IN THE UNITED STATED DISTRICT COURT
FOR THE NORTHERM DISTRICT OF ILLINOIS
EASTERN DIVISION

ILLINOIS LEAGUE OF ADVOCATES FOR THE DEVELOPMENTALLY DISABLED; and MURRY PARENTS ASSOCIATION, INC.; and INDIVIDUALLY AND ON BEHALF OF ALL PERSONS SIMILARLY SITUATED: RITA WINKELER, as Guardian for Mark Schomaker and Mark Winkeler; KAREN KELLY, as Guardian for Eric Schutzenhofer; LAUREEN STENGLER, as Guardian for Wayne Alan Stengler; STAN KRAINSKI, as Guardian for Steven Edward Krainski; ELIZABETH GERSBACHER, as Guardian for Charlie Washington and Linda Faye Higgins; BARBARA COZZONE-ACHINO, as Guardian for Robert Metullo; ROBIN PANNIER, as Guardian for Benjamin Pannier; JEANINE L. WILLIAMS, as Guardian for John L Fuller Jr.; DAVID IACONO-HARRIS, as Guardian for Jonathan P. Iacono-Harris; DR. ROBERT POKORNY, as Guardian for Robert James Pokorny; and GAIL K. MYERS, as Guardian for Mark Andrew Wymore. Plaintiffs, vs. PATRICK QUINN, as Governor of the State of Illinois, ILLINOIS DEPARTMETN OF HUMAN SERVICES, MICHELLE R.B. SADDLER, in her official capacity as Secretary of the Illinois Department of Human Services, KEVIN CASEY, in his official capacity as Director of Developmental Disabilities of the Illinois Department of Human Resources, and COMMUNITY RESOURCE ALLIANCE, Defendants.	)	Case No. 13 C 01300 Hon. Marvin E. Aspen **STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA**

I. INTRODUCTION

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517[1] regarding Plaintiffs' Motion for Preliminary Injunction, [Docket No. 9], in order to clarify to the Court the proper scope and application of the integration mandate of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132. The statute, regulations, and established precedent do not support the Plaintiffs' claim that the ADA gives them a right to remain in a particular institution and to stop the State's efforts to rebalance its service system toward community based care.

Congress enacted the ADA in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." Id. § 12101(a)(2). For these reasons, Congress prohibited discrimination against individuals with disabilities by public entities:

> [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

[1] Under 28 U.S.C. § 517, "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

Id. § 12132. In passing the ADA, Congress sought to create strong national standards to address discrimination and to ensure that the federal government played a "central role" in creating and enforcing those standards. 42 U.S.C. § 12101(b)(2) & (3).

The Attorney General issued regulations, as directed by Congress, 42 U.S.C. § 12124, to implement the ADA's broad mandate to end the pervasive and ongoing segregation of persons with disabilities in all facets of life. See 42 U.S.C. §12101(a)(2). Title II's integration regulation requires public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.103(d).[2] The "most integrated setting" means one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.…" 28 C.F.R. Pt. 35, App. B at 673. The Department has interpreted the integration regulation to prohibit the unnecessary provision of such services to persons with disabilities in segregated institutional settings, in which persons with disabilities have little to no opportunity to interact with non-disabled persons. See, e.g., "Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C." at 3 (June 22, 2011), available at: http://www.ada.gov/olmstead/q&a_olmstead.htm. Similarly, the Supreme Court in Olmstead v. L.C., 527 U.S. 518 (1999), interpreted these regulations to mean that "[u]njustified isolation" of individuals with disabilities "is properly regarded as discrimination based on disability." Id. at 597.

As the agency charged by Congress with enforcing and implementing regulations under Title II, the Department's interpretation of both Title II and the integration regulation has been

[2] Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, contains an identical regulation issued by the Attorney General. 28 C.F.R. § 41.51(d). These regulations have been read in tandem to provide similar protections to persons with disabilities. See Olmstead v. L.C., 527 U.S. 581, 591 (1999).

accorded substantial deference. See Olmstead, 527 U.S. at 597-98; ("Because the Department is the agency directed by Congress to issue regulations implementing Title II, its views warrant respect." (citation omitted); Pashby v. Delia, -- F.3d --, 2013 WL 791829 *10 (4th Cir. 2013) ("Because Congress instructed the DOJ to issue regulations regarding Title II, we are especially swayed by the DOJ's [interpretation of] 'the ADA and the Olmstead decision'") (internal citation omitted); M.R. v. Dreyfus, 663 F.3d 1100, 1117 (9th Cir. 2011) (same), opinion amended and superseded on other grounds, 697 F.3d 706 (9th Cir. 2012). The Department's interpretation of the integration regulation must be upheld "unless plainly erroneous or inconsistent with the regulation." Auer v. Robbins, 519 U.S. 452, 461 (1997).

