

**PHASING OUT SUBMINIMUM WAGES:
SUPPORTING THE TRANSITION TO COMPETITIVE
INTEGRATED EMPLOYMENT FOR WORKERS
WITH DISABILITIES**

JOINT HEARING

BEFORE THE

**SUBCOMMITTEE ON
WORKFORCE PROTECTIONS**

AND THE

**SUBCOMMITTEE ON
CIVIL RIGHTS AND
HUMAN SERVICES**

OF THE

**COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES**

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, JULY 21, 2021

Serial No. 117-24

Printed for the use of the Committee on Education and Labor



Available via: edlabor.house.gov or www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

45-176 PDF

WASHINGTON : 2022

COMMITTEE ON EDUCATION AND LABOR

ROBERT C. “BOBBY” SCOTT, Virginia, *Chairman*

RAÚL M. GRIJALVA, Arizona	VIRGINIA FOXX, North Carolina,
JOE COURTNEY, Connecticut	<i>Ranking Member</i>
GREGORIO KILILI CAMACHO SABLÁN,	JOE WILSON, South Carolina
Northern Mariana Islands	GLENN THOMPSON, Pennsylvania
FREDERICA S. WILSON, Florida	TIM WALBERG, Michigan
SUZANNE BONAMICI, Oregon	GLENN GROTHMAN, Wisconsin
MARK TAKANO, California	ELISE M. STEFANIK, New York
ALMA S. ADAMS, North Carolina	RICK W. ALLEN, Georgia
MARK DeSAULNIER, California	JIM BANKS, Indiana
DONALD NORCROSS, New Jersey	JAMES COMER, Kentucky
PRAMILA JAYAPAL, Washington	RUSS FULCHER, Idaho
JOSEPH D. MORELLE, New York	FRED KELLER, Pennsylvania
SUSAN WILD, Pennsylvania	GREGORY F. MURPHY, North Carolina
LUCY McBATH, Georgia	MARIANNETTE MILLER-MEEKS, Iowa
JAHANA HAYES, Connecticut	BURGESS OWENS, Utah
ANDY LEVIN, Michigan	BOB GOOD, Virginia
ILHAN OMAR, Minnesota	LISA C. McCLAIN, Michigan
HALEY M. STEVENS, Michigan	DIANA HARSHBARGER, Tennessee
TERESA LEGER FERNANDEZ, New Mexico	MARY E. MILLER, Illinois
MONDAIRE JONES, New York	VICTORIA SPARTZ, Indiana
KATHY E. MANNING, North Carolina	SCOTT FITZGERALD, Wisconsin
FRANK J. MRVAN, Indiana	MADISON CAWTHORN, North Carolina
JAMAAL BOWMAN, New York, <i>Vice-Chair</i>	MICHELLE STEEL, California
MARK POCAN, Wisconsin	JULIA LETLOW, Louisiana
JOAQUIN CASTRO, Texas	<i>Vacancy</i>
MIKIE SHERRILL, New Jersey	
JOHN A. YARMUTH, Kentucky	
ADRIANO ESPAILLAT, New York	
KWEISI MFUME, Maryland	

VÉRONIQUE PLUVIOSE, *Staff Director*

CYRUS ARTZ, *Minority Staff Director*

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

ALMA S. ADAMS, North Carolina, *Chairwoman*

MARK TAKANO, California	FRED KELLER, Pennsylvania,
DONALD NORCROSS, New Jersey	<i>Ranking Member</i>
PRAMILA JAYAPAL, Washington	ELISE M. STEFANIK, New York
ILHAN OMAR, Minnesota	MARIANNETTE MILLER-MEEKS, Iowa
HALEY M. STEVENS, Michigan	BURGESS OWENS, Utah
MONDAIRE JONES, New York	BOB GOOD, Virginia
JOHN A. YARMUTH, Kentucky	MADISON CAWTHORN, North Carolina
ROBERT C. “BOBBY” SCOTT, Virginia	MICHELLE STEEL, California
	VIRGINIA FOXX, North Carolina (<i>ex officio</i>)

III

Page

SUBCOMMITTEE ON CIVIL RIGHTS AND HUMAN SERVICES

SUZANNE BONAMICI, Oregon, *Chairwoman*

ALMA S. ADAMS, North Carolina

JAHANA HAYES, Connecticut

TERESA LEGER FERNÁNDEZ, New Mexico

FRANK J. MRVAN, Indiana

JAMAAL BOWMAN, New York

KWEISI MFUME, Maryland

ROBERT C. "BOBBY" SCOTT, Virginia

(ex officio)

RUSS FULCHER, Idaho, *Ranking Member*

GLENN THOMPSON, Pennsylvania

LISA C. McCLAIN, Michigan

VICTORIA SPARTZ, Indiana

SCOTT FITZGERALD, Wisconsin

VIRGINIA FOXX, North Carolina *(ex officio)*

CONTENTS

Hearing held on July, 21 2021	Page 1
Statement of Members:	
Adams, Hon. Alma S., Chairwoman, Subcommittee on Workforce Protections	1
Prepared statement of	3
Keller, Hon. Fred, Ranking Member, Subcommittee on Workforce Protections	3
Prepared statement of	4
Bonamici, Hon. Suzanne, Chairwoman, Subcommittee on Civil Rights and Human Services	5
Prepared statement of	6
McClain, Hon. Lisa C., Member, Subcommittee on Civil Rights and Human Services	7
Prepared statement of	8
Statement of Witnesses:	
Anton, John, Legislative Specialist, Massachusetts Down Syndrome Congress	19
Prepared statement of	20
Koppstein, Nantanee, Member, New Jersey Statewide Independent Living Counsel	9
Prepared statement of	11
Lewis, Anil, Executive Director, Jernigan Institute, National Federation of the Blind	30
Prepared statement of	33
Putts, Matthew R., CEO, Employment Horizons, Inc	25
Prepared statement of	28
Additional Submissions:	
Chairwoman Adams:	
Prepared statement from Melwood	77
Prepared statement from the National Association of State Directors of Developmental Disabilities Services	81
Prepared statement from the National Council on Disability	82
Chairman Scott:	
Prepared statement from the Consortium for Citizens with Disabil- ities Employment and Training Task Force	84
Letter from the Hon. Cathy McMorris Rodgers, a Representative in Congress from the State of Washington, dated July 21, 2021	87
Prepared statement from SourceAmerica	89
Ranking Member Foxx:	
Article: "Faith at Work: The dignity of all work", <i>Washington Times</i> , May 11, 2016	92
Mr. Keller:	
Prepared statement from Kate McSweeney, Vice President Government Affairs and General Counsel, ACCSES	94
Letter to Leadership dated February 12, 2021	100
Prepared statement from Kit Brewer, Executive Director, Project CU	102
Letter from the Hon. Vicki Hartzler, a Representative in Congress from the State of Missouri, dated December 8, 2020	105
Mr. Keller on behalf of Grothman, Hon. Glenn, a Representative in Congress from the State of Wisconsin:	
Prepared statement from A-Team Grassroots System, Inc	107

	Page
Additional Submissions—Continued	
Mr. Keller on behalf of Grothman, Hon. Glenn, a Representative in Congress from the State of Wisconsin—Continued	
Prepared statement from Dallas Kerzan, Mother and Guardian of Yael Kerzan, Member of A-Team Wisconsin	109
Prepared statement from Disability Service Provider Network	111
Thompson, Hon. Glenn, a Representative in Congress from the State of Pennsylvania:	
Prepared statement from Rehabilitation & Community Providers Association	113
Prepared statement from Venango Training & Development Center, Inc	114
Questions submitted for the record by:	
Chairman Scott	115
Ranking Member Foxx	119
Response to question submitted for the record by:	
Mr. Lewis	116
Mr. Putts	120

**PHASING OUT SUBMINIMUM WAGES:
SUPPORTING THE TRANSITION TO
COMPETITIVE INTEGRATED EMPLOYMENT
FOR WORKERS WITH DISABILITIES**

Tuesday, July 21, 2021

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WORKFORCE PROTECTIONS,
SUBCOMMITTEE ON CIVIL RIGHTS AND HUMAN SERVICES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The Subcommittees met, pursuant to notice, at 10:17 a.m., via Zoom, Hon. Alma S. Adams (Chairwoman of the Subcommittee on Workforce Protections) presiding.

Present: Representatives Adams, Bonamici, Scott, Takano, Norcross, Jayapal, Hayes, Stevens, Leger Fernández, Mrvan, Bowman, Keller, Thompson, Miller-Meeks, Good, McClain, Fitzgerald, Cawthorn, Steel, and Foxx.

Staff present: Phoebe Ball, Disability Counsel; Ilana Brunner, General Counsel; Rasheedah Hasan, Chief Clerk; Sheila Havenner, Director of Information Technology; Eli Hovland, Andre Lindsay, Policy Associate; Richard Miller, Director of Labor Policy; Max Moore, Staff Assistant; Mariah Mowbray, Clerk/Special Assistant to the Staff Director; Lorin Obler, GAO Detailee, Kayla Pennebecker, Staff Assistant; Véronique Pluviose, Staff Director; Banyon Vassar, Deputy Director of Information Technology; Cyrus Artz, Minority Staff Director; Gabriel Bisson, Minority Staff Assistant; Michael Davis, Minority Operations Assistant; Rob Green, Minority Director of Workforce Policy; Amy Raaf Jones, Minority Director of Education and Human Resources Policy; Dean Johnson, Minority Legislative Assistant; Georgie Littlefair, Minority Legislative Assistant; David Maestas, Minority Fellow; Hannah Matesic, Minority Director of Operations; Eli Mitchell, Minority Legislative Assistant; Alex Ricci, Minority Speechwriter; Mandy Schaumburg, Minority Chief Counsel and Deputy Director of Education Policy; and John Witherspoon, Minority Professional Staff Member.

Chairwoman ADAMS. Good morning. We are ready to begin. I will countdown from five and then we'll start. The Subcommittee on Workforce Protections and the Subcommittee on Civil Rights and Human Services will come to order.

Welcome everyone. I note that a quorum is present. The Subcommittees are meeting today for a joint hearing to hear testimony on "Phasing Out Subminimum Wages, Supporting the Transition to Competitive Integrated Employment for Workers with Disabilities."

This is an entirely remote hearing, and as such the Committee's hearing room is officially closed. All microphones will be kept muted, as a general rule, to avoid unnecessary background noise. Members and witnesses will be responsible for unmuting themselves when they are recognized to speak, or when they wish to seek recognition.

If a member of witness experiences technical difficulties during the hearing, please say connected on the platform, make sure you are muted, and use your phone to immediately call the Committee's IT director whose number was provided in advance. Should the Chair experience technical difficulty, or need to step away, Chair Bonamici, or another majority member is hereby authorized to assume the gavel in the Chair's absence.

In order to ensure that the Committee's five-minute rule is adhered to, staff will be keeping track of time using the Committee's remote timer which appears in its own thumbnail picture. Members and witnesses are asked to wrap up promptly when their time has expired.

Pursuant to Committee Rule 8(c), opening statements are limited to the Chairs and Ranking Members. This will allow us to hear from our witnesses sooner and provide all members with adequate time to ask questions. I now recognize myself for the purpose of making an opening statement.

Chairwoman ADAMS. Today we are meeting to discuss a proposal to phaseout the 14(c) subminimum wage and help workers with disabilities transition to competitive integrated employment. Each person in this country deserves access to equal employment opportunities, yet one of our foundational labor laws, the Fair Labor Standards Act, still allows workers with disabilities to be paid less than their peers.

Under Section 14(c) employers can obtain certificates that allow them to pay individuals with disabilities subminimum wages. These certificates have effectively eliminated any minimum wage for workers with disabilities. For many of these workers the estimated hourly wage is roughly \$2.50.

For too many it is even less. We should all agree that no American worker should be earning a measly \$2.00 an hour, but opponents continue to argue that phasing out 14(c) certificates will burden businesses and restrict opportunities for workers with disabilities. The evidence says otherwise.

Eleven states, New Hampshire, Maryland, Alaska, Oregon, Maine, Washington, Hawaii, Colorado, Delaware, Vermont, and Wyoming have either phased out 14(c) or have no active certificates. Many of these states have taken the initiative to ensure individuals with disabilities can continue to their local economies—can contribute, excuse me, to their local economies, and work in competitive employment alongside people without disabilities.

Even in states with 14(c) certificates, many providers have discontinued the subminimum wage in favor of inclusive workplaces that meet the needs of both employer and worker. And while many workplaces across the country have shifted away from 14(c) certificates, we know that some states have struggled to find appropriate and meaningful alternatives.

So today we will discuss legislation, the Transformation to Competitive Integrated Employment Act that would help providers to shift their business models to hiring workers with disabilities, in competitive, integrated employment. This bill incentivizes states and employers who currently use 14(c) certificates to work with the disability community toward updating business models and creating fully integrated and competitive employment opportunities.

Simply put, with the right supports anyone can achieve competitive integrated employment if they choose to. It's up to us in Congress to provide the support that workers with disabilities need to succeed in our economy. I now recognize the distinguished Ranking Member of the Subcommittee on Workforce Protections for the purpose of making an opening statement.

[The statement of Chairwoman Adams follows:]

STATEMENT OF HON. ALMA S. ADAMS, CHAIRWOMAN, SUBCOMMITTEE ON
WORKFORCE PROTECTIONS

Today, we are meeting to discuss a proposal to phaseout the 14(c) subminimum wage and help workers with disabilities transition to competitive integrated employment.

Each person in this country deserves access to equal employment opportunities. Yet, one of our foundational labor laws-the Fair Labor Standards Act-still allows workers with disabilities to be paid less than their peers.

Under Section 14(c), employers can obtain certificates that allow them to pay individuals with disabilities subminimum wages.

These certificates have effectively eliminated any minimum wage for workers with disabilities. For many of these workers, the estimated hourly wage is roughly \$2.50. For too many, it is even less.

We should all agree that no American worker should be earning a measly \$2 an hour.

But opponents continue to argue that phasing out 14(c) certificates will burden businesses and restrict opportunities for workers with disabilities.

The evidence says otherwise.

Eleven states-New Hampshire, Maryland, Alaska, Oregon, Maine, Washington, Hawaii, Colorado, Delaware, Vermont, and Wyoming-have either phased out 14(c) or have no active certificates. Many of these states have taken the initiative to ensure individuals with disabilities can contribute to their local economies and work in competitive employment alongside people without disabilities.

Even in states with 14(c) certificates, many providers have discontinued the subminimum wage in favor of inclusive workplaces that meet the needs of both employer and worker.

While many workplaces across the country have shifted away from 14(c) certificates, we know that some states have struggled to find appropriate and meaningful alternatives.

Today, we will discuss legislation-the Transformation to Competitive Integrated Employment Act-that would help providers to shift their business models to hiring workers with disabilities in competitive integrated employment.

This bill incentivizes states and employers who currently use 14(c) certificates to work with the disability community toward updating business models and creating fully integrated and competitive employment opportunities.

Simply put, with the right support, anyone can achieve competitive integrated employment if they choose to. It is up to us in Congress to provide the support that workers with disabilities need to succeed in our economy.

I now recognize the distinguished Ranking Member of the Subcommittee of Workforce Protections for the purpose of making an opening statement.

Mr. KELLER. I thank the Chair, and before I begin, I would like to make a couple points. I must first urge the majority to begin holding hearings in person. The American people, the people we are elected to work for show up for work. We should be no different. In fact, the people that we're discussing that may have dis-

abilities are eager to get to work, and would welcome the opportunity to come to work, yet my Democratic colleagues can't seem to come to the hearing room and do the business that we should be doing for the American people here in Congress.

Having said that, I just want to say that democrats and republicans both want what is best for people with disabilities. We want these individuals to find rewarding work, get paid a fair wage for their contributions, and live fulfilling lives. Every human life is important, and every person should be free to pursue their happiness and reach their full potential.

Federal law sets standards employers must meet to protect their workers. The Fair Labor Standards Act, or FLSA, establishes standards for minimum wage, overtime pay, and other workforce protections for private and public sector employees. Section 14(c) of the FLSA authorizes the Secretary of Labor to allow employers to compensate certain individuals with disabilities at wages commensurate with their productivity.

These processes use special certificates issued to employers commonly called 14(c) certificates. A Department of Labor 14(c) certificate offers individuals with disabilities a chance to contribute in the workplace, engage with other workers, and develop new skills.

Republicans believe 14(c) certificates, combined with competitive integrated employment opportunities have been successful in helping individuals with disabilities find the best and highest paying jobs possible for their unique circumstances. It is worth dispelling several myths about 14(c) work environments.

First, it is not true that employers with 14(c) certificates accrue a financial benefit because of the arrangement. Second, it is not true that 14(c) workers are somehow trapped in their jobs. These individuals are fully able to explore other employment opportunities as they receive job coaching, referrals, and readiness services.

Third, it is not true that all 14(c) employees can work in competitive, integrated employment environments. Available research shows that those with significant disabilities will lose their jobs if the 14(c) system is terminated.

Republicans support the ability of individuals with disabilities to access employment opportunities in a setting of their choice. I am concerned that eliminating 14(c) as proposed by H.R. 2373, would have terrible consequences for many workers with disabilities.

I look forward to hearing the witnesses' insights on this important topic. Thank you and I yield back.

[The statement of Ranking Member Keller follows:]

STATEMENT OF HON. FRED KELLER, RANKING MEMBER, SUBCOMMITTEE ON
WORKFORCE PROTECTIONS

Thank you, Chairwoman Adams.

Democrats and Republicans both want what is best for people with disabilities. We want these individuals to find rewarding work, get paid a fair wage for their contributions, and live fulfilling lives. Every human life is important, and every person should be free to pursue happiness and reach their full potential.

Federal laws set standards employers must meet to protect their workers.

The Fair Labor Standards Act, or FLSA, establishes standards for minimum wage, overtime pay, and other workforce protections for private and public-sector employees.

Section 14(c) of the FLSA authorizes the Secretary of Labor to allow employers to compensate certain individuals with disabilities at wages commensurate with their productivity. This process uses special certificates issued to employers com-

monly called 14(c) certificates. A DOL 14(c) certificate offers individuals with disabilities a chance to contribute in the workforce, engage with other workers, and develop new skills.

Republicans believe 14(c) certificates combined with competitive integrated employment opportunities have been successful in helping individuals with disabilities find the best and highest-paying jobs possible for their unique circumstances.

It is worth dispelling several myths about 14(c) work environments.

First, it is not true that employers with 14(c) certificates accrue a financial benefit because of the arrangement.

Second, it is not true that 14(c) workers are somehow trapped in their jobs. These individuals are fully able to explore other employment opportunities, and they receive job coaching, referrals, and readiness services.

Third, it is not true that all 14(c) employees can work in competitive integrated employment environments. Available research shows that those with significant disabilities will lose their jobs if the 14(c) system is terminated.

Republicans support the ability of individuals with disabilities to access employment opportunities in a setting of their choice. I am concerned that eliminating 14(c), as proposed by

H.R. 2373, would have terrible consequences for many workers.

I look forward to hearing the witnesses' insights on this important topic. Thank you and I yield back.

Chairwoman ADAMS. Thank you very much Mr. Keller. I now recognize the distinguished Chair of the Subcommittee on Civil Rights and Human Services for the purpose of making an opening statement, Chair Bonamici.

Chairwoman BONAMICI. Thank you, Chair Adams and Ranking Members Keller, McClain and thank you especially to our witnesses for joining us today. Today workers with disabilities in several states can legally be paid less than the Federal minimum wage. The U.S. Commission on Civil Rights recently issued a report that found that more than 100,000 workers with disabilities have been subjected to subminimum wages averaging an estimated \$3.34 per hour.

Phasing out subminimum wages for workers with disabilities is fundamentally a civil rights issue. The 14(c) subminimum wage provision in the Fair Labor Standards Act of 1938 or FLSA is a relic of an era when employers were legally permitted to discriminate against individuals with disabilities in the workplace.

And workers with disabilities did not have access to Federal protections. It is far past time that we phaseout this harmful provision that denies the equal opportunity for many workers with disabilities. Since the FLSA first passed, thanks to generations of advocacy, Congress has passed several key laws to guarantee students and workers with disabilities the education and workplace rights they deserve.

The Individuals with Disabilities Education Act for example, provides children with disabilities access to free and appropriate education. The Developmental Disabilities Bill of Rights provides people with development disabilities the opportunity to design and access community services, individualized supports, and other forms of assistance.

And the Americans With Disabilities Act guarantees equal opportunity for individuals with disabilities in all areas of public life. And now, decades after the enactment of these Federal protections, Congress must make sure that workers with disabilities can earn fair wages and succeed in the workplace.

States across the country, including my home State of Oregon have already enacted legislation to eliminate the 14(c) subminimum wage, and successfully transition workers into integrated and competitive work. But a recent GAO report also found that many employers and workers with disabilities do not have the appropriate resources or services to transition to competitive, integrated employment.

We need to phaseout this outdated policy for all workers with disabilities, regardless of where they live. So, I'm pleased to support Chairman Scott's Transformation to Competitive Employment Act, which would make sure states and employers that currently employ workers using a 14(c) certificate can provide workers with disabilities the support that they need to transition into fully integrated and competitive jobs.

We must take bold action to make sure that all Americans have access to equal employment opportunities. Thank you Madam Chair and I yield to the distinguished Ranking Member Mrs. McClain for the purposes of making an opening statement.

[The prepared statement of Chairwoman Bonamici follows:]

STATEMENT OF HON. SUZANNE BONAMICI, CHAIRWOMAN, SUBCOMMITTEE ON CIVIL RIGHTS AND HUMAN SERVICES

Thank you, Chair Adams, and Ranking Members Keller and McClain, and thank you especially to our witnesses for joining us today.

Today, workers with disabilities in several states can legally be paid less than the Federal minimum wage. The

U.S. Commission on Civil Rights recently issues a report that found that more than 100,000 workers with disabilities have been subjected to subminimum wages averaging an estimated \$3.34 per hour.

Phasing out subminimum wages for workers with disabilities is fundamentally a civil rights issue.

The 14(c) subminimum wage provision in the Fair Labor Standards Act of 1938, or F-L-S-A, is a relic of an era when employers were legally permitted to discriminate against individuals with disabilities in the workplace and workers with disabilities did not have access to Federal protections.

It is far past time that we phaseout this harmful provision that denies the equal opportunities for many workers with disabilities.

Since the FLSA first passed, thanks to generations of advocacy, Congress has passed several key laws to guarantee students and workers with disabilities the education and workplace rights they deserve.

The Individuals with Disabilities Education Act, for example, provides children with disabilities access to free and appropriate education.

The Developmental Disabilities Bill of Rights Act provides people with developmental disabilities the opportunity to design and access community services, individualized supports, and other forms of assistance.

And the Americans with Disabilities Act guarantees equal opportunity for individuals with disabilities in all areas of public life.

And now, decades after the enactment of these Federal protections, Congress must make sure that workers with disabilities can earn fair wages and succeed in the workplace.

States across the country, including my home State of Oregon, have already enacted legislation to eliminate the 14(c) subminimum wage and successfully transitioned workers into integrated and competitive work.

But a recent GAO report also found that many employers and workers with disabilities do not have the appropriate resources or services to transition to competitive integrated employment.

We need to phaseout this outdated policy for all workers with disabilities regardless of where they live. So, I am pleased to support Chairman Scott's Transformation to Competitive Employment Act, which would make sure

states and employers that currently employ workers using a 14(c) certificate can provide workers with disabilities the support they need to transition into fully integrated and competitive jobs.

We must take bold action to make sure all Americans have access to equal employment opportunities.

Thank you, Madame Chair, and I yield to the distinguished acting Ranking Member, Ms. McClain for the purposes of making an opening statement.

Chairwoman ADAMS. And thank you. Ms. McClain?

Ms. MCCLAIN. Thank you, Madam Chair. First of all, I want to express my frustration and sadness as well, and echo what my friend Representative Keller said. How disappointed I am that this hearing is entirely remote. We are one of the last committees still not meeting in person, and it's really time to get back to the work of the people and get back to in-person events.

With that said, I think my friend, Representative Keller said it best, "Work, by its very nature is dignifying and important for all individuals." Our job is to help as many people as possible pursue pathways to success. As Representative Keller stated a DOL 14(c) certificate offers individuals with disabilities a chance to contribute in the workforce, engage with other workers, and develop new skills.

We must honor and uphold this flexibility. Sadly, it appears that the democrats' good intentions would result in a misguided public policy. The unemployment rate for people with disabilities is tragically high already. H.R. 2373 strips workers' self-worth by eliminating jobs opportunities.

Employer with 14(c) certificates are not artificially keeping paychecks low. They are giving individuals an opportunity to contribute where no opportunity existed. By advocating for the elimination of 14(c) program, democrats are effectively turning their backs on some of our Nation's most vulnerable workers.

A one size all DC mandates are rarely effective, and this proposal is truly no different. To try and reduce the inevitable fallout, the bill authorizes 300 million in taxpayer funded competitive grants to effective states and businesses, throwing taxpayer dollars at states and a handful of employers will not make up for the job lost opportunities.

The legislation's phasing out of 14(c) combined with democrats' efforts to double the national minimum wage, will force these employers to actually downsize, and unfortunately tens of thousands of laid off individuals will have no hope of finding meaningful employment opportunities, and they will lose the more important benefit of actually having a job.

My friends across the aisle claim that the existing system segregates people with disabilities and is detrimental to everybody's interest. This cheap rhetoric misstates the reality. As Dr. Putts describes in his testimony, there are legitimate instances where the 14(c) environment is appropriate.

Differently situated workers may want different work environments, and we must respect those workers' choices. Presumably, democrats called this hearing because they want to help. But H.R. 2373 is not the solution. Democrats claim that the solution claim it to be, we should carefully weigh the evidence, the actual evidence before eliminating a meaningful and successful program. Thank you very much and I yield back.

[The prepared statement of Ms. McClain follows:]

STATEMENT OF HON. LISA C. MCCLAIN, MEMBER, SUBCOMMITTEE ON CIVIL RIGHTS
AND HUMAN SERVICES

Thank you, Madam Chair.

My friend Representative Keller said it best. Work, by its very nature, is dignifying and important for all individuals. Our job is to help as many people as possible pursue pathways to success. As Representative Keller stated, a DOL 14(c) certificate offers individuals with disabilities a chance to contribute in the workforce, engage with other workers, and develop new skills.

We must honor and uphold this flexibility.

Sadly, it appears the Democrats' good intentions would result in misguided public policy. The unemployment rate for people with disabilities is tragically high already. H.R. 2373 strips workers' self-worth by eliminating job opportunities.

Employers with 14(c) certificates are not artificially keeping paychecks low; they are giving individuals an opportunity to contribute where no opportunity existed. By advocating for the elimination of the 14(c) program, Democrats are effectively turning their backs on some of our Nation's most vulnerable workers. One-size-fits-all D.C. mandates are rarely effective. This proposal is no different.

To try and reduce the inevitable fallout, the bill authorizes \$300 million in taxpayer-funded competitive grants to affected states and businesses. Throwing taxpayer dollars at states and a handful of employers will not make up for lost job opportunities. The legislation's phasing out of 14(c), combined with Democrats' efforts to double the national minimum wage, will force these employers to downsize. Unfortunately, tens of thousands of laid-off individuals will have no hope of finding meaningful employment opportunities, and they will lose the important benefits of having a job.

My friends across the aisle claim the existing system segregates people with disabilities and is detrimental to everybody's interests. This cheap rhetoric misstates the reality. As Dr. Putts describes in his testimony, there are legitimate instances when the 14(c) environment is appropriate. Differently situated workers may want different work environments. We must respect workers' choices.

Presumably, Democrats called this hearing because they want to help. H.R. 2373 is not the solution Democrats claim it to be. We should carefully weigh the evidence before eliminating a meaningful and successful program.

Thank you and I yield back.

Chairwoman ADAMS. And thank you very much for your comments. Let me now without objection, all of the members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5 p.m. on August 4, 2021.

I'd now like to introduce our witnesses. First of all, we have Nantanee Koppstein, who is the mother of an adult daughter with multiple cognitive and auditory disabilities and is an effective advocate for people with disabilities, including in her role as a board member of the New Jersey Chapter of the Association of People Supporting Employment First.

John Anton is a legislative specialist with the Massachusetts Down Syndrome Congress, and an ambassador to the National Down Syndrome Society who advocates for legislation to improve the lives of people with disabilities.

Dr. Matthew Putts is the Chief Executive Officer of Employment Horizons, Inc., a non-profit community rehabilitation program in northern New Jersey that provides a variety of employment services to people with disabilities.

Anil Lewis is the Executive Director of Blindness Initiatives at the National Federation of the Blind. He has previously held other leaderships posts within the NFB and managed employment programs for people with disabilities.

I want to thank all of the witnesses. We appreciate your participation today. We look forward to your testimony. Your written

statement will appear in full in the hearing record, and you are asked to limit your oral presentation to a 5-minute summary. And after your presentation we'll move to member questions.

The witnesses are aware that their responsibility to provide accurate information to the joint Subcommittee, and therefore we will proceed with their testimony. I'd like to first recognize Ms. Koppstein, you are recognized now for five minutes. We'll hear from, so Ms. Koppstein you are recognized for five minutes.

**MS. NANTANEE KOPPSTEIN, MEMBER, NEW JERSEY
STATEWIDE INDEPENDENT LIVING COUNSEL**

Ms. KOPPSTEIN. Thank you, good morning. Thank you for the opportunity to testify into part of the Transformation to Competitive Integrated Employment Act, H.R. 2373. Today I draw upon my lived experience as a parent of Monica, a 33-year-old individual with cognitive and developmental disabilities, auditory processing deficits, seizures, and bleeding disorders.

My testimony does not necessarily represent the views of any organization of which I'm a member, including two Governor appointed state-wide councils, and if I may add I have been appointed and reappointed by both republican and democrat Governors of New Jersey.

I have graduate degrees in economics and have also worked as an economist. I've lived in New Jersey since 1986 and have enjoyed an extensive network and friendship with individuals with disabilities and their families, largely through my daughter's participation in Special Olympics activities, and my own active advocacy.

The network and observation of events during my college years in America from 1969, have given me a voice to advocate for our daughter Monica, who was fortunate to have graduated from a public high school with a decent school to work transition program, but no paid employment when she left school in 2009.

One year before her final year at high school Monica and I visited three sheltered workshops following the recommendation of her school's transition team, which viewed her as being too disabled to work in the community, even though she had had two paid summer jobs as camp counselors.

Neither Monica nor I had positive impressions of the three 14(c) entities we visited. Attendants there appeared to be bored with long periods of down time, were not performing the assigned tasks, which were monotonous and all mundane, there seemed to be little interaction among attendees.

Before these three visits my husband I were ready to sign on the dotted line and send her to a 14(c) entity, which would achieve our goal of finding a structure to Monica's four school days away from home. In the end we followed not only our own impressions, but more importantly, Monica's vehement objections to her attending a sheltered workshop.

Out of desperation Monica applied to and was accepted to a county vocational technical school, and which granted her a certificate in retail food marketing after 2 years. Upon graduation she was offered a part-time job at a grocery store, and later on applied and received part-time position at a new Costco warehouse, and eventually was asked to become a full-time worker at another warehouse.

Monica's road to full-time employment and a decent living wage with paid time off, health and other benefits was winding with many bumps and some barriers. Her employment success is an outcome of her strong desire to work, her own work ethics, and employment and other supports received, all in integrated settings.

The interactions Monica has with coworkers and customers have been the best rehabilitation she has received, at no direct cost to her or to the public. Her ability to recall information and to respond appropriately has improved since exiting her educational entitlement.

In my opinion, a number of Monica's disabled friends in 14(c) entities not only want to hold competitive integrated jobs, but also have the attributes necessary to do so, if only they would be given access to effective job supports, reasonable accommodations and the opportunities to acquire skill. Research indicates those who had previously been in sheltered workshops at higher support costs and low wages, than comparable people who have never been in sheltered workshop settings.

