

Olmstead: Protecting the Rights of All Individuals with Intellectual and Developmental Disabilities

Olmstead v. L. C., 527 U.S. 581 (1999)

The Supreme Court's decision in *Olmstead v. L. C.* [527 U.S. 581 (1999)] has been frequently misrepresented as a mandate for inclusion, a simple, one-sided declaration that all individuals with intellectual and developmental disabilities (I/DD) must live in community-based settings. **This is not true. There is no inclusion mandate in *Olmstead*.** Rather, the Court's determination in *Olmstead* supports the right to receive treatment in the least restrictive environment, based on the need and desires of the individual. *Olmstead* guarantees choice for all individuals, their parents, and guardians. *Olmstead* requires that those who are moved from institutional care to smaller, community-based group homes meet three distinct criteria to determine the appropriate residential setting. There is no mandate to deny access to institutions, to close institutions, nor to place at risk any individuals who need and choose institutional care.

The Supreme Court recognized the need for States to maintain a range of facilities for the diverse needs of persons with developmental disabilities:

*"Unjustified isolation, we hold, is properly regarded as discrimination based on disability. But we recognize, as well, the States' need to maintain a range of facilities for the care and treatment of persons with diverse mental disabilities, and the States' obligation to administer services with an even hand."*¹

*"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."*²

The majority opinion revealed the need for standards in determining the appropriate level of care:

*"Consistent with these provisions, the State generally may rely on the reasonable assessments of its own professionals in determining whether an individual 'meets the essential eligibility requirements' for habilitation in a community-based program. Absent such qualification, it would be inappropriate to remove a patient from the more restrictive setting."*³

The Court set conditions before the State is required to move individuals to the community:

*"[U]nder Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities [1] when the State's treatment professionals determine that such placement is appropriate, [2] the affected persons do not oppose such treatment, and [3] the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."*⁴

In her opinion, Justice Ruth Bader Ginsberg clearly stated the need to maintain institutional care:

*"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. . . Some individuals . . . may need institutional care from time to time 'to stabilize acute psychiatric symptoms'. . . For other individuals, no placement outside the institution may ever be appropriate...for these persons, institutional settings are needed and must remain available."*⁵

Justice Ginsberg then quoted an amicus brief submitted by VOR:

*"Each disabled person is entitled to treatment in the most integrated setting possible for that person - recognizing that, on a case-by-case basis, that setting may be in an institution."*⁶

In his concurring opinion, Justice Anthony Kennedy warned about the possibility of tragic consequences for ICF residents if the ADA is misinterpreted:

*"It would be unreasonable, it would be a tragic event, then, were the American with Disabilities Act of 1990 (ADA) to be interpreted so that States had some incentive, for fear of litigation, to drive those in need of medical care and treatment out of appropriate care and into settings with too little assistance and supervision."*⁷

*"In light of these concerns, if the principle of liability announced by the Court is not applied with caution and circumspection, States may be pressured into attempting compliance on the cheap, placing marginal patients into integrated settings devoid of the services and attention necessary for their condition."*⁸

¹ *Olmstead v. L. C., 527 U.S. 581*, at 597

² *ibid*, at 601-602

³ *ibid*, at 602

⁴ *ibid*, at 607

⁵ *ibid*, at 604-605

⁶ *ibid* at 605

⁷ *ibid* at 610

⁸ *ibid* at 610

(emphasis added on all quotes)