ORAL ARGUMENT NOT YET SCHEDULED

No. 25-7135

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

IVY BROWN; LARRY MCDONALD; TANITA SANDERS; DENISE RIVERS; JAMES BUMPASS, ON BEHALF OF THEMSELVES AND ALL OTHERS,

Plaintiffs-Appellees,

v.

DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION,

Defendant-Appellant.

On Appeal from the United States District Court
for the District of Columbia
No. 1:10-cv-02250-PLF (Honorable Paul L. Friedman)

BRIEF OF PARALYZED VETERANS OF AMERICA, ARC OF THE UNITED STATES, QUALITY TRUST, CENTER FOR PUBLIC REPRESENTATION, DISABILITY RIGHTS EDUCATION & DEFENSE FUND, JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, JUSTICE IN AGING, MENTAL HEALTH AMERICA, NATIONAL DISABILITY RIGHTS NETWORK, AND NATIONAL HEALTH LAW PROGRAM AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEES AND AFFIRMANCE

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CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), *amici curiae* state:

A. Parties and Amici

Except for the present *amici*, all parties, intervenors, and amici appearing before the district court and in this court are listed in the Brief for Appellant the District of Columbia.

B. Rulings Under Review

References to the rulings at issue appear in the Brief for Appellant the District of Columbia.

C. Related Cases

References to related cases appear in the Brief for Appellant the District of Columbia.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, all *amici curiae* state that they are private non-profit organizations, that they are not publicly held corporations or other publicly held entities, and that they have no parent corporations. No publicly held corporation or other public entity owns ten percent (10%) or more of any amicus organization.

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GLOSSARY

ADA	Americans with Disabilities Act
CAP	Client Assistance Program
District	District of Columbia
DREDF	Disability Rights Education & Defense Fund
HHS	United States Department of Health and Human Services
IDD	Intellectual and Developmental Disabilities
MDS	Minimum Data Set
NDRN	National Disability Rights Network
P&A	Protection and Advocacy
PVA	Paralyzed Veterans of America
SCI/D	Spinal Cord Injury or Disorder
The Arc	The Arc of the United States

STATEMENT OF INTEREST[1]

Amici are national nonprofit organizations dedicated to enforcing the fundamental right of people with disabilities to live in integrated settings in their communities. *Amici* have extensive experience advocating for people with disabilities confined to nursing facilities and other institutions, including by ensuring that they receive effective outreach and transition assistance to enable them to exercise their fundamental right to choose to live in the community. A detailed description of each *amicus* is included as an addendum to this brief.

SUMMARY OF ARGUMENT

The Court should affirm the district court's post-trial judgment in full. After a lengthy trial, the district court correctly held that the District of Columbia ("District") violated the Americans with Disabilities Act (ADA) by failing to provide informed choice, effective outreach, and transition assistance to nursing facility residents who may want to move to the community. *See Brown v. Dist. of Columbia*, 761 F. Supp. 3d 34, 86-91 (D.D.C. 2024). Without such services, the District cannot demonstrate that it has a "comprehensive, effectively working plan"

[1] No party or their counsel has authored this brief, in whole or in part. No party, their counsel, or any person other than *amici* and their counsel contributed money intended to fund preparing or submitting this brief. The parties have consented to the filing of this brief.

to avoid unnecessary institutionalization, as required by *Olmstead v. L.C.*, 527 U.S. 581, 605-06 (1999).

Adequate informed choice, effective transition assistance and outreach, and a "sufficient capacity of community-based long-term care services," *Brown*, 761 F. Supp. 3d at 93, are necessary to ensure that institutionalized persons with disabilities can meaningfully exercise their right to choose to live in the community. *Olmstead*, 527 U.S. at 587; *United States v. Florida*, 172 F.4th 1201, 1233 (11th Cir. 2026) (parents of institutionalized children "cannot be deemed opposed to transfer because they would opt for community-based care if Florida were fully complying with the ADA" by providing community services, "effectively facilitating discharge, and providing complete and accurate information regarding community options.").

States must also provide a sufficient array of community services as part of their duty to provide services in the most integrated setting. *See, e.g., Florida*, 172 F.4th at 1231 ("Community placement is deemed appropriate under *Olmstead* if the individuals in question could live in the community with sufficient services for which they would be eligible.") (citation and internal quotations omitted). As the district court correctly found, the District failed to demonstrate that ensuring sufficient capacity of community-based services was not a reasonable modification or would fundamentally alter its long-term care system for people with disabilities,

including by being "so costly as to be unreasonable." *Brown*, 761 F. Supp. 3d at 94 (quoting *Brown v. Dist. of Columbia*, 928 F.3d 1070, 1082 (D.C. Cir. 2019)).

Like the post-trial injunction recently affirmed by the Eleventh Circuit, *see Florida*, 172 F.4th at 1239–42, the district court's injunction here was narrowly tailored and necessary to remedy these violations.

ARGUMENT

I. UNDER THE ADA, PUBLIC ENTITIES MUST ENABLE NURSING FACILITY RESIDENTS TO MAKE AN INFORMED CHOICE ABOUT LIVING IN THE COMMUNITY.