And we've had a number of research results which would support this statement already. From Monica's own experience in high school, I know that an individual's behavior and performance are partly impacted by the setting and the implicit or explicit expectations of the environment.

Supervisors of workers with disabilities in sheltered workshops evaluate the performance of these workers in restricted and confined contexts. As a result, participants in sheltered workshops are viewed by their supervisors as not being capable of working outside the strict confines of these workshops.

Chairwoman ADAMS. Can you bring your comments to a conclusion, we've passed time.

Ms. KOPPSTEIN. Thank you. Disability employment has been regarded as the next frontier to empower people with disabilities to live full and independent lives. The Transformation Act would build capacity, improve the disability and employment service and—

Chairwoman ADAMS. I'm sorry ma'am, we are out of time.

Ms. KOPPSTEIN. Thank you.

[The prepared statement of Ms. Koppstein follows:]

PREPARED STATEMENT OF NANTANEE KOPPSTEIN

**"Phasing Out Subminimum Wages: Supporting the Transition to
Competitive Integrated Employment for Workers with Disabilities"**

Testimony before the Subcommittees on
Civil Rights and Human Services & Workforce Protections,
Committee on Education and Labor,
United States House of Representatives
Statement of Nantane Kopstein
July 21, 2021

Chair Bonamici, Chair Adams, Ranking Member Fulcher, Ranking Member Keller, and distinguished members of the Subcommittees and the Committee:

Thank you for the opportunity to testify in support of the Transformation to Competitive Integrated Employment Act, H.R. 2373 (Transformation Act). In providing this testimony, I draw upon my lived experience as a parent of Monica, a 33-year-old individual with intellectual and developmental disabilities. My testimony does not necessarily represent the views of any organizations of which I am a member, namely: the New Jersey Statewide Independent Living Council, the State Rehabilitation Council, the Employment Workgroup of the Developmental Disabilities Advocacy Network (a project of the New Jersey Council on Developmental Disabilities), and board of directors of New Jersey APSE (Association of People Supporting Employment First). APSE is the only national, non-profit membership organization dedicated to Employment First, a vision that all people with disabilities have a right to competitive employment in an inclusive workforce. As you will hear, my testimony today is perfectly aligned with APSE's policy priorities.

I have been a resident of New Jersey since 1986, having moved from St. Louis, Missouri. I lived in St. Louis for five years. Before moving there in 1981, I taught Economics at Vassar College in Poughkeepsie, New York, and at Yale University in New Haven, Connecticut, where I received my graduate degrees in Economics.

I am a naturalized American citizen and a native of Thailand. I came to the United States for college education in 1969. During my time in college in the U.S. during this tumultuous period, I learned how advocacy, activism, and protests could bring about political and legislative changes, leading to greater equality for all. Little did I know that years later my experience and observations of events in 1969 and the early 1970s would give me a voice to advocate for our daughter, Monica, who was born in 1987 with multiple disabilities, including cognitive and auditory processing deficits. When she became a teenager, Monica began to have seizures. Even though her seizures are under control by medication, she has occasional "absence seizures" which present challenges at work.

Monica was fortunate to have graduated from a public high school with a decent school-to-work transition program which provided her with a variety of short volunteer and unpaid work experiences around the school and in the community. Nevertheless, she did not have paid employment upon her graduation in 2009 following the Great Recession.

One year before her final year at high school, Monica and I visited three sheltered workshops in our area after her school's transition team recommended facility-based employment as a post-school path for her. In the opinion of school personnel, Monica was "too disabled" to work in the community even though she had a paid job as a junior camp counselor at our local YMCA during the last two summers before finishing high school.

Neither Monica nor I had positive impressions of the three sheltered workshops we visited. Sheltered workshop attendees appeared to be bored, with long periods of down time when not performing the assigned tasks, which were monotonous and/or mundane. There seemed to be little interaction among attendees. A parent of one attendee subsequently confirmed the validity of our observations.

Before these three visits, my husband and I were ready to follow the strong suggestion of our daughter's school transition team to send her to a sheltered workshop after high school; we were ready to "sign on the dotted line", which would achieve our goal of finding a structure to Monica's post-school days away from home. In the end, we followed not only our own impressions, but more importantly, Monica's vehement objections to her attending a sheltered workshop. We were therefore glad that Monica was accepted by a County Vocational Technical School to a half-time program in Retail Food Marketing as an adult student.

On the last day of her two years at the Technical School in 2011, Monica got a part-time job offer at the grocery store where she was being job trained as a bagger during the previous few months.

In 2014, an opportunity opened up for Monica to apply for a part-time position at a new Costco warehouse, located half an hour from our house. Even though there was no accessible public transportation to the work place, Monica took on the challenge of the new job, which was more intense and fast-paced than her first job at the grocery store. I was gratified when the Costco site's Human Resources manager asked her to consider working more hours there. Monica again took on the challenge, and was successfully approved to transfer to a full-time position at a new Costco warehouse closer to home when it opened in 2016.

Monica's seven-year-long road to full-time employment and a decent living wage, with paid time off, health, and other benefits, was windy with many bumps and some barriers. Her employment success is an outcome of her strong desire to work, her own work ethics, and the employment and other supports received, including the community-based work experiences and post-secondary education. Monica's journey to full-time employment is a road worth taking. The interactions Monica has with co-workers and customers have been the best rehabilitation she has received – at no direct costs to her or to the public. For instance, her ability to recall information and to respond appropriately has improved since exiting her educational entitlement. Monica is a productive taxpayer and a contributing, engaged member of her community. Even

during the pandemic, she only took a few weeks off at the beginning. From my point of view as her parent, she is happy, safe, and has chartered a good career path for herself. Monica's jobs have allowed both my husband and me to focus on our paid and unpaid work.

In my opinion, a number of Monica's former disabled classmates and acquaintances who are in sheltered workshops not only want to hold competitive, integrated jobs but also have the attributes necessary to do so if only they were given access to effective job supports and job accommodations, and the opportunities to acquire skills. Because the Fair Labor Standards Act of 1938 allows 14(c) certificate holders to pay subminimum wage to their disabled workers, a 2017 – 18 national survey of these workers, conducted in part by John Butterworth at U. Mass Boston's Institute of Community Inclusion, found that the average wage of disabled workers in sheltered workshop was \$3.34 per hour, and that such workers earned an estimated average of \$213.76 per month.¹ Nearly half (or 46 percent) of subminimum wage earners and those who engaged in non-work activities who were funded by states' IDD agencies wanted well-paying jobs and career paths towards economic self-sufficiency.²

Furthermore,

People with disabilities in supported employment who had previously been served in sheltered workshop settings do not show a higher rate of employment as compared to those who had gone straight to supported employment without ever being in a sheltered workshop. However, research indicates that those who had previously been in sheltered workshops had higher support costs and lower wages than comparable people who had never been in sheltered workshop settings³

¹ John Butterworth, Public Testimony before the U.S. Commission on Civil Rights on Subminimum Wages: Data Regarding Subminimum Wages (November 15, 2016), p. 3.

² *Ibid*, p. 4.

³ National Council on Disability, Subminimum Wage and Supported Employment (August 23, 2012), p. 11 https://www.ncd.gov/sites/default/files/NCD_Sub%20Wage_508.pdf

The above finding makes sense intuitively: People who have acquired vocational skills in facility-based, segregated settings usually have to unlearn some of these skills, and re-learn different ones such as learning to work and communicate effectively with others at mainstream job sites. Most importantly, subminimum wage employment reinforces the stigmatic misconception that people with disabilities are less productive, a self-fulfilling belief which keeps them in poverty and perpetuates employment discrimination against them.

According to a report of the General Accounting Office, only 5% of disabled workers in sheltered workshops were able to transition successfully to competitive, integrated employment (CIE) because of the limitations of the ways in which skills learned in sheltered workshops can be transferred to integrated work settings.⁴ The corresponding rate of successful transition from sheltered workshops to CIE in New Jersey was only 1.95% in FY 2019; 0.72% in FY 2020; and 0.33% in FY 2021.⁵

Because of the meager successful transition rates of clients from sheltered workshops to CIE in New Jersey, the number of people with disabilities in segregated employment in New Jersey has declined only slightly (from 2,817 in FY 2019; to 2,658 in FY 2020; to 2,566 in FY 2021 and projected in FY 2022)⁶ – despite provisions of the Workforce Innovation and Opportunity Act (WIOA) which was signed into law in July 2014.

The above outcomes from New Jersey are consistent with the findings of national studies that the original vision of Section 14(c) of the Fair Labor Standards Act – to provide training to people with disabilities so that they could build up their employable skills for future typical jobs in the community which pay minimum wage or higher – has not been realized. Over time, Section 14(c) has thus become a way to segregate people

⁴ GAO. Report to Congressional Requesters on Subminimum Wage Program (September 2001). <https://www.gao.gov/assets/gao-01-886.pdf>

⁵ NJ Department of Labor and Workforce Development. Response to Questions from NJ Legislature on FY 2022 State Budget (April 2021), p. 26. https://www.njleg.state.nj.us/legislativepub/budget_2022/DOL_response_2022.pdf

⁶ Ibid, p. D-237

with disabilities and deny them the right to the minimum wage protection. Sheltered workshops in effect have one-way doors; once you enter, the doors are locked behind you. According to the 2001 report of the General Accounting Office (GAO) which details findings from a survey of 77 holders of 14(c) certificates, 55 percent of 14(c) workers had worked there for 5 years or more. The GAO team also visited 7 work centers (holders of 14(c) certificates) and found that some 14(c) workers at these sites had worked there for more than 20 years.⁷

Some individuals in sheltered workshops who want to seek CIE face additional tactics by sheltered workshop operators to “persuade” them from leaving the workshops. Monica has a friend who was very upset during a meeting at the sheltered workshop she had been attending for ten years because she had told the workshop that she wanted to find a competitive job in the community. The sheltered workshop didn’t want her to leave partly because she was one of the more productive attendees there. The sheltered workshop used various threatening tactics in the hope that she would change her mind and stay. In the end, her mother had to explain to her that she was not learning any new skills and was languishing at the workshop. This young woman eventually got a job in the community; was promoted and given more hours to work; and received positive recognition from her employer and customers at the grocery store for the past five years. In my opinion, she would have been better off if she had started her post-school career in a CIE without wasting time in a sheltered workshop.

For these reasons, I strongly support the provision of the Transformation to Competitive Integrated Employment Act (H.R. 2373) to phase out subminimum wages over a period of approximately five years, by gradually increasing the required minimum wage paid by 14(c) certificate holders from 60% of the federal minimum wage to 100% of the federal minimum wage. During the phase-out period, no new certificates would be issued.

From my daughter’s own experience in high school, I know that an individual’s behavior and performance are partly impacted by the setting and the implicit or explicit

⁷ GAO. Report to Congressional Requesters on Subminimum Wage Program (September 2001). <https://www.gao.gov/assets/gao-01-886.pdf>, p. 24

expectations of the environment. Supervisors of workers with disabilities in sheltered workshops evaluate the performance of these workers in restricted and confined contexts. As a result, participants in sheltered workshops are viewed by their supervisors as not being capable of working outside the strict confines of these workshops. Because pay rates of workers in sheltered workshops are determined by the documented time study outcomes without any accommodation, job coaches naturally look for these workers' deficits and shortcomings for the required documentation, rather than their abilities and potential.

Based on my own experiences and observations, I also strongly support the Transformation Act's provision to establish a center to provide technical assistance to all 14(c) entities regarding best practices and effective models for transitioning all participants to competitive jobs in the mainstream workforce.

Let me also illustrate why I support the Transformation Act's provision of wraparound services to complement the workday and to support the individual's integration into the community. New Jersey's I/DD agency has been funding my daughter's membership in a local gym and multi-faceted health and wellness sessions in the community, all of which have helped her maintain healthy weight; strengthen her core muscles; and learn movements to reduce potential physical injury at work and at home. These wraparound activities have complemented her work life and provide her with social interactions with other participants at the gym. I therefore strongly support the Transformation Act's requirement of evaluation and reporting on the expansion of the service delivery structure

Before ending my testimony, I would like to applaud your initiative and leadership in introducing and advancing the Transformation Act. In many ways, the Act would provide a bridge *between* the antiquated and discriminatory relics of Section 14(c) of the 83-year-old **Fair Labor Standards Act** and the **Americans with Disabilities Act** (ADA). Disability employment has been recognized as the "next policy frontier to

empower people with disabilities to live full and independent lives.”⁸ The Transformation Act would realize the promise of Title II of the ADA which, among other things, requires state and local governments to administer services, programs and activities in the most integrated setting to the maximum extent possible as appropriate for people with disabilities. Furthermore, the 1999 Supreme Court’s *Olmstead* ruling⁹ prohibits unjustified segregation of people with disabilities in placements which isolate them from participating in community life and severely limit them from everyday activities including education, work, and social contacts.

In 2012, a Court in Oregon found that the ADA and *Olmstead* apply to government services, programs and activities that include employment services; the Court rejected the argument that the ADA and *Olmstead* only apply to residential services and programs. Subsequent settlements in VA, DE, NC and GA, and RI expanded the ADA and *Olmstead* protections to include not only supported employment, but also integrated day services.

I urge you to advance the Transformation to Competitive Integrated Employment Act in order to supplement the enforcement of the integration mandate of Title II of the ADA and *Olmstead*. People with disabilities have the right to minimum wage protections, to live and work among peers without disabilities for the maximum number of hours, to be given benefits comparable to those received by their non-disabled co-workers, regardless of policies of their states or fluctuation in their local economies.

The Transformation Act would provide comprehensive support to states, provider organizations, and the affected individuals with disabilities while incentivizing employers to hire more workers with disabilities. The Act would benefit all stakeholders and allow our country to expand civil rights protections for people with disabilities.

⁸ Representative Cathy McMorris Rodgers (WA-05) – during the introduction of the Bipartisan bill, “Transformation to Competitive Integrated Employment Act”, on April 6, 2021. <https://bobbyscott.house.gov/media-center/press-releases/scott-mcmorris-rodgers-introduce-bipartisan-bill-to-help-workers-with>

⁹ *Olmstead v. L.C.*, 527 U.S. 581 (1999). For more information: <https://www.ada.gov/olmstead/index.html>

Thank you for the opportunity for me to testify at today’s hearing in support of the Transformation to Competitive Integrated Employment Act. I am happy to provide any clarifications or additional information to advance this landmark legislation.

Nantanea Koppstein
7 Suffolk Lane
Princeton Junction, NJ 08550

Chairwoman ADAMS. OK thank you very much. We do have your full testimony, and that will benefit the committee.

Ms. KOPPSTEIN. Thank you.

Chairwoman ADAMS. Thank you very much. We'll now hear from Mr. Anton. Mr. Anton you have five minutes sir.

**MR. JOHN ANTON, LEGISLATIVE SPECIALIST,
MASSACHUSETTS DOWN SYNDROME CONGRESS**

Mr. ANTON. Good morning.

Chairwoman ADAMS. Good morning.

Chairwoman BONAMICI. Good morning.

Mr. ANTON. Thank you for inviting me to speak today. Growing up in segregated, and devalued, and hard to use my voice. I felt invisible and not respected. My parents helped me to be included in Special Olympics, Boy Scouts, hunting and fishing with my dad.

After high school I did a variety of food service jobs which were not good for my diet I can tell you that. Then I attended the local workshop doing jobs such as packaging, shipping, and piece works. It was very boring. My friends would be playing cards, watching videos, and just hanging out with nothing to work on. In addition, I got paid very little. It was discouraging, and it did not encourage us to do our best.

Many of my friends felt the same way. One friend worked for the week of \$1.25 and another friend paid only \$10.00 a week for cleaning bathrooms. I went to my supervisor and said I want to do more. He told me no. And look, so I quit. The local ARC helped me to learn how to dress professionally. I wanted a job wearing a suit and tie and carrying a briefcase like my dad who was my teacher.

I have learned that legislative advocacy can make things happen. I led the Mass Advocates Standing Strong regionally, and I went on to be the Chairperson of a state-wide organization, and it's all about respect and dignity as a citizen for me. It's not being stigmatized on labels which belong on jars, not people.

I was hired in Massachusetts Down Syndrome Congress as a Legislative Specialist. I got paid for the minimum wage, and I advocate for legislation that supports and protects the rights of all people with Down Syndrome. For many years I also have worked as a legislative intern at the State House in Boston on bills affecting all of us.

Many self-advocates, and I come to Washington, DC for the National Down Syndrome Society. We advocate for policies to ensure that all people with Down Syndrome have access, meaningful jobs, healthcare, and other important resources. The NDSS has connected me with a 5-week internship with the Congresswoman Cathy McMorris Rodgers from Washington State who has a son with Down Syndrome, and is the co-lead on H.R. 2373, and I am proud to be here today to represent both the organizations, with the Mass Down Syndrome Congress and the NDSS.

For many years people told me that I could not do what I wanted, but I persisted. My parents were so surprised in how high my goals were. Look at me now. The fact that people with disabilities need real jobs for real pay. Like all of you, I urge members of the committee to support and phaseout the 14(c) and the Trans-

formation of the Competitive Integrated Employment Act, H.R. 2373, thank you.

[The prepared statement of Mr. Anton follows.]

PREPARED STATEMENT OF JOHN ANTON



Testimony for the Education & Labor Committee
Hearing on Sub-Minimum Wage to People with Disabilities and the
Transformation to Competitive, Integrated Employment Act (HR2373)

Presented by
John Anton

Legislative Specialist, Massachusetts Down Syndrome Congress
NDSS DS-AMBASSADOR®, National Down Syndrome Society

Chairman Scott, Chairwoman Adams, Chairwoman Bonamici, Ranking Member Foxx, Ranking Member Fulcher, Ranking Member Keller and Members of the Education & Labor Committee and Subcommittees on Civil Rights & Human Services and Workforce Protections, thank you for the invitation to speak to you today.

When I was born, there were no laws regarding integrated classrooms. Even though expectations for individuals with Down syndrome or other intellectual and developmental disabilities were very low, my parents believed that I could do more with the right support and education. Their goals for me were very high.

They entered me into a Montessori pre-school program and then had to fight to get me into elementary school classes which were not all special education. Chapter 766 had just started and teachers were trying to figure out how to mainstream those of us who needed extra help.

When I was growing up, I felt segregated and devalued and found it hard to use my voice to speak up. I felt invisible, not respected and not listened to when I spoke. My parents had no idea I felt this way.

It helped being involved in Special Olympics, Boy Scouts, hunting and fishing with my dad, and many other community activities.

In high school, I went to Essex Agricultural School and graduated in 1986. After that, I did a variety of food service jobs which were not good for my diet, I can tell you that!!

Then I attended a local workshop where they had us doing jobs such as packaging items to be shipped out, and piece work

It was very boring and unsatisfying for me. My friends would be sitting around playing cards, watching videos, and just hanging out with nothing to work on. In addition, we got paid very little for the work we did do.

It was not a good atmosphere to be in because it did not encourage us to do our best and see the results of our efforts.

The agency applied for and received a waiver to pay us less than minimum wage.

I went to my supervisor and said that I was not satisfied with what was happening and wanted to do more. He told me they did not have anything else and I quit!!

After connecting with the local Arc, I learned how to dress professionally and develop a Self-Advocacy presentation. I wanted to have a job where I could wear a suit and tie, carry a briefcase, and be a professional, like my Dad who was a teacher.

The Arc sparked my interest in joining with other advocates across the state to make things happen.

After becoming Chair-person with Mass Advocates Standing Strong regionally, I went on to be Chairperson of the state-wide organization.

It is all about respect and dignity as a citizen for me and not being stigmatized by labels-which belong on jars, not people!!

We would like to have “Nothing About Us Without Us.”

I soon realized that I had to be at the State House to make things happen with laws which affect all of us.

I was hired by the Massachusetts Down Syndrome Congress to be their legislative specialist. In that role, which I still serve in today, I get paid above minimum wage for my services, I advocate for legislation that supports and protects the rights of all people with Down syndrome.

Along with many other self-advocates, I come to Washington DC for the National Down Syndrome Society Buddy Walk(r) on Washington Advocacy Day each year to advocate for policies to ensure all people with Down syndrome have access to meaningful jobs, healthcare and other important resources.

The NDSS also hooked me up with a 5-week internship with Congresswoman Cathy McMorris Rodgers from Washington State, who has a son with Down syndrome and is the co-lead on the Transformation to Competitive Integrated Employment Act.

I’m proud to be here today to represent both of these organizations – the MDSC and the NDSS.

Also, one of the jobs that I have enjoyed most over my career was working at the State House as the Legislative Intern for Representative

Tom Sannicandro. While there, I reviewed bills, did research on current budget issues, and attended rallies to reinstate funding for families and individuals with disabilities.

When Representative Sannicandro left, I moved on to work with Senator Barbara L'Italian. I was with her for several years and then she ran for the Senate and also moved on.

Over the years, I have learned that the voices of self-advocates such as myself really does make a difference, so I appreciate the opportunity today to voice my opinion.

Advocating is about respect and dignity and working together. There is a great saying that I think says it all -- T-E-A-M Together Everyone Achieves More (TEAM).

For many years people told me I could not do what I wanted, but I persisted. My parents were even surprised at how high my goals were.

Look at me now!!

It is important to have a social life. I am very active in my church, do volunteer work, and go out to dinner with friends. I am also going to the Northpoint Bible College in Bradford, working toward my goal of being a minister someday.

I live in a 5-room apartment with the L'Arche Boston North community and attend many things with other core members.

I'm not the only one who was very unhappy working in a sheltered workshop. I have talked to many friends who have had experiences like mine.

Like me, they wanted to work, but had to work on the same boring task year after year. Or they would end up playing bingo or cards while job

coaches were on their phones. One of my friends said she worked in a workshop all week for \$1.25. She was told she couldn't make more money. Another said she was paid \$10 a week for cleaning bathrooms. Another friend said the workshop felt like a babysitting location.

The fact is that people with disabilities need REAL jobs with REAL pay.

We passed the Real Lives Bill in Massachusetts and with this bill, we have more control over our funding which we receive from the MA Department of Developmental Services.

There are 3 funding models.

Traditional Services have the funds come from DDS to the Provider (such as The Arc) and then on to the individual.

Of course, there is an administrative cost to this. The Agency hires the staff for me. I do not have a choice in who they hire and I am not in control of my money.

If I choose Agency with choice, DDS gives the money to the provider who gives it to the individual. The agency finds staff and the individual can choose their supports. However, I still would not have control over my budget.

If I choose Participant-Directed or Self-Direction, which is in fact what I have chosen, DDS funding is administered through Public Partnership Limited, where invoices are submitted for staffing and other needs.

With this option, I oversee my budget, and have a voice in all the supports I need. I also find my own staff. Some families choose not to have this responsibility.

But for me, self-direction gives me more self-esteem, choice and control over my life.

In summary, I would like to address these sub-minimum wages which are currently legal. It is an asset to companies but a huge drawback to those of us who need to make a living and be a respected, valued employee in the community. We have to pay for rent, food, utilities, clothing and other expenses like everyone else, as well as wanting to be able to afford transportation and have a social life. We cannot live a full life on a sub-minimum wage check.

I urge the Members of this Committee to support the phase out of Section 14c and the Transformation to Competitive Integrated Employment Act (HR2373).

Martin Luther King, Jr. inspires me and like Reverend King, I feel strongly about human rights. Like him, I have a dream.

"I dream that people will be able to afford to live independently or with supports if needed, work at a fair wage, and be happy in their communities."

I respectfully ask the Education & Labor Committee and everyone here today to do everything in their power to ensure people with disabilities receive the full wages they truly deserve so that they can live a meaningful fulfilling life.

For more information please contact: Maureen Gallagher, MDSC Executive Director at 781-221-0024 x201 or mgallagher@mdsc.org or Ashley Helsing, NDSS Director of Government Relations at 202-766-2407 or helsing@ndss.org.

Chairwoman ADAMS. And thank you very much. Right on time. You did a fantastic job sir. And you look good too. So, Dr. Putts we now recognize you for five minutes sir.

DR. MATTHEW R. PUTTS, CEO, EMPLOYMENT HORIZONS, INC.

Mr. PUTTS. Good morning. Thank you, Chairs Adams, and Bonamici, Ranking Members, Keller and McClain, and members of the Subcommittees for the invitation to provide this statement regarding 14(c) wages as discussed in the Transformation to Competitive Integrated Employment Act.

Employment Horizons, founded in 1957, is a non-profit community rehabilitation program, or CRP in Northern New Jersey. Our program participants, the people with disabilities we serve, participate in a wide range of programs which include supportive employment, work on janitorial, groundskeeping, and fulfillment contracts, and a variety of other vocational programs.

While Employment Horizons is proud of the work, we do to ensure employment opportunities for individuals with disabilities, we are just one organization out of thousands nationally, that provide these life-changing services.

In order to ensure that as many people with disabilities as possible can work, CRPs rely on a variety of methods and tools, including in some cases 14(c) special wage certificates. Elimination of 14(c) certificates as proposed in H.R. 2373 would eliminate employ-

ment opportunities for thousands of employees who want to be able to choose the type of employment that makes the most sense for them.

In fact, the outright elimination of 14(c) certificates benefits no one. Those working under 14(c) certificates already have the right and option to pursue competitive integrated employment. They also have the right and option to pursue non-vocational programs like day programs.

Employment within a 14(c) program is just one of the many choices available to people with disabilities who wish to work, and only one type of program offered by CRP's. Part of my role is to advocate for the rights of people with disabilities. It is crucial that I raise awareness about any issue in which a person with the disability loses the right for self-determination, or the right to make choices about their own life.

The elimination of 14(c) certificates does just that. Such a step assumes that people with disabilities cannot make their own best choices about the type of employment and setting they would like to work or spend time in. Discontinuing 14(c) programming also makes the assumption that working with people without disabilities is somehow innately better than working in a setting with people with disabilities.

How can we assume and apply a standard that work is only valuable when performed around a preponderance of non-disabled coworkers if we truly believe in the value of the people with disabilities? If we accept the basic premises that people with disabilities are valuable members of our community, and that they have the right to self-determination, then we must also accept that they have a right to a full array of employment and program options.

Why then would anyone argue for the elimination of 14(c)? Often those who would like to see 14(c) eliminated are not fully aware of the value of these programs or have been provided information on them that is not fully accurate, including some of the following misconceptions.

First, many people believe that 14(c) certificate holders receive a financial benefit through having such a certificate. Second, some people believe that employees in 14(c) programs are unaware of other employment opportunities or are not provided alternatives.

And third, a common misconception is that the closure of 14(c) programs would result in more people with significant disabilities working in competitive integrated employment. The use of 14(c) certificates as part of a continuum of opportunities for people with disabilities is a complicated issue. Unfortunately, grant funding, and elimination of such certificates are not enough to ensure a transition from 14(c) to competitive integrative employment.

More research is needed on the impacts such an elimination would have, and employers must be part of the conversation as competitive integrated employment relies on their hiring decisions. Ultimately, the self-determination of people with disabilities must be preserved. I leave you with the story of a former program participant working under a 14(c) certificate.

This individual started working in a 14(c) program after high school. After developing the necessary skills, she transitioned into competitive integrated employment working in the hospitality field.

As part of her disability, she had a number of medical issues including frequent seizures.

As these conditions worsened, and her seizures became more frequent, she left competitive integrated employment and returned to her earlier 14(c) covered job, where she continued to work until unfortunately passing away in her 50's. There was not a day in either of her jobs where she was not proud to be working.

However, without the full continuum of services available to her, she would have needed to stop working as her seizures worsened and may have never achieved her earlier competitive position. Her 14(c)-employment allowed her to both develop critical work skills initially, and to finish her career in a safe and supportive setting.

I appreciate the opportunity to speak to you about the important issue of 14(c) employment, and the array of employment opportunities available to individuals with disabilities. I look forward to continuing the discussion and believe that together we can find creative ways to ensure the best, and best paying employment possible for people with disabilities, thank you.

[The prepared statement of Dr. Putts follows:]

PREPARED STATEMENT OF MATTHEW R. PUTTS

Statement of Matthew R. Putts, PhD
Chief Executive Officer, Employment Horizons, Inc., Cedar Knolls, NJ

U.S. House of Representatives
Committee on Education and Labor
Joint hearing of the Subcommittee on Workforce Protections and
the Subcommittee on Civil Rights and Human Services
“Phasing Out Subminimum Wages: Supporting the Transition to Competitive Integrated
Employment for Workers with Disabilities”

July 21, 2021

Thank you for the invitation to provide this statement regarding 14(c) wages as discussed in the
Transformation to Competitive Integrated Employment Act (H. R. 2373).

Employment Horizons is a non-profit community rehabilitation program (CRP) in northern New Jersey serving approximately 450 or more individuals with disabilities a year. We have been in operation since 1957. Our program participants, the people with disabilities we serve, participate in a wide range of programs including supported employment, vocational evaluation, Pre-Employment Transition Services (Pre-ETS), Community Based Work Evaluation, Trial Work Experience, job sampling, Readiness for Individual Success in Employment (training and connection to employment for out of work, out of school participants age 16 to 24), employment on janitorial and grounds keeping contracts, culinary arts and janitorial instruction, and employment in our fulfillment center. In providing these services, we partner with the New Jersey Division of Vocational Rehabilitation Services, the New Jersey Division of Developmental Disabilities, and the New Jersey Commission for the Blind and Visually Impaired. While Employment Horizons is proud of the work we do to ensure employment opportunities for individuals with disabilities, we are just one organization out of thousands nationally that provide these crucial life-changing services.

In order to fully understand the importance of CRPs like Employment Horizons and the role they play in our communities, it is essential to understand the employment gap between people with and without disabilities. The U.S. Bureau of Labor Statistics tells us that as of June of this year, the labor force participation rate – people working or looking for work – for people *without* disabilities was 67.7 percent and for people *with* disabilities was 21.3 percent. The data also indicates that the unemployment rate for people *without* disabilities was 5.9 percent as of June; but for people *with* disabilities, it was 10.9 percent. CRPs work to close these gaps through an assortment of programs.

In order to ensure that as many people with disabilities as possible can work, CRPs rely on a variety of methods and tools. One tool available to these organizations is the use of 14(c) special wage certificates. These certificates allow CRPs to successfully hire and maintain employment for individuals with the most significant disabilities. Elimination of 14(c) certificates as proposed in H. R. 2373 would eliminate employment opportunities for thousands of employees who want to be able to choose the type of employment that makes the most sense for them. In fact, the outright elimination of 14(c) certificates benefits no one. Those working under 14(c) certificates

already have the right and option to pursue competitive integrated employment. They also have the right and option to pursue non-vocational programs like day programs. Under the Rehabilitation Act of 1973, the designated state unit (state vocational rehabilitation program) must provide career counseling including referrals for assistance with competitive integrated employment every six months for the first year of employment and annually thereafter for all employees receiving subminimum wages. Employment within a 14(c) program, therefore, is just one of many choices available to people with disabilities who wish to work.

Part of my role, and that of others in the vocational rehabilitation field, is to advocate for the rights of people with disabilities. In this role, it is crucial that I raise awareness about any issue in which a person with a disability loses the ability for self-determination, or the right to make choices about their own life. The elimination of 14(c) certificates does just that. Such a step assumes that people with disabilities cannot make their own best choices about the type of employment and setting they would like to work or spend time in. Discontinuing 14(c) programming also makes the assumption that working with people without disabilities is somehow innately better than working in a setting with other people with disabilities. How can we assume and apply a standard that work is only valuable when performed around a preponderance of non-disabled co-workers if we believe in the value of people with disabilities?

If we accept the basic premises that people with disabilities are valuable members of our community and that they have the right to self-determination, then we must accept that they have a right to a full array of employment and program options. Why then would anyone argue for the elimination of 14(c)? Often, those who would like to see 14(c) eliminated are not fully aware of the value of these programs or have been provided information on them that is not fully accurate. I would like to provide some facts that may help clear up some of this misinformation.

