

Recent Changes to DOJ's Interpretation of *Olmstead v. L.C. ex rel. Zimring*

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In 1999, the Supreme Court decided the landmark disability discrimination case *Olmstead v. L.C. ex rel. Zimring*, which [established](#) that “unjustified institutional isolation of persons with disabilities is a form of discrimination.” *Olmstead* applied [Title II](#) of the [Americans with Disabilities Act](#) (ADA Title II), which prohibits disability discrimination by state and local governments. Title II is often interpreted [consistently](#) with [Section 504 of the Rehabilitation Act of 1973](#) (Section 504), which prohibits disability discrimination by recipients of federal funding and federal agencies. When *Olmstead* was decided, long-standing [Title II](#) and [Section 504 regulations](#) from the Department of Justice (DOJ) required covered entities to serve people with disabilities “in the most integrated setting appropriate to the[ir] needs.” Section 504 regulations from other agencies, including the [Department of Health and Human Services](#) (HHS), echoed this “[integration mandate](#).”

On June 18, 2026, the DOJ Office of Legal Counsel (OLC) published an [opinion](#) (OLC Opinion) narrowing DOJ's interpretation of *Olmstead*. OLC [determined](#) that *Olmstead*, Section 504, and Title II do not “impose[] an integration mandate.” Rather than requiring services in integrated settings, OLC [interpreted](#) *Olmstead*, Title II, and Section 504 to prohibit only the irrational institutionalization of people with disabilities. Subsequently, DOJ has withdrawn from or changed its position in several *Olmstead* matters on grounds related to the OLC Opinion and for other cited reasons. These matters include a case challenging HHS's regulations implementing the integration mandate. As a result of DOJ's change in position, the HHS integration regulations have been vacated.

This Legal Sidebar reviews the background of the integration mandate and the *Olmstead* decision. It discusses OLC's new interpretation of *Olmstead* and certain recent DOJ activities related to *Olmstead* enforcement. It concludes with some potential implications of these developments.

Section 504, Title II, and the Integration Mandate

Section 504 prohibits disability discrimination by federal funding recipients and federal agencies, and Title II prohibits disability discrimination by state and local governments. The integration mandate has been part of Section 504's interpretation since its original regulations were promulgated, and it was adopted into Title II's regulations after the ADA's passage as well. Relevant to the Supreme Court's

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holding in *Olmstead*, both statutes have also consistently been interpreted to require covered entities to make reasonable modifications to accommodate people with disabilities.

Because Section 504 attaches conditions to federal funding, each federal agency promulgates Section 504 regulations governing its grantees. Responsibility for coordinating federal Section 504 enforcement originally [rested](#) with the former Department of Health, Education, and Welfare (HEW) and was later [shifted](#) to DOJ. HEW promulgated [regulations](#) coordinating executive agency implementation of Section 504 in 1978, and DOJ [adopted](#) those regulations in full in 1981. They have not been substantively amended since. The Section 504 coordination regulations [require](#) recipients of federal funding to, among other things, “administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.” At the time of promulgation, HEW [described](#) this requirement as “intrinsic to section 504.”

When Congress passed the ADA in 1990, it included [findings](#) that “historically, society has tended to isolate and segregate individuals with disabilities” and described “such forms of discrimination” as “a serious and pervasive social problem.” It [directed](#) DOJ to issue Title II regulations “consistent with” the 1978 HEW Section 504 coordination regulations. [Since 1991](#), DOJ’s Title II regulations have therefore paralleled the Section 504 coordination regulations, [requiring](#) state and local governments to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” Under the regulations, the “[most integrated setting](#)” is the “setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.” In 1991, DOJ [stated](#): “Integration is fundamental to the purposes of the [ADA].”

In 2011, DOJ published [guidance](#) on the integration mandate. That guidance affirmed DOJ’s perspective at the time that the ADA required covered entities to “[provide individuals with disabilities opportunities to live, work, and receive services in the greater community](#)” and that people “[at serious risk of institutionalization or segregation](#)” could bring ADA claims. The guidance [rejected](#) the notion that costs to state programs could, on their own, justify serving people with disabilities in more segregated settings.

The Supreme Court and federal agencies have also interpreted Section 504 and Title II to require covered entities to make reasonable modifications to allow people with disabilities to access their programs and services. In *Alexander v. Choate*, a Section 504 case, the Court [held](#) that “while a grantee need not be required to make ‘fundamental’ or ‘substantial’ modifications to accommodate the handicapped, it may be required to make ‘reasonable’ ones.” Both Title II’s [statutory text](#) and its [regulations](#) require reasonable modifications. Like Section 504, Title II [does not require](#) covered entities to make changes that “would fundamentally alter the nature of the service, program, or activity.”

