IN THE

Supreme Court of the United States

October Term, 1979.

Nos. 79-1404, 79-1408, 79-1415, 79-1489.

PENNHURST STATE SCHOOL AND HOSPITAL, et al.,
Petitioners,

v.

TERRI LEE HALDERMAN, et al.,
PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al., and
UNITED STATES OF AMERICA,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF IN OPPOSITION OF PARC, et al.

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Respondents, the Pennsylvania Association for Retarded Citizens, Jo Suzanne Moskowitz, Robert Hight, David Preusch and Charles DiNolfi, who are also conditional cross-petitioners in No. 79-1414, respectfully request that this Court deny the four petitions for writ of certiorari seeking review of the judgment and opinion of the Third Circuit in this case.

OPINIONS BELOW

The opinions of the Court of Appeals, *en banc*, not yet reported, are set forth in state and county petitioners' Joint Appendix at 89a-196a.

The opinion, judgment and orders of the District Court for the Eastern District of Pennsylvania, per Judge Raymond J. Broderick, which were before the Court of Appeals are reported at 446 F. Supp. 1295 (1977) and are set forth at 6a-88a.

JURISDICTION

The judgment of the Court of Appeals was entered on December 13, 1979. The four petitions and respondents' conditional cross-petition would invoke this Court's jurisdiction under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED

Counter-Statement of Petitioners' Questions

1. Whether the Court of Appeals' application of the Pennsylvania statute, consonant with all state court decisions construing the statute, does not support entirely and independently the judgment below.

2. Whether 42 U. S. C. § 1983 does not create a private cause of action against public defendants to enforce Section III of the Developmentally Disabled Assistance and Bill of Rights Act, 42 U. S. C. § 6010, a law providing for the equal rights of retarded persons, independently of whether a private cause arises under § 6010 itself.

3. Whether 42 U. S. C. § 6010 does not prohibit a state which has undertaken to provide services, including residential services, to retarded people from providing inappropriate and injurious services which defeat the developmental potential of retarded people and require that the services provided by the state be appropriate to the needs of retarded people.

4. Whether the remedies granted below, including the individual determinations, were not necessary and proper to overcome the findings made by the district court and affirmed by the Court of Appeals of defendants' violations.

5. Whether the United States was not properly permitted to intervene as a party plaintiff.

Conditional Cross-Questions

6. Whether 42 U. S. C. § 6010 prohibits further admissions to Pennhurst.

7. Whether 42 U. S. C. § 6010 prohibits the use of Pennhurst as a residence for retarded people and requires thereby that Pennhurst be phased out.

STATUTORY PROVISIONS INVOLVED

Pennsylvania's Act of October 20, 1966, is codified at Pa. Stat. Ann., Title 50, §§ 1401 *et seq.* (Purdon 1969). In pertinent part, the Pennsylvania statute provides:

> ARTICLE II. RESPONSIBILITIES OF THE STATE
>
> *§ 4201. General powers and duties of the department*
>
> The Department shall have power, and its duty shall be:
>
> (1) To assure within the State the availability and equitable provision of adequate mental health and mental retardation services for all persons who

need them, regardless of religion, race, color, national origin, settlement, residence, or economic or social status. 225a.

Section 111, the Bill of Rights provision, of the Developmentally Disabled Assistance and Bill of Rights Act, 42 U. S. C. § 6010, is set forth in full at 200a-202a. In most pertinent part, § 6010 provides:

> Congress makes the following findings respecting the rights of persons with developmental disabilities:
>
> (1) Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.
>
> (2) The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty.
>
> (3) The Federal Government and the State both have an obligation to assure that public funds are not provided to any institutional or other residential program for persons with developmental disabilities that—
>
> > (A) does not provide treatment, services, and habilitation which is appropriate to the needs of such persons; . . .
>
> * * *
>
> The rights of persons with developmental disabilities described in findings made in this section are in addition to any constitutional or other rights otherwise afforded to all persons.

STATEMENT OF THE CASE

This action began on May 30, 1974. Eight retarded people, residents of Pennhurst, and the Parents and Family Association of Pennhurst were the original plaintiffs. The United States was granted leave to intervene as a party plaintiff on January 17, 1975. Four additional retarded people, residents of Pennhurst, and the Pennsylvania Association for Retarded Citizens intervened as plaintiffs on November 12, 1975.[1]

By amended complaint, filed January 8, 1976, claims under state statute, under Section 504 of the Rehabilitation Act of 1973, 29 U. S. C. § 794 and under the newly enacted Bill of Rights provision of the Developmentally Disabled Assistance and Bill of Rights Act of 1975 were added to the original Constitutional claims under the First, Eighth, Ninth, and Fourteenth Amendments.

On November 26, 1976, the plaintiff class was certified and the several motions of defendant state and county officials to dismiss were denied. On February 4, 1977, the action was bifurcated for trial.[2] Jurisdiction arose in

1. The Pennsylvania Association for Retarded Citizens was founded in 1950 and at the time of trial had "chapters in fifty-seven of Pennsylvania's sixty-seven counties, its purpose being to advance the interest of retarded persons in Pennsylvania." 18a. Its nearly 20,000 members, most of them parents and family of retarded people and retarded people themselves, currently organized into sixty-one county chapters, "include parents, other relatives, guardians and next friends of persons residing in Pennhurst and those in jeopardy of residing there." 18a. At the time it joined this action, the Association had devoted more than two decades in the executive, legislative and other forums, recounted in the trial record, to the effort to change the conditions of Pennhurst. See *PARC v. Commonwealth*, 343 F. Supp. 279 (E. D. Pa. 1972).

2. In fact, the action was trifurcated: the first phase to be limited solely to the issue of liability, the second, to determine appropriate injunctive relief, if any, and the third to determine money damages. After trial of liability, however, the district court denied the original plaintiffs' claim for damages. 73a-75a.

the district court under 28 U. S. C. § 1343, the action being one to redress the deprivation by state and county officials of rights secured, inter alia, by 42 U. S. C. §§ 1983 and 6010 [3] and by the Constitution, as well as under 28 U. S. C. § 1331. Jurisdiction of the state law ground arose by virtue of pendent jurisdiction.[4]

After a trial of thirty-two days, from April 17, 1977 until June 13, 1977, during which Judge Raymond J. Broderick heard the testimony of eighty witnesses, of whom half were offered by plaintiffs and half by defendants,[5] and received into evidence 27 depositions of defendants and their managing agents, 108 photographs, a three-hour videotape presented by defendants, and 288 documentary exhibits, the district court on December 23, 1977 entered judgment for plaintiffs. By failing to provide such minimally adequate education, training and care as will afford a reasonable opportunity to retarded people to acquire and to maintain the life skills necessary to cope as effectively as their capacities permit, the district court held, defendants violated the constitutional and statutory rights of the retarded at Pennhurst. The Court's judgment rested alternatively upon the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment, the Eighth Amendment proscription of Cruel and Unusual Punishment, upon federal statute law, Section 504 of the Rehabilitation Act of 1973, and upon state statute.[6] On

3. See 9a, n. 2.

4. No party defendant in this case has ever sought abstention, either in the district court or before the Court of Appeals. None seek it here.

5. Plaintiffs' witnesses included three experts who had been retained by defendants to conduct a three month study of Pennhurst, eleven other experts and 26 fact witnesses, including 11 parents of Pennhurst residents and 3 retarded people who had formerly resided at Pennhurst.

6. Although the Developmentally Disabled Act ground had been raised by amended complaint, briefed on preliminary injunction and specified as at issue in the pre-trial order, the district court did not rely upon it. 9a, n. 2. As of the date of the trial court opinion, that Act had been mentioned in dicta in one case, but no case had been decided on the Developmentally Disabled Act ground. Chief Judge Pettine's decision in *Naughton v. Bevilacqua*, 458 F. Supp. 610 (D. R. I. 1978) was the first holding invoking the Bill of Rights provision of the Developmentally Disabled Act.

March 17, 1978, after two hearings on remedy, the district court found state defendants' remedial plan to be "vague and indefinite," 78a, rejected it, and entered a 41 paragraph remedial order (79a-88a).

The Court of Appeals, having reheard the case *en banc* on its own motion, did not reach the constitutional grounds (108a, 131a) or Section 504 (140a).[7] Rather, concurring in the district court's extensive findings of fact (103a-108a), the Court rested its judgment upon the Developmentally Disabled Act and upon a Pennsylvania statute. The Court of Appeals *en banc* "affirmed in all respects" the judgment of the trial court "[w]ith the exception of the order to find employment for all Pennhurst employees, the order directing the eventual closing of Pennhurst, and the order banning all future admissions to Pennhurst." [8] (161a).

The Court found both in the Developmentally Disabled Act and in the state statute no ban upon large institutions as such but "a presumption in favor of placing [retarded] individuals in C[ommunity] L[iving] A[rrangement]s" (159a) and "remanded for individual determinations by the court or by the Special Master as to appropriateness of an improved Pennhurst for each such

7. Circuit Judges Gibbons, Rosenn, Weis, Garth, Higginbotham and Sloviter joined in the Court's judgment and opinion. Chief Judge Seitz, Judges Aldisert and Hunter dissented. Judge Adams did not participate.

8. The last two of the three exceptions are the subject of respondent's Conditional Cross-Petition.

patient" (156a). The standard under both statutes, the Court held, is:

> "Only where . . . an improved Pennhurst is the only appropriate place for individual patients should it be used. For all other[s], CLAs must be provided." (160a)

The dissent agreed "with the majority that the conditions at Pennhurst revealed in this record fall below a statutory or constitutional threshold of decency so as to merit judicial intervention." (162a) and otherwise concurred in the district court's findings (163a, 172a), but disagreed as to remedy.[9]

This case has been before this Court twice before. Once, before the trial below was begun, state defendants sought certiorari here to review the Court of Appeals denial of a writ of mandamus or prohibition against the district court judge to prohibit the continued participation of the United States in the action. This Court without dissent denied certiorari. *Beal v. Broderick*, 431 U. S. 933 (1977). A second time, Philadelphia defendants sought a stay of certain further orders below. Mr. Justice Brennan denied the stay; Philadelphia defendants renewed the application before the entire Court; the Court requested responses to the motion from all parties, and on October 1, 1979, without dissent, denied Philadelphia's application. *Pennhurst State School and Hospital, et al. v. Terri Lee Halderman, et al.*, 100 S. Ct. 28 (1979).

