**No. 25-140**

IN THE

# Supreme Court of the United States

THE STATE OF FRANKLIN DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET. AL.,
*Petitioners*

v.

SARAH KILBORN, ET. AL.,
*Respondents*

and

THE UNITED STATES OF AMERICA.,
*Intervenor-Respondents*

*On Writ of Certiorari to the United States Court of Appeals for the Twelfth Circuit*
*Chief Judge OKPARA and Circuit Judges HOFFMAN and PARKS*

## BRIEF FOR PETITIONERS

Team 3422

*Counsel for Petitioners*

September 09, 2025

## QUESTIONS PRESENTED

1. Whether Title II of the Americans with Disabilities Act, consistent with statutory text and Supreme Court precedence, requires proof of actual exclusion, denial, or discrimination to maintain a claim, thereby foreclosing speculative allegations based merely on a hypothetical risk of future institutionalization or segregation?

2. Can the United States, through the U.S. Attorney General, intervene in an action brought under Title II of the Americans with Disabilities Act, when the plain language of the statute coupled with clear congressional intent points to the exclusion of the government from bringing such an action on its own—and when it has no legally cognizable interest in the original action?

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## STATEMENT OF THE CASE

**Factual Background**. Plaintiffs Sarah Kilborn (herein "Kilborn"), Eliza Torrisi (herein "Torrisi") and Malik Williamson (herein "Williamson") each have mental health disorders, namely bipolar disorder and schizophrenia respectively. (R. 12) Each Plaintiff has their own individual history of institutionalization. *Id*.

Kilborn and Torrisi were both diagnosed with bipolar disorder and given medication to treat related symptoms. (R. 12, 14) Kilborn voluntarily admitted herself to Southern Franklin Regional Hospital and was subsequently discharged. (R. 12) Kilborn later electively re-admitted herself. *Id*. Torrisi was admitted to Newberry Memorial Hospital. (R. 14) Both hospitals used by Plaintiffs are funded by the State of Franklin. (R. 12, 14) While being treated at their respective facilities, Kilborn and Torrisi's treating physicians recommended that they could benefit from being transferred to a community mental health facility but neither required this transition to receive adequate treatment. (R. 13-14) For context, community mental health facilities provide the same services to its patients as state-funded hospitals with the exception that it offers some integration into the community. *Id*. Both Kilborn and Torrisi declined the option of receiving services at the nearest community centers, choosing instead to remain where they were for personal reasons, including a preference not to travel. *Id*. Each plaintiff received the inpatient care required to stabilize their conditions and were eventually discharged once their physicians determined they had improved, demonstrating they obtained the treatment needed without transfer to community-based facilities. *Id*. Later, both Kilborn and Torrisi returned to the hospitals where they received additional care and were later discharged. *Id*.

Williamson was diagnosed with schizophrenia and has received mental health treatment at Franklin State Hospital, another state-funded facility. (R. 14-15) Williamson's treating physician,

likewise, recommended, but didn't require, a transition into a community mental health facility. (R. 15) However, in a similar fashion, Williamson chose to forgo this recommendation to transfer to the nearest facility due to personal preferences of location distance from home. *Id*. Williamson continued to receive optimal care at Franklin State Hospital and was later discharged after a recognized improvement. *Id*.

Notably, none of the Plaintiffs have been required, nor have electively chosen, to be institutionalized in recent years. (R. 13-15) Kilborn has not been institutionalized since 2021, Torrisi since 2022, and Williamson since 2021. It has been more than three years since any Plaintiff has been institutionalized. *Id*.

The State of Franklin (herein "State") hosts a population of almost 700,000 people in approximately 99,000 square foot miles, making it one of the largest states by landmass in the country. (R. 15) A vast majority of the residents are sparsely separated from one another, given geographical size making the central location of state-funded facilities far from most citizens. *Id*. Due to a twenty percent budgetary cut, the State of Franklin Department of Health and Social Services (herein "Department") was forced to make the difficult decision to close two of its community mental health facilities—located in Mercury and Bronze—in 2011. *Id*. Unfortunately, the inpatient treatment program at a state-funded hospital in Platinum Hills was also cut because it served the fewest people while simultaneously being the most expensive program to operate. *Id*. While the state legislature has increased funding for the Department of Health and Social Services by five percent, the programs and facilities will not re-open due to expense concerns. *Id*.

**Procedural History.** Plaintiffs brought this action in 2022 against the State of Franklin Department of Social and Health Services, alleging that they have been discriminated against, in violation of Title II of the Americans with Disabilities Act (herein "ADA"), by the State. (R. 2)

According to Plaintiffs' allegations, they are "at-risk" of institutionalization and claim that if they were institutionalized, at some point in the unknown future, they will be separated from other similar patients and the public due to their preferences to not travel to the state-funded community mental health facility. *Id*.

Following the commencement of this action, the United States Department of Justice Civil Rights Division undertook a review of the state's department and subsequently the Attorney General (herein "the United States") filed a motion to intervene on behalf of the Plaintiffs. *Id*. The United States' proposed complaint mirrors the Plaintiffs' allegations in nearly every aspect. *Id*. The only nominal difference is that the United States merely tacks on a request for broader relief for all future plaintiffs. *Id*. The State opposed the intervention, explaining that the United States has no statutory authority to bring a claim under the ADA and thus has no legitimate stake in the action that could justify its intervention. *Id*.

## SUMMARY OF THE ARGUMENT

This Court should reverse the District Court's decision to allow the United States to intervene in the original action, reverse the District Court's grant of summary judgment in favor of the Respondents and Respondent-Intervenor, and reverse the judgment of the Twelfth Circuit Court of Appeals affirming the District Court's decisions. These decisions should be reversed for the following reasons: (1) Respondent's lack sufficient legal grounds to file suit under Title II of the Americans with Disabilities Act ("ADA") because a hypothetical risk of future institutionalization does not adhere to the plain language meaning of explicit terms of the ADA and offends congressional intent, nor is the Department of Justice's guidance document entitled to deference by this Court under its decision in *Loper Bright Enter. v. Raimondo*, and allowing claims for speculative risks to proceed will fundamentally alter state-funded mental health services; (2) The United States cannot intervene in the original action because it contravenes the plain language meaning of the term 'person' under the ADA while simultaneously undermining clear congressional intent, and the United States lacks a legally cognizable interest in the Plaintiffs' claims to justify their prejudicial intervention.

## ARGUMENT AND AUTHORITIES

### I. RESPONDENTS LACK LEGAL BASIS FOR THEIR CLAIMS, THE DOJ'S GUIDANCE DOCUMENT WARRANTS NO DEFERENCE , AND RESPONDENTS DEMANDS WOULD FUNDAMENTALLY ALTER STATE MENTAL HEALTH SERVICES.

The legal question of whether individuals merely at risk of institutionalization can pursue a claim under Title II of the ADA will be reviewed de novo, as "[t]his [C]ourt reviews the district court's findings of fact for clear error and legal determinations" under the same standard of review. *See U.S. v. Miss.*, 82 F.4th 387, 391 (5th Cir. 2023).

#### A. This Court Must Adhere to the Statutory Text of the Americans with Disabilities Act, Which Precludes Claims Based on Hypothetical Risk and Forecloses Deference to the DOJ's Unsupported Guidance.

The statutory text of Title II of the ADA does not support Respondent's claims as "at-risk" individuals. "Courts must follow the language Congress has enacted; [it] may not enhance the scope of a statute because [it] think[s] it good policy or an implementation of Congress's unstated will." *Miss.*, 82 F.4th at 393.

##### 1. The Plain Language of The Statute Does Not Provide Respondents with A Cause of Action.

The statutory text of Title II of the ADA leaves little to the imagination, and the Respondents do not have a cause of action as "at-risk" individuals. The guideline language laid out by Congress is clear: "[N]o 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. The operative terms—**excluded**, **denied**, and **subjected**—must be interpreted in accordance with their plain meaning, which refers to state actions that have actually occurred; not the prospective risks Respondents would have this Court accept.

