IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

The Georgia Advocacy Office, et al.,

Plaintiffs,

v. Civil No.: 1:17-CV-3999-MLB

State of Georgia, et al.,

Defendants.

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RECONSIDERATION

The Court should reconsider its September 27, 2024 Opinion and Order granting Defendants' Motion for Summary Judgment [ECF No. 303] ("Order") to correct clear error and prevent manifest injustice. The Order rests on or incorporates the following errors:

1. The Order erroneously analyzed standing for the wrong Plaintiff. The Order addressed the standing of former individual Plaintiff C.G., who is no longer a party to this case, and failed to address standing for one of the current individual Plaintiffs, C.R., who is currently in a GNETS program.

2. The Court improperly assessed the credibility of Plaintiffs' proffered evidence in concluding that Plaintiffs had not met evidentiary requirements of injury-in-fact. This was error. The Court did not take Plaintiffs' evidence as true as

required on a motion for summary judgment. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

3. The Court held *sua sponte*, without providing Plaintiffs an opportunity to demonstrate otherwise, that Plaintiffs The Arc of the United States ("The Arc") and Georgia Advocacy Office ("GAO") lack standing. It was error for the Court to resolve this issue against Plaintiffs, especially because it was not raised by Defendants, without providing them with notice and an opportunity to supplement the record to address this issue. *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 270–271 (2015).

4. The Court's traceability and redressability analysis rests on its conclusion that the State cannot "force" local entities to take action that would address Plaintiffs' claims. This was error. The Order improperly dismissed the role of State Defendants in GNETS and the programs that serve children with disability-related behaviors, and completely ignored Defendants Department of Behavioral Health and Developmental Disabilities ("DBHDD"), Department of Community Health ("DCH"), and their commissioners, who all have distinct roles and mandates with respect to provision of services to these children. Moreover, all State Defendants have an obligation under the Americans with Disabilities Act ("ADA") to take action to prevent, and make reasonable modifications to avoid,

discrimination. These duties, and Defendants' failure to fulfill them, establish traceability and redressability.

5. The Order improperly applied the legal standard applicable to claims brought under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. 1400 *et seq*., which imposes the requirement of a free and appropriate public education, despite there being no such claim. This was error. *Lartigue v. Northside Indep. Sch. Dist.*, 100 F.4th 510, 520 (5th Cir. 2024); *see also Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 756, 758 (2017).

6. The docket entry for the Judgment [ECF No. 304] reflects that the Court dismissed this action *with* prejudice. This was error. As the Court dismissed this action for lack of standing and standing is a jurisdictional question, not one of merits, Eleventh Circuit precedent requires that the dismissal be *without* prejudice. *See, e.g.*, *Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008).

For these reasons, addressed in detail below, Plaintiffs respectfully request the Court reconsider its Order and permit the case to proceed to trial.

LEGAL STANDARD

A motion for reconsideration "falls within the ambit of either Rule 59(e) (motion to alter or amend a judgment) or Rule 60(b) (motion for relief from judgment or order)." *Region 8 Forest Serv. Timber Purchasers Council v. Alcock,*

993 F.2d 800, 806 n.5 (11th Cir. 1993). There are "three major grounds" that each may justify an order granting reconsideration: "(1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice." *Instituto de Prevision Militar v. Lehman Bros., Inc.*, 485 F. Supp. 2d 1340, 1343 (S.D. Fla. 2007) (quoting *Cover v. Wal-Mart Stores, Inc.*, 148 F.R.D. 294, 295 (M.D. Fla. 1993)). Motions for reconsideration "[are] appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Z.K. Marine Inc. v. M/V Archigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992)). In such situations, a court has "broad discretion to reconsider a previously issued order." *Produce Pay, Inc. v. Agrosale, Inc.*, 533 F. Supp. 3d 1140, 1147 (S.D. Fla. 2021).

ARGUMENT

I. THE COURT MISAPPLIED THE STANDARD AND EVIDENCE FOR DETERMINING INJURY IN FACT

In ruling that Plaintiffs have not demonstrated an injury in fact, the Court analyzed the wrong Plaintiff, improperly weighed evidence, adjudged witness credibility, and failed to properly consider the standing of GAO and The Arc. Application of Eleventh Circuit precedent on the substantive legal standards and proper consideration of the evidence submitted by Plaintiffs dictates a finding that Plaintiffs have standing.