9. The Pennhurst Parents-Staff Association, a petitioner here, sought to intervene in the district court after judgment and after entry of the orders. The District Court denied intervention in an opinion reported at 451 F. Supp. 233 (E. D. Pa. 1978) and the Court of Appeals *en banc* in a companion case unanimously affirmed the denial. The Court of Appeals' judgment and opinion in that case (C. A. No. 78-1999) was filed December 13, 1979 and the Pennhurst Association has not sought certiorari to review that judgment. *United Auto Workers v. Scofield*, 382 U. S. 205, 209.

The Court of Appeals granted the Pennhurst Association leave to file a brief amicus and to argue the merits of this case-in-chief, both before the panel and before the Court *en banc*, and in its opinion in this case considered and rejected their arguments on the merits. (144a-147a) On March 4, 1979, when no petition had yet been filed in this Court by state or county defendants and upon the Pennhurst Association's representation that it was uncertain whether any state or county defendant would file a petition, the Court of Appeals granted the Pennhurst Association "leave to intervene for purposes of filing a petition for certiorari to the United States Supreme Court".

SUMMARY OF ARGUMENT

Certiorari should be denied because the opinion of the Court of Appeals carefully and faithfully follows the Congressional and state legislative policy to correct the historic and continuing segregation of retarded people by finding a presumption in favor of community based facilities. Because the Bill of Rights provision of the Developmentally Disabled Assistance and Bill of Rights Act explicitly requires services to retarded persons in the least restrictive setting this case does not raise issues of constitutional interpretation or of judicial intrusion.

I. Pennhurst was created in 1913 for the express purpose of the segregation of retarded people. The lower courts found at Pennhurst, despite relatively high expenditures of money, precisely the conditions Congress has condemned—conditions of deprivation and regression, conditions of acute and chronic abuse of residents. Even the dissenting judges below had "no hesitation in agreeing that the federal judiciary should take the necessary steps to eliminate those conditions. . . ." No question of clinical treatment arises here; retarded people are not mentally ill but require education, training and care.

II. The decision below independently rested on a Pennsylvania statute enacted to "atone . . . for the wrongs we have done over the centuries", which imposes upon Pennsylvania officials the duty to provide community services to retarded Pennsylvanians. Many Pennsylvania courts have applied the Pennsylvania statute to so require and none have held, or even suggested, to the contrary. When a decision rests independently and alternatively on state grounds, this Court should follow its general policy of refusing review.

III. The Congressional enactment is a law providing for equal rights and satisfies the requirements of the several opinions in *Chapman v. Houston Welfare Rights Organization,* 441 U. S. 600 (1979) for enforcement by a private cause of action under § 1983. The Congress clearly meant the Bill of Rights provision at issue here to be judicially enforced.

IV. The Court of Appeals, applying the Congressional statute, imposed no *per se* rule. Rather, it was faithful to the Congressional mandate to end the isolation of retarded people expressed in the requirement of § 6010 that "services . . . for such disabilities . . . be provided in the setting that is least restrictive of the person's personal liberty" and be responsive to the particular needs of individual retarded people. The presumption in favor of community based facilities and the individual determination serves those ends. The extensive Congressional history makes clear that Congress was aware of, and wanted to halt, state imposed isolation of retarded people. The authorative Senate Report on the Act declared "Efforts to assure proper treatment, education and habilitation services in large institutions should not deflect attention from the fact that most of these institutions themselves are anachronisms, and that rapid steps should be taken to phase them out."

V. The orders below are appropriate to the violations of the statutes found by the lower courts and the remedies are essential to respect and satisfy the legislative decisions.

REASONS FOR DENYING THE WRIT

I. This Case Concerns Retarded People at Pennhurst, Not Mental Illness

"Careful attention," the Court has written, "must be paid to the differences between the mentally ill and mentally retarded." *Kremens v. Bartley*, 431 U. S. 119, 135-36 (1977).[10] This case concerns retarded people only and does not take the courts into "the baffling field of psychiatry." *O'Connor v. Donaldson*, 422 U. S. 575, 578 n. 2 (concurring opinion).

The court below, adopting the district court's findings (10a, 47a) wrote:

> "At the time of trial Pennhurst housed 1,230 mentally retarded individuals, some of whom also suffered from physical disabilities. The residents are not mentally ill, have broken no laws, and are not a danger to others, although, in severe cases, some are unable to care for themselves. Mental retardation is an impairment in learning capacity and adaptive behavior, and is not treatable, like mental illness, by means of drugs or psychotherapy. While the mentally retarded do suffer educational difficulties, the level of their functioning can be improved by individualized training." (104a).

Retardation is a life-long condition arising at birth or in childhood and is not subject to "cure." Retarded people achieve and maintain skills not by "treatment" or by the use of medical or psychiatric technologies, but by education, training and care. Thus, this case is about the education, training and care of retarded citizens.[11]

10. The district court judge who decided this case had dissented in *Bartley v. Kremens*. Judge Broderick's further dissent on remand was cited with approval by this Court in *Secretary of Public Welfare v. Institutionalized Juveniles*, 442 U. S. 640, 645 n. 7 (1979) *reversing*, *Institutionalized Juveniles v. Secretary of Public Welfare*, 459 F. Supp. 30, 47 (E. D. Pa.).

The retarded people at Pennhurst were placed there at age 14 on the average and at the time of trial had been there more than 21 years on the average. PARC Ex. 48. The same figures, confinement for more than 21 years, obtain on the average for retarded people in all large public retardation institutions in the United States. Scheerenberger, *Public Residential Services for the Mentally Retarded* (1976). In contrast, the average stay of mentally ill patients at state mental hospitals is less than six months. U. S. Bureau of the Census, *1976 Survey of Institutionalized Persons* at 60.

Retardation institutions have their own peculiar history. "Pennhurst," the district court found, "was the product of [its] era" (13a)—the era of state imposed segregation. The Pennsylvania Legislature in creating Pennhurst, Act of June 12, 1913, § 1, 32 *Laws of Pennsylvania* 494 (1913), expressly declared its purpose:

> "Be it enacted, etc., that the Eastern Pennsylvania State Institution for the Feeble-Minded and Epileptic shall be devoted to the segregation . . . of epileptic, idiotic, imbecile or feeble-minded persons,"

Compare C. Vann Woodward, *The Strange Career of Jim Crow* (Oxford Rev. Ed. 1957) with P. Tyor, *Segregation*

11. As the district court wrote, "the term of art used to refer to that education, training and care required by retarded individuals to reach their maximum development" is "habilitation." 10a. Although the Court of Appeals chose to write its opinion in terms of treatment it acknowledged that the term is "strictly speaking . . . inappropriate." 109a.

As to the statutes relied upon by the court below, the Pennsylvania Mental Health and Mental Retardation Act of 1966 by its terms extends both to the retarded and the mentally ill. The federal statute, however, Section 111 of the Developmentally Disabled and Bill of Rights Act applies only to those who are developmentally disabled, which includes retarded people, but does not include the mentally ill. 42 U. S. C. section 6001(7).

or Surgery: The Mentally Retarded in America (Northwestern Univ. Ph. D. diss. 1972).[12] See also S. Rept. No.

12. *Compare,* for example, the 1913 pamphlet, *The Menace of the Feeble-Minded in Pennsylvania* (C. H. Frazier, Pamph. Col., Hist. Soc. of Pa.):

> "A comprehensive plan for the segregation of these unfortunates is perfectly feasible and economic, and if undertaken by the state, . . . [o]n state lands of no great value, far from dangerous contact with communities or easy transportation, the feeble-minded can engage in all kinds of useful occupations . . . and can render themselves self-supporting, useful and content."

and another Pennsylvanian, speaking in 1903 of the benefits of lifetime custodial service in institutions, P. Tyor, *supra* at 186:

> "they partake of the industrial and manual training given in the ante-bellum days on the plantation, which were in fact—as the world is fast acknowledging—training schools for a backward race, many of whom were feeble-minded."

with a 1900 Address to the Southern Education Association, C. Vann Woodward, *supra* at 80-81:

> "The negro race is essentially a race of peasant farmers and laborers . . . As a source of cheap labor for a warm climate he is beyond competition; everywhere else he is a foreordained failure, and as he knows this he despises his own color. Let us go back to the old rule of the South and be done forever with the frauds of an educational suffrage."

And *compare* C. Vann Woodward, *supra* at 81:

> "The conservative old Charleston *News and Courier* quoted at the beginning of this chapter as heaping ridicule upon the Jim Crow movement and the absurdity of its consequences, was of another opinion by 1906. 'The "problem" is worse now than it was ten years ago' wrote the editor. Far from being ridiculous, segregation did not now seem sufficient. Mass deportation was the remedy. 'Separation of the races is the only radical solution of the negro problem in this country. There is no room for them here,' declared the paper."

with P. Tyor, *supra* at 160-61:

> "Previously men like [Samuel Gridley] Howe believed—[that] after a few years of instruction the idiot would return to his home or parish. . . . This was why Howe did not want his school to become custodial. . . . The times, however, had changed. As Fernald [in 1903] stated: 'the Doctor wrote before the tide of immigration had set so strongly to our shores. . . . What is to be done with the feeble-minded progeny of the foreign hordes that have settled and are settling among us?' "

94-160 94th Cong. 1st Sess. (1975) at 26-27 (Title II, "Forces Behind Institutionalization and Deinstitutionalization: A History of Attitudes Toward Retardation").

