Docket No. 25-140

In the Supreme Court of the United States

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

v.

Sarah KILBORN, et. al.
Respondent
and
THE UNITED STATES OF AMERICA
Intervenor-Respondent.

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

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BRIEF FOR RESPONDENT AND INTERVENOR-RESPONDENT

SEPTEMBER 9, 2025 **TEAM 3418**

QUESTIONS PRESENTED

1. 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 Americans with Disabilities Act, when such person has a history of repeated admissions to institutional treatment facilities; when federal regulations mandate public entities to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities; and when the United States Department of Justice has issued specific guidance on its own regulations that extends mandated integration to apply to those simply at risk of institutionalization, but who are not currently institutionalized.

2. Whether the United States can file a lawsuit to enforce Title II of the Americans with Disabilities Act and thus has an interest relating to the subject matter of a private Americans with Disabilities Act action under Federal Rule of Civil Procedure 24(a)(2), when the United States' motion to intervene was timely, when the United States has a demonstrable interest in the subject matter of the lawsuit, when that interest would be impaired if its motion were denied, and when the initiating party's representation inadequately serves the United States' interest in the matter.

OPINIONS BELOW

The Twelfth Circuit's decision has not yet been published in the Federal Reporter but is reported in the Twelfth Circuit Court Docket as Case No. 24-892. The District Court's opinion is recorded as *Kilborn v. State of Franklin Dep't of Social & Health Servs.*, 38 F.5th 281, 283 (D. Franklin 2022).

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STATEMENT OF THE CASE

A. Statement of Facts

Sarah Kilborn, Eliza Torrisi, and Malik Williamson ("Respondents") are residents of the state of Franklin who suffer from disabling mental health disorders that require treatment. R. at 12. Sarah Kilborn was diagnosed with bipolar disorder in 1997, and medication treatment was not effective in treating her depressive episodes. *Id.* After multiple attempts to harm herself, her physician recommended she receive inpatient treatment at a medical facility. *Id.* Ms. Kilborn voluntarily admitted herself to Southern Franklin Regional Hospital, a state-operated facility, in Silver City, Franklin, in 2002. *Id.* She remained there for two years until her treating physician determined that she was no longer a risk of harming herself. *Id.*

Unfortunately, Ms. Kilborn continued to have severe bipolar disorder episodes, particularly depressive episodes requiring inpatient treatment, and in 2011, Ms. Kilborn was re-admitted to Southern Franklin Regional Hospital. R. at 13. After two years, her treating physician determined that she could benefit from community mental health treatment, which provides a setting that allows patients to integrate into the community much more than patients who are institutionalized. *Id.* However, there was no state-operated community health facility within three and a half hours from Ms. Kilborn's home in Silver City, and she did not have the means to afford the only private operated community mental health facility in the area. *Id.* As a result, she remained institutionalized at Southern Franklin Regional Hospital until she was released in May of 2015. *Id.* Ms. Kilborn voluntarily admitted herself to

Southern Franklin Regional Hospital again in October of 2018. *Id.* Two years later her physician again determined that she would benefit from community-based mental health treatment, but there were still no state-operated community mental health facilities within three and a half hours from her home. *Id.* As a result, Ms. Kilborn spent another two years in an institutional treatment facility before she was released in January of 2021. *Id.*

Elisa Torrisi was diagnosed with bipolar disorder as a teenager in 2016, and despite taking medication and psychotherapy to help her condition, her bipolar episodes were still severe, characterized by manic episodes for days at a time, and engaging in highly erratic behavior. R. at 14. Ms. Torrisi was admitted to Newberry Memorial Hospital, a state-operated facility, in Golden Lakes, Franklin, in 2019 for inpatient treatment. *Id.* During her inpatient treatment, Ms. Torrisi's manic episodes became less frequent, and, in May of 2020, her treating physician determined that she would benefit from community-based mental health treatment. *Id.* The only state-operated community health facility in Franklin does not offer inpatient treatment and is within four hours of Ms. Torrisi's home. *Id.* As a result, Ms. Torrisi remained institutionalized at Newberry Memorial Hospital before being released in May of 2021. *Id.* Unfortunately, Ms. Torrisi was readmitted to Newberry Memorial Hospital in August of 2021 before being released again in January 2022. *Id.*

