NO. 25-140

IN THE

Supreme Court of the United States

NOVEMBER TERM 2025

THE STATE OF FRANKLIN DEPARTMENT OF SOCIAL AND HEALTH SERVICES, et. al.,

Petitioners,

– versus –

Sarah KILBORN, et. al.,

Respondents,

and

THE UNITED STATES OF AMERICA

Interventor-Respondents

On Writ of Certiorari to the

United States Court of Appeals

for the Twelfth Circuit

BRIEF FOR PETITIONER

Team 3405

Attorneys for Petitioner

QUESTIONS PRESENTED

I. Whether one who is at risk of institutionalization, but not actually institutionalized, can maintain a claim under Title II of the Americans with Disabilities Act when the statute on which the claim is based does not list such individuals as being under its protections, but the Department of Justice issued a nonbinding statement which expanded Title II's protections.

II. Whether, absent any statutory grant of enforcement authority to the Attorney General under Title II of the Americans with Disabilities Act, the United States may intervene under Federal Rule of Civil Procedure 24(a)(2) in a private Title II action on the grounds that it has an interest relating to the subject matter of the litigation.

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OPINIONS BELOW

The unreported Opinion of the United States District Court for the District of Franklin, *Sarah Kilborn, et. al. v. The State of Franklin Department of Social and Health Service, et. al.*, Case No. 1:22-cv-00039 (March 22 2024), is contained in the Record of Appeal at Pages 1–21, where the District Court GRANTED Plaintiffs' motion for summary judgment, GRANTED the United States' motion for summary judgment, and DENIED Defendants' motion for summary judgment. The unreported Opinion of the United States Court of Appeals for the Twelfth Circuit, *Sarah Kilborn, et. al. v. The State of Franklin Department of Social and Health Service, et. al.*, Case No. 24-892 (June 26 2025), and is contained in the Record of Appeal at Pages 22–39. The Appellate Court AFFIRMED the District Court's decision.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The following provisions of the United States Code are relevant in this proceeding: Fed. R. Civ. P. 24(a)(2); 29 U.S.C. § 794a; and 42 U.S.C. §§ 12132, 12133, 12101(b)(1), and 2000d. Also relevant is the following regulation of the Code of Federal Regulations: 28 C.F.R. § 35.130(d).

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

The State of Franklin and Its Mental Health Infrastructure. Franklin is a geographically vast and sparsely populated state, spanning nearly 99,000 square miles but home to a population of 692,381 residents. R. at 15. Franklin is served by a

centrally located community mental health facility in Platinum Hills, providing convenient access and accommodating the needs of its dispersed population. *Id.*

Legislative Funding Reductions and Facility Closures. In 2011, Franklin's legislature cut the funding for the Department of Health and Social Services (the "Department") by twenty percent. R at 15. Faced with this significant funding cut, the Department and its Secretary, Mackenzie Ortiz (together, the "Petitioners"), made necessary adjustments to ensure the continued delivery of essential services. *Id.* Among those facilities were two community mental health facilities, one in Mercury and another in Bronze. *Id.* Petitioners also discontinued the inpatient program at Platinum Hills, which was the costliest program, yet served the fewest patients. R. at 16. Despite the fiscal constraints, the Department preserved the Platinum Hills community mental health facility, thereby ensuring that Franklin residents retained access to critical mental health services by prioritizing efficiency and maximizing limited resources. *Id.*

Respondent Kilborn's Treatment History. Kilborn, Torrisi, and Williamson (together, the "Respondents") are individuals who suffer from mental health issues. R. at 12. Both Kilborn and Torrisi have bipolar disorder, and Williamson is schizophrenic. *Id.* Kilborn lived in Silver City and was diagnosed in 1997. R at 12, 13. In 2013, her physician recommended that she transfer to a community mental health facility. R. at 13. However, because the nearest community facility was more than three hours from Kilborn's home and she could not afford a private care facility, she chose to remain institutionalized until 2015, when she was initially released. *Id.*

She encountered the same problem in 2020 after voluntarily re-institutionalizing herself and again being recommended care at a community mental health facility. *Id.* She was released in 2021. *Id.*

Respondent Torrisi's Treatment History. Torrisi, who lived in Golden Lakes, was diagnosed with bipolar disorder as a teenager in 2016 and was admitted by her parents to a state-operated hospital for inpatient treatment. R. at 14. Like Kilborn, in 2020 Torrisi was recommended inpatient treatment at a community mental health facility. *Id.* However, there were no community mental health facilities within four hours of Torrisi's home and none which offered inpatient treatment at all. *Id.* Thus, she chose to remain institutionalized during her intermittent hospital stays until 2022, when she was ultimately released after a brief readmittance due to a manic episode. *Id.*

Respondent Williamson's Treatment History. Williamson, who lived in Platinum Hills, has been receiving treatment for schizophrenia since 1972, and after 2 years of intensive treatment was recommended inpatient care at a community health facility. R. at 14–15. Platinum Hills does have a community health facility, but it does not offer inpatient care and the nearest private facility is more than two hours away. R. at 15. So, like Kilborn and Torrisi, Williamson decided to remain institutionalized until 2021, when he was able to begin outpatient care at the Platinum Hills community mental health facility. *Id.*

Geographic Access to Community Mental Health Services. The facilities which Petitioners were forced to close due to budget constraints were relatively close

to Kilborn's and Torrisi's homes (twenty minutes and one hour, respectively). *Id.* Although the Department's budget was increased in 2021 by five percent, the Department has not used the funds to re-open either of the community mental health facilities. R. at 16.

II. NATURE OF PROCEEDINGS

The District Court. In February of 2022, Respondents filed a complaint for injunctive relief against Petitioners. R. at 16. The complaint asserted that Petitioners were in violation of Title II of the Americans with Disabilities Act (the "ADA") for unnecessarily segregating individuals who are at risk of institutionalization. R. at 11. The injunction was to ensure that the violation would be remedied should any of the Respondents be readmitted to a Franklin hospital. R. at 11–12. In May 2022, the United States District Court for the District of Franklin granted a motion by the United States to intervene under Federal Rule of Civil Procedure 24(a)(2) ("Rule 24(a)(2)") on the Respondents' behalf. R. at 12.

At the close of discovery, parties filed cross-motions for summary judgment. R. at 11. Respondents complained that they were at risk of being institutionalized and unnecessarily segregated due to Petitioners' failure to adequately provide state-operated community mental health facilities. *Id.* The United States filed a similar motion but on behalf of all individuals who may be segregated at Franklin hospitals. R. at 12. Petitioners asserted that the granting of the United States' motion to intervene was improper. *Id.* Further, they argued that Respondents could not sustain a claim under Title II of the ADA because the statute does not allow for claims by "at

risk" individuals. *Id.* The District Court granted the Respondents' motion and denied that of Petitioners (see opinion below). R. at 12.

The Twelfth Circuit Court of Appeals. On appeal to the United States Court of Appeals for the Twelfth Circuit, the Petitioners argued the District Court erred in holding that individuals who are at risk of being institutionalized and segregated in the future may maintain a cause of action under Title II. R. at 23. Further, the Petitioners argued that the District Court erred in allowing the United States could intervene as of right under Rule 24(a)(2). *Id.* The Twelfth Circuit AFFIRMED the District Court's ruling (see opinion below). R. at 29. It is that affirmation which Petitioners now appeal. R. at 39.

