No. 25-140

IN THE

Supreme Court of the United States

OCTOBER TERM 2025

The State of Franklin Department of Social and Health Services, et. al.,

Petitioners,

v.

Sarah KILBORN, et. al.,

Respondents,

and

The United States of America,

Intervenor-Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Twelfth Circuit

BRIEF FOR PETITIONER

TEAM 3404
Attorneys for Petitioners

QUESTIONS PRESENTED

I. Whether Title II of the Americans with Disabilities Act ("ADA") permits claims by individuals with mental illness who are not currently institutionalized or segregated, but who allege only a speculative risk of future institutionalization or segregation?

II. Whether the United States can file a lawsuit to enforce Title II of the ADA and therefore intervene under Federal Rule of Civil Procedure 24(a)(2)?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

CONSTITUTIONAL AND STATUTORY PROVISIONS 1

RULE PROVISIONS 1

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENTS 3

ARGUMENTS AND AUTHORITIES 4

STANDARD OF REVIEW 4

I. THE DISTRICT COURT ACTED ULTRA VIRES BY EXERCISING JURISDICTION WHERE NONE EXISTED BECAUSE RESPONDENTS FAILED TO SATISFY ANY ARTICLE III REQUIREMENT, AND ALLOWING SUCH OVERREACH THREATENS THE RULE OF LAW. 5

A. Standing Based on Mere Offense Is Categorically Impermissible, as This Court Has Held, Because It Is Inconsistent with Article III and Contravenes Long-Established Notions of Justice and Fairness. 6

1. Respondents' Alleged Harm Is Purely Abstract and Cannot Confer Article III Standing, Because Their Claim Rests Solely on Displeasure With Government Programs Rather Than Actual, Concrete Injury. 7

2. Olmstead Confirms That Prospective or Hypothetical Harm Cannot Establish Article III Standing, Because the Constitution Demands an Actual, Concrete Injury Before a Court May Reach the Merits 9

3. Even If Respondents Once Had Standing, Their Claim Is Now Moot, Because Article III Forbids Federal Courts From Deciding Extinguished Controversies. 10

B. No Statute or Supreme Court Precedent Extends Title II to Individuals at Risk of Institutionalization, Because the Law Protects Only Those With Present, Actual Harm. 11

1. The DOJ Guidance Document Oversteps Its Role by Purporting to Create Rights, Because Agencies Cannot Expand Statutory Obligations Beyond What Congress Enacted. 13

2. Title II's Text, Structure, and Purpose Confirm That Congress Limited Its Protections to Individuals Experiencing Actual Discrimination, Not Those Merely at Risk of Future Institutionalization. 15

II. THE CIRCUIT COURT ERRED IN GRANTING THE UNITED STATES' MOTION TO INTERVENE. 15

A. The Circuit Court Applied the Incorrect Standard of Review. 16

B. Even Under Abuse of Discretion, the District Court's Error of Law Precludes Deference. 17

C. The District Court's Determinations as to the United States Interests Were Misplaced. 17

1. The United States is not a "person" under the statute for the purposes of enforcement. 17

2. The difference in language of Title II prevents the Attorney General from enforcing. 19

3. The purpose of Title II is still adequately protected without Government enforcement. 21

4. The United States does not have an "interest" in the manner contemplated by the intervention requirements, and can therefore not file suit 21

D. The United States Motion to Intervene Does Not Meet the Remaining Factors Necessary for Intervention. 22

1. The United States intervention was untimely due to its effect on the case as a whole. 23

2. The United States' alleged interest is not impaired by the disposition of their action. 24

3. The United States' alleged interest is represented by these parties. 24

E. Allowing the United States to Intervene or File its Own Suit Would Create Dangerous Precedent. 25

1. The US would have an interest in intervening in any dispute or filing suit based on any statute that allows for individual enforcement. 25

2. Allowing the US to step in complicates individual enforcement. 26

CONCLUSION 27

TABLE OF AUTHORITIES

Page(s)

United States Supreme Court Cases

Alexander v. Sandoval,
532 U.S. 275 (2001) 13

Already, L L.C v. Nike, Inc.,
568 U.S. 85 (2013). 10

Anderson v. City of Bessemer City, N.C.,
470 U.S. 564 (1985) 16

Auer v. Robbins,
519 U.S. 452 (1997) 13

Brown v. Plata,
563 U.S. 493 (2011) 16

Brown v. U.S.,
476 U.S. 1157 (1986) 16

Bufkin v. Collins,
145 S. Ct. 728 (2025) 16

City of Los Angeles v. Lyons,
461 U.S. 95 (1983) 8

Clapper v. Amnesty Int'l,
568 U.S. 398 (2013) 7, 8

DeFunis v. Odegaard,
416 U.S. 312 (1974) 10

Dep't of Homeland Sec. v. New York,
140 S. Ct. 599 (2020) 26

Dobbs v. Jackson Women's Health Org.,
597 U. S. 215 (2022) 5, 6, 11

Food & Drug Admin. v. All. for Hippocratic Med.,
602 U.S. 367 (2024) 26

Kisor v. Wilkie,
588 U.S. 558 (2019) 13, 14

Koon v. United States,
518 U.S. 81 (1996) 17

Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992) 6, 7, 11

Lyons v. City of Los Angeles,
461 U.S. 95 (1983) 6

Mansfield, C. & L. M. Ry. Co. v. Swan,
111 U.S. 379 (1884) 6

Massachusetts v. E.P.A.,
549 U.S. 497 (2007) 6

M'Culloch v. State,
17 U.S. 316 (1819) 5

Muskrat v. United States,
219 U.S. 346 (1911) 10

O'Shea v. Littleton,
414 U.S. 488 (1974) 13

Olmstead v. L.C. ex rel. Zimring,
527 U.S. 581 (1999) 9, 10

Return Mail, Inc. v. United States Postal Serv.,
587 U.S. 618 (2019) 21

Rizzo v. Goode,
423 U.S. 362 (1976) 12

Russello v. United States,
464 U.S. 16 (1983) 20

Steel Co. v. Citizens for a Better Env't,
523 U.S. 83 (1998) 6

Stringfellow v. Concerned Neighbors in Action,
480 U.S. 370 (1987) 16

Valley Forge Christian Coll. v. Ams. United for Separation of Church & State
454 U.S. 464 (1982) 7

Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens,
529 U.S. 765 (2000) 18

United States Circuit Court of Appeals Cases

Ass'n of Am. Physicians & Surgeons v. United States Food & Drug Admin.,
13 F.4th 531 (6th Cir. 2021) 26

Cooksey v. Futrell,
721 F.3d 226 (2013) 4

Cross-Sound Ferry Servs., Inc. v. I.C.C.,
934 F.2d 327 (D.C. Cir. 1991) 6

Davis v. Shah,
821 F.3d 231 (2d Cir. 2016) 6

Edwards v. City of Houston,
78 F.3d 983 (5th Cir. 1996). 4

Georgia v. U.S. Army Corps of Eng'rs,
302 F.3d 1242 (11th Cir. 2002) 22

Grochocinski v. Mayer Brown Rowe & Maw, LLP,
719 F.3d 785 (7th Cir. 2013) 23

H.L. Hayden Co. of New York, Inc. v. Siemens Med. Sys., Inc.,
797 F.2d 85 (2d Cir. 1986) 22

Jones v. UPS Ground Freight,
683 F.3d 1283 (11th Cir. 2012). 5

M.R. v. Dreyfus,
663 F.3d 1100 (9th Cir. 2011) 7

M.R. v. Dreyfus,
697 F.3d 706 (9th Cir. 2012) 7

Pashby v. Delia,
709 F.3d 307 (4th Cir. 2013) 6

Radaszewski ex rel. Radaszewski v. Maram,
383 F.3d 599 (7th Cir. 2004) 6

Sokaogon Chippewa Community v. Babbitt,
214 F.3d 941 (7th Cir. 2000) 23

State v. City of Chicago,
912 F.3d 979 (7th Cir. 2019) 22

Stauffer v. Brooks Bros., Inc.,
619 F.3d 1321 (Fed. Cir. 2010) 17

Steimel v. Wernert,
823 F.3d 902 (7th Cir. 2016) 6

United States v. Fla.,
938 F.3d 1221 (11th Cir. 2019) 25, 26

United States v. Mississippi,
82 F.4th 387 (5th Cir. 2023) 6, 7

United States v. Stringfellow,
783 F.2d 821 (9th Cir.) 16

Washington Elec. Co-op., Inc. v. Massachusetts Mun. Wholesale Elec. Co.,
922 F.2d 92 (2d Cir. 1990) 22

Waskul v. Washtenaw Cnty. Cmty. Mental Health,
979 F.3d 426 (6th Cir. 2020) 6

Constitutional and Statutory Provisions

29 U.S.C. § 794(a) 11

42 U.S.C. § 12117 ..... 19, 20

42 U.S.C. § 12131 18

42 U.S.C. § 12132 ..... 1, 11, 12, 18

42 U.S.C. § 12133 ..... 1, 18, 20

42 U.S.C. § 12188 ..... 19, 20

42 U.S.C. § 2000d 11, 12

Fed. R. Civ. P. 24(a) 1, 2, 21, 22

Fed. R. Civ. P. 24(b) 1

Fed. R. Civ. P. 56(a) 1

U.S. Const. art. I 5, 13

U.S. Const. art. III § 1 ..... 1, 5, 7, 8

U.S. Const. art. III § 2. ..... 1, 5, 6

Other Authorities

2 Moore's Manual: Federal Practice and Procedure, § 14.124 16

Black's Law Dictionary (12th ed. 2024) 18

OPINIONS BELOW

The Decisions and Order of the United States District Court for the District of Franklin are unreported and set out in the Record. R. at 1–10, 11–21. The opinion of the United States Court of Appeals for the Twelfth Circuit is also unreported and provided in the record. R. at 22–38.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following provisions: 42 U.S.C. § 12132 and § 12133; U.S. Const. Art. III § 1 and § 2.

RULE PROVISIONS

The following provisions of the Federal Rules of Civil Procedure are relevant to this case: Fed. R. Civ. P. 24(a)–(b); Fed. R. Civ. P. 56(a);

STATEMENT OF THE CASE

In February 2022, Respondents filed suit under Title II of the Americans with Disabilities ("ADA") against the State of Franklin's Department of Social and Health Services ("Franklin") and its Secretary, Mackenzie Ortiz. R. at 16. They alleged that Franklin's mental-health system violated the ADA's integration mandate by inadequately funding community-based services and thus placing individuals with serious mental illness at risk of future institutionalization. *Id.* at 11. Respondents did not allege that they were currently institutionalized or presently denied access to any service. Rather, their claim rested on the concern that they might one day face institutionalization if community services were not expanded. *Id.* at 15.

Shortly after the complaint was filed, the Civil Rights Division of the United States Department of Justice ("DOJ") announced an investigation into Franklin's compliance with Title II. *Id.* at 2. Later, in May of 2022, the United States moved to intervene and filed a proposed

complaint seeking broader relief than Respondents requested. *Id.* Over Franklin's objection, the district court granted the motion to intervene. R. at 9–10.

Thereafter, litigation proceeded quickly. Respondents and the United States sought summary judgment, asking the court to compel Franklin to develop a comprehensive remedial plan. *Id.* at 11–12. Franklin then cross-moved for summary judgment, arguing that Respondents lacked Article III standing, that Title II does not authorize claims based on speculative risk, and that the DOJ lacked authority to enforce to Title II or intervene as of right. *Id.* at 19, 20, note 2.

On March 22, 2024, the district court sided entirely with Respondents and the United States. *Id.* 20–21. The District Court granted Respondents' motions for summary judgment, denied Franklin's cross-motion, and ordered prompt submission of a remedial plan explaining how it would assure Respondents would not face unnecessary future institutionalization. *Id.* at 25.

After which, Franklin timely appealed to the Twelfth Circuit. R. at 22. On June 26, 2025, a divided panel affirmed. *Id.* at 22, 29, 31. The majority held that Title II permits claims based solely on a serious risk of future institutionalization and that the United States may enforce Title II and intervene as of right under Federal Rule of Civil Procedure 24(a)(2). *Id.* at 29. Justice Hoffman dissented, emphasizing that Title II protects only individuals facing present, actual discrimination and warning that extending enforcement power to the United States contravenes both the statute's text and the Constitution's limits on federal jurisdiction. *Id.* at 31–38.

Franklin now seeks review in this Court to restore Article III's constitutional boundaries and reaffirm that neither Title II nor Rule 24 authorizes federal courts to oversee state programs based on hypothetical, future injuries.

SUMMARY OF THE ARGUMENTS

I.

