

No. 14-2850

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ILLINOIS LEAGUE OF ADVOCATES FOR THE DEVELOPMENTALLY
DISABLED, ET AL.,

Plaintiffs-Appellants,

v.

ILLINOIS DEPARTMENT OF HUMAN SERVICES, ET AL.,

Defendants-Appellees,

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
District Court No. 13 CV 1300
The Honorable Marvin E. Aspen

**BRIEF AMICI CURIAE
IN SUPPORT OF DEFENDANTS-APPELLEES
URGING AFFIRMANCE**

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TABLE OF CONTENTS

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT.....	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF INTEREST	1
INTRODUCTION	3
FACTS.....	5
ARGUMENT	5
I. WITH APPROPRIATE PLANNING, MOVING FROM STATE INSTITUTIONS INTO THE COMMUNITY RESULTS IN A BETTER QUALITY OF LIFE FOR PEOPLE WITH DISABILITIES AND IS NOT LESS SAFE.....	5
A. After transitioning into the community, both individuals and their families report higher levels of satisfaction compared with institutional living, even in cases where the closure was initially opposed	5
B. Many other states have demonstrated that state-operated institutions can be closed and individuals can be moved to the community safely.....	11
i. Indiana.....	12
ii. Massachusetts	13
C. Although transition to community settings may require adjustment, the benefits of community living are still far greater than what could be achieved remaining in an institution	14
D. Contrary to the picture of institutional perfection painted by Plaintiffs-Appellants, Murray has experienced failures that have threatened the lives and safety of the individuals residing there	16
CONCLUSION.....	20

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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TABLE OF AUTHORITIES

Cases

<i>Bruggeman v. Blagojevich</i> , 324 F.3d 906 (7th Cir. 2003).....	4
<i>Halderman v. Pennhurst State School & Hosp.</i> , 995 F. Supp. 534 (E.D. Pa. 1998)....	7
<i>Homeward Bound, Inc. v. Hissom Memorial Center</i> , 1987 WL 27104	7
<i>O'Bannon v. Town Court Nursing Ctr.</i> , 447 U.S. 773 (1980).....	4
<i>Olmstead v. L.C.</i> , 527 U.S. 581 (1999)	4,6

Statutes

42 U.S.C. § 12101.....	4
------------------------	---

Other Authorities

David Braddock et al., <i>The State of the States in Developmental Disabilities</i> (2011)	9
David Braddock et al., <i>The State of the States in Intellectual and Developmental Disabilities: Emerging from the Great Recession</i> (2015)	11, 12
Valerie J. Bradley et al., <i>Results of the Survey of Current and Former Belchertown Residents and their Families: The Belchertown Follow-Project</i> (1992).....	13,14
Marguerite Brown et al., <i>Eight Years Later: The Lives of People who Moved from Institutions to Communities in California</i> (2001).....	20
James Conroy & Jeffrey Seiders, <i>Outcomes of Community Placement at One Year for the People who Moved from New Castle and Northern Indiana State Developmental Centers, Report Number 6 of the Indiana Community Placement Quality Tracking Project</i> (2000)	12, 13
James W. Conroy & Valerie J. Bradley, <i>The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis</i> (1985).....	7,9
Illinois Department of Human Services, Transition Successes, https://www.dhs.state.il.us/page.aspx?item=65180	11
Agnes Kozma, <i>Outcomes in Different Residential Settings for People with Intellectual Disability: A Systematic Review</i> 114 Am. J. Intell. & Developmental Disabilities 193 (2009)	6
Charles Lakin et al., <i>Behavioral Outcomes of Deinstitutionalization for People with Intellectual and/or Developmental Disabilities: Third Decennial Review of U.S. Studies, 1977-2010</i> , 21 Policy Research Brief 8 (2011).	16
Sheryl A. Larson & Charles Lakin, <i>Deinstitutionalization of Persons with Mental Retardation: Behavior Outcomes</i> , 14 J. of the Ass'n for Persons with Severe Handicaps 324 (1989).....	8