1. Many people believe that 14(c) certificate holders receive a financial benefit through having such a certificate. However, the reality is that 14(c) certificates permit paying a commensurate wage (which may or may not be subminimum) based on the work abilities of the employee. For example, if a certificate holder's 14(c) employees have an average production rate of 25 percent the non-disabled average, then the employer will need to hire four employees to maintain the same level of production as their competition hiring non-disabled workers. The employer does not make any additional profit or have any additional savings compared to a non-certificate holder providing the same work. In fact, in certain situations there is a financial deterrent as benefits may need to be paid to more employees than if a smaller number of non-disabled employees were hired instead.
2. Some people believe that employees in 14(c) programs are unaware of other employment opportunities or are not provided alternatives. As discussed above, employees receiving subminimum wages working under 14(c) certificates receive career counseling, guidance, and referrals from each state's designated state unit in addition to services they may receive from their CRP, including job sampling, specific career preparation, vocational readiness services, job placement, and job coaching.
3. Another common misconception is that the closure of 14(c) programs would result in more people with significant disabilities working in competitive integrated employment along with increased wages. This is used as a rationale for eliminating 14(c) certificates. The truth is that there has been only limited research in this area, but the research that

exists suggests this is not true. As an example, the state of Maine eliminated 14(c) employment at the state level. The result in Maine was devastating for those with the most significant disabilities. In fact, after the elimination of 14(c) certificate use in Maine, fewer people with disabilities were working, fewer were in integrated employment despite the closure of non-integrated settings, more people with disabilities were in day programs, and those with disabilities who were working had the lowest number of hours worked per week of every state in the country¹. Employers cannot be forced to hire people, and we can see this in the statistics from Maine. Despite there being more people with disabilities available for employment, there was no increase in the number becoming competitively employed.

The use of 14(c) certificates as part of a continuum of opportunities for people with disabilities is a complicated issue. Unfortunately, grant funding and elimination of such certificates are not enough to ensure a transition from 14(c) to competitive integrated employment. More research is needed on the impacts such elimination would have, as very little information is available currently. Other options beyond full elimination should also be part of any research and discussion. Employers must be part of the conversation, as competitive integrated employment relies on their hiring decisions. Employers will need information and supports in order to adequately assist this process. And ultimately, the self-determination of people with disabilities must be preserved.

I leave you with the story of a former program participant working under a 14(c) certificate. This individual started out working in a 14(c) program after high school. After developing the necessary skills, she transitioned into competitive integrated employment working in the hospitality field. As part of her disability, she had a number of medical issues including frequent seizures. As these conditions worsened and her seizures became more frequent, she left competitive integrated employment and returned to her earlier 14(c) covered job where she continued to work until unfortunately passing away in her 50s. There was not a day in either of her jobs where she was not proud to be working and where she did not bring her infectious smile and positive attitude to work. However, without the full continuum of services available to her, she would have needed to stop working as her seizures worsened and may have never achieved her earlier competitive position. Her 14(c) employment allowed her to both develop critical work skills initially and to finish her career in a safe and supportive setting.

I appreciate the opportunity to speak to you about the important issue of 14(c) employment and the array of employment opportunities available to individuals with disabilities. I look forward to continuing the discussion and believe that, together, we can find creative ways to ensure the best, and best-paying, employment possible for people with disabilities.

¹ Phoenix, J. A. & Bysshe, T. (2015). *Transitions: A Case Study of the Conversion from Sheltered Workshops to Integrated Employment in Maine*. George Washington University.

Chairwoman ADAMS. Thank you, Dr. Putts. Now we'll hear from Mr. Lewis. You're recognized sir for five minutes.

MR. ANIL LEWIS, EXECUTIVE DIRECTOR, JERNIGAN INSTITUTE, NATIONAL FEDERATION OF THE BLIND, BALTIMORE, MD

Mr. LEWIS. Good morning. Can you hear me, OK?

Chairwoman ADAMS. Yes.

Mr. LEWIS. I'd like to offer, I am blind, so I cannot see the timer, so if someone will just say two minutes at two minutes left and one minute, at one minute left, I'll adhere to the time constraints.

Chairwoman ADAMS. OK.

Mr. LEWIS. So, my name is Anil Lewis. I live in Atlanta, Georgia. As stated, I am the Executive Director of Blindness Initiatives for the National Federation of the Blind, which is an organization of blind people that realize that blindness is not the characteristic that defines you, or your future.

See every day we raise expectations for blind people because we realize it's those low expectations, like those that are perpetuated through Section 14(c) that create the true obstacles between blind people and our dreams. And we recognize that you can live the life

you want, and blindness is not what holds you back. And this is true we found for other organizations as well.

I appreciate this opportunity to testify before the committee. I hope that I'm able to convey the message that I like because I have a history in all this, and if you take the time to read my written testimony, you'll see, especially I appended the testimony that I was able to give at the United States Commission on Civil Rights, which talks about how Section 14(c) adversely affected the future of my brother, created a tremendous amount of guilt on behalf of my mother.

Created tremendous barriers for employment for my sister and myself, but I'm trying not to emote around that issue because I have come through the fog and understand that there is a better outcome, but in all honesty in evaluating all this, I had to realize that as a professional, early on in my awareness around disability, and the capacity of people with disabilities, I also helped support a subminimal wage workshop at a community rehabilitation program.

So, I have true empathy and understanding, less I'd be a hypocrite for those who still feel like that antiquated remedy is still the solution for people with disabilities. Working with the National Federation of the Blind National Office since 2011, I was a legislative lead in trying to pass legislation that would eliminate 14(c).

I have to admit upon reflection, the strategy that we described in our legislation—the proposed legislation then—was woefully inadequate. The legislation before you now has addressed in my opinion, all the concerns that existed on both sides. But it's only important if we understand that those who support 14(c) come to know we're not committed to the exploitation and a discrimination that I have to admit back in 2011 was the messaging I put out there.

They're individuals through their what I understand is misguided compassion which I had as well, but well-intended. Just really invested in a philosophy that again is antiquated. I could take the time to express all of the data, the data just to take us off message because we can contest numbers, but it doesn't get us to the place where we can change the minds of people.

We start by actually informing the heart. I was doing this work under a shelter workshop; I thought that I was doing God's work.

Chairwoman ADAMS. You have two minutes.

Mr. LEWIS. I thank God for those who continue to show me that it is possible. And I think that the written testimony is there, but I'd like to take this opportunity based on the scenario that was just described, to give you an alternate perspective.

So, you have an individual with a significant disability that's employed at a shelter workshop, and she was able to obtain competitive integrated employment, which I think speaks to the fact that many individuals who are given the opportunity would choose competitive integrated employment.

It's not fair to say that every individual in those sheltered workshops has that opportunity, but when it's that environment, but then due to medical reasons as explained, chose to go back to the sheltered workshop environment. OK, so let's yield and say that was a choice, but I think that we're making assumptions that the services that we're aspiring should be provided in the instance to

support her in the competitive work environment which could have made it——

Chairwoman ADAMS. One minute sir.

Mr. LEWIS. Equally possible for her to do so, we're done. And I don't think that's the case. But even more so, I'd like to stress the difference of this. Eliminating 14(c) is not closing the shops. We already see shops that have been eliminating 14(c) and still able to continue to operate.

We need to understand that the ability for people to work competitively in these environments does not depend on the wages, that's the employer's decision. It's not going to close the shops, it's not going to eliminate choice, and it doesn't do the things—many of the things we're describing, but I understand the value and the motivation for doing so.

I just recognize that the Transformation Act puts the technical assistance in place that I think is necessary the grants that in place that will make it possible, and really shapes in a way the paradigm for us to seek better futures for people with disabilities, not acquiesce to the antiquated philosophy that existed. Thank you for your time.

[The prepared statement of Mr. Lewis follows:]

PREPARED STATEMENT OF ANIL LEWIS



To the Honorable Members of the United States House Subcommittee on Workforce Protections and the Subcommittee on Civil Rights and Human Services, I thank you for the opportunity to testify at this hearing. My name is Anil Lewis and I am the Executive Director for Blindness Initiatives at the National Federation of the Blind. I live in Atlanta, Georgia.

I appreciate this opportunity to participate in this joint hearing to add my voice to those considering phasing out the use of subminimum wages and supporting the transition to competitive integrated employment for workers with disabilities. In November 2019 I had the opportunity, honor, and privilege to testify in support of the phase out of Section 14(c) of the Fair Labor Standards Act before the United States Commission on Civil Rights (USCCR) (See Appendix A). My testimony today will grant me an opportunity to apologize, explain, clarify, and offer a charge.

Like many individuals who support Section 14(c) today, there was a time that I believed it was the moral, compassionate strategy to implement in order for those that are less fortunate to achieve the benefits of "work," and to give them something to do besides staying at home. For that, I apologize, because now I understand that [Compassion Can Be Discrimination](#) cloaked in sympathy and good intentions.

Fortunately, I came to realize that the real problem was not the incapacity of the people with disabilities, but rather the lack of knowledge of the training and tools that could be utilized to assist individuals with disabilities acquire the skills to become employed in a competitive integrated work environment. I outline this transition in more detail in my USCCR testimony, but let me simply state that I transitioned from working with the handicapped to working with people with disabilities. As long as I perceived them as unfortunates with no real employable skill set and my moral obligation, the work I did may have made me feel better, but did nothing for them. However, once I viewed them as people, with the same desires, ambitions, and capacity for employment with the right to a true quality of life; not only did I feel better, they felt better because I became aware of what is possible. Securing competitive integrated employment for even the most significantly disabled, which seemed to be an impossibility then, has come to be not only possible, but an imperative now. Section 14(c) of the Fair Labor Standards Act, by allowing the lawful payment of subminimum wages to workers with disabilities, interferes with this imperative, so my challenge is explaining why you should support the effort to phase out Section 14(c).

Many have previously provided data and examples of how the Section 14(c) provision is false and ineffective, so I will add that information to the end of this testimony (See Appendix B). Moreover, many have testified and given examples of success stories, but that has not resulted in consensus support toward the phase out of Section 14(c). Many have pleaded or offered impassioned requests to eliminate what they consider to be an exploitive, discriminatory piece of legislation, and although this has resulted in some phase out in the use of the subminimum wage certificates, we have still not made the conscious decision to phase out the law.

My USCCR testimony explains why this is personal to me. The adverse impact the subminimum wage provision has had on my family is real. The low expectations promoted and supported by Section 14(c) denied my brother the education and training he deserved, placed an undue burden of guilt on my mother, and offered unnecessary employment barriers for my sister and myself. Of course, mine is only one of many hundreds of thousands of families adversely impacted by this piece of legislation. Although the emotion expressed in my USCCR testimony is real, I recognize that the emotion keeps us from recognizing the true flaw in this "well intended" piece of legislation.

I will refrain from referring to the use of the subminimum wage provision as exploitation because many, as I did in the past, perceive it as the only opportunity for individuals with significant disabilities to achieve some semblance of employment. I previously believed that some people with disabilities, especially those with significant disabilities, were incapable of competitive integrated employment. My belief in their incapacity was not based on any lived or learned experience. I had no training or experience working with this population to provide training and supports that would enable them to live, work, and play in their communities. I was simply driven by my compassion to create a safe caring environment for these poor unfortunate souls . . . God's work.

Thank God for those that did and continue to believe in the capacity of people with disabilities, because they demonstrate to me, time and time again, that I was wrong. Even individuals I was absolutely convinced had no ability to work, were provided the training and supports to achieve better than subminimum wage employment. I came to have a new belief based in fact, not just emotion. Again, I apologize for my late awakening, and ask, should others continue to be unintentionally harmed as a result of the lack of knowledge possessed by those well intended individuals whose goal is to help?

Rather than referring to Section 14(c) as discriminatory, can we all agree that it's antiquated? After all, Section 14(c) was established in 1938 and based on the low expectations and lack of knowledge about the true capacity of people with disabilities that existed at that time. This body has subsequently passed decades of progressive civil rights legislation, like the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act, and the Americans with Disabilities Act (ADA), which have improved the education, training, and employment opportunities for people with disabilities (See Appendix A for more information). As a result, we continue to move forward, toward true equity for people with disabilities. Although our understanding of the capacity of people with disabilities has drastically improved over the years, Section 14(c) is in direct conflict with this progress. In fact, attempts to improve Section 14(c) have gone counter to the intent of subsequent, more enlightened disability legislation. Amendments to Section 14(c) have lowered the wage floor so that people can be paid pennies per hour. Regulations have made it easier for entities to secure subminimum wage certificates with less oversight. All of which has resulted in the development and perpetuation of a business model that serves as a disincentive to the promotion of tools and strategies to support competitive integrated employment.

I was honored to serve as a Presidential appointee to the AbilityOne Commission. I believed, and still have hope, that this work has the potential to be the incubator of best practices that will lead to more strategies to promote the competitive integrated employment of people with disabilities. While I served, we were able to adopt a Declaration Against the Use of Section 14(c) within the

AbilityOne program. There has been a rational, incremental progression toward the surrendering of subminimum wage certificates by AbilityOne participating nonprofits. However, there are a few that continue to use their priority access to government contracts to employ the use of the subminimum wage certificates rather than meeting their obligation to find ways to gainfully employ people with disabilities.

During my last meeting as a member of the AbilityOne Commission, the Executive Director of SourceAmerica, one of the Central Nonprofit Agencies responsible for providing oversight and technical assistance to AbilityOne participating nonprofits, gave a report that highlighted their Pathways program, which results in real employment outcomes for individuals with significant disabilities. However, the presentation on this program was dwarfed by the emphasis placed on their sheltered employment work. I asked, why didn't they place more emphasis on the Pathways model than the subminimum wage programs? The answer was that Pathways is costly and more difficult. We understand that it is not easy, and we understand that it may be more costly, but that is on the front end. With each "costly" investment in the development of an innovative employment strategy or tool that will allow someone with a significant disability to achieve a better employment outcome, we learn more and create opportunities that would not otherwise exist. Moreover, through the continued improvement and replication, we will refine the processes, reduce the cost of the program, reduce dependency on public assistance programs, and develop best practices that promote the competitive integrated employment of people with disabilities.

I have grown, and I am no longer angry at those who, as I once was, are driven by a misguided compassion to do what they feel is right. However, it is overwhelmingly frustrating to have to continue to justify the right for people with disabilities, like myself, to have the same opportunities freely offered and available to others.

My frustration is shared by the tens of thousands of members of the National Federation of the Blind, an organization that knows blindness is not the characteristic that defines you or your future. Every day we raise expectations for blind people because we realize it's those low expectations that create the true obstacles between blind people and our dreams. You can live the life you want; blindness is not what holds you back. This knowledge is shared by tens of thousands of others that have come to know that people with disabilities, with the proper training and support, can be competitive employees worthy of a competitive wage.

I recognize that the competitive employment of people with disabilities seems counterintuitive to those who have come to believe that these individuals do not have the capacity to work in competitive integrated environments. The entrenched belief in the incapacity of people with disabilities defies reason. One of the most difficult calls I have ever had was a discussion with the mother of a young man with significant disabilities. Her son was dismissed from a sheltered workshop that had discontinued their subminimum wage program. Unfortunately, the nonprofit did not implement the best strategies developed by entities like the Vermont Conversion Institute, and simply closed the shop, leaving the son with nothing to do. In talking with the mother, I attempted to explain to her that it would not be very difficult to provide some assistance that would make it possible for her son to obtain competitive integrated work. However, she simply did not believe me. I know that this was a result of years of conditioning by a system that made her believe her son did not have the capacity for competitive work, and that at least he was safe and had

National Federation of the Blind

Mark Riccobono, *President* | 200 East Wells Street at Jernigan Place Baltimore, MD 21230 | 410 659 9314 | www.nfb.org

something to do in the sheltered shop. As a result, both she and her son were prohibited from reaching their full potential, and we as a society were deprived of their active engagement and full participation.

The Transformation to Competitive Integrated Employment Act has specific provisions to prevent this scenario from happening to others by creating a technical assistance center and by identifying public and private sector resources that can be used by employers to facilitate a smooth transition to transform their subminimum wage employees to competitive integrated employment. In addition, the legislation will award grants to states to assure that all Section 14(c) subminimum wage programs in the state will have the resources to transition to competitive integrated employment by the end of the five-year grant period. Moreover, the legislation provides for two cycles of three-year grants awarded directly to Section 14(c) certificate holders, in order to serve the same function. Finally, the bill phases out subminimum wages over a five-year period, providing ample time for employees being paid subminimum wages to transition to competitive integrated employment.

I understand that most supporters of Section 14(c) believe it to be a means of offering opportunities that would otherwise not exist (See Appendix B). They are driven by their heart to help those without the capacity to achieve a better life experience. I believe we should be led by our hearts, but guided with emotional intelligence. I encourage you to seek out those who not only believe these individuals have capacity but continue to demonstrate it. It is not enough for us to feel good about what we are doing, if what we do denies others the same good feeling. We cannot pass laws to change people's hearts, nor should we try. Legislation can be used to continue to support institutionalized, antiquated thinking or it can be used to create a framework for innovation and evolution. I charge you all, on behalf of the multitudes of people adversely impacted as a result of this misguided compassion, to pass H.R. 2373, the Transformation to Competitive Integrated Employment Act.

Appendix A**November 15, 2019****U.S. Civil Rights Commission***A briefing on the civil rights implications of the Fair Labor Standards Act Section 14(c) Subminimum Wage Certificate Program on people with disabilities.**Testimony of Anil Lewis, Executive Director of Blindness Initiatives for the National Federation of the Blind*

To the honorable members of the U.S. Civil Rights Commission, and distinguished panelists, I continue to grow ever hopeful that we will be able to eliminate the historic violation of the fundamental civil rights of workers with disabilities that have been subjected to the legalized discriminatory practice set forth in Section 14(c) of the Fair Labor Standards Act (FLSA).

I appreciate the questions presented by the Commission in preparation for this briefing. The talent possessed by members of the various panels will undoubtedly offer compelling data, demonstrate effective strategies, and offer a number of success stories that address the questions. I agree that answering the questions should move us closer to a commitment to striving for competitive integrated employment opportunities for all people with disabilities. However, this will only be the case if we start with the belief in the capacity of all people with disabilities to be competitively employed in integrated work environments. Otherwise, regardless of the data provided, the effective strategies demonstrated, or the number of the success stories told, there will always be the underlying fallacy that Section 14(c) is necessary in order to help those that are unable to obtain competitive integrated employment.

With respect to the ills of Section 14(c), I have the lived experience to be able to speak from the perspective of a family member, consumer of services, service provider, and advocate.

My older brother became blind as a result of retinitis pigmentosa (RP) in high school and unfortunately was not taught Braille, independent travel, or other alternative skills of blindness as part of his secondary educational curriculum. He graduated high school and attempted to obtain a post-secondary degree, but without the pre-requisite skills to be successful in this environment, he was only able to complete one semester of his studies. Subsequently, the state vocational rehabilitation (VR) system attempted to assist him in obtaining gainful employment, but still did not encourage or support training in the alternative skills of blindness that would have allowed him to be competitive with his sighted peers. The initial job placement the VR "professionals" arranged for my brother was as a file clerk. Using thick magnifying glasses, and a bright hand-held lighted magnifier, he was responsible for filing and retrieving files from various filing cabinets throughout the office. Needless to say, he was not successful, and this opportunity lasted for only a very short period of time. Thankfully, he was able to obtain Social Security benefits that afforded him a minimal income for basic necessities.

This continuum of systemic failures that prohibited my brother from acquiring skills that would allow him to be independent and gainfully employed had a direct negative impact on my brother's

National Federation of the Blind

Mark Riccobono, *President* | 200 East Wells Street at Jernigan Place Baltimore, MD 21230 | 410 659 9314 | www.nfb.org

self-confidence and self-concept, and left him dependent on public benefits. Moreover, my mother, who had already been dealing with an inappropriate sense of guilt and an overwhelming sense of helplessness became more desperate to find any solution that would provide my brother with a sense of value and worth. Unfortunately, the solution was the Georgia Industries for the Blind (GIB), which at that time was a sheltered workshop that paid employees a piece rate based on the FLSA Section 14(C) Special (Subminimum) Wage Certificate.

This noncompetitive segregated environment was not designed for skills acquisition and did not present opportunities for upward mobility. In fact, the supervisors/managers, with no expertise in blindness, actually encouraged employees not to exceed an income that would adversely impact their Social Security Administration (SSA) benefits. Yet, the external perception was that this was a wonderful institution, which offered blind people an opportunity to experience the benefits of "work," and gave them something to do besides staying at home. Without offering additional details, my brother never achieved more.

My sister lost her sight to RP in college. She also attempted to obtain a college degree without receiving blindness skills training, and only completed a year of college. She went to work at GIB with my brother. Fortunately, her VR counselor, which had experience and training in working with blind consumers, provided her training in the use of computer access technology that allowed her to obtain a job as a customer service clerk for a mail-order catalog company. She was able to advance and secure other more gainful employment opportunities in other fields. She is now employed as a Financial Budget Analyst for the U.S. General Services Administration.

I became blind in 1989 as a result of RP at age twenty-five. Working my way through college, I had already had several various jobs by this point in my life, which afforded me an opportunity to acquire a host of transferrable job skills. Yet, when I became blind, I thought my destiny was GIB. Luckily, for me, I was exposed to successful blind individuals and blindness professionals that educated and supported me toward the acquisition of alternative skills of blindness, Braille, cane travel, access technology, and independent living skills. As a result of proper education and training, my sister and I have been able to improve our quality of life and achieve competitive integrated employment.

It is extremely important to note that it was not blindness that resulted in my brother's inability to obtain competitive integrated employment. In fact, I maintain that his ability to manipulate figures in his head and process other information without the benefit of being able to use Braille to read or write things down; his ability to get to whatever destination he desired without the ability to effectively and independently use a cane; and his ability to enlist the assistance of others to ensure that he completed other necessary tasks for his well-being demonstrated that he had the intellect and capacity to achieve so much more. He, like my sister, myself, and everyone else, simply needed the training and tools to be successful.

The failure of the education and vocational rehabilitation system is what prohibited my brother from achieving a competitive integrated employment outcome, not his blindness. The legal ability for an employer to support this systemic failure through the existence of subminimum wage

workshops that are marketed as wonderful environments to allow those considered "less capable" to participate in "work" presented his most significant barrier and resulted in the termination of his desire to achieve more.

In full disclosure, I participated in the perpetuation of the FLSA Section 14(C) fallacy that people with disabilities could not be competitively employed by helping run an extended workshop while employed as a Job Placement Specialist at a community rehabilitation center in Atlanta, Georgia. We had blind consumers performing work under contracts for various letter mailing campaigns and small assembly tasks that generated significant revenue for the center. We brought donors, public officials, and employers on tours of the center stating we were providing work readiness training. We received donations, legislative support, but no employment opportunities resulted from our workshop efforts. However, once I received the proper training on how to effectively prepare and assist blind individuals with obtaining employment; and we finally made the decision to close the workshop, we were successful in employing all but one of the fifteen to twenty individuals in the workshop.

In addition to my receiving training on strategies and best practices for facilitating the employment of people with disabilities, the reason for our success was that we evolved as an organization. We changed our philosophy and implemented new strategies. It was nothing revolutionary. We discontinued exploiting the consumers as tools for marketing and fundraising. We set higher expectations for the consumers and ourselves, evaluated the strengths and interests of our consumers, provided specific job skills training, and proactively implemented a job placement strategy that demonstrated how the acquired talents of our consumers met the needs of the employer.

Most entities that cling to the FLSA Section 14(c) as a necessary tool for them to survive have not made this evolution. They may have a sincere desire to help improve the quality of life of people with disabilities, but desire is not a substitute for training and expertise. We should not adversely limit the potential of hundreds of thousands of people with disabilities because their custodians feel that they are providing opportunities that would otherwise be unavailable. Contrary to these assertions, there are other real opportunities to be pursued other than subminimum wage segregated employment or languishing at home. Many individuals with disabilities previously deemed unemployable by the institutions that profit on this falsehood, have obtained competitive integrated employment when exposed to trained professionals with the skill and desire to provide them with the proper training and support.

For more than fifty years of the implementation and enforcement of the Section 14(c) subminimum wage provision, it was considered reasonable to employ a blind person at subminimum wage rates. Although blindness is still a factor, and the disability itself has not changed, today, it is considered unthinkable to do so. Blindness was never a reasonable justification to allow the use of this discriminatory practice. In fact, Section 14(c) only prolonged our ability to be afforded the basic right to a fair minimum wage, and continues to deny that right to people with other disabilities. Section 14(c) perpetuates the perception that having a disability is equivalent to lacking capacity, and discourages the development and implementation of innovative strategies that enable people with all disabilities to be competitive.

National Federation of the Blind

Mark Riccobono, *President* | 200 East Wells Street at Jernigan Place Baltimore, MD 21230 | 410 659 9314 | www.nfb.org

With so many examples of successful entities that have evolved into the contemporary businesses that do not require the use of the FLSA Section 14(c) subminimum wage certificate, it is obvious that it is the business managers, not the workers with disabilities that lack the skills to be competitively employed. Yet, rather than requiring entities charged with the responsibility of employment of people with disabilities to have trained staff with expertise (that can use effective contemporary strategies used to assist people with disabilities obtain competitive integrated employment) we afford them the opportunity through Section 14(c), to mitigate their inexperience by allowing them to compensate for this inexcusable lack of talent by legally paying their workers with disabilities subminimum wages.

We continue to hold harmless those entities that lack the talent and expertise to train and support people with disabilities. We continue to diminish the harm being done to those subjected to these segregate environments with phrases like "the soft bigotry of low expectations." We must openly and honestly admit that there are strong harmful results to the institutionalization of anyone within an environment that eventually convinces them that they have reached their full potential. Moreover, we mask the systemic failures that cause this harm by convincing the parents and family members that it is the disability that prohibits success, and not the lack of professional intervention and implementation of proven strategies to facilitate competitive integrated employment.

The National Federation of the Blind knows that blindness is not the characteristic that defines you or your future. Every day we raise the expectations of blind people, because low expectations create obstacles between blind people and our dreams. As the nation's oldest largest civil rights organization of blind people, we have always known that the use of subminimum wage was unfair, discriminatory and immoral. We work to ensure that blind people will be able to receive the proper training and education that allows us to live the lives we want by advocating within the public systems charged with the responsibility to educate and rehabilitate the blind. We also innovate, execute, and disseminate best practices for projects and programs that teach fundamental blindness skills, as well as, those that teach strategies and techniques that enable blind people to be proficient in the areas of science, technology, engineering and mathematics. We truly believe that given the proper training and opportunity that blind people can compete on terms of equality in all areas. Our belief is what drives our innovation.

Customized Employment and the Discovery process are examples of successful innovative strategies for the competitive integrated employment of people with disabilities; that have been developed and implemented when those that believe in the capacity of people with disabilities and are supported through initiatives from the U.S. Department of Labor (USDOL) Office of Disability Employment Programs (ODEP). These strategies have created competitive integrated employment opportunities for individuals with developmental disabilities that would have remained housed in segregated subminimum wage environments.

These strategies are not the ultimate answer to the question of how do we assist every person with a disability obtain competitive integrated employment. However, they are examples of the types of strategies that can and will emerge if we continue to set higher expectations and continue to believe in the capacity of every person with a disability to be employed. Microsoft has engaged in a proactive effort to recruit, train, and support employees with autism in competitive work

National Federation of the Blind

Mark Riccobono, *President* | 200 East Wells Street at Jernigan Place Baltimore, MD 21230 | 410 659 9314 | www.nfb.org

environments. This untapped resource of talent would have gone unrecognized if we continued to support environments that labeled them incapable and hid them from the world. Innovative strategies have not, and will not, emerge from segregated subminimum wage work environments. Non-competitive segregated environments are simply not incubators for best practices for creation of opportunities or strategies. If we acquiesce, and continue to refuse to eliminate the discriminatory provision found in Section 14(c) of the FLSA, we obstruct the development of additional innovative strategies, and the systems may never improve.

We have spent, and continue to waste far too much time discussing how to fix Section 14(c). It needs to be eliminated. It is a failed piece of legislation founded solely in the belief that people with disabilities cannot obtain competitive integrated employment, written by those who do not possess the training, skills, or expertise to do so. It is important to note that the FLSA provides for the employment of individuals at subminimum wages in other specified categories such as student-learners (vocational education students), as well as full-time students employed in retail or service establishments, agriculture, or institutions of higher education. If there are those that still feel subminimum wage employment is necessary, then they should be required to meet the expectations set forth in those sections of the FLSA, which offer greater accountability through measurable objectives and time limitations, not sanctioned discrimination based on disability.

I appreciate the opportunity to offer my comments. I sincerely hope that we can eliminate the discriminatory provision of Section 14(c) of the FLSA, thereby incentivizing a sense of urgency toward the development of innovative strategies that lead toward the competitive integrated employment of every American citizen, including those with disabilities.

Anil Lewis, M.P.A.

Executive Director of the Jernigan Institute
National Federation of the Blind
410-659-9314, extension 2374
alewis@nfb.org

Appendix B

Alaska, Maryland, New Hampshire, and Vermont have all phased out the subminimum wage for people with disabilities. Washington, Oregon, and Hawaii have also passed legislation that will soon phase-out subminimum wages for people with disabilities. In addition, Texas recently adopted a law which requires community rehabilitation programs in the state to develop "a plan to increase the wages paid to its workers with disabilities to the federal minimum wage not later than September 1, 2022."

Since 2015, the number of people with disabilities being paid subminimum wages has consistently decreased (as reported by US DOL), while the employment rate of people with disabilities has consistently increased, save for 2020 when employment rates dropped across the board due to the pandemic (as reported by the US Bureau of Labor Statistics). Any argument that eliminating subminimum wage jobs for people with disabilities hurts the overall employment rate of people with disabilities is simply not true.

Supplemental Material

December 2020 *Braille Monitor* article summarizing a National Council on Disability report from October 2020.

[AbilityOne and Section 14\(c\): Dinosaurs of Disability Employment Policy](#)

National Council on Disability Report – October 14, 2020

[Policies from the Past in a Modern Era: The Unintended Consequences of the AbilityOne Program & Section 14\(c\)](#)

[Letter from President Riccobono to Congressional Leaders Regarding the Transformation to Competitive Employment Act \(October 5, 2020\)](#)

US Commission on Civil Rights Report – September 17, 2020

[Subminimum Wages: Impacts on the Civil Rights of People with Disabilities](#)

National Council on Disability Report – October 11, 2018

[National Disability Employment Policy – From the New Deal to the Real Deal: Joining the Industries of the Future](#)

Appendix C

Compassion Can Be Discrimination: Sign the Petition Against Subminimum Wages

by Anil Lewis
Braille Monitor
 June 2013

From the Editor: Anil Lewis was born in 1964 in Atlanta, Georgia. Lewis was diagnosed at age nine with retinitis pigmentosa, although his vision was fairly unaffected until 1989. He has a master's in business administration in computer information systems and a master's in public administration from Georgia State University. He has developed a job placement program for people with disabilities, represented people with disabilities in a law office, and has been president of the Georgia affiliate of the National Federation of the Blind. Today he lives in Baltimore, Maryland, and is the director of advocacy and policy at the National Federation of the Blind Jernigan Institute. He works with the NFB's governmental affairs team to eliminate subminimum wages and the antiquated notion that blind and disabled people cannot be productive members of society. He is also the proud father of Amari, his bright, ambitious son. Reprinted from <<http://www.thejewishweek.com/blogs/new-normal/compassion-can-be-discrimination-sign-petition-against-subminimum-wages>>.

Most theological references to people with disabilities portray us as broken people in need of healing, who are dependent on the benevolence of others. Also most faith traditions have a moral imperative to seek salvation by caring for the less fortunate; and people with disabilities, being deemed less fortunate, are therefore tokens for that salvation. The false perception of brokenness, coupled with the misapplied moral edict, results in a "compassionate discrimination" that limits the potential of every person with a disability.

