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## **SUPREME COURT TO DECIDE: CAN VIRGINIA BLOCK INVESTIGATIONS**

On December 1, 2010, the United States Supreme Court will hear argument in a case where the Commonwealth of Virginia asserts immunity from investigations. In the case, *Virginia Office for Protection and Advocacy v. Stewart*, the Virginia Office for Protection and Advocacy (VOPA) is investigating deaths and other suspicious incidents at state operated facilities, but the State refuses to cooperate in the investigations. The State asserts that it cannot be required to produce any information in the investigations. Argument on the case before the Supreme Court will begin at 11:00 a.m. Seth Galanter, of Morrison & Foerster in Washington, DC, is representing VOPA.

In 2006, two people died under suspicious circumstances in Virginia institutions and a third person was seriously maimed. One death, at Central State Hospital in Petersburg, appeared to be the result of excessive force and improper restraint. The other two incidents, one a death and the other an assault, occurred at Central Virginia Training Center in Lynchburg. Both appeared to be the result of staff neglect.

VOPA was alerted to the suspicious deaths and the serious injury from various sources and began investigating. In the course of its investigations, VOPA requested specific records from the Department of Mental Health, Mental Retardation and Substance Abuse Services, now known as the Department of Behavioral Health and Developmental Services. The Department, which operates the facilities where the incidents occurred, refused to provide the requested records. VOPA sued in federal court, alleging that the state's refusal violates federal law. The 4<sup>th</sup> Circuit Court of Appeals barred the suit. The Court of Appeals held that VOPA, as a state agency, cannot sue another state agency in federal court, even to enforce federal law.

The U.S. Supreme Court agreed to review the ruling of the 4<sup>th</sup> Circuit.

"Our office was created to protect the rights of people with disabilities, especially when they are most vulnerable, when they are in the custody of the state," said Colleen Miller, VOPA's Executive Director. "It is unconscionable that the General Assembly would create us to do this job, but the Department of Behavioral Services would stand in our way."

VOPA was created as an independent state agency by the General Assembly in 2002. It is charged with investigating abuse and neglect of persons with disabilities. Under both state and federal law, VOPA is authorized to pursue all necessary legal remedies to carry out its mission.

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