



The Harmful Effects of Class Actions against Intermediate Care Facilities for Individuals with Intellectual Disabilities

For over thirty years, VOR has fought the unfairness and waste of millions of taxpayer dollars by Class Action Lawsuits designed to close Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs, or ICFs/IID). Brought on behalf of a few residents who wish to live in the community, they sweep all residents into the suit, undermining the wishes of the overwhelming majority to remain in the ICF. These lawsuits have cost families hundreds of thousands of dollars to try to prevent their loved ones from being included in the class. The suits cause untold grief to the families, to the residents themselves, and to the staff members who care for them. Too often, these cases have led to tragic outcomes. In Georgia, the closures brought by a 2010 settlement of a DOJ action similar to a class action resulted in the death of several hundred individuals who were hastily transferred out of their ICF homes into inappropriate, understaffed, non-ICF settings.¹

Common sense shows that there is no reason for these suits. Most people with I/DD already live in group homes, and those who wanted to leave ICF's have already done so. To leave an ICF and move into the community, all one needs to do is sign a waiver of the right to ICF care. Families that opt for ICF-level care feel that group homes do not provide the necessary level of care required for the complex needs of their loved ones. There is no truth to the argument that closing ICFs will increase community placements. Proper care is costly, wherever received. Thus, while the number of people in ICF's has decreased greatly over the last 30 years, waiting lists for community care have grown exponentially. All that the advocates of "everybody does better in a group home" have accomplished is to deprive others of their choice of an ICF.

It makes no sense to have taxpayer-funded entities, the Department of Justice (DOJ) and state Protection & Advocacy agencies, initiating costly actions against Medicaid-licensed ICF's to "preserve the rights" of people with I/DD when their rights have not been violated. Closing ICF's is about taking away the right to choose an ICF, a right granted to individuals with I/DD under the Americans with Disabilities Act and confirmed by the Supreme Court in *Olmstead v. L.C.*

In 2009, the DOJ filed a complaint against Conway Human Development Center, an ICF/IID operated by the state of Arkansas, complaining that Conway violated residents' rights by refusing to provide them the most integrated, least restrictive environment, and failing to allow them interaction with nondisabled persons to the fullest extent possible. DOJ instituted this action with no complaints filed by any resident of the center, nor from families or guardians. To the contrary, many parents and guardians gave testimony challenging DOJ's claims. Concluding that DOJ's claims were almost all baseless, U.S. District Judge J. Leon Holmes wrote, "Most lawsuits are brought by persons who believe that their rights have been violated. Not this one The United States is in the odd position of asserting that certain persons' rights have been and are being violated while those persons . . . disagree." The case was "dismissed with prejudice.

Still, the lawsuits have continued. In 2011, Representatives Barney Frank (D-MA) and Bob Goodlatte (R-VA) sponsored legislation to give families a chance to opt out of class action suits. The bill received strong bipartisan support, with 80 co-sponsors, but did not advance. Recently, on March 6, 2018, the House Judiciary Committee's Subcommittee on Constitution and Civil Rights held a hearing examining the harmful effects of class actions against ICF's/IID. Details of those hearings are printed on the following pages.

¹ <http://www.augustachronicle.com/news/health/2015-03-21/girls-death-among-500-one-year-community-care>