The Twelfth Circuit's decision must be reversed because it erodes fundamental constitutional and statutory limits. The lower court's expansion of Title II and its authorization of federal intervention untether the judiciary from the Constitution's carefully drawn boundaries and threaten the rule of law.

First, Article III strictly limits federal jurisdiction to live cases and controversies. U.S. Const. art. III, § 2. Under *Olmstead* and this Court's precedent, prospective or hypothetical harm cannot establish standing. Respondents alleged only a speculative risk of future institutionalization, which is categorically insufficient to confer jurisdiction. By granting relief on such conjectural harm, the lower courts acted **ultra vires** and undermined the separation of powers.

Second, even if standing were satisfied, neither Title II nor Rule 24 authorizes this sweeping assertion of federal power. Title II's plain text empowers private individuals—not the federal government—to enforce its provisions, and Rule 24 cannot be used to circumvent these statutory limits. Reading these provisions otherwise would improperly transform federal courts into perpetual supervisors of state programs, contrary to constitutional design and legislative intent.

II.

The Circuit Court also improperly held that the United States could intervene in this matter, and in doing so affirmed that the United States is authorized to file suit to enforce Title II. The first error was to apply an abuse of discretion standard of review where the question of whether the United States has an interest in the subject matter is at least a mixed question of law and fact. And even if the Court was to apply the abuse of discretion standard, the clear legal error the District

Court made when finding the United States had an interest in enforcing Title II should have precluded discretion.

The Twelfth Circuit improperly affirmed that the United States had an interest in enforcing Title II, stating that the District Court's conclusion was not completely incorrect. The District Court's reading of Title II's enforcement precision was entirely incorrect by allowing the United States to step in the shoes of a "person" able to enforce. For one, the Federal Government does not meet the definition of "person," either under the plain meaning or accepted legislative interpretation. Additionally, when looking at the ADA as a whole, the omission of any mention of the United States in enforcing in Title II should control a Court's interpretation. For these reasons, the District Court and Circuit Court erred in finding that the United States could intervene due to its interest in the subject matter.

Aside from their lack of interest, the United States also does not meet the other requirements under FRCP 24(a)(2) for intervening. Finding the United States has an interest in this litigation would make every statute that authorizes individual enforcement subject to potential government intervention. It also prevents parties and courts from focusing on the specific Plaintiffs in front of them.

This Court should REVERSE and REAFFIRM that Article III, Title II, and Rule 24 collectively bar the unprecedented overreach sanctioned by the courts below.

ARGUMENTS AND AUTHORITIES

Standard of Review. This appeal raises two issues that warrant *de novo* review as pure questions of law: constitutional standing and the right to intervene. *Cooksey v. Futrell*, 721 F.3d 226, 234 (2013); *Edwards v. City of Houston*, 78 F.3d 983, 995 (5th Cir. 1996). This Court also applies a *de novo* standard when reviewing a district court's grant of summary judgment, since the

question of whether the moving party is entitled to judgment as a matter of law is a purely legal issue. *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1291 (11th Cir. 2012).

I. THE DISTRICT COURT ACTED ULTRA VIRES BY EXERCISING JURISDICTION WHERE NONE EXISTED BECAUSE RESPONDENTS FAILED TO SATISFY ANY ARTICLE III REQUIREMENT, AND ALLOWING SUCH OVERREACH THREATENS THE RULE OF LAW.

Article III's Limits Are Inflexible. The decision below represents precisely the kind of ultra vires judicial overreach that Article III was designed to prevent. *See U.S. Const*. art. III, §§ 1–2; R. at 29. By reading Title II to authorize sweeping federal oversight of state mental-health systems based on speculative future predictions, the lower court stepped beyond its constitutional authority—unmoored from Article III's case-or-controversy requirement and untethered to the statute's text. Such an expansion of judicial power threatens the rule of law and intrudes on powers reserved to the elected branches. *U.S. Const*. art. I, § 8; *McCulloch v. Maryland*, (1819). This Court should correct that error, just as it has not hesitated to correct other entrenched but erroneous precedents.

Indeed, in *Dobbs*, this Court overturned a 50-year-old precedent that lacked textual or historical grounding. *Dobbs v. Jackson Women's Health Org.*, 597 U. S. 215, 388 (2022). If a half-century-old constitutional holding could be reexamined and reversed in light of fundamental legal principles, then a far more recent, statutory assumption—never ratified by this Court—that Title II covers speculative "at risk" claims surely warrant correction. Moreover, the answer is clear: precedent alone cannot confer jurisdiction where the Constitution forbids it. *McCulloch v Maryland*, 17 U.S. 316 (1819) ("[W]e must never forget that this is a Constitution we are expounding."). Article III is not an "inexorable command" that yields to lower-court consensus; it is an immovable limitation on federal judicial power. *U.S. Const.*, art III, § 1–2.

A. Standing Based on Mere Offense Is Categorically Impermissible, as This Court Has Held, Because It Is Inconsistent with Article III and Contravenes Long-Established Notions of Justice and Fairness.

Threshold Jurisdiction Must Be Decided First. Federal courts may act only to resolve a live "Case" or "Controversy." *U.S. Const*. art. III, § 2, cl. 1. Thus, jurisdiction is a threshold inquiry in every case. *See generally United States v. Mississippi*, 82 F.4th 387 (2023); *Massachusetts v. E.P.A.*, 549 U.S. 497 (2007); *Lujan v. Defs. of Wildlife, 504 U.S. 555 (1992); Lyons v. City of Los Angeles*, 461 U.S. 95 (1983). Here, the district court rushed past that duty, plunging into the merits without confirming a justiciable controversy existed. [R. .] But a court "may not decide cases when it cannot decide cases, and must determine whether it can, before it may." *Cross-Sound Ferry Servs., Inc. v. I.C.C.*, 934 F.2d 327, 340 (D.C. Cir. 1991) (Thomas, C.J., concurring). Skipping that step is not a harmless procedural lapse. It is a fundamental violation of a "*threshold matter"* which is "*inflexible* and *without exception*." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (quoting *Mansfield, C. & L. M. Ry. Co. v. Swan*, 111 U.S. 379, 382 (1884)) (emphasis added).