SUMMARY OF THE ARGUMENT

I.

Individuals at risk of institutionalization may not sustain a claim under 42 U.S.C. § 12132. Invoking a statutory cause of action requires that one be within the statute's zone of interest. However, the zone of interest created by 42 U.S.C. § 12132 excludes "at-risk" individuals. Therefore, Respondents here may not sustain a claim under 42 U.S.C. § 12132.

The plain language of the 42 U.S.C. § 12132, informed by three canons of statutory interpretation, bars "at-risk" individuals from sustain claims. The grammar canon establishes that the present tense used in the statute creates the requirement that one actively experience discrimination to be within the statute's zone of interest. The omitted-case canon bars courts from expanding the scope of the statute to include

"at-risk" individuals, because such individuals are unaddressed by the statute and should be treated as such. The negative implication canon reveals that the list of individuals who may sustain a claim under the statute functions to exclude other individuals from the statute's zone of interest. Thus, the plain language of 42 U.S.C. § 12132 does not allow for claims by "at-risk" individuals.

Moreover, the DOJ's guidance document should not receive deference under *Auer* because the corresponding regulation is not ambiguous and the document disclaims its own authority and is not well-reasoned. Auer deference may only be granted when the regulation at issue is genuinely ambiguous, which is not the case here. Even if the regulation were ambiguous, the document does not represent the authoritative position of the DOJ because it disclaims its own authority. Finally, the document does not qualify for deference because it is not well-reasoned. Thus, courts mistakenly relied on the document in expanding the scope of 42 U.S.C. § 12132 to include "at-risk" individuals, and such individuals may not sustain a claim under 42 U.S.C. § 12132.

II.

The Twelfth Circuit Court of Appeals erred in granting the United States' motion for summary judgement, finding that the United States could intervene as of right under Rule 24(a)(2). The Petitioners rely on the fact that the United States did not meet its burden in establishing all four of the required elements to intervene as a matter of right. The United States lacks a sufficient interest to justify intervention. Even if this Court were to conclude otherwise, its motion was untimely, and any

interest it may have is both adequately protected by the existing parties and unaffected by the outcome of this case.

First, the government does not have a qualifying interest in the subject matter. Title II of the ADA authorizes enforcement only by "persons," not by the federal government. The government's regulatory authority does not confer a right to sue or create an interest sufficient for intervention and treating it otherwise would improperly allow intervention in any ADA case.

Second, even if a qualifying interest were recognized, the government's motion to intervene was untimely. The government knew of its asserted interest at the outset but waited months before moving to intervene, during which time the parties had engaged in settlement discussions. Its late entry disrupted settlement efforts, expanded the scope of the litigation, and imposed substantial costs and delays, causing significant prejudice to the existing parties.

Third, the government cannot show that its interests would be impaired by the outcome of this case. An adverse judgment here would not bar the United States from bringing its own enforcement action in the future, meaning its ability to pursue its goals remains intact regardless of the result.

And finally, the government's interests are already adequately represented by the existing plaintiffs, who also seek injunctive relief to ensure compliance with Title II. Because the plaintiffs are vigorously pursuing these claims, the government has not shown any adversity of interest or failure of representation.

ARGUMENT

I. INDIVIDUALS AT RISK OF INSTITUTIONALIZATION CANNOT MAINTAIN A CLAIM UNDER TITLE II OF THE ADA.

Individuals who may be institutionalized in the future but are not currently institutionalized cannot maintain a claim under Title II of the ADA. Respondents filed their injunction claiming a violation of 42 U.S.C. § 12132, a provision of Title II of the ADA. R. at 11. However, to invoke a statutory cause of action, Respondents must be within the zone of interests created by the statute. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129 (2014). Here, from the language of 42 U.S.C. § 12132, the statute's relevant zone of interest is persons who are subjected to discrimination on the basis of a disability. The plain language of the statute requires active institutionalization for one to bring a claim. Moreover, reliance on the Department of Justice's (DOJ) guidance document in expanding the scope of the statute is misplaced, as is any deference given to it. Because the plain meaning of statutes must be given effect, "at-risk" individuals cannot sustain a claim under Title II of the ADA.

A. The standard of review is *de novo*.

Questions of law are reviewed *de novo*. *United States v. Mississippi*, 82 F.4th 387, 391 (5th Cir. 2023). Here, the parties filed cross-motions for summary judgment at the close of discovery and any factual disputes were resolved at the trial level. R. at 12. Thus, the district court's holdings with respect to those motions, and the appellate court's affirmation of that ruling, were determinations of law. Therefore, the appellate court's decision with regard to "at-risk" individuals is reviewed *de novo*.

B. The relevant canons of statutory interpretation bar "at-risk" individuals from maintaining a claim under Title II of the ADA.

It is a bedrock principle of statutory interpretation that courts must effectuate the plain language of statutes. *See e.g.*, *FDA v. R.J. Reynolds Vapor Co.*, 145 S.Ct. 1984, 1991 (2025) (applying statutory interpretation principles to the meaning of "aggrieved person"). That fundamental rule relies on two presumptions. First, courts must presume that the legislature "says in a statute what it means and means in a statute what it says." *Barnhart v. Sigmon Coal Co. Inc.*, 534 U.S. 438, 461–62 (2002) (quoting *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992). Second, there is an implicit presumption that statutes can be interpreted. Although the degree of ambiguity implicit in statutes is hotly debated, all would agree that courts have tools with which they can analyze the meaning of statutes. *See* Cass R. Sunstein, *Interpreting Statutes in the Regulatory State*, 103 HARV. L. REV. 405, 422 (1989) (discussing methods of statutory interpretation). Those tools include binding legal frameworks as well as helpful rules. *Compare Jones v. Hendrix*, 599 U.S. 465, 478 (2023) ("Basic principles of statutory interpretation require that we construe [statutes] in harmony, not set them at cross-purposes") *with Facebook, Inc. v. Duguid*, 592 U.S. 395, 402–03 (2021) ("Under conventional rules of grammar, [the series-qualifier canon] often applies. Courts often apply this interpretive rule. . . .").

Among the tools of statutory interpretation are canons of interpretation. *See generally* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012). Although not binding law, courts often apply these canons when addressing interpretive questions. *E.g., Facebook,* 592 U.S. at 404 (applying the

"series-qualifier canon" to the definition of an auto dialer); *see also Mississippi*, 82 F.4th at 392. In analyzing the language of 42 U.S.C. § 12132, three interpretive canons should be applied: the grammar canon, the omitted-case canon, and the negative-implication canon. The grammar canon requires that meaning assigned by proper English grammar and usage be effectuated. The omitted-case canon prevents the addition of meaning to what is stated in a statute. The negative implication canon presumes that the inclusion of one thing functions to exclude others. In light of those canons, the plain meaning of 42 U.S.C. § 12132 does not allow "at-risk" individuals to maintain a claim under Title II of the ADA. Such individuals are beyond the statute's zone of interest. Therefore, Respondents are unable to maintain a claim under Title II of the ADA.

1. The grammar canon requires the effectuation of grammar as it is used in a statute, which limits the scope of Title II of the ADA to claims by those who are actively experiencing discrimination.

