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.,

Petitioner,

— versus —

SARAH KILLBORN, et. al.,

Respondent.

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

BRIEF FOR RESPONDENT

TEAM 3420

Attorneys for Respondent

QUESTIONS PRESENTED

I. Whether Title II of the Americans with Disabilities Act ("ADA") permits a party to maintain a cause of action if they suffer an increased risk of institutionalization, as opposed to actual institutionalization?

II. Whether the district court erred when it permitted the United States to intervene in instant litigation under Federal Rule of Civil Procedure 24(a)?

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The unreported Opinion of the United States District Court for the District of Franklin, Southern *Sarah Killborn et al v. The State of Franklin Department of Social and Health Services,* Case No. 1:22-cv-00039 is contained in the Record of Appeal at Pages 1-21 where the District Court GRANTED Plaintiff's motion for summary judgment as well as the United States motion for summary judgement, and DENIED Defendant's motion for summary judgement. The unreported Opinion of the United States Court of Appeals for the Twelfth Circuit, *Sarah Killborn et al v. The State of Franklin Department of Social and Health Services,* Case No. 1:23-cv-00039 (Mar. 22 2024), is contained in the Record of Appeal at Pages 22-29. The Appellate Court AFFIRMED the District Court's decision.

STATUTORY PROVISIONS INVOLVED

The following provisions of the United States Code are relevant in this proceeding: 42 U.S.C. §§ 12132-12134. Also relevant are the following provisions of the Code of Federal Regulations: 28 C.F.R. § 35.130(d); 28 C.F.R 35.130(b)(7)(i); and 28 C.F.R. § 41.51(d).

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

This matter concerns the State of Franklin's failure to adhere to the provisions of Title II of the Americans with Disabilities Act ("ADA") with respect to the named Plaintiffs (Respondent). Specifically, both Plaintiff and the United States (Intervenor)

allege that the State has violated the provision of the ADA that requires the State to administer care in the most integrated possible environment, as determined by the relevant medical professionals.

Sarah Killborn and the other named plaintiffs initiated a civil action against the state on this basis, alleging that the State has placed them at an increased risk of institutionalization in violation of the ADA by failing to provide certain services in a non-custodial or outpatient environment. Plaintiffs allege that, as a result of this failure on the part of the State, they may only be able to access certain necessary medical services by committing themselves to inpatient care, which is a more segregated and restrictive environment than would otherwise be medically necessary for Plaintiffs' conditions.

2011, Killborn is Admitted to an Inpatient Mental Health Facility. In 2011, Killborn was admitted to Southern Franklin Regional Hospital for inpatient treatment for her ongoing, severe mood swings brought on by her bipolar disorder. R. at 13. In March of 2013, Killborn's treating physician determined that Killborn could benefit from a transfer to a community mental health facility. R. at 13. A community mental health facility provides for a range of services that are generally much more integrated and less restrictive than the care provided in the hospital environment. R. at 13. Killborn's treating physician recommended that she receive daily services from the community mental health facility multiple days per week in an outpatient setting. However, because there was no State-operated community mental health facility within three and a half hours from Killborn's location, and because Killborn could not

afford care at an equivalent private facility, it was not possible for her to receive the treatment recommended by her physician. R. at 13. As a result, Killborn's treating physician instead recommended that she remain institutionalized at the Southern Franklin Regional Hospital until she was ultimately discharged in May of 2015, almost a year after she would otherwise have been able to enter a more integrated treatment environment. R. at 13.

October 2018, Killborn Voluntarily Returns to Inpatient Treatment.

In October of 2018, Killborn voluntarily re-admitted herself for inpatient treatment at the Southern Franklin Regional Hospital due to ongoing struggles with bipolar disorder that her treating physician determined to constitute a risk to herself or others. R. at 13. Her treating physician determined that she was able to be released from inpatient care approximately two years later, but there was still no State-operated community mental health facility close enough to provide services to Killborn. R. at 13. As a result, Killborn was ultimately discharged in January of 2021, approximately one year after her treating physician determined that she could be released from inpatient treatment. R. at 13.

2019, Torrisi is Admitted to Newbury memorial Hospital. In 2022, Torrisi was admitted to Newbury Memorial Hospital in Franklin to receive inpatient treatment for her manic episodes brought about by her bipolar disorder. R. at 14. In May of 2022, Torrisi's treating physician decided that her manic episodes had decreased in frequentcy and severity such that she could receive treatment in a less restrictive environment. R. at 14. Torrisi's treating physician recommended that she

receive inpatient treatment at a community mental health facility, which is distrinct from inpatient treatment at a hospital in that it affords the patient more integration and interaction with the community while still providing twenty-four-hour care and supervision. R. at 14.

Unlike inpatient care in a hospital setting, patients at a community mental health facility can receive more visitors for longer durations, and are allowed frequent trips outside the facility. R. at 14. Torrisi was unable to receive the treatment recommended by her physician, however, because there was no State-run community mental health facility close to her residence to be accessible, and the nearest such facility did not offer the inpatient treatment that Torrisi required. R. at 14. As a result, Torrisi remained at Newbury Memorial Hospital in Franklin until she was discharged in January of 2022. R. at 14.