The lower court's failure to first obtain the key before entering the gate effectively turned judges into policymakers. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 241 (2022). That approach disregards the Constitution's limits and encroaches on powers reserved to the States and the political branches. And this is not an isolated incident: several lower courts have made the same mistake in similar Title II cases, discarding fundamental separation-of-powers principles in an unlawful effort to address policy concerns. *See Davis v. Shah*, 821 F.3d 231 (2d Cir. 2016); *Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2013); *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426 (6th Cir. 2020); *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599 (7th Cir. 2004); *Steimel v. Wernert*, 823 F.3d 902 (7th Cir. 2016); *M.R. v. Dreyfus*, 663 F.3d 1100 (9th Cir.

2011), *opinion amended and superseded on denial of reh'g*, 697 F.3d 706 (9th Cir. 2012). Yet, Article III tolerates no such departure from its requirements. *U.S. Const.* art. III.

Article III Bars Respondents' Speculative Claim. As the Fifth Circuit correctly observed, "the ADA does not define discrimination in terms of a prospective risk to qualified disabled individuals… the statute refers to the actual, not hypothetical administration of public programs." *United States v. Mississippi*, 82 F.4th 387, 392 (5th Cir. 2023). Here, by contrast, the Twelfth Circuit allowed a claim resting on speculative future injury, expanding Title II beyond its text and beyond Article III's boundaries. Such a ruling cannot stand. Article III and Title II each independently require a concrete, present injury before federal courts may intervene. Respondents satisfy neither standard.

1. Respondents' Alleged Harm Is Purely Abstract and Cannot Confer Article III Standing, Because Their Claim Rests Solely on Displeasure With Government Programs Rather Than Actual, Concrete Injury.

Respondents allege no concrete, imminent injury. To establish Article III standing, a plaintiff must show a personal injury that is "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). This requirement ensures federal courts do not act as roving commissions resolving policy disagreements but instead adjudicate concrete disputes. *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State*, 454 U.S. 464, 482 (1982). However, Respondents fail this basic test. R. at 11. They do not claim to be currently institutionalized nor denied any present benefit or service. Instead, they assert that without court intervention, they might one day be institutionalized at an unspecified future time. Such allegations of potential future harm amount to mere abstract fear or policy disagreement, not a judicially cognizable injury. *See Clapper v. Amnesty Int'l*, 568 U.S. 398, 410 (2013).

This Court has consistently rejected standing premised on such speculative future injury. In *Clapper*, the plaintiffs feared the government *might* intercept their communications under a surveillance program. In *Clapper*, The Court found no standing because that fear rested on a "highly attenuated chain of possibilities," contingent on decisions by third party independent actors note before The Court. *Id.* Here, Respondents' theory here is even more attenuated. It relies on a chain of events stretching from a 2011 state budget cut, through the closure of facilities, through Respondents past hospital stays, and ultimately to unknown future decisions by state officials and third parties not before the Court. R. at 12–16.

Even in cases involving more recurring harms, the Court has demanded a direct, personal threat of future injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 98 (1983). In *Lyons*, plaintiff sought an injunction against police chokeholds after he himself had been placed in a chokehold and presented evidence of numerous prior chokehold-related deaths. *Id.* Yet the Court held he lacked standing to seek prospective relief because he could not show a likelihood that he *personally* would be choked again. *Id.* at 105–06. If The Court in *Lyons*, could not find that he demonstrated standing despite his past injury and clear, documented policy, then *a fortiori* Respondents cannot claim standing based on *far more vague predictions* about what *might someday happen* to them.

At most, Respondents have expressed dissatisfaction with the current scope of the State's community mental-health services and a generalized worry about potential institutionalization. Such policy-based grievances, untethered to any concrete and impending harm, fall well short of Article III's requirements. *See U.S. Const*. art. III.

2. Olmstead Confirms That Prospective or Hypothetical Harm Cannot Establish Article III Standing, Because the Constitution Demands an Actual, Concrete Injury Before a Court May Reach the Merits

Respondents' reliance on Olmstead v. L.C. is entirely misplaced. *Olmstead* involved "actual" and "ongoing institutionalization", not prospective harms. *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999). The plaintiffs in *Olmstead* were two women who were at that very time confined in a state hospital, even though medical professionals agreed they could live in the community with proper support. *Id.* at 593. The Court h eld that this unnecessary present segregation of persons with disabilities violated Title II, but it carefully limited its holding to the facts of "ongoing" institutionalization. *See Id.* at 584. (stating the State's responsibility is not boundless).

Indeed, the *Olmstead* decision underscored that the state's responsibility is "not boundless," and that a "fundamental alteration" defense limits required accommodations. *Id.* In sum, *Olmstead* addressed a concrete, continuing injury (unjustified confinement) with an available remedy, and it emphasized practical limits on the state's duty. *Id.*

In stark contrast, here Respondents currently live in the community, not in an institution. R. at 15. In other words: They face *no present harm at all.* Respondents' sole claim rests on that at some indefinite future time, they might be institutionalized if community services remain static and their conditions worsen. However, that hypothetical scenario is far from *Olmstead*'s immediate and ongoing segregation.

Further, nothing in *Olmstead* authorizes federal courts to act as roving overseers of state mental health systems, granting standing where none is conferred. Stretching *Olmstead* to cover speculative future risk would obliterate Article III's limits and transform Title II into a mandate for perpetual federal oversight of state programs—a result Congress never intended.

In short, *Olmstead* provides no refuge for Respondents' position; if anything, it confirms that an actual, ongoing injury is a prerequisite to entering This Court's doors.

3. Even If Respondents Once Had Standing, Their Claim Is Now Moot, Because Article III Forbids Federal Courts From Deciding Extinguished Controversies.

Article III's requirements are ongoing. A plaintiff must not only have standing at the case's start, but the controversy must remain live through all stages of review. *See Already, L L.C v. Nike, Inc.*, 568 U.S. 85, 90–91 (2013). Where events occur that eliminate the injury or make relief impossible, the case becomes moot and must be dismissed. *DeFunis v. Odegaard*, 416 U.S. 312, 316–17 (1974).

Here, even assuming arguendo that Respondents previously alleged a sufficient injury, circumstances have changed such that no effective relief can be granted by any court. Respondents seek a forward-looking injunction ordering the state Department to develop a plan to prevent unnecessary institutionalization. R. at 11–12. But the Department does not control the crucial levers needed to implement such a plan. Those powers rest with the Franklin state legislature—which, as the record indicates, has repeatedly declined to fund new community programs. R. at 15.

