



The Supreme Court's *Olmstead* Decision and Its Far-Reaching Impact¹

Introduction

In 1999, the U.S. Supreme Court decided the landmark decision *Olmstead v. L.C.* holding that “unjustified isolation ... is properly regarded as discrimination based on disability” and requiring states to provide services to people with disabilities in the most integrated setting. ***Olmstead v. L.C.*, 527 U.S. 581, 600 (1999)**. The *Olmstead* decision has made a tremendous impact and many view it as the disability communities’ *Brown v. Board of Education*, in that separate can never be equal.² This legal brief will 1) discuss the history of community integration and how it was incorporated into the Americans with Disabilities Act; 2) review the Supreme Court’s decision in *Olmstead*; 3) examine how the *Olmstead* decision has been interpreted by the U.S. Department of Justice and by the courts; and 4) explore how the principles in *Olmstead* have been applied to a wide variety of contexts.

History of Community Integration and How It Was Incorporated Into the ADA

Historically, most housing for people with disabilities in the United States was provided in large institutions, usually operated by states. These institutions were highly restrictive, isolating residents from their families and communities.³ In the 1960s, motivated by and using strategies from the civil rights movement, people with disabilities, their families, and allies started advocating for the right to receive services outside of institutions, and to be integrated into their communities. The benefits of being integrated into the community include increased participation in community activities, greater self-direction, higher employment rates, and an overall improved sense of well-being. In response, Congress in 1981 established the Home and Community–Based Services Waiver Program to allow states to provide Medicaid services to people in the community instead of requiring institutionalization as a condition of federal funding.⁴

In 1990, Congress took another important step by passing the Americans with Disabilities Act (ADA)⁵ “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”⁶ Congress further found that the “isolation and segregation of people with disabilities was a serious and pervasive social problem.”⁷ Title II of the ADA prohibits discrimination by public entities and provides that “no 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.”⁸

To implement the ADA's Title II protections against discrimination by state and local governments, Congress directed the U.S. Department of Justice (DOJ) to promulgate regulations. Of most significance for this legal brief, DOJ issued a regulation requiring that state and local governments administer services, programs, and activities in the "most integrated setting" appropriate to the needs of people with disabilities.⁹ This regulation is often referred to as "the integration mandate." The Title II regulations define "most integrated setting" to mean "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible."¹⁰ The Title II regulations further state that "integration is fundamental to the purposes of the Americans with Disabilities Act" because the "provision of segregated accommodations and services relegates persons with disabilities to second-class status."¹¹ The Title II regulations also require that public entities make "reasonable modifications to their policies, practices and procedures 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."¹²

***Olmstead*: A Landmark Decision**

Lois Curtis and Elaine Wilson, two women with intellectual disabilities and mental illness, were residents of a state-operated institution in Georgia. In 1995, they filed a federal lawsuit alleging that the State of Georgia had violated the ADA's integration mandate by denying them community placements, even though they had been deemed appropriate for the community by treatment professionals. Their case ultimately ended up before the U.S. Supreme Court. In *Olmstead v. L.C.*, the Supreme Court issued an historic decision, authored by Justice Ruth Bader Ginsberg, holding that the unjustified institutionalization of people with disabilities is discrimination under the ADA.¹³ The Court explained that segregation perpetuates unjustified assumptions that institutionalized persons are incapable or unworthy of participating in community life. The Court also found that institutional confinement severely diminishes individuals' everyday life activities, including in family relations, social contacts, work, educational advancement and cultural enrichment.¹⁴

The Court ruled that the ADA requires states to serve people with disabilities in community settings, rather than in segregated institutions, when three factors are present:

1. treatment professionals determine community placement is appropriate;
2. the person does not oppose community placement; and
3. the placement can be reasonably accommodated taking into account the resources available to the state and the needs of others who are receiving state-supported services.¹⁵

The Court also held that a state could demonstrate compliance with the ADA if it had a “comprehensive effectively working plan for evaluating and placing people with disabilities in less restrictive settings, and a waiting list that moves at a reasonable pace and is not controlled by the State’s endeavors to keep its institutions fully populated.”¹⁶

Interpretation of the *Olmstead* Decision

The *Olmstead* decision was groundbreaking and far reaching. As such, it is not surprising that it has resulted in significant litigation interpreting terms referenced in the decision.

Comprehensive Effective Working Plan

As noted above, when deciding *Olmstead*, the Supreme Court established that states can comply with the ADA’s integration mandate by having a “comprehensive effectively working plan for evaluating and placing people with disabilities in less restrictive settings.”¹⁷ However, the term “comprehensive effectively working plan” cannot be found in the ADA, nor is it referenced in the Title II regulations. Fortunately, in 2011, on the twelfth anniversary of the *Olmstead* decision, DOJ released its “Statement on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*” (“DOJ’s *Olmstead* Statement”)¹⁸ providing helpful guidance on a variety of issues, including what constitutes an “*Olmstead* plan.” Specifically, the DOJ explained:

An *Olmstead* plan is a public entity’s plan for implementing its obligation to provide individuals with disabilities opportunities to live, work, and be served in integrated settings. A comprehensive, effectively working plan must do more than provide vague assurances of future integrated options or describe the entity’s general history of increased funding for community services and decreased institutional populations. Instead, it must reflect an analysis of the extent to which the public entity is providing services in the most integrated setting and must contain concrete and reliable commitments to expand integrated opportunities. The plan must have specific and reasonable timeframes and measurable goals for which the public entity may be held accountable, and there must be funding to support the plan, which may come from reallocating existing service dollars...To be effective, the plan must have demonstrated success in actually moving individuals to integrated settings in accordance with the plan.¹⁹

