

U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING MEETING **EDITED**

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FRIDAY, NOVEMBER 15, 2019

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The Commission convened in Suite 1150
at 1331 Pennsylvania Avenue, Northwest, Washington,
D.C. at 9:00 a.m., Catherine Lhamon, Chair,
presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair

DEBO P. ADEGBILE, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

** Present via telephone***NEAL R. GROSS**

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STAFF PRESENT:

TERESA ADAMS

NICHOLAS BAIR

KATHERINE CULLITON-GONZALEZ

ROSLYN DAVIS

PAMELA DUNSTON, Chief, ASCD

LATRICE FOSHEE

ALFREDA GREENE

RYAN KELLEY

TINALOUISE MARTIN, OM

ZAKEE MARTIN

MAYOWA OLUBAKINDE

WARREN ORR

LENORE OSTROWSKY

CHANEL SHERROD

JUANDA SMITH

PILAR VELASQUEZ-MCLAUGHLIN

BRIAN WALCH

MARIK XAVIER-BRIER

MICHELE YORKMAN-RAMEY

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COMMISSIONER ASSISTANTS PRESENT:

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

PEACH SOLTIS

IRENA VIDULOVIC

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P R O C E E D I N G S

9:00 a.m.

CHAIR LHAMON: This briefing of the U.S. Commission on Civil Rights comes to order at 9:00 a.m. on November 15, 2019 and takes place at the Commission headquarters at 1331 Pennsylvania Ave., NW, Suite 1150, Washington, DC 20425.

I'm Chair Catherine Lhamon. Commissioners present in addition to me are Vice Chair Timmons-Goodson, Commissioner Adegbile, Commissioner Heriot, Commissioner Kirsanow, Commissioner Kladney, and Commissioner Narasaki. On the phone, Commissioner Yaki, I heard you. Will you confirm that you are present.

COMMISSIONER YAKI: I am.

CHAIR LHAMON: Thank you. A quorum of the commissioners is present.

Will the Court Reporter confirm for the record that you are present. Will you confirm for the record that you are --

COURT REPORTER: Yes.

CHAIR LHAMON: Thank you. And Mr. Staff Director, will you confirm for the record that you are present.

MR. MORALES: I am present.

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I. INTRODUCTORY REMARKS:

CHAIR CATHERINE E. LHAMON

CHAIR LHAMON: Thank you. I welcome everyone to our briefing today, titled Subminimum Wages, Impacts on the Civil Rights of People with Disabilities. In today's briefing, the Commission examines the exemption under the Fair Labor Standards Act, known as the 14(c) waiver program.

Commissioner Yaki, I think that we're hearing some feedback from you on the phone, if you don't mind muting.

The 14(c) waiver program allows employers to pay less than the minimum wage to individuals with disabilities under certain employment conditions. Today we will hear from members of Congress, federal government officials, academic and legal experts, and advocates.

Panel One will focus on the federal government's role with respect to these issues. Panel Two will focus on data regarding subminimum wages and competitive integrative employment. Panel Three will focus on the nature of the existing 14(c) programs, after which we will hear remarks from Governor Tom Ridge, Chairman of the National Organization on Disability.

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1 And after a lunch break, Panel Four
2 will focus on transitioning from 14(c) programs.
3 And Panel Five will focus on reforms to the 14(c)
4 program at the federal level. The day will
5 conclude with an open public comment session during
6 which the Commission will hear from members of the
7 public who wish to present additional information
8 to the Commission.

9 I thank all who join us today to focus
10 on this critical topic. Your views help us to
11 fulfill our mission to be the nation's eyes and
12 ears on civil rights.

13 I now turn to Commissioner Dave
14 Kladney, who leads this investigation for the
15 Commission.

16 COMMISSIONER KLADNEY: Thank you, Madam
17 Chair, and many thanks to our staff for pulling
18 this briefing together today. I also wish to thank
19 our distinguished panelists and the public, who
20 will be giving their time and expertise today.

21 I also wish to thank my Special
22 Assistant, Amy Royce, for all her research on this
23 subject in preparation for today's briefing. As
24 usual, it was excellent work.

25 Subminimum wage paid to people with

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1 disabilities in programs they operate under the
2 critical issues for many -- are critical issues for
3 many people with disabilities and their families.
4 It is an area where people react strongly because
5 the question of how people structure their time,
6 their livelihood, and their lives are at stake.

7 We are committed to gathering as much
8 information as we can to understand the deep and
9 important ways this program has affected people and
10 continues to affect people.

11 When the Workforce Innovation
12 Opportunity Act was passed in 2014, it created
13 important requirements for employers and service
14 providers. It attempts to make subminimum wage
15 employment not the first choice for people with
16 disabilities, but rather give them an opportunity
17 to succeed in competitive employment.

18 Significant questions remain about
19 whether these requirements are sufficient to reach
20 that goal, or if more changes are necessary. 14(c)
21 is one of the few laws left on the books that in
22 its text allows discrimination against people with
23 disabilities. Our job as the Civil Rights
24 Commission is to understand why this provision
25 remains in the law and whether it is consistent

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1 with our civil rights values as a country.

2 I personally have learned a great deal
3 since we began work on this project and deeply
4 appreciate the people here today who inform us on
5 the 14(c) program, its impact on peoples with
6 disabilities, and how policymakers can better
7 protect the civil rights of people with
8 disabilities.

9 As an organization with many different
10 areas under our jurisdiction, I appreciate the
11 opportunity for us to explore this area of
12 disability rights and to document the experiences
13 of people with the program.

14 It is vitally important to respect
15 people with disabilities as full members of
16 society. We should listen to how we can raise our
17 expectations of their true potential and align
18 government policies accordingly. Our aim should
19 not be to leave people behind. I look forward to
20 our briefing today and the report we will publish.
21 Thank you.

22 CHAIR LHAMON: Thank you, Commissioner
23 Kladney. I will now turn us to begin our briefing
24 with a few housekeeping items. I echo Commissioner
25 Kladney's deep thanks to the Commission staff who

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1 researched and brought today's briefing to being,
2 including our expert team who have worked on
3 logistics. I also thank Staff Director Morales for
4 his leadership.

5 I caution all speakers, including our
6 Commissioners, to refrain from speaking over each
7 other for ease of transcription and to allow for
8 sign language translation, which is to my right.
9 For any individuals who might need to view sign
10 language translation, there are seats available in
11 clear view.

12 I ask everyone present to please
13 silence your phones and not to take flash photos to
14 minimize the health risk to persons present.
15 Individuals who need assistance or accommodations
16 or have questions should feel free to speak to
17 Commission staff, who are individuals wearing
18 badges that say USCCR staff.

19 Congress charges this Commission with
20 hearing testimony from all sides of the issues that
21 we evaluate. We welcome frank and open sharing of
22 views, and I know that the topics we address,
23 including this one, generally raise issues about
24 which people feel strongly, sometimes with strongly
25 opposing views.

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1 We welcome the debate and we look
2 forward ultimately to sharing the Commission's
3 conclusions in a report that will follow this
4 briefing.

5 As I mentioned, after the five panels
6 and an afternoon break, we will reconvene at 5:30
7 p.m. for a public comment period. If you are
8 interested in participating in the public comment
9 period, during which each person will have up to
10 three minutes to speak, we will be honored to hear
11 from you.

12 In total, spots at the public comment
13 period are allotted on a first-come, first-serve
14 basis. If you did not already sign up for a spot
15 online, you may sign up at the registration desk
16 now. The spots will be open until filled. If you
17 are one of the individuals who did sign up online,
18 please check in at the front desk so we hold your
19 spot.

20 For any member of the public who would
21 like to submit materials for our review, our record
22 will remain open until December 15, 2019.
23 Materials, including materials submitted
24 anonymously, can be submitted by mail to the U.S.
25 Commission on Civil Rights, Office of Civil Rights

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1 Evaluation, 1331 Pennsylvania Ave., NW, Suite 1150,
2 Washington, DC 20425, or by email to
3 subminimumwages@USCCR.gov.

4 Except for the first panel, when we
5 will accommodate Congressman Scott's schedule,
6 during the panels, each panelist will have seven
7 minutes to speak. After each panel presentation,
8 Commissioners will have the opportunity to ask
9 questions within the allotted period of time, and I
10 will recognize Commissioners who wish to speak.

11 I do strictly enforce the time
12 allotments given to each panelist to present his or
13 her statement. And unless we did not receive your
14 testimony until today, you may assume we have read
15 your statements, so you do not need to use them to
16 read as your opening remarks. Please focus your
17 remarks on the topic of the briefing.

18 I ask my fellow Commissioners to be
19 cognizant of the interest of each Commissioner to
20 ask questions and therefore to be brief in asking
21 your question so we can move quickly and
22 efficiently through today's schedule. And I will
23 step in to move things along as necessary.

24 Panelists, please notice the system of
25 lights that we have set up. When the light turns

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1 from green to yellow, that means two minutes
2 remain. When the light turns red, that means you
3 should stop speaking. My fellow Commissioners and
4 I will do our part to keep our questions and
5 comments concise.

6 Now we'll turn to our first panel, the
7 federal government's role. And because of
8 scheduling, we will first hear from Representative
9 Bobby Scott, who is the Chair of the House
10 Committee on Education and Labor and a longtime
11 civil rights champion. And we will follow his
12 presentation with a brief question and answer
13 period and then proceed with the remaining
14 presenters on the panel.

15 Congressman Scott, please begin.

16 **PANEL ONE:**

17 **THE FEDERAL GOVERNMENT'S ROLE**

18 **U.S. REPRESENTATIVE ROBERT C. "BOBBY" SCOTT,**
19 **CHAIRMAN, HOUSE COMMITTEE ON EDUCATION AND LABOR**

20 REPRESENTATIVE SCOTT: Well, thank you,
21 Madam Chair and members of the Commission. My name
22 is Bobby Scott, and I represent Virginia's 3rd
23 Congressional District and serve as Chair of the
24 House Committee on Education and Labor.

25 I'm grateful for the opportunity to

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1 testify today on two of our Committee's priorities,
2 HR 582, the Raise the Wage Act, which passed the
3 House in July, and HR 873, the Transformation to
4 Competitive Employment Act. Both of these bills
5 will take long-overdue steps to eliminate the
6 subminimum wage for workers with disabilities.

7 After more than ten years without an
8 increase in the federal minimum wage, which is the
9 longest period in the history of the minimum wage,
10 the Raise the Wage Act would gradually increase the
11 federal minimum wage to \$15 an hour by 2025,
12 increase the pay for 33 million workers, lift 1.3
13 million Americans out of poverty, including 600,000
14 children.

15 This bill also ensures that all covered
16 workers will make the full minimum wage. The Raise
17 the Wage Act gradually phases out the 14(c)
18 subminimum wage for the, in the Fair Labor
19 Standards Act. Currently under 14(c) employees and
20 organizations can apply for certificates that allow
21 them to pay individuals with disabilities less than
22 the minimum wage.

23 In other words, 14(c) certificates
24 legally permit employers to pay individuals the
25 subminimum wage based on, based not on performance

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1 or skill, but based on their ability status alone.

2 Still worse, the 14(c) subminimum wage
3 effectively eliminates any minimum wage for workers
4 with disabilities. For many of those individuals,
5 the estimated hourly wage is approximately \$2.50 an
6 hour. For too many, it's even less than that. The
7 FLSA provision is a relic of an era when people
8 with disabilities did not have federal protections
9 and were viewed as unable to work at all.

10 Yet thanks to generations of struggle,
11 Congress passed the key federal laws that guarantee
12 all students and workers the education and
13 workplace rights they deserve, regardless of
14 disability. The Individuals with Disabilities
15 Education Act, for example, ensures children with
16 disabilities access to free and appropriate
17 education.

18 The Developmental Disabilities Bill of
19 Rights provides people with developmental
20 disabilities the opportunity to shape and access
21 community services, individualized supports, and
22 other forms of assistance. Finally, the Americans
23 with Disabilities Act guarantees equal
24 opportunities for individuals with disabilities in
25 all areas of public life.

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1 Decades after the passage of these
2 federal protections, Congress has a responsibility
3 to ensure that workers with disabilities can access
4 fair wages alongside their non-disabled peers and
5 opportunities to meaningfully contribute to their
6 communities. Opponents have argued that phasing
7 out the subminimum wage will burden businesses
8 relying on 14(c) certificates and restrict
9 opportunities for workers with disabilities, but
10 the evidence shows otherwise.

11 States that have phased out 14(c) have
12 taken the initiative to provide individuals with
13 disabilities the opportunity to work and contribute
14 to the local economies.

15 For example, Vermont reported that 61%
16 of individual with disabilities in the state found
17 work in the community within one year of receiving
18 state employment supports. Between 2005 and 2019,
19 Vermont saw individuals with disabilities pay \$11.9
20 million in payroll taxes and reduced social
21 security and other social services by more than
22 five million dollars.

23 Even in states where 14(c) certificates
24 are still allowed, like my home state of Virginia,
25 some providers have discontinued the subminimum

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1 wage in favor of inclusive workplaces that meet the
2 needs and preferences of workers. As these
3 workplaces shift towards inclusivity, workers with
4 disabilities have more opportunities to leave 14(c)
5 workplaces, gain new skills, and find fully
6 integrated employment.

7 In fact, the evidence show that fully
8 integrating workers with disabilities into the
9 general workforce actually increases their
10 productivity. More importantly, when individuals
11 with disabilities transition to competitive
12 employment, they are better able to achieve
13 financial independence, they have more time and
14 opportunities to engage in their communities.

15 However, the Committee also recognizes
16 that some states and providers have struggled to
17 find appropriate, meaningful alternatives to 14(c)
18 workplaces, and even some workers and their
19 families have resisted this change.

20 And that's why I introduced the
21 Transformation to Competitive Employment Act to
22 accompany the Raise the Wage Act to ensure that
23 workers with disabilities can successfully
24 transition out of subminimum wages under 14(c).
25 This bill provides states and employers across the

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1 country with resources to work with the disability
2 community towards creating fully integrated
3 competitive employment opportunities for
4 individuals with disabilities.

5 Specifically, the bill establishes the
6 competitive state grant program to help providers
7 with 14(c) certificates change their business
8 models and assist workers with disabilities to make
9 the transition to competitive integrated
10 employment. Even in states that resist efforts to
11 eliminate subminimum wage for workers with
12 disabilities, the bill will also provide grants
13 directly to providers.

14 And finally, the bill establishes a
15 nationwide technical assistance center to help
16 transition individuals to competitive integrated
17 employment.

18 The Raise the Wage Act and the
19 Transformation to Competitive Employment Act are
20 part of our committee's effort to take the next
21 logical step towards civil rights and opportunities
22 for people with disabilities that is enlisting
23 states and providers to fully integrate workers
24 with disabilities into competitive employment.

25 Thank you, and I look forward to the

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1 questions.

2 CHAIR LHAMON: Thank you, Congressman
3 Scott. I'll open for questions. Commissioner
4 Narasaki.

5 COMMISSIONER NARASAKI: Good morning,
6 Congressman Scott, it's great to see you.

7 REPRESENTATIVE SCOTT: Good morning.

8 COMMISSIONER NARASAKI: I'm
9 particularly interested in the issue of transition-
10 age youth and the school-based certificates. And
11 you talked about closing the school-to-sheltered
12 workshop pipeline. So what is, how does your bill
13 do that, and why are you particularly concerned
14 about that?

15 REPRESENTATIVE SCOTT: Well, we want to
16 provide opportunities for people. If you own a
17 14(c) certificate, many people could be making a
18 full minimum wage, and we want to transition them.
19 Some will need support and services to make that
20 transition.

21 I suspect there may be some that even
22 with supports won't be able to make the minimum
23 wage, and some of the, yeah, grant programs will
24 provide opportunities, employment opportunities for
25 them. They'll make the minimum wage, but it'll

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1 probably be subsidized.

2 But we want to transition as many
3 people as possible out of the 14(c) certificate,
4 and we believe that with the support under the
5 bill, that'll take place.

6 COMMISSIONER NARASAKI: But do you have
7 a particular concern about the school-based ones?

8 REPRESENTATIVE SCOTT: School-based?

9 COMMISSIONER NARASAKI: Certificates.

10 REPRESENTATIVE SCOTT: I'm not familiar
11 with the school-based certificates, I was talking
12 about those 14(c) after, when they're in the
13 regular employment.

14 COMMISSIONER NARASAKI: Okay, thank
15 you.

16 CHAIR LHAMON: Congressman Scott, in
17 your testimony, I appreciated that you referenced
18 also the concern some families have about their
19 ability to continue to support persons with
20 disabilities if the 14(c) program were terminated.
21 And you referenced ways that Medicaid could still
22 be used, and also ideas that are in play for ways
23 to make sure that people are supported. Could you
24 expand on that for us?

25 REPRESENTATIVE SCOTT: Well, one of

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1 the things that people are concerned about is you
2 may lose certain benefits if you actually make more
3 money. If that's a concern, they could work fewer
4 hours at a higher minimum wage and keep their
5 income lower. But basically, the idea that you can
6 make more money doesn't seem to be a negative
7 factor, it seems to me to be a good thing.

8 Many of the programs don't have the
9 cliff where if you make a dollar more you lose all
10 your benefits. A lot of them are phased in. But
11 the fact that people with disabilities can make
12 more money, if there is a problem with the
13 threshold, then we, maybe the programs can address
14 those thresholds. But you shouldn't deny people
15 the opportunity to make a full minimum wage if they
16 can.

17 CHAIR LHAMON: Thanks very much. Other
18 questions for the Congressman? Commissioner
19 Adegbile?

20 COMMISSIONER ADEGBILE: Good morning,
21 Congressman Scott.

22 REPRESENTATIVE SCOTT: Good morning.

23 COMMISSIONER ADEGBILE: Thank you for
24 your testimony. Congressman Scott, you spoke a
25 little bit about this 14(c) exemption being one of

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1 the only pieces of our law that tolerates on its
2 face a particular type of differential treatment
3 based on status. I'm interested in your views
4 about whether today continuing that --

5 CHAIR LHAMON: Commissioner Adegbile,
6 just move the mic a little closer to you.

7 COMMISSIONER ADEGBILE: Sorry, normally
8 my mouth is sufficiently big that it projects.
9 It's early in the day, so I was trying to save our
10 audience from it. So my question is can you help
11 us think a little bit about whether or not this
12 type of facial difference, discrimination, is
13 consistent with our larger conception of equal
14 protection.

15 REPRESENTATIVE SCOTT: Well, we, the
16 individuals with -- the ADA provides that people
17 with disabilities should be treated like everybody
18 else. If they can make the minimum wage, if they
19 can get a job, they ought to be able to make the
20 minimum wage.

21 You ought not to be able to pay them a
22 differentiated wage just because they have a
23 disability. And we found that in most of the
24 people on 14(c) could, perhaps with a little
25 support, make a full minimum wage.

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1 There are other parts of the Raise the
2 Wage Act, the tipped minimum wage, the youth
3 minimum wage, that are both phased out. But with
4 the workers with disabilities, there's no excuse.
5 Some of them are making like a penny an hour, I
6 mean, just not getting anything at all. On
7 average, it's about \$2.50, when the minimum wage is
8 \$7.25.

9 And the idea under the Americans with
10 Disabilities Act, Individuals with Disabilities
11 Act, and others is that people ought not be
12 discriminated against because of their disability.
13 And 14(c) specifically allows that.

14 COMMISSIONER ADEGBILE: One additional
15 question, can you explain what the conception is of
16 the phase-out, why it is that the bill contemplates
17 certain phase-outs rather than an immediate change.

18 REPRESENTATIVE SCOTT: Well, if people
19 are -- I think phasing in makes it easier to get
20 the job done. When you have an abrupt change,
21 sometimes the adjustment is very difficult. But by
22 phasing it out, that gives people a lot of time to
23 adjust to make sure the supports are there. And
24 you don't have the problem of an abrupt change
25 where people may be left in the lurch.

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1 COMMISSIONER ADEGBILE: Thank you.

2 CHAIR LHAMON: Madam Vice Chair.

3 VICE CHAIR TIMMONS-GOODSON: Again,
4 thank you very much, Representative Scott. You
5 have made the point about the outdated nature of
6 14(c) and how the landscape in our country has just
7 changed. That same argument has been made by
8 others that will follow you today.

9 One of the things that has changed the
10 landscape is the prevalence of technology. I know
11 that you have a personal interest in technology.
12 Can you talk to us about technology and the role
13 that it does and can and will continue to play in
14 the lives of those that are disabled as well.

15 REPRESENTATIVE SCOTT: Well, this is
16 one of the reasons why we believe most of the
17 people can transition. With new technology, with
18 new supports, new methodology, people can work and
19 earn the full minimum wage. There's technology,
20 and just in typing, you can talk into your computer
21 and get the words printed up, you don't have to
22 type each individual letter.

