



**Congressional Testimony of Regina Kline, Esq.
Founder and CEO of SmartJob LLC
U.S. House Judiciary Committee, Subcommittee on the Constitution
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Thank you for inviting me to participate in today's hearing. My name is Regina Kline, and I am the Founder and CEO of SmartJob LLC, the first global company dedicated to closing the disability wealth gap— and catalyzing employment— through impact investment. At SmartJob, we are working to unleash the tremendous untapped talent of people with disabilities onto the capital markets, including by driving impact investments and philanthropic capital infusions into disability-led solutions and entrepreneurs across the world who have created products, services, and solutions that will reduce the low labor force participation of people with disabilities, address poverty, and increase upward mobility.

Prior to founding SmartJob, I served as a Partner at the law firm of Brown, Goldstein & Levy, LLP, in Baltimore, Maryland and Washington, DC, and served as both a litigator and co-lead of Inclusivity, the firm's strategic consulting practice, where I represented and provided advice to a range of clients on matters involving the employment of persons with disabilities across the United States. I formerly served as Senior Counsel to the Assistant Attorney General for Civil Rights at the U.S. Department of Justice, where I provided legal and policy counsel regarding efforts to implement the Americans with Disabilities Act ("ADA") and *Olmstead v. L.C.*'s mandate for community integration in, among other things, employment.

As a DOJ Trial Attorney, I was lead counsel and filed two of the Department's first cases, *U.S. v. Rhode Island and City of Providence* and *U.S. v. Rhode Island*, challenging unnecessary segregation of people with disabilities in state-funded employment programs and reached the nation's first statewide settlement agreements to transform employment programs to serve people with disabilities in competitive integrated employment. During the same period, I participated as a counsel of record, with co-counsel from the Center for Public Representation, Disability Rights Oregon, and two private law firms in the *Lane v. Kitzhaber / United States v. Oregon* matter which, similarly, resulted in a landmark settlement agreement to transform Oregon's employment service system for people with disabilities. Collectively, the three cases resulted in injunctions requiring that approximately 11,565 people with disabilities receive the services and supports that they need to leave segregated subminimum wage employment and transition to competitive integrated employment within ten years.

It is a special privilege to offer testimony to the Committee on the topic of enforcement of the ADA and the *Current State of Integration of People with Disabilities*, and to do so with particular attention to the subject of employment.

The past nineteen months have been an inflection point in our national history, both for the enduring public health crisis posed by a global pandemic, but also by the truths it has revealed about our labor market and the global economy. While the economy struggles to rebound, many industries are experiencing a pressing labor shortage for multiple reasons; among them, that workers covet additional flexibility and autonomy in their jobs, seek to minimize adverse consequences imposed on their health by certain workplace settings and practices, and have shifted expectations for the way they will work after recognizing the precariousness of continued participation in labor market sectors and industries that offer low wages, fewer worker protections, and have been upended by automation and the ever-changing demands of the technological knowledge-based economy. In short, the pandemic has magnified that the long-term economic prospects of millions of Americans depend on and will be aided

by newfound flexibility and adaptability in modes of working, access to technology, and new skills training that will allow them to join new and emerging industries.

The irony of these pandemic-era revelations is that the group that meaningfully pioneered and perfected remote and flexible work, adaptations to the workplace and modes of working, to improve access to employment—that is, people with disabilities—remain among the most conspicuously unemployed and underemployed people in the United States, and the world, at the precise moment that the economy is showing signs of shifting into a golden era of flexible work. More to the point, people with disabilities have received the least investment in the solutions needed to participate in such future-proofed work and the rapidly changing economy.

The statistics exemplify the scope of the problem. People with disabilities, a constituency that includes nearly 1 in 5 Americans¹, comprise roughly half of those living in long-term poverty in the United States.² Nearly two-thirds of working-age people with disabilities are not employed.³ People with disabilities are vastly overrepresented in the retail and manual skills industries most subject to disruption and vastly underrepresented in the industries experiencing the most growth in the economy.⁴ In global terms, more than one billion people in the world live with disabilities⁵, leaving a multi-trillion dollar hole in global GDP due to the social exclusion of people with disabilities. In short, this is an unemployment crisis of profound proportions with direct ramifications for the capital markets and the global economy.

