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**Statement of Kate McSweeney,
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U.S. Commission on Civil Rights Public Briefing on Special Minimum Wage
November 15, 2019**

Thank you for the opportunity to provide this Statement in relation to the Commission's November 15, 2019 Briefing on Special Minimum Wage.

ACCSES is a national disability policy organization that represents community-based disability service providers across the country and the individuals with disabilities they serve. Guided by federal policy, including the Americans with Disabilities Act, the Olmstead Decision, the Workforce Innovation and Opportunity Act, the Individuals with Disabilities Education Act, the Rehabilitation Act of 1973, the Fair Labor Standards Act, and other federal and state laws, ACCSES stands with over three million people with disabilities and over 1,200 community rehabilitation providers across the country in support of maintaining a full array of options and opportunities for ALL people with disabilities. As part of that mission, ACCSES represents and stands with the individuals who would be negatively affected if the right to be paid special minimum wage under 14(c) certificates were eliminated.

Let me begin by making one thing clear. If Section 14(c) special minimum wage certificates were to be eliminated, no one would benefit. **No one would benefit.** Rather, many people who love their jobs and want to keep their jobs would be harmed. People working under a special minimum wage certificate already have the option of participating in day programming. They choose work, a choice that should be respected, a choice that should remain their choice. Work is a vital part of their day and, indeed, their dignity. There is a tendency in disability policy to treat all people with disabilities as a monolithic group, thinking the same way, believing the same way. We know that it is not true, yet policy is often developed with a very negative connotation – that working with people *without* disabilities is superior to working with people *with* disabilities. That "community" exists only where people *without* disabilities are in the majority and never where people *with* disabilities are in the majority. In support of this thinking, policies have been developed in recent years limiting how much contact people with disabilities can have with other people with disabilities when being provided services – no more than three people on an outing for example or eliminating work options for jobs people love. We are here to tell you that it is time to set these notions aside. We agree it is a civil rights issue. It is time to stop acting like people with disabilities are entitled only to a limited menu of choices, and a limited number of rights. Expand options – and do it without taking away people's right to choose what services they want and where and with whom they want to receive them. Community in its truest sense is not about geography; it is about people.

Section 14(c) special minimum wage certificates have made a significant difference for a lot of people, whose lives have been more fulfilled through the opportunities, friendships, and community that work provides. Section 14(c) certificates are controlled and monitored and require both state and federal authority. In addition, people earning less than minimum wage must receive annual job counseling, delivered by the state, and annual information on third-party resources to teach peer mentoring and self-advocacy provided by the certificate holder. Let's look at a few facts about special minimum wage:

1. Obtaining a Section14(c) certificate requires meeting the standards mandated by the U.S. Department Labor and are subject to regular renewals through the Department of Labor. The Department has strict enforcement measures.
2. The certificates are heavily regulated. Even though they are issued by the Department of Labor, they cannot be used without state authority.
3. Federal law requires regular job counseling for every person who earns less than minimum wage under a certificate.
4. No one is required to work under a Section14(c) certificate. People working under Section 14(c) certificates already could participate in a day program or other employment. Many people, in fact, choose to divide their day between work and day activities.
5. Many people working under a 14(c) certificate make *more than* minimum wage.

Working under a Section 14(c) certificate gives people the opportunity to develop job skills that they can expand on in other environments. These critical job-sustaining skills have allowed many people who started out working under a Section14(c) certificate to take on new challenges that were previously out of reach. Section 14(c) certificates also allow people with the most significant disabilities the dignity of work and of earning a paycheck. We cannot underscore enough the importance of this fact.

Policies being set in motion are causing a good deal of anxiety for people who do not want to lose their jobs, prompted by people with seemingly little curiosity and even less data as to how such outcomes will affect real lives. Eliminating options has consequences for individuals and their families. Those consequences must be part of the discussion. While this Commission has put forth four questions, we would like to use this time to ask the Commission to consider additional relevant questions, including:

- A. What has been the effect on individuals who were working under a 14(c) certificate in a state or locality that has now banned the use of a certificate?
- B. If an individual has a new job, how many hours per week are they working now as compared to how many hours a week they worked in the past?
- C. If an individual is working in a competitive job, what is their net income now and what was it in the past?
- D. If that individual is not working, how are they spending their days?

This is data that presently does not exist in any substantive form beyond an early Maine study. Everyone has an opinion. What this Commission and other policymakers need is hard facts, collected and published by an unbiased source. ACCSES encourages the Commission to work with Congress to commission such a study that asks the difficult questions before laws are changed that take opportunities away forever.

Many people who work under 14(c) today have a 32-hour week. Often, people who lose that opportunity go home, go into day programming that they already have declined as an optimal choice for themselves, or find a few hours of work per week – two or three shifts, nowhere close to what they once had. In some instances, family finances are significantly impacted because another family member must leave work to be home with the recently unemployed individual. Such a significant change clearly affects people's lives. Being separated from work, from friends, from community is very isolating. This isolation is the type of psychological harm that can come from policy changes that do not consider the full effects on people's lives. Getting a better idea of what has happened to individual lives is information that is available if we look. We hope this Commission will do everything in its power to see that such a study is performed by a neutral, third-party researcher or by the Congressional Research Service. We all need data.

Recently, the Department of Labor undertook an online dialogue on 14(c). It received a huge response from people recognizing the important role of 14(c). It included many moving stories about the value of the work performed, the meaning of friendships formed, and the desire to keep jobs available. We hope the Department of Labor will deliver the promised report on the online dialogue prepared by a truly neutral third party and reopen the archived comments so that the people on this Commission can read why this subject is so important to so many people. Often, Commissions such as this put together panels to discuss Section 14(c) and never include the people who would be directly affected. Yet, those are the people to whom you should be listening. Those are the people who want to be heard.