To ensure that individuals with disabilities in segregated settings can determine whether to accept or decline community services, as required by *Olmstead*, 527 U.S. at 607, States must provide information, education, accommodations, and opportunities necessary to allow these individuals to make an informed choice whether to enter or remain in a segregated setting or transition to an integrated one. *See Florida*, 172 F.4th at 1246 (affirming injunction requiring State to develop individualized transition plans and discuss "how any barriers to returning to community-based care can be addressed"); *Steward v. Young,* 787 F. Supp. 3d 476, 630-31, 758-59 (W.D. Tex. 2025); *Kenneth R. v. Hassan,* 293 F.R.D. 254, 270 n.6 (D.N.H. 2013); *Conn. Off. of Prot. & Advoc. v. Connecticut*, 706 F. Supp. 2d 266, 277-78 (D. Conn. 2010) (failure to provide meaningful information denied nursing facility residents the right to choose community services); *Disability*

Advocs., Inc. v. Paterson, 653 F. Supp. 2d 184, 260-67 (E.D.N.Y. 2009) ("*DAI II*") (finding that many people, with accurate information, would choose to receive services in an integrated setting if given an informed choice), *vacated on other grounds*, 675 F.3d 149 (2d Cir. 2012); *Messier v. Southbury Training Sch.*, 562 F. Supp. 2d 294, 332-34, 339-42, 344-45 (D. Conn. 2008) (rejecting claim that people were opposed to community placement because they did not affirmatively request community services).

To ensure that individuals with disabilities in segregated settings make an informed choice, courts consider whether States provide:

1. A range of appropriate community alternatives and supports that allow qualified individuals with disabilities to live in integrated settings, participate in community activities, and interact with non-disabled citizens;[2]

2. Detailed information and education, provided on a regular and ongoing basis, about the full range of appropriate community services and supports;[3]

[2] *See Florida*, 172 F.4th at 1233–34; *Steward*, 787 F. Supp. 3d at 756 ("Where a state fails to make adequate and appropriate community services available for a person, a person's alleged 'choice' to enter an institution or to remain institutionalized does not constitute a meaningful choice to 'oppose' community services as contemplated by *Olmstead* or the ADA's integration mandate.").

[3] *See Florida*, 172 F.4th at 1247 (district court properly ordered State "to consistently assess how to overcome barriers to receiving community-based care"); *Brown*, 761 F. Supp. 3d at 85-86.

3. Person-centered information, not limited to written brochures, provided in a manner that the individual can understand;[4]

4. Information and education provided with reasonable accommodations to the individual's disability, communication style, cultural background, ability to process information, and the impact of institutionalization on decision making;[5]

5. Actions and supports to address the person's fears, concerns, barriers to, and negative experiences with community services;[6]

6. Opportunities to visit community programs and experience community living;[7] and

[4] *Florida*, 172 F.4th at 1244 (affirming order requiring "person-centered and individualized" care coordination).

[5] *See Steward*, 787 F. Supp. 3d at 634 ("Long-term institutionalization diminishes an individual's ability to express preferences and make choices.").

[6] *See Florida*, 172 F.4th at 1246 (affirming enhanced transition services to remedy fact that "families were sometimes discouraged, faced pushback, provided with inaccurate information about the suitability of their homes, faced confusion about how to communicate to staff a desire to bring their child home, and felt ignored.").

[7] *See Steward*, 787 F. Supp. 3d at 636 ("Direct experiences of community living alternatives – opportunities to both see and experience a community home, and engagement with others who have made the transition from institutions to community living – are the most powerful, most important, and most effective methods for providing information.").

7. Opportunities to speak with peers, families, professionals, providers, and others who have been involved with successful transitions to the community.[8]

These core elements are the responsibility of the public entity – here, the District – and necessary to ensure that people with disabilities can make an informed and meaningful choice whether to enter and/or remain in a nursing facility. As explained below, the district court properly found that the District fell short of these obligations. *Brown*, 761 F. Supp. 3d at 86-90.

The right under the ADA and Section 504 to live and receive services in the community also implicates and informs core constitutional rights to freedom of association, freedom of movement, and informed consent. *See Thomas S. v. Flaherty*, 699 F. Supp. 1178, 1203-04 (W.D.N.C. 1988) (holding that confinement of individuals with disabilities in a segregated institution violated their right to freedom of association), *aff'd*, 902 F.2d 250 (4th Cir. 1990). For individuals in facilities operated, funded, or administered by States to waive these rights, waiver must be "knowing" and "voluntary." Public entities must demonstrate that any decision to remain in a segregated nursing facility, and thereby waive rights to freedom of movement, association, and integration, is knowing, informed, and reliable. *Steward*, 787 F. Supp. 3d at 756-57. To meet this test, institutionalized

[8] *See id.* at 637 ("If a person in a nursing facility has not had an opportunity to hear from a community provider or visit community programs, that person has not made an informed choice to oppose receiving community services.").

persons must receive adequate and individualized information tailored to their ability to understand the nature and consequences of foregoing these rights. *Id*.

II. THE DISTRICT COURT CORRECTLY FOUND THAT THE DISTRICT DID NOT HAVE AN EFFECTIVELY WORKING *OLMSTEAD* PLAN BECAUSE IT LACKED EFFECTIVE OUTREACH AND TRANSITION ASSISTANCE.