To join the future of work, people with disabilities require both public and private investment in the solutions, including technologies, innovations, and integrated services and supports, required to participate in today's rapidly changing economy and workforce.

Crucially, in the United States, the disability unemployment crisis has been deepened by public spending—namely, the significant overreliance of state and local governments on service systems that structure employment service delivery for people with disabilities in separate, segregated settings—apart from competitive mainstream and typical employment—in violation of the mandates of federal civil rights law. While to correct these failures, over the past decade, the Department of Justice and private plaintiffs have been assertive in enforcing the ADA and *Olmstead v. L.C.* with incredible success, both legally and practically, the lion share of public spending on disability employment and day services, through the government's multi-billion dollar services system, continues to be invested in segregated employment and non-work services and settings with, in relative terms, few material gains in labor market participation of people with disabilities in the mainstream economy.

¹ U.S. Census Bureau, <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html> (last visited October 17, 2021).

²² *National Disability Policy: A Progress Report*, National Council on Disability, page 21, available at: https://ncd.gov/sites/default/files/NCD_A%20Progress%20Report_508.pdf.

³ See *2020 Progress Report on National Disability Policy: Increasing Disability Policy*, National Council on Disability, page 22, available at: https://ncd.gov/sites/default/files/NCD_Progress_Report_508_0.pdf.

⁴ *Id.* at 23-24.

⁵ See United Nations Fact Sheet, <https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html> (last visited October 17, 2021).

One common feature of segregated employment settings draws particular attention to how misaligned segregation is with the ADA's explicit goal of economic self-sufficiency. Over the past eight decades millions of Americans with intellectual and developmental disabilities ("I/DD"), who are blind, who have significant psychiatric disabilities, or have other significant disabilities have been left out of the open marketplace often to earn just pennies per hour in segregated settings, often for decades at a time, based on the erroneous assumption that disability inherently creates insurmountable barriers to productivity. Many others are served in day programs that do not offer any type of employment service at all, and receive no encouragement or assistance to secure employment.

Nearly eighty-three years ago, as part of the New Deal reforms, it became accepted that this justified the need for wages to be downwardly adjusted to sub-minimum wages⁶ and for such persons to participate in work settings with only other people with disabilities, except for paid staff. These institutional settings are most commonly referred to as "sheltered workshops." These assumptions have been perpetuated even though many people in segregated work settings can and want to work in the community and could do so with accommodations, training, technology, and supports designed to remove barriers to entry, as opposed to receive the kinds of services offered in segregated settings that ensure their near-terminal separation from competitive employment and ongoing economic apartheid. If the goal of sheltered workshops is ostensibly to train and support people with disabilities to eventually participate in mainstream employment, then such programs have a 95% fail rate, as only approximately 5% of sheltered employees ever transition from such programs to the open market.⁷

While some service providers and families have long expressed fear that dependence on segregated service settings, including sheltered workshops, is a necessary feature of everyday life and work for some people with disabilities, the past nineteen months have offered an alternative point of view. During the global pandemic, many state employment service systems, and service providers operating within them, temporarily suspended the employment services provided in segregated settings, including in sheltered workshop settings that pay people subminimum wages. They did so because, as advocates have long known, congregation itself can be a threat to individuals' safety, and most certainly during a public health emergency precipitated by a contagious airborne virus. As I then learned firsthand from people with disabilities (and as was reported to me by other disability rights lawyers, advocates, and family members in the field), after the segregated employment settings suspended services, many people with disabilities experienced the first opportunity in their adult lives to evaluate whether they were fully realizing their full employment potential by participating in such programs and settings. For some, this experience revealed that they do not, in fact, have an inherent dependence on segregation, but instead may have "ended up there" because of a lack of previous opportunities to meaningfully evaluate alternatives and a dearth of available supports in the community (like job developers, job coaches, and benefits planning counselors) to work in typical employment settings. It has long been documented that a great many people with disabilities who receive services in segregated employment settings can and want to work in the community in competitive integrated employment. But the bitter reality remains, as state and local governments have serially overinvested in

⁶ See "Section 14(c)" of the Fair Labor Standards Act, 29 U.S.C. § 214(c).