The plain meaning rule of statutory interpretation dictates that when the plain meaning of the text is clear, then no further inquiry is needed. *In re Phila. Newspapers, LLC*, 418 B.R. 548, 559 (E.D. Pa. 2009), *aff'd*, 599 F.3d 298 (3d Cir. 2010), *as amended* (May 7, 2010). The plain meaning rule requires courts to read statutes in their "ordinary and natural sense" in order "to avoid making policy choices when intent of Congress is expressed in language of statute." *Id*. Courts have consistently relied on the plain meaning of the statutory text when interpreting congressional intent. *See U.S. v. Ron Pair Enter., Inc.*, 489 U.S. 235, 241 (1989) ("The task of resolving the dispute over the meaning of [the statute] begins where all such inquiries must begin: **with the language of the statute itself**."); *Farr v. U.S.*, 990 F.2d 451, 455 (9th Cir. 1993) ("In so doing we follow the usual rule of statutory construction . . . [w]e must follow the plain meaning of those words.")

The plain language of the text forecloses claims based on potential future harm using past tense—"excluded", "denied", and "subjected"—making it clear that it is intended to target actual harm. The Fifth Circuit, in *United States v. Mississippi,* correctly interpreted the plain language of 42 U.S.C. § 12132, emphasizing that a hypothetical risk of institutionalization is not enough to trigger a violation of the statute. *See id.* at 387. This Court, in *Olmstead v. L.C. ex rel. Zimring*, has recognized that "[t]he statute as a whole is intended 'to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.'" 527 U.S. 581, 589 (1999). The use of verb tense plays an important role in statutory interpretation and application. The Eleventh Circuit reasoned that, "Congress' choice of verb tense can be significant in discerning a statute's meaning." *Turner v. U.S. Atty. Gen*., 130 F.4th 1254, 1260 (11th Cir. 2025). This was not an isolated recognition, however, as this Court pointed out that "A statute's 'undeviating use of the present tense' is a 'striking indic[ator]' of its 'prospective orientation.'"

*Carr v. U.S.*, 560 U.S. 438, 449 (2010). It seems counterintuitive that the reasoning applied in *Carr* would apply only to statutes that utilize present tense language and not apply the same principle to past tense. Therefore, applying this plain meaning rule articulated by this Court to the statutory language of Title II would eliminate any argument that Respondents may have regarding the potential ambiguity of Title II, as well as the integration mandate, given that it utilizes a similar structure using the term "administer," a present tense verb. 28 C.F.R. § 35.130(d).

The Eighth Circuit asserted that when interpreting statutes such as this, which are straightforward and clear, "legislative history and policy arguments are **at best** interesting, at worst distracting and misleading, and in neither case authoritative." *N. States Power Co. v. U.S.*, 73 F.3d 764, 766 (8th Cir. 1996) (emphasis added). Not only does the statutory text fail to support Respondent's position, but unlike the parties in *Olmstead*, Respondents here face no risk of institutionalization. In *Olmstead*, the plaintiffs were diagnosed with schizophrenia and a personality disorder, respectively, and were institutionalized. 527 U.S. at 581. While seeking care in a community-based center, the parties filed suit against the State under Title II of the ADA. *Id*. Crucially, this Court held that:

> [U]nder Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.

*Id*. at 607. The *Olmstead* case is factually distinguishable from the instant case. Unlike in *Olmstead*, Respondents here were not institutionalized at the time of filing. *Id*. at 593-94; (R. 12-15)

Respondents Sarah Kilborn, Eliza Torrisi, and Malik Williamson all suffer from mental health disorders. (R. 12-15) They each share a history of receiving inpatient treatment from the

Petitioner, the State of Franklin Department of Health and Social Services. *Id*. The Respondents would like this Court to believe that a history of institutionalization means they have a high likelihood of being re-institutionalized. (R. 2) Even assuming so, *arguendo*, it is not a sufficient basis for a discrimination claim under 42 U.S.C. § 12132, based on the plain text of the statute. Quantifying the nature of a person "at-risk" of institutionalization is also troublesome for the Respondent's argument. If the State were required to open a community-based mental health facility, for the sake of convenience, to everyone "at-risk" of institutionalization, where would the line be drawn? The term "at-risk," given the broad definition the Respondents are attempting to enforce, has the potential to extend to every person in the State. This could manifest in the State being required to open a center on every street corner within Franklin, due to the sparse population and large geographical area of the state, because of the Respondent's contention of driving distance. The Respondents' claim is further undermined by the undisputed fact that none of the Respondents has been institutionalized within the last three-and-a-half years, with the most recent release being Torrisi's in January 2022. (R. 12-15)

The Respondents assert to this Court that they are "at risk" of future institutionalization, and therefore, would be subject to segregation and discrimination by not being treated at a community-based mental health facility within the State of Franklin. (R. 2) However, the Respondent's claim fails as a matter of law given the plain language interpretation of the statute. *See Supra* I. This Court should heed the Fifth Circuit's holding in *United States v. Mississippi*, that the ADA does not frame discrimination as based on a potential or future risk to individuals with disabilities. 82 F.4th at 393. The court astutely recognized that "[n]othing in the text of Title II … suggests that a **risk of institutionalization**, without actual institutionalization, constitutes actionable discrimination." *Id*. at 392 (emphasis in original). In *Mississippi*, the United States

investigated the mental health system of the state, *sua sponte,* without any reported incidents of discrimination. 82 F.4th at 389. During the investigation, interviews were conducted, and reports were produced to compare community-based mental health centers in Mississippi with those of other states. *Id*. Similarly to the investigation, "the federal government charged that due to systemic deficiencies in the state's operation of mental health programs, every person in Mississippi suffering from a serious mental illness was *at risk* of improper institutionalization in violation of Title II." *Id*. The Fifth Circuit held that it refused to follow suit with other courts, namely the Tenth Circuit in the case of *Fisher v. Oklahoma Health Care Authority*, which chose to cast aside the plain language that the statute provides, and wrongly concluded that neither the implementing regulations nor the statute itself barred a claim based on speculative risk of institutionalization. *Id*. at 392 (citing *Fisher v. Okla. Health Care Auth.,* 335 F.3d 1175, 1181 (10th Cir. 2003)). The court held that the Tenth Circuit's reasoning "gets statutory interpretation exactly backwards," and the Petitioners in this case agree. *Id*.

The Fifth Circuit cites *Olmstead* by pointing out that the respondents were **currently** institutionalized at the time of filing. Therefore, a claim for future institutionalization is not warranted by the statute nor endorsed by the *Olmstead* Court. *Id*. at 394. The Petitioner concedes that while some circuits have permitted claims of those who are "at-risk," Justices Thomas and Scalia's dissents in *Olmstead* and the Fifth Circuit have outright rejected this position. *Id*. at 394; *Olmstead*, 527 U.S. at 621 (Thomas, J., dissenting). The dissent notes that, "the vague congressional findings upon which the majority relies simply do not suffice to show that Congress sought to overturn a well-established understanding of a statutory term (here, 'discrimination')", which is not unlike the argument we are faced with here. *Id*. The dissent emphasizes the need to adhere to the established definition provided by the ADA, rather than expanding it to include

institutional isolation without clear statutory support. *Id*. This Court should follow suit, adhere to the language of § 121321, and therefore find that Congress's choice in past tense verbiage limits actions under this provision to those who are **currently** or have **been** institutionalized.

This Court established in *Abbott Laboratories et al. v. Gardner*, 387 U.S. 136, 149 (1967) a test to discern whether a case was ripe for judicial review, which was broken into two main prongs: (1) evaluation of the fitness of the issues for judicial decision, and (2) the hardship to the parties if the court were to withhold their consideration. "Ripeness is peculiarly a question of timing' and is governed by the situation at the time of review, rather than the situation at the time of the events under review." *Anderson v. Green*, 513 U.S. 557, 559 (1995) (per curiam). As to the first prong, a case is deemed fit when no further factual development is needed, making purely legal questions the strongest candidates for review. *See Iowa League of Cities v. E.P.A.*, 711 F.3d 844, 867 (8th Cir. 2013). The Respondents' case hinges entirely on speculation about their potential future institutionalization. It has been consistently held, including by this Court, that cases hinging on speculative or contingent circumstances are not ripe for review. *Trump v. N.Y.*, 592 U.S. 125 (2020) ("[R]equirement for ripeness, that the case not be dependent on contingent future events"); *Texas v. U.S.*, 523 U.S. 296 (1998) ("A claim resting upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all,' is not fit for adjudication"); *Sierra Club v. Yeutter*, 911 F.2d 1405, 1419-20 (10th Cir. 1990) ("The contingency of any harm . . . makes this case indistinguishable from other cases where the Court had found ripeness lacking").

