

1 respectfully requests this Court grant Plaintiffs' Motion for Preliminary Injunction.

2 This suit alleges that the State of Washington's planned reduction in personal care hours
3 to individuals with disabilities who receive these services in the community places them at risk
4 of institutionalization in violation of the ADA. Plaintiffs all live in community settings, primarily
5 in their own homes, and are able to enjoy community life such as attending church, volunteering,
6 going to movies and visiting with family. However, the independence and stability that Plaintiffs
7 enjoy is threatened by the sudden reduction in personal care hours on which they depend.

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9 Plaintiffs produce substantial evidence regarding the anticipated devastating effects of the
10 service reductions including institutionalization, deteriorating health and even death. The State's
11 swift implementation of the reduction without advanced analysis, individual assessments, plans
12 for alternative services or other implementation plans to ensure that individuals are not placed at
13 risk of institutionalization, undermines the State's contention that the reductions are harmless.
14 The State asserts that the reduction is necessary in light of budget shortfalls; however, it admits
15 that institutional care is more costly than providing the same care in the community.

16 **II SUMMARY OF FACTS**

17 **A. Washington Provides Personal Care Hours Through Several Medicaid Programs**

18 Approximately 45,000 elderly and disabled Washington residents receive Medicaid in-
19 home personal care services (Susan Dreyfus Decl., DKT 124, ¶ 5, Jan. 25, 2011) that enable
20 them to live independently and in community-based settings. In-home personal care attendants
21 assist Plaintiffs with essential daily tasks including eating, bathing, cooking, cleaning, bowel care
22 (e.g. changing a ileostomy bag and incontinence briefs), shopping, transferring to and from the
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1 toilet and changing body positions to avoid ulcers.¹

2 Of the 45,000 individuals who receive Medicaid in-home personal care services (Dreyfus
3 Decl. ¶ 5), over 60% receive the services through one of Washington’s Medicaid waiver
4 programs (Charles Reed Decl., DKT 18, ¶¶ 19-20, Dec. 20, 2010). The Medicaid waiver²
5 program allows states to provide home and community-based services to the elderly and
6 individuals with disabilities for whom “there has been a determination that but for the provision
7 of such services the individuals would require the level of care provided in an hospital or a
8 nursing facility or intermediate care facility for [individuals with intellectual disabilities³].” 42
9 U.S.C. § 1396n(c)(1); 42 U.S.C. § 1396(d)(1). States are required to perform an initial
10 evaluation and at least annual evaluations to determine that “but for the provision of waiver
11 services” the individual would be institutionalized. 42 C.F.R. § 441.302(c). Thus, for the
12 approximately 30,000 class members who receive personal care services through one of
13 Washington’s waiver programs, the State has already made the determination that these services
14 are necessary to prevent their institutionalization. The State must further provide assurances to
15 the Centers for Medicare and Medicaid Services (“CMS”) of the same. *Id.*

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18 The remaining class members receive personal care services through Washington’s
19 Medicaid state plan. (Reed Decl. ¶¶ 19-20.) The Medicaid Personal Care program (“MPC”) is

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21 ¹ (Vickie Partridge Decl., DKT 35, ¶¶ 2, 5, 9, Dec. 22, 2010; Donna Albott Decl., DKT 37, ¶¶ 9-10, Dec.
22 14, 2010; Donna Hays Decl., DKT 39, ¶ 15, Dec. 19, 2010; Lucille Frederick Decl., DKT 40, ¶ 11, Dec. 15, 2010;
23 Debra Dockstader Decl., DKT 42, ¶ 10, Dec. 15, 2010; Karen Paolino Decl., DKT 45, ¶ 14, Dec. 16, 2010; Maria
Allington Decl., DKT 52, ¶ 13, Dec. 18, 2010.)

24 ² The “waiver” authority permits the Secretary of Health and Human Services to waive certain Medicaid
requirements in order for the State to offer the services. *See* 42 U.S.C. § 1396n(c)(3); 42 U.S.C. § 1396n(d)(3).

25 ³ The term “mental retardation” is replaced by “intellectual disability” throughout this brief as is consistent
with current usage. *See* Rosa’s Law, Pub. L. No. 111-256, 124 Stat. 2643 (2010).

1 “designed to help [individuals] remain in the community” and “offers an alternative to nursing
2 home care.”⁴ Wash. Admin. Code § 388-106-0015 (2010). In order to qualify for the MPC
3 program, the individual must have unmet or partially unmet needs in Activities of Daily Living
4 (“ADL”) including, for example, eating, toileting, bathing, dressing, transferring, medication
5 management, and personal hygiene. Wash. Admin. Code § 388-106-0210 (2010). The vast
6 majority of individuals receiving personal care services through the MPC program also meet the
7 eligibility criteria for institutional care. (Reed Decl. ¶ 19a.)
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9 Finally, the State must also determine that the personal care services are medically
10 necessary. Wash. Admin. Code 388-501-0050 (4). A medically necessary service is one that is
11 “reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of
12 conditions in the client that endanger life, or cause suffering or pain, or result in an illness or
13 infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or
14 malfunction.” Wash. Admin. Code 388-500-0005.
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16 Since approximately 2003 (Bea-Alise Rector Decl., DKT 125, ¶ 12, Jan. 12, 2011), the
17 Department of Social and Health Services (DSHS) has utilized the Comprehensive Reporting
18 Evaluation (CARE) system in order to assess individual needs and determine the number of in-
19 home personal care hours that beneficiaries will receive. (Penny Black Decl., DKT 19, ¶¶ 6-9,
20 Dec. 22, 2010; Reed Decl. ¶¶ 26-28, 32.) The CARE assessment relies upon in-person
21 evaluations and is based upon standardized screening tools that have been proven to increase the
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24 ⁴ The State asserts that the “essential purpose” of personal care services is to assist individuals with ADLs,
25 and not to allow them to remain in a community-based setting. (Defs.’ Resp. to Pls.’ Mot. for TRO, DKT 66, 14-15.)
This argument is misguided because it ignores the entire purpose of the Medicaid Waiver program, discussed above,
and the express purpose of the MPC program under the Washington Medicaid state plan.

