

## Celebrating the 20<sup>th</sup> Anniversary of the Olmstead Decision: Opportunities and Choices

VOR acknowledges the 20<sup>th</sup> Anniversary of the Olmstead Decision and celebrates in its opening doors to community living for people with intellectual and developmental disabilities (I/DD) who are able and wish to take advantage of such opportunities. The Court's decision in Olmstead was balanced and comprehensive. It presented a road map for how to meet the aspirations of those seeking inclusion while protecting the needs of those with more severe intellectual disabilities. VOR is proud of the role that we played in presenting an *amicus* to the court, showing the need to include all people with I/DD in their ruling.

Recently, the Department of Justice (DOJ), and the Administration for Community Living (ACL) issued press releases celebrating the 20<sup>th</sup> Anniversary of the Olmstead decision. Unfortunately, their ideological focus with one key part of Olmstead, "community integration", at the expense of the other key part, "choice", has reduced options for all people with I/DD and especially those with the most severe and profound forms of I/DD. Whether or not this is an innocent misreading of the ruling or a deliberate misrepresentation of the Court's opinion, this limited interpretation of the plain language of Olmstead has done significant harm to many of our most disabled citizens.

By insisting that *all* people with I/DD live in the community, the DOJ and ACL are treating people with I/DD as a monolithic group, not as unique individuals. DOJ and ACL are substituting the wishes of the government for that of the person with I/DD or, where relevant, the parent or legal guardian. While their policies have opened doors for the less severely disabled, they have closed important doors for the more severely disabled. Many of these individuals have lifelong needs that require a very high level of care, the kind often found only in public and private Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID).

DOJ and ACL are pursuing this agenda in the name of the ADA and Olmstead, *but that is not what the ADA and Olmstead call for*. Both the statute and the Supreme Court case embody the best values of American society—nondiscrimination *and* choice. All of our civil rights laws contain both elements. Civil rights laws do not tell people where they must live or work. They guarantee individuals are not denied opportunities based on a particular factor, and they expand choices for individuals who have suffered discrimination. In sharp contrast, DOJ and ACL are using federal dollars to bring lawsuits and promote policies that needlessly and dangerously eliminate important options – ICFs/IID, sheltered workshops and facility-based day programs – that many of our most disabled individuals rely on and prefer over small community residences.

In pursuing a one-size-fits-all ideology, DOJ and ACL are ignoring the vital rights of choice embodied in the ADA itself: As the Court clearly stated in *Olmstead*:

“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. *Olmstead v. L.C.*, 527 U.S. 581, 601-602 (1999).

In fact, the Court specifically incorporated the right of choice in the second prong of its holding:

“(b) the transfer from institutional care to a less restrictive setting is not opposed by the affected individual,” *Olmstead*, at 587.

Even DOJ and ACL’s concept of what constitutes the most integrated setting contradicts the view of Justice Ginsburg:

“[For some individuals, no 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.’ ” . . . 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” *Olmstead*, at 605.

Not only are DOJ and ACL ignoring the plain language of governing law and decision, they are ignoring the harmful effects of their policies. Journalists have time and again documented the high rates of abuse and mortality for our most disabled citizens who have been forced out of congregate care facilities into unprepared [communities](#)<sup>i</sup>. Federal agencies should stop dictating the lives of the severely disabled, and instead, join hands with the community of individuals with I/DD to ensure that all people with I/DD receive quality services and supports wherever they choose to reside.

The ADA and *Olmstead* are the beacons for providing more opportunities for people with I/DD, but they do not dictate one-size-fits-all solutions. They are to provide rights and protection for everyone. Individual choice among the widest possible range of quality living and occupational options is what is necessary to realize the goals of the ADA and *Olmstead*. VOR supports the full reading of *Olmstead*, making individual choice of services paramount and ensuring a full range of living and work options in order to meet the spectrum of needs of this very diverse population.

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*VOR is a national organization that advocates for high quality residential and work options and human rights for people with intellectual and developmental disabilities. Established in 1983, VOR is a 501(c)(3) non-profit organization, governed by a volunteer board of directors and funded solely by dues and donations. VOR receives no government support.*

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<sup>i</sup> VOR Abuse and Neglect Document:

<http://www.vor.net/get-help/more-resources/item/abuse-and-neglect-document>