The district court correctly held that the District lacked a "comprehensive, effectively working plan" to transition individuals from institutional settings to the community. *See Olmstead*, 527 U.S. at 605-06. This was because the District's "plan" lacked (1) outreach to institutionalized individuals to ensure that they can make an informed choice about whether to transition, and (2) transition assistance and planning to enable people to move from institutions to a community setting of their choosing with appropriate services. Without these elements, an *Olmstead* plan cannot be an "effectively working plan" that facilitates smooth transitions to the community.

A. An *Olmstead* Plan Without Effective Outreach Is Not an Effectively Working Plan.

A key element of an "effectively working" plan is the provision of information and outreach that affords institutionalized persons the opportunity to understand their options and make an informed choice whether to transition to the community. Outreach that provides the core components of informed choice described above is necessary to ensure that institutionalized people have the information needed to

make "an informed and meaningful choice about where to live." *Steward*, 787 F. Supp. 3d at 630-31. Such outreach is critical for several reasons.

1. Outreach is important to overcome the effects of institutionalization on individuals' choice making and confidence in their ability to transition.

Outreach is essential to address the effects of institutionalization on people's ability to make an informed choice. Institutionalization makes it harder for people to believe they can live in the community. As the district court found, "nursing facility residents with physical disabilities may lack self-confidence in their ability to navigate the complex administrative processes of applying for Medicaid-funded services, to secure subsidized housing, and most critically, to safely transition to the community given their individual, particularized needs." *Brown*, 761 F. Supp. 3d at 72.

"Institutionalization is associated with high levels of apathy and dependency, increased passivity and submissiveness, and learned helplessness and fear of retribution." *Steward*, 787 F. Supp. 3d at 635. When people are treated as if they are completely helpless, "the helplessness becomes a learned phenomenon." *DAI II*, 653 F. Supp. 2d at 214. Particularly with lengthy periods of institutionalization, this learned helplessness makes residents "highly reluctant to move on, even if they are capable of living independently." *Disability Advocates, Inc. v. Paterson*, No. 03-cv-

3209, 2010 WL 786657, at *3 (E.D.N.Y. Mar. 1, 2010) ("*DAI III*") (citation omitted), *vacated on other grounds*, 675 F.3d 149 (2d Cir. 2012).

Learned helplessness and erosion of self-confidence occur because institutions often discourage or prohibit residents from cooking, cleaning, doing their own laundry, administering their own medication, or managing the money that residents are allowed to keep. Some residents lose skills they had prior to entering the institution and express concern, fear or trepidation about their ability to transition. *DAI II*, 653 F. Supp. 2d at 214-15; *Steward*, 787 F. Supp. 3d at 637.

Outreach to institutionalized people is critical to overcoming the effects of learned helplessness and fear. It must not simply provide general factual information, but also attempt "to build trust, to emphasize strengths, and to encourage the exercise of informed choices." *DAI III*, 2010 WL 786657, at *3 (citation and internal quotations omitted); *accord Powers v. McDonough*, 748 F. Supp. 3d 842, 868 (C.D. Cal. 2025) ("By employing veterans in outreach roles who have themselves experienced homelessness, addiction, mental illness, and the unique traumas associated with combat, the VA increases their chance of connecting with unhoused veterans who do not trust the agency to help them."), *aff'd in relevant part, rev'd in part on other grounds*, 163 F.4th 1162, 1187-88 (9th Cir. 2025).

2. Outreach helps people understand which community services are available to them.

Outreach is necessary to help people who have been institutionalized for significant periods of time develop a vision of what community life might look like. Residents have often lived in nursing facilities for years and may not remember community life, nor received—let alone know about—the kinds of community services being offered now. *Steward*, 787 F. Supp. 3d at 635.

Outreach is also critical to helping people who have concerns about transitioning due to previous failures in community settings based on a lack of services. Many individuals entered institutions because the community services they needed were unavailable at the relevant time. Prior challenges with community living often instill fears about transitioning back to the community.

Outreach also helps individuals understand what living in the community with appropriate services would entail, including which services are available, how they would choose a place to live, who would help them, and how to manage their income. As the district court correctly found, without this "vital" outreach, nursing facility residents cannot know what community services are available. *Brown*, 761 F. Supp. 3d at 87-88.

Outreach should also include visits to the community so that people can understand and observe what types of community living arrangements are being offered and can talk to individuals receiving those services to understand their

experiences. *Steward*, 787 F. Supp. 3d at 637 ("If a person in a nursing facility has not had an opportunity to hear from community providers or visit community programs, that person has not made an informed choice to oppose receiving community services."); *DAI III*, 2010 WL 786657, at *3.

Here, the district court found that "the District does not have an adequate system for educating nursing facility residents about available home- and community-based services to enable them to make informed decisions about whether to seek to transition to the community." *Brown*, 761 F. Supp. 3d at 87. The District improperly relied on "group presentations, brochures, flyers, and word of mouth" rather than meeting "face-to-face" with residents and providing them "information that is personalized to that individual's financial and medical circumstances." *Id*.