⁷ *National Disability Employment Policy: From the New Deal to the Real Deal: Joining the Industries of the Future*, National Council on Disability (October 11, 2018), Page 34, available at: https://ncd.gov/sites/default/files/Documents/NCD_Deal_Report_508.pdf (last visited October 17, 2021).

segregated employment settings, the lack of public investment in integrated alternatives continues to relegate people with disabilities to segregated settings by default, even at a time when there are many unfilled jobs in the economy that such persons could perform.

I. Disability-Related Civil Rights Protections and Employment

For the past half century, the United States has championed the civil rights of individuals with disabilities including by signing into law federal protections that have allowed such persons to be free from unnecessary institutionalization, social isolation, and segregation and to fully participate in all aspects of community life, including where such persons live, learn, work, and interact with peers. The United States has accomplished this through seminal statutes and regulations including Title XIX of the Social Security Act of 1965 (“Medicaid Act”), the Rehabilitation Act of 1973 (“Rehab Act”), the Education for All Handicapped Children of 1975 (EHCA), the Individuals with Disabilities Education Act of 1997 (“IDEA”), the Developmental Disabilities Act of 1984 (“DD Act”), and finally and importantly, the ADA. In 1999, the United States Supreme Court’s *Olmstead v. L.C.* decision, and later the enactment of the Workforce Innovation and Opportunity Act of 2014 (“WIOA”) have clarified and expanded these rights.

These significant advancements were accompanied by rising expectations for people with disabilities, alongside the promise of equality of opportunity, a free and appropriate public education in the least restrictive environment, access to health care, services, and supports in their homes and communities rather than in institutions, and freedom from discrimination in all aspects of community life. Today young people with disabilities come of age in an America where they expect to live at home, go to school with non-disabled peers, navigate sidewalks, buildings, and access public transportation free from physical and architectural barriers, and be fully integrated into the fabric of the community.

The culmination of these rights to education, healthcare, independent living, and community access is the **economic self-sufficiency** of people with disabilities and their emergence as employees, taxpayers, and consumers in the mainstream economy. Crucially, one of the primary purposes of the ADA was to remove barriers to work, including discrimination and segregation, to assist people with disabilities to “move proudly into the economic mainstream of American life.”⁸ It is important to remind the committee, that the last half century has taught us that full inclusion of people with disabilities is more than merely being physically present in the community, it is most certainly *economic*. Yet now millions of those in, or at risk of, segregated work settings across the country lack the economic security to enjoy the full range of opportunities and benefits derived from being physically present in the community. And the global economy is sorely missing such persons’ economic and social contributions. Discussions of the ADA cannot begin and end with the freedom from discrimination once already on-the-job, they must also include *equity* and the corresponding inclusion most fundamentally bestowed by allowing those historically separated from labor market participation to enter employment with the right supports.

⁸ President George H.W. Bush, “Statement on the Signing of the Americans with Disabilities Act” (Washington, DC, July 26, 1990).

II. The Requirements of the ADA and *Olmstead v. L.C.*

Federal law requires that states and local governments provide employment services in the most integrated setting appropriate to individuals' needs. The underlying legal mandate of this requirement is explicitly embedded in the ADA, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d) (the "integration mandate"); and strengthened by the Supreme Court's interpretation in *Olmstead v. L.C.*, 527 U.S. 581 (1999). The integration mandate has been one of the most important aspects of the ADA. Segregation and isolation of people with disabilities has curtailed their opportunities to participate in virtually all aspects of everyday life, including employment, educational, social and cultural, and other activities.