Even if a court compelled the agency to write a plan, that plan would simply sit on a shelf without effect, given the legislature's stance. In other words, no court order now can redress Respondents' feared harm. Federal courts do not issue injunctions in vain or to send a political message. To do so would be the essence of an advisory opinion, which Article III forbids. *Muskrat v. United States*, 219 U.S. 346, 361 (1911) (federal courts cannot issue opinions where no tangible relief can result).

Allowing this case to proceed despite the absence of any redressable injury would thus violate Article III's core command. It would entangle the judiciary in exactly the kind of policy

monitoring and supervision that belong to the political branches, not the courts. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 240 (2022) ("The Court must not fall prey to such an unprincipled approach.").

B. No Statute or Supreme Court Precedent Extends Title II to Individuals at Risk of Institutionalization, Because the Law Protects Only Those With Present, Actual Harm.

When Congress intends a statute to reach speculative or potential injuries, it knows how to say so explicitly. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 604–05 (1992). For example, other laws sometimes authorize suit to prevent a *likely* future harm by using phrases like "imminent danger" or similar language. Title II contains no such forward-looking language. Instead, Congress deliberately used present-tense, concrete terms to describe the prohibited conduct:

"No qualified individual with a disability shall, by reason of such disability, *be excluded* from participation in or *be denied* the benefits of the services, programs, or activities of a public entity, or *be subjected* to discrimination by any such entity." 42 U.S.C. § 12132 (emphasis added).

Words such as "excluded," "denied," and "subjected to discrimination" speak in the present tense and demand an existing harm, not a mere possibility. The use of these words was intentional. In drafting Title II, Congress modeled its language on § 504 of the Rehabilitation Act, which in turn was modeled on Title VI of the Civil Rights Act of 1964. Under Title VI, a plaintiff cannot sue a federally funded program based on the risk of future discrimination; the plaintiff must show they are currently being denied equal treatment or benefits. 29 U.S.C. § 794(a) (2018); 42 U.S.C. § 2000d (2018). This Court's decisions under Title VI have always required a showing of present, concrete discrimination, not hypothetical injuries. By using the same operative language in Title II, Congress signaled its intent to impose the same limitation here. *Id.* If Congress had wanted to

create a new, forward-looking right to sue over a risk of future institutionalization, it easily could have included such language. *Id.*

Further, the absence of such provision is telling. As the Fifth Circuit put it, the ADA's text "refers to the actual, not hypothetical" provision of public services. *United States v. Mississippi*, 82 F.4th 387, 392 (5th Cir. 2023). Accordingly, Federal Courts that have interpreted Title II to cover individuals who are "at risk" of institutionalization have stretched the statutory language beyond its plain meaning.

Here, Respondents have not been excluded from any program, nor denied any service to which they are entitled. R. at 1–38. Further, they do not allege that Franklin is currently refusing them treatment or shunning them into an institution against medical advice. Rather, all the Respondents voluntarily entered **and** remained at the institution. *Id.* at 12–15. And now, they seek an injunction ordering broad improvements to the State's mental-health system to prevent a possible future injury. But Title II does *not* authorize such speculative oversight. 42 U.S.C. § 12132. Rather it prohibits only concrete acts of discrimination—someone "presently" excluded from a service or program by reason of disability. *Id.* To read otherwise, would not only distort the statutory text, but would effectively federalize general health policy decisions reserved to state governments.

A result, that would raise grave federalism concerns, as it would conscript Article III courts into long-term monitoring of state resource allocations and program planning. And **nothing** in the ADA's language or structure even hints at such an extraordinary intrusion. *See Id.* This would invite courts to regulate state programs on a continuing basis absent any concrete trigger, in the name of "harm prevention." *Rizzo v. Goode*, 423 U.S. 362, 363–64 (1976) (cautioning against federal injunctions that inject the courts into the operations of state agencies without a specific

legal violation); *O'Shea v. Littleton*, 414 U.S. 488, 500 (1974) (federal courts may not issue injunctions that would require "continuous supervision by the federal court" of local officials); But our system reserves such policy judgments to elected legislatures and state officials unless and until an individual's legal rights have been violated. *U.S. Const*. art. I–2.

As is evident, reading Title II to authorize the kind of relief Respondents seek would transgress these principles, effectively placing state mental-health budgets under perpetual federal court supervision. There is absolutely no indication Congress intended such a dramatic result—and *every* indication it did *not*.

1. The DOJ Guidance Document Oversteps Its Role by Purporting to Create Rights, Because Agencies Cannot Expand Statutory Obligations Beyond What Congress Enacted.

Lacking support in the ADA's text, Respondents and the United States point to agency materials suggesting that people "at risk" of institutionalization are protected by the ADA's integration mandate. But an executive agency cannot expand a statute's scope beyond what Congress enacted. *See Alexander v. Sandoval*, 532 U.S. 275, 291 (2001) (no agency can "create a right [of action] Congress has not" conferred). Here, the Department of Justice's informal guidance purporting to extend Title II to at-risk individuals finds no footing in the statute's language and cannot override it.

Moreover, such guidance is not even entitled to administrative deference under this Court's precedents. While *Auer v. Robbins*, 519 U.S. 452 (1997), once allowed deference to an agency's interpretation of its own ambiguous regulation, the Court's more recent decision in *Kisor v. Wilkie*, 588 U.S. 558 (2019), sharply narrowed that doctrine. *Kisor* makes clear that "*Auer* deference is sometimes appropriate and sometimes not", and it established strict preconditions for any such deference." *Id.*

First, the underlying regulation must be "genuinely ambiguous" after applying all traditional tools of interpretation. *Id.*at 573. If it is not, the agency has no gap to fill. *Id.* Second, even if ambiguity exists, the agency's interpretation must reflect its considered, official judgment and not merely a convenient litigating position. Id. Third, the interpretation must be of a type Congress would expect to carry the force of law, such as one issued with proper authority and formality. *Id.* at 576–79.

However, the DOJ "Statement" or "guidance" on which Respondents rely meets none of these criteria. To begin, Title II's text is not ambiguous on the point at issue, as shown above, it speaks only to persons who have been excluded, denied benefits, or subjected to discrimination (all in the present tense). There is no gap or ambiguity about protecting those who are merely anticipating a future injury; that concept is simply outside the statute's terms. With no ambiguity, there is nothing for the agency to interpret – end of inquiry. *Kisor*, 588 U.S. at 574 ("[I]f there is only one reasonable construction of a regulation – then a court has no business deferring to any other reading…").