In 2021, DOJ issued a report on its investigation of **Iowa's developmental disability system**. The report found Iowa did not have a comprehensive effectively working plan for placing people with disabilities into the community, but instead unnecessarily relied on institutional settings. Specifically, DOJ found the "State is not even tracking the number or proportion of people with I/DD [intellectual and developmental disabilities] who are in nursing facilities...nor has the State established any goals or performance benchmarks regarding the number of people it intends to serve in such institutions...There are deficiencies in Iowa's service and transition planning processes that impede timely and successful transitions in home and community-based services...and there is no comprehensive plan driving the process."²⁰

Court decisions also provide insight on what constitutes an *Olmstead* plan. One of the first cases to examine this issue was ***Frederick L. v. Dep't of Pub. Welfare of Pa.*, 422 F.3d 151 (3rd Cir. 2005)**. In that case, residents of a state psychiatric hospital brought an ADA class action to force the State of Pennsylvania to provide community services. The plaintiffs argued that Pennsylvania's so-called *Olmstead* plan was insufficient because it failed to provide "concrete, measurable benchmarks and a reasonable timeline to ascertain when, if ever, residents will be discharged to appropriate community services."²¹ The State argued that its only obligation was to demonstrate "a commitment to take all reasonable steps to continue [its past] progress."²² The Third Circuit Court of Appeals agreed with the plaintiffs finding that the State's "generalized steps" toward more community services were insufficient and did not constitute an *Olmstead* plan.²³ The court explained that an *Olmstead* plan must specify:

- the time-frame/target date for resident discharge;
- the approximate number of residents to be discharged each time period;
- the 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.²⁴

In ***Crabtree v. Goetz*, 2008 WL 5330506 (M.D. Tenn. Dec. 19, 2008)**, twenty-two adults with disabilities who were receiving substantial or full-time in-home nursing care sued the State of Tennessee for significantly cutting funding for home health care services. They sued under Title II of the ADA and Section 504 of the Rehabilitation Act arguing that due to funding cuts, plaintiffs would be forced out of their homes and into institutions. The court held that the State had not developed a "comprehensive effectively working plan" as discussed in the *Olmstead* decision. Although the State passed a law with a proposed comprehensive plan, the plan was not operational and lacked a projected date for implementation.²⁵



However, some courts have found that states have developed a valid *Olmstead* plan. For instance, in ***Sanchez v. Johnson*, 416 F.3d 1051 (9th Cir. 2004)**, the Ninth Circuit Court of Appeals found California had a valid *Olmstead* plan. Relying on the factors set forth in the *Frederick L.* decision, the court found California's plan was a comprehensive and effectively working plan where: 1) a 30 year old state law required coverage of services for people with developmental disabilities to prevent or minimize institutionalization; 2) a significant decrease in institutionalized individuals occurred over a decade; 3) the State significantly increased community based spending, home and community based waiver slots over the course of a decade; and 4) the State had a system of individualized community placement plans with extensive databases containing disabled citizens in the system.²⁶

Fundamental Alteration

As noted above, Title II regulations recognize that states do not have to modify their programs if it would fundamentally alter their services, programs or activities.²⁷ And in *Olmstead*, Justice Ginsberg said that a state can rely on the fundamental alteration defense by showing that in the allocation of available resources, 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 mental disabilities.²⁸ This raises the question, how has the fundamental alteration defense been applied post-*Olmstead*?

In many cases, states raise budget shortfalls as a basis that the changes sought by plaintiffs constitute a fundamental alteration. DOJ's *Olmstead* Statement, referenced previously, provides the following guidance with respect to the interplay between the ADA's fundamental alteration defense and budget shortfalls:

Budgetary shortages are not, in and of themselves, evidence that such relief would constitute a fundamental alteration. Even in times of budgetary constraints, public entities can often reasonably modify their programs by re-allocating funding from expensive segregated settings to cost-effective integrated settings. Whether the public entity has sought additional federal resources available to support the provision of services in integrated settings for the particular group or individual requesting the modification – such as Medicaid, Money Follows the Person grants, and federal housing vouchers – is also relevant to a budgetary defense.²⁹

Courts have supported DOJ's position that budgetary constraints do not, by themselves, constitute a fundamental alteration. For example, in ***Pennsylvania P&A v. Pennsylvania Dep't of Public Welfare*, 402 F. 3d 374 (3d Cir. 2005)**, residents of a nursing facility brought an ADA class action community integration lawsuit. In response, the State argued that it was experiencing budget shortages and therefore, it would be a fundamental

alteration to require the State to provide the requested community services. The Third Circuit Court of Appeals rejected the State's argument finding that budgetary constraints alone do not satisfy the fundamental alteration defense.³⁰ 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.³¹

Recently, a similar result was reached in ***United States v. Mississippi*, 400 F. Supp. 3d 546 (S.D. Miss. 2019)**. In this case, DOJ sued Mississippi, asserting the State's mental health system discriminated against adults with serious mental illness by unnecessarily over-relying on institutions instead of providing community-based services required by the ADA's integration mandate. The State claimed that providing these services would constitute a fundamental alteration. The court disagreed finding that the State failed to show that making proposed modifications to its mental health system would fundamentally alter the nature of the system and thus, lacked a fundamental alteration defense. Although the State claimed that there were budgetary constraints related to moving away from institutions, the court pointed out that the State's own experts acknowledged that community-based services and institutions cost the system approximately the same. Moreover, the court noted that the great weight of case precedent confirmed that budgetary constraints alone are insufficient to establish a fundamental alteration defense.³²

Courts have consistently rejected that an increase in expenditures for community services is inherently a fundamental alteration. In ***Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175 (10th Cir. 2003)**, the Tenth Circuit Court of Appeals confirmed this by holding "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."³³