Lane v. Kitzhaber/ United States v. Oregon established that "the risk of institutionalization addressed in *Olmstead* ... includes segregation in the employment setting," rejecting the argument that *Olmstead* only applied to segregated residential institutions.⁹ The ADA's integration mandate requires employment service systems to allow those who are qualified for, and who do not oppose doing so, to receive employment supports in the most integrated setting appropriate to their needs.

Thus, it is enshrined in federal law that public entities must transition and rebalance employment service systems away from significant over-reliance on segregated employment and day settings to the exclusion of integrated alternatives like supported employment services provided in competitive integrated employment. In doing so, states will allow individuals a meaningful opportunity to access services in the most integrated setting appropriate; or in other words, competitive integrated employment (*i.e.* typical jobs in the community).

Other federal laws and requirements stand in harmony with the ADA and *Olmstead*. For example, Section 511 of WIOA is intended to ensure that all people with disabilities are given opportunities to work in competitive integrated employment and to limit the placement of individuals in subminimum wage sheltered workshops. Thus, it has become the explicit policy of the federal government to intercept young people with disabilities before they enter segregated employment settings to ensure that they are first given a meaningful choice to work in competitive integrated employment. Likewise, the Center for Medicare and Medicaid Services ("CMS") has also weighed in on this issue. The HCBS Settings Rule applies to all HCBS settings, both residential and day settings (including employment settings). Among other things, the Rule requires that the setting is integrated in and supports access to the greater community and provides opportunities to seek employment in competitive integrated employment.

A. Application of the ADA and *Olmstead* to Employment

Under the ADA and *Olmstead*, no one who wants to work should be compelled to go into a segregated employment setting to do so because those supports do not exist or are not otherwise

⁹ *Lane v. Kitzhaber*, 841 F. Supp.2d 1199, 1205 (2012) ("Those same criticisms apply equally to offering no choice of employment services other than working in a sheltered workshop. ... [This case] seeks to ensure the provision of available employment-related services in order to prevent unnecessary segregation in employment. Although the means and settings differ, the end goal is the same, namely to prevent the 'unjustified institutional isolation of persons with disabilities.' Thus, this court concludes that the risk of institutionalization addressed in [] *Olmstead* ... includes segregation in the employment setting.").

available elsewhere in the service system. Yet this has been precisely the lived experience of millions of Americans with disabilities for decades. People with disabilities who can and want to work have been relegated to separate rather than typical employment settings often for no other reason than because that is where public entities have made services and supports most available to them.

In *Lane v. Kitzhaber (Brown)/ United States v. Oregon*, a class comprised of thousands of individuals with disabilities in or at risk of entering sheltered workshops filed a lawsuit against the state of Oregon, alleging that people with disabilities who can and want to work in competitive integrated employment were forced to receive employment services in Oregon sheltered workshops because Oregon's system significantly over-relied on segregated employment settings and had under-invested in services and supports (like job developers, job coaches, benefits counselors) that would allow such persons to participate in competitive integrated employment.

Likewise, DOJ investigated and filed a lawsuit against the state of Rhode Island for its significant over-reliance on sheltered workshops.¹⁰ The lawsuit, like the one filed in Oregon, was premised upon DOJ's findings that people can and want to work in competitive integrated employment but were forced to receive employment services in segregated sheltered workshops because of Rhode Island's over-investment in those settings and under-investment in integrated alternatives.

These actions in Oregon and Rhode Island resulted in three landmark ADA court-ordered settlement agreements within the span of three years: *United States v. Rhode Island and City of Providence* (2013); *United States v. Rhode Island* (2014); and *Lane v. Brown/ United States v. Oregon* (2015).¹¹ Under these settlement agreements, both states agreed to no longer purchase or fund sheltered workshop placements for new entrants to workshops, including transition-age youth; to increase technical assistance resources; career planning and development services; and to overhaul youth transition services. The settlements also brought about new person-centered planning processes for people with disabilities, and the use of evidence-based practices in finding, obtaining, and sustaining employment. In sum, Oregon committed to providing 8,115 people with disabilities with the services and supports they need to leave segregated employment and transition to competitive integrated employment over 7 years; likewise, Rhode Island committed to transitioning 3,450 people with disabilities over 10 years.

