

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA,
Plaintiff,

v.

Civil Action No. 3:12cv59-JAG

COMMONWEALTH OF VIRGINIA,
Defendant.

ORDER

This case involves the treatment of mentally disabled people by the Commonwealth of Virginia. The United States has filed suit, contending that Virginia has violated the rights of developmentally and intellectually disabled people (hereafter, “disabled” people) in a number of significant ways. On the day suit was filed, the United States and the Commonwealth of Virginia submitted a joint agreement to this Court. The agreement settles the case. The parties have asked the Court to incorporate the settlement agreement into its final order.

The Court has received a great deal of correspondence from families of disabled individuals, advocates for the disabled, and other groups. The submissions to the Court express deep and understandable concern. A common theme of the letters is that the agreement will force the Commonwealth to close its five Training Centers, which currently are home to approximately 1,000 residents. Some comments to the Court take the opposite view, namely that disabled people should all be allowed to live in the community, not the confines of a Training Center.

These voices—on both sides—will be heard. How that will happen is described below.

The Court has thoroughly reviewed the suit papers and settlement agreement. At heart, the purpose of this agreement is to allow disabled people to live in the community. The Court,

however, is concerned that the agreement is being misconstrued by some. Most importantly, the agreement *does not* force the closing of any institution or Training Center in Virginia. Rather, the agreement requires the Governor of Virginia to submit to the General Assembly a plan to close four of the residential Training Centers. The General Assembly need not close the facilities, and, in fact, can easily pass legislation requiring the Executive Branch to keep the Training Centers open.

Our system of government allocates responsibilities to both the federal and state government, and, within those governments, to the executive, legislative, and judicial branches. The states—not the federal government—decide what kind of treatment facilities to operate. This is essentially a political decision to be made by the states on how to spend their funds to address the needs of the people. Putting the settlement agreement aside, the Commonwealth could decide to close the Training Centers. If the Court refused to enter the agreement, Virginia and the federal government could still agree to close the facilities. On the other hand, even if the Court approves the agreement, Virginia can keep the Training Centers open. But this decision is a political one, over which the Court has no authority.

In short, this Court cannot close the Training Centers; it also cannot keep them open. The agreement is simply a plan or system for the Court to hold the state accountable on how it treats disabled citizens. For example, the agreement provides for an independent reviewer, who is an expert in the care of developmentally and intellectually disabled people, to submit public written reports to the Court every six (6) months. Under the agreement, the Court would use the reviewer's detailed reports and determine whether the Commonwealth is in compliance with the terms of the agreement.

Anyone who opposes the closing of a Training Center should contact the Governor, or his or her Delegate or Senator in the Virginia General Assembly to make a complaint. They have the ultimate authority on whether to maintain state institutions.

That being said, the Court will still allow interested people and groups to submit written comments about the agreement. American courts have a long-standing practice of receiving “briefs amicus curiae,” also called “friend of the court briefs.” In such briefs, people with an interest in the outcome of the case are allowed to state their position and the legal and practical reasons their view is the correct one. The Court will receive amicus briefs until April 6, 2012. These comments need not be in any particular form. If a person or group has already sent a letter to the Court, it will be treated as a written comment and properly considered.

The Court will consider these written comments in deciding if the agreement is adequate, fair, and reasonable, if the agreement is unlawful, or if it is against public policy. Generally, people who submit written comments or amicus briefs may not speak or argue at a hearing, because they are not parties to the case. But, if the Court receives a consolidated written comment from a large enough group of interested people, then it may allow a group representative to speak at a hearing prior to its final decision on the agreement.

Written comments or more formal amicus briefs concerning the agreement may be submitted before April 6, 2012 to:

The Honorable John A. Gibney Jr.
District Court Judge
United States District Court, Eastern District of Virginia
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

A copy and descriptions of the agreement are available at:

<http://www.justice.gov/va-ada> and
<http://www.dbhds.virginia.gov/Settlement.htm>.

The Court will hold a final hearing on the agreement after April 6, 2012, but the date has not been set yet. At this hearing, the Court will hear argument on whether to enter the agreement. Either before or at the hearing, the Court will receive factual submissions from representatives of the Community Service Boards regarding the effect of this agreement on them, on the availability of community services to meet the needs of intellectually disabled Virginians, on the Community Service Boards' personnel needs to implement the settlement, and on the funding needed to achieve the goals of the settlement. The Court will also receive factual submissions from private providers of services to disabled Virginians concerning the agreement's effects on them. Moreover, the Court will consider whether and how the agreement is enforceable by the Court.

In addition, between now and the hearing, the Court, accompanied by counsel, will visit at least one Training Center and several community facilities. The Commonwealth is directed to provide to the Court a list of all Intermediate Care Facilities for the Mentally Retarded within thirty (30) miles of the State Capitol. The Commonwealth will also provide to the Court a list of all private nursing facilities or other facilities equipped to deal with profoundly disabled individuals within thirty (30) miles of the State Capitol.

Although the Court will review the agreement and its implementation fully at its hearing, the Court will allow the agreement to be entered temporarily at this time. The Court has not decided whether to enter the agreement, but it has decided to allow the state of Virginia to begin certain planning stages, which is the reason for the temporary approval.

The Commonwealth is directed to post a copy of this Order on the portion of its website dealing with the settlement of this case. The Order shall remain posted at least until April 6, 2012. The Commonwealth is further directed to mail a copy of this Order to parent and family groups associated with the Training Centers, to the various ARC groups in Virginia, to the Virginia Association of Community Services Boards, and to a list of interested persons provided to it by the Court. The Commonwealth will certify its compliance with this provision within seven (7) days from the date of this Order.

Accordingly, the Court ORDERS the following:

(1) Interested people and groups shall have until April 6, 2012, to submit written comments or amicus curiae briefs to this Court regarding the proposed agreement;

(2) The Joint Motion for Entry of Settlement Agreement (the “agreement”) (Dk. No. 2) is PROVISIONALLY GRANTED, subject to final approval after the submission of comments and briefs to the Court;

(3) The defendant shall make available and provide public notice of this Order by: (1) maintaining it on the website of the Virginia Department of Behavioral Health and Developmental Services until at least April 6, 2012; (2) transmitting it to parent groups associated with the Defendant’s Training Centers, the Arc of Virginia, the Virginia Office for Protection and Advocacy, and the Virginia Association of Community Services Boards; and (3) transmitting it to such other interested persons as the Court identifies to the defendant. The defendant shall certify that it has provided such notice; and

(4) The defendant will provide to the Court a list of all ICF/MRs and private facilities equipped to deal with profoundly disabled people within thirty (30) miles of the State Capitol.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: March 6, 2012
Richmond, VA

/s/ J.A.G.

John A. Gibney, Jr.
United States District Judge