IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ERIC STEWARD, by his next friend and mother, Lillian Minor, et. al.

Plaintiffs

v.

CHARLES SMITH, in his official capacity as the Executive Commissioner of Texas Health and Human Services Commission, et. al.

Defendants

CIVIL ACTION NO.
SA-10-CA-1025-OG
A CLASS ACTION

THE UNITED STATES OF AMERICA

Plaintiff-Intervenor

v.

THE STATE OF TEXAS

Defendant

ORDER

Pending before the Court is Defendant State of Texas' Motion for Summary Judgment (docket no. 477), in which the State seeks dismissal of the United States' claims in intervention under Title II of the ADA and Section 504 of the Rehabilitation Act. The United States has filed a response in opposition (docket no. 501). After reviewing the record and applicable law, the Court finds that the State of Texas' Motion for Summary Judgment should be denied.

In 2010, Plaintiffs filed this lawsuit for declaratory and injunctive relief asserting claims under Title II of the ADA, Section 504 of the Rehabilitation Act, and Section 1983 for violations of

the Medicaid Act and Nursing Home Reform Amendments (NHRA) to the Medicaid Act. Docket nos. 1, 173. In May 2011, the United States filed a Statement of Interest in the litigation. Docket no. 43. In June 2011, the United States filed a motion to intervene to seek injunctive and declaratory relief under Title II of the ADA and Section 504 of the Rehabilitation Act. Docket no. 53. In response to the United States' motion to intervene, Defendants expressly admitted that the United States has the authority to seek injunctive and declaratory relief against the State as a means of enforcing Title II of the ADA and Section 504 of the Rehabilitation Act. Specifically, Defendants stated:

> Title II of the ADA incorporates the remedies, procedures and rights set forth in the Rehab Act, which in turn incorporates the remedies, procedures and rights set forth in Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et. seq.* Title VI provides that –
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> > Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity ... is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability ... Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement . . . or (2) by any other means provided by law . . .
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> 42 U.S.C. § 2000d-1. Thus, both Title II and the Rehab Act allow for enforcement through the termination or refusal to grant federal funding, or by "any other means provided by law[.]" 42 U.S.C. § 2000d-1. Courts interpret "any other means provided by law" *to authorize DOJ enforcement via federal court action.*"

Docket no. 56, p. 5 (footnotes omitted) (emphasis added).

The Court determined that the United States clearly met the requirements for permissive intervention under Rule 24 and allowed the United States to intervene in the lawsuit. Docket no. 136. The United States' Complaint in Intervention was filed the same day. Docket no. 137.

In November 2015, the State of Texas moved to dismiss the United States' complaint in intervention. Docket no. 242. Four years after expressly admitting that the United States had the statutory authority to seek judicial enforcement of Title II and Section 504, and without any new authority or change in controlling law, the State of Texas completely ignored its prior admission and argued precisely the opposite – that the United States lacked authority to seek judicial enforcement under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and Title II of the ADA – and thus lacked standing. Docket no. 242. As the United States noted in response, "[t]he State already conceded in this case that the Attorney General has authority to enforce Title II. Subsequently, the State discovered an argument that the State of Florida advanced, and it copied Florida's argument, virtually word-for-word, as its motion to dismiss here. But the district court in Florida rightly rejected that argument and concluded that the United States has enforcement authority under Title II. *See A.R. ex. rel. Root v. Dudek*, 31 F. Supp. 3d 1363, 1368-70 (S.D. Fla. 2014)." Docket no. 260, p. 1.[1]

After considering the parties' arguments, the Court denied the State's motion to dismiss. *Steward v. Abbott*, 189 F. Supp. 3d 620, 625-27 (W.D. Tex. 2016). The Court explained that the United States, as an intervenor who seeks no relief beyond that sought by Plaintiffs, need not

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[1]The district court in *A.R. v. Dudek* noted that no court had ever denied the United States the authority to litigate ADA Title II claims or the right to intervene in these types of lawsuits. *Id.* at 1370. *See, e.g., Smith v. City of Philadelphia*, 345 F. Supp. 2d 482, 490 (E.D. Pa. 2004); *United States v. City and County of Denver*, 927 F. Supp. 1396, 1400 (D. Colo. 1996)(citing *United States v. Marion Cty. Sch. Dist.*, 625 F.2d 607, 612 (5th Cir. 1980)); *United States v. Ill. Special Recreation Ass'n*, 2013 WL 1499034, at *5 (N.D. Ill. April 11, 2013); *United States v. City of Baltimore*, 845 F.Supp. 2d 640, 642-43 (D. Md. 2012); *United States v. Arkansas*, 2011 WL 251107, at *2 (E.D. Ark. Jan. 24, 2011); *Disability Advocates, Inc. v. Paterson*, 2009 WL 4506301, at *2 (E.D. N.Y. Nov. 23, 2009).

possess Article III standing to proceed. *Id.* at 625. When a case or controversy already exists, it is immaterial to the Court's jurisdiction whether an intervening party, proceeding alone, could have satisfied the requirements of Article III. *Id.* at 626. Any argument based on statutory standing also fail because a government agency's capacity to intervene and assert claims within the scope of the original plaintiff's complaint is not limited to the agency's capacity to institute an independent action on its own behalf. *Id.* Fed. R. Civ. P. 24(b)(2) was intended to allow intervention liberally to governmental agencies and officers seeking to speak for the public interest. *Id.* The original Plaintiffs' claims and the defenses asserted by the State of Texas and other defendants arise from a statutory and regulatory scheme that the Attorney General has been charged by Congress with administering. The United States' pleadings are congruent to the pleadings of the Plaintiffs, and the interests of the United States in the enforcement of Title II and the Rehabilitation Act provide a sufficient basis for the United States to pursue claims in intervention that do not exceed the scope of the original Plaintiffs' complaint. *Id.* at 626-27.

