

January 25, 2015

Director John L. Martin  
Ohio Department of Developmental Disabilities  
30 E. Broad Street, 12th Floor  
Columbus, OH 43215-3434

Open Letter to Director Martin

Dear Director Martin,

In his presentation at the ARC Conference on November 19th, Michael Kirkman, Executive Director of Disability Rights Ohio (DRO), spent 45 minutes citing various sections of the Olmstead opinion. He did so to justify his group's actions to systematically dismantle the support systems in Ohio for the developmentally disabled that have been carefully put in place over the past 50 years by dedicated professionals working with caring families and good-hearted, decent citizens.

It is quite remarkable that during his 45 minute lecture, Mr. Kirkman managed to steer clear of all **six** plainly worded passages of Olmstead's majority opinion which emphatically state that the U.S. Supreme Court and the Americans with Disability Act (ADA) recognize the importance of institutions for individuals with intellectual and developmental disabilities who require a higher level of care. In fact, the Olmstead opinion stresses that institutions are a critical part of an array of services that a state must provide in order to properly serve the diverse community of people with mental disabilities. Olmstead also recognizes that the wishes of the individual are paramount in determining residential placement.

Let me provide these passages for you now:

*"Such action is in order when the State's treatment professionals have determined that community placement is appropriate, **the transfer from institutional care to a less restrictive setting is not opposed by the affected individual**, and the placement can be reasonably accommodated taking into account the resources available to the State and the needs of others with mental disabilities."*  
(Emphasis added.)

*"But we recognize, as well, the States' need to maintain a range of facilities for the care and treatment of persons with diverse mental disabilities, and the States' obligation to administer services with an even hand."*

*"We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings...Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it."*

*"As already observed...the ADA is not reasonably read to impel States to phase out institutions, placing patients in need of close care at risk...Nor is it the ADA's mission to drive States to move institutionalized patients into an inappropriate setting..."*

*"For other individuals, no placement outside the institution may ever be appropriate...for these persons, institutional settings are needed and must remain available."*

*"For these reasons stated, we conclude that, under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, **the affected persons do not oppose such treatment**, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."*(Emphasis added.)

Justice Kennedy wrote eloquently in Part I of his concurring opinion, which was joined as to this part by Justice Breyer, that the ADA should not be interpreted as a means “to drive” people who require a higher level of care out of institutions.

*“It would be unreasonable, it would be a tragic event, then, were the American with Disabilities Act of 1990 (ADA) to be interpreted so that States had some incentive, for fear of litigation, to drive those in need of medical care and treatment out of appropriate care and into settings with too little assistance and supervision.”*

*“Justice Ginsburg’s opinion takes account of this background. It is careful, and quite correct, to say that **it is not “the ADA’s mission to drive States to move institutionalized patients into an inappropriate setting...”** (Emphasis added.)*

*“In light of these concerns, if the principle of liability announced by the Court is not applied with caution and circumspection, States may be pressured into attempting compliance on the cheap, placing marginal patients into integrated settings devoid of the services and attention necessary for their condition.”*

**Unfortunately, Justice Kennedy’s words are far too prophetic for the 6,000 developmentally disabled individuals in Ohio who rely on ICF/IID homes for safe and compassionate care.**

How is it that Mr. Kirkman, a man who professes to be an expert on disability law, the Olmstead decision, and the ADA, and who claims as his life’s mission to represent the rights of people with disabilities, could manage to miss these clearly written, oft-repeated themes in Olmstead’s majority and concurring opinions? How can it be that Mr. Kirkman can overlook these important findings of the court, but I, unschooled in the law, just a deeply concerned mother with a simple bachelors degree, am able to discover these passages upon my first reading of Olmstead?

Could it be by design that Mr. Kirkman chooses to ignore the findings of the Court - findings so important that Justice Kennedy felt compelled to highlight them in a separate concurring opinion which Justice Breyer joined?

Regardless, DRO’s distortions of Supreme Court precedent call into question its credibility to run around Ohio threatening to sue the State of Ohio while putting our most fragile citizens at risk and causing sleepless nights for concerned parents, many of them beaten down by the difficulties life has thrown at them and their precious children who are developmentally disabled.

Twisting the true meaning of Olmstead and the ADA to advance a political agenda insults every person with developmental disabilities in Ohio and their family members. That the Department of Developmental Disabilities has chosen to enter into a confidentiality agreement with DRO to negotiate the future of my children and the 6,000 other individuals who rely on Intermediate Care Facilities Homes for Individuals with Intellectual and Developmental Disabilities (ICF/IID) in this state is an abuse of the public trust.

We are told that the Department must enter into discussions with DRO in confidence to protect the State from a lawsuit. How can the best interests of people with developmental disabilities be served when the Department’s actions are being directed entirely by fear? Could it be that the well-being of individuals with developmental disabilities is not the primary goal of the parties involved? **And isn’t this just what Justice Kennedy warned against in Olmstead?**

DRO does not speak for my children. DRO does not speak for the 6,000 people in ICF/IID homes across this state. And apparently, DRO does not speak for the law that it brandishes about like a weapon instead of the tonic it is meant to be.

I urge you as the Director of the Department of Developmental Disabilities to protect the health and well-being of individuals with developmental disabilities in Ohio by not allowing the intimidation and malfeasance of Disability Rights Ohio to stand. I ask you, as your constituent and a parent who must speak for children whose welfare rests in part on your judgement, to properly administer the full meaning of the ADA as it has been written by Congress, and to carry out the findings of the Olmstead decision as it has been handed down by the U.S. Supreme Court. I ask you to do nothing but what the laws of this land and the oath of your office requires you to do.

Sincerely,

A handwritten signature in blue ink that reads "Caroline A. Lahrmann". The signature is written in a cursive style and is centered within a light gray rectangular box.

Caroline A. Lahrmann

CC: Governor John Kasich  
Lt. Governor Mary Taylor  
Director Greg Moody, Office of Health Transformation  
Director John McCarthy, Ohio Department of Medicaid  
U.S. Senator Rob Portman  
U.S. Senator Sherrod Brown  
U.S. Representative Steve Stivers  
State Senator Jim Hughes  
State Representative Stephanie Kunze