1 assessments' reliability and accuracy. (Black Decl. ¶¶ 8-12, 18, 20-21, 25.) The CARE
2 assessment occurs each year, or when there is a significant change to the individual's ability to
3 care for his/her self. Wash. Admin. Code § 388-106-0050 (2010). The CARE tool is used to
4 determine the number of personal care hours that individuals will receive, and whether they
5 receive services through a Medicaid waiver program or the Medicaid state plan. Wash. Admin.
6 Code § 388-106-0070 (2010).

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8 **B. Plaintiffs Reside in the Community and Depend upon Personal Care Services for
Their Essential Needs**

9 Plaintiffs currently reside in the community. They all have severe disabilities and rely
10 heavily on their personal care attendants for their basic needs. For example, Z.J., who has
11 quadriplegia, lives at home and is "able to be there as a parent for his children." (Glenda
12 Faatoafe Decl., DKT 56, ¶ 15, Dec. 17, 2010.) Along with emptying his catheter bag three times
13 per day, Z.J.'s caretaker prepares and places formula into Z.J.'s feeding machine. (*Id.* ¶ 12a-b.)

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15 A.R. "values independent living," and, at 63, "is so young compared to the other people
16 in facilities, so she really enjoys being able to spend more time with her family and people her
17 own age." (Frederick Decl. ¶ 14.) A.R., however, is paralyzed on her right side, is blind in her
18 right eye (*id.* ¶ 9) and must use an ileostomy bag to relieve herself (*id.* ¶ 11c). She requires
19 extensive assistance eating, with bathing and hygiene, being repositioned in bed, and dressing
20 herself. (Dockstader Decl. ¶ 10b-f.) Additionally, A.R.'s ileostomy bag requires cleaning every
21 two hours, including during the nighttime. (Frederick Decl. ¶ 11c.)

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23 A.H., who has grey matter disease, glaucoma and neuropathy, enjoys living with family.
24 (Donna Kay Guin Decl., DKT 55, ¶ 11, Dec. 18, 2010.) She receives assistance with her oxygen
25 machine, getting in and out of bed, bathing, toilet use, food preparation, mobility, and medication

1 management. (*Id.* ¶ 13a-e; A.H. Decl. ¶¶ 5-6.) Moreover, she has “never stayed in a nursing
2 home and . . . would never want to go to one.” (A.H. Decl. ¶ 8.)

3 M.R., who has severe mental retardation, daily seizures, and cerebral palsy (Dorcas
4 Maxson Decl., DKT 26, ¶ 3, Dec. 19, 2010), “loves the independence she is afforded by living at
5 home to set her own schedule, do puzzles, color or trace letters, and spend time with [her
6 personal care service provider] playing with beads or sorting coins” (*id.* ¶ 10). In addition to
7 assisting M.R. with normal ADLs (*id.* ¶ 8), M.R.’s caretaker assists M.R. with her feeding tube,
8 which “requires extensive maintenance . . . and has a tendency to ooze and become infected, and
9 because she has a tendency to grab and pull on it” (*id.* ¶ 8b).

11 D.V.S., who is missing a portion of his skull as a result of brain surgery (D.V.S. Decl.,
12 DKT 59, ¶ 9, Dec. 18, 2010), receives assistance repositioning himself to avoid damage to the
13 back of his head, and also receives assistance showering. (*Id.* ¶ 7.)

14 **C. State of Washington’s Reduction of Personal Care Hours**

15 On September 14, 2010, Governor Christine O. Gregoire issued Executive Order 10-04,
16 which ordered the reduction of general funds appropriations by 6.287% to offset the State budget
17 shortfall in the current fiscal period and directed each agency to submit a plan to implement the
18 reductions. (Andrea Brenneke Decl., DKT 12, Exs. 2, 3, Dec. 23, 2010.) In response,
19 Defendants submitted a plan that called for, *inter alia*, the reduction of in-home beneficiaries’
20 personal care hours by an average of 10%. (*Id.* Ex. 4.) In order to realize the anticipated budget
21 savings from reducing the personal care hours, the Plaintiffs must remain in the community
22 because of the high cost of institutional care. (Reed Decl. ¶ 20; Defs.’ Resp. to Pls.’ Mot. for
23 TRO 27.) Defendants issued emergency regulations on November 17, 2010 and implementation
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1 instructions to their staff on December 2, 2010. Wash. Reg. 242113 (Dec. 30, 2010) (attached as
2 Exhibit A); (Brenneke Decl. Ex. 1). However, the Defendants did not complete or plan new
3 assessments of Plaintiffs' needs in order to determine if the reduced hours are sufficient to safely
4 maintain Plaintiffs in their respective communities. (Reed Decl. ¶ 42.) Further, these cuts were
5 on top of an average 4% decrease that went into effect in FY 2010. (Black Decl. ¶ 29.) Named
6 Plaintiffs, along with approximately 45,000 other beneficiaries of personal care hours in
7 Washington State, were notified via U.S. Mail at the beginning of December, 2010 that their
8 personal care hours were being reduced and that no appeals would be granted. (C.B. Decl., DKT
9 29, Ex.4 at 1, Dec. 16, 2010.) Defendants were scheduled to implement the reductions on
10 January 1, 2011. (Jane B. Decl., DKT 33, ¶¶ 4-5., Dec. 22, 2010)⁵

12 **III. ARGUMENT**

13 **A. Olmstead and the Integration Mandate**

14 Congress enacted the ADA in 1990 "to provide a clear and comprehensive national
15 mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C.
16 § 12101(b)(1). Congress found that "historically, society has tended to isolate and segregate
17 individuals with disabilities, and, despite some improvements, such forms of discrimination
18 against individuals with disabilities continue to be a serious and pervasive social problem."
19 42 U.S.C. § 12101(a)(2). For those reasons, Congress prohibited discrimination against
20 individuals with disabilities by public entities.
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24 ⁵ At the time of this filing, the State's implementation of these reductions is unknown given the injunction
25 ordered by the Ninth Circuit Court of Appeals on January 14, 2011 and the State's representation to the Ninth
26 Circuit that it was not possible to reverse the implementation before the first week of February. (Order, DKT 92,
27 filed Jan. 20, 2011; Defs.' Mot. for Recons., 9th Cir. DKT 30-1 (No. 11-35026).)

1 [N]o qualified individual with a disability shall, by reason of such disability, be excluded
2 from participation in or be denied the benefits of the services, programs, or activities of a
3 public entity, or be subjected to discrimination by any such entity.

