NO. 25-140

IN THE

Supreme Court of the United States

NOVEMBER TERM 2025

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

Petitioners,

— versus —

Sarah KILBORN, et.al.,

Respondents,

and

The United States of America,

Intervenor-Respondents.

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

BRIEF FOR PETITIONERS

TEAM 3419

Attorneys for Petitioners

QUESTIONS PRESENTED

I. Can individuals merely at risk of future institutionalization and segregation, but who are not currently institutionalized or segregated, maintain a claim for discrimination under Title II of the Americans with Disabilities Act (ADA)?

II. Does the United States have enough of an interest to enforce Title II of the ADA through private action under Federal Rule of Civil Procedure 24(a)(2)?

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The United States District Court for the District of Franklin issued an Order where it GRANTED the United States' motion to intervene as of right under Federal Rule of Civil Procedure 24(a)(2). R. at 1-10; *Kilborn v. State of Franklin Dep't of Social & Health Servs.*, 38 F.5th 281, 283 (D. Franklin 2022). The district court issued an additional Order where it GRANTED both Respondents and the United States' motions for summary judgment and DENIED Petitioners motion for summary judgment R. at 11-21. The United States Court of Appeals for the Twelfth Circuit issued an Opinion where it AFFIRMED the district court's judgment. R. at 22-38.

STATUTORY PROVISIONS INVOLVED

This case arises under Title II of the Americans with Disabilities Act (ADA). 42 U.S.C. § 12131-12134. Additional statutory provisions involved in this case include: 42 U.S.C. §§ 12101, 12201, 2000; 28 C.F.R. §§ 35.130, 35.150, and Section 505 of the Rehabilitation Act.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

This case comes from three individuals with mental health conditions who allege that their state's limited community facilities segregated and placed them at risk of future institutionalization. R. at 1. The district court erroneously granted intervention to the United States, causing unnecessary expansion and extension of this case. R. at 9. The district court then granted summary judgment for Respondents and the United States. R. at 21. Petitioners timely appealed, but the Twelfth Circuit affirmed the judgment in a divided 2-1 decision. R. at 29-30.

The State of Franklin. Franklin is one of the largest and sparsely populated states in the country, covering nearly 99,000 with less than 700,000 residents. R. at 15. Platinum Hills, the state capital and located near the center of the state, houses Franklin's only remaining community mental health facility.[1] R. at 15. Because of Franklin's size and sparse population, more than 550,000 residents—nearly eighty percent of the state's population—live over two hours from that facility. R. at 15.

The Budget Cuts. Until 2011, Franklin's Department of Health and Social Services (DHSS) operated three community mental health facilities in Mercury, Bronze, and Platinum Hills. R. at 15. After DHSS had its budget reduced by twenty percent in 2011, the Department was forced to close its Mercury and Bronze facilities. R. at 15. DHSS also eliminated the inpatient program[2] at Platinum Hills because it served the fewest people despite its high operating costs. R. at 16. In 2021, Franklin's legislature increased DHSS's budget by five percent but did not restore services at Mercury or Bronze. R. at 16. Instead, DHSS used those funds to maintain its current allocation of resources. R. at 16.

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[1] A "community mental health facility" provides a variety of mental health prevention, treatment, and rehabilitation that is "*sometimes* organized as a practical alternative to the largely custodial care given in mental hospitals." *Community Mental Health Center*, American Psychological Association Dictionary of Psychology (Sept. 8, 2025), https://dictionary.apa.org/community-mental-health-center (emphasis added).

[2] Inpatient treatment or "inpatient services" provides patients with diagnostic and treatment services usually unavailable or only partially available in outpatient facilities, including continuous supervision, medical treatment and nursing care, specialized treatment techniques liked rehabilitation, occupational, movement, or recreation therapy, and social work services. *Inpatient Services*, American Psychological Association Dictionary of Psychology (Sept. 8, 2025), https://dictionary.apa.org/inpatient-services.

Sarah Kilborn. Sarah Kilborn was diagnosed with bipolar disorder in 1997 and has voluntarily received inpatient care at Franklin's Silver City facility. R. at 12-13. In 2013 and 2020, Kilborn's physician recommended daily treatment at a community based mental health facility, but the nearest facility was over three hours away. R. at 13. Kilborn was ultimately released at her physician's recommendation and has not received state-operated treatment since January 2021—nearly one year before filing this lawsuit. R. at 13.

Eliza Torrisi. Eliza Torrisi was diagnosed with bipolar disorder in 2016 and was admitted for inpatient treatment at Franklin's Golden Lakes facility. R. at 14. In 2020, Torrisi's physician recommended inpatient treatment at a community mental health facility [3], but the nearest facility—over four aways away in Platinum Hills—does not offer inpatient services. R. at 14. Torrisi remained hospitalized until her condition stabilized, resulting in her discharge in 2021. R. at 14. She was briefly readmitted later that year and released again in January 2022. R. at 14. It is unclear whether her physician recommended community placement during her second hospitalization. R. at 14. Nonetheless, Torrisi joined Kilborne in filing a complaint against Franklin about one month after her release, despite no ongoing institutionalization or present denial of services.

Malik Williamson. Malik Williamson was diagnosed with schizophrenia in 1972 and has intermittently received treatment at Franklin hospitals for over fifty years.

[3] The district court explained that inpatient treatment at community mental health facilities differs from those offered in an institutionalization setting because they offer patients a greater degree of socialization by allowing visitors often and for longer periods, they also allow patients to attend supervised outings in the community and interact more freely with other patients. R. at 14.

R. at 14. In 2015, his daughter and guardian admitted him to the Platinum Hills facility because it was only a few miles away from their home, allowing her to provide support regularly. R. at 15. Williamson's physician considered community-based inpatient care but determined it was better for him to remain at Platinum Hills given his need for nearby family support and the absence of local inpatient options. R. at 15. In 2021, Williamson's physician determined that he was stable enough to transition to outpatient care. R. at 15. At the time of this lawsuit, Williamson was living in the community and not institutionalized.

II. NATURE OF PROCEEDINGS

The District Court. Respondents filed a complaint for injunctive relief against Petitioners in the United States District Court for the District of Franklin. R. at 2. The complaint alleged that Petitioners violated Title II of the Americans with Disabilities Act (ADA), 42 § U.S.C. 12132, by failing to provide adequate community mental health facilities. R. at 2. Specifically, Respondents alleged that the risk of future institutionalization may cause unnecessary segregation from other similar patients and the public, and that Petitioners failure to provide "adequate" state-operated community health care facilities is discrimination under Title II. R. at 2.

After completing its investigation, the United States moved to intervene as of right under Federal Rule of Civil Procedure 24(a)(2). R. at 2. Petitioners filed an opposition, arguing that Title II does not grant the federal government authority to intervene in private litigation and argued that the United States lacked a cognizable interest in the case. R. at 5. The district court found that the United States' interest in enforcing the ADA was sufficient and granted intervention. R. at 7. After briefs

and oral argument, the district court granted summary judgment for Respondents and the United States and found that individuals not currently institutionalized may nevertheless pursue a Title II claim. R. at 24. The case proceeded to trial, where the district court found that Petitioners violated Title II. R. at 24-25.