The conditions of this state-imposed segregation at Pennhurst and their consequences for retarded people there have not changed materially since Pennhurst's creation. R. Smilovitz, *A Brief History of Pennhurst 1908-1926, Compiled From Superintendents Documents* (1974)[13] concluded:

> "As you read [the history] you will, if you disregard dates, discern an almost eerie similarity to [the] present situation. High costs, few staff, crowded buildings, inadequate facilities, insensitive legislators, confused contradictory labelling, inappropriate placements, delinquents, etc. are all clearly documented. You will also find the etiological base of what we today call peonage, the medical model and institutionalization."

12. (Cont'd.)

P. Tyor, *supra* at 176, 184 also records:

> "One of the most formidable obstacles to achieving the large scale permanent segregation of mental defectives was the lack of proper institutional facilities. Despite the propaganda efforts of the superintendents and their implementation of the colony plan, there still were only accommodations for approximately one defective in ten. The superintendents likened the situation of the feeble-minded to that of the insane. They believed the numbers of each group to be equal. [The general secretary of the National Conference of Charities and Corrections and chairman of its Committee on Colonies for the Segregation of Defectives] explained [in 1899] that 'the average citizen is afraid of the insane. A few among them are so dangerous that the whole class is feared. . . . The dangers of the idiotic are less obvious.' [He] suggested that the public had to be made more conscious of the claims of the feeble-minded; when this was accomplished, the institutions would receive the appropriate degree of public consideration."

13. This history is PARC Ex. 40. The *Superintendent's Documents* record, in 1922, for example, that "the general public [is] now convinced more than ever that it is a good thing to segregate the idiot and the imbecile."

Annual Reports of the Department of Public Welfare from 1966 through 1976 show the persistence of these conditions.[14]

Recurrent legislative investigations and legislative and executive resolves changed the dollars spent at Pennhurst, the staff-resident ratios, and renewed repeatedly the effort to provide effective program there.[15] By 1977, when this case was tried, the number of retarded people at Pennhurst had been reduced to 1230 (19a); the staff-resident ratio was in excess of 1:1 (19a); the average per person per day expenditures of public funds there was $60 (44a),[16] and "on the whole, the staff at Pennhurst is dedicated and trying hard to overcome the inadequacies of the institution." (22a, 74a).

Even with all of that, the trial record showed, the District Court found and the Court of Appeals—all judges sitting, those in the majority (103a) and those in dissent (162a)—unanimously concurred in the finding that "the conditions to which Pennhurst residents have been subjected" are "abominable."

The Court of Appeals opinion recited these findings as follows:

14. They are PARC Exhibits 41(a)-(j) in the trial record.

15. The legislative hearings and reports of 1967-68 and the various executive studies and resolves are in the trial record as PARC Exhibits 27, 28 and 42.

16. Pennsylvania's expenditures in its retardation institutions ranked it among the four highest expenditure states of the fifty. E. Butterfield, "Some Basic Changes in Residential Facilities," *President's Committee on Mental Retardation, Changing Patterns in Residential Services for the Mentally Retarded*, 15, 22-23 (Rev. Ed. 1976). Pennsylvania's expenditures at Pennhurst were above the average expenditures among Pennsylvania's twelve public institutions. *Compare* PARC Ex. 65 at page 86 *with* Commonwealth of Pennsylvania, Governors' Executive Budget 1979-80 at 633, indicating current per annum expenditures of over $45,000 for each resident of Pennhurst.

> "[T]he environment at Pennhurst is not merely inconsistent with normalization principles but is actually hazardous to residents. [R]esidents were found to have lost skills already learned. Organized programs of appropriate education and training were found to be inadequate or unavailable. . . .
>
> "Moreover, the Pennhurst environment was found to be unsanitary. There is often urine and excrement on the ward floors. Infectious diseases are common. Obnoxious odors and excessive noise permeate the institution. Most toilet areas do not have towels, soap or toilet paper. Injuries to residents by other residents or through self-abuse are common. Serious injuries inflicted by staff members, including sexual assaults have occurred. Physical restraints, which may be physically harmful and which have caused injuries and at least one death are resorted to more frequently than appropriate because of shortages of staff. Dangerous psychotropic drugs are used for purposes of . . . behavior control and staff convenience rather than for legitimate treatment needs. Such drug misuse produces lethargy, hypersensitivity to sunlight, inability to maintain gait, and other disabilities. Seclusion in solitary confinement has been used to punish aggressive behavior which might not have occurred if a proper regimen of training were available. Diet control is not possible because residents dine in large group eating areas without adequate staff supervision." 106a.

The dissent recited these findings as follows:

> "[T]he conditions at Pennhurst revealed in this record fall below a statutory or constitutional threshold of decency so as to merit judicial intervention. The district court adequately documented the deplorable

conditions at Pennhurst . . . . Understaffing, filth, violence, enforced inactivity and other horrors make Pennhurst, in the opinion of one well-traveled expert, one of the worst institutions of its kind in the world. Under these circumstances the federal courts have the right and duty to intervene and to secure for Pennhurst's residents, at the very least, adequate living conditions. . . . I have no hesitation in agreeing that the federal judiciary should take the necessary steps to eliminate those conditions at Pennhurst." 162a-163a.

In contrast, the Court of Appeals found (105a):

"Pennsylvania operates smaller and less isolated programs referred to as Community Living Arrangements (CLAs). The latter programs reflect a recognition of the principles of normalization for the habilitation of the retarded. Under normalization principles, retarded persons are treated as much as possible like nonretarded persons. The purpose of such treatment is remediation of the delayed learning process so as to develop maximum potential in self-help, language, personal, social, educational, vocational and recreational skills. These remediation efforts, the trial court found are, in general, much more likely to succeed in smaller living units which are closer to and more reflective of the normal society." [17]

17. At the time of trial 3,437 retarded Pennsylvanians had resided in community living arrangements. PARC Ex. 63. The CLAs are structured and supervised residences for retarded people, no larger than family-scale, located in a house or apartment in the general community and staffed by specially-trained personnel. "CLA" was not "undefined" in the court record as the state petition says, p. 6, n. 4, nor are they "*one* method", p. 9, "of caring for the retarded." PARC Exhibits 29, 30, 31, 33, 63 and 64 put before the court state defendants' own documents defining CLAs and describing in detail the full continuum of the nine different types of CLAs Pennsylvania provides.

It is not surprising that an institution with the history and purpose of Pennhurst leads to the conditions found by the courts below. This case is not about refinements of clinical method. It is about ending the abusive conditions which flow from segregation—a task with which both the Congress and courts are familiar.

II. The Decision of the State Law Ground Below Is Not in Conflict With Any Applicable State Law and Independently Supports the Judgment

The Court of Appeals' holding that retarded Pennsylvanians are entitled to adequate services which respond to their needs and to the presumption, when the state undertakes to provide residential services, that they should be placed in Community Living Arrangements is grounded alternatively and independently upon Pennsylvania statute law, the Act of October 20, 1966. (122a-130a, 157a-161a, 175a).

Notwithstanding that there may have been a federal issue of importance decided below,[18] since the decision below is predicated independently on state law grounds and since that decision was in no way inconsistent with applicable state law, certiorari should not be granted. To review the federal issue would be futile: the Court's power is to "correct wrong judgments, not to revise opinions." *Herb v. Pitcairn,* 324 U. S. 117, 125 (1944); *Fox Film Corp. v. Muller,* 296 U. S. 207 (1935). To review the state law issue is contrary to the Court's "general policy [to] leave undisturbed [a] Court of Appeals' holding on a question of state law." *Spiegel's Estate v. C. I. R.,* 335 U. S. 701, 708 (1949); *Huddleston v. Dwyer,* 322 U. S. 223, 237 (1944).

18. There is no conflict among the Circuits on any issue presented by this case.

The four petitions here make no showing that the decision below is in any way in conflict with applicable state law; indeed the petitions attempt no such showing, offering no citation to any state decision even arguably in conflict. To the contrary, the decision is entirely consonant with the Pennsylvania statute and with its construction and application in an unbroken line of state court decisions. Had it decided the state law question any way other than it did, the Court of Appeals would have erred.

1. On the basis of the Pennsylvania statute, § 4201 in particular, nearly two score state trial courts have denied commitments to institutions and ordered the provision of community residential services for retarded people. In one of these cases, for example, *In Re Joyce Z.*, 4 Pa. D. & C. 3d 596 (C. P. Allegh. Co. 1975) Judge Cohill, then in his tenth year as judge of Allegheny County Family Court, now a judge of the United States District Court for the Western District of Pennsylvania, held that the statute barred an institutional commitment as unsuitable and required the provision to a 14 year old profoundly retarded girl of casework services, placement in a foster home and certain services for her physical disabilities. This decision and six other such Pennsylvania trial court decisions are noted and described in *Coval et al.*, "Rules and Tactics in Institutionalization Proceedings for Mentally Retarded Persons," 12 *Education and Training of the Mentally Retarded* 177, 180-82 (A Journal of the Division on Mental Retardation, Council for Exceptional Children, 1977). Thirteen of these cases were before the court below in an Appendix filed August 15, 1979.

2. State petitioners incorrectly say in their petition (p. 16) that what they characterize as "this limited holding" of the Court of Appeals—"that . . . Pennsylvania . . .

facilities for the mentally handicapped . . . must provide adequate . . . habilitation"—"is not supported by any decision of any court of state-wide jurisdiction." To the contrary, in *In Re Guzan*, — Pa. Comwlth. Ct. —, —, 405 A. 2d 1036, 1038 (1979), the Commonwealth Court of Pennsylvania, the intermediate appeals court in such matters, considered the question of state law and, citing and quoting the federal district court opinion in this case with approval, held "that when the state . . . commits retarded persons it must provide 'minimally adequate habilitation'." In fact in that case, which concerns transfers between Pennsylvania facilities, following a Pennsylvania Supreme Court decision construing the statute [19] and citing and quoting with approval the district court opinion in this case, the Commonwealth Court held:

> "Because the Commonwealth maintains facilities of varying degrees of restriction (. . . state facilities are 'maximum' restrictive facilities and local facilities are considered 'minimum' facilities) the hearing requirement articulated in *Eubanks* [v. Clarke, 434 F. Supp. 1022 (E. D. Pa. 1977)] for the mentally ill applies with even greater force to the mentally retarded: 'individuals who have not broken any laws, . . . and who are not in any way a danger to society.' *Halderman, supra*, 446 F. Supp. at 1313."

