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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The District has a problem. For four years, it defended the Eighth Circuit's asymmetric *Monahan* rule as correctly interpreting Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. The District consistently maintained that *Monahan v. Nebraska*, 687 F.2d 1164 (8th Cir. 1982), "appropriately developed" a special rule applying only to a "unique subset" of claims brought by children with disabilities against their schools. BIO2. The District won on that theory at every stage below and tried to avoid certiorari on that basis here too.

The District's problem is that this Court granted review—and *Monahan*'s asymmetric rule is indefensible. So now the game is up. The District knows there is no way the Court will interpret the same statutory provision to create a two-tier standard of justice imposing a uniquely stringent bad-faith-or-gross-misjudgment requirement only on vulnerable children who face disability discrimination at school.

Desperate times call for desperate measures. And so just four weeks before oral argument, the District conceded the question presented, abandoned its prior arguments, and undertook a massive flip-flop. Before, the District defended imposing different standards on different plaintiffs, BIO26-27—but now it concedes that the same rules apply to everyone, Resp.Br.2. Before, the District acknowledged that both statutes "target[] unintentional discriminatory acts" and thus require "reasonable accommodations," BIO7, 30—but now it says these laws demand a discriminatory "motive" and thus foreclose paradigmatic reasonable-accommodation claims.

Resp.Br.2. Before, the District described Ava's "question presented" as "narrow" and impacting only school-age children with disabilities, BIO23—but now it asks this Court to embrace a new "across the board" rule that would impair the rights of *all* victims of disability discrimination, Resp.Br.2.

This Court should not bless the District's tactics. This case has always been about whether *Monahan*'s "uniquely stringent" rule for school children with disabilities is a valid exception to the baseline standards that apply to all other plaintiffs. Pet.i. The District now concedes no exception is warranted. The Court should accept that concession and overturn the decision below.

This Court should not entertain the District's new arguments for applying *Monahan*'s bad-faith-or-gross-misjudgment test to everyone. Judicial estoppel and this Court's rules bar the District from overhauling its longstanding position and expanding the question presented. Enforcing these procedural doctrines is especially imperative given the revolutionary—and uniformly harmful—impact of the District's new theory.

If the District's new theory is considered, the Court should reject it. The District's approach would gut the ADA and Rehabilitation Act in their most paradigmatic applications. It would violate the text, flout precedent, and upend settled law across the country. This Court should answer Ava's question presented and vacate the Eighth Circuit's judgment.

ARGUMENT

I. The District Concedes The Question Presented

This Court granted certiorari to decide whether children with disabilities bringing education-related claims under the ADA and Rehabilitation Act[1] must satisfy a heightened, context-specific test (as five circuits have held), or meet the same standards as everyone else suing under these statutes (as two circuits have held). Pet.i. The District now concedes that the former asymmetric regime cannot stand. Resp.Br.2. That should end this case.

1. The Eighth Circuit denied Ava relief under *Monahan*'s exception to the general rules governing ADA and Rehabilitation Act claims. Pet.App.4a-5a & n.2. "[W]hen the alleged ADA and [Rehabilitation Act] violations are 'based on educational services for disabled children,'" the Eighth Circuit explained, "a school district's simple failure to provide a reasonable accommodation is not enough to trigger liability." *Id.* at 3a. Instead, under *Monahan*, children with disabilities "must prove that school officials acted with 'either bad faith or gross misjudgment,'" even though "much less" is required "in other disability-discrimination contexts. *Id.* at 3a & 5a n.2.[2]

Ava accordingly sought certiorari on whether *Monahan* properly subjects education-related claims

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[1] Unless otherwise noted, "ADA" refers to Title II, and "Rehabilitation Act" refers to Section 504.

[2] *Monahan* itself unmistakably established a special rule for "the context of handicapped children," as courts have recognized. 687 F.2d at 1170-71 (also noting desire to "harmonize" the Rehabilitation Act and the IDEA's predecessor statute); Pet.15-17 (citing cases); *contra* Resp.Br.2, 24-25.

brought by children with disabilities to a "uniquely stringent" standard. Pet.i, 2-3, 13, 15-16, 22, 24, 27. Ava described the 5-2 circuit split as involving whether "the ADA and Rehabilitation Act's generally applicable provisions" impose "a heightened standard on children with disabilities and no one else." *Id.* at 14-21. On the merits, Ava argued that applying this "uniquely stringent" test in one factual context "cannot be squared with statutory text, structure, or purpose." *Id.* at 22-30. Her supplemental and reply briefs likewise took aim at *Monahan*'s asymmetric regime. Suppl.Br.1, 3-5; Cert.Reply.1-8.

