



March 5, 2018

Hon. Bob Goodlatte
Chair, Committee on the Judiciary
2309 Rayburn House Office Building
U.S. House of Representatives
Washington DC 20515

Hon. Jerrold Nadler
Ranking Member, Committee on Judiciary
2109 Rayburn House Office Building
U.S. House of Representatives
Washington DC 20515

Hon. Steve King
Chair, Subcommittee on the Constitution
and Civil Justice
Committee on the Judiciary
2210 Rayburn House Office Building
U.S. House of Representatives
Washington DC 20515

Hon. Steve Cohen
Ranking Member, Subcommittee on the
Constitution and Civil Justice
Committee on the Judiciary
2404 Rayburn House Office Building
U.S. House of Representatives
Washington DC 20515

*Re: Hearing on "Examining Class Action Suits Against
Intermediate Care Facilities for People with
Intellectual Disabilities"*

Dear Chairman Goodlatte, Ranking Member Nadler, Chairman King and Ranking Member Cohen:

The Epilepsy Foundation submits this letter to express our strong opposition to any legislation that would weaken the ability to bring class action lawsuits to enforce the rights of individuals with intellectual and developmental disabilities in intermediate care facilities.

The Epilepsy Foundation is the leading national voluntary health organization that speaks on behalf of the at least 3.4 million Americans with epilepsy and seizures. We foster the wellbeing of children and adults affected by seizures through research programs, educational activities, advocacy, and direct services. Epilepsy is a medical condition that produces seizures affecting a variety of mental and physical functions. Approximately 1 in 26 Americans will develop epilepsy at some point in their lifetime.

We have grave concerns about bills that were introduced in prior years aiming to restrict class action lawsuits to protect the rights of institutionalized individuals with intellectual and developmental disabilities. Such legislation, if passed, would do enormous damage. It would leave people with intellectual and developmental disabilities without adequate recourse to remedy harms such as abuse and neglect in institutional settings and the needless institutional confinement of individuals who could live in community settings and wish to do so.

Class action lawsuits have been a very important tool, and often the only effective means, to address abuse, neglect, and violations of the civil rights of institutionalized individuals with disabilities. They have been critical to systemic enforcement of the right of people with disabilities to be served in the most integrated setting appropriate to their needs. *Olmstead v. L.C.*, 527 U.S. 581 (1999). Many



thousands of individuals with intellectual disabilities (as well as individuals with other disabilities) remain needlessly confined in public and private institutions.

The bills introduced in prior Congresses to limit class actions by institutionalized individuals with intellectual and developmental disabilities would have created different—and more restrictive—rules for class actions brought by these individuals than for class actions brought by anyone else. This would be a dangerous and troubling precedent. There is no reason why individuals with intellectual disabilities should have greater obstacles to proceeding as a class than those imposed by Federal Rule 23, which applies to all class actions.

The bills introduced in prior Congresses claimed to provide protections for class members who do not wish to participate in a class action suit. But the existing rules for class actions already provide protections for these individuals and their representatives. Among other things, before a class action may be settled, the court must conduct a hearing to ensure that the settlement is fair, adequate and reasonable, and class members must have the opportunity to object and be heard. Individuals and their family members have the opportunity to offer testimony and/or submit written comments expressing their objections to a proposed settlement. When objectors have demonstrated that a proposed settlement is not fair, adequate and reasonable, courts have declined to approve such settlements. Individuals with intellectual and developmental disabilities and their families have also been permitted to intervene in class action cases where appropriate.

Moreover, in cases where individuals seek to enforce their rights under the ADA and *Olmstead* to leave institutions and live in community settings, class members who do not wish to live in a community setting cannot be forced to do so. Neither the ADA nor *Olmstead* forces accommodations on individuals who do not want them. Settlements and remedy orders in *Olmstead* cases make community services and housing available to class members who choose them, without forcing them on individuals who do not.

We urge you not to consider legislation that would change class action rules for institutionalized individuals with intellectual and developmental disabilities.

Please do not hesitate to contact Angela Ostrom, Chief Legal Officer & Vice President Public Policy, at 301-918-3766 or aostrom@efa.org with any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Philip M. Gattone".

Philip M. Gattone, M.Ed.
President & CEO
Epilepsy Foundation