

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

DAVID RISSLING, *et al.*,

Plaintiffs,

v.

MAGARIA BOBO, *in her official capacity as
Absentee Election Manager of Tuscaloosa
County, Alabama, et al.*,

Defendants.

Civil Docket No. 7:23-cv-01326-RDP

**UNITED STATES OF AMERICA’S ACKNOWLEDGMENT OF
CONSTITUTIONAL CHALLENGE**

On June 4, 2025, Defendants Magaria Bobo, in her official capacity as Absentee Election Manager of Tuscaloosa County, Alabama; Susan Potts, in her official capacity as Absentee Election Manager of Mobile County; and Jacquelin Anderson-Smith, in her official capacity as Absentee Election Manager of Jefferson County, Birmingham Division (“Defendants”) filed a “Notice of Constitutional Question” with respect to Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132. *See* ECF No. 68.

The United States may intervene in any action wherein the constitutionality of an act of Congress is questioned. 28 U.S.C. § 2403. Here, however, the constitutional challenge has been raised only contingently, and in cursory fashion, as the fifth of five arguments in Defendants’ Combined Cross-Motion for Summary Judgment and Opposition to Plaintiffs’ Motion for Summary Judgment. *See* ECF No. 67 at 16–49 (internal pagination) (arguing first that all but one of the Plaintiffs lack standing; second that the ADA cannot preempt State election laws; third that Plaintiffs fail to state an ADA claim, for several independent reasons; fourth that Plaintiffs’

requested relief would be unduly burdensome; and fifth—on a single page of Defendants’ 49-page brief—that the ADA cannot constitutionally require public entities to provide online voting to voters who do not require it); *see also* ECF No. 83 at 25 (internal pagination).

Given that the Court need reach Defendants’ argument regarding the ADA’s constitutionality only if it rejects Defendants’ statutory arguments, this case may be resolved without the Court having to decide the constitutional question. Therefore, the United States believes that intervention would be premature at this time. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981) (“[P]rior to reaching any constitutional question, federal courts must consider nonconstitutional grounds for decision.”); *see also, e.g., Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 346–47 (1936) (Brandeis, J., concurring) (“The Court will not ‘anticipate a question of constitutional law in advance of the necessity of deciding it.’” (quoting *Liverpool, N.Y. & P.S.S. Co. v. Emigration Comm’rs*, 113 U.S. 33, 39 (1885))); *Xiong v. Lynch*, 836 F.3d 948, 950 (8th Cir. 2016) (“A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.” (quoting *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988))).

The Solicitor General decides whether to approve intervention by the United States, 28 C.F.R. § 0.21, and obtaining the Solicitor General’s approval generally takes several weeks. Therefore, if the Court deems it necessary to reach Defendants’ constitutional challenge to the ADA in resolving the Motions for Summary Judgment, the United States respectfully requests that the Court first notify the United States and permit the United States to intervene within sixty days of that notice. Undersigned counsel will monitor the docket in this matter for any such filing.

Dated: August 1, 2025

Respectfully submitted,

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