Amie Lulinski et al., <i>An Evaluation of the Jacksonville Developmental Center Closure: Part 1</i> (2014)	10,11
National Council on Disability, <i>Deinstitutionalization: Unfinished Business</i> (2012)	5, 16
National Council on Disability, <i>Home and Community Based Services: Creating Systems for Success at Home, at Work, and in the Community</i> (2015).....	6
Amy Sorenson et al., <i>An Evaluation of the Howe Developmental Center Closure</i> (2012)	10
Roger J. Stancliffe et al., <i>Satisfaction and Sense of Well Being Among Medicaid ICF/MR and HSBC Recipients in Six States</i> , 47 J. Intell. & Developmental Disabilities 63 (2009)	9
U.S. Senate Committee on Health, Education, Labor, and Pensions, <i>Separate and Unequal: States Fail to Fulfill the Community Living Promises of the Americans with Disabilities Act</i> (2013)	8, 9

STATEMENT OF INTEREST

Amici Equip for Equality, Access Living, American Civil Liberties Union of Illinois, The Arc of Illinois, Illinois Council on Developmental Disabilities, Illinois Network of Centers for Independent Living, Statewide Independent Living Council and United Cerebral Palsy of Illinois¹ represent a vast network of organizations of and for people with disabilities, all of whom have experience in advocating for the rights of people with disabilities, including the right to live in the least restrictive setting. Together, *Amici* have knowledge and experience in assisting with transitions from one setting to another and in ensuring that appropriate services are delivered.

Amici have extensive experience in interacting with people with developmental disabilities and ensuring that they receive adequate care. Consequently, *Amici* have significant knowledge of the current disability service system in Illinois and the federal and state laws governing it. *Amici* represent a wide range of expertise concerning the needs of individuals with developmental disabilities and with Illinois' service system for these individuals. *Amici* have helped countless individuals with developmental disabilities to live productive and meaningful lives in their homes and communities and have helped numerous other individuals transition successfully from institutional to community settings.

¹No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

This case presents questions regarding the State's authority to transfer residents out of Murray Developmental Center ("Murray") to community-based settings or other settings due to the decision to close Murray. Specifically, it presents questions regarding the interpretation of the Americans with Disabilities Act, 42 USC § 12101 and the Rehabilitation Act of 1973, 29 U.S.C. § 701, including the "integration mandate," and the federal Medicaid Act, as those laws impact that authority and the closure decision. *Amici* have significant experience in implementing and enforcing these laws, particularly as they relate to persons with developmental disabilities in Illinois. *Amici* also have many decades of collective experience in planning, designing, administering and receiving services that enable individuals with developmental disabilities to live successfully in their own homes and communities. *Amici* have firsthand experience with what has been demonstrated by repeated studies and experience in service systems across the country: individuals with developmental disabilities, including those with the most complex needs, can live successfully in the community.

This brief *amici curiae* will shed light on the broader context of this litigation: the rights and desires of people with developmental disabilities to live in community-based settings. *Amici* offer this brief to bring a perspective to this case that is lacking: the perspective of many people with developmental disabilities who have long awaited and still await full integration into the community and of the many experts whose research dispels the assumptions and stereotypes regarding

the needs of people with developmental disabilities and the settings in which they should be served.

INTRODUCTION

Illinois has seven large, congregate residential facilities for people with developmental disabilities that are state-owned and operated. Pursuant to a decision of Governor Quinn, one of those facilities, Warren G. Murray Developmental Center, was slated to be closed on October 31, 2013. Plaintiffs-Appellants, a small group of guardians of residents of Murray and organizations opposed to the closure of Murray, brought this action to seek court intervention to stop the closure of Murray and other State-Operated Developmental Centers (“SODCs”). On June 12, 2013, following a short hearing at which no testimony was presented, Plaintiffs-Appellants sought and obtained a Temporary Restraining Order (“TRO”) preventing the transition of residents out of Murray absent guardian consent, pending a hearing on Plaintiffs-Appellants’ Motion for Preliminary Injunction. The TRO remained in effect until July 21, 2014, when the District Court denied Plaintiffs-Appellants’ Motion for Preliminary Injunction, finding that they did not establish a better than negligible likelihood of success on the merits of their claims under the Americans with Disabilities Act (“ADA”), the Rehabilitation Act, the Equal Protection Clause or the Medicaid Act. The Plaintiffs-Appellants have appealed from that decision, apparently abandoning their Equal Protection claim, arguing that their claim of intra-class discrimination under the ADA and their claim under the Medicaid Act should be allowed to proceed.