Further, the DOJ's pronouncement here is informal guidance, not the product of notice-and-comment rulemaking or any comparable process carrying the force of law. It appears to be more of a "convenient litigating position" or "*post hoc* rationalization", adopted in enforcement rather than a carefully considered rule. *Id.* at 573. Under *Kisor*, such informal and non-binding guidance is precisely the type of agency interpretation that does *not* warrant judicial deference. *Id.*

At bottom, the DOJ's "at-risk" guidance is an attempt to create new obligations, that Congress *never* clearly imposed, and the Constitution *never* conferred. To defer to the DOJ's interpretation here would not only contravene *Kisor* but would also raise serious separation-of-powers concerns, effectively allowing an executive agency to rewrite the statute under the guise

of interpretation. The Court should decline that invitation. Title II means what it says, and says what it means—no more, no less.

2. Title II's Text, Structure, and Purpose Confirm That Congress Limited Its Protections to Individuals Experiencing Actual Discrimination, Not Those Merely at Risk of Future Institutionalization.

In sum, Title II's plain text, its statutory context, and Supreme Court precedent all confirm that the ADA's integration mandate protects individuals facing actual, present discrimination or segregation—not those who are merely apprehensive about potential future events. Nothing in the statute or valid authority supports stretching the law to cover Respondents' speculative claims. Embracing Respondents' position would not only defy the statute's wording; it would undermine constitutional principles of federal jurisdiction and federalism. The lower court's contrary holding was an ultra vires act beyond judicial authority, and it should be firmly reversed. Only by insisting on the Constitution's limits and the statute's text can this Court vindicate the rule of law and respect the proper roles of Congress, the Executive, and the States in our federal system.

II. THE CIRCUIT COURT ERRED IN GRANTING THE UNITED STATES' MOTION TO INTERVENE.

The Circuit Court erred when it granted the United States' motion to intervene, choosing a standard of review that highly deferred to the District Court. The finding that the United States had an interest in the matter, as contemplated in under the ADA, also does not align with the meaning of the statute's text. Additionally, the United States does not meet the rest of the standards for intervention. Lastly, the practical result of allowing the United States to intervene in this case would complicate individual enforcement and allow for the Federal Government to intervene in any case under a statute that describes individual enforcement.

A. The Circuit Court Applied the Incorrect Standard of Review.

Generally, when a lower court makes a legal determination, the lower court's decision is reviewed *de novo*. *Brown v. Plata*, 563 U.S. 493, 512 (2011). If the issue is a question of fact, the lower court is afforded deference due to their assumed ability to grasp the factual situation better. *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985). There are also cases where there are mixed questions of law and fact, where the fact-finding is done by the District Court and applied to make a legal determination, which are often reviewed *de novo*. *Bufkin v. Collins*, 604 U.S. __, 145 S. Ct. 728, 739 (2025).

The majority opinion of the Circuit Court is correct that the Supreme Court has not ruled whether a decision granting or denying a motion to intervene (for any reason other than untimely filing) is reviewed *de novo* or for an abuse of discretion. Notably, there is currently a Circuit split on this issue. *See* 2 Moore's Manual: Federal Practice and Procedure, § 14.124. However, the Supreme Court should side with the Ninth Circuit in holding that a district court's grant or denial of a motion to intervene should be reviewed *de novo*. *United States v. Stringfellow*, 783 F.2d 821, 826 (9th Cir.), *cert. granted on other grounds*, 476 U.S. 1157 (1986); *vacated on other grounds*, 480 U.S. 370 (1987) (stating a *de novo* review is appropriate because the Court's review "of the district court's decision involves application of a rule of law to the established facts, and because the issue primarily involves consideration of legal concepts in the mix of fact and law.").

The Circuit Court held that because the decision is ultimately based on facts better ascertained by district courts, it concerns a question of fact. The more accurate interpretation is that the situation presents a mixed question of law fact—in which a court applies facts and determines whether they fit squarely within a legal standard—and therefore should be reviewed *de novo*.

B. Even Under Abuse of Discretion, the District Court's Error of Law Precludes Deference.

Abuse of discretion certainly offers a high deference to the District Court's findings—which is why it applies to those questions of fact—but it is not conclusive. The Supreme Court has, in clarifying the abuse of discretion standard, stated that "[a] district court by definition abuses its discretion when it makes an error of law. *Koon v. United States*, 518 U.S. 81, 100 (1996). The standard "includes review to determine that the discretion was not guided by erroneous legal conclusions." *Id.*

This language has been used on this specific issue, where a Court reversed a denial of intervention even though the Court recognized that the "Second Circuit reviews denials of motions to intervene under Rule 24 for an abuse of discretion." *Stauffer v. Brooks Bros., Inc.*, 619 F.3d 1321, 1328 (Fed. Cir. 2010). With this said, the error of law made by the District Court in finding the United States had an interest in the litigation constitutes an abuse of discretion.

C. The District Court's Determinations as to the United States Interests Were Misplaced.

The District Court's interpretation of the statute allowing the United States to fit the category of entities able to enforce the statute is misguided and anti-textual. Title II of the ADA specifically allows individuals to enforce the law that will inevitably impact them, but it offers no such right to the Federal Government.

1. The United States is not a "person" under the statute for the purposes of enforcement.

As the Circuit Court dissenting opinion accurately explains, the word "person" should only refer to an individual with a disability in terms of enforcement. Under the ADA, the "remedies, procedures, and rights set forth in [the Rehabilitation Act, which then references the Civil Rights

Act] shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title." 42 U.S.C. § 12133.

Because there is no definition of "person" under this Act, we look to the plain meaning of the term "person," which typically refers to a human being. *Person, Black's Law Dictionary* (12th ed. 2024). "Person" does not normally, under the definition or even under common sense, encompass a government body. *See Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 780 (2000) (applying the Court's "longstanding interpretive presumption that "person" does not include the sovereign.").

If we look to other sections of Title II for definitional guidance, the context favors denying intervention. The preceding section states "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The Act defines "qualified individual" as an "individual with a disability who...meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2).

Under any of these sections, both the terms used as well as the context indicate these sections refer to individual human beings. Under 12133, the fact that "person" is followed by "alleging discrimination on the basis of disability," leads to the interpretation that the person must be the one discriminated against due to their disability. Similarly, under 12132 and 12131(2), "qualified individual" is followed by "with a disability," seemingly indicating the individual at issue is the person with the disability.