23 And so there's a lot of technology that
24 can allow people to do jobs that they couldn't have
25 done before. And what the transition legislation

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1 will do is to identify what people can do and then
2 figure out what jobs they can perform effectively
3 with the appropriate technology. And so I think
4 when 14(c) was, first came about, you didn't have
5 those kind of supports, and you do now.

6 CHAIR LHAMON: So Congressman Scott, I
7 want to be mindful of your schedule. I really
8 appreciate your coming, it's really a true pleasure
9 to have you with us today. And we understand that
10 you will have to leave and we will proceed with the
11 rest of our meeting.

12 REPRESENTATIVE SCOTT: Thank you.

13 CHAIR LHAMON: Thank you. So turning to
14 the rest of our panel, the order in which they will
15 speak is first Mary Ziegler, who is Associate
16 Administrator for Policy, Wage and Hour Division at
17 the U.S. Department of Labor. Thank you for
18 coming.

19 And then Neil Romano, thank you for
20 coming, who is the Chairman of the National Council
21 on Disability, which I note, like the Commission,
22 is an independent commission that advises the
23 government, so it's lovely to have you with us.

24 And then Alison Barkoff, thank you,
25 Director of Advocacy at the Center for Public

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1 Representation.

2 So we'll begin with Ms. Ziegler.

3 Please proceed.

4 **MARY ZIEGLER, ASSOCIATE ADMINISTRATOR,**
5 **OFFICE OF POLICY, WAGE AND HOUR DIVISION,**
6 **U.S. DEPARTMENT OF LABOR**

7 MS. ZIEGLER: Good morning,
8 Commissioners.

9 CHAIR LHAMON: I don't think your mic
10 is on. There you go.

11 MS. ZIEGLER: Thank you. Good morning,
12 Commissioners, the staff of the U.S. Commission on
13 Civil Rights, and my fellow panelists. Thank you
14 for inviting me here today to talk to you about the
15 Wage and Hour Division at the U.S. Department of
16 Labor and our role in enforcing and administering
17 Section 14(c) of the Fair Labor Standards Act, or
18 FLSA.

19 My name is Mary Ziegler, and I'm the
20 Associate Administrator for Policy at the U.S.
21 Department of Labor's Wage and Hour Division. I'm
22 here today to discuss Section 14(c), the
23 administration of the program, and related recent
24 activity.

25 The Wage and Hour Division is a federal

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1 law enforcement agency with the mission to promote
2 and achieve compliance with the labor standards
3 that protect and enhance the welfare of workers in
4 the United States. In addition to the FLSA, Wage
5 and Hour administers and enforces over a dozen laws
6 which cover private, state, and local government
7 employment.

8 The FLSA provides for the employment of
9 certain individuals at wage rates below the
10 generally applicable statutory minimum. FLSA
11 Section 14(c) authorizes employers, after receiving
12 a certificate from the Department, to pay certain
13 individuals wages that are less than the federal
14 minimum wage if their earning or productive
15 capacity is limited as a result of a disability.

16 The purpose is to prevent curtailment
17 of opportunities for employment. Notably, the
18 lower wage rate is permitted under limited
19 conditions and only under certificates issued by
20 Wage and Hour.

21 Wage and Hour has a responsibility to
22 carry out a rigorous, consistent, and effective
23 program to obtain and maintain compliance with the
24 statutory and regulatory requirements of Section
25 14(c).

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1 To maximize resources, Wage and Hour
2 balances key strategies and a multi-pronged
3 approach to effect compliance, including outreach
4 and education to employers and employees,
5 partnerships with stakeholders, the promotion of
6 public awareness through media activities, and
7 enforcement, including both complaint- and agency-
8 based investigations.

9 We take seriously our responsibility to
10 enforce the law. Responsibility for administering
11 and enforcing Section 14(c) of the FLSA has been
12 delegated entirely to the Wage and Hour Division.
13 The FLSA requires the Department to establish
14 regulations governing the issuance and enforcement
15 of Section 14(c) certificates. Those regulations
16 describe Wage and Hour's role in enforcing and
17 achieving compliance with the Section 14(c)
18 requirements.

19 Section 14(c) is a certificate-based
20 program. Certificates are issued to an employer
21 and are not issued to individual employees or
22 groups of employees. The certificate application
23 requires employers to provide Wage and Hour
24 information about themselves and a snapshot of
25 information about the way they use or seek to use

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1 the subminimum wage program.

2 Issuance of a certificate is not a
3 statement by Wage and Hour that the employer is in
4 compliance with Section 14(c) or other provisions
5 of applicable law. Neither does the certificate
6 provide the employer with a good faith defense
7 should violations of the law be found during an
8 investigation.

9 Education and outreach to employers and
10 workers has long been and will continue to be one
11 of Wage and Hour's key strategies for promoting
12 compliance. Specific to Section 14(c), each year
13 for the last eight years, Wage and Hour hosted
14 several public full-day Section 14(c) seminars
15 throughout the country for certificate holders,
16 advocates, workers, and other interested parties.

17 Since 2008, Wage and Hour has published
18 numerous guidance documents, including fact sheets,
19 letters to certificate holders, public PowerPoint
20 presentations, guidance on compliance with the
21 Rehabilitation Act Section 511 requirements, and
22 other materials. Wage and Hour maintains a robust
23 website of information and compliance assistance
24 materials for all employers, as well as any
25 interested stakeholders.

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1 While the 14(c) program is one of the
2 many program areas that Wage and Hour enforces, we
3 investigate on average approximately eight percent
4 of the total universe of certificate holders each
5 year to determine compliance with the requirements
6 of the Section 14(c) program. This represents
7 proportionately more employers than we investigate
8 in any other program area that Wage and Hour
9 enforces.

10 In fiscal year 2019 alone, Wage and
11 Hour concluded 227 14(c) investigations, accounting
12 for nearly 14% of certificate holders. In these
13 investigations, Wage and Hour recovered nearly \$2.5
14 million for workers. As you can see, Wage and Hour
15 is committed to maintaining its enforcement
16 presence in this program area.

17 Compliance actions are initiated both
18 in response to complaints and data-driven, agency-
19 initiated investigations. In the event that Wage
20 and Hour discovers a deficiency during the course
21 of an investigation, investigators charge a
22 violation and inform the employer of the issues.
23 Wage and Hour provides compliance assistance to
24 help the employer correct the errors and seeks an
25 appropriate remedy.

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1 Generally, only after the employer has
2 corrected the issues and agreed to compliance will
3 Wage and Hour collect back wages and conclude its
4 investigation. Nearly every case is resolved
5 through administrative means. However, when that
6 is not possible, Wage and Hour uses every
7 appropriate tool to remedy the violations,
8 including certificate revocation and legal action.

9 The Workforce Innovation and
10 Opportunity Act placed direct restrictions on the
11 payment of subminimum wages to workers with
12 disabilities under 14(c) through amendments to the
13 Rehabilitation Act Section 511. Wage and Hour
14 includes a review of Section 511 compliance in
15 every Section 14(c) investigation.

16 We've also published two field
17 assistance bulletins that describe in detail our
18 authority and jurisdiction to enforce these
19 requirements, as well as a fact sheet to provide
20 employers the information they need to comply.

21 To enhance our enforcement efforts with
22 respect to 14(c) certificate holders, over the last
23 several years Wage and Hour has taken a more
24 strategic approach to strengthen its enforcement
25 and administration of the Section 14(c) provisions,

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1 thereby ensuring that employers are held
2 accountable for understanding and complying with
3 the law.

4 One example of our stepped-up
5 enforcement is our use of certificate revocation.
6 In 2013, Wage and Hour took this approach with two
7 Rhode Island entities, one a disability services
8 provider with a work center, and the other a school
9 which was a point of origin for many of the work
10 center's employees.

11 As a result of the findings of the
12 investigations, the Department revoked all Section
13 14(c) certificates held by both entities, for
14 numerous legal violations and all FLSA-covered
15 employees were owed the full federal minimum wage
16 for all hours worked. To date, Wage and Hour has
17 revoked the certificates of six employers.

18 We have fully implemented a certificate
19 review and denial process to better hold employers
20 accountable for the information they provide to
21 hold a 14(c) certificate. In addition, we're
22 undertaking a modernization of our 14(c) systems,
23 ensuring the design of our forms and modernizing
24 our certificate processing.

25 We appreciate the opportunity to be

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1 here to discuss Wage and Hour's role in the
2 administration and enforcement of Section 14(c) of
3 the FLSA, and we look forward to working with the
4 Commission as you continue your study.

5 CHAIR LHAMON: Thank you very much, Ms.
6 Ziegler. Mr. Romano.

7 **NEIL ROMANO, CHAIRMAN**

8 **NATIONAL COUNCIL ON DISABILITIES**

9 MR. ROMANO: Esteemed Commissioners,
10 thank you for the opportunity to testify at this
11 briefing. I'm Neil Romano, the Chairman of the
12 National Council on Disabilities, a federal
13 advisory board that since 2012 has recommended that
14 Congress eliminate the 14(c) provision of the Fair
15 Labor Standards Act.

16 Last year, NCD recommended that the
17 United States Department of Labor impose a
18 moratorium on the issuance of any new 14(c)
19 certificates and strengthen their overall
20 enforcement of the program. Let there be no
21 mistake, this was designed as a first step towards
22 the total elimination of the program.

23 Some people will testify before this
24 body about the importance of maintaining the choice
25 or option to work for subminimum wages. The belief

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1 that someone would choose to make less money for
2 their work is, in and of itself, a demonstration of
3 how certificate holders do not believe that people
4 with disabilities are whole people capable of
5 making even the most basic decisions beneficial to
6 themselves.

7 As you look at this issue, please don't
8 lose sight of our national policy goals, which are
9 tied to the advancement of civil rights for people
10 with disabilities and all Americans. The ADA
11 became the law of the land to assure equality of
12 opportunity, full participation, independent
13 living, and economic self-sufficiency. Each of
14 these national goals is compromised or impossible
15 as long as paying people with disabilities
16 subminimum wages persists.

17 It helps to remember 14(c)'s age. It
18 became legal to pay people with disabilities below
19 the minimum wage in 1938, when there was no
20 federally protected civil rights for anyone, let
21 alone people with disabilities. Anything done for
22 people with disabilities in the 1930s, like
23 affording them the opportunity to earn pennies an
24 hour, was charity because a lack of belief in
25 people with disabilities was the game at that time.

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1 However, since the 1930s, society and
2 people with disabilities have come to expect far
3 more out of their lives than past public policies
4 allowed. Today we have different words for the
5 opportunity to work for pennies an hour, words like
6 discrimination and exploitation.

7 I could go into the federal protections
8 here, and I have them in my written testimony, but
9 for the sake of time I would rather note the
10 federal protections that do not exist.

11 To understand where federal protections
12 are lacking, it's important to briefly unpack the
13 doublespeak in the narrative of many community
14 rehabilitation providers, some of whom you'll hear
15 from today.

16 On the one hand, these providers will
17 regularly reference to people with disabilities
18 they serve as workers and employees. They will say
19 that their employees, quote, love the work that
20 they are doing and that there is dignity in the
21 jobs that these individuals are doing and the
22 paychecks they are earning, regardless of how
23 meager they actually are.

24 And to be clear, whether performing
25 tasks like bagging screws or untangling hangers,

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1 there is financial benefit to the CPRs in the work
2 these individuals are doing. In many instances,
3 these individuals are performing tasks that fulfill
4 contracts the CPRs -- CRPs, excuse me, I do have
5 dyslexia -- the CRPs have with the outside
6 businesses.

7 So yes, it is work. And yes, someone
8 is gaining benefit from that work. But sadly, it
9 is not the person with the disability.

10 On the other hand, in spite of the
11 prolific employment terminology and the financial
12 benefit to the CRPs for the work performed, in
13 other contexts, CRPs will say they are simply job
14 training and not jobs.

15 For instance, in response to questions
16 from sheltered workshop providers to the
17 Occupational Safety and Health Administration,
18 OSHA, regarding recordkeeping requirements, OSHA
19 stated that sheltered workshops are an exempt
20 industry, as, quote, job training and vocational
21 rehabilitation providers, and thus do not need to
22 keep OSHA injury and illness records.

23 As someone who has toured dozens of
24 sheltered workshops around the country, some very
25 clean and well-lit, and others dim, dirty, and

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1 poorly ventilated, it should be everyone's concern
2 that there's no required reporting of injuries or
3 illnesses that occur in facilities where some of
4 our most vulnerable Americans work.

5 You know, you can't have it both ways,
6 you simply can't have it both ways. 14(c) is
7 either work or it's training. If it's work, then
8 it's clearly discriminatory. And if it's training,
9 it is the most abysmal failure in job training
10 history, with many of the people with disabilities
11 subject to training for 20, 30, even 40 and more
12 years, sheltered away in gulags of indifference,
13 many times without any meaningful connection to the
14 community or hope for their futures.

15 According to a letter I received from
16 the Department, from the Deputy Secretary of the
17 Department of Labor, in fiscal 2017, Wage and Hour
18 investigated 217 workshops, 90% of which were found
19 to have violated 14(c) recommendations,
20 requirements, resulting in nearly \$2.5 million in
21 back wages impacting 7,302 employees.

22 In 2018, Wage and Hour investigated
23 another 201 cases, 83% of which were found with
24 violations, resulting in nearly \$2.6 million in
25 back wages, and impacting 9,133 employees. And we

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1 just heard of another investigation that was just
2 about on the same level.

3 That percentage of violations in any
4 other kind of business would be unacceptable. Just
5 remember for a moment that these folks are making
6 less than minimum wage. And if you're talking
7 about \$2.00 an hour as the average, then what we're
8 talking about is they're making tons less and a lot
9 is being taken away.

10 It is said that we collect data on
11 things we view as important, and historically we
12 just don't count people with disabilities. For
13 this reason, not surprisingly, there's an extreme
14 lack of data available on people with disabilities
15 who are paid subminimum wages in America.

16 For far too long, the facts about 14(c)
17 have been hidden from the public and policymakers,
18 leaving the, quote, truth about 14(c) to be
19 designed by the lobbyists for the providers, who
20 have the most to gain by the continuation of this
21 decrepit program.

22 That's why we're delighted that Wage
23 and Hour recently converted its 14(c) application
24 from paper to an electronic format, because there
25 is great opportunity to collect, aggregate, and

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1 analyze information in a way that was not
2 previously available. When NCD first called for
3 the phase-out of 14(c), no state or local
4 governments had eliminated them. Many have now.

5 Even the AbilityOne Program has asked
6 all of their central nonprofits to phase out the
7 use of subminimum wage. And this year,
8 SourceAmerica's Board of Directors adopted a
9 position to phase out the elimination, the practice
10 of 14(c) on all its AbilityOne contracts within
11 three years.

12 For far too long, 14(c) holders have
13 used the scare tactics that if 14(c) is eliminated,
14 people will lose their jobs --

15 CHAIR LHAMON: Thank you, Chairman
16 Romano, we need to move on. Thank you. But we
17 will look forward to questions.

18 MR. ROMANO: Okay.

19 CHAIR LHAMON: Ms. Barkoff.

20 **ALISON BARKOFF, DIRECTOR OF ADVOCACY,**
21 **CENTER FOR PUBLIC REPRESENTATION**

22 MS. BARKOFF: Good morning,
23 Commissioners, and thank you for inviting me to
24 testify today. My name's Alison Barkoff, and I've
25 spent more than 20 years enforcing disability

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1 rights laws. I'm currently at the Center for
2 Public Representation, but I've also had the
3 privilege of working on enforcement at the
4 Departments of Justice, Health and Human Services,
5 and Labor.

6 Most importantly, I approach this work
7 as a family member, and I've seen firsthand the
8 impact of disability rights laws and enforcement on
9 the lives of people with disabilities over the 40
10 years of my brother's life.

11 Numerous federal agencies play a
12 critical role in protecting and advancing the civil
13 rights of people with disabilities, including
14 people in or at risk of entering segregated,
15 subminimum wage settings called sheltered
16 workshops. I'll start with the Department of
17 Justice that's charged with enforcing the Americans
18 with Disabilities Act.

19 The ADA prohibits discrimination by
20 public entities and requires them to provide
21 services in the most integrated setting, meaning a
22 setting where people with and without disabilities
23 can be alongside each other. The Supreme Court in
24 Olmstead v. L.C. interpreted the integration
25 mandate to mean that unjustified segregation is

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1 discrimination and held that people with
2 disabilities have a civil right to inclusion in all
3 aspects of life.

4 Federal courts have interpreted
5 Olmstead to reach all types of segregation,
6 including in sheltered workshops. And consistent
7 with DOJ's position, courts have rejected efforts
8 by some providers to try to use Olmstead to demand
9 a, quote unquote, choice of segregation in
10 institutions and sheltered workshops.

11 In the last administration, DOJ brought
12 several lawsuits finding that states were violating
13 the civil rights of people with disabilities by
14 primarily funding and relying on sheltered
15 workshops instead of providing employment services
16 to help people work in community jobs at fair
17 wages, known as competitive integrated employment.

18 These lawsuits have given thousands of
19 people the opportunity to work in competitive
20 integrated employment. Unfortunately, DOJ has
21 recently taken steps backwards.

22 In December 2017, at the urging of the
23 sheltered workshop lobby, DOJ rescinded guidance
24 about the application of Olmstead to states'
25 employment systems to, quote unquote, afford

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1 further discussion with relevant stakeholders. To
2 date, DOJ has not engaged stakeholders further, and
3 this important guidance to public entities remains
4 withdrawn.

5 The Department of Health and Human
6 Services is another agency that is key in ensuring
7 people have the civil right to work alongside
8 people without disabilities. Medicaid funds a
9 range of employment and day services to people with
10 disabilities, paid for as what is known as home and
11 community-based services, or HCBS.

12 This includes supported employment to
13 help people work in competitive integrated
14 employment, as well as what's called pre-vocational
15 services in sheltered workshops.

16 Federal Medicaid policies have
17 historically fueled nearly three-quarters of a
18 billion dollars into sheltered workshops, money
19 that could instead be used to help people work in
20 competitive integrated employment. Fortunately,
21 this is beginning to change.

22 In 2014, the Centers for Medicare and
23 Medicaid Services issued a new rule called the HCBS
24 settings rule to advance the civil right of people
25 with disabilities under Olmstead by ensuring that

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1 all people receiving Medicaid HCBS have
2 opportunities for competitive integrated employment
3 and are not limited to segregated placements.

4 Several states have already started
5 phasing out sheltered workshops and expanding
6 supports to help people get competitive integrated
7 employment as they're implementing this rule. If
8 CMS ensures states fully implement this rule in
9 their employment systems, it will be one of the
10 most impactful policy changes in the history of
11 disability employment.

12 The Department of Education also plays
13 an important role in protecting the civil rights of
14 people in or at risk of entering sheltered
15 workshops.

16 The Department's Rehabilitation
17 Services Administration is charged with
18 implementing the Workforce Innovation and
19 Opportunity Act, or WIOA, a 2014 law that
20 prioritizes federal funding for competitive
21 integrated employment and significantly limits the
22 placement of people in sheltered workshops,
23 particularly students who are transitioning from
24 school to employment.

25 RSA has provided little technical

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1 assistance or public data on states' implementation
2 around sheltered workshops. While preliminary data
3 from individual states shows that many people in
4 sheltered workshops, when asked, say they would
5 like to work in competitive integrated employment,
6 without technical assistance and data, we can't
7 know if these individuals' rights are being
8 vindicated.

9 In 2016, RSA issued regulations and
10 guidance implementing WIOA's definition of
11 competitive integrated employment. But
12 unfortunately, again due to pressure from the
13 sheltered workshop lobby, RSA has recently
14 announced plans to reopen the regulations.

15 The National Council with Disability
16 and hundreds of disability organizations, family
17 members, and people with disabilities themselves
18 have spoke out against the rules being reopened.

19 I will end by briefly talking about the
20 Department of Labor, which oversees Section 14(c).
21 In WIOA, Congress created a federal advisory
22 committee made up of stakeholders with a range of
23 perspectives, including providers who use 14(c)
24 certificates. I was privileged to serve as a
25 member of this committee.

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1 The committee unanimously concluded
2 that Section 14(c) is outdated and antithetical to
3 every civil rights law relating to people with
4 disabilities and recommended its phase-out.

5 This view is supported by the vast
6 majority in the disability community, including
7 most importantly, people with disabilities and
8 families. While you'll later hear from the
9 sheltered workshop lobby about their view on what
10 people with disabilities and families think, I
11 would encourage you to seek out the stories
12 directly from people who have made that transition
13 and their family members, including people who
14 recently testified at a congressional briefing last
15 month. And I'm happy to share the testimony and
16 brought copies.