Because of the inherent overhead in institutional settings, typically community services will cost the state less, and will make it more difficult for a state to assert a fundamental alteration argument based on fiscal issues. For instance, in ***Radaszewski ex rel. Radaszewski v. Maram*, 2008 WL 2097382 (N.D. Ill. March 26, 2008)**, a young man with significant disabilities sought to receive nursing services in his home rather than in an institution. He had been receiving these services at home as a minor, but once he turned 21, he was no longer eligible for that program. When he turned 21, he became eligible for the Home Services Program (HSP). Unfortunately, HSP did not provide the number of in-home nursing service hours that the plaintiff required, and the State of Illinois took the position that it could only serve him in a nursing facility. The State claimed that to serve him in his family home was a fundamental alteration of its programs not required



under the law. In 2004, the Seventh Circuit rejected the State's fundamental alteration defense and reversed the lower court's judgment on the pleadings since the State already provided this service, just not at the level requested. The court found that plaintiff's case was even stronger based on evidence that it would be less expensive for the State to serve plaintiff in his home, rather than in a nursing facility.³⁴ On remand, the district court found that providing in-home services would not fundamentally alter the nature of the State's program and services.³⁵

States have been more successful asserting a fundamental alteration defense when they can show a longstanding and demonstrated commitment to community services. For example, in ***Arc of Washington v. Braddock*, 427 F.3d 615 (9th Cir. 2005)**, an ADA lawsuit was filed to force the State of Washington to increase its Medicaid waiver slots, and thereby provide community services to more people with disabilities.³⁶ In response, the State argued it had already significantly reduced its institutional population, implemented an "*Olmstead*" plan, previously increased its Medicaid waiver cap, and significantly expanded its budget for community services. To require more, it argued, would constitute a fundamental alteration. The Ninth Circuit Court of Appeals agreed, finding that forcing Washington to apply for an increase in its Medicaid waiver program cap constituted a fundamental alteration and was not required by the ADA.³⁷

Burden of Proof

As noted above, in *Olmstead*, the Supreme Court set forth a three-part test to determine when the ADA requires states to serve people with disabilities in community settings, rather than in segregated institutions:

1. treatment professionals determine community placement is appropriate;
2. the person does not oppose community placement; and
3. the placement can be reasonably accommodated taking into account the resources available to the state and the needs of others who are receiving state-supported services.³⁸

Following the *Olmstead* decision, there was an open question as to which party has the burden of proof with respect to those three factors. A recent decision from the District of Columbia Circuit Court of Appeals in ***Brown v. District of Columbia*, 928 F.3d 1070 (D.C. Cir. 2019)** provides useful guidance. In *Brown*, people with physical disabilities living in D.C. nursing facilities filed an ADA class action lawsuit seeking community living placements and services. In ruling in favor of the plaintiffs, the D.C. Circuit explained the plaintiff has the burden to establish the first two factors (that treatment professionals determine community placement is appropriate and that the person does not oppose

community placement).³⁹ Then, the burden shifts to the state to prove the third factor - the unreasonableness of the requested accommodation. The court relied on earlier cases to support its position. ***Steimel v. Wernert*, 823 F.3d 902, 914–16 (7th Cir. 2016)** (if disabled individual desires community-based treatment and medical professional determines that such placement is appropriate, “[i]t is the state’s burden to prove that the proposed changes would fundamentally alter their programs”); ***Townsend v. Quasim*, 328 F.3d 511, 517 (9th Cir. 2003)** (“Because [the State] does not allow [the disabled individual] to receive the services for which he is qualified in a community-based, rather than nursing home, setting, [the disabled individual] can prove that the [State] has violated Title II of the ADA, unless [the State] can demonstrate that provision of community-based services to [him] and members of the class would fundamentally alter the nature of the services [it] provides.”)⁴⁰

Application of the Principles of *Olmstead* to Other Contexts

Following the *Olmstead* decision, it was unclear whether the principles articulated by the Supreme Court would be extended to community living scenarios other than adults living in state-operated institutions. It was also unclear whether the Court’s analysis would apply to contexts other than housing. As discussed below, the principles of *Olmstead* have been applied to a variety of contexts.

Extension of the *Olmstead* Decision: Private Facilities

As noted previously, the *Olmstead* case involved people with disabilities who were living in large public institutions owned and operated by the State of Georgia. The connection to Title II – services by state and local governments – was clear and undisputed. While states have historically owned and operated their own institutions, many states have also contracted with private entities to provide institutional housing for people with disabilities. It was unclear whether Title II and the principles of *Olmstead* would apply to institutional services in which states provide the funding, but do not actually own and operate the facilities. The answer by the courts to this open question has uniformly been yes and to date, no courts have found to the contrary.

The State of Illinois not only operates many public institutions for people with disabilities, but it also provides significant funding to numerous large private institutions that house people with disabilities. Following the *Olmstead* decision, disability advocates in Illinois joined together to bring three community integration class action lawsuits against the State of Illinois for its funding and reliance on privately owned and operated institutions for people with disabilities.⁴¹ (Note that even though the housing is owned and operated by private entities, the only defendants in these cases were State officials.) Confirming



that Title II of the ADA and the principles of *Olmstead* apply to states that contract with private entities to provide institutional housing and services, federal courts in Illinois granted class action status in all three of these cases. ***Ligas v. Maram*, 2006 WL 644474 (N.D. Ill. Mar. 7, 2006)** (privately owned and operated Intermediate Care Facilities for people with I/DD); ***Williams v. Blagojevich*, 2006 WL 3332844 (N.D. Ill. Nov. 13, 2006)** (privately owned and operated Institutions for Mental Disease); ***Colbert v. Blagojevich*, 2008 WL 4442597 (N.D. Ill. Sept. 29, 2008)** (privately owned and operated traditional nursing facilities).

