1999 WL 143936 (U.S.) (Appellate Brief)
United States Supreme Court Amicus Brief.

Tommy OLMSTEAD, Commissioner, Georgia Department of Human Resources, et al., Petitioners,
v.
L.C., by Jonathan ZIMRING, Guardian Ad Litem and Next Friend, et al., Respondents.

No. 98-536.
October Term, 1998.
March 15, 1999.

On Writ Of Certiorari To the United States Court of Appeals For The Eleventh Circuit

BRIEF OF AMICI CURIAE, AMERICAN CIVIL LIBERTIES UNION AND ACLU OF GEORGIA, IN SUPPORT OF RESPONDENTS

Of counsel:
Steven R. Shapiro
American Civil
Liberties Union Fdn.
125 Broad Street
New York, NY 10004
(212) 549-2500

Laurie Webb Daniel
Counsel of Record Holland & Knight
1201 W. Peachtree, N.E.
Suite 2000
Atlanta, GA 30309
(404) 817-8500

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CASES

*1 INTEREST OF THE AMICI CURIAE

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly 300,000 members dedicated to preserving the principles of liberty and equality that are embodied in the Constitution and our nation's civil rights laws. The ACLU of Georgia is one of its statewide affiliates.

ACLU affiliates around the country have been intensely engaged for nearly three decades in the effort to end the unnecessary segregation of the mentally disabled, beginning with the work of our New York affiliate on behalf of Willowbrook residents in the early 1970's, and continuing to this day. On a federal level, the ACLU was deeply involved in the advocacy effort that ultimately led to the enactment of the Americans with Disabilities Act (ADA). Both in disability cases and otherwise, the ACLU has appeared before this Court on numerous occasions as direct counsel and as amicus curiae. [1]

STATEMENT OF THE CASE

L.C. and E.W. are mildly retarded adults who have been diagnosed with additional mental disorders. At the commencement of this litigation, they were confined in a locked ward of a psychiatric hospital run by the ***2** State of Georgia. *See L.C. v. Olmstead*, 138 F.3d 893, 895 (11th Cir. 1998).

L.C. initiated this action, challenging the State's failure to provide her with care in the most integrated setting appropriate to her needs. *See id.* The complaint sought a declaratory judgment holding that her institutionalization violated the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, the Attorney General's Title II regulations, 28 C.F.R. § 35.130 (1997), and the Due Process Clause of the Fourteenth Amendment. *See id.* She also sought an injunction requiring the State to place her in a community-based treatment program. E.W. later intervened, asserting identical claims. *See id.*

Noting that the State had conceded that L.C. and E.W. qualified for community-based programs, the district court granted the requested relief. *See L.C. v. Olmstead*, No. l:95-CV-1210-MHS, 1997 WL 148674, at *3-4 (N.D. Ga. 1997). The United States Court of Appeals for the Eleventh Circuit affirmed the ruling that the ADA imposed on the State a general duty to administer services to the plaintiffs in the most integrated setting appropriate to their needs. *See L.C. v. Olmstead*, 138 F.3d at 902. The court remanded, however, instructing the district court to assess whether its ruling would impose such a great burden on the State's mental health budget as to fundamentally alter the services provided. *See id.* at 905.

The State has argued throughout these proceedings that it is not required by the ADA to provide "the least restrictive treatment" to individuals with psychiatric disabilities. It argues further that, in light of the financial burdens allegedly associated with integration, a state's decision to provide or deny a community-based program should be immune from ***3** review under the ADA. In rejecting the State's argument, the Court of Appeals found that "[b]y definition, where, as here, the State confines an individual with a disability in an institutionalized setting when community placement is appropriate, the State has violated the core principles underlying the ADA's integration mandate." *Id.* at 897. The court based this conclusion on the ADA's legislative history, the plain language of the Act, its implementing regulations, and the analysis of the ADA set out in *Helen L. v. DiDario*, 46 F.3d 325, 331-32 (3d Cir. 1995).

SUMMARY OF THE ARGUMENT

The Court should affirm the judgment below because the unnecessary segregation of mentally disabled individuals who are appropriate for community placement violates some of the most fundamental civil rights guaranteed to American citizens, as well as the express judgment by Congress to extend those rights to the disabled through the ADA.