17 While only Congress can amend or
18 eliminate Section 14(c), there are ways that DOL
19 can improve enforcement and oversight in the
20 meantime. In particular, there is an abysmal
21 failure to collect important data about people
22 working under Section 14(c), which impedes the
23 ability of the Department of Labor to oversee the
24 program and the ability of other federal agencies
25 to protect the civil rights of people with

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1 disabilities.

2 In sum, while the federal government
3 has taken important steps to protect and advance
4 the rights of people with disabilities in the
5 employment arena, there is so much more than can
6 and must be done. Thank you for this opportunity
7 and I welcome any questions.

8 CHAIR LHAMON: Thank you to each our
9 panelists. And I will just say that we would
10 welcome having the testimony that you brought
11 entered into the record, so thank you very much for
12 that.

13 I'll open for questions. Commissioner
14 Narasaki.

15 COMMISSIONER NARASAKI: Thank you. Ms.
16 Barkoff, you have a lot of expertise on the
17 policies affecting the transition-age youth. So I
18 hope that you can enlighten us on the school-to-
19 workshop pipeline and your concerns about that, and
20 how that squares with civil rights laws, and what
21 you think about proposals to address that.

22 MS. BARKOFF: Sure. Again, thank you
23 for the opportunity. And I think there are really
24 three important pieces around transition-age youth.

25 I can certainly say that while we're

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1 here talking about this issue, for many people with
2 disabilities, particularly intellectual
3 disabilities, the default that for a very long time
4 for students with disabilities, families are told,
5 well, we're working on transition, and the
6 transition is to the sheltered workshop that, at
7 least historically, had been connected to the
8 school.

9 The Workforce Innovation and
10 Opportunity Act really tried to take on that
11 school-to-sheltered workshop pipeline in three
12 important ways. The first is that for anyone under
13 24 years old, they must have an opportunity to try
14 competitive integrated employment before anyone can
15 be referred to a workshop.

16 That is a game changer that is
17 completely different than the experience my family
18 had and many others before this law. And it's
19 important that we make sure the Department of
20 Education is making this, making sure it's
21 happening.

22 You mentioned schools contracting with
23 sheltered workshops. So literally their transition
24 is, oh, go down the hall to start working in the
25 sheltered workshop. 511 now prohibits schools from

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1 contracting with subminimum wage settings.

2 And then most importantly in WIOA, for
3 someone who's transitioning, they have the school
4 system they're working with, they're starting to
5 enter the vocational rehabilitation system. And
6 states now must have memorandum of understanding
7 between all of the agencies and come up with a
8 single plan and make sure money ends up and works
9 together.

10 I think the most important thing in my
11 experience is working with families and people with
12 disabilities early in their education, so the
13 Individuals with Disabilities Act has transition
14 provisions. And really starting at age 14 saying
15 what are your skills, what are your interests. And
16 the best predictor for students getting a real job
17 is having real work experiences while they are in
18 school.

19 So we have laws that are out there.
20 They are not fully being enforced at this point,
21 but we absolutely have a framework and need to be
22 working with families and people with disabilities
23 to raise the expectation that they will go from
24 school to employment.

25 COMMISSIONER NARASAKI: So what more

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1 can agencies be doing to make sure that there's
2 enforcement? How well are they educating parents
3 about the rights of their children?

4 MS. BARKOFF: I think that some of this
5 is a culture change with these new laws, and again,
6 included in the testimony, we did an entire
7 briefing on transition-age youth. There are some
8 families who because they are seeing kind of peers
9 a generation older working in real jobs, you know,
10 have those expectations, and they are pushing the
11 system to provide them the opportunities.

12 At a briefing we had just last month,
13 though, we heard from a family member who said I,
14 my son, they just told us to go to a sheltered
15 workshop. I never even heard of competitive
16 integrated employment. I didn't know what was
17 possible.

18 So I think, you know, we have an entire
19 chapter in the Committee report to Congress and the
20 Secretary and a big piece is, you know, raising
21 expectations, and then making sure that schools
22 really have buy-in to that and that transition is
23 focused on what can you do, not what are your
24 weaknesses.

25 COMMISSIONER NARASAKI: Thank you.

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1 MS. BARKOFF: Thank you.

2 CHAIR LHAMON: Commissioner Kladney.

3 COMMISSIONER KLADNEY: Thank you, Madam
4 Chair. Ms. Barkoff, along those lines, it's my
5 understanding that there's thousands of school
6 districts and there is no standardization as to how
7 to pull this program off.

8 How would you approach that in terms of
9 trying to make it happen? For instance, I have
10 here a pre-employment transition services manual
11 that a school uses, I think in Oregon. Yet I know
12 in my state, things are rough, so --

13 COMMISSIONER ADEGBILE: What is that
14 state, Commissioner?

15 CHAIR LHAMON: We're going to really
16 cement it for the record.

17 COMMISSIONER KLADNEY: It's not New
18 York. And so I was wondering, where can the
19 enforcement come from, where can standardization of
20 the programs come from, and how can implementation
21 happen through vocational rehabilitation?

22 MS. BARKOFF: This is where the role of
23 the federal government is so key. The federal
24 government, especially in the last few years, has
25 really kind of backed away from technical

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1 assistance and from guidance from agencies. But
2 that is absolutely what needs to happen. Again,
3 these laws are fairly new.

4 Some of this is a big culture change,
5 and we need to make sure that the federal agencies,
6 including the Department of Education, the
7 Department of Labor, vocational rehabilitation are
8 out there working with every single state agency to
9 make sure that they understand what these laws
10 mean, what employment first is.

11 And frankly, I think the best messenger
12 of all these stories if I was doing this training
13 is bringing in people with disabilities themselves
14 who are working and can talk about what it takes,
15 and family members who can talk about what their
16 concerns are and how to address those.

17 So I think that's a really important
18 role, and I would highly recommend the Committee
19 think about making recommendations about increased
20 technical assistance and guidance.

21 COMMISSIONER KLADNEY: Thank you. Mr.
22 Romano, there are witnesses that are going to
23 appear here later today that believe that people
24 with intellectual disabilities are more vulnerable
25 than people who don't have those disabilities, and

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1 as a result, need a controlled workspace where they
2 can be protected as opposed to integrated
3 employment. I was wondering if you had any
4 thoughts on that.

5 MR. ROMANO: Well, I'm not entirely
6 sure that they're correct that people with
7 intellectual disabilities are more vulnerable in
8 many ways. I mean, we see tremendous advances in
9 people with intellectual disabilities.

10 We see more people with ID and DD who
11 can read and who go through, who have gone through
12 IDEA and have programs. It's more of a projected
13 fear of how they're going to react or not.

14 But what's interesting to me is that as
15 we talk about this we get caught in the fog of
16 regulation. And I don't want to lose sight of the
17 fact that we're talking about massive
18 discrimination against a group of people.

19 You know, when we hear a workshop
20 saying that people are going to get fired, I'm
21 deeply concerned about that, I'm deeply concerned
22 for the parents. That's really gut-wrenching for
23 me. But the fact of the matter is what they're
24 actually saying is we don't want to pay the minimum
25 wage so we're going to fire them.

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1 So the very people that are saying
2 that, you know, we care about these people are the
3 same ones who are saying we're going to dump you
4 the minute we have to pay more. That's
5 unacceptable. So for us to sit and talk too much
6 about transition and to look too much about
7 transition, and as this panel, you know your jobs,
8 obviously you're very, very good at it.

9 But the recognition is, is this good
10 policy in 2019, to have a class of people who are
11 segregated and discriminated against. And with a
12 little deeper in an answer for you about whether or
13 not it's a good idea that they should be, I think
14 we call that segregation.

15 I think it's been called segregation
16 for a long time. And I think we have found in
17 many, many cases that segregation is not good. And
18 by the way, it's illegal. So you know, you can
19 call it what you want, but the fact of the matter
20 is that's exactly what it is. It's segregation.

21 COMMISSIONER KLADNEY: Thank you. Ms.
22 Ziegler, and Mr. Romano, because I know you've been
23 to a lot of sheltered workshops, I'm interested in,
24 I saw an old certification application. I know you
25 have a new one. The old one, they listed all the

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1 names, which I didn't get to see any, of the
2 participants in the work centers. And then across
3 the page, they had their hourly wage.

4 And this one I saw, I saw 176 people in
5 the application that made zero dollars an hour. So
6 what do those people do and how does Wage and Hour
7 handle that? And maybe Mr. Romano can tell me what
8 they do in his vision, I don't know. So. I mean,
9 are they working, are they considered workers?

10 MS. ZIEGLER: Thank you for the
11 question. To be on the, excuse me, when an
12 employer applies, and you must have seen a renewal
13 application, when an employer applies for a renewal
14 14(c) application, they are required to give us
15 information about the employees who were employed
16 at subminimum wages in the most recently completed
17 calendar quarter prior to the filing of the
18 application.

19 When you've seen that we've blacked out
20 the information for privacy reasons, blacked out
21 the information on employees. With the new
22 application, the employer is to provide us, in
23 addition to the name of the individual, the primary
24 disability affecting the employee's productivity,
25 the primary job that the individual is performing,

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1 and the primary rate of pay, whether that's a piece
2 rate or an hourly.

3 Without looking at the application, I
4 don't know, I can't tell you what they were doing
5 at zero dollars an hour. But we do gather that
6 information in making -- and use that on the basis
7 of making the determination of the certification.

8 COMMISSIONER KLADNEY: I think actually
9 maybe Mr. Romano can answer, my question goes to
10 are they considered employees or is that day
11 services? Exactly what is that?

12 MR. ROMANO: Well, that's a very, very
13 interesting question. We recently, there was a
14 letter that was sent from the workshops to the
15 Department of Labor that basically said they had a
16 great many people who were working for zero dollars
17 for them because these are people who were working
18 in other places for minimum wage.

19 And because their benefits prevented
20 them from going any further, they then for the rest
21 of the day would go over to a workshop where they
22 would be paid nothing, zero. These are people who
23 are getting paid somewhere else, real minimum
24 wages, but they can't work any further. And that
25 in and of itself should tell us, you know, why some

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1 of that happens, why there's zeros.

2 Because frankly, I cannot believe the
3 legality that that can in any way be legal. That
4 people who we know, and they have said, we are
5 working at minimum wage someplace else, but because
6 they can only work 15 or 20 hours a week, then go
7 over to a workshop at subminimum wage and are paid
8 zero.

9 COMMISSIONER KLADNEY: Do you have a
10 copy of that letter?

11 MR. ROMANO: That letter exists, I can
12 get it to you. I can absolutely get that to you.

13 COMMISSIONER KLADNEY: Thank you, I
14 appreciate it.

15 MR. ROMANO: No problem at all.

16 COMMISSIONER KLADNEY: Madam Chair.

17 CHAIR LHAMON: I just want to follow up
18 on Commission Kladney's question. Ms. Ziegler, can
19 you let us know are there circumstances under which
20 someone who was paid zero dollars an hour would be
21 considered by Wage and Hour an employee?

22 MS. ZIEGLER: I can't think of any
23 circumstances. I would need to look at that
24 application and see what's behind it.

25 CHAIR LHAMON: Okay, thank you. Mr.

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1 Romano, I was struck in your written statement that
2 you said that there is not a topic about which you
3 feel more strongly than ending subminimum wages for
4 people with disabilities. That was incredibly
5 powerful statement in the abstract, and coming from
6 you, given the scope of the work that you do with
7 respect to disabilities.

8 So could you tell us why it is your
9 position that this issue is the paramount issue for
10 you?

11 MR. ROMANO: You know, I'm one of those
12 people that actually believes what the Declaration
13 of Independence says, that everyone's created
14 equal. And I find this to be singularly the one
15 area where we have laws that discriminate against a
16 class of human beings, something we have been
17 fighting for, fighting for since the inception of
18 this country.

19 And here we are in 2019 arguing whether
20 or not this is a good idea or a bad idea. I find
21 it appalling. My upbringing, my religious
22 background, everything about me screams this is
23 discrimination at its worst.

24 And the worst part for me is that
25 someone who works in this field, to walk into a

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1 member's office or to meet with someone and have
2 them say, well, you know, Neil, you know, maybe we
3 can't push too far. Maybe they really aren't as
4 good as. I've heard these arguments before. I've
5 read more about the Civil War than probably anyone
6 in this room, and those were the same, exact
7 arguments used for slavery.

8 I'm sorry, I hate to say this, I know
9 my friends who are in the room that are, you know,
10 providers are going to be pissed off, excuse me,
11 annoyed with me for saying that. But the fact of
12 the matter is there's nothing else that one can
13 say. I don't care about the fog of oh, they need
14 to be, or oh, their parents -- I care deeply about
15 their parents.

16 But let's finish this off. Let's
17 transition and finally have the country that we
18 claim we are, which is a country where everybody is
19 considered for what they can do and not
20 marginalized for what they can't do or who they
21 are. That's why that gets me. It's my, it's been,
22 forgive me, it's been 65 years of thinking that way
23 about every human being, so I guess that's why.

24 CHAIR LHAMON: Thank you. You also
25 referenced in your testimony today an extreme lack

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1 of data about persons with disabilities in
2 employment. And I take it notwithstanding that
3 extreme lack of data, you don't think the nation
4 should wait before transitioning --

5 MR. ROMANO: You know, it's interesting
6 -- I'm sorry.

7 CHAIR LHAMON: No, go ahead.

8 MR. ROMANO: You know it's, for me, I
9 answer the questions and I, you know, I go. But
10 once again, I don't really care about the data or
11 the lack thereof. And I'm saying from the point of
12 view of the -- I do care a great deal about the
13 data.

14 (Laughter.)

15 MR. ROMANO: But I mean, I, what I'm
16 saying is it gets stuck. If we keep getting stuck
17 in the data and the data sets as opposed to whether
18 or not this is a legal, if this is a
19 constitutional. If this is not discrimination or
20 discriminatory. If we get stuck in the data, we
21 could be grinding on this another 81 years, okay.

22 My point is that we have to look at it
23 from a different point of view. However, I am
24 thrilled that Wage and Hour -- I think that comes a
25 little later in my talk. I am thrilled that Wage

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1 and Hour has put their data now on a computer.
2 They've computerized that.

3 Because we are going to get some new
4 data where we can at least, you know, until we
5 eliminate this burden, where we can at least
6 understand, you know, who these folks are, why
7 they're there, what they're doing. And not hear it
8 exclusively from the providers, who give us their
9 interpretation of why they're there.

10 So from my point of view, more data is
11 very, very important. I was at the Department of
12 Labor when we transitioned and started counting
13 people with disabilities in the workforce for the
14 first time. I was the Assistant Secretary then.
15 And there was a lot of arguments about why we
16 should or shouldn't do that back and forth.

17 Well, it has yielded tremendous
18 opportunities for us, tremendous benefits, because
19 at least we know who is and isn't in the workforce.

20 So I'm very happy that we're getting
21 the data, but once again, I'm the one that's going
22 to keep looking at you all and saying I don't want
23 to get involved in the fog of the data when the
24 fact of the matter is this is not what we're
25 talking about.

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1 CHAIR LHAMON: Thank you. Ms. Barkoff,
2 you also mentioned the absence of effective data,
3 and I want to pose the same question to you, do you
4 think that we should wait for better data before,
5 we as a nation should wait for better data before
6 making a transition to this program?

7 MS. BARKOFF: Absolutely not. I could
8 not agree more with that this is an abysmal civil
9 rights violation that sends a message to people
10 with disabilities that they are worth less. We
11 know that people with disabilities can work. And I
12 want to unequivocally say, again, I would have been
13 very happy to be on a panel that's about kind of
14 people with disabilities and family members,
15 because those stories really need to be told.

16 This is not about some people who can
17 work. We have seen that with the right supports,
18 with the right technology, all people with
19 disabilities can have those types of opportunities.
20 We cannot justify separating and segregating
21 people.

22 And I just, I would like to just
23 briefly touch on the question from Commissioner
24 Kladney, which we hear sometimes, which is people
25 are safer when they are segregated.

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1 We know from the last 60 years of
2 institutionalizing people, of putting people in
3 segregated settings, that when they are in settings
4 with only other people with disabilities and paid
5 staff and no external eyes and no people who care
6 about them because they know them, not because they
7 have to, people are incredibly unsafe. One of the
8 best protections for people with disabilities, and
9 I have seen this in my brother's life, is people
10 knowing him.

11 When Evan doesn't show up at work or
12 something doesn't seem right, we get calls from his
13 coworkers who know and care about him. So I would
14 really encourage people to think about safety, to
15 think about how community is safety, how being
16 known is safety, and how separating and segregating
17 people does not keep people safe. We have 60 years
18 of evidence about that.

19 CHAIR LHAMON: Thank you. I know that
20 other Commissioners have questions, I'm just going
21 to ask one last question of you, Ms. Barkoff.

22 MS. BARKOFF: Sure.

23 CHAIR LHAMON: You noted that the
24 Department of Justice rescinded guidance applicable
25 in this area. I will say that this Commission

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1 voted to criticize that recision, and so I
2 appreciate your raising the topic. I'd like to
3 know if it's your view that federal enforcement of
4 federal civil rights laws is or could be sufficient
5 to protect people's rights in this area.

6 MS. BARKOFF: I think there is an
7 absolute need for the Department of Justice to
8 prioritize enforcing Olmstead in this area. Not
9 only was the guidance rescinded, but there have
10 been no new cases in this area.

11 Fortunately, the ADA can be enforced
12 also by private plaintiffs and organizations like
13 mine that are committed to the civil rights of
14 people with disabilities, are continuing that work
15 with or without the Department of Justice.

16 But the power and might behind the
17 federal government cannot be understated. And I
18 think the message that has come to states and what
19 we've seen over the last two or three years with
20 this kind of stepback from DOJ, from other agencies
21 is we don't really have to worry about it, and it
22 has slowed down and halted, in some instances,
23 changed.

24 So it is absolutely critical that the
25 federal government take a strong enforcement role

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1 on all of these civil rights issues.

2 CHAIR LHAMON: So I appreciate that.
3 And I hear you that it would be useful for the
4 federal government to be enforcing that, you don't
5 see that happening effectively now. My question is
6 if it were, would that be enough and so there would
7 be no need to change the 14(c) program?

8 MS. BARKOFF: Oh, absolutely not. I
9 mean, we need to get rid of a outdated law that
10 completely is inconsistent with civil rights laws,
11 including the ADA. We have used the tools that we
12 have to blunt 14(c), but we cannot completely make
13 this change with the tools that we have now.

14 CHAIR LHAMON: Thank you. Commissioner
15 Kladney.

16 COMMISSIONER KLADNEY: I just have two
17 more -- I have so many questions.

18 (Laughter.)

19 COMMISSIONER KLADNEY: But I have to
20 prioritize. And I was going to ask one of these
21 questions later. The first question I have is
22 Commissioner Narasaki asked you about the school-
23 to-workshop pipeline. But the other half of that
24 is the counseling that is supposed to take place
25 annually at the community rehabilitation providers.

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1 And my question is is almost with the
2 schools and all the school districts, you have the
3 states and all the VR people and all the community.
4 How is that being done? Because it's my
5 understanding they're supposed to be counseled and
6 plans developed on several levels, the discovery
7 plan, the career development plan, the individual
8 placement and support.

9 There's like five more, and I'm not
10 going to take up the time. But it's my
11 understanding VR is supposed to do the counseling.
12 Is it documented, is it sent anywhere, does anyone
13 enforce it? Does anybody review what's been done?
14 Is it functioning?

15 MS. BARKOFF: So what you're referring
16 to is Section 511 requires for anyone who is in a
17 sheltered workshop to at least annually be made
18 aware of options for competitive integrated
19 employment.

20 It was a huge step in the law. And
21 that's what I was referring to, that there has not
22 been enough done.

23 It is absolutely critical that you
24 can't just walk in and say to someone who's spent
25 20 years in a sheltered workshop and may not know

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1 what competitive integrated employment is, oh, do
2 you want something different.

3 Really it has to be an engagement of
4 people with disabilities and their families and
5 really experiential to say let me take you to see
6 what this is.

7 We don't know what is happening because
8 the Department of Education is not yet collecting
9 data. We know from the initial data that many,
10 many people, a third, half are even with this
11 limited engagement saying I would like to work in
12 competitive integrated employment.

13 What we don't know is what happens
14 next. Is VR actually working with them to make
15 that transition? That is a really key point that
16 the Rehabilitation Services Administration
17 absolutely needs to be working with state VR
18 agencies to track that data. How long is it
19 taking? Are we working with them? What services
20 are we putting in place?

21 And we do not know that yet. And that
22 is a huge civil rights violation that is happening
23 each day as we go in and ask these people and give
24 them hope for this opportunity and then don't take
25 the next step to make it happen.