Although Plaintiffs-Appellants allege improper evaluations and inadequate placements as part of their claims of intra-class discrimination, they do not seek remedies to address such concerns. The goal of Plaintiffs-Appellants' lawsuit is not to assure all Murray residents receive competent and accurate evaluations of their needs. Nor is it to assure safety in whatever setting such individuals reside. It is to stop the closure of Murray. The lawsuit is thus part of a larger political effort to stop the closure of any SODCs in Illinois.

The District Court ruled that “[P]laintiffs are not entitled to care in, and cannot force the State to permanently maintain, any particular facility.” Mem. Op. & Order 9, July 21, 2014. Plaintiffs-Appellants have conceded that point. (Pl.’s Br. 25.) “Simply put, Murray residents and guardians have no legal claim to Murray itself.” Mem. Op. & Order 36, July 21, 2014 *citing O’Bannon v. Town Court Nursing Ctr.*, 447 U.S. 773, 785-86 (1980); *Bruggeman v. Blagojevich*, 324 F.3d 906, 909-11 (7th Cir. 2003). Yet that is precisely the outcome Plaintiffs-Appellants desire: to keep Murray open so their wards can remain there—not at another SODC. The remedy they seek is to force the continuation of what has long been recognized as an outdated model for those with developmental disabilities—segregation in large state-run congregate institutions. Moreover, by insisting that the default placement for individuals currently in SODCs must remain an SODC, Plaintiffs-Appellants seek to force the State to abandon the integration mandate of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* and the United States Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999).

This brief *amici curiae* will provide the Court with information about the experiences of other states and information from studies and surveys that show that the closure of Murray is a positive step, in line not only with the ADA and the Supreme Court's decision in *Olmstead*, but with a national trend in which Illinois has woefully lagged behind.

FACTS

Amici accept the statement of facts set forth in Defendants-Appellees' Brief.

ARGUMENT

I. WITH APPROPRIATE PLANNING, MOVING FROM STATE INSTITUTIONS INTO THE COMMUNITY RESULTS IN A BETTER QUALITY OF LIFE FOR PEOPLE WITH DISABILITIES AND IS NOT LESS SAFE.

A. After transitioning into the community, both individuals and their families report higher levels of satisfaction compared with institutional living, even in cases where the closure was initially opposed.

The advantages of community living are powerfully and convincingly supported by a large body of professional literature. The benefits have been demonstrated in a range of community settings and regardless of the degree of the individual's disability. Individuals with developmental disabilities show gains and improvements in adaptive behavior, independence, self-care skills, social skills and vocational skills when they are transferred from institutions into the community. Life in the community provides opportunities for freedom, dignity and a sense of belonging that is not possible in an institutional setting. National Council on Disability, *Deinstitutionalization: Unfinished Business* 48 (2012).

In the landmark decision of *Olmstead v. L.C.*, 527 U.S. 581 (1999), the Supreme Court recognized that segregation of people with disabilities perpetuates unjustified assumptions that institutionalized persons are incapable or unworthy of participating in community life and noted that institutional confinement severely diminishes an individual's everyday life activities, including family relations, social contacts, work, educational advancement and cultural enrichment. *Id.* at 600-01. It is precisely these unjustified assumptions about people with developmental disabilities that have kept them from achieving full community integration in Illinois. And it is these same unjustified assumptions upon which Plaintiffs-Appellants rely in bringing this appeal. “[T]he opportunity to choose to receive support in order to have a home, family, friends, a job and a regular life in the community is no longer a privilege – but a right.” National Council on Disability, *Home and Community Based Services: Creating Systems for Success at Home, at Work, and in the Community* 5 (2015).

