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2018 Joint Legislative Hearing: General Government Hearing Date February 5, 2018

Attention: Mr. Clinton Freeman

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Westchester Independent Living Center (WILC) is a leading disability rights organization representing persons with all types of disabilities. I am submitting this testimony relative to the 2018 Joint Legislative Hearing on General Government (February 5, 2018 hearing). The first issue that I would like to address is the inability of state workers who have been discriminated against by their state employer to seek legal redress against their state employer (Including State Agencies) in federal court for money damages, including lost wages. WILC strongly urges the State of New York to waive its sovereign immunity to claims under the Americans with Disabilities Act (ADA) and Section 504 of the Federal Rehabilitation Act of 1973 (A.2546 Lifton), (S.1522 Avella). Pursuant to the US Supreme Court decision in *Alabama v. Garrett*, the Court ruled that a private individual may not, consistent with the Constitution, sue a state or state agency to enforce the employment discrimination protections in Title I of the ADA. The Court held that States are protected from such suits by sovereign immunity under the Eleventh Amendment. The Court in *Garrett* also held that Title I's prohibition of discrimination on the basis of disability went beyond Congress's authority under the Fourteenth Amendment. Thus plaintiff's may not sue a state or state agency directly to enforce Title I of the ADA and Section 504. Entities such as businesses, schools, Cities, Counties, Towns, Villages, and private employers cannot violate the ADA or Section 504 without the prospect of being held responsible in a court of law. State governments must be held to the same standard. State employees deserve the same protections that all workers have. It is patently unfair to an entire group of employees such as state employees to be unable to adjudicate legal claims against their state employer based on federal law in federal courts. This is a civil rights issue that must be rectified by state legislators so as to waive sovereign immunity. State employers should not be insulated from defending claims based on the ADA and Section 504 in federal courts.

Another issue of governmental impact is to change local, village, county, and City of New York elections coincide with the dates of state and federal elections (S.382 Carlucci). People with disabilities, 18 years after the enactment of the ADA are still fighting for the right to a private and independent vote. Progress was made with the Help America Vote Act (HAVA 2002) that mandated all polling sites to have accessible, universally designed voting machines for all state and federal elections. However, local elections are not held to the same standard. Local elections in cities, towns, and villages are of import to persons with disabilities. How is it fair to guarantee the right to an independent and private vote for state and federal elections while at the same time denying individuals with disabilities that right in local elections. The result of this discriminatory

policy disenfranchises a large segment of the disability community. While local elections are no longer allowed to use lever machines, many are being administered using paper ballots only and these ballots are inaccessible to many voters with disabilities. It seems prudent to move these local elections so they coincide with state and federal elections so that they are administered by the County Board of Elections. This change would ensure that all local elections would be held with the disability community in mind.

Furthermore, WILC urges the State to create an Office of Community Living (A.5597 Weprin). The creation of an Office of Community Living would provide a focal point within state government to address the community integration needs of people with disabilities. This Office would promote compliance with the ADA and the US Supreme Court Olmstead decision that ruled people with disabilities must be able to live in and receive services in the "Most Integrated Setting" appropriate to their needs. Currently, people with physical disabilities have no state agency representing their needs and interests. An Office of Community Living would serve as the state advocate on behalf of people with disabilities and would house some misplaced programs that serve people with disabilities, including Independent Living Centers, the Access to home program, the Technology-Related Assistance for Individuals with Disabilities program, and the Most Integrated Setting Coordinating Council. People with disabilities need all of the support necessary for them to live in the community commensurate with their individual needs and challenges.

I thank you for considering this testimony.

Joseph Guagliano
Legislative Advocate