Compassionate discrimination, like other types of discrimination, springs from ignorance and deprives us all of the value each person and group of people have to offer. But unlike the abusive treatment of slaves resulting from racial discrimination and unlike the chauvinistic treatment of women resulting from gender discrimination, compassionate discrimination is cloaked in sympathy and good intentions. The segregation of African-Americans in educational, employment, and living environments is unlawful and universally censured—no questions asked, no exceptions. Conversely, the segregation of people with disabilities in school, work, and home is justified as the creation of safe environments where we are nurtured and protected.

The 20 to 30 percent wage disparity between male and female employees is considered a discriminatory practice in the workplace. But, perversely, the disparity between an executive's \$500,000 salary and the 22-cent-per-hour wage of the worker with a disability is considered reasonable. Work at such wages is even promoted as an opportunity for the disabled worker to experience the tangible and intangible benefits of work. Given this confused moral perspective, it is almost understandable why public policies have been developed that continue to limit people with disabilities from reaching our full potential.

In 1938 policymakers, acting on a laudable desire to integrate people with disabilities into the workforce, made a huge mistake when they enacted Section 14(c) of the Fair Labor Standards Act

National Federation of the Blind

Mark Riccobono, *President* | 200 East Wells Street at Jernigan Place Baltimore, MD 21230 | 410 659 9314 | www.nfb.org

<www.dol.gov/elaws/esa/flsa/14c/>. That provision authorizes the U.S. Department of Labor to issue Special Wage Certificates to employers, permitting them to pay workers with disabilities less than the federal minimum wage. As a result of the erroneous belief, commonly held in 1938 but long since disproved, that people with disabilities cannot be productive employees, employers are permitted to pay workers with disabilities subminimum wages that are supposedly based on our productivity. This denial of fundamental wage protections to workers with disabilities, although masked as a compassionate offering of a work opportunity that would otherwise not be available, leaves over 300,000 people with disabilities employed at subminimum wages, some as low as three cents per hour.

A person with a disability is not less valuable than any other person, and, although employing that person may require the use of nontraditional training and employment strategies, a worker with a disability is not inherently less productive than a nondisabled worker. Section 14(c) is a poor public policy that perpetuates compassionate discrimination and harms people with disabilities by denying us proper education and training opportunities and by prohibiting most of us from obtaining competitive, integrated employment.

It is true that over 70 percent of people with disabilities are unemployed, but current segregated subminimum-wage work environments have proven that they are not the solution to this dilemma. We must understand that it is not the disability itself that causes this circumstance. It is the lack of understanding about the true capacity of people with disabilities that results in the misperception that we cannot be productive. Once this misperception has been embraced, it is difficult if not impossible for us to obtain real opportunities to demonstrate that we have that capacity. Rather than challenging the mistaken status quo, society's "compassionate" remedy is to continue to create "safe," segregated living, educational, and work environments for people with disabilities.

In order to implement a real solution to the unemployment problem, we must remove the mask of compassion from the discrimination we face. We must eliminate the separate-but-equal environments, and we must repeal the discriminatory policies that are founded on the flawed assertion of incapacity. We can achieve this goal. Congressman Gregg Harper has introduced the Fair Wages for Workers with Disabilities Act of 2013 (H.R. 831) to repeal Section 14(c) of the Fair Labor Standards Act, and an online petition that you can sign to support the repeal of Section 14(c) can be found at <<https://www.nfb.org/fair-wages-petition>>.

We are not broken. Our disabilities are neither a curse from God nor penance for our sins. They are a manifestation of the life with which God has blessed us, and, although the vessels which contain them are different, we have the same needs, desires, and abilities as everyone else. People with disabilities are not passive recipients of benevolence; we are also benevolent. We clothe the naked, we feed the hungry, we care for the sick, and we demonstrate the capacity to believe, to have faith, and to worship God. We demand to be fully participating members of society, and we refuse to be reduced to the status of tokens for the salvation of others.

National Federation of the Blind

Mark Riccobono, President | 200 East Wells Street at Jernigan Place Baltimore, MD 21230 | 410 659 9314 | www.nfb.org

Chairwoman ADAMS. Thank you very much Mr. Lewis, we appreciate that very much. Under Committee Rule 9(a) we will now question witnesses under the five-minute rule. As this is a joint committee hearing, after the Chairs and Ranking Members, I will be recognizing Subcommittee members based on seniority on the full committee.

As Chair I know recognize myself for five minutes.

Mr. Lewis a March 2021, Government Accountability Office Report described the consequences of the COVID-19 pandemic for the employment of people with disabilities. For example, the pandemic made congregate work settings more dangerous, made it harder for disabled people to get jobs.

In your view sir, what has been the impact of the pandemic on efforts to transition people with disabilities into competitive, integrated employment, and what role can the Transformation to Competitive Integrated Employment Act Play in helping to address the challenges?

Mr. LEWIS. Sure, I mean there are so many negatives, and actually positives that resulted out of the pandemic for people with disabilities. Yes, based on the nature of the sheltered workshop model

the congregated environment did create a problem for the virus spread, it could turn into super spreader locations.

But many individuals who were again in competitive integrated work environments were not adversely affected by that particular scenario, but they were adversely affected by the fact that many of the accommodations that were needed in order for them to be employed, had to be adjusted, and improved on. So, I think in a strange way the things that we learned, the strategies that we learned to support those individuals that were already in competitive, integrated environments, are strategies and tools that we can use now to enhance that employment post-pandemic, and also create opportunities for more individuals in those sheltered congregated environments to transform and transition into competitive integrated workplaces.

Chairwoman ADAMS. OK. Great. Mr. Lewis in his testimony Dr. Putts cited a study finding that after Maine eliminated 14(c) employment, the number of people with disabilities employed in the State decreased, as did the work hours. Dr. Putts cited the study as evidence that phasing out 14(c) would be harmful to people with disabilities.

So, if you're familiar with the study, can you put its methodology and findings into context for us? Do you for example, consider the findings valid, and if not, why?

Mr. LEWIS. So again, as I stated we could look at data and analyze data. This specific study I received information that did challenge the validity of the data. But I'd like to take this opportunity to make the point. Even if the data was correct, again we're operating under assumptions that the processes that we're ascribing now were followed, and I don't think that that's the case.

It's been demonstrated across the country that entities who use these strategies that have been developed, to actually transform their business model to transition into this new, integrated model, are successful. So to State that it happened as described in the data provided in Maine, is probably more of a confirmation that it wasn't done correctly or using best practices.

Chairwoman ADAMS. OK. At the time of publication one of the studies were literally refuted due to the problematic research design, the very low sample size used, and the conflict of interest of the study's funder.

Mr. LEWIS. Correct. And that's where I saw one of the data analysts who evaluated the study also shared those same results with me. But again, I could pull data that shows in other states how it was done correctly and created the positive outcomes that we aspire to achieve.

Chairwoman ADAMS. Thank you. So, beyond this one study, what do research findings more broadly tell us about the outcomes for people with disabilities when states have eliminated the 14(c) employment? And I just have a minute left.

Mr. LEWIS. Sure, overwhelmingly the data shows that individuals in those states that have done it correctly, that abused not only the opportunity to provide employment—I mean the support, but also the wrap around services that are necessary, have proven to have an increase in the employability of people with disabilities in competitive integrated work environments.

Chairwoman ADAMS. OK. Well thank you sir, thank you very much for that. I want to now recognize the Ranking Member of the Ed and Labor Committee Dr. Foxx, I'm going to recognize you if you will take five minutes, you are recognized ma'am.

Ms. FOXX. Thank you Dr. Adams and I want to thank our witnesses for being here today. Dr. Putts thank you for your testimony and for making it your life's work to offer employment opportunities to people with disabilities.

We've heard some strong rhetoric already about 14(c) employment opportunities, and the people who provide them. That rhetoric doesn't seem to match what we've heard from you. Could you just tell us more about yourself, how you've gotten into this work, and what motivates you?

Mr. PUTTS. Sure, thank you. So, my first job out of college was actually as an employment specialist at Employment Horizons where I am still employed. I was working with individuals with physical disabilities and brain injury helping them find competitive integrated employment, and very quickly fell in love with the field in terms of helping individuals with disabilities become more self-sufficient by finding and keep jobs and learned an awful lot about the meaning and dignity of a job, and how much that goes beyond just a paycheck.

After a pretty short period of time in the field I realized I really couldn't see myself doing anything else, and I continued my education in order to be able to do more in the field, earning a master's in rehabilitation counseling, and eventually a Ph.D. in rehabilitation counseling and administration, and working my way through different administrative positions until eventually becoming CEO of Employment Horizons in 2016.

Beyond my work at Employment Horizons, I'm involved in a number of different government and board type of roles, so I am the Chair of the Board for Access New Jersey, which is our trade association here in New Jersey. I serve on the Paratransit Transportation Committee to ensure transportation options for folks with disabilities, and I'm also in our Tri-County Workforce Development Board.

Ms. FOXX. Thank you. Dr. Putts as we like to say in this committee, states are the laboratories of innovation, sometimes for the better, but sometimes for the worse. We think Congress can learn a lot from what states are doing to create opportunities for individuals with disabilities, and to find out which policies work and which do not.

In your testimony you discuss one State that stopped the use of 14(c) certificates. Could you please expand on the outcomes of that decision for individuals with disabilities, and how this experience should inform the debate about the 14(c) program at the Federal level?

And let me add very quickly that I'm a firm believer that there is tremendous dignity in work for every single person, and I will put something in the record about this after the hearing today, but please go ahead and expand on the outcomes.

Mr. PUTTS. Absolutely. So the State that I referenced was Maine, which was spoken about just a minute ago, and the report was put together by George Washington University. In 2011, which was

about 3 years after the transition in Maine, people with intellectual disabilities were working an average of 12 hours a week, which at the time was the lowest in the Nation.

And that was a jump from an average of working over 4 days a week before the closure of workshops to working less than half a day a week after. Following the closure of 14(c) programs it was found that people with disabilities were spending more time in community support activities than they were before the transition, which means non-work activities.

And the employment rate of people with disabilities actually decreased from over 39 percent to about 34 percent, which was greater than the work for non-disabled individuals during that same time period. By 2010 in fact, integrated employment had decreased from 31 percent to 23 percent for individuals with intellectual and developmental disabilities, and participation had increased for non-work facility-based services.

So folks were still coming to non-profit organizations, but they were doing non-work activities. And so while individuals were earning more per hour after the transition, they were earning less in total due to the decreased number of hours that they were working.

So my biggest takeaway from what happened in Maine is that Maine planned for this transition and still got this result, and they're a relatively small State with a relatively small number of people that needed to be transitioned out of 14(c). According to the GAO report, we could be looking at as many as 125,000 individuals working under 14(c) nationally, and—with time to plan the transition, couldn't pull that off, and I'm very concerned about what that would mean nationally.

Ms. FOXX. Thank you. Madam Chair I believe I have 14 seconds left, and what I want to say is we'll be asking you a question after the hearing that we'd like to put into the record about your experience with the issue on determining on a case-by-case basis, the competitive integration employment determination, and with that I yield back.

Chairwoman ADAMS. Thank you very much. I appreciate that. So now we'll hear from Ms. Bonamici, Chair Bonamici?

Chairwoman BONAMICI. Thank you so much Chair Adams and thank you to the witnesses for being with us today. I want to start with Mrs. Koppstein. Thank you for sharing the story that your family experienced, and I wanted to ask you the Transformation to Competitive Integrated Employment Act would strengthen wrap around support services to help workers with disabilities transition to competitive integrated employment.

So could you talk a little bit about what support services and benefits, the wrap around support services and benefits, were most important for your daughter Monica's success and integration into the workplace.

Ms. KOPPSTEIN. Yes, thank you for the question. In fact, the wrap around services that Monica has received funded by the Division of Developmental Disabilities has provided her with not just a supplement to her workday which started off as part-time, but also provided her with some control over her own day and schedules and activities.

She has used this funding and services to participate as a member in a local gym that has helped her learn the benefits of exercise, healthy eating to keep her weight down, and also has learned skills that would help her prevent injury at work and at home, simple work skills, everything has to be taught to Monica, for instance, how to lift some heavy object from the floor. I suppose I could benefit from that as well.

So in addition, she has also used opportunities that were not funded publicly outside of her services. So it has really enriched her life and supplemented her day of work in very meaningful way while exposing her to and providing her with network of friends outside of her usual special education, not that they are better or worse, but just different exposures actually help people grow.

Chairwoman BONAMICI. Right, thank you. Is it fair to say that she wouldn't have been as successful without those wrap-around services?

Ms. KOPPSTEIN. Absolutely. They are crucial, and I'm glad that the Transformation Act has been so insightful to provide these wrap-around services which are so crucial in many ways.

Chairwoman BONAMICI. And I want to move on to Mr. Lewis. And Mr. Lewis in your testimony you noted that you testified before the U.S. Commission on Civil Rights about the importance of helping people with disabilities transition into competitive, integrated employment, and thank you for that involvement.

I know your voice matters. So can you underscore for us why phasing out the 14(c) subminimum wage is a Civil Rights issue, and also what is the nexus between 14(c) subminimum wage and the Americans With Disabilities Act, and the Supreme Court's decision in *Olmstead*?

Mr. LEWIS. Yes. And I think that's a really important question, so I'll focus the answer on that. In all the discussion I think that we're convoluting the issue. 14(c) itself is what's counter to the Americans With Disabilities Act which states that people with disabilities have the same rights as any other American citizen.

14(c) is a provision that allows people with disabilities, just for the fact of having a disability to be paid less than everyone else. In many instances, it's not because the people with disabilities lack the capacity, it's because the professionals that work with them don't evolve into a place where they recognize there are evolving new strategies to do so.

I was one of those people, so I recognize that that's the case. The *Olmstead* Act really shows that by integrating—and working to integrate people with disabilities within the community—not only does it create quality of life for people with disabilities, but it also reduces the public burden. The data is out there, it shows it, but we are not going to be able to move further until we get people who again, through that misguided compassion remain vested in that old, antiquated philosophy around the incapacity and the low expectations, and we've got to shift the paradigm.

Chairwoman BONAMICI. Thank you, Mr. Lewis, and I agree. I really see this as a Civil Rights issue, and to say that there's a category of people who don't deserve to earn minimum wage, it just seems to me an injustice, so I'm glad that we heard from you today, as well as our other witnesses, personal stories really do make the

difference as we move forward with this important legislation. Thank you Madam Chair and I yield back.

Chairwoman ADAMS. OK. And thank you very much Chair Bonamici, and it looks like it's Mr. Keller?

Mr. KELLER. Thank you, Madam Chair. Thank you. Dr. Putts, members of both sides of the aisle share the goal of ensuring that individuals with disabilities have employment opportunities. According to the Bureau of Labor and Statistics, less than 20 percent of individuals with disabilities were employed in 2019 and 2020.

By comparison, almost 62 percent of individuals without a disability were employed in 2020. In your experience would ending the Section 14(c) certificate program, as required by H.R. 2373, actually improve the employment rate for individuals with disabilities, or help address this disparity?

Mr. PUTTS. Thank you. So from what I have seen from the data, and from my personal and professional experience, I believe that ending 14(c) would actually decrease employment opportunities for people with disabilities. As you pointed out, unfortunately employment rates for people with disabilities are dismally low and have been that way for as long as any of us can remember.

Those working under 14(c) certificates are typically the individuals with the most significant disabilities, and so there's little reason to believe that ending 14(c) would in that case improve employment rates. What we've seen on a large scale is that the systems that exist are unsuccessful at that.

And so I'm deeply concerned that if 14(c) were to go away without some sort of replacement that we'd be looking at significantly decreased rates of employment for people with disabilities, and you can see that in places where 14(c) has ended, that there's a lot more engagement in non-work activities.

Mr. KELLER. You mentioned non-work activities, and an individual that is going to a non-work activity, and I imagine they get you know, some kind of help with life skills and education on being able to get a job, or have employment, do they get paid any money for going to these non-work activities? Do they earn any money while they're in the non-work activities?

Mr. PUTTS. They do not. And so from my perspective, that's where 14(c) comes in, is that those same work skills, that same career counseling, the developing the ability to work through a full work day, et cetera, can be accomplished in a 14(c) setting where actual work is being performed for real companies, a paycheck is being earned, and folks get the dignity of reporting to work, of going to a job as opposed to you know you certainly can acquire some of those skills in a non-work setting, but I don't believe that's the same, and has the same value, you know, unless someone choose that as going to work does.

Mr. KELLER. So in order to get the skills, and employment experience necessary in an environment with 14(c) would the equivalent of you know a high school student getting their first job and learning their job and learning the work environment and so on.

Meanwhile, people in a 14(c)-certificate program are earning a few dollars while they're doing that.

Mr. PUTTS. And to be clear the 14(c) is commensurate wage, and so there are folks that are earning more than a few dollars when

we talk about this. There are folks that are actually making above minimum wage, but below a contract or prevailing wage.

And people you know working in 14(c) settings, anyone with a disability has their own unique needs, and so the setting that's most appropriate for one person, is the setting that's most appropriate for that one person. If you've met somebody with a disability that's all you've done is meet one person with a disability. And so it's really important to maintain the full array of options, so that folks for whom 14(c) is an appropriate choice, have it, and other folks certainly you know can choose other things, and we're proud at Employment Horizons to provide that full array.

Mr. KELLER. Thank you, and actually you're 100 percent correct on individuals that have—and I like to refer to it as different abilities you know. Everybody has abilities, and my wife actually worked in the Commonwealth of Pennsylvania for 34 and a half years in a setting where she worked with individuals that had disabilities.

And actually, the job I had, in the factory I managed, we hired people with job coaches, to help give them the experience they need. We didn't have 14(c) certificates, we paid the wages, you know, and depending upon the job we could do that. And you know individuals with disabilities have disparate and unique needs.

In your testimony you discussed the menu of services Employment Horizons offers to meet employment-based needs. Can you discuss further what role the 14(c)-certificate program plays in providing options to individuals with disabilities?

Mr. PUTTS. The 14(c) certificate just allows for a wider array of options. So without it we would be sort of left with the extremes of supported employment in a competitive setting, and those pre-employment and non-work sort of opportunities, and so with the 14(c) there's something in between that for the folks for whom that's appropriate, and that could be learning soft skills.

It's developing the stamina and the concentration needed for a workday. It allows those with safety or behavior challenges to work, rather than attend non-work programs if they choose.

Chairwoman ADAMS. Thank you.

Many folks with intellectual and developmental disabilities receive relatively few hours of CIE, and so some individuals then can actually split their time between competitive opportunities, and work in a 14(c) program.

Chairwoman ADAMS. And we're out of time, OK, thank you very much. I appreciate it. I'll now recognize Mr. Takano, Mr. Takano you have five minutes sir.

Mr. TAKANO. Thank you, Madam Chair. My questions are for Mr. Lewis. Mr. Lewis, as you described in your written testimony, you previously managed a sheltered workshop that employed people who were blind. But it successfully transitioned virtually all of these workers into competitive, integrated employment.

Can you tell the committee what the key factors, or practices that helped these individuals transition to competitive integrated employment?

Mr. LEWIS. Sure. The key factor was in my paradigm shift. I was looking at them, even though I was a blind person, society made me feel like I was an exception because I was doing other things

that other blind people were not. And I'm not the exception, only because the systems in place make it the exception and not the rule.

But I saw them as individuals, handicapped individuals, you know, less fortunate than me. Once I realized that they were just people with disabilities with the same rights and aspirations that I had, and I got access to the tools that the National Federation of the Blind provided with respect to work incentives for social security, different alternative job modifications and strategies.

Again, I didn't know all of this. I was operating from a limited knowledge. Once I started implementing those, and then empowering them, because the other thing I had to do was take an institutionalized group of people who had been in that workshop for years, who had made that comfortable for them, and that was what they did day to day, recognize that there was another alternative, and to give them a real understanding of what that opportunity consisted of.

That it wasn't just wonderful, but with a lot of work it could create a better outcome for them, so working collaboratively on myself, and implementing the strategies to work with the consumers, we were able to get those individuals competitively employed. And I must say that that was done, and I guess at this point, say haphazard, because the Transformation Act itself really prescribes what should have been done.

And if we would have had the funding through the grants and the technical assistance that's provided, I would have been able to do a much better job.

Mr. TAKANO. Well Mr. Lewis what were the practices? Can you just sort of enumerate the practices that helped these individuals?

Mr. LEWIS. Yes. So one of the things that was just mentioned was the term non-work. So yes, we bought into the fact that they were earning some money and acquiring a skillset, but the skillset they were acquiring were how to fold and stuff envelopes, and that wasn't going to be a gainful opportunity for them to be employed.

So what we did was we had them participate in non-work, and I will just offer this as an understanding. I participated in non-work it was called college. I didn't get paid. As a matter of fact, I got in debt as opposed to it. I wasn't paid for it, but it allowed me to acquire the skillset and the knowledge to become competitively employed, so that's what we did.

We stopped paying them subminimum wage for doing work that wasn't leading to a successful outcome and using that time through our non-profit status to raise money, capitalize on the other public programs that paid for this type of assistance, and provided them actual training in a skill that resulted in competitive integrated employment.

So non-work is not a bad thing. Non-work is what we all participate in as we acquire skillset and talent to become employed.

Mr. TAKANO. So really what you mean by non-work was training that led to some sort of skill that would lead them to employment, full employment, not subminimum wage employment.

Mr. LEWIS. Exactly.

Mr. TAKANO. So really what we call non-work is really some sort of training or broader education.

Mr. LEWIS. If we, do it right. Again, individuals who aren't really invested in a successful outcome yes, their answer is going to be well if we can't pay them subminimum wage well, I guess we'll just let them sit there. And like the other witness said, playing games. Of course, they're having fun, and many parents think that's great because their kids are doing something, but they truly don't recognize that there is an alternative that leads to a better outcome for their children.

I also reference a conversation I had with a parent of a child with significant disability who I know through my experience, I would have been able to help them obtain competitive integrated employment, but because she had been told by professionals year after year, after year, that the best her son could do is work in that sheltered workshop.

Mr. TAKANO. Mr. Lewis, with the time I have remaining that one example of the intellectual disability, that one person, what competitive work did they obtain?

Mr. LEWIS. She told me, and it was really just interesting. Again, I didn't get to work with him because she didn't want to work with me, but she in her discussion with me and told me that in the times when he wasn't at the sheltered workshop, he actually worked at their local church, and she described him doing a variety of different custodial jobs.

That's a no brainer. I wouldn't want to relegate him to just doing that, but I knew at a minimum that the floor was that he could have obtained a competitive wage in any other environment, doing custodial work.

Mr. TAKANO. All right. Well thank you. Madam Chair I yield back.

Chairwoman ADAMS. Thank you so much. Thank you so much. Now Mrs. McClain you are recognized for five minutes.

Mrs. MCCLAIN. Thank you, Madam Chair. Mr. Putts you talked in your statement about the dignity of work. And I agree with you on that. The principle was especially evident in the moving story you talked about the former participant in your program.

I think everyone would agree we want to provide an environment that enables people with disabilities to flourish. And also, to get as many of those people with disabilities involved in that process through listening. That's what I hear we all agree upon.

However, I think the injustice would be if we decreased the amount of people that we could get into that program, in those types of programs, and I think by eliminating this, that is what we're doing, or at least that's what the facts tell us. And although I would love to live in a world where facts didn't matter, and we could just go on about our day with our feelings, that's not reality.

And I think it's my job to really get us into reality and pay attention to the facts. That's what I'm here to do, and that's what I'm here to try to understand. So the facts tell me that if we eliminate the 14(c) program that we would in essence have less people in these programs, which is counter intuitive to what we're trying to do.

The other thing that I want to point out is as a business owner, we're not taking into account the actual people and entities that employ these people, which are the businesses. My fear is that if

you take this away and you mandate to a business what they need to pay, they do have a choice, and they do have an option. So one of the things I would like to suggest is instead of mandating, why don't we incentivize them?

That would seem like a lot better idea to be more inclusive, and we can broaden the tent, but the piece we're forgetting here is that the business actually has a choice as well. So I would offer a suggestion that we be inclusive to the businesses, and that we incentivize the businesses as opposed to mandating them.

With that said, why Mr. Putts, why is access to a job so meaningful to people with disabilities? And what is the impact on those people's dignity when employment opportunities are taken away? Because the facts actually show, not the feelings, but the facts actually show that if we eliminate this, we are going to employ less people with disabilities, and those opportunities are going to be taken away. So can you share with me what the impacts of that dignity would be when the opportunities are taken away?

Mr. PUTTS. Sure. And I think you're right in that a lot of what we're hearing doesn't put the onus on the businesses where it falls, and we can see that already it's not that there is a lack of access to people with disabilities on the job market. The majority of them are unemployed. Employers are not making the decisions to hire them, and so there does need to be focus on the employers.

Many folks that are non-disabled take having a job for granted, and it's how a lot of non-disabled folks actually identify. It's one of the first things we ask someone when we meet someone new is what do you do?

And for folks with disabilities a lot of the times there isn't an answer for that. And so it is about the dignity. It's the sense of purpose. It's a reason to get out of bed in the morning and have a place that you report where you can be proud of the work that you're doing, and you can connect to other people. How many of us, our daily connections, the social interactions we have, take place at work.

And I can tell you exactly what the loss of that opportunity looks like because in New Jersey all of our 14(c) programs, all of our workshop programs were shut down for over 7 months because of the COVID-19 pandemic by the State. And I can't even tell you the heart wrenching Facebook messages we were getting, the emails we were getting, the phone calls we were getting from folks that went from having a place that they went daily to work, to not having that and not knowing if we were going to reopen ever, or when that would be, and it really was gut-wrenching to see.

Mrs. MCCLAIN. And what I understand, and I want to make sure I understand this correctly, from your data, if we eliminated this 14(c) program, we would have less people with the opportunity to work. Did I hear that? Is that simply put?

Mr. PUTTS. Correct. We would have—there certainly would be some folks that would leave 14(c) for competitive, integrated employment, but what we've seen is it's not the majority.

Mrs. MCCLAIN. And that's not a goal. I don't think that's anyone's goal, that the policies would have some unintended consequences that would work in reverse to what we're trying to accomplish. Thank you, ma'am.

Chairwoman ADAMS. Thank you. OK. Next Representative Hayes you're recognized for five minutes ma'am.

Mrs. HAYES. Thank you, Madam, Chair, and thank you to the witnesses who are here today for being with us. The phasing out of 14(c) is not only a labor equity issue, it's a Civil Rights issue. Every worker, including workers with disabilities, or differing abilities, deserve a living wage.

This issue is somewhat personal for me. I worked at Southbury Training School, a residential facility here in my State of Connecticut for people with physical and intellectual disabilities. I was there for 15 years, and I have been a job coach and supported so many of our residents as they worked at these sheltered workplaces.

Through those years I experienced first-hand that while many of those individuals required specialized services, I also saw the potential for them to succeed with proper supports and saw many of them thrive outside of those workplaces. Another concern that I saw is that one of the workshops that I was in was a place where we had where the employer asked the job was to piece together packets for a much larger corporation.

Those packets were sold at full price, while the people who put them together were paid a subminimum wage. I've heard concerns that the passage of the Transformation to Competitive Employment Act would mean an end to sheltered workshops nationwide. I just do not believe that to be true.

So Mr. Lewis, can you describe the resources provided by the bill for employers to transition from utilizing 14(c) certificates, to providing high-wage employment for all workers, including workers with different abilities.

Mr. LEWIS. Thank you for this question because again I think that's the point that needs to be hammered home. The phaseout of 14(c) is not going to eliminate the ability for these existing community rehabilitation programs to operate. Those entities that say that they can't, that's a business decision that they're making because their peers in this environment are doing it and doing it successfully.

The Transformation Act itself has provisions that again I wish were in place back when I was doing this. They're grants to the states that want to implement the services to allow the workshops to transition into a new business model, a proven, new proven business model.

We know that in instances where the states were not willing to apply for the grants, there's still going to be some ambitious community rehabilitation programs that recognize that this is the right thing to do, and the bill itself offers grants for those particular entities to do it as well, which is a great thing, because they will become exemplars right, for their peers.

Then it also offers technical assistance. Again, building on the best practice of what's been done makes it possible for others to do it without the overhead that it costs. I would bring another example, when we first started advocating for the phaseout, well, we've been doing that as an organization for centuries, well not centuries, decades.

But when we in this recent initiative started, we were engaging with the individuals at Goodwill Industries which had a significant amount of their community rehabilitation programs dependent on 14(c). And I remember a conversation with Jim Gibbons who was the Executive Director at the time, and we pointed out that approximately two-thirds of them were working without the 14(c) certificate, and we were asking—and I never got an answer to this question, so the one-third of remaining community rehabilitation programs that say that the 14(c) certificate is needed.

So what is that? Are they dealing with the more significantly disabled population than the others? Which is not true. Or are the people in their geographic area somewhat more disabled than others, which also wasn't true. The fact remains that it's been proven by a majority of entities that it can be done, and the decision not to do so is a business decision, not a result of incapacity of the people with disabilities.

Mrs. HAYES. Thank you. I appreciate that because in my district there are two businesses that I can think of off the top of my head that are very successful. One of them is a café, and the other is a movie theater, that is fully staffed with people with differing abilities, and they are a thriving business.

With the remainder of my time, I want to go to Mr. Anton. You talked about actually going to your supervisor and quitting your job because you didn't feel that you were fulfilled. How difficult was it for you to find a new job after you made that really important decision? Mr. Anton?

Mr. ANTON. Hello.

Mrs. HAYES. Hi. I'm sorry I don't know if you heard my question, I said when you made the decision to quit your job, how difficult was it for you to find a new job?

Mr. ANTON. It took me a while to figure it out in the beginning. But, also, through my advocacy where people saw me working hard to get hired at MDSC, the Mass Down Syndrome Congress as a legislative specialist, and also the minimum wage—above the minimum wage, and thank you, OK.

Mrs. HAYES. Thank you, Mr. Anton. You show us that it is in fact possible. Madam Chair I yield back.

Chairwoman ADAMS. And thank you, thank you very much. Mr. Thompson? Is Mr. Thompson on the platform? OK, then we'll go to Representative Miller-Meeks, you're recognized for five minutes.

Mrs. MILLER-MEEKS. Thank you, Madam Chair, and I want to thank all of those who are providing testimony today. I have a best friend whose daughter has an intellectual handicap if you will, but I also have experience with an organization in my hometown, Timko, who does assist and help individuals with disabilities of all kinds, and when the State of Iowa was raising the minimum wage, ended up having individuals who lost employment.

We also had a situation where unfortunately, there was an abusive situation and employment was terminated, but those individuals to this day have not been re-employed, those with disabilities, and are now leading a much less functional and engaged life than they were, and they've commented upon this to us.

So I think Mr. Putts, last Congress this committee held a hearing where one of the witnesses testified about his organization's

transition away from the use of 14(c) certificates. Prior to the transition his organization employed 500 workers using 14(c) certificates. After the transition, the organization was only able to employ 65 individuals with disabilities at or above the minimum wage, where the average employees were working part-time.

While about one-fifth of these workers were able to find competitive employment outside the organization, the circumstance strikes me as far from being an unqualified success, and certainly, it would mirror my understanding of what happened in my own hometown of 26,000 people.

So Dr. Putts, based on your experience would H.R. 2373 lead to similar outcomes including fewer hours worked, and employment opportunities for individuals with disabilities, and would not companies hire people at higher wages, and then make a task that they had someone else do, make that part of the expanded tasks that an individual with a higher wage would do?

Mr. PUTTS. Thank you. So sadly, I'm not surprised by that result. I believe you'd see a very similar result on a broad scale, a concerningly broad scale, if not a worse overall result due to the lack of resources for a much larger population. So it's one thing to scale down 14(c) for a particular organization, but to do it nationally again for you know 125,000 or so people, is quite the undertaking.