Olmstead v. L.C. ex rel. Zimring

In *Olmstead*, two women with intellectual disabilities and serious mental illnesses [sued](#) Georgia health officials for allegedly keeping them institutionalized for years after their physicians agreed that they could be served in community-based programs. The plaintiffs argued that Georgia violated the Title II integration mandate by failing to place them in such programs. Georgia [countered](#) that the plaintiffs had not shown disability discrimination because they could not identify a group of similarly situated nondisabled people who were treated better. Georgia [contended](#) that it was keeping plaintiffs out of community-based services not because of their disabilities but because of costs, and requiring the state to prioritize particular services for these two individuals would fundamentally alter its health program by forcing it to divert funds from serving other people with medical needs.

Majority Opinion

A splintered Supreme Court largely sided with the plaintiffs. In the majority opinion authored by Justice Ginsburg, the Court [held](#) that “unjustified institutional isolation of persons with disabilities is a form of discrimination” prohibited by Title II. The Court relied both on Congress’s [findings in the ADA](#), which “explicitly identified unjustified ‘segregation’ of persons with disabilities as a ‘for[m] of discrimination,’” and DOJ’s [Title II regulations](#) requiring integrated services. The Court reasoned that unjustified institutionalization was a form of discrimination for at least two reasons: [First](#), it “perpetuates” stereotypes that people with disabilities “are incapable or unworthy of participating in community life.” [Second](#), it results in disparate treatment of people with disabilities because it requires them to “relinquish participation in community life they could enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice.”

A majority of the Court also [agreed](#) that a state could defer to the “reasonable assessments of its own professionals” as to appropriate medical placements and that a state did not need to put unwilling patients in community-based services. In other words, to be eligible to transfer to a more integrated setting, a person with a disability would need to consent and obtain a doctor’s approval.

How much *Olmstead*’s holding depended on DOJ’s Title II regulations is not clear. One could read the opinion as an interpretation of DOJ’s regulations. The Court [characterized](#) the dispute between the parties, at least in part, as one over “the proper construction and enforcement of the regulations.” The Court expressly declined to consider whether the regulations validly construed Title II, and it therefore may have based its conclusion on the assumption that they did. On the other hand, the Court also [characterized](#) the case as “concern[ing] the proper construction” of Title II itself, not just the regulations, and it appeared to treat the regulations as one of several sources of support for its holding. It [declined](#) to decide whether it should defer to DOJ’s regulations under the then-prevailing *Chevron* doctrine, holding only that DOJ’s “views warrant respect.” The Court also looked to congressional findings and its own reasoning about what discrimination means, in addition to its references to the Title II regulations.

Plurality Opinion

As discussed above, a majority of the Court in *Olmstead* agreed that unjustified institutionalization can be disability discrimination and that states need not provide community-based services against a doctor’s advice or a patient’s wishes. The Court did not reach a majority to further explain when public entities must provide community-based services. A four-member plurality viewed the matter as a question of what [reasonable modifications](#) states would need to make to provide community-based care to participants in state medical programs. The plurality sought to [balance](#) the needs of people in institutions seeking more integrated settings with “the responsibility the State has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities.” In addition to a doctor’s approval and

patient's consent, the plurality [thought](#) that a state would have to provide community-based services when "the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." Generally, the plurality thought that a state could meet its obligations by [showing](#) that it had a "working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated."

Justice Kennedy's Concurrence

Justice Kennedy concurred in the judgment. While he did not join the majority opinion, he [agreed](#) that institutionalization could constitute disability discrimination. Justice Kennedy [proposed](#), however, that plaintiffs pleading a Title II claim based on unjustified institutionalization would have to show that the state served another group of people with "medical problems of comparable seriousness" in the community but denied community-based services to the plaintiffs because of their disabilities. Justice Kennedy [emphasized](#) his concerns that courts respect doctors' treatment recommendations, that federal courts not overly intrude into state health policy decisions (including by managing [trade-offs](#) between competing interests), and that people with disabilities not be forced out of institutions without proper treatment or placements available in the community.

Dissent

Justice Thomas, joined by Chief Justice Rehnquist and Justice Scalia, dissented. The dissent would have found discrimination only if the state treated a person in a protected group—in this case, people with disabilities—differently than people outside that group. Because the plaintiffs in *Olmstead* sought services given only to people with disabilities, in the dissent's view they [could not identify](#) anyone outside of their protected class who was treated better. The dissent saw the plaintiff's claim as one for a certain "[standard of care](#)," rather than nondiscriminatory treatment. The dissent also echoed Justice Kennedy's concerns about the "[federalism costs](#)" of "directing States how to make decisions about their delivery of public services" and about undue court interference in state decisions about the allocation of "[limited resources](#)."