The District's brief opposing certiorari understood this framing and joined issue only on Ava's narrow question presented. The District defended *Monahan*'s asymmetry by arguing that primary and secondary education is a "unique context" giving rise to a "unique subset" of ADA and Rehabilitation Act claims calling for a "different standard," even as compared to "college students." BIO2-3, 31 n.3; *see, e.g.*, *id.* at 1, 7, 27-28. And the District justified *Monahan* as an "appropriate[]" attempt to fashion "a 'sensible remedial scheme'" for "the education context." *Id.* at 26-27.

Ava's merits brief then comprehensively explained why statutory text, structure, history, and purpose demonstrate that the "same standards apply to everyone." Pet.Br.2; *see id.* at 23-47. That submission emphasized that her question presented "does not ask the Court to decide what standard should uniformly govern all claims." *Id.* at 30 n.7.

2. Unable to defend *Monahan*'s two-tiered approach, the District now agrees with Ava that the same standards apply "across the board." Resp.Br.2. It accepts "the usual rule that statutory provisions

should carry a consistent meaning," no matter who a plaintiff is or how her claims arose. *Id.* at 24. And it does not contest Ava's dozens of pages of argument attacking *Monahan*'s asymmetric standard. *See* Pet.Br.23-47.

The District's eleventh-hour concession resolves the question presented. As all parties now agree, the same rules apply to everyone: Children with disabilities bringing education-related claims are *not* subject to a "uniquely stringent" test for liability. Pet.i. The Court should accept the District's concession and issue a straightforward decision rejecting *Monahan*'s two-tiered approach.

II. The District's Radical New Argument Is Procedurally Improper

Rather than defend *Monahan*'s asymmetry, the District now advances a radical new interpretation of the ADA and Rehabilitation Act. The District argues that *all* plaintiffs—not just children with disabilities bringing education-related claims—must satisfy *Monahan*'s bad-faith-or-gross-misjudgment test. Resp.Br.2. That reading would upend longstanding precedent from this Court and every circuit, while gutting core ADA and Rehabilitation Act protections. It also directly contradicts the District's position below and at the certiorari stage. The Court should refuse to consider the District's new theory.

A. The District's New Theory Would Revolutionize Anti-Discrimination Law

Previously, the District called this a "narrow" case affecting only a limited "universe of plaintiffs," namely school-age children with disabilities. BIO23. Now, the District advances a sweeping argument threatening to eviscerate protections for *every*

American who endures disability discrimination—and quite possibly other kinds of discrimination too. No court has ever embraced anything close to the District's new rule.

1. For decades, the ADA and Rehabilitation Act have been understood to target not just "invidious animus" against people with disabilities, but also "thoughtlessness and indifference" toward their unique needs. *Alexander v. Choate*, 469 U.S. 287, 295 (1985). With most forms of discrimination—such as discrimination based on race, sex, or religion—the protected characteristic is usually "not relevant" to a defendant's decisionmaking, and the statutory goal is to eliminate that impermissible consideration. *Bostock v. Clayton County*, 590 U.S. 644, 660 (2020). But disability discrimination is different. A disability often *itself* precludes "meaningful access" to programs or services. *Choate*, 469 U.S. at 301. As a result, "discrimination against the handicapped is primarily the result of apathetic attitudes rather than affirmative animus." *Id.* at 296. People with disabilities are "shunted aside, hidden, and ignored" more frequently than they are hated, threatened, or harassed. *Id.* at 295-96.

Eradicating these "shameful oversights" requires "reasonable accommodations," even without evidence of intentional discrimination. *Id.* at 295-96, 300 n.20. Merely treating disability as an impermissible consideration does not solve the problem. Rather, it is "necessary to dispense with formal equality of treatment" and instead "require changes in otherwise neutral policies that preclude the disabled from obtaining" equal access to "opportunities that those without disabilities automatically enjoy." *Cinnamon Hills Youth Crisis Ctr., Inc. v. Saint George City*, 685

F.3d 917, 923 (10th Cir. 2012) (Gorsuch, J.) (emphasis omitted); *accord* 42 Fed. Reg. 22676 (May 4, 1977).

Accordingly, the ADA and Rehabilitation Act have always required "reasonable accommodations," regardless of a covered entity's intent. *Choate*, 469 U.S. at 301. And a "refusal to accommodate the needs of a disabled person amounts to discrimination against the handicapped" whenever the denial is "unreasonable." *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 412-13 (1979); *accord Sch. Bd. of Nassau Cnty. v. Arline*, 480 U.S. 273, 287-88 & n.17 (1987); *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 159-60 (2017).

