10-235-cv(L)

10-251-cv(CON), 10-767-cv(CON), 10-1190-cv(CON)

United States Court of Appeals

FOR THE SECOND CIRCUIT

DISABILITY ADVOCATES, INC., UNITED STATES OF AMERICA,

Plaintiffs-Appellees,

—against—

NEW YORK COALITION FOR QUALITY ASSISTED LIVING,
EMPIRE STATE ASSOCIATION OF ASSISTED LIVING,

Movants-Appellants,

—and—

DAVID A. PATERSON, in his official capacity as Governor of the State of New York, RICHARD F. DAINES, in his official capacity as Commissioner of the New York State Department of Health, MICHAEL F. HOGAN, in his official capacity as Commissioner of the New York State Department of Mental Health, NEW YORK STATE DEPARTMENT OF HEALTH, NEW YORK STATE OFFICE OF MENTAL HEALTH,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF OF DICK THORNBURGH, FORMER GOVERNOR AND UNITED STATES ATTORNEY GENERAL, AND 30 FORMER STATE MENTAL HEALTH COMMISSIONERS, AS *AMICI CURIAE*, IN SUPPORT OF PLAINTIFFS-APPELLEES

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INTEREST OF AMICI[1]

This case raises issues of great importance to the mental health and disability communities throughout this country. As a former governor,[2] two former New York State commissioners of mental health, and thirty former commissioners and directors of other state mental health agencies, *amici* are uniquely positioned to speak to many of the issues presented by this case, including how public systems of care may operate in a manner that best addresses the needs of people with disabilities. As a result of our considerable experience, which includes managing state systems of care as well as serving people with disabilities directly, *amici* have a breadth of understanding about the background and facts of this case, such as the mechanisms states use to fund disability services and the long and tortured history of the states' treatment of people with mental disabilities.

Amici have been involved with every aspect of our respective state service systems, including planning and developing services, collaborating with other state agencies to implement service systems, overseeing the closing of institutions,

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[1] The parties to this action have consented to the filing of this brief. Pursuant to Local Rule 29.1, no party's counsel authored any part of this brief, no party to this action or their counsel contributed money to fund preparing or submitting this brief, and no other person or entity other than counsel for *amici curiae* contributed money to fund preparing or submitting this brief.

[2] Former Pennsylvania governor Dick Thornburgh subsequently was appointed the Attorney General of the United States. In that capacity, he drafted, promulgated and implemented the Americans with Disabilities Act (ADA) integration regulations, 42 U.S.C. § 12182(b)(1)(B); 28 C.F.R. § 35.130, which are at the core of this case.

developing new community care alternatives, managing limited state appropriations, and providing services in the most effective and efficient manner. As state officials responsible for administering state mental health agencies, *amici* are committed to implementing the integration mandate of Title II of the ADA, consistent with the Supreme Court's instructions in *Olmstead v. L.C.*, 527 U.S. 581 (1999).

Amici are keenly aware of the administrative, fiscal, and programmatic challenges of reducing and eliminating segregation in our disability service systems and have developed an array of methods and strategies for fulfilling the mandate of the ADA. In order to expand our limited state resources, *amici* have depended heavily on federal Medicaid revenue, and have developed methods of administering and financing integrated mental health services in conjunction with our state Medicaid agencies and other state entities. In recognition of our limited resources to operate public facilities and services, *amici* have relied upon private providers – mostly non-profit agencies but occasionally for-profit companies – to deliver disability services. While we shared our responsibilities with other state entities and private providers, *amici* recognize that our agencies and states remain ultimately responsible for complying with the integration mandate of the ADA.

Amici are deeply troubled by New York's argument that its actions do not violate Title II of the ADA because they do not directly operate adult homes,

because they are not responsible for certain aspects of adult homes even though they provide mental health support services in the homes, and because they do not explicitly mandate the segregation of persons with psychiatric disabilities in these homes. The district court properly recognized that New York, like all of our states, is directly involved in planning, administering, funding, and overseeing public mental health services, including incorporating mental health treatment in residential treatment settings like adult homes. The lower court correctly held that this combination of mental health settings and services is encompassed by the ADA. It properly concluded that New York's excessive reliance upon large, segregated adult homes,[3] and its failure to offer services in the most integrated setting violates the ADA.

If New York's argument were accepted by this Court, it would eviscerate Congress' command and the Supreme Court's directive to prevent the unnecessary segregation of persons with disabilities. In fact, it even could provide other states with a road map to avoid the requirements of federal law by sharing the responsibility for providing residential and non-residential services with other public and private entities. *Amici* urge the Court to reject this argument and affirm the district court's judgment.

[3] The district court's decision, and this brief, focus exclusively on twenty-eight adult homes in New York City with more than 120 beds and in which 25% of the resident population or twenty-five residents (whichever is fewer) have a mental illness (the "adult homes").

For a listing of the individual *amici*, please see the Appendix.

SUMMARY OF THE ARGUMENT

Consistent with state law, New York's Department of Health (DOH), Office of Mental Health (OMH), governor and commissioners of DOH and OMH (hereafter "New York" or "the State") plan, administer, fund, monitor, and regulate the State's mental health system, which includes public institutions, segregated adult homes, and an array of integrated community programs and services. Neither the fact that New York, like virtually all states, allocates the responsibility to administer and fund this system between several state agencies nor the fact that it relies upon private providers to deliver mental health services exempts it from complying with Title II of the ADA.

New York deliberately incorporates large, segregated adult homes as a core residential treatment component of its mental health system, and historically relied upon these institutions to depopulate its public psychiatric hospitals and "trans-institutionalize" its residents. Since the adult homes in this case undisputedly are segregated "mini-institutions" that provide a combination of residential support services and mental health treatment to persons with psychiatric disabilities who cannot live on their own, the State's failure to offer adult homes residents meaningful access to its integrated supported housing program violates the integration mandate of the ADA.

ARGUMENT

I. NEW YORK STATE OFFICIALS AND AGENCIES ARE SUBJECT TO THE INTEGRATION MANDATE OF THE ADA BECAUSE THEY PLAN, ADMINISTER, FUND, AND MAINTAIN NEW YORK'S MENTAL HEALTH SYSTEM FOR PERSONS WITH PSYCHIATRIC DISABILITIES, INCLUDING ITS SEGREGATED INSTITUTIONS LIKE ADULT HOMES.

The district court correctly concluded that New York's administration of its mental health system, which relies on large, segregated adult homes[4] to provide residential and treatment services to thousands of persons with mental illness whose individual needs can be met in more integrated settings like supported housing, violates the ADA's integration mandate. *Disability Advocates, Inc. v. Paterson*, 653 F. Supp. 2d 184, 187-188 (E.D.N.Y. 2009) ("*DAI II*"). Based upon their experience planning, administering, funding, and delivering mental health services, *amici* strongly support the district court's application of the ADA to New York's adult homes, and similarly support the district court's determination that supported housing is a professionally-accepted and effective method for providing mental health treatment in the community.

[4] Thus, it is critical to understand that the reference to "adult homes" in the context of New York's system describes large, heavily-populated facilities that have almost all of the attributes of institutional settings. In virtually every sense, these are "institutions" and not "homes."

A. New York Plans, Administers, Develops, and Maintains Its Mental Health System, Including Adult Homes, Through Multiple State Agencies and Entities.

New York, like virtually all states, offers an array of mental health services which are provided in an array of residential treatment settings and locations. It operates twenty-five state psychiatric hospitals that segregates and confines over 4,000 persons with psychiatric disabilities. *See* 2008 Update to the OMH 2006-2010 Statewide Comprehensive Plan for Mental Health Services, http://www.omh.state.ny.us/omhweb/Statewideplan /2008/update/2008_update.pdf. New York also funds twenty-eight segregated adult homes in New York City that serve over 4,000 persons with disabilities, with almost three times this number in adult homes throughout the state. *Disability Advocates, Inc. v. Paterson*, 598 F. Supp. 2d 289, 296 (E.D.N.Y. 2009) (*"DAI I"*).[5] It manages integrated residential settings for over 30,000 individuals with psychiatric disabilities, including supported housing for over 13,000 individuals.

