Journal of Gender, Social Policy & the Law

Volume 22 | Issue 3 Article 5

2014

Gimme Shelter: Lane v. Kitzhaber and Its Impact on Integrated Employment Services for People with Disabilities

Gena Rinaldi

GIMME SHELTER?: *LANE V. KITZHABER* AND ITS IMPACT ON INTEGRATED EMPLOYMENT SERVICES FOR PEOPLE WITH DISABILITIES

GENA RINALDI*

* Senior Staffer, Vol. 23, American University Journal of Gender, Social Policy, & the Law; J.D. candidate, May 2015, American University Washington College of Law. Thank you to my editor, Rebecca Wolf, for making this process possible and bearable, and to my technical editor, Megan Rusciano, for her dedication to my parentheticals. Special thanks to my family, to Charlie, for his endless support, to Anna, for the countless hours of brainstorming, and to Emmy, who let me talk even when she did not understand a word I said.

I. INTRODUCTION

The Americans with Disabilities Act ("ADA") mandates the elimination of discrimination against persons with disabilities.[1] Its integration mandate

1. *See* Americans with Disabilities Act of 1990, 42 U.S.C. § 12101(b)(1) (2012) (providing the guiding purpose of the statute).

requires public entities to administer services in the most integrated setting appropriate to the needs of a qualified individual with a disability.[2] Despite the clear intent of that mandate, hundreds of thousands of people with disabilities are unnecessarily segregated in sheltered workshops.[3]

A sheltered workshop is a segregated place of employment that either employs persons with disabilities or allows persons with disabilities to work separately from others.[4] The original philosophy behind sheltered workshops was to enable men with severe physical impairments to contribute to society.[5] While proponents of sheltered workshops view them as fostering the goals of rehabilitation, the segregation of people with disabilities is an outdated concept that violates the guiding principles of the ADA.[6]

The State of Oregon developed its Employment First Policy in 2008, which strives to expand access to integrated employment settings to individuals with disabilities.[7] Despite this policy, Oregon's progress in its use of supported employment services has slowed while it has increased its dependence on sheltered workshops.[8] In response, eight plaintiffs with intellectual or developmental disabilities filed suit against the State of Oregon, alleging that they and thousands of others are unnecessarily

---

2. *See* 28 C.F.R. § 35.130(d) (2014) (defining the most integrated setting as an environment that allows persons with disabilities to interact with non-disabled people to the fullest extent possible).

3. *See* NAT'L DISABILITY RIGHTS NETWORK, SEGREGATED & EXPLOITED: A CALL TO ACTION! THE FAILURE OF THE DISABILITY SERVICE SYSTEM TO PROVIDE QUALITY WORK 12 (2011), *available at* http://www.ndrn.org/images/Documents/Resources/Publications/Reports/Segregated-and-Exploited.pdf (commenting on the vast number of individuals with disabilities who are isolated from their non-disabled peers and financially exploited by employers).

4. *See, e.g.*, Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1201 (D. Or. 2012) (introducing the concept of sheltered workshops, in which the plaintiffs in *Lane* believe they have been unnecessarily segregated).

5. *See* JOHN PARRY, EQUAL EMPLOYMENT OF PERSONS WITH DISABILITIES: FEDERAL AND STATE LAW, ACCOMMODATIONS, AND DIVERSITY BEST PRACTICES 4 (2011) (promoting the employment of persons with physical impairments in segregated settings from their non-disabled peers).

6. *See* NLRB v. Lighthouse for Blind, 653 F.2d 206, 209 (5th Cir. 1981) (asserting that sheltered workshops encourage employees to learn the skills necessary to move eventually from a sheltered workshop into the competitive job market).

7. *See Lane*, 841 F. Supp. 2d at 1201 (premising its Employment First Policy on data suggesting that integrated employment creates better outcomes than sheltered workshops).

8. *See* Lane v. Kitzhaber, 283 F.R.D. 587, 593 (D. Or. 2012) (finding that Oregon has increased its reliance on sheltered workshops to employ persons receiving employment services).

isolated in sheltered workshops despite their expressed desire to work in integrated employment.[9]

This Comment argues that *Lane v. Kitzhaber* correctly established that the integration mandate of the ADA applies to employment services provided by public entities.[10] Part II examines the ADA, reviews institutionalization in *Olmstead v. L.C. ex rel. Zimring*, and discusses Title II's application to employment in *Zimmerman v. Oregon Department of Justice*.[11] Part II then introduces *Lane v. Kitzhaber*.[12] Part III argues that the protections provided by the ADA require the provision of services by a public entity to be in the most integrated setting; therefore, Oregon's reliance on sheltered workshops in *Lane v. Kitzhaber* violates Title II of the ADA.[13] Part IV recommends that states should endeavor to establish integrated employment service options for people with disabilities to encourage community integration.[14] Lastly, Part V concludes that a state's dependence on sheltered workshops violates the intent and purpose of the ADA, and that states must follow the integration mandate set forth in the Act.[15]

II. BACKGROUND

A. Origins of Sheltered Workshops

Prior to the twentieth century, society generally considered persons with disabilities "defective" and in need of institutionalization to survive.[16] States and charities began to introduce rehabilitation programs in the mid-1800s as ways to provide therapeutic treatment and vocational training to

9. *See Lane*, 841 F. Supp. 2d at 1200 (stating that the plaintiffs are denied contact with their non-disabled peers as a result of Oregon's employment services).

10. *See infra* Part III (arguing that the court correctly decided *Lane v. Kitzhaber* because the employment claims fall under Title II of the ADA and the integration mandate applies to employment-related services).

11. *See infra* Part II (reviewing the ADA, Olmstead v. L.C. ex rel. Zimring, and Zimmerman v. Or. Dep't of Justice to lay the foundation for the arguments in this Comment).

12. *See infra* Part II.

13. *See infra* Part III (arguing that the ADA's integration mandate includes employment services).

14. *See infra* Part IV.

15. *See infra* Part V (concluding that integrated employment settings will allow people with disabilities to be fully involved in the community).

16. *See* Michael J. Ward, *Foreward*, to THE ADA MANDATE FOR SOCIAL CHANGE xv (Paul Wehman ed., 1993) (recalling the prevalent attitudes of people in the United States towards people with disabilities prior to 1900).

"cripples."[17] First developed as a vocational training program, the sheltered workshop is a segregated place of employment that employs persons with disabilities or where people with disabilities work separately from others.[18] The Perkins Institute for the Blind, founded in 1840, served as the model for sheltered workshops as centers of employment for persons with disabilities.[19]

While the objective of these rehabilitation programs was the elimination of dependency, the philosophy behind sheltered workshops was to help men with severe physical impairments contribute to society, in segregated settings.[20] Early sheltered workshops only focused on the employment and rehabilitation of people with severe physical disabilities; people with intellectual disabilities were not considered employable.[21] Today, sheltered workshops are still seen by proponents as fostering the goals of rehabilitation.[22]

B. Federal Disability Rights Legislation and Statutes

1. The Americans with Disabilities Act of 1990

The ADA federalized anti-discrimination laws for people with disabilities.[23] In Section 12101, Congress declared that the ADA was "a clear and comprehensive national mandate for the elimination of discrimination."[24] Through its findings, Congress addressed its concern of segregation and concluded that discrimination continues in many important

17. *See* Johnathan C. Drimmer, Comment, *Cripples, Overcomers, and Civil Rights: Tracing the Evolution of Federal Legislation and Social Policy for People with Disabilities*, 40 UCLA L. REV. 1341, 1361 (1993) (introducing the purpose of early rehabilitation programs for persons with disabilities).

18. *See, e.g.*, Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1201 (D. Or. 2012).

19. *See* DORIS ZAMES FLEISCHER AND FRIEDA ZAMES, THE DISABILITY RIGHTS MOVEMENT: FROM CHARITY TO CONFRONTATION 93 (2011) (recalling the founding of the Perkins Institution in Massachusetts and its role as a model to early disability employment).

20. *See* PARRY, *supra* note 5 (stating the philosophy of the early disability employment movement).

21. *See id*. (noting that early vocational programs were designed only for persons with severe physical disabilities).

22. *See* NLRB v. Lighthouse for Blind, 653 F.2d 206, 209 (5th Cir. 1981) (asserting that sheltered workshops incentivize employees to learn the skills necessary to move eventually from a sheltered workshop into the competitive job market).