Among the other state appellate court decisions construing the statute which make clear at the least, that the highest state court would probably rule as the Court of Appeals did and that the decision below was not clearly wrong,

19. In that case *Com. ex rel. DiEmilio v. Shovlin*, 449 Pa. 177, 181 n. 7, 295 A. 2d 320, 323 n. 7 (1972) the Pennsylvania Supreme Court articulated the § 4416(d) standard for transfers to more restrictive facilities in terms similar to the presumption the Court of Appeals found in the statute in this case—"that his illness could be beneficially treated only at a maximum security institution."

see *County of Allegheny v. Commonwealth Department of Public Welfare,* 33 Pa. Commw. Ct. 267, 381 A. 2d 1014, 1016 (1978) (citing *Joyce Z.* with approval); *Com. ex rel. DiEmilio v. Shovlin,* 449 Pa. 177, 295 A. 2d 320 (1972).[20]

20. *Hoolick v. Retreat State Hospital,* 24 Pa. Commw. Ct. 218, 223-24, 354 A. 2d 609, 611-12 *aff'd mem.* 496 Pa. 317, 382 A. 2d 739 (1978) is not to the contrary and was seriously misread in the dissent below (176a). In *Hoolick,* the converse of this case, where plaintiffs and their union counsel sought to *stop* the state from *closing* Retreat and transferring residents to other Pennsylvania facilities, the Commonwealth Court held that the statute does *not* require that a particular, *institutional* facility must remain open. This decision is consistent with the decision below, and, if pertinent at all, tends to support it. The Commonwealth Court said:

> "Nor are we persuaded that the provisions of Section [4] 202 of the Act directing the State to operate State facilities and authorizing the establishment of additional facilities, either specifically or inferentially, require the State to continue to operate forever all State mental health facilities functioning at the time of passage of the Act. . . . Its implementation and need for flexibility to meet improved or new methods and means of treatment would be seriously impaired if not totally frustrated if Retreat or any other particular State mental health facility were to enjoy such a monolithic status."

Compare 176a-177a.

Similarly, the dissent misreads *County of Allegheny v. DPW, supra* (177a). The Commonwealth Court there approved *Joyce Z.*, including its holding that the Commonwealth is obliged to pay for residential care, and decided with perfect consistency, only that the cost is subject to a reasonable cost limitation. There was no assertion in *Allegheny* that the cost limitation rendered impossible the provision of adequate care or was otherwise unreasonable. As to *In Re Wayne K.*, 34 Pa. Commw. Ct. 10, 382 A. 2d 989 (1978), see note 2 of the decision, 382 A. 2d at 991, showing that the private residential service provided was to be state reimbursed under a statutory 90% formula, albeit not 100% as under a nonapplicable statutory formula. These two cases concern the proper allocation of service costs as between state and county under statutory formulae. They do not concern the service rights of retarded people. The decision of the Court of Appeals below did not purport to disturb the statutory allocation formulae, nor does it. However the costs are to be shared, the Court holds only that retarded Pennsylvanians are entitled to adequate services.

3. Other decisions construing the state statute by federal courts sitting in Pennsylvania, "judges . . . who are familiar with the intricacies and trends of local law and practice," *Huddleston v. Dwyer, supra,* 322 U. S. at 1018, are in accord with the decision below.[21] In *Eubanks v. Clarke,* 434 F. Supp. 1022, 1026-27 (E. D. Pa. 1977), for example, Chief Judge Lord held that Section 4201 establishes a state law right to "treatment."

4. The state statute itself, its origin and its legislative history fully support its reading by the decision below. The key provision of the 1966 Act says:

> "§ 4201. General Powers and Duties of the Department.
>
> The department [of public welfare] shall have the power, and its duty shall be:
>
> (1) to assure within the State the availability and equitable provision of adequate . . . mental retardation services for all persons who need them, regardless of religion, race, color, national origin, settlement, residence or economic or social status."

The 1966 Act was adopted unanimously by both Houses of the Pennsylvania General Assembly in a special session called to consider it. The 1966 Act was among the first state statutes enacted in response to the Kennedy initiatives. In his special message to the Congress, February 5, 1963, *Public Papers of the Presidents* 128, 137

21. Among the six judges who made the decision of the Court of Appeals below four are Pennsylvania lawyers, one had served as Secretary of the Department of Public Welfare of the Commonwealth, another as a member of the Allegheny County MH-MR Board. The District Court Judge, a Pennsylvania lawyer, had served as Lieutenant Governor of the Commonwealth.

(1964), 109 *Cong. Rec. 1837,* President Kennedy had said:

> "[T]here is . . . a desperate need for community facilities and services for the mentally retarded. We must move from the outmoded use of distant custodial institutions to the concept of community-centered agencies. For those retarded children or adults who cannot be maintained at home by their own families, a new pattern of institutional services is needed. [S]ervices to the mentally retarded must be community based." 109 *Cong. Rec.* 1841, 1838.

The message called upon the Congress:

> "To bestow the full benefits of our society on those who suffer from mental disabilities; . . .
>
> "To provide for early diagnosis and continuous and comprehensive care, in the community, of those suffering from these disorders;
>
> "To stimulate improvements in the level of care given the mentally disabled in our state and private institutions, and to reorient those programs to a community-centered approach;
>
> "To reduce, over a number of years, and by hundreds of thousands, the persons confined to these institutions.
>
> "To retain in and return to the community the . . . mentally retarded, and there to restore and revitalize their lives through better health programs and strengthened educational and rehabilitation services; and
>
> "To reinforce the will and capacity of our communities to meet these problems in order that the communities, in turn, can reinforce the will and capacity of individuals and individual families." 109 *Cong. Rec.* 1842.

In the fall of 1963, Congress enacted the Mental Retardation Facilities Construction Act, P. L. 88-164, 72 Stat. 282,[22] and the Maternal and Child Health and Mental Retardation Planning Amendments of 1963, P. L. 88-156, 77 Stat. 273. The Pennsylvania Act followed.

The prime sponsor of Pennsylvania's 1966 Act, Senator Pechan, was clear in presenting the Act to the House in which the Act originated, what the evil was that the Act was intended to overcome:

> "It atones . . . for the wrongs we have done, over the centuries, to our fellowmen upon whom the misfortune of . . . retardation has fallen. We have labeled them . . . feeble-minded. Because their disability was unseen, we have had little sympathy with it. . . . We have locked them up, put bars on their cells, and strait jackets on their bodies. We have exiled and sometimes forgotten them. We have sometimes cut them off from human society, and abandoned them to their distress and misery."

Pa. Legislative Journal, p. 76 (September 27, 1966) (pp. A1-2 in Appendix A to this Brief). Its purpose was also clear:

> "The object of this legislation is to make it possible for every mentally disabled person to receive the kind of treatment he needs, when and where he needs it. It will make those services available to every citizen in every community which are now

22. This Act is the direct lineal progenitor of the Developmentally Disabled Assistance and Bill of Rights Act of 1975.

available only to a lucky few in the more progressive communities." Id. at 76 (A2).[23]

Thereupon, Senator Pechan listed in common language some of the community services which were to be provided.[24]

> "It will open more beds in the local general hospitals. It will make available the services of psychiatrists and psychologists, of psychiatric nurses and social workers, of specially trained occupational therapists, of speech and hearing therapists, of activities directors and of child care workers. It will supplement the benefits of therapy with daytime and evening programs of activity. . . . It will provide productive activity for those who can work only in a sheltered situation, and for those who are able, it will prepare them to go back to the customary world of business and industry, or to go forth into it for the first time, at the case may be. For those in acute distress service will be available twenty-four hours a day, and the violent will find protective care instead of the harsh custody of jail."

Although the statute and its legislative history contemplate that institutions may continue to exist, as the decision below held, the statute and the legislative history, the latter in language quite like the Court of Appeals' articulation of the presumption for community living arrangements, show a decided preference for community services:

> "There will be those who will need a long stay in an institution, some even for whom this is the necessary and the only kind of provision for the rest of their lives. We are not about to close our State schools and hospitals or our State mental hospitals. The great point is that we shall know that the treatment program of one of these institutions is the indicated treatment before the patient leaves his community. Diagnosis and evaluation of his condition will precede the disposition of his case, *and everything possible will be done for him in his hometown.*" Id. at 76 (A2-3) (emphasis supplied).

Nor were those in institutions to be abandoned there:

> "If he responds to the program of the institution and the time comes when he is ready to return home, he will not be turned out into the cold. These same community services will be there to help ease the transition back to normal life. Nobody will be lost from sight. Care will be continuous, even though the patient may move from in-patient to out-patient care, from hospital to workshop, from halfway house to foster home." Id. at 76 (A3).

The legislature recognized that "these community services, which must be made available in every community," were not yet there and understood the Act to affirmatively require "the new ones to be created where they are lacking." Id. at 76 (A3, A4).

23. The legislative history thus resolves whatever ambiguity, see state petition at p. 16, might otherwise be thought to attach to the statute's mandate "to assure within the State the *availability* and *equitable* provision of adequate . . . retardation services to all who need them" (petitions' emphasis). Those words were intended not to trim or to limit the right to community services but to assure provision of the needed services *in every community*.

24. These services in the community, he said, "will re-create and strengthen the ties which bind one human being to another and make us comfortable in each others' company." *Id.* at 76 (A2).