Malik Williamson was diagnosed with schizophrenia in 1972 and has received inpatient and outpatient treatment at several hospitals in the State of Franklin over the past fifty years due to his symptoms. *Id.* In 2017, Mr. Williamson's daughter

admitted him to Franklin State University Hospital, a state-operated facility, in Platinum Hills. R. at 15. Mr. Williamson's daughter chose this hospital because it is within a few miles of the home she shares with her father so she could visit regularly. *Id*. After two years of intensive treatment at the hospital, and being prescribed new medication, Mr. Williamson's physician determined he could be transferred to a community mental health facility for inpatient treatment. *Id*. However, the only state-operated community mental health facility in Franklin does not have inpatient treatment and the nearest private facility is over two hours away. *Id.* Because his physicians believed it to be critical for Mr. Williamson to have a nearby support system while receiving treatment, Mr. Williamson remained at Franklin State University Hospital until June 2021 when his physician determined he was well enough to receive outpatient care at the State's community mental health facility. *Id*.

Franklin is one of the largest states in the United States, covering almost 99,000 square miles. *Id*. Platinum Hills, where the only state-operated community mental health facility remains, is located near the center of the state and it takes several hours to travel from Platinum Hills to towns that are neighboring states. *Id.* Franklin is also one of the most sparsely populated states with only 692,381 people living there. *Id*. Approximately 550,000 out of the 692,381 residents of Franklin, live more than two hours away from the State's community mental health facility in Platinum Hills. *Id*.

Franklin had three community mental health facilities until 2011 when Franklin's legislature cut funding for the Department of Social and Health Services ("DSHS") by twenty percent. *Id.* As a result, Franklin's DSHS was forced to close the state-operated community mental health facilities located in Mercury and Bronze. *Id.* The facility in Mercury was significantly closer to Ms. Kilborn's home, only twenty minutes away, and was only one hour from Ms. Torrisi's home. *Id.* DSHS was also forced to eliminate the inpatient program at the Platinum Hills facility for budget reasons. R. at 16. Franklin's legislature increased the DSHS budget by five percent in 2021, but the agency has not utilized those funds to re-open the Mercury or Bronze community mental health facilities. R. at 17.

After Respondents Kilborn, Torrisi, and Williamson filed their complaint, the United States Department of Justice Civil Rights Division announced an investigation of the State of Franklin's compliance with Title II of the Americans with Disabilities Act. R. at 2.

B. Procedural History

In February 2022, Respondents Kilborn, Torrisi, and Williamson ("Respondents") filed a complaint in the United States District Court for the District of Franklin, alleging that the State of Franklin Department of Social and Health Services ("Petitioner") violated Title II of the American with Disabilities Act ("Title II"), 42 U.S.C. § 12132. R. at 2. Shortly after Respondents filed their complaint, the United States Department of Justice Civil Rights Division began an investigation into Petitioner's compliance with Title II. *Id.* 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 Respondents, stating that it had substantiated Respondents' claim that the Petitioner violated Title II. *Id.* The United States' motion was based on its finding that Petitioner failed to provide adequate community health facilities for all individuals who are at future risk of being unnecessarily institutionalized and segregated at a Franklin hospital. *Id.* The United States' motion requested broader relief than Respondents' initial complaint, and Respondents consented to the motion to intervene. *Id.* However, Petitioner opposed the motion, arguing that the United States cannot maintain a cause of action under Title II, and therefore have no interest in the present case warranting intervention. *Id.* On June 29, 2022, the United States District Court for the District of Franklin granted the United States' motion to intervene, finding the motion proper under Federal Rule of Civil Procedure 24(a)(2) ("Rule 24(a)(2)"). R. at 10, 26.

On the issue of Petitioner's alleged Title II violation, the United States District Court of Franklin received motions for summary judgment from Petitioner, Respondents, and the United States. R. at 33. On March 22, 2024, the District Court granted both Respondents' and the United States' motions for summary judgment and denied that of the Petitioner. R. at 21. On December 12, 2024, Petitioner submitted an appeal to the United States Twelfth Circuit Court of Appeals, seeking to reverse the District Court's decision on Franklin's violation of Title II, as well as the ruling on the United States' motion to intervene. R. at 22. The Twelfth Circuit affirmed the decisions of the District Court on both issues, holding that the United

States' motion to intervene was proper under Rule 24(a)(2), and that Respondents can maintain a cause of action against the State of Franklin of Title II as individuals who are simply at risk of future institutionalization but are not currently institutionalized. R. at 28, 29. The United States Supreme Court has since granted writ of certiorari on both issues. R. at 39.