3. Outreach is important to correct misinformation that individuals may have been told by institutional staff.

Outreach also addresses individuals' misconceptions about their own capabilities stemming from what facility staff may have told them about their limitations and alleged "best interests." People living in institutions are commonly told that they would be better off living in the institution than in the community, or that community options are not available to them. *See DAI II*, 653 F. Supp. 2d at 256 (describing a facility social worker refusing resident's request for help applying for community services because "we don't do that here" and another social worker informing resident it would be "better if you stay here"); *Florida*, 172 F.4th at 1244

(affirming "a widespread failure to affirmatively inform families that they have alternatives to placing their children in a nursing facility." (citation omitted)). Facilities are often incentivized to avoid helping residents move, as they may lose revenue when residents secure alternative housing. Further, the expressions of skepticism from institutional staff or others about individuals' ability to succeed in the community are often based on historical community service deficiencies, rather than services that would be provided to individuals under an *Olmstead* order.

4. Outreach should begin early, be conducted by an independent entity, and build relationships of trust.

For the reasons described above, it often takes significant time to overcome and address individuals' fears and concerns about transition. Thus, outreach must begin shortly after admission so that individuals are prepared to make informed choices when afforded the opportunity. Building trusting relationships necessary to communicate effectively with many institutionalized people often takes time and requires many conversations. *DAI III*, 2010 WL 786657, at *3.

Further, the longer people remain institutionalized, the more likely they are to lose their homes and become disconnected from their communities, creating new challenges in helping them transition back to the community. While the District dismisses the need to do outreach before a person has been institutionalized for at least 90 days and becomes a class member, Appellants' Br. 55-56, waiting that long

would undermine the effectiveness of informed choice and create avoidable barriers to transitioning back to the community.

Finally, an independent entity, not connected with the facility, should conduct this outreach. *See Brown*, 761 F. Supp. 3d at 84 (finding that the District's existing outreach was inadequate because it "places too much reliance on nursing facilities to provide transition assistance" instead of "following up proactively and systematically through their transition care specialists."). The District wrongly insists that nursing facilities themselves provide class members with informed choice through the Minimum Data Set (MDS) survey, annual level of care assessments, and the occasional involvement of facility social workers. Appellants' Br. 14-15. To assume that institutional staff will be the primary agent for providing informed choice and transition assistance ignores historical patterns of institutional discrimination and conflicts of interest of facilities, which have a financial incentive in keeping their beds full and discouraging people from transitioning. *See DAI II*, 653 F. Supp. 2d at 256. Accordingly, courts have required States or other independent entities to be the primary agent for ensuring informed choice. *See Steward*, 787 F. Supp. 3d at 652.

5. The District's minimal outreach does not satisfy the requirements for an "effectively working" *Olmstead* plan.

The district court correctly found that the District's outreach efforts are woefully insufficient to achieve the goals described above and ensure informed

choice. *Brown*, 761 F. Supp. 3d at 86-88. As stated above, the court found that the District only learns of an individual's interest in moving to the community if the person affirmatively requests transition services or is referred by a nursing facility social worker, and that the District's only mechanisms for educating residents about community services are group information sessions, "word of mouth of people who work with nursing facility residents," and the MDS survey—conducted by nursing facility staff. As a result, most individuals who express interest in transitioning are never referred for transition assistance. *Id*. at 64, 66-67, 88; *accord Steward*, 787 F. Supp. 3d at 652 (MDS data is not a reliable indicator of who is appropriate and does not oppose community living). The court properly concluded that the District lacked an effective *Olmstead* plan due to the absence of effective transition assistance. *Brown*, 761 F. Supp. 3d at 86.

B. An *Olmstead* Plan Without Effective Transition Assistance Is Not an Effectively Working Plan.

The proactive arrangement of services and supports to meet an individual's identified needs is also essential to facilitate a successful transition from an institution to the community. *Florida*, 172 F.4th at 1244-45; *Steward,* 787 F. Supp. 3d at 647. This typically requires, among other things, building relationships and linking people with community service providers; helping people locate housing that meets their needs; negotiating with landlords; and helping individuals secure needed identification and documentation, set up utilities and secure furnishings, learn public

transportation, and navigate their communities. *See Florida*, 172 F.4th at 1217 (holding that transitioning medically involved children from nursing facilities "is not an easy task—it requires training, equipment, nursing, and arrangements for schooling and therapy.").

Professional standards and practice require transition planning for all individuals in institutional settings describing the location, living arrangement, services, supports and preferred activities that allow the individual to live successfully in the community. *Steward*, 787 F. Supp. 3d at 647. Person-centered service and transition planning should focus on addressing and resolving the individual's barriers to community living, including any concerns related to prior community living opportunities the person may have experienced. *Id*. at 647-48. Without effective transition assistance and planning, it is impossible to have an *Olmstead* plan that functions effectively to transition people with disabilities out of institutions.

The district court correctly found that the District's transition assistance is far from what is needed for an effectively working *Olmstead* plan. *Brown*, 761 F. Supp. 3d at 89. The court concluded that the District failed to move individuals who wanted and were able to transition to the community "in large part by relying on the residents themselves and on nursing facility staff to take the initiative—rather than on District of Columbia employees—to coordinate transitions to the community." *Id.* at 89.

Individuals interested in transitioning received little support from transition care specialists, who interpreted any ambiguity to mean that individuals had changed their minds. *Id*. at 89-90. *See also Florida*, 172 F.4th at 1246 (rejecting State's contention that it was not required to provide transition planning because "families needed to make a formal request in order to initiate discharge").

III. INFORMED CHOICE AND A SUFFICIENT CAPACITY OF COMMUNITY SERVICES ARE REASONABLE MODIFICATIONS THAT DO NOT FUNDAMENTALLY ALTER THE DISTRICT'S LONG TERM CARE SYSTEM.