Compared with institutional residents, community residents have more opportunities to make choices as well as larger social networks and more friends. Agnes Kozma, *Outcomes in Different Residential Settings for People with Intellectual Disability: A Systematic Review* 114 *Am. J. Intell. & Developmental Disabilities* 193, 197 (2009). They access more mainstream facilities, participate more in community activities, have more chances to acquire new skills and develop existing skills, and are more satisfied with their living arrangements. *Id.* at 208-09.

The first major research data on community integration was reported in the Pennhurst Longitudinal Study, in which researchers assessed more than 1,100 individuals over five years as they moved into the community from the Pennhurst State School and Hospital in Pennsylvania. The study found that people who moved into the community were more independent and showed improvements in adaptive behavior. James W. Conroy & Valerie J. Bradley, *The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis*, 314-15 (1985). This report documents that gains were largely due to community placement, rather than other factors, and all occurred notwithstanding the involuntary nature of the transfers. The report concludes that “[t]he people deinstitutionalized under the Pennhurst court order are better off in every way measured . . . the results are not mixed.” *Id.* at 322-23; see *Halderman v. Pennhurst State School & Hosp.*, 995 F. Supp. 534, 541 (E.D. Pa. 1998) (“The *Pennhurst* case has brought numerous benefits to the plaintiffs in this class action as well as to other persons with mental retardation throughout Pennsylvania and the country. The *Pennhurst* litigation is widely credited with creating a general awareness that persons with mental retardation do have rights: the right to be free from abuse and mistreatment, the right to not be warehoused in institutions, and the right to receive habilitation and training”);² see also *Homeward Bound, Inc. v. Hissom Memorial Center*, 1987 WL 27104 (Noting the historic denial of freedom to people with developmental

² Note that the preferred term today is “intellectual disability” or “developmental disability”. The term “mental retardation” is only used in this brief for studies that were done before a consensus had been reached about changing the terminology.

disabilities living in institutions, the court established as guiding principles that: “[a]ll persons are capable of growth and development; all persons deserve to be treated with dignity; [a]ll persons have value; [a]ll persons must be involved in and carry the primary responsibility for decisions which affect their lives; [a]ll persons should live and work in the most natural settings . . . and [a]ll persons should live in and be a part of the community”).

Following the Pennhurst study, an overwhelming number of research studies corroborated the study’s results. In a 1989 survey of 18 studies of 1,358 subjects from 13 states, the conclusion was that institutions were “consistently less effective than community-based settings in promoting growth, particularly among individuals diagnosed as severely or profoundly retarded.” Sheryl A. Larson & Charles Lakin, *Deinstitutionalization of Persons with Mental Retardation: Behavior Outcomes*, 14 J. of the Ass’n for Persons with Severe Handicaps 324-32 (1989). This research clearly dispels the myth that only those individuals with less significant disabilities may be successfully served in the community. It also refutes Plaintiffs-Appellants’ argument that the State is “reclassifying” individuals living at Murray as less disabled in order to make them appropriate to live in the community.

Not surprisingly, individuals with disabilities prefer to live at home when provided the option to do so. U.S. Senate Committee on Health, Education, Labor and Pensions, *Separate and Unequal: States Fail to Fulfill the Community Living Promises of the Americans with Disabilities Act* 6 (2013). Individuals who have lived in institutional settings describe feelings of isolation and hopelessness while

living there compared with feelings of fulfillment in the community. *Id.* at 6 (“In the institution, I didn’t get to think for myself. The staff thought for me and made all of my decisions. For a long time, no one expected anything of me . . . People don’t grow in places like Forest Haven and other institutions.”) A survey of individuals found that people with disabilities living in larger settings were significantly lonelier, with greater loneliness in settings with seven or more individuals. Roger J. Stancliffe et al., *Satisfaction and Sense of Well Being Among Medicaid ICF/MR and HCBS Recipients in Six States*, 47 *J. Intell. & Developmental Disabilities* 63, 80 (2009). Individuals living in smaller settings also like their home significantly more. *Id.*