23. *See* FLEISCHER & ZAMES, *supra* note 19, at 93 (asserting that the ADA incorporated the Civil Rights Act of 1964, Section 504, and individual states' laws to provide comprehensive protection for people with disabilities).

24. *See* Americans with Disabilities Act (ADA), 42 U.S.C. § 12101(b)(1) (2012) (declaring the ADA a mandate against discrimination).

areas of life, including employment.[25] Title I of the ADA prohibits discrimination against qualified individuals with disabilities in employment.[26] The ADA defines a qualified individual as a person who, with or without reasonable accommodation, can perform the "essential functions" of the employment position.[27] The statute explicitly prevents covered entities from discriminating against a qualified individual in the context of employment, including the job applications process, hiring, firing, compensation, training, and other conditions of employment.[28] A covered entity encompasses employers, employment agencies, labor organizations, or joint labor-management committees.[29]

Title II prohibits discrimination against qualified individuals by public entities.[30] State and local governments, and any department, agency, or instrumentality of those governments, fall under the definition of a public entity.[31] A qualified individual under Title II is a person who meets the eligibility requirements for receipt of services or participation in programs and activities.[32] The ADA and its accompanying regulations do not define services, programs, or activities.[33]

2. Department of Justice ADA Regulations

The Department of Justice ("DOJ") has developed a set of regulations, known as the integration mandate, based on the statutory language of the ADA.[34] The integration mandate requires public entities to administer

25. *See* § 12101(a)(2)-(3) (finding that people with disabilities have a right to fully participate in society but have been prevented from doing so because of discrimination).

26. *See* § 12111(2) (defining covered entities as employers, employment agencies, labor organizations, and joint-labor management committees).

27. *See* § 12111(8) (granting the employer the authority to determine the essential functions of employment).

28. *See* § 12112(a) (setting forth the areas in which a person with disabilities is protected from discrimination).

29. *See* § 12111(5)(a) (defining employers as a person or agent of a person engaged in an industry affecting commerce).

30. *See* § 12132 (stating that no qualified individual, due to disability, may be excluded from participation in, denied benefits from, or discriminated against by a public entity).

31. *See* § 12131 (excluding the federal government from the definition of a public entity).

32. *See* § 12111(8) (defining a "qualified individual" under the ADA).

33. *See* § 12132.

34. *See* Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. § 35 (2014) (concluding that public entities must reasonably modify their policies, procedures, and practices when necessary to avoid

programs and activities in the most integrated setting appropriate to suit the needs of a qualified individual with a disability.[35] The regulations define the most integrated setting as an environment in which persons with disabilities may interact with non-disabled individuals to the fullest extent possible.[36] A public entity violates the integration mandate when it administers its programs in a way that results in unjustified segregation of persons with disabilities.[37]

When the DOJ first proposed the integration mandate in 1991, its language did not include sheltered workshops as a violation of this mandate.[38] The commentary did include, however, a statement that public entities cannot deny individuals the opportunity to participate in integrated programs.[39] In 2011, the DOJ issued a new interpretation of the mandate to include the corpus of the Supreme Court's decision in *Olmstead*, by specifically including integrated employment services as a remedy to unnecessary segregation in sheltered workshops.[40]

C. Olmstead v. L.C. ex rel. Zimring

Two women, L.C. and E.W., voluntarily admitted themselves to Georgia Regional Hospital for psychiatric treatment.[41] The hospital diagnosed L.C. with schizophrenia and E.W. with a personality disorder; the hospital

---

discrimination).

35. *See* § 35.130(d) (mandating that a public entity shall "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities").

36. *See* § 35, app. A (2013) (elaborating on the definition of "most integrated setting").

37. *See* § 35.130(b)(1)-(2) (prohibiting a public entity from discriminating on the basis of disability or utilizing methods that have the effect of discrimination).

38. *See* Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1203-04 (D. Or. 2012) (recalling the original commentary that stated the provisions should not be construed to jeopardize the viability of sheltered workshops).

39. *See* Nondiscrimination of the Basic of Disability in State and Local Government Services, 56 Fed. Reg. 8538 (proposed Feb. 1991) (to be codified at 28 C.F.R. pt. 35) (stating that special or segregated programs cannot be used to restrict a person's participation in integrated activities).

40. *See* CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, STATEMENT OF THE DEPARTMENT OF JUSTICE ON ENFORCEMENT OF THE INTEGRATION MANDATE OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT AND *OLMSTEAD V. L.C.* 1 (June 22, 2011), *available at* http://www.ada.gov/olmstead/q&a_olmstead.htm (updating its interpretation of the integration mandate to include sheltered workshops as a segregated setting).

41. *See* Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 593 (1999) (highlighting that both women chose to be admitted to the hospital at the time of intake).

considered both women intellectually disabled.[42] After each woman's conditions had stabilized their respective treatment teams determined that the women's treatment needs could be met in the community.[43] Despite these findings, both women remained institutionalized.[44] In 1995, while still institutionalized, L.C. filed suit in federal district court, asserting that the State of Georgia had violated Title II when it failed to place her in a community-based program after her treatment team deemed it appropriate.[45]

The district court held that the State's failure to place L.C. and E.W. in appropriate community-based treatment programs violated Title II of the ADA because unnecessary institutional segregation constitutes discrimination.[46] The Eleventh Circuit affirmed the district court's judgment but remanded the case for a determination as to whether the costs of community-based care would be an unreasonable burden on the State.[47] The Eleventh Circuit held that the State's duty to provide integrated services was not absolute because the services could create an unreasonable cost burden upon the State if fundamental alterations were required.[48]

The Supreme Court concluded that Congress intended Title II of the ADA to serve as a national mandate to eliminate discrimination towards persons with disabilities.[49] The Court then addressed Title II and the implementation of the statute by the DOJ.[50] The Court recognized that Congress authorized the DOJ to issue implementing regulations and affirmed the lower courts' deference to the regulations of the implementing

---

42. *See id*. (chronicling the mental health and intellectual ability of both women at the time of hospital admittance).

43. *See id*.

44. *See id*. (finding that, after their respective evaluations, L.C. was held for an additional three years before being transferred, while E.W. was held for a year).

45. *See id*. at 593-94 (pleading that the State should place L.C. in a community residential program and that she should receive treatment with the goal of integration into mainstream society).

46. *See id*. at 594 (rejecting the State's argument that inadequate funding accounted for the women's retention in the institution and concluding that discrimination cannot be justified by a lack of funding).

47. *See id*. at 595 (remanding the case to the district court, which again rejected the State's funding defense).

48. *See id*. (finding that Title II requires reasonable modifications, but does not demand fundamental alterations to the State's programs).

49. *See id*. at 589 (introducing the integration mandate intended by Congress and regulated by the DOJ).

50. *See id*. at 590 (recalling Congress' instructions to form regulations implementing Title II that are consistent with Section 504 of the Rehabilitation Act).

agency.[51]

The Supreme Court further held that unjustified segregation based on a disability constitutes discrimination under Title II of the ADA.[52] Accordingly, states must provide community-based treatment for persons with mental disabilities when treatment professionals determine the placement is suitable, the person with the disability does not oppose treatment, and the person can be reasonably accommodated in the community.[53] These placements must take into account the resources available to the states.[54] Finally, the Court concluded that, because L.C. and E.W. remained institutionalized, despite their treatment teams' determination that they should receive community treatment, the State of Georgia had violated Title II.[55]

D. Zimmerman v. Oregon Department of Justice

Zimmerman, who had a visual impairment, asked his government employer to make accommodations based on his disability; the employer refused and later fired Zimmerman.[56] Eighteen months later, Zimmerman filed suit, claiming that his employer violated Titles I and II of the ADA.[57] The Oregon district court dismissed the Title II claim, holding that Title II does not apply to employment.[58]

On appeal, the Ninth Circuit held that Title II does not apply to employment by state and local government, which is covered under Title I.[59] The Ninth Circuit determined that Title II applies only to outputs of a public entity, such as services, programs, or other activities that a public

---

51. *See id*. at 597-98 (noting the DOJ's advocacy that undue institutionalization by reason of disability qualifies as discrimination).

52. *See id*. at 589, 597 (asking whether the prohibition of discrimination may require states to provide individuals with disabilities with community-based services).

53. *See id*. at 587, 607 (outlining the three factors that govern a community-based treatment decision).

54. *See id*. at 597 (qualifying the determination of whether placement in the community is appropriate by weighing those needs with the resources and responsibilities of the state).