Ordinary principles of English must be applied when interpreting statutes. *See Flora v. U.S.*, 362 U.S. 145, 150 (1960). Here, verb tense the key grammatical principle. 42 U.S.C. § 12132 states that no qualified individual shall, on the basis of a disability, "be excluded [from]" certain activities, "be denied" certain benefits, or "be subjected" to discrimination. Respondents contend that they have standing due to discrimination stemming from risk of unnecessary segregation. R. at 11. However, as used in the statute, the term "be" is in the present tense. To be excluded from an activity or denied a benefit is an active state of being, not a state which one can experience prospectively. Thus, one must actively experience the listed states of

being to fall into the category of individual the ADA was written to protect. *Mississippi*, 82 F.4th 392. Therefore, Title II of the ADA, by its terms, does not allow for those at risk of institutionalization to maintain a claim.

That interpretation aligns with the common principle that actual harm, not just the risk of harm, is required before a claim is ripe for legal action. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). At the very least, harm must be "certainly impending." *Id.* Further, requiring actual institutionalization for is advantageous because it results in a bright-line rule which may be easily and uniformly applied by courts. *See Daunt v. Benson*, 956 F.3d 396, 424–25 (6th Cir. 2020) (Readler, J., concurring) (discussing the advantages of bright-line rules). In contrast, there is virtually no guidance as to what constitutes an "at-risk" individual. As noted by the fifth circuit, "nothing in the text of Title II, its implementing regulations, or *Olmstead* suggests that a *risk of institutionalization*, without actual institutionalization, constitutes actionable discrimination." *Mississippi*, 82 F.4th at 392. The inherent uncertainty in what constitutes "at-risk" reinforces the proposition that Congress did not intend for the ADA to cover "at-risk" individuals. Title II of the ADA limits its zone of interest to those actively experiencing harm, not those merely at risk of harm.

2. "At-risk" individuals cannot maintain a claim under the ADA because the omitted-case canon prevents meaning being added to 42 U.S.C. § 12132.

When interpreting statutes, courts must "eschew interpolation and evisceration." *Reading Law* at § 8, quoting Felix Frankfurter, *Some Reflections on the*

Reading of Statutes, 47 COLUM. L. REV. 527, 533 (1947). Courts are not permitted to enhance the scope of a statute beyond what the statute's text provides. *Mississippi*, 82 F.4th at 392. This canon of analysis limits the plain meaning of a text to what the text actually says. The 'omitted case' here is not a reference to a legal opinion, rather it is a simply a statement that something not provided for in a statute is just that: unprovided. Here, whether "at-risk" individuals may sue under Title II is unaddressed by 42 U.S.C. § 12132, the statute under which Respondents' complaint was brought. However, that silence is not an invitation to expand the scope of Title II to include such individuals who may maintain a claim. Instead, the omitted-case canon posits that such individuals be treated by the statute as they are: unaddressed. Thus, under the omitted-case canon, the plain language of 42 U.S.C. § 12132 bars "at-risk" individuals from maintaining a claim. Such individuals are not within the statute's zone of interest.

The omitted-case canon's approach to a statute's plain meaning aligns with the principle that a court's task is "to say what the law is, *no more, and no less*." *Waskul v. Washtenaw County Community Mental Health*, 979 F.3d 426, 471 (6th Cir. 2020) (Readler, J., concurring in part and dissenting in part) (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803) (internal quotations omitted, emphasis added). Although strong public policy concerns may incentivize additions to statutes, such additions are beyond the scope of the judiciary's function. Here, Congress did not address a situation where "at-risk" individuals seek to sustain a claim under the ADA. Thus, courts should not expand Title II's zone of interest to include "at-risk" individuals.

The plain meaning of 42 U.S.C. § 12132, informed by the omitted-case canon, prevents it.

3. The negative-implication canon bars claims by "at-risk" individuals because the designation of actively discriminated-against individuals as those who may bring a claim excludes "at risk" individuals from that list.

The inclusion of certain items on a list necessarily excludes other items which are not on that list. *See Reading Law* at § 10. This doctrine is reliant upon context and only applies when the list provided can be reasonably seen as a complete expression of grant. However, it applies here in a manner similar to the omitted-case canon. As noted, 42 U.S.C. § 12132 does not allow qualified individuals with disabilities to "be excluded" from services, programs, or activities, "be denied" certain privileges, or "be subjected to discrimination" by a public entity. Such individuals can bring a claim for violation of the ADA if exclusion, denial, or discrimination occurs because they are listed as being within the statute's zone of interest. Further, because of the statute's specificity, that list can be reasonably interpreted as a complete expression of those who may sustain a claim. *See Reading Law* at § 10. The conditions that must be met to make a claim under the ADA align with the law's original purpose: to prevent unfair discrimination against people with disabilities. The states of being required to sustain a claim under the ADA correlate with what the ADA was originally intended to prevent: unjustified discrimination based on disability. *See* 42 U.S.C. § 12101(b)(1). Conversely, under the negative-implication canon, individuals who do not share those states of being are excluded from sustaining a claim under the ADA. "At-risk" individuals are not included on 42 U.S.C. § 12132's list. Therefore,

under the negative-implication canon, the plain language of the statute excludes such individuals from the list of those who may sustain a claim.

The negative-implication canon rejects the approach of the circuits which have adopted the notion that "there is nothing in the plain language of the regulations that limits protection to persons who are currently institutionalized." *Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175, 1181 (10th Cir. 2003); *see also M.R. v. Dreyfus*, 697 F.3d 706 (9th Cir. 2012); *Steimel v. Wernert*, 823 F.3d 902 (7th Cir. 2016). As the fifth circuit noted, that reasoning is "exactly backwards." *Mississippi*, 82 F.4th at 392. It is true that Congress did not expressly exclude "at-risk" individuals from the list of those who may sustain a claim under Title II. However, it *implicitly* did so by including certain classes of individuals in the scope of Title II's protections. *See* 42 U.S.C. § 12132 Thus, under the negative-implication canon, the plain language of 42 U.S.C. § 12132 does not allow for claims by "at-risk" individuals.

Taken together, the relevant analytical canons illustrate that the plain meaning of 42 U.S.C. § 12132 does not allow claims by "at-risk" individuals. Instead, the zone of interest created by the statute is limited to individuals who are actively experiencing discrimination. The grammar canon requires interpretations of statutes to effectuate rules of English grammar and syntax, thus narrowing the scope of those who may bring a claim under Title II to individuals who are actively experiencing a violation of its provisions. Further, the omitted-case canon resists the notion that courts should expand the meaning of statutes beyond their stated language, even in reasonable ways. An expansion of the ADA should come from Congress's pen, not this

Court's. *See Waskul*, 979 F.3d at 471 (Readler, J., concurring in part and dissenting in part). The negative-implication canon favors a similar limitation. By choosing to list active exclusion, denial, and discrimination as requirements to sustain a claim, Congress excluded all individuals who do not share those characteristics from being covered by Title II. Thus, the plain meaning of 42 U.S.C. § 12132 does not allow claims by "at-risk" individuals. Therefore, Respondents are unable to sustain a claim under the statute.