The Twelfth Circuit. Petitioners timely appealed to the United States Court of Appeals for the Twelfth Circuit. R. at 26. On appeal, Petitioners argued that Title II does not authorize claims by individuals who are not currently institutionalized and that the United States lacked a right to intervene in a private Title II lawsuit. R. at 26. The Twelfth Circuit affirmed 2-1, holding that Respondents could maintain a cause of action under Title II based solely on an alleged risk of future institutionalization. R. at 33. The court also upheld the district court's decision allowing the United States to intervene because it had a "central role" in ADA enforcement. R. at 34. The dissent held that the majority erred on both issues. R. at 34.

SUMMARY OF THE ARGUMENT

This Court should reverse the holding of the Twelfth Circuit Court of Appeals entirely for two reasons. First, the Twelfth Circuit erred in affirming the district court's conclusion that those who are merely "at risk" of institutionalization can maintain a claim under Title II of the ADA. Second, the Twelfth Circuit erred in affirming the district court's conclusion that the United States may intervene in this case as matter of right.

In short, none of the Respondents are currently institutionalized, nor have any been denied access to community services for which they were eligible to receive at the time of treatment. Each received care based on medical judgment and resource availability, and all now live in the community. Their claims therefore rest not on any present exclusion or discrimination, but on speculative assertions of future risk—an insufficient basis for liability under Title II.

I.

The district court incorrectly found that persons at risk of future institutionalization can maintain a claim for discrimination under Title II of the ADA. Title II prohibits public entities from discriminating against individuals with disabilities from the benefits of services, programs, or activities. However, the statute is explicitly limited to preventing actual exclusion or denial, not speculative future harm. Individuals who remain in community settings and continue receiving treatment cannot state a Title II claim based solely on the possibility of future institutionalization. Recognizing such "at risk" claims would improperly expand the ADA beyond its text by creating an unconstitutional federal mandate that would ultimately, and unfortunately, fundamentally alter the nature of the services, programs and activities provided by the State and encroach upon core state functions.

II.

Moreover, the district court also incorrectly found that the United States may intervene in this case. Title II grants private rights of action, but it does not authorize the federal government to enforce its provisions directly against states absent a clear and express delegation of enforcement authority. The statutory enforcement

structure—incorporating the Rehabilitation Act and Title VI of the Civil Rights Act—limits federal involvement to regulation and administrative remedies, not litigation as a party. Allowing the federal government to intervene would distort the statutory scheme and intrude on federalism principles.

ARGUMENT AND AUTHORITIES

Standard of Review. This appeal raises two legal questions—the scope of Title II of the ADA and the availability of intervention. Interpretation of Title II is reviewed de novo. *United States v. Mississippi,* 82 F.4th 387, 391 (2023). However, denial of a Rule 24(a) motion to intervene as of right is reviewed either for abuse of discretion or de novo, "though slightly more courts favor de novo review." *Wolfsen Land & Cattle Co. v. Pacific Coast Fed'n of Fishermen's Ass'ns*, 695 F.3d 1310, 1314 (Fed.Cir.2012). This Court recently acknowledged, but did not resolve, the circuit split over the standard, explaining that even under an abuse of discretion standard, a misunderstanding of applicable law generally constitutes reversible error. *Berger v. North Carolina State Conf. of the NAACP*, 597 U.S. 179, 200 n.* (2022). Here, the Twelfth Circuit applied abuse of discretion review to the entire intervention analysis even though timeliness only warrants such deference. R. at 25; *see NAACP v. New York*, 413 U.S. 345, 366 (1973). Because the remaining Rule 24(a)(2) factors are legal questions, this misapplication constitutes reversible error and requires de novo review. *See Argument Section A(1), infra.*

I. RESPONDENTS AND THE UNITED STATES CANNOT MAINTAIN A DISCRIMINATION CLAIM UNDER TITLE II BECAUSE FUTURE INSTITUTIONALIZATION IS NOT DISCRIMINATION.

This Court should reverse the Twelfth Circuit's holding that individuals at risk of institutionalization can maintain a claim under Title II of the ADA. The district court erroneously found that Petitioner's entire mental health system violated Title II because it placed every person with a mental illness at risk of unjustified institutionalization. R. at 24-25. But nothing in Title II, the subsequent integration mandates, and this Court's jurisprudence authorizes discrimination claims based solely on speculative risk of future segregation.

A. Title II Precludes Claims Based Solely on Speculative Risk.

Title II prohibits actual discrimination, exclusion, or denial of benefits—not speculative future harms. Specifically, Title II provides that "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; 28 C.F.R. § 35.130(a).

The ADA does not define discrimination in terms of prospective risk to qualified disabled individuals. *United States v. Mississippi*, 82 F.4th 387, 392 (5th Cir. 2023). As the Fifth Circuit and the dissent below correctly observe, "[i]n stating that no individual shall be "excluded," "denied," or "subjected to discrimination," the statute refers to the actual, not hypothetical administration of public programs. 42 U.S.C. § 12132. *United States v. Mississippi*, 82 F.4th 387, 392 (5th Cir. 2023).

1. The integration mandate does not extend to individuals merely "at risk."

Likewise, the integration mandate issued by the Department of Justice is no exception. Congress authorized the Attorney General to enforce Title II with regulations consistent with the ADA and § 504 of the Rehabilitation Act. 42 U.S.C. §§ 12134(a)-(b). Modeled after a similar regulation under the Rehabilitation Act, the Attorney General promulgated the "integration mandate" in 1991. *Id.*

The integration mandate requires public entities to "administer [their] 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). The "most integrated setting" is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible[.]" 28 C.F.R. pt. 35, app. B, at 711 (2020). Thus, a state violates the ADA when it administers and funds services for disabled individuals in a manner that unjustifiably segregates them. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d).

Petitioners contend that neither Title II nor the integration mandate supports the Twelfth Circuit's unprecedented expansion to risk-based claims. Two textual features foreclose that reading. *First*, the word "administer" confirms that the regulation governs how existing programs are operated, not hypothetical risks of future segregation. Petitioner agrees with the conclusions of the dissent below that "the integration mandate is not ambiguous…if anything, the use of the word 'administer' plainly demonstrates that it does not apply to those who are at risk of being institutionalized and segregated in the future." R. at 37.

Second, the word "appropriate" does not create ambiguity either. There is no dictionary definition or common usage of the word "appropriate" that would support an interpretation that the Attorney General intended. Doing so would impose a sweeping obligation on every state to preemptively avoid any conceivable risk of future discrimination against every individual who may become institutionalized. *See Olmstead v. L.C.*, 527 U.S. 581, 607 (1999) Moreover, *Olmstead* held that the integration mandate requires persons with mental disabilities to be placed in community settings rather than institutions "when the placement can be **reasonably accommodated, taking into account the resources of the State** and the needs of others with mental disabilities." *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 587 (1999) (emphasis added).