2017, Williamson is Admitted to Franklin University Hospital for Inpatient Treatment. Shortly In 2019, Williamson's daughter and caretaker admitted him to the Franklin University Hospital to receive inpatient treatment for his schizophrenia. R. at 15. Two years later, after intensive treatment including medication therapy, Williamson's physician determined that he could be released from inpatient care. R. at 15. Though there was a State-operated community mental health facility located in Silverlake, where Williamson's family resides, the facility does not offer inpatient treatment options. R. at 15 As a result, Williamson was not released from inpatient care at Franklin University Hospital until June of 2021 when his treating physician determined he could receive outpatient services. R. at 15.

2011, Franklin State Legislature Cuts the Budget for the Department of Health and Social Services. In 2011, the legislature of the State of Franklin elected to cut the budget for the Department of Heath and Social Services by twenty percent. R. at 15. This resulted in the closure of two of the three state-funded community mental health facilities in Franklin, namely the Mercury and Bronze community mental health facilities. R. at 15. The community mental health facilities in Mercury and Bronze were significantly closer to Killborn and Torrisi, and could have allowed them to receive the care recommended by the parties' respective physicians, were the facilities not shuttered following the aforementioned 2011 budget cuts. R. at 15-16.

Additionally, the budgetary cuts of 2011 also eliminated the inpatient program in Platinum Hills, a program that could have allowed Williamson to receive care in the least restrictive environment recommended by his treating physician. R. at 16. The legislature of Franklin increased the budget for the State's Department of Health and Social Services in 2021, but these funds were not used to reopen any of the facilities in question, nor were they used to resume the inpatient program at the Platinum Hills facility. R. At 16. The State of Franklin is one of the largest in the United States, covering 99,000 square miles that contain over 600,000 residents. R. at 15. Over 500,000 Franklin residents reside two hours or more from the nearest community mental health facility. R. at 15.

II. NATURE OF PROCEEDINGS

The District Court. In February of 2022, Plaintiffs filed for injunctive relief, asking that the District Court enjoin Defendants from further violating their right to integrated treatment under Title II of the ADA. In May of 2022, the United States

filed a motion to intervene on Plaintiffs' behalf. The District Court granted the United States' request to intervene as of right under Federal Rule of Civil Procedure 24(a). R. at 9. In rendering its decision on the United State's motion to intervene, the District Court found that the motion was timely, and that the United States had an interest in the litigation in question. R. at 3, 5. Furthermore, the District Court found that the United States had a legal interest in the disposition of the litigation pursuant to the ADA's enforcement provisions stipulated in Title II of the Act. In reaching this conclusion, the District Court also found that the enforcement provisions in Title II of the ADA include the possibility of the Attorney General filing of a civil action against any public entity found to be in violation of the Act. R. at 5. The litigants subsequently filed cross motions for summary judgement under Federal Rule of Civil Procedure 56(c), alleging that the respective opposing parties had not demonstrated a genuine issue of material fact for trial in their pleadings. R. at 16-17. The District Court GRANTED Plaintiffs' motion for summary judgement, as well as that of the United States, finding that the ADA permits a plaintiff to maintain a cause of action even if they have not been institutionalized, but are at risk of being institutionalized counter to the statute's integration mandate. R. at 20-21. In reaching this conclusion, the District Court found that the ADA's integration mandate contained ambiguous language, and therefore deferred to the Department of Justice's interpretation of the integration mandate promulgated in a guidance document issued by the agency. R. at 20. According to the guidance document adopted by the District Court, a plaintiff may bring a civil suit against a defendant if they can demonstrate that they are at an

increased risk of institutionalization, and actual institutionalization is not required to vest a cause of action. R. at 20. The District Court subsequently held a bench trial on the matter, ultimately ruling in favor of the United States and Plaintiffs and finding that the State of Franklin Department of Health and Social Services had violated the ADA by placing Plaintiffs at an increased risk of institutionalization. R. at 23. Consequently, the District Court GRANTED Plaintiffs' request for injunctive relief, and ordered the Department of Health and Social Services to propose a plan on how it would remedy the Department's violations of the integration mandate. The District Court also enjoined the Department of Health and Social Services from institutionalizing Plaintiffs at a future time. R. at 23.

The Twelfth Circuit Court of Appeals. On appeal to the United States Court of Appeals for the Twelfth Circuit, Defendant argued the district court erred in finding that an increased risk of institutionalization is sufficient to vest a cause of action, and also erred in granting the United State's motion to intervene. R. at 25. Finding that Defendant's appeal was timely, the Twelfth Circuit stayed the District Court's order pending appellate review. R. at 25. After conducting its appellate review of the record as well as the District Court's findings, the Twelfth Circuit AFFIRMED the District Court's granting of the United States motion to intervene and AFFIRMED the District Court's finding that a plaintiff at risk of institutionalization can bring a suit under Title II of the ADA. R. at 29

SUMMARY OF THE ARGUMENT

The Twelfth Circuit correctly affirmed the district court's decision to grant the United States motion to intervene in instant litigation. In reaching this conclusion, the Twelfth Circuit found that all necessary factors enumerated in the rule were met, and the district court properly used its discretion in allowing the United States to intervene as of right pursuant to Rule 24(a). Specifically, in conducting its review of the district court's ruling, the Twelfth Circuit correct found that Title II of the ADA allows a plaintiff who suffers an increased risk of institutionalization to seek redress through a civil action, as is the case in instant suit. Accordingly, because an increased risk of institutionalization vests a cause of action in Plaintiffs, the District Court was also correct in finding that the United States had a cognizable interest in instant litigation that qualifies the United States to intervene in the suit on behalf of Killborn and others under Rule 24(a)(2).