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1 COMMISSIONER KLADNEY: And the question
2 I was going to ask later, but I'm going to ask now
3 and then ask again later is Olmstead cases, Oregon
4 and Rhode Island. It seemed to me after reviewing
5 those cases and seeing what went on in those states
6 that that goes on in every state. So why only
7 those two states?

8 MS. BARKOFF: So I'm happy to bring 48
9 more. My organization is involved in Oregon.

10 But I think the hope when we were at
11 the Department of Justice is we tried to bring
12 cases to set a precedent. And what was really
13 useful and came out of those two cases is states
14 across the country actually affirmatively started
15 looking at their employment system, started doing
16 what we call Olmstead planning and saying what can
17 we do. We don't want to be sued by the Department
18 of Justice.

19 That's why that guidance was so
20 important. It really took what those two cases
21 were about, what the courts had said, what the
22 remedies looked like, and said, states, here's a
23 plan to start working on bringing your employment
24 systems into compliance with the ADA.

25 So, again, if we have to bring 48 more

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1 cases, we will. But what would be much more
2 effective is really trying to help states move in
3 that direction by saying, here's the rules of the
4 road, we will give you technical assistance, we'll
5 give you funding like the Transformation to
6 Competitive Employment Act.

7 But I suspect we will be bringing more
8 cases soon.

9 COMMISSIONER KLADNEY: Thank you. And
10 if there's any time later, I have more questions.

11 CHAIR LHAMON: Okay. Commissioner
12 Kirsanow.

13 COMMISSIONER KIRSANOW: Thank you,
14 Madam Chair. And thanks to all of the witnesses.
15 And thanks to staff for putting together this
16 panel.

17 You may have already said this in terms
18 of the inadequacy of the data. I'd like to see if
19 I can get somewhat of a baseline, though. I went
20 through the materials, and what I'm trying to see
21 it seems to be conflicting.

22 What's the aggregate number of
23 individuals who are covered under a 14(c)
24 certificate? It looked to me to be about 300,000.
25 Is that -- anyone know?

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1 MS. ZIEGLER: I think this is mine to
2 answer.

3 That is a perennial question. When
4 employers seek a renewal application for 14(c)
5 certification, they are required to include on the
6 application the number of employees employed at a
7 sub-minimum wage rate during the most recently
8 completed fiscal quarter prior to filing the
9 application.

10 Applications come in on a rolling
11 basis. So this is always a snapshot in time. It's
12 not a census. It's not a universe. But it does
13 give you an idea of the size of the universe. But
14 it doesn't give you the actual universe.

15 COMMISSIONER KIRSANOW: What's the idea
16 then? Is it -- do you have an approximation?

17 When I looked at some of the data, it
18 appeared to me, it was about 300,000, but I'm not
19 sure because I see all kinds of conflicting
20 numbers. And I know many of you don't like -- I
21 like data.

22 MR. ROMANO: No, and I like data. I
23 like data. Let me just suggest that part of that
24 is the fact that you have -- it depends on who you
25 talk to. And it's a shifting opinion.

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1 If you talk to the people who run
2 workshops, the number gets lower and lower. If you
3 talk to me, sometimes the number gets higher.

4 You know, the fact of the matter is
5 because of, as my friend here at Wage and Hour just
6 said, there is divergent data. Plus, we don't know
7 the day-to-day ups and downs of hiring and firing
8 like any other business. It's like saying how many
9 people there are.

10 The bottom line is that we need part of
11 the, part of what Wage and Hour is doing is trying
12 to get that for us. That's what we are hoping for.

13 But there's so many other things, like
14 what is the baseline amount of dollars being paid,
15 who are these people, where do they come from, how
16 are they paid, how many hours are they working for
17 the pay they're getting.

18 You know, when you hear something like
19 \$2.5 million, you know, is discovered with 200
20 organizations, it doesn't sound like much. But
21 that's a lot of money. And that's a lot of people
22 affected.

23 When you look at the universe, if
24 they're correct that the universe is 145,000
25 people, and 9,000 people in one test, in one

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1 grouping, 9,000? So you're talking about, you
2 know, X percentage, a large percentage. They've
3 all been mistreated or mishandled with their
4 dollars that they get? It's a big problem.

5 But we can't get even that kind of data
6 that truthfully, you know, on every other kind of
7 American we have.

8 COMMISSIONER KIRSANOW: Most of the
9 testimony today and questioning had to do with
10 CRPs. Again, looking at the data, it appears as if
11 maybe two-thirds of the individuals who are covered
12 pursuant to a 14(c) certificate work in some form
13 of CRP.

14 But is it, is the balance in schools,
15 hospitals, and private sector? And does anyone
16 know what percentages those amount to? You know,
17 for example, is it like five percent is in the
18 private sector? Does anyone have any idea?

19 CHAIR LHAMON: And I'll just jump in
20 also. It looked like, Ms. Ziegler, you were going
21 to answer with more specificity about the universe
22 in the program as you know it as well. So I want
23 to invite that if you did have that --

24 COMMISSIONER KIRSANOW: Thanks.

25 MS. ZIEGLER: Sure. Thank you. One

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1 place you can look for data on -- and again, this
2 is the snapshot in time. But on our website, we do
3 have information about the number of workers. And
4 we believe that that is accurate based on the
5 applications that we've received and gives you a
6 good idea of the number of workers, although not
7 the universe.

8 And now I need you to repeat your
9 second question --

10 COMMISSIONER KIRSANOW: Well, when I
11 look at -- and I've seen some of that data, because
12 I like looking at Wage and Hour Division data,
13 because I have no life. It looked as if there were
14 about 9 or 10,000 people in the private sector.
15 Does that sound about right?

16 MS. ZIEGLER: Yes, we can give you the
17 data on the distribution of certificates and the
18 number of workers based on the certificates, the
19 number of workers reported for the most recently
20 completed fiscal quarter for those certificates --

21 COMMISSIONER KIRSANOW: Okay. And am I
22 correct? When I go through the materials, it seems
23 as if -- and I'm not sure. But when I look at
24 them, this is somewhat conjecture, it appears as if
25 the average hourly wage in private sector 14(c)

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1 institutions is higher than it is in CRPs. Does
2 that sound right?

3 MS. ZIEGLER: That is something I would
4 have to look at the data. I have not looked at it
5 at that level.

6 COMMISSIONER KIRSANOW: I was just
7 curious as to why that would be. Okay. Thank you
8 very much.

9 CHAIR LHAMON: Okay. Commissioner, I'm
10 sorry, Madam Vice Chair.

11 VICE CHAIR TIMMONS-GOODSON: Thank you
12 very much. And thank you, panelists, for being
13 with us.

14 It's my understanding in reading your
15 materials, Ms. Ziegler, that Executive Order 13658
16 that established minimum wage for workers on new
17 federal service concession and construction
18 contracts and that that began in 2015.

19 And you indicate that, under that
20 executive order, worker includes any individuals
21 performing work on or in connection with a covered
22 contract whose wages are calculated pursuant to
23 certificates issued under Section 14(c).

24 Explain that part to me. And then I'll
25 have a follow-up question, whose wages are

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1 calculated pursuant to it. So are they getting the
2 minimum wage or not?

3 MS. ZIEGLER: So, under the executive
4 order, all employees, even individuals with
5 disabilities, have to be paid at least the
6 executive order minimum wage, which is now \$10.60
7 per hour.

8 These are also on Service Contract Act
9 contracts primarily. The Service Contract Act
10 prevailing wage may be higher than the \$10.60
11 minimum wage as it currently stands. The 14(c)
12 commensurate wage could apply to the SCA prevailing
13 wage but can never be less than the minimum --

14 VICE CHAIR TIMMONS-GOODSON: And that's
15 basically the way that I interpreted it. But I
16 just --

17 MS. ZIEGLER: Yes.

18 VICE CHAIR TIMMONS-GOODSON: -- wanted
19 to make sure.

20 MS. ZIEGLER: Yes.

21 VICE CHAIR TIMMONS-GOODSON: So my
22 question is, are there any lessons that we can
23 learn, or that we have learned since we, basically
24 since 2015 we see it in action? You know, we see
25 this new policy that some are advocating. We see

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1 it in action. So are there any lessons, that's for
2 anybody, that we have learned or can take from
3 that?

4 MR. ROMANO: If I might, I think one of
5 the lessons is that if it is mandated that someone
6 pay minimum wage and it's the law, they'll pay
7 minimum wage. You know, it's just that simple. It
8 works everywhere else. It works for everybody
9 else.

10 I have often suggested that if this
11 program is so wonderful, why don't we use it for
12 inner city people or why don't we use it for
13 African Americans, wouldn't that be delightful if
14 we started using it for women, because it doesn't
15 work, because it's terrible, because it was ages,
16 done during an age when it was ridiculous.

17 So the bottom line is change the law,
18 just say you must, you must do this. And they'll
19 raise their wages.

20 They'll raise their wages or, as I said
21 before, some people will say they'll fire these
22 people. Well, that's -- you know, they'll be out
23 of work. Well, that's just delightful. That just
24 shows exactly how much they care about these people
25 that they're nurturing and loving and blah, blah,

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1 blah. So, if you change the wage, they'll just can
2 them.

3 CHAIR LHAMON: I just want to note for
4 the record that you are being sarcastic as you say
5 that.

6 MR. ROMANO: I was being
7 extraordinarily sarcastic, yes. I was being --

8 CHAIR LHAMON: That doesn't always come
9 up in a transcript --

10 MR. ROMANO: Yeah, that'll show up in a
11 congressional hearing somewhere. Mr. Romano, you
12 said -- yeah, thank you. Thank you for saving me.

13 VICE CHAIR TIMMONS-GOODSON: You're
14 nodding your head, Ms. Barkoff. Do you have
15 anything that you wish to add to that?

16 MS. BARKOFF: I think the other thing
17 that probably Mr. Romano didn't get a chance to
18 touch on is, while many states in the country have
19 been waiting for the federal government and
20 Congress to take a lead, we now have four or five
21 states that have passed their own state wage laws.

22 And we're starting to see what's
23 happening. Again, it is the combination of, you
24 know, setting very clear expectations about wages,
25 working with providers to change their models.

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1 Again, I think you'll be hearing from
2 some providers later, including from states that
3 have said you have four years, we're moving away
4 from sub-minimum wage, you're going to move from
5 being a facility-based sheltered workshop to
6 helping support people in employment.

7 And so we are in kind of the beginning
8 of that process. But we now have, you know, four
9 states, several cities that are doing this.

10 And we are learning some important
11 lessons learned, which is engaging people, finding
12 their strengths, working with the business
13 community, and making sure there are the resources
14 to help providers make that transformation, and
15 making sure all of the federal resources that I
16 talked about and Medicaid systems and vocational
17 rehabilitation systems are all going towards the
18 right thing, which is supporting people in
19 competitive integrated employment. Thank you.

20 CHAIR LHAMON: Commissioner Narasaki.

21 COMMISSIONER NARASAKI: Yes, thank you.
22 I just wanted to follow up on the question around
23 the issue of what better data collection you could
24 have around the counseling issues.

25 So is it that, because in order to be

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1 precise in whatever recommendation gets made, is it
2 that the data is there but not being collected and
3 not being mandated to be shared to the department,
4 or does the department have it and is not sharing
5 it? Where is the issue?

6 MS. BARKOFF: So first I would say we
7 have some great experts on the next panel on data
8 and actually are very familiar with what states are
9 collecting.

10 CHAIR LHAMON: But we want to put you
11 on the spot.

12 MS. BARKOFF: Yeah, that's fine. But I
13 do think, you know, some of it is being collected
14 at a state level. But, again, it's kind of what
15 are the things that we're looking at.

16 I am very concerned that a check the
17 box of: I walked in, I walked up to someone who
18 spent 10, 20 years in a sheltered workshop and
19 said, hi, would you like to work in a job, when
20 they have no idea what that looks like, what kind
21 of support that is that they could get doing that.

22 And it's not really engaging someone in
23 what we -- we really make a big distinction between
24 choice and an informed choice. And especially for
25 people with disabilities, they may need information

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1 in an accessible way, in an experiential way to
2 make those decisions, benefit counseling being part
3 of it.

4 So I think for me in turning this into
5 a reality and I think for many advocates, it's not
6 just checking the box, how many people did you,
7 were you able to hit in a year, but what does that
8 counseling look like. You know, was it you came in
9 one time and it was five minutes, or did you give
10 some information and then come back? And I think
11 that's the important piece.

12 We have met with the Department of
13 Education several times over the last two years to
14 ask about data. And they're still in the initial
15 phases of collecting it. I am not aware of any
16 public data that has been shared. But, again, I
17 wish they were on the panel to get some of those
18 questions, too.

19 CHAIR LHAMON: Thank you. Commissioner
20 Adegbile.

21 COMMISSIONER ADEGBILE: Thank you for
22 your testimony. Let's try and relocate here. You
23 know, he won't disclose his state. I don't know
24 where he's from.

25 (Laughter.)

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1 COMMISSIONER ADEGBILE: Nevada, it's
2 scary. Okay. So, Nevada, sorry. That's how New
3 Yorkers say Nevada.

4 My question, and I understand that some
5 of you want an urgent change in the law. But we
6 also have a duty to understand how the law is
7 operating so that any findings and recommendations
8 we make can be tailored to the circumstances and
9 the underlying civil rights concerns.

10 So my question is this. What
11 guardrails does 14(c) have in place to prevent
12 abuse within the construct of how the statute
13 works, how it operates?

14 I understand that there is an objection
15 to the classification it makes and what it allows.
16 But I'm trying to understand what guardrails it has
17 in place, whether they are adequate as a matter of
18 policy and implementation, and why or why not. And
19 I'm happy to take your answers on this, each of
20 you.

21 MS. BARKOFF: So I have a really hard
22 time thinking of any guardrail in Section 14(c)
23 other than how do we make sure people are paid and
24 the wages are calculated pursuant to a system
25 that's inherently discriminatory.

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1 I mean, none of us do time trials at
2 our jobs. So the guardrail is, okay, we might go
3 in and make sure you're doing your time trials
4 right, that you've filled out the paperwork right.
5 So that to me does not feel like there are any
6 civil rights protections in 14(c).

7 On the other hand, I completely agree
8 to the extent your question is how do we make sure
9 changes include guardrails.

10 And I think that's why many disability
11 advocates feel so strongly about, in a positive way
12 about the Transformation to Competitive Employment
13 Act, which for the first time pairs together a well
14 thought out, phased transition away from sub-
15 minimum wage over six years paired together with
16 the resources to make sure that we have the
17 capacity for something else.

18 The last thing is someone who works
19 with people with disabilities wants is to pull
20 something away. It's not about what we don't want.
21 It's what we want the billions of dollars going
22 into sheltered workshops to be redirected to. And
23 those guardrails are very important.

24 CHAIR LHAMON: Before the rest of the
25 panel answers the question, and while I do want to

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1 get to that, I also just want to make sure our
2 record is clear.

3 If 14(c) were amended to say thou shalt
4 not do time trials, that would not be a sufficient
5 guardrail for you for a civil rights protection
6 either, would it?

7 MS. BARKOFF: No.

8 CHAIR LHAMON: Okay.

9 MS. BARKOFF: If 14(c) said you must
10 pay people the same as, people with disabilities
11 the same as everyone else because all people are
12 valued, that's what 14(c) needs to be amended to
13 say.

14 CHAIR LHAMON: Thank you.

15 MR. ROMANO: It's -- let me just
16 suggest that it's hard to think of any guardrails,
17 as my colleague has said, because the program
18 itself is antithetical to anything that would
19 potentially be good.

20 But also it's the entrance into the
21 program. It's you can't -- you know, if you're
22 entering this program, then nothing is a guardrail
23 anymore once you're in there. Once you're in a,
24 you know -- please, I'm just using this once again.

25 You know, if you're entering into a

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1 prison, talking about the guardrails is not very
2 important. You know, if you're entering something
3 that's going to be problematic, it's really hard to
4 say, well, they get nice soap.

5 So it's a difficult, it's difficult for
6 me really to think in that regard. So I just think
7 that what we're talking about is --

8 COMMISSIONER ADEGBILE: But in
9 fairness, even in prisons, there are civil rights
10 protections. And so --

11 MR. ROMANO: There are -- right.

12 COMMISSIONER ADEGBILE: Right?

13 MR. ROMANO: Right.

14 COMMISSIONER ADEGBILE: And so we don't
15 say because you're sentenced to prison nothing
16 matters, right? There are laws that this committee
17 is very focused on, that the --

18 MR. ROMANO: Correct

19 COMMISSIONER ADEGBILE: -- that the
20 fed, that the DOJ is focused on in protecting
21 prisoners. So I take the point and I understand
22 the categorical objection.

23 MR. ROMANO: Right.

24 COMMISSIONER ADEGBILE: But we're just
25 trying to understand to inform our recommendation.

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1 MR. ROMANO: There's the -- the
2 guardrails I don't believe exist. I guess I made
3 that point clear. Thank you.

4 COMMISSIONER ADEGBILE: I guess that
5 brings the question to you, Ms. Ziegler, about what
6 it is that you're auditing and looking for in a
7 context where your fellow panelists think that
8 there may not be a lot to look at because there
9 aren't protections. Help us understand --

10 MS. ZIEGLER: Yes.

11 COMMISSIONER ADEGBILE: -- your role
12 and how you see it.

13 MS. ZIEGLER: So our role is to
14 administer and enforce the law. And we do this
15 rigorously. We've been adding rigor to how we
16 conduct our investigations and how we evaluate
17 certificates.

18 We do wall to wall investigations.
19 When we find violations, we call them to the
20 employer's attention. We provide compliance
21 assistance to the employer too, so that the
22 employer can make appropriate corrections.

23 Only after the employer has made
24 appropriate corrections and made a commitment to
25 future compliance will we talk about back wages and

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1 seek to resolve the case.

2 Where that's not possible, we look at
3 all the other tools in our toolbox, including
4 revocation, which is a very powerful tool, taking
5 away the employer's ability to pay a sub-minimum
6 wage. And we have used that in egregious
7 situations where the circumstances warranted.

8 In addition to what we do through our
9 enforcement, we also work with our federal agency
10 partners. We have an MOU, memorandum of
11 understanding, with the Equal Employment
12 Opportunity Commission.

13 So, during the course of our
14 investigation if we see what we believe to be
15 violations of the ADA, and granted we are not
16 experts in the ADA, but we do a referral to EEOC so
17 that they can look into this.

18 We've worked with the Department of
19 Justice where the circumstances were appropriate,
20 such as in the Rhode Island case.

21 And we work with other agencies,
22 including the Office of Disability Employment
23 Policy within the Department of Labor, because they
24 do focus on capacity building and assisting states
25 and providers in helping to move people to

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1 competitive integrated employment.

2 I don't believe these things get to
3 what our other panelists are talking about. But we
4 do, within the law, we do what we can. Of course,
5 if the law were to change, we would change our
6 enforcement and administration accordingly.

7 COMMISSIONER ADEGBILE: Is it true that
8 the first revocation occurred in 2013?

9 MS. ZIEGLER: Yes.

10 COMMISSIONER ADEGBILE: And you
11 mentioned a couple of more recent revocations in
12 Rhode Island. Maybe one way to -- is that right?

13 MS. ZIEGLER: The Rhode Island
14 revocations were in 2013. There have been some
15 since then.

16 COMMISSIONER ADEGBILE: Okay. I
17 misspoke. So you mentioned the Rhode Island
18 revocations in 2013. How many have there, how many
19 revocations have there been in total?

20 MS. ZIEGLER: Six total.

21 COMMISSIONER ADEGBILE: Okay. And just
22 so we understand it, could you give us a little bit
23 more granularity about what the facts were that led
24 to the revocations? What is it, what are the
25 events, what are the abuses that go to justifying

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1 the act of a revocation?

2 MS. ZIEGLER: So I will talk about a
3 more recent one. I think Alison probably is more
4 in the weeds on the Rhode Island revocations.

5 But a more recent revocation dealt with
6 an employer that had hundreds of workers at sub-
7 minimum wages. During the investigation, they hid
8 work. They hid contracts. They falsified time
9 studies. They falsified prevailing wage studies.

10 And at every step of the investigation,
11 they tried to present a front of compliance when
12 all the evidence that we collected found that they
13 were not in compliance at all. They were not
14 willing to admit to violations or to remedy the
15 violations. And so, based on that, we did pursue
16 revocation of their certificate. It's the most
17 egregious circumstances that we --

18 COMMISSIONER ADEGBILE: Alison, did you
19 want to -- sorry, Ms. Barkoff, did you want to shed
20 some light on the Rhode Island situation?

21 MS. BARKOFF: Sure. And I just want to
22 be clear, so we've talked about this being a
23 statute that's 80 years old and 6 revocations ever.

