No. 25-2010

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

HAYMARKET DUPAGE, LLC,

Plaintiff

v.

VILLAGE OF ITASCA, *et al.*,

Defendants-Appellees

APPEAL OF: UNITED STATES OF AMERICA,

Proposed Intervenor-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Case No. 1:22-cv-160
The Honorable Judge Steven C. Seeger

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STATEMENT REGARDING ORAL ARGUMENT

The United States requests oral argument in this appeal from the denial of the United States' motion to intervene in this case.

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STATEMENT OF JURISDICTION

The United States appeals from a district court order denying its motion to intervene in a case brought by a private plaintiff under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131 *et seq*. The district court has subject matter jurisdiction over plaintiff's federal statutory claims under 28 U.S.C. 1331. The challenged order, issued on March 31, 2025, is a final appealable decision as to the United States. *Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 745 (7th Cir. 2020). Therefore, this Court has subject matter jurisdiction over this appeal under 28 U.S.C. 1291. The United States filed a timely notice of appeal on May 29, 2025.

STATEMENT OF THE ISSUES

This case arises from the frustrated efforts of plaintiff Haymarket DuPage, LLC, a nonprofit provider of substance-abuse treatment, to obtain zoning approval for a new treatment facility in the Village of Itasca, which is an area heavily affected by the opioid crisis. After conducting its own investigation, the United States concluded that the denied zoning approval constituted discrimination against persons with disabilities and a failure to accommodate such individuals, in violation of

the ADA. The United States moved to intervene in plaintiff's existing suit under Federal Rule of Civil Procedure 24, but the district court denied the motion. The United States' appeal from this order raises two issues:

1. Whether the district court erred by denying the United States intervention as of right under Federal Rule of Civil Procedure 24(a)(2) on the basis that the United States cannot enforce Title II of the ADA in federal court by bringing a civil action.

2. Whether the district court abused its discretion in denying the United States permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B) and (b)(2)(A), including on the basis that the United States' participation potentially could unduly delay resolution of plaintiff's ADA claims.

PERTINENT STATUTORY PROVISIONS, REGULATIONS, AND RULES

Pertinent statutes, regulations, and rules are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Title II of the ADA

The ADA, 42 U.S.C. 12101 *et seq*., prohibits discrimination based on disability. Congress enacted the ADA "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities" and "to *ensure that the Federal Government plays a central role* in enforcing [those] standards . . . on behalf of individuals with disabilities." 42 U.S.C. 12101(b)(2)-(3) (emphasis added).

Title II of the ADA establishes anti-discrimination requirements that specifically govern "public entit[ies]," including States and local governments. 42 U.S.C. 12131(1)(A). Congress enacted Title II to expand preexisting protections provided by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794(a). Title II's substantive prohibition largely tracks Section 504 by specifying that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. 12132; *see also* 29 U.S.C. 794(a). But while Section 504 reaches only

certain public (and private) entities that receive "Federal financial assistance," 29 U.S.C. 794(a), Title II covers any "public entity" whether or not it receives federal funding, 42 U.S.C. 12131(1), 12132.

Not only does Title II track Section 504's antidiscrimination language, it also relies on the same enforcement scheme. The means for enforcing Title II's guarantees are set forth in 42 U.S.C. 12133. Rather than provide detailed enforcement mechanisms in Title II itself, Congress chose to incorporate the Rehabilitation Act's remedial regime by cross-referencing Section 504's enforcement provision, Section 505, 29 U.S.C. 794a. *See* 42 U.S.C. 12133. Specifically, Title II's enforcement provision states that "[t]he remedies, procedures, and rights set forth in [Section 505] shall be the remedies, procedures, and rights [the ADA] provides to any person alleging discrimination" under Title II. *Ibid.*

Section 505, in turn, cross-references Title VI of the Civil Rights Act of 1964, which bars recipients of federal financial assistance from discriminating based on race, color, or national origin. 29 U.S.C. 794a(a)(2) (citing 42 U.S.C. 2000d *et seq.*). Specifically, Section 505 provides that "[t]he remedies, procedures, and rights set forth in [T]itle

VI . . . shall be available to any person aggrieved" under Section 504. *Ibid.*

Title VI's remedies, procedures, and rights include two methods of enforcement. First, Title VI has an implied private right of action under 42 U.S.C. 2000d. *See Alexander v. Sandoval*, 532 U.S. 275, 279-280 (2001). Second, there is an administrative and judicial enforcement scheme, under which agencies must "effectuate" Title VI's anti-discrimination mandate, including by issuing regulations. 42 U.S.C. 2000d-1. Section 2000d-1 specifies that "[c]ompliance" with Title VI may be "effected" by (1) terminating financial assistance following an administrative proceeding; or (2) "any other means authorized by law." *Ibid.*

Long before Congress enacted the ADA in 1990, regulations implementing Title VI and the Rehabilitation Act established enforcement procedures that included an administrative complaint process that could culminate in suits by the Department of Justice. *See, e.g.*, 45 C.F.R. 80.8(a) (tracing to 1964 Department of Health and Human Services Title VI regulation providing referrals "to the Department of Justice with a recommendation that appropriate proceedings be brought

to enforce" rights); 28 C.F.R. 50.3(c)(I)(B)(1) (tracing to 1966 Department of Justice Title VI regulation discussing "appropriate court action" to enforce Title VI's mandates); 28 C.F.R. 41.5(a)(1) (tracing to 1978 Department of Justice Rehabilitation Act regulation tracing to 1978 that instructs agencies to establish the same "enforcement and hearing procedures that the agency has adopted for the enforcement of [T]itle VI").

B. Factual and Procedural Background

1. The Zoning Dispute and Haymarket's Lawsuit

Plaintiff Haymarket DuPage, LLC (Haymarket) is a nonprofit provider of substance-abuse treatment that aimed to open a treatment center in a part of Itasca, Illinois, zoned for healthcare facilities. Doc. 1, at 2.[1] Haymarket sought zoning approval from the Village of Itasca but was met with "intentional and orchestrated discriminatory conduct across Itasca's key governmental entities." Doc. 1, at 1. Indeed, Haymarket was subjected to "more than 35 hearings" from 2019 to 2021

[1] "Doc. __, at __" refers to the number of the document on the district court docket in this case and the corresponding page number.

before Itasca's Village Board finally rejected its request for zoning approval in early November 2021. Doc. 1, at 4, 8.

Itasca's rejection of zoning approval led Haymarket to sue the Village of Itasca, the Itasca Plan Commission, Itasca Mayor Jeffrey Pruyn in his official capacity, and other defendants, alleging violations of Title II of the ADA, among other claims. Doc. 1, at 70-83. The dispute also launched a Title II investigation by the U.S. Attorney's Office for the Northern District of Illinois (USAO). Doc. 1, at 5 n.3. Several weeks after Itasca denied Haymarket's zoning application, the USAO sent Itasca's mayor a letter informing him of the investigation and seeking information about Itasca's zoning procedures and its rejection of Haymarket's application. Doc. 1-3, at 3-7.

Haymarket's litigation and the USAO's investigation both proceeded. Certain defendants moved to dismiss in March 2022. Doc. 27; Doc. 30. Nearly two years later, in February 2024, the district court granted their motions based on standing grounds without reaching the merits of Haymarket's claims. Doc. 61, at 28. Meanwhile, the Village provided the USAO with more than 110,000 pages of documents, which

defendants later produced to Haymarket after the motions to dismiss were granted. Doc. 71, at 1; Doc. 115, at 8.

2. The United States' Motion to Intervene

In June 2024, the United States moved to intervene in the case to bring its own claims under Title II of the ADA. Doc. 94; Doc. 94-1, at 26-27 (stating claims for disparate treatment and failure to accommodate). First, the United States sought intervention as of right under Federal Rule of Civil Procedure 24(a)(2), which provides for intervention where the proposed intervenor has "an interest" in the "subject of the action" and where resolution of the case would "impair or impede" with the ability to protect that interest, "unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Citing its "institutional interests in ensuring that public entities comply with . . . the ADA and its implementing regulations" and in remedying discrimination, the United States argued it was entitled to intervention as of right. Doc. 94, at 2. The United States also explained that the current parties could not adequately represent this interest. *Ibid.*

Alternatively, the United States sought permissive intervention under Federal Rule of Civil Procedure 24(b). The United States first

argued that its Title II claims shared "common questions of law and fact with Haymarket's main action" as required for intervention under Rule 24(b)(1). Doc. 94, at 3-4. It also argued for permissive intervention under Rule 24(b)(2) because the Department of Justice administers Title II of the ADA, on which Haymarket's claims were based. Doc. 94, at 4. The United States further explained that permissive intervention would satisfy Rule 24(b)(3) because no delay would result. Doc. 94, at 4-5. Specifically, the USAO's investigation was already complete, the United States' claims substantially overlapped with Haymarket's, and the case was still early in discovery. *Ibid.* Haymarket supported the United States' motion, explaining that the United States had participated in all of the limited discovery the parties had conducted to date. Doc. 112, at 1.

Itasca opposed intervention, principally challenging the Attorney General's ability to sue to enforce Title II of the ADA. Doc. 107, at 2-8. Itasca also argued that permitting intervention would cause undue delay. Doc. 107, at 14-15. In reply, the United States rebutted Itasca's arguments about the Attorney General's Title II enforcement authority (Doc. 115, at 9-15), but also explained that the district court could avoid

deciding this question if it granted permissive intervention under Rule 24(b)(2) because Haymarket's claims were based on a statute "administered by" the Department of Justice (Doc. 115, at 2-3 (citation omitted)).

The district court denied the United States' motion. First, the court rejected intervention as of right under Rule 24(a)(2) on the ground that the United States "has no enforcement powers under Title II of the ADA." Doc. 152, at 6. The court noted that "Title I and Title III [of the ADA] expressly grant enforcement powers to the United States," whereas Title II does not mention the Attorney General by name and thus "includes no comparable textual hook." Doc. 152, at 6-7. The court treated that difference in wording as dispositive of the Attorney General's ability to enforce Title II in court. Doc. 152, at 7. The court did not address in depth the United States' argument that Title II's enforcement scheme permits suit by the Attorney General because it draws on the Title VI and the Rehabilitation Act frameworks. Doc. 152, at 10 & n.1. Instead, it adopted the reasoning of an opinion dissenting from denial of rehearing in the Eleventh Circuit in a footnote. *Ibid.* (citing *United States v. Secretary Fla. Agency for Health Care Admin.*, 21 F.4th 730, 752, 758

(11th Cir. 2021) (Newsom, J., dissenting from denial of rehearing en banc)).

The district court held that intervention as of right was also inappropriate because the existing parties adequately represented the United States' interest. Fed. R. Civ. P. 24(a)(2). Because the court determined that the Attorney General lacked Title II enforcement authority, it held that there were "no interests of the United States for Haymarket to represent." Doc. 152, at 10. The court also reasoned that Haymarket was "capably pursuing" its ADA claims, so even if "the federal government has an interest in enforcing the ADA in this dispute . . . there is no need for another voice." Doc. 152, at 11.

The district court denied the request for permissive intervention under Rule 24(b)(1)(B) and (b)(2)(A). The court's conclusion that the Attorney General lacks Title II enforcement authority led it to reject permissive intervention under Rule 24(b)(1)(B) because it meant the United States could not state "a claim . . . that shares with the main action a common question of law or fact." Doc. 152, at 12 (quoting Fed. R. Civ. P. 24(b)(1)(B)).

The district court denied permissive intervention under Rule 24(b)(2)(A) on two grounds. First, under Rule 24(b)(2)(A), the court suggested that intervention by an agency in an action based on a statute administered by that agency is limited to "stick[ing] up for federal law and defend[ing] its constitutionality," and no such constitutional challenge was presented here. Doc. 152, at 15. Second, the court found that granting intervention "would unduly expand the controversy or otherwise lead to improvident delay or expense." *Ibid.* (quoting 7C Mary K. Kane, Federal Practice & Procedure § 1912 (3d ed. 2024)); *see* Fed. R. Civ. P. 24(b)(3) (requiring court to consider "undu[e] delay or prejudice" intervention would cause). Despite the government having already participated in discovery, the court believed it was "unavoidable" that intervention "would add burdens and create delays." Doc. 152, at 14. The court also thought that trial "could get complicated" because "the jury might get the sense that the government is putting its oversized thumb on the scale." *Ibid.* "Candidly," the court opined, the government's involvement "feels like piling on," and "[f]orcing the Village [of Itasca] to litigate against Haymarket, *plus* the federal government, seems like overkill." Doc. 152, at 14-15.

The United States timely appealed the district court's denial of its intervention motion. Doc. 158.

SUMMARY OF ARGUMENT

1. The district court erred by denying the United States' motion to intervene as of right under Federal Rule of Civil Procedure 24(a)(2). Contrary to the court's conclusion, the United States may enforce Title II of the ADA through the Title VI mechanisms that Title II incorporates. Specifically, Title II's enforcement provision incorporates the enforcement provisions of Section 504 of the Rehabilitation Act, and Section 504 incorporates the enforcement mechanisms of Title VI. For decades, those mechanisms have included the possibility of an affirmative suit filed by the Attorney General to enforce those statutes. Congress was thus well-aware that, by referencing Section 504 and, in turn, Title VI, federal court litigation by the United States was among the "remedies, procedures, and rights" available to persons discriminated against based on disability under Title II. The ADA's legislative history and its statutory purpose reflect this understanding, as Title II was intended to expand the protections offered by the Rehabilitation Act and reach public entities that the Act did not cover. It is thus unsurprising

that, apart from the decision below and a district court opinion that the Eleventh Circuit later reversed, all courts that have considered the issue agree that the ADA vests the United States with authority to enforce Title II in court.

Because the United States possesses enforcement authority under Title II, it may assert the type of unique interest required for mandatory intervention under Federal Rule of Civil Procedure 24(a)(2). As the existing plaintiff, Haymarket cannot adequately represent the United States' interest in Title II enforcement. Even though the United States seeks the same relief as Haymarket, their interests are not coterminous. When the United States sues to remedy disability discrimination involving an aggrieved person, it seeks to vindicate not only the rights of that individual but also the broader public interest in eradicating disability discrimination by public entities.

2. If the Court chooses to address permissive intervention, it should hold that the district court abused its discretion by denying the United States intervention on that basis. The United States satisfied the requirements for permissive intervention on two separate and independent grounds: (1) the United States' Title II claims had questions

of law or fact in common with the existing parties under Federal Rule of Civil Procedure 24(b)(1)(B); and (2) the United States' regulatory (and enforcement) responsibilities under the ADA justified intervention by a federal agency that administers a statute under Rule 24(b)(2)(A). The court also abused its discretion by finding that the United States' intervention would cause "undu[e] delay or prejudice" under Rule 24(b)(3).

ARGUMENT

I. The district court erred by denying the United States' motion to intervene as of right under Federal Rule of Civil Procedure 24(a)(2).

A. Standard of review

Under Federal Rule of Civil Procedure 24(a)(2), a court must allow intervention if the intervenor can show: "(1) timely application; (2) an interest relating to the subject matter of the action; (3) potential impairment . . . of that interest by the disposition of the action; and (4) lack of adequate representation of the interest by the existing parties to the action." *Bost v. Illinois State Bd. of Elections*, 75 F.4th 682, 686 (7th Cir. 2023) (citation omitted). This Court reviews de novo a district court decision rejecting intervention as of right based on the second and fourth of these factors. *Ibid.*

B. The United States has an interest under Title II of the ADA warranting intervention as of right in this case.

The district court erred by concluding that the United States lacked a "legally protectable interest" in this dispute based on its view that the Attorney General cannot enforce Title II of the ADA in federal court. Doc. 152, at 4, 10. This interpretation runs counter to Title II's text, implementing regulations, purpose, and history, and it has been rejected by nearly every court that has addressed the issue. Moreover, in light of this enforcement authority, the United States possesses a unique interest in the subject matter of this action.