Regarding prong two, hardship examines whether the party requesting review would suffer an **immediate** burden if the Court were to decide to withhold review. *See Abbott Laboratories*, 387 U.S. at 152 (emphasis added). Respondents cannot meet this standard. Their asserted hardship relies entirely on the unavailability of community-based treatment facilities in Franklin, a

condition that reflects broader policy decisions rather than a concrete harm. This Court has held that claims based solely on speculative future events do not establish hardship for the purpose of ripeness. *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 416 (2013) ("[R]espondents cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending"). Respondents claim falters under both *Abbott* prongs. Because ripeness demands actual, cognizable controversy, not speculation about possible future events, the Court should decline to entertain the unripe claim.

Accordingly, this Court should decline to extend the protections afforded by Title II to Respondents whose claims rely entirely on a speculative risk of institutionalization, absent any actual discriminatory act. Allowing such a claim to survive would depart from the plain meaning of the statute and undermine the carefully considered structure established by Congress. The ADA's statutory framework demands strict adherence to its explicit terms, which safeguard against actual discrimination, rather than hypothetical risks. Congress's deliberate language and verb tense in Title II do not allow for creative interpretation. The statute's command is clear, and this Court must enforce it as written.

**2. The Department of Justice's Guidance Document Should Not be Afforded Deference.**

The Respondents have failed to identify any statutes, regulations, or Supreme Court precedent that could support them as "at-risk" individuals under Title II of the ADA. Short of any legal authority with actual substance, the Respondents have resorted to relying on a single guidance document drafted by the Department of Justice ("DOJ") that the Court referenced in *Olmstead*. 527 U.S. 581; (R. 18-19) The *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.*, produced by the DOJ, relies on mere assertion, rather than any apparent legal authority or

precedent[1] that those at risk of institutionalization can maintain a claim under Title II of the ADA.[1] With no persuasive value to speak of or ambiguity entitled to deference, the Respondents rely on wishful thinking rather than statutory interpretation. The responsibility of interpretation falls squarely with this Court, and with a qualified reading of Title II, individuals at mere risk of institutionalization are not entitled to maintain a claim.

To that end, courts assess whether an agency guidance document is entitled to deference apply specific legal frameworks, depending on the type of deference sought. This Court has held that, "a court should not afford *Auer* deference unless the regulation is genuinely ambiguous." *Kisor v. Wilkie*, 588 U.S. 558, 574 (2019). More recently, this Court determined in *Loper Bright Enter. v. Raimondo* that, "[a] statutory ambiguity does not necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question." 603 U.S. 369, 372 (2024). Further, there is the potential implication of deference under *Skidmore*, which considers "the validity of its reasoning, 'which would give it power to persuade, if lacking power to control.'" *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

To be entitled to deference under this Court's holding in *Kisor*, the DOJ guidance document must satisfy the specific criteria articulated in *Auer v. Robbins*, 519 U.S. 452 (1997). *See Kisor v. Wilkie*, 588 U.S. 558, (2019). It is important to note that *Auer* deference is not automatic; the framework requires that, "[f]irst and foremost, a court should not afford *Auer* deference unless, after exhausting all the 'traditional tools' of construction . . . the regulation is genuinely **ambiguous**," and secondly, the "agency's reading must fall 'within the bounds of reasonable interpretation.'" *Kisor*, 588 U.S. at 559-74 (emphasis added). Presumptively, the DOJ's guidance

[1] https://www.ada.gov/resources/olmstead-mandate-statement/

document is the agency's attempt to interpret the regulations of the ADA, and therefore, the Respondent's feeble effort to provide persuasive authority to this Court to support their claim.

The first requirement recognizes that genuine ambiguity of the regulation must be present, which is determined through analyzing, "the text, structure, history, and purpose of a regulation." *Id*. at 559. As previously qualified, it is a stretch for Respondents to assert that Title II allows them to maintain a claim under the regulation—given the plain language of the statute, and the fact that the statute lacks any reference to the idea that "at-risk" individuals are encompassed in the statute. *See generally* 42 U.S.C. § 12132. Further, and as discussed previously, the statutory text, which exclusively uses past tense verbs, further undermines any arguments the Respondents may have for ambiguity, indicating that only actual, not hypothetical harm, is actionable. Courts follow the presumption that Congress is intentional with its language choices. *See Connecticut Nat'l Bank v. Germain,* 503 U.S. 249, 253-54 (1992) ("[C]ourts **must** presume that a legislature says in a statute what it means **and means in a statute what it says** there.") (emphasis added).

Even if the Court were to determine that there was a case of genuine ambiguity here, "the agency's reading must still fall 'within the bounds of **reasonable** interpretation.'" *Kisor*, 588 U.S. at 559 (emphasis added). With that said, it pushes beyond the bounds of reasonableness for the DOJ to make bare assertions without citing any legal authority to support their claim that the, "ADA and the *Olmstead* decision extend to persons at serious risk of institutionalization or segregation."[2] Having already addressed this deficiency, it seems repetitive to point out that nowhere in the text of either the ADA or *Olmstead* is there any explicit (or even implicit) mention that those who are self-imposed "at-risk" individuals should be extended the same ability to support a claim of discrimination. *See generally* 42 U.S.C. § 12132. To assert otherwise is not

[2] Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.,* https://archive.ada.gov/olmstead/q&a_olmstead.htm

only unreasonable, but also unsupported and borderline offensive. *Beasley v. O'Reilly Auto Parts*, 69 F.4th 744 (11th Cir. 2023) ("[J]udicial decisions cannot make law beyond the facts of the cases in which those decisions are announced.")

Secondly, the guiding document states that, "[i]ndividuals need not wait until the harm of institutionalization or segregation occurs or is imminent." *Statement of the Department of Justice.* The guiding document does not consider the burden this assertion would place on States such as the Petitioner in the instant case, who are faced with an overburdened, underfunded mental health system. (R. 15-16) As previously noted, the State of Franklin has ultimately faced a fifteen percent budget cut that forced the State to close two facilities and slash community-based care at another. (R. 15-16) Treating risk alone as actionable would impose open-ended duties on already overburdened state systems. Through this analysis, it's clear that neither of the threshold requirements of *Kisor* has been met, rendering deference under the framework inappropriate.

This Court's decision in *Loper Bright*, which overturned the framework for deference under *Chevron*, held that "[c]ourts interpret statutes, no matter the context, **based on the traditional tools of statutory construction**, not individual policy preferences." 603 U.S. at 403 (emphasis added). Accordingly, the DOJ's guiding document, which provides "guidance" based on nothing but mere assertion, cannot be responsible for this Court's interpretation of Title II, and an established canon of construction already guides the Court's interpretation. *Loper Bright* reintroduced a well-known principle—that statutory interpretation falls squarely into the responsibilities of the judiciary—and reestablished that "[a]n agency's interpretation of a statute 'cannot bind a court[].'" *Id*. The Department of Justice's statement, touted as "guidance," would be unlikely to even fall into the category of persuasive authority.

The Document's example of a claim showing risk of institutionalization from services cuts harming health or safety reveals it is based solely in policy. https://archive.ada.gov/olmstead/q&a_olmstead.htm. *Loper Bright* confirms that policy rationales cannot substitute for statutory clarity. *See generally* 603 U.S. 369. Under the traditional tools of interpretation—whether Congress has spoken directly to the issue, and whether the statute is unambiguous—this document fails to warrant deference. *See Chevron, U.S.A., Inc. v. Natural Resources Defence Council, Inc*, 467 U.S. 837, 844 (1984), overruled by *Loper Bright*, 603 U.S. 369. As outlined previously, the Respondents would be incredibly hard-pressed to prove that the DOJ's document falls under the umbrella of "reasonable," negating the need for further discussion on the matter. It is incredibly unlikely that the Respondent's attempt at deference could succeed under *Loper Bright*, and as such, this Court is bound to apply the statute consistent with the plain reading of its text.

Deference given to guiding documents under *Skidmore* is dependent on the "thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). While the Respondents may confuse the lower standard of *Skidmore* with an easy way out, ultimately, their last-ditch effort for deference will still fail.[3]

First, the requirement of "thoroughness" leaves a lot to be desired in terms of clarity. The Court noted that "thoroughness" will be "evident in [a regulatory document's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors

[3] The guidance document itself states that it is "not intended to be a final agency action, **has no legally binding effect**, and may be rescinded or modified. https://archive.ada.gov/olmstead/q&a_olmstead.htm. (emphasis added)

which give it power to persuade, if lacking power to control." *Id*. It seems less than likely that an assertion that amounts to a mere three sentences would meet this standard.

