcement bears directly on the Coalition's member organizations' ability to protect the statutory rights of the children they serve and represent and to fulfill their organizational and statutory mandates. That connection establishes a legally protectable interest under Rule 24(a)(2).

B. Reversal would impair the Coalition's ability to protect that interest.

Rule 24(a)(2) requires only that disposition of the appeal "may as a practical matter impair or impede" the movant's ability to protect its interest. Fed. R. Civ. P. 24(a)(2). That standard is readily fulfilled.

The Parties seek reversal so they may implement modifications to the

Agreement that limit some children's ability to access needed services, reduce provider training and outreach obligations, diminish public reporting, and eliminate the Independent Reviewer responsible for evaluating Maine's compliance. *See* ECF No. 58 at 2–3 & n.1. Those changes would significantly weaken both the substantive protections afforded by the Agreement and the mechanisms designed to ensure compliance.

In particular, eliminating the Independent Reviewer would shift oversight to self-reporting by Maine—which DRM and the United States concluded was in violation of the ADA. Even that reporting would be less frequent and would not include the independent evaluation of child outcomes contemplated by the Agreement. As the district court noted, the State is not yet in substantial compliance. *Id.* at 12–13. The proposed amendments would therefore reduce the availability of independent compliance metrics and technical assessments for the court, the public, and the Coalition. *See* Reilly Decl. ¶¶ 5–6.

If the appeal succeeds, the Coalition's ability to monitor implementation, identify noncompliance, and advocate effectively on behalf of affected children will be materially constrained. That practical impairment—coupled with the increased risk that violations will go undetected or unremedied—satisfies Rule 24(a)(2).

C. No existing party can represent the Coalition's interests.

The burden to show inadequate representation is "minimal." *Conservation L. Found. of New Eng., Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). The Coalition must show only that representation "may be" inadequate. *Id.* That burden is carried here.

The United States and Maine jointly sought to modify the Agreement and substantially weaken its protections. *See* ECF No. 31 at 3. They continued to advocate for those changes after the Coalition opposed them on behalf of affected children and their families. They now seek reversal of the district court's denial of their joint motion. *See* ECF Nos. 58, 65. Neither Party will defend the district court's interpretation of its retained-jurisdiction dismissal order, its application of Rule 60(b) standards, or its conclusion that changed circumstances were not demonstrated.

Where all existing parties seek reversal of the judgment, adequate representation of a party seeking affirmance cannot be presumed. *See Alstom Caribe, Inc. v. George P. Reintjes Co.*, 484 F.3d 106, 111 (1st Cir. 2007) (granting intervention on appeal where the movant had "a substantial stake in the outcome" and no party fairly represented its interests). Absent intervention, the district court's reasoning will not be presented to this Court. Rule 24(a)(2) does

not require that outcome.

II. Permissive Intervention Is Also Appropriate.

Even if the standards for intervention as of right were not satisfied, Rule 24(b) authorizes permissive intervention where the movant presents a claim or defense that shares a common question of law or fact with the main action and intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *See Antilles Cement Corp.*, 408 F.3d at 45; Fed. R. Civ. P. 24(b)(1)(B), (b)(3). Both requirements are satisfied here.

First, the Coalition seeks to defend the sole order under review. As below, the Coalition intends to address the procedural, legal, and factual predicates for modification of the agreement, and whether those predicates were met here. The Coalition does not seek to introduce collateral claims or alternative theories; it seeks to defend the district court's reasoning on the very questions before this Court. That alignment suffices for Rule 24(b)'s "common question" requirement.

Second, intervention will neither prejudice the Parties nor meaningfully delay resolution of the appeal. The Parties have long been aware of the Coalition's position: it announced its intent to participate in July 2025, submitted briefing, participated in oral argument, and filed supplemental briefs at the district court's request. There is no unfair surprise. Nor will intervention

meaningfully prolong this appeal. The appeal remains in its early stages—the United States noticed its appeal less than a week ago—and no opening briefs have been filed.

The interests of the children and their families deserve a voice in this matter that directly impacts their health, safety, and ability to receive services in their homes and communities. Because the Coalition's participation will address the legal and factual questions already presented on appeal and will not cause delay or prejudice, permissive intervention under Rule 24(b) is appropriate.

III. At A Minimum, The Court Should Appoint The Coalition As Amicus Curiae To Defend The District Court's Decision.

If the Court concludes that formal intervention is unavailable, it should appoint the Coalition as amicus to ensure adversarial presentation of the issues.