While there is limited data on the affects of limiting 14(c), we do have some employment data. The U.S. Bureau of Labor Statistics tells us that as of October 2019, the labor force participation rate – people working or looking for work – for people *without* disabilities was 68.9 percent and for people *with* disabilities was 20.6 percent. It also shows that the unemployment rate for

people *without* disabilities was 3.2 percent as of October; but for people *with* disabilities, it was 6.9 percent. Those are numbers that should get everyone's attention and everyone working to improve them. This is where all advocates should be able to find common ground. Let's work together to close the employment gap. Instead of taking options away, let's (a) focus on expanding employment opportunities and educating businesses on how to hire people with the most significant disabilities, (b) work on transportation issues that are more than a metaphorical roadblock to full employment, and (c) really invest in the kind of employment supports that people will need.

The number of people working under 14(c) has dropped over the past three years. Some of that reduction is through attrition, through state or local action eliminating the use of certificates, through certain certificate holders ceasing to hold a certificate, and some is due to the limitation created by Congress in 2016 that forbids a certificate holder from hiring any person under the age of 25 for a job that pays less than minimum wage. Recently, the Congressional Budget Office issued a report on *The Effects on Employment and Family Income of Increasing the Federal Minimum Wage*. The purpose of the report was to examine the impact the Raise the Wage Act would have on jobs. That bill would phase out 14(c), a fact that the CBO noted although it did not make any assessment as to how that phase out would impact jobs for people with disabilities. Notably, however, the CBO did state that 125,000 people presently are working under a certificate. Imagine if we took all the energy that has been spent arguing over killing or protecting the jobs of 125,000 people, and instead devoted it to expanding employment options, increasing the number of job coaches, and educating potential employers. Then, maybe we could start to eat into that vast abyss between the percentage of people *without* disabilities who are working and the percentage of people *with* disabilities who are working. It is a significant concern that so many federal and state entities are looking at 14(c), because few are looking at it through the right lens. It is easy to be high minded about someone else's job – but before getting rid of a valuable, viable work option for people who want that choice, please have an understanding of what that job means to the person and what losing that opportunity will mean for them. The elevator speech on Section 14(c) is easy – the reality is more complicated. The reality is where policy affects people.

There has been a good deal of misinformation spread about 14(c) certificates, the people who work under them, and the important role of community rehabilitation programs in providing and supporting employment opportunities for people with a wide range of disabilities. If you will bear with me for another minute, I would like to tell you about community rehabilitation programs. CRPs have played a primary role in supporting employment and residential opportunities and choice for people with disabilities for the past five decades or more. The politically manufactured idea that CRPs providing people with significant opportunities at work centers and elsewhere are not "in the community" is an absurdity that is placing good jobs – and the people who are working at them – at risk.

The value of a job in or through CRP-run work centers that provide employment opportunities and training cannot be overstated. In short, if CRPs and the jobs they provide were eliminated,

they would have to be reinvented. The network of CRPs across this country, staffed by people with substantial knowledge and extensive experience, are a vital component of providing and maintaining work opportunities for people with the most significant disabilities. CRPs will play a major role in future disability policy, too, because there can be no growth without them. CRPs not only provide training, work opportunities, transportation, and job supports, they also work with the people they serve to provide supported employment and job coaches in competitive jobs.

In some places in this country, jobs in which people were thriving were eliminated in favor of day programs or as some advocates call it, a "meaningful day." What is more patronizing or discriminatory to a person with a disability than telling them their job is going to be replaced with day activities so they can have a "meaningful day"? What is meaningful for most American adults who want to work is having a job and having the dignity of work. Every person working in or through a work center under a 14(c) certificate has chosen to work. Each person could participate in a full-time day program right now. We applaud the extraordinary efforts of the providers in creating day programs that help people flourish. Nothing we are saying here takes away from those incredible efforts. In fact, many people choose an option that allows the flexibility of working part of the day under a certificate and spending part of the day in day activities. Other people work part of the day in a competitive job, often with job coaches or other job supports provided by the CRP, and spend part of the day at a work center performing other types of work. In other words, a meaningful day at or through a CRP offers many options, including options that make competitive employment possible. Competitive jobs frequently provide a person with a significant disability only a few hours of work per week – a subject that Congressman Grothman touched on during a recent Education and Labor Committee hearing. This can leave people with too many empty days. Going from a 32 hour-per-week job to two four-hour shifts does not benefit an individual who does not do it by choice.

ACCSES is not suggesting that there should not be additional options. To the contrary, we champion expanding choices. We appreciate and promote apprenticeships, job sharing, job coaching, entrepreneurship, and increasing competitive opportunities. Where we draw a line, is taking a valuable and important tool out of the employment toolbox and with it, the jobs that provide great satisfaction to so many people. A lot of people who would not be affected support eliminating 14(c) certificates. They are **not** the ones to whom this Commission should be listening. This Commission needs to hear from individuals who are presently working under 14(c) and who would be affected were it to be eliminated.

This Commission also needs to hear from community rehabilitation programs on the important role they play in their communities. Many of the great strides forward that have been made are because CRPs have spent more than half a century successfully working with individuals with disabilities and helping them live rich and robust lives. If there are a lot of misconceptions about 14(c) certificates, there are even more about CRPs and the important work they do in communities in every state in this country. We ask that the Commissioners visit CRPs in their

McSweeny Statement
U.S. Commission on Civil Rights Briefing
November 15, 2019
Page | 6

States before issuing any report. If there is no work center near a specific Commissioner, we can arrange a visit to one of our ACCSES member organizations. It will be worth your time.

Thank you for this opportunity to speak on these important issues. Together, we can accomplish so much.