Discriminatory intent or animus need not be shown to establish an ADA or Rehabilitation Act violation. On the contrary, "[r]ecognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures" to remove "barriers to accessibility." *Tennessee v. Lane*, 541 U.S. 509, 531 (2004). And the paradigmatic application of these laws is mandating the removal of "architectural barriers" that "were clearly not erected with the aim or intent of excluding the handicapped." *Choate*, 469 U.S. at 297.

Consistent with these precedents, every circuit has held, as a general rule, that a plaintiff can establish a statutory violation *without* proving discriminatory intent. Pet.Br.8-9 & n.1. And the ADA and Rehabilitation Act's regulations have always required "reasonable modifications" when "necessary to avoid discrimination on the basis of disability." 56 Fed. Reg. 35694, 35718-19 (July 26, 1991) (ADA) (now codified at 28 C.F.R. § 35.130(b)(7)); *see* 42 Fed. Reg. at 22680-81 (Rehabilitation Act) (now codified at 28 C.F.R. §§ 41.53, .56).

The District once conceded these points. In opposing certiorari, it acknowledged that by requiring "reasonable accommodations," the ADA and Rehabilitation Act "target[] unintentional discriminatory acts." BIO7, 30. And it defended *Monahan* as applying only in the "unique context" of claims against schools. *Supra* 4.

2. The District's new argument throws all this out the window. Now, the District says that *all* ADA and Rehabilitation Act plaintiffs must show "bad faith or gross misjudgment" to establish a violation and obtain injunctive relief, such that the statutes do *not* "create intent-free reasonable accommodation claims." Resp.Br.38.[3] According to the District, the statutes cover only actions based on "an improper purpose"—i.e., a discriminatory "motive." *Id.* at 2. And the same conduct can be "lawful if taken for one reason, but unlawful if taken for another." *Id.* at 16. What matters is whether the defendant acted "for improper, bad-faith reasons" demonstrating "intentional discrimination" against people with disabilities. *Id.* at 18.

The District's "motive-focused" test, *id.* at 36, would revolutionize the settled understandings of the ADA and Rehabilitation Act. It would overturn the unanimous circuit consensus that, outside the school setting, reasonable-accommodation claims are viable without intentional discrimination. Pet.Br.8-9. More

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[3] Contrary to the District (Resp.Br.2, 37-38), a "claim based on a denial of a reasonable accommodation differs from a disparate-impact claim." *Doe v. BlueCross BlueShield of Tenn., Inc.*, 926 F.3d 235, 243 (6th Cir. 2019) (Sutton, J.); *accord Cinnamon Hills*, 685 F.3d at 922 (Gorsuch, J.). The former is permitted, even in the one circuit holding that the latter is not. *Doe*, 926 F.3d at 243-45.

importantly, the District's theory would immunize "much of the conduct that Congress sought to alter in passing" those statutes, *Choate*, 469 U.S. at 296-97—with shocking consequences.

Consider some examples. People "who use wheelchairs for mobility" could not establish a statutory violation when a courthouse has "no elevator" or other means of access—even if forced to "crawl[] up two flight of steps"—unless they could prove that the architectural design constituted intentional discrimination. *Lane*, 541 U.S. at 513-14. So too for someone with "cerebral palsy" if "a public library or theater had refused admittance" to her "service dog" based on a generally applicable rule prohibiting animals. *Fry*, 580 U.S. at 161-62, 175. Without proof of prejudice against blind people, a visually impaired voter would have no recourse for lacking "meaningful access to absentee voting." *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 498 (4th Cir. 2016). And "deaf individuals" would be out of luck, even if a public hospital inexcusably "failed to provide effective communication" necessary for safe and effective medical treatment. *Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334, 338 (11th Cir. 2012).

The District's argument would also jack up the standard—"across the board"—for obtaining damages under the ADA and Rehabilitation Act. Resp.Br.2; *see id.* at 30-34. Nine circuits currently hold that "deliberate indifference" is enough to establish an "intentional violation[]" of the ADA and Rehabilitation Act and thus trigger damages liability outside the educational context. *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 275 (2d Cir. 2009); *see* Pet.7. This well-established intent standard "does not require a showing of personal ill will or animosity

toward the disabled person." *Meagley v. City of Little Rock*, 639 F.3d 384, 389 (8th Cir. 2011). The District's new theory, by contrast, would extend *Monahan*'s "impossibly high bar" to *all* ADA and Rehabilitation Act plaintiffs, *Knox County v. M.Q.*, 62 F.4th 978, 1002 (6th Cir. 2023), even though no court has ever applied that standard outside the education context.

