IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

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| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Plaintiff, | ) | Civil Action No. 3:12CV59-JAG |
| | ) | |
| v. | ) | |
| | ) | |
| COMMONWEALTH OF VIRGINIA, | ) | |
| | ) | |
| Defendant, | ) | |
| | ) | |
| PEGGY WOOD, et. al., | ) | |
| | ) | |
| Intervenor-Defendants | ) | |

# AMICUS CURIAE BRIEF ON BEHALF OF VIRGINIANS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

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## FINANCIAL DISCLOSURE STATEMENT

Proposed *amicus* disAbility Law Center of Virginia hereby certifies that it is a 501(C)(3) not-for-profit corporation has nothing to report under Local Civil Rule 7.1(a) and (b). The disAbility Law Center of Virginia does not, and has no parent, subsidiary, or affiliate entities that does, issue stock or debt securities. It has no partnerships, owners, or members of non-publicly traded entities.

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## STATEMENT OF INTEREST

The disAbility Law Center of Virginia ("dLCV") respectfully submits this brief on behalf of individuals with intellectual and developmental disabilities in Virginia. dLCV is the federally mandated protection and advocacy (P&A) system for Virginians with disabilities. Va. Code § 51.5-39.13. Federal and state laws invest P&A systems with unique and extensive authority to advocate on behalf of individuals with developmental and other disabilities. For example, The Developmental Disabilities Assistance and Bill of Rights Act of 2000 ("DD Act") (42 U.S. Code § 15001 et seq.) provides the system with the authority to "pursue legal, administrative and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals […]." § 15032 (a)(2)(A). The United States Supreme Court affirmed this authority in Virginia Office for Protection and Advocacy v. Stewart, 563 U.S. 247 (2011).

dLCV shares the concern of the Intervenors for the well-being of individuals residing in training centers. dLCV and its predecessors have always worked to improve the safety of individuals remaining in the training centers; dLCV and its predecessors have been monitoring the training centers since passage of the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) in 1975. 42 U.S.C. §§ 15001 et. seq. In the past year, dLCV has monitored, conducted investigations, and advocated for corrective action at Central Virginia Training Center (CVTC), Southeastern Virginia Training Center (SEVTC), Southwestern Virginia Training Center (SWVTC), and Hiram W. Davis Medical Center (HDMC). Indeed, dLCV has recently published a report showing that CVTC failed to properly diagnose and treat urinary tract infections.

dLCV is also in the process of increasing its monitoring and investigation capacity in the community. dLCV and Virginia were recently one of three states to receive grant funding for a

demonstration project to find strategies to improve protection and advocacy agencies' ability to monitor community settings. This process is based upon dLCV's review of Adult Protective Services reports and incidents in community facilities. Virginia is the only state in the United States that provides every incident report in state operated and community operated facilities to the protection and advocacy agency. This puts dLCV in a unique position to monitor safety within the state facilities and the broader community.

As the P&A system, dLCV has an interest in securing the rights of persons with disabilities in Virginia, including the rights protected by the Settlement Agreement between the United States of America and the Commonwealth of Virginia ("Commonwealth"). Therefore, dLCV files this amicus brief to aid the court and speak on behalf of Virginians with intellectual and developmental disabilities in the matter at issue between the Intervenor-Defendants and the Commonwealth.

## INTRODUCTION AND SUMMARY OF ARGUMENT

In this controversy, neither the Intervenor-Defendants, hereinafter referred to as the Intervenors, nor the Commonwealth speak on behalf of the people with intellectual and developmental disabilities who are not residents of training centers who object to discharge. dLCV takes no position on whether the Commonwealth is violating the terms of Settlement Agreement in connection with the discharge of persons from the training centers, but it shares the Intervenor's concern that Virginia assure the safety of individuals who are being discharged from state training centers or transferred to other training centers.

dLCV is specifically mandated by the DD Act to advocate for the safety and rights of all individuals with developmental disabilities. 42 U.S.C § 15001(b)(2) (2017). dLCV urges the Court to remember that discharge from training centers is only part of the Settlement Agreement.

If the proposed injunction is granted, it will compel the state to redirect resources away from developing a community based system and increasing community oversight.

