No. 24-249

In the Supreme Court of the United States

A.J.T., BY AND THROUGH HER PARENTS, A.T. AND G.T.,
PETITIONER,

v.

OSSEO AREA SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 279; OSSEO SCHOOL BOARD,
RESPONDENTS.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS

LAURA TUBBS BOOTH
CHRISTIAN R. SHAFER
ADAM J. FRUDDEN
RATWIK, ROSZAK & MALONEY, P.A.
444 Cedar St., Ste. 2100
Saint Paul, MN 55101
(612) 339-0060

LISA S. BLATT
Counsel of Record
CHARLES L. MCCLOUD
AARON Z. ROPER
ROHIT P. ASIRVATHAM
MEGAN R. IZZO
HALLIE SAUNDERS
GARRETT M. WEN
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

QUESTION PRESENTED

Petitioner frames the question presented as follows:

Whether the ADA and Rehabilitation Act require children with disabilities to satisfy a uniquely stringent "bad faith or gross misjudgment" standard when seeking relief for discrimination relating to their education.

TABLE OF CONTENTS

Page

STATEMENT 1
A. Statutory Background 4
B. Factual and Procedural Background 5
SUMMARY OF ARGUMENT 11
ARGUMENT 15
I. *Monahan*'s Longstanding Rule Is Correct 15
A. *Monahan* Correctly Interpreted the Statutory Text 15
B. Federalism Principles Confirm *Monahan* 19
C. Petitioner's Criticisms of *Monahan* Are Misguided 24
II. Petitioner's Interpretation Is Incorrect 27
A. This Court Should Decide the Appropriate Standard 27
B. Deliberate Indifference Is Not the Appropriate Damages Standard 30
C. "No Intent" Is Not the Appropriate Liability Standard 34
D. Legislative History and Policy Arguments Do Not Justify Petitioner's Rule 44
CONCLUSION 48

TABLE OF AUTHORITIES

Page

Cases:

Abbott v. Perez, 585 U.S. 579 (2018) 17
Alexander v. Choate, 469 U.S. 287 (1985) 15, 24, 42, 44
Alexander v. Sandoval, 532 U.S. 275 (2001) 5, 30-32, 41
Ames v. Ohio Dep't of Youth Servs.,
87 F.4th 822 (6th Cir. 2023) 29
B.M. ex rel. Miller v. S. Callaway R-II Sch. Dist.,
732 F.3d 882 (8th Cir. 2013) 19, 26
Baker v. Bentonville Sch. Dist.,
75 F.4th 810 (8th Cir. 2023) 19, 25
Bartlett v. N.Y. State Bd. of L. Exam'rs,
156 F.3d 321 (2d Cir. 1998) 30
Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982) 5
Bd. of Trs. of Univ. of Ala. v. Garrett,
531 U.S. 356 (2001) 20-21
Bowen v. Am. Hosp. Ass'n,
476 U.S. 610 (1986) 22-23, 36
Chambers v. NASCO, Inc., 501 U.S. 32 (1991) 17
City of Cleburne v. Cleburne Living Ctr.,
473 U.S. 432 (1985) 21
Clark v. Nat'l Linseed Oil Co.,
105 F. 787 (7th Cir. 1901) 18
Cmty. Television of S. Cal. v. Gottfried,
459 U.S. 498 (1983) 41
Culley v. Cumberland Valley Sch. Dist.,
758 F. App'x 301 (3d Cir. 2018) 40
D.A. ex rel. L.A. v. Hous. Indep. Sch. Dist.,
629 F.3d 450 (5th Cir. 2010) 46
D.A. ex rel. L.A. v. Hous. Indep. Sch. Dist.,
716 F. Supp. 2d 603 (S.D. Tex. 2009) 46-47

Page

Cases—continued:

D.S.W. v. Fairbanks N. Star Borough Sch. Dist., 628 P.2d 554 (Alaska 1981) 23
Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629 (1999) 32
Dean v. United States, 556 U.S. 568 (2009) 35-36
Delano-Pyle v. Victoria County, 302 F.3d 567 (5th Cir. 2002) 29
Doe v. BlueCross BlueShield of Tenn., Inc., 926 F.3d 235 (6th Cir. 2019) 13, 22, 26, 29, 34, 41
Donohue v. Copiague Union Free Sch. Dist., 391 N.E.2d 1352 (N.Y. 1979) 23
Douglass v. District of Columbia, 605 F. Supp. 2d 156 (D.D.C. 2009) 26
Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir. 2001) 40
Eastman v. Va. Polytechnic Inst. & State Univ., 939 F.2d 204 (4th Cir. 1991) 30
EEOC v. Wyoming, 460 U.S. 226 (1983) 22
Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386 (2017) 5, 23, 25
Epic Sys. Corp. v. Lewis, 584 U.S. 497 (2018) 44
Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246 (2009) 5
Fry v. Napoleon Cmty. Schs., 580 U.S. 154 (2017) 42
Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274 (1998) 32
Gray v. Cummings, 917 F.3d 1 (1st Cir. 2019) 29
Gross v. FBL Fin. Servs., 557 U.S. 167 (2009) 35
Helix Energy Sols. Grp. v. Hewitt, 598 U.S. 39 (2023) 44

Page

Cases—continued:

Hunter v. Bd. of Educ. of Montgomery Cnty.,
439 A.2d 582 (Md. 1982) 23
Husted v. A. Philip Randolph Inst.,
584 U.S. 756 (2018) 37
I.A. v. Seguin Indep. Sch. Dist.,
881 F. Supp. 2d 770 (W.D. Tex. 2012) 46-47
J.W. v. Paley, 81 F.4th 440 (5th Cir. 2023) 29
Jackson v. Birmingham Bd. of Educ.,
544 U.S. 167 (2005) 32, 35, 41
Jones v. Governor of Fla.,
975 F.3d 1016 (11th Cir. 2020) (en banc) 35
Kamps v. Baylor Univ.,
592 F. App'x 282 (5th Cir. 2014) 41
Lentini v. Cal. Ctr. for the Arts, Escondido,
370 F.3d 837 (9th Cir. 2004) 38
Loper Bright Enters. v. Raimondo,
603 U.S. 369 (2024) 25, 40
M.P. ex rel. K. v. Indep. Sch. Dist. No. 271,
326 F.3d 975 (8th Cir. 2003) 26
M.Y. ex rel. J.Y. v. Special Sch. Dist. No. 1,
544 F.3d 885 (8th Cir. 2008) 19
Meagley v. City of Little Rock,
639 F.3d 384 (8th Cir. 2011) 30
Monahan v. Nebraska,
687 F.2d 1164 (8th Cir. 1982) 2-3, 10-13, 15-16, 18-25, 29, 33, 35, 43, 45-46
Murphy v. NCAA, 584 U.S. 453 (2018) 21
New York v. United States, 505 U.S. 144 (1992) 21
Olmstead v. L.C. ex rel. Zimring,
527 U.S. 581 (1999) 22, 38
Overby v. Gordon,
13 App. D.C. 392 (D.C. Cir. 1898) 18

Page

Cases—continued:

Penn Mut. Life Ins. Co. v. Mechs.' Sav. Bank & Tr. Co., 73 F. 653 (6th Cir. 1896) 18
Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1 (1981) 19
Peter W. v. S.F. Unified Sch. Dist., 60 Cal. App. 3d 814 (1976) 23
Punt v. Kelly Servs., 862 F.3d 1040 (10th Cir. 2017) 38
R.B. ex rel. L.B. v. Bd. of Educ. of City of N.Y., 99 F. Supp. 2d 411 (S.D.N.Y. 2000) 26
Raytheon Co. v. Hernandez, 540 U.S. 44 (2003) 34
Reid-Witt ex rel. C.W. v. District of Columbia, 486 F. Supp. 3d 1 (D.D.C. 2020) 45-47
Richardson v. Clarke, 52 F.4th 614 (4th Cir. 2022) 40
Royal Canin U.S.A., Inc. v. Wullschleger, 604 U.S. 22 (2025) 28
Sch. Bd. of Nassau Cnty. v. Arline, 480 U.S. 273 (1987) 44-45
Sch. Comm. of Burlington v. Dep't of Educ. of Mass., 471 U.S. 359 (1985) 47
Second Nat'l Bank v. Pan-Am. Bridge Co., 183 F. 391 (6th Cir. 1910) 18
Sellers ex rel. Sellers v. Sch. Bd. of City of Manassas, 141 F.3d 524 (4th Cir. 1998) 19
Se. Cmty. Coll. v. Davis, 442 U.S. 397 (1979) 11, 15-16, 25, 35-37, 42-43
Stern v. Univ. of Osteopathic Med. & Health Servs., 220 F.3d 906 (8th Cir. 2000) 24
Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll., 600 U.S. 181 (2023) 32, 35
Sweeney v. United States, 109 U.S. 618 (1883) 18
Tennessee v. Lane, 541 U.S. 509 (2004) 21, 43

Page

Cases—continued:

U.S. Forest Serv. v. Cowpasture River Pres. Ass'n, 590 U.S. 604 (2020) 22
United States v. Clarke, 573 U.S. 248 (2014) 17
United States v. Lopez, 514 U.S. 549 (1995) 20, 22
Univ. of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338 (2013) 38
Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252 (1977) 18-19
Wimberly v. Lab. & Indus. Rels. Comm'n, 479 U.S. 511 (1987) 36-37
Wis. Cmty. Servs., Inc. v. City of Milwaukee, 465 F.3d 737 (7th Cir. 2006) (en banc) 40

Constitution, Statutes, and Regulations:

U.S. Const. amend. XIV 20-21
20 U.S.C.
§ 1400 ..... 5, 21
§ 1411 5
§ 1412 5
§ 1414 5
§ 1415 ..... 5, 9, 24, 40, 47
§ 1416 20
§ 1681 41
26 U.S.C. § 3304 36
29 U.S.C.
§ 705 37
§ 794 ..... 2, 4, 14, 19, 30, 40
§ 794 (1978) 15
§ 794a 4-5, 20, 30
§ 3001 21

Page

Constitution, Statutes, and Regulations—continued:

42 U.S.C.
§ 1981a....34
§ 2000d....41
§ 2000d-1....20
§ 6102....41
§ 12102....37
§ 12111....4, 39, 43
§§ 12111-17....4
§ 12112....4, 38-39
§ 12131....4, 21, 44
§ 12132....2, 4, 14, 40
§ 12133....4
§§ 12181-89....4
§ 12182....4, 38-39
§ 12188....34
§ 12901....21
§ 15021....21
52 U.S.C. § 21083....37
Pub. L. No. 93-112, 87 Stat. 355 (1973)....37
28 C.F.R. pt. 35....39
34 C.F.R.
§ 100.8....19
§ 104.61....19
Minn. Stat. § 363A.12....47-48
Mont. Code
§ 49-3-101....48
§ 49-3-205....48
N.C. Gen. Stat. § 168A-7....48
Tex. Hum. Res. Code § 121.003....48

Page

Constitution, Statutes, and Regulations—continued:

Vt. Stat. Ann. tit. 9,
§ 4501 48
§ 4502 48

Other Authorities:

American Heritage Dictionary of the English Language (1969) 35
Ballentine's Law Dictionary (3d ed. 1969) 17
Black's Law Dictionary (4th ed. rev. 1968) 17
Oral Arg. Tr., *Ames v. Ohio Dep't of Youth Servs.*, 87 F.4th 822 (6th Cir. 2023) (No. 23-1039) 29
Osseo Area Schs., Legislative Priorities (2025), https://tinyurl.com/bdhcwhu5 6
Pet. Br., *Tennessee v. Lane*, 541 U.S. 509 (2004) (No. 02-1667) 43
Resp. Br., *Tennessee v. Lane*, 541 U.S. 509 (2004) (No. 02-1667) 43
U.S. Br., *Tennessee v. Lane*, 541 U.S. 509 (2004) (No. 02-1667) 43
U.S. Dep't of Justice, Title IX Legal Manual (updated Jan. 31, 2025), https://www.justice.gov/crt/title-ix 32
Webster's New International Dictionary of the English Language (2d ed. 1951) 35

In the Supreme Court of the United States

No. 24-249

A.J.T., BY AND THROUGH HER PARENTS, A.T. AND G.T.,
PETITIONER,

v.

