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 (No. 1:22-cv-160-scs)

AMICUS CURIAE BRIEF OF TENNESSEE AND 18 OTHER STATES IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

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INTEREST OF AMICI STATES

Amici are nineteen sovereign States that, for the benefit of their citizens, administer services, programs, and activities that are regulated under Title II of the Americans with Disabilities Act ("ADA"). The *amici* States thus have an interest in how Title II is enforced and by whom. That is particularly true here.

Whether Congress granted the Attorney General authority to enforce Title II against States and local governments significantly implicates the federal-state balance of powers. Consider, for example, *United States v. Georgia*, No. 1:10-cv-00249-CAP (N.D. Ga.), where the Department of Justice ("DOJ") successfully wielded the pain of Title II litigation to extract significant policy changes from the State of Georgia without ever having to prove wrongdoing by the State. *See United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730, 757-58 (11th Cir. 2021) ("*FAHCA*") (Newsom, J., dissenting from denial of rehearing en banc). The *amici* States have a long-recognized interest in protecting the proper allocation of governmental power between the federal government and the States. Policing these bounds helps *amici* States protect their citizens and sovereign prerogatives from federal agencies' unlawful arrogation of power. The *amici* States thus file this amicus brief pursuant to Federal Rule of Appellate Procedure 29(a)(2) in support of Appellees-Defendants and the district court's holding that the United States lacks a sufficient interest to warrant intervention here.

INTRODUCTION

Justice Kagan spoke too soon when she announced that "we're all textualists now."[1] After all, the text of the ADA is clear: Title I is enforceable by "the Attorney General" or "any person alleging discrimination" by an employer. 42 U.S.C. § 12117(a). Title III likewise authorizes an enforcement action by the "Attorney General" or "any person who is being subjected to discrimination" in the activities of a place of public accommodation. 42 U.S.C. § 12188(a), (b). Title II, on the other hand, only provides enforcement "remedies, procedures, and rights" to "person[s] alleging discrimination" in accessing State and local programs, services, and activities. 42 U.S.C. § 12133. Under that text, the Attorney General has a cause of action to enforce Titles I and III, but not Title II.

Yet the United States claims that Title II's distinct language lacks distinct meaning. It argues that the Attorney General's enforcement authority is "implicit" from a series of cross-references. The theory goes like this: The Attorney General has enforcement authority because Title II cross-references the Rehabilitation Act of 1973, which in turn cross-references Title VI of the Civil Rights Act of 1964, which itself says nothing explicit about the Attorney General's authority but instead directs agencies to "effectuate" Title VI's anti-discrimination mandate, including by

[1] Harvard Law School, *The 2015 Scalia Lecture Series: A Dialogue with Justice Elena Kagan on the Reading of Statutes*, YOUTUBE, at 8:29 (Nov. 25, 2015), https://www.youtube.com/watch?v=dpEtszFT0Tg.

issuing regulations. And through those regulations, agencies have established enforcement procedures that include an administrative complaint process that "could culminate in suits" by DOJ. According to the United States, its reading is required by Congress's general desire for the federal government to "play a central role in enforcing" the ADA—as evidenced by legislative history and the ADA's statement of purpose.

But the district court correctly eschewed the United States' purpose-driven morass of cross-references in favor of the ADA's plain text, which declines to grant the Attorney General the same authority to enforce Title II that she has under Titles I and III. The court's textual approach is bolstered by the federalism fallout that would otherwise ensue. Unlike the mostly private businesses and public accommodations regulated under Titles I and III, respectively, Title II regulates important state-run programs, services, and activities. So blessing federal-government enforcement of Title II carries significant implications for the federal-state power balance, particularly given the federal government's demonstrated willingness to wield its purported enforcement authority to affect States' policymaking. Such a radical reorientation of federal-state power typically must appear on the face of the statute, not deep at the core of a statutory matryoshka doll. Given the Attorney General's lack of authority to enforce Title II, the district court rightly held that the United States lacks a sufficient interest to intervene here.