The United States' interest in the stare decisis implications that might issue from the disposition of this matter can properly serve to satisfy the aspect of Rule 24(a)(2) that requires a legally cognizable interest in the litigation to properly permit intervention by a third party. The Twelfth Circuit also asserted that the District Court correctly determined that the United States' interest can be impaired by its disposition of this litigation without the presence of the United States as a proper party to the case. Finally, the Twelfth Circuit agreed with the district court's determination that the United State's Rule 24 motion was timely, and similarly found that intervention would not prejudice Defendant.

Though Justice Hoffman of the Twelfth Circuit argues that the District Court's ruling should be reversed because allowing the United States to intervene prejudiced Defendant by subjecting them to voluminous discovery, it is Respondent's position that Defendant was not prejudiced by the District Court's decision in this matter, as evidenced by the fact that Defendant did not argue this point before the district court. Furthermore, even if it were proper for an appellate court to raise this issue in its review, it is Respondent's position that the additional discovery required upon the United States' intervention was not prejudicial to Defendant. Though Justice Hoffman correctly notes that there were significant additional discovery requests imposed on Defendant after the United States' intervention, Respondents would note that the United States would be subject to this discovery regardless of the District Court's decision to allow intervention in instant litigation. The only difference would be that the judiciary would be subject to an additional administrative burden because the aforementioned discovery would take place in a different proceeding. As such, the District Court's decision to allow intervention did not subject Defendant to any more discovery than they would face regardless, with the added benefit of enhancing the efficiency of instant litigation by allowing an additional party to resolve its dispute with Defendants without necessitating an additional lawsuit.

The circumstances in question therefore meet the requirements to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2). Fed. R. Civ. P. 24(a)(2), and the Twelfth Circuit was correct to affirm the district court's decision regarding this issue.

I.

The United States Court of Appeals for the Twelfth Circuit properly affirmed the District Court's decisions regarding both the issue of intervention under Rule 24(a)(2) and the issue of the scope of the enforcement mechanism found in Title II of the ADA. Applying the abuse of discretion standard of review for the District Court's decision to grant the United States Rule 24(a)(2) motion, the Twelfth Circuit found that the District Court applied the correct legal test, did not arrive at a plainly erroneous result, and affirmed the court's decision accordingly.

II.

The Twelfth Circuit Court of Appeals correctly affirmed the district court's determination regarding the interpretation of Title II of the ADA, finding that a party who suffers an increased risk of institutionalization can properly maintain a suit under the statute. In reaching its conclusion, the Twelfth Circuit found that the language at-issue in the statute was ambiguous and subject to two reasonable interpretations. Under one interpretation, a party could not sustain a cause of action under Title II unless they were already unjustly institutionalized, but under another interpretation, the mere risk of institutionalization would suffice to sustain a civil action. In order to resolve this ambiguity, the Twelfth Circuit correctly deferred to a Department of Justice guidance document issued to resolve this ambiguity, finding that the agency's interpretation was reasonable and that Congress had empowered the agency to promulgate such rules and regulations.

ARGUMENT

Standard of review. This appeal raises two issues, one of which warrants review under the abuse of discretion standard, while the other requires that the appellate court perform its review *de novo*.

In its review, the Twelfth Circuit correctly notes that the generally applicable standard of review for a Rule 24(a) motion is abuse of discretion. Though the Twelfth Circuit correctly notes that there is no binding precedent from this Court establishing the standard of review required when an appellate court takes a granted Rule 24(a)(2) motion under review, the appellate court correctly joined the First, Second, Third, and Fourth Circuit Courts in requiring a finding of abuse of discretion in order to reverse a trial court's ruling. *See, e.g.,* Int'l Paper Co. v. Town of Jay, Me., 887 F.2d 338, 344 (1st Cir. 1989); *Am. Lung Ass'n v. Reilly, 962 F.2d 258, 261 (2d Cir. 1992)*; *Brody v. Spang, 957 F.2d 1108, 1115 (3d Cir. 1992*); *In re Sierra Club*, 945 F.2d 776, 779 (4th Cir. 1991).

As the Second Circuit noted when analyzing this issue, "the great variety of factual circumstances in which intervention motions must be decided, the necessity of having the 'feel of the case' in deciding these motions, and other considerations essential under a flexible reading of Rule 24(a)(2*), particularly in government enforcement actions*, are precisely those which support an abuse of discretion standard of review. *United States v. Hooker Chemicals & Plastics Corp.,* 749 F.2d 968, 991 (2d Cir. 1984) (citing *United States v. McCoy,* 517 F.2d 41, 44 (7th Cir.) (Stevens, J.), *cert. denied,* 423 U.S. 895, 96 (1975) (emphasis added)).