SUMMARY OF THE ARGUMENT

The Twelfth Circuit was correct in ruling that Respondents Kilborn, Torrisi, and Williamson can maintain a claim for discrimination under Title II of the Americans with Disabilities Act ("Title II") and the Integration Mandate, as they are individuals at risk of future institutionalization. The Circuit Court correctly found that the Integration Mandate is ambiguous, and as such, afforded appropriate deference to the Department of Justice's interpretation of its own regulation. Further, the Petitioner failed to administer mental health services to Respondents in the most integrated setting appropriate, thereby discriminated against Respondents in violation of Title II and the Integration Mandate. For these reasons, we respectfully request that this Court affirm the decision of the Twelfth Circuit and rule that Respondents can maintain a cause of action against Petitioner for violation of Title II and the Integration Mandate.

The Twelfth Circuit was also correct in ruling that the United States is authorized to intervene as of right to enforce Title II under Rule 24(a)(2). The United States has an interest in the subject matter of the action, specifically in protecting the rights of similarly situated individuals to the Respondents as well as ensuring

the laws set by the legislature are followed. Further, the United States' motion met all requirements set forth in Rule 24(a)(2). Therefore, we respectfully request that this Court affirm the decision in the Twelfth Circuit and rule that the United States' motion to intervene was proper under Rule 24(a)(2).

ARGUMENT

I. RESPONDENTS CAN MAINTAIN A CLAIM FOR DISCRIMINATION UNDER TITLE II OF THE AMERICANS WITH DISABILITIES ACT BECAUSE PETITIONER FAILED TO PROVIDE MENTAL HEALTH TREATMENT SERVICES IN THE MOST INTEGRATED SETTING APPROPRIATE.

In failing to administer mental health services in the most integrated setting appropriate, Petitioner discriminated against Respondents in violation of Title II of the Americans with Disability Act ("Title II"). Specifically, each of Respondents' physicians recommended them for integrated mental health treatment, but Respondents were excluded from this treatment because Petitioner failed to maintain accessible integrated treatment facilities. Given each of the Respondents' histories of repeated admissions into institutional treatment facilities, they remain at substantial risk of future institutionalization.

Under Title II, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. In 1991, the Attorney General promulgated a regulation known as the Integration Mandate, which requires a public entity 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).

Since the Integration Mandate was issued, The United States Supreme Court has ruled that unjustified institutional isolation constitutes discrimination under Title II and the Integration Mandate. *Olmstead v. Zimring*, 527 U.S. 581, 601 (1999). In the wake of *Olmstead*, the Department of Justice published a guidance document clarifying that the Integration Mandate extends not only to individuals currently institutionalized, but also to those at serious risk of future institutionalization or segregation. U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.* (June 22, 2011). Under the principle of *Auer* deference, federal agencies' interpretations of their own regulations are owed deference by the judiciary. *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (internal quotation marks omitted).

In the present case, each of the three Respondents remained institutionalized in the past, despite their physicians recommending integrated community mental health treatments. Although Respondents are not currently receiving care in an institutional setting, they each have a history of repeated admissions to institutional treatment facilities. Respondents therefore remain at substantial risk of future segregated treatment due to Petitioner's failure to provide community health facilities that reasonably accommodate Respondents' circumstances. Thus,

Respondents can maintain a claim of discrimination against the State of Franklin under Title II.

A. The Twelfth Circuit correctly ruled that the Department of Justice guidance document is owed *Auer* deference, and the Integration Mandate therefore extends to individuals simply at risk of institutionalization.