A. The Court Improperly Analyzed Plaintiff C.G. Instead of Plaintiff C.R., Who Currently Is in GNETS

The Court's finding that "Plaintiffs fail to establish standing for C.G.'s potential future segregation" is clear error. C.G. is no longer a Plaintiff in this action. [ECF No. 186]. On December 14, 2023, the Court granted Plaintiffs' motion to withdraw C.G. and substitute C.R., a student who attends GNETS in metro Atlanta. [ECF No. 185]. The Court's failure to analyze the individual facts of C.R., who remains segregated in GNETS, and has yet to receive the individualized behavioral supports needed to remain in a more integrated educational setting, was improper. C.R. goes to school at GNETS and has standing to raise her claims. [ECF No. 187-15] at ¶ 7.[1]

B. The Court Made Improper Credibility Determinations About Plaintiffs' Injuries

To meet standing requirements at the summary judgment stage, Plaintiffs must, as they did here, provide "specific facts" in affidavits or other evidence, and not mere allegations. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Even though Plaintiffs more than satisfied this requisite showing, the Court improperly

[1] This Motion only addresses the Court's Order regarding Defendants' Motion for Summary Judgment. Since the Court denied Plaintiffs' motions for class certification and partial summary judgment as moot [ECF No. 303 at 8 n.3], and did not substantively address Plaintiffs' class action claims in the Order, Plaintiffs do not address class certification arguments here and preserve all arguments related to class certification for appeal.

assessed the credibility of Plaintiffs' proffered evidence in concluding that Plaintiffs had not met evidentiary requirements of injury-in-fact. It is well established that evidence a non-moving party offers to show standing "for purposes of the summary judgment motion *will be taken to be true*." *Id*. (emphasis added). Accordingly, for purposes of summary judgment, a district court "*cannot* decide disputed factual questions or make findings of credibility essential to the question of standing on the paper record alone." *Bischoff v. Osceola Cnty.*, 222 F.3d 874, 879 (11th Cir. 2000) (emphasis in original). Instead, standing must be resolved "either at a pretrial evidentiary hearing or at trial." *Id*.

Here, the Court improperly weighed evidence and determined credibility at numerous points in its summary judgment decision. *See, e.g.,* [ECF No. 303] at 17–19 (opining on credibility of Dr. Elliott's expert opinion on whether GNETS students can be served in non-segregated settings), 20–24 (determining credibility of Dr. Elliott's opinion with respect to whether named Plaintiffs W.J. and J.F. suffered from unnecessary segregation).[2]

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[2] Other examples of the Order's improper credibility determinations include: [ECF No. 303] at 29–30 (finding Dr. Elliott credible with respect to whether named Plaintiffs obtain educational opportunities inferior to those of non-disabled students), 31–33 (discounting Plaintiffs' evidence and weighing evidence they presented at n.12), 43 (weighing evidence in concluding that the State is not responsible for W.J.'s injury), 48 (determining credibility of Dr. Elliott's opinion on whether SBOE criteria cause improper referral to GNETS), 50 (not viewing evidence of GNETS strategic plan connecting State control to Plaintiffs' injuries in light most favorable to Plaintiffs), 59 (not viewing evidence of GNETS Rule in light

The Court also concluded that "Plaintiffs fail to identify any individualized evidence showing which (if any) of these students meet *Olmstead*'s appropriateness or consent requirements." [ECF No. 303] at 25.[3] In fact, Plaintiffs provided ample evidence to support all three individual named Plaintiffs' *Olmstead* claims, including the appropriateness requirements (*see* Report of Judy Elliott, Ph.D. ("Elliott Report") [ECF No. 187-3]), and lack of consent to placement in GNETS. [ECF No. 242] at 27–28 (excerpts from family depositions describing opposition to GNETS placement, full depositions available at ECF No. 232-33 (Depositions of D.J., J.A.)[4]; [ECF No. 187-15] (Declaration of Judy Elliott regarding C.R.)).

The Court's factual analysis made demands on Plaintiffs that go well beyond the "low threshold" required for showing injury. *Golson v. Provident Life &*

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most favorable to Plaintiffs), 61 (not viewing evidence of State contracting for GNETS services in light most favorable to Plaintiffs), 64 (concluding that Plaintiffs' evidence lacks credibility), 71–72 (not viewing Strategic Plan evidence in light most favorable to Plaintiffs), 74–75 (adopting moving party's interpretation of evidence concerning redressability).

