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

The United States of America

Intervenor-Respondents.

On Writ of Certiorari to the

United States Court of Appeals

for the Twelfth Circuit

BRIEF FOR RESPONDENT

Team 3412

Attorneys for Respondents

QUESTIONS PRESENTED

I. Whether a person at risk of institutionalization and segregation in a hospital in the future, but who is not currently institutionalized or segregated, can maintain a claim for discrimination under Title II of the American Disabilities.

II. Whether the United States can intervene as of right under the Federal Rules of Civil Procedure 24(a)(2) to enforce Title II of the Americans with Disabilities Act, thereby showing interest in the subject matter of a current private action.

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The opinion and order on the United States' motion to intervene from the United States District Court for the District of Franklin, *Kilborn v. State of Franklin Department of Social and Health Services,* is contained in the Record of Appeal at pages 1-10 where the District Court GRANTED the United States' motion to intervene. The opinion and order on the parties' cross-motions for summary judgement from the United States District Court for the District of Franklin, *Kilborn v. State of Franklin Department of Social and Health Services* is contained at pages 11-21. The opinion for the Twelfth Circuit Court of Appeals, *Kilborn v. State of Franklin Department of Social and Health Services* is located at pages 22-38. The Appellate Court AFFIRMED the judgements of the District Court.

STATUTORY PROVISIONS

The following statutory provisions are relevant to this case: 42 U.S.C. §§ 1983; 12101; 12103; 12132; 12133; 12134(a); §2000d; § 2000d-1. These provisions are reproduced in Appendix A.

RULES PROVISIONS

The following provisions of the Federal Rules of Civil Procedure are relevant to this case: Fed. R. Civ. P. 24. This provision is reproduced in Appendix B.

STATEMENT OF THE CASE

Factual Background

A brief overview. In 2019, Sarah Kilborn, Eliza Torrisi, and Malik Williamson were all concurrently receiving inpatient treatment in hospitals across the State of Franklin. R. at 12-15. Ms. Kilborn was at Southern Franklin Regional Hospital receiving care for her bipolar disorder. R. at 13. Ms. Torrisi was a patient at Newberry Memorial Hospital where her parents had her admitted after she experienced several severe manic episodes. R. at 14. Mr. Williamson, initially diagnosed with schizophrenia in 1972, was at Franklin State Hospital. R. at 14–15.

At some point during their treatment, Ms. Kilborn, Ms. Torrisi, and Mr. Williamson were all encouraged to seek care at community mental health facilities. R. at 12-15. Each of their attending physicians determined that transferring to these facilities would improve their mental health care. *Id.* Community mental health facilities, they reasoned, provide less intensive treatment and allow greater flexibility so patients can live a more typical life. *Id.* This flexibility can improve a patient's general well-being and reduce the likelihood that they will be re-institutionalized in the future. But for Ms. Kilborn, Ms. Torrisi, and Mr. Williamson, access to this kind of treatment is a practical impossibility.

The only state-sponsored community mental health facility in the State of Franklin is in Platinum Hills, the capital. R. at 15. Roughly 20 percent of the state's population resides within two hours of this facility; the other 80 percent, living across 99,000 square miles of state territory roughly the size of Oregon, live farther away. *Id.*

In 2011, the State of Franklin cut funding for the Department of Health and Social Services by 20 percent, forcing two other state-sponsored mental health facilities to close. *Id.* These facilities would have significantly reduced the travel time necessary to access treatment for the other 550,000 State of Franklin citizens who live more than two hours away from Platinum Hills. *Id.* Someone living in Silver City, where Ms. Kilborn resides, would have needed to travel 20 minutes to one of the closed facilities. R. at 15. Ms. Torrisi, a resident of Golden Lakes, would only need to travel for an hour. R. at 16.

Ms. Kilborn's suffering. Sarah Kilborn lives over three and a half hours away from Platinum Hills. R. at 13. In 2002, she was first admitted for intensive inpatient care after attempting self-harm during a severe depressive episode. R. at 12. She spent several years at Southern Franklin Regional Hospital where, multiple times, her treating physicians recommended that she transfer to a community mental health facility. R. At 13.

Ms. Kilborn initially tried to transfer to one of these facilities in 2013. *Id.* There, she could live at home, work, and generally go about her daily life while receiving treatment. *Id.* However, the only facility capable of accommodating Ms. Kilborn is in Platinum Hills. R. at 15. Determining that uprooting Ms. Kilborn from her community would be impractical and proposedly detrimental, her physician recommended that she remain at Southern Franklin for the duration of her treatment. R. at 13. Five years later, Sarah was re-institutionalized. *Id.* To this day, no new state-sponsored community health centers have been built. *Id.*

Ms. Torrisi's suffering. Eliza Torrisi lives four hours away from Platinum Hills. R. at 14. She was diagnosed with bipolar disorder as a teenager only three years before her first inpatient treatment term at Newberry Memorial. *Id.* During the manic episodes that forced her parents to have her admitted, she engaged in erratic, threatening behavior. *Id.* Ms. Torrisi's condition improved after a year of treatment at Newberry Memorial, and her doctors recommended that she transfer to a community mental health facility. *Id.* There, she was told, Ms. Torrisi could live at the facility and enjoy opportunities for supervised socialization, visitation from family, and outings in the community. *Id.*

The Platinum Hills facility does not offer the kind of treatment Ms. Torrisi's doctors recommend. R. at 16. Thus, Eliza stayed at Newberry Memorial, close to her family and friends, until her release in May 2021. R. at 14. Three months later, she was re-institutionalized after another severe manic episode. *Id.*

Mr. Williamson's suffering. For 50 years Malik Williamson has been in and out of hospitals receiving treatment for his schizophrenia disorder. *Id.* He suffers from hallucinations and delusions that have previously induced threatening behavior. R. at 15. For his most recent treatment term, Mr. Williamson's daughter and guardian chose Franklin State University Hospital in Platinum Hills because it is just a few miles from their shared home. *Id.* There, she could visit him often. *Id.*

In 2019, after two years of intensive care, Mr. Williamson's physician recommended that he transfer to the nearby state-sponsored community mental health facility. *Id.* Mr. Williamson tried to enroll, but the clinic does not offer the kind

of inpatient treatment advised by his doctor. *Id.* In fact, the facility does not offer inpatient treatment at all; the nearest community mental health center that does is privately operated and requires a two-hour drive. R. at 15–16. To stay close to his community and support system, Mr. Williamson chose to remain institutionalized at Franklin State until his release in June 2021. R. at 15.

Legislative history. The inpatient treatment program at the Platinum Hills facility was targeted for elimination in the 2011 state budget cuts. R. at 15–16. The legislature's justification was that the inpatient program was expensive while assisting minimal patients. R. at 16. In 2021, the Department of Health and Social Services received a five percent budget increase. *Id.* Since that time no new community mental health facilities have been constructed or proposed, nor have new services have been added to the Platinum Hills location to assist patients struggling with severe mental illness. R. at 15–16.

The petition. In February 2022, Ms. Kilborn, Ms. Torrisi, and Mr. Williamson filed a complaint against the State of Franklin Department of Social and Health Services ("State of Franklin"), alleging their rights were violated under Title II of the Americans with Disabilities Act (ADA). R. at 24. The patients contend that they are at risk of being institutionalized in the future and may be unnecessarily segregated from both other patients and the public at large due to the state's failure to provide adequate health facilities. *Id.*

Several months after the patients submitted their petition, the United States Department of Justice Civil Rights Division filed to intervene against the State of

Franklin, arguing that the civil rights of all state citizens have been violated on under Title II of the ADA. *Id.*

Sarah Kilborn, Eliza Torrisi, Malik Williamson, and the United States of America now seek injunctive relief for all State of Franklin citizens who are at risk of being unnecessarily institutionalized and segregated because of the state's unlawful activity.

