No. 25-140

IN THE

Supreme Court of the United States

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

Petitioners,

v.

SARAH KILBORN, et. al.,

Respondents,

and

THE UNITED STATES OF AMERICA

Intervenor-Respondents.

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

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

1. Can an individual who is not currently institutionalized or segregated, but who is at serious risk of future institutionalization or segregation in a state-operated hospital, bring a viable claim for discrimination under Title II of the Americans with Disabilities Act ("ADA")?
2. Do recent SCOTUS rulings in *Loper* and *Auer* change how the Court may use Department of Justice (DOJ) guidance in evaluating such ADA claims?
3. Whether the United States may avail the remedies provided under 42 U.S.C. § 12133 to enforce Title II of the Americans with Disabilities Act, and if so, whether it can satisfy all four requirements for intervention as of right under Federal Rule of Civil Procedure 24(a)(2).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes, Regulations, and Rules:

Other Authorities:

STATUTORY PROVISIONS

42 U.S.C.S. § 12101. Findings and purpose

a. **Findings.** The Congress finds that—

1. physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental

disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

2. historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
3. discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
4. unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
5. individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

6. census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
7. the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and
8. the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

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

1. to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
2. to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
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; and
4. to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

28 C.F.R. 35.130. General prohibitions against discrimination

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

Fed. R. Civ. P. 24. (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.

STATEMENT OF THE CASE

The Mental Healthcare Crisis in the State of Franklin

The State of Franklin has failed to provide adequate mental health care services to its residents. This systemic failure has caused prolonged suffering and preventable

institutionalizations for its citizens; notably with the lack of care opportunities available for Plaintiffs Sarah Kilborn, Eliza Torrisi, and Malik Williamson.

The Plaintiffs all suffer from long-term mental health disorders. **R. at 1.** All Plaintiffs have required treatment for their mental health problems over the years for varying disorders.

Kilborn was diagnosed with bipolar disorder. **R. at 12.** In addition to self-harm, Kilborn continuously endures severe bipolar and depressive episodes. **R. at 12.** Prior methods of treatment including medication have not been effective. **R. at 12**. She has had long stays at Southern Franklin Regional Hospital and despite being cleared, Kilborn has repeatedly had to be re-admitted for further treatment due to fears of her harming herself. **R. at 13.**

Torrissi was also diagnosed with bipolar disorder. **R. at 12.** Medication and psychotherapy has had some positive effect for treating her condition, however, she continues to suffer from severe bipolar and manic episodes. **R. at 14.** Repeatedly she was identified as a danger to both herself and others. **R. at 14.** She is supported by her family, who admitted her for treatment at Newberry Memorial Hospital. **R. at 14.** She was later released from their care due to not having a manic episode for a short time. Unfortunately, she had to return a few months later after suffering from a severe manic episode. **R. at 14.**

Williamson suffers from schizophrenia. **R. at 14.** Over the past 50 years, Williamson has lived with severe hallucinations and delusions that cause him to threaten himself and others. **R. at 15.** He has repeatedly been admitted to Franklin State University Hospital for inpatient care. **R. at 15.**

All Plaintiffs have required treatment for their mental health problems over the years at state-operated facilities. **R. at 13-15.** During recent hospitalizations, the Plaintiffs' treating physicians determined that community mental health facilities would be the *best* method of

treatment for their mental health crises. **R. at 1.** Community mental health facilities would offer a variety of vital services such as inpatient, outpatient, and daily treatment plans. **R. at 13.** These facilities also provide a greater degree of socialization and support for patients, allowing for visitors and supervised outings. **R. at 14.** Despite the clear advantages to community mental health facilities, the Plaintiffs' treatment needs have not been adequately addressed. **R. at 1.**

Franklin has inadequate state-operated community mental health facilities available for its citizens. With only one state-operated facility in the entire state, the facility is inaccessible to most of the population. **R. at 1 and 15.** The facility is either hours away or does not offer the requisite treatment the Plaintiffs require. **R. at 1.** With no clear path to obtain necessary care, Plaintiffs are left with no other option but to continue relying on inpatient services available at the local state hospitals when additional care is desperately needed. **R. at 12.**

Franklin used to have three community mental health facilities until 2011 when funding was slashed for the Department of Health and Social Services. **R. at 15.** Facilities that would have been closer to the Plaintiffs were shut down. **R. at 15.** Additionally, inpatient programs were gutted at the last remaining facility in Platinum Hills due to these budgetary constraints. **R. at 16.** Recently, Franklin's legislature increased the Department of Health and Social Services' budget by five percent in 2021; nonetheless, the agency has not utilized these new funds for mental health care facilities. **R. at 16.**

The United States Intervenes

Near the same time as the Plaintiffs filed this suit, the United States Department of Justice Civil Rights Division began investigating the State of Franklin Department of Social and Health Service's compliance with the ADA. **R. at 2.** After investigations took place, the Attorney General filed a motion to intervene on Plaintiff's behalf on May 27, 2022. **R. at 2.**

Along with the motion to intervene, the United States included a complaint against the Defendants, alleging a similar claim as Plaintiffs; however, the United States seeks broader relief for all Franklin residents impacted. **R. at 2.** The Plaintiffs' consented to the motion to intervene. **R. at 2.**

Procedural History

Plaintiffs allege that the Defendants, the State of Franklin Department of Social and Health Services, have discriminated against them in violation of Title II of the Americans with Disabilities Act ("ADA"). **R. at 2.** Plaintiffs argue that the Defendants failed to provide them with adequate mental health care services at state-operated facilities. **R. at 2.** This systemic issue creates a risk for Plaintiffs that they will be institutionalized or unnecessarily segregated from other patients in the future due to the lack of services available. **R. at 2.**