Both Title II and the integration mandate are unambiguous, and both offer a limited remedy. Qualified individuals who have been denied reasonable and appropriate accommodations in consideration of the State's resources and needs of others similarly situated may maintain a claim for discrimination under Title II, but those who are merely at risk do not. Respondents unreasonably argue that that "appropriate" accommodations under the integration mandate should hold the State strictly liable for failing to construct a community health center equipped with the capacity to deliver inpatient services in every qualifying individual's community. Respondents and the United States contention is wholly unreasonable and unsupported by the plain language of Title II and the integration mandate.

Additionally, such an interpretation is beyond the scope of this Court's authority. Courts must follow the language Congress has enacted and may not enhance the scope of a statute because it is "good policy or an implementation of Congress's unstated will." *United States v. Mississippi*, 82 F.4th 387, 393 (5th Cir. 2023). Moreover, this Court has held that under no circumstances should Title II or the integration mandate be construed to require States to take on an undue financial burden. *Tennessee v. Lane*, 541 U.S. 509, 531–32 (2004); 28 C.F.R. §§ 35.150(a)(2)-(3).

Title II, the integration mandate, and this Court's jurisprudence speak one voice. The statute applies only to two States actually administer existing services in the most integrated setting appropriate to an individual's needs. Nothing in Title II, its implemental regulations, or *Olmstead* authorizes risk-based claims. By extending beyond its text and precedent, the Twelfth Circuit effectively rewrote the statute. Therefore, this Court should correct that error and reaffirm that risk-based claims are unsupported by law, regulation, and principle.

2. *Olmstead* does not require integration for those merely "at risk".

As this Court explained in *Olmstead*, "unjustified isolation…is properly regarded as discrimination based on disability." *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 598 (1999). But even there, this Court tethered liability to actual unjustified isolation or segregation, not a speculative risk of future institutionalization. *Id.* at 593-94.

As Justice Thomas cautioned in *Olmstead*, "[w]e cannot expand the meaning of the term 'discrimination' in order to invalidate policies we may find unfortunate." *Olmstead v. L.C. ex rel. Zimring*, 527 U.S.C. 581, 620 (1999) (Thomas, J. dissenting). He explained that the majority's reasoning rested heavily on "certain congressional

findings contained within the ADA, but such "general, hortatory terms…provide little guidance to the interpretation of the specific language of § 12132." *Id.* at 621. Moreover, this Court has recognized that reliance on congressional findings is a "thin reed" upon which to base statutory interpretation. *Nat'l Org. for Women, Inc v. Scheidler,* 510 U.S. 249, 260 (1994). Title II's findings use terms like "segregation" in a broad, social sense that commonly relate employment, facilities, and transportation. Title II must not read as a mandate to regulate treatment decisions or speculative risks of future harm provide a medical context to the word "discrimination." Properly read, the findings do not suggest that "discrimination" is applied to treatment of mentally disabled individuals.

The Fifth Circuit recently confirmed this limitation. *See United States v. Mississippi*, 84 F.4th 387, 398 (5th Cir. 2023) (holding that the risk of institutionalization, without actual institutionalization, does not give rise to discrimination under Title II). Properly read, Title II's findings employ terms like "segregation" in a broad social sense—addressing barriers to employment, facilities, and transportation—not as a mandate to regulate medical treatment decisions or impose liability for future risks of institutionalization. Title II prohibits actual discrimination—it does not create a duty to eliminate hypothetical risks that may never materialize.

B. Allowing Risk-Only Claims Fundamentally Alters Petitioners' Services.

Compliance with the integration mandate requires a state to make reasonable modifications to policies, practices, or procedures when necessary. 28 C.F.R. § 35.130(b)(7)(i). In *Olmstead*, this Court only required states to provide community-

based services only when: (1) such services are appropriate, (2) the individual does not oppose community placement, and (3) placement can be reasonably accommodated in light of state resources and the needs of other mentally disabled individuals it serves. *Olmstead,* 527 U.S. 581 at 607. However, these modifications may be excused if they "fundamentally alter" the nature of the State's service system. 28 C.F.R. § 35.130(b)(7)(i)*; see also Olmstead*, 527 U.S. at 604-07.

1. The fundamental alteration defense protects state resources.

The fundamental alteration defense protects States from being compelled to divert resources away from current institutionalized individuals in order to serve those merely at risk. The district court must consider, in view of the resources available to the State, three factors: (1) the cost of providing community-based care to the litigants; (2) the range of services the State provides others with mental disabilities; and (3) the State's obligation to meet out those services equitably. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 597 (1999).

Olmstead itself illustrates that relief is inequitable where it could displace those currently on waiting lists or undermine a State's comprehensive plan for community placement. *Id*. The Third Circuit confirmed this in *Pennsylvania Prot. & Advocacy, Inc. v. Pennsylvania Dep't of Pub. Welfare,* holding that forcing immediate individualized relief at the expense of a State's broader compliance plan "could sacrifice widespread compliance for individualized relief." 402 F.3d 374, 381 (3d Cir. 2005). The Third Circuit also provided additional factors for analyzing the fundamental alteration defense: (1) unsuccessful attempts at fund procurement; (2) evidence that the public entity had responsibly spent its budgetary allocation, re-

allocated overtime savings to increase funding for community-based mental health services, and had a favorable bed closure rate; (3) the fact that the public entity's ability to increase the number of community care placements was hampered by community opposition to further expansion; and (4) that increasing the number of community placements would eventually lead to a diminution of services for institutionalized persons. *Pennsylvania Prot. & Advocacy, Inc. v. Pennsylvania Dep't of Pub. Welfare*, 402 F.3d 374, 380–81 (3d Cir. 2005).

Olmstead makes clear that a lack of funding is not tantamount to administering accommodations with an uneven hand. Likewise, *Pennsylvania Prot. & Advocacy, Inc.* further clarifies that, where a public entity can demonstrate a good faith effort to offer integrated community health facilities but is merely lacking the funding to do so, the State can successfully assert a fundamental alteration defense.

2. Petitioners have a valid fundamental alternation defense.

Here, the Record illustrates that the fundamental alteration defense applies. Petitioners attempted to expand community services through the Mercury and Bronze facilities but were forced to close them due to funding constraints. R. at 15-16. Petitioners also responsibly allocated resources, increased budgets when possible, and prioritized services for currently institutionalized individuals. R. at 16. Expanding care to those merely "at risk" would impose disproportionate costs on a sparsely populated state and diminish resources for those already institutionalized—the very inequity *Olmstead* warned against.

Moreover, Courts recognize that "[a]n accommodation is unreasonable if it imposes undue financial or administrative burdens or requires a fundamental

alteration in the nature of the program." *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 784 (7th Cir. 2002). For Petitioners, requiring new community facilities in every locality for every at-risk individual would be an undue burden on Petitioners at this time and therefore disproportionate to the benefit.