The State now seeks summary judgment on the United States' claims in intervention on the same grounds. The State claims, once again, that the United States lacks authority to bring an enforcement action under Title VI, the Rehabilitation Act, and Title II of the ADA. The only difference between the prior motion and the instant motion is the State's reliance on *C.V. v. Dudek*, 209 F. Supp. 3d 1279 (S.D. Fla. 2016), *appeal docketed, A.R. et. al. v. SEC Health Care Admin, et. al.*, No. 17-13595 (11th Cir. August 8, 2017).[2] This reliance is misplaced for several reasons. First, in that case, the United States brought a Title II claim under the ADA directly against the State of Florida –

[2]In *C.V. v. Dudek*, the State of Florida's motion to dismiss was denied. The case was subsequently transferred to a different district judge who *sua sponte* set aside the prior ruling and dismissed the United States' claim for lack of standing to assert a Title II claim under the ADA. *Id.* at 1294. Every other court encountering the issue has held otherwise.

the United States did not join the Florida lawsuit as an intervenor after Article III standing had already been established by individual plaintiffs as in this case. *See id.* at 1293 (distinguishing this case and others because they "concern the Department's intervention in existing litigation"). Second, the Florida case was brought only under Title II of the ADA, not Section 504 of the Rehabilitation Act as in this case. Third, that judgment is now on appeal, lacks finality, and is not controlling authority in this Circuit.

As the Court previously explained when it denied Texas' motion to dismiss, this case does not turn on whether the United States, standing alone, would have standing to sue under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and Title II of the ADA because that is not what happened here. The United States is not standing alone; instead, the United States was permitted to intervened in the lawsuit after the individual and organizational plaintiffs had already established Article III standing. Intervenors are not required to independently possess standing where the intervention is into a subsisting and continuing Article III case or controversy and the ultimate relief sought by the intervenors is also being sought by at least one subsisting party with standing to do so. *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 428 (5th Cir. 2011); *Newby v. Enron Corp.*, 443 F.3d 416, 422 (5th Cir. 2006); *Ruiz v. Estelle*, 161 F.3d 814, 829-30 (5th Cir. 1998). And to the extent that Texas' argument goes to doctrines of "prudential" or statutory standing, it also fails. A government agency's capacity to intervene – and to raise claims that are within the scope of the original plaintiffs' complaint – is not limited to the agency's capacity to institute an independent action on its own behalf. *In re Estelle*, 516 F.2d 480, 485 (5th Cir. 1975) ("the intervenor-by-permission does not even have to be a person who would have been a proper party at the beginning of the suit[.]"); *Halderman v. Pennhurst State Sch. & Hosp.*, 612 F.2d 84, 92 (3d Cir. 1979) ("we need not decide whether absent the [original] action the United States could

independently have sued . . . Congress has made the decision that someone could seek the injunctive relief in question. Intervention presented no danger that the federal executive would be initiating a lawsuit that Congress somehow never intended."), *rev'd on other grounds*, 451 U.S. 1 (1981).

Defendants further claim that "even if . . . the United States may intervene in an existing Title II suit brought by individual plaintiffs and echo their claims, it has no authority to [name] a new defendant – the State of Texas." Docket no. 477, p. 2. Defendants rely on *Alabama v. Pugh*, 438 U.S. 781 (1978) to support their argument. But *Pugh* was not an intervenor suit brought by the United States – it was an original action brought by individual plaintiff-inmates. The fact that the United States' complaint in intervention names the State of Texas rather than the Governor and Commissioner in their official capacities does not make its Title II and 504 claims meaningfully different than Plaintiffs' claims. The ultimate relief being sought remains the same irrespective of whether the State is named in the intervenor's complaint.

This is certainly not the first time a state has been a named defendant in a Title II case. *See United States v. Georgia*, 546 U.S. 151 (2006)(United States intervened on appeal in Title II claim against the State of Georgia, the State Department of Corrections, and state prison officials); *Tennessee v. Lane*, 541 U.S. 509 (2004)(Title II claims against the State of Tennessee and a number of counties); *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 289 (5th Cir. 2005) (en banc)(Section 504 and Title II claims against the State of Louisiana and several other public entities). The claims and relief being sought by the United States, as intervenor, are congruent to the claims and relief being sought by Plaintiffs, who have standing to pursue the claims herein. No further showing is necessary.

For these reasons, and the reasons set forth in the Court's prior orders, the State of Texas' Motion for Summary Judgment (docket no. 477) is DENIED. Plaintiffs' Motion for Preliminary Injunction (docket no. 317) will be carried to trial and all requests for injunctive relief will be

considered upon determination of the merits.[3]

IT IS SO ORDERED this 27 day of September, 2018.

ORLANDO L. GARCIA
CHIEF U.S. DISTRICT JUDGE

[3]Because the Court's consideration of permanent injunctive relief subsumes any prior request for preliminary injunctive relief, the docket clerk may terminate the motion for preliminary injunctive relief for administrative purposes.