C. The DOJ's guidance document is not entitled to deference because 28 C.F.R. § 35.130(d) is not genuinely ambiguous, and the document disclaims its own authority and is not well reasoned.

Courts may not defer to the DOJ's guidance document on this issue. *But see Pashby v. Delia*, 709 F.3d 307, 322 (4th Cir. 2013) ("We are especially swayed by the DOJ's determination that the ADA and the *Olmstead* decision extend to persons at serious risk of institutionalization. . . .") (referencing UNITED STATES DEP'T OF JUSTICE, STATEMENT OF THE DEPARTMENT OF JUSTICE ON THE INTEGRATION MANDATE OF TITLE II OF THE ADA AND *OLMSTEAD V. L.C.* (2020) [herinafter STATEMENT ON THE INTEGRATION MANDATE], https://archive.ada.gov/olmstead/q&a_olmstead.htm). Deference to the guidance document was justified by the deferential framework adopted by this Court in *Auer v. Robbins*. *See generally* 519 U.S. 452 (1997). However, deference under the *Auer* doctrine only applies if certain requirements are met. *See generally Kisor v. Wilkie*, 588 U.S. 558, 573–79 (2019) (restating and clarifying the *Auer* doctrine's elements). Those requirements were not satisfied here, making deference the guidance document inappropriate.

The guidance document is not entitled to deference because it does not satisfy three of *Auer's* requirements. First, deference is prima facia inappropriate because 28 C.F.R. § 35.130(d), the implementing reguation at issue here, is not genuinely ambiguous. Second, the guidance document does not represent an authoritative position of the agency because it disclaims its own authority. Third, the guidance document does not reflect "fair and considered" judgment because it contains no reasoning. *See Kisor*, 588 U.S. at 579 (quoting *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155 (2012)). Because the guidance document does not satisfy the requirements for *Auer* deference, any deference given to it was misplaced. Further, the improper reliance upon the guidance document among courts who have extended Title II's protections to "at-risk" individuals suggests that Title II's protections do not actually cover those individuals.

1. Deference to the guidance document is inappropriate because the DOJ's implementing regulation is not genuinely ambiguous.

The threshold requirement for *Auer* deference is not satisfied here because the implementing regulation at issue is not genuinely ambiguous. *See* 28 C.F.R. § 35.130(d). A court may not afford *Auer* deference to an agency's interpretation of a regulation unless the regulation itself is genuinely ambiguous. *Christiansen v. Harris County*, 529 U.S. 576, 588 (2000). Moreover, finding genuine ambiguity is a measure of last resort. *See Kisor*, 588 U.S. at 575 ("Before concluding that a rule is genuinely ambiguous, a court must exhaust all the traditional tools of construction."). Before finding genuine ambiguity, courts must consider the "text, structure, history, and purpose" of a regulation. *Id.* The regulation at issue here is the integration mandate

issued by the Department of Justice. 28 C.F.R. § 35.130(d). That regulation orders public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." *Id.* This Court in *Olmstead* held that the meaning of the integration mandate was intertwined with the meaning of 42 U.S.C. § 12132 because failing to follow the mandate constitutes discrimination based on disability, which the law clearly forbids. *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 597 (1999) (providing the context of the integration mandate and its related statutes). Therefore, the meaning of 42 U.S.C. § 12132 informs the meaning of the integration mandate.

As argued above, 42 U.S.C. § 12132 plainly excludes "at-risk" individuals from maintaining a claim under Title II. Such individuals are beyond the statute's zone of interest. Thus, a regulation promulgated to implement that statute faces the same limitation by way of its history and context. This contention is supported by the text and structure of the integration mandate, which requires public entities to "administer services . . . ." 28 C.F.R. § 35.130(d). As with 42 U.S.C. § 12132, the integration mandate uses 'administer' in the present tense, which implicitly requires active institutionalization. A public entity cannot administer services to one who is not actually institutionalized. The lower courts in this case were therefore incorrect in concluding that the integratio mandate was genuinely ambiguous because it may require administration "whether a person was institutionalized or not." R. at 20, 29. The integration mandate is not genuinely ambiguous, so *Auer* deference to the guidance document was inappropriate.

2. The guidance document is not entitled to deference because it does not represent an authoritative position of the DOJ.

Reliance upon the guidance document was inappropriate because the document disclaims its own authority. Independent from analysis on regulatory ambiguity is an "inquiry into the character and context of the agency interpretation." *Kisor*, 588 U.S. at 576. *Auer* deference was justified by the presumption that Congress intended courts to defer to an agency's interpretations of its ambiguous regulations. However, an interpretation must represent an agency's authoritative position to receive deference. *See U.S. v. Mead Corp.*, 588 U.S. 218, 257 (2001) (Scalia, J., dissenting). Here, that is not the case. A statement at the bottom of the DOJ's guidance document states that it "provides informal guidance" and "is not intended to be a final agency action and has no legally binding effect." R. at 37; STATEMENT ON THE INTEGRATION MANDATE. Those statements are clear disclaimers of any authority the document might otherwise have. Therefore, the guidance document does not represent the agency's authoritative position and should not receive any deference.

3. The guidance document should not receive deference because it does not contain fair and considered judgment.

Even if the other requirements are satisfied, *Auer* deference only applies if the document reflects "fair and considered judgment." *Kisor*, 588 U.S. at 579. The Court in *Kisor* applied that standard to disqualify "post-hoc" rationalizations and "convenient litigating positions" from receiving deference. However, what constitutes "fair and considered judgment" has a broader meaning. It references an early requirement of agency deference: that an agency demonstrates "thoroughness in its

consideration" to receive deferential treatment. *See Skidmore v. Swift*, Co. 323 U.S. 134, 140 (1944); *Kisor*, 588 U.S. at 596 (Gorsuch, J., concurring) (explaining the history of agency deference).

Here, the guidance document is not thorough with respect to whether "at-risk" individuals may sustain a claim under Title II. Only one section of the document addresses Title II's zone of interest. STATEMENT ON THE INTEGRATION MANDATE. That section contains no reasoning; it is a series of assertions about the scope of Title II followed by an example of one who might be considered "at-risk." *Id.* Further, there are no citations provided for those assertions. *Id.* References to legal authority are made elsewhere in the statement, but not about the scope of Title II. Thus, the guidance document does not reflect fair and considered judgment by the DOJ. Because it lacks fair and considered judgment, the guidance document is not entitled to deference under *Auer*.

A lack of deference to the guidance document undermines the contention that "at-risk" individuals are covered by Title II. As noted, the circuit courts which expanded the zone of interest of Title II to include "at-risk" individuals have relied heavily on the guidance document in their decisions. *See, e.g., Davis v. Shah*, 821 F.3d 231 (2d Cir. 2016). That reliance suggests a lack of alternative reasoning for the inclusion of "at-risk" individuals. It follows that, without reliance upon the guidance document, courts would be unable to justify including "at-risk" individuals among those who may sustain a claim under Title II without turning to public policy concerns. Because those concerns are in the purview of Congress, the question of whether "at-

risk" individuals may sustain a claim under Title II of the ADA is best left to the legislature.

Because "at-risk" individuals are not within Title II's zone of interest, the lower courts erred in allowing Respondents to sustain a claim under 42 U.S.C. § 12132. Therefore, Petitioners request that this Court reverse the decision of the United States Court of Appeals for the Twelfth Circuit.