[5] In its summary judgment motion below, New York argued that Title II was inapplicable to adult homes because the State's role in licensing, inspecting, and monitoring them is not a "service, program, or activit[y]." *See DAI I*, 598 F. Supp. 2d at 313. It appears that New York has abandoned that argument on appeal, and now concedes both that adult homes are part of its service system and that DAI's claims relate to state services, programs, or activities. Appellants' Br. 29, 40, 41, 46, 48, 64. This concession is inevitable given the State's choice to fund adult homes as a residential treatment setting for persons with psychiatric disabilities who cannot live independently, and then to incorporate publicly-funded mental health treatment into the adult homes.

DAI II, 653 F. Supp. at 273.

New York, like virtually all states, allocates the responsibilities to plan, administer, fund, and manage this array of mental health services and settings among various state agencies, including OMH, DOH (which is also the state Medicaid agency), and related human service agencies. Services and settings are funded by state and federal revenues, most significantly through the federal Medicaid program that is operated by DOH. Various agencies license, regulate, and oversee the appropriateness of services provided to persons with psychiatric disabilities, including the safety and appropriateness of the settings where they reside. Some of the settings, like public psychiatric hospitals, are operated directly by governmental entities, such as OMH or the City of New York. Others, like adult homes and supported housing, are funded by public agencies but operated by private corporations. Many of these private entities are charitable corporations, like the non-profit supported housing providers. Others are for-profit businesses, like the adult homes.

Under state law, New York, like all states, is responsible for administering a mental health service system. It cannot evade its federal statutory obligations simply by dividing these functions between various state agencies and public entities. Nor can it avoid the commands of the ADA by employing private providers – either non-profit or for-profit – to fulfill its statutory duties to its

citizens with disabilities. *See* § I(B), *infra*.

Based upon the facts and statutory duties of various state agencies, the district court found that New York has created a mental health system that deliberately includes adult homes and which depends on adult homes to reduce its state hospital population. *DAI I*, 598 F. Supp. 2d at 295-97. The court properly held that New York, including the governor, OMH, DOH, and the commissioners of these agencies, have a shared responsibility for planning, administering, funding, and maintaining the mental health system that relegates persons with psychiatric disabilities to adult homes. *Id.* at 317-18. It did so both in reliance on state laws and policies that prescribe this allocation of functions, as well as the reality that New York, like other states, elects to divide these responsibilities between various state agencies and to depend upon private entities to directly provide the services and to operate the settings. *Id.* Finally, it concluded that New York's actions in developing, supporting, overseeing, and relying upon adult homes as a segregated residential service setting for persons with psychiatric disabilities violates the ADA. *DAI II*, 653 F. Supp. 2d at 314.

OMH and DOH are the two state agencies with the primary responsibility for planning, administering, funding, and maintaining New York's mental health system and the segregated adult homes in that system. OMH plans and develops mental health services, decides upon the settings where services will be delivered,

funds and oversees a range of mental health residential and treatment services, and contracts with private providers to deliver most of these services. *See* N.Y. Mental Hyg. L. § 7.07; *DAI I*, 598 F. Supp. 2d at 313. As summarized by the district court, "OMH is responsible for planning what mental health services the State will provide, and allocating resources to those services." *Id*. at 314.

OMH also sets standards and issues regulations governing the quality of mental health service providers, including those which provide mental health services in the adult homes. *See* N.Y. Mental Hyg. L. §§ 31.01, 31.04. In addition, OMH funds, oversees, licenses and credentials providers of mental health services to adult home residents with psychiatric disabilities and "provides treatment services directly inside some adult homes." *DAI I*, 598 F. Supp. 2d at 315-16.

DOH plays a major role in developing, funding, regulating, and overseeing mental health services and settings. *Id.* at 314-15. In order to ensure that there are a sufficient, but not an excessive, number of adult home beds, DOH issues operating certificates for adult homes, which must be renewed every four years. 18 N.Y.C.R.R. §§ 485.3(a)(3), 485.5(c). To the extent that persons with psychiatric disabilities are needlessly institutionalized in adult homes, DOH has the authority and the duty to certify fewer beds than currently exist.

New York's Medicaid program is administered by DOH, which pays for

most of the mental health services provided to most of OMH's clients. *See* N.Y. Soc. Serv. Law § 363-a(1)-(4). Specifically, DOH funds the mental health services for adult home residents, while the residents use other federal funding from the Social Security Administration to pay for services like room and board, which is not covered by Medicaid. *DAI II*, 653 F. Supp. 2d at 282-283. Then New York pays a targeted SSI supplement for adult home residents to pay the additional costs of their residential services in the adult homes. *Id.*

Both DOH and OMH share the authority and responsibility to monitor and inspect adult homes. N.Y. Const. Art. XVII, § 4; 18 N.Y.C.R.R. § 485.3(a)(1), (a)(5), (b)(1). If an adult home does not comply with state regulations or if the agency determines that it would be in the public interest, DOH has the authority and duty to revoke or suspend the home's operating certificate. 18 N.Y.C.R.R. § 485.5(c), (l), (m).

Thus, through the coordinated administration of OMH and DOH, and with the direct support of the State Medicaid program, New York plans, funds, regulates, and monitors adult homes as a critical component of its mental health service system. These state activities are clearly encompassed within the scope of Title II of the ADA. Moreover, given New York's decision to rely upon adult homes as a residential treatment setting for persons with psychiatric disabilities who cannot live independently; to fund, certify, and incorporate these homes in its

mental health system; and to provide mental health services directly in the homes, adult homes are clearly a state service within the meaning of Title II of the ADA. Therefore, the district court properly concluded that New York must comply with Title II's integration mandate with respect to residents of its adult homes. *DAI I*, 598 F. Supp. 2d at 317-18.

B. New York Cannot Avoid Its Duty to Comply with the Integration Mandate of the ADA By Relying Upon Private Agencies and Entities Like Adult Homes to Provide Mental Health Residential and Treatment Services.

In order to provide services to individuals with psychiatric disabilities, New York, like virtually all states, does not rely entirely – or even primarily – on state-funded and operated service settings, such as state psychiatric hospitals. Rather, New York has developed a service network that combines public facilities, private for-profit corporations, and non-profit organizations to deliver residential and treatment services. Its adult homes and other segregated institutions (other than public psychiatric hospitals) are operated by corporations that are organized to generate profits, while most of its community-based mental health services, such as supported housing, are run by charitable, non-profit organizations. *DAI I*, 598 F. Supp. 2d at 295. This combination of delivery mechanisms, as well as the precise delegation of services to different entities, does not relieve New York from its obligation to comply with Title II of the ADA, and specifically to ensure that

services are provided in the most integrated setting. *DAI I*, 598 F. Supp. 2d at 316-18 ("Title II covers all programs, services, and activities of a state or local government entity 'without any exception.'") (citing *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 209 (1998)). If it did, states would simply outsource their human services systems to avoid federal law.

Other circuit courts of appeals consistently have held that states cannot escape their duty to comply with Title II by utilizing private providers to deliver disability services. *Townsend v. Quasim*, 328 F.3d 511, 517 (9th Cir. 2003) (Title II's integration mandate is applicable to residents of community-based, private "adult homes"); *Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175, 1181 (10th Cir. 2003) (policy which required persons to be admitted to private nursing facilities in order to obtain certain pharmacy benefits not available to individuals living in private community programs violated Title II of the ADA). Lower courts that have addressed the issue concur. *See Martin v. Taft*, 222 F. Supp. 2d 940, 981 (S.D. Ohio 2002) ("the ADA applies to 'services, programs and activities,' and liability does not hinge upon whether the setting in question is owned or run directly by the State."); *Rolland v. Cellucci*, 52 F. Supp. 2d 231, 237 (D. Mass. 1999) (in class action seeking integrated community services under the ADA, the court found it "immaterial" that "many Plaintiffs reside in private rather than public nursing facilities").