3. *Olmstead* confirms that relief must remain equitable.

This Court in *Olmstead* offered an illustrative example of how a state could bring a successful fundamental alteration defense, "the fundamental-alteration component of the reasonable-modifications regulation would allow the State to show that, in the allocation of available resources, immediate relief for the plaintiffs would be inequitable, given the responsibility the State has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities... If, for example, the State were to demonstrate that it had a comprehensive, effective working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated, the reasonable-modifications standard would be met. In such circumstances, a court would have no warrant effectively to order displacement of persons at the top of the community-based treatment waiting list by individuals lower down who commenced civil actions." *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 584 (1999).

"But Title II does not require States to employ any and all means to make judicial services accessible to persons with disabilities, and it does not require States to compromise their essential eligibility criteria for public programs. It requires only "reasonable modifications" that would not fundamentally alter the nature of the

service provided, and only when the individual seeking modification is otherwise eligible for the service.

As Title II's implementing regulations make clear, the reasonable modification requirement can be satisfied in a number of ways." *Tennessee v. Lane*, 541 U.S. 509, 531–32 (2004) (emphasis added). As this Court has correctly noted, the individual must be actively seeking modification to assert a remedy under Title II. Respondents in this case are not.

Here, Petitioners have undoubtedly asserted a successful fundamental alteration defense as laid out in *Olmstead*. Petitioners have a responsibility to care for and treat a large and diverse population of persons with disabilities. Moreover, Petitioners are one of the largest and most sparsely populated states in the nation. R. at 15. To invest resources into constructing community health centers for the at-risk population would undoubtedly make resources for currently institutionalized individuals more scarce and would be the exact kind of inequitable relief that *Olmstead* describes as problematic and entitling a State to a fundamental alteration defense. Petitioner can demonstrate an effective working plan for placing qualified individuals with mental disabilities in less restrictive settings and that compelling Franklin to invest in community health centers for the at-risk population would create budget constraints that would fundamentally alter Franklin's existing compliance infrastructure. In conclusion *Olmstead* clarifies that Title II requires actual unjustified institutionalization for recovery under this statute.

C. Expanding Title II Constitutes a Constitutional Question.

This Court held in *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012) that it was unconstitutional for Congress to financially pressure States into accepting the terms of Medicaid expansion. While in *Sebelius*, the issue was Congress withholding funding and here, the issue is the threat of having to pay the same unconstitutional principle is at play.

A ruling in favor of Respondents would pressure states into choosing between dedicating significant funding allotments and administrative resources to implementing congressionally mandated regulations or risk financial penalties in the form of ADA liability. While in *Sebelius* the unconstitutional pressure came in the form of withholding funds (i.e., not getting paid), the financial pressure in this case comes in the form of risking liability (i.e., having to pay a fee). At worst, a holding in favor of Respondent is clearly an unconstitutional exercise of Congressional power. At best, a holding favor of Respondent raises a constitutional question. Therefore, in accordance with the canon of constitutional avoidance, this Court should hold in favor of Petitioner to avoid a holding that raises a constitutional question.

II. THE UNITED STATES CANNOT ENFORCE TITLE II BECAUSE IT LACKS A SUFFICIENT INTEREST UNDER RULE 24(A)(2).

This Court should reverse, or alternatively remand, the Twelfth Circuit's opinion affirming intervention by the United States in this case for two reasons. First, the Twelfth Circuit applied the wrong legal standard to determine whether the United States could intervene. Second, even under the correct standard, the United States failed to meet the necessary requirements for intervention as of right. Accordingly,

the United States should not have been allowed to intervene in this case, and the decision below should be reversed.

A. The Twelfth Circuit Erroneously Affirmed the District Court's Judgment Because It Applied the Wrong Standard of Review.

Questions of law are reviewed de novo and questions of fact are reviewed for clear error. *Monasky v. Taglieri*, 589 U.S. 68, 83–84 (2020). For mixed questions of law and fact, the standard depends on whether resolving the issue requires primarily legal or factual work. *Bufkin v. Collins*, 145 S. Ct. 728, 739 (2025); *see also U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 583 U.S. 387, 396 (2018) (explaining that appellate review depends on whether mixed questions are primarily legal or factual). Because the factors required to establish intervention as of right turn on the district court's interpretation and application of legal standards, the inquiry is primarily legal. Therefore, this Court should review the lower court's decision de novo, or alternatively, remand so that the Twelfth Circuit may apply the correct standard of review.

1. Intervention as of right is primarily a legal question.

Intervention is intended to prevent multiple lawsuits when common legal and factual questions are involved. *Deaus v. Allstate Ins.*, 15 F.3d 506, 525 (5th Cir. 1994). Federal Rule of Civil Procedure 24 allows a party to voluntarily join a pending lawsuit in two ways—as of right or permissively. Fed. R. Civ. P. 24(a)-(b). Denials of permissive intervention under Rule 24(b) are reviewed for abuse of discretion. *T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 38, 42 (1st Cir. 2020). By contrast, the standard of review for intervention as of right under Rule 24(a)(2) has divided the

circuit courts. *See Wolfsen Land & Cattle Co. v. Pacific Coast Fed'n of Fishermen's Ass'ns*, 695 F.3d 1310, 1314 (Fed.Cir.2012).

The majority rule—de novo review—accurately reflects the text and structure of Rule 24(a)(2). Indeed, most circuit courts correctly apply de novo review to the Rule's substantive requirements. *See, e.g., Harris-Clemons v. Charly Acquisitions, Ltd.*, 642 F. App'x 17, 21 (2d Cir. 2016); *Acra Turf Club, LLC v. Zanzuccki*, 561 F. App'x 219, 221 (3d Cir. 2014). Only few circuit courts have applied the abuse of discretion standard when reviewing interventions as of right. *See, e.g., Kane County, Utah v. United States*, No. 18-4091, 2019 WL 2588524, at *6–7 (10th Cir. June 25, 2019); *Entergy Gulf States La., L.L.C. v. EPA*, 817 F.3d 198, 202 (5th Cir. 2016).

The better view, as the Ninth Circuit explained, is that the last three elements of Rule 24(a)(2)—interest, impairment, and representation—require the district court to apply legal standards to established facts, making the inquiry primarily legal. *United States v. Stringfellow*, 783 F.2d 821, 826 (9th Cir. 1986), *cert. granted on other grounds*, 476 U.S. 1157 (1986); *vacated on other grounds*, 480 U.S. 370 (1987). Because majority of Rule 24(a)(2)'s analysis is a legal inquiry, this Court should review use the de novo standard of review, or alternatively, remand for proper application of the correct standard of review.

a. The "timeliness" element is reviewed for abuse of discretion.