OSSEO AREA SCHOOLS, INDEPENDENT SCHOOL DISTRICT
NO. 279; OSSEO SCHOOL BOARD,
RESPONDENTS.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS

STATEMENT

Every day across America's 100,000 public schools, teachers, parents, and administrators collaborate to achieve the best learning outcomes possible for each student, including those with disabilities. Sometimes those efforts will unfortunately fall short. But Congress did not plausibly subject every public school in America—and every State, locality, and federal-funding recipient—to federal-court supervision, plus the potential loss of federal funding and money damages, whenever good-faith efforts fail to satisfy everyone.

Instead, as the Eighth Circuit correctly held in *Monahan v. Nebraska*, 687 F.2d 1164 (8th Cir. 1982), the text of Section 504 of the Rehabilitation Act prohibits only intentional discrimination, *i.e.*, actions taken in "bad faith" or based on "gross misjudgment." Section 504 prohibits discrimination only "solely by reason of … disability." 29 U.S.C. § 794(a). And Title II of the Americans with Disabilities Act (ADA) likewise prohibits discrimination only "by reason of … disability." 42 U.S.C. § 12132.

Both statutes' "by reason of" language focuses on the defendant's motive. "Bad faith" is the traditional legal label for actions taken for an improper purpose, with "gross misjudgment" being one classic way of demonstrating improper purpose. *Monahan* reflects a straightforward interpretation of the statutory text, not a school-specific rule rooted in policy concerns.

Petitioner attacks *Monahan*'s bad-faith standard as "atextual and asymmetric." But *Monahan* is the correct standard across the board, both in schools and out, because every textual and contextual indication demonstrates that Section 504 and Title II cover only intentional discrimination. The statutes do not impose liability for nondiscriminatory, good-faith denials of requested accommodations.

When Congress compels affirmative actions or authorizes intent-free reasonable-accommodation or disparate-impact claims, it does so expressly, as shown by numerous other carefully detailed provisions of the Rehabilitation Act and ADA that do just that. Petitioner and the government's reading renders inexplicable Congress' decision to omit similar language from Section 504 and Title II. It likewise ascribes to Congress the implausible intent to expose the Nation's understaffed public schools to damages liability while exempting countless private schools from the same claims.

Monahan's longstanding bad-faith standard, by contrast, comports with foundational federalism principles. It ensures that liability and the potential loss of critical federal funding attach only for what the statutory text actually prohibits: intentional discrimination. Petitioner and the government's interpretation would permit federal courts to second-guess the myriad nondiscriminatory, good-faith decisions that public schools and other local entities make every day about how best to serve individuals with disabilities.

Petitioner and the government offer an ode to text and symmetry. But their approach defies both. They endorse a reasonable-accommodation theory found nowhere in the text. And they embrace an indefensible remedial regime whereby the exact same statutory text, which directs courts to follow Title VI's remedial scheme, means two different things depending on the relief sought.

In their view, even though the same text governs all forms of relief, intent in this case is required for damages but not injunctions or the withdrawal of federal funding. Then they water down their intent requirement with an inapposite "deliberate indifference" standard imported not from Title VI, but from Title IX sexual-harassment cases involving supervisory liability. Worse, on petitioner and the government's telling, their supposed intent standard appears not to require intentional discrimination. Any negligent or even good-faith violation of the Individuals with Disabilities Education Act (IDEA) would seemingly put covered entities on the hook for potentially crushing liability.

This Court should not subject America's 100,000 public schools and countless other state and local entities and federal-funding recipients to a manifestly incoherent regime when the plain statutory text demands intentional discrimination—as *Monahan* rightly held.

A. Statutory Background

1. Enacted in 1973, Section 504 of the Rehabilitation Act states that individuals with disabilities shall not "be excluded from the participation in, be denied the benefits of, or be subjected to discrimination" under any federally funded "program or activity" "solely by reason of her or his disability." 29 U.S.C. § 794(a). Included in a "program or activity" is the operation of state and local government entities that receive federal funds, like school districts. *Id.* § 794(b)(1).

In 1990, Congress enacted the ADA. The ADA has three main titles. Title II, at issue here, targets "State [and] local government[s]" and their instrumentalities, again including school districts. 42 U.S.C. § 12131(1). Title II provides that individuals with disabilities shall not, "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." *Id.* § 12132.

Titles I and III, respectively, regulate disability discrimination in "employment" and in "public accommodations and services operated by private entities." *Id.* §§ 12111-17, 12181-89. Unlike Section 504 and Title II, Titles I and III both bar "standards, criteria, or methods of administration … that have the effect of discrimination on the basis of disability." *Id.* §§ 12112(b)(3)(A), 12182(b)(1)(D)(i). And Titles I and III, again unlike Section 504 and Title II, require "reasonable accommodations" or "reasonable modifications." *Id.* §§ 12112(b)(5)(A), 12182(b)(2)(A)(ii).

Title II incorporates the "remedies, procedures, and rights set forth in [Section 504]." *Id.* § 12133. And Section 504 incorporates the "remedies, procedures, and rights set forth in title VI" of the Civil Rights Act. 29 U.S.C.

§ 794a(a)(2). Title VI contains no express cause of action, but this Court has implied one for violations of Title VI's prohibition of *intentional* discrimination "on the ground of" race, color, or national origin. *Alexander v. Sandoval*, 532 U.S. 275, 278-81 (2001).

2. The IDEA requires public schools to provide students with disabilities a "free appropriate public education." 20 U.S.C. § 1400(d)(1)(A). Educators, parents, and the student must collaborate annually to develop an "individualized education program" (IEP), which the school must implement. *Id.* § 1414(d). The IDEA provides States with IDEA-specific funds to fulfill the Act's affirmative-action requirements. *See id.* §§ 1411-12.

Congress prescribed "elaborate and highly specific procedural safeguards" under the IDEA to ensure that parents have a meaningful voice in their children's education. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 205 (1982); *see* 20 U.S.C. § 1415. Only after exhausting these requirements can aggrieved parties bring IDEA claims to federal court. 20 U.S.C. § 1415(i)(2)(C)(iii). And IDEA lawsuits permit only injunctive relief, not compensatory damages. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 254 n.1 (2009); Pet. Br. 5-6; U.S. Br. 5-6. This IDEA-prescribed process prevents courts from "substitut[ing] their own notions of sound educational policy for those of the school authorities." *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 404 (2017) (citation omitted).

B. Factual and Procedural Background

1. Osseo Area School District is the fifth largest school district in Minnesota. The District provides primary and secondary education to over 20,000 students across suburban Hennepin County. Like many of America's 19,000 school districts, the District faces perennial

budget shortfalls as it strives to serve a variety of students with unique needs. Over 40% of the District's students receive free or reduced-price meals, and 11% are learning English as a second language. *See* Osseo Area Schs., Legislative Priorities 2 (2025), https://tinyurl.com/bdhcwhu5. The District faces perpetual "workforce shortage[s]" and concerns about obtaining "necessary funds" for students' "critical needs." *Id.* at 1.

In 2015, the District learned that petitioner A.J.T. ("Ava") was moving from Kentucky and would need special-education support. Pet.App.50a. Ava's parents told the District that Ava has Lennox-Gastaut Syndrome, a rare form of epilepsy that causes daily seizures and impairs her cognitive and physical functioning. Pet.App.6a. Because Ava's seizures are most frequent in the morning, Ava's parents "requested that [Ava] not attend school until noon." JA550. The District always "excused [Ava]'s absence from school before noon." JA548.

The District also "proposed an IEP that accepted the goals and objectives from [Ava's] Kentucky IEP" and provided Ava with *more* special-education services than her Kentucky IEP prescribed. Pet.App.10a. The District provided "240 minutes of direct special education daily" (all in school), while Ava's Kentucky IEP provided only "215 minutes" per day (split between in-school and at-home time). Pet.App.10a.

In addition to those special-education services, Ava's parents "requested that [Ava] receive paraprofessional support in her home from 4:00 p.m. to 6:00 p.m." JA550. While the District declined to provide such regular, at-home, after-school support, it offered a series of other measures to assist Ava.

First, Ava has received "very individualized, intense services focused only on her" that exceed those offered to

any other student in the District. JA192. Before Ava's arrival, the special-education program at Ava's school had one full-time teacher and two paraprofessionals working with a class of five to seven students with disabilities. JA337. The District "hire[d] an additional paraprofessional" specifically "to support Ava's needs." JA337. Thus, while most special-education students are educated in an environment with more students than educators, Ava always has at least one, and often two, educators focused exclusively on her. JA394; *see also* JA193.

The District's intensive services mean that Ava's school day looks very different from other students'. For most students, much of the day is eaten up by "lots of breaks" for "lunch," "passing time," and "homework." JA193-94. And even for students with disabilities, the school day may include activities "independent of an adult," such as reading by themselves. JA394. But Ava's services run continuously; she never has "times independent of getting direct instruction from a licensed special education teacher or reinforcing skills from a paraprofessional." JA395.

Second, "[t]he District made repeated offers to serve [Ava] whenever she [was] available during the regular school day, including before 12:00 p.m. on any days when [Ava] might be available to be in school earlier in the day." JA554. Ava's neurologist told the District that "education earlier in the day would be a possibility" and "reasonable" to try. JA594. But Ava's parents declined. JA278.

Third, the District extended Ava's school day by 15 minutes to accommodate her parents' "concern[s] about her safety navigating the halls" during the end-of-school-day exodus. Pet.App.50a-51a n.2.

Fourth, the District provided Ava "16 3-hour[] sessions in [Ava]'s home by a licensed special education

teacher" from noon to 3:00 p.m. during the summers. JA549. The District typically only provides such services before noon, but made an exception for Ava. *See* JA549.

Fifth, the District "offered to provide additional" at-home instruction over the summer, but Ava's parents "rejected this offer because June and August were times that [Ava] might try new medications and treatments and receive outside therapies." JA549.

The District's specialized services resulted in Ava "making progress on her IEP goals and objectives." JA221-22; *see also* JA152, 196, 462. The District shared "data on Ava's progress on her IEP goals" "at each [IEP] meeting." JA349. Unfortunately, "[m]uch like [her] experience in Kentucky," Ava's progress was not uniformly positive or at the level the District and Ava's educators desired. JA462. But it was not clear that further at-home instructional time was the answer, particularly given that individuals with Ava's condition "often plateau in their functional and intellectual gains by middle school." JA545. Ava's own expert "admitted" that recent literature "indicates that less intensity of service may actually be more successful because the learner's attention span wanes in longer sessions." JA585.

2. The District has consistently offered multiple, mutually compatible reasons for not going further. The District has always been focused on a combination of Ava's needs, staff availability, and effectively utilizing scarce resources shared among all students, including others with disabilities. For example, the District considered Ava's documented progress, its legal obligations, general practices, and concerns about the precedent granting Ava's request would set. *See* Pet.App.50a. The District also considered the lack of data demonstrating that extending the school day would be beneficial for Ava and the fact that Ava was already "receiving intensive

program[m]ing from one to two adults throughout her day and continuing to show progress." JA406; Pet.App.50a.[1]

When Ava graduated to middle school, the District proposed a new IEP to continue offering Ava special-education services from noon until shortly after the end of the school day, which in middle school was 2:40 p.m. Pet.App.11a. But the District and Ava's parents could not agree, so Ava's previous IEP remained in place. *See* 20 U.S.C. § 1415(j). Ava thus continued to receive schooling from noon to 4:15 p.m., including specialized educational services from noon to 3:00 p.m. and direct one-on-one educational and paraprofessional services from 3:00 p.m. to 4:15 p.m. Pet.App.4a; JA232.

3. In September 2020, Ava's parents filed an IDEA complaint with the Minnesota Department of Education. JA453. They argued that Ava was entitled to a 6.5-hour school day and that her current 4.25-hour day failed to provide the free appropriate public education required by the IDEA. JA444-45; Pet.10-11. The ALJ ordered the District to increase Ava's daily instructional hours from 4.25 to 5.75 by providing at-home instruction from 4:30 p.m. to 6:00 p.m. JA477. The ALJ also ordered 495 hours of compensatory education instruction. JA477. The district court affirmed that order. *See* Pet.App.52a.