DOJ's Reinterpretation of *Olmstead*

The 2026 OLC Opinion significantly changes DOJ's interpretation of *Olmstead*, Section 504, and Title II. As described above, since 1981, DOJ has consistently interpreted Section 504 and Title II to require covered entities to maximize integration when serving people with disabilities. The OLC Opinion [concludes](#) that federal agencies "incorrectly interpret [the laws] to impose an integration mandate." OLC [acknowledges](#) that most circuit courts treat the *Olmstead* plurality's framework "as binding." OLC, however, emphasizes what it describes as the majority's "[narrow](#)" holding: that Title II [prohibits](#) only "unjustified institutional isolation." Further, OLC interprets the majority to say "[remarkably little](#)" about when institutionalization is "unjustified." OLC [interprets](#) Section 504, Title II, and *Olmstead* to prohibit institutionalization "only when there are no legitimate, nondiscriminatory factors that weigh in favor of it." In OLC's view, legitimate justifications for institutionalization [include](#) anything other than the "mere fact of disability" itself. OLC [elaborates](#) that this may "include concerns about the safety of the individual or the community," such as that disabled individuals will not take "necessary medication"; "[r]esource and space constraints in community-based treatment facilities"; or any "special needs resulting from" a person's disability.

In many ways, the OLC Opinion echoes the concerns of Justice Kennedy's concurrence and the *Olmstead* dissent. OLC opines that requiring states to provide medical services in integrated settings would be constitutionally suspect for a number of reasons, including that it would "[upset the usual constitutional](#)

balance of federal and state powers.” It contends that the fundamental meaning of discrimination is to treat similarly situated people differently and that institutionalization is therefore discriminatory only when a covered entity makes “arbitrary distinctions between individuals with similar medical needs.” Beyond some of the reasoning supported by the concurring and dissenting Justices in *Olmstead*, OLC doubts whether Congress has the constitutional authority to regulate where states provide medical services outside of attaching conditions to federal funds, and it does not think that Section 504 speaks clearly enough to the integration mandate to give recipients the necessary “clear notice” of what is required.

On July 20, 2026, DOJ published a *Federal Register* notice to “clarify” that certain DOJ *Olmstead* guidance, including the 2011 guidance, is “not enforceable” and that DOJ would not rely on it. According to the notice, DOJ intends to “revisit” whether its *Olmstead* guidance is “consistent with the ‘single, best meaning’” of the ADA.

Recent DOJ Activities Related to *Olmstead* Enforcement

DOJ and HHS have cited the OLC Opinion and July 20, 2026, notice to explain changes in their litigating positions in ongoing *Olmstead* matters. In one such case, *Texas v. Kennedy*, HHS faced a suit from several states challenging its Section 504 regulations implementing the integration mandate. The states claimed that HHS had exceeded its statutory authority by forcing states to “redesign their entire systems of care” to provide HHS’s preferred services, rather than requiring only that states not discriminate in the services they did provide. In addition, the states claimed HHS violated Spending Clause requirements by attaching “new conditions” to federal funds that were coercive and not clearly statutorily mandated.

Citing the OLC Opinion, HHS and the plaintiffs in *Texas v. Kennedy* agreed to settle the case by jointly asking the court to vacate HHS’s integration-related Section 504 regulations. On September 23, 2026, the court obliged. The court’s order vacates the challenged regulations nationwide. The court observed that DOJ takes the position that courts cannot vacate rules and that any vacatur “must at least be party-specific” but stated that DOJ agreed not to “pursue [that] position . . . in this case.”

DOJ cited its July 20, 2026, notice to explain its request to the Eleventh Circuit to vacate a recent decision in DOJ’s favor in another case, *United States v. Florida*, which DOJ had been litigating since 2013. *United States v. Florida* involved claims that Florida administered its Medicaid program in ways that put children with “complex medical needs” in nursing homes or “at serious risk” of institutionalization. The suit addressed “approximately 140 Institutionalized Children” and “more than 1,800” children at risk of institutionalization. Ultimately, DOJ prevailed on a number of significant legal issues, among them that people “at risk of institutionalization” could bring claims under Title II. In March 2026, the Eleventh Circuit largely upheld an injunction requiring Florida to make changes to its Medicaid administration.

