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longed debate when Congress again considers action in that area.

Fullilove v. Klutznick, 448 U.S. 448, 503 (1980) (Powell, J., concurring). Prior congressional hearings had documented extensive and profound constitutional problems with the conditions of confinement and medical care afforded to disabled prisoners.

Congress was aware that “the confinement of inmates who are in need of psychiatric care and treatment * * * in the so called psychiatric unit of the Louisiana State Penitentiary constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.” *Civil Rights for Instit. Persons: Hearings on H.R. 2439 and H.R. 5791 Before the Subcomm. on Courts, Civil Liberties, and the Admin. of Justice of the House Comm. on the Judiciary*, 95th Cong., 1st Sess. 320-321 (1977) (*H.R. 2439 Hearings*). The lack of treatment of mentally ill patients in other jurisdictions was found to be equally constitutionally deficient.¹⁸ One inmate “who had suffered a stroke and was partially incontinent”

was made to sit day after day on a wooden bench beside his bed so that the bed would be kept clean. He frequently fell from the bench, and his legs became

¹⁸ *Civil Rights of Instit. Persons: Hearings on S. 1393 Before the Subcomm. on the Const. of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. 1066-1067 (1977) (*S. 1393 Hearings*) (the Alabama Board of Corrections employs “one clinical psychologist, who works one afternoon each week,” to treat 2400 inmates who are mentally retarded or suffer from mental illness; if psychotic inmates become violent, “they are removed to lockup cells which are not equipped with restraints or padding and where they are unattended”; “the large majority of mentally disturbed prisoners receive no treatment whatsoever. It is tautological that such care is constitutionally inadequate”) (quoting court findings in *Newman v. Alabama*, 349 F. Supp. 278, 284 (M.D. Ala. 1972), *aff’d* in relevant part, 503 F.2d 1320, *att’y fee award vacated*, 522 F.2d 71 (5th Cir. 1974) (*en banc*), *cert. denied*, 421 U.S. 948 (1975)).

ADDENDUM A

Cases Evidencing the Problem of Unconstitutional Treatment of Individuals with Disabilities in Correctional Facilities:

Vitek v. Jones, 445 U.S. 480 (1980) (due process protections required to transfer prisoner to state mental hospital); *Miller v. King*, 384 F.3d 1248 (11th Cir. 2004) (reversing grant of summary judgment to defendants on Eighth Amendment claims by paraplegic inmate where inmate was housed in a cell so small that he could not turn his wheelchair around; where inmate did not have access to wheelchair-accessible toilets and showers, as a result of which inmate was not able to bathe regularly and was forced to urinate and defecate on himself; and where prison staff's failure to provide adequate medical care resulted in bed sores, serious atrophy, and deterioration of his spinal condition); *Serrano v. Francis*, 345 F.3d 1071 (9th Cir. 2003) (court of appeals found assignment of wheelchair-bound inmate to administrative segregation implicated protected liberty interest where inmate was not allowed to use his wheelchair while in segregation, forcing him to crawl around vermin and cockroach-infested floor to get to his bed and to hoist himself up by the toilet seat in order to use the toilet; was prevented from showering due to a lack of accessible showers; and was denied outdoor exercise due to inaccessible yard),

ADDENDUM B

**Findings of Investigations by the United States Department of Justice
under the Civil Rights of Institutionalized Persons Act
42 U.S.C. 1997 *et seq.***

Between 1980 and the enactment of Title II of the Americans with Disabilities Act in 1990, Department of Justice investigations under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997 *et seq.*, found unconstitutional treatment of individuals with disabilities in correctional facilities in thirteen different States. From 1980 until the present, unconstitutional conditions have been found in 88 different correctional facilities in 33 States and 2 territories throughout the Country. The tables below describe some of the findings issued by the Department of Justice pursuant to 42 U.S.C. 1997b(a)(1). Copies of the complete findings letters will be provided to the Court upon request, and have been served upon counsel for all parties to this case.