4. In August 2021, Ava's parents sued under Section 504 of the Rehabilitation Act and Title II of the ADA. JA1. These claims were "based on the District's failure to provide [Ava] a six-and-a-half-hour school day starting at

---

[1] Petitioner (at 5) incorrectly claims that "[t]he district court and Eighth Circuit held" that the District's reasons for not providing Ava with after school instruction were "pretextual" and "not credible." Those quotations come only from the *ALJ's* opinion on Ava's IDEA claim. *See* JA468, 471.

noon." JA561; *see* JA23, 25. Ava's parents sought damages and injunctive relief. JA28-29.

The district court granted summary judgment to the District. The court concluded that it could not "attribute 'wrongful intent' to the District" as required to state a Section 504 or Title II claim under *Monahan*, 687 F.2d at 1171. Pet.App.33a-35a.

In particular, the court considered "all the District's attempts at conciliation," including "convening multiple IEP meetings," "extending [Ava]'s school day beyond the school day of her peers," "implementing many of [Ava's expert's] suggestions," and "[e]nsuring that [Ava] always has at least one and often two aid[e]s with her at school." Pet.App.33a-35a. The court further found no merit in Ava's parents' assertion that the District "expressed ignorance of [her] discrimination complaints." Pet.App.26a-29a. The court therefore held that "the District's officials exercised professional judgment" and did not act "with bad faith." Pet.App.35a-36a.

5. The Eighth Circuit affirmed. Pet.App.5a. The court first explained that, under *Monahan*, "a school district's simple failure to provide a reasonable accommodation is not enough to trigger liability" under Section 504 or Title II. Pet.App.3a (citation omitted). Instead, "a plaintiff must prove that school officials acted with 'either bad faith or gross misjudgment.'" Pet.App.3a (quoting *Monahan*, 687 F.2d at 1171).

Here, the court concluded, "the District did not ignore [Ava]'s needs or delay its efforts to address them," and Ava thus failed to demonstrate "bad faith or gross misjudgment." Pet.App.3a-4a. In particular, the court explained, District officials "met with [Ava]'s parents and updated her [IEP] each year," provided her "a variety of services, like intensive one-on-one instruction and a 15-

minute extension of her school day so that she could safely leave after the halls cleared," and "offered 16 three-hour sessions at home each summer." Pet.App.4a.

The Eighth Circuit stated that Ava's parents "*may* have established a genuine dispute about whether the district was negligent or even deliberately indifferent." Pet.App.3a (emphasis added); *contra* Pet. Br. 3-4, 40 (suggesting that the court so concluded). And in a footnote, the court questioned *Monahan*'s intent standard. Pet.App.5a n.2. But given the District's extensive efforts, the court concluded that Ava "d[id] not show wrongful intent," as required by Eighth Circuit law. Pet.App.4a.

The court denied rehearing en banc. Pet.App.44a.

SUMMARY OF ARGUMENT

I. *Monahan*'s textual analysis is correct. Section 504 and Title II prohibit only intentional discrimination.

A. Section 504 requires plaintiffs to show that they were "excluded from participation in," "denied the benefits of," or "subjected to discrimination under" a federally funded program or activity "solely by reason of" their disability. *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), held that Section 504's "solely by reason of" language bars liability where the defendant had a legitimate, nondiscriminatory purpose for the challenged action. Three years later, *Monahan* relied on *Davis* to correctly interpret this motive-focused statutory language in Section 504, which Title II tracks, to require discriminatory intent.

Monahan also chose appropriate language to describe that intent requirement: "bad faith or gross misjudgment." "Bad faith" is the established legal term for actions taken for an improper or unlawful purpose—exactly the inquiry Section 504 and Title II command.

And "gross misjudgment" is a traditional way of demonstrating improper purpose.

B. Federalism principles support *Monahan*'s statutory interpretation. Under the Spending Clause, Congress needed to speak far more clearly if it wished to impose liability on federal-funding recipients for nondiscriminatory acts and good-faith disagreements. And absent the Spending Clause, Congress has no constitutional authority to require every State and locality to remedy every unintentional barrier to access facing individuals with disabilities.

Doing away with *Monahan*'s intent requirement would threaten the States' historic powers in the disability and education contexts. *Monahan* leaves intensely local questions about how best to fulfill those obligations to local authorities. And *Monahan* avoids the constitutionally suspect result of forcing States to expend their own funds to affirmatively accommodate people with disabilities according to federal dictates under threat of potentially ruinous damages claims or sweeping injunctions.

C. Petitioner's attacks on *Monahan* lack merit. Statutory text, not judicial policy-making, expressly drove *Monahan*'s intent requirement. That later courts have wrongly injected atextual liability theories outside the school context is a reason to reaffirm *Monahan*, not to discard it. Petitioner also overstates the burden that *Monahan* imposes. Plaintiffs can and do prove intent to discriminate through various direct or circumstantial evidence. But *Monahan* properly bars claims like petitioner's, which seek to relitigate the wisdom of nondiscriminatory decisions made by professionals acting in good faith.

II. This Court should reject petitioner and the government's atextual construction of the statutes.

A. The Court should decide what standard governs Section 504 and Title II discrimination claims. The petition for certiorari cleanly presents that issue. Petitioner's effort to duck it now is puzzling and rests on the faulty assertion that lower courts are aligned on the standard outside the school context. In fact, courts are deeply divided over the proper standard for such claims. The Sixth Circuit has squarely held that Section 504 "does not encompass actions taken for nondiscriminatory reasons." *Doe v. BlueCross BlueShield of Tenn., Inc.*, 926 F.3d 235, 242 (6th Cir. 2019) (Sutton, J.). This Court should not upset *Monahan*'s long-settled rule only to leave confusion in its wake.

B. Petitioner apparently embraces the notion that plaintiffs must establish deliberate indifference to obtain damages. But petitioner never explains textually how damages and injunctive relief can be governed by two different standards, especially when Section 504 and Title II incorporate Title VI's remedies across the board, and Title VI requires intent for both forms of relief.

Nor does petitioner explain why deliberate indifference could possibly be the right test for damages. Lower courts that require deliberate indifference rely on this Court's Title IX sexual-harassment cases. But those cases use deliberate indifference to determine whether the covered entity had adequate notice of *someone else's* intentional discrimination. Absent intentional discrimination *somewhere* in the picture, there is no liability under Title IX. Petitioner and the government's two-tier remedial scheme cannot be squared with Title VI and Title IX's requirement of intentional discrimination for all forms of relief.

The government's defense of deliberate indifference is also deeply flawed. The government would subject public entities to damages liability so long as they had

"knowledge of the substantial likelihood of discrimination." U.S. Br. 19 (citation omitted). But the government does not explain how likely the discrimination must be. Is a 10% chance of a successful discrimination claim enough? 51%? 75%? Congress did not plausibly leave public entities at the mercy of such amorphous damages liability when private entities—including countless private schools—would not face damages for identical conduct.

C. Petitioner and the government further err in contending that plaintiffs may obtain injunctive relief and the government may withdraw all federal funding from an entire public entity based on any good-faith disagreement over the scope of the IDEA or what accommodations are reasonable. Start with the text, which requires discrimination "solely by reason of" or "by reason of" disability. 29 U.S.C. § 794(a); 42 U.S.C. § 12132. By focusing on the *reason* for the challenged action, Congress necessarily instructed courts to consider the motive and purpose—*i.e.*, the intent—behind that action. The word "discrimination" likewise points toward intent; decisions made for improper reasons, not good-faith ones, are the essence of discrimination. The statutes' use of the passive voice does not compel a different conclusion. This Court has repeatedly interpreted similarly phrased statutes to consider the reason for a decision, notwithstanding the passive voice.

Statutory structure confirms the point. When Congress wanted to mandate affirmative obligations or impose liability on good-faith failures to accommodate in other parts of the Rehabilitation Act and the ADA, it did so expressly. Congress then defined the contours of the obligation and either placed limits on damages or foreclosed them altogether. Petitioner and the government's view fails to give effect to Congress' deliberate decision to omit similar provisions in Section 504 and Title II.

D. The legislative history of Section 504 and Title II does not justify imposing antidiscrimination liability for nondiscriminatory acts. To the extent *Alexander v. Choate*, 469 U.S. 287 (1985), suggests otherwise, those statements were plainly dicta. Policy arguments likewise do not change the statutory text, and they are especially unpersuasive here. A multitude of state and federal provisions address unintentional barriers to access for individuals with disabilities. This Court should not distort Section 504 and Title II beyond recognition to achieve the same aim.

ARGUMENT

I. *Monahan*'s Longstanding Rule Is Correct

A. *Monahan* Correctly Interpreted the Statutory Text

1. *Monahan* considered whether a school's decision not to provide a requested accommodation violated Section 504. In answering that question, the Eighth Circuit focused on the statutory text. *Contra* Pet. Br. 24-28; U.S. Br. 28-32. The court found "the language of the statute … instructive," emphasizing that Section 504 "prohibits exclusion, denial of benefits, and discrimination" only if done "'solely by reason of … handicap.'" 687 F.2d at 1170 (quoting 29 U.S.C. § 794 (1978)). "The reference in the Rehabilitation Act to 'discrimination' must require … something more than" "a mere failure to provide the 'free appropriate education' required by [the IDEA's predecessor]." *Id.* Instead, *Monahan* concluded, "either bad faith or gross misjudgment should be shown before a § 504 violation can be made out, at least in the context of education of handicapped children." *Id.* at 1171. Lower courts have consistently followed *Monahan* for decades. *See* Pet. 16-17.

Monahan construed the text following this Court's decision in *Davis*, which held that "[n]either the language,

purpose, nor history of § 504 reveals an intent to impose an affirmative-action obligation on all recipients of federal funds." *Id.* at 1170 (quoting 442 U.S. at 411). Instead, Section 504 "requires only that an 'otherwise qualified handicapped individual' not be excluded from participation in a federally funded program 'solely by reason of his handicap.'" 442 U.S. at 405 (citation omitted). While a covered entity cannot deny an accommodation to someone *because* she has a disability, Section 504 does not "refer at all to" any freestanding "affirmative action" obligation. *Id.* at 410-11. *Davis* thus rejected a Section 504 claim against a college because the college's "purpose" in declining to accommodate an applicant with a disability was rooted in a "legitimate academic policy," not "any animus against handicapped individuals." *Id.* at 413 & n.12.

Consistent with *Davis*, *Monahan* recognized that Section 504's text (like Title II's) cannot be "read … as creating general tort liability for educational malpractice" without any showing of wrongful intent. 687 F.2d at 1170-71. Both statutes zero in on the *reason* for the adverse action: The plaintiff must show that the decision was made "solely by reason of" (Section 504) or "by reason of" (Title II) the statutorily prohibited consideration (disability), as opposed to legitimate reasons. Absent such a showing, Section 504 does not impose liability on federal-funding recipients. Nor does Title II's "materially identical prohibition." Pet. Br. 24; *accord* U.S. Br. 3-4.

2. *Monahan* also chose appropriate language to describe the statutory intent requirement: "bad faith or gross misjudgment."

"Bad faith" is the traditional legal label for actions taken for an improper or unlawful reason. When an action is lawful if taken for one reason, but unlawful if taken for another, courts ask whether the action was taken in "bad

faith." A public law school acts in good faith when it denies admission to a blind applicant based on legitimate criteria, for instance, his low LSAT score and GPA. But the law school acts in bad faith if it rejects the same applicant because of a statutorily forbidden reason—his blindness. Section 504 and Title II bar only such bad-faith denials.

The "bad faith" standard recurs throughout the law. Legal dictionaries contemporaneous with Section 504's passage consistently equated bad faith with improper or "ulterior purpose." *Ballentine's Law Dictionary* 118 (3d ed. 1969); *see also, e.g.*, *Black's Law Dictionary* 176 (4th ed. rev. 1968) (defining "bad faith" as "[t]he opposite of 'good faith'" and "not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive").