The 1966 Act, entitled by the legislature "the Mental Health and Mental Retardation Act of 1966," could just as well have been entitled the Pennsylvania Community Services Act.[25]

5. No party defendants sought absention in either of the courts below; none made even any suggestion of absention below. None of the four petitions in this Court raise any question of absention. There is no question here but that pendent jurisdiction was properly invoked and exercised below, *United Mine Workers v. Gibbs*, 388 U. S. 715 (1966) and the state law ground properly decided, *Hagans v. Levine*, 415 U. S. 528, 543 (1974), *Ashwander v. TVA*, 297 U. S. 288, 341 (1936), *Siler v. Louisville & Nashville R.R. Co.*, 213 U. S. 175, 193 (1909).

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25. Unaccountably, the dissent below says:

"I believe it would be anomalous to attribute to the General Assembly of 1966 an intention to require treatment of the mentally retarded in a community setting because it would be less restrictive than an institution when the state did not even consider community treatment until 1970." (176a).

The dissent overlooks the plain language of the 1966 Act and its piercing clear legislative history. The pages of the Legislative Journal which apart from the tally of votes constitute the legislative history of the 1966 Act were before the Court of Appeals in an Appendix, filed July 26, 1979 and they are attached to this Brief as Appendix A.

The dissent's reference to 1970 is to the Act of November 27, 1970 appropriating $21 million:

"to provide definite treatment and normalizing accommodations for mentally retarded residents of Bucks, Chester, Delaware, Montgomery and Philadelphia Counties and to be located in the same counties. The units are to provide accommodations for approximately 900 patients [now resident] at Pennhurst [and] to provide logical dispersal and reorientation into the community for [these] Pennhurst residents and alternatives to institutionalization for the Pennhurst waiting list population and other mentally retarded citizens of the area who require such treatment and accommodations."

The district court found that $18 million of this $21 million for community services have yet to be spent and only 37 Pennhurst residents have benefited from the appropriation." (44a).

III. Enforcement of 42 U. S. C. § 6010 in a Private Cause of Action Raises No Issue, Either Under § 1983 or Under § 6010 Itself, Meriting Review by the Court

This is a § 1983 case; § 6010 is a law providing for equal rights. Thus under § 1983, even apart from directly under § 6010 itself, a private cause of action lies to enforce 42 U. S. C. § 6010. As to a private cause of action, no question meriting review by the Court is presented by the petitions.

1. This case does not raise any implied private cause of action question like those which the Court has recently addressed in *Cannon v. University of Chicago*, 441 U. S. 677 (1979). Although the Court there found an implied private cause of action under Title IX, the question arose only because the defendants in that case were private parties. *Id.* at 680 n. 2, 696 n. 21, 700 n. 27 (Ct. op.), 719, 723 (concurring opinion). In this case, the defendants are public officials acting under color of state law and it is state action and their official conduct which is at issue. In such a case § 1983 expressly creates the cause of action and the right of private parties to enforce a § 1983 cause of action is unexceptional. The only necessary inquiry is whether the cause involves "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws"—in this case, whether the Bill of Rights provision of the Developmentally Disabled Assistance and Bill of Rights Act is within the ambit of § 1983.

2. Although Learned Hand would have found that all statutes of the United States are "laws" within the meaning of § 1983, *Bomar v. Keyes*, 162 F. 2d 136 (2d Cir. 1947), and Mr. Justice White would also, *Chapman v. Houston Welfare Rights Organization*, 441 U. S. 600, 646 (1979) (concurring in judgment), it is not necessary here as the Court found it was not in *Chapman*, *id.* at 616,

623, to reach that question. It is uncontroverted that at the least statutes of the United States providing for equal rights are "laws" within § 1983. *Id.* at 623 (concurring opinion).[26] Section 6010 is such a statute.

3. The court below held that the Bill of Rights provision is a statute enacted pursuant to the Congress' power to enforce the Fourteenth Amendment (117a-118a). *Katzenbach v. Morgan*, 384 U. S. 641 (1966); *Fitzpatrick v. Bitzer*, 427 U. S. 445 (1976). Its legislative history shows that in enacting 42 U. S. C. § 6010 what the Congress was about was "legislation providing for equality in the enjoyment of civil rights." *Chapman v. Houston Welfare Rights Organization, supra* at 633 n. 14 (concurring opinion). In S. Rep. 94-160, 94th Cong., 1st Sess. (1975), the United States Senate Labor and Public Welfare Committee, which originated the Bill of Rights provision, wrote of the provision:

> "The Committee is firmly convinced that Congress must take action to ensure the humane care, treatment, habilitation and protection of the mentally retarded. The Federal Government has the responsibility to provide equal protection under the law to all citizens." S. Rep. 94-160 at 32.

See also H. Rep. 95-1188, 95th Cong., 2nd Sess. at 7 (1978) with regard to the 1978 Amendment ("the committee recognized the need for legislation which would insure . . . equitable access to all benefits which are the right of citizens of the United States.") Introducing floor consideration of the bill, the primary sponsor of the Bill of Rights provision, Senator Javits said:

> Congress should reaffirm its belief in equal rights for all citizens—including the developmentally disabled. Congress should provide the leadership to change the tragic warehousing of human beings that has been the product of insensitive federal support of facilities providing inhumane care and treatment of the mentally retarded. The Bill of Rights . . . represents this new direction, and begins this reaffirmation." 121 Cong. Rec. 16519 (1975).

See also the remarks of Senator Randolph, 121 Cong. Rec. 16515; of Senator Stafford, 121 Cong. Rec. 16516; of Representative Young calling the bill to the House floor, 121 Cong. Rec. 9965; and of Representative Badillo, 121 Cong. Rec. 9978. Testimony and deliberations during the two years of hearings by the Senate Committee on Labor and Public Welfare prior to its enactment show the Congress' consciousness that it was the Constitution and the equal rights of retarded people which the Congress was enforcing.[27] *Developmental Disabilities Act Extension and Rights of Mentally Retarded, 1973: Hearings on S. 427 and S. 458 Before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare*, 93 Cong.,

26. The Opinion of the Court in *Chapman*, 441 U. S. at 611 said:

> "the prime focus of Congress in all of the relevant legislation was ensuring a right of action to enforce the protections of the Fourteenth Amendment and the federal laws enacted pursuant thereto."

27. This Court held in *O'Connor v. Donaldson*, 422 U. S. 567, 576 (1975) that:

> "a state cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom with the help of willing and responsible family members or friends."

This statute, § 6010, is fairly read to require state and federal governments both to be that friend of retarded citizens. The freedom whose "equality in the enjoyment" the Congress sought to enforce includes the freedom of association, the freedom of expression, the freedom to learn, develop and grow, the freedom of family integrity and the freedom to enjoy personal security.

1st Sess.; *Developmentally Disabled Assistance and Bill of Rights Act, 1974: Hearings on S. 3378 Before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare,* 93 Cong., 2nd Sess.; *Developmentally Disabled Assistance and Bill of Rights Act, 1975: Hearings on S. 462 and S. 1194 Before the Subcommittee on the Handicapped of the Senate Committee on Labor and Public Welfare,* 94th Cong., 1st Sess.

4. Should the Court chose to reach the question whether an implied private cause of action arises directly under § 6010, the standards applied in *Cannon, supra,* suggest that it does.[28] Section 6010 on its face seems to say so, even though it does not use the particular words private cause of action, by explicitly associating the set of rights which it creates with other rights which are privately enforceable, as well as by the very use of the word "rights":

> "The rights of persons with developmental disabilities described in findings made in this section are *in addition to* any constitutional or other rights afforded to all persons." (emphasis supplied)

The legislative history of § 6010 is explicit that Congress intended that it be judicially enforceable. In 1975, the Chairman of the Senate Labor and Public Welfare Committee which originated the Bill of Rights provision, said:

> "Over the past few years, the horrifying conditions which exist in most of the public residential institutions for the mentally retarded and other developmentally disabled persons have provided shocking testimony to the inhuman way we care for such

28. Only one other court has decided the question under § 6010 itself, see *Naughton v. Bevilacqua,* 485 F. Supp. 610 (D. R. I. 1978) (accord).

> persons. The conditions at Willowbrook, at Partlow in Alabama, and at Rosewood in Maryland, and at many other institutions have shown beyond a shadow of a doubt that the treatment of these individuals is worse then all of us would like to admit.
>
> "Steps to scale down many of these large custodial institutions have resulted in no-so-large institutions, often with not much improved care and with little follow-up. This has been true at Willowbrook: in 1965 and again in 1972, broad criticism has been levied at this institution; all indications point toward little change, unless substantial legal and advocacy pressure is forthcoming.
>
> * * *
>
> "S. 462 provides a framework by which the constitutional rights of residents and other persons with developmental disabilities may be enforced." 121 Cong. Rec. 16516-7.

In 1978, when § 6010 was amended to include the sentence recited above, the Chairman of the Judiciary Committee, speaking on the floor of the Senate, said:

> "I do not know how many times we have had television documentaries on Willowbrook and Forest Haven, and other institutions in this Nation and still nothing gets done. The public looks at these various programs and they absolutely deplore the conditions that, in too many instances, have been the lot of people that are covered by this legislation.
>
> "Everyone in here knows that the only way that change is going to be brought about is the long, difficult, persistent, and dedicated advocacy . . . through challenges in the courts, for the kinds of rights which

are being guaranteed in this legislation. That is the way it is done." 124 Cong. Rec. S. 15663 (daily ed. Sept. 21, 1978).

On all other counts as well § 6010 satisfies *Cannon*, as the alternative analysis of the court below (114a-116a, 118a-120a) shows, and with which the dissent did not disagree (164a).

