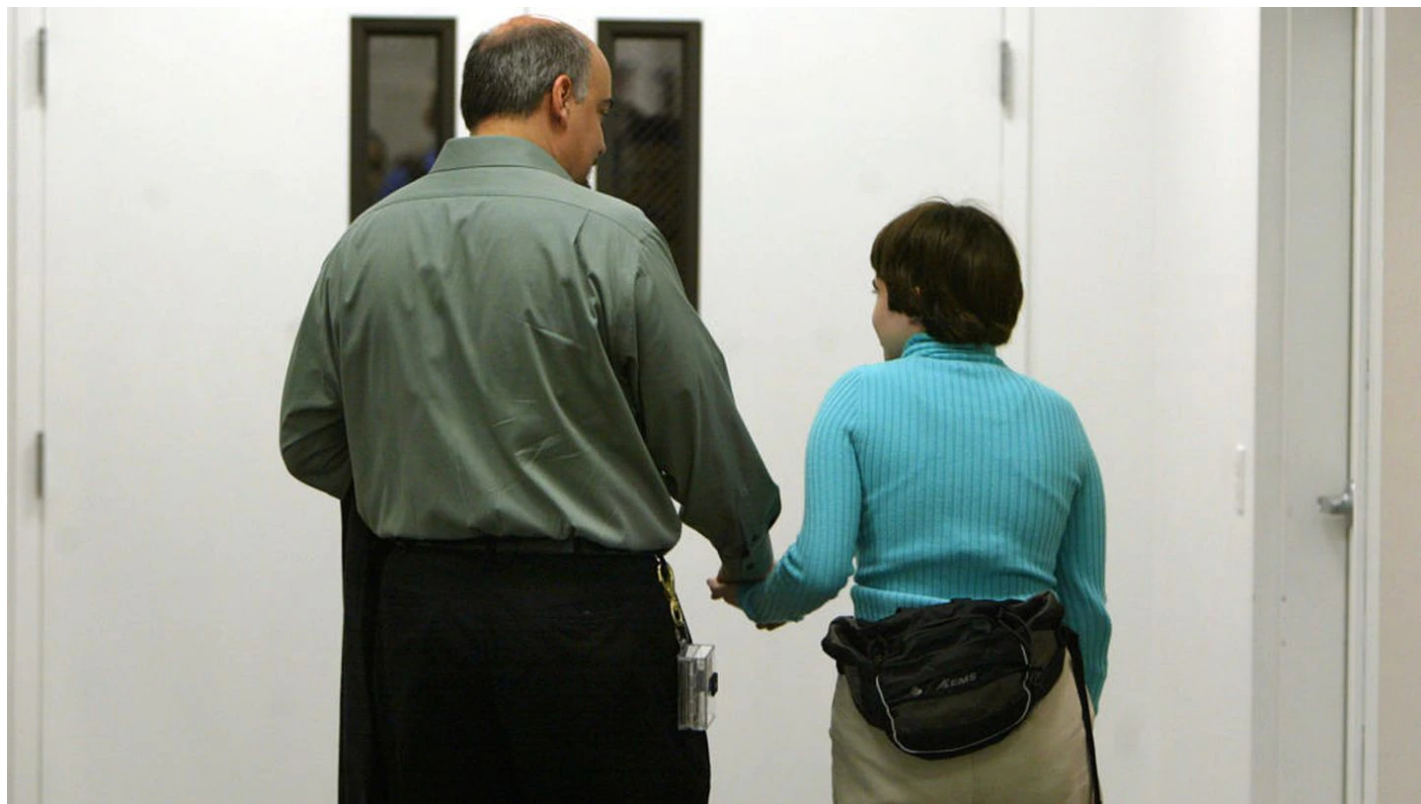


Court decision allows Canton school to continue using electric shocks on residents with intellectual disabilities

Federal appeals court overturns FDA ban on the Judge Rotenberg Educational Center's shock devices

By [Naomi Martin](#) Globe Staff, Updated July 7, 2021, 7:00 p.m.



