No. 17-2773

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Mary B. Valencia, et al.,

Plaintiffs-Appellees,

v.

City of Springfield.

Defendants-Appellants,

Appeal from the United States District Court
for the Central District of Illinois, Springfield Division
The Honorable Richard Mills
16 CV 3331

BRIEF OF AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLEES URGING AFFIRMANCE

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 17-2773

Short Caption: Mary B. Valencia, et al., v. City of Springfield

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STATEMENT OF INTEREST

Equip for Equality[1] is the governor-designated Protection and Advocacy system for the State of Illinois, charged with advancing the human and civil rights of Illinois residents with disabilities. Among the most important of these rights is the freedom to live full and integrated lives in the community, rather than be segregated in large institutions. Equip for Equality is co-counsel in three class actions brought on behalf of people with disabilities who are unnecessarily institutionalized and segregated -- *Ligas v. Hamos,* No. 05-4331 (N.D. Ill.); *Williams v. Rauner,* No.05-4673 (N.D. Ill.); and *Colbert v. Rauner*, No. 07-4737 (N.D. Ill.). Though there is a consent decree in each case providing the opportunity for people to move out of institutions into the community of their choice, these rights cannot be fully realized if communities erect barriers to people with disabilities though zoning ordinances. This brief will shed light on the broader context of *Valencia v. City of Springfield*: the rights and desires of people with disabilities to move out of institutions and live full and integrated lives in the community under the Americans with Disabilities Act and the *Ligas* consent decree.

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici*, its members, or its counsel made a monetary contribution to its preparation or submission.

The **American Civil Liberties Union of Illinois** ("ACLU") is a statewide, non-profit, non-partisan organization of more than 70,000 members and supporters. The ACLU is dedicated to the defense and promotion of the principles embodied in the U.S. Constitution, the Illinois Constitution, and state and federal civil rights laws. The ACLU believes it is essential to the rights of people with disabilities that they be able to live their lives as part of their communities and is co-counsel in three class actions challenging Illinois' unnecessary institutionalization of people with mental health, developmental and physical disabilities. *Williams v. Rauner*, No. 05 C 4763 (N.D. Ill.); *Ligas. v. Hamos*, No. 05 C 4331 (N.D. Ill.); *Colbert v. Rauner*, No. 07 C 4737 (N.D. Ill.). One of the barriers to effectuating the rights of class members under the consent decrees in these cases is the lack of appropriate and affordable housing. The zoning ordinances herein are discriminatory and contribute to that housing deficiency thereby hindering implementation of individuals' rights under the consent decrees.

Access Living is a Center for Independent Living for people with disabilities established pursuant to the Rehabilitation Act, 29 U.S.C. § 796f. Access Living is governed and staffed by a majority of people with disabilities, including both physical and mental disabilities. Access Living's statutorily-mandated mission includes ensuring that people with disabilities have equal access to and participation in services, programs, activities, resources, and facilities, whether public or private. Access Living is the largest Center for Independent Living in Illinois and one of the

nation's first and largest. One of its central aims is to ensure people with disabilities have the opportunity to integrate fully into the communities of their choosing. To that end, Access Living has historically provided services, supports, and advocacy to enable people with disabilities to live in integrated communities. For example, Access Living (a) assists people with disabilities to move out of nursing homes and into homes of their own, using community-based and in-home supports and services, (b) enforces civil rights laws that prohibit discrimination against people with disabilities, including the Americans with Disabilities Act, the Fair Housing Act, and Section 504 of the Rehabilitation Act, and advocates for public policies that increase affordable, accessible, and integrated housing for people with disabilities. Because this case concerns the core concept of integration – a principle Access Living has long fought to protect and advance - Access Living's views will be of service to this Court.