3. Adopting the District's motive-focused test would also threaten settled interpretations of *other* anti-discrimination statutes. The District insists that *Monahan*'s standard flows from the ADA and Rehabilitation Act's requirement that a defendant's action was made "by reason of" the "statutorily prohibited consideration"—here "disability." Resp.Br.16. But as the District itself emphasizes, other anti-discrimination laws, including Title VI, Title VII, and Title IX, use "materially identical" language. *Id.* at 35, 41; *see* 42 U.S.C. §§ 2000d, 2000e-2; 20 U.S.C. § 1681(a). If the District is right that the ADA and Rehabilitation Act's "by reason of" language requires bad faith, the District's logic would suggest that these other statutes demand the same. *See* Resp.Br.31-32.

This Court has never embraced a bad faith standard under these laws. It has *rejected* the District's position (Resp.Br.43) that a "good faith" motive can excuse liability. *See, e.g.*, *Int'l Union, United Auto., Aerospace & Agric. Implement Workers v. Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 289 (2023) (Gorsuch, J., concurring). And contrary to the District's claim that "deliberate indifference" cannot "be the appropriate standard," Resp.Br.31-32, this Court has repeatedly embraced that test under

Title IX. *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 289-91 (1998); *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 642-43 (1999).

For all these reasons, the District's position would transform this narrow dispute about the rights of school-age children with disabilities into a revolutionary case that could redefine not just the ADA and Rehabilitation Act, but also numerous other civil-rights laws.

B. The District's New Theory Is Not Properly Presented

This Court should not address the District's new argument that *Monahan*'s bad-faith-or-gross-misjudgment standard applies to *all* ADA and Rehabilitation Act plaintiffs. That radical contention goes beyond the question presented and directly contradicts the District's position throughout this case. Under this Court's rules, it should not be considered. *See* Stephen M. Shapiro et al., *Supreme Court Practice* § 6.26(a)-(c) (11th ed. 2019).

1. Settled principles of judicial estoppel foreclose the District's about-face in this Court. That doctrine "prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). Judicial estoppel "protect[s] the integrity of the judicial process" by "prohibiting parties from deliberately changing positions according to the exigencies of the moment." *Id.* at 749-50. Such tactics are an "improper use of judicial machinery." *Id.* at 750.

This is a textbook case for judicial estoppel. Below, the District ducked en banc review by defending

Monahan's asymmetry, without ever hinting that its bad-faith-or-gross-misjudgment test should apply across the board. The District argued that *Monahan*'s standard "correctly" addresses "unique considerations" raised by education-related claims under the ADA and Rehabilitation Act. CA8.Resp.Reh'g.Opp.2. And it conceded that both statutes require "'reasonable accommodations'" outside the school setting—regardless of intent. *Id.* at 15. On that basis, the District accused Ava of seeking to overturn "40 years of precedent," while insisting that *Monahan*'s two-tiered approach "was appropriate when it was adopted and remains appropriate today." *Id.* at 1.

That argument paid off. Over three dissents, the Eighth Circuit denied en banc review and left *Monahan* undisturbed. Pet.App.44a. But because the District's "interests have changed" after the grant of certiorari, it has suddenly "assume[d]" a contrary position at the merits stage. *New Hampshire*, 532 U.S. at 749. The District concedes the same standards govern "across the board," while asserting that "intent-free reasonable-accommodation claims" do not exist. Resp.Br.2, 24.

Had the District straightforwardly told the Eighth Circuit what it now says here—that *Monahan*'s asymmetric regime is wrong—Ava's rehearing petition would surely have been granted. This Court should not reward the District's "intentional self-contradiction." *New Hampshire*, 532 U.S. at 751.

2. The Court's rules and basic forfeiture principles likewise bar the District's sweeping new arguments. Rule 15.2 requires respondents to address—"in the brief in opposition, and not later"—"any perceived misstatement of fact or law in the petition that bears

on what issues properly would be before the Court if certiorari were granted." A respondent's merits brief, like a petitioner's, may "not raise additional questions or change the substance of the questions already presented." Sup. Ct. R. 24.1(a), 24.2. And this Court generally "will not entertain arguments not made below," even when asserted by respondents. *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 37-38 (2015).