ARGUMENT

I. The Attorney General Lacks a Cause of Action Under Title II.

"Like substantive federal law itself," the right "to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). Courts therefore must interpret the relevant statute to determine whether Congress intended to create a particular "remedy," because when "a cause of action does not exist[,] … courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." *Id.* at 286-87. Here is how Congress determined Title II should be enforced:

> The remedies, procedures, and rights set forth in section 794a of Title 29 [*i.e.*, § 505 of the Rehabilitation Act of 1973] shall be the remedies, procedures, and rights this subchapter [*i.e.*, Title II] provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

42 U.S.C. § 12133.

By its plain language, Title II only "provides" certain "remedies, procedures, and rights" to "person[s] alleging discrimination on the basis of disability." *Id.* And because the Attorney General, in her official capacity, is no such "person," Title II does not "provide[]" her with authority to enforce its standards. This plain-text reading is bolstered by context and bedrock interpretative canons requiring Congress to be "unmistakably clear" before a statute may be understood to "alter the usual constitutional balance between the States and the Federal Government." *See Gregory*

v. Ashcroft, 501 U.S. 452, 460 (1991) (quotation omitted) (cleaned up).

A. Title II's plain text does not grant the Attorney General a cause of action.

Title II only "provides" certain enforcement "remedies, procedures, and rights" to "*person*[*s*] alleging discrimination on the basis of disability." *See* 42 U.S.C. § 12133 (emphasis added). Thus, in answering whether the Attorney General has a cause of action, the word "person" is "precisely where this case should begin and end," *United States v. Florida*, 938 F.3d 1221, 1253 (11th Cir. 2019) (Branch, J., dissenting), because "[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others," *Alexander*, 532 U.S. at 290. The ADA does not define "person" in Title II, but there is a "longstanding interpretive presumption that 'person' does not include the sovereign." *Return Mail, Inc. v. U.S. Postal Serv.*, 587 U.S. 618, 626 (2019) (quotation omitted). Thus, the ADA's plain text "excludes a federal agency"—here, DOJ under the Attorney General—enforcing Title II because a "federal agency" is not a "person." *See id.* at 626-28.

Basic interpretive principles support that "longstanding interpretative presumption" here. *Id.* at 626 (quotation omitted). For one, limiting "person" in Title II to individuals reflects "common usage"—after all, a federal agency cannot have a

"disability"[2] that might serve as a "basis" for discrimination. *See id.* at 627. For two, the federal government is "[n]otably absent from the list of 'person[s]'" in the Dictionary Act—which supplies the definition of "person" that courts should use in "determining the meaning of any Act of Congress, unless the context indicates otherwise." *Id.* (quotations omitted).

B. Context confirms Title II's plain text.

The presumption that the federal government is not a "person" can be overcome only if there is "some indication in text or context of the statute that affirmatively shows Congress intended to include the Government." *Id.* at 628-29; *see also FAHCA*, 21 F.4th at 749 (Newsom, J., dissenting from denial of rehearing en banc). But the ADA's larger context only confirms that the Attorney General lacks authority to enforce Title II. Just compare Title II's enforcement provision with the enforcement provisions in Titles I and III.

Congress knows how to give the Attorney General a cause of action, and when it does so, it is explicit. *See, e.g.*, 52 U.S.C. § 10101(c) (authorizing "the Attorney General" to enforce the Voting Rights Act). The ADA is a case in point. "Title I's enforcement provision … expressly authorizes the Attorney General to sue, and does so *separately* from 'any person alleging discrimination.'" *FAHCA*, 21 F.4th at 749

[2] *See* 42 U.S.C. § 12102(1)(A) (defining "disability" "with respect to an individual" and to encompass "a physical or mental impairment that substantially limits one or more major life activit[y]").

(Newsom, J., dissenting from denial of rehearing en banc) (emphasis in original) (citing 42 U.S.C. § 12117(a)). "Title III's enforcement provision … is structured a bit differently, but it too clearly vests the Attorney General with authority to sue" separately from any "person" who is being subjected to discrimination based on disability. *Id.* at 749-50 (citing 42 U.S.C. § 12188).