This Court's cases reflect the same usage. Take the redistricting context, where this Court asks whether district lines were drawn for legitimate reasons or by decisionmakers who "acted in bad faith and engaged in intentional discrimination." *Abbott v. Perez*, 585 U.S. 579, 607-08 (2018). Similarly, when considering whether the IRS issued a summons for an "improper purpose" or "improper motive," this Court requires evidence indicating "bad faith." *United States v. Clarke*, 573 U.S. 248, 249-50, 254-55 (2014). And when determining whether improperly motivated court filings justify fee-shifting, courts again look for "bad faith." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 & n.10 (1991) (citation omitted). That use of

"bad faith" to describe an improper purpose goes back over a century in the Federal Reporter.[2]

Demonstrating "gross misjudgment" is a traditional way of establishing that an action was taken for improper, bad-faith reasons. As *Monahan* explained, standalone evidence that a decisionmaker made an incorrect decision does not typically demonstrate wrongful intent. *See* 687 F.2d at 1170. But the right facts can demonstrate "such [a] gross mistake as would necessarily imply bad faith." *Sweeney v. United States*, 109 U.S. 618, 620 (1883); *accord Second Nat'l Bank v. Pan-Am. Bridge Co.*, 183 F. 391, 394-95 (6th Cir. 1910). If a blind law-school applicant denied admission shows that every other applicant with his GPA and LSAT score was admitted, that might well support an inference of intentional discrimination.

Monahan therefore recognized that plaintiffs can demonstrate intentional discrimination where the defendant made a "gross misjudgment," indicating that "the person responsible actually did not base the decision on" neutral, legitimate criteria. 687 F.2d at 1171 (citation omitted). This Court has recognized the same principle in the race-discrimination context: Evidence that "the factors usually considered important by the decisionmaker [would] strongly favor a decision contrary to the one reached" "might afford evidence that improper purposes

---

[2] *E.g.*, *Penn Mut. Life Ins. Co. v. Mechs.' Sav. Bank & Tr. Co.*, 73 F. 653, 654 (6th Cir. 1896) (Taft, J.) (describing "bad faith" as "an ordinary expression, the meaning of which is not doubtful," that means "with actual intent to mislead or deceive another"); *Overby v. Gordon*, 13 App. D.C. 392, 411 (D.C. Cir. 1898) (equating "[b]ad faith" with "improper purpose"); *Clark v. Nat'l Linseed Oil Co.*, 105 F. 787, 790-91 (7th Cir. 1901) (same).

are playing a role." *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977).[3]

Monahan correctly drew on these longstanding concepts to describe Section 504's textual requirements. To demonstrate "bad faith or gross misjudgment," plaintiffs must present "facts which would suggest the defendants discriminated." *Sellers ex rel. Sellers v. Sch. Bd. of City of Manassas*, 141 F.3d 524, 529 (4th Cir. 1998). Facts demonstrating "bad faith or gross misjudgment" are facts that support "an inference of wrongful intent"—exactly what the statute requires. *See B.M.*, 732 F.3d at 888; *see also* Pet.App.3a-4a. The test simply restates the statute's "[i]ntent [r]equirement." *See, e.g.*, *M.Y. ex rel. J.Y. v. Special Sch. Dist. No. 1*, 544 F.3d 885, 889 (8th Cir. 2008); *accord Baker v. Bentonville Sch. Dist.*, 75 F.4th 810, 816 (8th Cir. 2023) (characterizing *Monahan* as a "wrongful intent" standard (citation omitted)).

B. Federalism Principles Confirm *Monahan*

1. Section 504's status as Spending Clause legislation further confirms *Monahan*'s interpretation of the text. If Congress "intends to impose a condition on the grant of federal moneys, it must do so unambiguously." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). That rule applies not just to damages liability, but to the very "legitimacy" of *any* "condition on the grant of federal moneys." *Id.*; *contra* U.S. Br. 18 n.2. Clear notice is especially important here given that Section 504 violations jeopardize *all* of a program's federal funds. *See* 29 U.S.C. § 794(a)-(b); 34 C.F.R. §§ 100.8, 104.61.

---

[3] The brief in opposition (at 30) incorrectly suggests that "gross misjudgment" might capture unintentional conduct. Gross misjudgment is relevant only when it "demonstrate[s] that the defendant acted with wrongful intent." *See B.M. ex rel. Miller v. S. Callaway R-II Sch. Dist.*, 732 F.3d 882, 887 (8th Cir. 2013).

Absent clear statutory text, therefore, this Court should not presume that Congress took the extraordinary step of imposing liability on any federal-funding recipient who acts in good faith yet fails to remedy unintentional barriers to access. On petitioner and the government's telling, however, the federal government could sweepingly withdraw all funding from any federally funded entity (like a university) for good-faith, nondiscriminatory failures to accommodate (or here, a good-faith, unintentional IDEA violation). *See* 29 U.S.C. § 794a(a)(2); 42 U.S.C. § 2000d-1. That result would be startling, especially when States that violate the IDEA risk only IDEA-specific funding. *See* 20 U.S.C. § 1416(e)(2)-(3).

Monahan's intent requirement avoids the notice problem. The Executive cannot bankrupt schools for mere mistakes. And private parties cannot seek injunctive or damages relief based on good-faith disagreements. Only when the recipient intentionally discriminates against persons with disabilities will liability attach. Given that Section 504's text does not even mention reasonable accommodations, disparate impacts, or any other theory of intent-free liability, any liability rule going beyond *Monahan*'s intent standard raises serious constitutional concerns.

As for the ADA, it is unclear what constitutional authority Congress even has to force public schools to take affirmative actions, like hiring more teachers or extending the school day. The ADA is not Spending Clause legislation. Nor does the Commerce Clause give Congress the sweeping power to protect "the learning environment" in our Nation's schools. *United States v. Lopez*, 514 U.S. 549, 564 (1995). And Section 5 of the Fourteenth Amendment permits only legislation "congruent and proportional to the targeted [Fourteenth Amendment] violation." *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S.

356, 374 (2001). But the Equal Protection Clause does "not require[]" the government to "make special accommodations for the disabled," *id.* at 367; it only prohibits conduct that lacks a rational basis, like decisions motivated by "a bare … desire to harm." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 447 (1985) (citation omitted). *Monahan*'s interpretation avoids the problem, keeping Title II's prohibition tightly linked to the Equal Protection Clause's intent standard.[4]

2. *Monahan*'s intent requirement also avoids major anticommandeering concerns. The Constitution "has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." *New York v. United States*, 505 U.S. 144, 162 (1992). Title II—which targets "State [and] local government[s]," 42 U.S.C. § 12131(1)(A)—therefore cannot be read to "compel[]" states to "expend … state funds" to accommodate people with disabilities "in accordance with federal standards." *See Murphy v. NCAA*, 584 U.S. 453, 463, 476 (2018) (citation omitted). Yet Title II offers none of the federal funding that Congress normally attaches to affirmative-accommodation mandates. *E.g.*, IDEA, 20 U.S.C. § 1400 *et seq.*; Assistive Technology Act, 29 U.S.C. § 3001 *et seq.*; Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15021 *et seq.*; AIDS Housing Opportunities Act, *id.* § 12901 *et seq.*

---

[4] In *Tennessee v. Lane*, this Court held that Title II was a valid exercise of Congress' Section 5 authority as applied to access to courts. 541 U.S. 509, 531 (2004). The Court stated, however, that it was not considering "Title II's other applications." *Id.* at 530-31, 532 n.20. The Court had previously held outside of the access-to-courts context that extending Title I of the ADA beyond *Cleburne*'s intentional-discrimination core would "far exceed[]" the Fourteenth Amendment's limits. *Garrett*, 531 U.S. at 372.

Monahan's intent requirement avoids this anticommandeering problem. States and localities need only refrain from basing their decisions on discriminatory reasons. *Monahan* thus preserves Title II's role as a pure antidiscrimination measure that does not "forc[e] the States" to expend their own funds or "leave them with less money for other vital state programs." *See EEOC v. Wyoming*, 460 U.S. 226, 237-40 (1983).

3. Additionally, *Monahan* respects "States' historical role as the dominant authority responsible for providing services to individuals with disabilities." *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 625 (1999) (Thomas, J., dissenting).

Congress presumptively legislates with "the balance between federal and state power" in mind. *U.S. Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U.S. 604, 622 (2020). Absent an intent requirement, States' unintentional violations of the IDEA, their good-faith choices to invest in some assistive devices but not others, or their exercise of professional judgment to limit extra test-taking time for students with learning disabilities would all be subject to federal review and liability. The same would be true for giving walkers instead of canes to prisoners with disabilities or banning novel medical procedures. This Court should not lightly presume that Congress intended such "federal superintendence of … decisions traditionally entrusted to state governance." *See Bowen v. Am. Hosp. Ass'n*, 476 U.S. 610, 643 (1986) (plurality op.).

Federalism concerns are especially urgent in the school context, where States "historically have been sovereign." *Lopez*, 514 U.S. at 564. Schools make countless nondiscriminatory, safety-, academic-, and resource-based decisions every day. Inevitably, many of these "neutral (and well-intentioned) policies disparately affect" students with disabilities. *See Doe*, 926 F.3d at 242. Even

with notice, it is not always obvious what school policy or accommodation best serves students with disabilities while also fulfilling obligations to other students.

Under *Monahan*'s longstanding bad-faith standard, courts do not second-guess "the application of expertise and the exercise of judgment by school authorities." *Endrew F.*, 580 U.S. at 404. Nor do schools with ballooning class sizes and tight budgets need to "shift scarce resources away from other" students with critical needs based on federal dictates. *See Bowen*, 476 U.S. at 638 (plurality op.). Instead, schools retain breathing room to make good-faith judgment calls about how best to educate students without fearing liability should a court conclude that "an incorrect evaluation has been made." *Monahan*, 687 F.2d at 1170.

Under petitioner's view, however, Section 504 and Title II transform every unintentional IDEA violation into a potential federal tort claim. But *Monahan* rightly recognized that the statutory text cannot be read "as creating general tort liability for educational malpractice." *Id.* States have long rejected such a tort for "fail[ure] to discover [a student's] disabilities" or "provide an appropriate educational program once [the] disabilities are discovered." *D.S.W. v. Fairbanks N. Star Borough Sch. Dist.*, 628 P.2d 554, 555 (Alaska 1981). Such claims generate "burdensome and expensive litigation" and "blatant[ly] interfere[] with the responsibility" of "school administrative agencies." *Id.* at 555-56 (citations omitted); *see also Hunter v. Bd. of Educ. of Montgomery Cnty.*, 439 A.2d 582, 583 (Md. 1982); *Donohue v. Copiague Union Free Sch. Dist.*, 391 N.E.2d 1352, 1354 (N.Y. 1979); *Peter W. v. S.F. Unified Sch. Dist.*, 60 Cal. App. 3d 814, 818 (1976). *Monahan* correctly concluded that Section 504 (and Title II) did not silently create a federal version of these disfavored state tort claims.

C. Petitioner's Criticisms of *Monahan* Are Misguided

1. Petitioner (at 45) and the government (at 29) portray *Monahan* as a "bespoke legal standard" for schoolchildren with disabilities. Such a standard, petitioner and the government say, violates the usual rule that statutory provisions should carry a consistent meaning across contexts. Pet. Br. 25, 43-44; U.S. Br. 21-24.

But *Monahan* did not single out schoolchildren for disfavored treatment. *Monahan* recognizes that the "bad faith or gross misjudgment" standard applies "*at least* in the context of education of handicapped children." 687 F.2d at 1171 (emphasis added). There is nothing objectionable about a court limiting its decision to the fact pattern at hand. To be sure, the Eighth Circuit later injected intent-free reasonable-accommodation claims *outside* the school context, based on this Court's dicta in *Choate*. *E.g.*, *Stern v. Univ. of Osteopathic Med. & Health Servs.*, 220 F.3d 906, 908 (8th Cir. 2000); *see* Pet.App.5a n.2. But that subsequent dichotomy only calls into question the logic of these later cases. It does not signal an infirmity with *Monahan*'s original interpretation.

Similarly, petitioner (at 12, 20, 22, 30-34, 43) and the government (at 6-7, 10-12, 24, 28-32) invoke Section 1415(*l*) of the IDEA, which mandates that "[n]othing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under" Section 504 or Title II. 20 U.S.C. § 1415(*l*). But *Monahan*'s intent requirement flows from Section 504 and Title II's text, and does not depend upon any reading of the IDEA.