This suit was originally brought in the United States District Court for the District of Franklin in February 2022. **R. at 1.** Shortly after Plaintiff filed their complaints the United States Department of Justice Civil Rights Division announced an investigation of Defendants. **R. at 2.** On May 27, 2022, the United States, through the Attorney General of the United States Department of Justice, filed a motion to intervene on behalf of Plaintiffs. **R. at 2.** The United States claimed that Defendants violated Title II of the ADA. **R. at 2.** Defendants opposed the United States motion to intervene on the basis that the United States cannot maintain a cause of action under Title II of the Americans with Disability Act and even if they could, it lacks any interest relating to the subject matter of the action. **R. at 3, 4.**

Judge Sathi granted the United States' motion to intervene, and parties were directed to submit a new scheduling order. **R. at 9.**

From there the parties all made motions for summary judgment. **R. at 11.** Plaintiffs sought injunctive relief to ensure that the perceived ADA violations would not recur. **R. at 12.** The U.S. moved for summary judgment on a similar claim. **R. at 12.** Defendants opposed these motions and cross-moved for summary judgment. **R. at 12.** Upon review, Judge Sathi granted both the Plaintiffs' and United States' motions for summary judgment. **R. at 21.**

After a four-week bench trial, hearing from nineteen witnesses such as medical experts and State agency employees, the District Court ultimately ruled that the Plaintiffs were at risk of future institutionalization and segregation. **R. at 24.** Defendants were directed to (1) submit a proposed plan explaining how it would correct its violations; and (2) ensure that the Plaintiffs would not be institutionalized if requirements were met in the future. **R. at 24, 25.**

Defendants then appealed to the United States Court of Appeals for the Twelfth Circuit. **R. at 22.** On appeal, Appellants argued that the District Court erred in its ruling on the issue. **R. at 25.** After reviewing the District Court's reasoning and standards of review used, the Twelfth Circuit affirmed the lower court's ruling and remanded the case for further proceedings. **R. at 29.** However, attached with the Circuit's majority opinion was a strong dissent by Judge Hoffman. **R. at 31-38.** Appellants timely appealed the Circuit Court's decision again, now to be heard before the Supreme Court of the United States by grant of writ of certiorari. **R. at 39.**

SUMMARY OF THE ARGUMENT

The State of Franklin has continuously failed its citizens with its lack of community centered mental health care facilities offered. For those suffering from mental health disorders, proper support is vital to ensure their well-being. Here with its lack of treatment opportunities,

Franklin condemns these individuals to institutionalization as the only available option to survive.

Franklin violates the ADA and discriminates against the Plaintiffs by failing to provide adequate health care services. Appellees merely seek proper access to necessary care under the ADA's integration mandate. Without these state-operated services, Plaintiffs remain at risk of future institutionalization in Franklin hospitals due to the lack of alternative treatments available.

The DOJ has provided clear guidance on how the integration mandate must be applied in furtherance of supporting those with disabilities. The agency has an important role in the enforcement of the ADA and its regulations. Their authority and expertise are vital in the matter to interpret what is required of Franklin to avoid discrimination against Franklin residents suffering from mental health disorders.

The United States can maintain a cause of action under Title II of the Americans with Disabilities Act because Congress expressly intended for the federal government to have both the duty to issue regulations implementing Title II and the authority to enforce those regulations. It is because of these imposed duties that the United States may use the remedies, procedures, and rights available under 42 U.S.C. § 2000d-1 to carry out those duties and sue on behalf of any person who claims to have been discriminated against based on disability. The United States is authorized to maintain a suit under Title II of the ADA and therefore satisfies all four requirements for intervention as of right under Federal Rule of Civil Procedure 24(a)(2).

ARGUMENT

I. THIS COURT MAY DEFER TO THE DEPARTMENT OF JUSTICE'S ("DOJ") INTERPRETATION OF ITS OWN ADA REGULATIONS WHERE AMBIGUITIES EXIST AND THE *KISOR* CRITERIA IS MET

A. *Auer* Is Controlling Precedent and Grants Conditional Deference to DOJ Interpretations of Its Own Regulations

The Attorney General ("AG") is granted authority by Congress to enforce the Americans with Disabilities Act ("ADA") through the powers set forth in the Civil Rights Act of 1964. *See* 42 U.S.C.S. § 12117 (The powers, remedies, and procedures set forth [...] are provided to the Commission, the AG and to "any person alleging discrimination on the basis of disability in violation of any provision or this Act"). Additionally, Congress has explicitly granted the Department of Justice ("DOJ") the authority to enforce the ADA. *See generally,* 42 U.S.C.S. § 12101. Congress emphasized the DOJ's vital role in enforcing the standards established under the ADA to eliminate discrimination against individuals with disabilities. *Id.*

The integration mandate is enforced through DOJ regulations. *See* 28 C.F.R. 35.130. The integration mandate requires public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities". *Id.*

Recently, this Court overturned prior precedent that allowed deference for agencies in interpreting statutory law. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (*overturning Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)). The *Chevron* doctrine provided a framework for courts to "interpret statutes administered by federal agencies". *Loper Bright Enters.*, 603 U.S. at 379. If a statute was determined to be ambiguous, courts would "defer to the agency's interpretation" to review the applicability of the statute to the issue at hand. *Id.* In *Loper*, this court reasoned that the *Chevron* doctrine was "unworkable". *Id.* at 408. The purpose of *Chevron* was to provide courts a framework to "say what the law is", however, its approach was deemed antithetical to the purpose of judicial review. *Id.* at 410. Henceforth, courts "must exercise their independent

judgment in deciding whether an agency has acted within its statutory authority". *Id.* at 412-413. However, this interpretation is not the same as deference provided for agencies in interpreting regulations as seen in *Auer*. *See generally, Auer v. Robbins*, 519 U.S. 452 (1996).

