

SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered this 4th day of May, 2021, by and between Lynn Merrill, Nicholas Giudice, Pauline Lamontagne and Cheryl Peabody (the “Individual Plaintiffs”), and Disability Rights Maine (collectively, the “Plaintiffs”); and Shenna Bellows, Secretary of State, in her official capacity and the Maine Department of the Secretary of State (collectively “the Secretary”). Plaintiffs and the Secretary are collectively referred to as the “Parties.”

Whereas, Plaintiffs filed a complaint in the United States District Court for the District of Maine currently pending as Case No. 1:20-cv-00248-JAW, alleging violations of Title II of the Americans with Disabilities Act (the “ADA”), Section 504 of the Rehabilitation Act (“Section 504”), and the Maine Human Rights Act “MHRA”) based on an alleged failure of the Secretary to provide a mechanism for individuals with print disabilities to vote by absentee ballot in an accessible and independent manner (the “Lawsuit”); and

Whereas, the Secretary denies the material allegations of the Lawsuit; and

Whereas, the Parties wish to resolve the Lawsuit and avoid the uncertainty and expense of litigation.

Now, therefore, in consideration of the mutual promises, covenants, and agreements set forth herein, the Parties covenant and agree as follows:

1. General Release. In consideration of the agreement made by the Secretary as set forth below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Plaintiffs, being of lawful age, and fully competent, hereby for themselves, their heirs, executors, administrators, attorneys, successors, and assigns IRREVOCABLY AND UNCONDITIONALLY, RELEASE, ACQUIT, AND FOREVER DISCHARGE the Secretary and their respective successors and assigns, and the current and former directors, officers, employees, agents, attorneys, representatives, and insurers and their successors, and all related or affiliated persons or entities from any and all claims, complaints, grievances, liabilities, obligations, promises, agreements, damages, causes of action, rights, debts, demands, controversies, costs, losses, damages, and expenses (including attorneys’ fees and expenses except where noted herein) whatsoever, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, liquidated or unliquidated, which they have, or have ever had at any point prior to and up to and including the Effective Date of this Agreement and arising out of or connected with any acts or failure to act occurring at any time whatsoever, including at any point prior to and up to and including the Effective Date of this Agreement, any and all claims which were or could have been asserted in the Lawsuit, and any damages or claims resulting from same, including, without limitation, all claims arising under any and all municipal, local state, federal, and local human rights and anti-discrimination laws, or any other grounds, whether based on common law, statute or otherwise, including, but not limited to, claims under the Americans with Disabilities Act, the United States Civil Rights Act, the Maine Human Rights Act, the Rehabilitation Act of 1973, or under any other State or Federal or Local law including those dealing with discrimination on the basis of gender, race, color, national origin, religion, disability, age, sexual orientation,

whistleblower, or any other protected classification, occurring at any point prior to and up to and including the Effective Date of this Agreement. This Agreement includes matters based on common law, statute or otherwise, including, but not limited to claims based on theories of breach of express or implied contract, tort, whether negligent or intentional, defamation, libel, slander, breach of good faith and fair dealing, promissory estoppel, harassment, omission, misrepresentation or fraud in the inducement, or any other claim or cause of action whether based on statute, common law, public policy, or otherwise, including, but not limited to, claims based on theories of contract, express or implied, tort, negligent or intentional, wrongful discharge, unpaid wages and benefits, misrepresentation or fraud in the inducement, occurring at any point prior to and up to and including the Effective Date of this Agreement.

Notwithstanding the foregoing, this Agreement shall not release or otherwise affect or limit (i) the rights and obligations of the Parties arising out of this Agreement; (ii) the right of the Parties to enforce this Agreement; (iii) any claims that which by law cannot be released; (iv) any claims arising after the Effective Date of this Agreement.

2. Definitions. The following terms shall have the following meanings with respect to this Agreement. All other terms shall be interpreted according to their plain and ordinary meaning:

- a. Unless otherwise provided in this Agreement, technical terms used in this Agreement have the same meaning as provided in the Web Content Accessibility Guidelines (“WCAG”) 2.0 published by the World Wide Web Consortium (“W3C”), available at www.w3.org/TR/WCAG/. The term “WCAG 2.0 AA” as used in this Agreement incorporates the WCAG 2.0 Level A and Level AA Success Criteria. “Accessible Forms” are forms, applications, ballots, or transactions that are electronically fillable and submittible, produce a savable confirmation of submission for users, are provided in an HTML format option, and are compliant with WCAG 2.0 AA.
- b. “Print disabilities” are disabilities that interfere with the effective reading, writing, or use of printed material. By way of example, this definition includes, but is not limited to, those persons who are blind or visually impaired, those with cognitive or learning disabilities, as well as those with a physical disability that interferes with holding and manipulating paper or a pen or pencil.
- c. “Conformance” and “conform” have the same meaning as used in WCAG 2.0 AA.
- d. “Effective Date” is the date of the last signature on this Agreement.
- e. “Accessible Absentee Ballots” are electronically fillable and submittible, produce a savable confirmation of submission for users, are provided in an HTML format option, and are compliant with WCAG 2.0 AA, as provided in 2(a) of this Agreement. Accessible Absentee Ballots are received, marked, cast and submitted electronically, and ensure privacy and independence in voting for individuals with print disabilities who are able to use common assistive technology, such as standard