Courts in other states have reached similar results in cases brought on behalf of people with disabilities living in state-funded, but privately owned and operated institutions. In a case similar to *Williams* referenced above, litigation was brought against the State of New York with respect to its reliance upon state-funded, but privately owned and operated adult care homes for people with mental illness. ***Disability Advocates Inc. v. Paterson*, 653 F.Supp.2d 184 (E.D.N.Y. 2009)**. In that case, the court agreed Title II and the principles of *Olmstead* applied to these facilities.⁴² In a case similar to the *Ligas* case referenced above, class action status was granted in litigation brought against the State of Ohio with respect to its reliance on state-funded, but privately owned and operated institutions for people with I/DD. ***Ball v. Kasich*, 307 F.Supp.3d 701 (S.D. Ohio 2018)**.

Extension of the *Olmstead* Decision: Risk of Institutionalization

The plaintiffs in *Olmstead* were housed in institutions and were seeking to live in the community. Does that mean Title II and the principles of *Olmstead* are limited to people with disabilities who live in institutions? What about people with disabilities who live in the community, but may be at risk of institutionalization if the state does not provide sufficient community services?

In its *Olmstead* Statement, DOJ made clear that the integration mandate also applies to people at risk of institutionalization:

The ADA and the *Olmstead* decision extend to persons at serious risk of institutionalization or segregation and is not limited to individuals currently in institutional or other segregated settings. Individuals need not wait until the harm of institutionalization or segregation occurs or is imminent. For example, a plaintiff could show sufficient risk of institutionalization to make out an *Olmstead* violation if a public entity's failure to provide community services or its cuts to such services will likely cause a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution.⁴³

Courts have consistently agreed with DOJ that the principles of *Olmstead* extend to people at risk of institutionalization. One of the first cases to explore this issue was ***Fisher***

v. Oklahoma Health Care Authority, 335 F.3d 1175 (10th Cir. 2003). In *Fisher*, the State of Oklahoma imposed a five-prescription drug cap for people living in the community, but there was no such cap for nursing facility residents. Plaintiffs filed a lawsuit arguing that Oklahoma’s policy placed them at risk of institutionalization and therefore, violated Title II of the ADA. The Tenth Circuit Court of Appeals agreed with the plaintiffs finding that Oklahoma’s policy was a violation of the ADA’s integration mandate as it put people with disabilities at risk of institutionalization. The court also held that the *Olmstead* decision is not limited to people currently living in institutions. The court explained that people “who, by reason of a change in state policy, stand imperiled with segregation,” may challenge that policy under the integration mandate.⁴⁴ Similarly, the *Ligas* case, referenced previously, was certified as a class action on behalf of people living in private institutions as well as on behalf of the thousands of people living in the family home who without services were at risk of institutionalization.⁴⁵

The “at risk of institutionalization” scenario often arises when states experience budget shortfalls, and as a result, propose cutting community services. In those situations, the service cuts place people with disabilities in an untenable position - try to survive in the community with reduced services or surrender their freedom and independence and move into an institution to get the services they need. In DOJ’s *Olmstead* Statement, it confirmed that budget cuts can violate the ADA and *Olmstead* when significant funding cuts to community services create a risk of institutionalization or segregation. “The most obvious example of such a risk is where budget cuts require the elimination or reduction of community services specifically designed for individuals who would be institutionalized without such services. In making such budget cuts, public entities have a duty to take all reasonable steps to avoid placing individuals at risk of institutionalization.”⁴⁶ DOJ reaffirmed its position in a Statement of Interest filed in the *Ball* case discussed earlier.⁴⁷

Courts have also consistently found that ADA cases can be brought against states if budget cuts would place people with disabilities at risk of institutionalization. In ***V.L. v. Wagner, 669 F.Supp.2d 1106 (N.D. Cal. 2009)***, California proposed reducing or terminating in-home support services for older adults and people with disabilities. Plaintiffs filed suit to prevent the service cuts from being implemented. Plaintiffs argued the State’s proposed cuts violated Title II of the ADA because such cuts would place them at risk of institutionalization. The court agreed with plaintiffs holding that budget cuts could violate the ADA’s integration mandate. Accordingly, the court issued a preliminary injunction, which prevented the budget cuts from taking place while the litigation was pending.⁴⁸ Similarly, in the *Crabtree* case discussed previously, adults with disabilities receiving in-home nursing care were at risk of institutionalization when Tennessee



proposed significantly cutting funding for home health care services. The court found that plaintiffs would be at risk of institutionalization if the proposed funding cuts were imposed. Accordingly, the court issued a preliminary injunction to prevent implementation of the cuts while the litigation was pending.⁴⁹

Extension of the *Olmstead* Decision: Community Services for Children

As noted previously, the plaintiffs in *Olmstead* were two adults. Since *Olmstead*, numerous community integration cases have been filed on behalf of children with disabilities. In those cases, courts have consistently applied the same analysis, even though the plaintiffs were minors.

For example, an ADA suit was brought by three children and a disability organization alleging that the District of Columbia failed to provide sufficient community mental health services to kids, forcing them to be institutionalized. ***M.J. v. District of Columbia*, 401 F.Supp.3d 1 (D.D.C. 2019)**. In denying D.C.'s Motion to Dismiss, the court found that plaintiffs properly alleged that D.C.'s failure to provide community services forced them into institutions.⁵⁰

Courts have used similar analysis regarding the placement of foster care children in institutional placements. ***G.K. v. Sununu*, 2021 WL 4122517 (D.N.H. Sep. 9, 2021)**. In *G.K.*, plaintiffs alleged that New Hampshire was violating the ADA and Section 504 of the Rehabilitation Act by unnecessarily placing foster children with disabilities in congregate care facilities, rather than in the most integrated setting. The court denied the State's Motion to Dismiss allowing the case to proceed, including plaintiffs' claim that the ADA and *Olmstead* apply to placement of foster care children. The court referenced the Supreme Court's findings that confinement in institutions inherently diminishes the lives of people with disabilities and cited favorably to the DOJ's integration mandate regulation and guidance.⁵¹ The court also rejected the State's argument that there is no ADA violation when congregate settings have non-disabled children living there as well.⁵²