[3] Although the Court does not decide, or otherwise substantively address, Plaintiffs' pending motion for class certification beyond finding it moot [ECF No. 303 at 8 n.3], in its standing analysis, the Court suggests at various points that proving unnecessary segregation under *Olmstead* requires individualized proof from each affected class member. *See e.g.,* [ECF No. 303] at 25, 26, 26 n.9. Many courts disagree. *See, e.g., B.D. by next friend Wellington v. Sununu,* No. 21-CV-4-PB, 2024 WL 4227544, at *16 n.15 (D.N.H. Sept. 18, 2024) (collecting class action *Olmstead* cases). Plaintiffs reserve the right to address this issue should the Court reconsider its Order and thereby revive Plaintiffs' Motion for Class Certification.

[4] Due to briefing timelines, the deposition testimony of R.G. on behalf of C.R. was not included in Plaintiffs' Summary Judgment or class certification briefing.

Accident Ins. Co., No. 2:19-CV-00127-RAH, 2020 WL 5793420, at *4 (M.D. Ala. Sept. 28, 2020) (citing *Ross v. Bank of America, N.A.*, 524 F.3d 217, 222 (2d Cir. 2008)); *see also Tipton v. Bergrohr GMBH-Siegen*, 965 F.2d 994, 998 (11th Cir. 1992) ("The nonmoving party may avail itself of all facts and justifiable inferences in the record taken as a whole.") (citing *United States v. Deibold, Inc.*, 369 U.S. 654, 655 (1962)).

In sum, the Court did not take Plaintiffs' evidence as true as required on a motion for summary judgment. *Lujan*, 504 U.S. at 561. Moreover, the Court improperly discounted Plaintiffs' evidence without an evidentiary hearing, which would have given Plaintiffs the opportunity to properly present their evidence and challenge or rebut Defendants' evidence. Instead, the Court did what the Eleventh Circuit has held it cannot do: namely, decide "disputed factual questions or make findings of credibility essential to the question of standing on the paper record alone." *Bischoff*, 222 F.3d at 879. Thus, this Court should reconsider its Order taking Plaintiffs' evidence of standing as true for purposes of summary judgment.

C. The Court Failed to Properly Consider the Standing of GAO and The Arc

The Court erred by rejecting *sua sponte* GAO and The Arc's associational standing, and GAO's standing as the State's Protection and Advocacy ("P&A") agency, without providing Plaintiffs the opportunity to demonstrate that they meet standing requirements. [ECF No. 303] at 24–27.

In their motion for summary judgment, Defendants did not argue or suggest that GAO or The Arc lacked associational standing, nor did they suggest or imply that GAO, as the State's P&A agency, lacked P&A standing to pursue the claims in its role. Def.'s Mot. Summ. J. [ECF No. 214-1] at 13–28. The Supreme Court is clear that "elementary principles of procedural fairness" require district courts to provide parties the opportunity to be heard before dismissing cases on standing grounds that are not in dispute. *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 270–271 (2014) (finding that the district court erred by deciding *sua sponte* that the plaintiffs lacked associational standing). In determining that GAO and The Arc lack standing, this Court committed the same error. The proper remedy for such an error is to, "rather than acting *sua sponte*, give the [Plaintiffs] an opportunity to provide evidence of [standing]." *Id.* at 271.[5]

[5] Plaintiffs reserve the right to address the three-pronged test for associational standing should the Court reconsider and order additional briefing, as the Court only addressed the first factor in its Order. *See* [ECF No. 303] at 24–25; *Baughcum v. Jackson*, 92 F.4th 1024, 1031 (11th Cir. 2024) (laying out three-pronged test for associational standing). Moreover, the Court failed to consider whether GAO has standing based on its status as the State's Protection and Advocacy System. As the Eleventh Circuit has observed, "[nothing] requires a protection and advocacy system to name a specific individual in order to have standing to sue." *Doe v. Stincer*, 175 F.3d 879, 884 (11th Cir. 1999). Should the Court grant this Motion to Reconsider it should also order additional briefing on whether GAO separately has standing as a Protection and Advocacy organization.