screen reader software (JAWS, NVDA, VoiceOver or Narrator), magnification, or speech to text software independently.

- f. “State Election” means any primary election, general election or special election for any state, federal or county office, as those terms are defined in 21-A M.R.S. § 1, and any statewide referendum election.
- g. “Municipal Election” means any election for any municipal office or municipal referendum question.

3. Voting by Accessible Absentee Ballot. In consideration of the complete execution of this Agreement by the Parties and the covenants and promises contained herein, the Secretary will provide a mechanism for individuals with print disabilities to vote independently by accessible absentee ballot as follows:

- a. For any State Election that may occur before July 1, 2021, the Secretary shall offer a UA/PDF absentee ballot to voters with print disabilities that is similar to the UA/PDF absentee ballot that the Secretary used for the November 2020 State Election. Voters who wish to use this service will be required to use the Absentee Ballot Request Service to request the UA/PDF absentee ballot. For any Municipal Election that is held in conjunction with such a State Election, the Secretary will follow the procedure in paragraph 3(c)(iv).
- b. Before the next State Election that occurs on or after July 1, 2021:
 - i. **Creation of Accessible Absentee Ballots.** The Secretary shall work with its existing vendor, IVS, LLC, to develop an Accessible Absentee Ballot that will allow voters with print disabilities who use screen reader software (such as JAWS, NVDA, VoiceOver or Narrator), magnification, or speech to text software to review, mark and cast absentee ballots electronically, privately and independently via accessible form ballots as defined in Paragraph 2(a).
 - ii. **Testing of Ballots.** The Secretary or its vendors shall undertake their own testing of the ballots, including testing by individuals with print disabilities, before full implementation. In addition, the Secretary shall provide Plaintiffs, and any experts they choose, the opportunity to test the accessibility and usability of the Accessible Absentee Ballot and provide feedback to the Secretary in a manner similar to how this was done in preparation for the November 2020 State Election.
- c. For the State Election(s) that may occur between July 1, 2021 and November 30, 2024:

- i. **Absentee Ballot Request (“ABR”) Service.** The Secretary shall provide accessible, electronic forms in HTML format through which voters with print disabilities can independently request absentee ballots and self-certify that they are voters with disabilities that prevent or substantially limit them from being able to privately and independently complete a paper absentee ballot, and that they require use of an accessible electronic absentee ballot in order to vote privately and independently without visiting a clerk’s office or voting place and using a ballot marking device. Voters will be provided with confirmation (in an accessible form) that their request is complete after they submit it. Once the application is approved, each voter will receive a secure login and credentials to access the state ballot, which will contain all the federal, state and county offices, and any statewide citizen initiative or people’s veto petition that may qualify for the ballot for the electoral district in which the voter resides, as well as any municipal ballots submitted as described in paragraph 3(c)(iv) below;
- ii. **Use of Accessible Absentee Ballots and Troubleshooting.** The Secretary shall permit eligible voters who complete the ABR process described in paragraph 3(c)(i) to use the Absentee Accessible Ballot to review, mark and cast their ballots electronically. A sample ballot will be made available on the Secretary of State’s website for demonstration purposes so that voters can practice using it before they cast their actual ballot. The Secretary of State or its vendor will also make available on the Secretary’s website instructions on how to receive technical assistance with using the Accessible Absentee Ballot, including the name and contact information of the individual responsible for providing technical assistance;
- iii. **Public Notification.** The Secretary shall provide notice to the public of the availability of the ABR and Accessible Absentee Ballot, and post information about them in the same locations where the Secretary provides information about other means of absentee voting, including posting step-by-step instructions for how to use the system on the Secretary of State Website. The Secretary shall share any outreach materials regarding the ABR and Accessible Absentee Ballot with Disability Rights Maine so that Disability Rights Maine can publicize them;
- iv. **Municipal Elections.** The Secretary shall notify all municipalities that Accessible Absentee Ballots are being offered for voters with print disabilities, and provide instructions to municipalities for submitting the content of their local ballots in proper format and on time to the Secretary or its vendor for use in any Municipal Election

that is held in conjunction with a State Election. For municipalities that comply with the Secretary's instructions, the Secretary shall provide the voters with local ballots in Accessible Absentee Ballot format. Any local ballots that are cast by Absentee Accessible Ballot will be separated from the state ballot upon receipt by the Secretary and will be delivered to the appropriate municipality for counting by that municipality. This Agreement shall not require the Secretary to provide local ballots in Accessible Absentee Ballot format for use in any Municipal Election that is not held in conjunction with a State Election.