These rules "reflect[] the fact that our adversarial system assigns both sides responsibility for framing the issues," and they serve important purposes. *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 306 n.14 (2010). For one thing, they "help to maintain the integrity of the process of certiorari." *Taylor v. Freeland & Kronz*, 503 U.S. 638, 646 (1992). Letting parties "alter" the question presented or "devise additional questions at the last minute" would "thwart this system." *Id.* The Court thus consistently refuses to consider "alternative grounds to affirm" that fall "outside the question[] presented." *Glover v. United States*, 531 U.S. 198, 205 (2001); *see, e.g.*, *West v. Gibson*, 527 U.S. 212, 223 (1999).

Furthermore, "[b]ecause this is 'a court of review, not of first view,'" the Court considers it "generally unwise to consider arguments in the first instance." *Byrd v. United States*, 584 U.S. 395, 404 (2018). When the lower courts "did not have occasion to address" an issue or "what consequences might follow from" deciding it, this Court's decisionmaking lacks the benefit of their analysis—and suffers as a result. *Id.* This rule, too, applies with full force to respondents. *See, e.g.*, *United States v. Miller*, 145 S. Ct. 839, 856 (2025); *OBB*, 577 U.S. at 37-38.

Under these bedrock principles, the Court should not countenance the District's eleventh-hour assault on the ADA and the Rehabilitation Act. Ava's petition noted that "[a]s a general matter," plaintiffs suing under those statutes can establish a violation and "obtain injunctive relief without proving intentional disability discrimination," and can obtain damages "by proving that the defendant was deliberately indifferent to their federally protected rights." Pet.2. It repeatedly referenced these "baseline standards." *Id.* at 18-21, 23-24, 27, 31-32. It also attacked *Monahan* as adopting an "asymmetric interpretation disfavoring children with disabilities." *Id.* at 3; *see id.* at 13-14, 22-29.

Yet the District's opposition to certiorari did not challenge the baseline standards or contest Ava's account of *Monahan*. It did the opposite: The District steadfastly defended *Monahan*'s two-tiered regime. *Supra* 4. It accepted that "less-demanding standards" apply in other settings. BIO23. And it admitted that both the ADA and Rehabilitation Act "require covered entities to make reasonable accommodations" in other contexts, even in the absence of "'discriminatory intent.'" *Id.* at 7, 30 (quoting *Choate*, 469 U.S. at 297). All this mirrors what the District told the Eighth Circuit. *See* CA8.Resp.Reh'g.Opp.1-2, 15; CA8.Resp.Br.22, 25. And it directly contradicts the District's merits brief here. *Supra* 4-5, 8-10.

This Court has repeatedly rejected materially identical maneuvers. For example, in *Travelers Casualty & Surety Co. of America v. Pacific Gas & Electric Co.*, 549 U.S. 443 (2007), the Court granted certiorari to review the so-called *Fobian* rule, "which held that 'where the litigated issues'" in bankruptcy proceedings involve "issues peculiar to federal

bankruptcy law, attorney's fees will not be awarded absent bad faith or harassment.'" *Id.* at 447 (quoting *In re Fobian*, 951 F.2d 1149, 1153 (9th Cir. 1991)). In its merits brief, the respondent "ma[de] no effort to defend the *Fobian* rule" and instead advanced a broader argument "categorically disallow[ing] unsecured claims for contractual attorney's fees." *Id.* at 454. This Court declined "to affirm on that basis" because the respondent "did not raise these arguments below" or in its "brief in opposition." *Id.* at 454-55.

Likewise, in *Norfolk Southern Railway Co. v. Sorrell*, 549 U.S. 158 (2007), the Court granted certiorari to decide whether "the causation standard for employee contributory negligence under [the Federal Employer's Liability Act] differs from the causation standard for railroad negligence." *Id.* at 162 (emphasis omitted). At the merits stage, the petitioner "attempted to expand the question presented to encompass what the standard of causation under FELA should be, not simply whether the standard should be the same for railroad negligence and employee contributory negligence." *Id.* at 163 (emphasis omitted). This Court refused to consider that argument. *Id.* at 164-65. The petitioner was "not only enlarging the question presented, but taking a position on that enlarged question that is contrary to the position it litigated below." *Id.* at 164. Moreover, the Court emphasized, "the issue of the substantive content of the causation standard [wa]s significant enough" that the Court "prefer[red] not to address it" because it had "not been fully presented." *Id.* at 164-65.

3. The District offers no "convincing reason to depart" from these settled estoppel and forfeiture

principles. *S. Cent. Bell Tel. Co. v. Alabama*, 526 U.S. 160, 171 (1999). On the contrary, there are especially good reasons not to let the District "switch gears" and "smuggle additional questions" into this case "after the grant of certiorari." *Norfolk*, 549 U.S. at 164-65.