In its motion to vacate, DOJ cited the July 20, 2026, notice and asked the appellate court to withdraw its decision. It stated that DOJ had “decided to ‘revisit’” the position that people at risk of institutionalization could pursue Title II claims and that “the United States no longer seeks or wishes to enforce liability in this case based on the at-risk theory.” It further stated that it no longer seeks to “uphold or enforce” the lower court’s injunction. In response, the Eleventh Circuit referred the case to mediation and invited “counsel representing the interests of at-risk children” to join.

In addition to changing its positions in *Texas v. Kennedy* and *United States v. Florida*, DOJ has recently withdrawn from or terminated some additional *Olmstead* matters. For example, on August 6, 2026, DOJ withdrew as plaintiff-intervenor and stipulated to dismissal of its claims in *Steward v. Abbott*. In 2025, the district court in that case held that Texas violated the ADA and Section 504 by failing to provide certain services to nursing home residents with intellectual disabilities, leaving many “languishing in nursing facilities for years when they could have been living in a community setting.” In another example, on

September 14, 2026, a federal district court [granted](#) a joint motion by DOJ and North Carolina to terminate a 2012 settlement agreement related to the alleged over-institutionalization of people with serious mental illnesses.

Implications of DOJ's Recent Approach to *Olmstead* and Considerations for Congress

Both Title II and Section 504 may be enforced via a [private right of action](#), and neither private plaintiffs nor courts are bound by DOJ's interpretation of *Olmstead*. Private plaintiffs may still seek to enforce an interpretation of *Olmstead* that requires greater access to community care, and they may seek judicial relief for people with disabilities at risk of institutionalization.

That said, Congress [envisioned](#) that the federal government would “play[] a central role in enforcing” the ADA, and DOJ is a major player in *Olmstead* matters. *Olmstead* matters can be “[highly resource- and personnel-intensive](#).” As in *United States v. Florida*, they can span years (sometimes decades), require expertise in law, health care policy and administration, medicine, and other fields, and involve dozens to thousands of plaintiffs or class members. DOJ has [at times](#) taken a “sweeping” “enforcement approach,” addressing “all of a state’s institutions” rather than individual facilities. Private litigants may lack the resources or expertise to pursue *Olmstead* cases at the scale at which DOJ is capable. Resource constraints aside, as commentators [observe](#), privately litigated *Olmstead* matters often proceed as class actions, and class certification presents significant challenges that DOJ does not face.

DOJ's position has directly affected individual cases and could lead to more changes in ongoing *Olmstead* matters. The [OLC Opinion](#) states that DOJ “has successfully elicited consent decrees, remedial orders, or out-of-court agreements in nearly a dozen states.” As seen in the cases described above, DOJ may seek to terminate or modify other injunctions, orders, or consent decrees. DOJ's position may enable states to exercise more flexibility in how they administer their health care programs and to allocate resources differently than they would under a more aggressive interpretation of the ADA and Section 504.

While *Olmstead* and the OLC Opinion focus on the integration mandate in health care settings, they each have broader implications. *Olmstead*'s reach stretches into other areas. DOJ has pursued *Olmstead* cases involving [segregated employment](#) and [segregated educational services](#) for people with disabilities, for example. Policies in these domains may be affected by the OLC Opinion. The OLC Opinion may also signal a narrower approach to Title II enforcement beyond matters involving segregation. The OLC Opinion questions Congress's [Commerce Clause](#) authority to regulate state activity that DOJ views as noneconomic, as well as Congress's [Fourteenth Amendment](#) authority to address disability discrimination by states except where such discrimination is irrational. One possible conclusion of this reasoning may be that Congress cannot use these constitutional authorities, which [underpin](#) Title II, to compel states to reasonably accommodate people with disabilities in all state services. Whether DOJ will extend its reasoning so far, and change its enforcement practices in other ADA cases, remains to be seen.

Olmstead is a statutory opinion. Congress can clarify its position on the integration mandate. If Congress agrees with DOJ's approach and seeks to rein in private litigation, for example, it can amend Title II and Section 504 to align with the OLC Opinion. Congress can also consider codifying the *Olmstead* plurality or other approaches to a broader integration mandate. While DOJ posits certain constitutional limits on Congress's power to require states to provide integrated services, those views have not been tested at the Supreme Court. Moreover, DOJ [agrees](#) that Congress could require integration through conditions on federal funds, so long as those conditions are clear and the law satisfies [other constitutional constraints](#).

All Justices in *Olmstead* [recognized](#) that [states](#) have competing interests when serving people with disabilities and that states may lack the [resources](#) to both maintain institutions for those who need them

and provide community-based services for all who could benefit from them. [Resolutions](#) in *Olmstead* cases may lead to both increased community-based services and decreased institutional capacity. Congress may choose to address the balance between institutional and community-based services through adjustments to its spending programs, such as Medicaid, rather than rely on civil rights law.

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