As the Second Circuit notes, the trial court is in a better position to appreciate the evidentiary nuances and practical administrative concerns that are a significant part of the Rule 24(a)(2) inquiry. The abuse of discretion standard for appellate review affords the proper degree of deference to the trial court's ruling where (as in instant case) the trial court is better positioned to appreciate and weigh the factors necessary to properly dispose of a Rule 24(a)(2) motion to intervene. Under the abuse of discretion standard, a trial court's decision on a motion to intervene pursuant to Rule 24(a)(2) can only be reversed on appeal if the appellate court finds that the trial court finds that the trial court either applied the incorrect legal standard, or arrived at a clearly erroneous result. *See Spang*, 957 F.2d at 1115. The Twelfth Circuit was correct to affirm the trial court's decision to allow the United States' to intervene in instant litigation, because the trial court applied the correct standard and arrived at a reasonable conclusion through the application thereof.

The issue of determining what parties can maintain a cause of action under Title II of the ADA is a matter of law that is reviewed *de novo*. *See United States v. Mississippi*, 82 F.4th 387, 391 (2023). Even so, the Twelfth Circuit correctly followed the majority approach in its review by deferring to the Department of Justice's interpretation of the statutory language under the standard set by this Court in *Auer v. Robbins*, 519 U.S. 452 (1997).

I. The Twelfth Circuit Correctly Applied *Auer* in Resolving the Ambiguity of the Integration Mandate in Title II of the Americans with Disabilities Act.

Under the rule promulgated in *Auer,* this Court established that it will defer to an agency interpretation of ambiguous statutory language so long as the agency interpretation is reasonable and the issue in question is within the scope of that agency's expertise. *See Auer v. Robbins*, 519 U.S. 452 (1997). The ambiguity at the heart of instant debate is the meaning of the integration mandate elucidated in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999). More specifically, the ambiguity arises when interpreting such words as "excluded," "denied," or "subjected to discrimination" in the context of 42 U.S.C. § 12132. Moreover, as the Twelfth Circuit correctly notes, instant matter is squarely within the ambit of the Department of Justice's expertise, because the agency is explicitly authorized to promulgate rules and regulations to interpret the ADA. R. at 29. Accordingly, because the agency interpretation is reasonable, this Court's ruling in *Auer* controls, and the Court should defer to the agency interpretation of the ambiguous language.

Put differently, one reading of the *Olmstead* integration mandate only requires that the State provide treatment in the most integrated setting for patients who are already institutionalized. This is the reading adopted by the minority. Another interpretation of the integration mandate permits a party at risk of institutionalization to bring a cause of action against a public entity. This is the interpretation that the Twelfth Circuit correctly adopted when it affirmed the district court's ruling in instant matter.

A. The Department of Justice's Assertion that the Integration Mandate Prohibits Policies that Place Individuals at a Serious Risk of Unnecessary Institutionalization is Reasonable

The Court should affirm the Twelfth Circuit's holding that individuals at a serious risk of institutionalization can maintain a claim for discrimination under Title II of ADA. This position is directly supported by a broad and consistent consensus among the federal appellate courts and is the only interpretation that honors both the text and purpose of the ADA and foundational Supreme Court precedent.

Title II of the ADA prohibits public entities from subjecting qualified individuals with disabilities to discrimination on the basis of such disability. 42 U.S.C.A. § 12132. The Department of Justice's implementing regulation, known as the integration mandate, requires that a public entity "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). In *Olmstead v. L.C. ex rel. Zimring*, the Supreme Court established that "unjustified institutional isolation of persons with disabilities is a form of discrimination" that "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life" and "severely diminishes the everyday life activities of individuals." 527 U.S. 581, 600-01 (1999).

Following this precedent, several circuits have expanded upon the foundation established by *Olmstead* and correctly held that the integration mandate's protections apply not only to individuals who are already institutionalized, but also to those who are at a serious risk of institutionalization due to a state's discriminatory policies.

The Tenth Circuit's decision in *Fisher v. Oklahoma Health Care Auth.* clearly illustrates this principle, holding that the ADA's protections "would be meaningless if plaintiffs were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy that threatens to form them into segregated isolation." 335 F.3d 1175, 1181 (10th Cir. 2003). While the *Olmstead* plaintiffs were institutionalized when their claim was brought, the Tenth Circuit noted that "nothing in the *Olmstead* decision supports a conclusion that institutionalization is a prerequisite to enforcement of the ADA's integration requirements." *Id.*

The Fourth Circuit's decision in *Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2013) also illustrates how a state policy can be discriminatory, even if it does not explicitly require institutionalization. The court found that a policy imposing stricter eligibility requirement for in-home personal care services was discriminatory because it created a "significant risk of institutionalization" in adult care homes, which were determined to be institutions. *Id.* at 324. In its reasoning, the court relied on the Department of Justice's determination that "the ADA and the *Olmstead* decision extend to persons at serious risk of institutionalization or segregation and are not limited to individuals currently in institutional or other segregated settings." *Id.* at 322. By affirming the district court's preliminary injunction, the Fourth Circuit held that plaintiffs demonstrated a likelihood of success on the merits by showing this serious risk, thereby confirming that the ADA's integration mandate protects individuals "at risk" of segregation.