So while I wasn't present for that testimony, the evidence in general suggests that the one-fifth who got jobs were likely working fewer hours ultimately, and earning less money overall, even though their hourly wage may have increased, and as minimum wages continue to go up, there really aren't as many jobs with one or two sort of tasks that exist anymore, and for individuals with intellectual and developmental disabilities it does get harder to place individuals into those jobs because there's so much more complication and multi-tasking involved in that.

So there has to be incentive for employers to carve out positions that make sense as appropriate, and that's you know again, not an easy thing to do because there are, you know, millions of employers, and they're all independent entities, so that's a bit of an undertaking.

Mrs. MILLER-MEEKS. And Dr. Putts can companies or businesses, or non-profit, other organizations, can they continue to work on increasing the jobs skills of individuals with disability while they're engaged in employment with the 14(c) certificate?

Mr. PUTTS. Absolutely, and we do have folks actually working in our workshop downstairs right now who split their time between competitive integrated employment, and 14(c). They're developing job skills in both of those locations, and we flex their schedule here in order to match the schedule that they have at the employer because we give that precedence, but it's absolutely possible to do both, and to continue to develop really important skills from both.

Mrs. MILLER-MEEKS. So that looking at the individual as not just having a static set of skills, but skills that would be dynamic as we would see in any employee, in any workplace.

Mr. PUTTS. Sure. And I think one informs the other.

Mrs. MILLER-MEEKS. Great. Thank you so much for your testimony. Madam Chair I yield my time.

Chairwoman ADAMS. Well thank you very much. We want to recognize now Representative Jayapal you have five minutes, ma'am.

Ms. JAYAPAL. Thank you, Madam Chair, thank you very much for holding this hearing on phasing out the subminimum wage. I think it's just important again to ground ourselves in the stories of how people with disabilities get compensated under the subminimum wage that is so disturbing, and so just a couple I want to highlight.

A man in my home State of Washington worked 6 hours a day only to make \$70.00 every 2 weeks. Another individual earned \$1.54 an hour, even while producing two times the number of products compared to their supervisor, who made over \$100,000.00 a year.

In New York workers with disabilities packaged pharmaceuticals and got paid 33 cents an hour while the CEO was paid more than \$400,000.00. I think if everyone understood that Americans with disabilities are getting paid less than their coworkers for doing the same job because of an 80-year-old law, I think they'd be horrified.

I'm proud that Seattle became the first city government to eliminate the subminimum wage, and that my home State of Washington is one of seven states that has abolished it as well. Mr. Lewis in your testimony you talk about how there was a time when you thought the subminimum wage made sense.

And you talked about how you provided work to blind folks as a manager of a sheltered workshop where people with disability work in clusters, separate from other workers. But then you were able to successfully transition nearly all your workers into competitive integrated employment.

What was it that led you to realize that your workers were capable of more?

Mr. LEWIS. Thank you for that question because it was that epiphany, I think that was the pivotal moment for me. One in your opening comments I think that you speak to a big problem. This is happening in a vacuum, and most of the people when they're made aware do find that it is atrocious, then they fall subject to the existing misconception that people with disabilities don't have the capacity, and this is the least we can do to at least give them quality of life, but that's not balanced with the tools and strategies that are necessary to change that particular outcome.

And that's what happened. We were thinking we were doing the right thing before we realized that if we implemented other strategies that we weren't aware of, we could create other opportunities. And I also think that it's important to recognize when you talk about looking forward to what could happen, that we look at what has happened.

The data from Maine was back in 2015, but if you look at the data there was an increase in employment with people with disabilities. If you start citing data from 2019 to 2020, we all know why those numbers were different than what the progress has shown and hopefully it will return to the upward employability of people with disabilities post-pandemic.

Again, I know that my testimony here today is probably not going to change the minds of those individuals who have been convinced that 14(c) is the right thing to do, but I can stand here, or

sit here, as an example to say I've been there. I understand that that's how you feel, and just charge you with really reaching out and finding out more truth to what's possible and really looking toward a more positive future.

The last thing I will say you know I believe the Congresswoman said she was from Iowa when she was talking about her example. I thought that she was going to talk about the turkey farm incident, but I'm sure that the one she was talking about was not the turkey farm, because the turkey farm was really the demonstration of how the 14(c) really does lead to just a horrific outcome.

And I know that that people say that that's an anomaly, but as long as it's legal it still remains a possibility.

Ms. JAYAPAL. Thank you, Mr. Lewis. Let me stay on that for a minute and go to Ms. Koppstein, because one of the things that always strikes me about this argument is we're talking about how wages are portrayed in terms of a person's worth. I mean really, we're saying to the people with disabilities, we think you're worth much less, and we're going to pay you much less, and that really, really troubles me for anybody, regardless of their abilities, there's support we need to give.

There's things we need to do for people to be successful, but it bothers me to see sort of how the wage gets pulled into a person's worth. Ms. Koppstein in your testimony you speak compellingly about how your daughter was able to gain full-time employment and a decent living wage with benefits.

What would you say to other parents who believe that the sub-minimum wage is necessary for their kids to have jobs?

Ms. KOPPSTEIN. I think you've nailed one of the key issues in this discussion. That is a person should not be defined by one variable alone, productivity. A person is multi-dimensional, can bring different unique talents.

My daughter's productivity may be lower while working at Costco compared to other of her coworkers who perform the same task, but she brings other attributes to the job that may not be measurable, and therefore the wages in a company that has the foresight to hire people of different abilities with diversity, the bottom lines actually have been shown to be higher than their peers without that element of diversity.

And so this would also address the motivation of employers, that's the inherent reason to hire people with disabilities because of the multi-dimensional talents that they bring.

Ms. JAYAPAL. Thank you Madam Chair I yield back.

Chairwoman ADAMS. Thank you. OK. Representative Good do you want five minutes sir?

Mr. GOOD. Yes ma'am. I'm here.

Chairwoman ADAMS. OK, go ahead.

Mr. GOOD. Thank you, Madam Chairman. Thank you to our witnesses and thank you again Madam Chairman. Work in and of itself is invaluable in the dignity it provides, along with satisfying a God created need that we all have to contribute, to be productive. In fact, we often identify ourselves by what we do.

That is typically the first question we ask when we meet someone because we all gain a tremendous amount of pride and self-worth from what we do, and I appreciate those employers and

those organizations who are willing to stretch a little, and give a break, or a helping hand to those who are disadvantaged, or at risk in some way.

Both my wife and son actually work for a company that helps folks in these situations to obtain employment, and to succeed in the workplace. Again, folks who are disadvantaged in some way, or at risk in some way and need some help in obtaining and succeeding at employment.

But democrats seem to see discrimination in everything whether based on race, gender, or disability. Democrats seem to look with contempt on all employers and job creators and presume the worst of intentions on those hiring and paying American workers.

The fact is there's value in providing employers a greater ability to hire someone who because of some personal limitations may not be able to perform at the same level of a typical employee. And the fact is there's value in providing disabled employees more opportunities for employment, even if it's a special reduced rate for those unable to obtain employment at standards rates.

There are over 9.3 million jobs waiting to be filled, yet Democrats' solution to this madness is to keep printing more money, spending money we don't have, and exacerbate the problem by finding more ways to pay people not to work. That's why last month I joined my colleague, Mr. Roy from Texas, in trying to help get Americans back to work by introducing legislation eliminating the \$300.00 Federal enhanced unemployment weekly benefit in an effort to fight against these efforts.

Democrats' default response to businesses struggling to stay open, struggling to recover from government lockdowns and restrictions is just pay them more, but as with the impact of forcing a minimum wage increase, democrats don't seem to want to use real world facts and evidence, they prefer anecdotal stories.

Dr. Putts I'm glad that in your testimony you mentioned the disastrous results that Maine experienced when that State eliminated Section 14(c). Instead of helping people with disabilities, eliminating it actually hurt them, so we have real-life, real-world example.

This would no doubt be made much worse if the democrats are successful in forcing through a doubling of the minimum wage. This is why when the U.S. Commission on Civil Rights requested feedback in 2019 on the 14(c) program, nearly 10,000 respondents were received, or responses were received, and 98 percent of those said that 14(c) should be maintained.

98 percent of the nearly 10,000 respondents to the U.S. Commission on Civil Rights asking if 14(c) should be maintained back in 2019. Dr. Putts, can you give a few examples of how this program has helped individuals by allowing them to experience the opportunity and the dignity of work.

Mr. PUTTS. Absolutely. And 98 percent of those comments were in favor of 14(c) and 1 percent were opposed, so I don't believe that H.R. 2373 respects the opinion of the individuals that—

Mr. GOOD. That's right.

Mr. PUTTS. Did submit comments on that. You know every day we have about 100 here at Employment Horizons, about 115 individuals coming in to work with us who get to see peers, have social

interactions, perform real work for real companies. I don't want to, you know, mention them in a public forum, but we have two huge telecommunications companies that we do work for, along with other Fortune 500 companies that you would absolutely recognize the names of.

And these folks that are coming here are proud of the work that they're doing. They're proud of Employment Horizons, they're proud of the companies that they're performing work for, and as they acquire skills, we are taking opportunity to place them into jobs in competitive integrated employment that I'm doubtful they would have received without that opportunity to work.

We have some folks that recently got placed in an ice cream store. We have somebody recently placed in a local food store. To us, I can talk about folks from the past that have worked in movie theaters, and other settings, and the skills that they've acquired from their 14(c) employment has allowed that to happen.

And for some of them working in a hybrid manner where they split their time between the 14(c) environment, and competitive employment is exactly what they need to maintain sort of the higher level of supports that they get in 14(c) and also maintain the employment that they need outside. And we support them in both of those options.

Mr. GOOD. Thank you, Dr. Putts. I yield back Madam Chair.

Chairwoman ADAMS. Thank you very much. Now Representative Mrvan you're recognized.

Mr. MRVAN. Madam Chair thank you very much. I would like to thank all the witnesses. I have been in Congress as a freshman member for 7 months. One of the more memorable things that I'm going to take with me is John Anton. When you high-fived after your speech and celebrated doing such a phenomenal job.

I want to commend you for all of that and for what you did and your contribution toward this. With that, my question is for Ms. Koppstein. In your written testimony you mentioned the importance of the effective job supports and accommodations in helping your daughter Monica succeed in her job at Costco.

Can you say more about the specific supports and accommodations she has received and how they have helped her?

Ms. KOPPSTEIN. Yes certainly. The reasonable accommodations that Monica has received actually because her job coach has educated Costco about who she is and has communicated about any needs that might arise. Just during the pandemic, during the beginning weeks of the pandemic when it was too chaotic, when people didn't know what to do, actually Monica took the benefits, vacation pay, and time off to stay out, but she returned to work immediately after that.

And she was able to be assigned a work schedule early in the day when it's not so busy, and when she is usually more productive. In fact, Costco has assigned her work schedule to recognize that. Costco has allowed Monica to take frequent time off for doctor's visits, and also has exempted her from doing front end tasks, that are usually required of other front-end workers. For instance, she does not have to do shopping cart duties, which would be deemed too dangerous for her.

She would not have to check membership cards at the front door, and they've tried to put her fold clothes and tidy up merchandise, but they found that was not the best suited skill. So she's really good at packing and unpacking merchandise into shopping cart, but that too was not something that she was born with.

Her job coach had worked very hard with Monica to teach her this skill because among other things she has challenges in spatial planning. But she has prevailed. Someone in Monica's position is required to count the number of items in the shopping cart, but Monica is really not accurate in counting, and we're not talking about counting to 100, we're talking about counting to maybe 7 or so.

As long as she can communicate and say that something is underneath the shopping cart. So some of those accommodations and flexibility have enabled Monica to thrive, and be successful in her job, along with the job support she's received.

Mr. MRVAN. Thank you, Ms. Koppstein. Mr. Lewis how can competitive grants under the Transformation of Competitive Integrated Employment Act help 14(c) certificate holders leverage what they have learned about working with people with disabilities in an employment setting in order to shift to a focus on competitive integrated employment?

Mr. LEWIS. That's a very good question. I'd like to add to the description of the job that was just given. Again, this is learned. So even in the individual's inability to count to a specific number, you could set up a little jig that allows her to put the contents in a container that only allows for the specific number that you want.

So I could brainstorm any number I guess, but I only do that because I've transitioned into my understanding of thinking out of the box and being creative around these employment options. The grants themselves will help us not only create an environment that the states who really want to invest in this and centers that want to invest in this, can continue to build on those learned behaviors, build on those best practices.

But share them in a real way. I'll give a real quick example of something that I think is important here as well. As long as we continue to see people with disabilities that are so uniquely different that we can't relate to it, we will continue to feel that we need to take care of these less fortunate.

But if you look at the research that the Office of Disability Employment policy has been doing to build on the customized employment strategies, customized employment is the strategy that is used to help people with significant disabilities get to work by engaging in what they call the discovery process, integration of job coaching, and supportive employment, and some job carving. All those sound like unfamiliar terms, but discovery is just what every—as an able-bodied person if I weren't blind, I discover it every day because I had the opportunity to be engaged in different extracurricular activities.

And even my first job at a grocery store had me experiencing a lot of different things, so I found out what I was good at what I liked, what I didn't like.

Chairwoman ADAMS. We are out of time. OK. Well thank you very much. I want to yield now to Representative Fitzgerald, is Representative Fitzgerald on the platform?

Mr. FITZGERALD. Thank you. Thank you very much Madam Chair. I just wanted to highlight after kind of thinking through some of the centers that could, and I'm not exactly positive on each one of the arrangements, but there are a number of them that are non-profits within my district.

And so the question is there's kind of this misconception I think that employers are motivated by financial incentives, but the fact of the matter is I think the model could fall apart if in fact there was, you know, something less than just an incentive to increase those.

So I'm wondering if Dr. Putts could comment on that part of it, because I'm worried, we could without any intention, do some damage here that maybe we're unaware of.

Mr. PUTTS. I think it would, and you know I want to correct I guess some of the misconceptions if I could about the financial aspects of this, because I've heard a few even just today in terms of how the model works. There really is no financial incentive for an organization like Employment Horizons to have a 14(c) certificate.

We don't make any additional money off of the contracts that we run by having one, in fact my 14(c) program in our workshop actually loses money. If we break even, we would consider that a pretty good year. The way that the payment actually works, and we've heard some of the misconceptions about that this morning, is that we know on average how long a particular task takes non-disabled folks to do, and just to make the math very easy, if we know that the average is 10 widgets produced an hour, and the prevailing wage is \$10.00 an hour, then each widget is worth \$1.00.

And so, you know the average productivity in our shop is somewhere between 20 and 25 percent at any given moment, and so the 14(c) certificate allows us that if we need to hire four or five individuals to complete 100 percent productivity work, we can go ahead and do that.

We're still providing a more intense supervision than a regular employer in the community is, and so there's actually added costs for us in having a 14(c) certificate, but it's our mission to provide those employment opportunities, and so that's simply how we operate.

And I do think, you know, when you talk about the more global model that with 14(c) if that were to go away, you would be losing both employment opportunities, and also these instructional and training opportunities for a large number of folks.

Mr. FITZGERALD. Yes, very good. I mean my concern is just you know let's do no harm. And thank you very much. I'll yield back. Thank you to the Ranking Member, thank you.

Mr. KELLER. I appreciate that and you know just looking and following-up on that, I think it's important to realize, and Dr. Putts you mentioned the learning potential that people have, and what you do to help people develop skills that they can use.

Maybe you can explain a little bit or elaborate a little bit on what you help people with.

Mr. PUTTS. Absolutely. So a large part of working in any setting is developing the soft skills. It's things as simple as showing up to work on time, and how do you take feedback from a supervisor, and how do you work cooperatively. The things that we all learn from having work experiences, especially some of those first and early work experiences that we have.

But it's also really important for organizations like ours to make sure that we are introducing individuals with disabilities to the world of work beyond the 14(c) setting, so one of the things that we do is we have a discovery or community program where we take individuals from our 14(c) settings out to local employers so that they can learn about jobs that exist in the community. Because if you have not had a lot of work experience, you may not realize the things that you see every day are actually jobs.

We do job sampling, where we take folks from our 14(c) settings, and give them paid opportunities to try out jobs at local employers, and we learn a lot about what their skills are, they learn a lot about what they like and don't like in a work setting, which makes it easier then to place folks.

And in fact, on a number of occasions those job samplings have turned into employment—competitive integrated employment for the clients that we serve. We do career counseling, career discovery, so that individuals might learn where their interests lie and the types of jobs that correspond to that.

We hold a groups so that folks who are wanting to work together on things like developing interview skills, resume writing skills, how to find jobs that are of interest to you in the first place, and so you know there is a whole lot that goes into it beyond sort of what I think that people think 14(c) is.

Mr. KELLER. Thank you. I appreciate that insight and I yield back.

Chairwoman ADAMS. Thank you, sir. We want to recognize Representative Bowman you are recognized sir five minutes.

Mr. BOWMAN. Thank you so much Madam Chair. My first question goes to Ms. Koppstein. Thank you so much for your testimony, which is a testament to your years of advocating for your daughter to ensure her voice was uplifted, particularly on the question of sheltered workshops.

You also shared in your testimony that the recommendation to look into sheltered workshops came from your daughter's school transition team. I wanted to ask you what are your thoughts or recommendations for schools to consider when it comes to supporting students with disabilities and their families with transitioning from school to work?

Ms. KOPPSTEIN. So WIOA from 2014 has recognized that pre-employment transition service which could start as early as age 14 in New Jersey would be one promising stick. And even though my daughter's school has already recognized that before WIOA, the most important transition from school to work activities would be to provide opportunities of job skills in authentic settings where students could learn skills in those integrated settings because then they would not have to unlearn the skills.

Even if the students might be learning in the classroom, to transfer the learned skill from the classroom to outside of the classroom

represents another learning stick. Another important aspect is to recognize the presumption that everyone has the ability, the presumption that everyone can work, rather than having to limit the growth, the learning growth in a straight line, by looking at work readiness skill.

Now work readiness skill is important, however, if someone—a typical person is tested for his or her own work readiness skill, I would say that many of us would not be able to achieve what we've been able to, but people with disabilities, and many in the special education schools, and in sheltered workshops, are limited because they are not able to pass all of the job readiness skills that in fact are obstacles.

So the presumption of ability to work is really key to the success.

Mr. BOWMAN. Thank you, Ms. Koppstein. Mr. Lewis, I would love for you to share your thoughts on the same question. What more can be happening in our K to 12 school settings to set up students with disabilities, and better prepare them for the world of work?

Mr. LEWIS. As I am alluding to earlier giving them the same experiences that our able-bodied students get. I think that one of the things that we talked about in our group was people with disabilities don't get opportunities to experience bad jobs, real bad jobs in the real world so they can understand what they like and what they don't like.

And I want to be very clear. I'm not trying to throw out the baby with the bath water. I need to make sure everyone understands that all of the good things that we're talking about, even Dr. Putts has talked about, can be done without the 14(c) certificate.

When you introduce this 14(c) certificate, you can say you're doing these things in tandem, but I'll be honest with you, we had contracts to meet because of our subminimal wage environment, and we know it's time to get the new job club, but we had a contract that we needed these many widgets done by a certain time-frame, job club was usurped.

And we put those people back in the workshop to make sure that we're able to deliver the products that we needed. The 14(c) is just counter to what we need to be focusing our energy on, and the school systems using the 14(c) environments as training institutions is not right. We need to be doing more of what Dr. Putts says.

Getting them out into the community looking at real jobs, getting an opportunity to see what they like, what they don't like, what they have the skills for, what they don't have the skills for.

Mr. BOWMAN. Thank you so much. Madam Chair I yield back.

Chairwoman ADAMS. All right. Thank you very much. Representative Thompson you're recognized for five minutes.

Mr. THOMPSON. Madam Chair thank you so much. Thank you to all the witnesses. This is an issue having spent my entire career working with individuals that were facing or living with life changing disease and disabilities. I really appreciate this hearing. Dr. Putts thank you for being here today.

You know the Fair Labor Standards Act established the Federal minimum wage, overtime pay, child labor, recordkeeping and other wage and hourly standards for nearly 143 million Americans.

As you know, Section 14(c) of this legislation authorizes the Secretary of Labor to provide special certificates, more commonly re-

ferred to as 14(c) certificates for certain workers whose capacity is impaired living with physical or cognitive-intellectual disability, at wages lower than the Federal minimal wage.

And as of April 1, 2021, the Department of Labor listed more than 600 employers with an issue 14(c) certificate, paying nearly 40,000 workers a subminimum wage and almost 700 employers with a pending 14(c) certificate application. In my congressional district many employers utilize the 14(c) certificate program, including the Cambria County Association for the Blind, the Venango Training and Development Center, ICW Vocational Services in Indiana, Pennsylvania, Progressive Workshop of Armstrong County, among others.

These employers have argued for the continuation of this program citing that it provides employment opportunities for individuals with disabilities who would not otherwise find employment. You know 14(c) is not just about receiving a paycheck, this is about the power and the dignity of work.

It has always been my opinion that work gives dignity to individuals, and these certificates offer individuals with disabilities, living with disabilities, a chance to contribute in the workforce, engage with other workers, have that social network, and to develop new skills.

However, my colleagues across the aisle are considering H.R. 2373, which aims to eliminate this program entirely forcing people with disabilities out of the labor market. And while I can support, and always supported giving individuals the opportunity to earn more money, this should not come at the expense of eliminating opportunities for others.

HR 2373 within that, by eliminating 14(c) this will be based on my work experience, and my observations today spending a lot of time in these settings, this is going to result in pushing many individuals with significant disabilities over the poverty cliff, threatening the very safety net benefits that they rely upon.

So instead, what we should be doing, and this comes down to the fact that it is the Secretary of Labor that grants these waivers. We should focus on how the department oversees and implements this program. We should be doing our job as a committee of oversight with the Secretary of Labor in order to make sure that they raise their standards and allow these individuals to thrive in the workplace.

Where there's a problem, there's a violation of the law that already exists today. So Dr. Putts, I wanted to reiterate what my colleague from Virginia said earlier. In November 2019, the U.S. Commission on Civil Rights received nearly 10,000 public comments when soliciting opinions on the future of the 14(c) program, 98 percent commenting that the 14(c) program should be maintained.

This clearly shows how we should look for other ways to improve the program and not eradicate it all together. So Dr. Putts in your opinion, does H.R. 2373 respect the ability of individuals with disabilities to select an employment setting that meets their needs?

Mr. PUTTS. So I think it clearly does not based on those figures. 98 percent of the comments like you said were in favor of 14(c). If we're to judge 2373 in light of those comments, then it's not matching the feedback that the U.S. Commission on Civil Rights re-

ceived, and in my opinion self-determination and choice have to be the underpinning of any good system of employment for people with disabilities.

And what H.R. 2373 does is take away certain choices. There's clearly not an insignificant number of people with disabilities who want to maintain 14(c) options, and I sort of reject the attitude that others know what's best for them, instead of allowing them to make those choices.

I also appreciate your comment on fixing things when there are errors, as opposed to trying to you know sort of throw apart the whole system. Some of the examples that we've heard this morning are definitely not best practice, or things that employers with 14(c) certificates should not have done, but if there are folks operating out there that are not operating appropriately with a 14(c) certificate, then we need to address that as opposed to deciding that the entire program, you know, doesn't work.

Mr. THOMPSON. Thank you, Dr., Madam Chair if I may, before I conclude I'd like to submit two letters for the record. The first is from the Venango Training and Development Center located in my congressional District. The second letter is from the Rehabilitation and the Community Providers Association. Both letters outline the impact of eliminating the 14(c) certificate program.

Chairwoman ADAMS. So noted thank you. OK. Thank you very much. Representative Cawthorn you're recognized for five minutes sir.

Mr. CAWTHORN. Thank you very much Madam Chair. The facts are abundantly clear. The Biden administration's policy and exorbitant unemployment benefits has been counterproductive, and the American workforce has stalled in returning to work. Our local businesses need safe, effective labor in order to kickstart our economy.

If there was ever a time to work on disability pay, now is the time after a global pandemic, and where businesses need workers more than ever. Now I personally do not believe in any form of Federal minimum wage, but if there is going to be a minimum wage, you should treat all citizens as equal under the law.

The strength of human dignity is fully realized in a good job and a firm work ethic. Given the right resources and building on existing programs we can transition capable employees into our workforce. I urge my colleagues to consider this legislation and with that I yield back.

Chairwoman ADAMS. All right thank you sir. Let's see. The Representative Steel, are you on the platform? Mrs. Steel you're recognized five minutes, OK.

Mrs. STEEL. Thank you, Chairwoman. Thank you for all the witnesses for testifying today, and I really appreciate it and staying long hours. And I just want to have a question to Dr. Putts. Hopefully everyone agrees that individuals with disabilities should have access to employment opportunities and Congress should empower people to make the best choice for themselves.

Should we respect the abilities of individuals with disabilities to select an employment setting that best meets their needs? Who should make that decision? Should the Congress take away options available to individuals with disabilities?

Mr. PUTTS. Thank you for that question. You know as somebody who works in the vocational rehabilitation field, choice is really the primary thing that we support. And all of us get to make choices about the employment settings that we work in, and so people with disabilities really should not be treated any differently by Congress or any other organization.

And so I think it's important that we recognize that there are people that may make a choice that is different than the one that we would make, or that we might make for a family member, and that we have to preserve that wide range of choices. And so I don't think the 2373 allows for that.

And everyone's situation really is so different that we have to allow them, and in conjunction with their family and other support of others to make the choice for the situation that best fits their needs.

Mrs. STEEL. Thank you for that answer. I have a second question. If someone in California loses the ability to use Section 14(c) of the Fair Labor Standards Act, can organizations like yours Employment Horizons, successfully transition everyone to another opportunity in a competitive integrated employment setting?

Mr. PUTTS. So that what we've seen so far suggests no. There are certainly individuals that could and would be transitioned into competitive integrated employment, I don't believe they would be working the same number of hours that they are now, and ultimately, they would probably earn less pay overall, but certain folks would be able to be placed in competitive integrated employment.

My fear is that there's a large number, and some folks also would take advantage of the opportunity either to retire, or to move into you know day programs due to age or other factors, so who I worry about are the folks that are in the middle, the clients we serve that are not going to be able to be placed in the competitive, integrative employment, or who don't want competitive, integrative employment, and the folks that want to do more, or want to continue working and don't want to be in a day program or retire, and those are the individuals that I really worry about in this situation.

Mrs. STEEL. Thank you very much I yield back.

Chairwoman ADAMS. And thank you. Let me recognize the Chair of the full committee, Representative Scott, you are recognized sir.

Mr. SCOTT. Madam Chair thank you for this hearing. First, I'd like to introduce a letter for the record, and I'm just going to introduce the letter for the record from Representative Cathy McMorris Rodgers in support of the legislation.

Chairwoman ADAMS. So noted, thank you.

Mr. SCOTT. Thank you. Mr. Lewis for the people that are presently on 14(c) certificate, how can wrap around services, supportive employment, job coaches, allow transformation to competitive, integrated employment?

Mr. LEWIS. Thank you for that question because it allows me to elaborate that that's the only time that the individuals really do have an opportunity for real choice. We've been talking about choice, but in the example that was given, about the individual who went to that competitive integrated work environment and

said that as a result of some circumstance related to her disability, she went back to the shelter workshop.

Again, it's easy to use that as an example without taking into consideration that we put in place the proper job coaching to help her be able to be productively employed in that environment, that we provide the wrap around services that include not only supports on the job, but also in her home life that allowed her to do this, that would have reduced, or even eliminated the subsequent impact that the seizures, or whatever happened.

There doesn't seem to be a legitimacy in saying that those same supports that were provided in a segregated environment could not have provided in a competitive integrated work environment. And once you get an opportunity to be exposed to all those supports in that opportunity, I think that it's common knowledge that anybody on this committee would make the choice to be in a more integrated work environment, making a better wage, hopefully with better benefits.

I don't see how anyone could say that that choice would be different.

Mr. SCOTT. Mr. Lewis are you aware of any programs that give wage subsidies to help bring up the pay?

Mr. LEWIS. Yes. I mean I could give many examples. The one that speaks to my heart is when my brother was employed at the workshop in Georgia. Not only was he given kind of a wage subsidy because they were saying that they wanted to make sure he didn't lose his social security benefits. In those instances where his productivity did end up based on that flawed commensurate wage formula, make more than he was eligible for.

What they would do is they would put money back to actually reduce his income. Never even give him the opportunity to make enough money to escape public assistance.

Mr. SCOTT. Well, if you can give us, provide for the record those kinds of programs we'd appreciate it.

Mr. LEWIS. Yes sir.

Mr. SCOTT. Dr. Putts one of the problems we have with this issue is that the Supreme Court has spoken with the Olmstead decision about getting people into the least restrictive environment. The Americans With Disabilities Act has prohibited discrimination. Disability advocates coming to a consensus that 14(c) is obsolete.

In fact, several states have just eliminated 14(c) altogether, and the number of 14(c) certificates is going down. And so one problem we have is that the debate seems to be, if it's not over already, it's on the way to being over. You indicated that you shouldn't end it without a reasonable replacement. How does this legislation serve as a reasonable replacement for 14(c)?

Mr. PUTTS. Well unfortunately, I don't think this legislation does service as a reasonable replacement for 14(c).

Mr. SCOTT. OK. And in that case what provisions would be necessary to serve as a replacement?

Mr. PUTTS. You know I can give you some of my sense, but this might go beyond my expertise here. One of the things that certainly could be looked at is subsidized wages so that organizations like Employment Horizons could pay the individual with the disability the prevailing rate, or the minimum rate wage the indi-

vidual then earn a full wage and hopefully be able to come off of other forms of public assistance, but without making it impossible for organizations like ours to continue operating.

My issue with 2373 as it stands, and I want to be clear is I want individuals with disabilities to earn as much as they possibly can, and to have as much career mobility as they possibly can. I just don't think that we're in a situation, at least a situation yet where we can do that by simply shutting down 14(c).

And this legislation puts money into states, in disseminating information and best practices, but the ultimate reality is that right now employers have access to individuals with disabilities, and yet only 20 percent or so of individuals with disabilities are in the labor force, and so it's not that employers don't have access to these individuals, we need—we're looking at grant funding to change the hearts and minds of employers, and I don't think grant funding can do that.

Mr. SCOTT. OK. Thank you. Mr. Lewis both Ranking Members of both Subcommittees and Dr. Putts have indicated that if we eliminate 14(c) there will be some people that won't be choosing between \$2.00 an hour or \$7.25 an hour, but they will be choosing between \$2.50 an hour, or they'll lose their job.

What happens to people that cannot get into competitive integrated employment if 14(c) is eliminated?

Mr. LEWIS. So first I'd like to offer the perceived impact that eliminating 14(c), and again we're not eliminating, we're phasing out the use of it, that it would have on the employment rate. Well, the Act was introduced in 1938, and the employment rate of people with disabilities has hovered—unemployment rate has hovered around 75 to 80 percent for these many years, except for the last few, where there has been an increase in the employment rate for disabilities.

So 14(c) existed in those years. The only thing that's really changed is the move toward eliminating the use of 14(c), toward engaging in competitive integrated employment strategies, so I think that's important to note. And I'm sorry I went to that without answering your question if you could—

Mr. SCOTT. Well what happens? What could we do for those who may lose their job?

Mr. LEWIS. So what we need to understand is that 80 percent that's unemployed now, they're the ones who are currently being adversely impacted because 14(c) exists. It shapes the minds, paradigms, and perception of employers around the capacity of people with disabilities. But we see now that those individuals who have been unemployed are gradually becoming employed in the competitive integrated environments.

I think that it self-signals that we're on the right path. We're moving forward toward the right trajectory.

Mr. SCOTT. Thank you. Thank you Madam Chair I yield back.

Chairwoman ADAMS. Thank you. Thank you, Mr. Chairman. Mr. Grothman was a member of the full committee, but not a member of either of these Subcommittees is joining us today. And he's requested to waive on to the Subcommittee and to ask questions of the witnesses, so Mr. Grothman you are now recognized for five minutes.