II. THE DISTRICT COURT ERRED IN ALLOWING THE UNITED STATES TO INTERVENE AS OF RIGHT UNDER FEDERAL RULE OF CIVIL PROCEDURE 24(A)(2).

This Court should reverse the appellate court's grant of the United States' Rule 24(a)(2) motion to intervene as a matter of right because the United States failed to meet its burden in proving the elements required for intervention as of right. The United States did not meet its burden under Rule 24(a)(2) because it did not have an interest relating to the subject matter of the action and was not timely in filing its Rule 24(a)(2) motion. Alternatively, if this Court finds that it has a qualifying interest, a disposition on this action would not impair its interests, and the United States' interests were adequately represented by the initial parties in this action. Therefore, the United States failed to meet its burden and intervention is therefore unwarranted.

To successfully intervene as of right under Rule 24(a)(2), courts have routinely recognized that four elements must be met: (1) its motion to intervene is timely; (2) it has an interest relating to the subject matter of the action; (3) it is situated so that disposition of this action may potentially impair its interests; and (4) its interest is inadequately represented by existing parties in the action. *E.g.*, *Southmark Corp. v.*

Cagan, 950 F.2d 416, 418 (7th Cir. 1991). Because the United States failed to meet any one of these factors, it should not be allowed to intervene as of right under Rule 24(a). *Mastercard Intl, Inc. v. Visa Intl Serv. Assn*, 471 F.3d 377, 389 (2006).

A. The standard of review should be *de novo* because whether the United States may intervene as of right raises questions of statutory interpretation, which are questions of law.

Whether the United States may intervene as of right should be reviewed *de novo*. Statutory interpretation is a question of law subject to *de novo* review. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). To determine whether the United States meets the requirements of Rule 24(a)(2) the lower courts determined the meaning of the term "person" as it is used in the rule. Resolving that issue hinged on interpreting the ADA's statutory framework, which is a question of law. Further, determining whether the other requirements of Rule 24(a)(2) are satisfied requires interpreting the legal criteria of the ADA. *Wilkinson v. Garland*, 601 U.S. 209, 217 (2024). Although that issue requires applying particular facts of this case to the law, all material facts were established the trial level. R. at 34. Thus, this issue should be reviewed *de novo* on appeal. *U.S. Bank Nat'l Ass'n v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 396 (2018).

The issues of statutory interpretation raised here distinguish this case from those where circuit courts applied an 'abuse of discretion' standard. Though some circuits have applied the abuse of discretion standard in evaluating whether Rule 24(a)(2) was satisfied, those circuits did not engage in statutory interpretation when doing so. *See, e.g.*, *Stuart v. Huff*, 706 F.3d 345, 349-50 (4th Cir. 2013)

(applying abuse of discretion to a Rule 24(a)(2) motion where the appellants sought to intervene in an action challenging the constitutionality of the Woman's Right to Know Act). However, those courts have acknowledged the appropriate use of de novo in the context of Rule 24(a)(2). For example, the first circuit applied the abuse of discretion standard when analyzing the elements of 24(a)(2) but noted that legal questions ought to be reviewed *de novo*. *Cotter v. Mass. Ass'n of Minority Law Enf't Officers*, 219 F.3d 31, 32 (1st Cir. 2000).

The issue here implicates issues of statory interpretation and as such warrants *de novo* review. Determining whether Title II grants the United States a legally protectable interest, a prerequisite to intervention as of right, is a matter of statutory interpretation. Unlike in *Cotter*, where the court assessed whether an intervenor's personal stake in defending his promotion satisfied the interest requirement, the question here is one of statutory interpretation. *Id.* Because of that distinction and the questions of statutory interpretation, the proper standard of review here is *de novo*.

B. The United States does not have an interest relating to the subject matter of the action.

This Court should reverse the district court's order granting the United States intervention as of right because the United States lacks a cause of action under Title II of the ADA and therefore does not possess a qualifying interest. To intervene as of right under Rule 24(a)(2), a party must demonstrate a "significantly protectable interest" in the subject matter of the litigation. Fed. R. Civ. P. 24(a)(2). The United States' claim that it has an interest in enforcing Title II of the ADA is unfounded for

three reasons: (1) the United States is not a "person" under Title II's enforcement clause, (2) statutory interpretation reveals a lack of enforcement authority in the DOJ, and (3) the United States misinterpreted the DOJ's promulgation authority as an enforcement mandate.

The explicit language of 42 U.S.C. § 12133 says that only "person[s]" can enforce the protections of Title II. 42 U.S.C § 12133. However, federal agencies are presumed to be excluded from this definition. *See Return Mail, Inc. v. United States Postal Serv.*, 587 U.S. 618, 626 (2019). In *Return Mail, Inc.*, this Court considered whether the United States Postal Service ("USPS"), a federal agency, qualified as a "person" eligible to petition for post-issuance patent review under the America Invents Act (AIA). *Id.* at 627. This Court held that the government is not a "person" for purposes of the AIA and therefore may not invoke its review procedures. *Id.* at 628. This Court reasoned that there is a longstanding presumption that "person" does not include the federal government absent a clear indication of congressional intent. *Id.* at 627. Mere existence of indirect references was insufficient to overcome this presumption. *Id.* at 632.

The Northern District of Illinois recently applied that presumption to Title II of the ADA. In *Haymarket DuPage, LLC v. Village of Itasca*, Haymarket, a private mental health and substance provider sued the Village of Itasca under Title II of the ADA. No. 22-cv-160, 2025 U.S. Dist. LEXIS 60493, 3 (N.D. Ill. Mar. 31, 2025). After Haymarket filed its complaint, the United States launched an investigation and subsequently filed a motion to intervene through Rule 24(a)(2) and Rule 24(b). *Id.* at

3–4. The court held that the United States was not entitled to intervene by right because it failed to have an interest in the subject matter and, even if it did, its interests were adequately represented by the existing parties in this case. *Id.* at 5–6.

1. The United States is not a "person" eligible to enforce Title II.

Only "person[s]" can enforce the protections of Title II. *A.J.T. v. Osseo Area Sch., Indep. Sch. Dist. No. 279*, 605 U.S. 335, 345 (2025). 42 U.S.C. § 12132 creates a substantive right by prohibiting discrimination against "qualified individuals with disabilities" by public entities, while 42 U.S.C. § 12133 merely supplies the enforcement mechanism for that right. Because 42 U.S.C. § 12133 relates to violations of 42 U.S.C. § 12132, the term "person" must be read to refer back to the qualified individuals with disabilities protected under 42 U.S.C. § 12132, thereby channeling remedies exclusively to those individuals rather than creating new substantive rights or expanding the class of enforcers. *See A.J.T.*, 605 U.S. at 345 (explaining that § 12133's broader language simply ensures that everyone Congress meant to protect under § 12132 can bring a claim). Thus, when read together, 42 U.S.C. § 12132 and § 12133 work together to link rights with remedies, confirming that only qualified individuals, not the government, may enforce Title II. *See Nat'l Ass'n of Home Builders v. Defenders of Wildlife,* 551 U.S. 644, 666 (2007) (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.") (internal quotations omitted). Thus, the structural link between "persons" and "qualified individuals with

disabilities" confirms that Congress intended enforcement to rest with the qualified individuals whose rights are violated, not with the federal government or other actors outside the protected class.