24 And I also want to point out, as I have
25 in my testimony, that while there is a regulatory

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1 standard that these certificates should only be
2 granted or renewed when necessary to address a lack
3 of opportunities, there is absolutely no standard
4 for that.

5 So certificates are given when you can
6 fill out and meet the requirements of we'll be
7 doing time trials the right way, we'll make sure
8 that we'll pay people again, what are
9 discriminatory wages.

10 There is nothing in these certificates
11 that are about capacity building or addressing any
12 lack of opportunities or having an employer come in
13 and show we're working to expand opportunities. So
14 I think that's some of my biggest concerns about
15 it.

16 Again, I will just say that the 2013
17 Rhode Island investigation, there was collaboration
18 between DOJ and Wage and Hour. I think we were
19 able to find a way to thread the needle where some
20 of the very technical pieces around the 14(c)
21 violations lined up with trying to achieve goals of
22 the ADA and people being able to get opportunities
23 from competitive integrated employment. And while
24 finding those technical violations and withdrawing
25 the certificate, again, there's data about what has

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1 happened.

2 But when the certificate wasn't there,
3 guess what happened? People were able to be
4 engaged and get engaged around what are the right
5 opportunities for employment and make that
6 transition.

7 So I think you can see Rhode Island is
8 a perfect example of the certificate is a barrier.
9 When the certificate isn't there and resources go
10 towards matching people's skills with jobs, that
11 happens.

12 CHAIR LHAMON: Sorry. Ms. Ziegler, I
13 just want to make sure that our testimony is clear.
14 Is it your view that Wage and Hour could enforce an
15 Olmstead violation or could enforce the ADA? Or is
16 it your view that that is something that the
17 Department of Justice can do and not Wage and Hour?

18 MS. ZIEGLER: That is something that we
19 would refer to another agency, either Equal
20 Employment Opportunity Commission or Department of
21 Justice.

22 CHAIR LHAMON: Okay. Thank you.

23 COMMISSIONER ADEGBILE: Just one final
24 question, I think it's a quick one.

25 CHAIR LHAMON: Okay.

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1 COMMISSIONER ADEGBILE: I heard that
2 there are exemptions from OSHA requirements in
3 certain workplaces. I guess the question is
4 whether or not they're workplaces. Is that the
5 rationale?

6 MR. ROMANO: The rationale is it's not
7 a workplace.

8 COMMISSIONER ADEGBILE: Okay.

9 MR. ROMANO: It's training.

10 COMMISSIONER ADEGBILE: Okay. So what
11 is the defense? If folks are saying that they're
12 concerned about the health and well-being of this
13 community of persons, what is the policy rationale
14 of the United States to allow these places to not
15 follow safety requirements for the people that are
16 in effect --

17 MR. ROMANO: They're not classified as
18 workplaces. They're classified as just training.

19 But, of course, this is what I was
20 saying before in my testimony. When they want to
21 convince you that this is work, they'll tell you
22 these workers are wonderful people, they work hard,
23 they work. They use that language when it's
24 training, because they know to use the word work,
25 because immediately you know it's discriminatory.

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1 So they got to bounce back to training.

2 So that's part of the shell game of
3 what you have to remember constantly, that the
4 verbiage will change in order to make the point, as
5 opposed to just going straight down the line and
6 never saying what it is, which is part and parcel
7 of the reason why you can go to a, you can go
8 someplace.

9 I was in a state a few years ago. And
10 I had one of the -- I'm not going to tell you where
11 it was or who the head was. But they told me they
12 have 10,000 people working under certificates in
13 their state and they had talked to every single one
14 of them, and 10,000 said they loved being on their
15 certificate and they loved making less than minimum
16 wage.

17 And I said to them, hey, I'm from a
18 large Italian family. I can't get two people to
19 agree on anything let alone 10,000 people who they
20 can't find one who said, you know, this stinks.

21 So, you know, that is part and parcel
22 of it. It's a shell game of what you ask, how you
23 ask, and making sure that you continually put your
24 finger on -- I'm continually putting my finger on
25 the concept that this is from the outset, from the

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1 outset an egregious violation of who we are as a
2 people more than anything else that I care about.

3 CHAIR LHAMON: So we are past time.
4 But I worry about my own health and well-being if I
5 don't let Commissioner Kladney ask one last
6 question.

7 COMMISSIONER KLADNEY: Thank you.
8 Thank you. Thank you.

9 Ms. Ziegler, you spoke about the
10 toolbox at Wage and Hour. It's my understanding
11 the toolbox consists of recovery in lost wages and
12 revocation. That's it.

13 So my question is, would it assist you
14 in enforcement of 14(c) if you had civil penalties
15 against corporate officers and the corporation
16 themselves for continued violations of 14(c) and
17 more kinds of enforcement tools?

18 MS. ZIEGLER: Civil money penalties are
19 always welcome by the enforcement agency, perhaps
20 not by employers. But it is a very useful tool in
21 the toolbox.

22 We are endeavoring to use all the tools
23 we have. We're also engaging in more certificate
24 denials than we have in the past. But, obviously,
25 more tools would help us better enforce the law.

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1 COMMISSIONER KLADNEY: And was that a
2 CRP that had those violations, that got revoked?

3 MS. ZIEGLER: Yes.

4 COMMISSIONER KLADNEY: Thank you.

5 MS. ZIEGLER: Yes.

6 CHAIR LHAMON: Thanks very much to this
7 panel. Obviously, we found it very engaging. And
8 we really appreciate your testimony.

9 We'll take a brief break until 10:40
10 and come back for panel two. Thank you.

11 (Whereupon, the above-entitled matter
12 went off the record at 10:35 a.m. and resumed at
13 10:43 a.m.)

14 **PANEL TWO - DATA REGARDING SUBMINIMUM WAGES**
15 **AND COMPETITIVE INTEGRATED EMPLOYMENT**

16 CHAIR LHAMON: Coming back to order,
17 it is now 10:43 a.m. Eastern Time. We will proceed
18 with our second panel, which is about Data
19 Regarding Subminimum Wages and Competitive
20 Integrated Employment.

21 In the order in which they will speak,
22 our panelists are John Butterworth, who is the
23 Director of Employment Systems Change and
24 Evaluation, Senior Research Fellow at the Institute
25 for Community Inclusion at the University of

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1 Massachusetts Boston.

2 And then Teresa Grossi, who is the
3 Director of Strategic Development, Indiana
4 Institute on Disability and Community, Indiana
5 University.

6 Mr. Butterworth, proceed.

7 JOHN BUTTERWORTH, DIRECTOR OF EMPLOYMENT SYSTEMS
8 CHANGE AND EVALUATION SENIOR RESEARCH FELLOW,
9 INSTITUTE FOR COMMUNITY INCLUSION, UNIVERSITY OF
10 MASSACHUSETTS BOSTON

11 DR. BUTTERWORTH: Thank you for the
12 chance to be part of this critical conversation. I
13 have worked in the field of employment for over 40
14 years now, in roles that span providing direct
15 supports; managing data employment services,
16 including subminimum wage services; training
17 employment professionals; supporting state
18 agencies; and research.

19 We have been asked to comment on the
20 data that describes subminimum wage employment. I
21 will draw on a few sources, but the majority of my
22 comments will focus on people with an intellectual
23 or developmental disability, and that's mostly
24 because the state and federal IDD community has a
25 strong commitment to outcome and quality

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1 measurement.

2 So, first-off, who receives subminimum
3 wage? Responding to some of the earlier
4 conversation, as of April 2019, there were 109,000
5 workers identified on certificate applications.
6 Most of those, about 96 percent, work under a
7 certificate held by a community rehabilitation
8 services provider. The overwhelming majority of
9 those people are individuals who have an IDD --
10 over 80 percent -- and who receive services funded
11 by a state IDD agency.

12 Slide.

13 People who receive services from a
14 state IDD agency are more likely to work in
15 facility-based or sheltered work than in any other
16 work setting. And 96 percent of those people earn
17 less than minimum wage.

18 The average wage in 2018 --

19 CHAIR LHAMON: Mr. Butterworth, I'm
20 sorry, we don't have the slide. Oh, there.

21 DR. BUTTERWORTH: There we go.

22 The average wage in 2018 was \$3.34 an
23 hour for that group of people, compared to over \$10
24 an hour for their peers working in competitive
25 integrated employment. Put another way, people in

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1 facility-based work earned on average about \$2,600
2 a year. People in the individual jobs earned well
3 over \$12,000 a year on average.

4 It is important to note that subminimum
5 wage is also an important part of small group
6 employment, enclaves and work crews, and provider-
7 owned community businesses.

8 Slide, please.

9 While we tend to think that subminimum
10 wage primarily supports people with more
11 significant support needs, people identified as
12 having mild or moderate levels of intellectual
13 disability are more likely to work in subminimum
14 wage jobs, and represent the majority of people who
15 work in facility-based settings.

16 Put another way -- slide, please -- put
17 another way, while level of intellectual disability
18 is certainly not the only measure of a person's
19 level of support need, people with mild or
20 moderate disabilities represent 92 percent of all
21 individuals working in facility-based settings.

22 What do people want? One of the most
23 powerful datapoints from the National Core
24 Indicators Project, data collected by state IDD
25 agencies, addresses the goals of people who are not

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1 working in a community job. Almost half of them
2 say they want a job in the community. And this
3 speaks directly to unrealized goals and dreams.

4 The second part of the question asks if
5 the person has an employment goal in their service
6 plan. Only 43 percent of people who said they want
7 a job also said they had a goal. That suggests we
8 aren't reliably hearing or responding to people's
9 individual priorities.

10 Slide.

11 First, a few notes about -- Oh. So,
12 "What are the trends?" was the next question we
13 were asked.

14 First, a few notes about the overall
15 context of trends in data employment services and
16 outcomes. Despite the strong interest in work that
17 people tell us they have, over the past 30 years
18 the largest growth area has been non-work services,
19 growing from 115,000 people to over 400,000 people.

20 The number participating in supported
21 employment services was stagnant between 2000 and
22 2010, but has started to grow again with the
23 current emphasis, growing by over 20,000 in the
24 last five years.

25 In contrast, participation in facility-

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1 based work has dropped steadily since 1999, a
2 decrease of over 64,000 people.

3 Slide, please.

4 The drop in the use of 14(c)
5 certificates is even more dramatic. The number of
6 certificate holders has plummeted in every
7 category. And the number of subminimum wage
8 workers reported by community rehabilitation
9 providers dropped from over 240,000 to 105,000 in
10 about 5.5 years.

11 So, what data do we need? The largest
12 gap is our ability to describe who individuals are
13 outside of individuals with an IDD, and to
14 understand what happens as people transition away
15 from subminimum wage jobs. And, in particular,
16 maybe some of the new data that's being collected
17 in the certification process will begin to address
18 some of this: who works on certificates, and how
19 long have they been employed at subminimum wage,
20 and what are the barriers that are keeping them in
21 that setting?

22 What do the data say about our ability
23 to do this differently is an important part of our
24 work. The evidence suggests that both states and
25 providers can support people in high quality jobs

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1 without relying on subminimum wage options.

2 A few examples:

3 In 2019, three states had no active
4 14(c) certificates, and five more had only one.

5 At the other end of the spectrum, five
6 states had between 80 and 113 active certificates.
7 And even after adjusting for population
8 differences, the disparities are huge.

9 This variation is consistent with what
10 we know about participation in integrated
11 employment services provided by state IDD agencies.

12 In 2017, participation in integrated
13 employment services ranged from about 5 percent of
14 people who did a day or employment service to 86
15 percent of people who did a day or employment
16 service. These aren't differences that we can
17 explain because of state labor market differences
18 or from population demographics. Our research
19 suggests they can primarily be explained by a
20 state's commitment, reflected in policy, funding,
21 and the kind of accountability that they put in
22 place.

23 Three states, New Hampshire, Maryland,
24 and Alaska, and the City of Seattle, have
25 legislation that prohibits subminimum wage, with

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1 more considering it. Many more states have IDD
2 policy that restricts the use of facility-based
3 work or payment of subminimum wage.

4 We have clearly demonstrated the
5 possibility of transforming lives with supports and
6 systems that listen well and deliver precise, high
7 quality supports. We are at a unique moment of
8 time right now when advocacy, state policy, and
9 changes in federal policy are converging to work on
10 this issue of making employment an option for many
11 more people.

12 Thank you.

13 CHAIR LHAMON: Thank you, Mr.
14 Butterworth.

15 Ms. Grossi.

16 DR. GROSSI: Hi. My name is Teresa
17 Grossi.

18 CHAIR LHAMON: I think your microphone
19 is not on.

20 DR. GROSSI: Pardon me?

21 CHAIR LHAMON: I think your microphone
22 is not on. Thank you. And I apologize for
23 mispronouncing your name.

24 TERESA GROSSI, DIRECTOR, STRATEGIC DEVELOPMENTS,
25 INDIANA INSTITUTE ON DISABILITY AND COMMUNITY,

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1 INDIANA UNIVERSITY

2 DR. GROSSI: That's okay.

3 For 39 years I have been working in
4 this field as a transition coordinator, running a
5 supported employment agency, and for 20 years
6 working very closely with our state agencies
7 influencing policy, and procedures, and practices
8 through training, technical assistance and, most
9 importantly, data collection.

10 What I am going to do is support some
11 of Dr. Butterworth's efforts at a national level
12 and look at this from a state level.

13 Right now, to our knowledge, there is
14 about four to five states that really collect data
15 at the state level. Since 2001, Indiana has been
16 collecting data where individuals spend the
17 majority of their day, what we call the Day and
18 Employment Services Outcome Systems Report. We
19 collect the data for approximately 11,000
20 individuals yearly. This data includes
21 demographics, integration, outcomes, wage, hour,
22 and living arrangements.

23 We have used this data to inform
24 policy, procedures, and practices.

25 In my written testimony, I shared a

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1 national study that was conducted over 18 years ago
2 of individuals who were in sheltered workshops or
3 14(c) settings and left and obtained competitive
4 integrated employment. It was thought of at the
5 time that people in sheltered workshops weren't the
6 people who were able to be working competitively.
7 The study showed otherwise.

8 Since then, a number of legislative and
9 policy changes have occurred, as we've heard from
10 the first panel. However, the issues still remain.
11 And what I hope we have today is some bold goal --
12 goals.

13 As you can see in this first slide, I
14 have been breaking down since WIOA was implemented,
15 I wanted to look at for our state and for our state
16 VR, age groups to see what has really been
17 happening. And I know it's somewhat maybe
18 difficult to see. But I broke them down through,
19 for the ease of analyzing as well as being able to
20 visualize, 18 to 29 year olds instead of the 24.

21 And if you can see the purple, and if
22 you could see the green there, over 45 percent of
23 our transition age youth are leaving or are engaged
24 in individual jobs, competitive jobs.

25 The green is what we have classified as

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1 alternatives to employment. And we have classified
2 that as job-seeking activities, job development,
3 discovery process, work-based learning. And then
4 later in life it could be retirement, community
5 access, or volunteering. So, you can see of that
6 age group that they are both very high.

7 And I can tell you that of that age
8 group, 18 to 29 year olds, 90 percent of those
9 individuals were engaged in job-seeking activities.

10 Sadly, something happened, and we're
11 not sure why. Once the individuals turned 30, the
12 percent of those individuals changed significantly.
13 And as you can see, it somewhat evens out and they
14 ended up going into either a sheltered workshop, a
15 non-employment day, or an offsite group employment,
16 or somewhat a little bit into the alternatives to
17 employment.

18 Obviously, we need some further
19 analysis, and both our state and folks have been
20 asking for that.

21 Next slide.

22 The next slide somewhat reinforces what
23 Dr. Butterworth mentioned. The own guardianship,
24 we have been collecting data for the last two years
25 on individuals who are their own guardian. For the

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1 first time in Indiana we have an individual who
2 terminated their guardianship and moved to what we
3 -- replaced it with a supported decision making
4 agreement. We are hopeful that this momentum will
5 continue and decisions will be made, but we are
6 starting to look at what has happened to
7 individuals, how they are making their decisions
8 about their lives.

9 The individuals who are being served
10 with mild intellectual disability, I can tell you
11 that 22 percent of individuals on the autism
12 spectrum are also served in individual jobs. But
13 regardless of the setting, the majority of all
14 individuals are mild intellectual disabilities.

15 I find it important to look at where
16 the paycheck is coming from because that's about
17 the relationship with your employer. And the
18 opportunities for career advancement, the variety
19 of jobs you may have, it's about the good job match
20 you have with an individual's skills and the
21 employer needs when you are finding a competitive
22 job. And often in a sheltered workshop they tend
23 to be assembly-type jobs, and they're not always
24 good jobs for many of the individuals we support.

25 And, obviously, as Dr. Butterworth

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1 said, the wages are very similar to the national.

2 Next slide.

3 I also mentioned in my written
4 testimony Shawn's story. And Shawn is a colleague
5 of mine in Indiana. And he spent 15 years in a
6 sheltered workshop asking to get out. No one asked
7 what he wanted to do, and no one listening.

8 Shawn was told he will lose his
9 benefits and also that they needed him, an approach
10 that is fear-based and guilt-based. This is a
11 piece that we have to change drastically. People
12 express they want to leave. We need to be able to
13 change how we ensure that people are being heard.

14 Next slide.

15 All this information really leads to
16 the need for informed choice. If 46 percent
17 expressed their desire to leave from the National
18 Core Indicators and to work competitively, yet less
19 than half were heard, were put on an employment
20 goal in their service plan. We need to be able to
21 focus on these individuals who want to leave. Can
22 you imagine if we had 10,000 people who got a job
23 just today?

24 We know the how to get a job. We know
25 the how to support people to keep a job. We need

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1 to understand why this isn't happening, and about
2 the informed choices about a variety of experiences
3 and safeguards. We need states to ensure service
4 plans engage and equip individuals with information
5 and experiences and opportunities to understand
6 options to make that informed choice.

7 CHAIR LHAMON: Thank you very much, Dr.
8 Grossi.

9 And so, I'll open for questions.
10 Commissioner Kladney.

11 COMMISSIONER KLADNEY: Thank you, Madam
12 Chair.

13 Mr. Butterworth, it's my understanding
14 you've been involved with work centers.

15 DR. BUTTERWORTH: Yes.

16 COMMISSIONER KLADNEY: And competitive
17 integrated employment. So, can you give us your
18 thoughts on how many people in work centers you
19 think could successfully engage in competitive
20 integrated employment?

21 I know you don't have any actual
22 figures, and I know you're a data person, but I'm
23 just asking.

24 DR. BUTTERWORTH: My belief is that
25 anybody can work. Now, you know, in the general

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1 labor force of people without disabilities, there
2 everybody doesn't work. There are people who have
3 critical illnesses or for some other reason aren't
4 engaged in work, or are independently wealthy and
5 aren't engaged in work.

6 But my starting assumption is everyone
7 can work, as I ran a sheltered workshop, managed a
8 sheltered workshop. That was our assumption. And
9 I think what's striking is the importance of the
10 shift in our expectations for people. Because I
11 think about the folks that I supported. And we're
12 talking a long time ago now. But as I think about
13 the folks that I supported and some of the people
14 who I consider to have some of the greatest
15 challenges to employment, significant challenging
16 behaviors for example, very poor attention to task,
17 some of those folks, some of those folks are the
18 people who surprised me the most as they moved out
19 to community jobs.

20 Because what became really clear is
21 that we just weren't putting them in the right work
22 situation, that a big part of this is the match.
23 Someone who struggles, at least compared to a time
24 study standard in a workshop, probably isn't in the
25 right place to work, for them and for their

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1 interests. The guy who had very poor attention
2 task is a good example of that. We need to do a
3 better job of thinking about that.

4 So, my simple answer is there's not
5 anybody in a workshop that I've met that I wouldn't
6 try and find a job for.

7 COMMISSIONER KLADNEY: Since you are a
8 data collector, the both of you, and we talked
9 earlier on the first panel about the counseling
10 data for the annual counseling and that sort, what
11 -- and in reading Mr. Butterworth's statistics I
12 saw a lot of blanks.

13 What is the problem in collecting data
14 in this area, first from the states and then from
15 the federal government? And what would be the most
16 important things you would want to have on a
17 regular basis?

18 DR. BUTTERWORTH: You're talking
19 specifically about the Section 511 program --

20 COMMISSIONER KLADNEY: Yes.

21 DR. BUTTERWORTH: -- in the rules?

22 COMMISSIONER KLADNEY: That was the one
23 we were speaking about this morning.

24 DR. BUTTERWORTH: Yeah.

25 COMMISSIONER KLADNEY: But, I mean,

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1 there are other areas as well that I probably can't
2 codify right now.

3 DR. BUTTERWORTH: And Section 511 is an
4 opportunity. And I think there was some discussion
5 earlier about the implementation and what it
6 actually looks like in the field.