First, as explained, the District's broadside attack on intent-free reasonable-accommodation claims has "far-reaching" implications. *S. Cent. Bell*, 526 U.S. at 171; *see supra* 5-11. Even more so than in *Norfolk*, "the issue of the substantive content of the causation standard" required by the ADA and Rehabilitation Act is "significant." 549 U.S. at 164-65. It covers the full universe of all victims of discrimination, not just the subset of children with disabilities bringing education-based claims. *Supra* 5-11.

Second, "no other court has ever considered" the District's revolutionary new theory. *Miller*, 145 S. Ct. at 856. Nor has it "been adequately briefed" here. *Id.* Because the District did not "make clear it intended to make [its new] argument until it filed its brief on the merits," *S. Cent. Bell.*, 526 U.S. at 171, Ava's brief did not address that theory. *See* Pet.Br.30 n.7. Nor did her amici.

Third, it would be "unfair at this point to allow [the District] to switch gears and seek a ruling from [this Court] that the standard should be [bad faith or gross misjudgment] across the board." *Norfolk*, 549 U.S. at 165. For years, the District successfully defended *Monahan*'s asymmetry, over Ava's persistent opposition. The District should not get a do-over just because it finally sees the writing on the wall. Blessing the District's gambit would invite similar gamesmanship in future cases.

The bottom line is that the Court "did not grant certiorari" on the District's radical new argument, and "without adequate briefing, it would not be prudent"—or fair—"to decide it here." *Food & Drug Admin. v. Wages & White Lion Invs., LLC*, 145 S. Ct. 898, 916 (2025). The Court should "stick to the question on which certiorari was sought and granted." *Norfolk*, 549 U.S. at 164. As both parties now agree, Ava's answer to that question is correct.[4]

III. The District's Radical Theory Is Wrong

The District's revolutionary interpretation of the ADA and Rehabilitation Act does not withstand scrutiny. The settled interpretation of these statutes embraced by this Court, every circuit, and the United States should not be cast aside. *Supra* 6-8; *see* U.S.Br.12-20. Intentional discrimination is not required to establish a reasonable-accommodation claim, and damages are available based on a showing of deliberate indifference.

1. As explained, it has long been understood that the ADA and Rehabilitation Act prohibit discrimination resulting from "benign neglect" of people with disabilities, not just "conduct fueled by a discriminatory intent." *Choate*, 469 U.S. at 295-97; *supra* 6-7. Statutory text and history fully support that result.

The Rehabilitation Act provides that "[n]o otherwise qualified individual with a disability" shall,

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[4] The District urges the Court to address the substantive standards because merely overturning *Monahan* would "leave nothing in its place." Resp.Br.27. That's wrong: *Monahan* created a limited exception to the baseline rules otherwise governing ADA and Rehabilitation Act claims; eliminating that exception would leave those baseline rules intact. Pet.Br.8-10.

"solely *by reason of* her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving" federal funds. 29 U.S.C. § 794(a) (emphasis added). The ADA's similarly worded prohibition uses the same "by reason of" language, minus the "solely" modifier. 42 U.S.C. § 12132.

Neither statute requires improper motive or intent. "The phrase 'by reason of' denotes some form of causation," not an intent or motive requirement. *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 769 (2018); *accord Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 350 (2013). The use of the "passive voice" reinforces that the by-reason-of-disability element "does not require proof of intent." *Dean v. United States*, 556 U.S. 568, 572 (2009).

Instead, the text demands a causal link between a person's disability and the complained-of action. The failure to provide a reasonable accommodation readily satisfies this "causation requirement," even without proof of animus or intentional discrimination. *Husted*, 584 U.S. at 769. In countless situations—such as stairs preventing a physically impaired person from accessing a courthouse, a no-animals policy barring someone with a service dog from a municipal library, or braille-free ballots precluding a blind person from voting absentee—a person can lose access to benefits and services "by reason of" his or her disability, without any harmful intent. *Supra* 9. As Justice Gorsuch has explained, victims are harmed by the denial of reasonable accommodations "*because*

of conditions created by their disabilities." *Cinnamon Hills*, 685 F.3d at 923.[5]

Other textual features confirm that a "refusal to accommodate the needs of a disabled person" may itself "amount[] to discrimination against the handicapped." *Davis*, 442 U.S. at 413; *accord Doe*, 926 F.3d at 243 (Sutton, J.). For example, the ADA expressly contemplates such claims by creating an exception from the duty to "provide a reasonable accommodation" in certain circumstances. 42 U.S.C. § 12201(h). Its definition of "qualified individual[s]" extends to individuals with disabilities who, with "reasonable modifications," can meet the relevant "essential eligibility requirements." 42 U.S.C. § 12131(2); *see id.* § 12132. And the Rehabilitation Act makes clear that it sometimes requires structural alterations to buildings "for the purpose of assuring program accessibility." 29 U.S.C. § 794(c).