I. Forty-five years ago this Court ruled that racial segregation violates the equal protection clause of the Fourteenth Amendment. Such segregation is inherently discriminatory because of its damaging effects on the excluded individuals. It sends a message of inferiority and perpetuates stereotypes with their resulting stigma. *See Brown v. Board of Educ.*, 347 U.S. 483, 494 (1954). The Court also has condemned exclusionary practices directed at women. """[Gender]

classifications may not be used, as they once were, … to create or perpetuate the legal, social, and economic inferiority of women." *United States v. Virginia*, 518 U.S. 515, 534 (1996). The fundamental civil rights prohibition against unnecessary segregation applies in the disability context for the same reasons.

***4** II. Congress enacted the Americans with Disabilities Act against the backdrop of our nation's other civil rights laws and with the express purpose of providing disabled individuals with equivalent protection against discrimination. Comparing disability discrimination to race and gender discrimination, senators and representatives denounced the segregation of disabled Americans in the ADA hearings and committee reports and explained that the ADA promises a future of integration for these individuals.

The ADA itself makes it clear that Congress did not pass this law merely to express an hortatory preference for integration. Rather, the Act sets forth a comprehensive mandate, specifically aimed at redressing discrimination against individuals with disabilities resulting from unnecessary institutionalization and segregation. *See* 42 U.S.C. § 12101 (1998). Further, in passing the ADA, Congress instructed the Attorney General to promulgate regulations consistent with the coordination regulations issued under section 504 of the Rehabilitation Act--which in turn mandate that recipients of federal financial assistance administer programs "in the most integrated setting appropriate to the needs of qualified handicapped persons." 28 C.F.R. § 41.51(d) (1998); 42 U.S.C. § 12134(b). The Attorney General complied with the Congressional directive by including an express integration mandate in the ADA's implementing regulations. *See* 28 C.F.R. Part 35, App. A. § 35.130 (1999).

III. Even though mentally disabled Americans have been subjected to segregation that parallels the historic patterns of racial discrimination, Petitioners now ask this Court to endorse the outdated "separate but equal" concept with respect to mentally disabled individuals qualified for community placement. The Court should reject Petitioners' ***5** request because: (1) the plain language of the ADA integration mandate covers Americans with mental disabilities; (2) the unnecessary segregation of mentally disabled individuals is inherently discriminatory; (3) the Petitioners' segregationist practices cannot be excused by paternalistic or other "benign" motives that perpetuate the stigma resulting from unnecessary institutionalization; and (4) Petitioners' concerns regarding the practicalities of a mass deinstitutionalization do not justify the unnecessary segregation of those individuals who, like L.C. and E.W., are qualified for community placement.

ARGUMENT

I. UNDER OUR CIVIL RIGHTS LAWS AND EQUAL PROTECTION JURISPRUDENCE, THE UNJUSTIFIED SEGREGATION OF MINORITY GROUPS THROUGH OFFICIAL ACT OR DECREE IS AN IMPERMISSIBLE FORM OF DISCRIMINATION

The unnecessary segregation of mentally disabled individuals violates some of the most fundamental civil rights principles guaranteed to American citizens.

The inextricable link between segregation and discrimination was permanently etched into our social and constitutional consciousness by this Court's landmark decision, forty-five years ago, in *Brown v. Board of Education*, 347 U.S. 483 (1954). Although the Court was writing then in the context of racial discrimination, its views on the meaning of equality have had a broader resonance both in this Court's own cases and in the civil rights laws that Congress has enacted in the intervening years. As the ***6** *Brown* Court explained in rejecting the doctrine of "separate but equal," government-imposed segregation is inherently discriminatory because it sends a message of inequality that carries lifelong consequences for both the majority and the minority that cannot be erased merely by equal programs and facilities.

> Our decision, therefore, cannot turn on merely a comparison of these tangible factors … We must look instead to the effect of segregation itself …

[To segregate children] generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. …

Separate educational facilities are inherently unequal.

Id. at 492, 494-495.

After this Court's ruling in *Brown v. Board of Education*, one of the lower courts embraced an argument on remand that resembles the position of the petitioners here--that the law "does not require integration. It merely forbids discrimination." *Briggs v. Elliott*, 132 F. Supp. 776, 777 (E.D.S.C. 1955). Eventually, however, the appellate courts extinguished this notion as logically inconsistent with *Brown*. *See, e.g. Kelley v. The Altheimer, Ark. Pub. Sch. Dist. No. 22*, 378 F.2d 483, 488 (8th Cir. 1967). As noted by the Fifth Circuit, this attempt to avoid integration in fact perpetuated racial segregation, with all of its deleterious effects, for more than a decade after *Brown*. *See United* ***7** *States v. Jefferson County Bd. of Educ.*, 372 F.2d 836, 862-863, 866 (5th Cir. 1966).