55. *See id*. at 594 n.6 (stating that the women's claims were still valid because of the multiple institutional placements each received).

56. *See* Zimmerman v. Or. Dep't of Justice, 170 F.3d 1169, 1171 (9th Cir. 2001) (noting that the employers refused to accommodate the employee's disability).

57. *See id*. (dismissing the Title I claim because the plaintiff failed to file a complaint within the statute of limitations).

58. *See id*. (concluding that Title II does not apply to employment because of the comprehensive statutory scheme of Title I).

59. *See id*. at 1171-72 (finding that the plaintiff could have successfully filed suit under Title I, but failed to file his claim on time).

entity produces.[60] In contrast, the court defined employment as an input because a person provides services to an entity through their employment.[61] Thus, as employment is not a service or a program, it does not fall under the outputs protected in Title II.[62] Applying a *Chevron* standard of review, the court concluded that Congress had unambiguously expressed its intent that Title II does not apply to employment.[63] Therefore, the Ninth Circuit gave no weight to the DOJ's regulation incorporating employment into Title II.[64] The Ninth Circuit declined to provide relief to Zimmerman because he failed to file his claim properly under Title I, and his claims of employment discrimination did not fall under Title II.[65] The Ninth Circuit's decision in the case thus created a circuit split.[66]

E. Lane v. Kitzhaber

In a class action suit, eight plaintiffs with intellectual or developmental disabilities sued the Oregon Department of Human Services ("DHS"), alleging violations of Title II of the ADA.[67] The plaintiffs claimed that Oregon violated anti-discrimination laws by dedicating a disproportionate amount of resources to segregated employment services.[68] The plaintiffs had expressed their preferences to work in integrated employment, but instead DHS placed them in sheltered workshops.[69] The plaintiffs asserted

---

60. *See id*. at 1174 (defining an output as something provided or created by a public entity).

61. *See id*. (contrasting the services of a public entity to the employment of a single individual).

62. *See id*. (remarking that the phrase "services, programs, and activities" are outputs while employment is an input).

63. *See id*. at 1173 (applying the two-step deference test in *Chevron, U.S.A., Inc. v. Nat'l Res. Def. Council*, 467 U.S. 837 (1984), which first requires a court to determine whether Congress has unambiguously expressed its intent on the question before the court, and, if not, requires the court to uphold the regulation unless the court finds it to be arbitrary).

64. *See id*. (concluding its *Chevron* inquiry by holding that Congress did not intend Title II to apply to employment).

65. *See id*. at 1171-72 (affirming the lower court's conclusion that Title II does not apply to employment).

66. *See id*. at 1184 (noting that most circuits gave deference to the DOJ's interpretation that Title II can apply to employment).

67. *See* Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1200 (D. Or. 2012) (introducing the plaintiffs and the basis of the suit against DHS and various state officials in Oregon).

68. *See id*. at 1206 (stating that the violation of anti-discrimination laws is the central theme to the plaintiffs' claims).

69. *See id*. at 1201, 1206 (asserting that DHS placed these individuals in a

that DHS had caused them to be unnecessarily isolated and denied them contact with non-disabled persons.[70]

DHS petitioned the court to dismiss the plaintiff's claims on four separate issues.[71] First, DHS asserted that employment claims are not cognizable under Title II of the ADA.[72] DHS then argued that even if the claim is found cognizable under Title II, the integration mandate did not apply to segregated employment services.[73] Further, DHS asserted that the plaintiffs improperly sought to force the State to provide a service it does not and cannot provide, and lastly, that the plaintiffs were attempting to impose a standard of care on the State's employment services.[74]

The United States District Court for the District of Oregon concluded that *Zimmerman* was not a barrier to the plaintiffs' claims under Title II because the plaintiffs were not seeking state employment, but rather they were challenging the State's failure to provide integrated employment services.[75] The court then held that the current interpretation of the integration mandate applied to sheltered workshops and that the risk of institutionalization addressed in *Olmstead* included segregated employment services.[76] However, the court granted DHS's motion to dismiss based on its final claim that the plaintiffs were attempting to impose a standard of care on DHS.[77] The court asked the plaintiffs to amend their complaint to clarify that the State denied employment services for which these individuals were eligible, resulting in unnecessary employment

---

sheltered workshop despite the plaintiffs' abilities and preference to work in integrated employment).

70. *See id*. at 1200 (alleging that thousands of other individuals who were eligible to receive employment services from DHS were unnecessarily segregated in sheltered workshops).

71. *See id*. at 1201-02 (filing a motion to dismiss because the employment claims are not cognizable under Title II of the ADA).

72. *See id*. (claiming that Zimmerman v. Or. Dep't of Justice required the dismissal of the employment claim).

73. *See id*. at 1202 (alleging that the integration mandate applies only to institutionalization and that the denial of services does not place the individuals in the suit at risk for institutionalization).

74. *See id*. (maintaining that the State of Oregon could not provide integrated employment in a community setting).

75. *See id*. (concluding that the plaintiffs sought services, programs, and activities by the state, which fall under Title II, rather than state employment).

76. *See id*. at 1205 (upholding the integration mandate and Olmstead v. L.C. ex rel. Zimring as applicable to segregated employment).

77. *See id*. at 1206 (defining standard of care as a requirement to provide certain levels of benefits or services).

segregation.[78]

III. ANALYSIS

A. The Plaintiff's Employment Claims in Lane v. Kitzhaber *Are Cognizable Under Title II of the ADA Because the State of Oregon Sought to Provide Employment Services to People with Disabilities.*

1. Title II of the ADA Applies to Employment Services Because the Statute Covers All Services, Programs, and Activities of a State's Government.

Title II of the ADA applies to employment services because it covers all services provided by a public entity.[79] The structure of the ADA reflects Congress's intent to address employment and government services separately because it divides these areas into two different titles.[80] Title I only addresses employment of people with disabilities.[81] Title II applies to all services, programs, or activities offered by a public entity.[82] While Title I covers employment in detail, Title II does not contain any reference to employment.[83] Therefore, Title II is not applicable to employment disputes because Congress intentionally omitted those protections from that Section of the Act and intended for only Title I to cover disputes over discrimination in the employment context.[84]

The heart of Title II is the prohibition of discrimination in services, programs, and activities offered by a public entity.[85] The ADA defines a public entity as any state or local government, and any department, agency,

78. *See id*. at 1208 (asking the plaintiffs to amend their claim to remove its imposition of a standard of care on the state).

79. *See id*. at 1202-06.

80. *See* Zimmerman v. Or. Dep't of Justice, 170 F.3d 1169, 1176 (9th Cir. 2001) (concluding that the division of issues in the ADA reflects Congressional intent that employment receives different protections than services of public entities).

81. *See* ADA, 42 U.S.C. § 12112(a) (2012) (prohibiting the discrimination of persons with disabilities in the area of employment).

82. *See Lane*, 841 F. Supp. 2d at 1200 (recalling the discrimination prohibition of Title II and its application to services, programs, or activities of a public entity).

83. *See Zimmerman*, 170 F.3d at 1176 (concluding that the absence of language regarding employment in Title II means that it does not apply to employment).

84. *See* Russello v. United States, 464 U.S. 16, 23 (1983) (presuming that Congress acts intentionally and purposely in the disparate inclusion or exclusion of language in a section of a statute).

85. *See* § 12132 (prohibiting state and local governments from excluding a qualified individual with a disability from participation in public services, programs, or activities).

or instrumentality of a state or local government.[86] The ADA and the DOJ's implementing regulations do not, however, provide a definition of services, programs, and activities.[87] The Act and its regulations do not explain what constitutes a covered service, leaving the language open to encompass any services from a public entity.[88] Employment services are output programs by a public entity determining the employment needs of an individual, identifying jobs, contracting with employers, and providing job training.[89] These services do not include direct employment with the state.[90] Therefore, DHS's employment services fall under the protection of Title II because the plaintiffs in *Lane* did not seek direct employment, but sought output services provided by the State.[91]

2. Employment Services Do Not Fall Under the Purview of Title I Because Title I Applies Only to Employment, and Not to Services, Programs, and Activities of a Public Entity.