The Twelfth Circuit correctly applied the abuse of discretion review to the timeliness element, though its ultimate conclusion was incorrect. R. at 26-27; *see Argument Section B(1), infra.*

Timeliness is reviewed for abuse of discretion. *NAACP v. New York*, 413 U.S. 345, 366 (1973). This is because it is "determined from all the circumstances." *Id.*; *see also, Sanguine, Ltd. v. United States Dep't of Interior*, 736 F.2d 1416, 1418 (10th Cir.1984); *Ritter v. Morton*, 513 F.2d 942, 949 (9th Cir. 1975) (per curiam). Assessing timeliness requires a district court to evaluate fact-specific considerations such as the stage of the proceedings and potential prejudice to the parties. Because these inquiries turn on the trial court's factual management of the case, appellate courts properly defer to the district court. Here, the Twelfth Circuit properly applied abuse of discretion. R. at 26-27. Although its ultimate conclusion was wrong, the deferential standard itself was correct.

b. The "interest" element should be reviewed de novo.

The Twelfth Circuit erred by reviewing the "interest element" for abuse of discretion because determining whether an asserted interest qualifies under Rule 24 is a legal question. Rule 24(a)(2) requires a proposed intervenor to demonstrate a "significant legal interest in the subject matter of the litigation." *Jansen v. City of Cincinnati*, 904 F.2d 336, 341 (6th Cir. 1990). This inquiry does not involve fact-finding about the strength of a party's stake in the case. Instead, it asks whether the type of interest asserted is one that the law recognizes as sufficient under Rule 24.

That determination is inherently legal. It is akin to asking whether a plaintiff has a cause of action. In both contexts, the court must interpret statutes and rules to decide whether the interest claimed is one that federal or state law protects. *See Ashcroft v. Iqbal*, 556 U.S. 662, 674 (2009) (explaining that evaluating the sufficiency of a complaint is not a "fact based" question of law). For this reason, courts that have

addressed this issue de novo review. *See, e.g., Harris-Clemons v. Charly Acquisitions, Ltd.*, 642 F. App'x 17, 21 (2d Cir. 2016) (reviewing denial of intervention as of right de novo).

Here, the United States asserted a generalized institutional interest in enforcing the ADA. R. at 5 (noting that the United States has institutional interest in ensuring that Respondents and others comply with the integration mandate). Whether such an interest qualifies under Rule 24(a)(2) is a matter of statutory interpretation, not judicial discretion. By deferring to the district court, the Twelfth Circuit failed to conduct the necessary independent analysis. Thus, the "interest" requirement presents a legal question that must be reviewed de novo.

c. The "impairment of interest" should be reviewed de novo too.

The Twelfth Circuit also erred in applying the abuse of discretion standard to the impairment element of Rule 24(a)(2), which requires a legal determination. This element asks whether denial of intervention "may, as a practical matter, impair or impede the applicant's ability to protect its interest." Fed. R. Civ. P. 24(a)(2); *see Michigan State AFL–CIO v. Miller*, 103 F.3d 1247, 1245 (6th Cir. 1997). Like the second element, this inquiry does not involve weighing evidence or resolving factual disputes. Rather, it requires a court to decide whether the type of interest asserted is one that the law recognizes as capable of impairment under the Rule.

Here the United States argued that its broad institutional role in enforcing the ADA would be impaired if it could not intervene. R. at 8. Again, whether such a generalized policy interest can be "impaired" is a question of law. Whether such an institutional interest is legally sufficient is a matter of statutory interpretation—not

factual judgment—and must therefore be reviewed do novo. Because the impairment inquiry turns on whether the claimed interest is legally protectable, it must be reviewed de novo.

d. "Adequate representation" should be reviewed de novo as well.

The Twelfth Circuit further erred by reviewing the adequacy of representation for abuse of discretion, when this element too presents a legal question. Rule 24(a)(2) requires a proposed intervenor to show that its interest "may not be adequately represented by the existing parties." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). Courts consider facts like adverse interest, collusion, and whether the existing parties are willing and able to make the same arguments. *See Western Watersheds Project v. Haaland*, 22 F.4th 828, 840–41 (9th Cir. 2022); *Purnell v. City of Akron*, 925 F.2d 941, 949–50 (6th Cir. 1991). Although these factors may arise in different factual contexts, the ultimate question is whether Rule 24 recognizes the intervenor's asserted distinction from existing parties. That inquiry is fundamentally legal because it requires applying a federal rule to undisputed facts.

Here, Respondents already advanced the same ADA claims as the United States R. at 5 (noting that both sought relief under Title II's integration mandate). Whether that overlap renders adequate existing representation is not a discretionary judgment but a legal determination about the scope of Rule 24(a)(2). The district court and Twelfth Circuit therefore erred in treating it otherwise.

Because three of the four elements of Rule 24(a)(2) involve the interpretation and application of legal standards, they should be reviewed de novo. Accordingly, this

Court should reverse the decision below, or at minimum remand for the Twelfth Circuit to apply the correct standard.

2. The abuse of discretion standard undermines the distinction between permissive intervention and intervention as of right.

Additionally, the Twelfth Circuit erred by applying the abuse of discretion standard to Rule 24(a)(2) because doing so improperly collapses mandatory intervention into discretionary intervention. Rule 24 draws a clear line between permissive intervention under Rule 24(b) and intervention of right under Rule 24(a)(2). *See* Fed. R. Civ. P. 24(a)–(b). Rule 24(b) expressly grants the district court discretion to allow permissive intervention, while Rule 24(a)(2) mandates that qualifying applicants "shall be permitted" to intervene. *Id.* Most circuits therefore review the substantive Rule 24(a)(2) elements de novo. *See, e.g., United States v. Tennessee*, 260 F.3d 587, 592 (6th Cir. 2001).

The abuse of discretion review is appropriate for permissive intervention under Rule 24(b), but not for intervention as of right under Rule 24(a)(2). Applying a deferential standard to the latter blurs this distinction and grants district courts the very discretion the Rule denies them. As Justice Brennan emphasized, "Rule 24(a) considerably restricts the court's discretion whether to allow intervention of right by providing that [a party meeting the requirements of Rule 24(a)(1) or (2)] 'shall be permitted to intervene.'" *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 382 n.1 (1987) (Brennan, J., concurring in part and concurring in the judgment).

Here, the Twelfth Circuit effectively converted as of right into intervention "at the court's discretion." This approach not only contradicts the plain text of Rule 24(a)(2)

but also risks unpredictable and inconsistent outcomes because district courts could permit or deny intervention based on policy preferences rather than legal entitlement. Therefore, the district court's decision to allow the United States to intervene rested on such a generalized policy interest, and the Twelfth Circuit erred in deferring to it.

In sum, only the timeliness element of Rule 24(a)(2) warrants abuse of discretion review because it turns on case-specific factual circumstances. The remaining elements—interest, impairment, and representation—require courts to apply legal standards to established facts. They therefore present legal questions subject to de novo review. By deferring to the district court across all four elements, the Twelfth Circuit collapsed mandatory intervention into discretionary intervention, and committed reversible error.