1. By cross-referencing the Rehabilitation Act and Title VI, the ADA's text vests the Attorney General with Title II enforcement authority.

Title II of the ADA expressly incorporates the remedial measures established under the Rehabilitation Act and Title VI. When "Congress adopts a new law incorporating sections of a prior law, [it] normally can be presumed to have had knowledge of the interpretation given to the incorporated law." *Lorillard v. Pons*, 434 U.S. 575, 581 (1978); *see also Bragdon v. Abbott*, 524 U.S. 624, 644-645 (1998) ("[R]epetition of the same language" from a prior law "in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial

interpretations as well."). So, by cross-referencing the Rehabilitation Act and Title VI, Congress also adopted the longstanding administrative and judicial interpretations of the remedial measures that they provide. These interpretations established that the Attorney General can bring suit in federal court to enforce Title VI and the Rehabilitation Act. The same conclusion applies here under Title II.

a. Section 12133 incorporates the remedial measures of the Rehabilitation Act, and by extension Title VI, both of which provide for the possibility of enforcement suits by the United States.

By incorporating the enforcement mechanisms available under the Rehabilitation Act and, by extension, Title II, Congress authorized the Attorney General to bring an affirmative suit to enforce Title II's antidiscrimination protections. Title II provides that "[t]he remedies, procedures, and rights set forth in [Section 505 of the Rehabilitation Act] shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of [Title II]." 42 U.S.C. 12133. Section 505 of the Rehabilitation Act, in turn, provides that "[t]he remedies, procedures, and rights set forth in [T]itle VI of the Civil Rights Act of 1964 . . . shall be available to any

person aggrieved by" a violation of the Rehabilitation Act. 29 U.S.C. 794a(a)(2). These statutory cross-references thus make clear that the "remedies, procedures, and rights" that Title II "provides to any person alleging discrimination," 42 U.S.C. 12133, are the same as the "remedies, procedures, and rights" that Title VI provides, 29 U.S.C. 794a(a)(2); *see also United States v. Florida*, 938 F.3d 1221, 1242 (11th Cir. 2019).

The "remedies, procedures, and rights" available to a person alleging discrimination in violation of Title VI include the possibility of a court action brought by the Attorney General. Title VI's enforcement procedures are detailed in its implementing regulations, adopted shortly after the statute was enacted in 1964. These regulations established a federal administrative enforcement scheme under which persons who believe that they have been the victims of unlawful discrimination may file complaints with federal agencies, which then conduct investigations. *See, e.g.*, 29 Fed. Reg. 16,301 (Dec. 4, 1964) (45 C.F.R. 80.7(b)-(c)) (issued by the Department of Health, Education and Welfare (HEW)); *see also* 31 Fed. Reg. 10,267 (July 29, 1966) (28 C.F.R. 42.107(b)-(c)) (issued by the Department of Justice). Under these regulations, if an agency believes that a particular complaint has merit, it first attempts to resolve the

matter through "informal means." 45 C.F.R. 80.7(d); 28 C.F.R. 42.107(d). If those efforts are unsuccessful, the agency may refer the matter to the Department of Justice to bring "appropriate proceedings"—including lawsuits—against Title VI violators. 45 C.F.R. 80.7(d), 80.8(a); 28 C.F.R. 42.107(d), 42.108(a).[2] Similarly, the Department of Justice's Guidelines for Enforcement of Title VI have long cited "appropriate court action" against noncompliant recipients of federal financial assistance as among the available "alternative courses of action" that agencies should consider before terminating federal funding. 31 Fed. Reg. 5292 (Apr. 2, 1966) (28 C.F.R. 50.3(c)(I)(A)-(B)); *see also* 28 C.F.R. 42.411(a), 42.412(b) (stating Department of Justice regulations coordinating Title VI enforcement). Indeed, "the United States has consistently used . . . litigation to enforce" Title VI. *Florida*, 938 F.3d at 1232 (collecting cases); *see also id.* at 1233 (explaining that "[t]he phrase 'any other means authorized by law' in

[2] Multiple federal agencies issued similar contemporaneous regulations. *See* 29 Fed. Reg. 16,277, 16,281-16,282, 16,285-16,286, 16,290, 16,295, 16,307 (Dec. 4, 1964) (7 C.F.R. 15.6, 15.8(a); 24 C.F.R. 1.7, 1.8(a); 29 C.F.R. 31.8, 31.9(a); 41 C.F.R. 101-6.210-2 to 101-6.210-4, 101-6.211-1; 43 C.F.R. 17.6, 17.7(a); 45 C.F.R. 611.7, 611.8(a)).

[Title VI] appears to be routinely interpreted to permit suit by the Department of Justice" (citation omitted)).

The "remedies, procedures, and rights" available to a person alleging discrimination under Section 504 of the Rehabilitation Act also include the prospect of enforcement actions brought by the Attorney General. When it was enacted in 1973, Section 504 did not contain an explicit enforcement provision. With the oversight and approval of Congress, HEW issued regulations implementing Section 504 in 1977. *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624, 634 (1984); 42 Fed. Reg. 22,676 (May 4, 1977). Those regulations incorporated HEW's Title VI complaint and enforcement procedures and, in so doing, created an administrative enforcement process that could culminate in an enforcement lawsuit brought by the Department of Justice. *See* 42 Fed. Reg. 22,685, 22,694-22,695 (May 4, 1977) (45 C.F.R. 84.61, incorporating HEW's Title VI regulations, including 45 C.F.R. 80.7-80.8).

One year later, HEW issued a set of Rehabilitation Act regulations, which directed agencies to follow the same enforcement and hearing procedures they used for Title VI. 43 Fed. Reg. 2137, § 85.5(a)(1) (Jan. 13, 1978) (28 C.F.R. 41.5(a)(1)); *see also* 28 C.F.R. 42.530 (Department of

Justice Rehabilitation Act compliance procedures, incorporating Title VI procedures). These HEW regulations were "of particular significance" because, at that time, HEW was the agency responsible for coordinating the implementation and enforcement of Section 504. *Bragdon*, 524 U.S. at 632; *see also Darrone*, 465 U.S. at 634. The Supreme Court has emphasized that HEW's 1977 regulations "particularly merit deference" because they were drafted with congressional committee participation, and "Congress itself endorsed the regulations in their final form." *Darrone*, 465 U.S. at 634 & n.15.[3]

Additionally, in 1978, Congress amended the Rehabilitation Act to add Section 505. Section 505(a)(2) expressly incorporates the "remedies, procedures, and rights set forth in [T]itle VI." Pub. L. No. 95-602, § 120(a), 92 Stat. 2983 (1978) (29 U.S.C. 794a(a)(2)). That provision "was intended to codify the [1977 HEW] regulations" that "govern[ed] enforcement of [Section] 504" as "a specific statutory requirement." *Darrone*, 465 U.S. at 635 & n.16 (citing and quoting S. Rep. No. 890, 95th Cong., 2d Sess. 19 (1978)).

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[3] HEW's coordination role was later reassigned to the Department of Justice. *See* Exec. Order No. 12,250, 3 C.F.R. 298 (1980 comp.).

In light of this history, by the time of the ADA's enactment in 1990, every court to consider the matter (of which the United States is aware) had recognized that the Attorney General could file lawsuits to remedy violations of Title VI or the Rehabilitation Act. *See, e.g.*, *United States v. Baylor Univ. Med. Ctr.*, 736 F.2d 1039, 1050 (5th Cir. 1984); *National Black Police Ass'n v. Velde*, 712 F.2d 569, 575 (D.C. Cir. 1983); *United States v. Marion Cnty. Sch. Dist.*, 625 F.2d 607, 612-613 (5th Cir. 1980); *Adams v. Richardson*, 480 F.2d 1159, 1161 n.1, 1164 (D.C. Cir. 1973) (en banc); *United States v. Louisiana*, 692 F. Supp. 642, 649 (E.D. La. 1988), *vacated on other grounds*, 751 F. Supp. 606 (E.D. La. 1990); *United States v. Tatum Indep. Sch. Dist.*, 306 F. Supp. 285, 288 (E.D. Tex. 1969). Considering Congress's deliberate incorporation of the Rehabilitation Act's and Title VI's remedial schemes, it is "'especially justified' to conclude that Congress was aware of [these] prior interpretations, as well as the operation of, both Acts." *Florida*, 938 F.3d at 1228 (citation omitted).[4]

[4] Complementing federal enforcement of Title VI, the Supreme Court has found an implied private right of action under the statute. *See Alexander v. Sandoval*, 532 U.S. 275, 280 (2001); *Cannon v. University of Chi.*, 441 U.S. 677, 703 (1979). Similarly, the Rehabilitation Act contains

In short, by incorporating into Title II the "remedies, procedures, and rights" available under the Rehabilitation Act and Title VI, Congress adopted a federal administrative enforcement scheme in which persons claiming unlawful discrimination under Title II may complain to and enlist the aid of federal agencies in compelling compliance with the ADA's requirements, potentially culminating in an affirmative suit by the United States. *See Florida*, 938 F.3d at 1244 ("By the time Congress enacted the ADA, it had established administrative enforcement structures in Title VI and the Rehabilitation Act that each . . . [could] culminate[] in the Department of Justice filing suit in federal court to enforce these statutory provisions."); *see also Lorillard*, 434 U.S. at 581; *Bragdon*, 524 U.S. at 644-645.

b. Congress's instructions regarding Executive Branch implementation of Title II confirm that the Attorney General has Title II litigating authority.

Title II's provisions addressing implementation of Title II through Executive Branch rulemaking offer additional evidence that Congress intended to vest the Attorney General with authority to bring suit to

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a private right of action to enforce Section 504. *Barnes v. Gorman*, 536 U.S. 181, 185 (2002).

enforce the statute. The ADA directed the Attorney General to "promulgate regulations" under Title II "consistent with" the Rehabilitation Act's "coordination regulations." 42 U.S.C. 12134(a)-(b). One of those "coordination regulations" provides that federal agencies "shall establish a system for the enforcement" of the Act that "shall include . . . [t]he enforcement and hearing procedures that the agency has adopted for enforcement of [T]itle VI." 28 C.F.R. 41.5. Title II's express statutory text thus requires the Department of Justice, among others, to establish an administrative enforcement scheme "consistent" with that previously established under Title VI—in other words, a scheme that may culminate in an enforcement suit by the Attorney General.

Consistent with this directive under Section 12134, the Department of Justice issued Title II regulations that established such an administrative enforcement scheme. *See* 28 C.F.R. 35.170-35.174, 35.190; *see also* Exec. Order No. 12,250, 3 C.F.R. 298 (1980 comp.) (assigning responsibility for coordinating Section 504 enforcement to the Department of Justice). Under these regulations, if an agency conducts an investigation and concludes that a complaint alleging disability discrimination under Title II has merit, it will attempt to negotiate a

resolution with the public entity that is the alleged violator. 28 C.F.R. 35.172-35.173. If those efforts are unsuccessful and a violation has been found, the agency shall refer the matter to the Department of Justice for the possible filing of a lawsuit. 28 C.F.R. 35.174. Thus, the prospect of a Department of Justice lawsuit is and has been an essential feature of the "remedies, procedures, and rights" that Title II (like Title VI and the Rehabilitation Act) makes available to persons alleging unlawful discrimination. 42 U.S.C. 12133.

c. The ADA's legislative history confirms that Congress intended for the Attorney General to enforce Title II.

The legislative history also reflects Congress's intent to authorize Title II enforcement suits by the Attorney General under Section 12133. Both the House and Senate committee reports accompanying Congress' enactment of the ADA state that enforcement of Title II "should closely parallel the Federal government's experience with [S]ection 504 of the Rehabilitation Act" and that the Attorney General "should use [S]ection 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models." H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. 98 (1990) (House Report); S. Rep. No. 116, 101st Cong.,

1st Sess. 57 (1989) (Senate Report). The committees envisioned that the Department of Justice would identify appropriate Federal agencies to oversee compliance activities for State and local governments. "As with [S]ection 504, these Federal agencies, including the Department of Justice, will receive, investigate, and where possible, resolve complaints of discrimination." House Report 98; Senate Report 57. And "[i]f a Federal agency is unable to resolve a complaint by voluntary means, the Federal government would use the enforcement sanctions of section 505 of the Rehabilitation Act of 1973," which, as discussed above, may lead to the filing of an enforcement suit by the Attorney General. *Ibid.*

Most significantly, the committee reports go on to explain that, "[b]ecause the fund termination procedures of section 505 are inapplicable to State and local government entities that do not receive Federal funds, the *major enforcement sanction* for the Federal government will be *referral of cases* by these Federal agencies to the Department of Justice," so that the Department "may then proceed *to file suits in Federal district court*." House Report 98 (emphasis added); Senate Report 57-58 (same); *see also* Senate Report 96, 101 (views of Sen. Hatch) (stating bill "subjects state and local governments to the remedies

available under Section 505," which include referrals of cases to the Department of Justice).

Thus, the legislative history of the ADA evinces clear congressional understanding that persons alleging disability discrimination under Title II would have the benefit of a federal administrative scheme, like those already in place under the Rehabilitation Act and Title VI, in which federal agencies may directly bring suit to obtain relief for affected parties.

d. The Attorney General's Title II litigating authority is indispensable to effective ADA enforcement.

The ADA expressly states that one of Congress's predominant purposes in enacting the statute was "to ensure that the Federal Government plays a central role in enforcing the standards established in *this chapter* on behalf of individuals with disabilities." 42 U.S.C. 12101(b)(3) (emphasis added). "[T]his chapter" encompasses the ADA as a whole, including Title II.[5] Not only did Congress intend a significant enforcement role for the federal government, but it described the federal

[5] As enacted, the ADA referred to the federal government playing a central role in enforcing the standards "established in this Act." Pub. L. No. 101-336, § 2(b)(3), 104 Stat. 327, 329 (1990).

government as enforcing the ADA "*on behalf of individuals with disabilities*." 42 U.S.C. 12101(b)(3) (emphasis added). That wording further confirms that the federal administrative enforcement process and the prospect of enforcement suits brought by the Department of Justice must be among the "remedies, procedures, and rights" that Title II "provides" to persons alleging unlawful discrimination.

If Title II did not permit such suits, it would mean that Section 12133 provides just a single, meaningful "remed[y], procedure[], or right[]": an implied private right of action. This would be true, even though under the Rehabilitation Act and Title VI, a person alleging discrimination can avail themselves of either one or both of two alternative enforcement mechanisms to vindicate their rights under the statute: (1) a private right of action, or (2) a federal administrative enforcement process that can lead to a Department of Justice enforcement suit. In short, Title II would provide only *half* of the package of "remedies, procedures, and rights" that are afforded to victims of discrimination under the Rehabilitation Act and Title VI, even though Title II's statutory text incorporates those statutes' respective enforcement schemes wholesale. *See* 42 U.S.C. 12133; 29 U.S.C.

794a(a)(2); *see also Florida*, 938 F.3d at 1241 ("Congress chose to use [Section] 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.").

It is true that, under the Rehabilitation Act and Title VI, the administrative complaint process can lead to *either* the withdrawal of federal funds or an enforcement suit by the Attorney General. But without the availability of an analogous enforcement suit under Title II, Title II's administrative process would provide *no* means of enforcement against entities that do not receive federal funds. Such an interpretation undermines Congress's core purpose in enacting Title II, which was to *expand* the protections provided under Section 504 of the Rehabilitation Act to *all* state and local government programs, activities, and services (not just those that receive federal funds) as part of a "comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. 12101(a)(3), (b)(1) and (3); 42 U.S.C. 12132; *see also* House Report 84. In light of this *broader* remedial purpose, it is implausible that Congress adopted a *narrower* set of

enforcement mechanisms than those available under the Rehabilitation Act and Title VI. As the Supreme Court recognized in *Barnes v. Gorman*: "The ADA could not be clearer that the 'remedies, procedures, and rights'" of Title II "are the same as the 'remedies, procedures, and rights set forth in' [Section] 505(a)(2) of the Rehabilitation Act" and Title VI. 536 U.S. 181, 189 n.3 (2002).[6] And, indeed, during the 35 years since the ADA's enactment, the Attorney General, through the administrative enforcement process, has routinely brought lawsuits in federal court and entered settlements to remedy public entities' violations of Title II.[7]

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[6] *See also Hainze v. Richards*, 207 F.3d 795, 799 (5th Cir. 2000) (Congress intended that the Rehabilitation Act's protections be extended "to cover all programs of state or local governments, regardless of the receipt of federal financial assistance" and that Title II would "work in the same manner as Section 504." (citation omitted)); 42 U.S.C. 12201(a) (instructing that the ADA should not be construed to provide less protection than the Rehabilitation Act).