Procedural History

District of Franklin. The Respondents filed their initial complaint seeking injunctive relief in February 2022, alleging discrimination in violation of Title II of the ADA, under 42 U.S.C. § 12132. R. at 2. Following an investigation of the State of Franklin's compliance with Title II, the United States Department of Justice Civil Rights Division filed a motion three months later to intervene on behalf of the respondents. *Id.* The United States sought relief for all State of Franklin citizens who are at risk of bring unnecessarily institutionalized at state hospitals in the future. *Id.* The District Court granted the United States' motion. R. at 9.

Both parties filed cross-motions for summary judgment. R. at 11. The District Court bifurcated the case into two phases based on the issues. R. at 16. In the first phase, the court would determine if the Respondents who were at risk of being institutionalized or segregated, but who are not actually institutionalized or segregated, can file a claim for discrimination under Title II. *Id.* In the second phase, the court would determine in trial whether the State of Franklin has discriminated against the Respondents under the ADA and what relief is appropriate. *Id.* The district court granted summary judgement for the Respondents on the issue

regarding standing under the ADA, denying the Petitioner's motion. R. at 21. The court moved to the second phase and held a trial, holding that the Respondents were at risk of future institutionalization and segregation in violation of Title II of the ADA. R. at 24.

The court then issued an order requiring the Petitioner to submit a proposed plan for correcting the violations and ensure that it would not institutionalize Respondents if it met three-part test in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999) in the future. The Petitioner appealed this decision to the Twelfth Circuit Court of Appeals. R. at 24–25.

The Twelfth Circuit. The Twelfth Circuit affirmed the lower court's ruling in favor of Ms. Kilborn, Ms. Torrisi, Mr. Wiliamson, and The United States of America, remanding the case for further proceedings. R. at 38. The State of Franklin Department of Social and Health Services, along with Mackenzie Ortiz in her capacity as secretary of the department, then petitioned the United States Supreme Court, which granted cert. R. at 39.

SUMMARY OF THE ARGUMENT

The patients may maintain a claim because they are "at risk" of institutionalization despite not being currently institutionalized or segregated. Under Title II of the Americans with Disabilities Act (ADA), individuals with a disability shall not be excluded from or denied services, programs, or activities of a public entity. 42 U.S.C. § 12132. The Attorney General is authorized by Congress to promulgate regulations to implement this broad mandate. *Id.* § 12134(a). The Department of Justice (DOJ) adopted a regulation requiring public entities to

administer programs supporting individuals with disabilities in the most integrated setting, which is known as the "integration mandate." 28 C.F.R. § 35.130(d).

This Court held in *Olmstead v. L.C. by Zimring* that unjustified isolation of individuals with disabilities was a violation of the ADA. 527 U.S. 581, 597 (1999). This Court requires the state to provide programs and services to individuals with disabilities when: (1) state professionals deem it appropriate, (2) when the affected individual does not oppose transfer, and (3) when the placement can be reasonably accommodated without fundamentally altering state programs or exhausting state resources. *Id.* at 587. All three patients satisfy the *Olmstead* requirements.

Additionally, this court should defer to the DOJ's interpretation of the integration mandate because the interpretation is of a regulation and not a statute. Courts defer to an agency's interpretation of a clearly ambiguous regulation when the interpretation is not clearly erroneous and is consistent with the regulation. *Auer v. Robbins*, 519 U.S. 452, 461 (1997); *Kisor v. Wilkie*, 588 U.S. 558, 573 (2019).

The United States has inherent interests in enforcing its regulations and must intervene as of right into the original claim. Under Rule 24(a)(2), the United States has demonstrated its inherent interests in ensuring that federally funded agencies comply with its regulations, including Title II of the ADA. After completing its investigation of the State of Franklin's compliance with Title II, the United States concluded that the State of Franklin violated the regulation. Upon conclusion of the investigation, the United States moved to intervene as of right in a timely fashion, demonstrating its interests in litigating on behalf of the current

plaintiffs and securing systemic relief for future plaintiffs. Congress has incorporated rights, remedies and procedures from Title VI of the Civil Rights Act into Title II, and has expressly shown that one of the remedies afforded to plaintiffs includes the Attorney General filing a lawsuit.

The United States is situated such that this Court disposing of its motion to intervene would impair its sovereign interests that are at issue in the case at bar. Further, the current private plaintiffs inadequately represent the United States' interests, particularly regarding the US protecting its regulations. Thus, under the totality of the circumstances, the United States has met its burden of proof in showing that its Rule 24(a)(2) motion is proper. For a court to deny its petition would both impede the United States' interests and offend congressional intent.

STANDARD OF REVIEW

When appellate courts review issue of statutory and administrative law, they do so *de novo*. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 463 (2024). This non-deferential standard of review is important for allowing courts to use their independent judgement on whether an administrative agency's regulation is within the bounds of its authorized discretion. *Id*. at 413. The appellate courts are granted authority to independently review district court's decisions. *Salve Regina College v. Russell*, 499 U.S. 225, 231 (1991).

When a court denies a proposed intervenor's motion to intervene on a basis other than timeliness, a court must review that decision for abuse of discretion. *Brody v. Spang*, 957 F.2d 1108, 1115 (3d Cir. 1992). When a court reviews a district court's decision for abuse of discretion, it must determine whether the lower court applied

the incorrect legal standard or reached a decision that is clearly incorrect. *See id.*; R. at 26. This is because the district court's decision is based on its position to view the facts in determining whether the proposed intervenor satisfied the four elements of Rule 24(a)(2).

ARGUMENT

I. Someone at risk of institutionalization or segregation but not currently receiving care may maintain a claim under Title II of the Americans with Disabilities Act.

Title II of the Americans with Disabilities Act (ADA) provides that no individual with a disability shall be excluded from or denied services, programs, or activities of a public entity. 42 U.S.C. § 12132. Congress directed the Attorney General to promulgate regulations to implement this broad mandate. *Id.* § 12134(a).

Empowered by the ADA, the Department of Justice (DOJ) adopted a regulation requiring public entities to administer programs supporting individuals with disabilities in the most integrated setting. 28 C.F.R. § 35.130(d). This regulation is known as the "integration mandate." This Court has already recognized that the ADA was enacted to end "unjustified institutional isolation of persons with disabilities." *Olmstead v. L.C. by Zimring*, 527 U.S. 581, 597 (1999). Respondents are asking this Court to enshrine the DOJ's interpretation of the integration mandate—its own regulation—by applying *Olmstead* to individuals at risk of institutionalization. 527 U.S. at 581.

A. Requiring actual institutionalization to bring an ADA claim would render Title II meaningless and nullifies *Olmstead*'s protections.

This Court previously limited a patient's scope of relief by requiring the government to provide community-based treatment only (1) when state professionals deem it appropriate, (2) when the affected individual does not oppose transfer, and (3) when the placement can be reasonably accommodated without fundamentally altering state programs or exhausting state resources. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 587 (1999). Under *Olmstead*, disallowing patients from

accessing community health facilities perpetuates unwarranted assumptions that those individuals "are incapable or unworthy of participating in community life" and that "confinement in an institution severely diminishes the everyday life activities" of those institutionalized individuals. *Id.* at 600–1. This Court has warned that "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." *Id.* at 601.

In *Olmstead v. L.C. ex rel. Zimring*, this Court held that unjustified institutional isolation of individuals with mental disabilities is discriminatory under Title II of the ADA. 527 U.S. 581. There, two women remained confined in a state hospital despite their physicians' recommendation that they receive care in community health programs. *Id.* at 593. The patients sued, alleging discrimination by reason of disability. *Id.* In reaching its conclusion, the Court concluded that unnecessary segregation stigmatizes individuals and severely diminishes their ability to participate in community life. *Id.* at 601.