"Person" is presumed to exclude federal agencies unless there is an affirmative showing that Congress intended otherwise. *Return Mail*, 587 U.S. at 626 (quoting *Vt. Ag. of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 780 (2000)) ("the Court applies a longstanding interpretive presumption that "person" does not include the sovereign, and thus excludes a federal agency. . . ." (internal quotations omitted). Here, there is nothing to suggest in the language of Title II that suggests Congress intended the word "person" to include the government. The Dictionary Act reinforces this conclusion. *Haymarket Dupage, LLC,* LEXIS 60493 at 12. *See* 1 U.S.C. § 1 (creating definitions and presumptions that apply when the meaning of a term in an Act by Congress is ambiguous). The Dictionary Act defines the word "person" to "include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." *Id.* The federal government is not listed within this definition. *Haymarket Dupage, LLC,* LEXIS 60493 at 12. Therefore, the United States cannot have a qualifying interest for intervetion as of right.

The United States may argue that "person" refers to the Attorney General, but this would make Congress's separate authorization for the Attorney General to sue in Title I redundant. *Republic of Sudan v. Harrison,* 587 U.S. 1, 12 (2019) (quoting *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 837 (1988)) ("[W]e are hesitant to adopt an interpretation of a congressional enactment which renders

superfluous another portion of that same law.") (internal quotations omitted); *see also Nat'l Ass'n of Mfrs. v. DOD*, 583 U.S. 109, 128 (2018) ("Absent clear evidence that Congress intended this surplusage, the Court rejects an interpretation of the statute that would render an entire subparagraph meaningless."). The Northern District of Illinois applied this principal in a recent decision. In *Haymarket*, the court stated "that if "person" in Title II includes the Attorney General, then Title I contains surplusage when it authorizes both a 'person' and the 'Attorney General' to file suit. Courts typically avoid interpretations that render text duplicative." *Haymarket Dupage, LLC,* LEXIS 60493 at 11. Consequently, the statutory text supports the conclusion that "person" and the Attorney General are separate actors under the ADA. Thus, the Attorney General does not provide the United States with a qualifying interest for intervention as of right.

2. The Attorney General's authority to enforce Title II cannot be supplied by indirect references to the Civil Rights Act and Rehabilitation Act.

Congress's omission of 'Attorney General' within Title II creates the presumption that the government does not have enforcement authority under 42 U.S.C. § 12133. When language is omitted in another section of the same act, it evidences Congress's intent to exclude that language. *Russello v. United States*, 464 U.S. 16, 23 (1983). Title II of the ADA does not explicitly mention 'Attorney General' as having an enforcement right under its respective enforcement provision, whereas Titles I and III do. *Compare* 42 U.S.C. § 12133, *with* 42 U.S.C. § 12117(a). *Haymarket Dupage, LLC,* LEXIS 60493 at 9. Had Congress had intended to grant a civil cause of

action to the Attorney General in Title II, "it presumably would have done so expressly as it did in" Titles I and III. *See Russello*, 464 U.S. at 23. This omission in Title II's enforcement provision indicates that the United States has a lack of enforcement authority under Title II. *Id.* at 11. *United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730, 751–57 (11th Cir. 2021) (Newsom, J., dissenting).

Indirect references to Title VI of the Civil Rights Act are insufficient to overcome the presumption of the government lacking enforcement authority. *Return Mail, Inc.,* 587 U.S. at 632. The United States contends that it has enforcement authority under Title II of the ADA because Title II incorporates the Rehabilitation Act's remedies provision, which in turn, references Title VI of the Civil Rights Act. 42 U.SC § 12132; 42 U.S.C. § 2000d et seq.; 29 U.S.C. § 794a. The United States argued that because Title VI of the Civil Rights Act authorizes federal agencies to enforce compliance with its regulations, Title II's indirect reference to Title VI confers similar enforcement authority on the DOJ. 29 U.S.C. § 794a. R. at 6; *see United States v. Florida,* 938 F.3d 1221, 1227 (11th Cir. 2019). However, this cross-reference in the Rehabilitation Act only imports the "remedies, procedures, and rights" framework recognized under the Civil Rights Act. 29 U.S.C. § 794a(a)(2). It does not adopt Title VI's prevision on the federal government's distinct enforcement authority. 42 U.S.C. § 2000d-1. *Compare* 29 U.S.C. § 794a(a)(2) ("The remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964 . . . . shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title"), *with* 42 U.S.C. § 2000d-1

(authorizing federal departments and agencies that furnish financial assistance to effectuate the provisions of Title V).

Consistent with this reading, this Court has made clear that the ADA and the Rehabilitation Act only provide for private causes of action, not government enforcement. *Barnes v. Gorman*, 536 U.S. 181, 185 (2002). In *Barnes,* this Court explained that The ADA and the Rehabilitation Act incorporated only the part of Title VI that allows private individuals to sue. *Id.* Thus, the available remedies under the Rehabilitation Act mirror those for private plaintiffs under Title VI. *Id.* Therefore, *Barnes* undermines the government's attempt to read into these provisions as an independent right to file lawsuits under Title II. Accordingly, the indirect incorporation of the remedy framework under Title VI of the Civil Rights Act does not confer enforcement authority to the United States or grant it the right to intervene in private actions under 42 U.S.C. § 12133.

3. The government's ability to promulgate regulations does not equate to an enforcement mandate.

The promulgation of regulations under the ADA does not give the DOJ an interest in the subject matter of the regulation because that would create a de facto interest in every case involving any regulation issued by any federal agency. The United States argues that because Title II authorizes the Attorney General to promulgate regulations, it therefore may intervene in this action and enforce the substantive rights in 42 U.S.C. 12132 by virtue of the enforcement provision, 42 U.S.C. § 12133. But it has long been established that 42 U.S.C. § 12132 is enforceable through private rights of action, rather than agency enforcement. *Barnes*, 536 U.S.

at 184–185. The fact that an agency is tasked with ensuring compliance with its regulations does not mean it has authority to enforce them in court. *Dir., Off. of Workers' Comp. Programs, Dep't of Lab. v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 132 (1995) ("Agencies do not automatically have standing to sue for actions that frustrate the purposes of their statutes."). Therefore, the DOJ's regulatory role under the ADA does not provide independent enforcement authority, and the United States thus lacks the interest necessary for intervention. Recognizing such authority would erase the distinction between agency oversight and litigation, effectively allowing the DOJ to intervene in any action arising under regulations it promulgates.

4. An economic interest alone is insufficient for the United States to have an interest in the underlying subject matter.