[7] *See, e.g.*, U.S. Dep't of Just., *ADA Enforcement, Title II (Cases 2006-2022)*, https://www.ada.gov/enforce_current.htm#TitleII (last visited July 21, 2025); U.S. Dep't of Just., *ADA Enforcement, Title II (Cases 1992-2005)*, https://www.ada.gov/enforce_archive.htm#TitleII (last visited July 21, 2025).

* * * * *

The district court thus erred when it held that the Attorney General lacks the authority under Title II of the ADA to enforce the statute in federal court. Indeed, "courts have routinely concluded that Congress's decision to utilize the same enforcement mechanism for Title II as the Rehabilitation Act, and therefore Title VI, demonstrates that the Attorney General has the authority to act 'by any other means authorized by law' to enforce Title II, including initiating a civil action." *Florida*, 938 F.3d at 1248. This includes the Eleventh Circuit, which upheld the Attorney General's authority and denied en banc rehearing over the dissenting view on which the district court relied. *See id.* at 1250-1254 (Branch, J., dissenting); *see also United States v. Secretary Fla. Agency for Health Care Admin.*, 21 F.4th 730, 739-745 (11th Cir. 2021) (*Secretary Fla. Agency*) (Pryor, J., opinion respecting denial of rehearing en banc).

The only exceptions to this wide judicial consensus are the district court decision that the Eleventh Circuit reversed[8] and the decision below

[8] *See C.V. v. Dudek*, 209 F. Supp. 3d 1279, 1282 (S.D. Fla. 2016), *rev'd and remanded sub nom. United States v. Florida*, 938 F.3d 1221 (11th Cir. 2019).

in this case. The relative absence of outliers on this issue is entirely understandable given that Title II's text, implementing regulations, legislative history, and purposes all militate in favor of finding that the United States may directly bring suit in federal court to enforce the statute's antidiscrimination protections.

e. The district court's rationale for deciding the Attorney General lacks Title II enforcement authority is misguided.

i. To conclude Title II does not authorize the Attorney General to enforce the statute in federal court, the district court conducted a flawed textual analysis. The court's primary reason was that the enforcement provisions in Titles I and III expressly reference the Attorney General, while Title II's enforcement provision does not. Doc. 152, at 7 (comparing 42 U.S.C. 12117(a), 12133, and 12188(b)). But there are straightforward explanations for Title II's omission of an express reference to the Attorney General in its enforcement provision. First, referencing the Attorney General in Title II would have been redundant. Section 12133 already incorporates enforcement actions by the Attorney General via its cross-references to the Rehabilitation Act and Title VI, both of which

have long been understood to authorize enforcement by the Attorney General in federal court. *See* p. 14, *supra*.

Another obvious reason for this distinction is that Congress was simply tracking the language of the Rehabilitation Act's enforcement provision, which authorizes federal-court enforcement by the United States without expressly mentioning the Attorney General. *Compare* 42 U.S.C. 12133, *with* 29 U.S.C. 794a(a)(2). Indeed, based on Title II's relationship to the Rehabilitation Act, Congress structured Title II in an entirely different way than Titles I and III. As one House Committee Report accompanying the ADA's enactment explains about the drafting of Title II, "[t]he Committee has chosen not to list all the types of actions that are included within the term 'discrimination', as was done in [T]itles I and III, because this [T]itle essentially simply extends the anti-discrimination prohibition embodied in [S]ection 504 to all actions of state and local governments." House Report 84. Likewise, Title II's enforcement provision simply incorporates the Rehabilitation Act's "remedies, rights, and procedures" without referencing the Attorney General, 42 U.S.C. 12132-12134, because the Rehabilitation Act's enforcement provision was already understood by courts and federal

agencies to vest the Attorney General with the authority to enforce the statute in court.

Finally, and relatedly, Congress drew on different anti-discrimination regimes in drafting Titles I and III than it did for Title II. The enforcement section of Title I, which addresses disability discrimination in employment, states, in relevant part, that "[t]he powers, remedies, and procedures set forth in [S]ections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this [T]itle shall be the powers, remedies, and procedures this subchapter provides to the [Equal Employment Opportunity] Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability." 42 U.S.C. 12117(a). The language "[S]ections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9" refers to five different provisions of Title VII of the Civil Rights Act of 1964, which establishes a complicated regime in which different enforcement actions may be taken by complainants, the Equal Employment Opportunity Commission, and the Attorney General. Because the point of Section 12117(a) was to make clear that the same division of authority among the various actors under the five different sections of Title VII applies to Title I of the ADA, it was only natural that

Congress would avoid confusion by *specifying* the actors among whom the authority is divided. No such reference to the Attorney General was necessary to prevent confusion under Title II, which cross-references only a single section of another statute to incorporate a single well-established enforcement mechanism—a federal administrative process that includes the prospect of suit by the United States.

As for Title III, unlike Titles I and II, it does not merely incorporate a preexisting enforcement scheme. To be sure, the enforcement provision of Title III, which addresses disability discrimination in public accommodations, incorporates the remedies and procedures of Title II of the Civil Rights Act of 1964, which also addresses discrimination in public accommodations. 42 U.S.C. 12188(a) (citing 42 U.S.C. 2000a-3(a)). But Title III also expands the Attorney General's enforcement authority by including new authority to seek damages and civil penalties. 42 U.S.C. 12188(b). These remedies are not available in court actions brought by either the Attorney General or private persons under Title II of the Civil Rights Act of 1964, *see* 42 U.S.C. 2000a-3(a), 2000a-5(a), or in private actions under Title III of the ADA, *see* 42 U.S.C. 12188(a)-(b). Congress could not have expanded the enforcement power of the Attorney

General in Title III of the ADA without including an express reference to the Attorney General. By contrast, Title II effects no expansion of the remedies available to the Attorney General and thus no such reference was needed.

ii. The district court also relied on the fact that the Attorney General is not a "person alleging discrimination" within the meaning of Section 12133. Doc. 152, at 7-8. But such "arguments about why the Attorney General does not qualify as a 'person' under [Section] 12133 miss the mark entirely" because the Attorney General's enforcement authority does not rest on this language. *Secretary Fla. Agency*, 21 F.4th at 733 (Pryor, J., opinion respecting denial of rehearing en banc). Rather, the "remedies, procedures, and rights" available to persons alleging discrimination under Section 12133 include the administrative-complaint process that, as noted, may culminate in a court action by the United States in its own name to vindicate the rights of individuals who suffered disability discrimination. *See ibid.* (noting that "the Attorney General brings [a Title II] lawsuit on behalf of a person alleging discrimination").

2. The United States' interests in Title II enforcement satisfy Rule 24(a) and are not adequately represented.

The district court's misapprehension of the Attorney General's Title II enforcement authority led to its wrongful denial of the United States' Rule 24(a) motion for intervention as of right. Properly analyzed, the United States' role in vindicating individuals' rights under the statute, including in federal court, gives it a clear interest in the proper adjudication of the Title II claims in this lawsuit. Additionally, none of the existing parties to this suit can adequately represent this interest, which is unique to the United States.

a. The Attorney General's Title II enforcement authority provides the United States with a "direct, significant and legally protectable interest in the [subject] at issue in this lawsuit," as Rule 24(a)(2) requires. *Bost*, 75 F.4th at 686 (alteration in original) (quoting *Keith v. Daley*, 764 F.2d 1265, 1268 (7th Cir. 1985)); *cf. Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 572 (7th Cir. 2009) (holding interest requirement was satisfied where case concerned validity of state statute and "the statute authorizes [intervenors] to sue to enforce it").

The United States has such an interest because it has the "right to maintain a claim for the relief sought" in this suit under Title II. *Daley*, 764 F.2d at 1268 (quoting *Heyman v. Exchange Nat'l Bank of Chi.*, 615 F.2d 1190, 1193 (7th Cir. 1980)). Additionally, federal agencies have qualifying interests in the enforcement of statutes within their jurisdiction. *See Heaton v. Monogram Credit Card Bank*, 297 F.3d 416, 424 (5th Cir. 2002). For example, in *Heaton*, the Fifth Circuit ruled that the Federal Deposit Insurance Corporation (FDIC) satisfied Rule 24(a)(2)'s requirements because it had an "interest in protecting the proper and consistent application" of the Federal Deposit Insurance t Act, which sets forth the agency's roles and responsibilities. *Ibid.* The same conclusion is warranted here: the ADA tasks the Department of Justice with regulatory and enforcement responsibilities under Title II, and therefore, the Department similarly has an interest in the "proper and consistent application" of Title II.

b. Nor can Haymarket adequately represent these Executive Branch interests in this private-party litigation. The district court held that "there [wa]s no need for another voice" in this suit outside of Haymarket's. Doc. 152, at 11. But the burden is "minimal" under Rule

24(a)(2) to show that existing parties will not adequately represent an intervenor's interests. *Bost*, 75 F.4th at 689-690 (citation omitted). Indeed, a proposed intervenor can satisfy this requirement merely by "show[ing] that representation of [its] interest *may* be inadequate." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972) (internal quotation marks omitted; emphasis added).

The United States easily satisfies this modest standard because Haymarket cannot represent the United States' unique interest in Title II enforcement—a context in which Congress intended for "the Federal Government [to] play[] a central role in enforcing [Title II] standards . . . on behalf of individuals with disabilities." 42 U.S.C. 12101(b)(3). Moreover, the United States' concern for the proper interpretation of its laws, along with its duty to represent the public, mean that its interests are not coterminous with those of any private litigant. Although the United States requests the same relief as Haymarket, the United States "seek[s] to vindicate [the] public interest" in eradicating disability discrimination "even when it pursues entirely victim-specific relief." *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 296 (2002) (holding that private parties' arbitration agreement cannot extinguish the Equal

Employment Opportunity Commission's right to enforce Title VII because its duty to the public interest is broader); *see also General Tel. Co. v. EEOC*, 446 U.S. 318, 326 (1980) (noting that action of federal agency tasked with enforcing antidiscrimination law both vindicates the rights of aggrieved individuals and "also acts to vindicate the public interest").

Accordingly, because the United States has met the requirements of Rule 24(a)(2) given its statutorily authorized duties under Title II of the ADA, this Court should reverse the district court's decision denying intervention as of right.

II. The district court abused its discretion by denying permissive intervention.

Reversal of the district court's ruling on intervention as of right would suffice to resolve this appeal. But if the Court chooses to address permissive intervention, it should hold that the district court abused its discretion in denying intervention under Federal Rules of Civil Procedure 24(b)(1)(B) and (b)(2)(A). The United States satisfied the requirements for permissive intervention under both Rule 24(b)(1)(B) and (b)(2)(A), and the district court relied on pure speculation to conclude that the United

States' participation would have resulted in undue delay or prejudice for purposes of Rule 24(b)(3).

A. Standard of review

Under Federal Rule of Civil Procedure 24(b), courts may permit intervention when a proposed intervenor has "a conditional right to intervene" under federal law or where the complaint-in-intervention shares "a common question of law or fact" with the main action. Fed. R. Civ. P. 24(b)(1)(A) and (B). A district court may also permit a federal agency like the Department of Justice to intervene when the case is based on federal law that the agency "administer[s]" or involves "any regulation, order, requirement, or agreement" based on federal law. Fed. R. Civ. P. 24(b)(2)(A) and (B). Regardless of the basis for permissive intervention, the proposed intervenor must demonstrate its intervention "will [not] unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

This Court reviews a district court's denial of permissive intervention for abuse of discretion. *See Bost v. Illinois State Bd. of Elections*, 75 F.4th 682, 691 (7th Cir. 2023). An abuse of discretion includes "an erroneous conclusion of law, a record that contains no

evidence rationally supporting the court's decision, or facts that are clearly erroneous as the district court found them." *LHO Chi. River, LLC v. Rosemoor Suites, LLC*, 988 F.3d 962, 967 (7th Cir. 2021).

B. The district court abused its discretion by denying permissive intervention under Rule 24(b)(1)(B).

The district court's denial of permissive intervention under Rule 24(b)(1)(B) was an abuse of discretion. The court acknowledged that the United States' Title II claims "overlap[ped] with the claims by Haymarket, legally and factually." Doc. 152, at 12. But the court denied permissive intervention under Rule 24(b)(1)(B) based solely on its view that the Attorney General cannot enforce Title II directly in federal court. *Ibid.* As explained in Part I.B.1, *supra*, this premise is wrong. Thus, because the other requirements for permissive intervention are otherwise met, reversal is warranted.

C. The district court also abused its discretion by denying permissive intervention under Rule 24(b)(2)(A).

Alternatively, this Court should find that the district court also abused its discretion under Rule 24(b)(2)(A). Rule 24(b)(2)(A) permits a federal agency to intervene in an action if an existing party's "claim[s] or defenses" are based on a statute "administered by" the agency. The

purpose of this rule is to "allow[] intervention liberally to governmental agencies and officers seeking to speak for the public interest." 7C Mary K. Kane, *Federal Practice & Procedure Civil* § 1912 (3d ed. 2024). The rule codifies a Supreme Court decision that allowed the Securities and Exchange Commission to intervene in a corporate reorganization proceeding even though it lacked "a direct personal or pecuniary interest," because it had "a sufficient interest in the maintenance of its statutory authority and the performance of its public duties." *Ibid.*; *see also SEC v. United States Realty & Improvement Co.*, 310 U.S. 434, 459 (1940).

The district court abused its discretion by ignoring Rule 24(b)(2)(A)'s clear language and broad purpose. The Department of Justice plays a key role in developing and issuing regulations under Title II. *See* 42 U.S.C. 12134(a) and (b). This case thus presents a textbook example of where an existing party's "claim[s] or defense[s]" are based on a statute "administered by" the agency seeking to intervene. Fed. R. Civ. P. 24(b)(2)(A).

Despite Rule 24(b)(2)(A)'s obvious applicability, the district court's suggested that permissive intervention under this provision is only

permitted when the constitutionality of a federal statute is at issue. *See* Doc. 152, at 15. But the text of the rule imposes no such limitation. To the contrary, an entirely different procedural rule and statute govern intervention in such cases. *See* 28 U.S.C. 2403(a) (authorizing Attorney General to intervene in any case "wherein the constitutionality of any Act of Congress . . . is drawn in question"); Fed. R. Civ. P. 5.1(a) and (c) (requiring notice to the Attorney General or appropriate state attorney general whenever a party "draw[s] into question the constitutionality of a federal or state statute," and permitting intervention). The district court's sole judicial authority offered in support of its atextual reading of Rule 24(b)(2)(A) was *Cameron v. EMW Women's Surgical Center, P.S.C.*, 595 U.S. 267 (2022). Doc. 152, at 15. But although *Cameron* addressed a state official's attempt to intervene in defense of a state law's constitutionality, the opinion did not construe Rule 24(b)(2)(A), much less suggest that the rule permits intervention only when a statute's constitutionality is in question. *See* 595 U.S. at 277-279. The opinion thus provides no support for the limitation that the court attempted to graft onto Rule 24(b)(2)(A).

D. The district court also abused its discretion by holding that intervention would unduly delay or prejudice resolution of the original suit.