Here, Ms. Kilborn, Ms. Torrisi, and Mr. Williamson all face the same functional issue as the patients in *Olmstead*. R. at 13-16; 527 U.S. at 601. Their inability to enroll in a State of Franklin community mental health facility has caused unnecessary segregation and stigma that diminishes their ability to participate in community life. The potential harm the Respondents face is the exact type of harm this Court contemplated in *Olmstead*. *Id.*

In this case, the patients all received recommendations from their physicians to enroll in community mental health facilities, and they were all unable to do so. RR:13-15. Their confinement, and pattern of re-institutionalization, to state hospitals diminished their everyday life activities, a critical process scrutinized in *Olmstead*. 527 U.S. at 601; RR:13-15. The distance of the community-based health facilities from the patients in this case is the same type of harm the Court sought to prevent in *Olmstead*. 527 U.S. at 601. For Ms. Kilborn and Ms. Torrisi, the closest facility is hours away. R. at 13–14. For Mr. Williamson, the Platinum Hills facility does not offer the kind of inpatient care recommended by his doctor. R. at 15.

Additionally, the patients here satisfy the three requirements established in *Olmstead*. 527 U.S. at 587. The patients' physicians are professionals working at state-funded hospitals who deem it appropriate for the patients to be transferred to community health facilities. R. at 13–15. The Respondents do not oppose being transferred to a community health facility, filing this suit to facilitate that transfer. *Id*. The patients' placement in a community health facility can be reasonably accommodated without fundamentally altering the state programs or exhausting state resources. *Id.*; see *Olmstead*, 527 U.S. at 587. After all, the state operated two additional community mental health facilities, as well as inpatient treatment options, before budget cuts forced their closure.

It is insufficient that the State of Franklin claims fiscal constraints. *Pashby v. Delia*, 709 F.3d 307, 324 (4th Cir. 2013). In 2011, the State of Franklin cut services at the Platinum Hills community mental health facility, claiming the cost of providing

inpatient care was too expensive with too few patients assisted. R. at 16. It is insufficient that the state claim fiscal constraints. *Pashby v. Delia*, 709 F.3d 307, 324 (4th Cir. 2013). Also, the State may not resist modifications that do not fundamentally alter the State's programs and services. *Olmstead*, 527 U.S. at 603. The state of Franklin cannot maintain the position that providing community mental health facilities is impossible merely due to speculative budgetary constraints that were not raised at the trial court or court of appeals. The Franklin legislature increased the budget of the Department of Health and Social Service's budget by five percent in 2021, yet there have been no facilities reopened. R. at 16. There is no evidence to suggest that Franklin operating community mental facilities would "fundamentally alter" its current programs and services. *Olmstead*, 527 U.S. at 603.

B. The DOJ's guidance document reasonably interprets the ambiguous integration mandate to cover at-risk individuals.

The jurisprudence from this Court on determining deference given to an agency's interpretation of law is clear. When an agency's interpretation of its own regulation is consistent with the regulation and not plainly erroneous, the Court should give deference to that interpretation. *Auer v. Robbins*, 519 U.S. 452, 461 (1997). The regulation must also be clearly ambiguous. *Kisor v. Wilkie*, 588 U.S. 558, 573 (2019). Courts may not defer to an agency's interpretation of an ambiguous statute. *Loper Bright*, 603 U.S. at 380, 412 (2024).

1. This Court should apply *Auer* and *Kisor*.

Courts defer to an agency's interpretation of its own regulations when a regulation is genuinely ambiguous. *Kisor v. Wilkie*, 588 U.S. at 573. The promulgating

agency's interpretation of the regulation must not be "plainly erroneous or inconsistent with the regulation." *Auer*, 519 U.S. at 461.

The plain text of Title II is ambiguous. On one reading, the duty to "administer" programs applies only once institutionalization of a patient occurs; on another, it applies whenever individuals are denied integrated services. 28 C.F.R. § 35.130(d). The preamble to the Attorney General's Title II regulations defines the most "integrated setting appropriate" to mean "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible." *Olmstead*, 527 U.S. at 591 (citing 28 CFR pt. 35, App. A, p. 450 (1998)). The DOJ interpreted this regulation to cover individuals at risk of institutionalization. United States Department of Justice, Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C., https://archive.ada.gov/olmstead/q&a_olmstead.htm. The Department of Justice reasoned that a plaintiff doesn't need to wait until institutionalization "occurs or is imminent" to bring a claim under the ADA. *Id*.

Because the regulation is ambiguous and because the DOJ has reasonably interpreted its own regulation, this Court should defer to the DOJ's interpretation. The DOJ has long interpreted the integration mandate to extend to persons "at serious risk of institutionalization or segregation." U.S. Dep't of Justice, Statement on the Integration Mandate of Title II of the ADA and *Olmstead v. L.C.*, https://archive.ada.gov/olmstead/q&a_olmstead.htm. That reading is both reasonable and consistent with the ADA's text, thus the DOJ's interpretation should control.

2. *Loper-Bright* is distinguishable as there is a clear ambiguity regarding a regulation, not a statue.

Defendants will likely argue that *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), forecloses deference. *Loper Bright* overruled *Chevron* and rejected deference to agency interpretations of statutes. *Loper Bright*, 603 U.S. at 412; see *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837(1984). The Court explained that *Chevron*'s presumption is misguided because "agencies have no special competence in resolving statutory ambiguities." *Loper Bright*, 603 U.S. at 373.

In *Loper Bright*, fishery owners challenged the application of the *Chevron* Doctrine as applied to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). See 90 Stat. 331 (codified as amended at 16 U.S.C. §1801 et seq.); *Loper Bright*, 603 U.S. at 380, 382 (2024). The National Marine Fisheries Service (NMFS), which administers the MSA, promulgated regulations requiring vessel operators to "declare into" a fishery before departing by notifying NMFS of the trip and identifying the species they intend to harvest. *Loper Bright*, 603 U.S. at 382. If NMFS required an observer but did not provide a government-funded one, the vessel was required to hire and pay for a government-certified third-party observer. Id. at 382–83. NMFS estimated this cost could reach $710 per day, reducing a vessel owner's annual returns by as much as 20 percent. *Id*. at 383.

Under *Chevron*, courts deferred to the federal agency's interpretation of a statute when "the statute [was] silent or ambiguous with respect to the specific issue" at hand, holding that a reviewing court could not "simply impose its own construction

on the statute, as would be necessary in the absence of an administrative interpretation." *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984). A court was required to defer to the agency if it offered "a permissible construction of the statute," even if it was not "the reading the court would have reached if the question initially had arisen in a judicial proceeding." *Id.* at 843.

There, this Court overruled *Chevron*, holding that courts may not defer to a government agency's interpretation of an ambiguous statute. *Loper Bright*, 603 U.S. at 412. The Court reasoned that the Administrative Procedure Act (APA) explicitly requires courts to decide all relevant questions of law and interpret statutory provisions independently, even when statutes are ambiguous. *Id.* at 391–92. Deference to agency interpretations, as required under *Chevron*, was inconsistent with this mandate. *Id.* at 399–400. The Court emphasized that judicial independence in statutory interpretation is a fundamental constitutional value reflecting separation of powers, ensuring that courts, not executive agencies, determine the meaning of laws. *Id.* at 392–94. The Court found that *Chevron*'s presumption of congressional intent to delegate interpretive authority to agencies was a legal fiction unsupported by the APA or historical judicial practice. *Id.* at 428–29. The Court noted that Chevron had become unworkable, leading to inconsistent application and undermining the rule of law by allowing agencies to change statutory interpretations arbitrarily. *Id.* at 404–07.