Even if the DOJ fails to show that its promulgation authority confers enforcement authority, it may still contend that it has a cognizable interest in the subject matter. Unlike in *Haymarket*, Franklin hospitals receive federal funding. R. at 1. The United States may use this funding relationship to assert an interest in ensuring compliance by the entities it supports. However, a mere economic interest is not sufficient to warrant intervention under Rule 24(a)(2). *Am. Mar. Transp., Inc. v. United States*, 870 F.2d 1559, 1562 (Fed. Cir. 1989) (holding that a potential economic impact alone is not a direct, substantial, or legally protectable interest). *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 466 (5th Cir. 1984) (holding that "an economic interest alone is insufficient, as a legally protectable interest is required under 24(a)(2) . . . . "). Because the DOJ's claimed interest arises

solely from the government's financial relationship with Franklin hospitals, it constitutes the sort of economic stake that courts have rejected under Rule 24(a)(2). Thus, the government's financial relationship with Franklin hospitals does not transform its stake into the kind of legally protectable interest Rule 24(a)(2) requires.

Therefore, the United States does not have a qualifying interest in the subject matter of the underlying action because it is not a "person" eligible to enforce Title II, and Title II does not grant the Attorney General independent enforcement authority that can be inferred from other statutes. Moreover, the DOJ's power to promulgate regulations under Title II does not create an enforcement mandate. Finally, the government's funding relationship with Franklin hospitals amounts only to an economic interest, which courts have repeatedly held is insufficient to support intervention under Rule 24(a)(2).

C. The United States' motion to intervene was untimely because it knew or should have known of its interest earlier, and its delay caused substantial prejudice to the existing parties.

The district court abused its discretion in finding the United States' motion to intervene was timely. The United States should have known of its interests prior to the commencement of the DOJ's investigation and this delay inflicted substantial and undeniable prejudice upon the original parties of the action.

Courts consider four factors when determining whether a motion was timely: "(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." *Sierra*

Club v. Espy, 18 F.3d 1202, 1204–05 (5th Cir. 1994). Timeliness is to be determined from all the circumstances. *NAACP v. New York*, 413 U.S. 345, 366 (1973). Two factors are implicated here: the length of time the intervenor knew or should have known of their interest and the prejudice caused to the original parties by the delay. Here, the United States' motion to intervene is not timely because the United States knew of their interest over three months before motioning to intervene and intervention prejudiced the existing parties.

1. The United States knew of its interest in the subject matter before it moved to intervene under Rule 24(a)(2).

A Rule 24(a)(2) motion to intervene is untimely when the applicant, despite knowing of its interests, delays asserting them until the litigation has reached a critical stage. In *NAACP*, the petitioners sought to intervene under Rule 24(a)(2) in a suit that had been instituted against the United States by the State of New York, on behalf of three of its counties. 413 U.S. at 348–49. This Court affirmed the districting court's denial of the petitioners' Rule 24(a)(2) motion to intervene on the ground that the petitioner's motion to intervene was untimely. *Id.* at 369. This Court reasoned that because the petitioners knew of their interests and failed to protect those interests in a timely fashion by intervening three months later when the litigation was at a critical stage. *Id.* at 367.

This Court has constantly recognized that the most important circumstance relating to timeliness is that the intervening party made a motion to intervene "as soon as it became clear" that their interests would not be adequately protected by the existing parties in the case. *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S.

267, 279–80 (2022). In *Cameron*, the Kentucky attorney general made a motion to intervene in a proceeding for the purpose of defending the constitutionality of a state law. *Cameron,* 595 U.S. at 271. This Court affirmed the district court's grant of the attorney general's Rule 24(a)(2) motion. *Id.* at 282. The Court reasoned that the motion to intervene was timely because it was filed two days after the attorney general discovered that the state's interests were not protected by the existing parties in the underlying action. *Id.* at 280.

The United States knew of its potential interest in the subject matter as soon as it began its investigation. The DOJ started its investigation "shortly after Plaintiffs filed their complaint" on February 22, 2022. R. at 4. As in *NAACP*, the United States did not move to intervene until over three months later on May 27, 2022. *Id.* Although the United States may argue that its investigation was necessary to discover the scope of its interest, its own pleadings demonstrate otherwise. The government asserted that it possesses an institutional interest in ensuring that federally funded entities, such as Franklin hospitals, comply with Title II and DOJ's implementing regulations. R. at 5. That interest, grounded in the provision of federal funding, was apparent from the moment the complaint was filed and did not depend on the outcome of the government's subsequent investigation. Thus, the United States knew of its potential interest in the subject matter months before, and delays in making an intervention motion after gaining such knowledge weigh against a finding of timeliness.

Moreover, the United States' assertion that the Petitioners cannot adequately represent its interests further establishes that the United States knew of its interest in the subject matter well before its motion to intervene. R. at 8. If the government believed from the outset that private plaintiffs could not adequately advance its interests, then it should have sought intervention as soon as the complaint was filed. By waiting to intervene until after it had already launched its own investigation, the United States effectively concedes that it knew of the potential inadequacy of representation yet chose to delay. This weighs against a finding of timeliness.

2. The delay in intervention prejudiced the existing parties.

The most important consideration in determining timeliness is whether any existing party to the litigation will be harmed or prejudiced by the proposed intervenor's delay in moving to intervene. *McDonald v. E. J. Lavino Co.*, 430 F.2d 1065, 1073 (5th Cir. 1970) (stating that untimeliness resulting in prejudice to the existing parties might as well be the *only* significant consideration when the proposed intervenor seeks intervention of right). For someone to be prejudiced by the intervention, there must be more than mere inconvenience. *Id.* Prejudice can only be measured by the harm caused by the delay in seeking intervention, not by the intervention itself. *Ruiz v. Estelle*, 161 F.3d 814, 828 (5th Cir. 1998).

Allowing intervention during ongoing settlement negotiations unfairly prejudices the existing parties. *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 950 (7th Cir. 2000). In *Sokaogon Chippewa Community*, the United States Court of Appeals for the Seventh Circuit held that granting the motion to intervene would

prejudice the existing parties because the existing parties had spent substantial time and effort in trying to settle the case. *Id.* The court reasoned that allowing the proposed intervention would eliminate the possibility of settlement and the parties' combined efforts to settle would be "completely wasted." *Id.*

Like *Sokaogon Chippewa Community*, at the time the United States intervened, the parties were engaged in meaningful settlement discussions. R. at 33. Those negotiations immediately ceased once the government entered the case, foreclosing the opportunity for a prompt, mutually agreeable resolution of the matter. *Id.* This disruption alone constituted significant prejudice, as courts have recognized that intervention is particularly disfavored when litigation is at a critical stage. *See NAACP*, 413 U.S. at 367. Accordingly, just as in *Sokaogon Chippewa Community*, the government's belated intervention here undermined settlement efforts and inflicted precisely the type of prejudice that warrants denial of intervention. R. at 34.

Moreover, the United States' intervention prolonged and expanded the litigation dramatically. R. at 33. The United States' intervention drastically expanded the scope and cost of litigation, increasing the amount of discovery, delaying summary judgment, prolonging trial, and adding over two years and $273,000 in extra expenses; this harm far exceeds the prejudice threshold for untimely intervention. *Id.* This quantifiable harm far exceeds the level of mere inconvenience and is sufficient to render intervention untimely. *See McDonald*, 430 F.2d at 1073.

The prejudice here is also distinguishable from the speculative concerns rejected in *Cameron*. *Cameron*, 595 U.S. at 282. In *Cameron*, the Court held that a

party's "reasonable expectation" that litigation would not be pursued vigorously did not establish prejudice. *Id.* By contrast, the prejudice here was concrete and severe: settlement efforts collapsed; discovery costs escalated; and litigation has now persisted for over two years and cost Petitioners, whose budget is limited, nearly three hundred thousand dollars. R. at 33.