IV. The Court of Appeals' Faithful Application of § 6010 Raises No Issue Meriting Review by the Court

The federal claim here is statutory. The court below rested entirely upon the statute, § 6010, when it held that retarded people are entitled to services appropriate to their needs, that the Congess had expressed a preference for providing services in settings least restrictive of their personal liberties, that there is a presumption in favor of community settings to be applied in making individual determinations. This is not a constitutional case.[29] The arguments petitions make to this Court might be in point if it were a constitutional case but the Congress in § 6010 has already resolved the policy matters.[30] The only question possible here is whether the court below accurately and sensitively interpreted this "relatively new and innovative legislation" (162a). As to that, the decision below is unmistakably faithful to the Congressional enactment.[31]

29. Of course, if this Court were to reject § 6010 and the Pennsylvania statute as adequate grounds for the Circuit Court's judgment, the constitutional issues and § 504 statutory issue raised in the district court would have to be decided.

30. As the Court put it in a similar context in *Cannon v. University of Chicago:*

> "In short, [petitioners'] principal contention is not a legal argument at all; it addresses a policy issue that Congress has already resolved." 99 S. Ct. at 1964.

31. Unlike *O'Connor v. Donaldson*, 422 U. S. 563 (1975); *Wyatt v. Aderholdt*, 503 F. 2d 1305 (5th Cir. 1974); *Burnham v.*

1. Petitions and the dissent misstate the reach of the court's opinion below. They say the court ignored Congress' desire to establish community care as the goal, but not as an inflexible requirement, an "absolute obligation" (168a) which is "rigid[ly] appli[ed]" (188a). To the contrary, by recognizing only a presumption for community services and carefully requiring individual need determinations the court below clearly meets and reflects Congress' attempt to move seriously in a particular direction without imposing a harsh and arbitrary rule.

Although it approved Judge Broderick's findings that "in general institutions are less effective than community living arrangements in facilitating the right to habilitation in the least restrictive setting" and that "for the retarded class members as a whole, Pennhurst cannot be an appropriate setting in which to provide habilitation" (155a-156a), and recognized that the Congress had reached the same conclusion in the Act, the court below insisted, based upon the Act, upon a "canvass" of the discrete needs of individual residents and "individual determinations" (156a). "The framers", the court wrote,

> "did not anticipate a shutdown of all institutions when they endorsed a right to habilitation in the least restrictive environment. Rather, they recognized that for some persons institutions, once improved, might be appropriate." (157a).

31. (Cont'd.)

Georgia Department of Public Health, 503 F. 2d 1319 (5th Cir. 1974), *cert. denied* 422 U. S. 1057 (1974); *New York Association for Retarded Citizens v. Rockefeller*, 393 F. Supp. 715 (E. D. N. Y. 1975) this is the first case in which a federal statutory ground for the application of federal standards to state mental retardation facilities was presented. Consequently, the decision of the court below is not expressive of its own views on "normalization" or its own fashioning of legal rules from "a mass of social science . . . data" (162a) but constitutes adherence to Congressional policy.

"It is plain", the court wrote, "that no *per se* rule against institutions was contemplated" (157a), and the court established none: "We have recognized that although institutionalization is strongly disfavored, it is not foreclosed completely by governing federal and state statutes." (159a). By directing that "on remand, the court or the Master should engage a presumption in favor of placing individuals in CLAs" and that "in the process . . . the special needs and desires of individual patients must not be neglected" (159a), the court surely did not mandate any "rigid application" (188a) of the Congressional statutory requirements but rather ordered what the statute and its legislative history makes inescapable.[32]

2. Section 6010 was enacted in 1975 and amended in 1978.[33] On its face it means just what the court below held it means:

32. It is incorrect to say as the state petition, pp. 12, 13, and the Pennhurst Association petition, p. 16, do—and as did the dissent (163a)—that the court below has required placement in community facilities "regardless of the feasibility or practicality of such a course of action."

The record showed and the courts below found that at the time of trial 3,437 retarded Pennsylvanians had been served in structured and supervised community facilities, including people profoundly retarded with multiple handicaps, (105a, PARC Ex. 63, 42a) and including some (105a, 28a n. 32) who had been transferred to community facilities from Pennhurst. As the dissent acknowledges "given proper facilities, all of [Pennhurst's residents] could be served in the community" (173a).

The record also showed and the courts below found that the cost of services in community facilities is, per person, less than the cost of Pennhurst (105a, 160a, n. 39, 44a). During the three years of hearings from which § 6010 was formulated, the Congress heard the same facts about relative costs. Hearings, *supra*.

33. The Developmentally Disabled Assistance and Bill of Rights Act contains two distinct kinds of provisions: (1) program assistance provisions and (2) the rights provision, now § 6010. As the Chairman of the Senate Committee said on the floor:

> "S. 462 provides a framework by which the constitutional right of residents and other persons with developmental disabilities

> "§ 6010. Congressional findings respecting rights of developmentally disabled
>
> Congress makes the following findings respecting the rights of persons with developmental disabilities:
>
> (1) Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.
>
> (2) The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty.

33. (Cont'd.)

> may be enforced. *Title I* assists states in their planning towards the provision of services to meet the needs of developmentally disabled individuals. *Title II* of the Legislation sets forth basic minimum standards for both community agencies and facilities and residential facilities. . . .
>
> "*Title II* of the bill sets forth a means to assure that the rights of developmentally disabled individuals will be protected." 121 Cong. Rec. 16517.

The program assistance provisions of the Act are the most recent in the line of community program assistance incentives following the 1963 Kennedy enactment, which had been augmented in 1965, P. L. 89-105; in 1967, P. L. 90-170 (see S. Rep. 90-725, 90th Cong. 1st Sess., 1967 U. S. Code Cong. & Ad. News, at 2062 and 2064); and in 1970, P. L. 91-517 (the first "DD" Act, the Developmentally Disabilities Services and Facilities Construction Act").

The 1975 Act was the first to contain a rights provision, reflecting the Congressional judgment that "encouragement" by program "incentives" were not by themselves enough to achieve Congress' purpose and that judicially enforceable rights needed to be added thereto. It may be correct to say, as the petitions do, that requirements stated in the program provisions run only to programs receiving funds under those provisions, but the requirements of 6010(3)(A) run with all public funds.

It is the rights provision that is at issue here, and although the history of the program provisions may, like the history of other related enactments, inform the meaning of the rights provision, any limitations in the program provisions cannot be imported into the rights provision unless the language of § 6010 itself and its own particular legislative history so require.

> (3) The Federal Government and the State both have an obligation to assure that public funds are not provided to any institutional or other residential program for persons with developmental disabilities that—
>
> (A) does not provide treatment, services, and habilitation which is appropriate to the needs of such persons; . . . .
>
> * * *
>
> The rights of persons with developmental disabilities described in findings made in this section are in addition to any constitutional or other rights otherwise afforded to all persons."

The language is plain enough. One way to analyze it is as follows. Section 6010(1),[34] in requiring "appropriate . . . services and habilitation for such disabilities", and § 6010(3)(A),[35] in requiring "services and habilitation appropriate to the needs of such persons," raise the question what the Congress meant by appropriate. On its face it meant that the services must respond to individual needs, as the court held. And on its face § 6010(2) may fairly be taken to say that to be individually appropriate the services must "be designed to maximize the developmental potential of the person" and be "provided in the setting that is least restrictive of the person's personal liberty." [36]

34. Section 6010(1), like § 6010(2) runs to all people with developmental disabilities.

35. Section 6010(3)(A) runs to people with developmental disabilities who are in any "institutional or other residential program" which receives "public funds," not just DD Act program funds. Even so, the Philadelphia petition, p. 7, is not correct in saying that it receives no DD program funds. The trial record, e.g. PARC Ex. 58, showed that Philadelphia received nearly $1,000,000 in DD funds.

36. Neither the Congress nor the courts below contemplated that a "setting least restrictive of . . . personal liberties" means

Such is precisely what the court below held and structured relief to achieve. It is what the legislative history shows the Congress had concluded is necessary for retarded people in order to be as fully equal citizens as they are able. It is what Congress legislated to provide. It is what the record shows, as Congress would have expected, is wanting at Pennhurst, most unlikely to be achieved there but very likely available in community facilities. Thus in ordering individual determinations and articulating the rules which guide them, the court below did no more than the Congress required.

3. The Section of S. Rep. 94-160 at pp. 26-34, entitled "Forces Behind Institutionalization and Deinstitutionalization," summarizes the conclusions from two years of hearings and tells what the Congress was doing in the Bill of Rights provision and why.[37] The Congress acted

36. (Cont'd.)
only, or even very importantly, an "unfettered freedom" (91a) to come and go, to move about, at will.

They knew that the beneficiaries of the statute included many retarded people who need structured and supervised residential services. All retarded persons require, as to some degree does every person, the help of friends to survive safely in freedom. A residential setting "least restrictive of . . . personal liberties" is not less important thereby, but more important. The personal liberties at stake are the full range of freedoms which may be broadly stifled, as *Shelton v. Tucker*, 364 U. S. 487, 488 put it, by life in an isolated institution: liberty of association, of expression, of the right to learn, of family integrity and of the right of personal security. Their infringement at Pennhurst as the record shows is not a mere formal violation of liberty rights, but a defeat of the citizens' very capabilities. We do not construct and guarantee liberties just for the sake of having them but because having them is a fundamental to human growth—for retarded people as for others.

37. As originally formulated the Bill of Rights provision ran to approximately 400 pages specifying service standards in great detail. Ultimately the Congress eschewed such an approach in favor of the succinct articulation of the basic rights that is § 6010. H. R. Conf. Rep. 94-473, 94th Cong. 1st Sess. 42-45; 1975 U. S. Code Cong. & Ad. News 961-63.

to remedy "the rejection and exclusion from the mainstream of society" of retarded people. *Id.* at 27. Congress sought a middle way between warehousing and dumping. It recognized that even a fixed-up and improved institution will not provide a decent or adequate environment for habilitation.[38] Nonetheless, the Congress understood that there might be some few who required an improved institution.[39] But they were clear that it was few. The key Congressional finding, which must inform the reading of § 6010, was:

> "It must be recognized that the vast majority of developmentally disabled persons and the vast majority of persons now institutionalized should not be in these institutions at all.[40] Efforts to assure proper treatment, education and habilitation services in large institutions should not deflect attention from the fact that most of these institutions themselves are anachronisms, and that rapid steps should be taken to phase them out. Many of these institutions by their very nature, their size, their isolation, their impersonality, are unsuitable for treatment, education, and habilitation programs." S. Rep. 94-160 at 32-33.