These statutory references reinforce that both the ADA and Rehabilitation Act create affirmative duties to provide reasonable accommodations in certain circumstances. And as *Choate* makes clear, the failure to provide such accommodations typically stems from "thoughtlessness," "indifference," and "benign neglect"—not "affirmative animus." 469 U.S. at 295-96. Requiring harmful intent would neuter

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[5] Under other anti-discrimination statutes, by contrast, intentional discrimination is usually the only way to satisfy the statutory causation requirement. It thus makes sense for the ADA and Rehabilitation Act to prohibit discrimination stemming from "apathetic attitudes," even if Title VI and other laws "reach only instances of intentional discrimination." *Choate*, 469 U.S. at 293, 295-96; *see* U.S.Br.26-29, *CVS Pharmacy, Inc. v. Doe, One*, 142 S. Ct. 480 (2021) (No. 20-1374) (distinguishing Title VI from disability statutes).

both statutes in a wide swath of their core applications.

Relevant history confirms that intent is not required. Congress enacted the Rehabilitation Act in 1973 to end the "glaring neglect" of people with disabilities. 118 Cong. Rec. 526 (Jan. 20, 1972); *see* Pet.Br.37-38. Soon after, the Department of Health, Education, and Welfare promulgated longstanding regulations requiring "reasonable accommodation[s]," regardless of intent. 42 Fed. Reg. at 22680-81. In the ensuing years, this Court repeatedly treated the Rehabilitation Act as imposing liability for failure to provide a reasonable accommodation—with no hint of any intent requirement. *Supra* 7 (citing *Davis*, *Choate*, and *Arline*).

In 1990, the ADA ratified this settled interpretation by providing that "nothing in [Title II] shall be construed to apply a lesser standard than the standards applied under [the Rehabilitation Act]" or its "regulations." 42 U.S.C. § 12201; *see id.* § 12133 (incorporating Rehabilitation Act's "rights").[6] The House Judiciary Committee Report on the ADA also expressly stated that the statute should be "interpreted consistent with" *Choate*. H.R. Rep. No. 101-485, pt. 2, at 84 (1990). And, consistent with this text and history, ADA regulations have also always required "reasonable modifications," regardless of intent. 28 C.F.R. § 35.130(b)(7); *see* 56 Fed. Reg. at 35718.

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[6] Based on this incorporation, Congress "chose[] not to list all the types of actions that are included within the term 'discrimination,' as was done in [T]itles I and III, because [Title II] simply extends the anti-discrimination prohibition embodied in [the Rehabilitation Act] to all actions of state and local governments." H.R. Rep. No. 101-485, pt. 2, at 84 (1990).

2. As for damages, common-law principles suggest that an ADA or Rehabilitation Act plaintiff should be able to recover whatever relief is necessary to put her "in the position" she "would have occupied if the [District's] wrong had not occurred." *Babb v. Wilkie*, 589 U.S. 399, 413-14 (2020). That would include compensatory damages, without any additional proof of wrongful intent.

But as the Solicitor General notes, different rules often govern claims for damages under Spending Clause legislation like the Rehabilitation Act. U.S.Br.15-16. And because the ADA incorporates the Rehabilitation Act's "remedies, procedures, and rights," 42 U.S.C. § 12133, the same logic applies to that statute as well. *See Barnes v. Gorman*, 536 U.S. 181, 189 n.3 (2002).

In the Spending Clause context, this Court "regularly" relies on a "contract-law analogy" to define "the scope of conduct for which funding recipients may be held liable for money damages." *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219 (2022). The "central concern" is to ensure that a funding recipient has "notice that it will be liable for a monetary award"—which cannot happen when a recipient is "unaware of the discrimination" alleged. *Gebser*, 524 U.S. at 287.

Applying these principles in the Title IX context, this Court has allowed damages claims only when the defendant had "actual notice of," but remained "deliberately indifferent to," conduct violating the statute. *Id.* at 277; *see id.* at 285-90. And it has consistently held "monetary damages" unavailable for "unintentional" violations. *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 74 (1992).

