

March 14, 2018

Dear Chairman King, Ranking Member Cohen, and members of the House Committee on Judiciary / Subcommittee on Constitution and Civil Justice,

Since the deinstitutionalization of Intermediate Care Facilities (ICF/IID) in Georgia, 504 people died in one year. That being said, I am sure I voice the sentiment of many when I ask that you to please act swiftly and call for a moratorium on deinstitutionalization until we are sure that the services in the community are equal or surpass those in the intermediate care facility. This moratorium includes, but is not limited to, the use of class action lawsuits as a means of leveraging closure and promoting deinstitutionalization.

The Americans with Disabilities Act (ADA) and the landmark Supreme Court *Olmstead* decision interpreting it have improved the lives of millions of Americans with intellectual and developmental disabilities (I/DD) by encouraging community integration. However, people with I/DD are not a homogenous group. Some need greater care for their well-being than can be found in the community. The ADA and *Olmstead* protect this need by recognizing the right of choice for people with I/DD. Unfortunately, the federal agencies that enforce the ADA have adopted an ideological agenda that does not reflect the law's balancing of these goals.

VOR, a national nonprofit organization advocating for high quality care and human rights for people with I/DD, calls on Congress to halt these activities that are harming many severely disabled individuals and make sure the federal agencies enforce the ADA, as written by the Congress and interpreted by the Supreme Court.

Olmstead is often *incorrectly* referred to as a community-only/deinstitutionalization mandate by disability advocates, including the **Department of Justice**, the **Administration on Intellectual and Developmental Disabilities**, and the **Centers for Medicare & Medicaid Services**. They have perpetuated this misinterpretation of the *Olmstead* decision and pursue an agenda of forced deinstitutionalization.

In fact, the Supreme Court in its *Olmstead* ruling recognized the need for a range of services to meet to the varied and unique needs of the entire disability community. **But don't take our word for it.** The best source for what *Olmstead* requires is the decision itself:

(1) *Unjustified* isolation is discrimination based on disability. [*Olmstead v. L.C.*, 527 U.S. 581, 597 \(1999\)](#).

(2) Community placement is only required and appropriate (*i.e.*, institutionalization is *unjustified*), when – “[a] the State’s treatment professionals have determined that community placement is appropriate, [b] the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and [c] the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities. *Id.* at 587 (**emphasis added**).

(3) There is an ongoing role for facility-based care: “We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it.” *Id.* at 601-602.

(4) A plurality stated: “As already observed [by the majority], the ADA is not reasonably read to impel States to phase out institutions, placing patients in need of close care at risk ‘Each disabled person is entitled to treatment in the most integrated setting possible for that person — **recognizing on a case-by-case basis, that setting may be an institution**’ [quoting from VOR’s *Amici Curiae* brief].” *Id.* at 605 (**emphasis added**).

Simply put, *Olmstead* requires, as plainly stated in the ADA, that people with I/DD receive services and supports in the most integrated setting appropriate to individual needs, consistent with individual choice.

VOR calls on Congress to prohibit federally-funded forced deinstitutionalization by federal agencies contrary to the plain language of the ADA and the Supreme Court’s *Olmstead* decision.

Sincerely,



Ann S. Knighton, Former President and current member, VOR Board of Directors; Co-President East Central Georgia Family Council