Here, the district court recognized that: "*Olmstead* … imposes an obligation on states, which are responsible for providing services, 527 U.S. at 607, not on the particular facilities in which service recipients are alleged to be segregated." *DAI I*, 598 F. Supp. 2d at 316. New York "cannot evade its obligation to comply with the ADA by using private entities to deliver some of those services." *Id.* at 318. The State is required by Title II to administer its service system so that individuals with psychiatric disabilities receive services in the most integrated setting possible, even if it chooses to rely on private providers such as adult homes to deliver residential and treatment services.

II. NEW YORK'S ADMINISTRATION OF ITS MENTAL HEALTH SYSTEM, WHICH DELIBERATELY INCORPORATES AND RELIES UPON SEGREGATED ADULT HOMES AS A CORE COMPONENT OF THAT SYSTEM, VIOLATES TITLE II OF THE ADA.

A. Adult Homes Are a Core Component of New York's Mental Health System.

1. New York Intentionally Implemented a Policy to Include Segregated Adult Homes as a Core Residential Treatment Setting for Persons with Psychiatric Disabilities.

Prior to 1970, New York confined 93,000 citizens with psychiatric disabilities in its segregated state hospitals. *DAI I*, 598 F. Supp. 2d at 297 n.7. During the next 30 years, New York, like most states, reduced the population of its psychiatric institutions in response to improvements in mental health care and the

escalating costs of maintaining state-operated psychiatric hospitals. However, rather than create a network of integrated community supports and services as many other states did, New York made a "'policy decision' to serve a large number of former patients in adult homes" and chose to rely on the availability and economic interests of private, for-profit corporations to operate adult homes. *DAI I*, 598 F. Supp. 2d at 296-97; *see also DAI II*, 653 F. Supp. 2d at 197; Tr. 640 (Rosenberg). In order to achieve this policy objective, New York "licensed private providers to create adult homes using under-utilized facilities, such as hotels, motels, YMCAs, and other similar buildings." *DAI I*, 598 F. Supp. 2d at 297.

New York's transfer of thousands of individuals with psychiatric disabilities from state hospitals to adult homes was simply a massive trans-institutionalization, not based upon individualized determinations of the benefits of integrated community living. *See* S-150 (D. Jones Report) at 7. Rather than developing sufficient community-based services for citizens with psychiatric disabilities who were discharged from state hospitals, New York chose the more expedient policy of relying on the private, for-profit adult home industry to effectuate a dramatic shift in its service system. Tr. 1004-05 (D. Jones).

2. New York Continues to Rely Upon Segregated Adult Homes as a Core Component of Its Mental Health System.

New York now administers and maintains a service delivery network that

relies on adult homes as a core component for providing residential and treatment services to individuals with psychiatric disabilities. New York officials recognize that these adult homes are "de facto mental institutions," "satellite mental institutions," and "mini-institutions." *DAI I*, 598 F. Supp. 2d at 297; Tr. 643 (Rosenberg).

New York's reliance on these "de facto mental institutions" to serve individuals with psychiatric disabilities has continued unabated since the 1970s, despite widespread evidence of mismanagement, abuse and neglect, deplorable living conditions, and fraud. S-150 (D. Jones Report) at 7. Additionally, even after the enactment of the integration mandate in Title II of the ADA, New York has continued to rely on adult homes as an important part of its mental health system. While the number of transfers from state hospitals has substantially decreased, due mostly to the reduction of the number of people remaining in state hospitals, New York continues to include adult homes as part of its residential service alternatives for people leaving other institutions.

New York's excessive reliance on adult homes – both to trans-institutionalize former state hospital residents and to institutionalize a new generation of persons with psychiatric disabilities – is unique in the nation. Few states have so blatantly incorporated privately-operated, state-funded "mini-institutions" directly into their mental health system, nor continued to rely so

heavily on these segregated institutions to confine more than 4,000 of their citizens with psychiatric disabilities.

Through its consistent and deliberate policy choices, funding priorities, and limited service options, New York intentionally continues to incorporate segregated adult homes as a key residential setting for persons with psychiatric disabilities. *DAI I*, 598 F.Supp.2d at 296. New York subsidizes each resident's placement in an adult home by providing an annual supplement of $8,328 for SSI recipients who live in adult homes. Appellants' Br. 7. New York also makes significant annual contributions to adult homes for capital improvements, staff training, and treatment programs. *Id.* at 9. New York refers people with disabilities to these homes and then provides mental health services while they remain in the homes. New York also makes it difficult for persons with disabilities to leave these adult homes for more integrated settings. In fact, New York has excluded adult home residents from its supported housing program by prioritizing other individuals and populations for its limited supported housing slots. *DAI I*, 598 F. Supp. 2d at 355.[6] Only in 2007 did New York modify that exclusionary policy, and then only to allow 60 adult home residents to move to supported

[6] The district court found that OMH has "designated 9,000 new community housing beds for *homeless individuals* with mental illness." *Id.* (emphasis added).

housing.[7] *Id*.

Thus, New York's policy to maintain adult homes as a major provider of residential and treatment services for individuals with psychiatric disabilities is deliberate and coordinated. In order to reduce state expenditures for mental health services, New York chose to shift persons with mental illness from its state-operated hospitals to adult homes. Although New York has reduced the number of individuals who are trans-institutionalized from state hospitals to adult homes in recent years, persons with psychiatric disabilities still are discharged to adult homes from shelters, hospitals, and nursing facilities. *DAI I*, 598 F. Supp. 2d at 296.

For almost two decades, New York has been on notice that its support and maintenance of adult homes contravenes the basic goal of the ADA and the specific command of its integration mandate. During the past ten years, the State has commissioned several revealing studies of adult homes and their residents, which document the State's perpetuation of the unnecessary segregation of thousands of adult home residents.

In early 2002, at the governor's direction, New York commissioned a

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[7] Dennis Jones, a former mental health commissioner in Texas, testified that he had reviewed several emails from state officials to adult home operators indicating that the state would be happy to facilitate referrals into the adult homes to replace the individuals who left as part of the 60 bed set-aside. Tr. 1078-79 (D. Jones).

Workgroup to complete "a comprehensive review of adult homes, including relevant issues of policy, program and financing." S-150 (D. Jones Report) at 13. The Workgroup, which included staff members from OMH, DOH and the Commission on Quality of Care, "concluded that 6000 persons (or 50% of the adult home residents with psychiatric disabilities) could move to a more integrated setting," and "proposed a seven-year time line for implementation." *Id.* at 14-15. However, state officials decided not to implement the recommendation, and instead elected to maintain New York's historical reliance upon, and support for, segregated adult homes.

In 2004, New York contracted with researchers from Columbia Presbyterian to complete individual assessments of adult home residents "for the express purpose of determining the demographic, clinical and functional (health and mental health) status of the persons living in impacted adult homes." *Id.* at 11. More than half of the adult home residents indicated that they would prefer to live somewhere other than an adult home, but New York officials forbade Columbia Presbyterian from further analyzing any of the data collected. Tr. 1035 (D. Jones); S-150 (D. Jones Report) at 12.

Rather than engaging in a thoughtful planning process to discharge patients from segregated state hospitals to integrated community settings, New York instead trans-institutionalized thousands of citizens with psychiatric disabilities to

segregated adult homes. Since then, New York has deliberately relied on adult homes to provide residential and treatment services to persons with psychiatric disabilities, and adult homes have expanded to become a core part of New York's mental health system.[8] Consequently, New York is directly responsible for administering its mental health system in a manner that segregates thousands of individuals in adult homes.

B. New York's Deliberate Reliance on Segregated Adult Homes to Provide Both Mental Health Residential and Treatment Services Violates the ADA.