Auer establishes the importance of deferring to an agency's interpretation for regulations not yet clearly defined. *Auer*, 519 U.S. at 457 (referred to as the "*Auer* deference"). Regulations are "creatures" of the agency's own creation. *Id.* at 461. If a regulation has an ambiguity, the *Auer* Court held that Secretary's and their corresponding agency can provide necessary guidance on how to interpret the ambiguity. *Id.* at 463. The agency's "reasonable" interpretation of an ambiguous regulation controls so long as it is not "plainly erroneous" or "inconsistent" with the regulation. *Id.* at 461.

The Twelfth Circuit's dissenting opinion misapplies *Auer* deference. Here, what is being disputed is whether the DOJ can provide insight to the court in what the integration mandate is meant to accomplish. Statute interpretation is not at issue, but regulation interpretation is. Though *Chevron* is overturned, under *Auer*, courts may still defer to an agency for contextualization surrounding the agency's own created regulations.

Congress inherently authorized the DOJ to enforce the ADA. Enforcement efforts are done through the agency's regulations such as the integration mandate. The DOJ guidance document utilized throughout these proceedings is not an attempt to interpret statutory law, but to explain the enforcement of the ADA's integration mandate. The document's self-described purpose is to "assist state and local governments in complying with the ADA" not to dictate what the ADA means.

B. The Integration Mandate is Ambiguous Under *Kisor* and Demands DOJ Interpretation For Clarification

The *Kisor* Court clarified scenarios where *Auer* deference is appropriate. *See generally, Kisor v. Wilkie*, 588 U.S. 558 (2019). Here, this Court reaffirmed the validity of *Auer* deference while setting limits for its scope of use. *See generally, Kisor*, 588 U.S. 558. In determining whether Auer deference can be applied, the *Kisor* Court found a three-step framework: (1) The court must first determine that the regulation *is* "genuinely ambiguous" by "exhausting all traditional tools of construction" such as analyzing the text, structure history and purpose of the regulation; (2) The court must then determine that the agency's interpretation is "within the bounds of reasonable interpretation"; and (3) The court must find through an "independent inquiry" that the "character and context of the agency's interpretation" entitle it to controlling weight. *Id.* at 559 (*Kisor* cites *Chevron*; *Arlington v. F.C.C.*, 569 U.S. 290 (2013); and *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012), respectively for each of the three-steps).

In addition to this framework, *Auer* deference also requires that the regulatory interpretation be the agency's "authoritative or official position" not an "*ad hoc* statement". *Kisor*, at 559. The agency's interpretation must also "implicate its substantive expertise" and reflect its "fair and considered judgment". *Id.* A court should decline *Auer* deference if the purpose is to merely "conveniently litigate" or if the new interpretation would create an "unfair surprise" to the regulated parties. *Id.*

Kisor provided some examples regarding when *Auer* deference is appropriate. *Id.* at 566. Included in the examples was *Paralyzed Veterans of America. Id.* (citing *Paralyzed Veterans of Am. v. D.C. Arena L. P.*, 117 F.3d 579 (D.C. Cir. 1997)). Here, a regulation of the ADA was brought into question on what public accommodations must be made to provide people with disabilities "comparable sight lines" as the general public. *See generally, Paralyzed Veterans of*

Am., 117 F.3d. Insight from the DOJ was needed to interpret what "lines of sight" required under the regulation. *Id.*

In summary, *Auer* deference is vital in accessing regulations as issues may arise that were not foreseeable by the agency in the regulation's original creation. *Kisor at* 566. It is impossible to capture every detail of a rule ahead of time. *Id.*

The regulation at issue involves the "integration mandate" from the ADA. See 42 U.S.C. § 12101 *et seq.* (the "ADA"); *See also* 28 C.F.R. § 35.120(d) (the "integration mandate"); *See generally, Olmstead v. L.C. by Zimring*, 527 U.S. 581 (1999) (this is the landmark case that the integration mandate is derived from, this case will be further discussed later). The integration mandate requires public entities to administer services, programs, and activities in the "most integrated setting appropriate to the needs of qualified individuals with disabilities". *See* 28 C.F.R. § 35.120(d).

The integration mandate *is* ambiguous and meets the *Kisor* requirements. The DOJ Document is necessary to resolve the present ambiguities of what the most integrated setting is and how States must implement it. Multiple courts have had to litigate what exactly the integration mandate warrants. Only with provided insight from the DOJ has clarification been achieved on application of the mandate (the case interpretations described will be further discussed in the argument).

Additionally, the DOJ is explicitly provided the authority by Congress to execute the plans of the ADA. They inherently meet the characteristics of the necessary authoritative voice as well as are the best examples of who can provide a reasonable interpretation of the regulations, after all, the mandate is of the agency's creation.

As this Court emphasized in *Kisor*, agencies cannot reasonably anticipate the application of their regulations to every scenario. Like in *Paralyzed Veterans*, consideration must be given to how far Franklin must go to meet the adequate or reasonable standard required under Title II of the ADA. *Auer* deference is appropriate here just like it was appropriate in *Paralyzed Veterans*. In both cases, the court was not using agency interpretation to rule on the ADA itself, but rather DOJ insight is needed to uniformly and accurately enforce regulations of the ADA.