The professional research consistently and unequivocally shows that families of individuals relocated from institutions into community placement are overwhelmingly satisfied with the results of the relocation. Even when families initially opposed the transfer, the great majority ultimately become supporters of community placement. David Braddock et al., *The State of the States in Developmental Disabilities* 177 (2011). Family members are often surprised by their own change in feelings and report unexpected changes for the better in their own lives and in the lives of their relatives. James W. Conroy & Valerie J. Bradley, *The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis*, 314-15 (1985).

Experience in Illinois is consistent with these findings. On June 21, 2010, the Howe Developmental Center in Tinley Park, Illinois was closed and 22% of

residents were transferred to community living arrangements. Amy Sorensen et al., *An Evaluation of the Howe Developmental Center Closure* 6 (2012). Over three-quarters (77%) of those reporting a move to a community integrated living arrangement (“CILA”) reported having a positive opinion about the benefits of community placement after closure. *Id.* at 67. These studies show that although change from institutional living to living in the community initially can be difficult for families to accept, it ultimately benefits both the individuals and their family members and leads to a better quality of life and increased happiness overall.

In 2012, the closure of Jacksonville Development Center (“JDC”) was announced. The Illinois Department of Public Health contracted with the Institute on Disability and Human Development at the University of Illinois at Chicago to conduct an evaluation of the JDC closure. As noted by the Plaintiffs-Appellants, the ACCT/CRA process was used in the transition for the majority of the 185 individuals transferred out of JDC. (Pl.’s Br. 7.) Although the Plaintiffs-Appellants have attempted to cast the ACCT/CRA process as inherently bad or illegal, the District Court found that “there is no evidence that Defendants-the same actors, using the same procedures, transferred Jacksonville residents into community homes against guardian wishes, when that facility closed in 2012.” Mem. Op. & Order 24, July 21, 2014. As part of the JDC closure, 62.9% of all former JDC residents moved into a CILA; 9.6% moved into a privately-owned state-funded institution; and 27.5% moved into another SODC. Amie Lulinski et al., *An Evaluation of the Jacksonville Developmental Center Closure: Part 1* 38 (2014).

Almost all (92%) of the survey respondents felt satisfied with their relative's new setting. *Id.* at 10. An overwhelming majority (86.7%) of the families/guardians felt their relatives were about the same or better when compared to when they lived at JDC. *Id.* This finding is in stark contrast to the picture painted by the Plaintiffs-Appellants of the dangers and parade of horrors that would result from moving out of Murray and into the community. In contrast to the Plaintiffs-Appellants' claim that the level of services available at Murray is not available in the community, respondents to the JDC survey felt that necessary services were available to their relative/ward in the community. *Id.*; *see also* Illinois Department of Human Services, Transition Successes, <https://www.dhs.state.il.us/page.aspx?item=65180> (highlighting the stories of individuals who transitioned from JDC into the community as part of the ACCT/CRA process).

B. Many other states have demonstrated that state-operated institutions can be closed and individuals can be moved to the community safely.

States have increasingly implemented effective, community-based services while closing expensive and outmoded institutional facilities, such as Murray. The census at large state-operated institutions nationwide decreased from 194,650 people in 1967 (U.S. Department of Health, Education, and Welfare, 1972) to 24,675 in 2013. David Braddock et al., *State of the States in Intellectual and Developmental Disabilities: Emerging from the Great Recession* 26 (2015). All fifty states and the District of Columbia have reduced their reliance on state-operated institutions, and thirteen states and the District of Columbia now operate without a

single public institution for persons with developmental disabilities. *Id.* at 28. These states have transitioned people with disabilities into the community, not other large institutions. This trend, which continues to gather strength, illustrates that individuals with developmental disabilities can live safely outside of a state-operated institution and in the community, regardless of the severity of their disabilities.