Second, the reasoning, which "means something more than deferring only when an inquiring court is itself persuaded that the agency got it right," would likely fall short in the instant case. *Tangney v. Burwell*, 186 F. Supp. 3d 45, 56 (D. Mass. 2016). Though there is a remote possibility that this Court may find itself persuaded by the bare bones assertions made by the guiding document, it seems unlikely, given the lack of authority and the plain meaning of the statutory text.

Finally, the third prong asserts that there must be consistency across all pronouncements. As has been mentioned in multiplicity, there is no precedent or statutory authority to support the DOJ's assertions that "at-risk" individuals should be afforded the capability to sustain a claim under Title II of the ADA. No evidence of consistency can be applied here, because none exists. The DOJ's document represents a novel, impermissible attempt to broaden the reach of the statute beyond what Congress intended. This position cannot merit deference under the final prong of *Skidmore*. In the end, the DOJ guidance document provides nothing more than unsupported assertions that offer no reasoning, analysis, or authority.

Title II of the ADA is silent as to whether the risk of institutionalization is a valid claim constituting discrimination and therefore should be interpreted to apply only to those who are "subjected to discrimination," not those who may possibly be at risk. *See generally* 42 U.S.C. § 12132. This Court in *Olmstead* held that a person has been discriminated against under the statute when they have been "unjustifi[ably]" institutionalized and not afforded the benefit of the most "integrated setting." 527 U.S. at 599-600. Justices Kennedy and Breyer observed the importance of being cautious when interpreting the statute due to Congress's use of "general language." *Id*. at

615 (Kennedy, J., concurring, Breyer, J. concurring). The caution of the concurrence is especially relevant here, where Congress's choice of general language cannot be stretched to manufacture rights or remedies that aren't tethered to the statutory text.

The purpose of the ADA is, "to invoke the sweep of congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities." 42 U.S.C. § 12101(b)(4). This Court recognized that, "[c]ongressional enactments in pursuance of constitutional authority are the supreme law of the land," which emphasizes the binding nature of statutory authority. *Hines v. Lowrey*, 305 U.S. 85, 91 (1938). The binding nature of statutory authority, coupled with the plain meaning of the language used in 42 U.S.C. § 121321, makes clear that Respondents have no claim against the State of Franklin merely because they have a risk of institutionalization. Even assuming that some ambiguity could be argued regarding the protections afforded by Title II, traditional canons of construction further reinforce the Petitioners' position. Under the canon of *ejusdem generis*, which dictates that, "when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed," a broad reading of the statute must still be confined to harms of the same kind as those expressly stated. *Ejusdem Generis, Black's Law Dictionary* (9th ed. 2009). Applying the plain meaning of the text is not just appropriate here; it would conform with the method used by this Court for purposes of statutory interpretation. *Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001) ("[W]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.").

Congress stated in the opening provisions of the ADA that "discrimination against individuals with disabilities persists in such critical areas as . . . institutionalization" *Olmstead,* 527 U.S. at 588. The ability for those currently institutionalized and facing discrimination to have an actionable claim is undeniably important and aligns with the intention of Congress. 28 C.F.R. § Pt. 35, App. B ("The Committee Reports make clear that Congress intended to provide a private right of action with the full panoply of remedies for individual victims of discrimination"). In line with this congressional intent, there is nothing in the language of Title II that indicates that those at mere risk of institutionalization (and risk of discrimination) should also have legal grounds to maintain a claim under the ADA. *See* 42 U.S.C.A. § 12132.

### B. The Scope of Olmstead and the ADA is Limited to Preventing Discrimination, not Overseeing Policy or Financial Decisions.

This Court in *Olmstead* held that community-based placement is required only when it is appropriate, unopposed, and can be reasonably accommodated considering state resources and the needs of others. *See generally Olmstead,* 527 U.S. 581. Consistent with 28 C.F.R. 35.130(d), the ADA does not require modifications that would fundamentally alter a public entity's programs or services. As such, Respondents claim fails because the requested modifications exceed what *Olmstead* and the ADA mandate and would impose precisely the kind of fundamental alteration that neither permit nor require.

#### 1. Respondents Fail the Third Prong of Olmstead: Community Placement Cannot Be Reasonably Accommodated Given State Resource Constraints.

This Court in *Olmstead* held that community-based placement is required: (1) "when the State's treatment professionals have determined that community placement is appropriate"; (2) "the transfer from institutional care to a less restrictive setting is not opposed by the affected individual"; **and** (3) "the placement can be reasonably accommodated, taking into account the

resources available to the State and the needs of others with mental disabilities." 527 U.S. at 587. (emphasis added).

The Petitioners recognize that Respondents Kilborn, Torrisi, and Williamson's physicians recommended that they be treated in a state-operated community mental health facility. (R. 12-15) Petitioners further acknowledge that had the Respondents been institutionalized at the time of filing, the second prong—whether the individuals do not oppose community placement—would likely have been satisfied. However, because Respondents were not institutionalized at the time of filing, there has not been an actual case of discrimination actionable under Title II.

The core issue here, nevertheless, is that these prongs now hinge upon hypothetical circumstances, as none of the Respondents are presently institutionalized. Claims under Title II cannot be supported when there is only "risk" of institutionalization–refer to *Supra* I for the full analysis. However, assuming for the sake of the argument that this Court decides that Respondents could prevail on the first two prongs, they still fail on prong three, which is the final dispositive requirement for community-based care. In *Olmstead*, this Court made clear that parties such as the Petitioners are not required to provide services that would fundamentally alter their programs or disrupt resource allocation. 527 U.S. at 582 ("[A]nd the placement can be reasonably accommodated, considering the resources available to the State and the needs of others with mental disabilities"). Both circumstances would have been present in this case. The transfer requested by Respondents would have strained an already overburdened system.

Franklin's legislature cut the budget allocated to mental health and social services by twenty percent in 2011. (R. 15) The record does not reflect the purpose behind this legislative cut, but it can be assumed there was an important purpose and that the money was required to be reallocated. With this significant reduction in the budget, the Department of Health and Social

Services was left with the task of deciding how funds would be utilized moving forward. Petitioners made the undesirable decision, but not arbitrarily, to close the Mercury and Bronze facilities, in addition to the inpatient program located in Platinum Hills. (R. 15-16) The Platinum Hills program, which Respondents now seek access to, was notably the most expensive to operate while serving the least number of people. *Id.* Reinstating that program at the behest of this claim would require a system, already stretched thin, to prioritize speculative risk over actual harm.

**2. The Fundamental Alteration Defense Bars Respondents' Claims Under the ADA's Reasonable Modification Regulation.**

Under 28 C.F.R. § 35.130(d), "[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, ***unless*** the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." (emphasis added). The integration mandate utilizes the operative word "unless" before the introduction of what is understood to be prong three of the *Olmstead* test—a word that this Court found particularly persuasive when deciding that case. *See generally Olmstead*, 527 U.S. 581. It is essential to recognize that there is no precedent set by this Court that supports claims made by "at-risk" individuals. Instead, this Court made clear these "reasonable modifications" are only necessary if they will not fundamentally alter the program or service. *Id*. Even if the Court were to determine, *arguendo*, that Respondents' claims based solely on this alleged hypothetical risk can be maintained, the claims would ultimately fail because the required modifications would fundamentally alter the Petitioners' services.

The Respondents do not have an actionable discrimination claim against the Petitioners, because the Respondents were not denied the most integrated setting (community-based care) due to discrimination, but rather because Franklin does not operate inpatient community-based care at

all, having eliminated such programs over a decade ago due to budgetary and resource constraints. (R. at 15-16) In *Olmstead*, disabled patients of Georgia sued the state for claims of segregation when they were placed in confinement. *Id*. While still under the care of the state, the Respondents were requesting that they be placed in a community-based mental health treatment program per the recommendations of their respective physicians. *Id*. at 581-582. The states' two-part defense began with their argument that, "requiring immediate transfers in such cases would 'fundamentally alter' the State's programs." *Id*. at 582. The district court remained unpersuaded by the state's defense; however, this Court gave it credence. *Id*. This defense is the position Petitioner assumes in the instant case. The State of Franklin offers community-based centers for mental health treatment, much like those found in the State of Georgia, although Franklin's centers do not provide inpatient treatment. (R. at 15) Franklin faces the distinct issue of potentially fundamentally altering its existing services by accommodating the Respondents. It is undisputed among both parties that Franklin is among the largest states in the country, and with that comes geographical challenges in providing services to such a sparsely populated area. The Respondents contend that their potential commute to the existing clinics ranges in time from two to four hours. (R. at 15-16) However, the Petitioner's defense is not that the Respondents should nevertheless make the drives to the existing centers; instead, they contend that providing specialized community-based centers to every "at-risk" individual across the state would fundamentally alter their services.