4 42 U.S.C. § 12132.

5 As directed by Congress, the Attorney General issued regulations implementing title II,
6 which are based on regulations issued under section 504 of the Rehabilitation Act.⁶ See 42
7 U.S.C. § 12134(a); 28 C.F.R. § 35.190(a); Executive Order 12250, 45 Fed. Reg. 72995 (1980),
8 *reprinted in* 42 U.S.C. § 2000d-1. The title II regulations require public entities to “administer
9 services, programs, and activities in the most integrated setting appropriate to the needs of
10 qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). The preamble discussion of the
11 “integration regulation” explains that “the most integrated setting” is one that “enables
12 individuals with disabilities to interact with nondisabled persons to the fullest extent possible . . .
13 .” 28 C.F.R. Pt. 35, App. A (2010) (addressing § 35.130). This mandate advances one of the
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16 ⁶ Title II was modeled closely on section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which
17 prohibits discrimination on the basis of disability in federally conducted programs and in all of the operations of
18 certain entities, including public entities, that receive federal financial assistance. Title II provides that “[t]he
19 remedies, procedures, and rights” applicable to section 504 shall be available to any person alleging discrimination
20 in violation of title II. 42 U.S.C. § 12133; *see also* 42 U.S.C. § 12201(a) (ADA must not be construed more
21 narrowly than Rehabilitation Act). The ADA directs the Attorney General to promulgate regulations to implement
22 title II, and requires those regulations to be consistent with preexisting federal regulations that coordinated federal
23 agencies’ application of section 504 to recipients of federal financial assistance, and interpreted certain aspects of
24 section 504 as applied to the federal government itself. 42 U.S.C. § 12134(a)-(b). Title II thus extended section
25 504’s pre-existing prohibition against disability-based discrimination in programs and activities (including state and
26 local programs and activities) receiving federal financial assistance or conducted by the federal government itself to
27 all operations of state and local governments, whether or not they receive federal assistance. The ADA and the
28 Rehabilitation Act are generally construed to impose the same requirements. *See Sanchez v. Johnson*, 416 F.3d
1051, 1062 (9th Cir. 2005); *Zukle v. Regents of Univ. of California*, 166 F.3d 1041, 1045 n. 11 (9th Cir. 1999). This
principle follows from the similar language employed in the two acts. It also derives from the Congressional
directive that implementation and interpretation of the two acts “be coordinated to prevent[] imposition of
inconsistent or conflicting standards for the same requirements under the two statutes.” *Baird ex rel. Baird v. Rose*,
192 F.3d 462, 468-69 (4th Cir. 1999) (citing 42 U.S.C. § 12117(b)). *See also Yeskey v. Com. of Pa. Dep’t of Corr.*,
118 F.3d 168, 170 (3d Cir. 1997) (“[A]ll the leading cases take up the statutes together, as we will.”), *aff’d*, 524 U.S.
206 (1998).

1 principal purposes of title II of the ADA—ending the isolation and segregation of people with
2 disabilities. *See Arc of Wash. State Inc. v. Braddock*, 427 F.3d 615, 618 (9th Cir. 2005).

3 Twelve years ago, the Supreme Court applied these authorities and held that title II
4 prohibits the unjustified segregation of individuals with disabilities. *Olmstead*, 527 U.S. at 596.
5 *Olmstead* held that public entities are required to provide community-based services for persons
6 with disabilities who would otherwise be entitled to institutional services when (1) individuals
7 are appropriate for community placement; (2) the affected persons do not oppose such treatment;
8 and (3) the placement can be reasonably accommodated, taking into account the resources
9 available to the entity and the needs of others who are receiving disability services from the
10 entity. *Olmstead*, 527 U.S. at 607.

12 The Court explained that this holding “reflects two evident judgments.” *Id.* at 600.
13 “First, institutional placement of persons who can handle and benefit from community settings
14 perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of
15 participating in community life.” *Id.* “Second, confinement in an institution severely diminishes
16 the everyday life activities of individuals, including family relations, social contacts, work
17 options, economic independence, educational advancement, and cultural enrichment.” *Id.* at 601.
18 *Olmstead* therefore makes clear that the aim of the integration mandate is to eliminate
19 unnecessary institutionalization. A state’s obligation to provide services in the most integrated
20 setting may be excused only where a state can prove that the relief sought would result in a
21 “fundamental alteration” of the state’s service system. *Id.* at 603-04.

22
23 **B. A Budget Crisis does not Automatically Relieve the State of its Duty Under the ADA**

24 A public entity cannot simply point to a budgetary shortfall as an excuse for failure to
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1 comply with *Olmstead*. “[T]hat [a state] has a fiscal problem, by itself, does not lead to an
2 automatic conclusion” that providing the community services that Plaintiffs seek would be a
3 fundamental alteration. *Fisher v. Oklahoma*, 335 F.3d 1175, 1181 (10th Cir. 2003). Indeed, “[i]f
4 every alteration in a program or service that required the outlay of funds were tantamount to a
5 fundamental alteration, the ADA’s integration mandate would be hollow indeed.” *Id.* at 1183.
6 Congress was aware that integration “will sometimes involve substantial short-term burdens,
7 both financial and administrative,” but the long-term effects of integration “will benefit society
8 as a whole.” *Id.* Similarly, the Third Circuit Court of Appeals held that a fundamental alteration
9 defense based solely on a budgetary shortfall analysis is insufficient. *Pa. Prot. & Advocacy, Inc.*
10 *v. Pa. Dep’t of Pub. Welfare*, 402 F.3d 374, 380 (3d Cir. 2005). In *Radaszewski v. Maram*, 383
11 F.3d 599, 614 (7th Cir. 2004), the Court similarly held that increased costs necessary to prevent
12 institutionalization does not alone defeat a title II claim.
13

14 **C. Plaintiffs Need Not Be Institutionalized To Pursue an ADA Claim**

15 The integration mandate prohibits public entities from pursuing policies that place
16 individuals at risk of unnecessary institutionalization. *Fisher*, 335 F.3d at 1181. Plaintiffs need
17 not wait until they are institutionalized to pursue a claim for violation of the ADA because the
18 goal of the integration mandate is to eliminate unnecessary institutionalization, and requiring
19 Plaintiffs to enter an institution before they may bring a title II claim would defeat this
20 fundamental purpose. In *Fisher*, the Tenth Circuit Court of Appeals rejected defendants’
21 argument that plaintiffs could not make an integration mandate challenge until they were placed
22 in institutions. *Id.* The court reasoned that the protections of the integration mandate “would be
23 meaningless if plaintiffs were required to segregate themselves by entering an institution before
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1 they could challenge an allegedly discriminatory law or policy that threatens to force them into
2 segregated isolation.” *Id.*⁷

3 **D. Plaintiffs Satisfy the Requirements for a Preliminary Injunction.**

4 To obtain a preliminary injunction, plaintiffs must show (1) likelihood of success on the
5 merits of their ADA Title II claim; (2) likelihood that the disruption in services will cause
6 irreparable harm; (3) that the balance of hardships weighs in favor of plaintiffs; and (4) that
7 granting an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555
8 U.S. 7, 29 S. Ct. 365, 374-76 (2008).