If the Intervenors were merely seeking an order that the Commonwealth comply with the Settlement Agreement, dLCV would not be concerned that community resources will be imperiled. Without any support in federal law - neither the Americans with Disabilities Act (ADA) nor the Social Security Act (SSA)[1] - the Intervenors are seeking a right to remain in a training center indefinitely. Their proposed rewrite is unworkable and detrimental to other individuals in the target population. It will require Virginia to expend its resources for the care of people with intellectual and developmental disabilities to maintain the training centers, resources that are needed to increase community care capacity. It asks this Court to circumvent the political process of Virginia and do what it said it could not do in approving the Settlement Agreement – require the Commonwealth to keep the training centers open by judicial fiat. The United States Supreme Court has warned federal courts to avoid the temptation of venturing into the political process, including decisions involving the operation of state facilities. *See Pennhurst State Sch. and Hospital v. Halderman*, 465 U.S. 89, 166 (1984). (holding that the operation of state facilities involves the sovereign interest of the state); *see also Louisiana Power & Light Co. v. City of Tiberaux*, 360 U.S. 25 (1959) (holding that federal courts should abstain from hearing cases that involve unsettled legal questions involving the special sovereign interests of the state).

[1] The ADA is 42 U.S.C. §§ 12101 et. seq. The Medicaid sections of the SSA are 42 U.S.C. §§ 1396-1396v. While the suit in question was based solely upon the ADA, the claims that the Intervenors are making also implicate the SSA. Indeed, as this brief argues parts of the injunction the Intervenors are seeking, if granted, will force the Commonwealth to violate federal ICF-ID regulations.

dLCV can provide some background for the Court, learned from years of monitoring HDMC. Prior to the late 2000s, HDMC was an independent facility with its own director but provided specialized medical care, dental care, short term skilled nursing facility care, long term nursing facility care, and pharmacy services for persons from Southside Virginia Training Center (SVTC). In the late 2000s, after the director of HDMC retired, the director at SVTC also became the director at HDMC. In that same period, the SVTC Local Human Rights Committee (LHRC) covered HDMC. See 12 VAC 35-115-10 (requiring DBHDS licensed providers to have an LHRC). When HDMC was an independent facility, it had a separate LHRC until the late 2000s. When the SVTC director became director of HDMC, the HDMC LHRC was abolished. At the time of the Settlement Agreement, dLCV staff attended the meeting for parents following the announced closure of SVTC. Because of the well-established connection between SVTC and HDMC, families were concerned that HDMC would also close. As SVTC moved towards closure, HDMC returned to operation as an independent facility – obtaining a director and formally affiliating with the former SVTC LHRC when SVTC closed in 2014.

Because dLCV monitors all state facilities, dLCV does not take a position on whether HDMC is a training center. However, the allegations that the Commonwealth is violating state law are better addressed in state courts. Besides seeking to enjoin alleged violations of state law, the Intervenors are also seeking to have this Court declare that HDMC is not a training center under VA Code §37.2-100 and the Settlement Agreement. First, many of the state court compliance questions do not directly relate to the question of whether Virginia is following the Settlement Agreement. The exact scope of the Virginia code section at question has not been decided by a Virginia court. Therefore, the decisive issues to the claims being made by Intervenors involve unsettled questions of state law, which counsels abstention from the case to

allow Virginia courts to answer the questions of state law. *See Louisiana Power & Light Co.*, 360 U.S. 25 (1959); *see also R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 500 (1941). Moreover, the Intervenors are seeking an injunction to enforce a state law, VA Code § 37.2-823 (A)(3) (2017). This proposed injunction to enforce VA Code § 37.2-823(A)(3) would be improper because the Supreme Court has held that federal courts do not have the legal authority to issue injunctions against states for violating state laws. *Pennhurst State Sch.*, 465 U.S. 89 at 166. The court should resist the call to exercise jurisdiction over these state law claims and leave their resolution to the state courts.

Removing the state law aspects from their claims, the court may find a valid case and controversy involving whether Virginia is complying with the Settlement Agreement in connection with discharge planning. Without taking a position on whether Virginia is complying with the Settlement Agreement with regard to training center discharges, dLCV believes that any injunction issued should be limited to ordering the Commonwealth to comply with the Settlement Agreement. Such a limited injunction, if appropriate, would be consistent with the Settlement Agreement, have a limited effect on other Virginians with intellectual and developmental disabilities, and keep the Settlement Agreement intact to benefit Virginians with intellectual and developmental disabilities.