The district court also abused its discretion in denying permissive intervention by holding that it would "unduly delay or prejudice the adjudication of the original parties' rights." Doc. 152, at 13-15 (quoting Fed. R. Civ. P. 24(b)(3)). Reversal of this determination is a "very rare bird indeed" as the provision gives courts the flexibility to manage their docket. *Bost*, 75 F.4th at 691 (citation omitted). But, for several reasons, the court's finding here is that "rare" occasion when "a[] reasonable person could [not] agree" with the district court's decision. *LHO Chi. River*, 988 F.3d at 967-968 (citation omitted).

First, Haymarket, the party with the claim that the district court speculated could be delayed by the government's participation, *supported* the government's intervention motion and specifically argued that the risk of delay was small and tolerable. Doc. 112, at 1-3. Moreover, some delay had already occurred: defendants' motion to dismiss went undecided for nearly two years between March 2022 and February 2024, and the government's intervention motion was pending before the district court between July 2024 and March 2025. The government participated

in the parties' discovery during these periods without any delay or prejudice resulting, and there was nothing to suggest that this would have changed as the discovery period continued. Indeed, the district court was unable to identify any particular delays the United States' involvement would have caused. To the contrary, the court acknowledged that the government "ha[d] participated in discovery so far," "the discovery process might not be that much different" once the government intervened, and it did not know whether the government had any specific discovery plans that would cause delay. Doc. 152, at 14. The court merely assumed, as a broad and categorical matter, that "[m]ore lawyers equals more burdens." Doc. 152, at 13. But there are likely to be "[m]ore lawyers" *any time* permissive intervention is granted, and Rule 24(b)(3) speaks only of "unduly" delaying adjudication of the original parties' rights. The possibility that government counsel—or additional private counsel in a case not involving government intervention—might ask their own questions in depositions or file their own motions just reflects typical litigation activities. *See Security Nat'l Ins. Co. v. Amchin*, 309 F.R.D. 217, 223 (E.D. Pa. 2015) (permitting intervention by the FDIC, and rejecting delay and prejudice concerns).

Decisions denying intervention due to delay and prejudice typically involve much more delay or much different circumstances than those presented here. *See, e.g.*, *Bost*, 75 F.4th at 691 (affirming denial of permissive intervention in "an election-law case that need[ed] to be streamlined and decided quickly"); *Randall v. Rolls-Royce Corp.*, 637 F.3d 818, 826-827 (7th Cir. 2011) (affirming, in putative class action, denial of intervention to substitute class representatives who sought to intervene after class certification was denied, "almost four years after the suit had begun and long after it was plain that there were substantial doubts about" original named plaintiffs' viability); *In re Holocaust Victim Assets Litig.*, 225 F.3d 191, 194, 202 (2d Cir. 2000) (affirming denial of permissive intervention attempted months after settlement agreement); *Adarand Constructors, Inc. v. Romer*, 174 F.R.D. 100, 104 (D. Colo. 1997) (denying federal agency's intervention where "the issues which [the agency] seeks to relitigate through intervention have already been adjudicated in [an earlier action], to which the [agency] is a party").

The district court further abused its discretion by assuming that a federal enforcement action is intrinsically prejudicial to a defendant. The court opined that the government's involvement in the case "feels like

piling on," and that the government "putting its oversized thumb on the scale" alongside Haymarket would amount to "overkill." Doc. 152, at 14-15. The court cited no authority for its implicit suggestion that federal agencies are somehow disfavored in the permissive-intervention analysis compared to private parties. Moreover, the risk of "overkill" could arise in any case in which the would-be intervenors share interests with an existing party, which is not uncommon under Rule 24. *See also* Fed. R. Civ. P. 24(b)(1)(B) (permitting permissive intervention where the movant's claim shares a "common question of law or fact" with an existing party's claim or defense).

The district court's rationale also is flawed because it ignores the different interests at stake when the United States seeks to intervene in a case. In explaining its conclusion, the district court suggested that "Haymarket is more than capable of defending its own interests." Doc. 152, at 14. But that misses the point—the United States' purpose in intervening is not merely to support Haymarket's claim. The United States more broadly seeks to vindicate the public interest in eradicating disability discrimination under Title II. This is an entirely distinct goal

from that of a private party like Haymarket, which seeks relief for the violation of its own statutory rights.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's order denying the United States intervention as of right. If it reaches the issue, the Court should also reverse the district court's denial of permissive intervention.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) and Seventh Circuit Rule 32(c) because it contains 9300 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

s/ Barbara Schwabauer
BARBARA SCHWABAUER
Attorney

Date: July 28, 2025

REQUIRED SHORT APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HAYMARKET DUPAGE, LLC,	)	
	)	
Plaintiff,	)	Case No. 22-cv-160
	)	
v.	)	Hon. Steven C. Seeger
	)	
VILLAGE OF ITASCA, *et al.*,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION AND ORDER

Haymarket DuPage, LLC wanted to open a treatment facility for substance abuse in the Village of Itasca. Haymarket tried and tried to get approval, over a span of two years. Hearing after hearing, discussion after discussion, and protest after protest followed. But in the end, the Itasca Plan Commission voted it down.

Haymarket responded by suing the Village and a number of its departments and officials, bringing a collection of disability-based discrimination claims under federal and state law. The United States later filed a motion to intervene as a plaintiff.

For the reasons stated below, the motion to intervene is denied.

Background

This Court already issued a lengthy opinion at the motion-to-dismiss stage. *See* 2/27/24 Mem. Opin. & Order (Dckt. No. 61). This Court assumes that any interested reader is familiar with the background.

In a nutshell, Haymarket DuPage, LLC is Chicagoland's "largest and most comprehensive non-profit provider of treatment for substance use disorders and mental health

disabilities." *See* Am. Cplt., at ¶ 3 (Dckt. No. 81). Haymarket wanted to open a new facility in an old Holiday Inn hotel in the Village of Itasca, a town in DuPage County.

Haymarket sought zoning approval from the Village. *See* Mtn. to Intervene, at ¶ 1 (Dckt. No. 94). The Village denied Haymarket's request. *Id.*

Haymarket then sued the Village, bringing eight claims, including a claim under Title II of the Americans with Disabilities Act ("ADA").

Several Defendants moved to dismiss. This Court granted those motions and dismissed three Defendants. *See* 2/27/24 Mem. Opin. & Order (Dckt. No. 61).

Haymarket then filed an amended complaint. *See* Am. Cplt. (Dckt. No. 81). Haymarket brings five claims against the Village, the Itasca Plan Commission, and the Mayor in his official capacity. The five counts include two claims under the Fair Housing Act, one claim under the ADA, one claim under the Rehabilitation Act, and one claim under state law.

Meanwhile, the United States opened an investigation into the Village's compliance with Title II of the ADA. The United States ultimately moved to intervene as a plaintiff in Haymarket's case against the Village. *See* Mtn. to Intervene, at ¶ 3 (Dckt. No. 94).

The United States attached a proposed complaint with two claims, including a disparate-treatment claim under the ADA, and a claim about a failure to provide reasonable accommodations under the ADA. *See* Cplt. in Intervention (Dckt. No. 94-1). Both claims fall under Title II of the ADA. *Id.* at ¶ 1 ("The United States brings this disability rights enforcement action against the Village of Itasca, Illinois, for violating Title II of the Americans with Disabilities Act of 1990.").

The motion to intervene prompted a number of states to file an *amicus* brief opposing intervention. *See* Amicus Brf. of Fifteen States (Dckt. No. 117-1).

Analysis

"Intervention provides a mechanism for non-parties to protect interests that might otherwise be adversely affected by a trial court judgment." *iWork Software, LLC v. Corp. Express, Inc.*, 2003 WL 22494851, at *1 (N.D. Ill. 2003) (citing *Felzen v. Andreas*, 134 F.3d 873, 874 (7th Cir. 1998)).

The Federal Rules recognize two types of intervention: intervention as of right, and permissive intervention. *See* Fed. R. Civ. P. 24(a) ("Intervention of Right"); Fed. R. Civ. P. 24(b) ("Permissive Intervention"). The non-party who hopes to intervene has the burden to satisfy all of the requirements. *See Vollmer v. Publishers Clearing House*, 248 F.3d 698, 705 (7th Cir. 2001).

The United States seeks to join the case through both routes, so this Court will walk down each path. In the end, both routes are dead ends.

I. Intervention as of Right

The first question is whether the government can intervene as of right. *See* Fed. R. Civ. P. 24(a)(2).

A district court "must" allow a non-party to intervene if that non-party "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." *See* Fed. R. Civ. P. 24(a)(2).

The Seventh Circuit has interpreted that rule to impose four requirements for intervention as of right: "(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 by the existing parties to the action." *See Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 797 (7th Cir. 2019) (citation omitted); *Illinois v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019).

The proposed intervenor must satisfy all four requirements. *See Kaul*, 942 F.3d at 797; *Vollmer*, 248 F.3d at 705. But if the proposed intervenor satisfies all four requirements, a district court "must" allow the party to intervene. *See* Fed. R. Civ. P. 24(a)(2).

Here, the United States gets tripped up on two of the four hurdles. The government lacks an interest relating to the subject matter of the action. And the existing parties are adequately representing any interest that the United States may have in this case.

A. An Interest in the Subject Matter

The first problem for the government is the lack of a legally protectable interest in this particular dispute.

Rule 24(a)(2) provides that the intervenor must have an "interest relating to the property or transaction that is the subject matter of the action." *See* Fed. R. Civ. P. 24(a)(2). "Intervention as of right requires a would-be intervenor to have a 'direct, significant, and legally protectable interest in the [subject] at issue in the lawsuit.'" *Bost v. Illinois State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023) (citation omitted); *see also* 7C Mary K. Kane, Federal Practice & Procedure § 1908.1 (3d ed. 2024) ("If there is a direct substantial legally protectable interest in the proceedings, it is clear that this requirement of the rule is satisfied.").

The Seventh Circuit has explained that the intervenor's interest must be "unique." *See Bost*, 75 F.4th at 686–87. The idea is simply that the intervenor must have its own interest. The interest must be "based on a right that belongs to the proposed intervenor rather than to an existing party in the suit." *Id.* at 687 (citation omitted).

The Seventh Circuit has "never required a right that belongs *only* to the proposed intervenor, or even a right that belongs to the proposed intervenor *and not to* the existing party. Properly understood, the 'unique' interest requirement demands only that an interest belong to the would-be intervenor in its own right, rather than derived from the rights of an existing party." *Id.* (emphasis in original); *see also id.* at 687 n.2 ("As one of our colleagues recently put it, 'unique' means an interest that is *independent of* an existing party's, not *different from* an existing party's.") (emphasis in original) (citing *Kaul*, 942 F.3d at 806 (Sykes, J., concurring)).

Intervention as of right is not a way to carry water on behalf of someone else. A shared interest with a party counts, but a derivative interest does not.

The Seventh Circuit has held that "this interest must be at least as significant as the injury required for Article III standing." *See Bost*, 75 F.4th at 687 n.1. Other cases from the Seventh Circuit have elevated the bar even higher, holding that "the case law makes clear that more than the minimum Article III interest is required." *See Lopez-Aguilar v. Marion Cnty. Sheriff's Dep't*, 924 F.3d 375, 391–92 (7th Cir. 2019).

"Interest" doesn't mean that the proposed intervenor finds the case interesting. And "interest" doesn't mean that the proposed intervenor wants one side to win, and the other side to lose. A non-party can't intervene as of right simply because it wants to chime in on someone else's dispute, and cheer for one side or the other. Intervention as of right isn't a basis to invite the cheering section onto the field of play.

The case at hand is an odd fit with the language of Rule 24. Again, the proposed intervenor must have an "interest relating to the property or transaction." *See* Fed. R. Civ. P. 24(a)(2). But the United States does not have any interest in the property or transaction in

question. The United States is not a stakeholder in the treatment facility or in the Holiday Inn, and has no skin in the game.

Haymarket is not running a program on behalf the United States. The federal government doesn't own the property, and it is not a party to any transaction. No party is trying to compel the federal government to do something, or prevent the federal government from doing something. No party is challenging a federal statute or regulation, either. The United States is off in the distance, watching this case from afar.

The United States argues that it has an interest in ensuring compliance with the ADA, and in holding public entities accountable for violating the ADA. *See* Mtn. to Intervene, at ¶ 5 (Dckt. No. 94). In its view, Congress envisioned the federal government playing "a central role in enforcing the standards established" in the ADA "on behalf of individuals with disabilities." *Id.* (citing 42 U.S.C. § 12101(b)(3)).

That argument faces an uphill battle when it comes to the statutory text. The United States wants to exercise enforcement powers under Title II of the ADA. But it has no enforcement powers under Title II of the ADA. *See United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730, 747–59 (11th Cir. 2021) (Newsom, J., dissenting from denial of reh'g en banc); *United States v. Florida*, 938 F.3d 1221, 1250–54 (11th Cir. 2019) (Branch, J., dissenting).

The ADA has three titles. Title I covers employment. Title II covers public services, programs, and activities. And Title III covers public accommodations. Haymarket brings a claim under Title II of the ADA. *See* Am. Cplt., at ¶¶ 228–34 (Dckt. No. 81).

Title I, Title II, and Title III each use different language when it comes to enforcement powers. After giving them a read, one thing jumps out: Title I and Title III expressly grant enforcement powers to the United States, but Title II does not.

Title I gives enforcement powers to the United States, and does so expressly. Title I conveys "the powers, remedies, and procedures . . . to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations . . . concerning employment." *See* 42 U.S.C. § 12117(a).

Notice the double dose of power vested by the statute. The "Attorney General" can enforce Title I, and so can "any person alleging discrimination." *Id.*

Title III also expressly grants enforcement power to the United States. That title expressly empowers the "Attorney General" to "commence a civil action in any appropriate United States district court." *See* 42 U.S.C. § 12188(b)(B).

But Title II includes no comparable textual hook for an enforcement action by the United States. The statute authorizes "any person alleging discrimination on the basis for disability" to bring a claim. *See* 42 U.S.C. § 12133. A reference to the Attorney General is nowhere to be found. Unlike its odd-numbered brethren, Title II doesn't expressly give the Attorney General any enforcement authority. The Attorney General has no hook to hang its claim on.

Putting it all together, Title I authorizes the Attorney General to bring a claim. Title III also authorizes the Attorney General to bring a claim. But Title II includes no such authorization.

The silence about the Attorney General in Title II speaks volumes, especially when compared to the nearby provisions in the same statutory neighborhood. "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 Security v. MacLean, 574 U.S. 383, 391 (2015); *see also Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

Plus, if "person" in Title II includes the Attorney General, then Title I contains surplusage when it authorizes both a "person" and the "Attorney General" to file suit. Courts typically avoid interpretations that render text duplicative. *See Republic of Sudan v. Harrison*, 587 U.S. 1, 12 (2019) ("[W]e are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.") (citation omitted); *Nat'l Ass'n of Mfrs. v. Dep't of Defense*, 583 U.S. 109, 128 (2018) ("Absent clear evidence that Congress intended this surplusage, the Court rejects an interpretation of the statute that would render an entire subparagraph meaningless."); A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 274 (2012) (noting that a term should not "needlessly be given an interpretation that causes it to duplicate another provision or have no consequence").

Boatloads of federal statutes give the United States enforcement powers. The list of possible examples is too long to do justice to the list. But the list doesn't include Title II of the ADA. Nothing in the text of Title II gives the United States the power to bring a claim.

The United States can't squeeze itself within the boundaries of the word "person" in Title II. "In 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." *See Return Mail, Inc. v. United States Postal Serv.*, 587 U.S. 618, 626 (2019) (citation omitted).

The Dictionary Act reinforces that longstanding understanding. *See* 1 U.S.C. § 1 (creating definitions and presumptions that apply "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise"). The Act defines the word "person" to "include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." *Id.* The federal government didn't make the cut.

