



CONSORTIUM FOR CITIZENS  
WITH DISABILITIES

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March 5, 2018

Hon. Bob Goodlatte  
Chair, Committee on the Judiciary  
2309 Rayburn House Office Building  
U.S. House of Representatives  
Washington DC 20515

Hon. Jerrold Nadler  
Ranking Member, Committee on Judiciary  
2109 Rayburn House Office Building  
U.S. House of Representatives  
Washington DC 20515

Hon. Steve King  
Chair, Subcommittee on the Constitution  
and Civil Justice  
Committee on the Judiciary  
2210 Rayburn House Office Building  
U.S. House of Representatives  
Washington DC 20515

Hon. Steve Cohen  
Ranking Member, Subcommittee on the  
Constitution and Civil Justice  
Committee on the Judiciary  
2404 Rayburn House Office Building  
U.S. House of Representatives  
Washington DC 20515

*Re: Hearing on “Examining Class Action Suits Against  
Intermediate Care Facilities for People with  
Intellectual Disabilities”*

Dear Chairman Goodlatte, Ranking Member Nadler, Chairman King and Ranking Member Cohen:

The Rights Task Force of the Consortium for Citizens with Disabilities (CCD) submits this letter to express our strong opposition to any legislation that would weaken the ability to bring class action lawsuits to enforce the rights of individuals with intellectual and developmental disabilities in intermediate care facilities. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. CCD represents individuals with disabilities, family members, and professionals in the disability field.

We note the widespread opposition among disability rights organizations to bills introduced in prior years aiming to restrict class action lawsuits to protect the rights of institutionalized individuals with intellectual and developmental disabilities. Such legislation, if passed, would do enormous damage. It would leave people with intellectual and developmental disabilities

without adequate recourse to remedy harms such as abuse and neglect in institutional settings and the needless institutional confinement of individuals who could live in community settings and wish to do so.

Class action lawsuits have been a critical tool to stop shameful widespread abuse, neglect, and violations of the civil rights of institutionalized individuals with disabilities. Such lawsuits brought about systemic change to address horrific institutional conditions in cases such as the *Willowbrook* case in New York, the *Wyatt* case in Alabama, the *Pennhurst* case in Pennsylvania, and numerous others. Even now, systemic failures occur in institutional settings, placing people with disabilities at great risk of harm.

In addition to remedying abuse and neglect, class action lawsuits are often the only effective way to achieve systemic enforcement of the right of people with disabilities to be served in the most integrated setting appropriate to their needs. *Olmstead v. L.C.*, 527 U.S. 581 (1999).<sup>1</sup> Many thousands of individuals with intellectual disabilities (as well as individuals with other disabilities) remain needlessly confined in public and private institutions. Class action litigation has been a key driver of large-scale efforts to offer institutionalized people with intellectual disabilities the opportunity to live in community settings with appropriate services.

The bills introduced in prior Congresses to limit class actions by institutionalized individuals with intellectual and developmental disabilities would have created different—and more restrictive—rules for class actions brought by these individuals than for class actions brought by anyone else. This would be a dangerous and troubling precedent. The Federal Rules of Civil Procedure, promulgated by the United States Supreme Court, set forth uniform rules for federal court actions, including class action lawsuits. These rules ensure fairness by applying the same standards and procedures to all litigants in federal court. There is no reason why individuals with intellectual disabilities should have greater obstacles to proceeding as a class than those imposed by Federal Rule 23, which applies to all class actions.

The bills introduced in prior Congresses claimed to provide protections for class members who do not wish to participate in a class action suit. But the existing rules for class actions already provide protections for these individuals and their representatives. Federal Rule of Civil Procedure 23 provides a host of procedural protections to ensure that the interests of all class members are fairly and adequately represented. Among other things, Rule 23 requires that, before a class action may be settled, the court must conduct a hearing to ensure that the settlement is fair, adequate and reasonable, and class members must have the opportunity to object and be heard. Objectors routinely offer testimony and/or submit written comments expressing their objections to a proposed settlement. When objectors have demonstrated that a proposed settlement is not fair, adequate and reasonable, courts have declined to approve such

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<sup>1</sup> Enforcement by the Justice Department in both areas has also been tremendously important. The Department does not have the resources to take enforcement action in every situation where the rights of institutionalized people with intellectual and developmental disabilities are violated, however, so private enforcement through class actions is also critical.

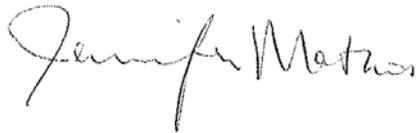
settlements. Individuals with intellectual and developmental disabilities and their families have also been permitted to intervene in class action cases where appropriate.

Moreover, in cases where individuals seek to enforce their rights under the ADA and *Olmstead* to leave institutions and live in community settings, class members who do not wish to live in a community setting cannot be forced to do so. Neither the ADA nor *Olmstead* forces accommodations on individuals who do not want them. Settlements and remedy orders in *Olmstead* cases make community services and housing available to class members who choose them, without forcing them on individuals who do not.

We urge you not to consider legislation that would change class action rules for institutionalized individuals with intellectual and developmental disabilities.

Sincerely yours,

CCD Rights Co-Chairs  
On behalf of CCD Rights Task Force



Jennifer Mathis  
Bazelon Center for Mental Health Law



Dara Baldwin  
National Disability Rights Network



Mark Richert  
American Foundation for the Blind



Heather Ansley  
Paralyzed Veterans of America



Samantha Crane  
Autistic Self Advocacy Network