As the district court correctly held, providing effective informed choice and sufficient capacity of community services for nursing facility residents are reasonable modifications of the District's long-term care system, would not fundamentally alter that system, and are part of the District's core duties under *Olmstead*. *Brown*, 761 F. Supp. 3d at 91-94.

A. Providing Informed Choice Is a Reasonable Modification and Would Not Fundamentally Alter the District's Service System.

As explained above, States cannot determine whether an "affected individual" is "not opposed" to community placement, *Olmstead*, 527 U.S. at 587, without first providing these individuals with the resources, supports, and transition assistance necessary to make an informed choice. Accordingly, because *Olmstead* itself requires States and the District, not simply private nursing facilities, to provide this

assistance, doing so is a "reasonable" modification of the District's disability services system under the ADA.

The district court correctly concluded that the District failed "to provide effective outreach to nursing facility residents to determine whether they are willing and able to transition to the community" as well as "provide residents with sufficient information to enable them to make informed decisions about whether to seek to transition to the community." *Brown*, 761 F. Supp. 3d at 86. Requiring the District to develop a "working system of transition assistance" as ordered by the court, *id.* at 96, is a reasonable modification because it is necessary to ensure that the District properly determines whether individuals are "opposed" to community placement.[9] *Olmstead*, 527 U.S. at 587.

The district court correctly found that District failed to demonstrate that providing effective outreach and informed choice would be a "fundamental

[9] Courts have similarly held that States may not avoid *Olmstead*'s first prong by refusing to conduct assessments to determine whether "community placement is appropriate," *Olmstead*, 527 U.S. at 587. *See Day v. Dist. of Columbia*, 894 F. Supp. 2d 1, 24 (D.D.C. 2012) ("[T]o allow the District to rely on the absence of an assessment by its own professionals as grounds for dismissal would 'eviscerate' the Integration Mandate.") (quoting *Colbert v. Blagojevich*, No. 07-4737, 2008 WL 4442597, at *2-3 (N.D. Ill. Sept. 29, 2008)); *Frederick L. v. Dep't of Pub. Welfare*, 157 F. Supp. 2d 509, 540 (E.D. Pa. 2001) ("*Olmstead* does not allow States to avoid the integration mandate by failing to require professionals to make recommendations regarding the service needs of institutionalized individuals with mental disabilities."). It follows, therefore, that States may not refuse to provide these assessments on grounds that they are not a "reasonable" modification of the State's disability services system.

alteration" of their disability services system. *Brown*, 761 F. Supp. 3d at 91-92; *accord Brown*, 928 F.3d at 1077 (holding that the State "bears the burden of proving the unreasonableness of a requested accommodation"); *Florida*, 172 F.4th at 1236. Since effective transition assistance is necessary to comply with one of the elements of a *prima facie* claim under *Olmstead*, *see Florida,* 172 F.4th at 1246-47; *Steward*, 787 F. Supp. 3d at 755, States cannot reasonably argue that providing such services would be "inequitable" given the State's responsibilities to serve others with disabilities.

Furthermore, without an effective outreach and informed choice program, the State cannot know how many individuals would want to be served in the community. *See Florida*, 172 F.4th at 1232-34. Absent informed choice, the District cannot know whom to serve in the community, develop a waiting list of individuals who are "not opposed" to community services, or develop sufficient service capacity in the community. Thus, the district court properly held that the lack of such assistance foreclosed the District from meeting "its burden of demonstrating that it has a comprehensive, effectively functioning *Olmstead* Plan[.]" *Brown*, 761 F. Supp. 3d at 91. Indeed, it would be counterintuitive and perverse to claim that this critical component of the District's affirmative fundamental alteration defense would *itself* be a "fundamental alteration."

Finally, the reasonableness of this modification is supported by the district court's findings that the District already "provides outreach to individuals in both nursing facilities and in the community," including by "fund[ing] or rel[ying] upon a range of services—governmental and non-governmental—to reach nursing facility residents about the prospect of transitioning to the community." *Id*. at 62, 64. Thus, the District cannot claim that this relief requires it "to create entirely new programs for the disabled." *Messier*, 562 F. Supp. 2d at 345; *accord Florida*, 172 F.4th at 1237 (affirming reasonableness of accommodations that "call for expanding access to State services that already exist") (citation and internal quotation omitted); *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1268 (D.C. Cir. 2008) (distinguishing modifications that would "remove an obstacle" to using governmental services from those that would create "a substantively different benefit than is already provided").