Here, the dispute is not over a statute like in *Loper Bright*. *Id.* at 369. Rather, the disputed revolves around the interpretation of a regulation created by the DOJ,

which is precisely the circumstance where *Auer* and *Kisor* continue to apply. The disputed regulation is the integration mandate. See 28 C.F.R. § 35.130(d). Because the integration mandate is a regulation and because that regulation is genuinely ambiguous, deference is warranted under *Auer* and *Kisor*. Were the court to apply *Loper Bright*, the result would be expanding that holding while narrowing *Auer* and *Kisor* in an unprecedented fashion. The result would be an essential overruling of *Auer* and *Kisor* deference and upset the standing regulatory scheme. *Loper Bright* would only be applicable if Title II of the ADA was the sole disputed law at issue in this case. However, because the dispute is centered around Title II's application by way of regulatory mechanisms (the integration mandate), a lack of deference under *Loper Bright* is inappropriate. Ultimately, the fundamental dispute of a regulation rather than a statute compels this Court to adopt the deference framework of *Auer* and *Kisor*.

C. The Court should resolve the circuit conflict by confirming that Title II's integration mandate extends to individuals at serious risk of institutionalization.

This Court should resolve the circuit split in favor of Title II confirming that the integration mandate extends to individuals at risk of institutionalization. While the circuits are divided and a controlling opinion has not been issued by this Court, a majority view has arisen. Seven of the eight circuit courts who have taken up this issue have recognized that at-risk individuals have a cause of action under Title II. The district court in this case was correct in joining the Second, Fourth, Sixth, Seventh, Ninth, and Tenth circuits in concluding that a cause of action may be brought under Title II of the ADA for those who may be at risk of segregation, and

the Twelfth Circuit Court upheld the district court's decision on review. *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*, 697 F.3d 706 (9th Cir. 2012); *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181-82 (10th Cir. 2003); and *State of Franklin Dep't of Soc. & Health Servs. v. Kilborn*, No. 24-892, slip op. (12th Cir. June 26, 2025).

1. This Court should adopt the majority view that Title II protects individuals "at risk" of institutionalization.

In *Fisher v. Oklahoma Health Care Authority*, three individuals with disabilities who participated in Oklahoma's Home and Community-Based Services (HCBS) Waiver Program challenged the state's decision to impose a cap of five prescription medications per month, regardless of medical necessity. 335 F.3d 1175, 1177 (10th Cir. 2003). The petitioners, suffering from severe medical conditions, argued that the cap would force them into nursing homes to obtain necessary care, violating the ADA and the Rehabilitation Act (RA). *Id.* at 1178. The state imposed the five-prescription limit in response to a budgetary shortfall, estimating it would save $3.2 million annually, while continuing to provide unlimited prescriptions to nursing home residents. *Id.* at 1179. But the plaintiffs contended that the cap would impose severe personal financial burdens, requiring the participants to either enroll in a nursing home or suffer potentially grave health consequences. Id. at 1179–80.

The district court held that plaintiffs could not state a claim under the ADA because they were not presently institutionalized. *Id*. at 1178.

There, the Tenth Circuit rejected the district court's narrow interpretation of the ADA's integration mandate, holding that Title II and its implementing regulations protect not only individuals already institutionalized but also those at serious risk of institutionalization. *Id.* at 1181–82. The court reasoned that requiring plaintiffs to enter an institution before challenging a discriminatory policy would render the ADA's protections meaningless. *Id.* at 1181–82. The court further concluded that Oklahoma's five-prescription cap could constitute unlawful discrimination because it effectively forced plaintiffs to choose between staying in their communities and receiving necessary medical treatment. *Id*. at 1182–83. The state's assertion that fiscal constraints justified the cap was insufficient. Id. at 1183 The ADA does not permit states to rely on budgetary concerns alone without demonstrating that accommodating plaintiffs would fundamentally alter the program. *Id*. Accordingly, the Tenth Circuit reversed the district court's decision and remanded for further proceedings, holding that plaintiffs had raised genuine issues of material fact as to whether the cap violated the ADA's integration mandate. *Id*. at 1186.

Similarly, in *Waskul v. Washtenaw County Community Mental Health*, Medicaid beneficiaries with developmental disabilities challenged a state budget methodology that reduced their service hours under Michigan's Home and Community-Based Services waiver program, alleging it placed them at risk of

institutionalization. 979 F.3d 426, 431–33 (6th Cir. 2020). The district court dismissed their claims, but the Sixth Circuit reversed, holding that the plaintiffs plausibly alleged violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act (RA), and 42 U.S.C. § 1983. *Id.* at 438–42. The court reasoned that a state's action creating future risk for citizens protected under the ADA sufficiently implicated the ADA and RA's integration mandate, which prohibits unnecessary institutionalization. *Id.* at 442–45. The court further held that the Medicaid Act's "reasonable promptness" provision created enforceable rights under § 1983, reinforcing that states must ensure eligible individuals receive the services necessary to avoid institutionalization. *Id.* at 446–49.

In *Pashby v. Delia*, the Fourth Circuit considered whether local residents had a cause of action against the State of North Carolina when official changes to the rules regarding in-home personal care services (PCS) placed them at risk of institutionalization. 709 F.3d 307, 313–15 (4th Cir. 2013). The plaintiffs, who relied on PCS to remain in their homes and communities, argued that the state's policy would unlawfully force them into nursing facilities to obtain comparable assistance. *Id.* at 315–16.

The Fourth Circuit held that the claim was meritorious under Title II of the ADA and § 504 of the Rehabilitation Act. *Id.* at 322–24. The court reaffirmed that the unnecessary institutionalization of persons with disabilities constitutes discrimination, and that policies placing individuals at serious risk of institutionalization can violate the ADA's integration mandate. *Id.* at 322 (citing

Olmstead, 527 U.S. at 597). The court emphasized that requiring plaintiffs to wait until after institutionalization to seek relief would nullify the ADA's protections. *Id.* at 322–23. The court ultimately held that policies that reduce access to community-based services and thereby place individuals with disabilities at serious risk of institutionalization may constitute discrimination under Title II of the ADA and § 504 of the RA, consistent with *Olmstead*. *Id.* at 322–24.

The Fourth Circuit further rejected the state's fiscal-constraint defense, noting that cost-saving alone is not a sufficient justification under *Olmstead* absent a showing of fundamental program alteration. *Id.* at 324. The court affirmed the district court's preliminary injunction against the state. *Id.* at 331.

2. The Court should not adopt the minority view of the Fifth Circuit because its decision was not based on individualized claims.

Only the Fifth Circuit deviates from the majority in its interpretation of Title II's integration mandate, holding that individuals at risk of institutionalization, but who are not actually institutionalized, cannot file a claim for discrimination under Title II of the ADA. See *United States v. Mississippi*, 82 F.4th 387, 391 (5th Cir. 2023).

In *United States v. Mississippi*, the DOJ sued Mississippi alleging that its entire mental health system violated Title II of the ADA by placing individuals with serious mental illness at risk of unnecessary institutionalization. 82 F.4th 387, 389–90 (5th Cir. 2023). The district court accepted this "at risk" theory, finding systemic ADA violations and imposing a sweeping remedial order restructuring Mississippi's mental health service. *Id.* at 390–91.

There, the Fifth Circuit reversed, holding that Title II prohibits only actual unjustified institutionalization, not speculative risks. *Id.* at 392–93. The court reasoned that neither the ADA's text, its regulations, nor *Olmstead* support claims based solely on a risk of future institutionalization. *Id.* at 392–95. The panel emphasized that the ADA does not require states to guarantee a particular level of services, nor authorize federal courts to oversee wholesale restructuring of state health systems. *Id.* at 395–400. Because no individual was shown to be currently unjustifiably institutionalized, the DOJ failed to prove a violation of Title II, and the district court's injunction was vacated. *Id.* at 401–02.