Title I, which encompasses employment by a covered agency, is not applicable to the administration of employment services by a state because Title I protects employment conditions.[92] As such, services, programs, and activities of governments are not included in Title I's employment protections, covering employment discrimination against people with disabilities with respect to personnel decisions and the terms, conditions, and privileges of employment.[93] Title II of the ADA, however, applies to and prevents discrimination on the basis of ability in all services, programs, and activities of a state or local government.[94] As Congress explicitly

86. *See* § 12131 (providing only two definitions for Title II: public entity and qualified individual with a disability).

87. *See id*. (leaving the implementation regulation to the DOJ).

88. *See id*. (omitting a limiting definition of the services that a public entity provides).

89. *See* Lane v. Kitzhaber, 283 F.R.D. 587, 592 (D. Or. 2012) (identifying the services that Oregon provides to persons with disabilities).

90. *See* Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1202 (D. Or. 2012) (stating that the plaintiffs did not attempt to become state employees, which would fall under Title I).

91. *See* § 12132 (prohibiting discrimination in all services, programs, and activities provided by public entities).

92. *See* § 12111 (excluding state and local governments and its services, programs, and activities from the aspects covered in the Act).

93. *See* § 12112(a).

94. *See* § 12132 (prohibiting discrimination by public entities in their services, programs, and activities, which are not defined by the ADA or its regulations and further providing that all services and programs provided by public entities are covered under the Act).

made services provided by a public entity the domain of Title II, employment services fall under its protections.[95] Because the issue in *Lane* related to the State of Oregon's endeavor to provide employment services for people with disabilities, Title II correctly governs Oregon's employment programs.[96]

Furthermore, Title I does not apply to DHS's employment services because DHS does not fall under the definition of a covered entity.[97] Under Title I, a covered entity is defined as an employer, employment agency, or labor organization.[98] However, DHS does not engage in the employment of individuals with disabilities.[99] Rather, DHS manages employment services for individuals with disabilities by identifying potential jobs and contracts with employment agencies and providing job training.[100] DHS does not employ individuals directly; instead, it connects individuals with employers or employment agencies that provide employment.[101] Because DHS does not constitute an employer, DHS does not qualify as a covered entity under Title I.[102] Thus, Title II governs DHS's employment services because DHS is a public entity providing a service to people with disabilities and does not provide direct employment.[103]

Moreover, the difference between Titles I and II in the definition of "qualified individual" demonstrates that Title II is the appropriate section in this case because Title II applies to a person's ability to receive

95. *See id*. (encompassing all services and programs provided by a public entity, including departments and agencies of state and local governments).

96. *See* Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1202 (D. Or. 2012) (rejecting the defense's *Zimmerman v. Oregon Department of Justice* argument because the plaintiffs were not seeking employment by the state, but rather wanted the employment services offered by the state to be provided in the community).

97. *See* § 12111 (including government and its agencies as employers, but not as service providers, in Title I).

98. *See id*. (defining an employer as a person or industry affecting commerce).

99. *See* Zimmerman v. Or. Dep't of Justice, 170 F.3d 1169, 1174 (9th Cir. 2001) (defining employment as an input function and services and programs as output functions of a government).

100. *See* Lane v. Kitzhaber, 283 F.R.D. 587, 592 (D. Or. 2012) (outlining the responsibilities of DHS in its management of employment services for people with disabilities).

101. *See id*. (developing, implementing, and overseeing employment programs that foster employment for persons with disabilities).

102. *See* § 12111 (omitting government service providers from the definition of employer).

103. *See* Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1202 (D. Or. 2012) (concluding that plaintiffs are seeking services, and not employment, from the State of Oregon).

services.[104] Title I provides that a qualified individual is one who can perform the essential functions of employment.[105] In contrast, Title II provides that a qualified individual is one who meets the eligibility requirement for receipt of services.[106] The first definition expresses a person's ability to work while the second definition describes an individual who meets the requirements to receive services or participate in programs.[107] Title II applies to DHS's employment services because its clients are qualified individuals seeking the receipt of services from the government, not direct or contractual employment with the DHS.[108] Accordingly, Title II protects the plaintiffs in *Lane* because they meet Oregon's requirements to receive services and are seeking those services in an integrated setting.[109]

3. Zimmerman*'s Rejection of the Integration Mandate on Employment Does Not Apply to Oregon's Employment Services Because the Plaintiffs in* Lane *Were Not Seeking State Employment.*

Zimmerman's holding that Title II is inapplicable to employment does not apply to Oregon's employment services because DHS was not providing employment to the plaintiffs in *Lane*.[110] *Zimmerman* addressed the applicability of Title II to direct employment, with the Ninth Circuit concluding that Congress expressly intended that Title II would not apply to such employment.[111] Creating a circuit split, the *Zimmerman* court held that both public and private employees, including government employees, are covered by Title I.[112] Consequently, it gave no weight to the DOJ's

104. *See Zimmerman*, 170 F.3d at 1177 (asserting that Title I's definition encompasses a person's ability to work while Title II incorporates a person's ability to receive services).

105. *See* § 12111(8) (stating that a qualified individual is one who, with or without reasonable accommodations, can perform essential employment functions).

106. *See* § 12131(2) (applying the qualified individual definition to the receipt of services, or the participation in programs or activities from a public entity).

107. *See Zimmerman*, 170 F.3d at 1176 (illustrating the difference between the two definitions in support of its conclusion that Title II does not apply to employment).

108. *See id.* at 1177 (highlighting that employment was omitted in Title II's definition of qualified individual).

109. *See* Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1202 (D. Or. 2012) (contending that Oregon failed to provide integrated services to its clients, including the plaintiffs).

110. *See id.* (noting that the plaintiffs did not seek employment with the state).

111. *See Zimmerman*, 170 F.3d at 1173 (reasoning that the Attorney General incorrectly determined that Title II applied to direct employment because Congress unambiguously wrote Title II so it would not apply to direct employment).

112. *See id.* at 1176 (stating that Congress did not intend for government employees to be covered under Title II).

integration mandate that found that Title II applies to employment.[113]

Zimmerman correctly interpreted the difference between Title I and Title II because the absence of references to employment in Title II reflects Congress's intent that employment discrimination against people with disabilities should be handled under Title I.[114] *Zimmerman* is inapplicable to *Lane*, however, because the plaintiffs in *Lane* were not seeking employment by the State,[115] which the Ninth Circuit considered an input function outside the purview of Title II.[116] Instead, the plaintiffs in *Lane* sought to receive integrated employment services from the State,[117] as services are an output function of a government and are protected under Title II.[118] Therefore, *Zimmerman* does not pertain to the plaintiffs' claims in *Lane* because Title II, not Title I, controls this case.[119]

Furthermore, *Zimmerman*'s interpretation of the DOJ's integration mandate does not properly address its inclusion of employment services in the mandate because the court limited its examination of the mandate to its application to direct employment.[120] The court focused on the word employment and Congress's intent for employment to apply only to Title I, but it ignored the final clause of the regulation, which limits its discrimination prohibition to services, programs, and activities of a public entity.[121] While Congress did intend for employment disputes to fall under the protections of Title I, Title II expressly covers services, programs, and activities of a public entity in its language.[122] *Zimmerman*'s narrow focus

---

113. *See id*. at 1173 (holding that the 1998 implementation of the integration regulation conflicted with the original intent of Congress).

114. *See id*. at 1176 (concluding that employment does not apply to Title II because Congress specifically omitted any language about employment from that section).

115. *See Lane*, 841 F. Supp. 2d at 1202 (concluding that the plaintiffs were not seeking to become state employees or to contend discrimination in hiring).

116. *See Zimmerman*, 170 F.3d at 1174 (noting that employment is not commonly considered a service, program, or activity).

117. *See Lane*, 841 F. Supp. 2d at 1202 (contending that the defendants failed to provide services to prepare clients for employment).

118. *See Zimmerman*, 170 F.3d at 1174 (presupposing that an output is generally available and that an individual seeks to receive the benefit of that output).

119. *See Lane*, 841 F. Supp. 2d at 1202 (concluding that *Zimmerman*'s holding is not a barrier to the application of Title II).

120. *See Zimmerman*, 170 F.3d at 1173 (citing the DOJ regulation, which reads, "no qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity").

121. *See id*. (focusing on the unambiguous intent of Congress that Title II does not apply to employment).