II. THE ADA IMPOSES OBLIGATIONS ON ALL STATE DEFENDANTS THAT THE COURT FAILED TO CONSIDER IN ITS TRACEABILITY AND REDRESSABILITY ANALYSIS

The Court made improper findings of fact and determined that Plaintiffs' injuries are not traceable to State Defendants and that those injuries cannot be redressed through an order from this Court. The Court dismissed the State's role in providing the vehicle for segregated services in GNETS. In addition, the Court failed to specifically address two Defendants, whose obligations to fund and provide Medicaid and other behavioral health services are distinct from the responsibilities of the Department of Education ("GADOE")[6] and form separate bases for traceability and redressability.

Moreover, the court failed to address each of the Defendants' affirmative obligations under the Americans with Disabilities Act ("ADA") to prevent, and to make reasonable modifications to avoid, discrimination. Thus, both traceability and redressability must be reconsidered. *See Timothy B. v. Kinsley*, No. 1:22-CV-1046, 2024 WL 1350071, at *5-9 (M.D.N.C. March 29, 2024) (citing *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 597) (traceability and redressability requirements were

[6] As explained in the Complaint, [ECF No. 1] at ¶ 41, "Defendant Georgia Department of Education ("GADOE") oversees public education throughout the State of Georgia, ensures that laws and regulations pertaining to education are followed, and allocates state and federal funds appropriated for education to local school systems." *See* GA. COMP. R. & REGS. § 160-4-7-.15(1)(c), § 160-4-7-.15(5)(a).

met in an *Olmstead* case against state Medicaid agency for injuries to plaintiff foster children stemming from denial of necessary behavioral health services which resulted in serious risk of unnecessary segregation).

The Order relies heavily on what it describes as the State's inability to "force" local actors such as local educational agencies, IEP teams, and behavioral health providers to do anything, s*ee, e.g.*, [ECF No. 303] at 47, 57 n.16, 62, 74–75, in essence suggesting that the State somehow delegates its legal responsibilities to the local school districts. But the Court mischaracterizes the relationship and responsibilities of State Defendants with respect to the entities they fund and oversee. Moreover, the structure the State has in place for delivery of services does not relieve it of its ADA obligations. "It would defy all logic if by [relying on other entities to deliver services], the State can then exempt itself from Title II of the ADA. The State's reasoning risks rendering *Olmstead* a dead letter." *United States v. Fla.*, 682 F. Supp. 3d 1172, 1193 (S.D. Fla. 2023).

A. Traceability

The crux of the Court's traceability holding is based on a determination that Plaintiffs failed to show that the State directly caused Plaintiffs' specific injuries, or put differently, that Plaintiffs failed to show that but for the State's actions, the Plaintiffs would not have been injured. [ECF No. 303] at 44–45 ("Having failed to tie any specific State conduct to Plaintiffs' specific injuries, Plaintiffs cannot show

those injuries are traceable to Defendants."). But "the causation requirement for standing is 'something less than the concept of proximate cause.'" *Parrales v. Dudek*, No. 4:15CV424-RH/CAS, 2015 WL 13373978, at *4 (N.D. Fla. Dec. 24, 2015) (quoting *Focus on the Fam. v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir. 2003)). "Instead, even harms that flow indirectly from the action in question can be said to be fairly traceable to that action for standing purposes." *Id.* (internal quotations omitted).

The Order concedes Plaintiffs have put forth evidence showing the State exercises "general supervision" over GNETS, [ECF No. 303] at 52, creates and implements eligibility criteria for GNETS, *id.* at 59, imposes mandatory Individualized Education Program (IEP) reviews on GNETS, *id.* at 62, and has "primary authority over funding for GNETS, *id.* at 38. Moreover, the Court correctly observes that the GNETS Strategic Plan "clearly provides the State some oversight on how regional GNETS programs provide academic instruction, behavioral and therapeutic supports, and facilities-based services—critical to Plaintiffs' claims they experience (or will experience) discrimination by receiving an inadequate education and lack the therapeutic supports they need to succeed." [ECF No. 303] at 68–69. Despite this State oversight, the record establishes that the State has failed to use its oversight authority to correct the GNETS program's deficiencies, which have in turn caused Plaintiffs' injuries. *See, e.g.*, Elliott Report [ECF No. 187-3] at 8, 30; Report

of Kim R. Campbell, MSW, LCSW [ECF No. 187-4] ("Campbell Report") at 13–21.