New York cannot deny its role in creating, and its legal responsibility for maintaining and funding, its mental health system that incorporates segregated adult homes. New York made a deliberate policy decision to rely upon adult homes to house and treat its citizens with psychiatric disabilities. It maintains persons with psychiatric disabilities in these homes. It provides significant funding to these homes. It has the authority to certify the needed capacity for these homes, and the duty to monitor, inspect, regulate, and oversee these homes. As a result, it

[8] New York's proffered fundamental alteration defense to its ADA violations reveals that its service delivery system is heavily dependant on adult homes. New York's argument that reallocating resources to integrated living arrangements like supported housing would result in a reduction in the number of adult homes, Appellants' Br. 64-65, acknowledges that New York's funding policy is directly responsible for maintaining the large network of adult homes and that the system, as presently administered, is heavily dependant on the State's continued support of its adult home industry. *Id.*

is inconsistent with the language of Title II of the ADA, as interpreted by the Supreme Court in *Yeskey* and *Olmstead,* for New York to claim it is not obligated to comply with the ADA's integration mandate with respect to residents of these homes.

Title II of the ADA prohibits discrimination by reason of disability. 42 U.S.C. § 12132. One such form of discrimination is violation of the ADA's "integration mandate." *Olmstead,* 527 U.S. at 592, 600-601. The integration mandate – as expressed in the statutory language of the ADA (42 U.S.C. § 12182(b)(1)(B)), the Attorney General's regulations implementing Title II (28 C.F.R. § 35.130(d)), and the Supreme Court's decision in *Olmstead* – requires that persons with disabilities receive services in the most integrated setting appropriate to their needs. In *Olmstead*, the Supreme Court held that where a community-based placement is appropriate for a person with mental disabilities, the "unjustified institutional isolation" of such a person violates the mandate of Title II and "is properly regarded as discrimination based on disability." 527 U.S. at 594-600.

New York has created a package of mental health residential and support services that are only available in a segregated adult home. For persons with psychiatric disabilities who cannot live independently, who need structured assistance in their residential setting, and who need mental health treatment for

their disabling condition, New York relies upon segregated adult homes as one core option. Just like a state's decision to unnecessarily segregate persons with psychiatric disabilities in a publicly-operated state hospital or a privately-managed institution violates the ADA, *see Olmstead,* 527 U.S. at 601, and *Fisher*, 335 F.3d at 1181, New York's policy of offering this package in segregated adult homes does so as well.

New York erroneously argues that *Olmstead* requires that a violation of the ADA's integration mandate must involve "state-mandated segregation."[9] Appellants' Br. 30-31. The term "state-mandated segregation" does not appear anywhere in the *Olmstead* decision, nor does New York provide any other citation for its erroneous characterization of the Court's *Olmstead* holding. In fact, New York's pre-condition for an ADA violation – state-mandated segregation – is neither clear nor correct. It clearly cannot mean that the state must require the segregation of persons with psychiatric disabilities, through judicial commitment or other forms of coercion, since even *Olmstead* did not involve such involuntary detention.[10] *Olmstead,* U.S. 527 at 593. Nor can it mean, as New York attempts to

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[9] New York invents a definition of "state-mandated segregation" to include two "narrow types of state action [that] constitute unlawful discrimination under Title II: (1) conditioning access to state services on institutional confinement, and (2) unwarranted confinement in segregated state institutions." Appellants' Br. at 28-29.

[10] No case supports this narrowing of the ADA and *Olmstead* plainly rejects it. In *Olmstead,* both plaintiffs, L.C. and E.W., were voluntarily admitted to the state

argue, Appellants' Br. 29, that prohibited segregation under the ADA can only take place in a "segregated state institution." *See, e.g., Radaszewski v. Maram*, 383 F.3d 599 (7th Cir. 2004); *Frederick L. v. Dep't of Public Welfare of Pennsylvania*, 364 F.3d 487 (3d Cir. 2004); *Fisher*, 335 F.3d at 1179 n.3; *Townsend*, 328 F.3d 511.

But even under its own invented test, New York's maintenance of segregated adult homes violates the ADA. Because New York administers, funds, and maintains a mental health system that relies so heavily on segregated adult homes to provide a combination of residential and treatment services to persons with psychiatric disabilities who cannot live independently, and because New York denies residents of these homes services in the most integrated setting appropriate for their needs, New York most certainly does "mandate segregation."

The overwhelming evidence demonstrates that New York funds and maintains adult homes as a residential setting that provides monitoring and support

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hospital in question. Other courts have applied the integration mandate to individuals who "voluntarily" reside in nursing facilities solely because the state does not provide access to community-based services, even though those individuals have not been "involuntarily" confined. *See e.g., State of Connecticut Office of Protection and Advocacy for Persons with Disabilities v. State of Connecticut*, 2010 WL 1416146, *4-6 (D. Conn. 2010) (voluntary nursing facility residents have Title II claim for community-based services); *Rolland*, 52 F. Supp. 2d at 236-37 (refusing to dismiss complaint by nursing facility residents that state officials violated the ADA by failing to provide appropriate community-based services, which resulted in unnecessary institutionalization).

to individuals who cannot live independently. *DAI I*, 598 F. Supp. 2d at 351. Persons with psychiatric disabilities must enter adult homes in order to access the combined residential and treatment services that they require. *See Fisher*, 335 F.3d at 1179 n.3. Because New York "packages" these residential and support services in segregated adult homes, New York violates the ADA by requiring persons to live in adult homes in order to receive both the special SSI supplement and the Medicaid-funded mental health services that they need.

Similarly, because thousands of residents could receive the same support services in a far more integrated setting, like supported housing, New York violates the ADA by unnecessarily maintaining them in segregated adult homes and failing to offer them an integrated alternative.[11] *See* § II(C), *infra*. New York's administration of its mental health system, which deliberately incorporates adult homes as a core component of that system and then conditions the receipt of a combination of residential support and mental health treatment services on segregation in an adult home, is directly responsible for the unjustified institutional isolation of persons with psychiatric disabilities.

[11] Both plaintiffs in *Olmstead*, like many adult home residents, wanted to leave the facility in order to be treated in the community, but the state's failure to provide access to community services left them no choice, in violation of the integration mandate. 527 U.S. at 607.

C. New York's Design, Development, and Administration of its Mental Health System Fails to Include a Sufficient Number of Integrated Community Living Alternatives, Thereby Forcing Persons with Psychiatric Disabilities to Enter and to Continue to be Confined in Segregated Adult Homes.

1. New York Does Not Fund a Sufficient Capacity of Integrated Community Living Arrangements to Serve Adult Home Residents With Psychiatric Disabilities, Leaving Them With No Meaningful Choice But to Remain in Segregated Institutions.

Through the deliberate actions of the defendants, adult home residents have been virtually excluded from most community residential treatment programs and all but a miniscule fraction of the supported housing placements. New York has chosen to fund only 60 supported housing beds specifically for adult home residents, even though there are thousands of persons with psychiatric disabilities in adult homes who qualify for and need this program to avoid continued segregation.[12] *DAI II*, 653 F. Supp. 2d at 274-75. As Linda Rosenberg, a former

[12] In 2007, without any involvement by the defendants and in part to counter the effects of the State's exclusionary policies, the New York Legislature allocated funding for 60 supported housing beds designated solely for adult home residents. *DAI II*, 653 F. Supp. 2d at 274. This belated access to supported housing pales in comparison to the number of adult home residents who need and prefer supported housing. The district court pointedly noted that "OMH did not propose or advance this initiative, and Defendants' witnesses testified that there is no plan to undertake a similar initiative in the future." *Id.* at 274-75. In light of the fact that adult home residents cannot access OMH's supported housing program because other groups are given a higher priority, "[o]nce the 60 supported housing beds from the set-aside are filled, the pipeline of supported housing beds for Adult Home residents will be closed." *Id.* at 275.

senior OMH official, testified, individuals with psychiatric disabilities generally are admitted to adult homes because that is the only placement that is available, not because it is an appropriate placement. Tr. 658 (Rosenberg). Thus, by funding its mental health services and settings so that there are ample placements available in adult homes but only 60 supported housing slots, New York is directly responsible for thousands of its citizens remaining segregated in adult homes.