Petitioner (at 11, 21, 31) and the government (at 31) seize on *Monahan*'s statement that the court had a "duty to harmonize the Rehabilitation Act and [the IDEA's predecessor] to the fullest extent possible." 687 F.2d at 1171.

According to petitioner (at 31), that language demonstrates that *Monahan* treated the IDEA's predecessor "as an implicit constraint on Rehabilitation Act claims." Similarly, petitioner (at 45) accuses *Monahan* of "invent[ing]" its standard "on pure policy grounds."

But as explained, *Monahan*'s holding was based on Section 504's text, not the IDEA's predecessor statute. *See Baker*, 75 F.4th at 815 ("Judge Richard Arnold [in *Monahan*] explained why the *text* of § 504 requires this level of proof" (emphasis added)). And in interpreting the text, *Monahan* relied on *Davis*, a case that had nothing to do with schoolchildren. *Monahan* simply acknowledged the limited "competence of courts to make judgments in technical fields" and observed that the bad-faith-or-gross-misjudgment standard "accomplishes th[e] *result*" of harmonizing the statutes. 687 F.2d at 1171 (emphasis added). Courts can properly observe the salutary policy benefits of their textual analysis. And there is nothing exceptional in *Monahan*'s recognition that courts should hesitate to inject themselves into educational disputes. This Court too cautions courts not to "substitute their own notions of sound educational policy for those of the school authorities which they review." *See Endrew F.*, 580 U.S. at 404 (citation omitted).

2. Petitioner (at 39) and the government (at 26-28) claim that *Monahan* sets the bar too high. But whether Section 504 and Title II are too demanding is a question for Congress, not courts. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 403-04 (2024). In any event, *Monahan*'s bad-faith standard is hardly insuperable.

Monahan does not require smoking-gun evidence of discriminatory intent. A plaintiff may demonstrate improper purpose by presenting circumstantial evidence that the school acted based on discriminatory reasons. For instance, the Eighth Circuit has held that, in "some

circumstances, notice of a student's disability coupled with delay in implementing accommodations can show bad faith or gross misjudgment," because undue delay can indicate "wrongful intent." *B.M.*, 732 F.3d at 888; *see also R.B. ex rel. L.B. v. Bd. of Educ. of City of N.Y.*, 99 F. Supp. 2d 411, 419 (S.D.N.Y. 2000) (bad faith sufficiently alleged by delays in implementing IEP and remedial order). A school's failure to respond to the safety concerns of a student with a disability might also indicate "discriminatory intent." *See M.P. ex rel. K. v. Indep. Sch. Dist. No. 271*, 326 F.3d 975, 982-83 (8th Cir. 2003). And, of course, facially discriminatory policies—like counting only non-special-education classes toward graduation requirements—can establish bad faith. *See Douglass v. District of Columbia*, 605 F. Supp. 2d 156, 168 (D.D.C. 2009).

Conversely, the bad-faith standard weeds out "fruitless challenges to legitimate, and utterly nondiscriminatory, distinctions." *See Doe*, 926 F.3d at 242. Consider this case. Both courts below held that the District did not intentionally violate the IDEA. Pet.App.4a, 33a-34a. Petitioner also has presented no evidence indicating that the District discriminated "by reason of disability" in making many accommodations for Ava, but not her preferred ones or the ones the district court later determined the IDEA required.

As the Eighth Circuit held, the District's responses to Ava's requests—which did not involve "ignor[ing] [her] needs" or any "delay [in] its efforts to address them"—"do not show wrongful intent." Pet.App.4a. Even now, petitioner (at 15-16) claims only that the District's "prevailing and paramount consideration" was "to safeguard the ordinary end-of-the-workday departure times for its faculty and staff." Good-faith disputes over how best to serve all children's needs should not support liability.

II. Petitioner's Interpretation Is Incorrect

Petitioner (at 30 n.7) asks this Court to reject an "asymmetric" liability rule without deciding what the correct rule should be. But in the same breath, petitioner embraces an asymmetric scheme with an atextual no-intent standard for liability and injunctive relief and another atextual "deliberate indifference" standard for damages.

This Court should not erase the longstanding "bad faith or gross misjudgment" standard that prevails in five circuits governing twenty-two States, 46,000 public schools, and 22 million students and leave nothing in its place. This case squarely presents the question of what standard applies. And the courts-of-appeals cases are disuniform, textually unsupported, and reflect the chaos and intrusion on federalism that arise when courts make up liability rules.

A. This Court Should Decide the Appropriate Standard

In asking this Court to grant review, petitioner concluded: "*What standard should apply* under the ADA and Rehabilitation Act is a pure question of law. That question *is cleanly presented* and exceedingly important. *It should be resolved in this case*." Pet. 33 (emphases added); *id.* at 30 ("The Court should grant review to enforce the plain meaning of the ADA and Rehabilitation Act."). Respondents joined issue on that question in opposing certiorari, challenging petitioner's "rule, under which plaintiffs could obtain injunctive relief (and potentially damages) without any showing of intentional discrimination." *See, e.g.*, BIO 28.

Now petitioner backtracks. She (at 30 n.7) implores the Court not to opine on any standards, leaving schools, teachers, and parents with no idea what the law requires

and leaving the lower courts (including on remand here) to muddle through what standard governs.

But petitioner's own question presented (at i) puts the correct standard squarely on the table. Petitioner asked this Court to decide whether Section 504 and Title II require "children with disabilities to satisfy a uniquely stringent 'bad faith or gross misjudgment standard.'" To say that courts should offer children with disabilities the same standard as everyone else—whatever that standard may be—is utterly non-responsive.

The government (at 31) calls any across-the-board defense of "bad faith or gross misjudgment" "not directly responsive to the question presented" because petitioner described that standard as "uniquely stringent." But the government (at I) puts no qualifiers in its question presented, recognizing that this case is about whether the statutes "require students with disabilities to prove that defendants acted with 'bad faith or gross misjudgment.'" And petitioner's adjectival description does not change the scope of the case. If petitioner had phrased the question presented as whether plaintiffs must meet the "patently erroneous bad-faith standard," this Court would not be bound to decide only whether courts may impose "patently erroneous" standards. The crux of the question presented is still what the standard is, not whether a "uniquely stringent" standard is permissible.

The decision below rests on the Eighth Circuit's holding that Ava failed to "demonstrate[] wrongful intent," as circuit precedent required. Pet.App.4a (citation omitted). Petitioner does not challenge that holding. The court's footnoted summary of what rules might apply in other contexts is dictum and thus "beside the point." Pet.App.5a n.2; *see Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 42 (2025). Determining whether that judgment should be affirmed requires determining

whether *Monahan*'s longstanding intent requirement is in fact good law.[5]

Regardless, petitioner (at 10) is incorrect that the courts of appeals "largely agree" on the standards for disability-discrimination claims outside the school context. The Sixth Circuit holds that Section 504 "does not encompass actions taken for nondiscriminatory reasons." *Doe*, 926 F.3d at 242. And while petitioner (at 10 n.2) collects cases adopting a deliberate-indifference standard for damages, the Fifth Circuit rejects that standard outright and correctly requires "intentional discrimination." *Delano-Pyle v. Victoria County*, 302 F.3d 567, 575 (5th Cir. 2002); *see also J.W. v. Paley*, 81 F.4th 440, 449-50 (5th Cir. 2023). And the First Circuit has left "open" the question "whether a showing of deliberate indifference is enough." *Gray v. Cummings*, 917 F.3d 1, 17 (1st Cir. 2019). Declining to resolve the standard here would simply import that confusion and disagreement into the school context.

At minimum, this Court should resolve the appropriate standard for damages under Section 504 and Title II. Compensatory damages are the critical form of relief available under these statutes but not the IDEA, *see* BIO 22-26; *supra* p. 5, and disagreement over the correct

[5] The parties' live dispute over *Monahan*'s bad-faith standard distinguishes this case from *Ames v. Ohio Department of Youth Services*, No. 23-1039 (discussed at Pet. Br. 28), where the Sixth Circuit held that majority-group Title VII plaintiffs must satisfy an additional pleading requirement not applicable to minority-group plaintiffs. 87 F.4th 822, 825 (6th Cir. 2023). There, respondent concedes that "the exact language" of the Sixth Circuit's standard is wrong and instead urges the Court to "construe that language" to be "consistent" with the standard applied elsewhere. *Ames* Oral Arg. Tr. 43. But here, the District argues that the Eighth Circuit *correctly* requires bad faith and urges the Court to confirm that the same intent requirement applies to all Section 504 and Title II discrimination claims.

standard for imposing damages is the crux of the circuit split, BIO 18-21. Leaving the damages standard unresolved would thus be particularly chaos-inducing in the lower courts.

B. Deliberate Indifference Is Not the Appropriate Damages Standard

Petitioner accepts a bizarre two-track regime: no intent required for injunctive relief; deliberate indifference for damages. While endorsing the first half of that scheme as "clearly correct" (at 30 n.7), petitioner conspicuously declines to say whether, and if so why, her damages claims should be treated differently from her request for an injunction. Petitioner's silence is telling. It makes no sense for courts to make up one rule for Section 504 and Title II liability and injunctions, but use a different rule for damages; the text requires that Title VI's intent standard apply across the board. At bottom, petitioner and the government pay lip service to the text, but ask this Court to greenlight an atextual, confusing, and asymmetric regime.

1. The lower courts adopting a heightened standard for damages explain that, because Section 504 incorporates "[t]he remedies, procedures, and rights" of Title VI, 29 U.S.C. § 794a(a)(2), Title VI's remedial standards apply. *E.g.*, *Eastman v. Va. Polytechnic Inst. & State Univ.*, 939 F.2d 204, 206 (4th Cir. 1991); *Bartlett v. N.Y. State Bd. of L. Exam'rs*, 156 F.3d 321, 331 (2d Cir. 1998). Because Title VI permits damages only in cases of intentional discrimination, the same showing is required under Section 504 and Title II. *E.g.*, *Meagley v. City of Little Rock*, 639 F.3d 384, 389 (8th Cir. 2011).

That conclusion is undeniably correct, but it also means that intentional discrimination should be required

for *any and all* relief, including injunctions, not just damages. Title VI is a "ban on intentional discrimination." *Sandoval*, 532 U.S. at 284. If the incorporation of Title VI requires intent for damages, it equally requires intent for injunctive relief. And if the incorporation of Title VI requires intent to obtain any relief, it should equally require intent to establish liability.

The government (at 18 n.2) suggests that disparate remedial standards are appropriate because Section 504 is Spending Clause legislation and damages more squarely implicate the "central concern" of imposing unannounced monetary penalties on federal-funding recipients. But injunctions can be just as unannounced and harsh and cost just as much, if not more. Here, for example, petitioner requests injunctive relief that she argues the IDEA does *not* require. Cert. Reply 9-10 & n.3. The government's further suggestion that covered entities give up millions in federal funding is perverse and raises serious constitutional concerns. *Supra* pp. 19-21.

In any event, the government's purported policy concerns cannot justify flouting the plain text of Section 504, including its wholesale incorporation of Title VI rights and remedies. As petitioner (at 21-30, 35-37) and the government (at 21-24) repeatedly underscore, statutory text must mean the same thing across contexts. The same statutory language (either "solely by reason of … disability" or "[t]he remedies, procedures, and rights set forth in Title VI") cannot require "no intent whatsoever" for liability and injunctive relief but require "deliberate indifference" for damages. Whatever intent rule applies under Section 504 and Title II claims should apply to all aspects of those claims equally.

2. Moreover, the courts of appeals have never justified why, since Title VI is unquestionably the place to look, deliberate indifference could be the appropriate

standard. Again, Title VI unambiguously covers only *intentional* discrimination. *Sandoval*, 532 U.S. at 280; *see Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 288-90 (2023) (Gorsuch, J., concurring). This Court has never adopted a deliberate-indifference standard under Title VI.

Instead, courts of appeals have incorporated the deliberate-indifference standard from Title IX cases involving supervisory liability for sexual harassment that long postdate Section 504 and Title II's enactment. But there, defendants were liable for *someone else's* intentional discrimination. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 292 (1998); *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 643-44 (1999). Neither petitioner nor the government cites any case applying deliberate indifference outside the supervisory-liability context. The Justice Department's Title IX manual says to generally follow Title VI precedents and describes deliberate-indifference as applying in sexual-harassment cases. U.S. Dep't of Justice, Title IX Legal Manual §§ I, IV.D.2 (updated Jan. 31, 2025), https://www.justice.gov/crt/title-ix.