Nor would the court's relief require the District to change "the basic design" of its Medicaid program or conflict with Medicaid. Appellants' Br. 13, 47. This Court's sister circuits have consistently held that compliance with Medicaid does not immunize States from an *Olmstead* claim, and the expansion of existing Medicaid services to comply with *Olmstead* does not constitute a "new" service or fundamentally alter a State's Medicaid program. *Florida*, 172 F.4th at 1237 (affirming reasonableness of accommodations that use "existing State programs and

tools of program administration to expand … access [to community services].") (citation and internal quotations omitted); *Davis v. Shah*, 821 F.3d 231, 264 (2d Cir. 2016) ("A state's duties under the ADA are wholly distinct from its obligations under the Medicaid Act."); *Townsend v. Quasim*, 328 F.3d 511, 519-20 (9th Cir. 2003) (reversing summary judgment on claim that requiring State "to apply for additional Medicaid waivers in order to provide community services" for nursing home residents was a *per se* fundamental alteration). The U.S. Departments of Health and Human Services (HHS) and Justice have also informed States that their *Olmstead* obligations are "independent" of their Medicaid obligations and that "[p]roviding services beyond what a state currently provides under Medicaid may not cause a fundamental alteration, and the ADA may require states to provide those services, under certain circumstances." U.S. Dep't of Just., *Statement of the Dep't of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and* Olmstead v. L.C. (Feb. 25, 2020), https://archive.ada.gov/olmstead/q&a_olmstead.htm.; Timothy Westmoreland, *Olmstead Update No. 4*, Dep't of Health & Hum. Servs. (Jan. 10, 2001), https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/smd011001a.pdf.

B. Ensuring Sufficient Capacity of Community Services Is a Reasonable Modification and Would Not Fundamentally Alter the District's Service System.

When a State cannot demonstrate that it has a "'comprehensive, effectively working plan' for transitioning the individuals to the community and a 'waiting list [for transition to the community] that moves at a reasonable pace,'" the State "*must* make every modification to its policies and procedures requested by an institutionalized disabled individual who wishes to, and could, be cared for in the community, *unless* the modification would be so costly as to require the unreasonable transfer of the State's limited resources away from other disabled individuals." *Brown*, 928 F.3d at 1078 (citing *Olmstead*, 527 U.S. at 604) (emphasis in original); *accord Florida*, 172 F.4th at 1237 ("[W]here appropriateness and non-opposition are established, the requested accommodations are presumed to be reasonable unless the state establishes a fundamental alteration defense."); *Frederick L. v. Dep't of Pub. Welfare*, 422 F.3d 151, 160 (3d Cir. 2005) ("DPW's inability to invoke the 'fundamental alteration' defense leaves unfulfilled its responsibility to provide Patients with their requested relief [of receiving services in the community].").

The duty to provide a sufficient capacity of community services arises from *Olmstead*'s mandate to provide services in the most integrated setting to all people who are appropriate for and do not oppose community placement. 527 U.S.

at 587. States may not "decline to provide adequate services to enable otherwise eligible children to live in community settings, then use the lack of services to establish that community placement is inappropriate." *Florida*, 172 F.4th at 1231; *see also Messier*, 562 F. Supp. 2d at 329 ("The resulting scarcity of opportune placement for class members is highly problematic because it further restricts opportunities for professional judgment to be exercised."); *Frederick L.*, 157 F. Supp. 2d at 540 (rejecting position that "a formal recommendation for discharge has not been made because the treatment professional believed that an appropriate community placement was not available."); *Timothy B. v. Kinsley*, No. 1:22-cv-1046, 2024 WL 1350071, at *7-8 (M.D.N.C. Mar. 29, 2024) (denying motion to dismiss on grounds that plaintiffs had not been determined appropriate for community placement because "if this court were to grant the relief requested to make more community placements and services available, it is likely Named Plaintiffs would receive those services in the community.").

Relatedly, because making sufficient community services available for individuals "who can handle and benefit from community settings" is required under *Olmstead*, providing services consistent with these determinations cannot, without more, constitute a fundamental alteration. *See Townsend*, 328 F.3d at 518-19 (rejecting State's argument that offering community services "would fundamentally alter … the state legislature's considered policy decisions to provide long term care

to medically needy persons in nursing homes" because "*Olmstead* did not regard the transfer of services to a community setting, without more, as a *fundamental* alteration." (emphasis in original)); *Disability Advocs., Inc. v. Paterson*, 598 F. Supp. 2d 289, 336 (E.D.N.Y. 2009) ("[A] transfer of services to existing community settings is not, by itself, a 'fundamental alteration.'"); *accord Hampe v. Hamos*, 917 F. Supp. 2d 805, 821 (N.D. Ill. 2013) (rejecting State's "abstract," non-cost-related reasons "for why the Court should view Plaintiffs' requested relief as a fundamental alteration.").

Upon finding that the District lacked a "comprehensive plan" under *Olmstead*, the district court properly ordered the District to provide plaintiffs with a "sufficient capacity of community-based long term care services … to serve plaintiffs in the most integrated setting appropriate to their needs" through two existing Medicaid programs. *Brown*, 761 F. Supp. 3d at 93 (citation and internal quotations omitted).[10] The court found that providing these services "would not be 'so costly as to be unreasonable'" because both programs were operating below their capacity and could accommodate class members who wanted to live in the community. *Id.* at 94 (quoting *Brown*, 928 F.3d at 1082). Other courts have similarly held that providing "an appropriate service array and system capacity of community

[10] The court rejected plaintiffs' request for a specific number of placements in a fixed time period, instead allowing the District to determine needed capacity for new community services consistent with an informed choice process. *Id.* at 96.

services in integrated settings such that qualified individuals with [disabilities] can safely receive long-term care services at home or in their communities" is a reasonable modification. *Steward*, 787 F. Supp. 3d at 759; *see also Florida*, 172 F.4th at 1239 (requiring State to ensure delivery of 90% of individuals' authorized community-based nursing care); *Radaszewski v. Maram*, 383 F.3d 599, 611 (7th Cir. 2004) (requiring State to provide community-based nursing care because "the integration mandate may well require the State to make reasonable modifications to the form of existing services in order to adapt them to community-integrated settings."). Indeed, the failure to provide sufficient services to allow individuals the opportunity to participate in community life may itself give rise to an *Olmstead* violation, independent of the failure to transition individuals from institutions. *See Steimel v. Wernert*, 823 F.3d 902, 913 (7th Cir. 2016).