7 COMMISSIONER KLADNEY: Right.

8 DR. BUTTERWORTH: And I can say that
9 from my experience spending time in states, what it
10 looks like in the field varies from a group of
11 people being gathered to watch a video, to focused
12 individual counseling sessions.

13 And I know that as I talk to people
14 there are states who say very few people say that
15 they want to work after having that experience.
16 And there are states that have had as many as 85
17 percent of people who are working in workshops say
18 that they want to work after having that
19 experience.

20 The quality of that engagement is
21 really critical, and the seriousness with which
22 that gets addressed is really critical.

23 So, what would I want to know, you
24 know, at a simple level? At a simple level I would
25 want those to be individual conversations, not

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1 showing a video. But I would want to know
2 something, I would want to know at a very simple
3 level how many people said that they were
4 interested in working. And if a state is very
5 different from another state, I'd want to pursue
6 why that is.

7 So, you know, why is it that a state
8 can have 85 percent of people saying, yeah, I want
9 a job in the community, and there are other states
10 that are coming in at very low numbers? That's a
11 simple start.

12 DR. GROSSI: I would say who's doing
13 the asking? You know, it's going to be more
14 powerful if an individual with a disability, a
15 self-advocate is asking and sharing their own story
16 and their experience and the opportunities out
17 there versus a non-disabled individual.

18 I'd also want to know what the
19 experiences have been versus just the asking. Have
20 they been out? Have they done some job touring and
21 exploration and it wasn't a one-shot deal; I went
22 out, I didn't like it?

23 So, I want to be able to see some of
24 the documentation in that experiences of it.

25 COMMISSIONER KLADNEY: Has there been

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1 any data collected on pre-employment training
2 program and its success or non-success? I don't
3 know how to say it. I don't want to say failure.

4 DR. GROSSI: WINTAC is collecting some
5 of that data. I'm not sure that it's actually
6 outcomes versus the process and the type of
7 activities. It's more activities that has been
8 conducted versus the outcomes.

9 DR. BUTTERWORTH: Yeah.

10 COMMISSIONER KLADNEY: So, you're not
11 seeing -- you couldn't opine on whether it's
12 working or not working or successful or where it
13 is? Like, you have different states --

14 DR. GROSSI: Right.

15 COMMISSIONER KLADNEY: -- in your
16 documents.

17 DR. BUTTERWORTH: Uh-huh.

18 COMMISSIONER KLADNEY: No idea?

19 DR. BUTTERWORTH: There's not, there's
20 not strong data on the relationship between
21 implementation of pre-employment transition
22 services and outcomes available at this point.

23 COMMISSIONER KLADNEY: And where would
24 you get that if it was avail -- I mean, how would
25 you get it available? From which organizations and

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1 when, and could that be a recommendation we would
2 make?

3 DR. BUTTERWORTH: Partly that's the
4 vocational rehabilitation system. And there are
5 datapoints in the RSA-911 file that address pre-
6 employment transition services. So, some of that
7 may become available in coming years.

8 You know, part of what's difficult
9 about pre-employment transition services if you
10 think about it more broadly, as a very formal term
11 that's part of the rehabilitation act section of
12 WIOA. And such specific expectation for the voc.
13 rehab agencies, those activities are also a key
14 part of IDEA services and what schools are expected
15 to provide.

16 So, I would want to add those pieces
17 also, what are people's school experiences looking
18 like? What kinds of work experiences have they
19 had? What kind of work training experiences have
20 they had? That's not going to be captured by the
21 VR system.

22 So, having some of that from the
23 education system would be useful.

24 I would say the other datapoint that's
25 really -- that's missing or insufficient at this

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1 point is outcomes from schools. There is, there is
2 a measure that schools are required to provide,
3 Indicator 14 for special education services, that
4 addresses employment outcomes. But the collection
5 of it is pretty inconsistent.

6 It's not considered very trustworthy.
7 It's not collected on -- it's not required to be
8 collected on every graduate, it's a sample of
9 graduates. And the structure of it doesn't tell us
10 very much about people's actual work outcomes.

11 DR. GROSSI: And it's actually
12 engagement, are they engaged?

13 DR. BUTTERWORTH: Are they engaged?

14 DR. GROSSI: Engaged in employment or
15 post-secondary education. And it's only one year
16 out, so it tells us if students are engaged.

17 COMMISSIONER KLADNEY: The chair would
18 be very happy to hear that this is my last
19 question.

20 (Laughter.)

21 CHAIR LHAMON: I take no position on my
22 own. So I'll stop at that.

23 (Laughter.)

24 COMMISSIONER KLADNEY: Do you have any
25 statistics -- I mean, I've read 3 to 5 percent of

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1 people in CRPs move to competitive integrated
2 employment. Is that an accurate figure? I mean,
3 it's not very many.

4 DR. BUTTERWORTH: That's, there's very
5 old data on that. That's probably an accurate
6 figure. We don't have a hard source to answer that
7 question right now.

8 COMMISSIONER KLADNEY: CRPs aren't
9 supposed to report that anywhere?

10 DR. BUTTERWORTH: There's no place --

11 DR. GROSSI: No.

12 DR. BUTTERWORTH: -- that CRPs are
13 required to report that.

14 COMMISSIONER KLADNEY: Okay. I didn't
15 mean to interrupt there.

16 DR. BUTTERWORTH: Yeah, I mean states,
17 states that collect robust data on employment
18 outcomes can track those kinds of things. So,
19 Teresa mentioned some of those states earlier.
20 There is very little movement. States that have
21 implemented change in policy or regulation around
22 facility-based work are seeing movement to
23 employment and growth in integrated employment.
24 So, those policies are having an impact.

25 It's hard to say it's just closure of

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1 facility-based work. It's a combination of closure
2 of support for facility-based work and an
3 investment in building capacity for the
4 alternative, competitive integrated employment, but
5 in those states we're seeing significant growth.

6 COMMISSIONER KLADNEY: So three to five
7 percent would be a number we could use?

8 DR. GROSSI: There was a 1979 study.
9 That's how old it was.

10 DR. BUTTERWORTH: That's how old it is.

11 DR. GROSSI: It was two percent ever --

12 COMMISSIONER KLADNEY: '79?

13 DR. GROSSI: -- once you entered the
14 sheltered workshop only two percent ever left.
15 That's how old. Yes. And I'm not sure it's
16 changed since.

17 COMMISSIONER KLADNEY: Thank you.

18 CHAIR LHAMON: Commissioner Kirsanow.

19 COMMISSIONER KIRSANOW: So, I suspect
20 there is no data bias. The question, are there any
21 data related to the relative employment levels for
22 individuals with disabilities in states that
23 prohibit subminimum wage versus those that still
24 maintain a subminimum wage, wage and employment
25 levels?

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1 DR. BUTTERWORTH: There are. And most
2 of the states that prohibit subminimum wage are
3 states that have a robust focus on employment. I
4 mean, they kind of go hand in hand.

5 But if I think about some of those
6 states, Maryland is one of those states. They have
7 not yet phased out subminimum wage but they are
8 what I would call a higher performing state in
9 terms of the number of people who are engaged in
10 competitive integrated employment and the nature of
11 their employment.

12 The state of Washington, which has
13 phased out the use of facility-based work, is
14 probably the highest performer of people who get a
15 day or employment service in the state of
16 Washington. Fully 60 percent are working in an
17 integrated job. That's compared to a national
18 average of more like 15 percent.

19 So, yeah, those states are. I mean, it
20 is a whole package. There was some reference
21 earlier to the WIOA report, the committee report on
22 competitive integrated employment. It is a whole
23 package. I mean, it's not just about ending
24 facility-based work or subminimum wage employment,
25 it's about building the capacity of your system to

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1 effectively support people in the alternatives.
2 States that have put a firm stamp on that goal and
3 created accountability about that goal do much
4 better.

5 I talked earlier about -- and this is
6 really a service view not strictly an outcome view
7 -- but I talked about the differences from state to
8 state for state IDD agencies. And the number of
9 people who participate in integrated employment as
10 a service, services that are intended to support
11 them in the competitive labor market. The range is
12 from 5 percent to 86 percent, and a pretty straight
13 line between those two points.

14 You know, as someone who's worked in
15 employment for over 40 years, that there are still
16 states that spend so little of their resources that
17 only 5 percent of the people in their system are
18 getting supports around competitive integrated
19 employment, that's just astonishing. But we have a
20 strong cluster of states that run range from 40
21 percent to that one, like, extreme outlier of 86
22 percent that are affirmatively focusing their
23 resources in different kinds of ways. And they're
24 seeing outcomes for that.

25 CHAIR LHAMON: Madam Vice Chair.

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1 VICE CHAIR TIMMONS-GOODSON: Thank you
2 very much, Madam Chair.

3 We have heard that only about six 14(c)
4 certificates have been revoked over a period of
5 about 18 years. I'm assuming that all others are
6 closed out voluntarily, or if the state no longer
7 supports that they would go out.

8 And I was wondering is there someone
9 that keeps track of what happens to the people with
10 disabilities when a workshop gives up its 14(c)
11 certificate?

12 DR. BUTTERWORTH: There's no standard
13 source for that information. States that maintain
14 focused outcome data can track that. So, Maryland,
15 Oregon, Washington, Massachusetts, Indiana, there
16 are a handful of states that have the ability to
17 follow that. But there's no national source of
18 that kind of information.

19 VICE CHAIR TIMMONS-GOODSON: Is that
20 information -- You were going to say something?

21 DR. GROSSI: Yeah. I'd say it's a
22 concern because, you know, the recommendation of
23 what happens to these individuals when they are no
24 longer on a 14(c), where do they go? And the
25 concern that we want to make sure they're not going

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1 into another segregated setting.

2 VICE CHAIR TIMMONS-GOODSON: Thank you.

3 CHAIR LHAMON: Commissioner Narasaki.

4 COMMISSIONER NARASAKI: Yes. Thank
5 you.

6 I'm very interested in your recent
7 study on the effects of embedded employment
8 resources on the employment outcomes of transition-
9 age youth. So, could you tell us more about that?
10 And is there a reason why we should be particularly
11 focused on transition-age youth when we look at
12 this issue?

13 DR. GROSSI: Yes. It was a two-part.
14 One, it was designed by all key stakeholders, so
15 schools, providers, VR, family members. They
16 designed the study with me.

17 The second was it was a way that we
18 wanted to ensure that our transition-age youth were
19 not walking into a sheltered workshop, and that
20 they were getting the appropriate services and
21 employment experiences.

22 The other piece of it is that because
23 of the demands of schools right now, they really
24 aren't equipped or have the expertise in employment
25 and dealing with businesses. So, it was about

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1 bringing everyone's expertise together. And we
2 embedded a provider and what we named a career
3 coach in the school and acted as that liaison
4 between the school and the providers and the
5 families.

6 And we forced them -- and I don't mean
7 forced -- but we had the providers work together so
8 that all the providers weren't all going into the
9 schools, bombarding the schools on a day that they,
10 as you know, many teachers are lucky to have a
11 restroom break during the day, their busy day, so
12 that they acted as that liaison.

13 COMMISSIONER NARASAKI: And what were
14 your findings that you think are particularly
15 important, that we should lift up as
16 recommendations?

17 DR. GROSSI: The outcomes were the
18 families really told us that it was that career
19 coach that really helped them. It was the schools
20 that really helped them understand the transition
21 process. It was the career coach that helped them
22 get through the adult service provider maze and
23 really go through vocational rehabilitation.

24 And, in fact, they were a support to
25 vocational rehabilitation. So they got all the

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1 information they needed so that that information,
2 and it facilitated the intake, and so that we can
3 get services much quicker, that the last year that
4 services were much more immersed. And this was
5 before WIOA. So this, we started this study two
6 years before WIOA.

7 So that piece of it was just that
8 everyone worked together in that collaborative
9 piece of it.

10 One of the biggest lessons we learned
11 was -- and our control sites or our treatment sites
12 they were more engaged with work experiences and
13 connected to the adult agencies than our control
14 sites. I think my biggest take-away was that when
15 our good intentions of really good policies
16 sometimes paralyzes our local level community
17 providers.

18 So, within a 4-year period of time our
19 VR changed their employment model, which wasn't too
20 big. Then WIOA hit. And then pre-employment
21 transition services hit. And then our state went
22 to an order of selection.

23 People got confused and they didn't
24 know what to do. So, one of the big lessons were
25 the impact of really good policies. And we forget

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1 what happens to people at the local level.

2 COMMISSIONER NARASAKI: So, what could
3 the federal government be doing? What should we be
4 recommending to the Congress or federal agencies to
5 help support?

6 DR. GROSSI: I think that, you know,
7 one of the things is giving time to plan and to be
8 able to role this out in a timely manner so
9 everyone is on board and understands it, and time
10 to that communication piece so that people could
11 really -- the state level folks have time to get it
12 to the locals and they know what it's going to look
13 like. I think that's a really big piece of it.

14 They were all really good policies but,
15 again, sometimes when things happen so fast people
16 become paralyzed.

17 COMMISSIONER NARASAKI: So, in Indiana
18 one of the outcomes for transition-age youth was it
19 seems that you ended up with a lot more people
20 going into non-employment day programs. So, I
21 think that's one of the issues that gets raised by
22 people who are concerned about ending 14(c).

23 So, what do we need to dig in there?

24 DR. GROSSI: I think that we need to
25 understand who are on the 14(c) and what happens

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1 after they are no longer on 14(c). And I think
2 that nationally we are seeing the same thing.
3 We're seeing a rise. John's graph showed it. And
4 I think that many states would show it that what
5 happens if someone leaves a 14(c). Who are they?
6 Where are they going?

7 I'm very concerned that we're going to
8 move from one segregated setting to another.

9 CHAIR LHAMON: Commissioner Kladney, do
10 you want to close this out?

11 COMMISSIONER KLADNEY: Thank you, Madam
12 Chair. I have more questions.

13 CHAIR LHAMON: But two minutes.

14 (Laughter.)

15 COMMISSIONER KLADNEY: Oh, I only have
16 two minutes? Oh my.

17 I noticed Mr. Butterworth, I studied
18 his statistics, it seems to me you got them from
19 the states. Is there -- should the federal
20 government require reporting? And what statistics
21 should they report and to whom should they report
22 it to?

23 DR. BUTTERWORTH: It's an interesting
24 question because we're talking about --

25 COMMISSIONER KLADNEY: If the answer is

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1 more than two minutes you should submit it in
2 writing because I have another question.

3 DR. BUTTERWORTH: I'll talk really
4 fast.

5 You know, one of the things that's
6 interesting here is that people who work on of
7 subminimum wage certificate almost entirely are
8 people who are also getting paid services from a
9 federal source, and that's primarily Medicaid.

10 COMMISSIONER KLADNEY: Uh-huh.

11 DR. BUTTERWORTH: That has two impacts.
12 One is there's an inherent conflict of interest
13 between your role as an employer who's trying to
14 get a product out the door, and your role as a
15 service provider and your responsibility for
16 helping people to move forward and work towards
17 their goals. And Teresa talked a little bit about
18 that earlier.

19 At a federal government level, given
20 that these are also funded services, I think it's
21 very reasonable for the primary funders,
22 particularly Medicaid in this case, to require that
23 they have outcome data reported on employment
24 outcomes and status for folks. That's something
25 that doesn't exist at this point.

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1 The National Core Indicators data does
2 give a pretty good national picture, but that's a
3 sample of people. It's a voluntary program managed
4 by state IDD agencies. So, I would like to see
5 that --

6 COMMISSIONER KLADNEY: Mandatory
7 reporting you mean.

8 DR. BUTTERWORTH: -- brought up to a
9 federal level in the same way that the voc. rehab
10 agencies are required to report outcomes because
11 that's fundamental to their mission.

12 COMMISSIONER KLADNEY: Ms. Grossi, you
13 mentioned a job coach. So, I guess that you are
14 familiar with them?

15 DR. GROSSI: Yes.

16 COMMISSIONER KLADNEY: My reading about
17 job coaches is it's hard to keep them --

18 COMMISSIONER KLADNEY: -- because of
19 salary and because of a lack of career path. Is
20 that correct? And if so, how can it be corrected?
21 Is that true and can it be corrected?

22 DR. GROSSI: I think the career path
23 could happen depending on the agency. But I think,
24 as many of my colleagues and CRPs and agencies say
25 to me is that when the workforce, when our

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1 economy's not doing so well it's easy to find them.
2 When it's doing really well, it's really hard to be
3 able to keep them because of the pay.

4 COMMISSIONER KLADNEY: Thank you.

5 DR. GROSSI: And pay is a big issue.

6 CHAIR LHAMON: Thank you both for your
7 work before today and for your presentations today.

8 We'll take a brief break and reconvene
9 at 11:30 for our third panel.

10 V. BREAK: 11:22 A.M. to 11:30 A.M.

11 (Whereupon, at 11:22 a.m., the above-
12 entitled matter went off the record, and reconvened
13 at 11:30 a.m.)

14 CHAIR LHAMON: Okay, I will call us
15 back to order as it is 11:30 Eastern Time. We will
16 proceed with our third panel on the Nature of
17 Existing 14(c) Programs.

18 **PANEL THREE, THE NATURE OF**

19 **EXISTING 14(C) PROGRAMS**

20 CHAIR LHAMON: In the order in which
21 they will speak they are Michele Ford who is
22 President and CEO of Inroads to Opportunities; John
23 Anton who is a Legislative Specialist,
24 Massachusetts Down Syndrome Congress; Ruby Moore
25 who is the Executive Director, Georgia Advocacy

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1 Office of Protection and Advocacy; and Finn
2 Gardiner, Research Associate, The Lurie Institute
3 for Disability Policy at Brandeis University.

4 Ms. Ford, please begin. And if you
5 would turn your microphone on.

6 MICHELE FORD, PRESIDENT AND CEO,
7 INROADS TO OPPORTUNITIES

8 MS. FORD: Okay, thank you.

9 I just want to thank the Commission on
10 Civil Rights for inviting me to testify today. I
11 have updated my remarks because I didn't quite
12 understand what the panel -- my panel I was sitting
13 on, so.

14 In New Jersey -- I can only really
15 speak to New Jersey because that's where I've done
16 my 40 years of experience -- in New Jersey we still
17 provide a full array of vocational options,
18 including extended training, operating under 14(c),
19 and paying commensurate wages. These programs are
20 funded by our state and they are regulated and
21 monitored by the Department of Labor and the
22 Division of Vocational Rehabilitation.

23 The specialists do monitor us monthly,
24 so we have someone come out to the agency monthly
25 and do the WIOA, 511's, but also to see all of the

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1 participants on a regular basis who enter the
2 agency.

3 In 2012, New Jersey became an
4 Employment First state. Some programs funded
5 through Medicaid and serving individuals with
6 developmental disabilities that were previously
7 working with commensurate wages no longer do it.
8 They stopped. So, we kind of have a unique
9 situation. We have half of programs still
10 operating under 14(c) under the state and DVR, and
11 the programs funded through Medicaid, and
12 specifically DDD clients not doing it any longer.

13 But we have seen, in my sister
14 agencies, a growth in day programming, meaning day
15 habilitation, people in the developmental world are
16 going to day programs more often than not.

17 As I said, I am currently the CEO of
18 Inroads. We are a community rehabilitation program
19 that provides many different services: job
20 placement, supportive employment, extended work
21 training, mental health day program. And both our
22 extended training program and our mental health
23 program do work under 14(c) and pay commensurate
24 wages.

25 So, I also want it to be known that

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1 it's just not developmentally disabled individuals
2 that use and work under 14(c). We have a mental
3 health program. 45 percent of our participants
4 have other diagnoses and multiple diagnoses. May
5 have a mental health and a developmental, may have
6 a physical disability, substance abuse addictions,
7 those kinds of things. So, it's not just the DDD
8 community.

9 As an agency, we are committed to
10 vocational development. We have a very well
11 staffed employment staff. We work with
12 approximately 100 individuals at any given point,
13 40 of them, 40-so, 44, 45 of them are in long-term
14 supports in integrated community employment, so we
15 just follow them. And we also have a Ticket to
16 Work program through the Social Security
17 initiative, so we work with folks directly in
18 employment through there as well.

19 I think the struggle is finding
20 employers. That's a huge thing that I haven't
21 heard. It's about engagement, people wanting to
22 work. But the employer pool is very, very
23 difficult. Doing employment is very, very
24 difficult. And we have a lot of individuals always
25 looking for work; we don't always have employers

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1 willing to work with us.

2 So, I think that really is a very, very
3 serious issue.

4 Many other agencies in our state,
5 including us, have had to develop social
6 enterprises and different business models to try to
7 help create new opportunities for job seekers. So,
8 we have a café which is regular, it's competitive,
9 it's integrated in the community, and we use that a
10 lot of times to help trial to give people
11 experience, you know, to get an understanding. And
12 they work in that bakery café.