II. ARGUMENT

The ADA Does Not Create a Right to Remain in a Particular Institution

The State of Illinois currently plans to close two State Operated Developmental Centers (Jacksonville Developmental Center and the Murray Developmental Center) in fiscal year 2013 and shift resources towards expanding community based care.[3] The Plaintiffs, who are the guardians of individuals residing in these institutions, are opposed to the closure of State Operated Developmental Centers (SODCs). The Plaintiffs argue that the ADA, an integration statute enacted to end the pervasive segregation of persons with disabilities, conveys a right to remain in a segregated institution, as opposed to a right to live in the community. See Plaintiffs' Memorandum of Law in Support of their Motion for Preliminary Injunction, p. 19 ("Pls.

[3] Plaintiffs' Motion for Preliminary Injunction makes two assumptions, both that the state plans to close "all of Illinois' SODCs without adequate and appropriate replacement services" and that such action violates Title II of the Americans with Disabilities Act, Pls. Memorandum, p 10. There is no indication that either of these assumptions is true; see State of Illinois, Department of Human Services, Division of Developmental Disabilities, Strategic Plan FY 2011-2017 at http://www.dhs.state.il.us/page.aspx?item=45085, and State of Illinois Fiscal Year 2013 Agency Budget Fact Sheets for the Department of Human Services, p. 18 www.state.il.us/budget/FY2013/FY13AgencyFactSheets.pdfShare.

Memorandum"). Nothing in the ADA or its regulations, the Supreme Court's decision in Olmstead, or any other case law supports this interpretation of the ADA and its integration mandate. Rather, the inverse is true.

In Olmstead, the Supreme Court concluded that the unjustified institutionalization and isolation of persons with mental disabilities violates the ADA.[4] 527 U.S. 581, 597 (1999). The Supreme Court reached this conclusion based upon two "evident judgments." Id. at 600. First, the Court observed that "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." Id. at 600. Second, the Court noted that "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." Id. at 601.

Plaintiffs make much of Olmstead's statement that there is no "federal requirement that community-based services be imposed upon those who do not desire them." 527 U.S. at 602. However, to read that sentence in Olmstead as creating a right to institutionalization would turn the ADA and its integration mandate on its head and impermissibly create a new right under the ADA that was never intended by Congress. Gonzaga Univ. v. Doe, 536 U.S. 273, 283 (2002) (Congress must "unambiguously confer a right" to support a cause of action under §1983 or an implied right of action.) The ADA does not confer a right to remain in any given institution.

Moreover, Plaintiffs' argument is inconsistent with established precedent that the ADA's purpose is to prevent unnecessary institutionalization, *not* to require continued operation of a

[4] States are required to provide community-based treatment for persons with mental disabilities when such services are appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities. Olmstead, 527 U.S. at 607.

state institution in which an individual plaintiff currently resides.[5] These courts have found that it does not violate federal law for states to close an institution. This is particularly true when a State is rebalancing their system of supports to people with disabilities away from expensive institutional care towards community care to use its resources to serve more people. See, Ricci v. Patrick, 544 F.3d 8, 17-18 n.8, 21 (1st Cir. 2008) (recognizing a State's ability to close its state-operated facilities, particularly when "allocating its resources to ensure equitable treatment of its citizens," and noting the ADA's preference for community integration under the Olmstead decision); Richard C. v. Houstoun, 196 F.R.D. 288, 291-292 (W.D. Pa. 1999) (rejecting plaintiffs' interpretation of Olmstead to require continued institutionalization when the three criteria Olmstead are not met and denying intervention); see also Baccus v. Parrish, 45 F. 3d 958, 961 (5th Cir. 1995); Lelsz v. Kavangauh, 783 F. Supp. 296, 298 (N.D. Tex. 1991), aff'd 983 F. 2d 1061 (5th Cir.); Messier v. Southbury Training School, 562 F. Supp. 2d 294, 338 (D. Conn. 2008), Alexander v. Rendell, 2006 U.S. Dist. LEXIS 3378, at *18-19 (W.D. Pa. Jan. 30, 2006).

[5] States, like Illinois, that participate in Medicaid's home and community-based waiver program must offer participants the choice of community-based or institutional services, which can be offered in a public institution (like a SODC) or a private institution at the option of the state. 42 C.F.R. § 441.302(d).

III. CONCLUSION

For the reasons stated above, the United States respectfully requests that this Court find that the Plaintiffs' have no claim under the Americans with Disabilities Act.

Dated: April 15, 2013

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing STATEMENT OF INTEREST OF THE UNITED STATES with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties in this matter via electronic notification or otherwise:

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