When OMH requests proposals and enters into contracts with providers, it identifies the specific populations or target groups that are eligible for the new supported housing. *DAI II*, 653 F. Supp. 2d at 273. State officials testified that they administer their residential system to ensure that only members of the priority populations receive supported housing, thereby making it very unlikely that other individuals will be able to access these services. *Id.* For most of the past two decades, residents of adult homes were explicitly excluded from all supported housing programs because they were not designated as a target population in any request for proposal. *Id.* A modest loosening of this exclusionary policy in 2005 did not alter the fact that adult home residents remained excluded from this and similar integrated residential services because other populations explicitly were afforded a higher priority. *DAI II*, 653 F. Supp. 2d at 274; *see also DAI I*, 598 F. Supp. 2d at 347. In fact, Ms. Rosenberg testified that the inclusion of adult home residents as a targeted population did not have "any impact on Adult Home

residents' access to supported housing beds." *DAI II*, 653 F. Supp. 2d at 274; Tr. 662 (Rosenberg).

The ADA does not permit states to continue to maintain persons with disabilities in segregated institutions and deny them access to integrated programs that the state currently administers. While New York may have discretion to identify priorities for its mental health services and programs, it cannot do so in a manner that discriminates against persons living in segregated institutions like adult homes, and which relegates these individuals to indefinite confinement in those institutions.

2. New York Has Established a Process to Access Its Limited Integrated Community Living Arrangements Which Effectively Precludes Adult Home Residents from Leaving Segregated Institutions.

In addition to explicitly excluding adult home residents from almost all supported housing programs through its contract and eligibility procedures, New York also administers other aspects of its mental health system in such a way that persons with psychiatric disabilities have virtually no opportunity to transition from adult homes to integrated community settings, such as supported housing.

One major obstacle to leaving adult homes is the dearth of information provided about alternative residential services. During the trial, several witnesses, including the defendants' expert, Dr. Jeffrey Geller, "agreed that adult home

residents are not adequately informed of housing options." *DAI II*, 653 F. Supp. 2d at 261. "In general, residents are unaware of other housing options and the wide range of assistance that would be available to them in supported housing and other settings." *Id.* Residents stated that even when they expressed interest in transitioning to more integrated service settings, they were either ignored or actively discouraged by case managers or other providers in the adult homes. *DAI I*, 598 F. Supp. 2d at 300.

Even if adult home residents find a way to apply for supported housing despite all of the obstacles identified above, the State does not maintain a waiting list to facilitate a future placement if none is available. *DAI I*, 598 F. Supp. 2d at 348. As a consequence, there is no record of which adult home residents have actively pursued supported housing. *DAI II*, 653 F. Supp. 2d at 276. New York cannot restrict access to its limited, integrated residential services and then not even allow adult home residents fair access to these services like supported housing.

3. Because of New York's Lack of Integrated Community Living Alternatives, Persons with Psychiatric Disabilities Have Little Choice About Whether to Enter Adult Homes or to Remain There, and Thus the Placements Are Not Truly Voluntary.

New York asserts that "no state law, regulation, or policy forces individuals with mental disabilities to accept any form of community residence, including

adult homes. If residents are dissatisfied with living in an adult home, they may leave." Appellants' Br. 33-34. The evidence presented at trial and the facts found by the district court directly contradict this assertion and reveal that, as a direct result of New York's administration of its residential service network, persons with psychiatric disabilities have no choice but to enter adult homes, and, once there, no opportunity to leave.

Because New York funds a significant number of segregated adult home placements and such an inadequate number of supported housing placements for adult homes residents, persons with psychiatric disabilities often have no choice but to enter and remain in adult homes.[13] During the trial, Ms. Rosenberg testified that most individuals did not have access to supported housing, and instead were placed in adult homes "because there are lots of them, there are lots of beds…it really is more about availability than anything else." Tr. 658 (Rosenberg). In an affidavit, Dr. Duckworth observed that "adult home residents I met were frequently given no choice about where to live. At best, if they were given a choice, it was between two adult homes." *DAI I*, 598 F. Supp. 2d at 300.

There is also overwhelming evidence in the record that the vast majority of

[13] When he was asked by defense counsel whether some individuals may prefer being in an adult home, Mr. Jones testified that "it comes down to a question of…what choices people really have, and I guess one of my premises as a commissioner has always been one choice is no choice. And I think we've got lots and lots of evidence that there were people who moved into adult homes because there was no other choice." Tr. at 1167-68 (D. Jones).

adult home residents want to leave these institutions. Dr. Groves reviewed the Columbia Presbyterian data and concluded that, of the 2,080 adult home residents who were assessed, "1,536 expressed either (A) explicit interest in living elsewhere, including in an apartment, in supported living, or with family and relatives, or (B) did not express a preference for living in the Adult Home where they were residing." *DAI I*, 598 F. Supp. 2d at 302. Several experts noted that the large number of people who expressed a desire to leave the adult homes significantly understates the number of persons who actually would prefer to leave, because the residents were not provided a clear explanation of the alternatives that were available and the assessments were being conducted by total strangers. *See id.*; Tr. at 1020-22 (D. Jones). Nevertheless, despite these factors, nearly 75% of participants asserted that they did not want to live in an adult home if given another choice.

New York's claim that all adult home residents are there voluntarily belies the State's denial of an adequate number integrated service options for these individuals as well as New York's purposeful exclusion of adult home residents from the limited available integrated residential alternatives. Similarly, their unsupported speculation that adult home residents are content with their situation is contradicted by the district court's findings, which are entitled to deference.

CONCLUSION

For the reasons set forth above, this Court should affirm the judgment of the district court in all respects.

Respectfully submitted,

s/ Robert J. Alessi

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Dated: October 13, 2010

CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,965 words, excluding parts of the brief exempted by Fed. R. App. P. 32(a)(7(B)(iii). In preparing this certificate, I relied on the word count program in Microsoft Word.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the brief has been prepared in a proportionally spaced typeface (Times New Roman) in 14-point font size.

Dated: October 13, 2010

s/ Robert J. Alessi

Robert J. Alessi

CERTIFICATE OF SERVICE

I, Robert J. Alessi, certify that on October 13, 2010, a copy of the foregoing Brief of Dick Thornburgh, Former Governor and United States Attorney General, and 30 Former State Mental Health Commissioners, as Amici Curiae, in Support of Plaintiffs-Appellees was filed electronically through the CM/ECF system. Notice of this filing will be sent by e-mail to the counsel of record for all parties by operation of the CM/ECF system.

Dated: October 13, 2010

s/ Robert J. Alessi

Robert J. Alessi

APPENDIX

Richard L. "Dick" Thornburgh

The Honorable Dick Thornburgh is the former Governor of Pennsylvania and former Attorney General of the United States. He served from 1979 to 1987 as Governor of Pennsylvania. He then served as Attorney General from 1988 to 1991 under Presidents Ronald Reagan and George H. W. Bush. He is also a parent of a man with a disability, and cites working on the passage of the Americans with Disabilities Act of 1990 as one of his proudest achievements as Attorney General.

Meredith Alden, Ph.D., M.D.

Meredith Alden was Director of the Utah Division of Mental Health from 1995 to 2000. She has been a provider of psychiatric care for persons with serious mental illness who are served in the public mental health system in Utah for 30 years. She is presently a Clinical Associate Professor of psychiatry at the University of Utah School of Medicine. Alden has served on the National Advisory Council of the U.S. Substance Abuse and Mental Health Services Administration. She is currently a member of the board of directors of Alliance House, a training base clubhouse certified by the International Center for Clubhouse Development.

C. Patrick Babcock

C. Patrick Babcock was Director of the Michigan Department of Mental Health from 1981 to 1986. He had executive responsibility for community mental health services, community residential services for individuals with mental illness or developmental disabilities, state hospitals for mentally ill adults, state treatment centers for mentally ill children, and residential centers for developmentally disabled citizens. He also served as the Director of the Michigan Department of Social Services, and as the Director of the Michigan Department of Labor, where his responsibilities included services to people with disabilities. In addition, he established and directed two new agencies in Michigan – the Office of Services to the Aging and the Office of Drug Abuse and Alcoholism.

Babcock's other public appointments include serving as co-chair of the Michigan Child Welfare Improvement Task Force and the Michigan Mental Health Reform Commission. His private sector appointments include serving as a board member on Michigan Partners in Crises; member and vice-chair of the Michigan Association for Mental Health; member of the Board of Directors of the National

Schizophrenia Foundation; and member of the Robert Wood Johnson Foundation's National Advisory Committee for Services to Seriously Mentally Ill Children. He also has served as Director of Public Policy and Vice President for Health Programming at the W.K. Kellogg Foundation.