- d. This Agreement is not intended to, and shall not be interpreted to, specify any obligations for the Secretary in any State Election held after November 30, 2024.
- e. This Agreement is not intended to, and shall not be interpreted to, require the Secretary to continue to use any particular absentee voting system or technology during the term of this Agreement. The Secretary may change its absentee voting systems or technologies during the term of this Agreement, as long as the systems provide a similar ability for voters with print disabilities to vote independently using an accessible absentee ballot. The Secretary will notify Plaintiffs' counsel at least 30 days prior to implementing a new absentee voting system or technology.

4. Training. The Secretary shall incorporate training on the Accessible Absentee Ballot system into the regular training that they provide to municipal election officials pursuant to 21-A M.R.S. § 505(7-A).

5. Reporting. After each State Election that may occur on or before November 30, 2024, upon request, the Secretary will provide Disability Rights Maine a report for the preceding State Election containing the following information by jurisdiction:

- a. The number of individuals who used the ABR to request an Accessible Absentee Ballot;
- b. The number of individuals who submitted a ballot using the Accessible Absentee Ballot system;
- c. Description of any complaints or feedback received by the Secretary or its vendor from voters with disabilities regarding attempts to use or use of the Accessible Absentee Ballot system and descriptions of how any complaints were resolved.

6. Notices. Any notice or communication provided to any of the Parties under this Agreement shall be made in writing and shall be delivered or sent by way of the U.S. Postal Service, private commercial carrier, hand delivery, facsimile transmission, or electronic mail to the addresses below or to such other addresses as may be specified in writing by any Party:

- a. To Plaintiffs: Kristin Aiello and Peter Rice, Disability Rights Maine, 160 Capitol Street, Suite 4, Augusta Maine 04330 kaiello@drme.org and pmrice@drme.org and Eve L. Hill, Brown, Goldstein & Levy LLP, 120 East Baltimore Street, Suite 1700, Baltimore, Maryland 21202, ehill@browngold.com.
- b. To the Secretary: Julie L. Flynn, or her successor, Deputy Secretary of State, State House Station 101, Augusta, ME 04333-0101.

7. Attorney's Fees and Costs. In consideration for the complete execution of this Agreement by the Parties, the covenant and promises contained herein, and the final and irrevocable effectiveness of this Agreement, the Secretary agrees to make the following payment within 30 calendar days after the last to occur of (1) the Secretary's receipt of a completed IRS Form W-9 on behalf of Disability Rights Maine and (2) the dismissal of the Litigation (as set forth in paragraph 8 below):

- a. The Secretary shall deliver to Kristin Aiello, Esquire, a check made payable to "Disability Rights Maine" in the amount of Fifty Thousand Dollars (\$50,000.00). Disability Rights Maine promises and agrees to provide the Secretary with a completed IRS Form W-9 on behalf of Disability Rights Maine on or before the date Plaintiffs execute this Agreement.

8. Dismissal with Prejudice. Within five (5) five calendar days after the Effective Date of this agreement, Plaintiffs, through counsel, shall sign and file a "Joint Stipulation of Dismissal with Prejudice" in the form attached as Exhibit A for Court File No. 1:20-cv-00248-JAW in the United States District Court for the District of Maine.

9. Jurisdiction and Enforcement. The Parties agree that the United States District Court for the District of Maine shall retain continuing jurisdiction over any attempt to enforce this Agreement by any of the Parties. The Parties agree to jointly file this Agreement with the Court, together with a joint motion to conditionally dismiss the Complaint pursuant to Federal Rule of Civil Procedure 41(a), with the Court retaining jurisdiction to enforce the Agreement in the event of any disputes that may arise between the Parties until the Agreement terminates.

10. No Admission; Liability Expressly Denied. It is understood and agreed by the Parties that this Agreement is a settlement and compromise of disputed claims, that the Secretary expressly denies any liability to Plaintiffs and that nothing in this Agreement shall be construed as an admission of liability. The Parties agree that no party in this matter is a "prevailing party" for purposes of seeking an award of attorneys' fees or costs under any statute or rule of court. Each party agrees to refrain from seeking further or additional relief or consideration for the matter settled herein beyond the terms of this Agreement and enforcement hereof.