The Seventh Circuit reached a similar conclusion in *Steimel v. Wernert*, 823 F.3d 902 (7th Cir. 2016), holding that the ADA's integration mandate applies where state policies "segregate in the home" or create a "serious risk of institutionalization." *Id.* at 914. In *Steimel*, a state policy change had rendered many individuals with developmental disabilities ineligible for care under a particular waiver program, thereby reducing their community access to as little as twelve hours per week. *Id.* at 909-10. The court rejected the state's argument that the integration mandate applies only to physical institutionalization, finding that the policy change created unjustified isolation in the home and a serious risk of institutionalization. *Id.* at 918. Because there was a factual dispute as to whether the state's policy change caused the plaintiffs' isolation and risk of institutionalization, the court reversed the grant of summary judgment and remanded the case. *Id.* at 916-17.

The Ninth Circuit's decision in *M.R. v. Dreyfus* also supports this principle, holding that state reductions to in-home personal care services available under the state's Medicaid plan placed the plaintiffs, Medicaid beneficiaries with severe mental and physical disabilities, at serious risk of institutionalization. *M.R. v. Dreyfus* 697 F.3d 706 (9th Cir. 2011). In its reasoning, the court emphasized that institutionalization can become irreversible by creating "an unnecessary clinical risk that the individual will become so habituated to, and so reliant upon, the programmatic and treatment structures that are found in an inpatient setting that

his or her ability to function in less structured, less restrictive, environments may become severely compromised." *Id.* at 735.

Moreover, in *Waskul v. Washtenaw County Community Mental Health*, 979 F.3d 426 (6th Cir. 2020), the Sixth Circuit reversed the district court's dismissal of ADA and Rehabilitation Act claims where the plaintiffs alleged that a change in Medicaid budgeting rendered them unable to secure community-based services. The court held that the plaintiffs adequately stated claims under the integration mandate by showing that they faced a serious risk of institutionalization when forced to forego medically necessary services or experience deteriorating health and safety. *Id.* at 463-64.

B. It is Within the Ambit of the Judiciary's Authority to Resolve the Ambiguity Present in the Integration Mandate

Though Justice Hoffman of the Twelfth Circuit dissented from the majority in affirming the district court's finding in this matter, the dissent's argument is based primarily on a reading of the statutory language that does not properly account for context. R. at 35. Though a plain-meaning interpretation of statutory language is often preferred, "[i]t is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989). It is precisely this overall statutory scheme that the Twelfth Circuit relies on when rendering its interpretation of the enforcement provisions present in Title II, and it is precisely this overall statutory scheme that the attendant dissenting opinion ignores.

Moreover, while Justice Hoffman asserts that "Appellees are essentially asking the Court to read language into [Title II]" a task the Justice asserts is better conducted by Congress, it is Respondent's position that such is not the case. R. at 34. Much to the contrary, instant litigation involves the resolution of ambiguity in the statutory language of Title II, and Respondents do not ask this Court to do more than just that. Indeed, it could be argued that Congress implicitly delegated the power to resolve such ambiguities to the Department of Justice when it tasked the agency with promulgating rules and regulations pertaining to the ADA. *See* 42 U.S.C. § 12134(a) With such in mind, it appears that the more reasonable position would be to adopt the interpretation of the department Congress authorized to oversee such matters, instead of requiring Congress to legislate on the issue directly. Moreover, this Court made the same determination in its holding in *Auer*. Consequently, asking this Court to adopt the position espoused in Justice Hoffman's dissent would be to ask that this Court contravene its own previous ruling and upend its own long-standing precedent.

In summation, the position adopted by Petitioner, Justice Hoffman in his dissent and the Fifth Circuit is contrary to the overwhelming weight of appellate precedent across the Second, Fourth, Sixth, Seventh, Ninth, and Tenth Circuits, which uniformly recognize that the ADA protects individuals who are at serious risk of institutionalization. See, e.g., *Fisher*, 335 F.3d at 1181; *Pashby*, 709 F.3d at 324; *Steimel*, 823 F.3d at 914; *Dreyfus*, 697 F.3d at 735; *Waskul*, 979 F.3d at 463. To require a plaintiff to suffer actual institutionalization before they may commence a cause of action is to ask that they subject themselves to the possibility of irrevocable

harm before availing themselves of any legal remedy. Under such circumstances, it is likely that a court will not be able to remedy any harm done by the time it is able to adjudicate the matter in question. Such a position is clearly irrational, and the attendant negative policy implications of such an interpretation are manifold.

II. The Twelfth Circuit Properly Affirmed the District Court's Ruling in Granting the United States Motion to Intervene

The Twelfth Circuit was correct to affirm the district court's decision to allow the United States to intervene in instant litigation. Under the appropriate standard of review, which requires an abuse of discretion, an appellate court would have to find that the trial court either used the incorrect legal test or arrived at an obviously incorrect conclusion to reverse its decision regarding a motion to intervene. In order to meet the requirements set forth in Rule 24(a), the court must find that there is "(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 to the action." *State v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019) (quoting *Shea v. Angulo*, 19 F.3d 343, 346 (7th Cir. 1994)).