Therefore, regardless of which way the word "person" is interpreted, the United States does not fall under the scope of the word. The United States is not capable of having a disability and therefore cannot possibly be a "person alleging discrimination on the basis of disability." The statute contemplates those discriminated against bringing an action to enforce the Act but does not explicitly or implicitly offer this to the Federal Government.

As far as enforcement goes, the interests of individuals are effectively protected by the statute, which allows them to enforce the statutory requirements. It is unnecessary to allow the United States to also intervene when an individual has every capability of stating an injury and reaping the protections.

2. The difference in language of Title II prevents the Attorney General from enforcing.

In both Title I and Title III of the ADA, the Attorney General, and therefore the United States, is explicitly given the right to enforcement. *See* 42 U.S.C. § 12117(a); 42 U.S.C. § 12188(b)(B). But because this explicit language is not included in Title II, the Court should interpret its omission as conclusive on the United States' ability to file suit and intervene in this case.

Title I includes language very similar to that of Title II, stating "[t]he powers, remedies, and procedures set forth in...this title shall be the powers, remedies, and procedures this subchapter provides **to the Commission, to the Attorney General, or to any person alleging discrimination** on the basis of disability…" 42 U.S.C. § 12117(a) (emphasis added). This almost perfectly mirrors the language of Title II, except for the fact that the Commission and Attorney General are also given enforcement powers.

Under Title III, "[i]f the Attorney General has reasonable cause to believe that…**the Attorney General may commence a civil action** in any appropriate United States district court." 42 U.S.C. § 12188(b)(B) (emphasis added). This language is even more explicit, authorizing the Attorney General to file a civil suit based on Title III violations.

In comparing these sections to the section at issue here, the omission of any grant to the Attorney General in the enforcement paragraph is striking. And under all reasonable rules governing legislative interpretation, the fact the two Titles on either side of Title II include a mention of the Attorney General's enforcement power, while Title II is silent on the issue, speaks volumes. *See Russello v. United States*, 464 U.S. 16, 23 (1983) (stating that where "Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

It is clear that Congress considered the possibility of granting—and did grant in some sections—the Attorney General power to enforce the ADA. *Compare* 42 U.S.C. § 12133, with 42 U.S.C. § 12117(a) and 42 U.S.C. § 12188(b)(B). However, the fact that Title II does not include this explicit language leads to the most reasonable interpretation: Congress did not authorize the Federal Government to sue based on Title II.

Therefore, whether we are to look at the plain meaning of the word "person," the context in Title II itself, or the context in terms of the ADA as a whole, there is no support to the notion that the United States has an interest in this suit. Therefore, the Government cannot intervene in this matter, and it cannot file a separate suit under Title II.

3. The purpose of Title II is still adequately protected without Government enforcement.

The United States may claim that its general interest in enforcing the ADA is at risk if this Court rules it cannot file suit in accordance with Title II of the ADA. However, this Court has held that in interpreting statues with their ultimate goal in mind, "[s]tatutes rarely embrace every possible measure that would further their general aims." *Return Mail, Inc. v. United States Postal Serv.*, 587 U.S. 618, 636 n.11 (2019). And on the specific topic of the word "person," the same court stated that "absent other contextual indicators of Congress' intent to include the Government in a statutory provision referring to a 'person,' the mere furtherance of the statute's broad purpose does not overcome the presumption." *Id.*

Therefore, any notion that this Court should read "person" to include the United States simply because it may offer greater levels of enforcement, is an unsupported claim. For both Title I and Title III, Congress afforded the United States a way to state a claim in their own right. However, Congress clearly did not give this same right under Title II. This does not mean that the entire enforcement of the ADA is at risk; the Government still has the right to enforce both Title I and III on its own. Title II should not be read to authorize Government enforcement simply because it may arguably further the overall purpose of the ADA. Title II can be effectively enforced by following the text itself: through individual enforcement alone.

4. The United States does not have an "interest" in the manner contemplated by the intervention requirements, and can therefore not file suit

Under FRCP 24(a)(2), a court must allow intervention to any party that "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." The party's interest must be

"direct, substantial and legally protectable." *Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1249 (11th Cir. 2002). An interest that is "remote from the subject matter of the proceeding, or that is contingent upon the occurrence of a sequence of events before it becomes colorable, will not satisfy the rule." *Washington Elec. Co-op., Inc. v. Massachusetts Mun. Wholesale Elec. Co.*, 922 F.2d 92, 97 (2d Cir. 1990) (citing *H.L. Hayden Co. of New York v. Siemens Med. Sys., Inc.*, 797 F.2d 85, 88 (2d Cir. 1986)).

The United States' alleged "interest" in the subject matter of this case does not meet the requirements of FRCP 24(a)(2), and therefore it should not be allowed to intervene or file suit on its own. The general interest the Government has in enforcing Title II of the ADA is not a "direct" or "legally protectable" interest. Under Title I or Title III, the United States certainly do meet this requirement, as the text itself explicitly grants them this direct, legally protectable interest. But given the omission in Title II, any interest the US has is too remote or general from the subject matter of this case, or any case under Title II. Put simply, a general interest in enforcing the ADA is too remote sans an explicit authorization creating a direct interest.

D. The United States Motion to Intervene Does Not Meet the Remaining Factors Necessary for Intervention.

An intervenor must prove the following factors: "(1) timely application; (2) an interest relating to the subject matter of the action; (3) potential impairment, as a practical matter, of that interest by the disposition of the action; and (4) lack of adequate representation of the interest by the existing parties to the action." *State v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019). As the interest relating to the subject matter factor has already been discussed, we must turn to the others. The Circuit Court proclaimed this was the correct legal standard, and because of the use of the word "and," the United States must meet every factor to succeed on their intervention claim.

1. The United States intervention was untimely due to its effect on the case as a whole.

As the District Court correctly pointed out, in determining whether a motion to intervene is untimely, courts consider "(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; (4) any other unusual circumstances." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797–98 (7th Cir. 2013) (quoting *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000)). As there were correctly no "unusual circumstances" found by the District Court, this factor will be set aside.

However, the District Court incorrectly found that because the United States did not file the lawsuit until it completed its investigation, it had met this first consideration. This, however, does not tell the whole story. The United States, as discussed above, is claiming an interest in this subject matter based on its alleged need to enforce Title II regulations. However, it was not until months after this lawsuit was filed, and even more months after an investigation, that the United States finally felt it knew enough to initiate this lawsuit.