9
10 **1. Plaintiffs Are Likely To Prevail on Their ADA Claim**

11 Plaintiffs can establish the three key elements of an *Olmstead* claim. The first two
12 elements—that Plaintiffs are appropriate for and do not oppose community placement—do not
13 appear to be in dispute. This case turns on whether the Defendants’ reduction in personal care
14 services places the Plaintiffs at risk of institutionalization. Both parties agree that if the
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16 ⁷ See also *Marlo M. v. Cansler*, 679 F. Supp. 2d 635, 637 (E.D.N.C. 2010); *Cota v. Maxwell-Jolly*, 688 F.
17 Supp. 2d 980, 985 (N.D. Cal. 2010) *appeal docketed*, No. 10-15635 (9th Cir. Mar. 24, 2010); *Brantley v. Maxwell-*
18 *Jolly*, 656 F. Supp. 2d 1161, 1164 (N.D. Cal. 2009); and *V.L. v. Wagner*, 669 F. Supp. 2d 1106, 1109 (N.D. Cal.
19 2009), *appeal docketed* No. 09-17581 (9th Cir. Nov. 18, 2009) (all granting preliminary injunctions where plaintiffs
20 were at risk of institutionalization due to cuts in community-based services); *M.A.C. v. Betit*, 284 F. Supp. 2d 1298,
21 1309 (D. Utah 2003) (ADA’s integration mandate applies equally to those individuals already institutionalized and
22 to those at risk of institutionalization); *Makin v. Hawaii*, 114 F. Supp. 2d 1017, 1034 (D. Haw. 1999) (individuals in
23 the community on the waiting list for community-based services offered through the State’s Medicaid program
24 could challenge administration of the program as violating title II’s integration mandate because it “could potentially
25 force Plaintiffs into institutions”); *Ball v. Rogers*, 2009 WL 1395423, at *5 (D. Ariz. April 24, 2009) (holding that
26 defendants’ failure to provide adequate services to avoid unnecessary institutionalization was discriminatory); *Cruz*
27 *v. Dudek*, No. 10-23048, 2010 WL 4284955, at *3-7 (S.D. Fla. Oct 12, 2010) (Magistrate’s Report and
28 Recommendation Adopted by Court Nov. 24, 2010, attached as Exhibit B) (granting preliminary injunction where
state’s denial of community-based services placed plaintiffs at risk of institutionalization); *Crabtree v. Goetz*, 2008
WL 5330506, at *30 (M.D. Tenn. Dec. 19, 2008) (unpublished decision) (“Plaintiffs have demonstrated a strong
likelihood of success on the merits of their [ADA] claims that the Defendants’ drastic cuts of their home health care
services will force their institutionalization in nursing homes.”). The State even argues that informing recipients of
the ETR process in the State’s notice creates a substantial burden on the State. (Def.’ Resp. to Pls.’ Mot. for Prelim.
Inj., DKT 123, ¶ 14, Jan. 25, 2011.)

1 Plaintiffs’ prediction that the reduction in personal care hours will place them at risk of
2 institutionalization comes true, then the State will not realize its anticipated budget savings from
3 the reductions. (Defs.’ Resp. to Pls.’ Mot. for TRO at 27; Reed Decl. ¶ 20.) Thus, while the
4 State’s budgetary shortfall drove the Defendants’ decision to reduce the services in the first
5 place, this not a case where the State’s compliance with *Olmstead* is at odds with the State’s
6 financial interests. The Plaintiffs have established that the sudden reductions in personal care
7 services places them at risk of institutionalization.

8
9 **a) Imminent Risk of Institutionalization Is Not Required Under the ADA
Integration Mandate**

10 The elimination of services that have enabled Plaintiffs to remain in the community
11 violates the ADA, regardless of whether it causes them to enter an institution immediately, or
12 whether it causes them to decline in health over time and eventually enter an institution to seek
13 necessary care. In *Fisher*, there was no allegation that the defendants’ actions threatened any of
14 the plaintiffs with immediate institutionalization. 335 F.3d at 1185. Rather, the evidence
15 showed that many of the plaintiffs would remain in their homes “until their health ha[d]
16 deteriorated” and would “eventually end up in a nursing home.” *Id.* (emphasis added). Indeed,
17 in *Brantley v. Maxwell-Jolly*, the court explicitly rejected the defendants’ assertion that “in order
18 to state a Title II violation, Plaintiffs must show that the [State’s reduction in community-based
19 services] leaves no choice other than to be institutionalized . . .” but rather concluded that “the
20 risk of institutionalization is sufficient[,]” and thus granted the plaintiffs’ motion for a
21 preliminary injunction. 656 F. Supp. 2d at 1170. (quotation marks omitted); *see also V.L.*, 669 F.
22 Supp. 2d at 1120 (concluding that plaintiffs may establish a violation of the integration mandate
23 by showing that the denial of services could lead to an eventual “decline in health” that puts
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1 them at “risk [of] being placed in a nursing home.”).