13 In New Jersey if you want competitive
14 employment you will be referred to an employment
15 specialist. WIOA has solidified that. And that's
16 wonderful because kids coming out of school they go
17 right to real employment.

18 The problem is that now three and four
19 years later we are now seeing referrals back to the
20 Work Activity Program, parents and participants
21 wanting to coming back. They were either
22 unsuccessful or they just don't want that service
23 and they're waiting. We try to always engage
24 people, to say try, try, try. See if you can get
25 into community employment and then we'll take a

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1 look down the road at what other options if that's
2 not working for you.

3 I will say that I have seen a lot of
4 success in 14(c) programs. I have seen individuals
5 who are coming off acute mental illness that use
6 the workday program as a therapeutic tool to get
7 back their concentration, their ability to be with
8 people and around people. And it is helpful and
9 they feel success.

10 I've also seen individuals who have
11 exhausted their families with behavioral
12 challenges, they're at their wit's end. And we
13 have done a very good job at creating good workers,
14 good employees, and good friends in the workplace.
15 And they have gone on to employment, many of them.

16 I've also seen people that have been
17 with us five and six years and finally get ready
18 and take that step to competitive employment. I
19 don't know the statistics, but I did employment
20 many years ago and we had about 12 percent of our
21 population that would get employed from the
22 workshop. Today we are seeing the statistics in
23 New Jersey. We are collecting them, our Division
24 of Vocational Rehabilitation makes us collect them.
25 And we are seeing about 10 to 12 percent of people

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1 in the workshop moving into competitive employment
2 annually.

3 I guess time studies, prevailing wages,
4 all those things, they are not an exact science. I
5 think nationally that's what some of the issues
6 are. They are not the same everywhere. We follow
7 the DOL regulations. We do them regularly. But I
8 think that's some of difficulty because we all are
9 a little different in the way we go about that.

10 And I think that we in New Jersey
11 continue to try, community rehabilitation programs
12 continue to try to brainstorm, and grow, and think
13 of different ways to help people to become
14 employed. But I know there is a huge concern
15 because we are on our way to the \$15 minimum wage.
16 And already we are seeing our employment numbers,
17 we have gone from, I guess, \$8.85 to \$10.00 in
18 July. We're going to \$11.00 in January. And we
19 are already seeing more difficult times with our
20 employment folks getting people employed.

21 I think there just needs to be more
22 research as to where people are going in those
23 states that don't have it. I don't, I don't
24 particularly -- we have a small day program for
25 people going into retirement because many of our

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1 folks you can't retire if you're in a residence, so
2 you still have to go somewhere. So we have,
3 because they're familiar with us, we have a very
4 small, we only have seven people in it. But I have
5 agencies that I work with that have over 200 people
6 now in their day programs. And I don't know that
7 that's any better, or is better than preparing
8 yourself continually and having pride in what you
9 do every day in your work and a job.

10 And that's really all I have to say.

11 CHAIR LHAMON: Thank you very much, Ms.
12 Ford.

13 Mr. Anton.

14 JOHN ANTON, LEGISLATIVE SPECIALIST,
15 MASSACHUSETTS DOWN SYNDROME CONGRESS

16 MR. ANTON: Good morning.

17 CHAIR LHAMON: Will you turn your
18 microphone on? If you press the top button it will
19 turn on. Thank you.

20 MR. ANTON: Good morning, everybody.

21 CHAIR LHAMON: Good morning.

22 MR. ANTON: Chair Lhamon and members of
23 the U.S. Commission on Civil Rights, thank you for
24 the invitation to speak to you today. I am proud
25 to be here today to represent the Mass Down

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1 Syndrome Congress and the National Down Syndrome
2 Society.

3 When I was born the expectations for
4 individuals with Down Syndrome were very low. My
5 parents had me attend Montessori Preschool Program.
6 They had to fight to get me into integrated
7 elementary school class, Chapter 766 just had
8 started.

9 Growing up, I felt segregated,
10 devalued, invisible, and not respected. I found it
11 hard to use my voice to speak up. It helped me
12 being involved in Special Olympics, Boy Scouts,
13 hunting and fishing with my dad, and many other
14 activities.

15 I went to Essex Agricultural School and
16 graduated in 1986. After that, I had a variety of
17 food service jobs which were not good for my diet,
18 let me tell you that.

19 (Laughter.)

20 Then I attended the local sheltered
21 workshop which had a waiver. They had us doing
22 jobs such as packing items, piecework. It was very
23 boring and unsatisfying for me. My friends would
24 be sitting around playing cards, watching videos,
25 and hanging out with nothing to work on.

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1 In addition, I got paid very little for
2 the work. It was only a few dollars a week
3 sometimes. I went to the supervisor and said I
4 wanted to do something more challenging. He told
5 me it was not possible. So I quit.

6 After connecting with the local Arc I
7 have learned how to dress professionally, develop a
8 self-advocacy presentation, and I wanted to have a
9 job where I could wear a suit and tie and carry a
10 briefcase and be a professional like my dad who was
11 a teacher.

12 I went on to join the Mass Advocates
13 Standing Strong and became a chairperson for a
14 regional group and then to the statewide board.
15 Working at the Mass Statehouse as a legislative
16 intern for Representative Tom Sannicandro and
17 Senator Barbara L'Italian, I have reviewed bills,
18 testified, and done research on current budgets,
19 and attended rallies to reinstate funding for
20 families and individuals with disabilities.

21 Along with other self-advocates I have
22 come to D.C. with the National Down Syndrome
23 Society buddy walk on the Capitol to advocate for
24 policies to ensure meaningful jobs, healthcare, and
25 other important issues. Currently I work at the

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1 Mass Down Syndrome Congress and I make above
2 minimum wage.

3 I advocate on legislation and to
4 courts, and protect the rights of all people with
5 Down Syndrome. I have learned that voices of self-
6 advocates make a difference to appreciate the
7 opportunity today to voice my opinion. There is
8 legislation in the House and Senate right now
9 called the Transformation to Competitive Employment
10 Act which I support.

11 I'd like to address the subminimum
12 wages which are currently legal and it's the asset
13 to companies with a huge drawback to those of us
14 who need to make a living. We pay rent, utilities,
15 pay for transportation and buy food, clothing, and
16 other expenses as well as we are able to have a
17 social life like all of you. We cannot live a full
18 life with a subminimum wage paycheck. We cannot be
19 respected, valued employees, and members of our
20 community.

21 For many years people told me that my
22 goals were too high. And I persisted. Look at me
23 now. And all about respect, dignity as a citizen
24 for me is not being stigmatized by labels which
25 belong on jars, not people.

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1 Our motto is "Nothing About Us Without
2 Us." People with disabilities need real jobs and
3 real pay. Martin Luther King, Jr., inspires me.
4 And like Reverend King, I feel strongly about my
5 human rights. Like him, I have a dream. I dream
6 that people will be able to afford and to live
7 independently, or with supports needed, work at a
8 fair wage, and be happy in their communities.

9 And I respectfully ask the United
10 States Commission on Civil Rights that everyone
11 here today to do everything in their power to
12 ensure that people with disabilities receive the
13 full wages they truly deserve in order to make
14 meaningful and fulfilling lives.

15 And thank you for your time.

16 CHAIR LHAMON: Thank you, Mr. Anton.

17 Ms. Moore.

18 MS. MOORE: That was great. Thank you
19 for allowing me to come and join this conversation
20 with you today. It's a conversation I've been
21 having for about 43 years which makes me wonder if
22 I have 43 years of experience or one year of
23 experience 43 times.

24 I'm actually astonished that in 2019,
25 almost 2020, we're still having the conversation

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1 about whether we should be paying American citizens
2 less than minimum wage.

3 I provided fuller testimony in terms of
4 -- my written testimony about how the -- subminimum
5 wages came into being, but it's interesting to me
6 that a part of that was our returning war heroes
7 from World War II, that they were coming home to a
8 grateful nation, but some notions about people who
9 had acquired disabilities as possibly, even though
10 they were willing to take a bullet for their last
11 employer, not really have a kind of contribution
12 that might be meaningful in the regular labor
13 force.

14 So that was happening around 1938 when
15 the Fair Labor Standards Act came into being and it
16 coincided in an unfortunate way, and so I just say
17 because even though the Fair Labor Standard Act was
18 intended to ensure that American workers would have
19 at least a minimum wage, there was a special
20 provision, as you've heard about already today, to
21 discriminate against people with disabilities and
22 that's now gone on for over 80 years. That has
23 been the driver for what expectations and
24 opportunities, as John was pointing out, actually
25 get offered or don't get offered to people.

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1 So it's stunning that we have decades
2 of research and demonstration about what people are
3 capable of.

4 My own experience, just as a sidebar,
5 besides running a protection and advocacy system,
6 where I realized that the best way to protect
7 people is to make sure that there are lots of
8 people in their life who are not just people paid
9 to be with them, but people who have something in
10 common with you, and who miss you when you're not
11 there, and who work alongside of you every day and
12 come to really appreciate the gifts and talents
13 that you have.

14 So it's a great way to protect people,
15 to include people as John, you know, has pointed
16 out.

17 So even with all of the demonstration
18 of what's possible, by contrast, today we're
19 talking about the nature of 14(c), here we go
20 again.

21 So -- well, I'm going to give a couple
22 of examples from my own life. I have family
23 members with disabilities who are working in a
24 broad range of business and industry, everything
25 from healthcare professions to performing arts to

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1 my dad had worked for NASA, I'm a protection and
2 advocacy director. I previously ran an employment
3 agency for 16 years and got a lot of people jobs
4 who were accused of being unemployable.

5 Throughout my work, I've had a chance
6 to work in every state but Wyoming, I have nothing
7 against Wyoming if any of you are from Wyoming, but
8 I'll just give a couple of examples from sheltered
9 workshops, places that I've literally evaluated
10 hundreds of these programs.

11 I met a man in a sheltered workshop in
12 New Mexico, I'll call him Mark for the purposes of
13 our discussion. Anyway, he was being paid sub-
14 minimum wages to put holiday lights in little bags,
15 you know, to do the packaging thing which is very
16 typical of the kinds of contract work often that we
17 find in sheltered workshops, and he had mastered
18 the job and industriously did it 30 hours a week,
19 and he was paid \$29 and some change every two
20 weeks. So a little less than \$15 an hour in order
21 to do a job he had mastered. And as is often the
22 case in some of the sheltered workshops is they
23 don't always have enough standard hours of work to
24 keep the people employed who they've recruited to
25 their program. And so --

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1 CHAIR LHAMON: Just to make sure your
2 testimony is correct, I think it was \$15 a week.

3 MS. MOORE: Excuse me?

4 CHAIR LHAMON: \$15 a week. Not \$15 an
5 hour.

6 MS. MOORE: Oh, I'm sorry. It was. I
7 confused myself. It was less than \$15 a week.
8 Right. Because it was \$29 every two weeks. Thank
9 you for that clarification. Oh my god, I'm as bad
10 as Neil.

11 So anyway, what would happen is about
12 ten months out of the year, they wouldn't have
13 work. And so instead of, you know, sort of
14 genuinely saying to people, we don't have any work,
15 they would take the same holiday lights, put it in
16 front of Mark, and ask him to do it as simulated
17 work instead of real work.

18 So then he would get paid ten percent
19 of his regular wage as a training wage, even though
20 he'd mastered the job. So he'd get paid \$2.98
21 every two weeks. So such is the nature of 14(c)
22 work in many of these segregated settings.

23 Another example is from Oregon and
24 you'll hear later from, I think Lilia's here to
25 talk about Oregon, and if you want to ask me

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1 questions about the Lane case, I'd love to answer
2 them. Anyway, I met a man named Jerry and he was
3 also in a sheltered workshop, but previously, he
4 had worked for his family business, and he had
5 worked for years making a very substantial salary.
6 And then some changes happened in his family and he
7 got sent to a sheltered workshop.

8 So when I met Jerry, he was doing sub-
9 minimum wage -- well, I'll tell you how the scheme
10 worked there. They had claimed that he was
11 competitively employed, but what really happened
12 was at lunchtime, they would hand him a rag and ask
13 him if he wanted to work.

14 Now, this had nothing to do with his
15 interests, his previous work experience, things he
16 was good at, things that really would motivate him
17 to want to apply himself. So if he said no, they'd
18 be, like, he's refusing to work and if he agreed to
19 do it for seconds or minutes, that would be applied
20 -- prorated against minimum wage and he'd be paid
21 pennies on the dollar for something that he really
22 had no interest in doing. So again, such is often
23 the case with subminimum wage kinds of work.

24 So I just want to close by saying we
25 did work hard. Alison and I were both on the WIOA

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1 Advisory Committee. There are substantial
2 recommendations in there. We gave a lot of
3 attention to what to do about 14(c) and had
4 suggested a very responsible measured phase out of
5 14(c) that allows for minimizing the adverse impact
6 on people who had been in that status for a long
7 time.

8 I also just want to say I'm happy to
9 say that two years ago the Veteran's Administration
10 ended the practice of paying subminimum wage.

11 CHAIR LHAMON: Thank you, Ms. Moore.
12 Mr. Gardiner?

13 MR. GARDINER: Hello. I'm very honored
14 to be here in front of the Committee to talk about
15 certain policy issues or the current state of
16 14(c). So the philosophical and policy frameworks
17 that allow for people of disabilities, we pay sub-
18 minimum wages, cast them as subaltern groups that
19 experienced disempowerment, marginalization, and
20 segregation from workers without disabilities.

21 These work relationships contribute to
22 the polarization and stratification of work and
23 engender alienation in people who are forced to
24 work in sheltered workshops for subminimum wages,
25 like what John Anton mentioned here with his

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1 terrible experiences with sheltered workshops and
2 how he felt demeaned by them.

3 So the disability rights movement in
4 the United States has pushed federal, state, and
5 local policy toward the full integration of people
6 with disabilities within American society.
7 However, the continued existence of the 14(c)
8 program is impeding this progress.

9 Subminimum wage jobs have not even
10 materially increased the employment rate for people
11 of disabilities. While nearly three-quarters of
12 working-age adults without disabilities are
13 employed in the United States, only 34 percent of
14 adults with disabilities are employed, and
15 comparative survey data also indicate that
16 sheltered workshops have not increased employment
17 prospects among autistic workers or workers with
18 intellectual disabilities.

19 Last month was National Disability
20 Employment Awareness month, but clearly not enough
21 is being done to improve our employment rates.
22 Subminimum wage jobs are not doing what they were
23 ostensibly designed to do. And as Ruby Moore said
24 earlier, these issues with subminimum wages and the
25 ethical concerns surrounding them are not new.

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1 Nearly 60 years ago, the founder of the
2 National Federation for the Blind, Jacobus
3 tenBroek, wrote an article called the Character and
4 Function of Sheltered Workshops. In this piece, he
5 directly likened sheltered workshops to prisons and
6 other institutions that are designed to keep
7 designated groups away from the rest of society,
8 rather than integrating them as full members.

9 In 2011, the National Disability Rights
10 Network produced a report, Segregated and
11 Exploited, that identified some of these power
12 dynamics and ways that policymakers could redress
13 these inequities and these issues are also borne
14 out by research data.

15 A 2009 study about disability and
16 employment found that people who acquire disability
17 as adults or received diagnosis for lifelong
18 disabilities later in life had fewer doubts about
19 their competence as workers because they did not
20 internalize stereotyping during childhood.

21 The problem with subminimum wage work
22 is that it engenders stereotyping. It sends the
23 message, as several other panelists have said, that
24 if you are a worker with a disability, who is
25 deemed to be somehow less productive than other

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1 members of society, then you are only worth being
2 paid pennies on the dollar.

3 If this were about people in some far-
4 flung country, there would be public outcry at the
5 kind of sweatshop wages that people are being paid.

6 However, there's this idea that because
7 the sheltered work facilities, these work centers,
8 are a charitable proposition, then it is perfectly
9 ethical to pay workers a pittance or to pay them
10 nothing, and they claim that these are training
11 programs, but what are they training for? They're
12 not being trained for competitive and integrated
13 employment. A lot of this work is repetitive and
14 routinized and will not provide them with the
15 transferable skills they need to work in integrated
16 workplaces.

17 So this idea that sheltered workshops
18 are somehow rehabilitative seems to be rooted in
19 systemic prejudice against people with disabilities
20 and our capabilities as workers.

21 And admittedly, this issue is very
22 personal to me. I, myself, have disabilities. I
23 am autistic, I'm on the autism spectrum, and I was
24 diagnosed at a young age, and I'm fortunate enough
25 to be part of the generation in which the ADA was

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1 passed. I was five years -- no, four years old, I
2 think, when it was passed, and around five when the
3 IDEA was passed.

4 So, like, by the time I started
5 kindergarten, we had a lot of these modern
6 protections in place. That's something that I
7 can't say for people who are even, you know, ten,
8 twenty years older than I am. And I remember some
9 of this data in the previous panel about these age
10 groups that had higher likelihoods of being sent to
11 sheltered workshops or non-workday programs. Look
12 at the ages. You have younger people who are more
13 likely to be in integrated and competitive
14 employment and older people who are not, and I feel
15 as though creating a society, changing the
16 language, changing the vocabulary around disability
17 and employment will help ensure that people with
18 disabilities are able to get jobs that are
19 fulfilling and worthwhile.

20 I am fortunate enough to be in
21 competitive and integrated employment and to have
22 been so since my 20s, but I can't say that for a
23 lot of other people with both my disabilities and
24 other disabilities.

25 I am extremely fortunate and there are

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1 other people who are not, and that's why I'm here.
2 I want to make sure that everybody has the right to
3 participate in work that has meaning for them.
4 That will give them the fulfillment they need.
5 That will give them a living wage. That will help
6 them. That they can get benefits. They can get
7 insurance. They can make -- and that they have the
8 right supports to accomplish that because, of
9 course, the whole idea of disability, the whole
10 social model of disability is the need -- an
11 extended need for support compared to the general
12 population.

13 So any program that would replace the
14 subminimum wage would need to include scaffolding
15 and supports and -- especially since that's one of
16 the primary concerns among supporters of these work
17 centers is a lack of support.

18 When these community-based -- these
19 initiatives to establish community-based employment
20 are talking about implementing supports and are
21 emphasizing the importance of support in
22 employment. There are, like, support in employment
23 programs, job coaches, and several other forms of
24 scaffolding that can be used in lieu of these
25 sheltered workshops that sort of sequester people

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1 with disabilities away from the general population.

2 I don't want to be separate from the
3 general population and I'm pretty sure that most
4 other disabled people do not want to be separate
5 from the general population. We are members of the
6 community, we are members, you know, we are part of
7 American society. We are part of global society in
8 general and laws regarding our employment should
9 reflect our right to inclusion in community
10 participation.

11 Thank you.

12 CHAIR LHAMON: Thank you, Mr. Gardiner.
13 We'll open for questions from my fellow
14 commissioners. Commissioner Kladney?

15 COMMISSIONER KLADNEY: Thank you, Madam
16 Chair. Mr. Anton --

17 MR. ANTON: Yes.

18 COMMISSIONER KLADNEY: -- thanks for
19 coming. There's going to be some testimony later
20 about people with disabilities and competitive
21 integrated employment that have a diminished social
22 life and friendships because of that. Can you
23 describe how your social life and friendships are
24 today and also describe how they were when you were
25 in the work center?

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1 MR. ANTON: I did have a lot of
2 friends.

3 CHAIR LHAMON: Mr. Anton, would you
4 push talk on your microphone? Thank you.

5 MR. ANTON: I did have a lot of
6 friends.

7 COMMISSIONER KLADNEY: Today, or?

8 MR. ANTON: Yeah, I did have friends in
9 school that I didn't get along with.

10 COMMISSIONER KLADNEY: That was in the
11 work center. Is that correct?

12 MR. ANTON: Yes.

13 COMMISSIONER KLADNEY: And today, do
14 you have friendships today and a social life?

15 MR. ANTON: Yes, I do.

16 COMMISSIONER KLADNEY: Can you tell me
17 about it a little? Describe it a little?

18 MR. ANTON: I live in a house with
19 L'Arche Irenicon and I have a lot of friends. My
20 friend, Jimmy, and the staff that I work with, I
21 get along very well, and we're friends. We do
22 social activities and stuff like that and I also go
23 to Northpoint Bible College in Bradford, in
24 Haverhill, and I'm taking classes in learning how
25 to become a pastor.

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1 COMMISSIONER KLADNEY: Great. Thank
2 you very much. Ms. Moore, my question is, you go
3 to the 33 work centers in Georgia. Is that
4 correct?

5 MS. MOORE: Yes.

6 COMMISSIONER KLADNEY: And do any of
7 them provide accommodations for their employees so
8 that they become more competitive?