## ARGUMENT

### I. NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES ARE DISTINCT

If the Court chooses to exercise supplemental jurisdiction with regard to state law claims, it is helpful to understand that Intervenors are making claims involving both nursing facilities (NF)[2] and intermediate care facilities for individuals with intellectual disabilities (ICF-IID).[3]

When evaluating claims involving people moving between the NF at CVTC and HDMC, it is helpful to reference the CMS licensing scheme. A move from the NF at CVTC to HDMC is a move between two nursing facilities not from an ICF-IID to a nursing facility.[4] The Intervenors also describe HDMC as "a state operated nursing facility." The focus on licensure is also useful when evaluating claims involving other discharges and transfers. For example, while CVTC had and HDMC has both ICF-IID and NF licenses, NVTC and SVTC had and SWVTC and SEVTC have ICF-IID licenses only. Therefore, movement from CVTC to SEVTC would be a movement between like facilities, as they are both licensed ICF-ID facilities. The Intervenors have expressed fear that the Commonwealth might transfer people to state hospitals, claiming that they are training centers.[5] Given the definition of "training center" under VA Code § 37.2-100 as "a facility operated by the Department that provides training, habilitation, or other supports," this is a plausible read of the statute since "other supports" is incredibly broad. However, dLCV believes that the proper focus on this definition is based upon habilitation - habilitation is a foundational requirement of the ICF-IID program and defining training center as

[2] See, https://www.cms.gov/Regulations-and-Guidance/Legislation/CFCsAndCoPs/LTC.html for information on long term care facilities.
[3] See, https://www.cms.gov/Regulations-and-Guidance/Legislation/CFCsAndCoPs/Intermediate-Care-Facilities-for-Individuals-with-Intellectual-Disabilities-ICF-IID.html for information on the ICF-IID program.
[4] While HDMC is also licensed as an ICF-IID, dLCV is not aware if there are any claims involving people being transferred to the ICF-IID at HDMC.
[5] As an historic note, one of the closed training centers, SVTC originally was part of Central State Hospital becoming an independent facility in 1971.

a state operated ICF-IID is one potential definition.[6] See, 42 U.S.C. § 1396d(d)(1). 42 C.F.R. § 483.440. dLCV believes that if the court focuses on the functional definition of training centers as being based upon their licensure as ICF-IID and/or NF, such concerns can be avoided.[7] By focusing on the licensing scheme, it is possible to incorporate NF without also incorporating the state hospitals.

## II. THE AMERICANS WITH DISABILITIES ACT DOES NOT PROVIDE THE RIGHT TO RECEIVE SERVICES IN A PARTICULAR INSTITUTIONAL SETTING

The Settlement Agreement between the United States and Virginia is designed to bring the Commonwealth into compliance with the Americans with Disabilities Act (ADA) as interpreted by Olmstead v. L.C., 527 U.S. 581 (1999). In the Olmstead decision, two women with intellectual disability who were held in a state hospital in Georgia sued the state in order to receive community services. The Supreme Court held that unjustifiably holding a person in an institutional setting because community services were unavailable violated the ADA. The Olmstead decision however did state that the ADA does not require a person who wants to remain in an institution to leave. The Settlement Agreement is based upon the ADA and therefore must be viewed in light of the ADA requirements. The Intervenors are arguing that they have the right to remain in the training center of their choice based upon the Settlement Agreement. However, the Settlement Agreement itself explicitly allows for movement of individuals between training centers. Settlement Agreement, (IV)(B)(10). While they do not explicitly make this claim, the Intervenors are effectively arguing that the ADA as interpreted by

[6] Such a definition would exclude both the NF at CVTC and HDMC.

[7] However, dLCV is aware from our monitoring work that persons have moved from training centers to state hospitals in the past - however, these moves were not connected with the closure of a facility. Instead the moves from training centers to state hospitals were primarily due to training center residents receiving criminal charges. dLCV is also aware that people from state hospitals have moved to training centers - mainly to enable people to become eligible to receive the Medicaid Waiver to facilitate discharge.