If the United States felt it has an interest in this subject matter, it should have known about this issue before these parties commenced suit. If there was such a disparity in distance for these Plaintiffs, or lack of offered services at nearby centers, this is a fault the United States was aware of, or at the very least should have been aware of, long before the Plaintiffs brought their case. To rely on Plaintiffs to realize these issues before the United States considers addressing them indicates either inattentiveness or ignorance.

Regardless of the reason, this alleged gap in healthcare is something the United States should have been aware of. The fact that it needed to complete a months-long investigation even

after the filing of this lawsuit only lengthened the time it should have known of the issue. The time it took the United States to finally discover it has an interest in the subject matter also only weakens its argument that this interest is so important.

Turning to the second factor, the District Court stated that Defendants do not argue they would be prejudiced by the delay, mainly because the United States is joining this lawsuit rather than initiating one of their own. The latter point relates to the third point and offers support for Defendant's following position: if the United States believes it has the right to initiate its own lawsuit, it should do that. The prejudice caused to the parties already in this lawsuit is that for any progress already made to resolve and redress any issue of the Plaintiffs, the Federal Government has now butted into negotiations. The United States is not prejudiced if it were denied intervention, and any progress made by the parties specific to this case can continue to blossom.

2. The United States' alleged interest is not impaired by the disposition of their action.

As discussed above, the United States' interest is not impaired by the disposition of this action. The District Court correctly pointed out that the United States is free to file suit on its own behalf, if it does believe that it has the right under Title II of the ADA to do so. Nothing in the facts or procedural history of this case necessitates the Federal Government's involvement.

3. The United States' alleged interest is represented by these parties.

The specific interest in enforcing the ADA as it pertains to these Plaintiffs in this area of the country is adequately represented by these parties. If the United States is relying on the notion that it is tasked with enforcing the ADA on a grand scale, the broad nature of this task lends itself to a broader suit. Hopping on the bandwagon of these Plaintiffs is not the most efficient way for the United States accomplish its goal, as this will only impact a small geographical area. If its

interest is so widespread, and their rights to enforce are as powerful as it claims, the Government would be better served attempting to file its own suit where it could address the faults on a widespread scale.

E. Allowing the United States to Intervene or File its Own Suit Would Create Dangerous Precedent.

If the Supreme Court was to allow the United States to intervene, the Federal Government would be able to intervene in any statute that has specifically allowed for individual enforcement. All precedential case law regarding statutes that grant individual enforcement would now be altered to also potentially include possible enforcement by the United States themselves. Additionally, cases such as this one here, which the parties could normally resolve by redressing the specific injuries to the Plaintiff(s) outside of litigation, now has big brother stepping in. This will continue litigation even where the parties actually at risk could have already resolved their problems.

1. The US would have an interest in intervening in any dispute or filing suit based on any statute that allows for individual enforcement.

As mentioned above, allowing the Federal Government to intervene based on a "general interest in executing laws" would open the floodgates to it intervening in any dispute that has typically been subject to individual enforcement. If the language of Title II, even after recognizing the context of the language of Title I and Title III, is found to allow for Government enforcement, there is no guidance on what statutes would still prevent Government enforcement.

In an Eleventh Circuit case, the majority, in finding that Title II did provide for government enforcement, referenced multiple different federal statutes. *See generally United States v. Fla.*, 938 F.3d 1221 (11th Cir. 2019). The dissent however, criticized this practice and disagreed that a

"multitude of cross-references to other federal regulatory schemes somehow provides a cause of action that does not otherwise exist in the text of Title II." *Id.* at 1253 (Branch, J., dissenting).

If this Court were to go down a similar roundabout path of finding that Title II does offer the United States to fit the definition of "person," and therefore the right to enforce Title II, there is no telling how many statutes this would affect. Any statute that affords individuals a private right of action may also be subject to Government enforcement.

The further a Court strays from the text itself, the more likely there will be multiple interpretations, and even more likely at least one of these interpretations will be wrong. This is the danger here. If we are to look at the text of Title II alone, or even with the surrounding Titles of the ADA, the text and legislative interpretation lead us to the conclusion that only private individuals may file suit under Title II. This is where the investigation should end. To look further would only encourage courts to find a way to find potential Government enforcement where there is no authorization. We should not encourage courts to attempt to fit square pegs into round holes.

2. Allowing the US to step in complicates individual enforcement.

In recent past, this Court has expressed displeasure with the use of "nationwide" or "universal" injunctions. *See, e.g.*, *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 400 (2024) (Thomas, J., concurring). One piece of rationale behind this idea is that "[t]he party who needs the remedy—the injured member—is not before the court. Without such members as parties to the suit, it is questionable whether 'relief to these nonparties ... exceed[s] constitutional bounds.'". *See id.* (J. Thomas, concurring) (quoting *Ass'n of Am. Physicians & Surgeons v. United States Food & Drug Admin.*, 13 F.4th 531, 540 (6th Cir. 2021)); *see also Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in grant of stay) (stating the flaw

of nationwide injunctions is "they direct how the defendant must act toward persons who are not parties to the case.").

If there has been discrimination, the individuals discriminated against may enforce Title II to its full effect. The United States should not sue on its own because in this case (1) they are not discriminated against, and (2) they are not stepping into to prevent any discrimination for any one individual. Courts should make decisions considering only the Plaintiffs before them, and Title II offers the perfect avenue to do so: allowing individual Plaintiffs with an injury to enforce. Allowing the United States to sue separately is both anti-textual, but it also would operate in a similar manner as a widespread injunction, where the Court is making a decision that will have an impact on potential Plaintiffs that never made their way to court. *See id.* Federal Government enforcement is not contemplated under Title II, and under recent Supreme Court jurisprudence, would likely exceed the powers offered to the Judiciary.

CONCLUSION

The District Court for the District of Franklin improperly exercised jurisdiction by granting summary judgment despite Respondents' failure to establish Article III standing. Federal courts cannot act without jurisdiction, and speculative or future harm is not enough to create a live case or controversy.

The United States should not have been allowed to intervene because it does not have the authority to enforce Title II. The Federal Government is not a "person," under the statue according to the plain meaning of the word, as well as legislative interpretation. If the United States were allowed to intervene in this suit, or file its own, a dangerous precedent would be set that the Federal Government may step into and enforce any statute that authorizes individual enforcement.

The Court should **REVERSE** the Twelfth Circuit Court of Appeals decision in all respects.