The Circuit Court was correct in ruling that the Department of Justice's guidance document is the controlling interpretation of the Integration Mandate. The United States Supreme Court has ruled that a federal agency's interpretation of its own regulation is controlling, unless that interpretation is "plainly erroneous or inconsistent with the regulation." *Auer*, 519 U.S. at 461 (internal quotation marks omitted). This approach to regulatory interpretation, known as *Auer* deference, should only be afforded if the regulation in question is genuinely ambiguous, such that there is doubt surrounding the meaning of the words in the regulation. *Kisor v. Wilkie*, 588 U.S. 558, 574 (2019). *Auer* deference remains intact following the Supreme Court's 2024 *Loper Bright* decision, as *Loper Bright* controls only the interpretation of language in congressionally-enacted statutes, rather than agency-promulgated regulations. *Loper Bright v. Raimondo*, 603 U.S. 369, 379 (2024); *United States v. Prather*, 138 F.4th 963, 975 (6th Cir. 2025). In applying *Auer* deference to Title II and the Integration Mandate, six circuit courts have concluded that the Department of Justice guidance document is the controlling interpretation, and that the Integration Mandate therefore extends to those simply at risk of institutionalization, but who are not currently institutionalized. *Davis v. Shah*, 821

F.3d 231, 263 (2d Cir. 2016); *Pashby v. Delia*, 709 F.3d 307, 322 (4th Cir. 2013); *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 459 (6th Cir. 2020); *Steimel v. Wernert*, 823 F.3d 902, 911 (7th Cir. 2016); *M.R. v. Dreyfus*, 697 F.3d 706, 736 (9th Cir. 2012); *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181-82 (10th Cir. 2003).

The Integration Mandate is ambiguous as to whether it covers only those presently institutionalized, or any individual at risk of future institutionalization. The language in the regulation does not specify its scope, as it simply mandates that public entities "shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals." 28 CFR § 35.130(d). As such, there is doubt surrounding the meaning of the words "administer" and "qualified individuals," and the Integration Mandate is therefore ambiguous under *Kisor*. Given this ambiguity, and absent any showing that the Department of Justice guidance document is "plainly erroneous or inconsistent with" the Integration Mandate's provisions, *Auer* holds that the Department of Justice guidance document is the controlling interpretation. Additionally, because the Integration Mandate is an agency-promulgated regulation and not a congressionally-enacted statute, *Loper Bright* does not apply. For these reasons, the Twelfth Circuit was correct in affording *Auer* deference to the Department of Justice guidance document, and in ruling that the Integration Mandate extends to those simply at future risk of institutionalization, but who are not currently institutionalized.

B. Petitioner discriminated against Respondents in violation of Title II of the ADA and the Integration Mandate by excluding Respondents from community-based mental health treatment services.

The State of Franklin violated Title II and the Integration Mandate by failing to provide appropriately integrated treatment for Respondents. The United States Supreme Court in *Olmstead* held that unjustified institutional isolation is a form of discrimination under Title II and the Integration Mandate for two reasons: (1) institutionalization of individuals who can handle and benefit from community treatment perpetuates unwarranted assumptions that institutionalized persons are incapable or unworthy of participating in community life; and (2) confinement in an institution severely diminishes the everyday life activities of individuals. *Olmstead,* 527 U.S. at 600-01. The *Olmstead* Court further held that, in order to avoid these harms of institutionalization, states must provide community-based treatment for disabled persons when (1) "the State's treatment professionals determine that such placement is appropriate"; (2) "the affected persons do not oppose such treatment"; and (3) "the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with [similar] disabilities." *Id.* at 607. Failure to provide community-based treatment even for individuals not presently institutionalized but simply at risk of institutionalization constitutes discrimination in violation of Title II and the Integration Mandate. U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.* (June 22, 2011); *Auer*, 519 U.S. at 461; *Davis*, 821

F.3d at 263; *Pashby,* 709 F.3d at 322; *Waskul*, 979 F.3d at 459; *Steimel*, 823 F.3d at 911; *M.R.*, 697 F.3d at 736; *Fisher*, 335 F.3d at 1181-82.

Here, Petitioner discriminated against Respondents in violation of Title II and the Integration Mandate by failing to provide community-based treatment. During their treatment for mental health disorders, Respondents Kilborn, Torrisi, and Williamson were forced to remain in institutional treatment facilities despite their physicians' determinations that community-based treatment was appropriate. There is no showing in the facts that any of the Respondents ever opposed community-based treatment. Instead, Respondents were unable to access community-based treatment because Petitioner failed to provide adequate services. This failure can be traced to the Franklin legislature's budgeting decisions for its Department of Health and Social Services, which resulted in the closure of all three community mental health facilities in the State. Those decisions included a budget cut of twenty percent in 2011 and a budget increase of only five percent in 2021.