Furthermore, Respondents are requesting that the State of Franklin revive community-based centers that were dismantled due to a significant budget cut that occurred over a decade ago. *Id.* At the time of the twenty percent budget cut, Franklin operated three mental health facilities which offered community-based care—Mercury, Bronze, and Platinum Hills. *Id*. However, due to the budget constraints, the State had no choice but to close Mercury and Bronze and reduce the

operations of Platinum Hills. *Id.* Now, fourteen years later, Respondents are asking this Court to compel the Petitioners to reopen, rehire staff, and restore the most expensive program Platinum Hills ever operated, *and* reopen the Mercury and Bronze locations. *Id*. The integration mandate does not require entities to restore costly, discontinued services when doing so would only slightly cure a convenience issue for a select group of individuals. *See Supra* B(1). To complete such an undertaking would put a strain on Franklin's budget and resources for other crucial programs throughout the state, not just ADA-mandated programs. This Court held that the:

> [F]undamental-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.

*Olmstead*. 527 U.S. at 584. If the State were compelled by this Court to reopen these facilities, it would require financial reconfiguration that not only goes beyond the bounds of a reasonable modification but also has the potential to affect the care of other patients throughout the State, which would be in direct conflict with the reasonable modification's regulation. It defies logic, and certainly reasonableness, to suggest that the State of Franklin would be required to rebuild and reopen inpatient community centers, merely to achieve a proximity complaint in a state where 550,000 of the total 692,381 residents—almost 80%—live more than two hours away from existing facilities. (R. at 15) This Court acknowledged in *Olmstead* that "[t]he State is entitled to wide discretion in adopting its own systems of cost analysis, and, if it chooses, to allocate health care resources based on fixed and overhead costs for whole institutions and programs." *Olmstead*, 527 U.S. at 585. The untenable demand made by Respondents is not a reasonable modification; it would constitute a complete restructuring of the State's mental health infrastructure under the threat of non-compliance with ADA standards. Respondents are asking the Court to compel the State to rebuild expensive, low-utilization services that were eliminated as part of a budgetarily

necessary downsizing. This Court should be wary of endorsing the standard that Respondents seek—a ruling against the Petitioners here would send a signal to other States that even the most difficult budgetary decisions may be overturned if an individual is merely at risk of institutionalization or demands a specific type of care and is more than thirty minutes away from the nearest facility. Additionally, forcing Petitioners to accommodate this unreasonable request would divert already limited funds from other state-funded programs to meet this expectation. This will deprive other citizens of state-funded facilities and health care programs. The ADA was designed to protect individuals with disabilities from actual discrimination, not to force states to restructure their entire public health systems to suit speculative risks and convenience complaints. In short, the modification requested is not a modification at all. It is a request for a judicial mandate to reallocate limited state funding and resources, redirecting funds to reinstate a service that served the fewest individuals. This is the very essence of fundamental alteration.

Respondents' claims fail under the statute, under deference doctrines, and under Olmstead's fundamental-alteration principle. Even setting aside the legal flaws found under this issue, Respondents still cannot prevail when turning to issue two: whether the United States has any interest relating to the subject matter of this litigation.

## II. THE UNITED STATES CANNOT FILE SUIT UNDER THE ENFORCEMENT PROVISION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT.

This Court should deny the United States' motion to intervene as Title II of the ADA does not grant the United States, a governmental entity, the power to sue the State of Franklin Department of Social and Health Services. Further, the United States lacks the "unique" interest relating to the subject matter of the action required under Federal Rule of Civil Procedure 24(a)(2) ("FRCP 24") to intervene. Lastly, the United States is also unable to file suit through permissive

intervention, governed by FRCP 24 (b), because intervention would unnecessarily prejudice and delay the parties in the original action.

In cases where intervention as of right was granted, this Court has not decided which standard of review is appropriate. *See* 2 Moore's Manual: Federal Practice and Procedure, § 14.124[5][b]. The lower court incorrectly applied abuse of discretion, which is appropriate for issues of fact, like determining the truth of the events surrounding a claim. (R. 25) However, the analysis required under intervention as of right determines whether a parties' claims are central to the case, meaning the court interprets the law based on *established facts* to decide if the motion should be granted. *Madison HMA, Inc. v. St. Dominic-Jackson Memorial Hosp.*, 35 So.3d 1209, 1215 (Miss. 2010). The decision rests on the interpretation of FRCP 24 (a)(2), and "is not a fact-intensive one on which the district court would enjoy a comparative advantage." *Id.* at 748. Therefore, the only appropriate standard of review is de novo. Under the de novo standard, the lower court's decision is reviewed without judicial deference "because the lower court has no comparative advantage in resolving legal questions and settled appellate precedent is of crucial importance in establishing a clear, uniform body of law." *In re Adoption of Baby B.*, 308 P.3d 382, 393 (Utah 2012) (applying the FRCP). The de novo standard of review has been consistently applied in the majority of federal circuit cases in issues of intervenor. *See NW. Forest Resource Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996); *Alameda Water & Sanitation Dist. v. Browner*, 9 F.3d 88, 90 (10th Cir. 1993); *Sierra Club v. Robertson*, 960 F.2d 83, 85 (8th Cir. 1992); *U.S. v. Tex. E. Transmission Corp*., 923 F.2d 410, 412 (5th Cir. 1991); *Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir.1989); *Walters v. City of Atlanta*, 803 F.2d 1135, 1151 n. 16 (11th Cir. 1986); *Cook v. Boorstin*, 763 F.2d 1462, 1468 (D.C.Cir. 1985).

Therefore, the district court utilized the incorrect standard in granting the United States' motion to intervene under FRCP 24 (a)(2) and this Court should review this issue de novo.

### A. The Text and Context of the Enforcement Provision of Title II of the Americans with Disabilities Act does not Authorize the United States to File a Lawsuit and to do so Offends Principles of Federalism.

The United States, though they may attempt to be classified as a "person" under Title II of the ADA for the sake of maintaining their claim, is a governmental entity. The enforcement provision of Title II provides that, "remedies, procedures, and rights set forth in [Section 505 of the Rehabilitation Act which, in turn, references Title VI of the Civil Rights Act] shall be the remedies, procedures, and rights this subchapter provides to any **person** alleging discrimination on the basis of disability." 42 U.S.C. § 12133 (emphasis added).

While Title II does not explicitly define "person" for enforcement, the plain language of the statute and this Court's precedent of interpreting statutes at face value demonstrate that Title II clearly did not authorize the United States Attorney General to file suit. When interpreting the meaning of a statute, this Court has repeatedly emphasized that the plain meaning of the words must be adhered to because, "[t]he legislature must be presumed to use words in their known and ordinary signification[.]" *Levy's Lessee v. McCartee*, 31 U.S. 102, 108 (1832). The ordinary meaning of "person" is an individual human being, distinguishable from the ordinary meaning of the United States government, known as a "federal republic," not one individual person. *Person*, *Black's Law Dictionary* (9th ed. 2024). Therefore, the court must apply the plain meaning of the word "person" to mean an individual human being. Further, Title II's own definition of "individual" corroborates the legislative intent to exclude the United States from the definition of person. Title II defines a "qualified *individual* with a disability" plainly as "an individual with a disability[.]" 42 U.S.C. § 12131(2). This definition fails to include any mention of "a federal republic" or any language that would lead this Court to apply another erroneous definition. *Id.* The

plain meaning of the provided text of the ADA demonstrates the United States is not a person for purposes of the enforcement provision.

This Court has found that there is a "longstanding interpretive presumption that 'person' does not include the sovereign." *Vt. Agency of Natural Res v. U.S. ex rel. Stevens,* 529 U. S. 765, 780–781 (2000); *See also U.S. v. Mine Workers*, 330 U. S. 258, 275 (1947) (holding that common usage of the word person excludes the sovereign); *U.S. v. Cooper Corp.*, 312 U.S. 600, 603–605 (1941) (finding that person excludes the sovereign when read in the statues ordinary and natural sense); *U.S. v. Fox*, 94 U.S. 315, 321 (1877) (holding person applies to natural persons not the federal government).