Illinois, however, lags behind this national trend, and the result sought by Plaintiffs-Appellants in this case would unnecessarily exacerbate that lag. Illinois ranks 50th in the percentage of people with developmental disabilities living in community settings for one to six people. *Id.* at 21. In Illinois, only 50% of people with developmental disabilities live in houses and apartments for one to six persons, compared with the national average of 80%. *Id.* Closing Murray would assist Illinois in catching up to the rest of the nation and increase the number of people with developmental disabilities living in the community.

i. Indiana

Illinois' neighbor to the east, Indiana, has been operating without a large state-operated institution since 2007. The results have been favorable. Studies conducted after Indiana closed two of its state-operated institutions showed that after a year in the community, former residents demonstrated statistically significant gains in skills, and professionals and families expressed the view that residents were far better off in their new homes. James Conroy & Jeffrey Seiders, *Outcomes of Community Placement at One Year for the People who Moved from New*

Castle and Northern Indiana State Developmental Centers, Report Number 6 of the Indiana Community Placement Quality Tracking Project 23 (2000). The closure of the last state-operated institution in Indiana was particularly challenging because it served many individuals with complex needs. Nonetheless, the vast majority of individuals, over 96%, were transferred to community settings as part of a careful planning process. To this day, Indiana operates a successful developmental disabilities service system without a state-operated institution.

ii. Massachusetts

The experience in Massachusetts is particularly instructive in demonstrating that transitions from institutional to community-based care can be beneficial for even those residents with the most significant disabilities. Following its closure of several large state institutions for individuals with developmental disabilities, a study was conducted to measure family satisfaction and resident perceptions of quality of life both from those who had moved from an institution into the community and for those who were still living at the facility at the time. Although 78% of the residents who left the institution were reported to have “severe or profound” developmental disability and the level of disability was “not at all different” from those who remained, 89% of families of residents who moved were satisfied or very satisfied with the move and only 2% expressed any dissatisfaction. Valerie J. Bradley et al., *Results of the Survey of Current and Former Belchertown Residents and their Families: The Belchertown Follow-Project 17* (1992). When comparing families whose loved ones remained in the institution to those who

moved to the community, the community families were happier overall, perceived their relatives to be happier, and believed that their relatives were continuing to learn new things. *Id.* at 17.

The success of other states in closing state-operated institutions shows that Illinois is finally moving in the right direction with the planned closure of Murray. The District Court acknowledged in its ruling that “predisposition in favor of the integration of the developmentally disabled population cannot alone constitute unlawful discrimination . . . is entirely consistent with the Supreme Court’s decision in *Olmstead* . . . [and] seeks to make community-based treatment a reality for more Illinois citizens who need and desire it.” Mem. Op. & Order 40, July 21, 2014. Assumptions that an individual’s degree of disability automatically precludes success in the community have been refuted again and again in other states. The operation of a disability service system with few or no state-operated institutions in neighboring states shows that even those individuals with the most complex or severe disabilities can be safely served in the community with the proper supports. Evaluating all individuals for their potential to be served in community settings is not a denial of service to them or a violation of their rights; it is a valuable service to them that can lead to a better, more satisfying life.

C. Even though transition to community settings may require adjustment, the benefits of community living are still far greater than what could be achieved remaining in an institution.

Studies have shown that the gains from community living are achieved whether the move is voluntary or as the result of closure of the institutional setting.

While there may be an initial adjustment period, transition to the community presents opportunities unavailable in institutional settings. If transitions follow well-laid out standards, policies and clinical guidelines that make transitions as easy as possible, the research clearly shows that individuals who leave institutions and move into the community experience fuller lives, form increased social networks and have greater levels of integration into their new communities.