Furthermore, the district court found that the District could provide this relief through existing Medicaid programs whose costs are comparable to institutional care. *Brown*, 761 F. Supp. 3d at 60-61. Under similar facts, courts have declined to find that the costs of community care are so high that the modification is unreasonable. *See Radaszewski*, 383 F.3d at 614 (because cost of care in private facility "equaled or exceeded the cost of caring for [plaintiff] at home … it would be difficult to see how requiring the State to pay for at-home care would amount to an unreasonable, fundamental alteration of its programs and services."); *Haddad v.*

Arnold, 784 F. Supp. 2d 1284, 1304 (M.D. Fla. 2010) (under *Olmstead*, court preliminarily enjoined State to provide in-home care to plaintiff to prevent her placement in a nursing facility).

IV. THE DISTRICT COURT'S INJUNCTION PROPERLY REQUIRES THE DISTRICT TO MODIFY ITS OUTREACH AND TRANSITION PROGRAMS TO BRING THEM INTO COMPLIANCE WITH THE ADA.

A. The Injunction Correctly Requires the District to Modify its Medicaid and other Programs to Comply with the ADA.

To remedy its findings that the District's *Olmstead* plan is inadequate due to inadequate outreach and assistance, the district court's injunction requires the District to "develop and implement a working system of transition assistance for plaintiffs," including through periodic and accurate information-sharing, elicitation of resident preferences, and assistance accessing community resources. *Brown*, 761 F. Supp. 3d at 96. This requirement does not "duplicate existing programs," Appellants' Br. 25, but rather requires the District to fix the deficiencies in those services and programs so that they comply with the District's obligation to provide an effectively working *Olmstead* plan.

This remedial requirement is entirely consistent with relief recently affirmed by the Eleventh Circuit in an *Olmstead* case involving similarly problematic transition services. In *Florida*, the Eleventh Circuit affirmed the district court's order enjoining the State to provide families of institutionalized children with detailed

transition plans as necessary to ensure the State's compliance with the ADA. 172 F.4th at 1246-47. There, as here, the State had existing outreach and transition programs, including a "freedom of choice" form similar to the MDS survey the District utilized. The State required its contractors to administer this form within seven days of admission and every six months thereafter to memorialize a family's choice about where to receive services. *United States v. Florida*, 682 F. Supp. 3d 1172, 1248 (S.D. Fla. 2023). The evidence showed that, these existing programs notwithstanding, "[t]here is a widespread failure to affirmatively inform families that they have alternatives to placing their children in a nursing facility." *Florida*, 172 F.4th at 1217 (quoting 682 F. Supp. 3d at 1215).

Similarly to the deficiencies in the *Florida* programs, the district court found that, because of the flaws in the District's outreach and transition programs, the majority of nursing facility residents who responded yes to the MDS survey question regarding their interest in community services are not referred for, and do not receive, transition assistance. *Brown*, 761 F. Supp. 3d at 88. Thus, as with the *Florida* injunction the Eleventh Circuit affirmed, the district court here properly required the District to develop an effective system of transition assistance to afford plaintiffs meaningful opportunities to obtain community services, as required by the ADA.

B. The Injunction Properly Requires the District to Provide Outreach and Information to Nursing Facility Residents Beginning at Admission.

The injunction appropriately requires the District to begin providing outreach to Medicaid-funded nursing facility residents upon admission. *Brown*, 761 F. Supp. 3d at 96. This requirement is consistent with other *Olmstead* remedies and necessary to redress the harms of unnecessary institutionalization. *See* Order of Inj. 6 § IV.A, *United States v. Florida*, No. 12-cv-60460 (S.D. Fla. July 14, 2023), Dkt. No. 1171 ("[W]ithout waiting for parent(s)/guardian(s) to request it, the State must initiate an individualized Transition Planning Process for every [child in a nursing facility] …"); *aff'd in relevant part*, *Florida*, 172 F.4th at 1246-47. This requirement has been included in remedial orders even when the class is limited to individuals who have been in nursing facilities for 60 days or more. *See* Settlement Agmt. ¶ 3, *Marsters v. Healey*, No. 1:22-cv-11715 (D. Mass. Apr. 16, 2024), Dkt. No. 152-1 (requiring "in-reach, informed choice, and transition support" to all individuals in nursing facilities over age 22); Order Approving Settlement Agmt. ¶ 3 (D. Mass. June 18, 2024), *Marsters v. Healey*, No. 1:22-cv-11715, Dkt. No. 168 (defining class).

The longer people remain institutionalized, the more challenges arise – such as losing housing or connections to the community – that make it harder to transition

to a community-based setting. Thus, delaying outreach and informed choice would only impair the effectiveness of a remedy.