Mr. GROTHMAN. Thank you. I can't think of a bill I have more of an interest in this session, and it's not a positive one. I like our Chairman, but first of all I'd like to make a statement before I begin my questioning. I'd like to submit the following documents into the record.

A statement of support of 14(c) and a full array of employment choices for individuals with disabilities from a disability service providers network, a statement in opposition to 2373, the Transformation to Competitive Integrated Employment Act from the A Team, a great grass roots advocacy organization.

And finally, a constituent and my constituent friend Yael Kerzan, her personal story of her experience working both in the community and with her CRP called Northwoods.

Chairwoman ADAMS. So noted.

Mr. GROTHMAN. So thank you. Now I would also beg members of the committee before we ever take any vote on this, to personally tour some of these facilities themselves. I have 10 in my district. I don't know how anybody could tour these facilities and see how happy the employees are to have a 30 or 35 hour a week job like their siblings and friends.

To get rid of it I just think you're taking such a wonderful choice away from people, and I think it's quite frankly anti-helping these people to have Big Brother come in and say you can't have that option. I have talked to people who moved to something in the community, either that job is a 6 of 7-hour job instead of a 30-hour job, or they just don't like it because they like so much the current settings.

And it is so arrogant to force these people to work in the community when they would prefer to work in these facilities. And I beg other members of the committee to tour these facilities in their district.

Now Dr. Putts a couple things, we have been told by one of the other committee members that people want to get out of these facilities and everyone would rather work in the community. I don't find that true when I talk to people. I find people who worked in the community and regret it, and want to get back, but I want you to comment on that quickly.

Mr. PUTTS. And I'll go back to everyone is an individual. There are absolutely folks that are very happy working in a 14(c) setting and wish to remain there, and there are folks who have aspirations for competitive integrated employment, and it is 100 percent our job to help them reach that when that is their goal.

Mr. GROTHMAN. Is there a difference do you think a little bit between people with physical disabilities and more mental disabilities?

Mr. PUTTS. And again, everyone with a disability is so different, so there is a definite difference between intellectual and developmental disabilities which is predominantly who we serve.

Mr. GROTHMAN. Next question I have, and I think it's going to be particularly a big problem for people with mental disabilities, but next when they say we've found employment for people, one of the things that I find is that they exaggerate, because someone goes from a 35 hour a week job to a 6 hour a week job, and they

say, "Ah ha, we found a job in the community." And the rest of the time you're babysit in a daycare setting.

And people know very well that they lost their job, and they're miserable, and I think to count finding a 6-or 7-hour job to replace a 35-hour job is just so unfair. I'd like you to comment on that.

Mr. PUTTS. Yes, and it's not a replacement. It's certainly an interesting opportunity for someone, you know competitive integrated employment is always a worthy goal for individuals, but 6 hours doesn't replace 30.

Mr. GROTHMAN. Right, it's just so dishonest. I'm going to say too, I think frequently you find a 6-and 7-hour job, it's not only a different job for the employee, it's a different job for the employer. I find a lot of employers in my district when they do offer the 6 or 7 an hour week thing, they do it as charity all the way. They're not getting a lot out of that employee, the employee knows it, but we created an expectation in our society, which is wonderful, and that a lot of employees feel it's their goal as a good citizen to in essence kind of sadly babysit this person for 6 and 7 hours a job.

And that's fine and it's wonderful to be out in the community, but I sometimes think certain advocates miss that. Do you feel that's the attitude of some of the private sector employers that they view it as more of a charity than we found this employee?

Mr. PUTTS. I think a lot of employers want to do what they consider to be the right thing, that they want a diverse workforce, and I think increasingly understanding that people with disabilities are part of a diverse workforce is becoming more common. But at the same time if the position made sense at more than 6 or 7 hours, then I'd like to think the employer would offer the position.

Mr. GROTHMAN. That's exactly right. I find that again and again, people hired for 6 or 7 hours a week, and everybody says how wonderful it is, but miraculously the employer says how wonderful that is, that employer never moves up to 14 or 15 hours a week. There's a reason for it. Do you feel that people have more job security in the formally called workshops than they do out in the community?

Another thing that concerns me is you know businesses open and close, and consistency and security is so important for that population. I find frequently, and people get jobs in the community, restaurant work is common. Restaurants open and close.

Chairwoman ADAMS. You're out of time, sir.

Mr. GROTHMAN. Thank you much. I again beg members of the committee to tour these facilities in their district, thank you very much.

Chairwoman ADAMS. Thank you very much. Let me quickly recognize Representative Stevens.

Ms. STEVENS. OK thank you Chair Adams and thank you Chair Bonamici, and of course Chairman of the full committee Mr. Scott as well as our just incredible witnesses. This hearing was not only informative, it was essential. And as we look at Section 14(c) of the FLSA which allows employers to apply for special certificates from the Department of Labor to pay individuals with disabilities less than the Federal minimum wage.

We've heard a lot today about how changing the law would be cumbersome for the businesses. It would be cumbersome for the businesses, except for they're still going through an application

process to pay less. And what we heard through our remarkable testimony from Mr. Anton, from Ms. Koppstein to Mr. Lewis here, it's absolutely remarkable that in the year 2021 this is still going on.

This is still going on. We have places in Michigan in my district, some of the gold standards for adult higher ed learning for the disability community, from Visions Unlimited, to the Learning Enrichment Center located at the Novi Northfield border that's focused on not leaving behind human talent.

And yet the value that we are placing on this talent is less than in the year 2021. So yes, this hearing couldn't be more essential for us here today. As we are balancing some very profound considerations with workforce development, a constrained labor market, and on.

Mr. Lewis, in particular, in the Workforce Innovation and Opportunity Act which requires vocational rehabilitation agencies to provide career counseling and other services to youth with disabilities before they can be employed at sheltered workshops, which is a term that I don't even know why we are using, frankly. I don't even like that term in the United States of America.

Based on your observations, to what extent Mr. Lewis, and how effectively has the counseling requirement been implemented?

Mr. LEWIS. The counseling requirement is only going to be as good as the professional's knowledge of what the true opportunities are, which was one of our concerns when we were looking at passing the reauthorization. I'm so pleased that the Workforce Integration Opportunity Act recognized that that transition aid is crucial.

And we need to set high expectations for our students with disabilities to strive for the same goals as everyone else regardless of what society feels their capacity is, we have proven strategies, interventions and supports that makes it possible for them to be in the same environment with the peers that hopefully they're engaging in the school systems.

This is pivotal that we need to do that, but if there are individuals—and again, I was one of these individuals that is advising these people that 14(c) is a viable option, and my arrogance was that I thought I knew what was best, but luckily for me I was open minded, and people who proved to me over and over again that the ceiling that I had placed on these people, the limitations that I had placed on these people were false and wrong.

Once I broke through that ceiling, then they were able to get those to access those true opportunities. So I think that's what's important. The counseling has to be supported through individuals that have the knowledge and the belief in the capacity that these students can be competitive.

Ms. STEVENS. Great, thank you so much and I know we are over on our hearing time, but just allow me again to thank you for your work, to thank you for your testimony. God bless you and your families, Mr. Lewis, Ms. Koppstein and Mr. Anton, you are remarkable individuals and part of the progress that we are making for the people in the 117th legislative session of the U.S. House of Representatives. Thank you Madam Chair and I yield back.

Chairwoman ADAMS. And thank you, thank you very much. And let me remind my colleagues that pursuant to committee practice

materials for submission for the record hearing must be submitted to the Committee Clerk within 14 days following the last day of the hearing, so by the close of business on August 4, preferably in Microsoft Word format.

The materials submitted must address the subject matter of the hearing. Only a member of the joint Subcommittee, or an invited witness may submit materials for inclusion in the hearing record. Documents are limited to 50 pages, no longer than 50 pages, or documents longer than 50 pages will be incorporated into the record via internet link that you must provide the clerk within the requirement timeframe.

Please recognize that in the future that link may no longer work. Pursuant to House rules and regulations items for the record should be submitted to the clerk electronically by emailing submissions to edandlabor.hearing@mail.house.gov.

Again, I want to thank the witnesses for their participation today. Members of the joint Subcommittee may have some additional questions for you, and we ask the witnesses to please respond to those in writing. The hearing record will be held open for 14 days in order to receive those responses.

I want to remind my colleagues that pursuant to committee practice witness questions for the hearing record must be submitted to the Majority Committee Staff by Committee Clerk within 7 days. The questions submitted must address the subject matter of the hearing.

I want to recognize the distinguished Chair of the CRHS Subcommittee Ranking Member, I'm sorry the Chair of the committee, the Ranking Member for a closing statement, that's Representative Keller, Representative McClain? Representative Keller OK, thank you sir, go ahead you're recognized.

Mr. KELLER. Thank you, Madam Chair, and I'd like to thank the witnesses for your testimony today, and for being here to help us understand more about your experiences. The hearing made one thing clear—both democrats and republicans want people with disabilities to reach their fullest potential.

While we may disagree about potential public policy changes, I hope we can agree that we should avoid actions here in Washington, DC. that foreclose opportunities for our constituents. Sadly, H.R. 2373 would have many potentially detrimental consequences for workers with disabilities, and I do not believe my democratic colleagues take these downstream costs seriously.

And I am not alone. Madam Chair, I ask unanimous consent to enter into the record three letters and two statements, all supporting the 14(c) program. The first letter is from the Rehabilitation and Community Providers Association in Pennsylvania.

The second letter is from members of the Missouri congressional Delegation to congressional Leadership. The third letter is from Rep Vicky Hartzler to the Chair of the U.S. Commission on Civil Rights. The first of the two statements is from Project CU Incorporated in St. Louis, Missouri, and the second is from Access in Washington, DC.

Chairwoman ADAMS. So noted.

Mr. KELLER. And additionally, I would ask unanimous consent to enter into the record documents for Mr. Grothman.

Chairwoman ADAMS. Yes, so noted.

Mr. KELLER. Thank you. All of these statements and letters for the record plead with Congress to protect the over 100,000 14(c) employees from becoming unemployed. Let me be clear, republicans support the ability of individuals with disabilities to work in a setting of their choice, reaching their fullest potential, including under 14(c) certificates.

Eliminating 14(c) is wrong. People with disabilities find meaning in these jobs, and it's heartbreaking that democrats want to take that away from them. I want to help individuals with disabilities find the best and highest paying jobs possible for their unique circumstances.

I thank you, thank the witnesses and I appreciate the helpful testimony. I yield back.

Chairwoman ADAMS. Thank you. I want to recognize now the distinguished Chair of the Civil Rights and Human Services Subcommittee, Chair Bonamici for your closing statement.

Chairwoman BONAMICI. Thank you so much Chair Adams. And thank you again to our witnesses for your insight, for your expertise, really sharing your stories with us. It really makes a difference. And as we heard today clearly, the 14(c) subminimum wage is a relic of an era when employers were legally permitted to discriminate against individuals with disabilities in the workplace.

That era is long over. Since the passage of the Fair Labor Standards Act of 1938, Congress has taken several historic steps to make sure that children with disabilities have access to free and appropriate education. That people with development disabilities can access services and individualized support, and that all Americans with disabilities have equal opportunities.

And despite this progress workers with disabilities in some states continue to legally be paid less than \$2.00 an hour. It's unacceptable. Now we have the ability to rectify this injustice by passing the Transformation and Competitive Employment Act we can protect the Civil Rights of workers with disabilities and join states across the country in supporting workers with disabilities and helping them succeed in competitive and integrated work.

So thank you again to our witnesses, and I yield back now to Chair Adams.

Chairwoman ADAMS. Thank you Chair Bonamici. I want to recognize the distinguished Ranking Member of the Civil Rights and Human Services Subcommittee, Ranking Member McClain, you're recognized for your closing statement now.

Mrs. MCCLAIN. Thank you, Madam Chair. As I said during my question time Members of Congress must not let our passions get the best of us. We need to evaluate legislation using facts. Feelings are not important in determining legislation, but our constituents care more about how our actions, actions affect them, then they do about how we felt about our vote.

And the facts show that democrats will eliminate jobs for individuals with disability if they pass H.R. 2373. Dr. Putts acknowledged some 14(c)(3) employees may secure competitive integrated employment, but a majority—a majority of them will not. Eliminating job opportunities is not why our constituents sent us to Congress.

Democrats' attempt to institute a one size fits all competitive integrated employment world, ignores the legitimate instances when 14(c)(3) environment is appropriate. The democrats' bill will also fail to consider other important entity in the equation—employers.

Businesses do not have unlimited resources, and not all of them will be able to afford to offer individuals with disabilities a position on staff if the democrats' proposal is enacted. I believe current law offers individuals with disabilities the chance to contribute, engage with other workers, and develop new skills. There is dignity in work, and no amount of taxpayer funding can change the fact that H.R. 2373 will strip this dignity away from too many workers.

We must respect workers' choices. We must make sure different workers have different work environments to pick from. We must carefully weigh the evidence, and the facts do not support the democrats' position. Thank you to all of the witnesses for your contributions today. I wish you the absolute very best, and thank you Madam Chair, I yield back.

Chairwoman ADAMS. And thank you. I want to recognize myself now for the purpose of making my closing statement. Thank you all for an engaging conversation. Thank you to our witnesses for sharing your expertise and advocacy. Today's discussions and expert testimony reaffirms our responsibility to not only end the 14(c) subminimum wage, but also to help providers and workers with disabilities transition to competitive integrated employment.

As we heard many states and cities across the country have already taken the initiative to phaseout the 14(c) subminimum wage. Integrated workplaces in these states prove that with the necessary investments it's possible to create an inclusive workforce in which all workers can meaningfully contribute to their communities.

And this is why we must pass Federal legislation, including the Transformation to Competitive Integrated Employment Act, to ensure that all working Americans with disabilities are given the tools that they need to succeed in our economy.

And finally, I'm submitting two statements for the record. One from the National Council on Disability, an independent Federal agency that has recommended the phaseout of 14(c) since 2012. And one from Melwood, a non-profit employer of people with disabilities that stopped using 14(c) certificates 5 years ago and has been a leading voice for the transformation to competitive integrated employment ever since. Without objection so ordered.

Chairwoman ADAMS. The letter from the NCD's Chair states that the Transformation to Competitive Integrated Employment, H.R. 2373 would provide, "Safe and individual providers with resources from subject matter experts in order to transform their business and program models away from the outdated subminimum wage model and into a new model that supports opportunities to enter competitive integrated employment."

The letter from CEO of Melwood states that, "As one of the largest employers of people with disabilities on the east coast, and as an employer that formerly held a 14(c) certificate, we firmly believe Congress should act to end the use of these certificates and embrace the future of disability employment policy that acknowledges all the work over the past many decades to improve opportunities for people to live, work and to play in their communities.

As so as we approach the anniversary of the ADA next week, this is a timely moment to take stock of how we move past this antiquated provision of the FLSA, and work to achieve the goals of the ADA by committing to opportunities for competitive integrated employment for people with disabilities.

If there is no further business, then without objection the joint Subcommittee stands adjourned.

[Additional submissions by Chairwoman Adams follow:]



July 21, 2020

The Honorable Bobby Scott
U.S. House of Representatives
Chair
House Education & Labor Committee
2176 Rayburn House Office Building
Washington DC 20515

The Honorable Alma Adams
Chair
Workforce Protection Subcommittee
House Education & Labor Committee
2176 Rayburn House Office Building
Washington DC 20515

The Honorable Suzanne Bonamici
Chair
Civil Rights and Human Services
Subcommittee
House Education & Labor Committee
2176 Rayburn House Office Building
Washington DC 20515

The Honorable Virginia Foxx
U.S. House of Representatives
Ranking Member
House Education & Labor Committee
2176 Rayburn House Office Building
Washington DC 20515

The Honorable Fred Keller
Ranking Member
Workforce Protection Subcommittee
House Education & Labor Committee
2176 Rayburn House Office Building
Washington DC 20515

The Honorable Russ Fulcher
Ranking Member
Civil Rights and Human Services
Subcommittee
House Education & Labor Committee
2176 Rayburn House Office Building
Washington DC 20515

Dear Chair Scott, Ranking Member Foxx and Members of the Committee,

On behalf of Melwood and our more than 1600 employees across Maryland, Virginia, and Washington, D.C., including nearly 1000 employees with significant disabilities, I would like to express our support for the Transformation to Competitive Employment Act (H.R. 2373) and commend your efforts to hold today's hearing on the subminimum wage for people with disabilities.

Amending the Fair Labor Standards Act

Section 14(c) of the Fair Labor Standards Act (FLSA) of 1938 is an outdated and unfair payment system for people with disabilities. As one of the largest employers of people with disabilities on the East Coast and as an employer that formerly held a 14(c) certificate, we firmly believe Congress should act to end the use of these certificates and embrace the future of disability employment policy that acknowledges all the work over the past many decades to improve opportunities for people to live, work, and play in their communities.

It should be a national priority for people with disabilities to be in competitive integrated employment (CIE) settings where they have the opportunity to succeed in mainstream jobs and are paid wages that are comparable to their co-workers. The Workforce Innovation and Opportunity Act (WIOA) of 2014 was designed to expand CIE, but the continued use of 14(c)



works counter to that effort and limits many people with disabilities to working in segregated settings and being paid pennies on the dollar.

The continued practice of paying people with disabilities lower than the minimum wage reinforces the discriminatory premise that people with disabilities are not fully capable and productive workers. It is this bigotry of low expectations that foreshadows, and often directly causes a life of poverty, segregation, and dependency on public support for the people that we serve. Because of the continuance of this policy, an estimated 400,000 people with disabilities are paid an average of \$3.34 per hour. Our collective goal should be to ensure that all people, regardless of race, gender, creed, religion, sexual orientation, or ability, have the opportunity to live a meaningful life of their choosing in the community.

Melwood and 14(c) in Practice

Melwood voluntarily gave up our 14(c) certificate five years ago because we were committed to paying our employees a fair wage and recognized the detrimental impacts the policy had on the people we served. Today our bottom line has never been better, our morale has never been higher, and our productivity has never been greater. In fact, we pay an average of \$15.68 an hour and offer full benefits for our workforce, in addition to providing job training, placement, and support services for the broader community of people with disabilities.

To our employees, the 14(c) certificate was known as the "Time Trials Program." Melwood personnel would meet with employees to monitor their productivity by observing and timing how long it took them to complete daily work tasks, comparing that to the time of a "typically abled" worker. The results of these Time Trials would impact the workers' hourly wages and, consequently, determine their ability to provide for themselves, their families, and their livelihood until the next Time Trial.

The Time Trials did not take into consideration what type of day the employee was having or whether an individual had personal issues that may affect their ability to perform that day. They did not take into account "test anxiety" or other factors that might affect any individual employee's performance on a day-to-day basis.

The Time Trials did not focus on a person as an individual, except to determine how their productivity would be measured against a non-disabled person completing the same tasks. Every six months, Time Trials reminded our employees about their disability and not their ability to work or their value to the customer and to society. Some of our federal customers banned the use of their contract sites for Time Trials because of the productivity and distraction concerns. Even employees who were consistently successful in retaining 100% productivity experienced anxiety and shame from witnessing other co-workers who had decreases in pay due to Time Trials.

"It made my anxiety run high. You didn't know what to expect. You don't know if you're going to pass or fail, and whatever happened, it would change on your very next paycheck. And then you had to figure out how to maintain your life on that income until they decided to give you another time trial."



We have reports from our Vocational Support Specialists,¹ who witnessed many employees feeling stress, anxiety, worry and discouragement during Time Trials. One of our Vocational Support Specialists described the experience for our employees as:

"...living in a space of limbo, due to not knowing if their hourly rate would be increased or decreased, and how that would affect their ability to support themselves and their families. The rather unfortunate and unfair aspect of Time Trials is that our employees pay would be decreased, while their job duties were not decreased."

Faced with all of these concerns, in January of 2016, Melwood's leadership made a recommendation to Melwood's Board of Directors to eliminate the use of 14(c) altogether. Melwood's Board adopted the recommendation and, on February 14, 2016, Melwood voluntarily relinquished its 14(c) certificate.

Today, none of our workers with disabilities earns less than the minimum wage and, in fact, earn an average of \$15.68 an hour. In addition, Melwood workers are entitled to all the same employee benefits, including health insurance, retirement contributions, etc. as all of our workforce.

Since relinquishing our own 14(c) certificate, Melwood leaders have educated and encouraged legislators and the public to permanently abandon this practice. Melwood helped lead the successful effort to eliminate the subminimum wage in the state of Maryland, and to remove discriminatory language in Virginia's minimum wage statute². There are only a handful of states that have abolished this practice, which is why this legislation to eliminate the subminimum wage nationwide is a long-overdue step for the disability community.

Responding to Concerns to Eliminating 14(c)

The elimination of 14(c) certificates continues to be a source of heated discussion, as employers still utilizing it argue its elimination will result in job losses for people with disabilities. Many family members of these employees fear the law's elimination will make it harder for their loved ones in a society that is still in many ways not inclusive or accommodating for certain disabilities.

With our nearly 1,000 people with disabilities on staff, I am deeply sympathetic to these concerns. But I've also seen a future beyond 14(c). We have proven that with proper training and adequate support, people with disabilities can be employed in competitive integrated or supported employment without the need for 14(c).

¹ A Melwood Vocational Support Specialist provides work support and coaching to individuals of disabilities to maximize their opportunities for success in the workplace and in the community through personal development, career growth, community integration, and improved financial capacity.

² In 2020, Melwood successfully advocated for a bill to eliminate "Any person whose earning capacity is impaired by physical deficiency, mental illness, or intellectual disability" as an exemption from Virginia's definition of "employee" for purposes of the statutory minimum wage in §40.1-28.9.



In the years since our use of the Section 14(c) certificate was eliminated, Melwood has demonstrated that the financial cost to discontinuing the use of the 14(c) program was not only manageable, but also a far-sighted investment in our mission. We have increased morale and employee satisfaction. The quality of our work on our contracts has increased and we have improved retention rates for our employees.

Paying all of our employees fairly has not hampered Melwood's business competitiveness or our ability to create job opportunities for people with disabilities. To the contrary, we now operate at more than 60 contract sites in Maryland, D.C. and Virginia, and continue to develop new business opportunities to further our mission.

What guaranteeing a fair wage has done is demonstrate our commitment to a world where people with disabilities are fully included and treated equally in the American workforce. It has allowed our employees to take charge of their lives, become self-sufficient, and financially independent — while reducing reliance on public assistance or social safety net programs.

Conclusion

The use of the subminimum wage for people with disabilities was initiated to prompt employers to offer opportunities in the workforce to people who might otherwise not have been considered employable. In the years since, Melwood has defied those expectations by recruiting, hiring, and training people with disabilities, demonstrating that inclusion and support can provide meaningful work opportunities to every person.

There is a path for each person with a disability to find employment that works for their individual needs and desires. Whether that path is through employment opportunities like those we offer, through supported employment opportunities, or through entrepreneurship, people with disabilities deserve to have choices and adequate support to engage in those efforts.

We urge the Committee to examine this policy through the lens we have today, recognizing that policies from a time without inclusion or accommodations are no longer needed. The time to move forward is now.

We thank you for your leadership and look forward to working with you on this important issue.

Sincerely,

Larysa Kautz
President & CEO
Melwood



NASDDDS Position on Equitable Wages for People with Intellectual and Developmental Disabilities

The National Association of State Directors of Developmental Disabilities Services (NASDDDS) calls for the repeal of Section 14 (c) of the Fair Labor Standards Act.

In acknowledgment of and respect for individuals with disabilities, the NASDDDS Board of Directors believes the time has come to move away from the practice of allowing people with intellectual and developmental disabilities and other significant disabilities to be paid less than minimum wage. This practice is currently enabled by Section 14(c) of the Fair Labor Standards Act.

At this juncture in our history, as we undertake efforts to ensure real and meaningful community integration for all individuals with disabilities, we must renounce practices that have the impact of systematic marginalization of individuals with disabilities. Our goal is for individuals with disabilities to be paid a living wage commensurate to pay for similar work by individuals without disabilities, at or above minimum wage. Fair compensation enables workers to achieve economic stability, safeguards their health, and assists in planning their future. All individuals, regardless of disability, have a right be paid the federal or state minimum wage, whichever is greater, or the prevailing wage for the work performed.

We recognize it will take dedication, focus, time, and resources to adapt our service delivery systems to move away from those structures that have relied upon subminimum wages. Therefore, NASDDDS calls for federal action and resources to develop the infrastructure and capacity at all system levels to increase competitive integrated employment and the supplemental services people with disabilities need to maintain employment.

Federal action and resources must be available to ensure appropriate resources for government funded, competitive, integrated employment services and a broad array of Medicaid Home and Community Based Services (HCBS) supports for people to live full lives in their communities when they are working and when they are not.

Advancing competitive integrated employment for people with disabilities requires coordinated and adequate resources across Medicaid HCBS programs, vocational rehabilitation, education and workforce development systems.

NASDDDS stands committed to assisting states through this journey. Several states have already successfully ended use of subminimum wages and have expanded the service capacity of their provider networks to deliver services and supports that leads to inclusion of individuals' with disabilities in the economic and social fabric of their communities. We can learn from these early adopters and NASDDDS will facilitate this peer-to-peer learning.



National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

Statement for the Record
U.S. House of Representatives
Committee on Education & Labor, Joint Subcommittee Hearing
"Phasing Out Subminimum Wages: Supporting the Transition to Competitive Integrated Employment for Workers with Disabilities"
July 21, 2021

Chairman Scott, Ranking Member Foxx, Members of the Subcommittee on Workforce Protections, and Members of the Subcommittee on Civil Rights and Human Services:

Thank you for this opportunity to submit the National Council on Disability's (NCD) Statement for the Record in support of the expedient enactment of a comprehensive multi-year phase-out of Section 14(c) of the Fair Labor Standards Act through the passage of the Transformation to Competitive Integrated Employment Act (H.R. 2373). NCD is a federal voice for over 61 million people with disabilities and is congressionally mandated to advise the President, Congress, and other policymakers on policies and practices that enhance equal opportunity for people with disabilities to achieve economic self-sufficiency and integration into all aspects of society.

Since 1938, Section 14(c) has allowed employers to obtain special wage certificates from the U.S. Department of Labor to exclude people with disabilities from minimum wage law protections. At the time of its enactment, this law was considered an innovative program that allowed people with disabilities the opportunity to work. That, however, is no longer the case given the rising societal expectations, changes in civil rights laws, innovations in the field of supported employment, and new technologies available to advance the employment prospects of people with disabilities in the United States. NCD acknowledges the considerable value Section 14(c) programs have had on the lives of persons with disabilities that it has employed. However, NCD examined the role that Section 14(c) serves today and concluded that it is antithetical to the goals of current disability policies like the Americans with Disabilities Act, to assure equality and opportunity through the elimination of policies that discriminate on the basis of disability. Instead, Section 14(c) operates as an eighty-three-year-old policy relic that adheres to an outdated employment model from the manufacturing-based economy of 1938.

Furthermore, NCD is concerned that Section 14(c) creates an employment barrier that prevents people with disabilities from entering the workforce. While the workforce and workplace are steadily being reimagined with innovations in technology, people under 14(c) employment remain confined to physical brick-and-mortar sheltered workshops to perform manual tasks while using outdated equipment. They are denied access to new technologies, services, and supports that would allow them to succeed in competitive integrated employment. Most importantly, the demand for piecework is on the decline making modernization unavoidable.

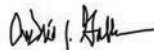
1331 F Street, NW ■ Suite 850 ■ Washington, DC 20004
202-272-2004 Voice ■ 202-272-2022 Fax ■ www.ncd.gov

Statement for the Record
 U.S. House Committee on Education & Labor – Joint Subcommittee: Workforce Protections, Civil Rights
 and Human Services Subcommittees
 “Phasing Out Subminimum Wages: Supporting the Transition to Competitive Integrated Employment for
 Workers with Disabilities
 July 21, 2021
 Page 2 of 2

NCD conducted two cross-sectional investigations on the impact of Section 14(c) on employment for people with disabilities. Its 2012¹ and 2018² investigations examined successful and unsuccessful attempts to end the use of Section 14(c) programs throughout the country in order to develop guiding principles for a national transition strategy and facilitate the successful transition of individuals with disabilities away from the segregated, subminimum wage model of the 1930s and into competitive integrated employment. NCD conducted site visits in several states that reflected regional diversity, including urban and rural settings and exhibited a range of progress in transitioning away from the Section 14(c) programs to supported employment programs in integrated competitive settings. NCD also interviewed workers with disabilities, their family members, workshop operators who held Section 14(c) certificates, state policymakers, and operators of supported employment programs. NCD determined with a reasonable degree of certainty, that simply eliminating all Section 14(c) certificates at once would jeopardize the employment security of individuals who are currently employed under Section 14(c) and developed recommendations for a national multi-year transformation strategy to responsibly phase-out this law.

NCD finds that the provisions of H.R. 2373 substantially incorporates the guiding principles of a national transition strategy outlined in our 2012 and 2018 reports and believes to a reasonable degree of probability that its passage would facilitate the successful transition of people with disabilities currently employed under Section 14(c) and into competitive integrated employment. Consistent with NCD’s key guiding principles, H.R. 2373 would provide states and individual providers with resources from subject-matter experts in order to transform their business and program models away from the outdated subminimum wage model and into a new model that supports opportunities to enter competitive integrated employment. It also incentivizes providers that have already demonstrated success in transitioning to the new work model to compete for technical assistance grants to assist other providers and states throughout their transformation efforts.

Most Respectfully,



Andrés J. Gallegos
 Chairman

¹ National Council on Disability, *Subminimum Wage and Supported Employment* (2012), available at: <https://nacd.gov/publications/2012/August232012>.

² National Council on Disability, *From the New Deal to the Real Deal* (2018), available at: <https://nacd.gov/publications/2018/new-deal-real-deal>.

[Additional submissions by Chairman Scott follow:]



August 4, 2021

The Hon. Alama Adams
Chair
Workforce Protections Subcommittee
Washington, DC 20515

The Hon. Fred Keller
Ranking Member
Workforce Protections Subcommittee
Washington, DC 20515

The Hon. Suzanne Bonamici
Chair
Civil Rights and Human Services Subcommittee
Washington, DC 20515

The Hon. Russ Fulcher
Ranking Member
Civil Rights and Human Services Subcommittee
Washington, DC 20515

Dear Chair Adams, Chair Bonamici, Ranking Member Keller, and Ranking Member Fulcher:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Employment and Training Task Force is pleased to submit the following statement for the record in response to the subcommittees' July 21 joint hearing, "Phasing out Subminimum Wages: Transition to Competitive Integrated Employment." CCD is a coalition of national rights, advocacy, consumer, provider, and self-advocates organizations representing the nation's 61 million people with disabilities. The Employment and Training Task Force concerns itself with policies and programs affecting their ability to achieve economic self-sufficiency through competitive, integrated employment.

People with disabilities, including veterans with significant disabilities, continue to struggle to gain financial security through employment. While the latest jobs report shows that the labor force participation among working age people with disabilities continues to increase from 33.7 percent in April 2021 to 35.4 in June 2021, their numbers continually lag far behind those for working-age people without disabilities.¹ It is critical for Congress to ensure that legislation and policies are being implemented in a way to support working-age people with disabilities to become successfully employed in competitive integrated employment.