When plaintiffs claim that a defendant *itself* directly discriminated, it makes little sense to ask whether the defendant was deliberately indifferent to its *own* discrimination. Instead, the question in the mine-run Title IX case is whether the defendant engaged in "intentional sex discrimination." *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 183 (2005). Likewise, the question here is whether the District engaged in intentional disability discrimination.

The government (at 15, 19) calls deliberate indifference an "exacting standard" and a form of "discriminatory intent" (citation omitted). Respondents agree that deliberate indifference (if it applies) should be a demanding

test, and certainly welcome a holding that discriminatory intent is required. But what the government (at 19-20) apparently envisions is only knowledge liability.

According to the government (at 19), damages are available if defendants had "'actual knowledge' of the substantial likelihood of discrimination" and "fail[ed] to act despite that knowledge" (cleaned up). Yet all sorts of nondiscriminatory reasons might explain why defendants failed to act. A municipality might decline to pave a trail through a protected wetland to protect a fragile ecosystem, despite knowing that wheelchair users will be unable to access the trail. A small town might be unable to afford an elevator for city hall's clocktower, despite knowing that mobility-impaired citizens will be unable go to the top. Or a public hospital might bar a blind visitor's service animal from a sterile ward, even if that means knowingly excluding the visitor. Without *Monahan*'s intent requirement, public entities and federal-funding recipients would face the very sweeping damages liability for good-faith decisions that the government purports to disclaim.

The government's embrace (at 19) of a "substantial likelihood of discrimination" standard is particularly troubling because the government never defines "substantial." The government does not say whether damages are available if a defendant concludes that an accommodation would be unreasonable but its lawyers assess a 40% probability that a court might disagree. Or perhaps the lawyers must assess litigation risks at 60% or 80%. Could petitioner argue here that the District was deliberately indifferent if it believed in good faith that it was complying with the IDEA but foresaw some unidentified risk that an ALJ might disagree?

3. The deliberate-indifference standard is meritless also given Congress' remedial scheme in other ADA provisions. In Title I, which covers employers, Congress

limited damages to cases of "intentional discrimination," as opposed to a "practice that is unlawful because of its disparate impact." 42 U.S.C. § 1981a(a)(2). That intent standard is what the text says: an intent standard. We know of no case applying a deliberate-indifference test. *See Raytheon Co. v. Hernandez*, 540 U.S. 44, 49 n.3 (2003) (observing that courts of appeals "consistently" use the *McDonnell Douglas* intent test under Title I). And in Title III, which covers public accommodations, Congress foreclosed private damages suits altogether, whether the defendant intentionally discriminated or not. *See* 42 U.S.C. § 12188.

Yet under petitioner and the government's view, only federal-funding recipients and public entities face damages liability with a showing of deliberate indifference, not intent. In other words, public school districts like the District would face *more* liability under Title II of the ADA than employers under Title I or private schools under Title III. A private school could knowingly exclude a student with a disability from a field trip with no damages liability under Title III. Yet a public school engaged in identical conduct could face a damages claim under Title II. That regime makes no sense from a textual and federalism perspective and disrespects Congress' carefully calibrated policy choices in Titles I and III about when to impose damages liability.

C. "No Intent" Is Not the Appropriate Liability Standard

As for liability, petitioner (at 29, 30 n.7) and the government (at 13) embrace the view that no showing of intent is required. The statutes' text, structure, and other provisions definitively refute that reading. As Judge Sutton has explained, the text simply does not encompass "actions taken for nondiscriminatory reasons." *Doe*, 926 F.3d at 242.

Text. As *Monahan* recognized, Congress chose the phrase "by *reason* of"—language that focuses on the *reason* for a decision. "Reason" means "[t]he basis or motive for an action, decision, or conviction." *American Heritage Dictionary of the English Language* 1086 (1969). Liability turns upon whether the protected characteristic (here, disability) "was the 'reason' the [defendant] decided to act." *Gross v. FBL Fin. Servs.*, 557 U.S. 167, 176 (2009); *cf. Jones v. Governor of Fla.*, 975 F.3d 1016, 1045 (11th Cir. 2020) (en banc) (plurality op. of Pryor, C.J.) ("by reason of" in the Twenty-Fourth Amendment considers "the *reason* for the State's action").

The statutes' prohibition on "discrimination" reinforces the focus on intent. To "discriminate" means to "act on the basis of prejudice" or to "make a difference in treatment or favor (of one as compared with others)." *American Heritage* 376; *Webster's New International Dictionary of the English Language* 745 (2d ed. 1951); *see Students for Fair Admissions*, 600 U.S. at 288 (Gorsuch, J., concurring). Thus, in the context of Title IX's similarly phrased prohibition, "the normal definition of discrimination is differential treatment." *Jackson*, 544 U.S. at 174 (cleaned up).

Passive Voice. Section 504 and Title II's passive voice cannot overcome that focus on intent. Title VI (on which Section 504 was based), Title IX, and the Age Discrimination Act use materially identical passive-voice phrasing, yet those statutes indisputably require intent. *Infra* p. 41.

The government (at 13) cites an irrelevant criminal case about passive voice, *Dean v. United States*, 556 U.S. 568, 572 (2009). *Dean* construed the phrase "if the firearm is discharged" not to require the defendant's intentional or knowing discharge of a firearm. *Id.* But that statute referenced no mental state at all. If the provision in *Dean*

had stated that "if, by reason of malice, the firearm is discharged," it would have been plain that the defendant must discharge the firearm with malicious intent.

This Court has already rejected the view that the defendant's intent is irrelevant under Section 504. As discussed, *Davis* zeroes in on the defendant's "purpose" in refusing a requested accommodation. *Supra* pp. 15-16. And in *Bowen*, a plurality of this Court rejected a Section 504 challenge to a hospital's denial of care to an infant with a disability. *Bowen* too focused on *why* the hospital denied care. The plurality explained that "the failure of [a] hospital to … provide [a] treatment because of the unavailability of medical equipment or expertise would not be 'on the basis of the handicap' but on the fact that the hospital is incapable of providing the treatment." 476 U.S. at 630 n.15 (cleaned up).

This Court has repeatedly looked at the defendant's intent in other statutes that similarly pair the passive voice with motive-focused language and verbs like "denied." Take *Wimberly v. Labor & Industrial Relations Commission*, 479 U.S. 511 (1987), where this Court considered a passive-voice bar on pregnancy discrimination. The statute there provided that "no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy." *Id.* at 514 (quoting 26 U.S.C. § 3304(a)(12)). Despite the passive voice, the Court explained that "[t]he focus of th[e] language is on the basis for the State's decision." *Id.* at 516. Thus, the provision did not prohibit the State from applying a neutral rule that "incidentally disqualifies pregnant … claimants." *Id.* at 517. Indeed, *Wimberly* expressly analogized to Section 504, noting that the Rehabilitation Act simply "prohibit[s] disadvantageous treatment" and does

not "mandate 'affirmative efforts to overcome the disabilities caused by handicaps.'" *Id.* at 517-18 (quoting *Davis*, 442 U.S. at 410).

Similarly, in *Husted v. A. Philip Randolph Institute*, this Court interpreted the Help America Vote Act's directive that no voting "registrant may be removed solely by reason of a failure to vote." 584 U.S. 756, 768 (2018) (quoting 52 U.S.C. § 21083(a)(4)(A)). That text, the Court explained, considered the "reason" for which the State removes a voter from the rolls. *Id.* Again, the statutory text focused on the defendant's motive, notwithstanding the passive voice.

Moreover, Section 504 and Title II define individuals with a "disability" to include people without a disability who are "regarded as having" a disability. *See* 29 U.S.C. § 705(20)(B); 42 U.S.C. § 12102(1). The only logical actor who could "regard[]" someone as having a disability is the entity that allegedly discriminated. The focus on the entity's perception thus confirms Congress' focus on the *reason* for the entity's decision, not simply the effect on the plaintiff.

Statutory Structure. Treating Section 504 and Title II as affirmatively requiring federal-funding recipients and public entities to make special accommodations and avoid good-faith disparate impacts on the disabled also defies both statutes' larger scheme.

As originally enacted, the Rehabilitation Act contained over 50 sections, which detailed numerous state-run programs to help people with disabilities. *See* Pub. L. No. 93-112, 87 Stat. 355 (1973). Title I of that Act supports employment programs, Title II offers "research and training" projects, and Title III supports "special projects" to construct new facilities and implement new services. Section 504 appears at the very end and is titled

"Nondiscrimination Under Federal Grants." Yet on petitioner and the government's view, Section 504 apparently subsumes the rest of the Rehabilitation Act, compelling States to take all of the same affirmative actions detailed elsewhere in the statute to ensure equal access to programming.

Congress' intent not to create intent-free reasonable-accommodation claims is especially clear in Title II of the ADA. The ADA's two other main titles both do so expressly. Titles I and III require employers and public accommodations to make affirmative accommodations. *See* 42 U.S.C. § 12112(b)(5)(A) ("reasonable accommodations"); *id.* § 12182(b)(2)(A)(ii)-(iv) ("reasonable modifications" and "failure[s] to" perform certain acts). And Titles I and III create intent-free disparate-impact liability by expressly barring "standards, criteria, or methods of administration … that *have the effect of* discrimination on the basis of disability" or "*tend to screen out* … any class of individuals with disabilities." *Id.* §§ 12112(b)(3)(A), (b)(6), 12182(b)(1)(D)(i), (b)(2)(A)(i) (emphases added).

Titles I and III, by their text, thus expressly reach reasonable-accommodation and disparate-impact claims without any required showing of intent, as courts widely recognize. *E.g.*, *Punt v. Kelly Servs.*, 862 F.3d 1040, 1048 (10th Cir. 2017) (Title I); *Lentini v. Cal. Ctr. for the Arts, Escondido*, 370 F.3d 837, 846-47 (9th Cir. 2004) (Title III).

Yet in Section 504 and Title II, Congress conspicuously omitted similar language. Congress' use of "clear and direct terms" to impose those species of liability in other titles of the ADA itself strongly signals that Congress did not impose intent-free liability in Title II. *See Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 357 (2013); *cf. Olmstead*, 527 U.S. at 622 (Thomas, J., dissenting). That choice makes eminent sense given Title II's

focus on States and localities. Congress appropriately afforded States and localities greater solicitude than the coffee shops, movie theaters, hot-dog stands, and employers covered by Titles I and III.

Titles I and III also illustrate the careful limitations that Congress imposes when it does away with an intent requirement. Because accommodating disabilities inevitably carries costs, regulated parties have never been required to go beyond that which is "reasonable." Title I requires only "reasonable accommodations," provides examples of what is "reasonable," and specifies the "factors to be considered" in "determining whether an accommodation" is not required because of "undue hardship." 42 U.S.C. §§ 12111(9)-(10), 12112(b)(5)(A). Title III similarly does not require accommodations that would "result in an undue burden" or "fundamentally alter the nature" of the good or service offered, and only requires structural changes if such changes are "readily achievable." *Id.* § 12182(b)(2)(A)(ii)-(iv).

Yet Section 504 and Title II—which never mention a reasonable-accommodation requirement—provide no comparable guidance for federal-funding recipients and public entities. Here, petitioner presumably thinks it was reasonable for the District to provide at-home evening instruction. But if a student were unable to start her school day until 8:30 p.m., would the school district need to hire a night-shift teacher to provide overnight instruction? Section 504 and Title II's text certainly do not say.[6]

---

[6] While the Department of Justice's regulations define a "reasonable accommodation" standard under Section 504 and Title II, *e.g.*, 28 C.F.R. pt. 35, the government conspicuously avoids citing those regulations outside its statement of interest. *But see* Pet. Br. 7 (relying

Unsurprisingly, courts jettisoning an intent requirement have found themselves at sea when attempting to define what accommodations are required. The Ninth Circuit defers to the *plaintiff's* proposed request. *See Duvall v. County of Kitsap*, 260 F.3d 1124, 1137 (9th Cir. 2001). The Third Circuit held a school liable even though the school provided every accommodation the student requested, because the school failed to "proactively" spot potential affirmative measures. *Culley v. Cumberland Valley Sch. Dist.*, 758 F. App'x 301, 306 (3d Cir. 2018). And the Seventh Circuit requires judges to balance "subjective" and "intangible values" in determining what is "reasonable." *Wis. Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 752 (7th Cir. 2006) (en banc). The Fourth Circuit, by contrast, focuses on objective criteria and evaluates whether a requested accommodation was "reasonable on its face." *Richardson v. Clarke*, 52 F.4th 614, 619 (4th Cir. 2022). Needless to say, none of these standards appears in the statutory text.