More broadly, the Fifth Circuit recognized that a failure to pursue integration following a state-sanctioned policy of segregation is "per se discriminatory." *Id.* at 872. "Denial of access to the dominant culture, lack of opportunity in any meaningful way to participate in political and other public activities, the stigma of apartheid … are concomitants of the dual educational system." *Id.* at 866. This Court later confirmed that "a State does not discharge its constitutional obligations until it eradicates policies and practices traceable to its prior de jure dual system that continue to foster segregation." *United States v. Fordice*, 505 U.S. 717, 727 (1992). In other words, a neutral policy is not sufficient where there are continuing effects of state-imposed segregation. *See id.* at 731-732. In such a case, there is an affirmative duty to desegregate, and the maintenance of separate institutions violates the Fourteenth Amendment. *See id.* at 727-733.

Recently, this Court applied these principles to compel the integration of the Virginia Military Institute (VMI) in *United States v. Virginia*, 518 U.S. 515 (1996). That the VMI case involved gender integration rather than racial integration did not fundamentally change the equal protection analysis. In holding that VMI can not exclude a female applicant on the basis of her gender if her admission is otherwise appropriate, the Court rejected VMI's defense that it offered women a separate but equal program at Mary Baldwin College. *See id.* at 526-527, 534.

The integration of VMI was based in part on the "core instruction" of *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994), *cited in United States v. Virginia*, 518 U.S. at 531. ***8** The *J.E.B.* Court explained that the discriminatory effects inherent in segregation are not confined to the context of racial discrimination.

While the prejudicial attitudes toward women in this country have not been identical to those held toward racial minorities, the similarities between the experiences of racial minorities and women, in some contexts, "overpower those differences." … Certainly, with respect to jury service, African-Americans and women share a history of total exclusion. …

The message it sends … is that certain individuals, for no reason other than gender, are presumed unqualified.…

J.E.B., 511 U.S. at 135, 142 (citation omitted). VMI's admission policy, therefore, was illegal because it perpetuated "the legal, social, and economic inferiority of women" based on stereotypes and myths. *See United Sates v. Virginia*, 518 U.S. at 533-534.

Further, the State's benign explanations for the segregation did not excuse the discrimination. *See id.* at 535-538. The State advanced the argument, among others, that "'[m]ales tend to need an atmosphere of adversativeness,' while '[f]emales tend to thrive in a cooperative atmosphere."DD' *Id.* at 541. In striking down VMI's policy, the court

acknowledged that the rigors of VMI's program might pose problems for many women. *See id.* at 533, 541. Nonetheless, VMI's segregationist policy was illegal because it unnecessarily excluded even those individuals who were appropriate for placement in its program. *See id.* at 542, 557. Simply put, "state actors ***9** may not rely on "'overbroad' generalizations to make judgments about people that are likely to … perpetuate historical patterns of discrimination."DD' *Id.* at 542. [2] *Accord Califano v. Webster*, 430 U.S. 313, 318 (1977) (gender discrimination cannot be justified by relying on "archaic and overbroad generalizations" about women), citing *Schlesinger v. Ballard*, 419 U.S. 498, 508 (1975). *See also Levy v. Louisiana*, 391 U.S. 68 (1968) (equal protection clause does not permit discrimination against illegitimate children based on outmoded stereotypes).

These same fundamental civil rights principles apply with equal force in the context of disabled individuals.

II. CONGRESS ENACTED THE AMERICANS WITH DISABILITIES ACT TO EXTEND THE PROTECTIONS OF EXISTING CIVIL RIGHTS LAW TO DISABLED INDIVIDUALS

The Americans with Disabilities Act was not created out of whole cloth. Rather, Congress enacted it against the backdrop of our nation's other civil rights laws and the equal protection clause of the Fourteenth Amendment. Congress designed the ADA to extend to disabled individuals the same ***10** protection against discrimination provided by existing law to racial minorities and women.

The Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241, established the basic statutory framework. Title II of the Act (codified at 42 U.S.C. § 2000a (1998)), bars discrimination in places of public accommodation on the basis of race, religion, color, or national origin. Title VI (codified at 42 U.S.C. § 2000d (1998)), bars discrimination on the basis of race, color, or national origin by recipients of federal funds. Title VII (codified at 42 U.S.C. § 2000e (1998)), prohibits employment discrimination against women as well as racial and ethnic minorities.