In his dissent, Justice Hoffman argues to that that the District Court was "clearly incorrect" in holding that the United States has an interest in instant litigation as is required under Rule 24(a)(2). R. at 32. Adopting the position of the Eleventh Circuit that Title II of the ADA only contemplates enforcement by individual private citizens, Justice Hoffman asserts that the United States could never have brought an action

against Defendant and therefore has no interest in the litigation that could suffice to justify intervention. According to the position expressed in the dissent, the language "qualified individual with a disability" expressed in 42 U.S.C. § 12131-32 serves a limiting function, and indicates that Congress did not intend to allow an agency or institution to bring suit under Title II. R. at 31-32.

This reading of the statutory language, however, neglects to account for the greater legislative context wherein Title II is contained. Notably, the Eleventh Circuit has already addressed this line of argumentation.

A. 42 U.S.C § 12133 Does not Preclude the United State's Intervention in Instant Matter

The Twelfth Circuit was correct to adopt the Eleventh Circuit's interpretation of 42 USC § 12133 when it affirmed the district court's ruling to grant the United State's motion to intervene. The Eleventh Circuit has stated that "the person referred to in 42 USC § 12133 is the individual who claims to have suffered discrimination. Under Title II and its supporting regulations, this individual is afforded a panoply of remedies, procedures, and rights, including the right to file an administrative complaint against any public entity that engages in discrimination—a process that may culminate in suit by the Attorney General against the public entity on the individual's behalf." *United States v. Sec'y Florida Agency for Health Care Admin.*, 21 F.4th 730, 733 (11th Cir. 2021).

As noted by the Eleventh Circuit in *Florida Agency for Health Care*, determining the scope of persons afforded remedies under Title II of the ADA is a process requiring

more than a single step. It is possible that it is for this reason that Justice Hoffman and Petitioners are confused about the implications of the statutory language.

B. Congress Intended to Allow the Department of Justice to Enforce the Americans with Disabilities Act when it Drafted the Legislation

The Eleventh Circuit succinctly elucidates the convoluted means by which Title II creates its enforcement mechanism, stating that "Congress chose to use § 505(a)(2) of the Rehabilitation Act as the enforcement mechanism for Title II of the ADA, with full knowledge that those provisions established administrative enforcement and oversight in accordance with Title VI. Congress also knew that, by adopting § 502(a)(2), it incorporated Title VI's 'any other means authorized by law' provision." *United States v. Florida*, 938 F.3d 1221, 1241 (11th Cir. 2019). With this in mind, while it is understandable that Petitioners and others arrived at an incorrect construction of Title II and its enforcement mechanism, in light of a holistic reading of the legislative history and a full appreciation of the context in which the language of Title II appears, it is difficult to arrive at any conclusion that does not permit the Attorney General to bring a suit under the provisions of Title II.

While a cursory reading of Title II may indicate that the parties authorized to bring suit under the statute are limited to individual citizens, there is an extensive body of case law that contravenes this interpretation of the statutory language. Specifically, the Eleventh Circtuit found that "the federal government may enforce compliance with the [ADA] by . . .'any []means authorized by law[,]'" up to and including "filing of an enforcement lawsuit against the public entity." *Id.* The Eleventh Circuit's opinion also notes that an interpretation of Title II's provisions

that denies the Attorney General access to its enforcement mechanisms (such as Justice Hoffman's interpretation explicated in his dissent to the Twelfth Circuit's holding in this matter) "rests on a misunderstanding of . . . the Attorney General's role in this lawsuit." *Id.* Put simply "[t]he statutory text [of 42 USC § 12133], when read in context, permits the Attorney General to sue to enforce Title II's prohibition on disability discrimination by public entities." *Id.*

C. The Inclusion of the Word "Individual" in Title II Does not Preclude the Department of Justice from Enforcing the Integration Mandate

In his dissent to the Twelfth Circuit's majority opinion, Justice Hoffman opines that "[t]he ADA's definition of "qualified individual with a disability" makes clear that it means an "individual."' R. at 33. According to this construction of the statutory language in question, Congress' use of the word "individual" should be taken to preclude the possibility of anyone but a private citizen availing themselves of the enforcement mechanisms delineated in Title II. In the words of the dissenting Justice, "[t]he word 'person' does not encompass an entire government or country." R. at 32. It is on this basis that Justice Hoffman asserts that "the district court was clearly incorrect in deciding that the United States has an interest in the subject matter of this action under Rule 24(a)(2)." R. at 33.

While Justice Hoffman's statutory construction may appear facially to be a reasonable interpretation of the plain language in 42 USC 12131, it considers neither the greater context of the statutory scheme of the ADA and Title II, nor does it properly account for the extensive body of precedent that directly contravenes such an interpretation of the statute. In explicating his position, Justice Hoffman relies on

a dissent to the Eleventh Circuit's opinion in the aforementioned *Sec'y Florida Agency for Health Care Admin*. There, Justice Newson of the Eleventh Circuit takes the position that the statutory language in Title II does not allow government agencies to bring suit for violations under its terms, asserting that the precedent relied on by the majority is much more narrow than it is portrayed, and that it only indicates that "the federal government can sue *federal-funding recipients for breach of contract.*" *Sec'y Florida Agency for Health Care Admin.*, 21 F.4th at 752.

