

## APPENDIX G: THE OLMSTEAD DECISION

The plaintiffs, L. C. and later E. W., were women with mental retardation, one of whom was also diagnosed with schizophrenia; the other was diagnosed with a personality disorder. The women were voluntarily admitted to Georgia Regional Hospital in Atlanta and confined for treatment in a psychiatric unit. Although treatment professionals eventually concluded that each of the women could be cared for appropriately in a community-based program, the women remained institutionalized in the Hospital. The women wanted to be placed in community care, so they filed suit against Tommy Olmstead, Georgia Commissioner of Human Services, and collectively the State of Georgia under 42 U.S.C. § 1983<sup>1</sup> and Title II of the ADA, claiming that the State violated Title II in failing to place them in a community-based program once their treatment professionals determined that such placement was appropriate. The Supreme Court ruled that “unjustified isolation,” institutionalization when a doctor deems community treatment equally beneficial, “is properly regarded as discrimination based on disability”<sup>2</sup> and thus violated Title II of the ADA. The decision “clearly challenges federal, state, and local governments to develop more opportunities for individuals with disabilities through more accessible systems of cost-effective community-based services.”<sup>3</sup>

In the first year after the *Olmstead* decision, forty states formed task forces, commissions, or state agency work groups to assess their current long-term care systems.<sup>4</sup> The U.S. Supreme Court ruled that states must provide services in the most integrated setting appropriate to the needs of qualified individuals with disabilities and make “reasonable modifications” in programs and activities. Modifications “fundamentally altering” the nature of services, programs, or activities are not required. As a result, the federal government has encouraged states to plan for reforms not only in the health arena, but also in the areas of transportation, housing, education, and other social supports to fully integrate people with disabilities into the least restrictive settings. Of the 40 states that were reviewing their long-term care systems in 2001, 18 states had issued long-term care plans or significant papers that

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<sup>1</sup> Public Health and Welfare, Civil Rights Section. Civil action for deprivation of rights.

<sup>2</sup> National Council on Disability ADA court cases, ([http://www.ncd.gov/newsroom/publications/pdf/supremecourt\\_ada.pdf](http://www.ncd.gov/newsroom/publications/pdf/supremecourt_ada.pdf)).

<sup>3</sup> Americans with Disabilities Act/ *Olmstead* Decision, Centers for Medicare and Medicaid Services, U.S. DHHS, (<http://www.cms.hhs.gov/olmstead/>).

<sup>4</sup> National Conference of State Legislatures. (2002). *Long-Term Care Recent Developments and Policy Directions*. (<http://www.ncsl.org/programs/health/forum/ltc/ltcmain.htm>). William T. Pound, Executive Director, 1560 Broadway, Suite 700, Denver, Colorado 80202.

addressed options for serving more people with disabilities in home and community-based settings, as of January 2002.<sup>5</sup>

New Mexico's Olmstead Task Force was initiated by Senate Joint Memorial 54, which were introduced in the 2002 legislative session.<sup>6</sup> The Governor's Committee on the Concerns of the Handicapped (GCCH) is the lead agency, but the Olmstead Task Force has no official members and is open to all stakeholders. In addition to the GCCH, organizations participating are the NMDDPC; the Arc Of New Mexico; the CILs; the State Agency on Aging; the Protection and Advocacy System; DOH; HSD; the New Mexico Children, Youth, and Families Department; the Mortgage Finance Authority; the Home Care Association; the Nursing Home Association; and others.

The joint memorial directs the Olmstead Task Force to develop a comprehensive and coordinated State response to the United States Supreme Court decision. One element of the plan will be to create more choices for recipients of services, with a focus on home and community-based services in the "most integrated setting." The Task Force has been meeting monthly since May 2002 to review national best practices and to receive input in developing the State's Olmstead plan. In October 2002, the Task Force presented a draft plan to the Legislative Finance Committee of the State Legislature.<sup>7</sup>

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<sup>5</sup> National Conference of State Legislatures. (2002). *Long-Term Care Recent Developments and Policy Directions*. (<http://www.ncsl.org/programs/health/forum/ltc/ltcmain.htm>). William T. Pound, Executive Director, 1560 Broadway, Suite 700, Denver, Colorado 80202.

<sup>6</sup> Senate Joint Memorial 54 (<http://legis.state.nm.us/Sessions/02%20Regular/FinalVersions/senate/SJM054.pdf>).

<sup>7</sup> James Parker. (2002, September 17). GCCH, e-mail.