The ADA and Rehabilitation Act can likewise sensibly be read to require "deliberate indifference." *Gebser*, 524 U.S. at 290. Here too, that standard resolves Spending Clause concerns about "unaware" defendants being held liable for damages. *Id.* at 287-88; *see* U.S.Br.16-18. This Court has previously relied on its Title IX precedents to assess damages remedies available under the ADA and Rehabilitation Act. *See Barnes*, 536 U.S. at 185-89. Heeding these instructions, nine circuits have adopted the deliberate-indifference standard for damages claims under the ADA and Rehabilitation Act. *Supra* 9.

3. The District offers no sound basis to reject the long-settled understanding in favor of its new interpretation that no court has ever embraced. Limited space precludes a comprehensive rebuttal, but a few points bear emphasis.

First, the District offers no serious textual case that the ADA and Rehabilitation Act's "by reason of" language somehow limits liability to defendants who act with "bad faith or gross misjudgment." *Contra* Resp.Br.15-19. That position defies plain meaning and this Court's decisions holding that "by reason of" is a causation standard, not a motive requirement. *Supra* 18-19 & n.5. It fails to grapple with the ADA and Rehabilitation Act's interlocking statutory and regulatory history, which confirm that neither statute requires intentional misconduct. And it is internally inconsistent: The District previously acknowledged that "gross misjudgment" under *Monahan* has always encompassed "unintentional yet harmful conduct," BIO30—but now the District reverses course and insists that "gross misjudgment" entails "improper, bad faith reasons," Resp.Br.18-19, 42 & n.7.

Second, the District disparages this Court's unanimous decision in *Choate*, which carefully considered unique features of disability discrimination that provide essential context for interpreting the statutory text. Resp.Br.44. This marks yet another flip-flop from its brief opposing certiorari, which endorsed *Choate*'s "instruction" that "conduct barred by the Rehabilitation Act need not be 'fueled by a discriminatory intent.'" BIO30 (describing this as *Choate*'s "h[o]ld[ing]"); *see* Resp.Br.42 n.7.

Third, the District is wrong to argue (Resp.Br.31-32) that "deliberate indifference c[annot] be the appropriate standard" for damages claims because it falls short of "*intentional* discrimination." *See* U.S.Br.16-20. This Court has made clear that "deliberate indifference" is a species of "intentional" conduct. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005). And while it's true that *Gebser* and *Davis* involved funding recipients being held directly liable for their alleged deliberate indifference to "*someone else's* intentional discrimination," Resp.Br.32, this Court has applied that same test when assessing a party's *own* "failure to attend to [someone's] medical needs." *Wilson v. Seiter*, 501 U.S. 294, 303 (1991) (Eighth Amendment). The deliberate-indifference standard is equally appropriate for assessing failures to accommodate disability-related needs.

Fourth, the District's grab-bag of new constitutional arguments (Resp.Br.19-23) only underscores why this Court should not entertain the District's current theory in the first instance. *See Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212-13 (1998) (refusing to address belatedly raised ADA

constitutional challenge). In any event, the courts of appeals have consistently rejected Spending Clause challenges to the Rehabilitation Act. *See, e.g.*, *Miller v. Tex. Tech Univ. Health Scis. Ctr.*, 421 F.3d 342, 348-52 & n.19 (5th Cir. 2005) (collecting cases). And they have upheld the ADA as valid enforcement legislation in the educational context under Section 5 of the Fourteenth Amendment. *See, e.g.*, *Toledo v. Sánchez*, 454 F.3d 24, 36-40 (1st Cir. 2006); *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 486-90 (4th Cir. 2005). Those decisions are correct for reasons the United States has explained elsewhere. *See, e.g.*, U.S.Br.6-35, *Danny R. v. Spring Branch Indep. Sch. Dist.*, 124 F. App'x 289 (5th Cir. 2005) (No. 02-20816); U.S.Br.9-45, *Bowers v. NCAA*, 475 F.3d 524 (3d Cir. 2007) (No. 05-2426).

Finally, the District ignores the elephant in the room. Accepting the District's across-the-board bad-faith-or-gross-misjudgment test would cause a sea change in disability law—and quite possibly anti-discrimination law more generally. *Supra* 5-11. Overnight, victims of discrimination would lose protections they have enjoyed for decades. It is shocking that the District does not acknowledge—let alone justify—the radical consequences of its new theory. One way or another, that theory should be rejected.

CONCLUSION

The Eighth Circuit's judgment should be vacated and the case remanded for further proceedings.

Respectfully submitted,

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