Given this Congressional purpose, the language of the statute and the findings concerning actual conditions at Pennhurst and in community facilities, the Court of Appeals' judgment is clearly faithful to the Congressional policy and does not raise any issue meriting review by this Court.[41]

38. For example, S. Rep. 94-160 at 33:

> "The Committee feels that the standards set forth in Title II are minimum standards to insure basic human dignity where institutional care . . . is found. It is *not*, however, the Committee intent that enactment of this Title should be construed *in any way* to constitute support of institutionalization of the mentally retarded." (emphasis supplied).

Of the "institution or residence" standards in § 6010(3)(*B*)(*i-vi*), the Conference Committee Report said:

> "[We] recognize that the six minimum standards are designed to protect the basic human needs of developmentally disabled individuals and will *not* in themselves ensure quality habilitation and adequate treatment programs." H. R. Conf. Rep. 94-473 at 43; 1975 U. S. Code Cong. & Ad. News at 963. (emphasis supplied).

See also remarks of Senator Cranston, 121 Cong. Rec. 16520 ("the growing realization over the past decade that institutional placement of individuals . . . is inappropriate to their full development to their maximum level of ability"); of Senator Williams, 121 Cong. Rec. 16516 ("Steps to scale down any of these institutions have resulted in not-so-large institutions, often with not much improved care"); of Representative Carter, 121 Cong. Rec. 9976 ("We, as a committee, are well aware that treatment of the developmentally disabled should be conducted in that person's community without unnecessarily institutionalizing him.")

39. E.g., remarks of Senator Cranston, 121 Cong. Rec. 16250; remarks of Representative Carter, 121 Cong. Rec. 9976.

40. The Pennhurst Association petition, p. 16, is, thus, just wrong when it says "Nothing in the Act suggests that institutional settings such as Pennhurst, are inappropriate for all but a few 'probably comparatively rare' mentally retarded individuals." The petitions assertion, p. 16 n. 18, that "for many developmentally disabled persons . . . , a large congregate institution that offers diverse, quality programs will afford more respect for and protection of the person's liberty than would life in a small discrete, community facility" is not properly addressed to the Court, for the Congress has concluded on the matter. As to any individual who may be among the few, the matter is properly presented in the individual determinations, not here.

41. Respondents PARC et al do not gainsay the holding of the court below that "the framers [of § 6010] did not anticipate a shutdown of all institutions when they endorsed a right to habilitation in the least restrictive environment" or that "they recognized that for some [persons] institutions, once improved, might be appropriate." Rather, respondents would submit, on the record and findings below Pennhurst is one institution so anachronistic, so isolated, so impersonal, so impervious to improvement that § 6010 requires that it be rapidly phased out. Therefore, should this Court grant a writ of certiorari on any petition, respondents request a writ be granted on their conditional cross-petition in No. 79-1414 to review the judgment by the court below insofar as it vacates the district court orders prohibiting admissions to Pennhurst and directing its eventual closing.

V. The Remedies Formulated Below Flow Directly From the Statutes and Raise No Issue Meriting Review by the Court

The district court found that implementation of its judgment would be impossible without the appointment of a Master (80a-81a). The Court of Appeals concurred in this finding, writing:

> "In this case, moreover, the court's resort to use of a master is particularly appropriate. After the decision on liability was announced, the [defendants] were afforded an opportunity to devise and present their own remedies for conditions at Pennhurst. They failed to do so." (150a).

Indeed, at two hearings on remedy before the district court state defendants had refused to submit any remedial plan except the one which they had submitted at trial nine months before in defense to liability, a plan which the district court had already rejected in its opinion on liability (28a-29a). Again, the court found state defendants' plan "vague and indefinite" (78a) and found it necessary again to reject it.[42] The county defendants made no suggestions as to what the remedy should be, except for Bucks County defendants who, notwithstanding the position stated in their petition here, p. 17, recommended to the district court the appointment of a master as necessary to implementation. In these circumstances the appointment of a master with the carefully circumscribed duties described by the court below (55a, 58a) was a proper exercise of the court's equity powers.

42. In addition, the record in this case shows literally dozens of repeated occasions during the last two decades when the state executive had failed to act upon its own plans and undertakings, as well as recommendations and directions of the legislature, of the Governor's Management Review Panel and of their own commissioned studies which would have resulted in the elimination of the statutory violations found by the Court.

The remedies chosen by the district court and approved, as modified, by the Court of Appeals—individual determinations whether any resident needs an improved Pennhurst, the transfer to community facilities of Pennhurst residents for whom these are suitable services,[43] and the establishment of on-going structures, like individual habilitation plans, for the self-policing by defendants of the appropriateness of services[44]—flow directly from the statutes and are finely fitted "to make effective the Congressional purpose." *Resident Advisory Board v. Rizzo*, 546 F. 2d 126, 149 (3d Cir. 1977) *cert. denied* 435 U. S. 908, 98 S. Ct. 1457 (1978).

The subject matter of this case was described, and challenges quite like those here to remedial orders were denied, in *Milliken v. Bradley*, 433 U. S. 267, 287 (1977) where for the Court, the Chief Justice wrote:

> "Children who have been thus educationally and culturally set apart from larger community[45] will inevitably acquire habits of speech, conduct and attitudes which reflect their cultural isolation [,]habits . . . which vary from the environment in which they must ultimately function and compete if they are to enter and be a part of that community. This is not peculiar to race; in this setting, it can effect any children who, as a group, are isolated by force of law

43. Contrary to the Pennhurst Association petition, p. 9, the orders do not require the "construction" of community residential facilities. Of the current 3500 community living arrangements nearly all are houses or apartments which are leased. Certainly the order means expansion of their number as well as the transfer of resources within Pennsylvania's retardation service system from the Pennhurst institutional facility to community facilities, as residents are transferred.

44. The district court had itself eschewed the detailed statement of extensive standards characteristic of cases like *Wyatt, supra* in favor of community-directed relief and monitoring structures.

45. The average age of Pennhurst residents at admission was 14; at the time of trial, on the average, they had been there for 21 years.

from the mainstream.[46] Cf. *Lau v. Nichols,* 414 U. S. 563 (1974)".[47]

On the propriety of the remedies there and here, see *id.* at 291.

VI. The Decision Below Permitting the United States to Intervene as a Party Plaintiff Raises No Issue Meriting Review by the Court

There was a case before the district court when the United States came to it, which in all events had to be determined. Whatever question there may be concerning the standing or authority of the United States to initiate a case like this one is not presented here where the United States was merely granted leave to intervene. *In re Estelle,* 516 F. 2d 480 (5th Cir. 1975) *cert. denied,* 426 U. S. 925 (1976).

The presence of the United States did not alter the scope or dimensions of this case in any way. Among the three sets of plaintiffs, the United States carried its share of the conduct of the litigation, but no more.[48] Among the fourteen expert witnesses presented by plaintiffs, for example, six were presented by the United States, eight by plaintiffs PARC et al. Among plaintiffs' 139 documentary exhibits, 55 were submitted by the United States and 84 by PARC et al. and original plaintiffs. Had the United States not been a party, the burden of proof would have been reallocated among the other parties.

46. See Act of June 12, 1913 § 1, *supra* at p. 13, creating Pennhurst and S. Rep. No. 94-160 at 27, *supra* at pp. 14-15 and 39.

47. Compare Mr. Justice McReynolds writing for the Court in *Meyer v. Nebraska,* 262 U. S. 390, 401-02 (1923).

48. On the eve of trial, defendants sought a writ of mandamus or prohibition against the participation of the United States in this case; the writ was denied by the Court of Appeals, a stay pending certiorari was denied below and this Court denied an application for stay and the petition for writ of certiorari. *Beal v. Broderick,* 431 U. S. 933 (1977).

CONCLUSION

For the above stated reasons, the Court should deny all of the petitions for a Writ of Certiorari herein.

Respectfully submitted,

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APPENDIX A.

The Legislative Intent of the Pennsylvania Mental Health and Mental Retardation Act of 1966,

Pennsylvania Legislative Journal
76-78 (September 27, 1966)

COMMONWEALTH OF PENNSYLVANIA
LEGISLATIVE JOURNAL—SENATE

THIRD SPECIAL SESSION OF 1966
WEDNESDAY SEPTEMBER 27, 1966

SECOND READING CALENDAR
BILL ON SECOND READING

SB 9 (Pr. No. 13)—Read at length the second time and agreed to,

Ordered, To be transcribed for a third reading.

PETITIONS AND REMONSTRANCES

Mr. PECHAN. Mr. President, I am very happy, as I am sure that the majority of the Members of this Senate are, about the progress of the mental health bill. I would like to make a few remarks, if I may; in fact, I have them prepared.

I think the Mental Health and Mental Retardation Act of 1966, in my opinion, is the noblest piece of legislation to come before the General Assembly at this Session. It will improve what we do now. It atones further for the wrongs we have done, over the centuries, to our fellowmen upon whom the misfortune of mental illness or mental retardation has fallen. We have labeled them "crazy", "insane",

or "feeble-minded". Because their disability was unseen, we have had little sympathy with it. We have judged them responsible for their actions and have punished them. We have locked them up, put bars on their cells, and strait-jackets on their bodies. We have exiled and sometimes forgotten them. We have sometimes cut them off from human society, and abandoned them to their distress and misery.