Despite having been afforded the budgetary resources to reopen Franklin's existing community treatment facilities, Petitioner failed to do so. Under *Olmstead*, this failure constitutes discrimination against Respondents in violation of Title II and the Integration Mandate. Although Respondents are not currently institutionalized, their prior treatment histories involve repeated admissions to state-run institutions due to their mental health symptoms. This pattern of repeated institutionalization demonstrates that Respondents are at substantial risk of future institutionalization. The Integration Mandate therefore extends to Respondents' circumstances, as the

interpretation of the Integration Mandate in the Department of Justice guidance document is controlling under *Auer*. As such, Petitioner's failure to administer community-based treatment constitutes discrimination against Respondents in violation of Title II and the Integration Mandate.

C. Petitioner lacks support for a fundamental alteration defense because reasonably modifying the State's mental health treatment practices does not fundamentally alter the State's services, programs, or activities.

Petitioner has no basis for the affirmative defense of fundamental alteration in the present case. States that are alleged to be in violation of Title II may offer an affirmative defense that the requested modification to their public services would cause a fundamental alteration of a state's services and programs. 28 C.F.R. § 35.130(b)(7)(i); *Olmstead*, 527 U.S. at 608 (Stevens, J., concurring in part). The *Olmstead* Court noted that no state has unlimited resources, and the judiciary cannot intervene in a state's decisions in basic matters such as establishing or declining to establish new programs. *Id.* at 612-13 (Kennedy, J., concurring) ("It follows that a state may not be forced to create a community treatment where none exists."). Reasonable modifications under Title II do not require a state to make all efforts to accommodate eligible individuals but instead impose an affirmative obligation on states to accommodate qualifying individuals as a reasonable prophylactic measure. *Tennessee v. Lane*, 541 U.S. 509, 511-12 (2004). When a state has older facilities, modifications can become more difficult, but a state can comply with Title II through

less costly measures, such as relocating services to more accessible sites and assigning aides to assist disabled persons in accessing treatment. *Id.* at 532.

Here, Petitioner is fully equipped to make reasonable modifications to accommodate Respondents but neglected its affirmative obligation to do so. Respondents do not request that the State be forced to open new community treatment facilities, which the *Olmstead* Court identified as an overreach. Instead, the reasonable modifications that Respondents seek are not nearly as burdensome. They might include reopening one or more of the existing facilities using the five percent budget increase that was made available in 2021. If reopening those facilities proves too costly, Petitioner can adopt other means of complying with Title II like those identified by the *Lane* Court. These measures could include relocating community treatment facilities to make them more accessible, or providing eligible individuals such as Respondents with aides to assist in accessing community treatment. Petitioner failed to make any such reasonable modifications, and its funds sit idly while disabled individuals such as Respondents are deprived of access to services for which they are eligible, and from which they would benefit. Further, because the funds are already available for use by the Department of Social and Health Services, Petitioner fails to demonstrate that the proposed modifications of reopening or relocating existing facilities, or providing disabled individuals with aides, would fundamentally alter its services, programs, or activities. Therefore, Petitioner lacks support for the affirmative defense of fundamental alteration.

In sum, the Twelfth Circuit was correct in ruling that Title II and the Integration Mandate extend to Respondents as individuals at serious risk of institutionalization, and in finding that Petitioner discriminated against Respondents by failing to administer its mental health services in the most integrated setting appropriate. Additionally, Petitioner lacks support for the affirmative defense of fundamental alteration. Therefore, Respondents can maintain a cause of action under Title II and the Integration Mandate, and we respectfully request this court to affirm the decision of the Twelfth Circuit accordingly.

II. THE UNITED STATES HAS AUTHORITY TO INTERVENE AS OF RIGHT TO ENFORCE TITLE II OF THE AMERICANS WITH DISABILITIES ACT BECAUSE THEIR MOTION MEETS ALL OF THE REQUIREMENTS OF RULE 24(a)(2).