To illustrate what excessive reliance on segregation in employment settings looks like, one should examine the state of affairs in Oregon and Rhode Island's service systems at the time that these cases were initiated. In Oregon at the time of the U.S. Department of Justice's ("DOJ") Letter of Findings (2012), approximately 61% of individuals with intellectual or developmental disabilities ("I/DD") receiving employment services from the state system did so in sheltered workshops versus less than

¹⁰ See Findings Letter from DOJ to Rhode Island (January 6, 2014) and Complaint (April 8, 2014), available at: https://www.ada.gov/olmstead/olmstead_cases_list2.htm#ri-state.

¹¹ See *United States v. Rhode Island and City of Providence* Interim Settlement Agreement (2013), https://www.ada.gov/olmstead/olmstead_cases_list2.htm#ri; *United States v. Rhode Island* (2014) Settlement Agreement, https://www.ada.gov/olmstead/olmstead_cases_list2.htm#ri-state; and *Lane v. Brown/ United States v. Oregon* Consent Decree (2015), https://www.ada.gov/olmstead/olmstead_cases_list2.htm#lane.

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16% of service recipients who did so in jobs in the community.¹² Likewise, in Rhode Island at the time of the DOJ's Letter of Findings (2014), approximately 80% of individuals with I/DD that received services from the employment and day service system did so in segregated settings including sheltered workshops, while just 12% reported that they participated in jobs in the community.¹³ In both cases, the DOJ found that such excessive and unjustified reliance on segregated settings, in lieu of integrated alternatives, violated Title II of the ADA and *Olmstead*.

Nearly a decade after the Department of Justice made its first findings applying the ADA and *Olmstead* to employment, and years after the resulting landmark consent decrees, Oregon and Rhode Island reflect considerable progress and promise for efforts to allow those who can and want to work to receive the supports they need to move from segregated to integrated employment settings. For example, at the time of entry of the Consent Decree, approximately 2,700 people with disabilities in Oregon worked in segregated sheltered workshops and now there are none.¹⁴ Correspondingly, at the time of entry of the Oregon Consent Decree just 300 people worked in typical jobs in the community and received publicly-funded supported employment services whereas just prior to the pandemic approximately 1,700 people with disabilities did.¹⁵

Similarly, in 2012, at the time of the DOJ's findings in Rhode Island, 2,572 people with disabilities reported participating in facility-based day programs and another 839 people with disabilities participated in sheltered workshops (a total of 3,411 people in segregated settings).¹⁶ At the same time, just 383 individuals participated in typical jobs in the community with supported employment services.¹⁷ Yet, years later, and just prior to the pandemic improvements were reported, as 614 people reported that they participated in individualized integrated paid employment or self-employment, 1,212 people reported participating in facility-based day programs, and just 14 people, or less than one half of one percent (0.4%) participated in segregated work settings.¹⁸

Although DOJ has continued to work implementing the agreements in these cases alongside private plaintiffs and the involved states, it has not yet— to my knowledge— initiated new enforcement actions under Title II of the ADA and *Olmstead* as applied to employment settings. The legal rationale presented in these cases, of course, applies to all Title II covered entities, meaning other state and local government employment and day service systems. As a result of the legal landscape, some other states have made considerable progress in recent years in transitioning their service systems away from significant reliance on segregated settings and taken concrete affirmative steps to invest in the services and supports necessary to allow people to work in competitive integrated employment. In addition, states like Maryland, Oregon, Alaska, Illinois, and New Hampshire, and cities like Seattle, have officially eliminated the payment of subminimum wages in their systems.

¹²See Findings Letter from DOJ to Oregon (June 29, 2012), https://www.ada.gov/olmstead/documents/oregon_findings_letter.pdf.

¹³ See *supra* note 10.

¹⁴ 2020 Report to the Court, Fifth Report of Independent Reviewer, Cathy Ficker Terrill, J.D. March 2021.

