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**Disability Rights Center – New Hampshire Issues Statement Clarifying the Legal Right to
Vote for People with Disabilities**

Disability Rights Center - New Hampshire (DRC-NH) is releasing this statement in response to issues raised by the article “[Charlestown Mother Investigated for Voter Fraud After Helping Disabled Son Vote](#)” featured in today’s Valley News.

The article states that DRC-NH declined to comment on the case “because it is part of an ongoing investigation.” To clarify, although DRC-NH has investigatory authority, it is the NH Attorney General’s office which is investigating this case, not DRC-NH.

I. Relating to Voter Competency

The article accurately notes that “there is no NH law or regulation that specifically gives an election official the ability to deny a person the right to vote based on competency.” However, it goes on to state that Deputy Secretary of State David Scanlan said “moderators have some discretion to determine if a person is mentally competent to vote,” and that moderators could attempt to communicate with the voter, “[t]hat attempt, he said, could be as simple as asking whether the person’s favorite ice cream is chocolate, vanilla or strawberry.”

To clarify, no legal basis exists for a moderator or clerk to preemptively deny someone the ability to cast a ballot because they are perceived to be “incompetent.” Although moderators and clerks have the ability to challenge a ballot, they can do so only for the reasons outlined in NH [RSA 659:27-a, II](#). The statute does not list “competency” as a reason to deny or challenge a resident’s right to vote or allow for a qualifying question regardless of how ‘simple’ it may be. The only possible justification to challenge a ballot would be if the voter was ineligible to vote “pursuant to some other state or federal statute or constitutional provision” that would make the voter ineligible ([RSA 659:27-a, II\(j\)](#)).

In the disability context, there is a legal process to take away a person’s right to vote. Specifically, an otherwise eligible voter with a disability may lose their right to vote only if a probate judge removes the right as part of a guardianship order. Absent a guardianship order, there is no competency test, qualifying question, or IQ standard to restrict a NH resident’s right to vote because of their disability.

Further, while a voter's right to cast a ballot may be challenged, the voter must also be given an opportunity to sign an affidavit affirming that they have a right to vote ([RSA 659:27, II](#)).

II. Assistance In Voting

The article mentions that a poll worker "initially declined to allow Dee Milliken in the voting booth with her son." However, a voter has the right to bring any person "of the voter's choice provided that the person is not the voter's employer or union official" into the ballot box to assist them with voting provided that they swear to the moderator that assistance is necessary ([RSA 659:20](#)). The person chosen by the voter to assist them must take an oath to fill out the ballot as directed by the voter.

III. Accessible Voting

The article states, "the Millikens weren't allowed into a polling area specifically set aside for people with disabilities because they wouldn't be using the touchscreen system designed to assist the visually impaired..." However, it is improper for a poll worker to not allow use of an accessible booth because a voter will not be using the accessible voting system (the touchscreen). Each polling place must have at least one accessible voting booth which is easily accessible to people with disabilities ([RSA 658:9, III](#)). The accessible voting booth is designed to meet the needs of people with physical disabilities and the law does not limit its use to only those using the accessible voting system.

It is also important to note that although the One4All accessible voting system (the touchscreen) was initially conceived to allow people with visual impairments to vote privately and independently, anyone can use it regardless of disability. Unfortunately, there is a common misconception that the One4All system is only 'designed to assist the visually impaired' but as its name indicates, it can be used by all voters.

Americans with disabilities have too often experienced barriers in voting due to inaccessible voting places or discriminatory voting policies. Although we cannot comment on any specifics relating to the Attorney General's investigation, issues raised in this article demonstrate a fundamental misunderstanding of the rights of people with disabilities and the determination of voter competency. They also indicate a problematic lack of training for Charlestown poll workers and election officials around voters who require assistance in voting, and accessible voting generally.

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DRC-NH is New Hampshire's designated Protection and Advocacy system and is dedicated to eliminating barriers existing in New Hampshire to the full and equal enjoyment of civil and other legal rights by people with disabilities. More information about DRC-NH can be found at <http://www.drcnh.org>.