A federal appeals court this week overturned the US Food and Drug Administration's ban on shock devices used by the Judge Rotenberg Educational Center for children and adults who have disabilities. In this 2006 file photo, a father holds the hand of his daughter, who received shocks as part of her treatment for epilepsy. TLUMACKI, JOHN GLOBE STAFF

A federal appeals court in Washington, D.C., this week overturned the US Food and Drug Administration's ban on shock devices created and used by a Canton residential school for children and adults who are intellectually disabled.

The 2-1 decision issued Tuesday allows the Judge Rotenberg Educational Center to continue

using the controversial devices on residents. The center is now the sole facility in the country that uses electric shocks to modify behavior in patients with disabilities, according to court records.

The center's attorney, Michael Flammia, said Rotenberg leaders are pleased with the ruling, which allows workers at the facility to continue delivering electric shocks to a portion of adult residents to correct aggressive or self-injurious behavior when other alternatives fail. The Rotenberg center continued administering shocks to about 55 of its 300 residents throughout the pandemic, under a stay of the FDA's 2020 ban, he said.

But disability advocates say the shocks are barbaric forms of torture that should be outlawed, citing court records and former residents' [accounts](#) in [news articles](#) and court [testimony](#) reporting being shocked many times by accident or for minor, nonviolent infractions such as swearing, running away, or not following directions, allegations the center denies. The United Nations also has [called](#) the center's shock practices "torture."

In the ruling, US Circuit Court of Appeals Judges David Sentelle and Gregory Katsas said the FDA lacked the authority to ban the devices for usage on people who are intellectually disabled and not other types of patients because federal law limits the FDA from interfering with the practice of medicine. Regulating medicine is the state's domain, they wrote.

"The FDA has no authority to choose what medical devices a practitioner should prescribe or administer or for which conditions," the ruling said.

But in a dissenting opinion, Chief Judge Sri Srinivasan disagreed, saying the FDA did have the legal authority to ban medical products for certain uses in the interest of patient safety. In this case, the FDA conducted a years-long examination of the risks and benefits of the practice before deciding to ban them from being administered on patients who are intellectually disabled. Meanwhile, the FDA found the devices still could be acceptably used on smokers who control the shocking device on themselves. The shocks can result in severe pain, skin burns, tissue damage, and psychological issues such as panic, anxiety, and post-traumatic stress disorder, he wrote.

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It is hard to perceive why Congress could want to deny the agency that made ground option” of allowing a device to remain on the market for one use but not another, Srinivasan wrote.

The Rotenberg center says shocks only are administered with approval from the patient’s family and a local judge. The center says the treatment is necessary to prevent people from behaviors such as punching themselves or banging their heads against a wall, risking brain injury, broken bones, or blindness. Some patients who were logged injuring themselves 400 times a month have responded to the treatment so well that they experience just a few instances a month afterwards, Flammia said.

“With the treatment, these residents can continue to participate in enriching experiences, enjoy visits with their families and, most importantly, live in safety and freedom from self-injurious and aggressive behaviors,” the center said in a statement.

But Shain Neumeier, a Springfield attorney who has represented former center residents, said the shocks are used as painful punishment on people who have no say in the matter, and their families often are not fully informed about the severity, frequency, or duration of the shocks people receive and their lack of effectiveness.

“State legislators need to end funding, if the court system is unwilling to put an end to this barbaric practice,” Neumeier said.

The Judge Rotenberg Educational Center Parents Association issued a statement praising the court’s decision.

“We have and will continue to fight to keep our loved ones safe and alive and to retain access to this life saving treatment of last resort,” the association said.

Advocates for people with disabilities condemned the decision.

“This ruling opens the door for continued torture of largely Black and brown disabled people in the name of treatment,” said Lydia Brown, director of policy, advocacy, and external affairs for the Autistic Women and Nonbinary Network. “The FDA must reissue a ban on all devices used to inflict painful electric shock on others.”

(The center said half of the patients receiving shocks are white.)

“There are alternative methods for behavioral supports for people with disabilities and other needs that do not include excessive force, pain, and fear,” said Leo Sarkissian, executive director of the Arc of Massachusetts, an advocacy group for people with intellectual disabilities.

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