The object of this legislation is to make it possible for every mentally disabled person to receive the kind of treatment he needs, when and where he needs it. It will make those services available to every citizen in every community which are now available only to a lucky few, in the more progressive communities. It will open more beds in the local general hospitals. It will make available the services of psychiatrists and psychologists, of psychiatric nurses and social workers, of specially trained occupational therapists, of speech and hearing therapists, of activities directors and of child care workers. It will supplement the benefits of therapy with daytime and evening programs of activity which will call back to reality the erring mind, which will re-create and strengthen the ties which bind one human being to another and make us comfortable in each others' company. It will provide productive activity for those who can work only in a sheltered situation, and for those who are able, it will prepare them to go back to the customary world of business and industry, or to go forth into it for the first time, as the case may be. For those in acute distress, service will be available twenty-four hours a day, and the violent will find protective care instead of the harsh custody of jail.

There will still be those who will need a long stay in an institution, some even for whom this is the necessary and the only kind provision for the rest of their lives. We are not about to close our State schools and hospitals or

our State mental hospitals. The great point is that we shall know that the treatment program of one of these institutions is the indicated treatment before the patient leaves his community. Diagnosis and evaluation of his condition will precede the disposition of his case, and everything possible will be done for him in his own hometown.

If he responds to the program of the institution and the time comes when he is ready to return home, he will not be turned out into the cold. These same community services will be there to help ease the transition back into a normal life. Nobody will be lost from sight. Care will be continuous, even though the patient may move from in-patient to out-patient care, from hospital to workshop, from halfway house to foster home.

Not only will it be easy for a mentally disabled person to find the treatment he needs, but it will also be easy for him, under certain circumstances, to leave treatment when he has derived the full benefit from it, since the bill provides for voluntary admissions. Even in commitment, there is a large measure of flexibility, since there can be commitment to out-patient as well as to in-patient care.

A benefit of the legislation in which we will all share is that in every part of the State there will be a point at which we can receive information, to which cases can be referred before they become acute, where we professional men and the community agencies can get advice and consultation on the perplexing problems which often come to our attention first.

To give them their designations in the proposed Act, these community services, which must be made available in every community, are:

Short term in-patient services other than State-operated facilities.

Out-patient services.

Partial hospitalization services.

Emergency services, twenty-four hours per day, which shall be provided by, or available within at least one of the types of services specified heretofore in this paragraph.

Consultation and education services to professional personnel and community agencies.

Aftercare services for persons released from State and community facilities.

Specialized rehabilitative and training services including sheltered workshops.

Interim care of mentally retarded persons, who have been removed from their homes and who having been accepted, are awaiting admission to a State-operated facility.

Unified information and referral services.

The manner in which services will be made available will be determined by County Government. There need be no disruption of existing services. The local general hospital will provide in-patient care for the mentally ill, as it does for those with other kinds of illnesses. The out-patient clinic, where there is one, will continue to give out-patient service. The workshop or the day care center for the mentally retarded will go on functioning as it does now. However, these services, and new ones to be created where they are lacking, will be drawn together and co-ordinated by a small county staff, so that continuity of care for the patient may be assured.

This is a function which is essential, and which County Government can best perform. Thus, local government is tied into a partnership which already includes the State and the Federal Government. The Federal Government has only recently concerned itself with the problems of mental health and mental retardation, but Federal legislation and Federal funds for the construction of facilities and the staffing of services have given a mighty impetus to the improvement of services for the mentally disabled.

This partnership will extend into policy-making, as well as into the administration and financing of the program. Representatives of the County Commissioners and of both the Legislative and Executive Branches of the State Government will co-operate in formulating policies.

The financial burden of caring for the mentally ill and retarded rests largely on the State now, and will continue to do so under the new Act. The State will bear the entire cost of hospitalization of the mentally ill, whether it is in the local general hospital or the State mental hospital, whether it is twenty-four hours around the clock, or for the day or the night only. The State will also bear the cost of institutional care of the mentally retarded, whether actually residing in a State school and hospital, or being cared for in a private institution or foster home, while awaiting admission. It will also bear the major share of the cost of other services and, as we have amended the bill, it will take care of ninety per cent of the cost.

That may sound like a lot of money, but it is small compared to the human lives that it will restore to productive citizenship. We must also bear in mind that many sources of income will be tapped to support these services. Most people will be able to pay their own way, either because they have the money or because they are covered by health insurance. We will take full advantage of the medical assistance (Pennsycare) program of which the Federal Government pays over half. In the beginning, the cost to the State should be somewhere around $12,000,000 to $15,000,000, a year, while many counties will have to put in very little more than they are now contributing to the support of services for the mentally ill and retarded. Even ten years from now, the increased cost in many counties will be absorbed in the increased value of taxable property.

Sure, it will cost money. However, in the total State budget, this is not a significant sum. Every time a person is preserved from a life of dependency, every time a man goes back to his job, the financial burden on the State and on the counties is lifted.

Let me close by reminding you who want this legislation. I am sure the Governor wants it—he called a special session to consider it. The County Commissioners want it—they approved it in principle at their annual meeting and, through a committee, have labored with us to produce a sound and workable law. The citizens' organizations, which are especially concerned about the mentally disabled, want it. They participated by the thousands in the two years of planning which led up to the preparation of the bill, and have followed its course closely. Nobody got everything he wanted in the bill which is before you, but all were willing to submerge their own interest in the common good for the good of the mentally ill and the mentally retarded of this Commonwealth. I call on you to remember those who want this legislation most; namely, the ill and distressed, who will benefit directly from it, and to remember the humane and progressive tradition of this Commonwealth, and to vote for this enlightened measure.

Mr. SESLER. Mr. President, I can only concur in the remarks made by my distinguished colleague from Armstrong County. I would ask that he add one more remark. During the next Session of the Legislature, I want him to use his enormous influence in the dental profession, in view of the largess that we demonstrated yesterday, to bring it upon himself to ask the members of his profession to see whether they can provide free dental care and teeth for all of the mentally ill who need them. I am sure that we will see that the gentleman will work on this program during next year.

However, Mr. President, at least, in so far as the Senate is concerned. I would like to say that we have

reached a conclusion, finally, on the Mental Health and Mental Retardation Act of 1966. It is our hope that the House will act speedily on this matter and that the bill will be a reality and pass into law within the very near future. At this present time, I see no obstacles to that accomplishment.

In hearing Senator Pechan speak, I am reminded, of course, of the efforts exerted by Governor George Leader who did so much toward the cause of mental health in Pennsylvania, and for President Kennedy who promoted so assiduously the idea of the community mental health services.

We hope that this bill will, indeed, be a milestone in the field of mental health and mental retardation. We have made concessions, on our side of the aisle, I think, in order to effect the passage of this bill. I would like to remind our friends in County Government that we have given a great deal of responsibility to the County Commissioners. They are charged with the help of professional staffs in our Department of Public Welfare with the duty of carrying out these programs. We have made concessions in that we are going to permit them to have control over their Administrators and regional programs. They will have the ability to discharge them, if they do not think that they are carrying out the program. We were not happy with this, but we conceded that if it was necessary for the passage of the bill, we were willing to make such a concession. We want to make it clear, for the record, that we are giving this responsibility to our County Governments, and we are giving them a great deal of money. One of the amendments just adopted today has provided that the State will have to reimburse the counties for ninety per cent of the cost of the program. We are giving them a certain degree of freedom. However, we must remind them that the counties had a program of control for taking care of the mentally ill, prior to 1937,

when they failed to do an adequate job. It may be that they lacked the finances at that time, and that they lacked the public's support. However, today, I think that the public's support is there. I trust that the Commonwealth will be there with the adequate finances.

We are now going to look for the County Commissioners to expend every effort they have, in working in cooperation with the Department of Public Welfare and with the Advisory Citizens Board, throughout the various counties of the Commonwealth, to see that they take immediate steps to begin to formulate these plans. We should see to it that they set aside politics and bend every effort to the end that we will have the maximum utilization of all of our resources, both public and private, for the benefit of those less fortunate than ourselves.

When you realize that practically one out of ten of every Pennsylvanian has some problem in mental health, you will realize how vast the scope of this problem is. However, I think, we now have sketched in broad, general terms the framework of a program which can provide a continuum of services—out-patient, in-patient, diagnostic treatment, evaluation and research, a procedure of commitment under almost all conceivable types of circumstances.

I hope that we can focus attention on the local level, because if there was ever an example of a co-operative effort, which involves so many citizens and private groups as this legislation, I do no know what it is. We are going to give it control down on the local level; we are giving it a flexible degree of control. So, I am saying today—at least, I, speaking for myself—that we are charging County Governments with this tremendous responsibility. We hope that they will take these words to heart, in the spirit in which we worked, in a bipartisan effort. We Democrats, on this side of the aisle, have certainly, throughout the entire course of this legislation, demonstrated our interest in producing a program that is going to be both realistic and, yet, broad and imaginative in its scope.

With this in mind, Mr. President, we are happy that we have finally reached an agreement which we hope will be a happy, working agreement, realizing that we had to exercise the arduous impossible.

Mr. BELL. Mr. President, in view of this wonderful feeling of all the Members of the Senate towards our mentally ill, I trust that the next Session of the Legislature will see the great need in our institutions for more appropriations; that we give to our mental health program the sinews to put this program into effect.

I trust that, during the next Session, the Department of Public Welfare will put in proper requests, so that we can have the General State Authority build adequate facilities to take care not only of those mentally ill, but to provide, immediately, proper facilities for our mentally retarded children.

Mr. STROUP. Mr. President, I must say that I am very much pleased that the gentlemen who have spoken on the floor, here this afternoon, have all been overwhelmingly for the enactment of this bill, tomorrow, into law. I shall save my laudatory remarks until that time.

ADJOURNMENT

Mr. STROUP. Mr. President, I move that the Third Special Session do now adjourn until Wednesday, September 28, 1966, immediately following adjournment of the Special Session.

Mr. LANE. Mr. President, I second the motion.

The motion was agreed to.