B. Even Though the Twelfth Circuit Applied the Wrong Standard of Review, the United States Still May Not Intervene Because It Failed to Establish the Requirements Under Rule 24(a)(2).

To intervene as of right, a proposed intervenor must show either that a federal statute confers a right to intervene or that it has an interest in the suit. Fed. R. Civ. P. 24(a); *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 43, 439-40 (2017). Title II of the ADA does not confer an unconditional right to intervene. *See* 42 U.S.C. § 12101 *et seq*. Moreover, permissive intervention was not considered by the district court nor the Twelfth Circuit, as the dissent below correctly observed, thus not being ripe for consideration by this court. R. at 34; *Sims v. Apfel*, 530 U.S. 103, 109 (2000) (explaining that an appellate court does not consider issues not raised below). As

such, the only question before this Court is whether the United States satisfied Rule 24(a)(2)'s substantive requirements for intervention as of right—which if failed to do.

To satisfy Rule 24(a)(2), a proposed intervenor must show four elements: (1) timely application; (2) an interest relating to the subject matter of the action; (3) potential impairment of that interest by the disposition of the action; and (4) lack of adequate representation of the interest by the existing parties to the action. *Illinois v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019). Although the United States moved to intervene as of right under Rule 24(a)(1), it failed to satisfy the Rule's substantive requirements. Because the United States cannot intervene under either provision, this Court should reverse the Twelfth Circuit's decision affirming intervention.

1. The United States did not timely intervene in this case.

The district court erred in finding that the United States' motion to intervene was timely by focusing narrowly on the passage of time element instead of conducting the required case-specific inquiry into prejudice and fairness. *NAACP v. New York*, 413 U.S. 345, 366 (1973). The Twelfth Circuit compounded this error by affirming the district court's decision without addressing the full prejudice analysis.

Courts consider four factors in determining whether a motion to intervene is timely: (1) the length of time the intervenor knew or should have known of its interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; (4) any other unusual circumstances. *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797–98 (7th Cir. 2013) (quoting *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949

(7th Cir. 2000)). When the district court denies a motion for intervention as untimely, the appellate courts review for abuse of discretion. *Id.*

Here, the United States' motion to intervene was untimely for three reasons. *First*, the United States waited three months to intervene in this lawsuit, despite knowing of the litigation and its potential interest from the outset. R. at 2 (noting that the complaint was filed on February 22, 2022 and the United States requested intervention on May 27, 2022). Indeed, the United States already announced an investigation into Petitioners' compliance with Title II yet chose to delay intervention until its completion. R. at 2, 24. This was not diligence; it was delay.

Second, when the United States requested intervention, the parties already filed pleadings and submitted a proposed scheduling order. R. at 33. Granting intervention required the district court to stay its existing scheduling order, which significantly prolonged litigation. R. at 33. Indeed, Respondents consented to the United States' motion knowing it could cause a delay. However, delay is assessed as to the "original parties." *Grochocinski*, 719 F.3d at 797–98. Here, the delay was significant for Petitioners and Respondents. Discovery expanded to include 31 depositions, 48 subpoenas, four months of summary judgment briefing longer than previously scheduled, and four weeks of trial that involved 19 witnesses. R. at 33. Moreover, intervention also imposed substantial costs to Respondents, costing an additional $273,000 in additional attorneys' fees and costs. R. at 33. This burden is especially severe given Respondents budgetary constraints. R. at 33.

Third, the district court failed to consider timeliness "from all the circumstances." *NAACP v. New York*, 413 U.S. 345, 366 (1973). The record shows that the United States could have acted earlier but instead strategically delayed its intervention to strengthen its position. R. at 4 (the district court notes that the United States filed its motion "when it would have been clear to the United States that it had an interest in the outcome of this litigation"). Moreover, both the district court and the Twelfth Circuit erred in overlooking the prejudice caused by this delay. Such tactical delay is inconsistent with Rule 24's timeliness requirement and undermines the very purpose of the Rule—to prevent undue prejudice to the original parties. *See United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004).

Accordingly, the district court abused its discretion in finding that the United States timely intervened because it failed to adequately consider and conduct a case-specific inquiry into prejudice and fairness.

2. The United States does not have an adequate interest in this case.

The second element of Rule 24(a)(2)—an "interest related to the subject matter of the action"—is not satisfied because the United States does not have an interest that is direct, substantial, or legally protectable.

Title II of the ADA prohibits public entities from discriminating against individuals with disabilities. 42 U.S.C. § 12132. Its enforcement provision incorporates the remedies available under Section 505 the Rehabilitation Act, which in turn adopts the procedures of Title VI of the Civil Rights Act. 42 U.S.C. § 12133; 29 U.S.C. § 794a(a)(2). Those remedies are available only to "any **person** aggrieved" by discrimination. 29 U.S.C. § 794a(a)(2) (emphasis added). Agencies "effectuate" this

provision by issuing rules and regulations. *Id.* at § 2000d-1. Thus, Title II provides relief and is only enforced by "any person alleging discrimination on the basis of disability." *Id.* at § 12133.

a. The plain text of Title II limits enforcement to "persons," and the United States is not a "person."

The enforcement provision of Title II excludes the United States because it grants remedies only to "persons," an unambiguous term omitting sovereign entities.

Section 12133 provides that "[t]he remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 shall be the remedies, procedures, and rights this subchapter provides to **any person alleging discrimination on the basis of disability** in violation of section 12132." 42 U.S.C. § 12133 (emphasis added). By contrast, other civil rights statutes explicitly authorize enforcement by the United States. *See e.g.,* 42 U.S.C. § 2000e-5(f)(1) (authorizing the Attorney General to bring civil actions under Title VII).

The legislature's deliberate use of "any person" in Title II reflects congressional intent to limit enforcement to individuals with disabilities rather than sovereign entities. Congress could have explicitly authorized enforcement by the Attorney General, as it has in other statutes, but it declined to do so. When the words of a statute are unambiguous, then, this first canon is also the last because 'judicial inquiry is complete." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461-62 (2002) (quoting *Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 253–254 (1992)).

Unlike Title VII and other statutes that expressly empower federal government, Title II's enforcement provision contains no such authorization. Instead, it channels

enforcement through "any person alleging discrimination." 42 U.S.C. § 12133. Because the United States is not a "person" under the statute, its claimed interest in falls outside the scope of § 12133.

Moreover, the absence of an ADA-specific definition of a "person" confirms that the ordinary meaning controls. *See Perrin v. United States*, 444 U.S. 37 (1979) (explaining that courts must "interpret the words consistent with their ordinary meaning…at the time Congress enacted the statute"). At the time of Title II's enactment in 1990, "person" meant "human, individual." 42 U.S.C. § 12133 (1990); *Person*, Merriam-Webster's Collegiate Dictionary (10th Ed. 1993). That understanding persists today because the definition of "person" means a "human being." *Person*, Black's Law Dictionary (12th Ed. 2024). In other words, that definition remains unchanged today. *Id.*

Because both the contemporaneous and modern definitions of "person" unambiguously exclude the United States, Congress's deliberate omission bars the United States from enforcing Title II of the ADA.

b. The statutory structure confirms that Congress deliberately excluded the United States.

