

**Outstanding Leadership in Disability Law Virtual Symposium
Wednesday, July 14, 2021**

Panel 2: *Olmstead* Enforcement: What's Next?

Time: 2:30-3:30 pm ET

Moderator

- **Mathew McCollough**, Director, District of Columbia Office of Disability Rights

Presenters

- **Jean N. Bowen**, Former Executive Director, Western Connecticut Association for Human Rights
- **Judith A. Gran, Esq.**, Partner, Reisman Carolla Gran & Zuba, LLC
- **Cheri Mitchell**, Program Director, The Georgia Advocacy Office, Long Road Home Chair, SARTAC

Synopsis, Learning Objectives, and Citations

Synopsis

*In its landmark 1999 *Olmstead v. L.C.* decision, the U.S. Supreme Court ruled that under the Americans with Disabilities Act (ADA), individuals with “mental disabilities” have the right to live in the community rather than in institutions and that state and local governments cannot discriminate against people with disabilities by excluding them from participating in government services, programs, or activities. The Court cited the ADA’s “community integration mandate” which requires that people with disabilities be given opportunities to live and work in the most appropriate, integrated settings of their choosing. This panel will focus on how state and local governments have progressed in ensuring that people with disabilities are able to live, work and participate in their communities as they see fit.*

Olmstead, or *Olmstead v. LC*, is the name of the most important civil rights decision for people with disabilities in our country's history. This 1999 United States Supreme Court decision was based on the Americans with Disabilities Act. The Supreme Court held that people with disabilities have a qualified right to receive state funded supports and services in the community rather than institutions when the following three-part test is met:

1. the person's treatment professionals determine that community supports are appropriate;
2. the person **does not object** to living in the community; and
3. the provision of services in the community would be a reasonable accommodation when balanced with other similarly situated individuals with disabilities.

On May 11, 1995, the Atlanta Legal Aid Society filed a lawsuit on behalf of Lois Curtis challenging her confinement at Georgia Regional Hospital Atlanta based on Title II of the ADA. In March 1997, the United States District Court, N.D. Georgia, declared that the failure of the Georgia Department of Human Resources and Georgia Regional Hospital to “place plaintiffs in an appropriate community-based treatment program violates Title II of the Americans with Disabilities Act” and that it was required to do so for both plaintiffs. The Georgia Defendants appealed to the Eleventh Circuit Court of Appeals and then, after losing at the 11th Circuit, to the United States Supreme Court. On December 14, 1998, the United States Supreme Court granted certiorari. Oral arguments were held on April 21, 1999. Justice Ruth Bader Ginsburg

announced the decision of the Court on June 22, 1999, wherein she stated that the Supreme Court answered with a “qualified yes” the question of whether the ADA’s prohibition of discrimination by a public entity required “placement of persons with mental disabilities in community settings rather than in institutions.”

The impact of Olmstead expanded in 2009 when the United States Justice Department made Olmstead a priority of its Civil Rights division and began to enforce the Supreme Court mandate state by state. Although the Olmstead decision only involved one type of institution, which was a psychiatric hospital, the decision applies to all state and Medicaid funded institutions, including nursing facilities and to individuals living in the community who were *at risk of* institutionalization. On June 22, 2011, the 12th anniversary of the Olmstead Decision, President Barack Obama reaffirmed the goal of the landmark ruling, saying “the unjustified institutional isolation of people with disabilities was a form of unlawful discrimination” under the Americans with Disabilities Act. In April 2014, Olmstead was part of the foundation of a settlement with the state of Rhode Island relating to sheltered workshops. Olmstead was also part of a settlement in Georgia that included individuals in forensic hospitals who had been found incompetent to stand trial or not guilty by reason of insanity.

Complying with Olmstead will become increasingly difficult if federal policy and budgetary changes reduce support to states. However, the community integration mandates in the Olmstead decision, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act are still law and states should continue to design and implement Olmstead plans that build sustainable system improvements that support community living in lieu of large, congregate care and segregation. As Olmstead continues to gain force, the foreseeable future may be when all Americans with disabilities will have the supports they need to receive services outside of institutions and be fully included and integrated in their communities.

Learning Objectives

Participants will acquire knowledge and improve their skills in understanding the role of federal, state, and local governments relative to the Olmstead Decision with regard to:

- The expectations of state and local governments to address the Olmstead community integration mandate with providing appropriate long-term supports and services to people with disabilities
- Enforcement of Olmstead by the Department of Justice and the Protection & Advocacy systems
- Understanding that changes to the Medicaid landscape at the federal level could put at risk the types of benefits coverage that support community integration for people with disabilities.

Citations & Resources

OLMSTEAD V. L. C. (98-536) 527 U.S. 581 (1999)
138 F.3d 893, affirmed in part, vacated in part, and remanded.

[Announcement of Olmstead decision by Justice Ruth Bader Ginsburg, June 22, 1999](#)

The Civil Rights Division of the Department of Justice maintains a [website](#) dedicated to enforcement of the integration mandate articulated in *Olmstead*, which includes a [Technical Assistance Guide](#), and lists of D.O.J. *Olmstead* enforcement actions by [circuit](#) and by [issue](#).

The U.S. Department of Health and Human Services maintains a [website](#) on Community Living and *Olmstead*.

ADA National Network [ADA and Olmstead Resources](#)