The lower courts correctly granted the United States' motion to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) ("Rule 24(a)(2)") to obtain relief for all those who are at risk of being unnecessarily institutionalized and segregated at a Franklin hospital in the future. A party may intervene in a lawsuit through permissive intervention or intervention as of right. Fed. R. Civ. P. 24(a)-(b). Courts must permit a party to intervene as of right who is either (1) given an unconditional right to intervene by a federal statute; or (2) claim 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 be 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 Title II does not contain an unconditional right to intervene (*See* 42 U.S.C. § 12101 et seq), the lower courts correctly applied Rule 24(a)(2) in reviewing the United States' motion to intervene. Because the lower courts correctly found that the United States would be permitted to intervene as of right under Rule 24(a)(2), permissive intervention is not under review in the present case.

A. The Twelfth Circuit was correct in granting the United States' motion to intervene because the motion was timely and related to the United States' demonstrable interest in the subject matter of the action, and because that interest would be impaired absent the United States' intervention, as their interest is inadequately represented by the existing parties in the action.

The United States met all the requirements under Rule 24(a)(2) to intervene as of right. Intervention as of right will not be allowed unless all of the requirements are met. *Sokaogon Chippewa Cmty. v. Babbit*, 214 F.3d 941, 949 (7th Cir. 2000); *Wade v. Goldschmidt*, 673 F.2d 182, 185 n.4 (7th Cir. 1982). These requirements are: "(1) timely application; (2) an interest relating to the subject matter of the action; (3) potential impairment, as a practical matter, of that interest by the disposition of the action; and (4) lack of adequate representation of the interest by the existing parties of the action." *Shea v. Angulo,* 19 F.3d 343, 346 (7th Cir. 1994) (quoting *Southmark Corp. v. Cagan*, 950 F.2d 416, 418 (7th Cir. 1991)). In the present case, the United States meets all four of these requirements.

i. The United States' motion was timely.

The United States filed its motion to intervene in a timely manner. Courts have held that "[t]he purpose of the [timeliness] requirement is to prevent a tardy

intervenor from derailing a lawsuit within the sight of the terminal." *United States v. South Bend Community Sch. Corp.*, 710 F.2d 394, 396 (7th Cir. 1983), quoted in *Sokaogon Chippewa Cmty. v. Babbit*, 214 F.3d 941, 949 (7th Cir. 2000). In determining whether intervention was timely, courts look to the following four factors: (1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; (4) any unusual circumstances. *Sokaogon Chippewa Cmty.*, 214 F.3d at 949. If a motion to intervene is denied in district court as untimely, the standard of review on appeal is abuse of discretion. *Id*.

In *Illinois v. City of Chicago*, the court found that the Police Lodge's motion to intervene was untimely because it was filed nine months after the State had filed its initial suit. *Illinois v. City of Chicago,* 912 F.3d 979, 984-85 (7th Cir. 2019). Further, the Police Lodge publicly discussed their opposition to the decree at issue, so the court found that they knew of their interest in the case since its filing. *Id*. The Seventh Circuit in *Sokaogon*, ruled that a motion to intervene was untimely because it was filed five years after the initial lawsuit was filed. *Sokaogon*, 214 F.3d at 949.

In the present case, Respondents filed their complaint on February 22, 2022, and the United States filed its motion to intervene on May 27, 2022. This is distinguishable from the nine months the Court found to be to untimely in *City of Chicago*. Another distinguishing factor is that after the Plaintiffs filed their complaint, the United States Department of Justice Civil Rights Division announced

an investigation into Petitioner's compliance with Title II and the Integration Mandate, and it completed this investigation in May, the same month their motion to intervene was filed. This timeline differs greatly from that of *City of Chicago* in that the Police Lodge knew of and publicly opposed the issue in the case for nine months preceding their motion to intervene. In essence, this first factor weighs in favor of the United States' motion being timely because the United States filed its motion within only three months of Respondents' filing, immediately following the conclusion of its investigation.

The second factor of prejudice to the original parties considers whether "parties have invested time and effort into settling a case it would be prejudicial to allow intervention." *Ragsdale v. Turnock*, 941 F.2d 501, 504 (7th Cir. 1991). In *City of Chicago*, the settlement negotiations between the original parties were complex and well-publicized before the Police Lodge filed its motion to intervene. *City of Chicago*, 214 F.3d at 987.