2 Recently, a district court considered whether the state of Missouri violated the integration
3 mandate of the ADA when it refused, as a matter of statewide policy, to provide incontinence
4 briefs under its Medicaid state plan to adults residing in the community. *Hiltibran v. Levy*, No.
5 10-4185 (D. Mo. Dec. 24, 2010) (attached as Exhibit C). The court held that despite the
6 plaintiffs’ ability thus far to pay for the briefs themselves to avoid institutional placement, the
7 plaintiffs were nonetheless likely at risk of institutionalization because the cost of the briefs
8 strained the plaintiffs’ already precarious financial situations. *Id.* at 11, 14. The district court
9 recognized that the risk of institutionalization does not need to be imminent; indeed, many
10 individuals go to great lengths to stave off institutionalization. *Id.* at 11. Similarly, in *Cruz v.*
11 *Dudek*, No. 10-23048 (S.D. Fla. filed Aug. 18, 2010), the district court found that although the
12 plaintiffs resided in the community for multiple years without the services they sought, they were
13 likely at risk of institutionalization due to the lack of sufficient community services. *Cruz v.*
14 *Dudek*, No. 10-23048, 2010 WL 4284955, at *3-7, 13 (S.D. Fla. 2010 Oct. 12, 2010) (See
15 Exhibit B, Court’s Order Adopting Magistrate Judge’s Report and Recommendation).

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18 **b) Plaintiffs Demonstrate That They Are At Risk of Institutionalization**
19 **as a Result of the Reduction in Personal Care Services**

20 The Plaintiffs here are similarly at risk of institutionalization (some are at immediate risk
21 while others face a risk that increases over time) due to the State’s reduction of their personal
22 care hours. Jennifer Wujick, a certified nursing assistant who works with new admissions at a
23 nursing facility in Spokane, Washington, observed that two individuals were admitted to her
24 facility in the first two weeks of January, 2011 because of deteriorating health due to reduced
25 personal care hours. (Jennifer Wujick Decl., DKT 119, ¶¶ 3-6, Jan. 21, 2011.) Sean Walsh, a

1 community service provider, estimates that 5% of his clients will require immediate
2 “hospitalization, emergency room visits, and imminent institutionalization” as a result of the
3 reductions in services. (Sean Walsh Decl., DKT 25, ¶ 13, Dec. 20, 2010.)

4 For other Plaintiffs, like the plaintiffs in *Fisher, Hiltibran, V.L., Brantley* and *Cruz*, the
5 reduction in hours places them at risk of institutionalization, but not necessarily imminently.
6 For example, the State’s reduction of J.P.’s hours resulting in 30 minutes less personal care
7 provider per day means that her provider no longer always has enough time to clean adequately
8 between J.P.’s legs and clean and replace her catheter daily, which is causing skin breakdowns
9 and infections necessitating hospitalization. (Val Anderson-Webb Decl., DKT 105, ¶ 25b-c, Jan.
10 21, 2011.) Z.J., who has quadriplegia and requires total assistance for bathing, toileting and
11 eating through a feeding tube (Faatoafe Decl. ¶ 9), will not be able to take a shower as a result of
12 his reduction in hours (Faatoafe Decl. ¶ 19). Instead, he will likely have to resort to the inferior
13 “bed bath,” which creates a high risk of infection. (*Id.*) Further, Z.J.’s bowel program (inducing
14 his bowels with a suppository, then cleansing Z.J. following the bowel movement) will be
15 delayed every morning because the personal care attendants cannot arrive as early due to the
16 reductions. (*Id.* ¶¶ 12b, 20.) This change in his care routine places Z.J. at risk of infection,
17 hospitalization and even death. (*Id.* ¶ 20.) Z.J.’s personal care attendant, Glenda Faatoafe, has
18 been providing Z.J.’s care for five years (*id.* ¶ 2), and she believes the reduced hours will result
19 in a “concerning gap of care” and a “serious risk of deteriorating [health]” (*id.* ¶ 16). Victoria
20 Partridge, who has provided personal care assistance for A.B., An.B., J.B. and M.B. over the past
21 eight years, will have to make impossible choices between tasks such as taking A.B., M.B. and
22 J.B. to medical appointments, doing laundry after toileting incidents, cooking and bathing.
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1 (Partridge Decl. ¶ 13.) Ms. Partridge fears that the reduced hours will force A.B., An.B., J.B.
2 and M.B. into nursing homes. (*Id.* ¶¶ 5, 27.)

3 For those receiving additional hours through the Exception to the Rule (ETR) process, the
4 harm associated with reducing their services is undeniable. The State has already made a
5 specific determination that they require more hours than those generated by CARE for “the
6 client’s welfare” and were thus approved for additional hours. Wash. Admin. Code § 388-440-
7 0001. Irrespective of the determination that the additional hours were needed for the individuals’
8 welfare, the State has nevertheless reduced the total hours of in-home personal care to
9 individuals with ETRs.⁸ (HCS Management Bulletin, DKT 66, Ex. 10, at 2, Dec. 2, 2010
10 (“Clients who have ETRs in place for personal care will have the reduction applied to their
11 CARE generated hours, but not the additional hours approved by ETR.”).) As a result, the
12 reduction will push the individuals’ total personal care hours well below what the ETR process
13 determined to be necessary to maintain their welfare.⁹

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16 **c) Experts Agree that Cuts in Services Place Plaintiffs At Risk of
Institutionalization**

17 The risk of institutionalization associated with going unbathed, remaining in the same
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19 ⁸ Defendants point out that the additional hours authorized through the ETR process are not subject to the
20 January 1, 2011 reductions, presumably to preserve the “health and safety” of individuals. (Bill Moss Decl., DKT
21 68, ¶ 9, Dec. 28, 2010.) Taken alone, this can be misleading because it inaccurately suggests that individuals who
receive additional hours through the ETR process will not experience any change in overall hours.

22 ⁹ As a hypothetical example, an individual who is classified through CARE as D High (279 base hours pre-
23 cut), and who pursuant to the ETR process was determined to need 300 hours to maintain health and safety in the
24 community, the total hours will *automatically* be cut to 280 hours per month after Defendants’ cuts take effect
25 (reflecting a decrease of his or her “base” hours to 260), well below what had previously been determined to meet
“safely” the person’s needs in the community. Wash. Reg. 242113 (Dec. 30, 2010) (attached as Exhibit A). Indeed,
this is exactly how the cuts have played out in the cases of at least two putative Plaintiffs: L.T. (cut of 22 hours
from ETR-enhanced level of 561 hours per month) and R.B. (cut of 27 hours from ETR-enhanced level of 420 hours
per month). (Walsh Decl. ¶¶ 14-15.)