While Justice Newsom acknowledges that Title II, considering its reference to Title IV, may imply that the statute can vest a cause of action in a governmental entity, he limits this possibility to a narrow set of circumstances wherein a federal funding recipient is in breach of some stipulated contractual terms. In other words, while Justice Newsom acknowledges that the language "any other means authorized by law" could include an action brought by the government on the behalf of a party alleging discrimination under Title II, he maintains that there is no clear legal authority allowing such intervention outside a narrow set of circumstances.

As noted by the majority, however, Justice Newsom's construction of the statutory language "adopts an interpretation that reads Title II's enforcement provision in isolation instead of reading the statutory text in context." *Id.* at 739. According to the Eleventh Circuit, when the statutory language of Title II is read in context, it becomes clear that "Congress[] . . . incorporated into Title II administrative procedures that may culminate in an enforcement action by the Attorney General." *Id.* At 740. Moreover, while other statutes "are expressly limited to addressing discrimination by

public entities that receive federal funding[] . . . Title II regulates against all public entities, with no mention of federal funding." *Id.*

While Justice Newsom's dissenting opinion may appear to be a reasonable and straightforward application of a textualist approach to statutory construction, it fails to arrive at the correct interpretation of the enforcement provisions in Title II because it fails to account for critical elements of context that can only be appreciated when the legislation is considered as a whole. While it is certainly the case that the plaining meaning of the text in any statute is the most authoritative element of statutory construction, it is also true that the plain meaning of the text can only be properly appreciated in the context of the legislation in its entirety.

D. The History and Evolution of Title II Indicate that Congress Intended Enforcement by the Department of Justice

As noted by the Eleventh Circuit, the legislative history and evolution of Title II and the ADA further bolster the position that "Congress adopted Title II . . . [to] extend[] the prohibition on disability discrimination to reach any program or activity of a state or local government, not merely those that receive federal funding." *Id.* In summation, through its analysis and refutation of Justice Newsom's dissent, the Eleventh Circuit arrived at a conclusion founded on a robust statutory construction that considers more than certain select verbiage addressed only in an isolated context. From this perspective, it is clear that the trial court did not err in its finding that Congress intended Title II to allow the Attorney General to enforce the provisions of the ADA by means up to and including a civil action.

Moreover, though Justice Hoffman claims that acknowledging United States' interest in instant matter would create "the de facto right of the United States to intervene in any case involving any regulation drafted by any federal agency[,]" such is far from the case. The limiting function that prevents these sweeping consequences asserted by Justice Hoffman is twofold. First, for an agency to intervene in a given piece of litigation pertaining to one of its regulations, the agency in question must be endowed by Congress with the power to enforce by civil action the regulation in question. Second, the litigation at-issue must be of such a nature that its disposition could impair the agency's ability to litigate in the future due to stare decisis.

As noted by the Fifth Circuit, the test to determine whether a given party's interest qualifies for purposes of Rule 24(a) is "a flexible one, which focuses on the particular facts and circumstances" inherent to the litigation in question. *United States v. Perry Cnty. Bd. of Ed.*, 567 F.2d 277, 279 (5th Cir. 1978). In this circumstance, the court's inquiry is highly individualized, and the discretion of the trial judge plays a significant role in both how the inquiry is conducted as well as its outcome. While Justice Hoffman seems to indicate that the stare decisis effect of permitting the United States to intervene in instant litigation will have drastic consequences, it is difficult to discern how such could be the case given the highly individualized nature of the inquiry at issue. The trial court found that under the specific circumstances illustrated on this record that the United States met the conditions of Rule 24(a). That does not mean that another set of facts, even if they are similar, must yield the same result. The highly flexible and individualized nature of

the Rule 24(a) inquiry means that the stare decisis implications of allowing the United States to intervene in instant litigation are narrow, not broad and sweeping as posited by Justice Hoffman.

For these reasons, acknowledging the United States' right to intervene in instant matter does not invite the sweeping consequences and negative policy implications mentioned by Justice Hoffman. Much to the contrary, as illustrated by the Sixth Circuit's holding in in *Ne. Ohio Coal. for Homeless and Serv. Emp. Intern. Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1008 (6th Cir. 2006), courts have consistently held that the impaired interest requirement stipulated in Rule 24(a) can be met if the stare decisis implications of the litigation in question could precipitate "an adverse ruling [that] could hinder the State's ability to litigate" collateral issues in the future. *Ne. Ohio Coal. for Homeless & Serv. Employees Intern. Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1007 (6th Cir. 2006). If such a holding had the sweeping collateral consequences Justice Hoffman warns of in his dissent, one would assume the effect would be evidence in the jurisdictions that adopt the Sixth Circuit's approach.

The Third Circuit has reached the same conclusion regarding Rule 24(a), finding that the impaired interest "factor may be satisfied if, for example, a determination of the action in the applicants' absence will have a significant stare decisis effect on their claims" in future litigation. *Brody By & Through Sugzdinis v. Spang*, 957 F.2d 1108, 1123 (3d Cir. 1992). Therefore, because the United States' has an interest in instant litigation via stare decisis, and because the original Plaintiff has interests

that "diverge sufficiently that the . . . [Plaintiff] cannot devote proper attention to the applicant's interests" with respect to instant litigation, the trial court acted appropriately when it allowed the United States to intervene in the suit at-issue. Id. Accordingly, because the trial court used the correct legal test to rule on the United States' Rule 24(a) motion, and because the trial court's application of that test was not plainly erroneous, it would be improper for this court to overturn the trial courts well-considered ruling on this matter.