Here, allowing the United States to intervene as of right would not have resulted in undue delay or be prejudicial to either of the parties. The case was still in its early stages when the United States filed for intervention, as the parties had only filed pleadings, submitted a proposed scheduling order to the Court, and discovery had barely begun. Moreover, Respondents consented to the motion, and the intervention of the United States would promote judicial economy and save the Petitioner time so they would not have to litigate the same issue on two occasions. As such, this factor also weighs in favor of the United States' being timely.

The third factor of prejudice to the intervenor also weighs in favor of timeliness. As the District Court noted, the United States could bring a separate lawsuit against Petitioner for violating Title II if it wished. However, intervening in the present suit presents a more efficient alternative.

Finally, the fourth factor considers unusual circumstances, for which there is no showing in the present case. As such, this factor is inapplicable. With three factors weighing in favor of timeliness and the fourth factor inapplicable, the lower courts correctly found that the United States' motion was timely.

ii. The United States has an interest relating to the subject matter in the litigation.

The United States meets the second requirement of Rule 24(a)(2) because it has an interest in the subject matter and outcome of the action, as well as the enforcement of the judgment. The Petitioners argue that the United States has no interests in the subject matter of this action and lacks the ability to enforce Title II, but this position lacks support. In *United States v. Florida*, the Eleventh Circuit analyzed the language of Title II and other similar statutes that enable the United States to initiate civil lawsuits and held that the United States has the statutory authority to intervene in civil litigation as a means of enforcing the provisions of Title II. *United States v. Florida*, 938 F.3d at 1221, 1248 (11th Cir. 2019).

The language at issue in Title II's enforcement provision states that the "remedies, procedures, and rights set forth in Section 505 of the Rehabilitation Act of 1973 (29 U.S.C. § 794(a)) shall be the remedies, procedures, and rights this title provides to

any person alleging discrimination on the basis of disability in violation of Title II. 42 U.S.C. § 12133. Section 505 of the Rehabilitation Act contains a provision that states that "the remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*)" and also enforces Section 504. *See* 29 U.S.C. §§ 794(a); 794a. As the *Florida* Court pointed out, Section 504 of the Rehabilitation Act and Section 601 of the Civil Rights Act both prohibit "discrimination, exclusion, or denial of benefits… on the basis of race, color, or national origin… by any program or activity receiving financial assistance." *Florida*, 938 F.3d at 1221; *See* 42 U.S.C. § 2000d. Section 602 of Title VI requires federal departments and agencies to provide financial assistance to "effectuate" Section 601 by "issuing rules, regulations, or orders of general applicability. *Florida*, 938 F.3d 1221; *See* 42 U.S.C. § 2000d-1. This Section also states that "Agencies may "effect" "[c]ompliance with any requirement adopted pursuant to this section… (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient… or (2) by any other means authorized by law…" 42 U.S.C. § 2000d-1. This provision demonstrates Congress's intent in creating the legislation surrounding discrimination, which allows the Federal Government to have a role in enforcing the standards set out in the Civil Rights Act, which is intentionally incorporated into Title II. *See Florida*, 938 F.3d at 1221, 1227 ("When Congress adopts a new law that incorporates sections of a prior law, 'Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute.'")(quoting *Lorillard v. Pons*, 434 U.S. 575, 581 (1978)). The

Eleventh Circuit ultimately held that Congress intended for Title II to authorize the United States to initiate civil lawsuits against states as a means of enforcing compliance. *Id.* at 1250.

The Fifth Circuit has also found that the United States can intervene to serve interests apart from enforcement, as a sufficiently related interest can be one simply worthy of protection. *Texas v. United States*, 805 F.3d 653, 656 (5th Cir. 2015) However the interest asserted may not be purely speculative. *Sokaogon*, 214 F.3d 947.

In the present case, the United States' motion to intervene is not only authorized, but it also serves an interest worthy of protection. Here, the United States seeks to protect the rights of Respondents and similarly situated individuals from being unnecessarily institutionalized and segregated in hospitals due to the state's failure to comply with Title II. The United States' interest in this action is to prevent continued institutionalization in circumstances where a patient would benefit from community-based treatment. For this reason, the United States' interest is not speculative but instead seeks to redress ongoing and demonstrable harm done unto its citizens. Therefore, the United States has an interest related to the subject matter of this litigation, and it meets the second requirement of Rule 24(a)(2).

iii. The United States' interest is impaired absent intervention.