¹⁵ *Id.*

¹⁶ *Supra* note 10.

¹⁷ *Id.*

¹⁸ See Sherlock Center at Rhode Island College, Day & Employment Survey data, *available at*: <https://w3.ric.edu/sherlockcenter/publications/statewideannualsummary2020.pdf>.

B. Persistent Trends and Segregated Landscape of Public Employment Service Systems

Even despite the considerable progress brought about by legal challenges over the past decade applying the ADA and *Olmstead* to public employment systems, namely *United States v. Oregon/ Lane v. Kitzhaber (Brown)*; *United States v. Rhode Island*, and *United States v. Rhode Island and City of Providence*, overall data reflect that many state employment systems continue to remain over reliant on providing services in segregated employment and day settings and have taken few if any actions to meaningfully address this imbalance, placing them at-risk of lawsuits under Title II of the ADA and *Olmstead*.

One September 2018 report by prominent disability researchers made this point plain as it related to people with intellectual and developmental disabilities:

While many policymakers, providers, families and advocates recognize the benefits of employment for people with IDD, rates of integrated employment among people with IDD receiving services are low and *have remained essentially unchanged for the past 10 years*. (emphasis added).¹⁹

Another study demonstrated that reliance on segregated facility-based and non-work services may be actually growing. Daria Domin and John Butterworth of the Institute for Community Inclusion at the University of Massachusetts Boston stated of 190 U.S. community rehabilitation providers, only 17.5 percent of 33,874 adults with I/DD served during the FY 2014-2015 year worked for pay in individual jobs with supports, while at the same time, participation in facility-based and non-work services was growing nationally.²⁰ This is concerning when considered in light of recent National Core Indicators data that demonstrates that a significant portion of individuals in segregated employment and day settings, including people in sheltered workshops, want to work in competitive integrated employment.²¹

Moreover, there are additional signs that public spending is out of step with the changing nature of work and the kinds of investment necessary to prepare people with disabilities for the mainstream economy. For example, despite overall spending of \$71.7 billion on vital services and supports for people with intellectual and developmental disabilities, approximately \$16 million— or less than 1% of that overall spending— is spent on technology.²² Accordingly, many such persons with disabilities lack

¹⁹ Dorothy Hiersteiner & John Butterworth, “Working in the Community—Update 3, The Status and Outcomes of People with IDD in Integrated Employment,” (Institute for Community Inclusion, UMass Boston)

²⁰ See *supra* note 7, *NCD New Deal to Real Deal Report* at page 27 (citing and explaining Domin and Butterworth data).

²¹ John Butterworth and Dorothy Hiersteiner, *How Many People with Intellectual and/or Developmental Disabilities Want a Job in Their Communities?*, 64 Data Note (2019), https://www.statedata.info/sites/statedata.info/files/files/DN_64_F.pdf (last visited October 17, 2021).

²² Larson, S.A., Butterworth, J., Winsow, J., Tanis, S., Lulinski, A., and Smith, J., *30 Years of Community Living for Individuals with Intellectual and/or Developmental Disabilities (1987-2017)*, Washington,DC: Administration on Community Living, U.S. Department of Health and Human Services, *available at*: <https://acl.gov/sites/default/files/Aging%20and%20Disability%20in%20America/30%20Years%207-13-21.pdf> (last visited October 17, 2021).

access to even the most basic type of technology infrastructure relative to work that would allow them to compete for open market positions.