Joseph J. Bevilacqua, Ph.D.

Joseph Bevilacqua is widely respected as a dean of public mental health administrators, having spent 21 consecutive years as Commissioner of Mental Health Services in Rhode Island, Virginia, and South Carolina from 1975 to 1996. He accomplished important reforms in each state, including balancing resources between institutional and community mental health services, establishing systems of community support to enable persons with severe mental illness to live independently, and strengthening connections between the state mental health agency and other human service systems. Following his 10-year tenure as the South Carolina Mental Health Commissioner, Bevilacqua served from 1996 to 1999 as Director of the State Initiatives Office at the Bazelon Center for Mental Health Law in Washington, DC. He also served two terms as President of the National Association of State Mental Health Program Directors. Currently, he works as a consultant and presenter on a wide variety of mental health topics.

Geraldine Botwinick

Geraldine Botwinick became Acting Division Director of the New Jersey Division of Mental Health after serving as Deputy Director, Director of Community Services, and Regional Coordinator. During her tenure, she significantly increased New Jersey's funding base and the community continuum of mental health services by securing the state's first federal Housing and Urban Development grant for individuals with mental illness. She also developed and implemented a regionalization plan to unify the hospital and community continuum. In addition, she rewrote the State Rules and Regulations Governing Community Services, prioritizing people discharged from psychiatric hospitals and, as the Division's Legislative Liaison, assisted in drafting new screening legislation. Botwinick executed the first consumer-run contract and formed the first Minority Advisory Committee. After leaving the Division, she served as Executive Director of the statewide Mental Health Association and as Vice-Chairperson of the State Community Mental Health Citizens Advisory Board. For the past 20 years, she has been a health and human services consultant for public and non-profit agencies. In 1997, she formed her own consulting business, the Strategic Consulting Group. Her current foci include behavioral health service planning and

delivery, systems of care for people living with HIV/AIDS, and quality management.

Elizabeth Childs, M.D., M.P.A.

Elizabeth Childs was the Commissioner of the Massachusetts Department of Mental Health from 2003 to 2007. She has an extensive background in serving people with mental illness in both the private and public sectors. She served on the National Institute of Mental Health Advisory Council from 2006 to 2010, and as President of the Massachusetts Psychiatric Society in 2002 and 2003. She currently is appointed to the Board of the Massachusetts Department of Early Education and Care, serving as chair of its Fiscal and Policy Committee. Childs has held academic appointments at the Massachusetts Institute of Technology, Harvard University, and the University of Cincinnati. She holds Diplomates in Adult, Child and Adolescent Psychiatry from the American Board of Psychiatry and Neurology, and from 1996 to 2003, was Chief and Director of Psychiatry at Carney Hospital in Dorchester, Massachusetts.

Robert Constantine, Ph.D., M.P.H.

Robert Constantine served as both the State Mental Health Director and the Assistant Secretary for Mental Health and Substance Abuse at the Florida Department of Health and Rehabilitative Services. He also was a District Administrator for the Department, with responsibilities for all state-supported health and human services in southwest Florida. In addition, from 1996 to 2004, Constantine was the Chief Executive Officer of the Florida Council for Behavioral Healthcare, a trade association of community-based behavioral health care providers. In this capacity he helped frame state policy and advocated for the resources to improve the performance of Florida's mental health system. He is currently a Research Associate Professor in the Department of Mental Health Law and Policy at the Louis De La Parte Florida Mental Health Institute, University of South Florida. He has been the principle investigator for the administrative data component of a large managed care evaluation, the Behavioral Pharmacy Management Program, and the Medicaid Drug Therapy Management Program for Behavioral Health.

King Davis, Ph.D.

King Davis served as Commissioner of the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services from 1990 to 1994. As

Commissioner, Davis was responsible for administering the state's community and institutional mental health programs. During his tenure, Virginia significantly reduced the number of individuals in large segregated mental health institutions and moved them to the community. These populations included adults, children, and the aged. Virginia also developed an exceptional tracking system that allowed the state system to examine the extent to which individuals return to the more segregated system after their transition to the community. Currently, Davis holds the Robert Lee Sutherland Chair in Mental Health and Social Policy at the University of Texas at Austin, where he teaches courses in mental health policy, planning, and theory.

Joel A. Dvoskin, Ph.D., ABFP

Joel Dvoskin was named the Acting Commissioner of Mental Health for the State of New York in 1995 after serving more than a decade as Associate Commissioner of the Department. He was in charge of New York's forensic and correctional mental health systems. He was responsible for inpatient services at three large forensic hospitals and two regional forensic units, and for all mental health services in New York State prisons, including innovative community forensic programs. Dvoskin currently teaches at the University of Arizona Medical School, and has a consulting practice in forensic psychology in Tucson, Arizona. He provides a wide array of training and consulting services to state mental health and criminal justice agencies, federal courts, corporations, and universities throughout the United States and Canada.

Eileen Elias, M. Ed.

Eileen Elias was Commissioner for the Commonwealth of Massachusetts, Department of Mental Health from 1991 to 1996. She was the Acting Commissioner for the District of Columbia's Commission on Mental Health Services in 1997. She brings more than 40 years of experience as a public health disability-based policy leader, manager, analyst, planner, trainer, and educator with a record of transforming international and national health and human service systems for persons with a disability. Elias also served as Deputy Director of the United States Department of Health and Human Services' Office on Disability, and Senior Policy Analyst for the DHHS' Substance Abuse and Mental Health Services Administration Office on Policy, Planning and Budget. She has published extensively, served on numerous local and national boards and received recognition awards from Federal and State organizations, providers and consumers. She is currently Senior Policy Advisor for Disability and Mental Health for JBS

International, a Washington-based consulting and contracting firm specializing in national and international public health social services issues.

Joan L. Erney, J.D.

Joan Erney was Deputy Secretary for the Pennsylvania Office of Mental Health and Substance Abuse Services from 2003 to 2010. During her tenure, two state facilities were closed; the closing of a third facility is underway. Erney also oversaw the expansion of HealthChoices, Pennsylvania's mandatory Medicaid behavioral health managed care program, and the development of certified peer specialists under Medicaid and other evidenced-based practices for children, adults, and older adults. She was instrumental in forwarding a major supportive housing initiative within the state and investing in the development of forensic peer and other criminal justice services. Erney is currently the Chief Business Development and Public Policy Officer for a not-for-profit behavioral health managed care organization.

Mary Jane England, M.D.

Mary Jane England served the Commonwealth of Massachusetts as Commissioner of the Department of Social Services and Associate Commissioner of the Department of Mental Health. In addition, she was an Associate Dean at Harvard University's John F. Kennedy School of Government, where she was the Director of the Lucius N. Littauer Master in Public Administration Program. She also was the program director of the Robert Wood Johnson Foundation's Mental Health Services Program for Youth. She is currently President of Regis College. England has served on numerous public and non-profit boards, as well as work groups and task forces, including the Carter Center Mental Health Task Force. She chaired the National Advisory Mental Health Council's Work Group on Child and Adolescent Mental Health Intervention, Development and Deployment that produced *Blueprint for Change: Research on Child and Adolescent Health.* She also chaired the Institute of Medicine (IOM) committee that produced the report on mental health and substance abuse, "Crossing the Quality Chasm," and more recently, the IOM committee that focused on parental depression and its effect on children and family members.

David L. Evans

David Evans, the State Commissioner for Mental Health, Mental Retardation and Substance Abuse in Georgia from 1990 to 1993, has more than 35 years experience

in the mental health, mental retardation and chemical dependence field. He previously served as State Director for the Office of Mental Retardation in Nebraska and Acting Director of the Community Services Division for Developmental Disabilities in Michigan. He is presently the Executive Director at Austin-Travis County Integral Care in Austin, Texas, and its affiliated non-profit New Milestones Foundation, Inc. He also teaches public policy at the University of Texas School of Social Work and St. Edwards University.