Unlike in *Fisher v. Oklahoma and Waskul v. Washtenaw County*, where plaintiffs were individual Medicaid beneficiaries alleging that specific reductions in services placed them at imminent risk of institutionalization, *Mississippi* involved a federal systemic challenge unsupported by individualized evidence. *Mississippi*, 82 F.4th at 388,. The reviewing courts in *Fisher* and *Waskul* accepted the "at risk" theory because denying essential medical or personal care services would foreseeably force disabled individuals into institutions. 335 F.3d at 1181–82; 979 F.3d at 442–45. By contrast, the Fifth Circuit rejected that reasoning in *Mississippi*, holding that Title II requires proof of actual unjustified segregation, not generalized statistical risks. 82 F.4th at 392–95. Thus, while *Fisher* and *Waskul* demonstrate courts' willingness to recognize imminent risk claims by individual plaintiffs tied to concrete service denials, *Mississippi* reflects a narrower interpretation, rejecting systemic "risk" claims brought by the federal government without individualized proof.

Here, the patients do not assert a generalized policy challenge, but rather they assert an individualized claim supported by professional determination and individualized risk reflected in their demonstrated patterns of re-institutionalization. The Fifth Circuit's decision in *Mississippi* is not controlling here. That case rejected a systemic ADA challenge brought by the federal government based solely on a statistical study that claimed all Mississippians with serious mental illness were "at risk" of unjustified institutionalization. 82 F.4th 387, 392–95 (5th Cir. 2023). The court emphasized the absence of individualized evidence that any person was unjustifiably institutionalized or at imminent risk of becoming institutionalized. *Id.* at 395–96. By contrast, this case involves individual plaintiffs who have shown how the challenged policy immediately threatens their ability to remain in community settings and out of isolated inpatient treatment programs. Unlike the generalized, system-wide allegations in *Mississippi*, the plaintiffs here identified concrete service reductions that deprived them of necessary medical and personal care, thereby forcing them into institutional facilities.

This case thus falls squarely within the line of precedent recognizing "at risk" claims where service denials to identifiable individuals create a foreseeable pathway to institutionalization. See *Fisher*, 335 F.3d at 1181–82; *Waskul*, 979 F.3d at 442–45, *Davis v. Shah*, 821 F.3d 231 (2d Cir. 2016); *Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2013); *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*, 697 F.3d 706 (9th Cir. 2012; and *State of Franklin Dep't of Soc. & Health Servs. v. Kilborn*, No. 24-892,

slip op. (12th Cir. June 26, 2025). This court should affirm the lower court's decision because individualized claims brought by the patients fits firmly within the holdings of the circuits decisions under *Olmstead.* When individualized claims meet the requirements of *Olmstead* and allege the harms this Court was concerned with in that case, those patients may maintain a claim under Title II of the ADA. See *Olmstead*, 527 U.S. at 587. Were this Court to decide differently, the result would be incongruent with this Court's current understanding of claims under Title, as well as reinterpret the understanding of Title II claims in every circuit where the issue has been raised.

Because the *Olmstead* requirements have been fulfilled, the interpretation of the disputed regulation is warranted difference, and because the circuits have come to a near unanimous conclusion, this Court should hold for the patients. This Court should hold that individuals who are not institutionalized but are at risk of institutionalization in the future may maintain a claim under Title II of the ADA.

II. The United States has an interest relating to the Plaintiffs' private lawsuit in enforcing Title II of the ADA and thus can intervene as of right.

Under the Federal Rules of Civil Procedure, Rule 24(a) allows a party to intervene into an existing lawsuit as of right. Fed. R. Civ. P. 24(a). Courts must allow an intervention to the moving party who is (1) given an unconditional right to intervene by a federal statute; or (2) 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. Fed. R. Civ. P.

24(a)(1)–(2). Because the Americans with Disabilities Act does not provide an unconditional right to intervene, then a party seeking to intervene on an ADA claim must motion to do so under Rule 24(a)(2). *See* Fed. R. Civ. P. 24(a)(1)– (2); 42 U.S.C. § 12101; R. at 3.

To determine whether a movant can intervene as of right under Rule 24(a)(2), courts evaluate the totality of the circumstances, considering four factors when making their inquiry. *See Ali v. City of Chi.*, 34 F.4th 594, 599 (7th Cir. 2022). The proposed intervenor must establish that: (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 the action may proposedly impair its interests; and (4) its interests are inadequately represented by the existing parties in the action. *Id.*

This Court should affirm the Twelfth Circuit's decision and hold that the United States' motion satisfies each element of 24(a)(2).

A. The United States' motion to intervene was timely.

When determining the first element of Rule 24(a)(2), the timeliness of a party's motion to intervene, courts use a four-factor analysis: (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; and (4) any other unusual circumstances. *Illinois v. City of Chi.*, 912 F.3d 979, 984 (7th Cir. 2019). This test evaluates whether a party acts with "reasonable promptness" when filing its motion, considering timeliness on a sliding scale that weighs justice for the moving party against the harm suffered by the original parties if court grants the motion. *Ali*, 34 F.4th at 599; *Reich v. ABC/York-*

Estes Corp., 64 F.3d 315, 321 (7th Cir. 1995). Courts examine timeliness of a proposed intervenor's motion by viewing all surrounding circumstances on a case-by-case basis. *See Stupak-Thrall v. Glickman*, 226 F.3d 467, 475 (6th Cir. 2000), (quoting *NAACP v. New York*, 413 U.S. 345, 366 (1973)). Thus, courts should grant a proposed intervenor's motion where no parties would be hurt, and greater justice would be attained. *Sierra Club v. Epsy*, 18 F.3d 1202, 1205 (5th Cir. 1994).

1. After concluding its investigation of the State of Franklin's compliance with Title II, the United States acted reasonably promptly by motioning to intervene.

The first factor considers the proposed intervenor's knowledge of the case and how it would affect its interests. *City of Chi.*, 912 F.3d at 984. The clock begins ticking when the proposed intervenor knows that the subject matter of the current lawsuit *might* adversely affect its interests. *Id.* at 985.

In *City of Chi.*, the Seventh Circuit Court of Appeals considered whether the proposed intervenor's delay in motioning to intervene was unjustifiable. *Id.* at 982. The proposed intervenor waited nine months before motioning to intervene, knowing the entire time that the outcome of the case would affect its interests. *Id.* In reaching its holding, the court reasoned that the proposed intervenor had demonstrated knowledge that the outcome of the case would affect its interests. The moving party monitored and knew about the private action at issue, met with state representatives, and constantly expressed concern about the lawsuit. *Id.* Yet the proposed intervenor waited nine months before filing its motion after it became clear that the lawsuit might affect its interests. *Id.* at 985. The Seventh Circuit held that the moving party

failed to file with reasonable promptness after learning the lawsuit would affect its interests, affirming the lower's court decision. *See id.* at 985–986.

Here, the United States filed its motion to intervene via the Attorney General of the United States Department of Justice a little over three months after the plaintiffs filed their initial complaint. R. at 4. Unlike the facts of *City of Chi.*, where the proposed intervenor waited to file after knowing the lawsuit implicated its interests, the United States' petition was prompt. 912 F.3d at 982-85. In this case, the United States filed its motion to intervene only a few weeks after determining its interests were impacted in the case at bar. R. at 4. When the plaintiffs filed their original complaint, the United States DOJ Civil Rights Division was still investigating the State of Franklin Department of Social and Health Service's compliance with Title II of the ADA. R. at 2. Upon completion of the investigation in early May of 2022, the United States promptly filed its motion to intervene a little over three weeks later on May 27. R. at 2-4. The United States' motion was not only timely but also demonstrated a keen awareness of the issues raised in the patients' argument—as well as how those issues affect the interests of the United States. *See id.*; 912 F.3d at 985.

