





The Supreme Court's Olmstead Decision and Its Far-Reaching Impact on People with Disabilities

Presented by Equip for Equality

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1

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2

Agenda

- History of community integration and incorporation into the ADA
- The *Olmstead* decision
- DOJ's role in interpreting and enforcing *Olmstead*
- Key terms/issues from the *Olmstead* decision
- Extension of *Olmstead* decision to other contexts
 - ✦ Private facilities
 - ✦ Risk of institutionalization
 - ✦ Children's services
 - ✦ Education
 - ✦ Employment Services
 - ✦ Criminal legal system
 - ✦ "Reverse" *Olmstead*
- Questions



3

Brief History of Community Integration Before the ADA

- Historically, most housing for people with disabilities in the US provided in large institutions, usually operated by states
- Institutions were highly restrictive, isolating residents from their families and communities
- In the 1960s, disability community started advocating to receive services outside of institutions
- In 1981, Congress established Home and Community-Based Services Waiver Program
 - ✦ Allowed states to provide Medicaid services to people in the community instead of requiring institutionalization as a condition of federal funding.

4

ADA and Community Integration

When Congress passed the ADA, it found:

- Segregation of people with disabilities was pervasive problem in US
- Discrimination included people in institutions
- Segregation perpetuates unjustified assumptions that institutionalized persons are incapable or unworthy of participation in community life
- Institutionalization severely diminishes everyday activities like family relations, social contacts, work, educational advancement, and cultural enrichment

5

Department of Justice ADA Regulations

- **DOJ:** Interprets and enforces Title II of ADA – covers state and local government programs and services
- **Integration Mandate:** Regulation that state and local governments must provide services to people with disabilities in the **most integrated setting** appropriate to their needs
- **Most Integrated Setting:** Setting that enables people with disabilities to interact with non-disabled persons to the fullest extent possible

6

Olmstead – Case Background

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

- Two women with mental illness and I/DD institutionalized in state-operated hospital in Georgia
- Both deemed appropriate for community placement, but remained institutionalized
- Placement not provided because of insufficient community resources
- Sued under ADA's integration mandate
- **Supreme Court:** Unjustified isolation is discrimination under the ADA

7

Factors Set forth by Supreme Court in *Olmstead*

- **Community integration requirements:**
 - ❖ Treatment officials find community is appropriate
 - ❖ Person does not oppose placement in the community
 - ❖ Placement can be reasonably accommodated taking into account State's resources & needs of other pwds
- **State can meet its ADA obligations if it has a:**
 - ❖ **comprehensive, effectively working plan** for placing people with disabilities in less restrictive settings
 - ❖ **waiting list that moves at a reasonable pace** not controlled by the State's efforts to keep its institutions fully populated

8

DOJ's *Olmstead* Interpretation and Enforcement

- **Bush administration (2001-2008):** Minimal affirmative community integration litigation following *Olmstead*.
- **Obama administration (2009-2016):** Very pro-active – "Year of Community Living" – DOJ involved in approximately 50 *Olmstead* cases. DOJ also issued [Statement on *Olmstead*](#), and [Statement on *Olmstead* and Employment](#)
- **Trump administration (2017-2020):** Withdrew *Olmstead* Statement on Employment and filed minimal affirmative *Olmstead* litigation.
- **Biden administration (2021- present):** Return to aggressive enforcement of integration mandate and *Olmstead* – disability community requests made to restore Statement on Employment.
- [DOJ *Olmstead* home page](#) – All of DOJ's *Olmstead* work can be found on this page.

9

Comprehensive Effectively Working Plan – DOJ Guidance

No definition of “comprehensive effectively working plan” in ADA text, regulations or *Olmstead* decision, but DOJ’s *Olmstead* Statement provides guidance - [See DOJ Olmstead Statement Question 12](#) explaining *Olmstead* plan:

- Must reflect analysis of most integrated services state is providing
- Must contain concrete commitments to expand integrated opportunities
- Must have specific and reasonable timeframes and measurable goals for which the public entity may be held accountable
- Must be funding to support the plan
- And to meet the “effective” requirement, plan must have demonstrated success in actually moving people to integrated settings in accordance with the plan