1 clothing, being left in a bed or chair longer than is acceptable, or being unassisted when needing
2 to go to the bathroom or eat is not mere conjecture or unfounded fear, but is the subject of an
3 academic study that links unmet or partially met ADL needs with institutionalization. Mitchell
4 LaPlante is a professor at the University of California. (Mitchell LaPlante Decl., DKT 68, ¶ 1,
5 Dec. 14, 2010.) He recently published a study on the unmet needs of individuals who receive
6 personal assistant services. (*Id.* ¶¶ 7-9.) He found that “[b]ecause [ADLs] involve satisfying
7 primary biological functions unmet[sic] need cannot be tolerated for long and has immediate and
8 serious consequences leading to death, institutionalization, injury or worsening health” (*Id.*
9 ¶ 10.) Further, persons with two or more unmet or partially met ADL needs are 1.8 times more
10 likely to enter a nursing home than those with met needs. (*Id.* ¶ 12.) Even temporary unmet
11 needs can threaten individuals’ ability to live safely in their own homes, but the risk increases as
12 the needs go unmet over time. (*Id.* ¶ 17.)

14 Those intimately familiar with Washington’s personal care system agree that the current
15 reduction in services places individuals at risk of institutionalization. Charles Reed, who has
16 been dubbed the “architect of the long-term care system in Washington state,” served for ten
17 years as the Director of the Washington State Bureau of Aging and Adult Services and was
18 appointed by the Governor to serve as a Chair on the Washington State Home Care Quality
19 Authority, states that “based on my professional opinion [and] based upon my education, training
20 and experience, the magnitude of these cuts will place many people receiving in-home personal
21 care services at immediate risk of serious health deterioration and even death, and will force
22 many individuals into institutional care.” (Reed Decl. ¶ 44.) Similarly, Penny Black, the
23 Director of the Washington Home and Community Services Administration until 2005, states
24
25

1 that “it is reasonably likely that many consumers will experience immediate and substantial harm
2 from these hour cuts, are likely to have more medical emergencies and hospitalizations, and will
3 experience serious and irreparable harm to their physical and mental health condition.” (Black
4 Decl. ¶ 33.) Sean Walsh, the director of a community provider agency, opines that the reduction
5 in personal care hours “will result in hundreds or thousands of cases of additional Skilled
6 Nursing Home placements and hospitalizations, as well as increases in preventable injury and
7 death for low income, older and disabled adults.” (Walsh Decl. ¶ 12.) Nancy Dapper, former
8 Centers for Medicare and Medicaid Services (CMS) administrator states that the reductions “put
9 lives at risk” and are “likely to cause increased danger to [individuals with dementia] and
10 medical emergencies.” (Nancy Dapper Decl., DKT 20, ¶¶ 8, 17, Dec. 22, 2010.)

11
12 **d) The State Cannot Defend the Cuts Based on Vague Promises of Its**
13 **Compliance with the Integration Mandate**

14 The State contends that the reductions in services will not place individuals at risk of
15 institutionalization. (Defs.’ Resp. to Pls.’ Mot. for TRO 22-23.) In support, the State argues that
16 the CARE assessment is not a measure of minimum need (*id.* 25-26) thus reducing services
17 below that level is unproblematic, that the significantly smaller 2009 cuts did not cause
18 widespread institutionalization (Moss Decl. ¶ 8), and that the ETR process functions as a safety
19 net to ensure individuals are not institutionalized (*id.*; Defs.’ Resp. to Pls.’ Mot. for TRO 3, n. 1).
20 Plaintiffs rebut each of these arguments in detail and in total (Pls.’ Mot. for Prelim. Inj. 16-24,
21 DKT 95, Jan. 21, 2011), and thus the United States will not respond to them point-for-point, but
22 will address the overall implication of the State’s arguments.
23

24 Assuming, *arguendo*, the CARE assessment is not a measure of minimum need, then the
25 State must admit, which it does, that it does not know what level of services Plaintiffs need to

1 remain safe in the community. (Defs.’ Resp. to Pls.’ Mot. for TRO 25-26.) Thus the State is
2 embarking upon an experiment whereupon it hopes that it will not cross an unknown (and
3 according to the State, unidentifiable threshold that places individuals at risk of
4 institutionalization. However, the State has an affirmative obligation to ensure its compliance
5 with title II of the ADA and the integration mandate and take necessary steps to ensure its
6 policies do not place individuals at risk of institutionalization. *See e.g., Fisher*, 335 F.3d at
7 1181-84; *Frederick L. v. Dep’t of Pub. Welfare of Pa.*, 364 F.3d 487, 500 (3d Cir. 2004) (“[The
8 State] must be prepared to make a commitment to action in a manner for which it can be held
9 accountable by the courts.”); *Brantley*, 656 F. Supp. 2d at 1174.

11 Instead of identifying the precise steps that it will undertake to ensure its compliance with
12 *Olmstead*, the State relies (Defs.’ Resp. to Pls.’ Mot. for TRO 11) on vague assurances and
13 references to unidentified “mitigation efforts” and ill-defined “appropriate steps” by department
14 officials that its actions do not place individuals at risk of institutionalization: “I believe the
15 department’s mitigation efforts will readily avoid this worst case scenario” (Moss Decl. ¶
16 8; *see also* Kathy Leitch Decl., DKT 67, ¶ 4 (“In [cases of health and safety and where the out of
17 home placement is jeopardized,] clients are *encouraged* to contact their case manager to
18 communicate concerns and look for ways to address them.”)¹⁰ (emphasis added).) Defendants’

21
22 ¹⁰ The State has discouraged individuals from calling their case managers for help, even if the reductions pose a
23 serious threat to the individuals’ health and safety. The State sent notices to all 45,000 recipients informing them the
24 State “knows that these changes may be difficult to you,” but that the reductions are program-wide and were
25 directed by the Governor. (Brenneke Decl. Ex. 1A.) The State further failed to inform recipients of the ETR process.
26 (*Id.*) The logical inference from the notice is that calling a case manager is futile, as some plaintiffs have already
27 discovered. (Patricia Bergstrom Decl., DKT 109, ¶ 8, Jan. 14, 2011 (T.W.’s care provider’s declaration states that
28 caseworker did not mention ETR process during conversations regarding T.W.’s needs in light of service cuts, but
caseworker did suggest placing T.W. in group home); Galen Ages Decl., DKT 107, ¶ 4, Jan. 14, 2011 (Andy Chen,
caseworker for M.F., allegedly stated that he will not file any ETR requests for clients in relation to January 1st cuts
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1 vague assurances in this case are similar to those unsuccessfully proffered by the State of
2 California in *Brantley*, where the State failed to rebut the plaintiffs’ evidence that a reduction in
3 adult day services would place individuals at risk of institutionalization:

4 [T]he Court is persuaded by Plaintiffs’ concern that Defendants have failed to
5 implement any means of ensuring that, if and when the cuts take effect, the
6 necessary alternative services will be identified and in place

7
8 [Defendants] have taken an arguably cavalier approach to ensuring their
9 continuing compliance with the ADA Defendants refuse to specify how they
10 will ensure their continuing compliance with the ADA . . . in the event that the
11 ADHC programs fail to comply with their “expectation” to secure alternative
12 services for their participants. . . . Defendants certainly bear the burden of
13 ensuring more than a “theoretical” availability of services.