DOJ has handled numerous investigations and cases focusing on the improper institutionalization of children. For instance, after conducting an investigation, DOJ recently issued a letter to the State of Maine finding that its inadequate community behavioral health services for children forces children with mental illness into institutions as a condition for receiving services, and thus, violates the ADA.⁵³ Similarly, after receiving a complaint that Rhode Island failed to provide an autistic child with appropriate community-based services, causing him to be unnecessarily segregated in an out-of-state facility, DOJ conducted an investigation of Rhode Island's services for children with I/DD. The investigation revealed a system-wide problem, resulting in a settlement agreement

in which Rhode Island has agreed to ensure that kids with I/DD have access to community services.⁵⁴

Extension of the *Olmstead* Decision: Integrated Employment Services

For many years, it was presumed that *Olmstead* was limited to housing. However, the landscape of the application of the *Olmstead* decision dramatically changed when a court recognized for the first time that the ADA's integration mandate applied to employment services. In *Lane v. Kitzhaber*, 841 F. Supp. 2d 1199 (D. Ore. 2012), an ADA lawsuit was filed by eight individuals with I/DD who received employment services from the State of Oregon. These services were provided in segregated settings called sheltered workshops, in which they were denied contact with people without disabilities, other than staff. Plaintiffs alleged they were able and would prefer to work in an integrated employment setting. They argued that the ADA's integrated mandate not only applied to where you live (housing), but also applied to how you spent your day (employment). The State argued that no other case had applied the integration mandate in a context other than one in which the state's action placed plaintiffs in institutions or at risk for institutionalization.⁵⁵ In a seminal decision, the judge in *Lane* held that Title II's integration mandate applies to the provision of employment-related services and does not require plaintiffs to show that they are institutionalized or at risk of institutionalization.⁵⁶ Following this decision, the court granted the plaintiffs motion for class certification⁵⁷ and DOJ subsequently joined the litigation via intervention.⁵⁸ Thereafter, a comprehensive settlement was approved in which the State agreed, among other things, to the following:

- provide real jobs in competitive integrated employment for approximately 1,100 individuals in sheltered workshops; and provide vocational services that lead to integrated employment for 4,900 youth with I/DD leaving public schools.⁵⁹

In 2022, the court found that the State of Oregon had fulfilled the terms of the settlement agreement and the case was dismissed.⁶⁰

Shortly after the *Lane* decision, DOJ investigated Rhode Island's segregated employment practices. Thereafter, DOJ entered into the nation's first statewide settlement agreement to vindicate the civil rights of people with disabilities who were unnecessarily segregated in sheltered workshops and facility-based day programs. The Consent Decree provided relief to approximately 3,250 individuals with I/DD over ten years. Rhode Island agreed to provide supported employment placements to approximately 2,000 individuals, including at least 700 people currently in sheltered workshops, at least 950 people currently in facility-based non-work programs, and approximately 300-350 students leaving high school. Rhode Island agreed that individuals in these target populations would receive sufficient services to support a normative 40-hour work week, with the

expectation that individuals will work, on average, in a supported employment job at competitive wages for at least 20 hours per week. Additionally, the State agreed to provide transition services to approximately 1,250 youth between the ages of 14 and 21, ensuring that transition-age youth have access to a wide array of transition, vocational rehabilitation, and supported employment services intended to lead to integrated employment outcomes after they leave secondary school.⁶¹ Implementation of the Consent Decree is ongoing.

DOJ's work on this issue has also been critical. DOJ's *Olmstead* Statement, issued prior to the *Lane* case made clear that the ADA's integration mandate and the principles of the *Olmstead* are much broader. Specifically, it said: "Integrated settings are those that provide individuals with disabilities opportunities to live, **work**, and receive services in the greater community, like individuals without disabilities" and that *Olmstead* remedies can include "supported employment."⁶²

Subsequently, in 2016 following the decision in *Lane*, DOJ issued a more detailed document called "Statement of the Department of Justice on Application of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* to State and Local Governments' Employment Service Systems for Individuals with Disabilities." ("DOJ's Employment Statement")⁶³ This document indicated it was supplementing DOJ's *Olmstead* Statement by providing more details on *Olmstead's* application to employment services. Specifically, the DOJ's Employment Statement 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." However, in 2017, following the election of Donald Trump, DOJ withdrew its Employment Statement.⁶⁴ Since then, disability advocates have advocated with both the Trump and Biden administrations to reinstate DOJ's Employment Statement, but to date it has not been reinstated. Despite this, DOJ's original *Olmstead* Statement remains viable and, as noted above, unequivocally states that the ADA's integration mandate applies to employment services.

***Olmstead* Extension: Education**

DOJ has taken the position that the principles articulated in *Olmstead* also apply to education. In 2015, DOJ conducted an investigation and sent a Findings Letter to the State of Georgia stating that the State's administration of the Georgia Network for Educational and Therapeutic Support (GNETS) program violated Title II of the ADA by unnecessarily segregating students with disabilities from their peers in school.⁶⁵ Specifically, DOJ found that Georgia failed to ensure that students with behavior-related disabilities receive services and supports that could enable them to



remain in, or return to, the most integrated educational placements appropriate to their needs. In explaining the application of *Olmstead* to education, DOJ stated:

Just as the plaintiffs in *Olmstead* faced the day-to-day injury of segregation in an institutional residential setting, students with disabilities who have been inappropriately segregated from their peers without disabilities also face tremendous ongoing harms: they may become victims of unwarranted stigma and may be deprived of essential opportunities to learn and to develop skills enabling them to effectively engage with their peers in ways that teach them to participate in mainstream society as they mature into adulthood. These injuries are exacerbated when, as in the GNETS Program, educational settings are unequal to, and less effective than, the settings provided to students without disabilities.⁶⁶

