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The Americans with Disabilities Act and Rights to Community Care: *Olmstead v. L.C.*

(name redacted)
Legislative Attorney
American Law Division

Summary

The Supreme Court granted certiorari on December 14, 1998 in *Olmstead v. L.C.* to address the issue of whether the public services portion of the Americans with Disabilities Act (ADA) compels the state of Georgia to provide treatment for the plaintiff mentally disabled persons in community placement when such treatment could be provided in a state mental institution. For a more detailed discussion of the ADA in general see Jones, "The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues," CRS Report 98-921 (Nov. 4, 1998). This report will not be updated.

Background

The Americans with Disabilities Act, 42 U.S.C. §§12101 *et seq.*, provides broad nondiscrimination protection for individuals with disabilities in employment, public services, public accommodations and services operated by public entities, transportation, and telecommunications. More specifically, at 42 U.S.C. §12132 the ADA prohibits discrimination against persons with disabilities in the provision of public services by state and local governments. The Department of Justice has promulgated regulations which state that a "public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."[1] In April 1998 the court of appeals for the eleventh circuit held that the ADA and its regulations prohibited a state from confining disabled individuals in state run institutions when those individuals could be appropriately treated in a more integrated community setting.[2] The Supreme Court granted certiorari on December 14, 1998.

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[1] 28 C.F.R. §35.130(d).

[2] *L.C. by Zimring v. Olmstead*, 138 F.3d 893 (11th Cir. 1998). A similar case in the third circuit reached the same conclusion. See *Helen L. v. DiDario*, 46 F.3d 325 (3d Cir. 1995), *cert. denied, sub nom. Pennsylvania Secretary of Public Welfare v. Idell*, 516 U.S. 813 (1995).

Court of Appeals Decision

L.C. by Zimring v. Olmstead, *supra*, was an action brought by two patients housed in a state psychiatric hospital challenging their continued confinement as a failure to provide care in the most integrated setting appropriate and thus violating the ADA. The plaintiffs prevailed on a summary judgment in the district court and the case was then appealed to the eleventh circuit which affirmed the district court's decision.

The State argued that the district court's application of the statutory and regulatory language was contrary to the requirement of the ADA that the discrimination against an individual with a disability be "by reason of such disability." The State contended that the plaintiffs did not show that they were denied community placements available to individuals without disabilities because of disability since such placements were not provided for individuals without disabilities. The court of appeals observed that, "reduced to its essence, the State's argument is that Title II of the ADA affords no protection to individuals with disabilities who receive public services designed only for individuals with disabilities." The court of appeals examined the statutory language and the regulations set forth above and found that "by definition, where, as here, the State confines an individual with a disability in an institutionalized setting when a community placement is appropriate, the State has violated the core principle underlying the ADA's integration mandate." At 897. In addition, the legislative history of the ADA and the history of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, were examined and found to support the holding of the district court.

The court of appeals also rejected the State's claim that the denial of community placement was due to the State's lack of funds, not the plaintiff's disabilities. The court observed that the ADA does not require the State to provide services if these services would require a fundamental alteration in its programs. However, in the situation presented, the court found that there was not sufficient evidence to make a determination of whether the services sought would require a fundamental alteration and so remanded this issue to the district court for further proceedings.

The limited nature of its ruling was also emphasized by the court. *Olmstead* was not a class action suit and applied only to the two individuals who had shown that they were qualified for a community based program. In addition, the court of appeals specifically stated: "We emphasize that our holding does not mandate the deinstitutionalization of individuals with disabilities. Instead, we hold that where, as here, a disabled individual's treating professionals find that a community-based placement is appropriate for that individual, the ADA imposes a duty to provide treatment in a community setting--the most integrated setting appropriate to that patient's needs. Where there is no such finding, on the other hand, nothing in the ADA requires the deinstitutionalization of that patient." At 902.

Implications

Despite the court of appeal's limiting language, the decision of the eleventh circuit in *Olmstead* has led to significant controversy. Twenty two states and the territory of Guam filed an amicus brief with the Supreme Court asking the Court to review the eleventh circuit's decision and stating that "the broad-ranging impact on the states of the Eleventh

Circuit's holding cannot be underestimated....".[3] This brief contended that the eleventh circuit's opinion had been "relied upon in several lawsuits designed to reshape the manner in which services (**not provided to nondisabled persons**) are provided by the states to individuals with disabilities."[4] In addition, the brief argued that the eleventh circuit's decision has a "profound" impact on the provision of services in various contexts and would impose a significant cost burden.

Disability advocates have agreed that the decision by the Supreme Court could be significant but differ on the possible meaning of the decision. An attorney who was involved in a similar lawsuit in Pennsylvania[5] was quoted as stating: "This will be the defining moment for the ADA." He went on to state that "if the Supreme Court rules in favor of Georgia, the ADA will become a mere shell of what it is intended to be, stripping away its major civil rights provision — integration."[6]

The Supreme Court's decision will be only the fourth ADA case decided by the Court[7] although the Court currently has granted certiorari in four other ADA cases in addition to *Olmstead*.[8] The decision in *Olmstead* could be a major ADA decision if the Supreme Court decides the case on the issues relating to the requirement of integration. Although the Court could emphasize the limited nature of the eleventh circuit's decision, it is probably unlikely that it will avoid the issues in this manner. It is somewhat unusual for the Supreme Court to grant certiorari in a case like *Olmstead* where there is no conflict between various judicial circuits and when this occurs, the Supreme Court often reverses the lower court's decision. Whether this will be the situation in *Olmstead* remains to be seen.

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[3] The twenty two states are Florida, Alabama, California, Colorado, Delaware, Hawaii, Louisiana, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming.

[4] Amicus Curiae Brief of the States of Florida, et al., in support of petitioners, On Petition for a Writ of Certiorari, No. 98-536, at 1. (Bold in original).

[5] *Helen L. v. DiDario*, 46 F.3d 325 (3d Cir. 1995), *cert. den. sub nom. Pennsylvania Secretary of Public Welfare v. Idell S.*, 516 U.S. 813 (1995).

[6] Michael Auberger, "Disability Rights Group Says Governors Declare War on Disabled People," *U.S. Newswire* (Dec. 18, 1998).

[7] In 1998, the Supreme Court decided three ADA cases: *Pennsylvania Department of Prisons v. Yeskey*, __U.S. __, 118 S.Ct. 1952, 141 L.Ed.2d 215 (1998); *Bragdon v. Abbott*, __U.S.__, 118 S.Ct. 2196, 141 L.Ed.2d 40 (1998); *Wright v. Universal Maritime Service Corp.*, __U.S.__, 119 S.Ct. 391, 142 L.Ed.2d 361 (1998).

[8] *Cleveland v. Policy Mgmt. Systems*, __U.S. __, 119 S.Ct. 39; 142 L.Ed. 30 (Oct. 5, 1998)(Whether application for or receipt of disability insurance benefits under the Social Security Act creates a rebuttable presumption that the applicant or recipient is judicially estopped from asserting that she is a qualified individual with a disability); *Murphy v. United Parcel Service, Inc.*, __ U.S. __ (January 8, 1999)(Whether petitioner's hypertension should be evaluated in its unmedicated state); *Sutton v. United Air Lines, Inc.*,__U.S.__(January 8, 1999)(When airline pilot's uncorrected vision is so poor that it constitutes physical impairment under the ADA, is the pilot nevertheless excluded from protection under the act if her vision can be corrected); *Albertson Inc. v. Kirkingburg*, __U.S. __ (January 8, 1999)(Whether an individual with monocular vision is an individual with a disability under the ADA).