

Update on Progress in Ohio's Ball v. Kasich Class Action

Ohio families of individuals who need and choose Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF) were granted intervention in the Ball v. Kasich class action filed by Disability Rights Ohio.

This is a very positive developmental in this case as ICF families have been given a place in this fight to protect the interests of their vulnerable family members whose homes, sheltered workshops and day programs are put at risk by this litigation.

Lead lawyer for the ICF families, William Choslovsky, stated,

"This is a great day for all intellectually disabled Ohioans. In his detailed opinion, Chief Judge Sargus nails it. He 'gets it' not just on a legal level, but also on a human level. As Chief Judge Sargus ruled:"

'This litigation is complex and important. Excluding individuals with disabilities who will be directly impacted is not the appropriate way to make this case less complex.'
[Chief Judge Sargus, [Opinion and Order](#), p.22]

"Only by having all intellectually disabled Ohioans at the table – both those who want to live in small settings and those, like our clients, who want to remain in their large settings – can all interests be addressed."

"Put most simply, you don't rob Peter to pay Paul. That is, expanding choice for some should not come at the expense of eliminating choice for others. Chief Judge Sargus gets that."

Caroline Lahrman, lead guardian intervenor, showed her appreciation of the court's action,

"You have no idea how appreciative I am of Chief Judge Sargus. My two severely intellectually disabled children – Henry & Elizabeth – have waited 18 years for someone, anyone, to understand our plight and needs, and today Judge Sargus is that someone."

"My twins were born with profound intellectual disabilities, quadriplegia, an intractable seizure disorder, and function at less than a one-year-old level. They need what some call and disparage "institutional" care, but where they live, Heinzerling in Columbus, is not an "institution." It is their loving home, where they receive world class care. Too many self-proclaimed advocates, like DRO, want to close large facilities. They think everyone should be "in the community." But my childrens' home already is a loving community and meets their needs better than any small setting ever would."

"What angers me is that DRO receives millions in taxpayer funds to represent the interests of all intellectually disabled people, yet in reality, it too often only represents

those individuals who can handle and benefit from community settings. DRO surely does not represent my childrens' interests. DRO needs to understand that when it comes to caring for our most vulnerable citizens, one size does not fit all. Just as small settings are good for some, so too are large settings for others. I respect the choice of those who choose small settings; the choices of people who choose large settings need to be respected as well; and the state needs to fund both."

"I so appreciate and respect Judge Sargus for rolling up his sleeves and understanding what is really at stake here."

READ JUDGE SARGUS OPINION AND ORDER AT THIS [LINK](#).

The Guardian Intervenors, many of them members of Disability Advocacy Alliance, ask these questions:

1. DRO receives millions of dollars in taxpayer funds and is mandated to represent the interests of all intellectually disabled Ohioans. Does it? Judge Sargus' opinion suggests it does not.
2. Why would DRO oppose ICF families from participating in this case?
3. Did you know that according to the state's own data, there are actually more empty "waiver" ("community") beds in Ohio than large ICF beds? Think about that. If ICFs are so bad, then why are there more vacancies in small community homes than ICF beds?
Hmmm.
Specifically 288 total residential vacancies, of which 158 are waiver ("community") homes and 130 are ICF ("institutional") -- <https://protect-us.mimecast.com/s/mmg1B7CkDA3ASY?domain=fvr.prodapps.dodd.ohio.gov>
4. Do the County Boards – who are the gate keepers that are supposed to advise families of all choices – actually inform families of the ICF choice? Or do they only tell families about the waiver choice? An enterprising reporter could do a test to see what happens in practice.
5. There are thousands of Ohioans with no family guardian (i.e., no parent or sibling to look after them). For many of them, an agency called APSI is their appointed guardian. Why is APSI "choosing" to give "exit waivers" to so many of their wards who are ICF residents – many of whom have lived successfully in large ICF facilities for decades? Who or what is pushing APSI to do so? Is doing so really in the residents' best interests, which is what the guidepost is supposed to be?
6. Did you know that, on average, it costs Ohio no more for 24 hour residential care in the "community" than it does for private "institutional" care? Why do so many "advocates" like DRO suggest otherwise?
7. Did you know that much of the "waiver" expansion in Ohio is from existing ICF residents moving to waiver homes, **not** from those on the waiting list living at home with

elderly parents who have no services? In this regard, the state is essentially paying to move people from green houses to blue houses, while those receiving no services remain without? And those green and blue houses cost the state, on average, about the same, so there is little to no cost savings. Yet the state, because of DRO's pressure, does so anyhow.

8. Did you know that DRO's entire lawsuit is premised on the claim that there are more than 22,000 Ohioans on a "waiting list" waiting for community services, but many – perhaps most – are not waiting for services at all? In fact many are on the waiting list even though they happily live in their large ICF and have no desire to move to a small waiver setting. In reality, nobody, not even the state or county boards, knows how many Ohioans really want small waiver settings. Yet DRO's lawsuit begins by claiming 22,000 want waiver services.