III. The District Court's Order Does Not Require a "Fundamental Alteration" of the State of Franklin's Services and is a Reasonable and Necessary Remedy to Correct a Systemic Violation of the ADA

The petitioners will likely argue that the district court's order requires a "fundamental alteration" of the State of Franklin's mental health services. However, this argument is without merit. The Supreme Court established a high bar for this affirmative defense in *Olmstead*, which the State of Franklin has failed to meet. The relief granted by the district court is not a radical change to the State's programs; instead, it is a necessary and reasonable modification to remedy a systemic failure to provide services in the most integrated setting, as required by the ADA. This demonstrates a choice by the petitioners not to provide the necessary services, not an inability to do so.

A. The Requested Relief is a Reasonable Modification, Not a Fundamental Alteration

The ADA requires public entities to make "reasonable modifications" to their policies, practices, or procedures to avoid disability discrimination, unless the public entity "can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." *Olmstead*, 527 U.S. at 592 (citing 28

C.F.R. § 35.130). The petitioners may argue that the required changes, such as reopening facilities and reinstating inpatient programs, constitute a fundamental alteration based on financial hardship. This argument fails for multiple reasons.

First, the State's own record demonstrates that it has the financial capacity to make these changes. While the State previously closed two community mental health facilities for budgetary reasons, the record shows that the Franklin legislature increased the Department of Health and Social Service's budget by five percent in 2021. (Amended Problem, pg. 16). The petitioners' likely assertion that this increase is insufficient to counteract the previous twenty percent cut is a red herring. As the Tenth Circuit recognized in a similar case, the fundamental alteration defense is not an excuse for a "financial crisis" alone. *Fisher*, 355 F.3d at 1182. If every modification requiring an "outlay of funds were tantamount to a fundamental alteration, the ADA's integration mandate would be hollow indeed." *Id.* at 1183. The issue is not the absolute value of the budget, but rather the petitioners' choices in allocating the funds they have. The fact that the State has not utilized the new funds to re-open the facilities or reinstate the inpatient programs demonstrates a choice by the petitioners not to provide the necessary services, not a genuine inability to do so. A state that consciously withholds funds that could remedy an ADA violation cannot then claim financial hardship as an affirmative defense against that violation.

Second, the requested relief does not fundamentally change the State's existing services. The State of Franklin already operates hospitals and at least one community mental health facility, which confirms that it provides a range of mental health

services. R. at 14. The district court's order does not seek to impose a new service on the State; it simply requires that the services the State already provides be administered in compliance with federal law by providing care in the "most integrated setting appropriate to the needs of qualified individuals with disabilities." See 28 CFR § 35.130(d). As the *Fisher* court noted, the central inquiry is whether a requested service is within the nature of the program, not whether the state has an absolute duty to provide it. *Fisher*, 335 F.3d at 1183. Furthermore, the Sixth Circuit in *Waskul v. Washtenaw County Community Mental Health*, 979 F.3d 426, 464 (6th Cir. 2020), rejected a similar fundamental alteration defense, finding that a flawed budget methodology that resulted in underfunding did not justify the state's claim. The district court's order is fully consistent with the State's existing practices and is a more effective and humane way to provide mental healthcare.

B. The State of Franklin's Current System is Not a "Comprehensive, Effectively Working Plan" as Required by *Olmstead*.

The *Olmstead* Court provided a clear standard for states seeking to defend against claims of undue institutionalization. A state could meet the reasonable-modifications standard by demonstrating that it had a "comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace." *Olmstead*, 527 U.S. at 605-06. The State of Franklin has failed to meet this standard.

The facts demonstrate that the State's system is neither comprehensive nor effectively working. The closure of two facilities and the elimination of the sole inpatient program at its remaining community center have left the majority of

Franklin's citizens more than two hours away from an appropriate treatment facility. R. at 15. Furthermore, the record demonstrates that the State's failures resulted in two plaintiffs being institutionalized for years after their own physicians determined that they were ready for community-based care. (Amended Problem, pg. 12-15). These facts demonstrate that the current system in the State of Franklin is not "effectively working," and that the State lacks a waiting list that moves at a "reasonable pace." *See Olmstead*, 526 U.S. at 605-06.

The district court's order requiring the State of Franklin to correct its violations of the ADA is not a fundamental alteration of its services. It is a necessary and reasonable remedy to a long-standing, systemic problem caused by the State's failure to maintain a comprehensive and effective system of care. For the foregoing reasons, the respondents respectfully request that this Court affirm the judgment of the district court.

CONCLUSION

This Court should AFFIRM the Twelfth Circuit's holding that individuals who face an increased risk of institutionalization can maintain a cause of action under Title II of the ADA. Moreover, this Court should also AFFIRM the Twelfth Circuit's holding that the district court did not abuse its discretion when it allowed the United States to intervene in instant litigation under Federal Rule of Civil Procedure 24(a). Both positions adopted by the Twelfth Circuit are supported by case law from the

majority of the Federal Circuit Courts, and both positions clearly align with the intent of Congress when it passed the relevant legislation.

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Respectfully submitted,

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ATTORNEYS FOR RESPONDENT