Indeed, it is far from clear why every IDEA violation would not state a potential Section 504 and Title II claim on petitioner and the government's view. Plaintiffs would presumably argue that a free appropriate public education is a "benefit[]" offered by school districts. 29 U.S.C. § 794(a); 42 U.S.C. § 12132. And if all "by reason of" requires is proximate causation, U.S. Br. 13, then the denial of a free appropriate public education seemingly meets the other side's test; the school's failure to comply with the IDEA has caused the plaintiff to be "denied" that "benefit." 29 U.S.C. § 794(a). The IDEA does not "limit the rights, procedures, and remedies available under" the Rehabilitation Act and the ADA. 20 U.S.C. § 1415(*l*). But

---

on the regulations). The government presumably makes that omission because the regulations do not even purport to interpret the statutory text. *See Loper Bright*, 603 U.S. at 412-13.

it defies credulity that Congress intended to transmute every unintentional IDEA violation into a Section 504 and Title II claim, with the threat of damages to boot.

Other Spending Clause Statutes. Petitioner's intent-free regime is also implausible given that Section 504 "was patterned after Title VI." *Cmty. Television of S. Cal. v. Gottfried*, 459 U.S. 498, 509 (1983); *see Doe*, 926 F.3d at 242. Much like Section 504 and Title II, Title VI provides that no person shall "be excluded from participation in, be denied the benefits of, or be subjected to discrimination" "on the ground of" a protected characteristic (there, race) in federally funded programs. 42 U.S.C. § 2000d. Title IX and the Age Discrimination Act bar identical conduct "on the basis of" sex and age. 20 U.S.C. § 1681(a); 42 U.S.C. § 6102.

This Court has already held that Title VI, notwithstanding its passive voice, reaches "only instances of intentional discrimination." *Sandoval*, 532 U.S. at 281 (citation omitted). Likewise, Title IX prohibits only "intentional discrimination on the basis of sex." *Jackson*, 544 U.S. at 178; *Sandoval*, 532 U.S. at 282 & n.2. And no circuit since *Sandoval* has read the materially identical language in the Age Discrimination Act to prohibit more than intentional discrimination. *See, e.g., Kamps v. Baylor Univ.*, 592 F. App'x 282, 285 (5th Cir. 2014); *Doe*, 926 F.3d at 240. Treating disability discrimination as the one setting where Congress jettisoned an intent requirement—even though race and sex are constitutionally suspect classes and the relevant text is materially identical—is nonsensical.

Absurd Results. The government's passive-voice argument also proves far too much. No one thinks that Section 504 and Title II require entities to make *un*reasonable accommodations. Pet. Br. 7; U.S. Br. 20. Yet on

the government's view, Section 504 and Title II are violated whenever an individual with a disability suffers a statutory "adverse effect" that "has a sufficient causal link to[] that individual's disability." U.S. Br. 13.

That reading of the text imposes no reasonableness requirement. If a student's wheelchair breaks at home and she is unable to come to class, the school would apparently be liable if it does not rush over a repairman before first bell. The student otherwise will have suffered an "adverse effect" (the inability to go to school) that was proximately caused by her disability. And if the school knew about the broken wheelchair and failed to act expeditiously, that inaction could apparently amount to deliberate indifference and damages liability too.

Petitioner (at 7) attempts to jury-rig a reasonableness limitation from other sources. She says that courts have "uniformly understood" Section 504 to license reasonable-accommodation claims, citing this Court's decisions in *Choate*, *Fry*, and *Davis*. But *Choate* "assume[d] without deciding" that Section 504 reaches at least some unintentional acts. 469 U.S. at 299.[7] And *Fry* merely observed that "courts have *interpreted* § 504 as demanding certain 'reasonable' modifications," without endorsing that precedent. *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 160 (2017) (emphasis added).

---

[7] The brief in opposition (at 30) incorrectly states that *Choate* "held that conduct barred by the Rehabilitation Act need not be 'fueled by a discriminatory intent'" (citation omitted). As *Choate* makes clear, this statement is dictum. Regardless, as explained above, *supra* pp. 27-30 & n.5, respondents have always contested petitioner's intent-free standard. Respondents' proposed question presented was thus whether "the court of appeals erred in concluding that respondents were entitled to summary judgment … because petitioner failed to establish a genuine dispute about whether respondents had discriminatory intent." BIO I.

As *Monahan* correctly recognized, *Davis* supports an intent requirement, defining "discrimination" based on the defendant's "purpose." 442 U.S. at 413; *supra* pp. 15-16. The passage petitioner cites merely recognizes that "situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory." 442 U.S. at 412-13. For example, a defendant might discriminatorily refuse an accommodation—say, excusing the absence of athletes who miss class for competitions, but not comparable absences for students with disabilities who miss class for doctors' appointments. *Davis* does not say that Section 504 imposes liability whenever a federal-funding recipient acting in good faith fails to provide a reasonable accommodation.

Petitioner (at 7), but not the government, suggests that Title II reaches intent-free reasonable-accommodation claims because the statutory definition of "qualified individual" includes individuals who meet the eligibility requirements for a program "with or without reasonable modifications to rules, policies, or practices." 42 U.S.C. § 12131(2). But that definitional provision does not define the scope of liability. Title I has an analogous definition, *id.* § 12111(8), yet meticulously details reasonable-accommodation claims elsewhere—language that would be superfluous if the definitional provision did the work. *Supra* pp. 38-39.[8]

[8] In *Lane*, this Court in dicta also cited Title II's definitional provision for the proposition that Title II requires reasonable accommodations. 541 U.S. at 531. But there, all parties assumed that Title II requires reasonable accommodations. Pet. Br. 31-33, *Lane*, 541 U.S. 509 (No. 02-1667) (citing 42 U.S.C. § 12131(2)); *Lane* U.S. Br. 45 (same); *Lane* Resp. Br. 39. The Court did not analyze the text, and

Moreover, Title II's definition treats as "qualified" anyone who would meet eligibility requirements with "the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services." 42 U.S.C. § 12131(2). Those two prongs of the definition contain no reasonableness limitation. So were petitioner correct that Title II's definitional provision defines the scope of liability, public entities would need to remove *any* physical barriers and provide *any* auxiliary aids, no matter how unreasonable.

D. Legislative History and Policy Arguments Do Not Justify Petitioner's Rule

For all petitioner's handwringing about text, petitioner (at 22, 32-33, 35-38) repeatedly invokes legislative history and policy concerns to argue that Section 504 and Title II must cover more than intentional discrimination. But "legislative history is not the law." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018). And "even the most formidable policy arguments cannot overcome a clear textual directive." *Helix Energy Sols. Grp. v. Hewitt*, 598 U.S. 39, 59 (2023) (citation omitted).

1. Petitioner (at 3, 22, 37-38) and the government (at 13, 25-26) cast the Rehabilitation Act as tackling "benign neglect," not just "invidious animus," citing legislative history summarized in *Choate*, 469 U.S. at 295. But *Choate*'s use of legislative history was both dicta, *supra* p. 42 & n.7, and especially dubious. For one, *Choate* acknowledged the "lack of debate devoted to § 504," and instead relied on individual legislators' comments about differently worded predecessor bills. 469 U.S. at 295 n.13. For another, "[t]he primary focus of the 1973 Act was to increase

---

the Court's narrow right-to-court-access holding did not interpret Title II's scope for all cases. As petitioner (at 29) correctly recognizes, "this Court has not squarely addressed the issue."

federal support for vocational rehabilitation." *Sch. Bd. of Nassau Cnty. v. Arline*, 480 U.S. 273, 278 n.3 (1987). The Rehabilitation Act contains a host of other provisions directed at that goal, so there is no reason to think Congress understood Section 504 alone as accomplishing every legislative objective.[9]

In a similar vein, petitioner (at 35-38) and the government (at 14, 25-26) invoke the ADA's legislative history and both statutes' general statements of purpose. But those statements too apply to the statutes as a whole, which for the ADA includes Titles I and III—provisions that undisputedly reach unintentional acts.

2. Petitioner (at 41-42) supports her policy arguments with examples of students whose claims failed under *Monahan* who she thinks deserve relief. But far from supporting her rule, these cases illustrate the kind of good-faith disagreements best left to parents and educators, not courts:

- *Reid-Witt ex rel. C.W. v. District of Columbia*, 486 F. Supp. 3d 1 (D.D.C. 2020)—The school "promulgated four separate accommodation plans" giving the student a variety of unique benefits, including "the ability to complete and turn in work virtually"; "alternative testing times and locations"; "automatic distribution of class lecture notes or PowerPoint presentations"; and "preferential seating in classrooms." *Id.* at 9. As the district court explained, the IDEA hearing officer determined that the student was "ineligible for special-

[9] The government (at 25) points to additional legislative history regarding "subsequent amendments to the Rehabilitation Act." Those amendments involved no material change to Section 504's text and consequently shed no light on that provision's meaning.

education services," and the parents' inflexible demand for at-home instruction was simply a disagreement between "[r]easonable minds" "about which accommodations are appropriate (or even feasible)." *Id.* at 5, 10.

- *D.A. ex rel. L.A. v. Houston Independent School District*, 716 F. Supp. 2d 603 (S.D. Tex. 2009)—The school's "Intervention Assistance Team" convened twice to consider the student's needs, "collected updated documentation" from the student's parents, teachers, and an independent expert, and submitted the documentation to a "Committee of Evaluation Specialists." 629 F.3d 450, 452 (5th Cir. 2010). The school mistakenly "believed that classroom interventions would be effective" and delayed disability testing "for a two month period" only because of a teacher's "negligence" in "improperly document[ing] [the student's] behavior." 716 F. Supp. 2d at 620. Petitioner (at 42) highlights salacious allegations about the student being placed in a closet and called a "lazy monkey." The district court rejected these allegations only as insufficient to state a *substantive-due-process* claim, and did not consider them under *Monahan* because the plaintiffs failed to "specify … which acts support[ed] their claim of bad faith." *See id.* at 620, 625.

- *I.A. v. Seguin Independent School District*, 881 F. Supp. 2d 770 (W.D. Tex. 2012)—A paralyzed student could not attend a field trip to an underground cave because there were no alternative "accessible caves nearby," so the school devised "alternative activities for [the student] that would enable him to learn the same information as his peers." *Id.* at 781. The student's gym instructor also did not let

him swim because the instructor "was unsure how to keep [him] safe in the water" and feared for "the safety of … others." *Id.* at 774, 783. And the student did not play on stage in one band concert due to a "negligent lack of prior planning," which the school tried to remedy by "suggest[ing] he play from the floor in front of the stage." *Id.* at 783. The district court discredited the remaining allegations petitioner (at 42) catalogs. *Id.* at 780.

3. Moreover, Section 504 and Title II are not the only tools to protect public-school children with disabilities.

Most obviously, the IDEA offers injunctive relief, monetary relief in the form of compensatory education and tuition reimbursement, and attorneys' fees. *See Sch. Comm. of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 371 (1985); 20 U.S.C. § 1415(i)(3)(B). Students can and do routinely obtain meaningful relief through IDEA claims. *E.g.*, *Reid-Witt*, 486 F. Supp. 3d at 9, 14 (plaintiff "may obtain relief through her IDEA claim"); *D.A.*, 716 F. Supp. 2d at 615-17 (plaintiffs *won* IDEA claim but "failed to offer evidence supporting their claim for compensatory relief"). Ava herself received 495 hours of compensatory education, daily after-school home instruction, direct and indirect speech-pathology services, and eye-gaze technology to "augment her communication capacities" via her IDEA proceeding. Pet.App.51a; JA476-77.