122. *See id*. (improperly concluding that the DOJ regulation holds no weight

on employment neglects to examine the role Title II plays in services, programs, and activities designed to enable employment of qualified individuals with disabilities.[123] Title II covers services, programs, and activities of a public entity that pertain to employment while Title I's statutory language does not encompass the services of public entities.[124] Therefore, Title II is the controlling statute in *Lane* because the plaintiffs sought the services of DHS, a public entity.[125]

B. The District Court in Lane v. Kitzhaber *Correctly Applied the ADA Integration Mandate Articulated in* Olmstead *Because the Integration Mandate Prohibits Discrimination in All Services Provided by Public Entities.*

The ADA integration mandate applies to Oregon's employment services because the mandate bans discrimination in the services or programs of a public entity.[126] Congress imposed the integration mandate on the states to ensure that they provide services to individuals with disabilities in the most integrated setting appropriate.[127] As established in *Zimmerman*, employment is considered an input function while services, programs, and activities of a public entity are considered an output function; output functions of public entities are covered under Title II while input functions of employment are covered under Title I.[128] Because the State of Oregon provides employment services and programs for persons with disabilities, all services and activities of Oregon's employment programs fall under the authority of Title II and its integration mandate.[129]

---

because Title II does not apply to employment).

123. *See id*. (limiting its discussion to how Title II has no application to employment).

124. *See id*. (finding that Title II does not apply to employment, while failing to address the final clause that limits the regulation to services, programs, and activities of a public entity).

125. *See* Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1202 (D. Or. 2012) (reiterating that the plaintiffs wanted integrated employment services from DHS, not direct employment).

126. *See* 42 U.S.C. § 12132 (2012) (prohibiting discrimination of qualified individuals in all services, programs, and activities provided by a public entity).

127. *See Lane*, 841 F. Supp. 2d at 1206 (rejecting the defendants' argument that the integration mandate is only enforceable for those persons with disabilities who were held against their will).

128. *See Zimmerman*, 170 F.3d. at 1174 (distinguishing input functions from output functions, and concluding that employment is an input function and services are an output function).

129. *See Lane*, 841 F. Supp. 2d at 1202 (concluding that *Zimmerman* is not a barrier to the plaintiffs' claims under Title II of the ADA because the services the plaintiffs

1. Congress Did Not Restrict Its Statutory Purpose to Institutionalization Because It Intended for the Integration Mandate to Apply to All Services, Activities, and Programs Provided by Public Entities.

Congress intended that the integration mandate apply to all services provided by a public entity because it did not limit its application to institutionalization.[130] Congress specifically recognizes unjustified segregation as a type of discrimination in Title II.[131] In the statutory findings of the ADA, Congress clearly states that persons with physical or mental disabilities have a right to participate fully in all aspects of society, yet this right is often denied because of discrimination.[132] Congress then addressed its concern regarding segregation in its findings, concluding that people with disabilities have been historically isolated by society, and that discrimination persists in many critical areas of life, including employment.[133] Accordingly, this inclusion of employment in the ADA's findings demonstrates Congress' intent to address broadly all forms of discrimination toward persons with disabilities, not just those in institutions.[134]

Congress' intent for the ADA is also manifested in its statutory purpose, which outlines the four objectives to be achieved by this legislation.[135] First, Congress declared that the ADA serves as a clear and broad mandate for the elimination of discrimination toward persons with disabilities.[136] Second, the ADA is designed to provide consistent enforceable standards to eliminate discrimination.[137] Congress has granted the DOJ the authority to

---

sought were not input functions of the government).

130. *See id*. at 1205 (implying that the lack of limiting language shows the integration mandate can be expanded beyond institutionalization).

131. *See* Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 600 (1999) (affirming Congress' conclusion that segregation because of disability is a form of discrimination).

132. *See* ADA, 42 U.S.C. § 12101 (2012) (declaring the right of persons with disabilities to be fully included in society).

133. *See id*. at § 12101(a)(2)-(3) (finding that people with disabilities have a right to participate fully in society, but have been prevented from doing so because of discrimination).

134. *See id*. at § 12101(b)(1)-(2) (articulating a clear mandate for the elimination of discrimination and establishing standards upon which to enforce the provisions of the ADA).

135. *See id*. at § 12101 (creating a standard of objectives to guide the application of the ADA).

136. *See id*. at § 12101(b)(1) (establishing the national mandate to eliminate discrimination further defined in 42 U.S.C. § 12132).

137. *See id*. at § 12101(b)(2) (establishing standards through the ADA to be enforced by the Federal government).

play a key role in the enforcement of these standards, and lastly, it invoked its own authority to address the major areas of discrimination faced by people with disabilities.[138] The unambiguously expressed intent of Congress must be given considerable weight.[139] Accordingly, the integration mandate should receive deference because Congress provides a clear expression of its intent through its statements in Section 12101, thus meeting the deference standards set forth in *Chevron*.[140] The integration mandate applies to employment services by public entities because Congress intended its mandate to apply to all services provided by a public entity.[141] Therefore, Title II's integration mandate applies to DHS's employment services for people with disabilities.[142]

2. The Plaintiffs in Lane *Should be Allowed to Choose to Participate in the Most Integrated Setting Possible Because the DOJ's Current Interpretation of the Integration Mandate Enforces This View.*

The current interpretation of the integration mandate by the DOJ should receive deference because no meaningful conflict exists between the original and current interpretation.[143] The initial interpretation of the integration mandate by the DOJ, addressed in *Olmstead*, did not specify sheltered workshops as a violation.[144] Rather, its regulations addressed

138. *See id*. at § 12101(b)(3)-(4) (granting authority to Congress to legislate the major areas of discrimination and to the Federal government to enforce the standards of the ADA and future disability rights legislation).

139. *See* Chevron, U.S.A., Inc. v. Nat'l Res. Def. Council, Inc., 467 U.S. 837, 843 (1984) (finding that a court must give effect to congressional intent when the precise question at issue is answered in legislation).

140. *See* Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 588 (1999) (asserting that DOJ regulations should be respected because Congress directed the Department to issue regulations to implement Title II).

141. *See id*. at 592 (noting the role of congressional intent and authorization in developing regulations).

142. *See* Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1205-06 (D. Or. 2012) (reiterating DHS's obligation to provide services in the most integrated setting appropriate).

143. *See id*. at 1202 (asserting that the integration mandate does not apply to the provision of employment services because the DOJ's original interpretation did not find that sheltered workshops violated the mandate); *see also* Nondiscrimination on the Basis of Disability in State and Local Government Services, Fed. Reg. §§ 8538-01, 8543 (proposed Feb 28, 1991) (to be codified at 28 C.F.R. pt. 35) (commenting that the mandate's original interpretation should not be construed to jeopardize the viability of sheltered workshops).

144. *See Lane*, 841 F. Supp. at 1202 (highlighting that specific language around employment was omitted in the original interpretation of the integration regulation).

general participation in integrated programs.[145] The *Olmstead* Court gave additional weight to the integration mandate when it held that the views of an agency implementing a statue constitute a body of expertise to which courts may look for guidance.[146] Adapting its interpretation in 2011 in light of *Olmstead*, and changing attitudes toward sheltered work, the DOJ has concluded that the integration mandate specifically applies to segregated employment settings.[147]

DHS improperly asserted in *Lane* that the new integration mandate was inconsistent with its original promulgation.[148] While the original interpretation's commentary did not specifically include sheltered workshops as a violation of the mandate, its language did assert that separate services should not be used to restrict a person's ability to participate in integrated services.[149] However, when the DOJ reinterpreted the mandate to prohibit the unjustified provision of services to persons with disabilities in non-residential settings, it specifically highlighted sheltered workshops.[150] The statement that issued the integration mandate referenced *Olmstead* and its requirement that states must provide treatment based in the community.[151]

Reconciling the original interpretation with the current interpretation, the reinterpretation of the mandate in light of *Olmstead* does not conflict with the original intent of the ADA or its regulations.[152] The *Olmstead* Court did not limit its judgment that its deference applies only to an original

---

145. *See* Nondiscrimination on the Basis of Disability in State and Local Government Services, 56 Fed. Reg. 8538-01, 8543 (proposed Feb. 28, 1991) (to be codified at at 28 C.F.R. pt. 35) (declaring that separate or special programs designed for persons with disabilities may not restrict their participation in integrated activities).

146. *See Olmstead*, 527 U.S. at 597-98 (observing that the well-reasoned views of an implementing agency warrant respect).

147. *See* 28 C.F.R. § 35.130(d) (2014) (expanding the integration mandate to apply specifically to segregated employment settings); *see also* CIVIL RIGHTS DIV., *supra* note 40 (interpreting the integration mandate to prohibit the unjustified provision of such services to persons with disabilities in segregated sheltered workshops).