He is a member of the National Alliance for the Mentally Ill, the Texas Council of Community Mental Health Mental Retardation Centers, Inc., Tejas Behavioral Health Services, the Texas Children's Policy Council, the American Association on Intellectual and Developmental Disabilities, and the Mayor's Mental Health Task Force Monitoring Committee. He previously served as a member of the National Association of State Mental Health Directors and the Georgia Planning Council for Developmental Disabilities, and was President of the National Association for State Mental Retardation Program Directors.

John J. Gates, Ph.D.

John Gates was the Georgia State Director of the Division of Mental Health, Mental Retardation and Substance Abuse from 1983 to 1990. Over the course of 30 years, he has held multiple positions in the Georgia Department of Human Resources, now known as the Department of Behavioral Health and Developmental Disabilities. He presently serves on the Board of the Rosalynn Carter Institute for Caregiving at Georgia Southwestern University, and is an ex-officio member of the Carter Center Mental Health Task Force in Atlanta. He was Director of the Mental Health Program at the Carter Center from 1993 to 2000. Gates is a past member of the Board of the National Mental Health Association (now known as Mental Health America) and the Board of the World Federation for Mental Health. He is an honorary life member of the Georgia Mental Health Association and a Fellow of the Georgia Psychological Association.

William Goldman, M.D.

William Goldman was Commissioner of the Massachusetts Department of Mental Health and Mental Retardation in the mid-1970s. Under his leadership, the Commonwealth began dismantling the mental health system and started closing state hospitals. Goldman subsequently served as the Director of Mental Health, Drug and Alcoholism Services for the City and County of San Francisco, and the Associate Medical Director for Mental Health Services for HealthAmerica, Inc.

He also was the Medical Director at both Contra Costa Health Plan in Martinez, California, and U.S. Behavioral Health/United Behavioral Health in San Francisco. In addition, he was the Senior Vice President for Behavioral Health Services at United Behavioral Health in San Francisco. Goldman, who has authored more than 40 articles in scientific journals, is a retired Clinical Professor of Psychiatry at the University of California in San Francisco.

Donald J. Hevey

Donald J. Hevey was the Director of the Alcohol, Drug Abuse and Mental Health Office for the State of Florida from 1982 to 1985. He previously served as the Assistant Director of the office. As Director, he was responsible for the statewide administration of community alcohol, drug abuse and mental health programs as well institutional mental health, substance abuse and forensic programs. Previously, from 1975 to 1981, he was the Executive Director of the Manatee County Community Mental Health Center, a comprehensive mental health and substance abuse center in Bradenton, Florida. Currently, Hevey is President and Chief Executive Officer of Mental Health Corporations of America, Inc., a national alliance of select organizations that provide behavioral health services. He has served in this capacity since 1985.

Thomas A. Kirk, Jr., Ph.D.

Thomas Kirk was Commissioner of the Connecticut Department of Mental Health and Addiction Services from 2000-2009. He served as Deputy Commissioner of the department from 1995 to 2000. During his tenure, Kirk focused on the design, implementation and management of recovery-oriented healthcare systems. In 2006, the National Alliance on Mental Illness rated Connecticut and Ohio highest in a review of the mental health systems in all 50 states. Kirk has served on the Board of Directors of the Foundation for Mental Health and the National Association of State Mental Health Program Directors Research Institute, Inc., and on the National Advisory Council of the federal Substance Abuse and Mental Health Services Administration.

Danna Mauch, Ph.D.

Danna Mauch served the State of Rhode Island as the Executive Director for Mental Health and Community Support Services. She also was Assistant Commissioner of the Massachusetts Department of Mental Health, where she directed the divisions of mental health, substance abuse and forensic medicine. In

both states, she directed planning, financing, regulatory and federal research and demonstration grants for a range of initiatives on treatment improvements, community-based care systems, and consumer directed care for developmental disabilities, mental health and chronic disease populations. In addition, Mauch served as the Special Master for the United States District Court for the District of Columbia, aiding implementation of the *Dixon* consent decree to reform the publicly-financed mental health system in the nation's capital.

She was the founding president and chief executive officer of Magellan Public Solutions, Inc., the subsidiary of Magellan Health Services, and chief administrative officer at Comprehensive NeuroScience, Inc. Currently, as a principal associate and principal scientist at Abt Associates, her work has concentrated on the adoption of evidence-based practices in prevention and treatment of health conditions impacting vulnerable populations, and financing of integrated prevention and care solutions for persons with social and economic disadvantages. She has continued to serve on several foundation, government, and nonprofit boards addressing prevention, treatment and care management for vulnerable persons at risk for or having complex, disabling and chronic health conditions.

Oscar Morgan

Oscar Morgan was Director of the Mental Hygiene Administration for the Maryland Department of Health and Mental Hygiene. He served in multiple positions during his career with the state's public mental health system. In addition, he has served as Project Director for Magna Systems, Inc., Vice President of Health Management Consultants, and Chief Operating Officer of Mental Health America, where he also was a senior consultant on Mental Health Policy and Programs. Morgan currently is Project Director at Affirma Solutions, Inc., which provides consulting services focusing on health and human services to underserved populations. He also chairs the Citizens Advisory Board of the Clifton T. Perkins Hospital Center, which is operated by the Maryland Department of Health and Mental Hygiene for offenders found not guilty by reason of insanity and for prisoners with mental illness who require hospitalization.

John A. Morris

John Morris, who has spent more than 35 years in the public behavioral health field as a clinician, administrator, researcher and educator, was the State Director of Mental Health in South Carolina from 1995 to 1997. He served as the Deputy

State Director of Mental Health from 1990 until 1995. During his tenure, the department implemented the Toward Local Care (TLC) Initiative, which moved hundreds of individuals from state psychiatric hospitals to supported housing and employment. One of the state's major psychiatric hospitals was closed on his watch. From 1999 to 2004, Morris was the founding Director of the South Carolina Center for Innovation in Public Mental Health, a joint venture between the South Carolina Department of Mental Health and the University of South Carolina. The Center focused on implementation of evidence-based practices designed to support persons with serious mental illnesses live successfully in their home communities.

Currently, Morris is Executive Director of the Annapolis Coalition on the Behavioral Health Workforce, which published the nation's first action plan for workforce development in partnership with the Substance Abuse and Mental Health Services Administration in 2007, and continues to provide leadership and technical assistance on workforce issues nationally. He also is a consultant with the non-profit Technical Assistance Collaborative, Inc., where a current project seeks to divert youth from institutional settings such as juvenile correctional facilities and psychiatric hospitals. Morris also has served as the Chair of the Board of Directors of Mental Health America and as President of the American College of Mental Health Administration and of the ACMHA Foundation.

Frank M. Ochberg, M.D.

Frank Ochberg served from 1979 to 1981 as the Director of the Michigan Mental Health Department with responsibilities for the administration of both institutional and community services. He was affiliated with the National Institute of Mental Health for ten years, the last two as Associate Director. He is currently a clinical professor of psychiatry at Michigan State University. He is a founding board member of the International Society for Traumatic Stress Studies and recipient of their highest honor, the Lifetime Achievement Award. Ochberg also founded the Dart Center for Journalism and Trauma at Columbia University and served as its first chairman. Drawing on an extensive global network of news professionals, mental health experts and researchers, the Dart Center provides journalists with resources to understand and report on traumatic events.

Robert L. Okin, M.D.

Robert Okin was the Commissioner of the Massachusetts Department of Mental Health from 1975 to 1981 after serving as the Commissioner of the Vermont

Department of Mental Health from 1973 to 1975. Also during the mid-1970s, he chaired the State Mental Health Program Directors' Deinstitutionalization Task Force, and was a member of the federal Task Force on Deinstitutionalization convened by Joseph Califano, Secretary of the United States Office of Health, Education and Welfare. Okin taught at Harvard Medical School and Massachusetts General Hospital before moving to California where he was Vice Chairman of the Department of Psychiatry at the University of California at San Francisco (UCSF) and Chief of Psychiatry at San Francisco General Hospital. He has taught at UCSF since 1990, and currently is Professor Emeritus of Psychiatry at the UCSF School of Medicine. A renowned expert in human rights for people with psychiatric disabilities, he has been Principal Psychiatrist for Mental Disability Rights International since 1995. Okin has received multiple honors and awards, and has presented papers throughout the country and the world on deinstitutionalization, mental health disability rights, and best practices.