The United States has substantial interests in enforcing the law and protecting the rights of its citizens, including Respondents and similarly situated individuals. Those interests would be necessarily impaired if the United States is barred from

intervening as of right. As the facts indicate, as soon as the United States was made aware of Petitioner's failure to comply with Title II of the ADA, they immediately sought to intervene as a means to protect other citizens that face harm from Petitioner's Title II violations. For this reason, the United States meets the third requirement of Rule 24(a)(2).

iv. Representation by the existing parties is inadequate.

The United States meets the last requirement of Rule 24(a)(2) because, without their involvement in this litigation, other individuals who face similar harm as Respondents would be left without remedy. An intervenor is not required to show that the current representation will certainly be inadequate. *See, e.g., Ne. Ohio Coal. for Homeless and Serv. Emp. Intern. Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1008 (6th Cir. 2008); *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997) (finding that "it may be enough to show that the existing party who purports to seek the same outcome will not make all the prospective intervenor's arguments."). The Fifth Circuit has held that, when intervention occurs before the litigation has resolved, the intervenor need only show that the representation may be inadequate. *Wal-Mart Stores, Inc. v. Tex. Alcoholic Bev. Comm'n*, 834 F.3d 562, 569 (5th Cir. 2016).

In deciding whether a present party adequately represents the interests of a prospective intervenor, the Ninth Circuit considered three factors: "(1) whether the interest of a present party is such that it will undoubtedly make all of the proposed intervenors arguments; (2) whether the present party is capable and willing to make

such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Callahan v. Brookdale Senior Living Cmtys., Inc.*, 38 F.4th 813, 821 (9th Cir. 2022); *See Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (citing *California v. Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986). The *Callahan* Court ruled that a proposed intervenor "must make a compelling showing to demonstrate inadequate representation." *Callahan*, 38 F.4th 821.

Here, the United States entered this action in its early stages. However, whether or not the action was in the early stages or if it were in the later stages, this does not change the fact that without its intervention into the action, there is inadequate representation by the Respondents. This is because there are only three plaintiffs being represented (Kilborn, Torrisi, and Williamson), yet there are 550,000 out of 692,381 Franklin residents who live more than two hours away from Platinum Hills where the only community mental health center lies. Also, with over half a million residents of the state, individuals who are advised by their physicians that inpatient treatment at a community mental health facility would be their best form of treatment would be greatly affected. Therefore, there bound to be others who were affected by the State of Franklin's noncompliance with Title II of the American Disabilities Act. Respondents' current representation could not possibly serve the interest of all those affected, and that is precisely why the United States sought to intervene.

Further, the United States satisfies all three of the factors identified by the *Callahan* Court. As for the first factor, the United States intervened because there are 692,381 residents of Franklin but in the current action only three plaintiffs were represented, and these plaintiffs were not there to enforce Title II. The Respondents brought this action to seek justice after these three individuals were unnecessarily institutionalized and segregated in state-operated hospitals while the United States' intervention is to protect similarly situated individuals and enforce Title II so that the state of Franklin be held accountable. As discussed, the Respondents are not capable of making the arguments the United States makes in this action, as they are three individuals. As for the third factor, the United States as an intervenor initiates enforcement of the Title II, as Congress intended. Franklin has not complied with this law for years and disadvantaged individuals with mental health disorders who were not able to progress due to being institutionalized and segregated in hospitals when their physicians recommended they move to a community mental health facility for treatment that would help them adapt to a more social environment in interacting with the community. The United States meets all three of the *Callahan* factors and therefore meets the fourth and last requirement of Rule 24(a)(2).

The Twelfth Circuit properly found that the United States' motion to intervene as of right was timely and met all the requirements of Federal Rule of Civil Procedure 24(a)(2) we therefore respectfully request this Court to affirm the decision of the Twelfth Circuit on the issue of the United States' motion to intervene.

CONCLUSION

Respondents Kilborn, Torrisi, and Williamson, as individuals at risk of future institutionalization, can maintain a cause of action against the State of Franklin for its violation of Title II of the American Disabilities Act and the Integration Mandate. Further, the lower courts were correct in granting the United States' motion to intervene, as the motion was timely and met all of the requirements of Rule 24(a)(2). Therefore, we respectfully request this court to affirm the decisions of the Twelfth Circuit on both issues accordingly.

Respectfully submitted,

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Team 3418