VOR
Speaking Out for People with Mental Retardation

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Olmstead Supports Choice!

The Supreme Court, in its Olmstead ruling, recognized the need for a range of services which respond to the varied and unique needs of the entire disability community:

(1) Unjustified institutionalization is discrimination based on disability. 119 S. Ct. 2176, 2185 (1999).

(2) The Supreme Court held that 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." 119 S. Ct. at 2181.

(3) A majority of Justices in Olmstead recognized an ongoing role for publicly and privately-operated institutions: "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." 119 S. Ct. at 2187.

(4) A plurality of Justices noted:

"[N]o placement outside the institution may ever be appropriate . . . 'Some individuals, whether mentally retarded or mentally ill, are not prepared at particular times-perhaps in the short run, perhaps in the long run-for the risks and exposure of the less protective environment of community settings' for these persons, 'institutional settings are needed and must remain available'" (quoting Amicus Curiae Brief for the American Psychiatric Association, et al). 521 U.S. at 604-604; 119 S. Ct. at 2189.

"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 VOR's *Amici Curiae* brief]." Id.

(5) Justice Kennedy noted in his concurring opinion, "It would be unreasonable, it would be a tragic event, then, were the Americans 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." 119 S. Ct. at 2191.

For more information about Olmstead and VOR, visit
http://vor.net/get-help/legal-resources/the-olmstead-decision