Notably, in its 40-page analysis of "the State's"[7] role in administering GNETS, the Court does not distinguish between the several different Defendants[8] named in this case. Nor does the Order even mention Defendants Department of Behavioral Health and Developmental Disabilities ("DBHDD"), Department of Community Health ("DCH"), or their commissioners, who have clear and separate ADA obligations related to their respective agency missions to administer medically necessary Medicaid and other behavioral health services to Georgia's eligible recipients, including GNETS students. Complaint [ECF No. 1] at ¶ 45–55; Pls. Partial Mot. For Summ. J. [ECF No. 188-1] at 15–16 nn. 45–49.

As set forth in Plaintiffs' Partial Motion for Summary Judgment, Defendant DBHDD has the statutory responsibility, together with Defendants DCH and GADOE, for "developing a coordinated system of care" for certain children with

[7] While the Order never specifies, we assume based on the Court's analysis that the Court's use of the term "the State" throughout generally refers to GADOE.

[8] The Defendants are: State of Georgia; Nathan Deal in his official capacity as [Former] Governor of the State of Georgia; Georgia Board of Education; Georgia Department of Education; Richard Woods, in his official capacity as State School Superintendent of Georgia; Georgia Department of Behavioral Health and Developmental Disabilities; Judy Fitzgerald, in her official capacity as Commissioner of the Georgia Department of Behavioral Health and Developmental Disabilities; Department of Community Health; and Frank Berry, in his official capacity as Commissioner of the Georgia Department of Community Health.

emotional disabilities, including students in GNETS. [ECF No. 188-1] at 17 nn. 48–49 (citing O.C.G.A. § 49-5-220(a) (6); O.C.G.A. §§ 31-2-1, 31-2-4). Defendant DCH administers the State's Medicaid and Peach Care for Kids programs, which provide significant funding for GNETS. *Id.* at 17 n.46 (citing O.C.G.A. §§ 31-2-1, 3-2-4; Answer [ECF No. 91] at ¶ 83; GEORGIA 00396843-397015). These Defendants have ultimate responsibility to ensure that the named Plaintiffs and Putative Class Members[9] receive medically necessary behavioral health services to prevent their unnecessary segregation in GNETS. *See Parrales*, 2015 WL 13373978 at *4 (although managed care organizations under contract with the state were responsible for provision of services to disabled Medicaid recipients, the state remained "responsible for the administration of Florida's Medicaid program and remain[ed] accountable for the operation" of the program at issue).

Yet State Defendants' actions and inactions fail to fulfill these obligations. For example, despite state rules that explicitly require that the GNETS program "collaborate with professionals from a variety of agencies to enhance students' social, emotional, behavioral and academic development," (GNETS Rule at 160-4-7-.15(2)(e)), Plaintiffs have provided evidence that they fail to do so. *See* Elliott Report at 17 (detailing a lack of collaboration between the defendant State agencies

[9] As mentioned in note 1, *supra*, this Motion does not address Plaintiffs' class claims, which we preserve pending the resolution of this Motion.

and outside professionals to provide services to GNETS students); Dep. of Matthew Jones, [ECF No. 187-7], at 301:23–304:17) (describing "limited" collaboration between Defendants GADOE and DBHDD in providing mental health services to students placed in GNETS).

A reasonable fact finder could conclude these facts, and proper consideration of Defendants DBHDD and DCH, show at least an indirect connection between the several State Defendants and the harms GNETS inflicts on named Plaintiffs and the constituents of GAO and The Arc, which is enough to meet the traceability requirement for standing. *See Parrales*, 2015 WL 13373978 at *4 (failure of Medicaid agency to adequately inform potential recipients about services satisfied causation requirement even though contracted entities were responsible for delivery of services).

B. Redressability

The Court's conclusion that both it and Defendants are powerless to impose requirements on local educational agencies and others is incorrect. First, to establish redressability, Plaintiffs need only show that a favorable decision would "significantly increase the likelihood that they would obtain relief that directly redresses the injury—not that it be a silver bullet." *United States v. Fla.,* 682 F. Supp. 3d at 1194–95 (internal quotations omitted). In *Florida* where, as here, the state defendant attempted to shift responsibility for its ADA obligations to third parties,

the court rejected the state Medicaid agency defendant's arguments that "redressability depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict." *Id.* at 1193–94 (internal quotations omitted). Plaintiffs have more than met this threshold showing.