11. Parties-in-Interest. Plaintiffs warrant that they have not assigned or transferred to any person, entity, or party the claims being released in paragraph 1. Plaintiffs warrant that they are the sole parties-in-interest with respect to the claims released in paragraph 1.

12. Subsequent Discovery. Plaintiffs acknowledge that they may in the future discover facts different from or in addition to those which they now believe to be true with respect to the matters which are the subject of this Agreement, and agrees that this Agreement shall remain in effect in all respects, notwithstanding the discovery or existence of different or additional facts. Plaintiffs intend in this Agreement to release fully, finally, and forever the claims described in paragraph 1, and to further this intention, Plaintiffs hereby agree that this Agreement shall remain in effect as enforceable, and as a full and complete release of claims, notwithstanding the discovery or existence of different or additional facts relevant to those claims.

13. Subsequent Testimony. Nothing in this Agreement will be construed to prevent the Parties or other persons from testifying under subpoena at a deposition, in a court pursuant to court order, or for purposes of enforcing this Agreement. Plaintiffs agree to notify the Secretary immediately and provide a copy to the Secretary of any subpoena or other notice inviting or requiring any of the Plaintiffs to testify at any deposition or any other legal proceeding that may involve testimony anything contained in this Agreement.

14. Voluntary. No promise or inducement which is not expressed in this document has been made by the Secretary to Plaintiffs, and in executing this Agreement, Plaintiffs acknowledge that they have done so voluntarily and that they do not rely upon any statement or representation made by the Secretary or by any agent, or any other person representing the Secretary, and they have not been threatened or forced to sign, and they have signed this Agreement of their own personal and free choice.

15. Severability. If any provision or term of this Agreement is held to be illegal, invalid, or unenforceable, such provision or term shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision or term there shall be added automatically as a part of this Agreement another provision or term as similar to the illegal, invalid, or unenforceable provision as may be possible and that is legal, valid, and enforceable.

16. Entire Agreement, Governing Law; Exclusive Jurisdiction. This Agreement contains the full and complete understanding between the Parties with respect to the subject matter hereof, supersedes all prior agreements and understandings of the parties, whether written or oral, and cannot be modified except by a written instrument signed by each party. Its terms are contractual and not a mere recital. To the extent permitted by law, the execution, validity, construction, and performance of this Agreement shall be construed and enforced in accordance with the laws of Maine without regard to its conflicts of law provisions.

17. Interpretation of Agreement. This Agreement shall not be construed against any party on the basis that that party's attorney drafted it.

18. Execution in Counterparts. This Agreement is being executed in one or more counterparts, each of which shall be deemed an original and all of which together constitute one

and the same instrument, and photographic copies of such signed counterparts may be used in lieu of the original. Electronic signatures shall be deemed to be as valid and enforceable as original ink signatures.

19. Acknowledgement. By executing this Agreement, the Parties acknowledge that (a) they have consulted with, or have had sufficient opportunity to consult with counsel regarding this matter generally and specifically with regard to the terms of this Agreement; (b) any and all questions regarding the terms of this Agreement have been asked and answered to their complete satisfaction; (c) Plaintiffs acknowledge that either they have read this Agreement in full or this Agreement has been read to them in full, and they fully understand its terms and their import; (d) except as provided by this Agreement, the Parties have no contractual right or claim to the benefits described herein; (e) the consideration provided for herein is good and valuable; (f) **the Parties are entering into this Agreement voluntarily, of their own free will, and without any coercion, undue influence, threat, or intimidation of any kind or type whatsoever.**

IN WITNESS WHEREOF, the parties have signed below this 3rd and 4th day of May, 2021.

PLEASE READ THIS DOCUMENT CAREFULLY. THIS SETTLEMENT AGREEMENT INCLUDES RELEASES OF KNOWN AND UNKNOWN CLAIMS.

LYNN MERRILL

/s/ Lynn Merrill

Lynn Merrill

Dated: May 3, 2021

NICHOLAS GIUDICE

/s/ Nicholas Giudice

Nicholas Giudice

Dated: May 3, 2021

PAULINE LAMONTAGNE

/s/ Pauline Lamontagne

Pauline Lamontagne

Dated: May 3, 2021

CHERYL PEABODY

/s/ Cheryl Peabody

Cheryl Peabody

Dated: May 3, 2021

DISABILITY RIGHTS MAINE

/s/ Kim Moody

By: Kim Moody

Its Executive Director

Dated: May 4, 2021

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SHENNA BELLOWS, SECRETARY
OF STATE FOR THE STATE OF MAINE

/s/ Shenna Bellows

Shenna Bellows

Dated: May 4, 2021

MAINE DEPARTMENT OF THE
SECRETARY OF STATE

/s/ Shenna Bellows

By: Shenna Bellows

Secretary of State for the State of Maine

Dated: May 4, 2021