This assumption was reaffirmed in *Return Mail, Inc. v. U.S. Postal Service*, where this Court applied this presumption to interpret "person" to exclude the U.S. Postal Service, a federal agency, from having the authority to request reexamination of their patent under the statute at issue. 587 U.S. 618, 625 (2019). Like Title II, the patent statute in lacked a definition of "person." *Id.* at 626. This Court explained "[i]n the absence of an express statutory definition, the Court applies a "longstanding interpretive presumption that 'person' does not include the sovereign," and thus excludes a federal agency like the Postal Service." *Id.* at 627. This presumption is rooted in the "common usage" of the word person and the Dictionary Act of 1947. *Id.*; 1 U.S.C. § 1. Under the Dictionary Act, there is an "express directive of Congress" to use the provided definition of "person" by the Act when interpreting the statutory language of the ADA. *See id.* The provided definition is thorough; "person" includes "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." 1 U.S.C. § 1. Moreover, the definition **explicitly excludes** the United States, leading to the rational conclusion that the use of the term "person" in Title II does not include the United States. *See id.* Given this definition and

the precedent of this Court to exclude the government from the use of "person", the United States lacks the authority to file suit.

This presumption can only be rebutted when there is a clear alternate meaning based on the context of the statute. *Return Mail, Inc*., 587 U.S. at 627. To explore whether there is a hidden meaning in the enforcement provision, the court should examine the ADA in its entirety, examining both Title I and Title III. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself . . . and the broader context of the statute as a whole."). Unlike Title II—which excludes the United States in its enforcement provision—Titles I and III expressly give the Attorney General of the United States enforcement power. 42 U.S.C. § 12117 (a), 12188. Title I, which regulates employment discrimination, states: "The powers, remedies, and procedures set forth in ... this title ... provides to the Commission, to the *Attorney General*, or to any *person* alleging discrimination." *Id.* § 12117(a). Similarly Title III, which regulates public accommodation discrimination, provides: "[R]emedies and procedures ... to any *person* who is being subject to discrimination" and that if "such discrimination raises an issue of general public importance, the **Attorney General** may commence a civil action." *Id.* § 12188(a)(1), (b)(1)(B). Both statutes explicitly authorize the Attorney General and separately a "person" to enforce the corresponding subchapters. *Id.* § 12117 (a), 12188 (a)(1), (b)(1)(B). If the two terms were interchangeable and overlapping, as the United States would have this Court believe, it seems illogical for Congress to include both terms in the same enforcement provisions of the ADA.

This is further reinforced by the assumption, "Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another." *See Dep't of Homeland Sec. v. MacLean*, 574 U.S. 383, 391 (2015); *see also Russello v. U.S.*, 464 U.S. 16, 23

(1983). Thus, Congress's choice to reference both 'person' and 'Attorney General' in Titles I and III, yet limit Title II to 'person' alone, affirms that the Attorney General was meant to be excluded from Title II's scope. If Congress wanted to give a right of action to the Attorney General, it would have done so—as it unequivocally did so in the other related provisions. Thus, it is clear from the statutory text that Congress did not intend for the United States to be able to file suit under the enforcement provision of Title II.

Furthermore, the Federal Government's—namely the Department of Justice ("DOJ")—central role in enforcement of the ADA alone does not automatically give the United States Attorney General the authority to file suit and invalidate the clear intent of the enforcement provision. The United States argues that the enforcement provision of Title II permits their intervention because the ADA specifies that "the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities[,]" and therefore pushing that this language grants it grounds to intervene in the present suit. (R. 7); 42 U.S.C. § 12101(b)(3). The United States misinterprets this provision. While the Federal Government does play a central role in implementing Title II provisions, the Attorney General is not permitted to file. *Id*. Rather, the Attorney General's central role is "promulgat[ing] regulations" to implement Title II; nowhere is it entitled to file suit under this title. 42 U.S.C. § 12134(a).

While it may be true, that in certain instances, the Attorney General may have policy reasons to file suit under Title II, even so, the controlling law is clear: the presumption that the United States is not included in the definition of "person" prevails. This Court has explicitly held that policy concerns are insufficient to displace this presumption, even if that presumption would, "exclude the Federal Government or one of its agencies from accessing a benefit or favorable procedural device." *Return Mail*, 587 U.S. at 628. Allowing the United States to bring a cause of

action under Title II would, at a minimum, impermissibly expand its scope of delegated authority under the ADA, and, at worst, would set a precedent that agencies can disregard congressional limitations whenever policy concerns may arise. It has consistently been held that the courts cannot create a cause of action, "no matter how desirable that might be as a policy matter, or how compatible with the statute." *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001). This principle must be upheld, even against agencies, to honor legislative intent and to protect the "delicate state-federal balance" on which this country rests. *U.S. v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730, 748 (11th Cir. 2021) (C.J. Newsom, dissenting).

To allow the United States to file suit under Title II offends notions of federalism and skews the critical balance between federal and state powers. *Id.* at 758. It is well-known that "our Constitution establishes a system of dual sovereignty between the States and the Federal Government." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). This dual system is crucial to keeping stability of our country's powers between the federal government and the states, respecting both of their separate roles and preventing a potential abuse of power. *See generally id.* By allowing the United States to file suit under Title II, the District Court ignored the intent of Congress and permitted the federal government to intrude on state authority. When weighing the federal and state powers, the "federal government holds the upper hand, the wielding of its federal power against the states cannot be taken lightly or casually inferred." *Id.* at 460. A federal right to sue state governments or public entities cannot rest on mere implication, least of all "in the absence of any solid evidence that Congress intended such a result." *Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th at 758 (discussing the United States' inability to file suit under Title II). Inferring a right in this manner simply cannot be allowed. *Id.* Failure to take the federal government's upper hand seriously and lightly inferring such a right will result in unsettling consequences.

The dissent in *United States v. Secretary Florida Agency for Health Care Administration* noted that allowing the United States to file suit under Title II can coerce local public entities to decide to either "(1) to enter into settlement agreements, which not only impose monetary and resource costs but also lead to federal oversight of local policy decisions, or (2) to risk thousands (possibly millions) of dollars in litigation costs by disputing liability or terms of compliance." *Id.* at 758. This warning has unfortunately become a reality for some states, including Georgia. In *United States v. Georgia*, the state of Georgia yielded to the United States Attorney General and agreed to a settlement agreement without any admission of misconduct. No. 1:10-cv-00249-CAP (N.D. Ga. filed October 19, 2010.). This settlement agreement provided that Georgia must provide full access to personnel files; be subjected to internal reviews at Georgia's expense; and change existing policies to ones that align with federal prerogative. *Id.* Georgia is a prime example of the consequences of allowing the Federal Government to usurp state powers. If allowed to happen, the state would be subject to federal control over its own state-funded department of health. *See generally id.* The enforcement provision of Title II must be interpreted to limit the ability to file suit to individual plaintiffs and, therefore, prevent the overreach of the federal government into local public entities.

The United States argues it has the authority to file suit under Title II by broadly misapplying qualities of the Rehabilitation Act and Title VI of the Civil Rights Act. The enforcement provision of Title II of the ADA incorporates specific parts of the Rehabilitation Act and Civil Rights Act, not the entire acts: "[R]emedies, procedures, and rights set forth in [Section 505 of the Rehabilitation Act which, in turn, references Title VI of the Civil Rights Act] shall be the remedies, procedures, and rights this subchapter provides to any *person.*" 42 U.S.C. § 12133. (emphasis added).

Section 505 of the Rehabilitation Act of 1973 provides: "[t]he remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 ... shall be available to any person." 29 U.S.C. § 794a(a)(2).

In turn, Title VI of the Civil Rights act of 1964 provides: "[c]ompliance with . . . to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient . . . or (2) by any other means authorized by law. 42 U.S.C. § 2000d–1.

Put together, Title II of the ADA permits enforcement through two routes: (1) by withholding assistance to public entities that fail to comply with Title II and (2) by any other means authorized by law. *See Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th at 753. The first route applies to the DOJ and permits the withholding of federal funds to enforce Title II. 42 U.S.C. § 12133. There is no issue raised involving the termination of federal funding, which leaves the second route: "any other means authorized by law." (R. 27) In the context of Title II this route refers to a cause of action granted **exclusively** to *individual* plaintiffs in addition to the DOJ's power to introduce regulations. *Id.*; 42 U.S.C. § 12133, 12134(a). Again, this does not give the United States a cause of action.

