

April 4, 2016

Governor John Kasich
Riffe Center, 30th Floor
77 South High Street
Columbus, Ohio 43215

Dear Governor Kasich,

As Governor, you are required under the Ohio Revised Code to appoint a Protection and Advocacy (P&A) system for individuals with disabilities to carry out duties described in state and federal law, including the Developmental Disabilities Act.

As parents of twins with intellectual and developmental disabilities, we write to you out of deep concern over the legal actions and positions taken by the agency that serves this function in Ohio, Disability Rights Ohio (DRO). Specifically, DRO has filed a class suit in federal court alleging institutional bias in the services and programs of the Ohio Department of Developmental Disabilities (DODD). The suit seeks to substantially direct state resources away from Intermediate Care Facilities (ICFs), sheltered workshops and facility-based day programs which 37,000 fragile Ohioans rely on for 24-hour nursing, monitoring and/ or behavioral supports. DRO seeks for these individuals to be served in the "community" regardless of their individual choices, needs and capabilities.

This action is part of a long line of DRO threats and litigation aimed at dismantling the DODD service system caring Ohioans put in place over decades. Each time, individuals with disabilities and their families rose up to say, "DRO does not speak for us." Ohio's P&A system now seeks to do through litigation what it could not accomplish through representative government.

But, DRO should not find a friend in the court because DRO does not properly interpret the law it is obliged to uphold. Through its lawsuit, DRO ignores an overarching principle of the Americans with Disabilities Act (ADA), as stated in the U.S. Department of Justice's analysis of the ADA,

"Consistent with these standards, public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do."

DRO not only disregards this bedrock tenet of the law, but also the findings of the U.S. Supreme Court's *Olmstead* decision which interprets it,

"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."

And, DRO recklessly neglects Justice Kennedy's warning in his concurring opinion in *Olmstead*,

"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." (Emphasis added.)

"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 its complaint, DRO claims, by virtue of its representation of six individuals, the right to represent tens of thousands of individuals and to have a single adjudication for all. This class-wide treatment would take place without any regard to the unique, varied and oftentimes acute needs of the individuals with intellectual and developmental disabilities swept into the class. The lawsuit's reckless rationale is set out in DRO's "Fact Sheet on DD Integration Case,"

"The litigation seeks to create opportunities. We should start with the basic principle that all persons with developmental disabilities are capable of living fully engaged in their communities..."

Thus, DRO's suit does precisely what the ADA was designed to guard against: It ignores the personal facts and circumstances of the individuals it serves and presumes that all Ohioans with disabilities can safely live and work in the community.

DRO is charged and paid by taxpayers, to represent the interests and wishes of each individual with disabilities for whom it is the State designated legal advocate, regardless of the severity or degree of disability. However, those individuals who cannot and/or choose not to fulfill DRO's presumptuous and reckless vision -- "that all persons with developmental disabilities are capable of living fully engaged in their communities" -- are marginalized by DRO's lawsuit and left devoid of legal representation in a case that directly affects their health, welfare and their very lives. Clearly, DRO suffers a disqualifying conflict of interest within the "class" it seeks to represent.

State and Federal law obliges the State to provide legal advocacy to individuals with developmental disabilities. As our children have been disassociated from DRO due to this clear conflict of interest, we **urgently request separate and independent legal representation on behalf of individuals with intellectual and developmental disabilities whose interests and well-being are jeopardized in this litigation.** We believe this to be the only way to insure that the interests and acute needs of individuals requiring and desiring higher levels of care can be brought before the court by advocates with undivided loyalty.

As Governor, you have made it a priority to aid vulnerable Ohioans. Parents, family members, friends and caregivers of arguably Ohio's most vulnerable citizens seek your assistance now. Please provide us with the necessary legal advocacy to give us, at the very minimum, an equal chance before the court.

Respectfully,



Bill and Caroline Lahrmann
Your constituents and citizens of Ohio

CC: Lt. Governor Mary Taylor
Attorney General Mike DeWine
Director Greg Moody
Director John Martin
Director John McCarthy
Director Kevin Miller
Senate President Keith Faber
Speaker Cliff Rosenberger