Simply put, Title II authorizes a "person" who suffered discrimination on the basis of disability to bring a claim. Congress gave no such authorization to claims by the United States. And Uncle Sam isn't a person.

At best, the government's "interest" is a general interest in enforcing federal law. That wide-ranging interest isn't a sufficient basis for intervention as of right by the federal government. Otherwise, the United States could intervene as of right in every case that raises a federal claim. There is no limiting principle.

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 whenever a case raises a federal question. That's an all-access pass. When it comes to statutes, Congress does not "hide elephants in mouseholes." *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). The Federal Rules do not hide elephants in mouseholes, either.

The government's reading would take the air out of a neighboring provision about permissive intervention. A district court "may" permit the federal government to intervene if a party's claim or defense is based on "a statute or executive order administered by the officer or agency." *See* Fed. R. Civ. P. 24(b)(2)(A). That provision wouldn't make much sense if a district court *must* allow the United States to intervene as of right whenever there is a federal question.

Congress creates the substantive rights, and Congress decides who can enforce them, and how. "Like substantive federal law itself," the right "to enforce federal law must be created by Congress." *See Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). And here, Congress withheld the power to enforce Title II from the federal government.

To sum it up, the United States has not satisfied the requirements for intervention as of right. Rule 24(a)(2) requires a proposed intervenor to have a legally protectable interest. The United States has no interest in the property or transaction, except a general interest in enforcing federal law writ large. It's hard to see how the United States could have a legally protectable interest if it has no enforcement powers under Title II at all.[1]

B. Adequate Representation

The other hurdle is adequate representation. The question is whether the "existing parties adequately represent that interest," meaning the intervenor's "interest relating to the property or transaction." *See* Fed. R. Civ. P. 24(a)(2).

The United States doesn't get over that hurdle, for similar reasons why it tripped on the last one. The United States doesn't have any "interest relating to the property or transaction." *Id.* There are no interests of the United States for Haymarket to represent.

[1] In a recent case, Judge Newsom addressed whether Title II's reference to the Rehabilitation Act could create an avenue for the Attorney General to bring a claim. *See United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730, 751–57 (11th Cir. 2021) (Newsom, J., dissenting from the denial of reh'g en banc). Basically, Title II points to the Rehabilitation Act, and the Rehabilitation Act points to Title VI of the Civil Rights Act of 1964. *See* 42 U.S.C. § 12133. As Judge Newsom explained, because Title II piggybacks off of Title VI, a plaintiff "can seek to effect compliance with Title II . . . [by] any other means authorized by law." *See Sec'y Fla. Agency*, 21 F.4th at 752 (Newsom, J., dissenting from the denial of reh'g en banc) (cleaned up). So, the question "is whether the Attorney General's suit here to enforce Title II constitutes an 'other means authorized by law.'" *Id.* (citation omitted). Judge Newsom exhaustively addressed this issue, and this Court adopts his reasoning in full. This Court thus concludes, as did Judge Newsom, that Title II does not create a cause of action for the Attorney General to enforce Title II, either by its own text or the text of the Rehabilitation Act or Title VI. *Id.* at 758.

Even if a wide-ranging interest in enforcing federal law counted as an "interest," there would be no reason to open the door and give the federal government a seat at the (counsel) table. Haymarket has an interest in enforcing its rights under the ADA, too. Haymarket is capably pursuing that interest on its own. If the point is that the federal government has an interest in enforcing the ADA in this dispute, then there is no need for another voice.

The Seventh Circuit applies "three different standards for showing inadequacy [of representation] depending on the relationship between the party and the intervenor." *See Bost*, 75 F.4th at 688. The stronger the relationship, the more proof of inadequacy is required before allowing intervention.

The parties agree that the lowest standard applies here, because there is no meaningful relationship between Haymarket and the United States. *See* Gov't's Reply, at 19 (Dckt. No. 115); Defs.' Resp., at 9 (Dckt. No. 107).

That standard is called the "default rule," which applies "when there is no notable relationship between the existing party and the applicant for intervention." *See Bost*, 75 F.4th at 688. The default rule is satisfied if "the applicant shows that representation of his interest 'may be' inadequate." *See Kaul*, 942 F.3d at 799 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528 538 n.10 (1972)). The burden is "minimal," but it "is not nonexistent." *See Bost*, 75 F.4th at 690 (citing *Ligas*, 478 F.3d at 774).

The United States argues that private parties cannot adequately represent the federal government's views on the proper interpretation of the ADA. *See* Mtn. to Intervene, at ¶ 7 (Dckt. No. 94). The United States also believes that it is best positioned to decide whether Haymarket is adequately representing its interests. *See* Gov't's Reply, at 19 (Dckt. No. 115) (citing *Miami Tribe of Okla. v. Walden*, 206 F.R.D. 238, 241 (S.D. Ill. 2001)).

That argument doesn't get very far. The United States "does not point to any arguments that it would make that [Haymarket] has not already made." *See Bost*, 75 F.4th at 690. The United States might want the microphone, but as far as this Court can tell, it doesn't want to say anything that Haymarket isn't already saying.

Down the road, if the United States wants to chime in, and add its perspective on the meaning of the ADA, then the United States can seek leave to file an *amicus* brief. But in the meantime, the United States has not demonstrated inadequate representation.

II. Permissive Intervention

The other possibility is permissive intervention.

A district court "may" permit "anyone to intervene" who "has a claim or defense that shares with the main action a common question of law or fact." *See* Fed. R. Civ. P. 24(b)(1)(B). The text vests a district court with substantial discretion. The helping verb is "may," not "must."

That said, a non-party *must* satisfy two threshold requirements, right off the bat – before any discretion kicks in. Only then does the district court look at the case as a whole, and assess how opening the door to a non-party would affect the parties and the litigation going forward.

"Permissive intervention is within the discretion of the district court where the applicant's claim and the main action share common issues of law or fact and where there is independent jurisdiction." *See Ligas*, 478 F.3d at 775 (citing *Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995)).

The United States satisfies those two requirements. The United States wants to bring claims that overlap with the claims by Haymarket, legally and factually. Again, the United States *can't* bring a claim (because it has no enforcement powers under Title II), but the putative claims are about the same kettle of fish as the claims by Haymarket. And federal-question

jurisdiction exists over the would-be federal claims, even if the claims are going nowhere on the merits. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998).

So, the question then becomes how the entrance of the United States would affect the case. The text of Rule 24(b)(3) doesn't place many limits on a district court's discretion. The decision to allow intervention is "wholly discretionary." *See Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000).

But the text of Rule 24(b)(3) does point courts in one general direction. "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *See* Fed. R. Civ. P. 24(b)(3). A court must assess how the arrival of someone new would affect the parties who were here first.

The text emphasizes two key considerations. A district court must consider whether intervention would cause "undu[e] delay" or would "prejudice" the existing parties. *See* Fed. R. Civ. P. 24(b)(3). Those two factors are "the only *required* considerations by [a] district court." *See Bost*, 75 F.4th at 691 (emphasis in original).

That said, the Seventh Circuit "ha[s] never gone so far as confining [a] district court's discretion to only the two mandatory factors in Rule 24(b)(3) or to prohibit consideration of the elements of intervention as a matter of right as discretionary factors." *See Kaul*, 942 F.3d at 804 (citing *Ligas*, 478 F.3d at 776). Overall, the role of the district court is to "show[] a thorough consideration of the interests of all the parties." *Id.* (citing *Ligas*, 478 F.3d at 776).

Here, opening the door to the United States would add some burdens when it comes to discovery. The United States could serve discovery requests, and ask questions at deposition, and so on. More lawyers equals more burdens.

Even so, the parties apparently have been taking that approach during discovery anyway, by agreement. The United States has participated in discovery so far. *See* Pl.'s Resp., at 1 (Dckt. No. 112). So, if the United States formally intervened, the discovery process might not be that much different than the discovery process so far.

Still, it seems unavoidable that unfurling a longer welcome mat and prolonging the invitation to the United States would add burdens and create delays. The marginal cost of the involvement by the United States can't be zero. The line about too many cooks in the kitchen equally applies to too many lawyers in a conference room for a deposition.

The parties have made significant progress in discovery, but they aren't done. They separately filed a motion for three more months of discovery. Streamlining discovery in the last few months, without the involvement of the United States, might speed things along.

Expert discovery is another potential heavy lift. It's hard to know whether the United States would offer one or more experts. But adding even one expert would add to the burden of expert discovery.

Including the United States for the rest of the case would add burdens down the line, too. It could lead to another batch of summary-judgment motions, and more pretrial motions. Any such motions would impose costs on the Village.

Trial, too, could get complicated. The jury would have to decide additional claims, adding complexity to the jury deliberations and the verdict. And the jury might wonder why the United States is here at all. Worse yet, the jury might get the sense that the government is putting its oversized thumb on the scale.

The Village also would suffer prejudice from the involvement of the United States. Candidly, it feels like piling on. Haymarket is more than capable of defending its own interests.

Forcing the Village to litigate against Haymarket, *plus* the federal government, seems like overkill.

Overall, adding the United States to the mix would add burdens, delay, and judicial inefficiency. It would slow things down, and create extra work for the parties and the jury. There isn't much upside to counterbalance those costs, either. Haymarket is here, and Haymarket can stick up for itself. The costs seem certain, and the benefits seem uncertain, so the request for permissive intervention is denied.

The answer might be different if one of the parties targeted a federal statute or regulation. The federal government can stick up for federal law and defend its constitutionality. *See* Fed. R. Civ. P. 24(b)(2)(A), (B); *see also Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 277–79 (2022) (discussing permissive intervention and recognizing the government's legitimate interest in defending the constitutionality of its laws). But that's not this case.

Sometimes courts do allow intervention under Rule 24(b)(2) based on broader considerations of the "public interest." *See* 7C Mary K. Kane, Federal Practice & Procedure § 1912 (3d ed. 2024). But "intervention can be denied if the court, in its sound discretion, finds that intervention would unduly expand the controversy or otherwise lead to improvident delay or expense." *Id.* And that's this Court's finding.

Conclusion

For the foregoing reasons, the motion to intervene is denied.

Date: March 31, 2025

Steven C. Seeger
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HAYMARKET DUPAGE, LLC.,	)	
	)	
Plaintiff,	)	
	)	No. 22 C 160
v.	)	
	)	Judge Seeger
VILLAGE OF ITASCA, *et al.*,	)	
	)	
Defendants.	)	

UNITED STATES' MOTION TO INTERVENE AS PLAINTIFF

The United States of America moves to intervene as a plaintiff in this action, as of right or by permission, under Federal Rule of Civil Procedure 24(a)(2), (b), and in support states as follows:

1. Haymarket DuPage, LLC, has brought this civil rights action against the Village of Itasca, its Plan Commission, and its mayor for their alleged misconduct in reviewing and denying Haymarket's request for zoning approval to use its property as a treatment center for people with substance-use disorders and other disabilities protected under federal law. Dkt. 81 ("Am. Compl."). In its amended complaint, Haymarket seeks damages and declaratory and injunctive relief for alleged violations of the Fair Housing Amendments Act, 42 U.S.C. § 3602, *et seq.*; Title II of the Americans with Disabilities Act, 42 U.S.C. § 12102, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 12101, *et seq.*; and Illinois law. *Id.*

2. In November 2021, the U.S. Department of Justice opened an investigation into the Village's compliance with Title II of the ADA and its implementing regulations, soon after the Village had issued a final denial of Haymarket's zoning request for its proposed treatment center earlier that month. Am. Compl. at Ex. A. The Department of Justice has since completed an extensive investigation and substantiated Haymarket's claim that the Village violated Title II of

the ADA in reviewing and denying its zoning request.

3. The United States now moves to intervene in this action as of right or by permission under Rule 24 by filing its complaint in intervention, attached here as Exhibit A, to hold the Village to account for violating Title II of the ADA and its implementing regulations. Ex. A. As the United States alleges, the Village engaged in disparate treatment based on the disabilities of Haymarket's prospective clients by, among other things, tainting the zoning review process with discriminatory animus, subjecting Haymarket to artificially onerous zoning requirements, and invoking pretextual concerns in denying zoning approval. *Id.* The Village also failed to comply with its obligations to provide reasonable modifications under the ADA even had its purported reasons for the zoning denial been sincere. *Id.* The United States seeks declaratory, injunctive, and monetary relief for the Village's ADA violations. *Id.*

4. The United States moves to intervene as of right based on its core interests regarding the ADA and its implementing regulations involved in this disability discrimination action, which may be impaired or impeded if this action is disposed, and the current parties cannot adequately represent those interests. Fed. R. Civ. P. 24(a)(2).

5. The United States, including its Department of Justice, has institutional interests in ensuring that public entities comply with and are held appropriately accountable for violating the ADA and its implementing regulations. 42 U.S.C. § 12132; 28 C.F.R. § 35.130. Congress recognized those interests in enacting the ADA in intending for "the Federal Government" to play "a central role in enforcing the standards established" in the statute "on behalf of individuals with disabilities." § 12101(b)(3). Congress also enacted the ADA to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," 42 U.S.C. § 12101(b)(1), and "clear, strong, consistent, enforceable standards

addressing discrimination against individuals with disabilities," § 12101(b)(2).

6. The United States' interests are also at stake here because this action concerns ADA regulations that its Department of Justice and Attorney General promulgate, administer, and enforce. Am. Compl. ¶¶ 42-54; 42 U.S.C. § 12134(a) (directing the Attorney General to promulgate ADA regulations); *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 750-51 (7th Cir. 2006) (describing the Attorney General's role, at the instruction of Congress, in implementing Title II regulations); *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 277 (2022) (reversing appellate court's denial of state attorney general's motion to intervene as an abuse of discretion while recognizing that the government's "opportunity to defend its laws in federal court should not be lightly cut off."); *Melendres v. Arpaio*, 2015 WL 11071095, at *1 (D. Az. Aug. 13, 2015) (recognizing the interests of the United States and its Department of Justice in ensuring the effective enforcement of civil rights laws in granting motion to intervene).

7. The core interests above may be impaired or impeded if this action is disposed, and the current parties cannot adequately represent those interests. Fed. R. Civ. P. 24(a)(2). Private parties do not and cannot represent the views of the federal government on the proper interpretation and application of the ADA and the Department of Justice's implementing regulations. *Ne. Ohio Coal. for Homeless and Serv. Emp. Intern. Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1008 (6th Cir. 2006) (governmental interests in statutes and regulations may be impaired based on *stare decisis* considerations); *Wilson v. Amoco Corp.*, 33 F. Supp. 2d 981, 986-87 (D. Wyo. 1998) (state agency's motion to intervene proper under Rule 24(a)(2)). The court should therefore grant the United States' request to intervene as of right under Rule 24(a)(2).

8. Alternatively, the United States asks for permission to intervention under both grounds in Rule 24(b). Initially, the United States' claims share common questions of law and fact

with Haymarket's main action. Fed. R. Civ. P. 24(b)(1). The United States wishes to press the common claim also at issue in Haymarket's action that the Village engaged in disparate treatment under Title II of the ADA and its implementing regulations in reviewing and denying Haymarket's zoning request. *Compare* Am. Compl., *with* Ex. A. Accordingly, the claims and action present common questions of law concerning the requirements Title II of the ADA and its implementing regulations imposed on the Village during the zoning review process as well as common questions of fact involving the Village's review and denial of Haymarket's zoning request. *Id.*

9. Granting permissive intervention is also proper under Rule 24(b)(2) because the United States' claims are based on the ADA and its implementing regulations, which the Department of Justice and its Attorney General administer, enforce, or promulgate. *Disability Advocates, Inc. v. Paterson*, 2009 WL 4506301, at *2 (E.D.N.Y. Nov. 23, 2009) (permitting the United States to intervene under Rule 24(b)(2) in Title II ADA action); 7C Wright & Miller, *Federal Practice & Procedure* § 1912 (2024) (collecting cases showing that "the whole thrust of the amendment" concerning permissive intervention for the government under Rule 24(b)(2) "is in the direction of allowing intervention liberally to government agencies and officers seeking to speak for the public interest," and "courts have permitted intervention accordingly."). The United States' interests in these matters are paramount for the reasons explained above.