148. *See Lane*, 841 F. Supp. at 1203 (noting that the Ninth Circuit has recently accorded deference to another portion of the 2011 DOJ Statement).

149. *See id*. (maintaining that participation should be a choice, not a requirement).

150. *See* CIVIL RIGHTS DIV., *supra* note 40 (stating that the most integrated setting allows persons with disabilities to live, work, and receive services in the community).

151. *See Olmstead*, 527 U.S. at 607 (holding that community-based treatment must be provided when the States' professionals determine such treatment is appropriate, the individual with a disability agrees to community treatment, and the State can reasonably accommodate that treatment).

152. *See Lane*, 841 F. Supp. at 1204 (finding no meaningful conflict between the original interpretation and the new interpretation).

interpretation of a regulation, which did not specifically list sheltered workshops as an area of concern.[153] Instead, courts and litigants may refer to the views of an agency for guidance.[154]

Building upon *Olmstead*, the *Lane* decision reflects the views of the original and the updated interpretation by concluding that participation in sheltered workshops must be a choice, not a requirement.[155] Both the original and current interpretations come to the same conclusion: a public entity cannot use separate programs designed to provide a benefit to persons with disabilities to restrict a person from participating in integrated activities.[156] The current interpretation takes this basic concept and specifically includes sheltered workshops as a segregated setting.[157] By including sheltered workshops in its new interpretation, the DOJ gives greater weight to the importance of the integration mandate and its requirement of integrated services.[158] To incorporate fully the holding of *Olmstead*, a public entity must commit to preventing the unnecessary isolation of people with disabilities in all segregated settings because the most integrated setting requirement creates an obligation to provide integrated services.[159] Therefore, the current interpretation of the integration mandate warrants deference because its intent reflects the purpose of *Olmstead*.[160] The current interpretation also applies to Oregon's employment services in *Lane* because the mandate's goal is to ensure services provided by a public entity are as integrated as appropriate.[161]

---

153. *See Olmstead*, 527 U.S. at 597 (concluding that the DOJ has consistently advocated that undue segregation is a form of discrimination).

154. *See id*. at 598 (observing that the well-reasoned views of an implementing agency constitute a body of experience and judgment).

155. *See Lane*, 841 F. Supp. at 1204 (finding no meaningful conflict between the original and new interpretations of the Justice Department).

156. *See id*. at 1203-04 (citing the original interpretation to show that the DOJ wanted to ensure individuals with disabilities had a choice in the type of services they could receive).

157. *See id*. at 1203 (finding that appropriate remedies included supported employment services).

158. *See id*. (declaring that individuals with disabilities should be provided the opportunity to interact with non-disabled persons to the fullest extent possible).

159. *See id*. at 1205 (highlighting the importance of the most integrated setting requirement in determining the services and programs provided by public entities).

160. *See id*. (allowing the original and current interpretation to receive equal deference in the *Lane* court's decision).

161. *See id*. at 1204 (concluding that no meaningful conflict exists between the original and the current interpretation of the integration mandate).

3. The Integration Mandate, as Interpreted by the Olmstead *Court, is Not Limited to the Risk of Residential Institutionalization and Includes Employment-Related Programs and Services.*

The risk of institutionalization includes segregation in an employment setting because the goal of employment services is to prevent the unjustified segregation of persons with disabilities.[162] The *Olmstead* Court interpreted Title II of the ADA to require services, programs, and activities provided by public entities to be delivered in the most integrated setting, appropriate to the needs of persons with disabilities.[163] The *Olmstead* Court qualified its holding that unjustified isolation of persons with disabilities is a form of discrimination by placing limits on its application.[164] The opinion itself specifically addressed unnecessary institutionalization of persons with disabilities.[165] The Court did not limit, however, the application of the integration mandate to residential institutionalization; rather it used this mandate to interpret how it applies to institutionalization.[166] The Court did not differentiate what types of segregation qualify as discrimination, but instead it applied the concept that unjustified segregation is generally discriminatory to a specific area, residential institutions.[167]

While *Olmstead* primarily addresses the issues of institutions, its affirmation of the integration mandate can be applied to a variety of areas regarding disability discrimination because the Court did not limit the concept of institutionalization to only residential settings.[168] The ADA's

---

162. *See id*. at 1205 (concluding that the risk of institutionalization addressed in *Olmstead* includes segregation in an employment setting).

163. *See* Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 592 (1999) (interpreting Title II as holding that a public entity must administer its programs in the most integrated setting appropriate).

164. *See id*. at 587 (holding that the proscription of discrimination may require placement of persons in community-based treatment if the State's treatment professionals approve the placement, the person in question does not oppose the placement, and the placement can be reasonably accommodated by the State).

165. *See id*. (presenting the issue as whether the prohibition of discrimination may require the placement of individuals with disabilities in the community over an institution).

166. *See id*. at 600 (recognizing that isolation reflects an assumption that those who are segregated cannot handle and benefit from participation in community life and that confinement diminishes the everyday life activities of individuals, including work options and economic independence).

167. *See id*. at 596-97 (applying its finding that unjustified segregation is a form of discrimination to persons who are institutionalized).

168. *See id*. at 599 (emphasizing that services and programs should be administered in a setting that is the least restrictive to a person's liberty).

mandate in Section 12101 is a confirmation of Congress' intent to eliminate discrimination that continues to exist in employment.[169] The *Olmstead* Court affirmed Congress' intentions and held that unjustified segregation is a form of discrimination.[170] While the case itself addressed institutionalization, the Court did not limit its findings of isolation as discrimination to any one area of life.[171]

Institutionalization addresses a broad range of areas that extend beyond residential housing.[172] Sheltered workshops, like institutions, are designed to provide services to persons with disabilities in a segregated setting.[173] Consequently, *Olmstead*'s broad language, which does not limit the definition of institutionalization, demonstrates that the integration mandate was intended to apply to the risk of segregation in a variety of settings, including employment. It creates an obligation for states to provide services in the most integrated setting.[174] Appropriately, no basis in statutory or regulatory authority exists to limit the integration mandate to persons who risk institutionalization.[175]

The same criticisms levied against institutionalization in *Olmstead* apply when public entities promote sheltered workshops as employment offerings for qualified persons with disabilities.[176] *Olmstead* found that unnecessary institutionalization maintains the assumption that persons with disabilities are not capable of participating in the community.[177] Further, *Olmstead* concludes that confinement in an institution diminishes the available

---

169. *See* Toyota Motor Mfg., Ky. v. Williams, 534 U.S. 184, 197 (2002) (noting that the intent of Congress is confirmed by § 12101, which lays out the legislative findings and purposes that inspired the Act).

170. *See Olmstead*, 527 U.S. at 600 (finding that Congress explicitly identified unjustified segregation as a form of discrimination against people with disabilities).

171. *See id*. at 597 (holding that unjustified isolation is properly regarded as discrimination when based on disability).

172. *See* Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1205 (D. Or. 2012) (expanding institutionalization to include employment services).

173. *See id*. at 1201 (defining a sheltered workshop as a segregated employment setting where people with disabilities work separately from others).

174. *See id*. at 1205 (concluding that the lack of authority outside of residential segregation cases does not necessarily lead to the conclusion that the integration mandate applies only in a residential context).

175. *See id*. at 1206 (finding that the allegations sufficiently assert that the defendants failed to meet their obligation under the integration mandate).

176. *See id*. at 1205 (concluding that the criticisms asserted by the Supreme Court in *Olmstead* are noteworthy and applicable in other areas of life).

177. *See* Olmstead v. L.C. ex rel. Zimring, 527 U.S. 597, 600-01 (1999) (recognizing that the unjustified isolation of individuals perpetuates the stereotype that persons with disabilities are unable to participate in the community).

choices to an individual with disabilities, including work options and economic independence.[178]

The intent of the claims in *Lane* and *Olmstead* illustrate differences in the two cases.[179] The plaintiffs in *Olmstead* petitioned the Court to receive the community-based services approved by their treatment team.[180] In contrast, the plaintiffs in *Lane* seek to ensure that desegregated employment services are provided to prevent unnecessary isolation.[181] While the settings differ between *Olmstead* and *Lane*, the goal of both cases is the same: to prevent the unjustified isolation of persons with disabilities.[182]

While the Oregon government in *Lane* asserted that the risk of segregation applied only to residential institutionalization based on a handful of decisions, the dearth of cases concerning the integration mandate should be viewed in a different context.[183] A lack of authority does not automatically lead to the conclusion that the integration mandate is inapplicable to plaintiffs' claims.[184] In fact, the lack of limiting language in the ADA's mandate and the corresponding integration mandate suggests the opposite.[185]

Lastly, the integration mandate applies to employment settings even though the plaintiffs are not forced to work in the same way people are forced into institutions.[186] This would inappropriately shift the burden from the defendant's obligation to provide integrated services to the

178. *See id*. (finding that institutional confinement diminishes the everyday lives of individuals with disabilities).