Olmstead provides them the right to remain in a training center of their choice. Several federal courts have been faced with claims that the Olmstead decision creates a right to continued care in a specific state operated facility - indeed, such claims first appeared in the immediate wake of Olmstead. One of the first such decisions is Richard C. ex rel Kathy B., 196 F.R.D. 288 (W.D. Pa. 1999). In this case, individuals who had been discharged from a state operated ICF-ID pursuant to a settlement agreement attempted to intervene and claimed that the Olmstead decision gave them a right to care in that particular institution. The court rejected intervention in the action, stating that the Olmstead ruling only explains the circumstances when the ADA requires a state to provide access to community care. A similar attempt to reopen a settlement agreement in California resulted in the court stating unequivocally that while unnecessary institutionalization violates the ADA "it does not follow from Olmstead that the converse is true: there is no basis for saying that a premature discharge into the community is an ADA discrimination based upon disability. There is no ADA provision providing community placement is a discrimination." *Richard S. v. Dep't of Developmental Services of Cal*., No. SA CV 97-219-GLT (ANx), 2000 WL 35944246, at 3 (C.D. Cal. 2000).

Federal courts continue to reject claims that a discharge from an institutional setting violates the ADA. However, the Intervenors are not primarily making claims involving people being removed from institutional settings - instead they are claiming that their rights are being violated based upon *transfers* between two state operated training centers. There is no support that the ADA provides a right to receive services in a particular institutional setting. Indeed, the Fourth Circuit has held in Doe v. Kidd, 501 F.3d. 348, 358-59 (4th Cir. 2007) that there is no right to receive services in a particular location.[8] The Seventh Circuit Court of Appeals held

[8] While Doe v. Kidd involved the Medicaid waiver program, its reasoning that the ADA as

that the ADA as interpreted by Olmstead does not provide a right to services in a particular developmental center when services at a different state developmental institution are available, holding that moving individuals to a different facility does not constitute discrimination. *Illinois League of Advocates for the Developmentally Disabled v. Illinois Department of Human Services*, 803 F.3d. 872, 876 (7th Cir. 2015). The Seventh Circuit further went on to hold that keeping a large facility operating for only a few residents that choose to remain in the institution rather than transferring them to a different institutional setting would create an unjustifiable financial burden on the state, far outweighing any benefits to the institutional residents. *Id.*, at 876. Other federal courts have also rejected claims that the ADA as interpreted by Olmstead provides a right to services in a particular institutional setting. See, e.g., *D.T. v. Armstrong*, No. 1-17-cv-00248-EJL, 2017 WL 2590137 (ID 2017) (rejecting motion for injunction against closing state operated ICF-ID on grounds that ADA does not support a right to continue to receive services in a particular facility), *Sciarrillo ex rel St. Amand v. Christie*, Civ. Act. No. 13-03478 (SRC), 2013 WL 6586569 (NJ 2013) (holding no right to receive services in a particular institutional setting), *Lane v. Kitzhaber*, No. 3-12-cv-00138-st, 2014 WL 2807701, at 3 (D. Or. 2014) ("neither the ADA nor the Rehabilitation Act creates a right to remain in the program or facility on one's choosing.")

## III. THE RELIEF SOUGHT BY THE INTERVENORS IS INCONSISTENT WITH THE REQUIREMENTS OF THE MEDICAID PROGRAM AND THE SOCIAL SECURITY ACT

The Intervenors are attempting to foreclose discharges from Southwestern Virginia Training Center and Central Virginia Training Center to avoid the closure of those facilities. As

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interpreted only provides the right to choose institutional or waiver care but no right to services in a particular setting applies equally well to institutional and community settings. Doe v. Kidd indeed held that the ADA and the Medicaid Act "freedom of choice" provision only requires people have the right to choose between receiving care in an ICF-IID and a waiver home.

previously discussed, the ADA -- which supplies the legal basis for the DOJ Settlement -- does not support the relief being sought. However, a more fundamental problem with this relief is that the Intervenors are seeking relief that, if granted by the court, could compel Virginia to violate the Social Security Act requirements for the Medicaid program. Like the ADA, the Social Security Act and Medicaid program do not provide a right to services in a particular state operated program. *Illinois League of Advocates for the Developmentally Disabled v. Illinois Department of Human Services*, 803 F.3d 872, 877 (7th Cir. 2015). The Fourth Circuit has indeed found that the Social Security Act freedom of choice provision only allows Medicaid recipients to choose whether to receive institutional care or a waiver program. *Doe*, 501 F.3d., at 358. Indeed, the fact that the Medicaid program does not provide for a right to continued services in a facility is further demonstrated by the revisions to the Home and Community Based Services Waiver program, which is the primary waiver for people eligible for ICF-IID level of care.[9] In the revisions to the waiver program that will take effect in 2022, there will be added protections to keep people from being wrongfully discharged from providers.