Federal courts routinely appoint amici where one side of a dispute would otherwise go unrepresented. *See, e.g.*, *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 104 (1993) (Scalia, J., concurring) (collecting cases); *United States v. Chin*, 913 F.3d 251 (1st Cir. 2019) (amicus appointed on appeal when there was no party to defend against a motion); *Ark. Tchr. Ret. Sys. v. State St. Corp.*, 25 F.4th 55 (1st Cir. 2022) (same). That is the situation here. Both original parties seek reversal, and no party will present arguments in support of the district court's reasoning.

The Coalition is well positioned to serve in that role. It participated

extensively in the proceedings below, submitted briefing, and argued the Rule 60(b) framework that the district court adopted. It also represents the interests directly affected by the Agreement's continued enforcement.

Appointment as amicus would ensure adversarial testing of the issues without prejudice or substantial delay. If the Court declines to grant intervention, it should exercise its discretion to appoint the Coalition as amicus so that the issues presented by this appeal—and the interests of the children and families affected—are fully and fairly considered.[3]

* * *

[3] In order to allow for a full and efficient airing of the issues, the Coalition respectfully suggests that, following the United States's cross-notice of appeal, it would be appropriate to consolidate the appeals and revise the briefing schedule to allow the Coalition to respond to both Parties' briefs—before the Parties submit their reply briefs.

CONCLUSION

For the foregoing reasons, the Coalition respectfully requests that the Court grant this Motion and permit the Coalition to intervene on appeal as intervenor-appellee to defend the Order or, in the alternative, to participate as Court-appointed amicus curiae to ensure adversarial presentation of the issues on appeal.

Dated: February 19, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(g), the undersigned counsel certifies that:

1. This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 2,771 words. As permitted by Federal Rule of Appellate Procedure 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Calisto MT font.

/s/ Christopher A. Eiswerth
Christopher A. Eiswerth

CERTIFICATE OF SERVICE

I hereby certify that on this same date, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system, which sent notification of such filing to all counsel of record by electronic means. In addition, I hereby certify that I caused copies of the foregoing document to be served via U.S. mail on:

Victoria Thomas
Danielle B. Rosenthal
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Civil Rights Division
150 M Street, NE
Washington, DC 20530

Kevin Kijewski
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/s/ Christopher A. Eiswerth
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DECLARATION OF ATLEE REILLY IN SUPPORT OF THE COALITION'S MOTION FOR LEAVE TO INTERVENE

I, Atlee Reilly, hereby declare:

1. I am a managing attorney at Disability Rights Maine. I submit this declaration in support of Disability Rights Maine's, the American Civil Liberties Union of Maine's, GLAD Law's, and the Center for Public Representation's motion for leave to intervene or, in the alternative to be appointed as amici curiae to defend the district court's decision denying the United States's and

Maine's joint motion to modify the settlement agreement. I have personal knowledge of the facts set forth herein, and if called upon to do so, I would testify competently to them.

2. In 1975, Congress created the Protection and Advocacy system to advocate on behalf of individuals with disabilities in the states and territories.

3. Disability Rights Maine is the designated P&A system for Maine.

4. As the state's designated P&A system, DRM serves children with disabilities in Maine as they and their families navigate access to appropriate educational and behavioral health services. This includes working to ensure that children with disabilities receive services in the most integrated settings appropriate to their needs.

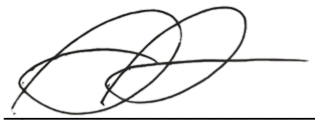
5. The court-approved settlement agreement in this case affects the services that our clients and constituents receive. And the reporting mechanisms in the agreement—including the Independent Reviewer—will aid our efforts to ensure our clients and constituents receive *Olmstead*-compliant services – in the most integrated settings appropriate to their needs.

6. If the changes to the agreement proposed by Maine and the United States go into effect, they would impact some of our clients' and constituents' ability to access necessary community-based services. Further, the changes would diminish public reporting and eliminate the Independent Reviewer role,

which would constrain our ability to conduct effective oversight and represent our clients and constituents.

Pursuant to 28 U.S.C. § 1746, I declare under penalty and perjury under the laws of the United States that the foregoing is true and correct.

Executed on: February 19, 2026.



Atlee Reilly

Managing Attorney

Disability Rights Maine