179. *See Lane*, 841 F. Supp. 2d at 1205 (concluding that the plaintiffs' claims are notably different than *Olmstead* because the intent is not to remove a person from confinement).

180. *See id*. (distinguishing *Olmstead* as seeking to restore services to prevent confinement).

181. *See id*. at 1207 (remarking that the plaintiffs are not seeking a guarantee of services by the State).

182. *See id*. at 1205 (asserting that the end goal of both *Olmstead* and the present case are the same).

183. *See id*. (noting that the defendants correctly found that no cases apply the integration to a context other than residential institution).

184. *See id*. (concluding that a lack of authority does not lead to the conclusion that the integration mandate is inapplicable to plaintiffs' claims).

185. *See id*. (noting the specific criticisms of institutionalization in *Olmstead* also apply to the context of employment).

186. *See id*. (applying the integration mandate to employment services because there is no statutory or regulatory basis that the integration mandate only applies to the risk of residential institutionalization).

plaintiffs' choices of services.[187] The inquiry in this case is whether the defendant has met its obligation to provide services in the most integrated setting appropriate to persons with disabilities and not whether a plaintiff's choice to work part-time eliminates the risk of institutionalization.[188] Because the State is unnecessarily segregating persons with disabilities by providing no service alternatives to sheltered workshops, it fails to meet the most integrated setting obligation mandated by the integration mandate.[189] The burden remains on the State to provide a choice of integrated employment services to individuals with disabilities; the plaintiff does not need to prove that she will face involuntary institutionalization because of the services.[190] DHS has failed to meet its obligation under the integration mandate because it relies heavily on sheltered workshops as appropriate employment services for individuals with disabilities and has failed to incorporate and fund new integrated services.[191]

C. The State of Oregon Impermissibly Discriminated Against the Plaintiffs in Lane *Because It Failed to Incorporate the Principles of* Olmstead *by Relying on Segregated Employment Settings.*

The State of Oregon failed to embrace the holding in *Olmstead* because the State continued to rely on sheltered workshops and limited the integrated employment opportunities for qualified individuals with disabilities.[192] *Olmstead* concludes that the prohibition of discrimination toward people with disabilities may require a public entity to place qualified individuals with disabilities in a community setting.[193] *Olmstead* held that unjustified isolation is considered discrimination when based on disability.[194] The Court then expanded this holding, recognizing a state's

187. *See id.* at 1206 (reiterating the State's obligation to administer its services and programs in the most integrated setting appropriate to the needs of an individual with disabilities).

188. *See id.* (rejecting the defendant's argument that plaintiffs are not at risk of institutionalization because they do not work against their will).

189. *See id.* (failing to develop and fund integrated employment services, the State continues to rely on sheltered workshops as a public method of employment).

190. *See id.* (placing the burden on DHS to show that employment is in the most integrated setting).

191. *See id.* (concluding that the State has failed to meet their obligation under the integration mandate to provide integrated employment choices).

192. *See id.*

193. *See* Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 587 (1999) (holding that states may be required to place qualified individuals in community settings rather than institutions).

194. *See id.* at 597 (identifying unjustified segregation as a form of discrimination under the ADA).

need to maintain a range of facilities and its obligation to distribute services evenly.[195] In issuing a remand to the district court, the Court instructed the lower court to consider the available resources of the State, including the cost of providing community-based care and the State's obligation to administer a range of services.[196] Lastly, the Court concluded that states are required to provide community-based treatment under Title II of the ADA when the state's treatment officials deem it appropriate, the person with a disability does not oppose treatment, and the placement can be reasonably accommodated.[197]

Olmstead clearly establishes that states may not unjustly segregate a person based on a disability.[198] The State of Oregon is bound by this principle in its provision of employment services to qualified individuals with disabilities.[199] Oregon made a commitment to integrated employment services when it established its Employment First Policy, designed to expand access to integrated employment services.[200] Oregon's commitment to its Employment First Policy demonstrates that the State has the available resources and a plan to create a range of services for persons with disabilities.[201] DHS's continued reliance on segregated workshops violates Title II because the State is unjustly segregating persons with disabilities who could be served in the community.[202]

The plaintiffs clearly expressed their intentions to receive employment services that would prepare them for integrated employment.[203] The State of Oregon did not dispute that the plaintiffs were capable of participating in

---

195. *See id*. (noting the financial and logistical limitations placed upon states concerning services for persons with disabilities).

196. *See id*. (expanding the Eleventh Circuit's conclusion that the state must determine whether the additional expenditures to place L.C. and E.W. in the community would be unreasonable).

197. *See id*. at 607 (taking into account the available resources of a state and the needs of persons with disabilities under the state's jurisdiction).

198. *See id*. at 597 (regarding unjustified isolation as discrimination based on disability).

199. *See* Lane v. Kitzhaber, 841 F. Supp. 2d 1199, 1206 (D. Or. 2012) (asserting that the State of Oregon failed to meet its obligations under the integration mandate).

200. *See id*. at 1201 (finding that DHS has developed, adopted, and promoted its Employment First Policy and intends to implement the policy at the community level).

201. *See id*. at 1206 (noting that DHS has an obligation to administer its services and programs in the most integrated setting appropriate).

202. *See Olmstead*, 527 U.S. at 597 (stating that the prohibition of discrimination may require states to provide treatment in community settings).

203. *See Lane*, 841 F. Supp. 2d at 1201 (recalling the plaintiffs' preference to work in an integrated employment setting).

integrated employment.[204] DHS should provide the plaintiffs in *Lane* with integrated employment services because the Department does not assert that the plaintiffs are not capable of participating in integrated employment, and the plaintiffs themselves desire integrated employment services.[205]

The goals of *Olmstead* and the plaintiffs in *Lane* are the same: to prevent the unjustified institutional segregation of people with disabilities.[206] The State of Oregon has an obligation to provide its employment services in the most integrated setting appropriate to the needs of individuals with disabilities.[207] However, the state cannot meet this obligation by continuing its reliance on segregated sheltered workshops, a type of isolated institution for people with disabilities.[208] In order to comply with both the integration mandate and *Olmstead*, the State of Oregon should provide a range of services that includes integrated employment services to its clients with disabilities.[209] The court in *Lane* correctly applied *Olmstead* to the plaintiffs' case because it enforced the obligation of the integration mandate on DHS.[210]

The *Lane* Court properly applied the integration mandate to the plaintiffs' case because it held that Title II does apply to employment services provided by a public entity.[211] While Title I covers direct employment, *Zimmerman* is not a barrier to the plaintiffs' claims because the plaintiffs are not seeking employment from the State.[212] The court concluded that the DOJ's current interpretation of the integration mandate,

---

204. *See id*. at 1202 (failing to contest that the plaintiffs are not qualified to receive integrated employment services in its motion to dismiss).

205. *See id*. at 1201-02 (meeting the requirements in *Olmstead* that the treatment be approved and the client desire placement in the community).

206. *See id*. at 1205 (noting the difference in goals between *Olmstead*, which addressed residential institutions, and *Lane*, which addressed employment institutions).

207. *See id*. at 1206 (restating the obligation of DHS under the integration mandate).

208. *See id*. (alleging that plaintiffs have been unnecessarily segregated due to DHS's overreliance on sheltered workshops and its failure to support integrated employment services).

209. *See, e.g*., 42 U.S.C. § 12132 (2012) (requiring services, programs, and activities to be provided in the most integrated setting appropriate to the needs of persons with disabilities).

210. *See Lane*, 841 F. Supp. 2d at 1206 (concluding that the risk of institutionalization applies in an employment services setting, bringing this service under the jurisdiction of Title II's integration mandate).

211. *See id*. at 1202 (concluding that *Zimmerman* is not a barrier to the plaintiffs' Title II claims).