A common refrain is that state-operated institutions must be preserved for people who have challenging behavior and/or psychiatric disabilities. In fact, Plaintiffs-Appellants argue that those residing at Murray and other SODCs are more severely disabled than those not residing there as part of their argument regarding intra-class discrimination. (Pl. Br. 34.) The reality is that there are residents of Murray who have complex and severe disabilities and thus significant needs, and there are residents of Murray whose service needs are not nearly as significant. Some residents are able to communicate verbally and some are not able to do so. There are those who have other medical conditions and there are those who do not have any. There are residents who are capable of expressing their needs and preferences, including where they would like to live and with whom, and there are those who are not.

Acknowledging first that there is no current plan to close all SODCs, there are successful models for serving individuals with a wide range of needs in the community, which can be used in Illinois as they have been elsewhere. In fact, of the twenty-six longitudinal studies of changes in adaptive behavior of individuals

leaving institutions for community living, fifteen reported statistically significant positive changes and five others reported positive but not statistically significant change. Charles Lakin et al., *Behavioral Outcomes of Deinstitutionalization for People with Intellectual and/or Developmental Disabilities: Third Decennial Review of U.S. Studies, 1977-2010*, 21 Policy Research Brief 8 (2011). The District Court found that “[P]laintiffs have not specified what particular benefits, services or activities of the ‘Illinois SODC program’ are at issue.” Mem. Op. & Order 36, July 21, 2014. Combined with the fact that some states do not offer any services in state-run institutions, Plaintiffs-Appellants’ insistence on an “Illinois SODC program” that offers certain specialized services to a class of individuals with certain disabilities is baffling. Further, while many people in institutions have very complex needs and significant disabilities and will require extensive supports to live in the community, many people with the same level of needs and disability are already successfully receiving those supports in the community. National Council on Disability, *Deinstitutionalization: Unfinished Business* 39 (2012).

D. Contrary to the picture of institutional perfection painted by Plaintiffs-Appellants, Murray has experienced failures that have threatened the lives and safety of the individuals residing there.

The District Court in this case found that “Plaintiffs have not presented evidence that residents in community placements face a significant greater risk of altercations, medication errors, or other serious problems than residents of institutional placements . . . Nor have Plaintiffs presented evidence that such incidents in the community would result in greater or different harm than seen in

an SODC.” Mem. Op. & Order 32-33, July 21, 2014. In fact, the Plaintiffs-Appellants would have great difficulty doing so, given that the Illinois Department of Public Health (DPH), which is responsible for oversight of the SODCs, has on numerous occasions cited Murray for deficiencies in its care and treatment of residents, many of which created the potential for serious harm or injury and, in some cases, resulted in death.

A sampling of the DPH surveys conducted of Murray in the last five years reveals deficiencies that include failure to carry out 1:1 staff supervision responsibilities; failure to prevent abuse and mistreatment of individuals; improper use of restraints; failure to administer medication in compliance with physician orders; failure to report and thoroughly investigate allegations of abuse and neglect; failure to provide individuals with nursing service in accordance with their needs; failure to provide sufficient safeguards and staff supervision to ensure individual safety; failure to offer off-campus activities; and failure to provide staff with training to effectively, efficiently and competently perform their duties.³

³ See, e.g., Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction: Warren G. Murray Dev Center (Mar. 6, 2009) <http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FA03062009.pdf>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction: Warren G. Murray Dev Center (Oct. 8, 2009), <http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FA10082009.pdf>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction: Warren G. Murray Dev Center (Sept. 7, 2010) <http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FIA09072010.pdf>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction: Warren G. Murray Dev Center (Aug. 2, 2011) <http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FIA08022011.PDF>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction:

These deficiencies resulted in Murray residents eloping from the facility; ingesting inedible objects (PICA behavior); sustaining injuries including broken bones while being transferred or due to peer-on-peer aggression; experiencing sexual assault and inappropriate sexual touching by peers; not receiving or having available life-saving medications (such as insulin injections for individuals with diabetes and EpiPens for individuals identified as having bee sting allergies); having incorrect medications administered during a hospital stay; being subjected to the use of an unauthorized restraint or a mechanical restraint that was specifically prohibited due to a respiratory condition; and use of chemical restraints.