The Intervenors are attempting to receive services in a facility that has been decertified and closed. They have cited alleged violations of the discharge requirements of 42 C.F.R. § 483.12 to support their claims.[10] However, 42 C.F.R. § 483.15(2)(6) makes clear that facilities that cease to operate can transfer or discharge people. Their cited provision states regarding situations where nursing facilities cease operations:

> Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to

[9] 79 F.R. 2947.

[10]dLCV notes that in the 2017 version, 42 C.F.R. § 483.12 prohibits abuse and neglect. The provision for transfer and discharge rights from a skilled nursing facility is 42 C.F.R. § 483.15.

the impending closure to the Secretary, the State LTC ombudsman, residents of the facility, and the legal representatives of the residents or other responsible parties, as well as the plan for the transfer and adequate relocation of the residents, as required at §483.70(l)."

The United States Supreme Court has held in O'Bannon v. Town Court Nursing Center, 447 U.S. 773 (1980) that due process does not require a hearing for individual residents before decertification of a NF. O'Bannon also held that people have no rights to receive services in a decertified or unlicensed facility, stating that any right to receive services there ended when the facility was decertified. O'Bannon further stated that the Medicaid program does not provide a right to services in a particular facility stating "the Medicaid provisions relied upon by the Court of Appeals do not confer a right to continued residence in the home of one's choice." *Id.*, at 785. The Fourth Circuit Court of Appeals has also made it clear that recipients of Medicaid are not entitled to services in the location of their choice. *Doe*, 501 F.3d, at 358-59. While the O'Bannon decision involved a facility being closed due to no longer meeting Medicaid standards, it is difficult to imagine a workable scenario where individuals had the right to forestall voluntary facility decertification and closure. dLCV believes that the care quality at a facility being involuntary kept open under court order would be seriously compromised. Operators also could have the incentive to violate Medicaid regulations and Social Security Act laws in order to be decertified and thus be able to close the facility. When a facility is being decertified prior to closure such as the NF at CVTC, another practical problem will be whether the facility would be required to operate even following decertification where Medicaid reimbursement would not be available. Such a scenario would raise serious Constitutional issues since an appeals board or court would be ordering to keep a facility open. In the current situation involving the question of

whether state operated facilities should continue to operate, the Eleventh Amendment requires that such decisions be made at the state level through state courts or the political process of the state. See *Pennhurst State Sch. and Hospital v. Halderman*, 465 U.S. 89 (1984); *Louisiana Power & Light Co. v. City of Tiberaux*, 360 U.S. 25 (1959). *See also R.R. Comm'n of Tex. v. Pullman Co*., 312 U.S. 496, 500 (1941).

The Intervenors are seeking to prevent the Commonwealth from offering community placement options to anyone who has stated that they are not interested. If this injunction is granted, it will cause Virginia to violate Medicaid provisions requiring that individuals in ICF-ID facilities receive information at least annually regarding discharge rights and engage in discharge planning, including identification of potential community placements. 42 U.S.C. § 1396n(c)(2)(C). The Social Security Act also requires that individuals with disabilities placed in ICF facilities under the Medicaid program receive periodic reviews to assure that they still qualify for ICF level of care. 42 U.S.C. § 1396a(a)(31). The Intervenors have declared that they do not wish to participate in any sort of discharge planning. They believe that any discussion of discharge planning equals harassment, so they are seeking a court order to prevent such discussions. This court should follow the example of the Seventh Circuit Court of Appeals in Illinois League of Advocates for the Developmentally Disabled, which rejected a similar request to prevent Illinois from engaging in discharge planning out of a developmental center that is scheduled for closure. 803 F.3d, at 877. Such an injunction will put Virginia in the impossible position of either violating the Court's injunction or violating Medicaid Act requirements. A violation of Medicaid program requirements could potentially lead Virginia to lose the ability to collect Medicaid funds for the training centers. If that happens, such injunction will create serious harm to the remaining residents of the training centers because Virginia will have to pay

for the training centers without federal assistance and the ICF-ID regulations would no longer apply. People who do not receive services in the training centers would also suffer because Virginia will have to expend more money for the training centers. People in the training centers would also suffer harm because they would be unable to learn about community options that could improve care outcomes. From our previous monitoring work at both SVTC and NVTC, dLCV is aware that many people were initially strongly opposed to community placement prior to learning about available options. Once they learned that there were available options often nearer to their residence, they chose community placement as being a better option. As the Seventh Circuit found in Illinois League of Advocates, such an injunction would have little benefit - since people will still be able to choose placement in a training center - and create serious harm to the very people it was designed to protect. 803 F 3d., at 877.