After a resolution could not be reached, DOJ filed a lawsuit in 2016 against the State of Georgia to remedy violations of the ADA pertaining to the State's failure to provide thousands of students with behavior-related disabilities with appropriate mental health and therapeutic educational services and supports in the most integrated setting appropriate to their needs. The lawsuit alleges that students with disabilities are unnecessarily segregated and provided unequal educational opportunities in GNETS Centers and Classrooms, where they are isolated from their non-disabled peers, when they could be served in general education classrooms. A similar lawsuit was filed against Georgia by disability rights advocates. Georgia's efforts to have both cases dismissed were denied by the courts and the litigation continues.⁶⁷

Applying *Olmstead's* integration mandate to education also arose in a case involving COVID-19 masking in schools. ***Arc of Iowa v. Reynolds*, 559 F.Supp.3d 861 (S.D. Iowa 2021)**. After a state law was passed that prohibited school districts from adopting universal masking requirements as a condition of attendance, parents of public children with disabilities filed an ADA lawsuit seeking to prevent the law from being implemented. The court granted plaintiffs' motion for a preliminary injunction, allowing local districts to require universal masking. This ruling is significant for this legal brief because the court emphasized that forcing students with disabilities to online learning because of the risks they would face if they attended school in person with students not wearing masks could violate the ADA's integration mandate.⁶⁸

***Olmstead* Extension: Criminal Legal System**

Another unexpected extension of the *Olmstead* decision has occurred in cases involving the criminal legal system. There are two scenarios in which the principles of *Olmstead*



and the ADA's integration mandate have been applied to the criminal legal system: 1) challenging segregation or solitary confinement and the lack of access to prison programming; and 2) seeking community-based housing and supports prisoners need for successful reentry into the community.⁶⁹

One of the first cases discussing the ADA's prohibition of unnecessary segregation of prisoners was ***Henderson v. Thomas*, 891 F.R.D. 1296 (M.D. Ala. 2012)**. In *Henderson*, a group of prisoners with HIV successfully challenged the Alabama Department of Corrections' HIV policy that categorically restricted people in custody with HIV to certain housing units, limited their ability to participate in prison programs, and required them to wear white armbands. The court ruled that Alabama was in violation of Title II of the ADA, finding that its segregation policy was not supported by any scientific or medical evidence.⁷⁰ More recently, DOJ conducted an investigation of Nevada's policy of segregating prisoners with HIV and similarly found that its segregation policy violated Title II of the ADA.⁷¹ Although neither the court in *Henderson*, nor the DOJ Findings Letter specifically reference the *Olmstead* decision, DOJ's Findings Letter in Nevada did cite to DOJ's integration mandate regulation relied upon by the Supreme Court in *Olmstead*.⁷²

A more recent case explicitly referenced *Olmstead's* application to the criminal legal system. ***Dunn v. Dunn*, 318 F.R.D. 652 (M.D. Ala. 2016)**. In *Dunn*, suit was brought against the Alabama Department of Corrections under Title II of the ADA for, among other things, segregating prisoners with disabilities. In an opinion granting class certification, the court stated that "as to requests that disabled prisoners be housed separately from other prisoners, the court agrees with the parties that imposing such a requirement would be inconsistent with the ADA's integration mandate," and then cited favorably to the Supreme Court's decision in *Olmstead*.⁷³

It should be noted that in addition to DOJ's integration mandate regulation referenced throughout this brief,⁷⁴ 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;
- (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.⁷⁵

The ADA's integration mandate and the principles of *Olmstead* have also been applied to incarcerated people with disabilities re-entering society. ***U.S. v. Los Angeles County, 2016 WL 2885855 (C.D. Cal. May 17, 2016)***. In this case, the U.S. filed a complaint against Los Angeles County alleging, among other things, constitutionally deficient discharge planning from the County jail. On the same day the complaint was filed, a stipulated settlement was submitted to the court. With respect to discharge planning, the settlement provided that prisoners with intense mental health needs would be discharged to mental health facilities, called Institutions for Mental Disease. Individuals with mental illness intervened to challenge the settlement's discharge planning provisions. Specifically, intervenors argued that discharging people with mental illness into institutions conflicts with the *Olmstead* decision and the ADA's requirement that public entities "administer services, programs, and activities in the most integrated setting appropriate." The court agreed with the intervenors and denied Defendant's judgment on the pleadings.⁷⁶

Applying *Olmstead* to the criminal legal system has also been made in cases in which the discharge of prisoners with disabilities has been improperly delayed because of inadequate community services. ***M.G. v. New York State Office of Mental Health, 572 F.Supp.3d 1 (S.D.N.Y. 2021)***. In *M.G.*, plaintiffs alleged they were held in prison past their lawful release dates (in some cases over a year) because of the lack of community-based mental health housing programs. The judge denied the State's Motion to Dismiss finding that the plaintiffs had sufficiently alleged a violation of the ADA's integration mandate.⁷⁷ A case with similar facts that has since settled was filed in Vermont.⁷⁸

***Olmstead* Extension: Right to Institutional Care**

Soon after the *Olmstead* decision was rendered, cases were filed arguing that the Supreme Court's ruling also gives people with disabilities the right to institutional care. Typically, these cases were filed when states announced a decision to close institutions. In support of this argument, plaintiffs seeking to keep institutions open cited to the following language from the *Olmstead* decision: "Nothing in the ADA or its implementing regulations condones forcing people with disabilities 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."⁷⁹ Despite this language, those initial efforts to use the *Olmstead* decision to prevent states from closing institutions were uniformly unsuccessful. ***Richard C. v. Houstoun, 196 F.R.D. 288, 292***

(W.D. Pa. 1999) (“it does not logically follow [from *Olmstead*] that institutionalization is required if any of the three *Olmstead* criteria is not met”); ***Richard S. v. Department of Developmental Services*, 2000 WL 35944246, at *3 (C.D. Cal. March 2000)** (“there is no basis [in *Olmstead*] for saying that a premature discharge into the community is ADA discrimination based on disability.”)