Warren G. Murray Dev Center (April 23, 2012)

<http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FA04232012.pdf>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction:

Warren G. Murray Dev Center (Jan. 4, 2013)

<http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FA01042013.pdf>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction:

Warren G. Murray Dev Center (Mar. 27, 2013)

<http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FA03272013.PDF>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction:

Warren G. Murray Dev Center (May 6, 2013)

<http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FAD05062013.PDF>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction:

Warren G. Murray Dev Center (May 28, 2013)

<http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FI05282013.PDF>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction:

Warren G. Murray Dev Center (June 19, 2013)

<http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FA06192013.PDF>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction:

Warren G. Murray Dev Center (July 1, 2014)

<http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FAD07012014.PDF>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction:

Warren G. Murray Dev Center (Aug. 11, 2014)

<http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FAD08112014.PDF>; Dept. of Health and Human Services, Statements of Deficiencies and Plan of Correction:

Warren G. Murray Dev Center (Aug. 14, 2014)

<http://www.idph.state.il.us/ltc/docs/SurveyResult/6009724FA08142014.PDF>.

See supra note 3. In one instance cited by DPH, an individual with special dietary requirements and feeding procedures due to poor oral processing and risk of aspiration choked and later died after staff failed to take required precautions. He was found cyanotic and not breathing and had food or vomit in his mouth. He was then taken to the hospital and put on a ventilator. He died upon being removed from the ventilator two days later.

Clearly, institutional care is not the panacea that Plaintiffs-Appellants hold it out to be. The default preference for SODCs as the only safe option being urged by Plaintiffs-Appellants is not supported by the experience in Illinois SODCs. Safety issues can and do arise in any setting that serves people with disabilities. The fact that problems may arise in one of these settings, however, is not cause for delaying and impeding the State's progress towards complying with the integration mandates of the ADA and *Olmstead*. Rather, the focus should be on expanding community-based services for people with disabilities, supported by standards and policies that will enhance the quality and availability of those services.

With proper planning, sensitivity, and funding, individuals with developmental disabilities can successfully and effectively be transitioned into different environments. Studies of individuals in California who were moved from institutions into the community showed that those receiving services in the community were not less safe after transition. Moreover, the study found that:

“[A]lmost no one wants to go back. Only a few families would like their relatives to go back. The people themselves, and those closest to them, believe their lives are significantly better in 9 out of 10 ways we asked them about. The people who moved are far more integrated, and have much more

of a role in making choices about their daily lives. There has been no major decrement in health and/or safety. The people and their families believe they are as healthy as ever, and as safe as ever.”

Marguerite Brown et al., *Eight Years Later: The Lives of People who Moved from Institutions to Communities in California* 9 (2001).

CONCLUSION

The closure of Murray would expand and enhance the services and supports necessary for people with developmental disabilities to live more fulfilling lives in the community. For those who do not choose the community, the closure of Murray would not require them to move to the community. It would only require them to move out of Murray. As Plaintiffs-Appellants have already conceded, they have no right to receive care in a particular facility, nor can they force the State to permanently operate a particular facility. Any further injunction in this case will thwart the State's obligation to comply with the ADA and *Olmstead* and will deny individuals with disabilities who wish to transition to the community the opportunity to do so.

For these reasons, *Amici* strongly urge this Court to affirm the District Court's order denying the Plaintiffs-Appellants' Motion for Preliminary Injunction.

Respectfully Submitted,

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Dated: April 8, 2015
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This brief complies with the type volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 5,142 words excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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Dated: April 8, 2015

CIRCUIT RULE 31(E) CERTIFICATION

Pursuant to this Court's Rule 31(e), I certify that a version of this Brief in non-scanned, searchable .pdf format has been electronically filed with this Court.

/s/ Barry C. Taylor
One of the Attorneys for Amici

Dated: April 8, 2015



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s/ Barry C. Taylor



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