10. Whether the court allows the United States to intervene as of right or by permission, intervention will not unduly delay or prejudice the adjudication of the original parties' rights, and this motion is timely. Fed. R. Civ. P. 24(b)(3); *see also Cameron*, 595 U.S. at 280-81; *Nat'l Ass'n for Advancement of Colored People v. New York*, 413 U.S. 345, 366 (1973)), *Paterson*, 2009 WL 4506301, at *2.

11. The United States has diligently conducted an extensive investigation, which

commenced after the Village issued a final denial of Haymarket's zoning request and was completed while this action is still at an early stage of litigation. Two months ago, Haymarket filed its amended complaint naming new parties—the Plan Commission and mayor. Am. Compl. Last month, the defendants filed an answer, and the court entered a discovery schedule. Dkts. 81-85. The parties have also been aware of and participated in the United States' investigation.

12. Intervention will also cause no delay or prejudice because the United States plans to press claims that overlap with Haymarket's ADA claims and seeks no extensions of the current discovery schedule, under which fact discovery is set to close in January 2025. *See Disability Advocates*, 2009 WL 4506301, at *2. Rather, the United States is already deeply familiar with the underlying facts and claims based on its thorough investigation and can even hasten resolution based on its expertise in the ADA and regulatory issues at the heart of this case. The United States' vital interests relating to those civil rights matters would be prejudiced were this motion denied.

13. On June 20, 2024, counsel for the United States conferred with counsel for all parties in this action about the relief requested in this motion. Haymarket urges the court to grant the United States' motion to intervene, and counsel for the defense requested time to review the motion prior to taking a position.

WHEREFORE, the United States should be granted leave to intervene as a plaintiff in this action under Federal Rule of Civil Procedure 24 by filing its attached complaint in intervention.

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HAYMARKET DUPAGE, LLC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
VILLAGE OF ITASCA, *et al.*,	)	
	)	
Defendants.	)	No. 22 C 160
	)	
UNITED STATES OF AMERICA,	)	Judge Seeger
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
VILLAGE OF ITASCA,	)	
	)	
Defendant.	)	

COMPLAINT IN INTERVENTION OF THE UNITED STATES OF AMERICA

The United States of America, having moved for and been granted leave to intervene in this action, alleges as follows:

Introduction

1. The United States brings this disability rights enforcement action against the Village of Itasca, Illinois, for violating Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165, and its implementing regulations, 28 C.F.R. Part 35. The Village engaged in unlawful disability discrimination in reviewing—and ultimately denying—a zoning request that Haymarket DuPage, LLC, ("Haymarket") filed for authority to use its property as a treatment center for people with substance-use disorders. The United States seeks declaratory, injunctive, and monetary remedies.

2. Congress enacted the ADA in 1990 to remedy widespread discrimination against individuals with disabilities. The ADA and its implementing regulations protect these individuals, including those with substance-use disorders, from discriminatory zoning decisions by public entities, including those the Village committed here. § 12132.

3. Haymarket is an organization run by an acclaimed team of experts in substance-use disorders and related mental health disabilities who manage the largest treatment center for these conditions in the Chicagoland area. In 2019, Haymarket contracted to purchase a five-story hotel in Itasca with plans to repurpose it into a specialized treatment center offering a full continuum of healthcare services tailored to diagnose, treat, and care for patients with substance-use disorders. But public outrage erupted immediately after residents learned about the proposal and intensified after Haymarket applied to the Village for zoning approval.

4. The Village engaged in disparate treatment by employing a host of unprecedented and highly anomalous tactics to frustrate Haymarket's treatment center proposal. As one primary tactic, Village officials—especially Mayor Jeffrey Pruyn—legitimized, endorsed, and fanned the flames of residents' fears by issuing scores of public statements disparaging Haymarket and its supporters while urging residents to voice their fears and concerns at zoning hearings. Just as the officials intended, the discriminatory opposition movement swelled, seeped into the hearings, and persisted until it ultimately tainted the decision-making process.

5. Village officials also concocted a pretextual narrative that the treatment center would impose severe economic harms on the region and its taxing bodies. To accomplish this, before the zoning hearings began, the Village: (1) misclassified the treatment center as a planned development instead of a "health center" special use; (2) waged a public campaign against Haymarket that focused the public discourse on its pretextual economic concerns while amplifying

residents' fears; and (3) drew the Itasca Fire Protection District ("Fire District") and Itasca School District 10 ("School District") into the zoning process as "interested parties" to oppose Haymarket.

6. The misclassification imposed onerous zoning requirements on Haymarket, most notably by requiring it to prove, with assistance from experts and attorneys, that the center would impose no economic harms on the region. The public campaign disseminated pretextual economic talking points to Haymarket's opponents and further fomented opposition. And the "interested party" designations allowed the Fire and School Districts to leverage nearly trial-like due process rights to help the Village bury Haymarket's proposal under baseless economic concerns.

7. Collectively, these improper tactics aimed at defeating Haymarket's proposal by refocusing the zoning hearings on manufactured economic impact concerns, and away from the discriminatory concerns mounting amongst residents and public officials. The tactics prejudiced Haymarket by galvanizing the discriminatory opposition movement around made-up economic impact claims and converting what should have been a routine special-use zoning proceeding into an unprecedented and openly hostile zoning process involving 35 hearings lasting over two years, with heavy participation from attorneys and experts, and imposing staggering costs for Haymarket.

8. After the hearings concluded, the Village denied zoning approval based on pretextual economic impact concerns that (1) the Village would lose desperately needed tax revenue if a nonprofit rather than a hotel operated at the site; (2) Haymarket's patients would require costly emergency medical services from the Fire District; and (3) Haymarket patients or their children would overwhelm the local K-8 School District. During the hearings, Haymarket had offered overwhelming proof that these purported concerns were unlawfully considered and baseless, and it made extraordinary concessions to resolve them anyway. But these efforts fell on deaf ears because they spoke only to concerns that were pretext for discrimination.

9. Lastly, the Village failed to fulfill its accommodation obligations under the ADA prior to denying Haymarket's zoning request. First, the Village failed to accommodate Haymarket's reasonable request to use its special-use process. And second, the Village conducted a fake accommodations analysis after deliberately breaking down and failing to conduct any meaningful interactive process that might have revealed solutions to its purported concerns.

Jurisdiction and Venue

10. The court has subject matter jurisdiction over this ADA action under 28 U.S.C. §§ 1331, 1345, and 42 U.S.C. § 3614(a). The court may grant the relief the United States requests in this action under 42 U.S.C. § 12133, 29 U.S.C. § 794a, and 28 U.S.C. §§ 2201, 2202.

11. Venue lies in the Northern District of Illinois under 28 U.S.C. § 1391(b). The Village resides in this district, and the events or omissions giving rise to the claims occurred here.

Parties

12. The plaintiff is the United States of America, which is authorized to enforce the ADA under 42 U.S.C. § 12188(b)(1)(B) through the United States Department of Justice.

13. The defendant is the Village of Itasca, a non-home-rule Illinois municipality in DuPage County, organized under the laws of the State of Illinois, including the Illinois Constitution and Illinois Municipal Code. Ill. Const. art. 7, § 1; 65 Ill. Comp. Stat. § 5/1-1-1, *et seq*. The Village is a public entity under the ADA. 42 U.S.C. § 12131(1)(A)-(B).

Title II of the ADA and Implementing Regulations

14. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. This protects individuals with disabilities, including those with substance-use

disorders, from discriminatory zoning decisions by public entities, 28 C.F.R. § 35.131, which include "any State or local government," 42 U.S.C. § 12131(1)(A)-(B).

15. Federal regulations implementing the ADA in 28 C.F.R. § 35.130 further spell out Title II protections, including by imposing specific prohibitions and obligations on public entities, such as the obligation to make reasonable modifications in policies, practices, or procedures necessary to avoid discrimination on the basis of disability. § 35.130(b)(7)(i).

Factual Background

I. Haymarket Center and Its Effort to Expand into DuPage County

16. Haymarket Center is a nonprofit healthcare provider formed in 1972 that has distinguished itself as one of Chicagoland's leading actors in diagnosing, treating, and caring for patients with substance-use disorders and related mental health disabilities. The nonprofit operates an existing treatment center for these conditions in the area that serves about 12,000 people annually, regardless of their ability to pay.

17. Haymarket Center's main treatment center is in Chicago's West Loop neighborhood and offers a broad range of services, such as detoxification support, inpatient and outpatient treatment programs, primary medical and pediatric care, and a program allowing mothers in treatment to remain with their children.

18. Treatment centers devoted to caring for patients with substance-use disorders are urgently needed. The latest National Survey on Drug Use and Health, a survey conducted annually by the Substance Abuse and Mental Health Services Administration, found that in 2022, "48.7 million people aged 12 or older" had "a substance use disorder," including "29.5 million who had

an alcohol use disorder, 27.2 million who had a drug use disorder, and 8.0 million people who had both an alcohol use disorder and a drug use disorder."[1]

19. For years, Haymarket Center has sought to expand into Chicago's western suburbs of DuPage County due to the urgent need for treatment centers there. DuPage County is the second most populous county in Illinois, home to about a million people, and has been hit hard by the opioid crisis, a rapid spread in the overuse of opioid medications that has destroyed countless lives.

20. In 2019, Haymarket learned that a vacant, five-story, 168-room Holiday Inn at 860 West Irving Park Road (the "Property") was for sale in the Village of Itasca, a suburb in DuPage County roughly 25 miles northwest of Chicago. The Property offered a highly favorable buildout opportunity together with an ideal location for a new treatment center. It was isolated in a business zoning district that was separated from the nearest residences, parks, schools, or daycares by over half a mile and a highway, as depicted in attached Exhibit A.

21. Haymarket contracted to acquire the property in April 2019. Then, after extensive planning, Haymarket developed a proposal to repurpose the hotel into a specialized treatment center for patients with substance-use disorders and mental health disabilities. The treatment center would provide four treatment options—detox, inpatient treatment, outpatient treatment, and recovery homes—that are used in different combinations based on a patient's individualized assessment to successfully treat substance-use disorders. Haymarket would admit patients into the center without regard to their ability to pay and only after conducting background checks to prevent admission of violent criminals or sex offenders.

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1 Substance Abuse and Mental Health Admin., HHS Publication No. PEP23-07-01-006, NSDUH Series H-58, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2022 National Survey on Drug Use and Health* (2023), *at* https://www.samhsa.gov/data/report/2022-nsduh-annual-national-report (last visited Feb. 22, 2024).

22. Haymarket garnered support before applying for zoning approval to operate the center. Endorsements flowed in from more than 60 elected officials, community groups, and others due to its team's sterling reputation and the urgent need for the center. Still, local legislators and the regional newspaper's editorial board anticipated opposition from Itasca residents.

II. Residents Formed an Unprecedented Discriminatory Opposition Movement.

23. As predicted, Itasca residents began meeting to oppose the Haymarket treatment center immediately after learning about the proposal. Residents met with Village Mayor Jeffrey Pruyn as early as April 2019 and later attended a Village Board meeting to voice fears that Haymarket's patients would pose safety threats. Thereafter, many coalesced into an active community group called the "Concerned Citizens of Itasca," which stoked discriminatory fears.

24. In July, the Concerned Citizens issued an open letter to elected officials protesting that the treatment center would be "unacceptably close to public facilities geared towards children, such as our public library and waterpark, and youth-focused businesses." The letter also claimed that the center would lead to an increase in "drug-related crimes in the immediate area."

25. The group also fueled opposition by distributing a flyer, titled "The Truth About Haymarket," which falsely stated that the center would house criminals by offering "alternative to incarceration programs," and imperil children. The flyer further warned that the center would be "near many children-based businesses and schools, including the pool, library, and nature center."

26. Residents also created the "No Haymarket Itasca" Facebook page, which amassed over 1,400 members, as well as an opposition website, *NoItascaHaymarket.com*. An avalanche of social media posts stated, among other things, that Haymarket sought to bring a "crack house" to the community, turn Itasca into a "ghetto," and draw patients that would endanger children.

27. Residents also directly conveyed discriminatory fears to the press. The Chicago Tribune reported that an owner of a business across from the Haymarket site said that Haymarket

patients "are going to wander here, they're going to shoplift because they're just going to be looking for money or drugs. They don't care what they take." ABC7 Chicago reported that a resident said the center would be "too close to schools, to libraries, to the pool and to the train." Media articles were awash with such statements leading up to the first substantive zoning hearing.

28. The community's panic reached a climax on September 18, 2019, the date scheduled for the first substantive zoning hearing. Summarizing the tense atmosphere leading up to the hearing, a member of the Chicago Tribune Editorial Board opined that the opposition was indicative of a "NIMBY, or not in my backyard, attitude," adding that there was "no question members of the [Village] board will be under rigorous pressure to reject" Haymarket's proposal. Roughly 1,500 residents marched against Haymarket—a whopping 18% of the Village's population. The Concerned Citizens of Itasca distributed 1,300 campaign-like "No Haymarket" signs in the area, and residents wore "small town proud" T-shirts. Crowds arrived in such force that the Village canceled the hearing when the forum exceeded capacity.

III. The Village Tainted the Zoning Process Prior to the First Hearing.

29. Residents' discriminatory and unprecedented opposition did not occur in a vacuum. Rather, Village officials—themselves personally opposed to the treatment center at the outset—strategically fostered the opposition and engaged in a host of other highly anomalous efforts to taint the atmosphere leading up to the first zoning hearing.

A. The Village Misclassified Haymarket's Proposed Treatment Center.

30. First, Village officials sought to thwart the treatment center proposal by unlawfully requiring Haymarket to secure zoning approval under its demanding *planned-development* zoning process rather than the *special-use* process that actually applied.

31. Haymarket's proposed treatment center Property is situated in the Village's B-2 business zoning district, which allows for an array of special uses, such as "healthcare centers, including clinics and hospitals." Itasca Zoning Ordinance ("IZO") § 8.04(2)(m).

32. Under well-established Illinois law, the Village's enactment of legislation designating "health centers" as a "special use" in the B-2 zoning district amounts to a legislative determination that the use is compatible with, belongs in, and serves the public welfare in that district. But owners must still apply for special-use approval to use property as a "health center" there, since the Village retains the authority to evaluate limited matters like whether the proposed use, based on its "unique character," will adversely impact neighboring property, such as by reducing property values. § 14.11(1) (special-use definition), (4) (special-use approval standards).

33. In April 2019, Haymarket informed Village officials that it planned to apply for "health center" special-use approval. Under the Itasca Zoning Ordinance, a place qualifies as a "hospital" (and thus a "health center") if it is primarily devoted to operating and maintaining facilities to diagnose and treat or care for patients seeking medical care. § 3.02 ("health center" definition). Accordingly, Haymarket's treatment center, which would be primarily devoted to diagnosing, treating, and caring for patients with substance-use disorders, easily satisfied the definition of a "hospital" (and thus a "health center," too).

34. Despite this, the Village prohibited Haymarket from applying for "health center" special-use approval, claiming that the treatment center consisted of two wholly distinct uses—a "medical" (*i.e.*, "health center") use and a "residential use"—rather than just a "health center" use. The Village isolated the treatment center's "recovery home portion" as the distinct "residential" use on the purported basis that the recovery homes would offer patients beds and allow for long-

term stays lasting up to a year, unlike the rest of the center. The Village then required Haymarket to apply for planned-development approval instead of "health center" special-use approval.