Congress's explicitly empowering the Attorney General to enforce Titles I and III teaches at least two lessons. First, "the Attorney General is not included within the term 'person' under Titles I and III—otherwise why mention the 'Attorney General' in addition to and alongside the word 'person'?" *Id.* (citing *Republic of Sudan v. Harrison*, 587 U.S. 1, 12 (2019)). Second, "when Congress intended the Attorney General to have enforcement power under the ADA, *it said so*," in keeping with "the Supreme Court's observation that 'the United States Code displays throughout that when an agency in its governmental capacity *is* meant to have standing, Congress says so.'" *Id.* (emphases in original) (quoting *Dir., Off. of Workers' Comp. Programs, Dep't of Labor v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 129 (1995)).

Applying these lessons to Title II's enforcement provision confirms that the Attorney General is not covered. The "normal rule of statutory construction" is "that identical words used in different parts of the same act are intended to have the same meaning." *Gustafson v. Alloyd Co.*, 513 U.S. 561, 568 (1995). So, if the term

"person" does not include the Attorney General in Title I or Title III, then it does not include the Attorney General in Title II, either. Moreover, "silence" regarding a federal agency's enforcement authority under Title II "is significant when laid beside" Title I and Title III's explicit authorizations. *See FAHCA*, 21 F.4th at 750 (Newsom, J., dissenting from denial of rehearing en banc) (quotation omitted). Indeed, Title II's failure to mention the Attorney General is even more telling since it resides in the same statute as Titles I and III. That's because where "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." *Russello v. United States*, 464 U.S. 16, 23 (1983) (quotation omitted).

C. Federalism canons further fortify Title II's plain text.

"[O]ur Constitution establishes a system of dual sovereignty between the States and the Federal Government." *Gregory*, 501 U.S. at 457. Although "[t]he actual scope of the Federal Government's authority with respect to the States has changed over the years," *New York v. United States*, 505 U.S. 144, 159 (1992), the "separation of the two spheres" remains "one of the Constitution's structural protections of liberty," *Printz v. United States*, 521 U.S. 898, 921 (1997). Congress must "enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power." *U.S. Forest Serv. v. Cowpasture River Preservation*

Ass'n, 590 U.S. 604, 622 (2020). This "requirement of [a] clear statement" ensures that Congress "has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (quoting *United States v. Bass*, 404 U.S. 336, 349 (1971)).

Title II's coverage of state and local "'services, programs, or activities,' it bears emphasizing, run[s] the gamut of governmental activity, from prison facilities and emergency response services to playgrounds and hospital services." *Reinhart v. City of Birmingham*, No. 24-1954, 2025 WL 2426820, at *7 (6th Cir. Aug. 22, 2025) (Readler, J., concurring). Suits under that title thus "refer[] state decisions regarding the administration" of such "programs and the allocation of resources to the reviewing authority of the federal courts." *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 610 (1999) (Kennedy, J., concurring in the judgment). So even Title II suits brought by individuals carry "federalism costs." *Id.* Granting the Attorney General power to sue state governments exacerbates that federal intrusion and is a "big deal." *FAHCA*, 21 F.4th at 757 (Newsom, J., dissenting from denial of rehearing en banc).

When considering alleged federal-government authority to oversee state programs and activities at the core of traditional state powers, courts "normally require 'exceedingly clear language' from Congress before understanding a federal statute to intrude on the day-to-day operations of state and local governments." *Reinhart*, 2025 WL 2426820, at *7 (Readler, J., concurring). "Doubly so when Congress's

means of enforcement is by abrogating state sovereign immunity through § 5 of the Fourteenth Amendment." *Id.* (citing *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 73 (2000), and *Tennessee v. Lane*, 541 U.S. 509, 522 (2004)). Yet there is no explicit grant of authority to the Attorney General in Title II. Rather, the United States tries to cobble together that authority from a series of cross-references. That isn't the type of "exceedingly clear language" the Supreme Court requires, or that exists in Titles I and III. *Cowpasture*, 590 U.S. at 622.

Placing the United States' "cascade of cross-references," *Florida*, 938 F.3d at 1229, on equal footing with the explicit language in Title I and Title III is particularly unwarranted here. Because some actions carry heavier federalism costs than others, "there are 'good reasons' … why Congress might have wanted the Attorney General to be able to sue under Titles I and III, but not Title II." *FAHCA*, 21 F.4th at 751 (Newsom, J., dissenting from denial of rehearing en banc). While "Titles I and III apply predominantly to private defendants—employers and providers of public accommodations, respectively—Title II regulates every service, program, and activity administered by every state in the country." *Id.* That means "Title II enforcement could bring the federal and state governments into broad-scale conflict in a way that suits under Titles I and II would not." *Id.* Indeed, granting the Attorney General oversight of broad swaths of States' governance and operations could "tilt[] the federal balance decisively in favor of the federal government." *See id.* at 758.

History bears this out. The United States' expansive understanding of Title II's scope means the agency could extract policy changes across all facets of States' operations. Just consider the United States' recent Title II action against the State of Tennessee, arguing that state criminal law violates the ADA. *See* Compl., ECF No. 1, *United States v. Tennessee*, No. 2:24-cv-2101 (W.D. Tenn. Feb. 15, 2024). There the United States alleged that Tennessee's aggravated prostitution statute—which provides heightened penalties for individuals who commit prostitution while knowing that they are HIV-positive—"unlawfully discriminate[s] against individuals with … a disability." *Id.* ¶ 2. In addition to seeking compensatory damages on behalf of individuals convicted under Tennessee's law, the United States sought a federal-court order rewriting state criminal law and compelling state officials to amend state criminal records.

Or consider the United States' Title II investigation against the Tennessee Board of Law Examiners and the Tennessee Lawyers Assistance Program—each an arm of the Tennessee Supreme Court. After an extensive and drawn-out investigation under Title II, DOJ issued a letter finding that efforts by those state entities to ensure individuals suffering from substance abuse disorders are competent to practice law amount to unlawful discrimination. DOJ further demanded that the Tennessee Supreme Court take certain "corrective measures," dictating how applicants to the bar should be evaluated and disciplined. Citing 28 C.F.R. § 35.173 and § 35.174,

DOJ warned that failing to accept its terms "may" trigger litigation.

In both cases against Tennessee, DOJ eventually backed down. *See* Notice of Voluntary Dismissal, ECF No. 95, *United States v. Tennessee*, No. 2:24-cv-2101 (W.D. Tenn. Dec. 6, 2024); *see* Press Release, Tennessee Atty. Gen. & Reporter, *Tennessee Board of Law Examiners and Lawyers Assistance Program Vindicated after Department of Justice Closes Misguided Biden-Era Investigation* (Aug. 26, 2025), https://perma.cc/ZNM8-TTC8. But that happened only *after* the State had undergone discovery and responded to investigatory requests. And not all States have been able to resist DOJ's enforcement efforts.

To settle a Title II case brought by the United States, "Georgia agreed to numerous substantive policy changes governing how it would serve those with developmental disabilities and mental illness." *FAHCA*, 21 F.4th at 757-58 (Newsom, J., dissenting from denial of rehearing en banc). "Georgia also agreed to allow an independent reviewer to determine—at state expense—its compliance with the settlement." *Id.* at 758. "Additionally, the agreement gave the United States 'full access' to any persons, records, or materials 'necessary to assess the State's compliance.'" *Id.* Thus, "sanctioning the Attorney General's enforcement of Title II," often forces States to choose between costly settlement agreements that also lead to federal oversight of local policy decisions and the risk of "thousands (possibly millions) of dollars in litigation costs by disputing liability or terms of compliance." *Id.*

The United States has also used Title II as a cudgel to affect zoning policy in the past. *See United States v. City of Baltimore*, 845 F. Supp. 2d 640, 643-48 (D. Md. 2012). And DOJ recently announced settlements under Title II with North Carolina[3] and Colorado,[4] as well as local governments in Sangamon County, Illinois,[5] and New Hartford Township, Minnesota[6]. DOJ has suggested that there is more Title II litigation against States and local governments to come. *See, e.g.*, Press Release, DOJ Civil Rights Division, *Justice Department Finds that Idaho Violates Federal Civil Rights Law by Unnecessarily Segregating People with Physical Disabilities* (Jan. 16, 2025), https://perma.cc/K2W4-XC7V; Letter of Findings, DOJ Civil Rights Division, *The United States' Investigation under Title II of the Americans with Disabilities Act of Alabama's Long-Term Care System for Children with Physical Disabilities* (Jan. 15, 2025), https://perma.cc/QGY3-9HMK.

This is not a comment on the merits of the discrimination allegations in any

[3] Press Release, DOJ Civil Rights Division, *Justice Department Secures Agreement with North Carolina Department of Adult Corrections to Improve Communication Access for Incarcerated People who are Deaf or Hard of Hearing* (Aug. 28, 2025), https://perma.cc/A7GK-K5M7.

[4] Press Release, DOJ Civil Rights Division, *Justice Department Secures Settlement Agreement with Colorado to Ensure Opportunities for People with Physical Disabilities to Live at Home* (Nov. 1, 2024), https://perma.cc/2CE6-TQKB.

[5] Press Release, DOJ Civil Rights Division, *Justice Department Secures Agreement with Sangamon County, Illinois and County Agencies Resolving Race and Disability Discrimination Investigation* (Jan. 16, 2025), https://perma.cc/Q25C-H9LJ.

[6] DOJ, *Settlement Agreement Under the Americans with Disabilities Act Between the United States of America and Township of New Hartford, Winona County, Minnesota (DJ No. 204-39-202)* (Oct. 21, 2024), https://perma.cc/PJ24-KH5A.

of these cases. Nor do *amici* States mean to imply that Congress can never "regulate states in seemingly local matters (or even provide for federal enforcement, through lawsuits or otherwise)." *FAHCA*, 21 F.4th at 758 (Newsom, J., dissenting from denial of rehearing en banc). But "federal legislation threatening to trench on the States' arrangements for conducting their own governments should be treated with great skepticism, and read in a way that preserves a State's chosen disposition of its own power," particularly vis-à-vis the federal government. *Nixon v. Missouri Mun. League*, 541 U.S. 125, 140 (2004).

So before allowing the Attorney General to regulate States in local matters ranging from zoning to medical care to criminal law enforcement Congress "must make its intention to [alter the usual constitutional balance] unmistakably clear in the language of the statute." *Gregory*, 501 U.S. 458 (quotation omitted) (cleaned up). After all, "the federal government holds the upper hand," so "the wielding of its federal power against the states cannot be taken lightly or casually inferred." *FAHCA*, 21 F.4th at 758 (Newsom, J., dissenting from denial of rehearing en banc). Indeed, the fact that "States do not retain sovereign immunity from suits brought by the federal government," *Florida*, 938 F.3d at 1250, is one reason why Congress must be clear when it creates a cause of action for the federal government. But "reading Title II's enforcement provisions to allow the Attorney General" a cause of action against States and thereby authority to regulate their "provision of services to

[their] residents" would "sanction DOJ's encroachment on [States'] sovereign prerogatives—*in the absence of any solid evidence that Congress intended such a result*." *FAHCA*, 21 F.4th at 758 (Newsom, J., dissenting from denial of rehearing en banc) (emphasis in original).

II. The United States' Counterarguments Fail.

In arguing that the Attorney General can enforce Title II, the United States does not wrestle with the enforcement provision's text conferring a cause of action only on "person[s]." The United States does not cite, let alone distinguish, *Return Mail*. Nor can the United States successfully conjure carte blanch litigation authority through Title II's cross-references. The question of rights and remedies differs from the question of who has enforcement authority: "No matter how 'complex' the 'remedies, procedures, and rights' provided for in Title II may be, they apply only to a 'person alleging discrimination.'" *FAHCA*, 21 F.4th at 751 (Newsom, J., dissenting from denial of rehearing en banc). And regardless, the Attorney General's purported authority to sue on behalf of individuals under Title II fails on its "own terms." *Id.*

1. The United States asks this Court to divine a cause of action for the Attorney General through a "cascade of cross-references." *See Florida*, 938 F.3d at 1229. In particular, the United States points to Title II's incorporating the "remedies, procedures, and rights" afforded by the Rehabilitation Act, which in turn incorporates the "remedies, procedures, and rights" afforded by Title VI of the Civil Rights Act

of 1964. *See* Opening Br. 16-23. Because "administrative and judicial interpretations … establish[] that the Attorney General can bring suit in federal court to enforce Title VI and the Rehabilitation Act," the United States argues that the "same conclusion" must apply here. *Id.* at 17. Not so.

The Attorney General's independent authority to enforce Title VI and the Rehabilitation Act derives from those statutes' unique origins. *See FAHCA*, 21 F.4th at 751-54 (Newsom, J., dissenting from denial of rehearing en banc). Relevant here, both statutes authorize the federal government to "effect[]" compliance "by any other means authorized by law." 42 U.S.C. § 2000d-1; 29 U.S.C. § 794a(a)(2) (incorporating 42 U.S.C. § 2000d-1). So, the Attorney General may enforce those statutes if, "in th[ier] absence …, *something else* would sanction the proposed 'means'" of effecting compliance. *FAHCA*, 21 F.4th at 753 (Newsom, J., dissenting from denial of rehearing en banc) (emphasis in original). Put differently, the Attorney General may enforce those statutes "via a cause of action" that exists "*elsewhere*," outside of the statutes themselves. *Id.* (emphasis in original). For Spending Clause statutes like Title VI and the Rehabilitation Act, that elsewhere authority usually comes from a "common-law cause of action … for breach of contract." *See id.*

Title II is different. Neither federal funds nor contracts are at issue here; so, the typical common law-based contract cause of action is not an available "means" by which to effect compliance. *See FAHCA*, 21 F.4th at 753-54 (Newsom, J.,

dissenting from denial of rehearing en banc). Yet here the United States "alleges a bare violation of Title II" without identifying "a common-law or statutory cause of action 'authoriz[ing]' the federal government to sue for" such a violation. *Id.* at 754. It only points to Title II's adoption of Title VI's remedies. Opening Br. 16-23.

But that stops one interpretative nesting doll short of establishing the Attorney General's core authorities. The Attorney General has a cause of action at most to pursue enforcement through some "other means authorized by law" besides Title II. *See* 42 U.S.C. § 12133 (incorporating 42 U.S.C. § 2000d-1). But the United States cannot identify that "means." Thus, at the bottom of the United States' proposed statutory cascade sits a dry fount of authority for the Attorney General under Title II. "[T]here simply is no cause of action authorizing the government's *non*-contract suit here." *FAHCA*, 21 F.4th at 752 (Newsom, J., dissenting from denial of rehearing en banc) (emphasis in original). And the Court is not "at liberty to conjure one, no matter how sympathetic the plaintiffs' case." *Id.*

2. The United States' focus (at 25-27) on legislative history does not move the needle. Because "[w]e are governed by laws, not by the intentions of legislators," legislative history is an "illegitimat[e]" means of reading policy preferences into statutory text. *See Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment). Nor should the ADA's general-purpose statement override the plain text of Title II's enforcement provision, as such language "does

not limit or expand the scope of [an] operative clause." *See District of Columbia v. Heller*, 554 U.S. 570, 578 (2008); *see also State v. Su*, 121 F.4th 1, 8 (9th Cir. 2024). Instead, this Court's focus should be the same as the district court's—the plain text of Title II's enforcement provision. Under that provision only "person[s] alleging discrimination on the basis of disability" have a cause of action; the Attorney General does not.

CONCLUSION

The Court should affirm the district court's order denying intervention.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Rule 32(g) of the Federal Rules of Appellate Procedure, that this Brief complies with the type-volume requirements contained in Circuit Rule 29 because, excluding the parts of the Brief exempted by Federal Rule of Appellate Procedure 32(f), the Brief contains 4,227 words.

I further certify that this Brief complies with the typeface requirements of Circuit Rule 32(b) and Federal Rule 32(a)(5) and the type-style requirements of Federal Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Harrison Gray Kilgore
HARRISON GRAY KILGORE

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2025, I electronically filed the foregoing amicus brief with the United States Court of Appeals for the Seventh Circuit using the CM/ECF system, which will send notification to all parties registered with the Court's CM/ECF system.

/s/ Harrison Gray Kilgore
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