

House of Representatives - Judiciary Committee, Subcommittee on the Constitution & Civil Justice
Hearing Examining Class Action Lawsuits Against
Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)

On March 6th, 2018, the House Judiciary's Subcommittee on the Constitution and Civil Justice convened to examine the harmful effects of class action lawsuits aimed at closing Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID). The hearing came at the request of Judiciary Committee Chairman Bob Goodlatte (R-VA) and was chaired by Rep. Steve King (R-IA).

Martha Bryant, Mother, RN, BSN & VOR member, Caroline Lahrman, Mother, VOR State Coordinator for Ohio & past president, and Peter Kinzler, Father, longtime VOR Member, Director & Legislative Committee Chair testified against class action lawsuits. Alison Barkoff of the Center for Public Representation and the Consortium for Citizens with Disabilities, spoke on behalf of those in favor of using class action lawsuits against ICFs/IID and opposed to providing notification to families and guardians of individuals residing in these homes who would become part of the class.



First to testify was Martha Bryant, a constituent of Congressman Goodlatte who spoke about her son Tyler. Tyler and his brother Taylor were the two surviving brothers of a triplet pregnancy and were born prematurely at 29 weeks. Tyler had severe physical and intellectual disabilities, functioning at the level of a 15-20 month old baby. He was non-verbal and non-ambulatory. His condition required ICF-level care which he had received at Central Virginia Training Center (CVTC) for most of his life.



With complete disregard for his needs, Tyler was forced from his home at CVTC on Jan 17, 2017 as the result of a lawsuit similar to a class action initiated by the Department of Justice (DOJ). Tyler was moved to an inadequate and inappropriate non-ICF facility 139 miles away without his mother's consent, and with no regard for her objections or guidance about the needs of her sons. Tyler could not tolerate the transfer. He was sent to the hospital where he spent 49 days, most of those in the ICU. Less than two months after his transfer, Tyler died in the Richmond hospital, alone,

more than 100 miles away from his mother. She was notified of his passing by phone.

The Subcommittee then heard from VOR's Caroline Lahrman, the mother of severely intellectually and physically disabled twins who reside in a private ICF in Ohio. Mrs. Lahrman gave testimony about the class action suit initiated by her state's Protection and Advocacy agency (P&A) - Disability Rights Ohio (DRO) - aimed at closing all of the state's public and private ICF's and uprooting 5,900 people with I/DD from their homes and forcing them into HCBS-waiver settings. The suit would treat all 5,900 individuals as if they were one and the same, with the same needs and levels of disability as the six individuals chosen by DRO to be named parties in the suit. Mrs. Lahrman quoted from *Olmstead* to describe the manner in which DRO's lawsuit violates the spirit and letter of that decision. DRO's lawsuit has cost the families who oppose it over \$100,000 to date. These families are forced to fight against being named as participants in a class action suit that is the antithesis of their wishes for their loved ones. She went on to say that the ability to opt out of these suits is not sufficient, that this type of class action suit should be prohibited on the grounds that, "P&A's bring class actions against Medicaid accommodations that are needed and chosen by their own clients."



Opposition testimony was then provided by Alison Barkoff, a long-time professional advocate for the waiver system who favors community for all individuals with intellectual and development disabilities. Ms. Barkoff told of her family's refusal to put her brother into ICF care 40 years ago, and of their struggle to provide for him for years before he was able to receive supplemental at-home services. Ms. Barkoff



contended that she has seen people leave ICFs and thrive in the community. She justified the class action suit that resulted in the death of Tyler Bryant for having given community service to the son of a woman named Brenda Booth, who refused the care offered by the state of Virginia in an ICF in favor of waiting for community placement. Ms. Barkoff spoke of “expansion of services” without acknowledging that this expansion in one sector, waiver-based care, came at the cost of ICF level care within the system. She did not mention the people who have suffered trauma and death by being displaced from their homes – only of those who have received services as a result of these actions. Rather than advocate for more funds and more services, her approach is to take from one group of people and give to others, and to use expensive class action suits as the way to secure that redistribution of services.

VOR’s Peter Kinzler was the last to testify. He is the father of Jason, 42, who functions at the intellectual level of a 6-month old and requires 24/7 care for all aspects of living. For 37 years, Jason received excellent care at North Virginia Training Center (NVTC). In 2016, NVTC was closed as the result of a DOJ suit, in furtherance of their policy, “Community Integration for Everyone.” As with class actions, the DOJ suit swept all individuals residing in ICFs into the suit, with neither advance notice nor the right to opt out. Mr. Kinzler stated that DOJ claimed to have consulted with “a whole laundry list of people in the system. The only people not consulted were the families of the residents of the ICF.” Despite near unanimous opposition by the families, DOJ went on with the case. They opposed the families’ motion to intervene, forcing them to spend over \$125,000 in legal fees. The judge then ignored the families’ opposition and accepted a settlement between the DOJ and the State of Virginia. Mr. Kinzler’s family was forced to choose between putting Jason in a group home fifty minutes from his home or into an ICF 160 miles away. To make things worse, the closure timetable was not tied to the creation of resources sufficient to handle the displaced individuals. Such displacements have resulted in considerably higher rates of mortality among this fragile population.



After the testimony, Rep. Goodlatte, Rep. Cohen (D-TN), and Chairman King asked the participants a number of questions to illustrate the issues brought up in their testimony. Mr. Cohen asked Ms. Barkoff if there were protections for people who oppose class action suits. She insisted that these protections exist, making a bill that would allow families to opt-out unnecessary. Her response was in direct conflict with the experiences and testimony of Ms. Bryant, Mrs. Lahrman, and Mr. Kinzler. Rep. Goodlatte asked Ms. Bryant if others who had been forced out of the CVTC had suffered or died as a result of their displacement. She stated that of the 42 people transferred into the community, Tyler was the tenth death that she knew about. When asked by Rep. Goodlatte about the importance of being able to intervene in these class action suits, Mrs. Lahrman replied that the judge in her case told her that without the ability to intervene, she would have had no rights in the case in which her children were unwilling participants.

Toward the end of the hearing, Rep. Goodlatte asked several questions of Ms. Barkoff that highlighted the inconsistencies in testimony. He asked if she was aware of any class actions P&A’s conducted against group homes. She skirted the question several times and never gave a direct answer. He went on to ask her if the P&A’s had an anti-institution agenda. She replied that in her opinion, they did not. He went on to say that the process as it exists, is inflexible and that it does not recognize the needs of people in ICF’s or their families, and that more protections were needed.

Testimony from the hearings is available at:

<https://judiciary.house.gov/hearing/examining-class-action-lawsuits-intermediate-care-facilities-individuals-intellectual-disabilities-icf-iid>

Taped testimony of the hearing is available on YouTube (Note: Video begins at 5:18):

<https://www.youtube.com/watch?v=PA9xH0PYnvA>