ARGUMENT

A. Most people with developmental disabilities prefer and benefit from community living

Historically, most housing for people with developmental disabilities in the United States was provided in large institutions, usually operated by states. These institutions were highly restrictive, isolating residents from their families and communities. *See generally,* President's Committee on Mental Retardation, *Mental Retardation: Past and Present* (January 1977), https://www.acf.hhs.gov/sites/default/files/add/gm_1976.pdf.[2] In the 1960s, motivated by and using strategies from the Civil Rights Movement, people with developmental disabilities and their families started advocating for the right to receive services outside of institutions and to be integrated into their communities. In response, Congress in 1981 established the Home and Community–Based Care Waiver Program to allow states to provide Medicaid services to people in the community instead of requiring institutionalization as a condition of federal funding. 42 U.S.C. § 1396n.

In 1990, Congress took another important step by passing the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq*., "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with

[2] Note that the preferred term today is "intellectual disability" or "developmental disability." The term "mental retardation" is only used in this brief to reference studies that were done before a consensus had been reached about changing the terminology.

disabilities." 42 U.S.C. § 12101(b)(1)). To implement the ADA's Title II protections against discrimination by state and local governments, the Attorney General promulgated the regulation often referred to as the "integration mandate," which requires a "public entity [to] administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 CFR § 35.30(d).

The seminal case interpreting the ADA's integration mandate is *Olmstead v. L.C.*, 527 U.S. 581 (1999), which found that "unjustified isolation … is properly regarded as discrimination based on disability" and required States to provide services to people with disabilities in the most integrated setting. *Id.* at 596-597. The Supreme Court recognized that segregation of people with disabilities perpetuates unjustified assumptions that institutionalized persons "are incapable or unworthy of participating in community life" and that institutional confinement "severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." *Id.* at 600-01.

The advantages of community living discussed by the Court in *Olmstead* are powerfully and convincingly supported by a large body of professional literature. The benefits have been demonstrated in a range of community settings and regardless of the degree of the individual's disability. Individuals with developmental disabilities show gains and improvements in adaptive behavior, independence, self-care skills, social skills, and vocational skills when they are transferred from institutions into

the community. Life in the community provides opportunities for freedom, dignity, and a sense of belonging that is not possible in an institutional setting. National Council on Disability, *Deinstitutionalization: Unfinished Business* at 48 (2012).

Compared with institutionalized residents, community residents have more opportunities to make choices, engage with larger social networks, and enjoy more friends. Agnes Kozma, *Outcomes in Different Residential Settings for People with Intellectual Disability: A Systematic Review* 114 Am. J. Intell. & Developmental Disabilities 193, 197 (2009). They participate in more community activities, have more opportunities to acquire new skills and develop existing skills, and are more satisfied with their living arrangements. *Id.* at 208-09. While many people in institutions have complex needs and significant disabilities and thus, will require extensive supports to live in the community, many people with the same level of needs and disability already successfully receive those supports in the community. National Council on Disability, *Deinstitutionalization: Unfinished Business* at 39 (2012).

Not surprisingly, most individuals with disabilities prefer to live in the community when provided the option to do so. U.S. Senate Committee on Health, Education, Labor and Pensions, *Separate and Unequal: States Fail to Fulfill the Community Living Promises of the Americans with Disabilities Act* 6 (2013). Individuals who have lived in institutional settings describe feelings of isolation and hopelessness while living there compared with feelings of fulfillment in the community. *Id.* at 6. A survey of individuals found that people with disabilities living

in larger settings were significantly lonelier, especially in settings with seven or more individuals. Roger J. Stancliffe et al., *Satisfaction and Sense of Well Being Among Medicaid ICF/MR and HCBS Recipients in Six States*, 47 J. Intell. & Developmental Disabilities 63, 80 (2009). Individuals living in smaller settings also enjoy their home significantly more. *Id.* Studies of individuals in California who moved from institutions into the community showed that:

> "[A]lmost no one wants to go back. Only a few families would like their relatives to go back. The people themselves, and those closest to them, believe their lives are significantly better in 9 out of 10 ways we asked them about. The people who moved are far more integrated, and have much more of a role in making choices about their daily lives. There has been no major decrement in health and/or safety. The people and their families believe they are as healthy as ever, and as safe as ever."