The United States filed its motion because it found that the State of Franklin's actions, leading to the patients' private action, violated Title II of the ADA. *See* R. at 2. Like the proposed intervenor in *City of Chi.*, the one of the guiding principles of the United States' DOJ is to ensure compliance with its federally enacted laws. 912 F.3d at 985. In this case, the United States acted within this role by conducting the

investigation into the State of Franklin's alleged ADA violations and subsequently filing its motion to intervene on the plaintiffs' behalf a little over three weeks later. *See* R. at 2. The United States acted promptly after concluding its investigation, solidifying the private action's effect on its interests. *See Ali*, 34 F.4th at 599; *Reich v. ABC/York-Estes Corp.*, 64 F.3d 315, 321 (7th Cir. 1995). Thus, the first factor of timeliness is satisfied.

2. The United States' motion to intervene caused no prejudice to the original parties because the private action was in its early stages.

The second factor looks to whether the timing of the proposed intervenor's motion prejudiced the original parties. *City of Chi.*, 912 F.3d at 984. The proper measure of prejudice involves looking to what steps the current parties have taken along the "litigation continuum." *Glickman*, 226 F.3d at 475 (6th Cir. 2000), (quoting *NAACP v. New York*, 413 U.S. 345, 366 (1973)). If the proposed intervenor files its motion in the early stages of litigation, then the injury is not so severe that the motion be denied. See *id*. Conversely, petitioning the court to intervene at a later stage may prejudice the opposing party. *Id*. The absolute measure of time between plaintiffs filing their original complaint and proposed intervenor filing its motion to intervene is one of the least important circumstances. *See id.*

In *Glickman*, the Sixth Circuit Court of Appeals considered whether the proposed intervenor's delay in intervening would cause prejudice to the existing parties. *Id.* at 474. There, the proposed intervenor motioned to intervene after the discovery deadline closed, and the case's "finish line" was quickly approaching. *Id.* at 475. The court ultimately ruled against the proposed intervenor because litigation

had made extensive progress in the district court before it filed its motion to intervene. *Id.* It held that such a delay would prejudice the original parties. *Id.*

Here, the United States motioned to intervene promptly and before the existing parties made extensive progress in the litigation process. R. at 3. Unlike the proposed intervenor in *Glickman*, the United States filed its motion while the original parties were still in early stages of litigation. 226 F.3d at 475. Only three weeks passed between the DOJ concluding its investigation and the United States filing its motion to intervene. R. at 4. When reviewing the litigation continuum at bar, the case was in its beginning stages where the parties had only filed pleadings, discovery was barely beginning, and the parties filed a proposed scheduling order with the Court. *Id.*; R. at 27. The United States District Court for the District of Franklin held in its memorandum opinion that delaying the scheduling order to account for the United States intervention would not be prejudicial. R. at 4. The district court emphasized the plaintiffs' consent to the United States' proposed intervention to vindicate rights on their behalf, despite knowledge of any proposed delays in the case's timeline. *Id.* Additionally, the defendants never alleged that the United States' proposed intervention would cause prejudice from any proposed delays that may arise from the United States' intervention. *Id.* The United States intervening now would save the defendants' time by litigating issues in a singular lawsuit, while preventing flooding of the courts in Franklin and draining pockets of the parties. *See id.* Thus, the United States's motion to intervene is not prejudicial.

3. Denying the motion to intervene would prejudice the United States by impeding its sovereign ability to protect its interests and enforce its regulations.

The third factor analyzes whether a court's denial of the proposed intervenor's motion will prejudice it. *City of Chi.*, 912 F.3d at 984. Courts typically look to whether denying a proposed intervenor's motion would impede its ability to ultimately protect its interests. *See Adam Joseph Res. (M) Sdn. Bhd. v. CNA Metals Ltd.,* 919 F.3d 856, 865 (5th Cir. 2019).

In *CNA Metals Ltd.,* the Fifth Circuit Court of Appeals found that disposing of the proposed intervenor's motion to intervene would greatly impede its ability to protect its interests. *Id.* The court found many practical reasons as to why prejudice was at stake, such as forcing the proposed intervenor to incur substantial expenses in pursuing a separate lawsuit. *Id.* at 866. This led the Fifth Circuit to ultimately hold that its motion to intervene was timely, and to hold otherwise would prejudice the proposed intervenor. *Id*

Here, although the District Court found the third factor to be "largely neutral," there are still circumstances surrounding the United States' proposed intervention that would weigh in its favor. *See* R. at 4. If this Court grants the United States' motion to intervene, efficiency in litigation would be achieved, which courts, litigators, and parties all desire. *See id*. Allowing the United States to join a similar lawsuit that already exists rather than it filling a separate action would provide a simple route to litigating not only the current plaintiffs' rights, but also to litigating for future plaintiffs who may experience the same harm in the future. *Id.* Like *CNA Metals Ltd.,* prejudice is clear here, especially for purposes of saving litigation costs. *See* 919 F.3d

at 866. Even if this Court finds that denial of the United States' motion would not prejudice it, it should consider efficiency that would benefit all parties in conjunction with the United States' inherent ability to protect its interests. *See CNA Metals Ltd.,* 919 F.3d at 865.

4. There are no unusual circumstances that would prompt a reviewing court to deny the United States' motion to intervene.

The fourth factor is a catch-all inquiry that evaluates whether there were any unusual circumstances that affect the timeline of a party's motion to intervene. *City of Chi.*, 912 F.3d at 988–89. Courts typically apply this inquiry when, under the totality of the circumstances, the moving party unusually delayed its petition. *See Glickman*, 226 F.3d at 475.

The DOJ's investigation of the State of Franklin's alleged violation of Title II of the ADA created a time gap that would substantiate an unusual circumstance. R. at 2. Upon receiving the complaint, the United States knew the current action may affect its interests and conducted an investigation to pursue legal recourse as quickly as it possibly could. R. at 4; *See City of Chi.*, 912 F.3d at 985. The United States then had to wait until its investigation was complete and showed that the State of Franklin violated Title II before motioning to intervene. R. at 4. As stated by the District Court, none of the parties have "filed substantive motions, requested preliminary injunctive relief, or asked for expedited briefing." R. at 5. Thus, this unavoidable investigation should serve as a mitigating factor in favor of the United States' timely motion.

B. The United States has an interest in enforcing its federal laws, including Title II of the ADA, relating to the subject matter of the original complaint.

The second element of Rule 24(a)(2) considers whether the proposed intervenor has an interest relating to the subject matter of the private action. F.R.C.P. 24(a)(2). The United States has an interest relating to the subject matter of the current lawsuit because its legal authority to enforce its federal laws through judicial remedy is synonymous with its interest in the current private action. *See* R. at 5; R. at 27. The United States has broad authority to enforce federal regulations like Title II of the ADA, allowing the Attorney General to file lawsuits. *United States v. Florida*, 938 F.3d 1221, 1248 (11th Cir. 2019); *United States v. City & County of Denver,* 927 F. Supp. 1396, 1400 (D. Colo. 1996). The pathway to determining the United States' authority to file suit follows: (1) the chain of incorporation from Title II to Title VI of the Civil Rights Act and (2) the broad language in Title II that places the United States in a role that can enforce its laws and compliance with such. *See* R. at 6.

1. Congress incorporated Title VI of the Civil Rights Act into Title II of the ADA, empowering the DOJ to bring civil rights claims against state entities who receive federal funding.