Importantly, the statute in question is Title II of the ADA, not the Rehabilitation Act or the Civil Rights Act. It is true that the enforcement provision incorporates a piece of the Civil Rights Act in the "remedies, rights, and procedures" provision, but, that language does not incorporate the entire Rehabilitation Act or Civil Rights Act into the ADA. *See* 42 U.S.C. § 12133. If Congress had intended for the ADA to adopt every part of either the Civil Rights Act or the Rehabilitation Act—then it would have simply amended those statutes. *Shotz v. City of Plantation*, 344 F.3d 1161, 1174 (11th Cir. 2003) ("[I]t would have been far easier to amend the Rehabilitation Act to

account for the minor differences between it and [Title] II of the ADA than to insert an otherwise unnecessary [title] in the ADA itself."). Therefore, the most logical conclusion after reading Title II upon its own ground, rather than viewing it as a mere extension of those statutes, is that Congress intended for the United States to be deemed an entity, not an individual.

### B. The United States Lack a "Unique" Subject Matter Interest Required for Intervention as of Right Under Federal Rules of Civil Procedure 24(a)(2).

The FRCP 24 (a) governs when a party can intervene in an action. The court must allow a party to intervene if the party is: (1) "given an unconditional right to intervene by federal statute,' or (2) the party has a central interest that "is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest". Fed. R. Civ. P. 24(a)(1), (2). The ADA does not grant the government an unconditional right to sue; therefore, the United States can only intervene if it has a central interest in the matter through intervention as of right. *See* 42 U.S.C. § 12101. In order to intervene as of right, the United States has the burden to meet all four requirements: "(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." *Ill. v. City of Chi.*, 912 F.3d 979, 984 (7th Cir. 2019); *See also Berger v. N. Carolina State Conf. of the NAACP*, 142 S. Ct. 2191, 2201 (2022). The United States fails to satisfy their burden because it cannot show a unique interest, an impaired interest, or inadequate representation.

#### 1. Timeliness Is Not in Dispute

The District Court concluded that the United States timely filed their motion to intervene due to lack of delay because the United States the motion was filed soon after the United States became aware of its potential interest. (R. 3-5) That determination, however, does not end the

analysis. Intervention as of right requires meeting all four delineated requirements, and the United States cannot satisfy its burden for the remaining elements.

**2. The United States Lacks a Unique Interest Relating to the Subject Matter of the Action.**

The second requirement to intervene as of right requires the United States to prove unequivocally that it has an interest related to the subject matter of the underlying action. First, the United States fails to meet the most basic perquisite to intervene: "an interest relating to the property or transaction that is the subject of the action." Fed. R. Civ. P. 24(a)(2). In *Haymarket DuPage, LLC v. Village of Itasca*, the court began its analysis of the United States' proposed interest by looking to the plain text of FRCP 24. No. 22-CV-160, 2025 WL 975668 (N.D. Ill. Mar. 31, 2025). In the case, the original plaintiff sued the Village of Itasca under a Title II claim for rejecting their application to build a substance abuse treatment center in the city. *Id.* at *1. The United States moved to intervene but was denied due to lack of property or transactional stake in the underlying lawsuit. *Id.* at *6-8. There was no property interest because the United States did not own the proposed abuse treatment center nor was the plaintiff attempting to open the center on behalf of the United States. *Id.* Further, there was no transactional interest because the United States was not involved with the rejection of the application, the United States was not being compelled to do anything by the Village of Itasca, and neither of the original parties were challenging Title II. *Id*. In sum, the United States had no ties to the original claim. *See Id.* Similarly to the case at hand, the United States lacks any ties to the original claim. Nothing in the record indicates that the United States owns any property associated with the Franklin Department of Social and Health Services ("FDSHS"), is being compelled or restricted by FDSHS in any way, is being represented by FDSHS, or that FDSHS is challenging the application of Title II.

Second, the United States fails to show more than a derivative interest by basing their motion to intervene solely on the original plaintiffs' claims and a broadened demand for relief on behalf of all future plaintiffs. (R. 9) The subject matter interest must be "unique," meaning that it "belong[s] to the would-be intervenor in **its own right**, rather than derived from the rights of an existing party." *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023) (citing *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 798 (7th Cir. 2019)) (emphasis added). This Court in *Donaldson v. United States,* held that what constitutes a "unique interest" is a high bar; it is not just a borrowed interest in the suit, but a standalone "significantly protectable interest." 400 U.S. 517, 531, 91 S. Ct. 534, 542 (1971). The United States fails to meet this bar, intervening on behalf of the plaintiffs is just a borrowed interest. The United States has added no additional claims and would be bringing an identical interest to the case which is not permitted under Rule 24. *Haymarket DuPage*, 2025 WL 975668 at *3 ("Intervention as of right is not a way to carry water on behalf of someone else"). Further, a broadened claim for hypothetical future relief does not constitute a "unique interest." *DeOtte v. Azar*, 332 F.R.D. 173, 183–184 (N.D. Tex. 2019). In *DeOtte,* the state of Nevada's motion to intervene based on future contraceptive harm to "600 to 1,200 women" was denied. *Id.* The court reasoned that future harm is not a direct interest and "courts have consistently found interests 'too contingent, speculative, or remote from the subject of the case' insufficient to justify intervention." *Id.* (citing *Bear Ranch, LLC v. HeartBrand Beef, In*c., 286 F.R.D. 313, 316 (S.D. Tex. 2012)). Similarly, in the present case, the United States' intervention based on all hypothetical future plaintiffs is speculative, remote and does not amount to a "unique interest."

The United States argues they have an interest which warrants intervention for two main reasons: (1) the United States has an interest in controlling compliance as the Department of Justice regulates the ADA; and (2) the United States is permitted to interfere as FDSHS receives federal

funding. (R. 5) Both arguments prove unpersuasive considering the legislative history of Title II and Congress's power under the Commerce Clause.

The United States would have this Court believe that to enforce a congressional directive, the DOJ, through the Attorney General, must be permitted to file suit to ensure compliance with the ADA. That position is not only indisputably incorrect but would essentially nullify and contravene congressional intent. As discussed in *surpa* II (A), the DOJ has an avenue in ensuring compliance with the ADA through *regulations*—but that does not extend to the Attorney General filing suits. 42 U.S.C. § 12134(a). This mechanism does not entitle the United States to intervene in any legal action it believes might adversely affect a public interest. A governmental entity has the right to intervene only to protect a *direct* interest; it is not permitted to meddle in private affairs merely to protect a broader public goal. *See Harris v. Pernsley*, 113 F.R.D. 615, 622 (E.D. Pa. 1986), *aff'd*, 820 F.2d 592 (3d Cir. 1987) ( "[A]view that only the District Attorney can or will protect the public safety is inaccurate and insufficient"). There is a clear authorized way for the United States to enforce compliance with Tile II through regulations, but this does not grant the United States the authority to file suit. *See id*. Regardless of the United States perceived interest, contextual assumptions cannot the plain meaning of the text. *Connecticut Nat'l Bank*, 503 U.S. at 253–54 ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.").

Further, if the United States' "general interest in enforcing laws" gave a "unique" interest to the federal government, it would effectively make FRCP 24 obsolete against the United States in cases involving a federal claim. *Haymarket DuPage, LLC*, 2025 WL 975668 at *5. In *Haymarket DuPage,* the court recognized "it would be strange to read the word 'interest' in Rule 24(a) as an open invitation to the United States to intervene as of right" is cases involving federal claims. *Id.*

This would result in an unlimited "all-access pass," even in cases where the United States only has a general interest rather than the "unique" interest required to intervene as of right. *Id.*; Fed. R. Civ. P. 24(a)(2). This Court should, therefore, find that the Department of Justice's regulatory power does not create a cause of action under Title II of the ADA, and subsequently does not authorize intervenor.