Building on this model, Congress has enacted since 1964 a succession of statutes designed to expand and strengthen our nation's commitment to equal rights in three principal ways. First, Congress has extended the reach of the civil rights laws to new contexts. *See, e.g.*, Title IX of The Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 375 (codified at 20 U.S.C. §§ 1681-1683(1998)) (generally prohibiting educational discrimination on the basis of gender). Second, Congress has enhanced the remedies available to victims of discrimination. *See, e.g.*, The Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (authorizing compensatory and punitive damages for certain Title VII violations). Third, and most relevant to this case, Congress has broadened the scope of the civil rights laws to reach previously unprotected groups. *See, e.g.*, The Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355 (codified at 29 U.S.C. § 794 (1998)) (barring discrimination against any otherwise qualified handicapped individual in federally funded programs); The Age Discrimination in Employment Act of 1967, Pub. L. 90-202, 81 Stat. 602 (codified at 29 U.S.C. §§ 621-634 (1998)).

***11** When the ADA was enacted, these other civil rights laws served as both history and model. *See McKennon v. Nashville Banner Publ'g Co.*, 513 U.S. 352, 357 (1995) (recognizing that the ADA is part of a wider statutory scheme aimed at the elimination of invidious bias); *Helen L. v. DiDario*, 46 F.3d 325, 331 (3rd Cir. 1995) (finding that the ADA was Congress' response to the need for "civil rights" legislation for the disabled).

The ADA's legislative history establishes that Congress intended the ADA to place disability discrimination on a par with race and gender discrimination and, specifically, to end the discriminatory effects of the historic segregation of disabled Americans.

> The Americans With Disabilities Act completes the circle begun in 1973 with respect to persons with disabilities by extending to them the same civil rights protections provided to women and minorities beginning in 1964. This year, 1990, is an historic one in the evolution of this nation's public policy

> towards persons with disabilities. The ADA is a comprehensive piece of civil rights legislation which promises a new future: a future of inclusion and integration, and the end of exclusion and segregation.

H.R. Rep. No. 101-485, pt. 3 at 26 (1990). "[D]rawing an analogy to the segregation of African-Americans, the House Report noted that 'segregation for persons with disabilities 'may affect their hearts and minds in a way unlikely ever to be undone."DD' *L. C.*, 138 F.3d at 898.

Former Senator Lowell Weicker, the original Republican sponsor of the ADA, strenuously denounced the ***12** application of the "separate but equal" notion to disabled individuals.

> For years, this country has maintained a public policy of protectionism toward people with disabilities. We have created monoliths of isolated care in institutions and in segregated educational settings. It is that isolation and segregation that has become the basis of the discrimination faced by many disabled people today. Separate is not equal. It was not for blacks; it is not for the disabled.

Americans With Disabilities Act, 1989: Hearings on S. 933 Before the Senate Comm. on Labor and Human Resources and the Subcomm. on the Handicapped, 101st Cong. 215 (1989).

Other statements comparing disability discrimination to historic exclusionary practices directed at racial minorities and women abound in the ADA's legislative history, along with corresponding expressions of Congressional intent to integrate Americans with disabilities into the mainstream of society to the fullest extent possible. *See, e.g.,* 134 Cong. Rec. S5106, 5107-5108 (1988) (statement of Sen. Weicker, explaining bill's purpose as providing protections that parallel those afforded against discrimination on the basis of race, sex, religion and national origin); 135 Cong. Rec. E2812, E2813 (1989) (statement of Rep. Owens, comparing disability movement to the African-American civil rights struggles); 136 Cong. Rec. H2421, H2428 (1990) (statement of Rep. Bartlett, noting that ADA provides same protection available to others on the basis of race, sex, national origin and age); H2438 (statement of Rep. Edwards, stating that "'Separate but equal' is not civil rights"); H2441 (statement ***13** of Rep. Brooks, noting that individuals with disabilities will have same protection provided to others against discrimination); H2445 (statement of Rep. Coleman, disabled individuals will receive same protections available to other minorities); H2447-H2448 (statement of Rep. Miller, ADA guarantees same rights provided to other minorities); 136 Cong. Rec. H2599, H2616 (1990) (statement of Rep. Glickman, comparing disability discrimination to discrimination on the basis of race and sex); H2639 (statement of Rep. Dellums, denouncing the separate but equal concept as applied to the disabled).

