

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**MELINDA LAMBERSON
REYNOLDS,**
Plaintiff

v.

**COMMONWEALTH OF
PENNSYLVANIA, et al.,**
Defendants

NO. 3:09-CV-1492

(Judge Munley)

ELECTRONICALLY FILED

DEFENDANTS' MOTION TO DISMISS COMPLAINT

Defendants hereby move to dismiss plaintiff's complaint pursuant to Fed.R.Civ.P. 12(b) (1) and (6). In support of this motion, defendants assert the following:

1. The Commonwealth of Pennsylvania and its agencies are immune from suit in federal court unless the Commonwealth waives its immunity or immunity is validly abrogated by Congress. The Commonwealth has not waived its immunity for claims under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and the ADA does not validly abrogate immunity for claims challenging state licensing decisions. Accordingly, plaintiff's ADA claim should be dismissed.
2. This claim is barred by the abstention doctrine.
3. Defendants will submit a brief supporting this motion within the time permitted by Local Rule 7.5.

Wherefore, defendants respectfully request that this Court dismiss the complaint filed in this matter.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

By: *s/Michael L. Harvey*
MICHAEL L. HARVEY
Senior Deputy Attorney General
Attorney I.D. #30098

SUSAN J. FORNEY
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Date: October 5, 2009

CERTIFICATE OF NONCONCURRENCE

I, Michael L. Harvey, Senior Deputy Attorney General, hereby certify that I sought concurrence from counsel for plaintiff in the foregoing motion and that it was denied.

s/ Michael L. Harvey _____
MICHAEL L. HARVEY
Senior Deputy Attorney General

DATE: October 5, 2009

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CERTIFICATE OF SERVICE

I, Michael L. Harvey, Senior Deputy Attorney General, Commonwealth of Pennsylvania, hereby certify that on October 5, 2009, I caused to be served a copy of the foregoing document via e-mail through the Middle District's electronic filing system upon the following individuals:

Lawrence D. Berger
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35 East State Street
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Michael Churchill
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s/ Michael L. Harvey
MICHAEL L. HARVEY
Senior Deputy Attorney General

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ORDER

NOW, this day of , 2009, upon consideration of
defendants' motion to dismiss plaintiff's complaint, the motion is hereby
GRANTED. Plaintiffs' complaint is dismissed.

James M. Munley
United States District Judge