

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Jane DOES 1 through 8, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

Charles D. BAKER, in his official capacity as  
Governor of the Commonwealth of Massachusetts;

Thomas TURCO, in his official capacity as  
Commissioner of the Massachusetts Department of  
Correction;

Paul HENDERSON, in his official capacity as  
Superintendent of the Massachusetts Correctional  
Institution at Framingham, and

The MASSACHUSETTS DEPARTMENT OF  
CORRECTION,

Defendants.

CIVIL ACTION

No. 1:14-cv-12813-DPW

**DEFENDANTS' MOTION TO DISMISS CASE AS MOOT  
UNDER FED. R. CIV. P. 12(b)(1)**

Defendants Charles D. Baker, Thomas Turco, and Paul Henderson, all in their official capacities, and the Massachusetts Department of Correction (the "DOC"), respectfully move this Court to enter an order dismissing this case for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1) because it is moot.

This case is about a controversy and class that no longer exist. Plaintiffs filed suit to challenge the civil commitment of women to the Massachusetts Correctional Institution at Framingham (“MCI-Framingham”) pursuant to Mass. Gen. L. ch. 123, § 35 (“Section 35”). At that time, Section 35 expressly authorized state judges to civilly commit women to MCI-Framingham to address alcohol or substance abuse issues if no other suitable inpatient treatment facilities were available. Almost two years ago, this Court certified Plaintiffs as a class of women who were—or will be—civilly committed to MCI-Framingham. Circumstances have changed and the premise of this action no longer exists. Effective April 24, 2016, Section 35’s text changed and it no longer authorizes commitments to MCI-Framingham but only to approved treatment facilities, which MCI-Framingham is not.

This case is thus moot because: (a) no woman is presently committed to MCI-Framingham pursuant to Section 35; (b) Section 35 no longer permits such civil commitments; and (c) there is no current member of Plaintiffs’ class. Thus, there is no longer any case or controversy under Article III of the Constitution, depriving this Court of subject matter jurisdiction. In further support of this Motion, the Defendants rely upon their Memorandum of Reasons submitted contemporaneous with this Motion.

WHEREFORE, the State Defendants respectfully request that this Court enter an order DISMISSING this case without prejudice pursuant to Fed. R. Civ. P. 12(b)(1).

Respectfully submitted,

Charles D. BAKER, in his official capacity as the Governor  
of the Commonwealth of Massachusetts,

Thomas TURCO, in his official capacity as Commissioner  
of the Massachusetts Department of Correction,

Paul HENDERSON, in his official capacity as  
Superintendent of the Massachusetts Correctional Institute  
at Framingham, and

The MASSACHUSETTS DEPARTMENT OF  
CORRECTION,

By their attorneys,

MAURA HEALEY  
ATTORNEY GENERAL

/s/ Bryan F. Bertram

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May 2, 2016

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)**

Undersigned counsel certifies that, pursuant to Local Rule 7.1(a)(2), he has conferred with counsel for the Plaintiffs and has attempted in good faith to resolve or narrow the issues presented in this motion. The parties were unable to resolve the issues and the Defendants now file this motion in accord with an order of this Court

/s/ Bryan F. Bertram  
Bryan F. Bertram  
BBO No. 667102

**CERTIFICATE OF SERVICE**

I, Bryan F. Bertram, hereby certify that, this 2nd day of May, 2016, I filed the foregoing documents through the Electronic Case Filing (ECF) system and thus copies of the foregoing will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF); paper copies will be sent, via first-class mail, to those indicated as non-registered participants.

/s/ Bryan F. Bertram