We support the efforts currently underway to phase out Section 14(c) of the Fair Labor Standards Act. An effective phase-out of Section 14(c) of the Fair Labor Standards Act must involve the building of necessary infrastructure and supports to ensure that better alternatives are available after the transition. The task force urges Congress to provide sufficient funding for grants to states and providers

¹ Bureau of Labor Statistics, June 2021 Press Release. Retrieved from <https://www.dol.gov/agencies/odep/research-evaluation/statistics>

to expand competitive integrated employment and provide services for all people affected by the shift. H.R. 2373, the Transition to Competitive Integrated Employment Act, provides infrastructure and comprehensive support to states, entities, and individuals with disabilities to assist with the transition. This is an important piece of legislation that will create a pathway to support the transition for nearly 68,000 individuals with disabilities earning subminimum wage under 14(c) certificates in 2020. The task force offers the following comments:

Decline in entities renewing for 14(c) certificates and a greater need for data collection:

Recent shift in the trends of disability employment policy is promoting community rehabilitation providers (CRPs) to voluntarily not renew their 14(c) certificate. According to most recent data from the U.S. Department of Labor, Wage and Hour, 39,358 individuals are employed on a 14(c) certificate by community rehabilitation providers (CRPs) according to a list posted on April 2021. This is a significant decrease from July of 2020, where 67,288 individuals were previously reported by the U.S. Department of Labor (DOL) to be employed on a 14(c) certificate by a CRP which shows a decline in CRPs renewing their certificates. However, there is a substantive number of CRPs with a pending status of their certificate. This accounts for more than half of CRPs on the April 2021 list. The number of pending certificates has tripled from an average of 310 certificates (July 2018) to 694 certificates (April 2021). DOL does not include the number of individuals on a 14c certificate with a status of pending. This demonstrates a greater need for ensuring that data is being reported accurately by Department of Labor to track individuals that are being impacted by the phasing out of 14(c).

Resources and Technical Assistance for CRPs to change their business models to successfully place individuals in competitive integrated employment:

H.R. 2373, the Transformation to Competitive Integrated Employment Act, is designed to improve and expand the service delivery system to support individuals with disabilities. The Task Force believes it is important for Congress to continue to build on recent success from other grants programs that are currently supporting CRPs with the transformation of their business operations to employ individuals in competitive integrated employment.

For example, the U.S. Administration on Community Living Project of National Significance, Partnerships in Employment (PIE), and the U.S. DOL Office of Disability Employment Policy (ODEP) project, National Expansion of Employment Opportunities Network (NEON) have both aided participating states to transition away from the use of 14(c) and toward enhanced models of competitive integrated employment (CIE) as defined in the Workforce Innovation and Opportunity Act of 2014. As stated in a 2019 report summarizing the impact of ODEP's efforts to date, "states will continue to need training, technical assistance, additional resources on emerging issues, and updates to current resources as they continue to work with providers on the challenges of transformation."²

As further evidence of the simultaneous need for investment in the service delivery system to coincide with the phase-out of the use of 14(c) certificates, the Government Accountability Office (GAO) released a report earlier this year indicating that a significant barrier in successfully achieving CIE for people with

² Mank, D. (2019). Provider Transformation Efforts Report: Outlining ODEP's Provider Transformation Efforts. Prepared by Econsys under Contract DOL-OPS-14-D-0005; Order No. 1605DC-18-F-00315.

disabilities is the lack of sufficient state resources for employment related supports and services.³ While there are numerous examples of successful provider transformation, existing resources are not sufficient to fully eliminate the use of subminimum wage allowed under Section 14(c) across the country.

The task force strongly recommends that members of Congress visit worksites and CRPs that have gone through a transition away from 14(c) to learn about their experiences. Members of the CCD Employment and Training Task Force welcome the opportunity to work with the House Committee on Education and Labor to arrange for these tours.

Wage and Benefit Improvements Must Not Adversely Affect Employment of People with Disabilities:

In considering an increase in the minimum wage, policymakers must understand and address the potential for creating a serious work disincentive for many individuals with disabilities who receive Social Security Disability Insurance (SSDI). Once someone reaches the substantial gainful activity (SGA) level under Title II disability benefits, they lose those SSDI benefits along with ancillary benefits for their dependents as well as access to Medicare. Raising the minimum wage will mean that workers with disabilities will confront the SGA threshold much sooner and may have to reduce their hours or even leave the workforce to retain their benefits under Social Security. These issues must be addressed if the minimum wage is raised.

We thank you for your attention to our recommendations and look forward to working with you and your colleagues to ensure that H.R. 2373, Transition to Competitive Integrated Employment responds to the current employment trends of Americans with disabilities. If you would like to learn more about the CCD Employment and Training Task Force recommendations, please feel free to contact any of the task force cochairs - Julie J. Christensen, APSE, 301-279-0060, julie@apse.org; Alicia Epstein, SourceAmerica, 703-584-3987, aepstein@sourceamerica.org; Phillip Kahn-Pauli, Respectability, 202-517-6272, phillip@respectability.org; Susan Prokop, Paralyzed Veterans of America, 202-416-7707, susanp@pva.org; Dahlia Shaewitz, Institute for Educational Leadership (IEL), (202) 822-8405, shaewitzd@iel.org.

Sincerely,

American Council of the Blind
American Foundation for the Blind
APSE
Autism Society of America
Easterseals
National Disability Rights Network
National Down Syndrome Congress
National Down Syndrome Society
National Organization on Disability
Paralyzed Veterans of America
The Viscardi Center

³ United States Government Accountability Office. (2021). Subminimum Wage Program: Factors Influencing the Transition of Individuals with Disabilities to Competitive Integrated Employment. Retrieved from <https://www.gao.gov/assets/gao-21-760.pdf>

CATHY McMORRIS RODGERS
5th District, Washington

REPUBLICAN LEADER
ENERGY AND COMMERCE
COMMITTEE

Congress of the United States
House of Representatives

July 21, 2021

The Honorable Robert "Bobby" Scott
Chairman
House Education and Labor Committee
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
House Education and Labor Committee
Washington, DC 20515

COURTESY
ASOTIN
COLUMBIA
FERRY
GARFIELD
LINCOLN
PEND OREILLE
SPOKANE
STEVENS
WALLA WALLA
WHITMAN

Dear Chairman Scott and Ranking Member Foxx:

I am writing in support of the *Transformation to Competitive Integrated Employment Act*, which is being considered during today's hearing titled, "Phasing Out Subminimum Wages: Supporting the Transition to Competitive Integrated Employment for Workers". Disability employment is the next policy frontier to empower people with disabilities to live full and independent lives. A job is so much more than just a paycheck; it's what gives us dignity, purpose, and the opportunity for a better life.

Under Section 14(c) of the Fair Labor Standards Act, employers can apply for special certificates from the U.S. Department of Labor (DOL) to pay individuals with disabilities less than the federal minimum wage.¹ There is no minimum floor for the hourly wage that an employer can pay an individual with a disability under these certificates.² In 2020, the U.S. Commission on Civil Rights called for phasing out the 14(c) subminimum wage, finding that it has "limited people with disabilities participating in the program from realizing their full potential while allowing providers and associated businesses to profit from their labor."³ The National Council on Disability has also publicly recommended the phase out of 14(c) certificates.⁴ Research confirms that when individuals with disabilities transition to competitive employment, they are better able to achieve financial independence and spend time engaging in their community.

While seven states have either phased out entities that pay subminimum wages or are in the process of doing so, a recent report from the Government Accountability Office (GAO) underscores that many employers and workers with disabilities do not have the appropriate resources or services to transition to competitive integrated employment.⁵ The *Transformation to Competitive Integrated Employment*

¹ Fair Labor Standards Act of 1938 (FLSA), §214(c).

² Ibid.

³ U.S. Commission on Civil Rights. Subminimum Wages: Impacts on the Civil Rights of People with Disabilities. September 2020. <https://www.usccr.gov/files/2020-09-17-Subminimum-Wages-Report.pdf>.

⁴ National Council on Disability. National Disability Employment Policy. From the New Deal to the Real Deal: Joining the Industries of the Future. October 11, 2018. https://ncd.gov/sites/default/files/Documents/NCD_Deal_Report_508.pdf.

⁵ Government Accountability Office. Subminimum Wage Program: Factors Influencing the Transition of Individuals with Disabilities to Competitive Integrated Employment. Published: March 4, 2021. Publicly Released: April 5, 2021. <https://www.gao.gov/assets/gao-21-260.pdf>.

1035 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2000
Fax: (202) 225-3302

10 NORTH POST STREET, SUITE 625
SPOKANE, WA 99201
(509) 353-2374

555 SOUTH MAIN
COVILLE, WA 99114
(509) 884-3481

28 EAST MAIN STREET, SUITE 2
WALLA WALLA, WA 99152
(509) 523-8558

www.mcmorrisrogers.house.gov

PRINTED ON RECYCLED PAPER

Act specifically provides states, service providers, subminimum wage certificate holders, and other agencies with grant opportunities and technical assistance to help workers with disabilities transition into community employment settings.

I appreciate the Committee's consideration of this importance piece of legislation, and I urge my colleagues to join me in supporting the *Transformation to Competitive Integrated Employment Act*.

Sincerely,

A handwritten signature in blue ink, reading "Cathy McMorris Rodgers". The signature is fluid and cursive, with the first name "Cathy" being the most prominent.

Cathy McMorris Rodgers
Member of Congress

SourceAmerica[®]

August 4, 2021

The Honorable Alma S. Adams
Chair
Workforce Protections Subcommittee
Washington, DC 20515

The Honorable Fred Keller
Ranking Member
Workforce Protections Subcommittee
Washington, DC 20515

The Honorable Suzanne Bonamici
Chair
Civil Rights and Human Services Subcommittee
Washington, DC 20515

The Honorable Russ Fulcher
Ranking Member
Civil Rights and Human Services Subcommittee
Washington, DC 20515

Dear Chair Adams, Chair Bonamici, Ranking Member Keller, and Ranking Member Fulcher:

On the behalf of SourceAmerica[®] and more than 400 nonprofit agencies employing people with disabilities in the AbilityOne[®] Program, I am pleased to submit the following statement for the record in response to the Committee's July 21 hearing entitled "Phasing out Subminimum Wages: Supporting the Transition to Competitive Integrated Employment for Workers with Disabilities." SourceAmerica's statement highlights the importance of establishing the appropriate support and infrastructure nonprofit agencies need to successfully transition from 14(c).

Established in 1974, SourceAmerica's mission is to create and increase employment opportunities for people with disabilities. As a leading job creator within the disability community, and an AbilityOne-authorized enterprise, SourceAmerica harnesses the momentum and boosts the capability of its network and customers.

We do this by connecting government and corporate customers to a national network of nonprofit agencies (NPAs) that hire a talented segment of the workforce – people with disabilities. Our network reaches nearly every congressional district in the U.S.

Nonprofit agencies in the SourceAmerica network employ nearly 40,000 people with disabilities on AbilityOne contracts providing service and products to the federal government. These individuals earned an average of \$15.00 per hour in FY2020. Of the 400 nonprofits participating in the AbilityOne Program approximately 170 NPAs use a 14(c) certificate to pay employees working on AbilityOne contracts. As of FY2020, 1,111 of the nearly 40,000 people on AbilityOne contracts were paid sub-minimum wage. This total was down to 674 as of the end of first quarter of FY2021.

In February 2019, the U.S. AbilityOne Commission called on SourceAmerica to lead its nonprofit agencies to eliminate payment of subminimum wages on AbilityOne contracts. In response to the call, SourceAmerica recognized a critical need to deliver additional technical assistance. In October 2019, SourceAmerica launched its 14(c) Transition Program which provides consultation, knowledge, data sharing, technical support, and financial assistance through a flexible grant program intended to support NPA transition activities. Through the program, NPAs receive direct consultation by SourceAmerica staff and subject matter experts on transition planning strategies. These include assistance with applications for grants, assessment of immediate operational needs and longer-term capacity building, technical support relevant to operational needs and capacity-building and navigating state funding systems. The program also



provides oversight of SourceAmerica's role as a National Provider Organization under the Department of Labor National Expansion of Employment Opportunities Network (NEON) initiative, and is responsible for advising SourceAmerica leadership, the AbilityOne Commission, and other groups on national trends in 14(c) use. In 2020, the SourceAmerica Board of Directors made a strategic decision to support H.R. 873, the Transformation to Competitive Employment Act and similar 14(c) transitional legislation.

Since October 2019, SourceAmerica has:

- Provided consultation services to 77 NPAs;
- Enrolled 30 NPAs in at least one program support;
- Awarded \$547,000 in transition support grants to NPAs;
- Supported 22 NPAs with enhancing productivity efforts on AbilityOne and/or commercial contracts; and
- Provided training and guidance to 13 NPAs to increase capacity to provide customized employment opportunities.

It is important to note that participation in the 14(c) Transition Program is voluntary due to the fact that 14(c) is still a legal practice under the Fair Labor Standards Act. However, participation in the 14(c) Transition Program is increasing as more NPAs become aware of the resources available through the program and understand that the use of 14(c) is likely to end in the near future.

Participants in the SourceAmerica 14(c) Transition Program are beginning to reach milestones in transitioning away from 14(c) use. Seven NPAs have successfully eliminated 14(c) use and allowed their certificates to expire. Two NPAs have nearly completed the transition. Five additional NPAs are actively developing grant proposals. Eleven NPAs are receiving one-on-one consultation through NEON or subject matter experts under contract by SourceAmerica.

We would like to share with the Committee an example from one nonprofit agency within our network that is currently going through the transition. Lark Enterprises, an NPA based in Pennsylvania, began the process five years ago when their board of directors made a business decision to support the transition. Lark Enterprises is a vocational rehabilitation organization and day services program providing job training and social engagement opportunities for people with significant disabilities.

To begin the transition process, Lark Enterprises received a state grant through Employment First to receive training and technical assistance. As a grantee, the organization was assigned a subject matter expert (SME) in transitioning from operating as a sheltered workshop to integrated services. The SME also assisted in reviewing the organization's strategy plan and business models. Transitioning away from 14(c) requires a thoughtful strategic plan and while the input they received from the SME was valuable, the organization continued to face challenges with the transition. Lark Enterprises is currently undergoing changes to several of its business models to:

- Redesign business operations such as switching from manual labor to automation;
- Increase use of assistive technology to assist with employees' level of production;
- Renegotiate contracts with commercial businesses to include pay increases for employees; and
- Invest in supported employment to ensure additional support and training for the individuals to transition away from 14(c) to competitive integrated employment.



This transition has resulted in 61 individuals with significant disabilities being hired into competitive jobs within their community over a period of five years. 22 of these positions were eliminated in part due to the impact on businesses from COVID-19. This story demonstrates the greater need for coordination and resources from federal, state, and local government to support the transition away from 14(c). H.R.2373, the Transformation to Competitive Integrated Employment Act, would provide comprehensive support to states, provider organizations, and individuals with disabilities.

Thank you for your consideration of our comments. We welcome the opportunity to work with you and your staff on this important issue. If you have any questions or need additional information, please do not hesitate to contact SourceAmerica Vice President of Government Affairs Stacy Palmer Barton, at sbarton@sourceamerica.org.

Sincerely,

Richard Belden
Interim President & CEO

[Additional submission by Ranking Member Foxx follows:]

Faith at Work: The dignity of all work

Washington Times; By Dr. Timothy Keller; May 11, 2016

All work has dignity because it reflects God's image in us, and also because the material creation we are called to care for is good. The Greeks saw death as a friend because it liberated us from the prison of physical life. The Bible sees death not as a friend, but as an enemy (1 Corinthians 15:26), because the created world is a brilliant and beautiful good (Genesis 1:31), destined to exist forever (Revelation 22:1-5).

Indeed, the biblical doctrine of creation harmonizes with the doctrine of the incarnation (in which God takes upon himself a human body) and of the resurrection (in which God redeems not just the soul but the body) to show how deeply "pro-physical" Christianity is.

For Christians, even our ultimate future is physical. Some views of reality see the spiritual as more real and true than the physical; other, more naturalistic views see the spiritual as illusory and the physical as the only thing real; but neither is true of the Bible. We acknowledge that the world is good. It is not the temporary theater for our individual salvation stories, after which we go to live disembodied lives in a different dimension. According to the Bible, this world is the forerunner of the new heavens and new earth, which will be purified, restored and enhanced at the "renewal of all things" (Matthew 19:28; Romans 8:19-25). No other religion envisions matter and spirit living together in integrity forever. And so birds flying and oceans roaring and people eating, walking and loving are permanently good things.

As we have seen, this means that Christians cannot look down on labor involving more intimate contact with the material world. Caring for and cultivating this material world has worth, even if it means cutting the grass. This also means that "secular" work has no less dignity and nobility than the "sacred" work of ministry. We are both body and soul, and the biblical ideal of shalom includes both physical thriving as well as spiritual. "Food that nourishes, roofs that hold out the rain, shade that protects from the heat of the sun the satisfaction of the material needs and desires of men and women when businesses produce material things that enhance the welfare of the community, they are engaged in work that matters to God."

In Psalm 65, verses 9-10, and Psalm 104, verse 30, we find God cultivating the ground by watering it through rain showers and, through his Holy Spirit, "renewing the face of the ground." However, in John 16, verses 8-11, the Holy Spirit is said to convict and convince people of sin and God's judgment — which is something a preacher does. So here we have God's Spirit both gardening and preaching the Gospel. Both are God's work. How can we say one kind of work is high and noble and the other low and debasing?

We have an excellent foundation if we understand the goodness of creation and the dignity of work. We work in a wondrous world that is designed at least partly for our pleasure. The author of Genesis tells us we should experience awe as we stand before the richness of the creation, for it teems with life. God seems to delight in diversity and creativity. Other places in the Bible speak of God's creative activity as being motivated by the sheer delight of creating (see Proverbs 8:27-31). This, too, is part of God's plan for what our work should be about, and what it would still be about if we had not experienced the fall, which marred everything, including our labor.

We were built for work and the dignity it gives us as human beings, regardless of its status or pay. The practical implications of this principle are far-reaching. We have the freedom to seek work that suits our gifts and passions. We can be open to greater opportunities for work when the economy is weak and jobs are less plentiful. We no longer have any basis for condescension or superiority; nor is there any basis for envy or feelings of infidelity. And every Christian should be able to identify, with conviction and satisfaction, the ways in which his or her work participates with God in his creativity and cultivation.

• Timothy Keller was born and raised in Pennsylvania and educated at Bucknell University, Gordon-Conwell Theological Seminary and Westminster Theological Seminary. In 1989, he started Redeemer Presbyterian Church in New York City with his wife, Kathy, and their three sons. Today, Redeemer has nearly 6,000 regular Sunday attendees and has helped start more than 300 churches around the world. This excerpt is taken from "Every Good Endeavor: Connecting Your Work to God's Work," published Nov. 13, 2012 by Penguin Books, an imprint of Penguin Publishing Group, a division of Penguin Random House LLC. Copyright by Timothy Keller, 2012.

[Additional submissions by Mr. Keller follow:]



1501 M Street, NW – 7th Floor | Washington, DC 20005
202.349.4259 (PHONE) | 202.785.1756 (FAX)

**Statement of Kate McSweeney,
Vice President Government Affairs and General Counsel, ACCSES, Washington, DC
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.

McSweeney Statement
 U.S. Commission on Civil Rights Briefing
 November 15, 2019
 Page | 2

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 Section 14(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 Section 14(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 Section 14(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:

McSweeney Statement
 U.S. Commission on Civil Rights Briefing
 November 15, 2019
 Page | 3

- 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

McSweeney Statement
 U.S. Commission on Civil Rights Briefing
 November 15, 2019
 Page | 4

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,

McSweeney Statement
 U.S. Commission on Civil Rights Briefing
 November 15, 2019
 Page | 5

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

McSweeney 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.

Congress of the United States
Washington, DC 20515

February 12, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives

The Honorable Mitch McConnell
Minority Leader
United States Senate

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives

Dear Senate Majority Leader Schumer, Senate Minority Leader McConnell, Speaker Pelosi, and House Minority Leader McCarthy,

We write to request your consideration of protecting workers with disabilities participating in Section 14(c) subminimum wage programs in any upcoming legislation.

Since the announcement of President Biden's plan to increase minimum wage to \$15 and eliminate separate subminimum wages for workers with disabilities, we have had hundreds of constituents reach out with their concerns for their loved ones currently benefiting from 14(c) programs in Missouri. While we should not assume that all parents are fully speaking on the behalf of their child, they are the closest advocate for these individuals with disabilities. If we are to work to better these individual's lives by federal action, we should first give them a voice and opportunity to express how this effort should be carried out.

It is important to note that, other than relief during the pandemic, Missouri's 14(c) certificate programs do not utilize any federal funding, and many of the participating employers and workshops are self-sufficient businesses that generate a large portion of their income through customer relationships, goods, and services. These businesses are also home and family to many Missourians with disabilities that would not otherwise have the opportunity to earn any wages in the competitive market. For example, Project CU in the Saint Louis area has been partnering with parents and children with developmental disabilities since 1958. This successful business employs individuals who have been determined incapable of competitive work; however, if after a period of time, an employee is determined to transition to competitive work, they are referred to a local agency that will provide services to help them achieve this goal. Without the existence of the 14(c) program, Project CU would not be able to continue to support these hardworking individuals who just want a chance to earn a paycheck for themselves, build relationships with others and gain a sense of independence and community.

While we do not believe these individuals should be forced into subminimum wage employment, eliminating the option altogether will only hurt those who do not wish to enter into competitive employment or those who are not able. With only 35% of disabled individuals employed in the competitive market, it is our duty to look for ways to expand employment opportunities, not diminish them. It is our hope that you will reconsider this blanket elimination of all subminimum wage programs. Please feel free to reach out if you have any questions or would like additional information.

We sincerely appreciate your attention to this important matter and stand ready to work with you to protect workers with disabilities in any upcoming coronavirus-relief package. Thank you for your consideration.

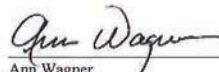
Sincerely,

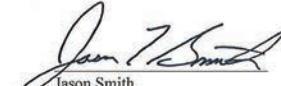

Vicky Hartzler
Member of Congress



Roy Blunt
United States Senator


Billy Long
Member of Congress


Blaine Luetkemeyer
Member of Congress


Ann Wagner
Member of Congress


Jason Smith
Member of Congress


Sam Graves
Member of Congress



July 20, 2021

www.projectinc.org

Chairman Scott, Ranking Member Foxx and Members of the Committee:

My name is Kit Brewer. I am the Executive Director of Project CU in St. Louis, MO. Project CU is a sheltered workshop and a member of Missouri's Extended Employment Sheltered Workshop Program (EESWP).

I am writing in regards to the Joint Subcommittee hearing entitled "Phasing out Subminimum Wages: Supporting the Transition to Competitive Integrated Employment for Workers with Disabilities" and our concerns with phasing out the "subminimum wage"

Project CU came into existence in 1958 as the result of a parent led effort to find employment opportunities and skills training for their children with developmental disabilities.

Opportunities for these individuals, sadly, are still lacking in 2021; however, FSLA Section 14c has for years provided an opportunity for advancement in skills training and employment for men and women facing significant challenges and barriers to competitive integrated employment. Here, individuals are able to work at their own pace and skill levels toward a common goal.

By statute in the state of Missouri each individual must be assessed and certified by the Department of Education prior to becoming an employee of a sheltered workshop. A portion of that certification process includes an individual's inability to work in a competitive integrated environment. Missouri's program is, therefore, very specifically for the most significantly challenged individuals.

While serving individuals across a broad spectrum of disability, Missouri's program is intended for individuals working at significantly lower productivity standards. This lessened productivity is not desirable in a commercial environment and often these men and women are overlooked or dismissed from competitive community-based situations.

Productivity standards are not merely an arbitrary thought, but rather a regularly measured and retested assessment. Standards are set for specific individual job tasks and created by experienced workers without disabilities. Individuals then preform a timed study for the same tasks for comparison. The resulting productivity levels are often less than 40%.

FSLA Section 14c allows for payment of wages on a commensurate scale. A sliding scale is created using the local prevailing wage for a specific job as the standard and an individual's productivity rate adjusts their individual wage along that scale. Not all calculations result in sub-minimum wages, the scale slides according to individual productivity. The Commensurate Wage

 **PROJECT CU, INC.**
CREATED BY CHALLENGE OUTCOMES, INC.
 2828 Brannon Avenue
 St. Louis, MO 63139
 314.647.3300

www.projectinc.org

scale allows for a fair wage to all individuals regardless of their current skill and productivity and allows them to earn a wage without the additional stress of a production-imposed quota.

In my years as a manager of a sheltered workshop, I have had the opportunity to work with and speak with hundreds of individuals with developmental disabilities, their families, their friends and their support staff. These men and women are pleased with the opportunity provided. Our business provides them a feeling of safety and security while working with peers in an environment with caring and well-trained staff to attend to their very specific needs.

For most of our workers, Project is an important part of their lives and social network as well as their employment.

A consistent national database of information involving employment metrics for individuals with disabilities does not exist at this time. Lacking such a database, what we are left with is a disjointed series of pictures from a handful of states each of which uses different models and methodologies in running their commensurate wage programs, and even in the collection of their data.

A consistent national definition of terms and measurables with regard to disability employment is a first step. Data must be available of the existing structures, and a system for longitudinal studies thru and following transition into new structures must be prepared. Data collections must include at least all individuals currently within facility-based programs, regardless of what path they may take thru and after transition.

But my objection to phasing out Section 14c is not limited to a lack of data to support the ending of the program. The program is a success. It is not an outdated relic. It provides individuals with pride, growth, income, and experiences which, for the vast majority would be lost if the program is discontinued.

Ending section 14c and the use of commensurate wage at this time amounts to nothing less than an assumption that we know what is best for others. Public comment, particularly the comments of the individuals and families directly affected by commensurate wage are overwhelmingly in favor of continuation of the program. I believe that it is time to listen to the participants. **How can any of us champion self-advocacy and self-determination and yet not include the individuals most affected in this decision-making process?**

 **PROJECT CU, INC.**
CREATED BY CHALLENGE OUR WITNES, INC.
2828 Brannon Avenue
St. Louis, MO 63139
314.647.3300

www.projectinc.org

I hope the Committee will take into consideration these points I have mentioned and make a more detailed examination of the program and its national ramifications. Please ensure that before any change, modification, or phasing out of this long standing and successful program is being requested by its participants, and that a plan exists including multiple options for men and woman of all ability levels.

Ka Brewer

Executive Director
Project CU, Inc.
Missouri Association of Sheltered Workshop Managers

VICKY HARTZLER
4th District, Missouri
COMMITTEE ON ARMED SERVICES
ARMED SERVICES, SUBCOMMITTEE ON
TACTICAL, AIR AND LAND FORCES
COMMITTEE ON AGRICULTURE
www.hartzler.house.gov



Congress of the United States
House of Representatives
Washington, DC 20515-2504

December 8, 2020

2235 RAYBURN BUILDING
WASHINGTON, D.C. 20515
(202) 925-2636
2415 CARTER LANE, SUITE 4
COLUMBIA, MO 65201
(573) 442-9311

1909 NORTH COMMERCIAL STREET
HANNIBALVILLE, MO 64701
(816) 884-5417

219 NORTH ADAMS AVENUE
LEBANON, MO 65536
(417) 632-5682

Ms. Catherine E. Lhamon
Chair
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW
Suite 1150
Washington, D.C. 20425

Dear Ms. Lhamon,

Thank you for your important work in understanding key programs for our disabled community, including the Section 14(c) subminimum wage program. On September 17, 2020, the United States Commission on Civil Rights released a report on subminimum wage programs for people with disabilities. While I appreciate the amount of work that went into putting this report together, I respectfully request that the Commission reexamine the recommendations made to Congress.

First, before recommending a full repeal of Section 14(c), the Commission should recommend that Congress request an exhaustive study to be conducted, requiring states to report uniform data that can be compared and weighed as collective information. In order to accomplish this, the Commission should recommend that Congress provide standard definitions of key concepts for participating states to utilize in their programs. For example, states should have the same definition for "disabled individual" or for what is considered a "qualifying disability." Next, states should have the same definition for what it means to have a "successful placement" in employment, whether that is at a sheltered workshop or in the competitive market. This could include a certain length of time for employment or a certain wage rate met. States should be collecting and providing the Commission with data on who is being paid subminimum wage under 14(c), why they qualify, for how long they have been employed, or their status outside of the program. This way we can effectively determine the strengths and shortfalls of this longstanding program before eliminating this option entirely.

Second, the Commission should put more weight into the public comments received. As you mentioned in your report, the "majority of the public comments were from parents who support the continued operation of 14(c) workshops unchanged." While we should not assume that all parents are fully speaking on the behalf of their disabled child, they are the closest advocate for

these disabled individuals. The Commission should also make an effort to talk with the individuals that are participating in this program, in school with the option to participate, or who opted not to participate and instead joined the competitive market. If we are to work to better these individual's lives by federal action, we should first give them a voice and opportunity to express how this effort should be carried out.

As you stated in the report, Missouri's 14(c) certificate programs do not utilize any federal funding, and many of the participating employers and workshops are self-sufficient businesses that generate a large portion of their income through customer relationships, goods, and services. These businesses are also home and family to many disabled Missourians that would not otherwise have the opportunity to earn any wages in the competitive market. For example, Project CU in the Saint Louis area has been partnering with parents and children with developmental disabilities since 1966. This successful business employs individuals who have been determined incapable of competitive work; however, if after a period of time, an employee is determined to transition to competitive work, they are referred to a local agency that will provide services to help them achieve this goal. Without the existence of the 14(c) program, Project CU would not be able to continue to support these hardworking individuals who just want a chance to earn a paycheck for themselves.

Again, I am grateful for the Commission's hard work in preparing this report and their effort to ensure individuals with disabilities have an equal opportunity for employment. While I do not believe these individuals should be forced into subminimum wage employment, eliminating the option altogether will only hurt those who do not wish to enter into competitive employment or those who are not able. With only 35% of disabled individuals employed in the competitive market, it is our duty to look for ways to expand employment opportunities, not diminish them. It is my hope that you will take these recommendations into consideration. Please feel free to reach out to me or my office if you have any questions or would like additional information.

Sincerely,



Vicky Hartzler
Member of Congress

[Additional submissions by Mr. Grothman follow:]



A-Team Grassroots System, Inc. 501(c)4
www.ateamUSA.net
ateamgrassroots@gmail.com

A-Team U.S.A. Comments on HR 2373, Transformation to Competitive Integrated Employment

1. We believe that the individuals supporting this legislation are well intentioned but unrealistic. In general, these individuals adhere to the following concepts:

- a. All people with disabilities are capable, with the proper supports, of working in Competitive Integrated Employment (CIE). This is obviously a false premise, as anyone who has worked with significantly disabled individuals (including those with severe and profound disabilities) well knows.
- b. All individuals with disabilities can be just as productive as non-disabled individuals when matched with the proper job. If this is true, then why do we have a Social Security Disability Program, which includes the description of disability as inability to perform gainful economic activity.
- c. All individuals with disabilities prefer to work in Competitive Integrated Employment. Again, more care should be exercised when making pronouncements about "all individuals with disabilities."
- d. Desires of family members, guardians and caregivers often are discounted or ignored. Family members who support 14(c) are accused of having low expectations, needing education as to the benefits of CIE, or worst of all, allowing their loved ones to be exploited and discriminated against.

2. We believe the real agenda of those supporting this legislation is to eliminate work centers. In the Education and Labor Committee Press Release on HR 2373 of April 6, 2021, are these telling words regarding the purpose of the bill: "help workers with disabilities transitions away from sheltered workshops." The overwhelming majority of 14(c) certificate holders are Community Rehabilitation Programs (CRPs) that operate prevocational work centers governed under Medicaid Waiver provisions in law and in Department of Health and Human Services Regulations and technical documents. Nowhere in these documents appears "sheltered workshops"- it is an obsolete term used by those opposed to 14(c) and prevocational work centers.

3. We believe the proponents of this legislation have not considered the impact on Community Rehabilitation Programs (CRP) of eliminating 14(c). Workers are paid through income received from contracts obtained with other companies. Can CRPs continue to be competitive in winning contract awards without 14(c)? Can CRPs continue to be financially viable without 14(c)? These questions never seem to be answered, perhaps because supporters of this legislation don't care.