Title II of the ADA has incorporated the "remedies, procedures, and rights" to be the same as those under Section 505 of the Rehabilitation Act, which references those in Title VI of the Civil Rights Act. *See* 42 U.S.C. § 12133. Courts have looked to the "statutory cascade" from Title II of the ADA to the Rehabilitation Act to Title VI to determine the breadth of the United States' power in enforcing its laws and the congressional intent behind the creation of them. *Florida*, 938 F.3d at 1247. Courts must place emphasis on congressional intent, and "presume that [what] a legislature

says in a statute [says] what it means and means in a statute what it says[.]" *Connecticut Nat'l Bank v. Germain*, 504 U.S. 249, 253–54 (1992). Congress has "expressed its desire that [courts'] interpretation of the ADA be compatible with interpretation of the other federal disability statutes." *Wis. Cmty. Servs. v. City of Milwaukee*, 465 F.3d 737, 751 (7th Cir. 2006). Thus, this Court must effectuate Congress' intent in incorporating Title VI's provisions for remedies, procedures and rights into Title II, and interpret such to "clearly authorize suit by the United States against recipients of federal funds[.]" R. at 6.

Courts must analyze the text of Title II, which explicitly incorporates the "remedies, procedures, and rights" of § 505 of the Rehabilitation Act, which in turn explicitly incorporates the same of Title VI of the Civil Rights Act of 1964. *See* 42 U.S.C. § 12133; 29 U.S.C. § 794(a)(2); 42 U.S.C. § 2000d-1. Title VI prohibits discrimination based on race, color, or national origin by "any program or activity receiving federal financial assistance." 42 U.S.C. § 2000(d). Agencies can effectuate compliance by issuing rules, regulations, and taking other actions. 42 U.S.C. § 2000d-1. These other actions include the termination or refusal of grants or continuation of assistance to programs, or by "any other means authorized by law." *Id.*

In *Florida*, the Eleventh Circuit considered whether Title II's "remedies, procedures, and rights" under the "any other means authorized by law" provision include the ability for the Attorney General to file a lawsuit against entities that violate Title II. 938 F.3d at 1247–48. The Eleventh Circuit based its reasoning on the fact that courts have routinely upheld Congress' intent in incorporating the

enforcement mechanism from Title VI to the Rehabilitation Act to Title II. *Id.* at 1248. 42 U.S.C. § 2000d-1 authorizes the Attorney General to enforce compliance with Title VI and other statues that adhere to the same enforcement scheme. *Id.* The court ultimately found that Attorney General of the United States has authority to enforce Title II "by any other means authorized by law[,]" which includes filing a lawsuit in federal court. *Id.*

Here, the United States moves to intervene as it has an "institutional interest" in ensuring federally funded entities, such as the Franklin Department of Health and Social Services, comply with Title II and its corresponding regulations. R. at 5. The lower courts determined that the State of Franklin falls within the category of recipients of federal funds that are subject to enforcement of regulations such as Title II that are in place to ensure compliance with Title VI. R. at 6; R. at 27. The United States has both an inherent and substantial interest to act within its sovereign capacity to ensure that recipients of federal funds comply with its civil rights and disability regulations. R. at 7. Thus, this Court should recognize the congressionally vested authority in the United States Attorney General to enforce the regulations under "other means authorized by law" by filing a lawsuit to be synonymous with its interests in the current lawsuit. R. at 27.

2. Congress has empowered the Attorney General, a person, to enforce the United States' federal regulations on behalf of citizens protected by the Americans with Disabilities Act.

Even if this Court finds that the statute calls for an actual person to intervene, the Attorney General, who is a person by plain definition, has the express authority to promulgate the rules and regulations set forth under Title II of the ADA. R. at 7;

42 U.S.C. § 12134(a). In the ADA, Congress stated that the United States "Federal Government plays a central role in enforcing the standards established in [the ADA] on behalf of individuals with disabilities[.]" 42 U.S.C. § 12101(b)(3). Courts have consistently held that Congress instructed the Attorney General to implement and enforce regulations, so federally funded programs accommodate the needs of those with disabilities in compliance with national regulations. *City of Milwaukee*, 465 F.3d at 751; *See also United States v. Sec'y Fla. Agency for Health Care Admin.,* 21 F.4th 730, 737 (11th Cir. 2021).

In *Sec'y Fla. Agency for Health Care Admin.*, the Eleventh Circuit addressed whether an intervenor must be a "person" alleging discrimination under Title II. 21 F.4th at 737. There, when the Attorney General filed a lawsuit under Title II, the original party alleging discrimination was not the Attorney General, but rather the individual with a disability. *Id.* The court reasoned that under Title II, a right afforded to the aggrieved individual is that "the Attorney General may sue to vindicate the individual's rights and to enforce federal law." *Id.* Conversely, the Attorney General can litigate on behalf of the individual, defending their rights. *See id.* The Eleventh Circuit ultimately held that the Attorney General suing under Title II qualifies as a "person." *Id.*

This Court should find the same as the lower courts in that the United States does not need to be a "person" by plain definition to intervene as the Attorney General is not the person seeking relief for discrimination. R. at 7; R. at 27; *Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th at 737. Congress empowered the Attorney General

with the authority to promulgate the remedies, procedures and rights set forth in Title II, which includes litigating on behalf of individuals the regulations intend to protect. 42 U.S.C. § 12134(a); 42 U.S.C. § 12101(b)(3). Thus, this Court should view that Congress' use of "any person" in Title II includes the Attorney General allows the United States to intervene through the Department of Justice because its own regulations are at issue in the present case. R. at 7–8.

C. The United States' sovereign interests would be impaired if this Court denies its motion to intervene.

The third element of Rule 24(a)(2) considers whether the proposed intervenor is situated such that a court's disposition of its motion to intervene may proposedly impair its interests. F.R.C.P. 24(a)(2). The proposed intervenor has the burden to prove that its interests are "legally protectable," and that denying a motion to intervene would be detrimental to the moving party's interests. *See Wal-Mart Stores, Inc. v. Tex. Alcoholic Bev. Comm'n*, 834 F.3d 562, 566 (5th Cir. 2016), (citing to *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co. (NOPSI),* 732 F.2d 452, 464 (5th Cir. 1984)).

In *Wal-Mart Stores, Inc.*, the Fifth Circuit Court of Appeals considered whether the proposed intervenor had a legally protectable interest that would allow it to intervene as of right into a current action. *Id.* at 565. The court determined an interest to be legally protectable if the law deems it worthy of protection, which is the case even if the proposed intervenor does not have an "enforceable legal entitlement" or "would not have standing to pursue her own claim." *Id.* at 566 (quoting *Texas v. United States*, 805 F.3d 653, 659 (5th Cir. 2015)). There, the court allowed the moving

party to intervene so it could "legally protect its interest in defending [its] regulatory scheme." *Id.* at 569. As a result, the Fifth Circuit held that the proposed intervenor's interest was not only related to the subject of the current action, but disposition of the action could impair its interests and the ability to protect them. *Id.* at 566.

Here, this Court should similarly find that because the United States has a legally protectable interest in defending its regulatory scheme, denial of its motion to intervene would impair its interests. *Wal-Mart Stores, Inc.*, 834 F.3d at 566. Title II provides legal remedies and procedures against federally funded offending agencies, empowering the Attorney General to enforce the regulation. *See* 42 U.S.C. §§ 12132–12133; 2000d. Congress incorporated Title VI of the Civil Rights Act into Title II of the ADA to emphasize the role of the Department of Justice in enforcing federal regulations. *See* R. at 7; *See* 42 U.S.C. § 12101(b)(3). Any interests violated under Title II of the Act are legally protectable, as Congress intended for Title II to be worthy of protection by empowering the Attorney General to promulgate the regulation and litigate on behalf of plaintiffs. R. at 7; *Wal-Mart Stores, Inc.*, 834 F.3d at 566. Furthermore, because Congress has intended for the DOJ to promulgate such remedies with broad power, the United States has enforceable legal entitlement to intervene in the litigation at bar to protect the federally recognized rights of citizens. *See Wal-Mart Stores, Inc.*, 834 F.3d at 566; R. at 8. If this Court were to deny the motion to intervene, then the United States would be unable to enforce its own federal regulations through judicial remedy, significantly impairing its interests. *See* R. at 8; R. at 27.

D. The existing parties in this action inadequately represent the United States' interests.

The fourth element of 24(a)(2) considers whether the existing parties adequately represent the proposed intervenor's interest in the current action. *United States v. Michigan*, 424 F.3d 438, 443 (6th Cir. 2005). The proposed intervenor has a minimal burden to prove that there is "potential for inadequate representation." *Id.* (quoting *Grutter v. Bollinger*, 188 F.3d 394, 400 (6th Cir. 1999)). Most crucial is whether the original parties and the proposed intervenor have the same ultimate objective in litigation. *See id.* Courts must determine whether the parties' and proposed intervenor's interests are "identical." *Kane Cnty. v. United States*, 94 F.4th 1017, 1024 (10th Cir. 2024). Even if the interests are similar, so long they are not identical, courts will presume inadequate representation. *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 197 (2022). Thus, Rule 24(a)(2) provides intervention to parties who have an interest "that may be practically impaired or impeded," so long as existing parties are not adequately representing the said interest. *Id.* at 195.

In *Berger*, this Court considered whether a proposed intervenor, by virtue of its governmental status, would have to clear a higher hurdle in proving that the original parties inadequately represent its interests. 597 U.S. at 197. There, legislative leaders proposed to intervene in a private action. *Id.* at 183. The proposed intervenors were amongst officials authorized to protect a state's practical interests in its enacted laws. *See id.* at 196. The Court found that if the moving party is a government official, then there should be a rebuttable presumption that the original parties inadequately represent the moving party's interests. *See id.* at 197. Courts

should treat government representatives with respect. *Id.* A court finding otherwise would displace a government's prerogative in selecting officials to defend its laws and voice its wide-ranging interests in contrast to private parties' narrow interests. *Id.* at 197. State agents who sought to defend state laws should not have to "clear some higher hurdle" in proving that the current parties inadequately represent their interests. *See id.* at 198. The Court ultimately held that the proposed intervenor met their minimal burden of showing inadequate representation because, for public policy reasons, government agents have express authority to represent and enforce its interests. *See id.* at 199.

In *Kane Cnty.*, the Tenth Circuit considered whether a private party would adequately represent the interests of the United States government. 94 F.4th at 1024. There, the dispute regarded public land involving public interests, which the government would litigate in favor of. *See id.* The court contrasted a private party's narrow interests and the government's broad interests. *Id.* The court reasoned that the United States government inherently represents multiple objectives and a broad spectrum of views when litigating on behalf of the public. *Id.* at 1031. The court declined the idea that because parties are seeking the same form of relief, that does not inherently mean that their interests are identical. *Id.* at 1032. The court took a liberal approach because the case involved "significant public interests." *See id.* at 1033–34. The inherent conflict of the government protecting public interests and private parties' interests therefore satisfied the government's burden of showing inadequacy of representation. *Id.* at 1024.

Here, this Court should align with the lower courts' findings that the private plaintiffs inadequately represent the United States' interests in enforcing its regulations. R. at 9. Allowing the United States to intervene would allow the government to align with its sovereign authority to defend its interests in ensuring federally funded programs comply with duly enacted federal laws. *See Berger*, 597 U.S. at 183. Congress empowered the Attorney General to defend broad interests under the ADA and other federal civil rights laws through many procedural avenues. 42 U.S.C. § 12134(a); 42 U.S.C. § 12133. Like the proposed intervenors in *Berger*, the Attorney General is a government-selected official who vindicates government-enacted laws like Title II, and for a court to presume that private parties adequately represent government interests would offend Congress' intent in empowering the Attorney General under the ADA. *See* 597 U.S. at 191–97. Thus, the United States, as the sovereign governmental authority, does not have a high burden to prove that the original plaintiffs inadequately represent its interests. *Id.* at 198.

Further, the United States and the current plaintiffs' interests are not identical. *Kane Cnty.,* 94 F.4th at 1031. Like the moving party in *Kane Cnty.*, the United States here moves to protect interests that concern public policy, litigating on behalf of any State of Franklin citizen discriminated against under Title II of the ADA. *See id.*; R. at 7. The United States must represent broad, differentiating views when litigating on behalf of the public. *Id.* at 1031. Furthermore, the United States is seeking broader relief for "*all* those who are at risk of being unnecessarily institutionalized and segregated at a Franklin hospital in the future[,]" which places

its interests in litigating this suit on a different plane than those of the plaintiffs'. *See* R. at 2; R. at 28. The United States can provide comprehensive relief under its direct interpretation of the ADA, which private plaintiffs may interpret differently whilst seeking individual relief. *See* R. at 28. The Tenth Circuit held that if the type of relief sought among multiple parties is the same, then it does not inherently mean the interests are identical. *See Kane Cnty.,* 94 F.4th at 1032. It is clear here that the difference in scope of relief demonstrates the United States' broader and different interests from the private plaintiffs' interests. R. at 9. If this Court were to hold otherwise, the potential for settlement of the private parties' claims would arise, which would render the United States' institutional interests unrepresented. *Id.*

CONCLUSION

Under Title II of the Americans with Disabilities Act (ADA), individuals with a disability shall not be excluded from or denied services, programs, or activities of a public entity. States are required to provide programs and services to individuals with disabilities when: (1) state professionals deem it appropriate, (2) when the affected individual does not oppose transfer, and (3) when the placement can be reasonably accommodated without fundamentally altering state programs or exhausting state resources.

In this case, Sarah Kilborn, Eliza Torrisi, and Malik Williamson were functionally denied access to community mental health centers, failing to receive recommended treatment from their attending physicians. Through distance or lack

of access to proper services, they were unable to receive proper care. Therefore, their civil rights were violated under Title II of the ADA.

Additionally, under FRCP 24(a)(2), the United States has a demonstrated interest in the outcome of the case: ensuring that federally funded state entities comply with its regulations—including all sections of the ADA. The United States' motion to intervene was timely and demonstrated an interest in the issues of the original case. Moreover, the United States is situated such that if this Court denies its motion to intervene, then its interests would be impaired, and the original parties litigating the case do not adequately represent United States sovereign interests. Thus, under the totality of the circumstances, the United States has met its burden of proof in showing that its Rule 24(a)(2) motion is proper.

It is for these reasons that this Court should affirm the holding of the Court of Appeals for the Twelfth Circuit.

Respectfully submitted,

/s/ 3412

Attorneys for Respondents

CERTIFICATE OF SERVICE

We certify that a copy of the Respondent's brief was served upon the Petitioner, The State of Franklin Department of Social and Health Services, et. al., through counsel of record by certified U.S. mail return receipt requested on this 9th day of September, 2025.

/s/ 3412

Attorneys for Respondents

APPENDIX A: Statutory Provisions

Americans with Disabilities Act

42 U.S.C. § 12101(b)(3). Findings and purpose

(b) Purpose. It is the purpose of this Act—

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities

42 U.S.C. § 12103. Additional definitions

As used in this Act:

(1) Auxiliary aids and services. The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) State. The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the

Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

42 U.S.C. § 12132. Discrimination

Subject to the provisions of this title, 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. § 12133. Enforcement

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202 [42 USCS § 12132].

42 U.S.C. § 12134(a). Regulations

(a) **In general.** Not later than 1 year after the date of enactment of this Act [enacted July 26, 1990], the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244 [42 USCS § 12143, 12149, or 12164].

Civil Rights Act

42 U.S.C. § 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 [42 USCS § 2000d] with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program... or (2) by any other means authorized by law...

APPENDIX B: Rule Provisions

Fed. R. Civ. P. 24(a)

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) 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.