

## **Olmstead's Fundamental Alteration Defense – A Circuit Review**

Christopher Sleeper

### **I. Introduction**

In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the Supreme Court held that under Title II of the Americans with Disabilities Act ("ADA") unjustified segregation of individuals with disabilities in institutions constitutes discrimination. The Court's opinion reinvigorated the deinstitutionalization movement, spurring litigation brought by the Department of Justice, the institutionalized and their advocates, and those on the verge of institutionalization. Many consider *Olmstead* to be the *Brown v. Board of Education* for the disabled; however, unlike *Brown*, the Supreme Court provided states with an excuse to not comply with the integration mandate – the fundamental alteration defense. Further, the Supreme Court did not define fundamental alteration, but only gave vague guidance. This omission has left the lower courts to grapple with the complex issue of what constitutes a fundamental alteration. This paper summarizes lower courts' interpretations of the fundamental alteration defense, particularly the three appellate courts that have ruled upon the issue – the second, third and ninth circuits – and suggests that *Olmstead* is so internally flawed that uniform application is nearly impossible.

### **II. Fundamental Alteration According to *Olmstead***

In 1990, Congress enacted the ADA<sup>1</sup> to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.<sup>2</sup> Congress recognized that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination

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<sup>1</sup>*Olmstead v. L.C.*, 527 U.S. 581, 589 (1999).

# Olmstead Reclaiming Institutionalized Live

**R Barnett**



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**Olmstead, Reclaiming Institutionalized Lives** National Council on Disability (U.S.),2003      **Clearinghouse Review**,2003      **Strategies to Improve Access to Medicaid Home- and Community-based Services** United States. Congress. Senate. Committee on Finance,2004      *Olmstead, Reclaiming Institutionalized Lives* National Council on Disability (U.S.),2003      Olmstead Lex Frieden,2004-01 Measures progress to date in the implementation of the landmark U S Supreme Court decision in *Olmstead v L C* identify commit the necessary resources for community based service options sustain collaborative action toward creating real choice for people with disabil living in institutions      Creating Healthy Communities ,2007      **On Target** ,1999      *Law & Inequality* ,2010      *Columbia Law Review* ,2004      *Changes in Decision-Making Capacity in Older Adults* Sara Honn Qualls,Michael A. Smyer,2007-11-09 Part of the Wiley Series in Clinical Geropsychology *Changes in Decision Making Capacity in Older Adults* Assessment and Intervention helps to familiarize you with the legal and social contexts for decision making in potentially impaired individuals Editors Sara Qualls and Michael Smyer have brought together a notable team of international contributors to provide you with a unique framework of the legal social and psychological approaches to assessing the ability of older adults to make decisions      *BNA's Health Care Policy Report* ,2003      *Legislative Calendar* United States. Congress. House. Committee on Education and the Workforce, **As Iowa Goes, So Goes the Nation** ,2009      **Mental and Physical Disability Law Reporter** ,2004      Caring ,1982 The Atlanta Historical Journal ,1982

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