Second, as a general matter, Title II of the ADA requires state entities such as Defendants GADOE, DBHDD, and DCH to take action to prevent, and make reasonable modifications to avoid, discrimination against people with disabilities, even where local educational agencies and other entities play a role. 42 U.S.C. §12132; 28 C.F.R. § 35.130; 28 C.F.R. § 35.130(b)(7). *See also Disability Advocates, Inc. v. Paterson* ("DAI I"), 598 F. Supp. 2d 289, 316–19 (E.D.N.Y. 2009) (finding State's planning, funding, and administration of service system sufficient to confer liability where state services were delivered through private entities).

Plaintiffs have offered a non-exhaustive list of examples of reasonable modifications State Defendants could take that would prevent unnecessary segregation in GNETS: State Defendants can increase capacity in schools and communities to deliver services to students with disability-related behaviors, expand Georgia's System of Care to serve all children with disability-related behaviors, and better leverage available resources like Medicaid funding to provide services that

would prevent unnecessary segregation for children with disability-related behaviors. *See* Resp. in Opp'n to Mot. for Summ. J. [ECF No. 242] at 8–9. With these and other specific actions, the Court, and ultimately the State, can address Plaintiffs' claims and thus will have a "predictable effect" on the local education agencies, counties, behavioral health providers, and others responsible for delivering services to Plaintiffs and Putative Class Members. *United States v. Fla.*, 682 F. Supp. 3d at 1193. Plaintiffs' injuries are thus redressable by the State and by this Court.

For these reasons, Plaintiffs have satisfied traceability and redressability requirements and the Court's conclusion otherwise should be reconsidered.

III. APPLICATION OF FAPE STANDARD WAS IMPROPER

The Court incorrectly references and applies the statutory obligations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq*., finding "the case involves the State's obligation to provide Plaintiffs a free and appropriate public education." [ECF No. 303] at 12–13. Plaintiffs have not raised any claim, or sought to enforce any obligation, pursuant to IDEA and, therefore, the standard laid out by the Court is incorrect and irrelevant. *See Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 756 (2017); *Lartigue v. Northside Ind. Sch. Dist.,* 100 F.4th 510, 520 (5th Cir. 2024) (finding that the IDEA and ADA differ in both ends and means).

Instead, the lawsuit is based on an entirely separate and distinct law, the broad nondiscrimination requirements of Title II of the ADA, including the prohibition on segregation of people with disabilities as recognized by the U.S. Supreme Court in *Olmstead*, 527 U.S. 581, and the affirmative requirement under the ADA to provide services to people with disabilities in the most integrated setting. [ECF No. 1].

IV. DISMISSAL WITH PREJUDICE WAS IMPROPER

Although neither the Order nor the Judgment specifies whether the Court dismissed this matter with or without prejudice, the docket entry for the Judgment states the dismissal was with prejudice. *See* [ECF No. 304] Docket Entry ("CLERK'S JUDGMENT in favor of Defendants against Plaintiffs and dismissing this action with prejudice."). This was error, whether clerical or otherwise. "Because standing is jurisdictional, a dismissal for lack of standing has the same effect as a dismissal for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1)." *Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008) (quoting *Cone Corp. v. Fla. Dep't of Transp.*, 921 F.2d 1190, 1203 n.42 (11th Cir. 1991)). "A dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice." *Id.* (quoting *Crotwell v. Hockman-Lewis Ltd.*, 734 F.2d 767, 769 (11th Cir. 1984)). As the Order states, the Court dismissed this action for lack of standing and thus any dismissal should be without prejudice. [ECF No. 303] at 77.

CONCLUSION

For the reasons and authority cited herein, Plaintiffs respectfully request that the Court reconsider its Order, deny Defendants' Motion for Summary Judgment, and permit the case to proceed to trial. If the Court does not reverse its decision and deny Defendants' Motion for Summary Judgment, at a minimum, Plaintiffs request that the Court amend the docket entry and Judgment to reflect that the dismissal was without prejudice.

Dated: October 25, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system on October 25, 2024.

/s/ Jessica C. Wilson
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LOCAL RULE 7.1(D) CERTIFICATION

The undersigned counsel hereby certifies that the foregoing document was prepared in Times New Roman 14-point font, pursuant to Local Rule 5.1(C).

/s/ Jessica C. Wilson
Jessica C. Wilson