II. THE STATE OF FRANKLIN'S FAILURE TO PROVIDE ADEQUATE COMMUNITY SETTINGS FOR ITS MENTAL HEALTH SERVICE USERS VIOLATES THE ADA AND ITS EFFECT IS DISCRIMINATORY

A. DOJ and Olmstead Guidance Establish That Risk of Future Institutionalization Violates the ADA

Courts have consistently held that the risk of institutionalization is sufficient to support a claim under the ADA's integration mandate as established in *Olmstead*. *Olmstead*, 527 U.S. 581; *Davis v. Shah*, 821 F.3d 231 (2nd. Cir. 2016); *Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2012); *Waskul v. Washtenaw Cty. Cmty. Mental Health*, 979 F.3d 426 (6th Cir. 2020); *Radaszewski ex rel Radaszewski v. Maram*, 383 F.3d 599 (7th Cir. 2003); *M.R. v. Dreyfus*, 697 F.3d 706 (9th Cir. 2012); *Steimel v. Wernert*, 823 F.3d 902 (7th Cir. 2016); *Fisher v. Oklahoma Health Care Auth.*, 335 F.3d 1175 (10th Cir. 2003).

In *Olmstead*, plaintiffs were institutionalized in state-operated hospitals for their mental illnesses. *Olmstead at* 593. Despite their treating physicians' efforts to discharge the patients to state-run community care facilities, Plaintiffs were not transferred for many years. *Id.* Considering their forced institutionalization at state-run hospitals, Plaintiffs sued the state, arguing that the State's failure to transfer them to a state-run community care facility violated the

ADA and the integration mandate. *Id.* at 593-594 (*See* 28 C.F.R. § 35.120(d) for the integration mandate). Defendants however contend that their inability to transfer the patients was non-discriminatory and instead due to a lack of funding. *Olmstead* at 594-595. The State could not provide the requested modifications by the Plaintiffs as the requested form of mental health care would "fundamentally alter" their operations. *Id.* (more on fundamental alterations later).

Ultimately, the Court in *Olmstead* held that Title II prohibits the unjustified segregation or institutionalization of individuals with disabilities. *Olmstead* at 600; *See also,* United States Department of Justice, *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.*, (Last Updated February 25, 2020) https://archive.ada.gov/olmstead/q&a_olmstead.htm. (hereinafter the "DOJ Statement").

The courts have continued to expand on this principle: In the Fourth Circuit, the *Pashby* Court explicitly recognized that the ADA and Olmstead extend to persons at serious risk of institutionalization or segregation. *Pashby v. Delia*, 709 F.3d at 322 (The *Pashby* looked to the DOJ Statement for clarification on the issue).

The Tenth Circuit ruled similarly. *See Fisher v. Oklahoma Health Care Auth.*, 335 F.3d 1175. Here, the Court recognized that ADA protections "would be meaningless if plaintiffs were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy that threatens to force them into segregated isolation". *Fisher*, 709 F.3d at 1181.

It is clear, a plaintiff does not need to wait until institutionalization occurs to be able to bring an *Olmstead* claim under the ADA. *Davis v. Shah*, 821 F.3d 231, 262 (2nd. Cir. 2016) (*citing* the DOJ Statement). Instead, a plaintiff can establish a "sufficient risk of

institutionalization" by showing that the "public entity's failure to provide community services [...] will likely cause a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution". *Id.: See also*, DOJ Statement (Answer to No. 6 of the Questions Section provides explanation).

Plaintiffs in this case continue to suffer from mental health disorders. Without proper state-sponsored community mental health services, they will continue to have to rely on Franklin's state hospitals for necessary treatment and by necessity remain institutionalized. Though none of the Plaintiffs are currently institutionalized, their repeated need for care and history of readmittance to Franklin hospitals is indicative of their future with Franklin's current mental healthcare system or lack therefore of.

The only available community mental health care facility is inaccessible and/or unsupportive of these Plaintiffs' needs; and likely they are not alone. Franklin is a sparsely populated state. The record indicates that 550,000 of its 692, 381 population (nearly 80%) cannot properly access the lone community mental health facility in Platinum Hills. This is not to say that all of Franklin's residents will need to access this healthcare facility, however, it is indicative of the lack of resources Franklin is providing its residents.

The present case is like that described above in *Olmstead* and *Davis*. Franklin has failed to provide necessary services as determined by the patients' treating physicians. Without proper support by the State of Franklin, the Plaintiffs will inevitably be forced to return to hospitalization to protect themselves and others. With no alternative therapies shown to be successful, the State of Franklin is depriving these patients of the opportunity to improve their own well-being and reintegrate into the community. Essentially, the state is freezing these

patients in time, forcing them to continue the path of institutionalization as their only source of reprieve from their mental health crises.

B. The State of Franklin Does Not Have Adequate Mental Health Care Facilities

1. Cost of Community Care Alone is Not Enough For a Fundamental Alteration Defense

In deciding whether a public entity violated the integration mandate under the ADA, the *Olmstead* Court recognized a three-prong test. See generally, *Olmstead*. The test requires that: (1) The state's treatment professionals determine that community-based treatment is appropriate for the individual; (2) The affected individual does not oppose the treatment; and (3) The placement is reasonably accommodated considering the resources available to the State and needs of others with mental disabilities. *See Olmstead; Steimel v. Wernert,* 823 F.3d 902 (7th Cir. 2016).

Under § 504 of the Rehabilitation Act, states that receive federal funding must comply with Title II and the DOJ's related regulations. *See* 42 U.S.C.S. § 12134(b) (2025). Modifications must be provided to avoid discrimination based on disability. *See* C.F.R. § 35.130(b)(7)(i) (2025). However, ADA regulations recognize that requested modifications must be reasonable. *See* 28 C.F.R. § 35.130(b)(7)(i) (2025). Modifications are required unless the public entity can show that the requested modification would "fundamentally alter the nature of the service, program, or activity". *Olmstead* at 592 (*citing* 28 C.F.R. § 35.130(b)(7)).