Therefore, the district court abused its discretion in concluding that the United States' motion to intervene was timely because the United States knew of their interest in the subject matter long before making the motion to intervene and there was substantial and demonstrable prejudice inflicted upon the original parties as a result of intervention.

D. Even if the United States had a qualifying interest and a timely motion, it still failed to satisfy the remaining requirements of Rule 24(a)(2).

Alternatively, if this Court finds that the United States has an interest in the subject matter, this Court should nonetheless reverse the appellate court's grant of its motion to intervene because the United States failed to meet its burden in proving the rest of the Rule 24(a)(2) requirements. It failed to show that its interests would be impaired by a disposition on the merits and that it failed to show that its interests were inadequately represented by the existing parties. Failure to prove either of these elements must result in a denial of intervention as a matter of right.

1. The United States' interests are not impaired by a disposition on the merits.

The United States did not establish that its interests would be impaired because a private lawsuit would not foreclose its ability to bring a suit of its own. An

intervenor's interests become impaired when a disposition on a legal question would "foreclose the rights of the proposed intervenor in a subsequent proceeding." *Shea v. Angulo*, 19 F.3d 343, 347 (7th Cir. 1994) (quoting *Meridian Homes Corp. v. Nicholas W. Prassas & Co.*, 683 F.2d 201, 204 (7th Cir. 1982)). The possibility of pursuing a separate suit or other remedies eliminates any practical impairment, even if the existing litigation resolves the same legal questions or involves related parties. *Id.*

The district court conflates the mere existence of interest in the subject matter with that interest being impaired by a merits disposition. R. at 8. Rule 24(a)(2) requires more than an interest in the subject matter; it requires a showing that the disposition of the case "may as a practical matter impair or impede the movant's ability to protect its interest." The district court's reasoning that the United States has an interest in enforcing the ADA, and therefore any resolution of this case necessarily impairs that interest, is logically flawed. R. at 8.

Under this reasoning, the existence of an interest would automatically satisfy the impairment requirement, rendering the Rule 24(a)(2) standard for showing that disposition may impair or impede the applicant's ability to protect its interest meaningless. This Court has repeatedly cautioned against interpretations that render independent provisions redundant. *E.g.*, *Gustafson v. Alloyd Co.,* 513 U.S. 561, 574 (1995) ("[T]he Court will avoid a reading which renders some words altogether redundant."). Although Rule 24(a)(2) sets out an element-based test rather than a statute, the same reasoning applies: courts must give effect to each requirement, not collapse multiple requirements them into one. *See Perry v. Proposition 8 Official*

Proponents, 587 F.3d 947, 950 (9th Cir. 2009) ("Failure to satisfy any one of the requirements is fatal to the application, and we need not reach the remaining elements if one of the elements is not satisfied."). The district court assumed that the United States' interest was impaired without explaining how a disposition of this case would hinder its interests in enforcing the ADA. In doing so, the court collapsed the distinct "impairment" inquiry into the mere existence of an interest, effectively rewriting Rule 24(a)(2) as a three-factor test.

Courts have long recognized that the "interest" and "impairment" elements are distinct, and they have denied intervention where a movant demonstrated an interest but failed to show that its interest would be impaired. *See Air Lines Stewards & Stewardesses Ass'n Loc. 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 106 (7th Cir. 1972) (holding that the Commission's interest in ensuring compliance with court orders is not impaired by denying intervention in court proceedings to determine liability or award relief"). *See Tripp v. Exec. Off. of the President*, 194 F.R.D. 344, 347 (D.D.C. 2000) (holding that former members of the Reagan and Bush Administrations could not intervene because they failed to articulate how their interests might be impaired without intervention). Like the Equal Employment Opportunity Commission in *Air Lines Stewards*, the United States asserts that it has an interest in ensuring compliance with federal law. R. at 7. But just as in *Air Lines Stewards*, that general enforcement interest is not impaired by denying intervention in a private lawsuit.

The ability to bring a separate suit weighs against any claim of impairment. *Shea*, 19 F.3d at 347. An adverse judgment in this case would have no *res judicata* or

collateral estoppel effect against the United States. This Court has long recognized that the government, when not a party to a suit, is not bound by private litigation. *United States v. Mendoza*, 464 U.S. 154, 158 (1984) (holding that nonmutual offensive collateral estoppel does not apply against the government). Thus, even if the Petitioners prevail on the merits, the Department of Justice remains free to pursue its own enforcement actions against the hospital, uninhibited by the judgment in this case. Without the binding effect of *res judicata*, the United States retains full ability to litigate its interest in future proceedings.

2. The United States' interests are adequately represented by the existing parties.

The existing parties adequately represent the United States' interests. A presumption of adequate representation arises when a proposed intervenor shares the same ultimate objective as an existing party, making intervention unnecessary. *Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula*, 41 F.4th 767, 774 (6th Cir. 2022); *see also Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 688 (7th Cir. 2023) (determining adequate representation when the prospective intervenor and named party has the same goal); *see also Virginia v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216–17 (4th Cir. 1976) (finding adequate representation because the intervenor sought no relief beyond what the plaintiff was already pursuing). This presumption can only be rebutted by showing adversity of interest, collusion, or nonfeasance by the existing parties. *Stuart*, 706 F.3d at 348. Interests are adequately represented when the existing parties are motivated to litigate vigorously to protect the same legal rights. *Shea*, 19 F.3d at 347.

Here, the private Respondents adequately represent the United States' interests because both parties share the same goal: pursuing injunctive relief to ensure Franklin hospitals comply with Title II of the ADA. R. at 9. Although the United States seeks broader systemic relief, its underlying interest—addressing noncompliance at Franklin—is fully aligned with the Respondents' claims. If the United States were seeking nationwide relief, there might be reason to question whether three individual Respondents could adequately represent its interests. However, because the United States and the Respondents are seeking relief only in Franklin hospitals, the private Respondents' interests are directly aligned with the United States' interests in challenging the allegedly discriminatory hospital policies; any relief obtained for the Respondents in Franklin directly advances the United States' enforcement goals.

Therefore, the United States failed to meet its burden of establishing all the necessary elements of Rule 24(a)(2) because it failed to establish a sufficient interest justifying intervention as a matter of right. Even if the United States did establish a qualifying interest, it nonetheless failed to establish the remaining elements of Rule 24(a)(2). Specifically, its motion to intervene was untimely, its interests are not genuinely impaired by a disposition on the merits of the litigation, and its interests are already adequately represented by the existing private Respondents. Therefore, with at least one of these requirements unmet, the United States has failed to meet its burden, and this Court should reverse the appellate court's grant of the United States' motion to intervene as a matter of right.

CONCLUSION

This Court should REVERSE the Twelfth Circuit's holding on the basis that "at-risk" individuals may not sustain a claim under 42 U.S.C. § 12132. The plain language of the statue does not allow for it, and the guidance document issued by the DOJ does not expand the statute's zone of interest. Additionally, the United States does not meet its burden in establishing all four elements required to intervene as of right under Rule 24(a)(2).

Respectfully submitted,

Team 3405

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ATTORNEYS FOR PETITIONER