Additionally, courts have routinely acknowledged the irreparable harm that results from prolonging unnecessary institutionalization. *See Haddad*, 784 F. Supp. 2d at 1307 (requiring individual to move into a nursing home for 60 days to qualify for community services was irreparable harm justifying a preliminary injunction); *United States v. Florida*, No. 12-cv-60460, 2023 WL 4763189, at *3 (S.D. Fla. July 25, 2023) (denying motion to stay injunction and recognizing the "substantial harm" to institutionalized children resulting from delayed relief), *aff'd and rev'd in part*, No. 23-12331, 2024 WL 5319135 (11th Cir. Feb. 6, 2024). Thus, in-reach and informed choice should begin as soon as possible so that institutionalized persons have immediate access to information necessary to access community living.

C. The Injunction Properly Requires the District to Ensure Sufficient Capacity in Its Long-Term Care Program.

Ensuring "sufficient capacity of community-based long term care services" to safely serve individuals transitioning from institutional settings, *Brown*, 761 F. Supp. 3d at 96, is a critical piece of an *Olmstead* remedy. *Marsters*, Settlement Agmt. ¶¶ 46-54 (requiring expansion of community residential services, including rental housing vouchers and residential supports, for people choosing to leave nursing facilities); *Williams v. Quinn*, 748 F. Supp. 2d 892, 897-98, 903 (N.D. Ill. 2010) (approving consent decree requiring State to "provid[e] community placements and

services for [institutionalized persons] who may appropriately be placed in such settings and do not oppose such a placement" as well as to "fund and provide sufficient services, in adequate quality, scope, and variety, to meet their obligations under the Decree."); Order & Consent Decree 19, *Colbert v. Quinn*, No. 1:07-cv-4737 (N.D. Ill. Dec. 21, 2011), Dkt. No. 210 ("Defendants shall ensure that Class Members who move to a Community-Based Setting have access to all appropriate Community-Based Services, Transition Costs, Home Accessibility Adaptation Costs and/or Housing Assistance specified in their Service Plans …"). Complete relief cannot be achieved without assuring that institutionalized persons have access to the services they need to live safely in the community.

CONCLUSION

For the reasons stated above, the Court should affirm the district court's judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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

This brief complies with the word-count limitation of Fed. R. App. P. 32(a)(5), and contains 6496 words, not counting the parts excluded by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

/s/ *Eamon P. Joyce*
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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2026, I will cause the foregoing document to be electronically filed through this Court's CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ *Eamon P. Joyce*
Eamon P. Joyce

ADDENDUM

Paralyzed Veterans of America (PVA) is a congressionally chartered veterans service organization headquartered in Washington, DC. PVA's mission is to employ its expertise, developed since its founding in 1946, on behalf of U.S. armed forces veterans who have experienced spinal cord injury or a disorder (SCI/D), such as Multiple Sclerosis and Amyotrophic Lateral Sclerosis. PVA has over 15,000 members, all of whom are military veterans living with SCI/D, and provides its services to not only its members but to all veterans with disabilities and their families. For decades, individuals with disabilities have been unnecessarily institutionalized. PVA supports the enforcement of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act (Section 504) to protect the rights of people with disabilities to live in their communities with their families.

The Arc of the United States ("The Arc"), is the largest national community-based organization advocating for and serving persons with intellectual and developmental disabilities (IDD) and their families. Founded in 1950, The Arc has nearly 600 state and local chapters. The Arc seeks to promote and protect the civil and human rights of people with intellectual and developmental disabilities and to actively support their full inclusion and participation in the community.

The Quality Trust is an independent, nonprofit advocacy organization dedicated to improving the lives of people with developmental disabilities and their

families. Our mission is to be a force for change in the lives of people with developmental disabilities and their families so they can succeed, thrive, and experience full membership in the community.

The Center for Public Representation is a national public interest law firm that has been assisting people with disabilities for almost fifty years. It has litigated systemic cases to enforce the constitutional and statutory rights of persons with disabilities, including the right to be free from discrimination under the Americans with Disabilities Act and to receive appropriate treatment and support in the community.

Disability Rights Education & Defense Fund (DREDF), based in Berkeley, California, is a national nonprofit law and policy center dedicated to advancing and protecting the civil and human rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy, and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal civil rights laws protecting persons with disabilities.

The Judge David L. Bazelon Center for Mental Health Law is a national non-profit advocacy organization that provides legal assistance to individuals with mental disabilities. By engaging in litigation, public policy advocacy, education,

and training, the Bazelon Center works to advance the rights and dignity of individuals with mental disabilities in all aspects of life, including health care.

Justice in Aging is a national non-profit legal advocacy organization that fights senior poverty through law. It advocates for affordable health care and economic security for older adults with limited resources, focusing especially on populations that have traditionally lacked legal protection, including older immigrants, older adults with disabilities, and older people experiencing homelessness.

The National Disability Rights Network (NDRN) is the non-profit membership organization of the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies for individuals with disabilities, which supports its' members ability to protect the rights of persons with disabilities to live in the community. The P&A and CAP agencies were statutorily established by the United States Congress to protect the rights of people with disabilities.

The National Health Law Program advocates, educates, and litigates at the federal and state levels to further its mission of ensuring that all low-income individuals and families have access to quality and comprehensive health care. It has consistently worked to expand eligibility for public health care programs for all people, including immigrants and their families.

Mental Health America, founded in 1909, is a national non-profit dedicated to advancing the mental health and well-being of all people living in the United States through public education, research, advocacy and public policy, and direct service.