Other laws require further accommodations. Every state has a comprehensive special-education law that requires public schools to address the needs of students with disabilities. *See* App. A. And virtually every State has standards requiring public entities (like school districts) to accommodate disabilities, such as by removing architectural barriers and allowing for service animals. *See* App. B-C. Some even require State and local entities to provide reasonable accommodations, full stop. *E.g.*, Minn.

Stat. § 363A.12; Mont. Code §§ 49-3-101(3)(b), 49-3-205; N.C. Gen. Stat. § 168A-7(a); Tex. Hum. Res. Code § 121.003(d); Vt. Stat. Ann. tit. 9, §§ 4501(8), 4502(c)(5). And when the defendant is a private entity, Titles I and III of the ADA kick in, offering comprehensive protection without any intent requirement.

Respondents take extremely seriously their role as educators in providing the best education possible to every student. But Congress did not provide for federal discrimination liability, including for money damages, on countless good-faith decisions by every public school in America.

CONCLUSION

The court of appeals' judgment should be affirmed.

Respectfully submitted,

LAURA TUBBS BOOTH
CHRISTIAN R. SHAFER
ADAM J. FRUDDEN
RATWIK, ROSZAK & MALONEY, P.A.
444 Cedar St., Ste. 2100
Saint Paul, MN 55101
(612) 339-0060

LISA S. BLATT
Counsel of Record
CHARLES L. MCCLOUD
AARON Z. ROPER
ROHIT P. ASIRVATHAM
MEGAN R. IZZO
HALLIE SAUNDERS
GARRETT M. WEN
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

MARCH 31, 2025

APPENDIX

TABLE OF CONTENTS

APPENDIX A
State Laws Requiring Public Schools to Provide Special-Education Services 1a
APPENDIX B
State Laws and Regulations Requiring Public Entities to Remove Architectural Barriers 3a
APPENDIX C
State Laws and Regulations Requiring Public Entities to Accommodate Service Animals 5a

APPENDIX A

State Laws Requiring Public Schools to Provide Special-Education Services

Alabama	Ala. Code § 16-39-1 *et seq.*
Alaska	Alaska Stat. § 14.30.180 *et seq.*
Arizona	Ariz. Rev. Stat. § 15-761 *et seq.*
Arkansas	Ark. Code Ann. § 6-41-201 *et seq.*
California	Cal. Educ. Code § 56000 *et seq.*
Colorado	Colo. Rev. Stat. § 22-20-101 *et seq.*
Connecticut	Conn. Gen. Stat. § 10-76d *et seq.*
Delaware	Del. Code Ann. tit. 14, § 3101 *et seq.*
Florida	Fla. Stat. § 1003.57 *et seq.*
Georgia	Ga. Code Ann. § 20-2-152 *et seq.*
Hawaii	Haw. Rev. Stat. § 302A-436 *et seq.*
Idaho	Idaho Code § 33-2001 *et seq.*
Illinois	105 Ill. Comp. Stat. 5/14-1.01 *et seq.*
Indiana	Ind. Code § 20-35-1-1 *et seq.*
Iowa	Iowa Code § 256B.1 *et seq.*
Kansas	Kan. Stat. Ann. § 72-3403 *et seq.*
Kentucky	Ky. Rev. Stat. Ann. § 157.195 *et seq.*
Louisiana	La. Rev. Stat. Ann. § 17:1941 *et seq.*
Maine	Me. Rev. Stat. tit. 20-A, § 7001 *et seq.*
Maryland	Md. Code Ann., Educ. § 8-401 *et seq.*
Massachusetts	Mass. Gen. Laws ch. 71B, § 1 *et seq.*
Michigan	Mich. Comp. Laws § 380.1701 *et seq.*
Minnesota	Minn. Stat. § 125A.01 *et seq.*
Mississippi	Miss. Code Ann. § 37-23-1 *et seq.*

Missouri	Mo. Rev. Stat. § 162.670 *et seq.*
Montana	Mont. Code Ann. § 20-7-401 *et seq.*
Nebraska	Neb. Rev. Stat. § 79-1110 *et seq.*
Nevada	Nev. Rev. Stat. § 388.417 *et seq.*
New Hampshire	N.H. Rev. Stat. Ann. § 186-C:1 *et seq.*
New Jersey	N.J. Stat. Ann. § 18A:46-1 *et seq.*
New Mexico	N.M. Stat. Ann. § 22-13-5 *et seq.*
New York	N.Y. Educ. Law § 4401 *et seq.*
North Carolina	N.C. Gen. Stat. § 115C-106.2 *et seq.*
North Dakota	N.D. Cent. Code § 15.1-32-01 *et seq.*
Ohio	Ohio Rev. Code Ann. § 3323.01 *et seq.*
Oklahoma	Okla. Stat. tit. 70, § 13-101 *et seq.*
Oregon	Or. Rev. Stat. § 343.035 *et seq.*
Pennsylvania	24 Pa. Cons. Stat. § 13-1371 *et seq.*
Rhode Island	R.I. Gen. Laws § 16-24-1 *et seq.*
South Carolina	S.C. Code Ann. § 59-33-10 *et seq.*
South Dakota	S.D. Codified Laws § 13-37-1 *et seq.*
Tennessee	Tenn. Code Ann. § 49-10-101 *et seq.*
Texas	Tex. Educ. Code § 29.001 *et seq.*
Utah	Utah Code Ann. § 53E-7-201 *et seq.*
Vermont	Vt. Stat. Ann. tit. 16, § 2941 *et seq.*
Virginia	Va. Code Ann. § 22.1-213 *et seq.*
Washington	Wash. Rev. Code § 28A.155.010 *et seq.*
West Virginia	W. Va. Code § 18-20-1 *et seq.*
Wisconsin	Wis. Stat. § 115.76 *et seq.*
Wyoming	Wyo. Stat. Ann. § 21-2-501 *et seq.*

APPENDIX B

State Laws and Regulations Requiring Public Entities to Remove Architectural Barriers

Alabama	Ala. Code § 21-4-1 *et seq.*
Alaska	Alaska Stat. § 35.10.015
Arkansas	Ark. Dept. of Transformation & Shared Servs., Minimum Standards and Criteria for State Building Projects § 2-1000 *et seq.*
California	Cal. Gov't Code § 4450 *et seq.*
Colorado	Colo. Rev. Stat. § 31-15-604
Connecticut	Conn. Gen. Stat. § 29-269
Delaware	Del. Code Ann. tit. 29, § 7301 *et seq.*
Florida	Fla. Stat. § 553.501 *et seq.*
Georgia	Ga. Code Ann. § 30-3-1 *et seq.*
Hawaii	Haw. Admin. R. §11-216-4
Idaho	Idaho Code § 39-4109
Illinois	410 Ill. Comp. Stat. 25/1 *et seq.*
Indiana	675 Ind. Admin. Code 13-2.6-12
Iowa	Iowa Code § 104A.1 *et seq.*
Kansas	Kan. Stat. Ann. § 58-1301 *et seq.*
Kentucky	Ky. Rev. Stat. § 198B.260
Louisiana	La. Stat. Ann. § 40:1731 *et seq.*
Maine	Me. Rev. Stat. tit. 5, § 4591 *et seq.*
Maryland	Md. Code Regs. 09.12.53.01 *et seq.*
Massachusetts	521 Mass. Code Regs. 1.00 *et seq.*
Michigan	Mich. Comp. Laws § 125.1351 *et seq.*
Mississippi	Miss. Code Ann. § 43-6-101 *et seq.*

Missouri	Mo. Rev. Stat. § 8.610 *et seq.*
Montana	Mont. Admin. R. 24.301.901 *et seq.*
Nebraska	Neb. Rev. Stat. § 71-6401 *et seq.*
Nevada	Nev. Rev. Stat. § 338.180
New Hampshire	N.H. Rev. Stat. Ann. § 275-C:14
New Jersey	N.J. Stat. Ann. § 52:32-4
New Mexico	N.M. Admin. Code § 14.7.2.19
New York	N.Y. Exec. Law § 296(2)(c)(iv)
North Carolina	N.C. State Bldg. Code ch. 11, § 1101.1 *et seq.*
North Dakota	N.D. Cent. Code § 54-21.3-04.1
Ohio	Ohio Rev. Code Ann. § 3781.111
Oklahoma	Okla. Admin. Code § 210:35-3-186(b)
Oregon	Or. Rev. Stat. § 447.210 *et seq.*
Pennsylvania	34 Pa. Code § 403.21(a)(6)(iii)
Rhode Island	R.I. Gen. Laws § 37-8-15
South Carolina	S.C. Code Ann. § 10-5-210 *et seq.*
South Dakota	S.D. Codified Laws § 5-14-12
Tennessee	Tenn. Code Ann. § 68-120-201 *et seq.*
Texas	Tex. Gov't Code Ann. § 469.001
Utah	Utah Code Ann. § 26-29-2 *et seq.*
Vermont	Vt. Stat. Ann. tit. 20, § 2900 *et seq.*
Virginia	Va. Code Ann. § 2.2-1159
Washington	Wash. Rev. Code § 70.92.100 *et. seq.*
West Virginia	W. Va. Code R. § 183-01
Wisconsin	Wis. Stat. § 101.13
Wyoming	Wyo. Stat. Ann. § 16-6-501 *et seq.*

APPENDIX C

State Laws and Regulations Requiring Public Entities to Accommodate Service Animals

Alabama	Ala. Code § 21-7-4(a)
Alaska	Alaska Admin. Code tit. 6, § 30.610(a), (n)
Arizona	Ariz. Rev. Stat. § 11-1024(A), (M)(4)
Arkansas	Ark. Code § 20-14-304
California	Cal. Civ. Code § 54.2
Colorado	Colo. Rev. Stat. § 24-34-803(1)
Connecticut	Conn. Gen. Stat. § 46a-44
Delaware	Del. Code Ann. tit. 6, § 4504(a)(3)
Florida	Fla. Stat. § 413.08(2)
Georgia	Ga. Code § 30-4-2(a), (b)(1)
Hawaii	Haw. Rev. Stat. § 347-13(a), (b)
Idaho	Idaho Code § 56-704
Illinois	775 Ill. Comp. Stat. 30/3
Indiana	Ind. Code § 16-32-3-2
Iowa	Iowa Code § 216C.11
Kansas	Kan. Stat. § 39-1101
Kentucky	Ky. Rev. Stat. § 258.500(5)
Louisiana	La. Rev. Stat. § 46:1951(C)
Maine	Me. Rev. Stat. tit. 5, § 4592(8)
Maryland	Md. Code Ann., Hum. Servs. §§ 7-704(a), 7-705(e)(1)(i)
Massachusetts	Mass. Gen. Laws ch. 272, § 98A
Mississippi	Miss. Code Ann. § 43-6-155

Missouri	Mo. Rev. Stat. § 209.150(3)
Montana	Mont. Code Ann. § 49-4-214
Nebraska	Neb. Rev. Stat. § 20-127(3)
Nevada	Nev. Rev. Stat. § 651.075
New Hampshire	N.H. Rev. Stat. § 167-D:4
New Jersey	N.J. Rev. Stat. § 10:5-29.3
New Mexico	N.M. Stat. § 28-11-3(A)(1)
North Carolina	N.C. Gen. Stat. § 168-4.2(a)
North Dakota	N.D. Cent. Code § 25-13-02
Ohio	Ohio Rev. Code Ann. § 955.43(A)
Oklahoma	Okla. Stat. tit. 7, § 19.1(B)
Oregon	Ore. Rev. Stat. § 659A.143(6)(a)
Rhode Island	R.I. Gen. Laws § 40-9.1-2
South Carolina	S.C. Code Ann. § 43-33-20
South Dakota	S.D. Codified Laws § 20-13-23.2
Tennessee	Tenn. Code Ann. § 62-7-112(b)(1)
Texas	Tex. Hum. Res. Code § 121.003(d)
Utah	Utah Code § 26B-6-803(1)(a)(i)
Vermont	Vt. Stat. Ann. tit. 9 § 4502(b)(1)
Virginia	Va. Code Ann. § 51.5-44(E)
Washington	Wash. Rev. Code § 49.60.215(7)
West Virginia	W. Va. Code § 5-15-4
Wisconsin	Wis. Stat. § 106.52(3)(am)(4)
Wyoming	Wyo. Stat. § 35-13-201(b)