The plain language of the ADA makes it clear that Congress did not pass this law simply to express an hortatory preference, but rather mandated the integration of disabled individuals pursuant to its power to enforce the Fourteenth Amendment. In this respect, the ADA differs significantly from the Developmentally Disabled Assistance and Bill of Rights Act of 1975 (DDA), 42 U.S.C. §§ 6000-6009 (1998), which was the subject of the principal case cited by Petitioners, *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981). In *Pennhurst*, the Court held that the DDA was only intended to encourage integration, not to compel it. Specifically, the Court noted that the DDA contained no express invocation of Congress' power to enforce the Fourteenth Amendment, and the legislative history established that Congress did not intend to create enforceable duties. *See Pennhurst*, 451 U.S. at 15, 20-23.

The ADA differs greatly from the DDA in its history, structure, and purpose. The text begins with a finding that discrimination against individuals with disabilities often takes the form of "institutionalization" and "segregation." The ADA then expressly invokes Congress' "power to enforce ***14** the fourteenth amendment" for the stated purposes of providing "a clear and comprehensive *mandate*" and "*enforceable* standards" for the elimination of discrimination against individuals with disabilities. 42 U.S.C. § 12101 (a)(3)-(b)(4) (emphasis added). Moreover, the ADA explicitly incorporates by reference the coordination regulations issued under section 504 of the Rehabilitation Act--which in turn

mandate that recipients of federal financial assistance administer programs "in the most integrated setting appropriate to the needs of qualified handicapped persons." 28 C.F.R. § 41.51(d); 42 U.S.C. § 12134(b). Because "[i]ntegration is fundamental to the purposes of the Americans with Disabilities Act," the Department of Justice complied with the congressional directive by including an express integration mandate in the ADA's implementing regulations. 28 C.F.R. Part 35, App. A. § 35.130. *See also L.C.,* 138 F.3d at 897-898; *Helen L.,* 46 F.3d at 332.

III. THE AMERICANS WITH DISABILITIES ACT PROHIBITS THE UNNECESSARY SEGREGATION OF INDIVIDUALS WITH MENTAL DISABILITIES

Petitioners suggest that the ADA does not compel the State to desegregate mentally disabled individuals who are qualified for community placement "when appropriate treatment can also be provided to them in a State hospital." (Petitioners' Brief at i). Petitioners' "separate but equal" approach to individuals with mental disabilities, however, cannot withstand scrutiny in light of the history of discrimination against this group of Americans, the plain language of the ADA, the Act's legislative history, and the principles of civil rights law developed over the last four decades.

***15** It is widely recognized that individuals with mental disabilities historically have suffered from state-imposed exclusionary practices comparable to prohibited race and gender discrimination. *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985) (holding that zoning restrictions imposed on a group home for the mentally retarded reflected "an irrational prejudice against the mentally retarded"). As observed by Justice Marshall, "the mentally retarded have been subject to a 'lengthy and tragic history' of segregation and discrimination that can only be called grotesque." *Id.* at 461 (citations omitted).

Fueled by the rising tide of Social Darwinism, … [a] regime of state-mandated segregation and degradation soon emerged that in its virulence and bigotry rivaled, and indeed paralleled, the worst excesses of Jim Crow. Massive custodial institutions were built to warehouse the retarded for life …

…

For the retarded, just as for Negroes and women, much has changed in recent years, but much remains the same; outdated statutes are still on the books, and irrational fears or ignorance, traceable to the prolonged social and cultural isolation of the retarded, continue to stymie recognition of the dignity and individuality of retarded people.

Id. at 461-462, 467 (Marshall, J., concurring in part and dissenting in part).

***16** Like the mentally retarded, the mentally ill, epileptics, persons with brain injuries, and other individuals with mental disabilities historically have been segregated in large human "warehouses." *See generally O'Conner v. Donaldson*, 422 U.S. 563 (1975) (addressing the unnecessary involuntary confinement of a mentally ill individual). Construction of custodial colonies for the mentally retarded followed the mid-nineteenth-century movement to build state institutions for the mentally ill. *See* Edward J. Larson, *Sex, Race and Science* 24 (1995). Mental health officials promoted eugenics as a way to rid society of the mentally insane and other "mental defectives." *Id.* at 24, 44.

Segregation has the same effects on disabled individuals as it has had on racial minorities and women. It sends a message of inequality, perpetuates stereotypes and forces these individuals to accept services in an isolated and inherently unequal environment. *See, e.g.*, Timothy M. Cook, *The Americans With Disabilities Act: The Move to Integration*, 64 Temp. L. Rev. 393, 409-410 (1991) (citing additional sources). The conclusion reached in *Brown*, therefore, is also applicable to the unnecessary institutionalization of mentally disabled individuals. Such state-imposed segregation is per se discriminatory.