Marguerite Brown et al., *Eight Years Later: The Lives of People who Moved from Institutions to Communities in California* 9 (2001).

B. Illinois is far behind the rest of the country in the number of people with disabilities living in the community

By 2005, most states had made substantial progress towards serving people with developmental disabilities in small community settings. Illinois severely lagged behind those states. Illinois ranked 49th out of all states and the District of Columbia in serving people with developmental disabilities in small community settings. More than 10,000 people with developmental disabilities still lived in large institutions, about 4,000 people in institutions run by the state and 6,000 people in institutions run by private – but Medicaid-funded – providers. David Braddock et al., *State of the States in Intellectual and Developmental Disabilities* (2005).

It was against this backdrop that *Ligas v. Maram* was filed. Lead plaintiff Stanley Ligas lived for over a decade in a 96-bed Intermediate Care Facility for the Developmentally Disabled (ICF-DD), a drab, crowded building that had once been a nursing home. He shared a bedroom with a roommate assigned by the facility, had no privacy, and had little contact with the outside community. Mr. Ligas spent most of his days in a sheltered workshop, which, like the ICF-DD, housed only people with developmental disabilities. He was not able to make even basic choices, such as what time to get up or when and what to eat. Mr. Ligas desperately wanted to move to an apartment or house -- a setting where he could live and work in the community and be closer to his family. Although his service providers believed he could handle and benefit from community placement, the State refused to fund placement in the community. Rather, the State required Mr. Ligas, and thousands like him, to be institutionalized as a condition of receiving long-term care services.

Ligas was filed as a class action on July 28, 2005, bringing claims for violations of Title II of the ADA; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a); and Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v. Plaintiffs were people who lived in private ICF-DDs but sought to move into the community and people living in their family homes who were at risk of institutionalization if they did not receive services from the State. On June 15, 2011, following a fairness hearing, the Court certified the class and approved a consent decree. Shortly thereafter, Mr. Ligas moved to a small home with two roommates in a suburb of Chicago. He has thrived ever since. Over 7,000 people have received community-based services under the

Ligas decree. David Braddock et al., *State of the States in Intellectual and Developmental Disabilities* (2017).

Notwithstanding the progress made in *Ligas* and other community integration class actions, Illinois still remains far behind the rest of the country in the number of people with developmental disabilities living in the community. In Illinois, only 48% of people with developmental disabilities live in houses and apartments for one to six persons, compared with the national average of 82%. David Braddock et al., *State of the States in Intellectual and Developmental Disabilities* (2017).

In *Illinois League of Advocates for the Developmentally Disabled v. Illinois Department of Human Services*, 803 F.3d 872 (7th Cir. 2015), this Court described Illinois as a "laggard outlier" and noted Illinois had "the second lowest percentage of developmentally disabled persons living in apartments that house six or fewer persons." *Id.* at 874. This Court recognized the benefits of community living, noting that people with severe disabilities "benefit emotionally from being able to go out into the community – expand their horizons, as it were – albeit under close supervision by nurses or other medical staff, rather than being isolated in a large medical center." *Id*. at 875. This Court went even further: "To be 'institutionalized,' whether in a prison, a madhouse, or a 'state-operated developmental center,' is to be frozen out of society – a situation that even a severely developmentally disabled person can experience as deprivation." *Id.*

C. The actions of the City of Springfield interfere with the rights of the residents of 2328 South Noble to live in the community

J.D., a *Ligas* class member, is a young man with cerebral palsy who uses a wheelchair for mobility. Since March of 2014, J.D. has lived peacefully and happily with two other men in an attractive home on Noble Street, a typical residential street in Springfield, Illinois. He rents the home from private landlords who made the home physically accessible for him. J.D. moved to Noble Street after living at Brother James Court, a privately-run, Medicaid-funded ICF-DD that houses 95 men. There, he shared a room with three men and had no privacy. At Noble Street, J.D. has his own room. He enjoys learning to shop for and cook meals and singing in a group that is recording a CD. J.D. engages the services of the Individual Advocacy Group (IAG) for the support he needs, while having the privacy and connection to the community he was lacking in the ICF-DD.