## IV. GRANTING THE RELIEF SOUGHT BY THE INTERVENORS MAY CAUSE HARM TO OTHER PEOPLE WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

The Intervenors are Virginians with disabilities, and their lives and rights are of great value and importance. Nonetheless, they represent a small portion of the Virginians who have rights under the Settlement Agreement. Indeed, the Intervenors are a small portion of those who have received discharge from training centers. While the Settlement Agreement was designed to improve and transform Virginia's care model away from institutional settings, Virginia retains a large waiting list for services of around 11,580 people.[11] People often must wait years before receiving services. This long wait can lead to substantial harm, including the harms contemplated by the Intervenors. In its monitoring and advocacy work, dLCV has found people with intellectual and developmental disabilities in inappropriate institutional settings, including

[11] Statewide Waiting List by CSB as of 6/1/2017, http://www.dbhds.virginia.gov/library/waitlist%20by%20csb%20summary6117.pdf

the very institutional settings that the Intervenors list as a potential destination for people in training centers – state hospitals. dLCV has requested and reviewed data on admission of individuals with intellectual and developmental disabilities admitted to state hospitals, and recent data shows an increasing number of individuals with intellectual or developmental disabilities being admitted to state hospitals. dLCV has identified a rise in the number of individuals with intellectual or developmental disabilities facing lengthy barriers to discharge once hospitalized. dLCV believes this trend will continue and worsen if Virginia is required to maintain the training centers.

If Virginia must keep the two training centers that are targeted for closure open or reopen closed facilities, it will necessarily have to provide fewer resources to care for the majority of people with disabilities, including those on the waiting list for services. Indeed, if Virginia must expend more resources on the training centers, it is likely that more people with intellectual and developmental disabilities will end up in state hospitals, jails, prisons, and other settings. The Intervenors are receiving services and will continue to receive services even if those services are provided in a different facility. Many people in Virginia with needs as complex as the Intervenors are receiving no services at all from the state. As of June 1, 2017, 2904 individuals on the waiting list were Priority 1, those found to have critical need and who will require waiver services within one year.[12] In 2017, Virginia Senator Stephen Newman introduced legislation to prohibit closure of CVTC until explicitly authorized by the General Assembly. The Department of Planning and Budget estimated that the fiscal impact would be close to 60 million dollars, more than half of which comes from Virginia. According to the 2017 Fiscal Impact Statement for SB1551,

[12] Statewide Waiting List by CSB as of 6/1/2017, http://www.dbhds.virginia.gov/library/waitlist%20by%20csb%20summary6117.pdf

> In order to support 149 residents, CVTC's ongoing annual operating budget needs are estimated to be $57.5 million. Of that budget, $25.9 million is general fund appropriated at DMAS to match federal Medicaid dollars and $5.8 million is general fund appropriated to the Department of Behavioral Health and Developmental Services (DBHDS). The remainder is federal Medicaid reimbursement. Continuing to operate CVTC would eliminate the planned savings that would occur beginning in the 2018-2020 biennium, which is obligated to providing waivers and building capacity under the Commonwealth's agreement with the U.S. Department of Justice. Funds also would be needed to address capital needs to keep buildings open for resident use.[13]

If more resources must go to maintaining large institutional settings for only a few people at an extremely high cost per individual, Virginia's ability to increase community oversight, enhance opportunities for community inclusion, and assure services will be imperiled.

## CONCLUSION

dLCV has presented this information with the hope that it will aid the Court's understanding of the law at issue in this matter, as well as the potential for unintended consequences for other individuals in the Settlement Agreement's target population. The service system for individuals with intellectual and developmental disabilities involves the interaction of multiple, complex legal and regulatory schemes, the common goal of which is to provide quality services in a non-discriminatory manner. Consistent with its role and values as the protection and advocacy system, dLCV shares this goal. For the reasons stated in this brief, dLCV feels strongly that any relief granted by this Court should be limited to assuring compliance with the

[13] https://lis.virginia.gov/cgi-bin/legp604.exe?171+oth+SB1551F122+PDF

Settlement Agreement. dLCV requests that the court consider the information provided herein when ruling on the matters at issue.

Respectfully submitted and DATED this 27th day of October 2017,

_____/s/_____
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