The overall statutory structure of Title II further confirms that Congress intended to exclude the United States from enforcing its provisions. As this Court has emphasized, "[T]he words of a **statute must** be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989); *see also United States v. Miller*, 145 S. Ct. 839, 853 (2025) (emphasis added). This Court has likewise cautioned against structural context that

"cuts decidedly against the broad reading respondent advances." *Miller*, 145 S. Ct. at 853 (2025).

Section 12132—the core operation provision of Title II—and the statute immediately preceding the enforcement provision supports this view. Section 12132 provides that "**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 subject to discrimination by any such entity." 42 U.S.C. § 12132 (emphasis added). Section 12133 makes the remedies of the Rehabilitation Act available only to "**any person alleging discrimination** on the basis of disability. 42 U.S.C. § 12133 (emphasis added).

Read together, these provisions confirm that Title II is designed to protect individuals with disabilities, not to empower the federal government to bring its own claims. Because Congress unambiguously requires only a qualified individual with a disability to be the "person" who can allege discrimination on the basis of disability and be afforded the remedies, procedures, and rights referenced in 42 U.S.C. § 12133, this Court should adopt Petitioners' interpretation and end any other inquiry because the "statutory language is unambiguous, and the statutory scheme is consistent." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). Because the United States does not fall within that category, it has no interest that is direct, substantial, and legally protectable under Title II and thus cannot enforce it.

c. Title II's findings and purpose provision cannot override its plain text.

Furthermore, the district court erred in concluding that the findings and purpose section of Title II authorizes the United States to invoke the remedies, procedures, and rights of the statute. A statute's purpose cannot override the plain language chosen by Congress. Here, Title II's preliminary statement of purpose provides only that one of its many aims is "to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities." 42 U.S.C. § 12101(b)(3). The District Court and Respondents improperly argue this broad and generalized purpose over the specific enforcement provision that governs remedies and enforcement. They also argue that the United States, through the Attorney General, has an institutional interest in ensuring public entities are held appropriately accountable for violations of the ADA and its implementing regulations. However, such a reading and a finding would be rewriting and supplanting judicial will with that expressly provided by the legislature.

Congress spoke directly in the enforcement provision, making clear that "[t]he remedies, procedures, and rights [available] shall be those provided to any **person** alleging discrimination on the basis of disability in violation of section 12132 of this title." 42 U.S.C. § 12133 (emphasis added). This court should not permit such a broad and vague purpose of Title II because the term "person" unambiguously means a person and "where the statutory language is unambiguous, the court should not consider statutory purpose or legislative history," *In re Phila. Newspaper, LLC*, 559 F.3d 298, 304 (3d Cir. 2010). This is because courts operate under the "assumption

that the ordinary meaning of the language accurately expresses the legislative purpose." *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). Thus, reliance on the purpose section to expand enforcement authority is misplaced.

As this Court has long recognized, "there is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 543 (1940). The plain language of Section 12133, not the generalized aspirational purpose of Section 12101(b)(3), controls. Respect for Congress's chosen words compels the conclusion that the United States is not empowered to enforce Title II of the ADA.

d. The United States' "institutional interest" is insufficient.

The same reasoning defeats the argument that the United States may enforce Title II based on its "institutional interest" or the Attorney General's authority to promulgate ADA regulations. That authority derives solely from the ADA itself, and because the statute limits enforcement to "persons," the Attorney General is likewise excluded from bringing enforcement actions under Title II. This plain language restriction also accords with common sense.

Accepting Respondents' view would create a de facto right for the United States to intervene in any case involving regulations issued by any federal agency, even where the statute authorizing those regulations expressly prohibits such intervention. That reading would allow agencies to both circumvent Congress's will and constitutional standing requirements. By contrast, Petitioners' reading faithfully reflects the legislature's express will as embodied in the statutory text and this Court's jurisprudence. And even if this Court were persuaded that Respondents'

generalized interpretation would yield a more reasonable outcome, that is not enough to override the statutes meaning because as this court has explained, "even when the plain meaning did not produce absurd results but merely an unreasonable on," *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 543 (1940), "the plain language governs as it is beyond our province to rescue Congress from its drafting errors, and to provide what we might think… is the preferred result." *United States v. Granderson*, 511 U.S. 39, 68 (1994) (concurring opinion); *Barnhart*, 534 U.S. at 462 (2002) ("We will not alter the text in order to satisfy the policy preferences of the [United States]. These are battles that should be fought among the political branches and the industry. Those parties should not seek to amend the statute by appeal to the Judicial Branch.")

Thus, this Court should reverse the Twelfth Circuit's decision granting the United States' motion to intervene as of right under Rule 24(a)(2) because it did not satisfy the second element—interest related to the suit.

3. The United States is not disadvantaged by the disposition of this case.

The third element—potential impairment of interest—is not satisfied too. Petitioners opposed intervention on the ground that the United States lacked any cognizable interest in this litigation and therefore did not address whether such an interest might be impaired. R. at 8. Because Petitioners did not raise that issue on appeal, it would be inappropriate to develop it here. *Sims v. Apfel*, 530 U.S. 103, 109 (2000) (explaining that an appellate court does not consider issues not raised below).

In any event, the impairment factor is inextricably tied to the existence of a legally protected interest. R. at 27. As previously discussed, the United States does not have

such an interest under Title II of the ADA. If this Court were to rule in favor of the Petitioner on the second element, further judicial inquiry would not be required. However, if this Court were to conclude otherwise, the question of impairment is properly analyzed alongside adequacy of representation as explained below.

4. The United States cannot establish adequate representation.

The fourth element—inadequate representation by existing parties—is not satisfied either. The United States contends that private plaintiffs cannot adequately represent its institutional interest in the ADA or the DOJ's implementing regulations because Congress directed the federal government to enforce the ADA and promulgate regulations under it. The United States also emphasizes the broader systematic relief it seeks, which could extend to all individuals institutionalized in Franklin hospitals in the future as opposed to the individual relief sought by the three Respondents. However, such a rationale is unpersuasive and not consistent with this Court's jurisprudence.

a. Respondents and the United States share the same ultimate objective, creating a presumption of adequacy.

Proposed intervenors bear only a "minimal" burden in showing inadequacy. *See Trbovich v. United Mine Workers*, 404 U.S. 528 n.10 (1972). Yet, even with that minimal burden, intervenors face a presumption of adequate representation when they share the "same ultimate objective" as existing parties. *Edwards v. City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996) (en banc). To rebut this presumption, the proposed intervenor must show "adversity of interest, collusion, or nonfeasance on the part of the existing party." *Id.*

Courts routinely hold that broader governmental mandate does not render private representation inadequate.