Budget cuts can violate the ADA and *Olmstead* when "significant funding cuts" create a risk of institutionalization or segregation. *Id.* Public entities have the duty to "take all reasonable steps to avoid placing individuals at risk of institutionalization". *Id.* Services must be available,

and individuals must be able to secure them to avoid institutionalization. *Id. See generally, Fisher*.

Budgets cuts alone are rarely enough to excuse States from complying with the ADA. *See generally, Fisher*. However, courts have recognized that "simple comparisons" of the cost of community care as compared to other options is not clear cut. *Olmstead*, 527 U.S. at 604. Short-term financial and administrative burdens are possible with the integration mandate; however, such burdens do not excuse ADA compliance. *Fisher* at 1182; *See also*, *Frederick L. v. Dep't of Pub. Welfare of Pa.*, 364 F.3d 487, 495-96 (3rd Cir. 2004); *M.R. v. Dreyfus*, 697 F.3d 706.

To determine whether the cost for Plaintiff's demands is justified, courts must determine if immediate relief for plaintiffs would be inequitable considering the state's responsibility to care for the overall population. *See* DOJ Statement (*citing Olmstead*, 527 U.S. at 604). "It is the public entity's burden to show that the requested modification would fundamentally alter its service system". *Id.*

Defendants will attempt to argue that they cannot provide the modifications requested as it fundamentally alters the state's plans for mental health services and warrants funds that are not available. However, that argument is illogical given the facts here.

Defendants have been directed to provide a plan of how they will correct these ADA violations by the Twelfth Circuit yet have failed to present proper reasoning for *why* they cannot integrate these requests. While budget cuts were cited in the record for the prior Franklin legislative decisions to close two state-sponsored community mental health care facilities, the record also notes that the department's budget was increased. It is unclear how much exactly was provided to the department but again that speaks to the Appellants inability to provide necessary evidentiary support for a fundamental alteration defense.

The Olmstead standards are met in this case: (1) All Plaintiffs' physicians recommended community care; (2) All Plaintiffs voluntarily sought this form of care; and (3) the present relief sought seems reasonable given the budget increase provided to the State.

However, we recognize that economics is not black and white as described by the *Olmstead*, *Frederick*, *Fisher*, and *Dreyfus* Courts. Community facilities may not immediately be cheaper for the state of Franklin, however until the State can provide evidentiary support that the requested relief fundamentally alters their healthcare budget or stops them from servicing the greater population's needs, budgetary concerns alone are *not* enough to justify non-compliance with necessary ADA integration requirements.

2. Franklin Citizens Mental Health Care Needs Are Not Being Met

The "most integrated setting" is defined as "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible". DOJ Statement (*citing* 28 C.F.R. pt. 35 app. A (2010)). Integrated settings allow individuals with disabilities the opportunity to "live, work, and receive services in the greater community". *See* DOJ Statement.

Community care settings have been determined as beneficial in the treatment of mental health disorders. See Steven P. Segal, *Community Care and Deinstitutionalization: A Review*, 24 Social Work 6, 521-7 (1979); *See also*, Mark Van Ommeren, M.D., *From Isolation to Inclusion: Community-Based Mental Health Care*, World Health Organization (July 24, 2025) (website link provided in table of authorities). They can provide "a range of services to meet diverse needs and ensure continuity of care". *Id.* They can empower those with disabilities "to thrive, not just survive". *Id.*

It should be undisputed that community mental health services are instrumental in supporting individuals suffering from mental health disabilities. The medical experts in this

record and from other cases have repeatedly recommended the process of deinstitutionalization and prioritization of community centered support. By allowing those individuals suffering from mental health crises access to community centered facilities, we can better rehabilitate and support their progress.

While private facilities are possibly available in Franklin, they are expensive and inaccessible for many, especially for those suffering from severe mental health issues.

Franklin must do better to increase the availability of these forms of mental health treatment services. By not having adequate alternatives to hospitalizations, patients are denied the opportunity to reintegrate back into society or achieve a sense of normalcy. The Plaintiffs deserve better; they deserve access to care that does more than just help them "survive" but gives them a chance to be with their community and "thrive".

III: CONGRESSIONAL INTENT BEHIND THE CREATION OF THE ADA INHERENTLY GIVES THE UNITED STATES THE AUTHORITY TO ENFORCE TITLE II OF THE ADA

A. ADA's Historical Importance to Ensure National Protection

It is important to consider the historical context behind the implementation of the Americans with Disabilities Act ("ADA") to understand why and how the United States, through the Department of Justice ("DOJ"), assumed the duty to ensure advancement and enforcement of the ADA.

During the 1950s, disability rights advocates mobilized to demand meaningful legislative protections against widespread, systemic discrimination. Mikenzi Bushue, Note, *The Americans with Disabilities Act: A Step Toward Equality*, Legacy, Vol. 22, Iss. 1, Article 3, 15, 15-16 (2022). In response, Congress enacted § 504 of the Rehabilitation Act of 1973, the first statute

addressing disability discrimination beyond physical access. *Id*. and Abigail A. Graber, *The Americans with Disabilities Act: A Brief Overview*, Congressional Research Service, (October 11, 2022), https://www.congress.gov/crs_external_products/IF/PDF/IF12227/IF12227.1.pdf. However, the Rehabilitation Act only extended to programs that received federal funding. 29 U.S.C.§ 701(c). Therefore, despite the passage of the Rehabilitation Act, Congress found that discrimination against individuals with disabilities "continue[d] to be a serious and pervasive social problem." *United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730, 734 (11th Cir. 2021). Individuals with disabilities were subjected not only to "outright intentional exclusion" but also to segregation and "relegation to lesser services, programs, activities, [and] benefits." *Id*. at 734.

Recognizing the insufficient protection nationally, Congress passed the ADA in 1990. The United States, through the DOJ, assumed the duty to advance Title II of the ADA because only strong federal enforcement could fulfill the ADA's mandate to eliminate widespread, systemic discrimination against individuals with disabilities. The ADA was a broader yet "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," extending its protections to programs and entities regardless of whether they receive federal funding. *Id*. The regulations that arise from the ADA are intended to "address the major areas of discrimination faced day-to-day by people with disabilities," 42 U.S.C. § 12101(b)(4), and do so on a national scale in response to systemic inequality. A goal that can only be achieved if the "Federal Government plays a central role in enforcing the standards established" under the ADA by establishing regulations that bring Title II's objectives into practical effect. 42 U.S.C.§ 12101(b)(3).

B. The DOJ's Duty to Issue Regulations That Advance Title II

Title II of the ADA authorizes the Attorney General to enforce its provisions, reflecting Congress's intent for the DOJ to act as both a guardian and enforcer of civil rights for individuals with disabilities. This authorization is found in 42 U.S.C. § 12133, "[t]he remedies, procedures, and rights set forth in section 794a of title 29 [29 U.S.C. § 794a(2)] shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability." Title 29 § 794a (2) provides that the remedies, procedures, and rights available to individuals under Section 504 of the Rehabilitation Act are those set forth in 42 U.S.C. § 2000d-1. Before identifying those remedies, § 2000d-1 first sets the legal foundation for their application by stating: "Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, . . . is authorized and directed to effectuate the provisions of section 2000d of this title 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." In essence, this language makes clear that when a federal department both provides funding to a recipient and is authorized to issue regulations advancing the goals of the relevant statute, it is empowered and obligated to enforce the corresponding remedies, procedures, and rights when those regulations are violated.

Here, the relevant statute is Title II of the ADA. The United States not only provides federal financial assistance to the Respondent's facility, **R. 15.** but Congress has also expressly tasked the DOJ with ensuring compliance with Title II's objectives. As the legislative history confirms, "[t]he DOJ was charged with issuing, within one year of enactment, regulations interpreting and implementing the state and local government requirements under Title II." Peter Black, *Disability Law and Policy*, at 34 (2d. ed. 2024), *also see*, 42 U.S.C. § 12134(a). To promulgate

regulations that are consistent with Title II, the Attorney General must "define the substantive standards for discrimination under Title II," and ensure that the substantive standards "are analogous to those under the Rehabilitation Act." *United States v. Florida*, 938 F3d at 1288. These regulations require that public entities "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.103(d). As the primary issuer of regulations under Title II of the ADA and a key provider of technical assistance to businesses and governments, the DOJ is rightly considered the leading authority on the matter. *Department of Justice ADA Responsibilities*, https://archive.ada.gov/doj_responsibilities.htm. Given its role as the primary federal agency charged with interpreting and enforcing the ADA, it is proper to conclude that the DOJ is not only authorized to issue regulations that implement and advance the goals of Title II but also empowered to enforce those regulations against non-compliant entities, such as the Defendants in this action.

C. The DOJ Has the Power of Enforcement

The remedies, procedures, and rights set forth in 42 U.S.C. § 2000d-1 are (1) termination of federal funding or (2) "by any other means authorized by law." By any other means authorized by law has been interpreted by courts to mean, referring the matter to the DOJ to enforce Title II in court. *United States v. City & Cnty. of Denver*, 927 F. Supp. 1396, 1400 (D. Colo. 1996).

Defendants assert that 42 U.S.C § 12133 mention of "person" does not include the Attorney General but rather a disabled individual who has suffered discrimination. Therefore, we cannot use 42 U.S.C. § 2000d-1. However, this argument misses the mark. We do not contend

that the Attorney General is a "person" alleging discrimination in the literal sense under § 12133. Instead, we contend that "person" refers to human beings, *Person*, *Black's Law Dictionary* (12th ed. 2024), and that the statutory framework implicitly grants the Attorney General authority to act as an alternative means of remedy, procedure, and right on behalf of those individuals. *Natl. Black Police Assn. v. Velde*, 229 US App DC 225, 712 F2d 569, 732 (1983). The Attorney General's duty is to vindicate the protected rights on behalf of the individual and to enforce federal law. Against this statutory and regulatory backdrop, the "persons" alleging discrimination here are the Plaintiffs, who claim they are at risk of being institutionalized at Franklin Hospital in the future and may be unnecessarily segregated from other similar patients and the public due to the Petitioners' failure to provide adequate state-operated community health care facilities. The United States did not bring this suit "on his own behalf as the 'person' described in § 12133," but rather seeks to intervene to aid the Plaintiffs in protecting their rights. *United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730, 738 (11th Cir. 2021).

Congressional intent clearly supports the conclusion that the Attorney General has authority to enforce Title II of the ADA through litigation. Over the years, the DOJ has taken numerous enforcement actions against public entities to ensure compliance with Title II, reflecting a well-established and accepted practice. For example, in *Doe v. Georgia Department of Corrections*, the DOJ filed a Statement of Interest in support of ADA claims brought by an incarcerated individual with gender dysphoria. No. 24-11382, 2025 WL 1206229 (11th Cir. Mar. 6, 2025). In the *United States v. City of Baltimore*, the DOJ sued alleging that the city's zoning code discriminated against individuals in residential substance abuse treatment, in violation of Title II. 845 F. Supp. 2d 640, 642 n.1 (D. Md. 2012).

These cases, among many others, demonstrate a consistent pattern of DOJ involvement through both litigation and negotiated resolutions. *Disability Rights Cases*, https://www.justice.gov/crt/disability-rights-cases?search_api_fulltext=%22Healthcare%22&sort_by=field_date. If Congress had intended to restrict the Attorney General's enforcement authority, it had ample opportunity to amend Title II's enforcement provision to clarify or limit that power, but it has not done so. This continued legislative inaction affirms the prevailing understanding that such enforcement authority is proper and aligned with congressional intent. Moreover, Congress expressly chose to adopt "the Rehabilitation Act as the enforcement mechanisms for Title II of the ADA with full knowledge that those provisions established administrative enforcement and oversight in accordance with [42 U.S.C. § 2000d-1]." *United States v. Florida*, 938 F3d at 1224. Further reinforcing that the Attorney General's enforcement role was both intended and expected.

Therefore, it would be illogical and contrary to the purpose of these laws for Congress to require the Attorney General to promulgate regulations designed to prevent disability discrimination and to provide individuals with the right to sue under those regulations yet simultaneously deny the Attorney General the authority to sue on behalf of or in support of those individuals alleging discrimination. As the Court in *Sec'y* states "[w]ithout any enforcement teeth, such a regulatory process would be utterly ineffectual." *United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th at 741. Such a contradictory framework would undermine effective enforcement and frustrate Congress's clear intent to protect the rights of persons with disabilities.

IV. THE UNITED STATES HAS A SIGNIFICANT INTEREST IN ENSURING THAT ITS DUTY TO INTERVENE IS PROPERLY CARRIED OUT

A non-party may intervene under Fed. R. Civ. P. 24 either through intervention of right or permissive intervention. There is no unconditional right to intervene in the ADA, thus the United States seeks to intervene under the intervention of right. An intervention of right is permitted if the inventor "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." *Id*. at (a)(2). This Federal Rule has been interpreted by courts to require an intervenor to show: (1) its motion to intervene is timely: (2) it has an interest relating to the subject matter of this action; (3) it is situated so that the disposition of this action may potentially impaired its interest; and (4) its interest is inadequately represented by existing parties in the action. *Illinois v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019); *Wal-Mart Stores, Inc. v. Tex Alcoholic Beverages Comm'n*, 834 F.3d 562, 565 (5th Cir. 2016).

The United States is entitled to intervention of right under Fed. R. Civ. P. 24(a)(2) because the United States has an interest sufficient to merit intervention, that without intervention its interest may be impaired, and that the present litigants do not adequately represent its interest. When determining whether a non-party may intervene, the courts apply this standard flexibly, "focus[ing] on the particular facts and circumstances surrounding each application." *Edwards v. City of Houston*, 78 F.3d 983, 999 (5th Cir. 1996).

A. The United States's Motion for Intervention Was Timely

A motion for intervention is timely when: "(1) the length of time the intervenor knew or should have known of his interest in this case (2) the prejudice caused to the original parties by the delay; (3) it is situated so that the disposition of this action may potentially impair its interest; and (4) is interest is inadequately represented by exiting parties in this action." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797-98 (7th Cir. 2013) (quoting *Sokaogon Chippewa Cmty v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000)).

The United States's motion for intervention was timely as all four requirements have been met that show timeliness. First, the United States became aware of his interest in this case shortly after completing their investigation and filed his request three months after the Plaintiffs filed their complaint in February 2022. **R. at 2.** Second, there is no prejudice to the original parties, on the contrary, both original parties can benefit from the intervention of the United States as it will lend efficiency to the proceedings. The motion of intervention was filed right before discovery and shortly after submitted a proposed scheduling order, still at the early stage of litigation. R**. at 4.** The Plaintiff in this action have consented to the intervention of the United States, thereby agreeing to the possibility of a more prolonged litigation process. In exchange, the Plaintiff can use and benefit from the discovery conducted by the United States to further strengthen their allegations. Defendants will also benefit from the United States' intervention by litigating both claims simultaneously, thereby saving time and reducing costs. The Defendants assert that the involvement of the United States has caused them $273,000 in costs; however, this amount could have been higher if the claims had not been litigated together. **R. at 33.** Finally, as we will further discuss below, the United States does have substantial legal interest in this litigation that are inadequately represented by Plaintiffs.

Therefore, the United States' motion for intervention was timely filed, satisfying the first requirement under Rule 24(a)(2) for intervention as of right.

B. The United States Has Two Substantial Interests in This Litigation

The policies that underlie the requirements of an interest are "whether intervention of right is warranted thus involves an accommodation between two potentially conflicting goals: to achieve judicial economies of scale by resolving related issues in a single lawsuit, and to prevent the single lawsuit from becoming fruitlessly complex or unending." *Intervention under the 1966 Amended Rule—What Constitutes a Sufficient Interest*, 7C Fed. Prac. & Proc. Civ. § 1908.1 (3d ed.) Generally, courts have agreed that the requisite interest must be of a direct, substantial, and legally protectable interest of which the United States has two. *Donaldson v. U.S.*, 400 U.S. 517, 531 (1971); *New Orleans Pub. Serv. Inc. v. United Gas Pipe Line Co.*, 732 F2d 452, 463 (5th Cir. 1984). (1) Maintaining uniformity in the enforcement and interpretation of Title II of the ADA by ensuring that *Olmstead*'s integration mandate requirements are met; and (2) avoiding unnecessary societal and economic costs that arise when entities fail to comply with the ADA.

1. An Interest in Preserving Uniform Interpretation and Enforcement

The United States has a direct, substantial, and legally protectable interest in ensuring the uniform interpretation and enforcement of Title II of the ADA, as mandated by Congress. 42 U.S.C.§ 12101(b)(1). Absent the intervention of the United States this interest would be substantially impaired, as inconsistent interpretations and enforcements would hinder the United States duty to provide uniform guidance to entities and uniform protection for persons with disabilities, nationally.

As previously stated, the Department of Justice, as the leading authority on ADA compliance, provides guidance and assistance to entities to ensure compliance with the ADA; the entities routinely rely on the DOJ to help them avoid sanctions and litigation. *Department of Justice ADA Responsibilities*, https://archive.ada.gov/doj_responsibilities.htm. Non-uniform enforcement of the ADA creates confusion regarding core regulatory obligations, particularly the extent to which entities must comply. For example, the integration mandate requires public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). Inconsistent interpretation or application of this mandate may lead to delays, fragmented implementation, or outright non-compliance, ultimately undermining the rights of individuals with disabilities and frustrating the ADA's central purpose.

As previously stated, the ADA's central purpose is that "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" 42 U.S.C. § 12101(b)(1). To give individuals with disabilities equal "opportunities to take advantage of the same services, activities, and business everyone else uses." William D. Goren, *Understanding the ADA*, 2 (2nd e.d. 2016). It is for this reason that Congress gave the DOJ the duty to file suit on behalf of persons who claim discrimination. 42 U.S.C. § 2000d-1. Without the intervention of the United States, equality under Title II would vary based on jurisdiction, leading to inconsistent legal standards and uneven protections. Leaving individuals with disabilities vulnerable to arbitrary treatment based solely on where they live. This means that some individuals may be denied meaningful access to essential services, as is the risk in this case if the United States does not intervene and seek injunctive relief requiring Defendants to comply with Title II of the ADA throughout Franklin. Finally, failure to ensure uniform

enforcement not only jeopardizes those individuals' rights but also undermines the perception of the United States as a reliable and committed protector of civil rights for people with disabilities. It sends a message that equal protection under the law is conditional, undermining public confidence and weakening the government's moral and legal authority.

Plaintiffs do not adequately represent the interests of the United States or the broader population affected by Title II of the ADA. The private Plaintiffs in this case seek personal injunctive relief and may settle their claims at any time, thereby ending the litigation without addressing the broader public interest. As such, they do not adequately represent the interests of the United States in this action. Congress recognized that individuals with disabilities, as a group, face systemic disadvantages, noting that "census data, national polls, and other studies have documented that people with disabilities… occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally." 42 U.S.C. § 12101(a)(6). Preventing the United States from intervening would effectively silence the broader community of individuals with disabilities who may be unable to bring suit themselves and who rely on the federal government to protect their rights under Title II of the ADA. Notably, the United States had already initiated an investigation into the Defendants' conduct before the Plaintiffs filed this action, further demonstrating that there are likely additional individuals similarly situated who have not, or cannot, come forward. Only the United States is positioned to represent their interests fully and to ensure comprehensive enforcement of the ADA against Defendants.

2. An Economic Interest

In addition to protecting the rights of individuals with disabilities, Congress explicitly recognized that "historically, society has tended to isolate and segregate individuals with

disabilities," and that this segregation "costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity." See 42 U.S.C. § 12101(a)(3). To prevent unnecessary expenses, the ADA requires entities to ""administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.103(d). This integration mandate promotes equal opportunity and inclusion, which in turn reduces reliance on federal aid by fostering greater independence and participation in society–which is ultimately the purpose of the ADA. 42 U.S.C. § 12101.

The ADA is designed to enable people with disabilities to take charge of their lives and "join the American mainstream.*" Equality of Opportunity: The Making of the Americans with Disabilities Act*, (July 26, 1997), https://www.ncd.gov/report/equality-of-opportunity-the-making-of-the-americans-with-disabilities-act/#:~:text=Future%20historians%20will%20come%20to,and%2C%20if%20necessary%2C%20amended. It does so by promoting access to employment, transportation, public accommodations, and communication systems, resources that foster independence and reduce reliance on state and federal aid. *Id.* When entities like Defendants fail to comply with Title II, the burden of care for individuals with disabilities, such as the Plaintiffs, often shifts to the federal government, leading to increased dependency and costs that the ADA was specifically enacted to prevent. 28 C.F.R. § 35.103(d). Moreover, enforcement by the United States ensures efficient administration of the law. Clear and consistent federal enforcement avoids duplicative litigation and provides uniform standards, allowing regulated entities to know what is expected without wasting public and private resources on legal uncertainty. Here, the United States completed its investigation in early May 2023. (R.at 4). It has already invested significant taxpayer-funded resources, including time, personnel, and money into investigating Defendants'

conduct. Allowing Defendants to sidestep federal enforcement efforts would not only disregard those efforts but would set a troubling precedent that could leave the federal government powerless to act after conducting similar investigations in the future. Such an outcome would undermine Congress's intent, weaken ADA enforcement, and waste limited public resources.

This substantial interest cannot be adequately represented by the private Plaintiff because, unlike the United States, private litigants are not accountable for the broader economic and social consequences Congress sought to prevent. While individual lawsuits play an important role in addressing local violations, they are inherently limited in scope, jurisdiction, and resources, as is the case here. Only the United States has the capacity and authority to use its resources to ensure compliance across Franklin. Undertaking such a task would be prohibitively costly and time-consuming for the Plaintiff. Moreover, the United States has already gathered extensive evidence through its investigation into Defendants' conduct, evidence that the Plaintiff would have no means to obtain independently.

CONCLUSION

The Plaintiffs and the United States have properly established that the lack of community care mental health facilities in Franklin as well as the lack of services offered violates the Americans with Disabilities Act's integration mandate. The United States has also established a cause of action under Title II of the Americans with Disabilities Act and that it meets all four requirements to intervene as of right. This Court should affirm the judgement of the Twelfth Circuit and District Court. This case should be remanded for further proceedings on what relief is warranted under these circumstances.

Respectfully submitted,

Counsel for Respondents