A-Team Grassroots System, Inc. 501(c)4
www.ateamUSA.net
ateamgrassroots@gmail.com

4. We believe that if individuals take the time to visit a CRP and observe and speak with the workers with disabilities, they will come away with a positive feeling about these programs. Anecdotally, we know of many legislators who have visited CRPs and come away with very positive impressions. We also know that there are some who refuse to visit. However, we know of no legislators who have visited and come away with a more negative view than they had before visiting. We highly recommend that the sponsors and co-signers of this legislation visit one or more of their state's CRPs.

5. We believe that no adequate analysis has been performed on what happens to individuals when work centers go away. Several states have closed work centers and/or prohibited 14(c). There is evidence that this has resulted in some small increase in CIE, but also a very large increase in non-work activity. The general trend observed since the National Disability Rights Network and others began advocating against work centers has been a significant increase in non-work activity. (See key chart that was included in U.S. Commission on Civil Rights Report on 14(c), attached.) We fail to understand why some advocates seem to prefer non-work activity to 14(c) work for those who want to work.

6. We believe Individuals working under 14(c) and their families, guardians and caregivers strongly support maintaining the choice for 14(c) employment. On occasions when the government has solicited public comment on 14(c), such as the Department of Labor Office of Disability Employment Policy On-line Dialogue on 14(c), and the U.S. Commission on Civil Rights public comment period on 14(c), workers and their families have flooded the internet with supportive comments on 14(c) and work centers, often expressing in heartfelt terms how much these programs mean to them. When individuals freely choose to work under 14(c), and love working in their work centers, why would we want to take this choice away?

7. We believe the authors of this legislation inaccurately bring in the Olmstead decision in their effort to eliminate 14(c) and work centers. The Olmstead decision did not eliminate informed choice. In fact, it stated that individuals with disabilities should not be given a setting placement that they oppose. Further, Olmstead does not dictate placement in the least restrictive setting, but rather placement in the least restrictive setting that is appropriate. Surely, we can agree that a setting that is appropriate for one may not be appropriate for another.

8. We fully support CIE for those who desire it and are capable of achieving it. We recommend that this legislation be rewritten to focus solely on developing initiatives to increase employment opportunities for individuals with disabilities, perhaps by offering more incentives to employers to hire the disabled, rather than incentives to CRPs to put their own work centers out of business. The individuals that would be directly affected by this legislation, i.e., those individuals working under 14(c) and their families, do not want 14(c) eliminated. Please listen to them.

July 20, 2021

Yael Kerzan's Personal Story



A-Team Wisconsin
UNITED FOR CHOICE

Yael was born with Williams Syndrome (WS) which is a rare genetic disorder characterized by medical problems, developmental delays and learning disabilities. On the positive side, WS gave her striking verbal abilities, a highly social personality and an affinity for music. But there are major struggles as well. Yael has difficulty with spatial relations, numbers and abstract reasoning, which makes daily tasks a challenge. Even though Yael is 39 years old, she functions and thinks like a third-grade student. She lives with her retired parents in rural Wisconsin.

Yael benefits from a full array of employment choices available to individuals with intellectual disabilities. She needs supportive employment and housing, as well as ongoing skill development training, to live to her fullest potential. She wants to work, earn a paycheck, and even pay taxes, just like everyone else. Yael chooses a blended work experience where she works part-time in competitive integrated employment (CIE) with a job coach, and part-time at her community rehabilitation provider (CRP). This blended approach gives her more hours per week and two paychecks. This is what works best for her and her unique abilities. Working gives Yael dignity, purpose and independence. She is successful, happy and feels proud of herself.

Job 1: Yael receives pre-vocational services at her CRP, Northwoods, Inc., where she receives training to maintain her skills, learns new skills, and strives to improve her quality of work. She has worked there for 19 years and benefits from doing real work alongside her peers with the support of trained staff. Yael does not feel segregated at Northwoods because it is a community to her. She values socializing with her long-time friends. The work she does at her CRP helps her be more productive and appropriate in her CIE job. In addition, Yael's CRP provides a place for her to work when she is not at her CIE job. She does not want to stay home, watch TV and do nothing. If she was not working, she would be miserable. In fact, Yael happily gets up every morning at 4:30a so she has plenty of time to be ready by 6:50a for her ride to work. Yael wants to work and feel valued. She takes great pride in earning her paychecks and contributing to the household expenses. Yael does not care if she earns minimum wage or not. She feels she is compensated fairly by the special wage she is paid. She understands that she does not work as fast as a non-disabled person, and therefore is paid according to her productivity. Yael would rather be paid the special wage than participate in day services. She wants to work, not go to the library or the mall. She also does not want the government to choose where she can work, because it does not know what is best for her. How would the bureaucrats feel if they had a daughter with intellectual disabilities, and the government took that choice away from their loved one? They probably wouldn't like it one bit. Yael would love for legislators to visit her CRP so they could see, firsthand, how happy she and her friends are while they are working.

Job 2: Yael's CIE job is at a local retail store with a full-time job coach. She has worked there for 17 years and has been described as a "strong performer" on her yearly evaluations and receives annual raises. Yael is a Maintenance Associate who cleans the bathrooms and breakrooms, empties trash cans, restocks the spill stations, dust mops floors, and performs other duties as assigned. Yael adds value to her store with her cheerful smile, exceptional work ethic, and her "can do" attitude. She enjoys seeing her co-workers, local friends and neighbors at the store. It needs to be emphasized that even though her co-workers are "friendly" to Yael, her co-workers at her CRP are her "friends." This is an important distinction.

Three years ago, Yael's job at the retail store was threatened due to a manager's interpretation of a policy. A new and inflexible scheduling system did not allow Yael to work the same schedule that she had worked for 13.5 years. Needed services such as the job coach and transportation were not available in the timeframe scheduled for Yael. Her parents submitted a formal request asking for a modified work schedule, but Yael was not allowed to work until corporate decided. She was devastated when she could not work at the store because she had done nothing wrong. After two weeks of not working, the Store Manager invited Yael to return to work until the decision was made, and she joyously returned. **Thank goodness her CRP, Northwoods, was a choice for her to work during those two weeks.** Two months later, we were told that our request was denied. Yael was placed on an unpaid twelve-week leave and escorted out of the building. We were instructed to submit another request and this one was successful. Corporate reversed their original denial and after **four months** of leave, Yael was able to return to the store. Our dogged perseverance had paid off. This was a very challenging time for Yael. She felt betrayed and couldn't understand how she could be treated so poorly after nearly 14 years of doing her job well. Her store now has a new manager, and the entire workplace has improved.

Yael's situation illustrates the importance of a full array of choices. Thank goodness for her CRP, Northwoods, which was her safety net when the retail store slammed the door in her face. If not for her CRP, Yael would have been sitting at home for **four months** being miserable. It only goes to show that CIE work can disappear in a heartbeat, yet it is placed on a pedestal by many as the preferred choice, even for individuals who may not choose it.

Yael has become a passionate self-advocate who speaks with her legislators often about issues that affect her and others with diverse abilities. She is a member of the A-Team Wisconsin advocacy group and gives testimony at legislative hearings, attends town hall meetings, and has even been a speaker at a national conference. She is determined to give a voice to those who cannot speak for themselves.

Limiting choice ultimately limits employment opportunities for Yael and others like her. Why do many legislators want to eliminate 14(c) and CRPs when this action will deny the dignity of work to willing and able individuals with intellectual disabilities? Who are they listening to? They need to hear from individuals who want to keep their jobs. They need to hear from CRPs and **visit the CRPs** to see the exceptional work they do. I am confident that once they visit, policy makers will understand the need to preserve a full array of service options that offer the support individuals need and have chosen based on what is important to them.

Respectfully submitted by:

Dallas Kerzan, Mother and Guardian of Yael
Member of A-Team Wisconsin
W5349 Barden Road
Pardeeville, WI 53954
dallasdarcy@yahoo.com
608-429-2251



July 21, 2021

The Honorable Alma Adams
 The Honorable Suzanne Bonamici
 United States House of Representatives
 House Education and Labor Subcommittee on Workforce Protections,
 and Subcommittee on Civil Rights and Human Services

Delivered via email

Dear Congresswoman Adams, Bonamici and Subcommittee members,

The Disability Service Provider Network (DSPN) is Wisconsin's leading trade association for organizations that provide support to people with disabilities. DSPN members provide both residential and non-residential services that enable people with disabilities and economic disadvantages to live and work in their local communities. We are writing to you today with our concerns regarding potential changes to federal wage law. As you examine these issues, we ask you to preserve the full array of employment options for people with disabilities, including the 14c certificate. Please do not leave our most vulnerable without an option to work.

We believe everyone should have the choice of how they define and experience their community.

According to the Bureau of Labor Statistics, Labor Force Characteristics 2020 Study, across all age groups, persons with disabilities were much less likely to be employed than those with no disabilities. In 2020, 17.9 percent of persons with a disability were employed, down from 19.3 percent in 2019, the U.S. Bureau of Labor Statistics reported today. For persons without a disability, 61.8 percent were employed in 2020, down from 66.3 percent in the prior year. The unemployment rates for persons with and without a disability both increased from 2019 to 2020, to 12.6 percent and 7.9 percent, respectively. We believe eliminating the 14c certificate will not improve these employment statistics.

We also remain concerned with the limited data on the impact of eliminating 14c as a work option for people with disabilities. People with disabilities working under a 14c certificate are not the driving force behind recently introduced legislation. We ask for the opportunity to work with you and the Administration to find solutions that will not leave people without a paid work

opportunity and all the ancillary benefits that come with having a job. Any significant change to public policy should be thoughtful, data driven, and engage those who will be impacted the most.

DSPN supports increasing employment opportunities for people with disabilities. Our Member Providers offer a host of options for employment such as Community Based Pre-Vocational Services, Group Supported Employment and Supported Employment. The 14c certificate exists as one of several options for employment for people with the most significant disabilities.

Especially as we continue our collective recovery from the COVID-19 pandemic, we want to explore all options for people with disabilities to grow our economy and participate in our workforce, not eliminate opportunities for employment. The pandemic has also reminded us of the need for connections with our community. Work provides a sense of purpose, dignity, and opportunities for socializing with others.

We stand ready and willing to work with you and all concerned stakeholders on this important issue. Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lisa M. Davidson", with a stylized flourish at the end.

Lisa M. Davidson
CEO

[Additional submissions by Mr. Thompson follow:]



**RCPA Position Paper on Community Rehabilitation Programs (CRP) operating under
14(c) Certificates July 2021**

RCPA supports assisting people with disabilities to secure and maintain competitive-integrated employment and efforts to increase meaningful community participation as an option in an array of services. We also believe that the option for individuals to make the decision to work in a vocational setting with a 14(c) certificate should be respected. Not everyone wants to work in competitive employment, or attend a day program where they may participate in volunteer work, or recreational activities. We believe that an array of services is necessary in order to provide individuals, families, and providers with the flexibility needed to allow Pennsylvanians with disabilities to be supported in a way that is based on their individualized needs and circumstances. There are thousands of people with IDD who currently chose to work in a vocational setting under a 14(c) certificate and are quite happy with their jobs and the support that they receive. No one is forced to work in a 14(c) facility. It is the individual's decision. If they do not want to work in a facility, they have other options such as Supported Employment, Small Group Employment, Competitive employment, Community Participation supports in or outside of a facility, to name a few.

The push by advocates to eliminate this program is disrespectful to the individuals who chose this service. The elimination of these programs takes away the rights of those individuals just because it is against someone else's values or ideology. Over 9,000 individual comments were made to the Civil Rights Commission in favor of keeping 14c in place. Why are these comments not given the same respect?

There are many factors that individuals consider when making a decision about where they want to work. Community Rehabilitation Programs offer a safe, supportive environment with staff who understand their needs, and are respectful in meeting them including personal care and behavioral supports. Every person has individual needs and desires. It is important to remember that one size does not fit all. Individuals with disabilities should be able to make a decision about how they wish to spend their day and what services they receive – in short they should be respected regarding their wishes and have an array of services available to them.



Comments on House Resolution 2373

July 21, 2021

House Committee on Education and Labor Committee

The Venango Training & Development Center, Inc. (VTDC) is a Community Rehabilitation Provider (CRP) in rural northwest and north central Pennsylvania. VTDC has provided a wide variety of community and facility-based programs for the past 48 years, most of which have a vocational and employment focus. I have been here for 31 of those years. During that time, everyone has seen vast changes in services to individuals with significant disabilities. The efforts directed at personal choice have afforded those individuals with opportunities for deinstitutionalization, community integration, and employment. The CRP's across the country have been an integral part of that positive change. Working with these individuals, their families, and the community at large, individuals have been able to make informed decisions that help them to reach their own personal goals, through an array of services.

It is through that continuum that choices are made with them and not for them. The individuals in our pre-vocational facilities are afforded information and opportunity to choose employment. Through Section 511, of the Workforce Innovation and Opportunities Act, the Office of Vocational Rehabilitation has done an excellent job of educating both transitioning students and adults attending pre-vocational facilities with tools and information on how to select competitive employment as an option. In addition, the Offices of Intellectual Disabilities across the nation have embraced choice and provided the necessary case management and tools to help them select employment if that is part of their goal.

CRP's have also embraced informed decision making, to ensure that individuals have supports and options to select what they feel is best for them. Over the years, individuals in our programs have selected employment and successfully reached their personal goals. Many say that anyone can be competitively employed. VTDC has been very creative over the years and continue to make opportunities become reality through the right supports. But the individuals that we are serving today in our pre-vocational facilities, as well as many others, would need considerable supports to succeed. That is if an employer would be able to accept the accommodations necessary to support individuals with significant disabilities. In rural PA there are also, additional geographic and poverty barriers.

CRP's not only provide support through training, but they are also part of the economic development community structure. We provide local employers with a workforce and many other support services during the staffing crisis across the nation. We must follow strict DOL guidelines in determining our rate of pay for each job. It must be a prevailing wage equal to what an experienced worker would make in the community, not minimum wage. The individuals in training get paid according to how productive they can be, have a feeling of worth and truly consider the pre-vocational program as their "job". It also provides consistent and flexible employment for those with medical barriers. If taken away, many will end up in programs where they can not earn a paycheck. Please do not take away their opportunity to earn, learn and engage their peers in a positive, productive work environment in their community.

Respectfully,

Colleen A. Stuart, C.E.O.

[Questions submitted for the record and the responses by Mr. Lewis follow:]

MAJORITY MEMBERS:
ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Chairman
RASHA M. GRIFFIN, ARIZONA
JOE COURTNEY, CONNECTICUT
GREGORY A. KAMAHARO, HAWAII
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DEBAULDER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRASAD JAYAPAL, WASHINGTON
JOSEPH D. MORELLE, NEW YORK
SUSAN WELD, PENNSYLVANIA
LUCY McBATH, GEORGIA
JAHANA HAYES, CONNECTICUT
ANDY LEVIN, MICHIGAN
ELIHA DAVIS, MINNESOTA
HALEY M. STEVENS, MICHIGAN
TERESA LEGER FERNANDEZ,
NEW MEXICO
MCKENNA JONES, NEW YORK
KATHY E. MARANING, NORTH CAROLINA
FRANK J. MURRAY, INDIANA
JAMAL BOWMAN, NEW YORK
MARK POCAL, WISCONSIN
JOSUIN CASTRO, TEXAS
MIKE SHERRILL, NEW JERSEY
JOHN A. YAMMOUTH, KENTUCKY
ADRIANO ESPINOSA, NEW YORK
KIVISH MFUNE, MARYLAND



COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:
VIRGINIA FOXX, NORTH CAROLINA,
Ranking Member
JOE WALBORN, SOUTH CAROLINA
GLENN THOMPSON, PENNSYLVANIA
TIM WALSH, MICHIGAN
GLENN GROTHMAN, WISCONSIN
ELISE M. STEPHAN, NEW YORK
RICK W. ALLEN, GEORGIA
JIM BANKS, INDIANA
JAMES COMER, KENTUCKY
RUSSELL FULCHER, IDAHO
FRED KELLER, PENNSYLVANIA
GREGORY F. MANNING, NORTH CAROLINA
MARIAHETTE MILLER-MEEKS, IOWA
BURGES OWENS, UTAH
BOB GOOD, VIRGINIA
LISA C. NICOLARI, MICHIGAN
DIANA HARSHBARGER, TENNESSEE
MARY E. MILLER, ILLINOIS
VICTORIA SPARTZ, INDIANA
SCOTT FITZGERALD, WISCONSIN
MADISON CANTHORN, NORTH CAROLINA
MICHELLE STEEL, CALIFORNIA
JULIA LETLOW, LOUISIANA
VACANCY

July 29, 2021

Mr. Anil Lewis
Executive Director, Jernigan Institute
National Federation of the Blind
200 East Wells Street at Jernigan Place
Baltimore, MD 21230

Dear Mr. Lewis:

I would like to thank you for testifying at the Subcommittee on Workforce Protections and the Subcommittee on Civil Rights and Human Services joint hearing entitled "*Phasing Out Subminimum Wages: Supporting the Transition to Competitive Integrated Employment for Workers with Disabilities*," held on Wednesday, July 21, 2021.

Please find enclosed additional questions submitted by Committee Members following the hearing. Please provide a written response no later than Thursday, August 5, 2021, for inclusion in the official hearing record. Your responses should be sent to Rasheedah Hasan (Rasheedah.Hasan@mail.house.gov), Mariah Mowbray (Mariah.Mowbray@mail.house.gov), and Lorin Obler (Lorin.Obler@mail.house.gov) of the Committee staff. They can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Chairman

Subcommittee on Workforce Protections and Subcommittee on Civil Rights and Human Services
Joint Hearing
"*Phasing Out Subminimum Wages: Supporting the Transition to Competitive Integrated Employment for Workers with Disabilities*"
Wednesday, July 21, 2021
10:15 a.m. (Eastern Time)

Chairman Robert C. "Bobby" Scott (D – VA)

Mr. Lewis, please provide information on any wage subsidy programs designed to incentivize the employment of people with disabilities.

- a. Describe any wage subsidy programs for people with disabilities, including how they operate and specific sub-populations they target.
- b. What does the evidence tell us about the effectiveness of these programs in increasing the employment of people with disabilities?



The Honorable Robert Scott
Chairperson
House Committee on Education and Labor
2328 Rayburn House Office Building
Washington, DC 20515

Dear Chairperson Scott:

I offer the following comments in response to your question:

"Please provide information on any wage subsidy programs designed to incentivize the employment of people with disabilities.

a. Describe any wage subsidy programs for people with disabilities, including how they operate and specific sub-populations they target.

b. What does the evidence tell us about the effectiveness of these programs in increasing the employment of people with disabilities?"

My interpretation of your question about subsidies may not be in line with the intent of the question, and as a result, my answer may not provide you with the information you are seeking. However, I believe it will address the concern expressed through the question. It has been the contention of the National Federation of the Blind that many employers that take advantage of the Section 14(c) provision are also taking advantage of the "wage subsidies" offered through Social Security benefits and other public programs. As the National Federation of the Blind and other disability led organizations work to reform these programs to align with our goal of becoming equal, fully participating citizens, Section 14(c) remains as an anchor to the antiquated handicapped existence of the past.

Employees being paid subminimum wages under Section 14(c) are able to maintain their Social Security benefits, and perhaps qualify for food stamps and other public supports. These public programs subsidize the wages of the worker with a disability, and should be available for those that need the support to sustain themselves as they seek the training, support, and opportunity to gain and maintain competitive integrated employment.

Unfortunately, Section 14(c) employers use these benefits as subsidies to support their failed, antiquated business model. In some instances, as stated by Dr. Putts in his testimony, this even supports those businesses that are losing money, and serves as a disincentive for Section 14(c) employers to provide the training and support to enable workers with disabilities to become competitively employed. In essence, the Section 14(c) employer is making the "choice" to use an antiquated business model that is dependent on public support to be successful. Moreover, by subsidizing the Section 14(c) facilities with public benefits, it becomes unnecessary for them to

adopt the proven business models successfully being implemented by other entities working with similar populations. I described this in the following blog post from 2013.

[Victims of the Exemption](#)

Blog Date: Monday, April 22, 2013

Author: Anil Lewis

Section 14(c) of the Fair Labor Standards Act exempts over three thousand employers from paying their workers with disabilities the federal minimum wage, allowing them to pay workers subminimum wages as low as three cents per hour. The Fair Wages for Workers with Disabilities Act of 2013 will repeal this unfair, discriminatory, and immoral provision. The employers paying a subminimum wage argue that, once the Fair Wages for Workers with Disabilities legislation passes, the increase in wages would create a financial hardship that would force them to terminate employees or go out of business. This argument is an attempt to frame the employers as victims, but instead highlights the perverse nature of the existing subminimum wage provision authorized by Section 14(c) of the Fair Labor Standards Act. Rather than adopting a proven successful business model in which workers with disabilities are paid the minimum wage or more, subminimum wage employers are exempted from being responsible creators of real opportunities for integrated employment at competitive wages.

Subminimum wage employers cannot properly claim to be victims when they receive revenue beyond the income generated from the actual productivity of the worker with a disability. These entities receive public funding, charitable contributions, non-profit tax status, preferred contracts, and more, all before their workers produce one product or provide a single service. The employers receive these benefits because they cultivate the perception that they are performing a service to people with disabilities. So although the employer argues that it is paying the worker based on productivity (which is itself a fallacy), the worker is not being paid consistent with all of the revenue being generated as a result of the worker's participation. It is important to understand that these employers would lose this revenue, and the goodwill that generates it, if they terminated their workers with disabilities. Therefore, it is very unlikely that they would terminate employees who generate revenue through their mere presence. It is simply unfair for the subminimum wage employer to continue to use the threat of termination of employees with disabilities to justify their continued exploitation of this labor source.

Moreover, it should be obvious that any business unable to remain lucrative with public and private money constantly flowing into its coffers, while paying the employees at least the federal minimum wage, should not be in business at all. The failure of such an entity would be the result of poor management, not the payment of competitive wages or the incapacity of its workers with disabilities. Such shoddy operations should not be subsidized by a federal law that allows the managers of these businesses to exploit workers with disabilities by using them as a fundraising resource, as a justification for the lavishing of federal largesse, and as sweatshop laborers.

Some subminimum wage employers feel they are excused from paying better wages because workers with disabilities choose to work in this subminimum wage environment and to receive Social Security and other public benefits to subsidize their wages. Working for pennies per hour

National Federation of the Blind

Mark Riccobono, *President* | 200 East Wells Street at Jernigan Place Baltimore, MD 21230 | 410 659 9314 | www.nfb.org

or fully participating in the workforce cannot realistically be considered a choice. Society would never consider establishing federal law that allows other American citizens the choice to work for subminimum wages and collect public benefits, while supplementing the employer's revenue with public funds.

It is important to understand that as long as we promote the illusion that subminimum wage work is a job, we deny these individuals access to the proper training, support, and opportunity to obtain real jobs at real wages. The existing resources currently being used to keep these individuals in segregated subminimum wage pseudo-work environments should be concentrated on finding them real jobs that pay real wages, or on training them for such jobs.

Some still argue that there are those individuals who are so severely disabled that they cannot be competitively employed. New strategies evolve every day that prove this statement to be false. Many individuals with significant disabilities, previously labeled unemployable by sheltered workshops, have received job training from qualified professionals that used innovative strategies to assist them in obtaining competitive integrated employment. And if there are truly individuals too severely disabled to perform competitive work, it does not follow that employment at subminimum wages is the best outcome for these individuals. There is a better reality that we can provide for these individuals than toiling away, day after day, for pennies an hour.

The Fair Wages for Workers with Disabilities Act of 2013 (H.R. 831), which will phase out Section 14(c) of the Fair Labor Standards Act, has a phase-in period and provides incentives to these businesses to adopt a new business model that truly benefits the worker with a disability while allowing the businesses to remain profitable. It should be noted that many employers of people with disabilities, including nonprofits that hold or have held special wage certificates, have already changed their policies to pay their workers the federal or state minimum wage or higher. These entities are still operating and in fact thriving. Continuing to exempt employers from paying workers with disabilities the federal minimum wage victimizes workers with disabilities, not their purported employers.

Sincerely,

Anil Lewis
Executive Director of Blindness Initiatives
National Federation of the Blind

National Federation of the Blind

Mark Riccobono, *President* | 200 East Wells Street at Jernigan Place Baltimore, MD 21230 | 410 659 9314 | www.nfb.org

[Question submitted for the record and the responses by Mr. Putts follow:]

MAJORITY MEMBERS:
 ROBERT C. "BOBBY" SCOTT, VIRGINIA,
 Chairman
 RALPH M. GRIFFIN, ARIZONA
 JOE COURTNEY, CONNECTICUT
 GREGORY M. CARMICHAEL, ARIZONA
 NORTHERN MARIANA ISLANDS
 FREDERICK A. WILSON, FLORIDA
 SUZANNE BONAMICI, OREGON
 MARK TAKANO, CALIFORNIA
 ALMA S. ADAMS, NORTH CAROLINA
 MARK DEBAUNTER, CALIFORNIA
 DONALD NORCROSS, NEW JERSEY
 FRANK J. MURRAY, INDIANA
 JOSEPH D. MORELLE, NEW YORK
 SUSAN WELLS, PENNSYLVANIA
 LUCY MCINTYRE, GEORGIA
 JAHANA HAYES, CONNECTICUT
 ANDY LEVIN, MICHIGAN
 LINDA DAVIS, MINNESOTA
 HALEY M. STEVENS, MICHIGAN
 TERESA LEGER FERNANDEZ,
 NEW MEXICO
 MORGAN JONES, NEW YORK
 KATHY E. MANNING, NORTH CAROLINA
 FRANK J. MURRAY, INDIANA
 JAMAL BOHANNAN, NEW YORK
 MARK POCAL, WISCONSIN
 JOAQUIN CASTRO, TEXAS
 MIKE SHERRILL, NEW JERSEY
 JOHN A. YAMMOUTH, KENTUCKY
 ADRIANO ESPINOSA, NEW YORK
 KIVESH MURRAY, MARYLAND



COMMITTEE ON
 EDUCATION AND LABOR
 U.S. HOUSE OF REPRESENTATIVES
 2176 RAYBURN HOUSE OFFICE BUILDING
 WASHINGTON, DC 20515-6100

MINORITY MEMBERS:
 VIRGINIA FOXX, NORTH CAROLINA,
 Ranking Member
 JOE WALBORN, SOUTH CAROLINA
 GLENN THOMPSON, PENNSYLVANIA
 TIM WALSH, MICHIGAN
 GLENN GROTHMAN, WISCONSIN
 ELISE M. STEPHAN, NEW YORK
 RICK W. ALLEN, GEORGIA
 JIM BANKS, INDIANA
 JAMES COMER, KENTUCKY
 RUSSELL FULCHER, IDAHO
 FRED KELLER, PENNSYLVANIA
 GREGORY F. MANNING, NORTH CAROLINA
 MARIANETTE MILLER-MEEKS, NEW
 HAMPSHIRE
 BURGES OWENS, UTAH
 BOB GOOD, VIRGINIA
 LISA C. MCCLAIN, MICHIGAN
 DIANA HARSHBARGER, TENNESSEE
 MARY E. MALLER, ILLINOIS
 VICTORIA SPARTZ, INDIANA
 SCOTT FITZGERALD, WISCONSIN
 MADISON CANTHORN, NORTH CAROLINA
 MICHELLE STEEL, CALIFORNIA
 JULIA LETLOW, LOUISIANA
 VACANCY

July 29, 2021

Matthew R. Putts, Ph.D.
 Chief Executive Officer
 Employment Horizons, Inc.
 10 Ridgedale Avenue
 Cedar Knolls, NJ 07927

Dear Dr. Putts:

I would like to thank you for testifying at the Subcommittee on Workforce Protections and the Subcommittee on Civil Rights and Human Services joint hearing entitled "*Phasing Out Subminimum Wages: Supporting the Transition to Competitive Integrated Employment for Workers with Disabilities*," held on Wednesday, July 21, 2021.

Please find enclosed additional questions submitted by Committee Members following the hearing. Please provide a written response no later than Thursday, August 5, 2021, for inclusion in the official hearing record. Your responses should be sent to Rasheedah Hasan (Rasheedah.Hasan@mail.house.gov), Mariah Mowbray (Mariah.Mowbray@mail.house.gov), and Lorin Obler (Lorin.Obler@mail.house.gov) of the Committee staff. They can be contacted at 202-225-3725 should you have any questions.

I appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT
 Chairman

Subcommittee on Workforce Protections and Subcommittee on Civil Rights and Human Services
 Joint Hearing
 "*Phasing Out Subminimum Wages: Supporting the Transition to Competitive Integrated Employment for Workers with Disabilities*"
 Wednesday, July 21, 2021
 10:15 a.m. (Eastern Time)

Ranking Member Virginia Foxx (R – NC)

- For several years, I have heard from constituents and colleagues in Congress about a particular issue that has gotten a lot of attention in the vocational rehabilitation space. After the Rehabilitation Act of 1973 was updated, the Obama Administration's implementation of the law strongly implied that AbilityOne jobs should not count as competitive integrated employment under the state vocational rehabilitation program. The Trump Administration took steps to correct these mistakes by clarifying that state vocational rehabilitation agencies must make competitive integrated employment determinations on a case-by-case basis. Could you discuss your experience with this issue in New Jersey?

Tel. (973) 538-8822
www.ehorizons.org



10 Ridgedale Avenue
Cedar Knolls, NJ 07927

July 30, 2021

OFFICERS

President

Jack Cox
NorthBridge Business
Advisors

Vice President

Aria Cahill
Mendenbaum Salsburg P.C.

Secretary

Paul Dolce
Meet Hospitality

Treasurer

Allen Lane
Solix, Inc.

TRUSTEES

Gregory Canose
Somerset Marketing
Services

Frank Crippen
Hayward Industries, Inc.

Edward Fernandez
Plymouth Rock Management
Company of New Jersey

W. David Hubbard
Verizon Communications

Alan Langsner
New York University
School of Medicine

Paul Montacelli
ADP/Statewide Ins.

Janice Oursler
Rutgers University

EMERITUS

Marion Cooper
Somerset County Board of
Social Services

HONORARY

TRUSTEES

Nancy Delaney
Ronald Pierson

CHIEF EXECUTIVE

OFFICER

Matthew Putts,
PhD, CRC, CVE

Rep. Virginia Foxx, Ed.D.
Committee on Education and Labor
2176 Rayburn House Office Building
Washington, DC 20515-6100

Dear Rep. Foxx,

This letter is my response to your inquiry below:

"For several years, I have heard from constituents and colleagues in Congress about a particular issue that has gotten a lot of attention in the vocational rehabilitation space. After the Rehabilitation Act of 1973 was updated, the Obama Administration's implementation of the law strongly implied that AbilityOne jobs should not count as competitive integrated employment under the state vocational rehabilitation program. The Trump Administration took steps to correct these mistakes by clarifying that state vocational rehabilitation agencies must make competitive integrated employment determinations on a case-by-case basis. Could you discuss your experience with this issue in New Jersey?"

My experience in New Jersey is that of a broad-brush approach by the Division of Vocational Rehabilitation Services (DVRS) that all AbilityOne (and state set-aside) jobs are presumed not to be competitive integrated employment (CIE). Only one organization in New Jersey has been able to get certain (call-center) contract work approved through the state set-aside program. To my knowledge, not a single AbilityOne job has been approved as CIE. I believe that there continues to be a misunderstanding about the requirements of designated state units to provide a case-by-case determination. I also opine that such determinations, when made, should not be based solely on the type of employer as appears to be the case.

As this situation has persisted for years without a change, and attempts to educate and advocate have been unsuccessful, a state bill has been introduced that would specifically require the designated state units in New Jersey to provide case-by-case determinations based on the individual specifics of each job. The bill has passed the state senate and is pending in the assembly.

Please reach out if I can provide any additional information or clarification. I thank you for your interest in providing the best possible job opportunities for individuals with disabilities.

Sincerely,

Matthew R. Putts, PhD, CRC, CLCP, IPEC, CVE

[Whereupon, at 12:46 p.m., the Subcommittees were adjourned.]