10

Comprehensive Effectively Working Plan – Court Decision

Frederick L. v. Dep’t of Pub. Welfare of Pa.
422 F.3d 151 (3rd Cir. 2005)

- Class action on behalf of residents of a state psychiatric hospital.
- **Plaintiffs:** State does not have an *Olmstead* plan and failed to provide “concrete, measurable benchmarks and a reasonable timeline to ascertain when, if ever, residents will be discharged to appropriate community services.”
- **State:** Just have to demonstrate “a commitment to take all reasonable steps to continue past progress”

11

Comprehensive Effectively Working Plan – Court Decision

- **Court:** State’s generalized steps toward more community services insufficient and do not constitute an *Olmstead* plan
- ***Olmstead* plan must specify:**
 - ❖ time-frame/target date for resident discharge;
 - ❖ approximate number of residents to be discharged each time period;
 - ❖ eligibility for discharge; and
 - ❖ a general description of the collaboration required between the local authorities and the housing, transportation, care, and education agencies to effectuate integration into the community.

12

Comprehensive Effectively Working Plan – Court Decisions

Crabtree v. Goetz, 2008 WL 5330506 (M.D. Tenn. Dec. 19, 2008)

- **Court:** Tennessee did not have valid *Olmstead* plan - although state passed a law with a proposed comprehensive plan, it wasn't operational and lacked date for implementation.

Sanchez v. Johnson, 416 F.3d 1051 (9th Cir. 2004)

- **Court:** California has valid *Olmstead* plan
 - ◊ 30-year-old state law required services for people with I/DD to prevent or minimize institutionalization;
 - ◊ significantly decreased # of people in institutions over a decade;
 - ◊ significantly increased community-based spending and home and community-based waiver slots over a decade; and
 - ◊ had a system for individualized community placement plans

13

Fundamental Alteration Defense

- **DOJ Regulation:** "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, **unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.**" [28 CFR 35.130\(b\)\(7\)](#)

- **Olmstead decision:** State can rely on the fundamental alteration defense by showing immediate relief for the plaintiffs would be inequitable, given the state's responsibility for the care and treatment of a large and diverse population of persons with disabilities

14

Fundamental Alteration Defense DOJ Guidance

DOJ *Olmstead* Statement:

- Budgetary shortages alone not sufficient evidence that expanding community services would be a fundamental alteration
- Even when budgets are tight, states can often modify their programs by re-allocating funding from expensive segregated settings to cost-effective integrated settings ("re-balancing")
- Relevant whether state has sought additional federal resources available to support the provision of services in integrated settings

[See DOJ *Olmstead* Statement Question 14](#)

15

Case Rejecting Fundamental Alteration Defense

Pennsylvania P&A v. Pennsylvania Department of Public Welfare 402 F. 3d 374 (3d Cir. 2005)

- Class action on behalf of people living in a nursing facility
- **State:** Funding shortages meant fundamental alteration to provide requested community services
- **3rd Circuit:** Budgetary constraints alone do not satisfy the fundamental alteration defense. Demonstrating a "commitment to action" to comply with the ADA is a prerequisite to establishing a fundamental alteration defense. Only when this is demonstrated do budgetary issues even become a factor.

16

Cases Rejecting Fundamental Alteration Defense

Fisher v. Okl. Health Care Auth, 335 F.3d 1175 (10th Cir. 2003)

- **Court:** Rejected fundamental alteration defense based solely on fiscal concerns and found "if every alteration in a program or service that required the outlay of funds were tantamount to a fundamental alteration, the ADA's integration mandate would be hollow indeed."
- **Radaszewski v. Maram**, 2008 WL 2097382 (N.D. Ill. March 26, 2008)
- **Court:** Not a fundamental alteration when Illinois was already providing requested service – and State just needed to provide increased amount – plus State would save money providing services in community instead of in nursing facility.
- **U.S. v. Mississippi**, 400 F. Supp. 3d 546 (S.D. Miss. 2019)
- **Court:** State failed to show how increasing community mental health services would fundamentally alter its system and its own experts said providing more community services would be cost neutral.