212. *See id*. (noting that the plaintiffs contend that the State has failed to provide them with integrated employment services).

which incorporates employment services, receives deference.[213] People with disabilities must have a choice to participate in sheltered workshops or integrated employment settings.[214] Furthermore, the court held that the risk of institutionalization in *Olmstead* applies to segregation in employment settings because the integration mandate requires states to prevent the unnecessary isolation of persons with disabilities.[215] Lastly, DHS failed to meet its obligation under the integration mandate because it over-relied on sheltered workshops and failed to develop comprehensive integrated employment services for its clients with disabilities.[216]

IV. POLICY SUGGESTIONS AND IMPLICATIONS

A. States Should Strive to Create Integrated Employment Services Because Integrated Employment Encourages the Development of Skills and Independent Living for People with Disabilities.

Sheltered workshops and segregated employment conflict with the ADA principle of encouraging people with disabilities to work and live independently in their communities.[217] These workshops mimic the same warehousing mentality manifested in residential institutions and do not encourage the development of skills or inclusion in the community.[218] Integrated employment services, however, encourage people with disabilities to develop the skills to obtain and retain employment.[219]

Many people with disabilities desire to work in an integrated employment setting because they see integrated employment as a real job in a community setting that provides them with the opportunity to work with employees without a disability and earn at least minimum wage.[220]

---

213. *See id*. at 1204 (concluding that, when appropriate, a more integrated setting is required by the integration mandate).

214. *See id*. (stating that sheltered workshops cannot be a requirement).

215. *See id*. at 1205 (finding that *Olmstead* and the plaintiffs desired the same goal: to eliminate unjustified segregation).

216. *See id*. at 1206 (placing the burden of obligation on the State to provide the most integrated employment services meets the standards of the integration mandate).

217. *See* NAT'L DISABILITY RIGHTS NETWORK, *supra* note 3, at 8 (asserting that sheltered work keeps individuals with disabilities marginalized from society and encourages abuse and neglect).

218. *See id*. (arguing that sheltered workshops violate statutes designed to discourage unnecessary institutionalization of people with disabilities).

219. *See id*. at 8-9 (contrasting integrated employment with sheltered workshops, which often teaches employees skills that are not relevant or transferrable to a traditional working environment).

220. *See Lane*, 841 F. Supp. 2d at 1201 (citing the definition of integrated employment as perceived by the eight plaintiffs with developmental and intellectual

Employees with disabilities in integrated employment settings are normally paid competitive wages for their work, in contrast with sheltered workshop employees who usually earn far less than minimum wage.[221] Individuals who participate in integrated employment also demonstrate increases in social and self-care skills over time.[222] People with disabilities can and should participate in all areas of the workforce, and many thrive when they fully participate in their communities.[223]

Participation in sheltered workshops must be a choice and not a requirement for people with disabilities.[224] By providing the option of integrated employment among employment services, states encourage a person-centered process that reflects the positive outcomes of integrated employment.[225] However, integrated employment services may not be appropriate for some people with disabilities, and those individuals should be able to access sheltered workshops as an alternative to competitive work.[226] Some people with disabilities prefer the consistent structure of a sheltered workshop and the stability of guaranteed employment.[227] The elimination of these workshops should not be the goal of integrated employment advocates because some people with disabilities may prefer to be in a segregated setting, believing it to be protective of their interests.[228]

---

disabilities in *Lane*).

221. *See* NAT'L DISABILITY RIGHTS NETWORK, *supra* note 3, at 29 (finding that workers in integrated employment settings often earn two to three times more than what a sheltered workshop employee earns).

222. *See* Paul Lerman et al., *Longitudinal Changes in Adaptive Behavior of Movers and Stayers*, 43 MENTAL RETARDATION 1, at 41 (2005) (comparing people who moved from institutional settings to those still in institutions).

223. *See* NAT'L DISABILITY RIGHTS NETWORK, *supra* note 3, at ii (arguing that sheltered workshops continue to exist because of outdated stereotypes of people with disabilities).

224. *See Lane*, 841 F. Supp. 2d at 1204 (asserting that in most instances of employment, a more integrated setting is appropriate, and thus required by the integration mandate).

225. *See id*. at 1201 (highlighting the data which shows that integrated employment has better outcomes than segregated employment).

226. *See* Alberto Migliore, *Sheltered Workshops*, INT'L ENCYCLOPEDIA OF REHABILITATION (Nov. 15, 2013), http://cirrie.buffalo.edu/encyclopedia/en/article/136/ (framing sheltered workshops as safe alternatives to traditional employment because the work is less demanding, and people with disabilities develop social skills, and receive structure).

227. *See id*. (arguing that not all people can meet the demands of traditional employment and some lack the complex skill required by integrated employment).

228. *See id*. (stating that some people with disabilities prefer a segregated employment setting because it fosters social interaction with other people with disabilities and provides them with a feeling of security).

Segregated employment should be a choice, not a requirement.[229] In order to allow people with disabilities to have a choice, states should encourage the development of supported employment services that expand access to integrated employment for people with disabilities who prefer an integrated environment.[230] When an integrated setting is appropriate, states must strive to provide supported employment services that satisfy the integration mandate because the ADA requires public entities to adhere to the integration mandate.[231]

V. CONCLUSION

The Americans with Disabilities Act is a critical piece of legislation that provides a statutory prohibition of discrimination against people with disabilities, extending broad protections that touch all aspects of an individual with a disability's life.[232] The integration mandate, which requires the provision of services in the most integrated setting appropriate, signals a new era for persons with disabilities where these individuals can be fully embraced and included by their communities.[233] *Olmstead* pushed this ideal to a new level of importance, firmly declaring that all unnecessary segregation based on disability is a form of discrimination.[234]

The *Lane* court recognized the importance of these protections in the area of employment services and established a model to which other courts can and should look.[235] Title II does not limit its definition of services in its language.[236] Accordingly, courts should not limit the application of the

229. *See Lane*, 841 F. Supp. 2d at 1204 (remarking that the plaintiffs do not allege that sheltered workshops should be eliminated because it is illegal, but because an integrated setting may be more appropriate).

230. *See id*. at 1201 (noting that the goal of Oregon's Employment First Policy is to expand the access of integrated employment services to people with intellectual and developmental disabilities).

231. *See id*. at 1204 (recalling the plaintiffs' argument that the integration mandate requires services to be offered in a more integrated setting when appropriate for that individual).

232. *See* 42 U.S.C. § 12101 (2012) (establishing the need to combat the continued discrimination of people with disabilities in all areas of life, including employment).

233. *See* 28 C.F.R. § 35.130(d) (2014) (mandating that a public entity shall administer services in the most integrated setting appropriate for persons with disabilities).

234. *See* Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 597 (1999) (holding that unjustified isolation is properly regarded as discrimination toward persons with disabilities).

235. *See Lane*, 841 F. Supp. 2d at 1205 (interpreting the ADA and *Olmstead* to incorporate employment into the risk of institutionalization).

236. *See* 42 U.S.C. § 12132 (noting the lack of limiting language in Title II's

ADA to the risk of residential institutionalization.[237] Segregated employment settings are a form of institutionalization that prevents people with disabilities from full inclusion in their communities.[238] The goal of the ADA is to allow all people to participate in and receive the benefits of their community; *Lane* affirms the importance of this purpose by extending the risk of isolation to those in sheltered workshops.[239] As this issue continues through the justice system, both *Olmstead* and *Lane* should and must guide the court to continue the elimination of unnecessary isolation of individuals with disabilities.[240] As a nation, we must strive for the inclusion of all people; *Lane* provides an important starting point for the progression of this ideal for people with disabilities.[241]

---

definition of services, thus covering all services, including those based on employment).

237. *See* CIVIL RIGHTS DIV., *supra* note 40 (expanding the definition of institutionalization to sheltered workshops).

238. *See Lane*, 841 F. Supp. 2d at 1205-06 (illustrating a risk of isolation in sheltered workshops and residential institutions).

239. *See id*. (promoting appropriate inclusion for persons with disabilities in the economic community).

240. *See* 42 U.S.C. § 12101 (laying the foundation for the elimination of unnecessary segregation for people with disabilities).

241. *See Lane*, 841 F. Supp. 2d at 1202-07 (establishing a basis that states must provide integrated employment services as appropriate and cannot rely primarily on sheltered workshops).