More than a decade following those initial cases, this argument was made and rejected again by courts in New Jersey - ***Sciarrillo ex rel. St. Amand v. Christie*, 2013 WL 6586569 (D.N.J. Dec. 13, 2013)** - and in Illinois - ***Illinois League of Advocates for the Developmentally Disabled v. Quinn*, 2013 WL 3168758 (N.D. Ill. June 20, 2013)**. In *Sciarrillo*, plaintiffs were adults with disabilities who resided at one of two New Jersey state-run institutions. The State decided to close those facilities and residents were given two options: either move to a community placement, or move to a different developmental disability institution. Plaintiffs argued under *Olmstead* New Jersey could not close an institution until every resident at those facilities consented to a transfer and a treatment professional had determined that another facility was the most appropriate place to receive services.⁸⁰ The court rejected this argument finding “that plaintiffs’ interpretation of *Olmstead* is untenable. Simply put, there is no basis in *Olmstead* for saying that a premature discharge into the community is an ADA *discrimination* based on disability. Indeed, there is no ADA provision that *providing* community placement is discrimination.”⁸¹

Similarly, in the *Illinois League* case, after the Governor announced plans to close two state I/DD institutions, suit was filed on behalf of residents whose family members did not want them to move into the community. Allegations included a claim that closure would violate the ADA and be contrary to the *Olmstead* decision. The court found: “[t]his 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—based on our close reading of *Olmstead* and the few relevant authorities—it does not follow from *Olmstead* that the converse is true.”⁸²

Conclusion

The Supreme Court’s decision in *Olmstead* has been far-reaching. Over the past twenty-three years, *Olmstead* has been the legal basis for thousands of people with disabilities successfully moving from institutional settings into the community where they can lead more independent and self-actualized lives. Moreover, the legacy of *Olmstead* is not limited to integrated housing, but also has provided people with disabilities with

integrated opportunities in the context of employment, education, and even the criminal legal system. Undoubtedly, *Olmstead* will continue to be applied in new ways and further positively impact the lives of people with disabilities.

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² See Mary C. Cerreto, *Olmstead: The Brown v. Board of Education for Disability Rights, Promises, Limits, and Issues*, 3 Loy. J. Pub. Int. L 47 (2001); See also, Samuel R. Bagenstos, Justice Ginsburg and the Judicial Role in Expanding “We the People”: The Disability Rights Cases, 104 COLUM. L. REV. 49 (2004).

³ See generally, President’s Committee on Mental Retardation, *Mental Retardation: Past and Present* (January 1977), https://www.acf.hhs.gov/sites/default/files/add/gm_1976.pdf. Note that the preferred term today is “intellectual disability” or “developmental disability.” The term “mental retardation” is only used in this brief to reference a study conducted before a consensus had been reached about changing the terminology.

⁴ 42 U.S.C. § 1396n.

⁵ 42 U.S.C. § 12101 *et seq.*

⁶ 42 U.S.C. § 12101(b)(1).

⁷ 42 U.S.C. § 12101(a)(2).

⁸ 42 U.S.C. § 12132.

⁹ 28 CFR § 35.130(d).

¹⁰ 28 CFR § 35, App. A, p. 450.

¹¹ 28 CFR § 35.130.

¹² 28 CFR § 35.130(b)(7).

¹³ *Olmstead* at 600 (1999).

¹⁴ *Id.* at 600-601.

¹⁵ *Id.* at 606.

¹⁶ *Id.* at 605-606.

¹⁷ *Id.* at 605-606.

¹⁸ https://www.ada.gov/olmstead/q&a_olmstead.htm Note, DOJ’s enforcement of the integration mandate has varied significantly during different administrations. 2001-2008 (Bush administration) - minimal affirmative community integration litigation following *Olmstead*; 2009-2016 (Obama administration) - very pro-active - approximately 50 *Olmstead* cases in which DOJ was involved. DOJ also issued guidance on *Olmstead* cited favorably by courts; 2017-2020 (Trump administration) - withdrew *Olmstead* guidance on employment and filed minimal affirmative *Olmstead* litigation; 2021-2022 (Biden administration) - a return to aggressive enforcement of *Olmstead*.

¹⁹ *Id.* See Question 12.

²⁰ U.S. Department of Justice Report of Investigation of Glenwood and Woodward Resource Centers, <https://www.justice.gov/crt/case-document/file/1454306/download>

²¹ *Frederick L. v. Dep’t of Pub. Welfare of Pa.*, 422 F.3d 151, 155 (3rd Cir. 2005).

²² *Id.* at 156.

²³ *Id.* at 158-159.

²⁴ *Id.* at 160. See also, *Disability Advocates, Inc. v. Paterson*, 2009 WL 2872833 (E.D.N.Y. Sept. 8, 2009)(citing the same requirements for an *Olmstead* plan).

²⁵ *Crabtree v. Goetz*, 2008 WL 5330506, at *29 (M.D. Tenn. Dec. 19, 2008).

²⁶ *Sanchez v. Johnson*, 416 F.3d 1051, 1066-1068 (9th Cir. 2004).

²⁷ 28 CFR § 35.130(b)(7).

²⁸ *Olmstead* at 605-606.

²⁹ https://www.ada.gov/olmstead/q&a_olmstead.htm, Question 14.

³⁰ *Pennsylvania P&A v. Pennsylvania Dep’t of Public Welfare*, 402 F. 3d 374, 382-383 (3d Cir. 2005).

³¹ *Id.* at 383.