The actions of the City of Springfield to remove J.D. and his roommates from their home and community of choice interferes with their rights under the Americans with Disabilities Act, its interpretation by the Supreme Court in *Olmstead*, and, for J.D., the consent decree in the *Ligas* case. The basis for the City's actions was the City's zoning ordinance, which puts spacing restrictions on three unrelated people *with disabilities* that are not placed on three unrelated people *without disabilities*. Utilizing the procedure established to address such unfair and unjust distinctions, the landlords and IAG then applied for a Conditional Permitted Use (CPU) permit. The City sought the views of neighbors, held hearings, and ultimately denied the permit, citing "adverse effects" on the "surrounding area." No actual adverse effects were identified or documented by the City. Per the plain language of the zoning

ordinance, testimony and comments about the CPU, and the findings of the District Court, the spacing restrictions were not created for the benefit of people with disabilities, but rather for the perceived benefits of other residents. *Valencia v. City of Springfield,* 2017 WL 3288110 at *5 (C.D. Ill. August, 2, 2017) ("it does not appear that the interests of the disabled were considerations when assessing the validity of the zoning ordinance"). This is a classic example of a municipality taking a "Not In My Backyard" approach with respect to people with disabilities living in their community, which has been repudiated by this Court. *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775,786 (7th Cir. 2002) ("The City cannot, however, rely on the anecdotal evidence of neighbors opposing the group home as evidence of unreasonableness. A denial of a variance due to public safety concerns or concerns for the safety of the residents themselves cannot be based on blanket stereotypes about disabled persons …") Put another way, the City's spacing restrictions and subsequent actions were not designed to ensure people with disabilities are truly integrated in communities rather than isolated in concentrated settings.[3] Rather, the restrictions here are designed to keep individuals with disabilities out of neighborhoods. Neighbors of the Noble Street house expressed

[3] *See, e.g.,* the Consent Decree in *Williams v. Rauner*, No.05-4673 (N.D. Ill.), Docket 326, par. 4(xx) ("'Permanent Supportive Housing'" or "'PSH'" refers to integrated permanent housing with tenancy rights, linked with flexible Community-Based Services that are available to consumers when they need them, but are not mandated as a condition of tenancy. For purposes of this Decree, PSH includes scattered-site housing as well as apartments clustered in a single building, but no more than 25% of the units in one building with more than four (4) units may be used to serve PSH clients known to have Mental Illness.")

discomfort and fears about people with disabilities. For many years, people with disabilities have been subject to unfounded and negative stereotypes, which have resulted in exclusion, stigma, and shame. To base the denial of the CPU, even in part, on stereotypical notions about people with disabilities only perpetuates these notions and creates further barriers to their hard-fought right to integration into the community.

As this Court previously noted, Illinois is already a "laggard outlier" because of its over-reliance on large institutions and its correspondingly low number of people with developmental disabilities integrated into communities. To condone the City's effort to obstruct the integration of people with disabilities into typical streets and communities will prevent Illinois from moving beyond its current unacceptable status as an emblem of the segregation of people with disabilities. Allowing the zoning ordinance to stand also will undercut the principles and implementation of the *Ligas* consent decree.

For all of the above reasons, *Amici* strongly urge this Court to affirm the District Court's order granting Plaintiffs-Appellees' Motion for Preliminary Injunction.

Respectfully Submitted,

/s/ Barry C. Taylor

One of the Attorneys for *Amici*

Dated: December 18, 2017

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Dated: December 18, 2017

CIRCUIT RULE 31(e) CERTIFICATION

The undersigned hereby certifies that I have filed electronically, pursuant to Circuit Rule 31(e), versions of the brief in non-scanned PDF format.

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Dated: December 18, 2017