35. The Village's decision had multiple obvious flaws and ran counter to its own zoning code. Initially, the Village wholly ignored that recovery homes serve *medical* purposes; they *treat* patients diagnosed with and *recovering from* substance-use disorders by offering a structured, sober group setting supervised by professionals specifically trained in providing substance abuse treatment. The recovery home setting, among other things, helps patients who choose that modality of care to avoid relapse and recover by relying on others undergoing similar experiences.

36. The Village also glaringly overlooked that the ordinance definition of a "hospital" unambiguously states two times that patients' potential length of stay is wholly irrelevant to whether a place qualifies as a "hospital." The definition states that a place should qualify as a "hospital" whether patients stay "overnight or longer" and "without regard to length of stay." *Id.*

37. Still further, the definition explicitly identifies as examples of "hospitals" multiple types of medical facilities that offer beds or homes for long-term stays, including maternity homes, lying-in-homes, homes for unwed mothers in which aid is given during delivery, sanitaria, and mental hospitals. *Id.* But the Village stated that Haymarket's recovery homes could not qualify as being part of a "hospital" because they offered beds for long-term stays.

38. Despite these and other obvious flaws, the Village stood on its decision to misclassify the treatment center, aiming to frustrate Haymarket's zoning request and disguise the discriminatory opposition mounting amongst residents and public officials.

39. The misclassification decision severely prejudiced Haymarket. The planned-development process is far more costly, lengthy, and complex than the "health center" special-use process. Because the planned-development process generally applies to ambitious development

projects seeking to convert vacant plots into combined-use real estate that deviates from ordinary zoning requirements, it involves more public hearings, scores of application filings, heavy attorney and expert involvement, and consideration of a wide array of substantive approval factors. § 14.12.

40. The process also dramatically broadens the scope of permissible zoning considerations, most notably by allowing the Village to assess whether the proposed use would be economically advantageous for the region and its taxing bodies. The Village exploited this aspect of the process soon after misclassifying the treatment center by requiring Haymarket to submit an economic impact statement ("EIS"), which requires "a tax impact study detailing the impact which the planned development will have upon all taxing bodies." § 14.12(4)(a)(5)(c)(3).

41. Even standing alone, the EIS submission and economic study supporting it imposed substantial costs on Haymarket and delayed the start of the zoning hearings by over a month. But costs and delay exponentially increased as Haymarket then had to defend itself during zoning hearings against wholly baseless economic impact concerns pertaining to Itasca's taxing bodies that public officials and residents raised to rout the proposal. The broadened economic scope of the planned-development process greatly contributed to causing Haymarket to progress through an unprecedented and adversarial zoning process lasting over two years and involving 35 hearings and heavy expert, attorney, and fact witness involvement.

42. Had the Village correctly classified the treatment center as a "health center" special use—a use that the Village determined to be compatible with, belong in, and serve the public welfare in the B-2 district by designating it as a special use there—, the Village's analysis would have been limited to routine considerations such as whether there is a need for the treatment center and whether the treatment center would adversely affect nearby properties. Haymarket's treatment center proposal easily satisfied the special-use standards that should have been applied to it.

B. The Village's Mayor Publicly Campaigned Against Haymarket.

43. As the Village defended the misclassification decision, Village Mayor Jeff Pruyn leveraged the economic impact feature unique to the planned-development process to publicly advance a pretextual narrative that Haymarket would impose disastrous economic harms on the region and all its taxing bodies—even before gathering evidence about these purported concerns. He also publicly accused Haymarket of lacking transparency, disparaged its supporters, and amplified residents' fears while encouraging those who harbored them to attend hearings.

44. On June 21, 2019, weeks before Haymarket had even filed a zoning application, Pruyn released his first public statement opposing Haymarket on the Village's website. There, he promised to keep an open mind and engage in an evenhanded and transparent zoning process. But in the same breath, he announced that Itasca's taxing bodies, including the Village and Fire and School Districts, would lose desperately needed tax revenue if Haymarket secured zoning approval. He stated that the taxing bodies annually received about $225,000 in taxes from the hotel the treatment center would replace, which would "be permanently lost if the property is converted to a nonprofit use and removed from the tax rolls." He then went on to publicly disparage the more-than-60 elected officials who had endorsed Haymarket's proposal.

45. Two days later, on June 23, 2019, the Daily Herald (a regional newspaper) published a letter Pruyn had submitted, wherein he castigated the paper for reporting that no tax dollars would be involved if the Village approved Haymarket's zoning request and continued disparaging Haymarket's supporters.

46. Four days afterwards, on June 27, the Village hired a public relations firm, Strategia Consulting, LLC, to assist the mayor in his public campaign against Haymarket. Strategia describes itself as "a hard-hitting, high-performance communications, crisis management and government affairs team of award-winning strategists, thought leaders and communications

experts." The firm helped the mayor prepare public statements and strategize throughout the zoning process. The Village had never retained a firm like Strategia for any other zoning matter.

47. Later, on July 3, Haymarket filed its zoning applications, and two weeks afterwards on July 16, Pruyn issued another public letter, criticizing Haymarket for failing to submit an EIS with its application. He stressed: "The economic impact statement is incredibly important. Without these, we have no way of knowing what, if any, impact Haymarket's petition will have for the Village, our resources, or the resources of other government services." He also announced that residents had expressed "frustrations and fears" about the proposal and urged residents to voice their concerns at the first zoning hearing scheduled for September 2019.

48. In mid-July, Pruyn began meeting with public officials and residents opposed to Haymarket, including members of the Concerned Citizens of Itasca. He compiled questions from these opponents into a formal questionnaire, which he had published on the Village's website on July 22. He later submitted the questionnaire for publication to the Daily Herald. The questionnaire posed security-related questions implying that Haymarket's patients would pose serious public safety threats. They asked, for example, "Are you asking to put a fence around the property?" "Are people using your facility allowed to leave?" "Do you expect law enforcement to assist in recovering an AWOL resident?"

49. Pruyn then went further by repeatedly deriding Haymarket in the public sphere for failing to fully respond (to his liking) to the questionnaire—including the security questions. In August, for example, the mayor publicly stated: "I have been extremely disappointed by Haymarket's lack of transparency and responsiveness throughout this process. Since day one, Haymarket's plans have been cloaked in secrecy." He added that he was "shocked to learn" that Haymarket had "secretly lobbied political heavyweights throughout the country."

50. The mayor had issued the questionnaire to mine bad information and amplify baseless and discriminatory concerns about Haymarket's proposal—not to learn answers. The security questions were especially discriminatory, as they assumed, without any supporting evidence, that Haymarket's patients would pose safety threats. Still, Haymarket responded to the questionnaire in August and supplemented its responses in September. Haymarket's CEO also gave the mayor a private tour of Haymarket's Chicago facility and answered all his questions.

51. In the meantime, Pruyn continued releasing a torrent of statements posing purported economic harms on the region all the way up to the first zoning hearing. On July 23, 2019, Pruyn said to the Daily Herald, "From the potential increase in the utilization of our village resources and the unknown change in tax revenue, there are concerns that need to be explored." On August 9, the Daily Herald reported that Pruyn stated that "most of the residents he's hearing from are concerned about the impact Haymarket's plan would have on the village."

52. On August 23, Pruyn issued a statement asserting that the "number one thing" Village staff wanted to convey "was how concerned we were about our Village's resources, and the potential strain our Village would encounter." And in September 2019, Pruyn sent a letter to the Chicago Tribune where he mocked a Tribune Editorial Board member who supported Haymarket and said that Itasca would lose "$250,000 in tax revenue" if "a nonprofit moves here." He added that the first hearing had to be postponed after "18% of our village" sought to attend, adding, "When that many people show up for a public hearing, it means something."

53. The mayor's derisive public statements and personal antagonism towards Haymarket engineered and fomented the discriminatory opposition movement amongst residents summarized above. Soon enough, the residents began repeating the same baseless and discriminatory concerns that the mayor had legitimized, disseminated, or amplified. They

complained, for example, that Haymarket patients would pose dangers to the community; that Haymarket's treatment center would cause severe economic burdens on the region, residents' pocketbooks, and municipal services; and that Haymarket was secretive and untrustworthy.

54. Some residents conveyed their opposition directly to the mayor by text. One resident referred to the treatment center as a "crackhouse" in a text to the mayor. Another texted the mayor to ask how he could present a "math-based argument" against Haymarket at the first zoning hearing. He sought to support the mayor's position that the Village would be unable to afford hiring fire and police staff to service Haymarket patients but lacked data to support the argument, so he asked the mayor for the data, stating, "Thanks for the leadership on this."

C. The Village Improperly Granted "Interested Party" Status to Public Entities.

55. The Village's third tactic to taint the zoning hearings before they began was to draw the Fire and School Districts into the zoning hearings and confer nearly trial-like due process rights on them so they could assist the Village with its pretextual economic attack against Haymarket. This further fomented opposition and exponentially increased the costs and length of the hearings.

56. Over Haymarket's objections, the Village designated each District as "interested parties" to the zoning hearings under its internal rules. This designation confers robust procedural rights to introduce evidence, present and cross-examine witnesses, propose findings of fact, and make opening and closing statements. By contrast, the Village grants those without this status only a single opportunity to offer statements or pose questions.

57. No constitutional, statutory, or other authority conferred such expansive procedural rights on the Districts. Rather, it is extraordinarily anomalous for public entities to seek or receive such far-reaching procedural rights during an Illinois municipal zoning process.

58. Indeed, neither District had ever asked for or been granted such wide-ranging hearing rights during prior zoning hearings. Instead, each had participated, if at all, merely by

sending a representative to express concerns about a proposed use before the Plan Commission. They had also cooperated with zoning applicants to resolve their concerns outside of the hearings.

59. But in the case of Haymarket, the Districts exploited their "interested party" designations to convert what should have been a routine special-use proceeding into an exorbitantly expensive and lengthy adversarial process. They hired attorneys who attended all the zoning hearings and opposed Haymarket by introducing evidence, presenting fact and expert witnesses, cross-examining and discrediting Haymarket's witnesses, making objections, submitting proposed findings of fact, and making opening and closing statements.

60. Having misclassified the treatment center as a planned development, waged a campaign against Haymarket, and designated the Fire and School Districts as "interested parties," the Village laid the groundwork to quash Haymarket's proposal during the substantive hearings.

IV. The Village Conducted Anomalous and Discriminatory Zoning Hearings.

61. After two cancellations due to the volume of people who wished to attend, the Plan Commission held its first substantive hearing on October 16, 2019, at Lake Park High School in nearby Roselle, Illinois. Over 1,000 people attended, nearly all of whom opposed Haymarket. During the hearings, the Plan Commission ultimately needed to decide whether to recommend that the Village Board approve Haymarket's planned-development and class I site-plan-review zoning applications. IZO §§ 14.12 (planned-development process), 14.13 (site-plan-review process).

62. The hearings were unprecedented for the Village in terms of length and scope. There were 35 hearings over a two-year period that involved testimony and cross examinations from 23 witnesses (13 fact witnesses and 10 experts) as well as heavy participation from residents, attorneys, and public officials. The Village's tactics before these hearings enabled residents to express patently discriminatory concerns and pretextual economic claims.

A. Residents and Officials Continued Voicing Discriminatory Concerns.

63. Initially, residents took up Village officials' many urgings to raise their concerns about the treatment center during the hearings—including patently discriminatory fears. The record is replete with discriminatory concerns expressed by members of the Concerned Citizens of Itasca; administrators of the "No Itasca Haymarket" Facebook page; and other residents. They said, among other things, that the center would cause crime to skyrocket, pose dangers to children, and be too close to essential Village infrastructure.

64. Village officials, in turn, failed to ensure that residents' prejudices did not taint its decision-making process. Rather, they acquiesced to, legitimized, and amplified residents' prejudices and repeatedly urged residents voice those concerns during the zoning hearings.

65. The opposition strongly influenced voting members of the Plan Commission and Board, who were appointed by the mayor or elected by the residents. They watched the mayor's campaign play out in the public sphere as throngs of misinformed residents opposed Haymarket through social media, direct communication, community meetings, public hearings, emails, letters, and marches—including one that involved about 18% of Itasca's voting residents.

66. Village Plan Commission members themselves made discriminatory statements during the hearings. They asked, for example, whether patients would be allowed to take the train from their home and then walk from the station to the treatment center; expressed fears that patients could abruptly leave the center if they no longer wanted treatment; and assumed that Haymarket would call the police if a patient left the building, even if the patient had done nothing wrong.

67. Residents echoed the officials' bias. At an early procedural hearing, two members of the Concerned Citizens of Itasca repeated many of the mayor's talking points during public comment, and one of them expressed fright that Haymarket's treatment center would be near "four

primary schools, a water park, three children-based stores," and public facilities as essential as the library. After she thanked "Village officials," especially the mayor, who "have risen to the occasion and listened to their residents," the crowd in attendance erupted in cheers.

B. Itaca Entities Opposed Haymarket with Pretextual Economic Impact Concerns.

68. Consistent with Village officials' efforts to improperly expand the scope of the hearings to camouflage mounting discriminatory opposition, the Village and Fire and School Districts focused their opposition during the hearings on purported economic consequences that Haymarket would inflict on the Village and its residents. These claims were baseless and pretextual and ignored Haymarket's repeated and specific offers to resolve them.

i. Fire District's Pretextual EMS Concerns

69. The Fire District is an independent taxing body that, at the time of the hearings, employed about 20 firefighters and operated three vehicles, including a fire engine, ambulance, and a truck. The District used its ambulance to respond to "911" EMS calls, which kept the ambulance busy for about 2.5 hours a day.

70. During the hearings, the District claimed that the treatment center would generate 379 more EMS calls annually, which would overwhelm its EMS capacity and require it to buy a second ambulance for $300,000 and staff it for $700,000 annually. But the District's own fire expert, Frank Moeller, contradicted these claims by testifying that the Fire District could handle at least 379 additional calls from the treatment center using just the ambulance it already owned.

71. Haymarket concluded that its treatment center would add only 150 annual EMS calls, well within the District's current capacity. Nevertheless, as a condition for zoning approval, Haymarket agreed at the hearing to contract with Elite Ambulance, the second largest private ambulance company in Illinois, to provide EMS for the treatment center. Elite would handle all

basic life support EMS needs for Haymarket so that the Fire District would only need to respond to EMS calls for *advanced life support*, which relate to more critical health emergencies.

72. This meant that even under the Fire District's inflated EMS projections, the District would only need to service about 100 annual EMS calls from Haymarket (or about two per week). The Fire District's expert had already admitted that the District could handle at least 379 EMS calls with one ambulance; accordingly, the District could easily handle 100 additional EMS calls.

73. When the Fire District hired Moeller, it directed him to ignore the reduced EMS burden that Elite Ambulance would have on the Fire District. Moeller therefore rendered his opinions subject to the absurd assumption that a private ambulance service would result in no reduction to the EMS calls that Haymarket's patients would generate for the Fire District.

74. Haymarket also agreed as another condition for zoning approval that it would hire additional full-time medical staff (at least a nurse or emergency medical technician) to further reduce the EMS burden that the treatment center's patients would impose on the Fire District. Haymarket represented that such medical staff would be available every day and night to provide medical services in-house and to triage patients needing EMS to determine whether to call Elite ambulance for basic life support services or the Fire District for advanced life support services.

75. Moeller generally agreed that the additional medical provider would alleviate the EMS burden Haymarket patients would impose on the Fire District. But again, he did not consider this factor in estimating Haymarket's potential EMS burden on the Fire District.

76. Even assuming that the Fire District needed to buy and staff an extra ambulance to provide EMS for Haymarket's patients, the District ignored obvious revenues and offers by Haymarket. As for the $300,000 ambulance cost, Haymarket offered to purchase a second ambulance for the District as a condition of zoning approval, but the Village rejected the offer.