The fact that the State of Franklin receives partial federal funding is irrelevant to establishing legitimate subject matter interest. The United States' argument rests solely on Title VI of the Civil Rights Act and the Rehabilitation Act which both expressly allow the United States to file suit for discrimination claims against public entities that receive federal funding. 42 U.S.C. § 2000d-1. One of the notable shortcomings of Title II's older brothers, the Civil Rights Act and the Rehabilitation Act, is that they limited enforcement only to federally funded public entities. *Sec'y Fla. Agency for Health Care Admin*., 21 F.4th at 741. This shortcoming was specifically addressed when Congress enacted Title II, which is why Title II explicitly "permits an *individual* to sue any public entity for disability discrimination, *regardless* of whether it receives federal financial assistance." *Tenn. v. Lane*, 541 U.S. 509, 526 (2004) (explaining the legislative history of the ADA); *See also* 42 U.S.C. § 12101(b)(4). This notion is further reinforced by the lack of reference to federal funding in the ADA's provided definition of a public entity, and likewise in the text of the ADA as a whole. 42 U.S.C. § 12131 (1), (2). Unlike the Rehabilitation Act and Civil Rights Act, which has its enforcement provision rooted in Congress' spending power, Title II's enforcement does not depend on the powers invested to Congress in the spending clause. *Sec'y Fla. Agency for Health Care Admin*., 21 F.4th at 740. Federal funding is not what authorizes the enforcement of the ADA, but rather it's the broader powers invested in Congress under the Commerce Clause and Fourteenth Amendment of the U.S. Constitution; it provides no basis for

the United States to assert a subject matter interest to *enforce* the ADA. *See id*. at 742. It is a fundamental misapplication of law and legislative intent to construe the mention of the Rehabilitation Act and Civil Rights Act in the enforcement provision of the ADA as implying a federal funding factor. *Id.* Because the ADA's enforcement does not depend on federal funding, the fact that the Franklin Department receives such funding is not a basis for the United States to claim subject matter interest for enforcement in this case.

**3. The United States Will Face no Impairment of Any Interest If it is not Allowed to Intervene.**

The United States cannot demonstrate impairment of any interest because it lacks a cause of action under the ADA in the first place. To satisfy the third requirement for intervenor as of right, the United States must show first, that they are owed a legal right—which must be a "direct, legally protectable interest." *In re Testosterone Replacement Therapy Prods. Liab. Litig.*, No. 14 C 1748, 2018 WL 5884519, *5 (N.D. Ill. Nov. 8, 2018). Only once the first prong is met does the Court examines the second prong, that the legal right in question would be impaired without its intervention in the case. *See id.* The United States fails on the first requirement, as discussed above in section A, because the enforcement provision does not include the United States Attorney General in its definition of "person." The United States cannot face a potential impairment of its interest if its asserted owed legal right is nonexistent, as it is here. *Id.*

**4. The United States' Theoretical Interest is Adequately represented by the Respondent's in the Original Action.**

The Seventh Circuit applies one of three standards in deciding if there is adequate representation, with the underlying principle "the stronger the relationship [between the party and the intervenor], the more proof of inadequacy is required before allowing intervention." *Bost*, 75 F.4th at 688. Of the three standards of proof articulated by the Seventh Circuit, the lowest standard of proof, known as the default rule, applies here because the United States and the original

Plaintiffs have no meaningful relationship. *Id.* at *6 (finding that the lowest standard applies because the United States had no interest in the property or transaction of the suit). Under the default rule, "when the prospective intervenor and the named party have the same goal, a presumption [exists] that the representation in the suit is adequate." *In re Testosterone Replacement Therapy Prods. Liab. Litig.*, 2018 WL 5884519 at *5 (quoting *Wis. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 657-58 (7th Cir. 2013)). The United States fails to rebut this presumption, as there is nothing to suggest that the United States interest is different from that of the original Plaintiffs'. (R. 2)

The United States argues that because the original Plaintiffs represent a private interest, rather than a public one, they therefore cannot adequately represent the United States' interest in this matter. (R. 8) This argument fails as a matter of law. A private interest is adequately represented when the proposed intervener would not bring any new arguments to the dispute and share the same ultimate objective, even in situations where the proposed intervenor is the United States. *Haymarket DuPage, LLC,* 2025 WL 975668 at *6. *See also Fed. Sav. and Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211 (11th Cir. 1993). The United States admits that it is arguing on behalf of the Plaintiffs, to which they are merely echoing the same arguments and legal theories advanced by the original Plaintiffs. (R. 2). The United States fails to bring any new arguments to the table, therefore its interests are already adequately represented by the Plaintiffs, as both the United States and the Plaintiffs share the same goal and lack a meaningful relationship.

The lower court made a clear error in granting intervention as of right because the United States failed to meet all four of the requirements under FRCP 24(a)(2).

**C. Even Through Permissive Intervention, the United States is Unable to File Suit.**

Permissive intervention is governed by FRCP 24(b) which allows a party to intervene if the proposed party "has a claim or defense that shares with the main action a common question of

law or fact." Fed. R. Civ. P. 24 (b)(1)(B). Permissive intervention, unlike intervention as of right, is "highly discretionary." *Melone v. Coit*, 100 F.4th 21, 28 (1st Cir. 2024) (citing *Liberty Mut. Ins. Co. v. Treesdale Inc.*, 419 F.3d 216, 227 (3d Cir. 2005)). Even if the proposed party meets the requirements, the court may still decline permissive intervention if allowing intervention would prejudice or delay the original parties. *Id.*

There are two requirements that must be satisfied before the court exercises its discretion in granting intervention: (1) "the applicant's claim and the main action share common issues of law or fact"; and (2) "there is independent jurisdiction." *See Ligas ex rel. Foster v. Maram,* 478 F.3d 771, 775 (7th Cir. 200) (citing *Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995)). As for common issues of law or fact, the United States satisfies this requirement because the United States is attempting to file suit on behalf of the Respondents based on their own claims which necessarily involves common issues of both law and fact. (R. 2) There would be independent jurisdiction as well because the United States would have federal-question jurisdiction as the claims arise under federal statute. *Id.*

However, permissive intervention is not appropriate because, as established above, the Attorney General lacks the enforcement power, and the United States' intrusion would unduly delay and prejudice the original parties. First and foremost, permissive intervention must be denied because the United States has no right to intervene under Title II. *U.S. v. P.R.*, 227 F.R.D. 28, 32 (D.P.R. 2005) (denying permissive intervention when an intervenor lacks a right to intervene under a statue). When permissive intervention would cause the original parties to suffer a significant increase in costs, delays, and judicial inefficiency, the motion is denied. *Haymarket DuPage, LLC,* 2025 WL 975668 at *8. In *Haymarket*, the court denied permissive intervention to the United States based on anticipated discovery costs, the future possibility of summary judgment and

pretrial motions, and a concern for public opinion of the United States sticking its nose in other people's business. *Id.* The involvement of the United States adds unavoidable costs, "more lawyers equals more burdens." *Id.* at *7. Differentially, the burdens in the case at hand are not merely speculative. Since the United States motion to intervene was granted, parties strayed from the original scheduling order, which resulted in litigation that has lasted more than 26 months. (R. 33) Furthermore, the United States' involvement resulted in an additional estimated $273,000 spent on attorney fees and costs. (R. at 33) The costs and delays simply are not worth it when the original plaintiffs are more than capable of handling their own claims. *Haymarket DuPage, LLC, 2025 WL 975668* at * 8. The undue delay and prejudice suffered by the original parties demonstrate the United States should not be permitted to permissively intervene.

This Court should reverse the decision of the lower courts and deny the United States' motion to intervene under FRCP 24. The United States lacks the authority to file suit under Title II and even if the United States had the ability to file suit under Title II, intervention as of right is inappropriate. Further, permissive intervention is also inappropriate. The court must deny the United States' motion to intervene and remedy the erroneous errors of the lower courts.

## CONCLUSION

This Court should **REVERSE** the District Court's decision to allow the United States to intervene, the grant of summary judgment to the Respondent's and Respondent-Intervenor, and the Twelfth Circuit's affirmance of the District Court's orders, and **REMAND** back to the District Court for further proceedings.

## CERTIFICATE OF SERVICE

This is to certify that the foregoing instrument has been served in compliance with Rule 24.1 and 33.2 of the Supreme Court of the United States, on September 09, 2025, on all registered counsel of record, and has been transmitted to the Clerk of the Court.

Respectfully submitted,
Team 3422
Counsel of Record for Petitioners
Dated: September 09, 2025

## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Rule 33(g) because this brief contains less than 13,000 words, excluding the parts of the brief exempted by Rule 33(d).
2. This brief also complies with the typeface requirements of Rule 33(b) and the type requirements of Rule 33(b) because this brief has been prepared in a proportionally spaced typeface with a 12 point font named Times New Roman.

Respectfully submitted,
Team 3422
Counsel of Record for Petitioners
Dated: September 09, 2025