Courts routinely allow intervention by parties' narrower interests not because broader interests are inadequate, but because narrower interests may be overlooked. *See Natural Res. Def. Council, Inc. v. Costle*, 561 F.2d 904, 912-13 (D.C. Cir. 1997) (allowing chemical companies to intervene in support of EPA regulations because their narrower business interests would not be adequately represented by EPA's broader mandate). But this Court has reasoned that the reverse is not true, as broader institutional interest does not render narrower private representation inadequate. *See Trbovich*, 404 U.S. at 539 (union member permitted to intervene where Secretary of Labor's obligation to public interest was broader than the member's narrower stake).

Here, Respondents and the United States share the same ultimate objective: vindicating ADA rights against Petitioners' mental health system. The United States' seeking broader relief does not itself render the Respondents' representation inadequate. Moreover, Respondents' narrower interest to secure prompt ADA relief fully encompasses the government's broader objective of securing ADA compliance. In other words, the government's desire for systemic relief does not change the fact that Respondents were already pressing the same claims. R. at 2, 24.

Indeed, the record underscores that Respondents' narrower interests are more immediate and concrete and that there is no nonfeasance in prosecution. Respondents filed suit to vindicate their rights under Title II, yet the United States waited three

months after the complaint was filed, despite knowing of the litigation and having already launched its own investigation, to intervene. R. at 2, 24. By the time it did, pleadings and a proposed scheduling order were already in place. R. at 33. Intervention forced the district court to stay its order, expanded discovery to 31 depositions and 48 subpoenas, extended summary judgment briefing by four months, and prolonged the trial to four weeks with 19 witnesses. R. at 33. These changes imposed $273,000 in additional attorneys' fees and costs on Respondents. R. at 33. Far from demonstrating inadequacy, the record shows that Respondents were already pursuing the same claims effectively. Because Respondents and the United States shared the same ultimate objective and Respondents vigorously pursued their claims, the presumption of adequate representation controls.

b. Broader governmental controls and speculative conflicts cannot overcome the presumption.

Moreover, the case law confirms that broader governmental objectives do not displace adequate private representation. In *Millie Lacs*, certain landowners were allowed to intervene despite the state's representation of the public interest in game preservation because their property values faced unique harm from game depletion. *Cf. Millie Lacs Band Chippewa Indians v. Minnesota*, 989 F.2d 994, 1001 (8th Cir. 1993) (where the private parties suffer particularized harms beyond the general public, intervention is warranted).

Likewise, the Fifth Circuit has rejected the intervention where the government already vigorously defends its position, and the intervenors cannot show a distinct defense or inadequacy. *Cf. Hopwood v. Texas*, 21 F.3d 603, 606 (5th Cir. 1994).

Similarly, the First Circuit has similarly explained that "[t]he general notion that the [government] represents 'broader' interests at some abstract level is not enough." *Daggett v. Comm'n on Gov'tal Ethics and Election Practice*, 172 F.3d 104, 111 (1st Cir. 1999). This idea is further cemented by the D.C. Circuit, which has stressed that while the government represents the public interest, intervenors may represent narrow private interests, but that divergence does not work in reverse. *Cf. Fund for Animals v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003).

The principal cuts in the opposite direction here: the United States' broader mandate adds nothing beyond what Respondents already seek. Thus, broader government interest does not render the narrower Respondents' representation of such interest inadequate.

c. There is no persuasive evidence that Respondents will not pursue their claim vigorously.

Finally, there is no persuasive evidence that Respondents will not "pursue their [claim] vigorously." A proposed intervenor must show that existing parties will not adequately represent their interest, but differences in motive, litigation strategy, or the possibility of settlement do not establish inadequacy. *Natural Resources Defense Council v. New York State Dep't of Environ Conservation*, 834 F.2d 60, 62 (2d Cir. 1987); *see also United States Postal Serv. v. Brennan*, 570 F.2d 188, 191 (2d Cir. 1978). Intervention is not designed to guarantee that every conceivable strategy or remedy will be pursued; it is meant only to ensure that the applicant's interest is not impaired by some current conflict. *Bush v. Viterna*, 740 F.2d 350, 356 (5th Cir. 1984) ("the possibility that the interests of intervenors and defendants might clash in some

future dispute does not demonstrate the necessary adverse interest in a present suit").

Courts consistently reject speculation about future divergence as a basis for intervention. As the Fifth circuit reasoned in *Bush*, such speculation about this possible conflict that largely comprises the relations between private parties in the civil system would eviscerate the rule. *Id.* at 356-57 (arguments that the interests of intervenors and defendants might clash in some future dispute do not demonstrate the necessary adverse interest and that adversity of interest must be shown in the present proceeding and may not be inferred from the possibility of adversity). Even though the burden of showing inadequate is minimal, it cannot be read so broadly as to eliminate the requirement all together. *Meridian Homes Corp. v. Nicholas W. Prassas & Co.,* 683 F.2d 201, 205 (7th Cir.1982).

Here, Respondents and the United States may have differing motives for recovery, but this mere difference in motivation does not render Respondents' representation as inadequate. *Natural Resources Defense Council*, 834 F.2d at 61-62. The former wants immediate injunctive relief for themselves, while the latter wants to ensure that all obtain relief. This is most evidence in the United States argument that plaintiffs could settle and abandon their broader concerns. Indeed, speculative settlement concerns cannot substitute for evidence of present adversity, collusion, or nonfeasance. *Bush*, 740 F.2d at 356-357.

Accepting the government's theory would transform Rule 24(a)(2) into an automatic right of intervention whenever the United States asserts its sovereign

interest, particularly when considering that the civil system is predominantly a system of settlements. This would effectively create an exception that swallows the rule, contrary to this Court's jurisprudence. *See Trbovich*, 404 U.S. 528, 538 n. 10 (1972). While the burden of showing inadequacy is minimal, it is not meaningless, and the United States failed to carry it here. Plaintiffs' pursuit of ADA relief sufficiently represents the shared objective, and differences in scope, motive, or potential settlement strategy do not render that representation inadequate. Because the United States has not met the fourth element, this Court should reverse the Twelfth Circuit's decision permitting intervention as of right.

CONCLUSION

Title II guards against actual segregation, not future risks of harm. Because Respondents are not currently institutionalized, their claims rest solely on a speculative risk of future harm—an interest neither supported by the statute's plain text nor consistent with *Olmstead v. L.C.*, 527 U.S. 581 (1999). Recognizing such claims would stretch Title II beyond its limits, invite speculative litigation, and diminish the critical distinction between present discrimination and hypothetical injury.

The district court erred in denying Petitioners' motion for summary judgment, and the Twelfth Circuit compounded that error by affirming the availability of claims for those merely "at risk" of institutionalization. Accordingly, this Court should hold that Title II does not authorize discrimination claims based on future risks of

institutionalization and should REVERSE the judgments below, concluding that Petitioners have not violated Title II of the ADA.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER