UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **STATE OF SOUTH CAROLINA,** **Defendant.**	**Case No. 3:24-cv-07125-CMC** **MOTION TO DISMISS**

The Defendant State of South Carolina hereby moves for dismissal of the Complaint in this case pursuant to Rules 12(b)(1), (6) and (7), FRCP, in that, for the reasons set forth below, this Court lacks subject matter jurisdiction of this case, Plaintiff has failed to state a claim upon which relief can be granted and Plaintiff has failed to join a party under Rule 19. Among other defenses discussed below, the United States lacks authority, and thus standing, to sue as a Plaintiff under the Americans with Disabilities Act (ADA) Title II,

BACKGROUND

This suit was filed on December 10, 2024, less than 60 days before inauguration under ADA Title II42 U.S.C. §§12131-34. The 19 page Complaint asks for sweeping relief against the entire State of South Carolina requesting that the State be enjoined to provide community-based services to adults with serious mental illness (SMI) "in the most integrated setting appropriate." It challenges the State's use of State and private run community residential care facilities (CRCF) which the suit contends are segregated settings for adults with SMI.

Although not naming the agencies as parties, the Complaint repeatedly references the State's Department of Mental Health as having responsibilities for the care of the mentally ill and

also mentions the State's Department of Health and Human Services (¶60) as administering a State Medicaid Plan that "covers the Medicaid-funded services relevant to this matter."[1] Both agencies vigorously deny that South Carolina is violating Federal law in its provision of services for the mentally ill.

GROUNDS FOR DISMISSAL

The United States lacks authority, and thus standing, to sue as a Plaintiff under ADA Title II, and it seeks sweeping relief that courts have found to be incompatible with that statute. The United States is essentially requesting class action type relief without an individual plaintiff who is alleged to have been injured and without any showing that the standards for a class action are satisfied. The United States lacks the authority to make such a claim, itself, as a Plaintiff under Title II. The relief it requests is the same broad relief found to be impermissible in *Mississippi, supra.*

I

THE UNITED STATES HAS NO AUTHORITY OR STANDING TO SUE UNDER ADA TITLE II

A

The Attorney General Is Not A "Person" Authorized To Sue For The United States Under Title II

The threshold question in this case is whether the United States Attorney General has the authority to sue under Title II of the ADA. He does not. "[T]he United States Code displays throughout that when an agency in its governmental capacity is meant to have standing, Congress says so." *Dir., Off. of Workers' Comp. Programs, Dep't of Lab. v. Newport News Shipbuilding &*

[1] The suit briefly mentions the Department of Public Health as licensing, inspecting and monitoring CRCF's. ¶26.

Dry Dock Co., 514 U.S. 122, 129 (1995). Congress has not said in Title II of the ADA that the Attorney General has authority to sue here. Accordingly, this Court lacks subject matter jurisdiction of this case. *Simon v. E. Kentucky Welfare Rts. Org*., 426 U.S. 26, 37 (1976)("No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies. *See Flast v. Cohen*, 392 U.S. 83, 95 (1968). The concept of standing is part of this limitation.").

"Congress enacted the ADA 'to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.' *Tennessee v. Lane*, 541 U.S. 509, 516 (2004) (quoting 42 U.S.C. § 12101(b)(1))." *United States v. Sec'y Fla. Agency for Health Care Admin*., 21 F.4th 730, 747 (11th Cir. 2021), on rehearing en banc, dissent of Judge Newsom. "The Act contains three titles: Title I covers employment; Title II covers public services, programs, and activities; and Title III covers public accommodations. See *id*. at 516–17, 124 S.Ct. 1978." *Id.*

Title II's enforcement provision in 42 U.S.C. §12133 states as follows:

> The remedies, procedures, and rights set forth in section 794a of Title 29 [§ 505 of the Rehabilitation Act] shall be the remedies, procedures, and rights this subchapter provides <u>to any person alleging discrimination</u> on the basis of disability in violation of section 12132 of this title." (emphasis added).

Congress did not authorize the Attorney General to sue States under Title II. That title contains no textual authorization for federal enforcement actions. While Titles I and III expressly authorize suit both by "the Attorney General" and by a "person alleging discrimination," Title II only authorizes suit by a "person alleging discrimination," 42 U.S.C. §§ 12117(a), 12133, 12188—which the Attorney General is not, and does not claim to be. This should be the end of the matter.

Congress alone authorizes the class of individuals who can sue under the laws it enacts. *Silvers v. Sony Pictures Entm't, Inc*., 402 F.3d 881, 885 (9th Cir. 2005). "Any and all authority pursuant to which an agency may act ultimately must be grounded in an express grant from

Congress." *Killip v. Office of Pers. Mgmt., 991 F.2d 1564*, 1569 (Fed. Cir. 1993); *see Oceanair of Fla., Inc. v. U.S. Dep't of Transp*., 876 F.2d 1560, 1565 (11th Cir. 1989). Congress stated very clearly who could enforce Title II: "any person alleging discrimination on the basis of disability in violation of" Title II. 42 U.S.C. § 12133 (emphasis added).

The "federal government" is not a "person." *See Return Mail, Inc. v. U.S. Postal Serv*., 139 S. Ct. 1853, 1861-62 (2019). Indeed, there is a "longstanding interpretive presumption that 'person' does not include the sovereign." *Id.; see also Vt. Agency of Nat. Res. v. United States ex rel. Stevens, 529 U.S. 765, 780* (2000). In other words, "person" means what it says: individuals. No ordinary speaker of English would think a statute "provid[ing]" a remedy only to "person[s] alleging discrimination" also covers the federal government.

And basic interpretive principles support that "longstanding interpretative presumption" here. *Return Mail*, 139 S. Ct. at 1861-62. For one, "Congress does not 'hide elephants in mouseholes' . . . ." *Sackett v. Env't Prot. Agency*, 598 U.S. 651, 677 (2023) This suit by the United States against a State on behalf of any number of unnamed adults with serious illness is nothing if not elephantine. For two, 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. § 10701(a)(1) (directing "[t]he Attorney General … to institute" actions to enforce the Twenty-Sixth amendment); 52 U.S.C. § 10101(c) (authorizing "the Attorney General" to enforce the Voting Rights Act); 18 U.S.C. § 248(c) (authorizing "the Attorney General" to enforce the Freedom of Access to Clinic Entrances Act).

Put simply, Title II authorizes "person[s]" to enforce Title II, and the federal government is not a person. In answering whether the federal government has a cause of action, the word "person" is "precisely where this case should begin and end." *United States v. Florida, supra*, 938 F.3d at 1253. (Branch, J., dissenting).

Reading "person" to mean individuals also gives full effect to the ADA's entire scheme. Congress carefully created specific enforcement regimes in the ADA—explicitly giving the "Attorney General" authority to bring actions in Titles I and III, but not in Title II. 42 U.S.C. §§ 12117(a), 12188. Title I's enforcement provision expressly names the "Attorney General" alongside "any person alleging discrimination." Id. Title III's enforcement provision, which addresses discrimination in public accommodations, is structured a bit differently, but it too vests the Attorney General with authority to sue. Id. §12188(b)(1)(B) ("the Attorney General may commence a civil action..."). Title II, by contrast, mentions "any person alleging discrimination," but not the "Attorney General." Id. § 12133. This distinction matters.[2]

Under the canon of *expressio unius est exclusio alterius,* a law that expressly provides rights to A does not provide rights to A and B. "The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." *Alexander v. Sandoval*, 532 U.S. 275, 290 (2001); *see Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 19 (1979) ("[W]here a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it."). Because Congress provided only "person[s] alleging discrimination" the "remedies, procedures, and rights" provided in Title VI, 42 U.S.C. § 12133, it meant to preclude the federal government from independently bringing Title II claims. A statute—like the ADA—

[2] The Supreme Court has not overlooked the distinction between the enforcement provisions of the three titles. In *Olmstead v. Zimring,* Court observed that the plain texts of Titles I and III are different than Title II, in that individuals can enforce Title II, while individuals and the Attorney General can enforce Titles I and III. 527 U.S. 581, 591 n. 5 (1999); accord *Newport News*, 514 U.S. at 129 ("[W]hen an agency in its governmental capacity is meant to have standing, Congress says so."). And in at least four other instances, the Supreme Court has addressed the private right of action under Title II without so much as hinting that there might exist a federal enforcement action. *See Fry v. Napoleon Cmty. Sch*., 137 S. Ct. 743, 750 (2017); *United States v. Georgia*, 546 U.S. 151, 154 (2006); *Tennessee v. Lane*, 541 U.S. 509, 517 (2004); *Barnes v. Gorman*, 536 U.S. 181, 184–85 (2002).

that "carefully enumerates the parties entitled to seek relief" cannot be read to confer rights on unnamed parties. *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 27 (1983).

The differences between Title II and Titles I and III lead to a particularly strong inference in this case, as all three provisions are located within the same act. When "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). Applying that principle here: Because Congress conferred a cause of action on the "Attorney General" in two sections of a statutory scheme, but not in another, its silence cannot imply the existence of a separate cause of action. *E.g., Marshall v. Gibson's Prod., Inc. of Plano*, 584 F.2d 668, 672–676 (5th Cir.1978); see In re Griffith, 206 F.3d 1389, 1394 (11th Cir. 2000) (en banc) ("where Congress knows how to say something but chooses not to, its silence is controlling").

Nor can the federal government dodge these structural implications by contorting the meaning of "person." If the Attorney General were a "person," then the express inclusion of the "Attorney General" in Titles I and III would be entirely unnecessary, contradicting the "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant." *Kungys v. United States*, 485 U.S. 759, 778 (1988). And the term "person" cannot be read to include the Attorney General in Title II but not Title I or III. That would depart from the general principle that identical words used in different parts of the same act are intended to have the same meaning. *See, E.g., Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980) (refusing to give "the word 'filed' two different meanings in the same section of the statute ...."). Not only that, it would run headlong

into the "longstanding interpretive presumption that 'person' does not include the sovereign." *Vt. Agency*, 529 U.S. at 780; *see Return Mail*, 139 S. Ct. at 1861-62.

At bottom, to establish that "the Attorney General" is a "person" within the meaning of Title II, DOJ has to convince this Court either (1) that Congress used the word "person" with different meanings in Titles I and III than in Title II or (2) that the use of "Attorney General" in addition to and alongside the word "person" is redundant. And it would then need to overcome the "longstanding interpretive presumption that 'person' does not include the sovereign." *Vt. Agency*, 529 U.S. at 780; *see Return Mail*, 139 S. Ct. at 1861-62. It cannot do so.

B

***United States v. Florida* Was Wrongly Decided and Its Compelling Dissents Should be Followed**

As stated in the panel decision in *United States v. Florida*, 938 F.3d 1221, 1248 (11th Cir. 2019), "[o]ther cases the United States has filed to enforce Title II have not considered the question of standing but were litigated without jurisdictional challenge in the federal courts;" however, in *Florida*, over a vigorous dissent by Judge Branch, the Eleventh Circuit reversed the District Court's decision that the Attorney General lacked standing to sue and found that the United States does have the authority to sue to enforce Title II The Fifth Circuit noted that the issue was "difficult" but not presented on appeal. *United States v. Mississippi*, 82 F.4th at 391. Judge Branch applied authority similar to that discussed above.

The Eleventh Circuit's rationale for the Attorney General's enforcement authority was as follows:

> Through a series of cross-references, the enforcement mechanism for Title II of the ADA is ultimately Title VI of the Civil Rights Act of 1964. See 42 U.S.C. § 12133; 29 U.S.C. § 794a; 42 U.S.C. § 2000d-1. Section 12133 of Title II states that the "remedies, procedures, and rights" available to a person alleging discrimination are those available in § 505 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a. Section 505 contains a provision for

> enforcing § 504 of the Rehabilitation Act, which prohibits discrimination on the basis of disability by programs and activities receiving federal financial assistance. See 29 U.S.C. §§ 794(a); 794a.

938 F.3d at 1227

The Eleventh Circuit then engaged in a lengthy analysis of Title VI and the Rehabilitation Act ultimately concluding that the Attorney General may sue to enforce Title II:

> When Congress chose to designate the "remedies, procedures, and rights" in § 505 of the Rehabilitation Act, which in turn adopted Title VI, as the enforcement provision for Title II of the ADA, Congress created a system of federal enforcement. The express statutory language in Title II adopts federal statutes that use a remedial structure based on investigation of complaints, compliance reviews, negotiation to achieve voluntary compliance, and ultimately enforcement through "any other means authorized by law" in the event of noncompliance. In the other referenced statutes, the Attorney General may sue. The same is true here.

938 F.3d at 1250.

Judge Branch rejected this analysis and focused instead on the language of Title II in 42 U.S.C. § 12133 which provides that "[t]he remedies, procedures, and rights set forth in section 794a of Title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title." He applied the "longstanding interpretive presumption that 'person' does not include the sovereign," and thus excludes a federal agency." Citing *Return Mail, supra,*. ——, 139 S.Ct.at 1861–62 (2019)). He found that nothing in the text of Title II overcame the presumption. He also examined the context of the provision as required by *Return Mail* and found that it, too, supported the conclusion that the Attorney General lacked authority to sue under Title II because the enforcement provisions for the other two titles expressly included the Attorney General.

> The difference in language across the ADA's three titles is noteworthy. It is well settled that, "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). . . . If Congress had intended to grant a civil cause of action to the Attorney General

> in Title II, "it presumably would have done so expressly as it did in" Titles I and III. *See Russello*, 464 U.S. at 23. . . .

938 F.3d at 1252.

Judge Branch rejected the analysis of the Panel majority and the different approach of the United States, as follows:

> Yet the majority essentially reads Title III's language (that "the Attorney General may commence a civil action in any appropriate United States district court") into Title II. Although the majority readily admits that, "at first glance, Title II's enforcement provision is not as specific as those in Titles I and III," it finds these differences inconsequential. The majority reasons that the differences between Title II and the other subchapters of the ADA "should not dictate a conclusion that, absent greater specificity, we should simply assume that a single word in § 12133 ends all inquiry." As discussed above, the inquiry does, in fact, turn on a single word. Accordingly, it is clear that the Attorney General is not a "person alleging discrimination" under Title II.
>
> "[f]ocusing solely on the word 'person' " is precisely where this case should begin and end. Because the Attorney General of the United States—on behalf of the United States itself and not on behalf of any individuals served by the State of Florida—filed suit in this case, it is the United States that must have a cause of action to enforce Title II. And that determination necessarily depends on whether the Attorney General is a "person alleging discrimination" under the text of Title II. Because he is not such a person, the Attorney General has none of the "rights, procedures, and remedies" available under the Rehabilitation Act and Title VI. Accordingly, in this case, it is legally irrelevant what those "rights, procedures, and remedies" are because he simply does not possess those rights with respect to Title II. I do not agree that the multitude of cross-references to other federal regulatory schemes somehow provides a cause of action that does not otherwise exist in the text of Title II.

938 F.3d 1221, 1252–53. (emphasis added).

In a lengthy opinion that is contrary to the above rule that the simplest explanation is usually correct and that was authored by a member of the Panel majority, the Eleventh Circuit denied rehearing over the dissent of Judge Newsome in which Judge Branch joined. 21 F. 4th 730. The dissent's position is eminently more persuasive as it relies on the absence of a reference in Title II to the Attorney General's having enforcement authority whereas the majority has to rely

on cross references to other statutes and delve into their enforcement schemes. As Judge Newsome said regarding the Panel majority's reasoning, it is a "cross reference 'cascade.'" 21 F.4th at 748.

Judge Newsom explained:

> Because the panel's decision creates a nonexistent cause of action, vests the federal government with sweeping enforcement authority that it's not clear Congress intended to give, and, in the doing, upends the delicate federal-state balance, this Court should have reheard it en banc. I respectfully dissent from its refusal to do so.

21 F.4th at 748. In explaining his reasoning, he stated:

> And yet no one—neither the government in its briefs nor the panel in its opinion—has pointed to a valid source of law that gives the federal government a cause of action to sue for violations of Title II. Instead, so far as I can tell, the Rehabilitation Act and Title VI precedents cited by the government and the panel—which I'll explore in detail—support only the much more limited proposition that the federal government can sue federal-funding recipients for breach of contract. While those precedents seem to me correct as far as they go, they don't go nearly far enough. In particular, they don't move the needle where, as here, the government's suit isn't predicated on the violation of any contractual funding condition embedded in a Spending Clause statute.

The United States has not brought a breach of contract action against the State in the instant suit, and therefore, has no standing to bring this action.

Notably, the panel and rehearing dissents in *Florida* discussed above provide the more persuasive authority for reasons that include its simplicity. As multiple circuits recognize, the simplest explanation is usually correct. *Acorda Therapeutics Inc. v. Mylan Pharms. Inc*., 817 F.3d 755, 765 (Fed. Cir. 2016) ("As Ockham's Razor advises, the simpler path is usually best." . . . *Commodity Futures Trading Comm'n v. Zelener*, 373 F.3d 861, 868 (7th Cir.2004) (Easterbrook, J.) ('Best to take Occam's Razor and slice off needless complexity.'))"; *Apache Stronghold v. United States*, 101 F.4th 1036, 1082–83 (9th Cir. 2024) ("William of Ockham's razor teaches that when one is faced with two competing ideas, the simplest explanation is generally the best.").

Apache applied the Supreme Court's "mousehole" statement noted above in which the Court said "Congress does not 'hide elephants in mouseholes' by 'alter[ing] the fundamental

details of a regulatory scheme in vague terms or ancillary provisions.' " *Sackett, supra* (quoting *Whitman v. Am. Trucking Assns., Inc*., 531 U.S. 457, 468 (2001)." *Id.* Just as *Apache* found that "[t]he dissent's circuitous route through RLUIPA to define a term for which RFRA already provides a clear definition is unnecessary and contrary to these principles of statutory interpretation," (*Id*.) the majority in *Florida* followed a "circuitous route through" the ADA" to reach a conclusion that was "unnecessary and contrary" to the clear language of the ADA regarding enforcement authority. 101 F.4th at 1083. Under that clear language, the Attorney General had no authority to bring this action under Title II.

C

Under Federalism, the Attorney General Lacks Authority to Sue Under Title II

If Congress intended Title II to allow federal encroachment on a traditional state prerogative, it was required to do so with far more clarity than it did in Title II. The Supreme Court has long presumed that Congress legislates with an eye toward "preserv[ing] the constitutional balance between the National Government and the States." *Bond v. United States*, 572 U.S. 844, 862 (2014) (quotations omitted). This Court routinely invokes a federalism-based interpretive principle when construing acts of Congress. To displace traditional spheres of state authority, Congress must make its intention "clear and manifest" if it intends to preempt the historic powers of the States, such as enacting and enforcing its own criminal laws. *Rice v. Santa Fe Elevator Corp*., 331 U.S. 218, 230 (1947). Congress must speak plainly: "it must make its intention to [alter the usual constitutional balance] unmistakably clear in the language of the statute." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (internal marks omitted). And courts must be "certain of

Congress' intent before finding that federal law overrides this balance." *Id.* No such intent is evidenced by Congress in Title II. [3]

Concluding that the Attorney General has the authority to sue a State under Title II not only is inconsistent with the express language of Title II giving only "persons" that right, it is also inconsistent with the means of establishing a claim under that statute set forth in. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999) *Mississippi* said that "[a]claim of system-wide risk of institutionalizing some unspecified group of patients is incompatible with [*Olmstead*'s] factors, the first two of which are necessarily patient-specific.[4] 82 F.4th at 394. Instead of a claim for an individual as provided in Title II, the United States has filed a sweeping state-wide claim in the nature of a class action without a class representative and without meeting the standards for certifying a class action.

The United States, through its Attorney General has no authority to sue the State of South Carolina under Title II of the ADA. That title allows only persons to sue and he is not a "person." Had Congress wanted to give the Attorney General that authority, it could have said so as it did in Titles I and III. Construing such authority through the convoluted reasoning of the Eleventh

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[3] Judge Newsom in his dissent from the denial of rehearing in *Florida* also "fear[ed][that the panel decision] comes at real cost to core principles of federalism." 21 F.4th at 757. He said that "[t]he upshot of the panel's holding is that the Attorney General can enforce Title II of the ADA by suing state governments. That's a big deal." *Id.* "The panel's opinion, by sanctioning the Attorney General's enforcement of Title II, could force other public entities (like Georgia and Florida) to make a choice either (1) to enter into settlement agreements, which not only impose monetary and resource costs but also lead to federal oversight of local policy decisions, or (2) to risk thousands (possibly millions) of dollars in litigation costs by disputing liability or terms of compliance." *Id.* 21 F. 4th at 758.

[4] "[T]he plurality's three-part test asks whether (1) 'the State's treatment professionals have determined that community placement is appropriate' for the individual;14 (2) the 'affected individual' agrees with the treating professional's recommendation for community care; and (3) the reasonableness of mandating an accommodation, 'taking into account the resources available to the State and the needs of others with mental disabilities.' *Olmstead*, 527 U.S. at 587." 82 F. 4th at 394 (emphasis added).

Circuit is contrary to the principles of federalism and with the need for proof of a claim by an individual rather than the system wide claim of the United States in this case.

II

THE STATE IS NOT A PROPER DEFENDANT

An injunction against the State would not redress any injury alleged here. The Court can only "enjoin individuals tasked with enforcing laws, not the laws themselves." *Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021). And courts may not grant an injunction "so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law." *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 13 (1945); *see also Scott v. Donald*, 165 U.S. 107, 117 (1897) ("The decree is also objectionable because it enjoins persons not parties to the suit.").

The Complaint names no State agencies or officers. Instead, it seeks to enjoin only the entire corporate entity of the State without specifying any officer or agency that would have the authority or capacity to provide relief. Rooted in Article III standing, a court issuing an injunction must look to a "defendant's actual action," *Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 414 n.5 (2013)—not individuals who "were not parties to the suit" and who may or may not be bound by a judgment. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 568 (1992). "A court order that goes beyond the injuries of a particular plaintiff to enjoin government action against nonparties exceeds the norms of judicial power." *L. W. by and through Williams v. Skrmetti*, 83 F.4th 460, 490 (6th Cir. 2023) (citation omitted). That a third party might be affected by "an incidental legal determination" is not dispositive because the judgment is not "binding upon" them. *Lujan*, 504 U.S. at 569. Here, the nonparties are any agencies or officers of the State of South Carolina that the United States

might later claim were bound by an order against the State. They would not be bound because they would not be named in the order.

Ultimately, the federal government must "satisfy[] the traceability and redressability requirements of standing against a defendant," not "nonparties 'who are in active concert' with a defendant." *Jacobson v. Florida Sec'y of State*, 974 F.3d 1236, 1255 (11th Cir. 2020) (quoting Fed. R. Civ. P. 65(d)(2)(C)). The United States, therefore, has no standing against the State of South Carolina due to the lack of redressability of its claims against the State as well as its not being a "person" under Title II. Accordingly, this action is subject to dismissal under Rule 12(b)(1) due to the lack of Standing as to the State of South Carolina, and under Rule 12(b)(7) due to the failure to name required parties under Rule 19, FRCP.

III

THIS SUIT SEEKS IMPERMISSIBLY BROAD RELIEF

The Complaint requests that the State be enjoined to "cease discriminating against adults with [serious mental illness], and instead provide them community-based services in the most integrated setting appropriate, consistent with their individual needs . . . ." "Injunctions must be narrowly tailored within the context of the substantive law at issue to address the specific relief sought." *United States v. Mississippi*, *supra*, 82 F.4th at 398. "Sweeping institution-wide directives like those at issue here are never 'narrowly tailored' to remedy individual instances of discrimination. *M. D. by Stukenberg v. Abbott*, 907 F.3d 237, 271 (5th Cir. 2018) ("[I]nstitutional reform injunctions are disfavored, as they 'often raise sensitive federalism concerns' and they 'commonly involve[ ] areas of core state responsibility.' ") (quoting *Horne v. Flores*, 557 U.S. 433, 450 (2009)) (holding injunction mandating sweeping changes to Texas's foster care system overly broad)." *Mississippi*, 82 F.4th at 400. Although the "institution-wide directives" in the Mississippi

district court order that were overturned by the Court of Appeals are more particular than the general demand for relief in the Complaint, the body of the Complaint, as follows, shows that this case seeks the same kind of relief in its claims about the State's use of Community Residential Care Facilities(CRCF) and allegations about alternative measures the State could take.[5]

> ¶6: South Carolina does not provide adequate community-basd services to avoid unnecessary institutionalization in CRFCs.
>
> ¶13 . . .the United States brings this lawsuit, seeking a judicial order compelling the State to make reasonable modifications to its services for low-income South Carolinians with SMI. Changes to the State's policies and practices would enable many more South Carolinians with SMI to live in their own homes, contribute to their communities, and develop and maintain bonds with their friends and loved ones.
>
> ¶48. . .the State could support more people in integrated settings who are diverted from, or transition from, CRCFs. . . . .
>
> ¶55. South Carolina can implement reasonable modifications that would enable many of its current CRCF residents to transition to, and live successfully in, the community and that would prevent numerous other South Carolinians with SMI from unnecessarily entering CRCFs.
> ¶70 . . . South Carolina's case management service rarely assists individuals in CRCFs with moving to an integrated setting or avoiding institutionalization. Instead, case managers generally provide therapy or referrals and do not promote transitions by directly assisting people to engage in intensive supports, locate housing, and access skill building services, even for people who have expressed a desire to.
>
> ¶72. While peer support can be central to transitions, about a third of the State's 51 full-time equivalent peer support specialist positions were vacant as of March 2024, leaving people in some regions without any available peer support specialists to help with transitions. move into integrated settings.
>
> ¶ 73. The State could expand the capacity of existing community-based services to meet the needs of people who want to transition out of or avoid CRCF placement. For example, the State could expand supportive housing, ACT, peer support, supported employment, individualized independent living skills, and case management.
>
> ¶75 . . . The State has invested millions of dollars in serving people with SMI in CRCFs and can shift that funding to provide alternative services that would support those individuals in the community.

[5] The State sets forth these paragraphs of the Complaint only for the purpose of illustrating the scope of relief the United States seeks. The State denies that it is violating federal law.

> ¶79 The State can provide South Carolinians with SMI with information about the option to transition to an integrated setting. This would include conducting regular in-reach at CRCFs to identify individuals who are interested in transitioning to integrated housing, identifying their need for alternative services to support transition, and conducting comprehensive transition planning to support their moves.
>
> ¶80. The State can promptly transition all adults with SMI living in CRCFs who do not oppose community placement, and for whom such placement is appropriate, to the alternative community-based services they need to be successful post-transition.

These allegations show that Plaintiffs are seeking impermissibly broad relief that would direct the State as to how to use its resources including facilities, personnel, programs and funding. The Fifth Circuit found that "[t]he district court's sweeping injunction is 'intrusive and unworkable,' and requires far more than what might have been required to comply with Title II, had the district court limited itself to requiring the state to assure the best interests of institutionalized individuals with serious mental illness pursuant to *Olmstead*." 82 F.4th at 401. Because the instant suit seeks relief that goes beyond limits on judicial power in relation to Title II, this suit must be dismissed.

CONCLUSION

This suit fails on multiple levels. The United States has no authority to bring this suit under ADA Title II, it makes assertions that are not rooted in claims of injury to specific individuals, it seeks sweeping relief that is incompatible with Title II and principles of federalism, and it fails to name a defendant that can provide relief. This case should be dismissed.

Respectfully submitted,

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[Signature block continues next page]

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