Indeed, Congress considered and rejected some of the same generalized concerns about extending the ADA's protections to individuals with mental impairments that Petitioners now put forth. *See* 135 Cong. Rec. S11173 (1989). As a result, the ADA's statutory language explicitly addresses Americans with "mental disabilities" and discrimination in the form of "institutionalization" and """"segregation." 42 U.S.C. § 12101(a)(5). The Attorney General's regulations also include mental disabilities among the conditions covered by the Act and construe the ADA to ***17** require community integration, where appropriate. *See* Chai Feldblum, *Antidiscrimination Requirements of the ADA*, in *Implementing the Americans with Disabilities Act* 38 (Lawrence O. Gostin & Henry A. Beyer, eds. 1992); 28 C.F.R. § 35.130. In light of the plain language of the ADA, its legislative history, and its implementing regulations, Petitioners' attempt to raise doubts regarding Congress' intent to mandate the integration of a mentally disabled individual who is qualified for community placement cannot withstand scrutiny. *See Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206 (1998).

Moreover, the Court should reject the Petitioners' arguments for the same reasons that it has rejected similar rationalizations in other types of civil rights cases. Petitioners' assertion that the ADA does not require integration, that it merely forbids discrimination, is reminiscent of the attitude of those who, even after *Brown v. Board of Education*, could not quite accept the task of eliminating the vestiges of racial segregation. Because this type of state-imposed segregation is per se discriminatory, however, the argument fails in the disability context just as it did in the context of racial discrimination.

Petitioners' paternalistic excuses cannot justify segregation of the mentally disabled any more than they can justify the exclusion of women. In fact, it is this type of protectionism that has perpetuated the discriminatory isolation of women and disabled individuals in the past. Petitioners' effort to escape their obligations under the ADA ignores the fact that the statute was enacted to address these precise attitudes. The absence of an overtly malevolent motive simply cannot convert a segregationist practice into a neutral policy. *See* ***18** *United States v. Virginia*, 518 U.S. at 535-536; *International Union, UAW v. Johnson Controls, Inc.*, 499 U.S. 187 (1991).

Just as Virginia cannot justify its exclusion of qualified women from VMI with "overbroad generalizations about the different talents, capacities, or preferences of males and females," *United States v. Virginia*, 518 U.S. at 533, Georgia cannot rely on generalized concerns regarding deinstitutionalization to segregate individuals who, like L.C. and E.W., have been found qualified for community placement. Furthermore, the Court of Appeals emphasized that it was not mandating "the deinstitutionalization of individuals with disabilities" *en masse* but only the integration of individuals whose treating professionals deem community placement to be appropriate. *L.C.*, 138 F.3d at 902.

Nor do Petitioners' financial considerations call for a reversal. "As the House Judiciary report explained, '[t]he fact that it is more convenient, either administratively or fiscally, to provide services in a segregated manner, does not constitute a valid justification for separate or different services …" *L.C.*, 138 F.3d at 902. *Cf. Cedar Rapids Community Sch. Dist. v. Garret F.*, No. 96-1793, 1999 WL 104410 (U.S. March 3, 1999) (holding that financial concerns were not a defense to the integration and accommodation requirements of the Individuals with Disabilities Education Act). In any event, the Court of Appeals remanded for further consideration of the cost issue.

In sum, the Petitioners' argument runs counter to the stated goals of the ADA to eliminate the stereotypes and stigma flowing from the unnecessary institutionalization of disabled individuals. In light of the plain language of the ADA and fundamental civil rights principles developed over ***19** the years, the conclusion reached by the Court of Appeals below is inescapable. The State's unnecessary segregation of an individual based on her mental disability violates the ADA, unless the State can prove on remand that the expense of community placement would fundamentally alter the services provided.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Footnotes

1 Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for amici states that no counsel for a party authored the brief in whole or in part and no person or entity, other than the amici curiae and its counsel, made a monetary contribution to the preparation or submission of the brief.

2 The Court also rejected Virginia's argument that the exclusion of women from VMI promoted diversity through single-sex educational options. *See United Sates v. Virginia*, 518 U.S. at 536. After analyzing the history of higher education in Virginia, the Court concluded that the VMI policy did not arise from an effort to diversify but rather was deeply rooted in a history of discrimination against women. *See id.* at 536-540. The history of society's segregation of mentally disabled individuals leads to the conclusion that Georgia's "benign" explanations here similarly seek to mask discrimination. *See, infra*, Part III.