

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

ERIC STEWARD, by his next friend  
and mother, Lilian Minor, *et al.*,

Plaintiffs,

v.

RICK PERRY, Governor, *et al.*,

Defendants

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CIV. NO. 5:10-CV-1025-OLG

DECLARATION OF MIKE BRIGHT

I am Mike Bright, being over 18 years of age, and of sound mind state the following of my own person knowledge:

1. I graduated from Angelo State University in 1974 with a Bachelor's degree in Elementary Education and certification in Special Education.
2. I am the executive director of The Arc of Texas ("The Arc"). I have held this position since June 1995. I have been employed by The ARC for 37 years. In my 37 years with The Arc or an ARC affiliate, I have served in a variety of leadership positions including Executive Director of The Arc of San Angelo as well as in the following programmatic areas: organizational development, grants management, programmatic planning, volunteer and consumer training and government affairs.
3. The Arc has approximately 3500 members. Members, including persons with developmental disabilities, families of persons with developmental disabilities, friends and advocates of persons with developmental disabilities, and professionals who serve persons with developmental disabilities. Several Arc members live in nursing facilities in Texas, or are family members or friends of nursing facility residents with developmental

disabilities. Thus, in my role as the executive director, I have learned first hand about the situations of many persons with developmental disabilities in nursing facilities.

4. I have been part of working groups and committees that have made recommendations to state agency directors and administrators regarding programs and services for persons with disabilities. On numerous occasions, I have testified before Texas House and Senate committees, House and Senate subcommittees, and been on agency Commissioner appointed task forces charged with looking at how various programs and policies affect persons with disabilities in terms of accessing services that will enable them to either move to, or remain in, the community. I have been asked by various legislators and senior state officials for my professional opinions on the design and delivery of services for persons with developmental disabilities in Texas, including the adequacy of community services that allow persons with developmental disabilities to live in the most integrated setting.
5. In my various roles with The Arc, I have become acutely aware of the critical need for significantly more community-based alternatives that would allow persons with developmental disabilities to live in the community, and particularly for persons who are institutionalized or in segregated settings like nursing facilities. I have spent a considerable amount of my 37 year career advocating on behalf of persons with developmental disabilities regarding their right to live in less restrictive community-based settings, including advocating more than 30 years ago on behalf of The Arc and its members that Texas establish the HCS waiver program so that persons with developmental disabilities can live in their least restrictive environment.

6. Over the past several years, I have also been a member of the Money Follows the Person Demonstration Advisory Committee (MFPDAC). As a result of the Supreme Court's decision in *Olmstead*, the State of Texas through the Texas Health and Human Services Commission ("HHSC") and the Texas Department of Aging and Disability Services ("DADS") provides money to help persons receiving long term care supports in a nursing facility be eligible for a nursing home waiver. The MFPDAC is the entity authorized by DADS with advising the agency in efforts to help nursing facility residents successfully transition in to the community.
7. Based upon information provided to me by Arc members, information from HHSC and DADS provided to me in my role on various task forces including the MFPDAC, and other data, I am aware that thousands of persons with intellectual and developmental disabilities currently reside in nursing facilities in Texas and that a significant number of additional persons are admitted each year.
8. For persons with intellectual and developmental disabilities, access to the nursing home waiver has had little to no impact on their ability to access less restrictive community-based services. For this group, the Home and Community-based Services ("HCS") waiver is the appropriate program waiver. The HCS waiver is specifically designed to enable persons with developmental disabilities move from a nursing facility to the community with the support and services needed to succeed. Accordingly, the 2012 Promoting Independence Advisory Committee ("Committee") to which HHSC's Executive Director appointed me, recently recommended in its Stake Holder Report that funding for HCS waiver slots currently available to persons living in State Supported Living Centers and large Intermediate Care Facilities for Persons with Mental

Retardation also be made available to persons with developmental disabilities living in nursing facilities.


9. Individuals with intellectual and developmental disabilities who had been institutionalized for years have successfully transitioned from nursing facilities to the community, utilizing the HCS waiver program. Many individuals who formerly lived in a nursing facility now live either in small community-based homes or in their own home or apartment because of the supports and services available through the HCS waiver program. In fact, I am aware of former nursing facility residents with intellectual disabilities who not only live independently in the community because of HCS program and the support services available through the waiver, but are working as well.
10. In the past, at least some individuals with intellectual and developmental disabilities were able to leave nursing facilities with HCS program services because HHSC funded several thousand slots each year. Currently, HCS waiver services are frozen for persons on the HCS waiting/interest list. Although there are some priority groups able to access HCS waiver services, including those living in State Supported Living Centers and Large Intermediate Care Facilities for Persons with Intellectual Disabilities, persons living in nursing facilities with intellectual and developmental disabilities have absolutely no chance of accessing HCS waiver services, whether or not they are on the HCS waiting/interest.
11. As I noted in ¶8 above, I am a member of the Committee that just this past June recommended funding HCS waiver slots for nursing facility residents with intellectual and developmental disabilities. Although neither HHSC nor DADS is bound by any of the Committee's recommendations, at this point, HHSC has submitted an exceptional

budget item to the Texas Legislature to fund a total of 360 HCS waiver slots for the next fiscal biennium – 2014-2015, for persons with intellectual and developmental disabilities residing in nursing facilities in order to move to less restrictive community-based settings. While I do not believe this adequately addresses the number of individuals with intellectual and developmental disabilities living in nursing facilities that qualify for or could benefit from HCS waiver services, I fully support this exceptional item.

12. I am also aware of serious and persistent deficiencies in the way Texas operates its Preadmission Screening and Annual Resident Review (PASARR) program, including problems in accurately identifying persons with intellectual and developmental disabilities, appropriately assessing their need for nursing facility admission, determining their need for specialized services, and providing the specialized services that they require.

13. Based upon information available to me in my various professional roles, I believe there are a significant number – at least hundreds – of persons with intellectual and developmental disabilities in nursing facilities who could benefit from community services, who are qualified for DADS' community and waiver services, and who would prefer to live in the community. In my opinion, the primary reason these individuals remain segregated in nursing facilities is because of the way that Texas and its relevant state agencies administer and fund the community services and waiver programs.

In accordance with 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on July 5, 2012.

  
Mike Bright