77. And with respect to the $700,000 annual staffing cost for the second ambulance, Haymarket established at the hearing that the Fire District receives revenue each time it responds to an EMS call. The District charged $5,390 for every EMS call, and it would keep half this amount each time it responded to an EMS call for a Haymarket patient. Thus, the District could potentially receive over $1 million each year if Haymarket patients generated 379 EMS calls ($2,695 x 379). The Fire District, however, never accounted for this new revenue stream, which could have more than offset even its own projected staffing costs for a second ambulance.

78. Although Haymarket had shown these EMS concerns were baseless, the District continued to fiercely oppose the treatment center. As a result, Haymarket repeatedly offered to interact with District officials outside the zoning hearings to explore additional resolutions to its purported EMS concerns and clarify necessary financing if a second ambulance were needed. However, the District refused to meet throughout the two-year zoning process and insisted on presenting its claims publicly before the Plan Commission instead.

79. This refusal to interact sharply contrasted with District officials' ordinary practice in other zoning hearings, during which they had negotiated with the applicants outside the hearings to resolve the District's concerns. And Village decision-makers knew that Haymarket repeatedly sought to interact but made no effort to leverage their power as decision-makers to facilitate and manage negotiations to resolve the purported economic EMS concerns.

ii. School District's Pretextual Education Concerns

80. The School District is an independent taxing body that serves about 1,000 children in three K-8 elementary schools. During the hearings, the School District claimed that Haymarket's treatment center would overwhelm school resources, even though the patients would be too old to attend its schools and their children would not reside at the treatment center.

81. The School District initially argued that Haymarket would burden its schools by allowing preschool-aged children (0-5) to stay with mothers receiving treatment through its Mother and Child Program. Although these infants and toddlers would not attend school, the District claimed that it *might* need to offer them early childhood services if they had special needs under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (IDEA), including Child Find, evaluation, and Individualized Education Plan (IEP) services.

82. Haymarket responded that its Mother and Child Program in Itasca would mirror the one offered at the Chicago treatment center, which did not use local school district special education services for infants in the Program. Haymarket explained that it conducted its own evaluations for such children and provided special education services for those who need it. But instead of resolving this concern, the School District continued opposing Haymarket on the basis that it nevertheless *might* be burdened because it would still be legally obligated to offer these services under IDEA if Haymarket sought them.

83. Haymarket considered the School District's claims to be pretextual but voluntarily eliminated its Mother and Child Program in hopes of fully resolving them. But despite this, School District Superintendent Craig Benes testified that the District still faced a preschool special education burden because Haymarket *might* offer the Mother and Child Program *in the future*.

84. Benes also pivoted by raising two new purported economic concerns. First, he claimed the District might be burdened if mothers treated at Haymarket established residency in Itasca and enrolled their children in District schools, even though the children would reside outside Itasca. Second, he claimed that 18- to 22-year-old mothers with learning disabilities might seek special education services under IDEA's transition program obligations. 34 C.F.R. § 300, *et seq*.

85. Haymarket responded that neither scenario had ever occurred throughout the 45 years its Chicago treatment center had operated. Haymarket added that the scenarios were farfetched, since the children at issue would be residing outside of Itasca, and even if there were mothers in treatment who were 18 to 22 years old and had IEPs, any burden concerning the *high school* transition program would not impact the District, which did not serve high school students.

86. These points still did not assuage Benes or the District. In fact, Benes responded by escalating the grammar-School District's already improper opposition by issuing a press release and sending a letter to school parents describing his purported economic concerns. In both statements, Benes claimed that children with special needs at the treatment center could cost the District as much as $28,000 per year, which would bring about increased property taxes and decreased educational quality for existing students. Benes further tried to alarm parents by stating that Haymarket would delay Fire District emergency safety support to the District's schools and reduce educational programming that the Fire District provided.

87. Haymarket, again, disagreed with these pretextual claims but attempted on at least four occasions during the zoning process to meet with the School District outside the hearings to discuss ways to resolve the concerns. On each occasion, the District refused to meet with Haymarket and insisted instead on presenting its claims publicly before the Plan Commission.

88. Village officials were aware of Haymarket's requests to interact but made no effort to facilitate and manage negotiations to resolve the District's purported economic concerns.

89. This course of action by the School District and Village starkly differed from their conduct in prior zoning hearings. Although the District had occasionally presented concerns at Village zoning hearings, it had never opposed a development (inside or outside a zoning hearing) due to the possibility that it would draw children who might economically impact the District. Nor

had the District opposed a development solely because it might be required to provide federally mandated special education services under IDEA. Rather, the District had routinely negotiated with zoning applicants outside the zoning process to resolve potential school-impact concerns.

iii. The Village's Pretextual Tax Revenue Concerns

90. The Village also directly opposed Haymarket during the hearings by presenting an expert, Sarah Ketchum, to raise a third economic impact concern. Ketchum opined that Itasca public entities would lose about $225,000 in annual tax revenue if Haymarket claimed a non-profit tax exemption and operated at the site instead of a hotel. She also stated that taxing bodies like the Village and Districts critically depended on the property tax revenue generated at the hotel site.

91. Haymarket responded that Ketchum's projected figure amounted to only about 0.3% of all property taxes collected from Itasca properties, and that the portion allotted to the Village and Fire and School Districts accounted for less than 0.5% of their budgets and revenues.

92. Any property tax loss could also have been offset by state and county funding. At the outset of the hearings in October 2019, Illinois State Representative Deborah Conroy, who chaired the congressional mental health committee, offered to secure $500,000 in grant funds to offset the tax revenue the Village said it would lose. But tellingly, Mayor Pruyn sidelined the offer by sending a letter directing Representative Conroy to hold off on securing state funding until Village staff had sufficient time to analyze data that would be presented during the hearings to determine the total financial impact to Itasca taxpayers.

93. Village officials never circled back with the legislator, made any effort to firm up the offer, or organized any interactive process involving her and Haymarket. Nor did they seek other private or public funding to offset the tax revenue the Village claimed it would lose.

94. The Village was also prohibited from even considering Haymarket's right to claim a tax exemption as a reason to deny zoning approval. Illinois law outright prohibits municipalities

from conditioning planned-development approval (or any zoning approval) on an applicant waiving its right to claim a tax exemption; and from denying zoning approval based on concern that the applicant's right to claim a tax exemption may be burdensome.

95. Moreover, had the Village properly classified Haymarket's treatment center as a "hospital" special use, considering Haymarket's nonprofit status would have been prohibited for an additional reason. The Village's zoning code explicitly designates "hospitals" as special uses in the B-2 zoning district, "*whether organized for profit, or not*." IZO § 3.2 (emphasis added). Under established Illinois zoning principles, this amounts to a legislative determination that nonprofit "hospitals" belong in, are compatible with, and serve the public welfare in the B-2 zoning district, and the Village could not backtrack on its legislative determination by denying "hospital" special-use approval for the treatment center based on Haymarket's nonprofit status.

96. Consideration of an entity's right to claim a tax exemption as a reason for denying zoning approval, in addition to being unlawful, is a highly anomalous Illinois zoning practice. The Village had never denied a zoning application on that basis before. Instead, Itasca's public entities had previously treated tax and zoning matters separately.

V. The Village Denied Haymarket's Zoning Application Based on Pretextual Concerns.

97. Throughout the zoning process, Haymarket had offered overwhelming proof that its treatment center proposal satisfied the approval standards that applied to its zoning applications. Haymarket had also made extraordinary concessions to address the concerns raised against its proposal, even though they were shown to be baseless.

98. But during its September 22, 2021 hearing, the Plan Commission unanimously recommended that the Board deny Haymarket's zoning applications. All commissioners agreed that there was a clear need in DuPage County for a treatment center for people with substance-use

disorders and mental health disabilities. But they stated that Haymarket would adversely affect the Fire District's ability to provide EMS and negatively affect the School District. One commissioner added that Haymarket would adversely affect tax revenue by claiming a tax exemption. All three reasons were pretextual.

99. The Plan Commission briefly discussed the Village's accommodation obligations under the ADA by discussing whether purchasing and staffing a new ambulance was a reasonable accommodation. They concluded that it was not on the purported bases that it required the purchase of a new ambulance for $300,000 and $700,000 in annual expenditures to fully staff it.

100. As for the $300,000 figure, the members never mentioned that Haymarket had offered to purchase the ambulance itself. And with respect to the $700,000 figure, the members offered no discussion at all on matters such as (1) whether or when the Fire District would even need a second ambulance; (2) how Haymarket's offers to contract with Elite Ambulance and hire additional medical professionals might lessen projected costs; or (3) the extent to which costs would be lowered by the additional revenue the Fire District would collect responding to EMS calls. The Plan Commission also never made any effort to engage in or organize any interactive process involving Haymarket to find other solutions to its purported EMS economic concerns.

101. On November 2, 2021, the Board voted 6-0 to deny Haymarket's zoning applications. Mayor Pruyn could only vote to break a tie as the Board's President. Even so, prior to the vote, he delivered a lengthy speech repeating pretextual economic concerns he had raised before the zoning hearings began, and before the Village had even collected evidence about them.

Claims for Relief

Count I
Americans with Disabilities Act
(Disparate Treatment)

102. The United States incorporates herein by reference paragraphs 1 to 101 above.

103. The Village engaged in disparate treatment against Haymarket and its prospective patients with disabilities in reviewing and denying Haymarket's request for zoning approval for its treatment center for patients with substance-use disorders. The Village, among other things, denied Haymarket's zoning application and prohibited Haymarket from applying for special-use zoning approval by reason of disability discrimination.

104. As a result, the Village violated Title II of the ADA, 42 U.S.C. §§ 12131-12165, and its implementing regulations, 28 C.F.R. Part 35.

Count II
Americans with Disabilities Act
(Failures to Provide Reasonable Accommodations)

105. The United States incorporates herein by reference paragraphs 1 to 101 above.

106. The Village refused Haymarket's reasonable accommodation request to apply for special-use approval to operate its treatment center as a "health center" special use and by denying Haymarket's planned-development application.

107. The Village also conducted a pretextual accommodations analysis that involved no meaningful interactive process after summarily rejecting, and at times quashing, extraordinary concessions Haymarket had offered to address its purported concerns. The Village deliberately broke down and failed to organize or partake in any meaningful interactive processes that might have revealed additional reasonable solutions to its purported economic concerns.

108. As a result, the Village failed to comply with its accommodations obligations in violation of Title II of the ADA, 42 U.S.C. §§ 12131-34, and its implementing regulations, 28 C.F.R. Part 35.

Prayer for Relief

WHEREFORE, the United States prays that the court grant the following relief:

A. Enter judgment in favor of the United States and declare that defendant Village of Itasca violated Title II of the ADA, as amended, 42 U.S.C. §§ 12131-12165, and its implementing regulations, 28 C.F.R. Part 35;

B. Enter an injunction requiring the Village to remedy the deficiencies described above;

C. Award compensatory damages in an appropriate amount for injuries suffered as a result of the Village's noncompliance with the ADA and implementing regulations; and

D. Award such other relief as the court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF RULE 30(d) COMPLIANCE

This appendix complies with Circuit Rule 30 because it contains all materials required by Circuit Rule 30(a) and (b).

s/ Barbara Schwabauer
BARBARA SCHWABAUER
Attorney

Date: July 28, 2025

ADDENDUM

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29 U.S.C. 794. Nondiscrimination under Federal grants and programs.

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

29 U.S.C. 794a. Remedies and attorney fees.

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e–5(f) through (k)) (and the application of section 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims of discrimination in compensation), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (and in subsection (e)(3) of

section 706 of such Act (42 U.S.C. 2000e–5), applied to claims of discrimination in compensation) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

42 U.S.C. 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action.

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant 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 as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the

department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

29 Fed. Reg. 16,301 (Dec. 4, 1964) (45 C.F.R. 80.7). Conduct of investigations.

. . .

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.*

> (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible

Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 80.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

31 Fed. Reg. 10,267 (July 29, 1966) (28 C.F.R. 42.107). Conduct of investigations.

. . .

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this subpart may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this subpart. The investigation should include, whenever appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this subpart occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this subpart.

(d) *Resolution of matters.*

(1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this subpart, the responsible

Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 42.108.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

31 Fed. Reg. 5292 (Apr. 2, 1966) (28 C.F.R. 50.3). Guidelines for the enforcement of title VI, Civil Rights Act of 1964.

. . .

(c) This statement is intended to provide procedural guidance to the responsible department and agency officials in exercising their statutory discretion and in selecting, for each noncompliance situation, a course of action that fully conforms to the letter and spirit of section 602 of the Act and to the implementing regulations promulgated thereunder.

I. Alternative Courses of Action

A. Ultimate Sanctions

The ultimate sanctions under title VI are the refusal to grant an application for assistance and the termination of assistance being rendered. Before these sanctions may be invoked, the Act requires completion of the procedures called for by section 602. That section require the department or agency concerned (1) to determine that compliance cannot be secured by voluntary means, (2) to consider alternative courses of action consistent with achievement of the objectives of the statutes authorizing the particular financial assistance, (3) to afford the applicant an opportunity for a hearing, and (4) to complete the other procedural steps outlined in section

602, including notification to the appropriate committees of the Congress.

In some instances, as outlined below, it is legally permissible temporarily to defer action on an application for assistance, pending initiation and completion of section 602 procedures—including attempts to secure voluntary compliance with title VI. Normally, this course of action is appropriate only with respect to applications for noncontinuing assistance or initial applications for programs of continuing assistance. It is not available where Federal financial assistance is due and payable pursuant to a previously approved application.

Whenever action upon an application is deferred pending the outcome of a hearing and subsequent section 602 procedures, the efforts to secure voluntary compliance and the hearing and such subsequent procedures, if found necessary, should be conducted without delay and completed as soon as possible.

28 C.F.R. 42.108. Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this subpart and If the noncompliance or threatened noncompliance cannot be corrected by informal means, the responsible Department official may suspend or terminate, or refuse to grant or continue, Federal financial assistance, or use any other means authorized by law, to induce compliance with this subpart. Such other means include, but are not limited to, (1) appropriate proceedings brought by the Department to, enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

28 C.F.R. 42.411. Methods of resolving noncompliance.

(a) Effective enforcement of title VI requires that agencies take prompt action to achieve voluntary compliance in all instances in which noncompliance is found. Where such efforts have not been successful

within a reasonable period of time, the agency shall initiate appropriate enforcement procedures as set forth in the 1965 Attorney General Guidelines, 28 CFR 50.3. Each agency shall establish internal controls to avoid unnecessary delay in resolving noncompliance, and shall promptly notify the Assistant Attorney General of any case in which negotiations have continued for more than sixty days after the making of the determination of probable noncompliance and shall state the reasons for the length of the negotiations.

28 C.F.R. 42.412. Coordination.

. . .

(b) Consistent with this subpart and the 1965 Attorney General Guidelines, 28 CFR 50.3, the Assistant Attorney General may issue such directives and take such other action as he deems necessary to insure that federal agencies carry out their responsibilities under title VI. In addition, the Assistant Attorney General will routinely provide to the Director of the Office of Management and Budget copies of all inter-agency survey reports and related materials prepared by the Civil Rights Division that evaluate the effectiveness of an agency's title VI compliance efforts. Where cases or matters are referred to the Assistant Attorney General for investigation, litigation or other appropriate action, the federal agencies shall, upon request, provide appropriate resources to the Assistant Attorney General to assist in carrying out such action.

45 C.F.R. 80.8. Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any

rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

Federal Rule of Civil Procedure 24. Intervention.

(a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:

> (1) is given an unconditional right to intervene by a federal statute; or
>
> (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) PERMISSIVE INTERVENTION.

> (1) *In General.* On timely motion, the court may permit anyone to intervene who:
>
> > (A) is given a conditional right to intervene by a federal statute; or
> >
> > (B) has a claim or defense that shares with the main action a common question of law or fact.
>
> (2) *By a Government Officer or Agency.* On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:
>
> > (A) a statute or executive order administered by the officer or agency; or
> >
> > (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) *Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) NOTICE AND PLEADING REQUIRED. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.