³² *United States v. Mississippi*, 400 F. Supp. 3d 546, 577 (S.D. Miss. 2019).

³³ *Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175, 1183 (10th Cir. 2003).

³⁴ *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 613-615 (7th Cir. 2004).

³⁵ *Radaszewski ex rel. Radaszewski v. Maram*, 2008 WL 2097382, at * 15 (N.D. Ill. March 26, 2008).

³⁶ *Arc of Washington v. Braddock*, 427 F.3d 615, 619 (9th Cir. 2005).

³⁷ *Id.* at 621-622.

³⁸ *Id.* at 606.

³⁹ *Brown v. District of Columbia*, 928 F.3d 1070, 1078 (D.C. Cir. 2019).

⁴⁰ *Id.*

⁴¹ Barry C. Taylor, Achieving Systemic Community Integration for People with Disabilities Through an Innovative Model of Collaboration, Clearinghouse Review Journal of Poverty Law and Policy, Vol. 46, May-June 2012.

⁴² *Disability Advocates Inc. v. Paterson*, 653 F.Supp.2d 184, 227 (E.D.N.Y. 2009). Note this decision was vacated on other grounds, see *Disability Advocates Inc. v. New York Coalition for Quality Assisted Living, Inc.*, 675 F.3d 149 (2nd Cir. 2012).

⁴³ https://www.ada.gov/olmstead/q&a_olmstead.htm, Question 6.

⁴⁴ *Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175, 1181-1182 (10th Cir. 2003).

⁴⁵ *Ligas* at *5.

⁴⁶ https://www.ada.gov/olmstead/q&a_olmstead.htm, Question 9.

⁴⁷ https://www.ada.gov/olmstead/documents/ball_kasich_soi.pdf

⁴⁸ *V.L. v. Wagner*, 669 F.Supp.2d 1106, 1121-1122 (N.D. Cal. 2009).

⁴⁹ *Crabtree* at *30.

⁵⁰ *M.J. v. District of Columbia*, 401 F.Supp.3d 1, 13 (D.D.C. 2019).

⁵¹ *G.K. v. Sununu*, 2021 WL 4122517, at *10-12 (D.N.H. Sep. 9, 2021).

⁵² *Id.* at *11-12.

⁵³ <https://www.justice.gov/opa/press-release/file/1514326/download>

⁵⁴ https://www.ada.gov/olmstead/documents/ri_hhs_sa.pdf

⁵⁵ *Lane v. Kitzhaber*, 841 F. Supp. 2d 1199, 1205 (D. Ore. 2012).

⁵⁶ *Id.* at 1205-1206.

⁵⁷ *Lane v. Kitzhaber*, 283 F.R.D. 587 (D. Ore. 2012).

⁵⁸ https://www.ada.gov/olmstead/documents/lane_complaint.pdf

⁵⁹ https://www.centerforpublicrep.org/wp-content/uploads/2017/02/Lane_Settlement-Agreement.executed.pdf

⁶⁰ <https://www.justice.gov/crt/case/united-states-v-oregon-lane-v-brown>

⁶¹ https://www.ada.gov/olmstead/olmstead_cases_list2.htm#ri-state

⁶² https://www.ada.gov/olmstead/q&a_olmstead.htm, Question 1 (emphasis added) and Question 15.

⁶³ https://www.centerforpublicrep.org/wp-content/uploads/2017/12/olmstead_guidance_employment-10.16.pdf

⁶⁴ <https://www.centerforpublicrep.org/initiative/doj-withdraws-olmstead-employment-guidance/>

⁶⁵ https://www.ada.gov/olmstead/documents/gnets_lof.pdf

⁶⁶ https://www.ada.gov/olmstead/documents/gnets_lof.pdf, p.7.

⁶⁷ *U.S. v. Georgia*, 461 F.Supp.3d 1315 (N.D. Ga. 2020); *Georgia Adv. Office v. Georgia*, 447 F.Supp.3d 1311(N.D. Ga. 2020).

⁶⁸ *Arc of Iowa v. Reynolds*, 559 F.Supp.3d 861, 880 (S.D. Iowa 2021), vacated on other grounds, 33 F.4th 1042 (8th Cir. 2022).

⁶⁹ Jamelia N. Morgan, The Paradox of Inclusion: Applying Olmstead's Integration Mandate in Prisons, 27 Georgetown Journal on Poverty Law and Policy (Winter 2020).

⁷⁰ *Henderson v. Thomas*, 891 F.R.D. 1296, 1308-1309 (M.D. Ala. 2012).

⁷¹ https://www.ada.gov/briefs/ndoc_lof.pdf

⁷² *Id.* at p. 3.

⁷³ *Dunn v. Dunn*, 318 F.R.D. 652, 670 (M.D. Ala. 2016).

⁷⁴ 28 CFR § 35.130(d).

⁷⁵ 28 CFR § 35.152(b).

⁷⁶ *U.S. v. Los Angeles County*, 2016 WL 2885855, at *7 (C.D. Cal. May 17, 2016).

⁷⁷ *M.G. v. New York State Office of Mental Health*, 572 F.Supp.3d 1, 13-14 (S.D.N.Y. 2021).

⁷⁸ Complaint, *Prisoner A v. Vermont*, Civil Action No. 2:15-cv-00221-wks (D. Vt. Oct. 15, 2015).

⁷⁹ See *Olmstead* at 601–02, 604.

⁸⁰ *Sciarrillo ex rel. St. Amand v. Christie*, 2013 WL 6586569, at *15 (D.N.J. Dec. 13, 2013).

⁸¹ *Id.* at 4. (emphasis in original)

⁸² *Illinois League of Advocates for the Developmentally Disabled v. Quinn*, 2013 WL 3168758, at *5 (N.D. Ill. June 20, 2013), *affirmed on other grounds*, 803 F.3d 872 (7th Cir. 2015).