17

Case Finding Fundamental Alteration Defense Valid

Arc of Washington v. Braddock 427 F.3d 615 (9th Cir. 2005)

- Suit alleged insufficient community services – sought order to require State to apply for increase in Home and Community Based Waiver Program beyond current cap.
- **State:** Already significantly reduced institution population, implemented an *Olmstead* plan, increased waiver cap previously, and significantly expanded budget for community services. To require more would be a fundamental alteration.
- **9th Circuit:** Forcing the Washington to apply for an increase in its Medicaid waiver program cap constitutes a fundamental alteration and is **not** required by the ADA.

18

Community Integration: Who has burden of proof?

Brown v. District of Columbia 928 F.3d 1070 (D.C. Cir. 2019)

- Class action by people with physical disabilities living in D.C. nursing facilities seeking community living and services
- **Trial Court:** Plaintiffs failed to prove "specific concrete" deficiencies in D.C.'s transition services that could remedied class-wide
- **D.C. Circuit:** Reversed – lower court asked wrong question and put the burden on the wrong party
- Once plaintiffs established the first two *Olmstead* factors (treatment professionals determine community placement is appropriate and person does not oppose community placement), the burden of proving the unreasonableness of the requested accommodation (the third factor) fell on D.C.

19

Olmstead Extension: Private Facilities

Although *Olmstead* involved a state-operated institution, courts have applied case to private facilities that receive state funding

- **Disability Advocates Inc. v. Patterson**, 653 F.Supp.2d 184 (E.D.N.Y. 2009) – Private Adult Homes for people with MI
- **Ligas v. Hamos**, 2006 WL 644474 (N.D. Ill. Mar. 7, 2006) – Private Intermediate Care Facilities for people with I/DD
- **Williams v. Blagojevich**, 2006 WL 3332844 (7th Cir. Nov. 13, 2006) – Private Institutions for Mental Diseases (IMDs)
- **Colbert v. Blagojevich**, 2008 WL 4442597 (N.D. Ill. Sept. 29, 2008) – Private nursing facilities
- **Ball v. Kasich**, 307 F.Supp.3d 701 (S.D. Ohio 2018) – Private Intermediate Care Facilities for people with I/DD

20

Olmstead Extension: At Risk of Institutionalization

- Courts consistently find *Olmstead* covers not just residents of institutions, but also people "at risk" of institutionalization.

Fisher v. Oklahoma Health Care Authority 335 F.3d 1175 (10th Cir. 2003)

- State imposed five prescription drug cap for people in the community – no such cap for nursing home residents.
- **Court:** Violation of the ADA's integration mandate – puts people at risk of institutionalization in nursing facilities.
- *Olmstead* not limited to people in institutions. Persons "who, by reason of a change in state policy, stand imperiled with segregation," may challenge that policy under *Olmstead* and the integration mandate.

21

Olmstead Extension: At Risk of Institutionalization Because of Budget Cuts

- *Olmstead* has also been applied to cases where because of budget cuts state is proposing to reduce or eliminate community services placing people at risk of institutionalization.
 - **V.L. v. Wagner**, 669 F.Supp.2d 1106 (N.D. Cal. 2009)
- California proposed reducing or terminating in-home support services. Plaintiffs argued State's proposed cuts violated ADA - cuts would place them at risk of institutionalization.
- **Court:** Budget cuts could violate the ADA's integration mandate by placing plaintiffs at risk of institutionalization. Preliminary injunction granted to prevent implementation of cuts while litigation was pending.

22

Olmstead Extension: Services for Children

- Although *Olmstead* involved adults with disabilities, cases also successful on behalf of children.
 - **M.J. v. District of Columbia**
401 F.Supp.3d 1 (D.D.C. 2019)
- Suit filed on behalf of three children and a disability organization under ADA and Medicaid alleging D.C. fails to provide sufficient community mental health services to kids, forcing them to be institutionalized.
- **Court:** Denied D.C.'s Motion to Dismiss – Plaintiffs' case can continue
 - Plaintiffs properly alleged that failure to provide community services forced them into institutions

23

Olmstead Extension: Services for Children in Foster Care

- **G.K. v. Sununu**
2021 WL 4122517 (D.N.H. Sep. 9, 2021)
- **Allegations:** State is violating ADA and Rehab Act by unnecessarily placing foster children with disabilities in congregate care facilities, rather than in most integrated setting.
- **Court:** State's motion to dismiss denied, including on ADA claim
 - Court found *Olmstead* decision applies to placement of foster care children; referenced Supreme Court's findings that confinement in institutions inherently diminishes the lives of people with disabilities and cited favorably to DOJ's integration mandate regulation and *Olmstead* guidance.
 - Court rejected State's argument that there is no ADA violation when congregate settings have non-disabled children as well.