14 656 F. Supp. 2d at 1174; *see also*, *Ball v. Rodgers*, No. 00-cv-67, 2009 WL 1395423, at
15 *5 (D. Ariz. April 24, 2009) (holding that defendants violated title II’s integration mandate by
16 “fail[ing] to provide adequate services to avoid unnecessary gaps in service and [because the]
17 institutionalization was discriminatory.”).

18 The State half-heartedly raises an affirmative defense that even if Plaintiffs establish that
19 the reductions in personal care services places them at risk of institutionalization, a modification
20 of the State’s programs to prevent that risk would affect a fundamental alteration of the State’s
21 program. (Defs.’ Resp. to Pls.’ Mot. for Prelim. Inj. 19, DKT 123, Jan. 25, 2011.) The

22 “because his understanding is that the Department will not approve such requests”); Rosa Perkins Decl., DKT 111, ¶
23 , Jan. 14, 2011 (J.W.’s care provider wanted to file ETR in December 2010 in light of pending cuts, but J.W.’s
24 caseworker “said that the State had passed a law and [clients] just had to live with the reductions”); Anderson-Webb
25 Decl. ¶ 29 (J.P.’s care provider had not heard of ETR until Plaintiffs’ firm informed her of it)). When M.A.B.’s care
26 provider called M.A.B.’s caseworker upon receiving notice of the pending cuts, the caseworker did not inform her of
27 the availability of an ETR and stated that “there was nothing she could do.” (Sandra Josephsen Decl., DKT 112, ¶ 8,
28 Jan. 21, 2011; *accord* C.B. 2d Decl., DKT 114, ¶ 5, Jan. 21, 2011 (At C.B.’s annual assessment on January 14,
2011, she asked her caseworker about obtaining an ETR in light of pending cuts, but caseworker responded that
ETR “did not apply” to C.B.’s case).)

1 Defendants have the burden of proving their fundamental alteration defense. *Olmstead v. L.C.*,
2 527 U.S. 581, 603-04 (1999). The State’s argument lacks merit.

3 The State, up until December 31, 2010, provided personal care services at a sufficient
4 level to maintain individuals in the community. Further, the entire purpose of the Medicaid
5 Waiver programs and Medicaid State plan service is to provide an alternative to
6 institutionalization. Thus, the State cannot now argue that a modification to prevent individuals
7 from being at risk of institutionalization is a fundamental alteration of the State’s programs. *See*
8 *Radaszewski v. Maram*, 383 F.3d 599, 612 (7th Cir. 2004); *Fisher*, 335 F.3d 1175, 1183.

9
10 Plaintiffs offer substantial evidence from experts, individual Plaintiffs, doctors, personal
11 care providers and Defendants’ policies and regulations that these reductions in services will
12 place Plaintiffs at risk of institutionalization. Defendants attempt to rebut Plaintiffs’ evidence
13 with nothing more than vague assurances and non-specific plans to ensure that Plaintiffs are not
14 placed at risk of institutionalization as a result of the reductions. Thus, Plaintiffs have
15 demonstrated the third element of *Olmstead*—that community placement can be reasonably
16 accommodated—and have proved a substantial likelihood of success on their ADA and
17 Rehabilitation Act claims.
18

19 **2. The Defendants’ Reduction in Services Will Result in Irreparable Harm**

20 Deteriorating health and institutionalization is an irreparable harm. *Rodde v. Bonta*, 357
21 F.3d 988, 999 (9th Cir. 2004); *V.L.*, 669 F. Supp. 2d at 1122. Several Plaintiffs referred to the
22 loss of unfettered socialization, privacy, and pursuit of hobbies and interests and freedoms that
23 they would lose upon admission to a nursing home as reasons for refusing an assisted living
24 placement. (S.J. Decl. ¶ 34; C.B. Decl. ¶ 12; D.W. Decl. ¶ 28b.) For D.V.S., who sustained
25

1 severe burns from a gasoline explosion when he was a child (D.V.S. Decl. ¶ 2), several of his
2 wounds “are in private areas” and “[he is] unwilling to expose [him]self to strangers” (*id.* ¶ 21).
3 For C.B., who has increasing difficulties with mental health, nursing home care is likely to cause
4 “her depression and anxiety [to] spiral out of control.” (Tia Davis Decl., DKT 30, ¶ 35, Dec. 16,
5 2010.) For the two individuals who were recently admitted to the nursing facility, M.J. is
6 already “severely depressed” because he cannot return to his home, and C.E. cried upon his
7 arrival to the nursing facility. (Wujick Decl. ¶¶ 5-6.)

8
9 Furthermore, several Plaintiffs harbor painful memories from past instances of
10 institutional confinement and abhor the thought of being subjected to it again. Z.J. was recently
11 admitted to a nursing home for a short period with an infection requiring intravenous antibiotics,
12 as his providers were not qualified to administer that medication. (Faatoafe Decl. ¶ 26.) During
13 a previous hospital stay, Z.J. suffered bed sores. (*Id.*) D.V.S. has “been hospitalized for half of
14 [his] life” and does “not want to spend any more time in a facility.” (D.V.S. Decl. ¶ 9.) The
15 mere thought of doing so makes him physically ill. (Guin Decl. ¶ 23.)

16
17 The Court in *Olmstead*, recognized the adverse effects that occur with unnecessary
18 institutional placements. *Olmstead*, 527 U.S. at 600-01. Other Courts have routinely recognized
19 that the harm associated with institutionalization—even on a short term basis—is severe. In
20 *Long v. Benson*, No. 08cv26, 2008 WL 4571903, at *2 (N.D. Fla. Oct. 14, 2008), a Florida court
21 granted a preliminary injunction in an *Olmstead* case and explained that forcing the individual to
22 leave his community placement and enter a nursing home “will inflict an enormous
23 psychological blow.” The court further explained that “because of the very substantial difference
24 in [plaintiff’s] perceived quality of life in the apartment as compared to the nursing home, each
25

1 day he is required to live in the nursing home will be an irreparable harm.” *Id.* See also, *Marlo*
2 *M.*, 679 F. Supp. 2d at 638)(granting a preliminary injunction because the plaintiffs had “lived
3 successfully in their community based apartments,” and, if they lost community services they
4 would “suffer regressive consequences if moved [to a nursing home], even temporarily.”);
5 *Crabtree v. Goetz*, No. 08-0939, 2008 WL 5330506, at *25 (M.D. Tenn. Dec. 19, 2008)
6 (unpublished)(granting a preliminary injunction enjoining defendants from cutting home health
7 care services because institutionalization “would be detrimental to [plaintiffs’] care, causing,
8 *inter alia*, mental depression, and for some Plaintiffs, a shorter life expectancy or death.”)¹¹

10 **3. Balancing the Hardships Weighs in Favor of the Plaintiffs**

11 The hardships that Plaintiffs will endure absent an injunction—including the risk of
12 institutionalization, deteriorating health and even death—far outweigh any potential hardship to
13 the State.

14 The State argues that the hardship weighs in its favor due to budgetary considerations and
15 the effect an injunction would have on other social services, yet “agrees with Plaintiffs that
16 institutionalization is more costly than serving people in their homes” (Defs.’ Resp. to Pls.’
17 Mot. for TRO 27.) Former State official Charles Reed opines that “[w]ith these cuts, the State of
18 Washington will lose prior budget savings, experience increased costs due to migration of
19 nursing home eligible long term care customers from their homes to residential and institutional
20 facilities, and reverse well-considered, long-standing policy of reducing reliance on nursing
21 homes.” (Reed Decl. ¶ 20.) Penny Black, another former State official, agrees that the reduction
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23

24 ¹¹ See also *Haddad v. Arnold*, No. 3:10-00414 (M.D. Fla. July 9, 2010) (Opinion granting preliminary
25 injunction in *Olmstead* case after finding that the plaintiff would suffer irreparable injury if forced to enter a nursing
home) (Attached as Exhibit D).

1 in personal care services will have the opposite effect on the State’s budget. (Black Decl. ¶ 34.)
2 Laurel Lucia, who holds a master’s degree in public policy from the University of California at
3 Berkley, notes that with the reductions in services, the State will lose \$26.1 million in Federal
4 Medicaid matching dollars, with a corresponding decline of local state and tax revenue. (Laurel
5 Lucia Decl., DKT 23, ¶¶ 10-11, Dec. 17, 2010.) Contrary to the State’s assertion, the injunction
6 will not force it to cut other social services.

7
8 When faced with similar reductions in social services, other courts have determined that
9 the harm to the plaintiffs outweigh the defendants’ budget considerations. In *Indep. Living Ctr.*
10 *v. Maxwell-Jolly*, the Ninth Circuit Court of Appeals found that California’s fiscal crisis was
11 outweighed by the “robust public interest in safeguarding access to healthcare for those eligible
12 for Medicaid, whom Congress has recognized as the most needy in the country.” 572 F.3d 644,
13 659 (9th Cir. 2009), *cert. granted* No. 09-958 (Jan. 18, 2011). The district court in *V.L.* similarly
14 found that the risk of institutionalization and inability to access necessary medical care as a result
15 of reductions to personal care services outweighed the financial burden of the state during a
16 fiscal crisis. *V.L.*, 669 F. Supp. 2d at 1122; *see also*, 656 F. Supp. 2d at 1177. Congress was
17 aware that integration “will sometimes involve substantial short-term burdens, both financial and
18 administrative,” but the long-term effects of integration “will benefit society as a whole.”
19 *Fisher*, 335 F.3d at 1183.

20
21 **4. Granting the Injunction Is in the Public Interest**

22 The public interest weighs heavily in favor of granting relief. “It would be tragic, not
23 only from the standpoint of the individuals involved but also from the standpoint of society, were
24 poor, elderly, disabled people to be wrongfully deprived of essential benefits for any period of
25

1 time.” *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).

2 There is a strong public interest in granting a preliminary injunction to allow Plaintiffs to
3 remain in community settings. There is also a public interest in eliminating the discriminatory
4 effects that arise from segregating persons with disabilities in institutions when they can be
5 appropriately placed in community settings. As *Olmstead* explained, the unjustified segregation
6 of persons with disabilities can stigmatize them as incapable or unworthy of participating in
7 community life.¹² *Olmstead*, 527 U.S. at 600. In *Long*, the court relied on this reasoning to hold
8 that the public interest favored allowing the plaintiff to “remain in the community rather than be
9 isolated in the nursing home”:
10

11 If, as it ultimately turns out, treating individuals like [plaintiff] in the community
12 would require a fundamental alteration of the Medicaid program, so that the
13 Secretary prevails in this litigation, little harm will have been done. To the
14 contrary, [plaintiff’s] life will have been better, at least for a time

14 *Long*, 2008 WL 4571903, at *3.

15 IV. CONCLUSION

16 For the reasons stated above, the United States respectfully submits that this Court should
17 grant Plaintiffs’ Motion for Preliminary Injunction. Should it be helpful to the Court, counsel for
18 the United States will be present and prepared to argue the present Statement at any upcoming
19 hearings.
20
21
22

23
24 ¹²See also U.S. Amicus Brief in *Olmstead* at 16-17, citing to 136 Cong. Rec. H2603 (daily ed. May 22,
25 1990) (statement of Rep. Collins) (“To be segregated is to be misunderstood, even feared,” and “only by breaking
26 down barriers between people can we dispel the negative attitudes and myths that are the main currency of
27 oppression.”).

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on January 26, 2011, a copy of the foregoing was filed electronically.
3 Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic
4 filing system. Parties may access this filing through the Court's CM/ECF System.

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