III. Recommendations for Continued Enforcement of the ADA and *Olmstead v. L.C.* in Employment

To contribute to the continued success of Title II ADA and *Olmstead* enforcement, it is recommended that:

1. DOJ Reinstate Title II ADA and *Olmstead* Employment Guidance: The Committee should recommend that the DOJ reinstate a critical guidance that was issued almost exactly 5 years ago in October 2016 on the subject of the application of Title II of the ADA and *Olmstead* to state employment service systems. The guidance was based on existing case law and settlement agreements and was framed as a tool for states and stakeholders to collaborate in rebalancing employment service systems. The guidance was rescinded by the DOJ in December 2017, in what is documented to have been at the urging of sheltered workshop providers.²³ At the time, over 200 disability organizations sent a letter to DOJ opposing the withdrawal of the guidance.²⁴ To date, the guidance remains withdrawn. Congress delegated the authority to DOJ in implementing the ADA to provide guidance and technical assistance to regulated entities. Title II regulated entities across the U.S. can only stand to benefit from the reinstatement of this guidance, as it provides clear examples and technical assistance in understanding the meaning of existing law.
2. Recommend that States Use American Rescue Plan Act (ARPA) Funds to Comply with ADA/*Olmstead*: Under the American Rescue Plan Act (and the HCBS Infrastructure Improvement Program), states now have additional funds to meet the growing demands for HCBS services stemming from the disproportionate number of COVID-19 cases and deaths among people in congregate care settings. In particular, ARPA provides an additional 10 percentage point increase in federal matching funds for state spending on HCBS from April 2021 through March 2022, an estimated \$11.4 billion increase.²⁵ States should use some of these funds to shift their systems to comply with the requirements of Title II of the ADA and *Olmstead*, so those persons with disabilities that can and want to work, and who are at serious risk of being referred to or returning to institutional isolation in segregated work or day settings, can receive the supports they need to instead enter the mainstream economy and competitive integrated employment.

²³ See August 2017 letter from ACCSES to Associate Attorney General Brand, *available at*: https://gallery.mailchimp.com/83f2bf25c4391de9e70589b76/files/dbae7e0b-3ac5-4fc4-b480-8914c611984e/ACCSES_Comment_Aug_14_2017_DOJ_Docket_No_OLP_164_003_.pdf (last visited October 17, 2021).

²⁴ CCD Letter to Hon. John Gore (Jan. 8, 2018), <https://centerforpublicrep.org/wpcontent/uploads/2017/12/letter-to-DOJ-re-withdrawal-of-guidance-1-5-18.pdf> (last visited October 17, 2021).

²⁵ See *How Could \$400 Billion New Federal Dollars Change Medicaid Home and Community-Based Services?*, Kaiser Family Foundation (July 16, 2021), *available at*: <https://www.kff.org/medicaid/issue-brief/how-could-400-billion-new-federal-dollars-change-medicaid-home-and-community-based-services/> (last visited October 17, 2021).

3. The DOJ should continue to prioritize enforcement of Title II of the ADA and *Olmstead* with regard to employment. The DOJ should be supported to continue to enforce the ADA and *Olmstead* as applied to employment and day service systems.

At SmartJob, although still a relatively new company, our team has already identified, researched, evaluated, and/or met with hundreds of entrepreneurs and innovators from the United States and throughout the world who are building viable solutions to close the disability wealth gap and catalyze employment through their private early-stage companies. By this I mean, they are entrepreneurs led by the lived experiences of disability who are ideating, creating, and bringing to market the next generation of universally designed technologies, solutions, services, and modes of working. Their products and services have the potential to make employment more flexible, adaptable, and accessible for people with disabilities, and for everyone else too. With access to investment capital, these solutions, and others like them, have the potential to help build an inclusive workforce and to catapult those left out of the open market back in.

Many in the field of impact investment would agree with my conclusion that facilitating investment in these dynamic and innovative entrepreneurs and companies requires that diligence and evaluation be predicated not simply on the fundamentals of financial evaluation of a given company but also the potentiality for the particular product or service to yield *measurable and concrete social impact outcomes* like the overall number of people working at higher wages, in new and emerging industries, on meaningful career paths, or who are acquiring new skills and credentials. Investors largely self-correct when the desired outcomes are not achieved by way of their investment. Those of us operating in the private markets certainly wish public investments would take a similar approach with regard to disability employment. Currently, the vast majority of disability public service dollars expended are not in alignment with the outcome of meaningful labor market participation, muting the potential economic and social contributions that people with disabilities could bring to bear on the market.