24

Olmstead Extension: Education

U.S. v. Georgia, 461 F.Supp.3d 1315 (N.D. Ga. 2020)
GA Adv. Office v. GA, 447 F.Supp.3d 1311 (N.D. Ga. 2020)

- Georgia systemically segregates its students with disabilities, most of whom are students of color
- Separate schools or inside regular schools but housed in locked wings; facilities in disrepair
- Inferior education: some only receive computer-based instruction; lack of electives, facilities and activities
- **ADA Claims:** Programs unnecessarily segregate students with disabilities and provide unequal education
- **Court:** Denied Motions to Dismiss in cases by DOJ and private litigants finding state administers the GNETS program, exhaustion not required under IDEA, and DOJ had authority to sue under Title II

25

Olmstead Extension: Education and Mask Mandates

The Arc of Iowa v. Reynolds
566 F.Supp.3d 921 (S.D. Iowa 2021)

- ADA suit brought by parents of public children with health conditions that faced increased risk of serious complications or death from COVID-19 challenging law that prohibited schools from imposing masking mandates.
- **Court:** Granted preliminary injunction (school districts can require universal masking).
- **Connection to Olmstead:** The court emphasized that requiring some online learning for students with disabilities violates the ADA's integration mandate.

26

Olmstead Extension: Employment – Case Decision

Lane v. Kitzhaber
841 F. Supp. 2d 1199 (D. Ore. 2012)

- Suit filed by eight people with I/DD who qualify for or receive employment services from State.
- **Allegations:**
 - ◊ Plaintiffs are able and would prefer to work in an integrated employment setting.
 - ◊ Plaintiffs are segregated in sheltered workshops and denied contact with people without disabilities.
- Defendants filed motion to dismiss.

27

Olmstead Extension: Employment – Case Decision

[Lane v. Kitzhaber](#) (cont.)

- **Court: Title II's Integration Mandate Applies to the Provision of Employment-Related Services**
- Relied on DOJ's guidance that an *Olmstead* plan includes people in sheltered workshops or segregated day programs.
- **Court:** Granted motion to dismiss so Plaintiffs could clarify allegations that State is violating the ADA by denying employment services to plaintiffs by segregating them in sheltered workshops
- **DOJ Intervened and Class certification granted: 283 F.R.D. 587 (D. Ore. 2012).**
- [Settlement Agreement](#) reached and case recently concluded.

28

Olmstead Extension: Employment – DOJ Settlement

[U.S. v. Rhode Island – 1:14-cv-00175 – \(D.R.I. 2014\)](#)

- DOJ entered into agreement with RI as state's system violated ADA by over-relying on segregated settings, including sheltered workshops and facility-based day programs, to the exclusion of integrated alternatives.
- Under the agreement, RI will provide supported employment placements to approximately 2,000 individuals. Implementation still ongoing.

Case Documents: Letter of Finding, Complaint, Agreement, Order, Press Release and Fact Sheet

29

Olmstead Extension: Employment – DOJ Guidance

[DOJ Olmstead Statement \(2011\):](#)

- Before *Lane* case, DOJ made clear *Olmstead* covered employment ("Integrated settings are those that provide individuals with disabilities opportunities to live, **work**, and receive services in the greater community.")
- *Olmstead* remedies can include "supported employment"

[DOJ's Olmstead and Employment Statement \(2016\):](#)

- After *Lane*, DOJ supplemented its *Olmstead* Statement by providing more details on *Olmstead*'s application to employment
- Made clear that "[t]he civil rights of persons with disabilities...are violated by unnecessary segregation in a wide variety of settings, including in segregated employment, vocational, and day programs." DOJ withdrew Statement in 2017.