Michael S. Pedneau

Michael Pedneau was the State Director of Mental Health, Developmental Disabilities and Substance Abuse in North Carolina. He oversaw implementation of reforms mandated by two class action lawsuits, including the *Willie M.* settlement agreement on behalf of youth with serious emotional disturbance. During Pedneau's six-year tenure, state psychiatric hospitals in North Carolina decreased the use of seclusion and restraint. The State also enacted laws for mental health advance directives and for appointments of guardians for mental health decisions.

R. Emmett Poundstone III

R. Emmett Poundstone III was the Commissioner of the Alabama Department of Mental Health / Mental Retardation in 1995 and 1996. He also served as the Department's Deputy Commissioner in 1996 and 1997, as the Acting Commissioner in 1985 and1986, and as an Associate Commissioner from 1984 to 1995. In addition, he was the Director of the Division of Legal & Administrative Services within the Department from 1981 to 1984. He previously served as Chief Counsel, Director of Legal Services, and Assistant Chief Counsel for the Department of Mental Health. Poundstone currently is Vice Chair of the Board of Directors of Southeastern Psychiatric Management, Inc. He also chairs the Psychiatric Section of the Alabama Hospital Association, the Coalition for Mental Health Insurance Parity, and the Board of Directors of Respect International. In addition, he is a member of Alabama Consumer Empowerment and Supports

(ACES), the Department of Mental Health / Mental Retardation Mental Illness (94-142) Planning Committee, the National, Alabama and Montgomery Alliances for the Mentally Ill, and the Montgomery Mental Health Association.

Elisabeth Rukeyser

Elisabeth Rukeyser, a volunteer and leader in the mental health field for more than 30 years, was Commissioner of the Tennessee Department of Mental Health and Developmental Disabilities from 1999 to 2003. Currently, she is vice chair of Respect International, which seeks to improve conditions for people with mental illness around the world, and a board member of Centerstone Community Mental Health Centers, Inc. in middle Tennessee, and Lakeshore Regional Mental Health Institute in Knoxville. Rukeyser was chairman of the board of the National Mental Health Association from 1990 to 1992. She also served as facilitator of Tennessee Governor Don Sundquist's 1998 TennCare Partners Program Advisory Committee. Previously, she chaired Covenant Behavioral Health and eight affiliated housing corporations of the federal Department of Housing and Urban Development in Knoxville. She also served on the boards of Covenant Health Systems and Tennessee Voices for Children. Rukeyser gained national prominence as a member of the board of directors of the National Alliance for Research on Schizophrenia and Depression (NARSAD) and as a member of the Advisory Council to Boston University's Center for Psychiatric Rehabilitation. In 1993, Secretary of Health and Human Services Donna Shalala appointed her a member of the Center for Mental Health Services National Advisory Council of the federal Substance Abuse and Mental Health Services Administration. In addition, Rukeyser served on the National Leadership Forum for Mental Health and the National Council for Community Behavioral Healthcare.

Sinikka Santala

Sinikka Santala (McCabe) was the Administrator of the Division of Long Term Care in Wisconsin Department of Health Services. During her 26-year career with the State of Wisconsin, she held numerous leadership positions and was the governor-appointed administrator of three divisions. In those positions, she was responsible for long-term care, community and institutional mental health services, substance abuse services, community-based and institutional developmental disability services, and regulation and licensing. She also was the Director of the State's Bureau of Community Mental Health. In addition, she previously worked for the University of Vermont as the director of a national technical assistance center that assisted states, counties and provinces in the United States and Canada

to develop community-based services, regular housing and improved consumer choices for people with severe mental illness.

Leslie Schwalbe

Leslie Schwalbe was the Deputy Director of the Arizona Department of Health Services from 1999 until 2005. Schwalbe was responsible for the state's behavioral health system that served 140,000 individuals and their families. She also directed reduction initiatives that were targeted to inpatient admissions and stays at Arizona State Hospital, and developed thousands of community housing alternatives for persons leaving the hospital and living in congregate settings. Currently, Schwalbe is a national behavioral health consultant; she provides consulting services that focus on states' Medicaid programs. Her clients include the federal Substance Abuse and Mental Health Services Administration / Center for Mental Health Services, numerous state and local health and human services departments, national associations, and private healthcare organizations. She specializes in developing and sustaining effective quality-driven oversight and public financial management practices.

Donald L. Shumway

Donald Shumway was Director of the Division of Mental Health and Developmental Services of New Hampshire from 1984 to 1996. During this period, he managed the first closing, nationally, of all institutional services for persons with developmental disabilities. Additionally, he managed the restructuring of the State's mental health system including the development of a comprehensive community mental health system. From 1999 to 2002, Shumway led New Hampshire's comprehensive human services agency as the Commissioner of the Department of Health and Human Services. Since 2002, he has been the President of Crotched Mountain Foundation in Greenfield, N.H. He has served as President of the National Association of State Mental Health Program Directors and as a member of the National Advisory Council of the National Institute of Mental Health and the Endowment for Health and Leadership in New Hampshire.

Leigh Steiner, Ph.D.

Leigh Steiner was the Director of Mental Health in Illinois from 1989-2002 (first in the Department of Mental Health and Developmental Disabilities, and then in the Department of Human Services). She led the effort to improve the quality of care in Illinois state hospitals. During her tenure, she closed several state hospitals

and used the money to strengthen community systems of care. Steiner launched initiatives to make evidence-based services available across the state, and created the first Office of Consumer Affairs. She is currently an organizational development consultant specializing in Appreciative Inquiry and teaches at the University of Illinois at Springfield.

Marylou Sudders

Marylou Sudders was Commissioner of Mental Health for the Commonwealth of Massachusetts from 1996 to 2003. During her tenure, she successfully advocated for legislation to overhaul the children's mental health and child welfare systems, to ensure fundamental rights for mental health consumers, to reform civil commitment, to reform commercial mental health insurance coverage, and to establish the children's mental health commission. In May 1999, she was honored at the first White House Conference on Mental Health. She testified before Congress in 2002 on criminal justice and mental health. For the past seven years, Sudders has been the President and Chief Executive Officer of the Massachusetts Society for the Prevention of Cruelty to Children (MSPCC), one of the Commonwealth's largest children's agencies. She provides executive leadership to the private non-profit agency that serves more than 30,000 children and families in child abuse intervention and prevention programs, provides clinical mental health services and engages in public policy advocacy. She currently serves on the Board of Directors of the National Alliance on Mental Illness of Massachusetts and the Massachusetts Association for Mental Health. She co-chaired then Governor-elect Deval Patrick's Transition Team on Human Services in 2006, and now serves as a member of the Governor's Commission on Sexual Assault and Domestic Violence and the Children's Behavioral Health Advisory Council.

Richard C. Surles, Ph.D.

Richard Surles was the Commissioner of Mental Health for the State of New York from 1987 until 1994. Previously, he was the Commissioner of Mental Health for the State of Vermont, the Director of the Office of Mental Health and Mental Retardation for the City and County of Philadelphia, and an Assistant Director of the North Carolina Division of Mental Health and Mental Retardation. In addition, Surles was the Executive Director for the Center for State Health Policy of the Institute for Healthcare, Healthcare Policy, and Aging Research at Rutgers University. He also was the Executive Vice President for National Operations and Chief Executive Officer for the Public Sector Services Division of Merit Behavioral Services. Currently, he is the Chief Development Officer for APS

Healthcare.

He has extensive experience in administering public mental health systems and in developing community-based programs for the disabled. He has served on numerous national advisory committees on mental health and healthcare policies. Surles has authored more than 40 publications in areas of government policy and organizing system of care for people with disabilities, and has been recognized nationally for his work with the mentally ill, especially among the homeless.