30

Olmstead Extension: Segregation in Prison – Case Decision

Henderson v. Thomas 289 F.R.D. 506 (M.D. Ala. 2012)

- Group of prisoners with HIV successfully challenged Alabama Department of Corrections' HIV policy that:
 - ◊ Categorically restricted inmates with HIV to certain housing units
 - ◊ Limited their ability to participate in prison programs
 - ◊ Required them to wear a white armband
- **Court:** ADA violation - "segregation policy" was not supported by any scientific or medical evidence and violated the ADA

See also [DOJ Letter of Findings, Nevada Department of Corrections](#)

31

Olmstead Extension: Segregation in Prison – New DOJ Regulations

In 2010, DOJ promulgated new Title II regulations specifically addressing the segregation of people in the criminal legal system which state:

- Public entities shall ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals.
- Unless it is appropriate to make an exception, a public entity:
 - ◊ (i) Shall not place inmates or detainees with disabilities in **inappropriate security classifications** because no accessible cells or beds are available;

32

Olmstead Extension: Segregation in Prison – New DOJ Regulations

- ◊ (ii) Shall not place inmates or detainees with disabilities in **designated medical areas** unless they are actually receiving medical care or treatment;
- ◊ (iii) Shall not place inmates or detainees with disabilities in **facilities that do not offer the same programs** as the facilities where they would otherwise be housed; and
- ◊ (iv) Shall not **deprive inmates or detainees with disabilities of visitation with family members** by placing them in distant facilities where they would not otherwise be housed.

28 CFR § 35.152(b).

33

Olmstead Extension: Discharge Planning – Case Decision

U.S. v. Los Angeles County

2016 WL 2885855 (C.D. Cal. May 17, 2016)

- U.S. filed a complaint on treatment of inmates
- U.S. entered settlement agreement with LA County
- Individuals intervened challenging settlement provision discharging inmates to mental health institution - violation of ADA/*Olmstead*
 - ◊ **Intervenors:** Without meaningful discharge planning, intervenors denied access to public benefits, including transportation, shelter, medical care and psychiatric care
- **County:** Not discrimination because all inmates treated equally
- **Court:** Denied Defendant's judgment on the pleadings
 - ◊ Lack of adequate discharge planning disproportionately impacts inmates with disabilities – entitled to community services

34

Olmstead Extension: Discharge Planning – Case Decision

M.G. v. New York State Office of Mental Health

572 F.Supp.3d 1 (S.D.N.Y. 2021)

- **Plaintiffs Argument:** ADA violation because people with disabilities held in prison past their lawful release dates (in some cases for over a year) because of lack of community-based mental health housing programs.
- **Court:** Relying on *Olmstead* decision, denied State's motion to dismiss finding that plaintiffs had sufficiently alleged a violation of the ADA's integration mandate.

35

“Reverse” *Olmstead*

- Some have tried to use the *Olmstead* decision to prevent closure of institutions
- Rely on following language in *Olmstead*:
 - ◊ “nothing in the ADA or its implementing regulations condones” forcing disabled persons into community settings when they are “unable to handle or benefit” from them, and
 - ◊ There is no “federal requirement that community-based treatment be imposed on patients who do not desire it.” See *Olmstead* 527 U.S. at 601–02, 604.
- Theory has been uniformly rejected by courts

36

“Reverse” *Olmstead*

IL League of Advocates for the Developmentally Disabled v. Quinn, 2013 WL 3168758 (N.D. Ill. June 20, 2013)

- Suit filed on behalf of people with developmental disabilities in state-operated DD institutions who do not want to move into the community. Suit was filed after Governor announced plans to close two state institutions
- Allegations included claim that closure would violate the ADA and would be contrary to the *Olmstead* decision.
- **Court:** Rejected reverse *Olmstead* claim

37

“Reverse” *Olmstead*

ILADD v. Quinn (cont.)

- “This is not an *Olmstead* case. Plaintiffs do not claim they have been or will be deprived of placement in a community living environment - quite the contrary. They oppose such placement and, thus, do not fall within *Olmstead*’s purview... Unjustified isolation constitutes discrimination under the ADA, but...it does not follow from *Olmstead* that the converse is true.”
- See also ***Sciarrillo v. Christie***, 2013 WL 6586569 (D.N.J. Dec. 13, 2013) – “plaintiffs’ interpretation of *Olmstead* is untenable...no ADA provision that *providing* community placement is discrimination.”

38

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39

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40

40

  

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41

41

  

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42