9 MS. MOORE: Yes. They've -- there's a
10 pretty wide range of experience there, but we've
11 primarily been focusing on the young people who
12 since WIOA was enacted have still gone to sheltered
13 workshops.

14 So what we've looked at is the -- how
15 the program and voc rehab themselves categorize
16 people. People who want to work, that they're
17 ostensibly working on getting them a job. People
18 who they aren't sure, and so we're urging them to
19 use discovery and other forms of figuring out what
20 people want to do and help people get into work.
21 And then --

22 COMMISSIONER KLADNEY: When you talk
23 about discovery, you're talking about discovery of
24 different types of work that people may want?

25 MS. MOORE: Right. It means

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1 experientially based practices where they're having
2 trial work experiences, you have a person-centered
3 vocational assessment that is based on your assets
4 and your skills and your interests and it helps
5 people to discover what their interests are.

6 A lot of times, people are asked
7 whether or not they want to work, and they don't
8 have any frame of reference for knowing what that
9 means.

10 And the group that I've mostly been
11 worried about are the group who've recently come
12 out of school and the sheltered workshops have
13 already decided that they don't want to work, or
14 they can't work. So as the protection and advocacy
15 system, we're really kind of focusing to make sure
16 that people get to make an informed choice.

17 Now, there are among the community
18 rehab providers, providers who, you know, have
19 gotten people jobs. It's not their primary
20 business model, but some people do eventually
21 leave, especially if there's unrelenting advocacy
22 in the process or if they have a strong family
23 involvement and, you know, want their family member
24 to work.

25 COMMISSIONER KLADNEY: Thank you. I'm

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1 sorry, I can't read your name.

2 MS. FORD: Michelle Ford. Sorry.

3 COMMISSIONER KLADNEY: Oh, there we go.

4 Ms. Ford --

5 MS. FORD: Yes.

6 COMMISSIONER KLADNEY: -- is there ever
7 a time that you don't have work at your worksite?

8 MS. FORD: No. We always have work.
9 We may not have --

10 COMMISSIONER KLADNEY: Work for
11 everyone.

12 MS. FORD: Work for everyone. There
13 are times, usually in the Spring, where we may have
14 half a day as opposed to a whole day of work, but
15 we've never not had work.

16 COMMISSIONER KLADNEY: I noticed that
17 you transitioned 29 people last year. Is that
18 correct? That was on your website.

19 CHAIR LHAMON: Commissioner Kladney, I
20 just want to remind you to give a pause for the
21 ease of transcription and for the sign language
22 interpreter.

23 COMMISSIONER KLADNEY: Oh, I'm sorry,
24 Madam Chair.

25 CHAIR LHAMON: Thank you.

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1 COMMISSIONER KLADNEY: I'm just --

2 CHAIR LHAMON: So eager.

3 MS. FORD: I'm sorry. Transition to
4 community employment?

5 COMMISSIONER KLADNEY: Yes.

6 MS. FORD: Each year is different. The
7 year before was 70, last year it might have been
8 30. Each year is different depending on our
9 employment staff. We have eight employment staff,
10 two job coaches, three job coaches now, so we're
11 growing in our employment, plus we now have -- our
12 DVR is doing a hybrid program which is trying to
13 encourage moving out of the workshops, so we're
14 working with about 20 participants from our work
15 program in employment as well. So they're part-
16 time competitive and they come to us a couple of
17 days as well.

18 COMMISSIONER KLADNEY: So I've also
19 noticed on your website, there are places where it
20 said you had 250 working in the work center, 200
21 plus, 210, I mean, it's obviously a moving target.

22 MS. FORD: It does change. Yes. Well,
23 we did at one point prior to probably five or six
24 years ago, had 231. We now have 199, but we also
25 have mental health folks who also use the work

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1 program. As I said, it's two separate types of
2 activity.

3 So altogether, I guess we have about
4 260 people that do at some point use the work
5 activity program.

6 COMMISSIONER KLADNEY: So are they all
7 eligible for the WIOA counseling?

8 MS. FORD: Everybody. Yes. Once a
9 year we have the local DVR counselors come in and
10 they do them individually.

11 COMMISSIONER KLADNEY: And how long
12 does that counseling take per individual?

13 MS. FORD: I guess it's 15 to 20
14 minutes per individual, depending on, you know,
15 what the conversation is. We also have guardians
16 come in at that time to make sure that there is a
17 conversation with the guardians as well.

18 COMMISSIONER KLADNEY: Okay. Do you
19 have a copy of that program that is given to them
20 in the 10 to 20 minutes?

21 MS. FORD: I don't have a copy of it
22 with me, no.

23 COMMISSIONER KLADNEY: Do you know
24 where we could get one?

25 MS. FORD: The dialogue that they use?

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1 Yes, I could have one sent to you. Yes.

2 COMMISSIONER KLADNEY: Thank you.

3 CHAIR LHAMON: Mr. Kladney, I'm going
4 to move onto other commissioners after this
5 question.

6 COMMISSIONER KLADNEY: No. I want to
7 ask all the questions.

8 CHAIR LHAMON: I'm sure that's true.

9 COMMISSIONER NARASAKI: We know it's
10 true.

11 COMMISSIONER KLADNEY: Go ahead.

12 CHAIR LHAMON: Oh, Commissioner
13 Narasaki?

14 COMMISSIONER NARASAKI: Thank you. Ms.
15 Ford, I was interested in a couple of questions for
16 you. One is that you -- one of the things that we
17 kept reading was that one of the reasons why
18 there's actually less 14(c) is not just changes in
19 policy, but that actually there's less work
20 available. There's less piecework that with
21 mechanization, some of the kinds of work that used
22 to be available are not as available. So I was
23 just wondering what your experience was with that.

24 MS. FORD: No. I think there's always
25 work available. Plus a lot of other agencies are

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1 doing different types of things, computer
2 recycling, document destruction, call centers,
3 there's a lot of different types of -- it's not
4 just the usual labeling or repairing or whatever.

5 So a lot of agencies in New Jersey are
6 doing a lot of different like I said, we're looking
7 at different kinds of enterprises and businesses to
8 help with skills also. We're looking -- you know,
9 there's print shops, there's, like, cafes, there's
10 all types of them, so I don't see that there's less
11 work. There's more.

12 COMMISSIONER NARASAKI: And you
13 mentioned in your testimony that you're seeing some
14 of the workers who transitioned from school into
15 competitive work coming now back into your system.

16 So what do you think could be done
17 better so that they could be more successful going
18 into competitive work and not ending up having to
19 come back to --

20 MS. FORD: Well, you know, in New
21 Jersey there are how many school districts? Tons.
22 And each transition program and what they do for
23 their students is different. So, you know, we work
24 with seven or eight schools and they all have
25 different ways of looking at transition.

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1 I think, you know, the younger --
2 dealing with students younger, having seamless
3 service so that they go into the adult community
4 and they have a job coach that they know, I think
5 that's important.

6 We just got a referral on a young lady.
7 She's had 14 different positions since she left her
8 school and she's done, you know, like, she now
9 wants to try a work activity program.

10 So I think it's good job coaches, and
11 good employment specialists, and good matches, but
12 sometimes there's a maturity piece too and I think
13 you can't deny that in some instances.

14 Sometimes it's medication. The young
15 man I was talking about, I mean, he was stealing
16 things, you know, causing his family all kinds of
17 issues. When we finally realized he needed to be
18 more stabilized on a ADHD medicine and he started
19 to get some support and really could see what he
20 could do in terms of work and enjoyed it, it was
21 the turnaround for him, but he needed time.

22 I think that some things, what a
23 workshop does offer is time. Employment --
24 employers have expectations and they can't give you
25 all the time sometimes you need.

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1 COMMISSIONER NARASAKI: Great. Thank
2 you. So, Ms. Moore, I wanted to take you up on
3 your invitation to ask you about the litigation.
4 I'm particularly interested again, in sort of the,
5 what you might have found in terms of the core --
6 the key age group of the youth in transition.

7 MS. MOORE: Yes. I think one of the
8 things is, I'm particularly happy about the Lane
9 case, which was the Oregon case, was that we did
10 pay attention to what were kind of the feeder
11 systems to segregated programs, and so one would be
12 new people coming onto the developmental
13 disabilities waiver and one would be, you know,
14 youth in transition.

15 So among the things that we were able
16 to negotiate with the State was to make sure that
17 students, I think you were starting to get to this,
18 Michelle, but that students when they transitioned,
19 that they had not been preparing for sheltered
20 workshops.

21 We had ended the practice of special ed
22 programs preparing people for sheltered work and
23 made sure that people got to have internships and
24 the same kind of things that their peers were
25 having. That they had work experiences before they

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1 left school so that it was a little more precise
2 kind of matching that could happen because people
3 had a frame of reference for thinking about what
4 they might want to do and some people could be
5 leaving with jobs, like, their typical peers. So
6 that was important.

7 We also set targets to say, you know,
8 hard numbers, like, setting goals tends to increase
9 the success rate. So that was important too. And
10 then I think that there was a lot of work that had
11 to be done sort of between the different state
12 systems to be more seamless isn't quite the word,
13 but more collaborative in making sure that voc
14 rehab, for example, has a very significant under-
15 representation of people with intellectual and
16 developmental disabilities that they serve who
17 actually get an individualized plan for employment
18 and ultimately a career path and a job.

19 So where we saw the, you know, the low
20 numbers for voc rehab and then some disconnects
21 between what were people being prepared for. They
22 were being prepared for something other than the
23 work available in that community.

24 Then we also had to deal with, you
25 know, sort of the gatekeepers in the system

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1 because, respectfully, the conversation for the
2 population that I'm talking about that often ends
3 up in sheltered workshops, a 10 to 20 minute
4 conversation is not enough counseling for people to
5 know what you're talking about, to make an informed
6 choice, and to make sure that, you know, they're
7 actually engaging with somebody who knows what
8 resources are available, what good practices are,
9 and so forth.

10 So one of the things that did come out
11 of the Lane case was that what became law in Oregon
12 was evidence-based practices, those practices known
13 to work. And so, when people are using practices
14 that are tried and true, things that we've learned
15 over many decades for the population, it's more
16 likely to be successful.

17 COMMISSIONER NARASAKI: Can I ask one
18 more question? So we heard on the earlier panel, a
19 lot of the data from the states who have actually
20 moved on is people, the numbers in day programs is
21 actually going up. So do you have a theory, does
22 anybody have a theory about why that's happening?

23 MS. MOORE: Well, I think that, you
24 know, the whole proliferation of the day programs,
25 the segregated day programs, ironically, came out

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1 initially came out of the deinstitutionalization
2 movement because people were coming out of
3 institutions and a lot of attention was paid
4 towards, what's home going to look like?

5 So while that was happening, it was
6 kind of like, we'll figure out what you do during
7 the day later. It was seen as sort of subordinate
8 to figuring out where people were going to live.

9 So what popped up was a whole bunch of
10 programs that were arranged around basically day
11 custody. You'll have a place to go during the day
12 and you'll have supervision.

13 What I learned when I was running an
14 employment agency, and we only did individualized
15 competitive integrated employment, and people --
16 what I learned from the families who came and said
17 to me, we're going to send our family member to
18 dayhab, was some of it was fear, some of it was
19 they really didn't know what was available, and
20 some of it, frankly, was providers who had not been
21 very respectful of their concerns.

22 So the way that we worked through that
23 on an individual basis was listening to the
24 concerns of the family members. I didn't find in
25 the 16 years that I ran New England Business

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1 Associates, we didn't find any family members who
2 were attached to the idea of segregation being a
3 good idea, but they did have very real concerns and
4 I -- we respected that.

5 So one thing was the day programs were
6 saying, you know, we have transportation, we'll
7 have your family member from nine to three. You'll
8 know who they're with every day. You'll know what
9 they're doing, and they'll be having -- enjoying
10 themselves, and they'll be safe. That was what
11 they were told.

12 So I was running an employment agency
13 and I said, okay, if the rules of the game here are
14 door to door transportation, we have to make sure
15 you're employed, you know, from at least nine to
16 three, that the family member has some say in who
17 the staff are that are working with their family
18 member and that we're very transparent about our
19 process for figuring out, you know, what does Karen
20 want to do, and that we're then working with the
21 person and their family to say, this is the --
22 these are the environments that we think your
23 family member would do well in.

24 We found that kind of engagement with
25 the family and addressing every single one of their

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1 concerns was what was needed in order for it to be
2 successful. I am a parent, I'm a grandparent,
3 nobody knows my kids better than me, and I
4 absolutely, you know, respected that all those
5 family members probably felt the same way.

6 COMMISSIONER NARASAKI: Thank you.

7 CHAIR LHAMON: Commissioner Adegbile?

8 COMMISSIONER ADEGBILE: Thank you for
9 your testimony. So the way that we try to advance
10 civil rights in the country is we do these reports,
11 we have some data and a description of what's going
12 on in the country right now, and a part of those
13 reports, which is very important, are the findings
14 and the recommendations.

15 So I want to ask the panel are there
16 any particular topics on which you think we should
17 focus findings for our report and are there any
18 particular recommendations that you think we should
19 be making?

20 MR. GARDINER: I think it's important -
21 -

22 CHAIR LHAMON: Do you mind turning your
23 microphone on? Thank you.

24 MR. GARDINER: Sorry. I think it's
25 important to note that sort of this aerial view of

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1 the issue, kind of the issues that kind of inform
2 the reasons why some people are being paid sub-
3 minimum wage in the first place, and on a more
4 practical level, understanding, A, how people end
5 up in these subminimum wage jobs, and B, how the
6 use of subminimum wages for people with
7 disabilities may intersect with other forms of
8 marginalization.

9 For example, people of color who may
10 have reduced employment opportunities because of
11 systemic racism may find themselves being shunted
12 into these work centers, these sheltered workshops,
13 because of both a combination of systemic prejudice
14 based on both their race and their disability and I
15 feel that having that kind of intersectional
16 approach regarding employment and disability and
17 race is also important.

18 I also think that it's important to
19 incorporate some of the data that I mentioned in my
20 testimony and that others have mentioned in theirs
21 about these outcomes of people who are in sheltered
22 workshops, like the one I mentioned earlier about
23 people with intellectual disabilities not having
24 improved employment outcomes.

25 I think it's important to have as much

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1 empirical data as possible, along with qualitative
2 observations and personal testimony and
3 experiences.

4 MS. MOORE: I think it's all going to
5 rise and fall on the strategies used to build
6 capacity for competitive integrated employment at
7 the local, state, and federal level, and we do know
8 how to do this.

9 The science is there, the history is
10 there, when the Supported Employment Initiative was
11 first, you know, initiated back in 1985, over the
12 next eight years, 400,000 people, many of whom were
13 considered unemployable before that, gained gainful
14 employment, minimum wage or better, roughly 20 to
15 25 hours a week, and that was when we didn't, you
16 know, really know what we were doing.

17 So I think that building capacity
18 should be the focus, so Alison gave testimony to
19 saying the HCBS settings rule requires certain
20 things in terms of shifting resources from
21 segregation to integration.

22 You already have some of those hooks.
23 You have some examples, and we can help you with
24 this. In looking at states, I brought up Oregon
25 because it's kind of a test kitchen. The template

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1 for coming into compliance with Olmstead, ADA,
2 WIOA, and HCBS is there.

3 Tennessee is another state to pay
4 attention to, and we can do a longer list at
5 another time, but the places where the leadership
6 was there to say, this is not some debate about
7 this civil right.

8 This is we are going to increase
9 competitive integrated employment. We are going to
10 decrease segregation. We are going to look at the
11 feeder systems to segregation and redirect that to
12 competitive integrated employment, and we're going
13 to take on some of the myths.

14 So I think you can find some of that
15 information to cite to in the NCD reports and in
16 the WIOA Advisory Committee report of September
17 2016, that adjusting things like people who are in
18 sheltered workshop are not different than people
19 who are in competitive integrated employment minus
20 a different set of expectations.

21 So I think just be very concrete about
22 building capacity, redirecting resources -- I know
23 this is an unpopular idea, but I'm just going to
24 put this out there.

25 When we got some momentum going back in

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1 the 80s, it began by Madeleine Will and others
2 having sort of the presence of mind to say a
3 percentage of resources needs to either be created
4 or redirected that actually goes to the end of, you
5 know, technical assistance and transformation. And
6 for that kind of cultural shift to happen, the
7 states need some support.

8 CHAIR LHAMON: Are there other
9 recommendations?

10 COMMISSIONER ADEGBILE: I don't know if
11 Mr. Anton or Ms. Ford want to comment on the
12 question?

13 MR. ANTON: We can pay more with our
14 attention to the outcome in how successful people
15 are in their programs and find a real job.

16 COMMISSIONER ADEGBILE: Thank you.

17 MS. FORD: I think --

18 COMMISSIONER ADEGBILE: Mic.

19 MS. FORD: Okay. I think there needs
20 to be some consideration for choice. There are
21 folks who have been in work activity programs for a
22 long time and who choose to remain there, and I
23 think they have to be considered in this as well.

24 I know we said that they're not given
25 informed choice, well, many of them are given

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1 informed choice now and that came about and it's a
2 very good thing, but our median population is 48.
3 We have a lot of people who are older, and I think
4 that needs to be considered.

5 I also think we need to remember that
6 it is just not developmentally disabled individuals
7 who are in these programs, and in many states, it
8 is not that you are sanctioned to go there.
9 Employment is the first choice in many states, so
10 you need to look at states collectively that are
11 following that.

12 COMMISSIONER ADEGBILE: Could you just
13 say one more line about what the consideration is
14 about the age demographic that you just described?

15 MS. FORD: Well, I mean, we've said
16 that the older population -- there's a large
17 population of between 40 and 60 that have been in
18 work activity programs who choose that option and
19 continue to choose it, and those are a concern for
20 me. I have parents and participants, every time
21 somebody talks about getting, you know, 14(c) going
22 by the wayside, that are panicked and are in my
23 office regularly.

24 So I think they need to be considered
25 in this.

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1 COMMISSIONER ADEGBILE: Thank you.

2 CHAIR LHAMON: Mr. Anton and Ms. Moore,
3 I have questions for both of you. I'll start with
4 a question for Mr. Anton and if you want to take
5 some time to formulate the response, that's fine, I
6 can go to Ms. Moore for her question.

7 You mentioned in your written testimony
8 that you described three funding models that are
9 available to you and your choice to use the
10 participant-directed model because that gives you
11 self-direction to oversee your budget and to select
12 your own staff, and I wondered if you could talk to
13 us about why you choose that model and if you know
14 ideas about why others might choose either of the
15 other two models.

16 MR. ANTON: Because --

17 CHAIR LHAMON: If you would push talk.
18 Thank you. Then your mic will be on.

19 MR. ANTON: When I first started, when
20 I worked at the sheltered workshop, there was,
21 like, very little work that they'd give out and
22 most of the people liked to play games and play
23 cards and everything else.

24 I used to help pull all the work in
25 from outside and I noticed a heavy load of boxes

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1 that we needed to carry in and all the other people
2 looked at me and says to me, it's basically, you
3 can do all the work for us and stuff like that, and
4 I said uh-huh. It's all about us and stuff like
5 that.

6 Yeah, because when I worked I'm in
7 charge of getting paid and I'm always happy to get
8 paid all the time for the work that I do.

9 CHAIR LHAMON: Terrific. And we can
10 come back. One of the things that you mentioned in
11 your written testimony was that in the other models
12 that the money goes to the agency and not to the
13 participant and so that participant doesn't have as
14 much choice about who works with the participant,
15 and I wondered if you could talk about why that
16 makes a difference.

17 MR. ANTON: It's good to work one on
18 one with a staff person sometimes and I also -- I
19 like to be in charge of my own money for one thing
20 and -- because the more work I did, the more I get
21 paid.

22 CHAIR LHAMON: Thank you very much.
23 Ms. Moore, in your written testimony, you talked
24 about wraparound services as one best practice that
25 can support competitive integrated employment and I

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1 wonder if you could share with us more about what
2 wraparound services are and why you consider them
3 the best practice.

4 MS. MOORE: Thank you for asking that
5 because I think that also gets another elephant in
6 the room that we've been kind of poking at a little
7 bit.

8 Not everybody works full-time and so
9 the practice has been for a long time if people,
10 especially if they live in a group home or if they
11 live at home and their family members work, that
12 they're, you know, functionally kind of homeless
13 for a good part of the week.

14 So if people are working part-time,
15 what we usually do is the wraparound services that
16 are very effective are those that are essentially
17 still aimed at the same goal of advancing your
18 career, building your network, acquiring new
19 skills, possibly trying out other work that you
20 might want to do.

21 What all of us do when we feel like
22 we're underemployed or not particularly thrilled
23 with the job we have -- don't tell me if you're not
24 thrilled with the job you have -- but it's also, it
25 addresses the families' concerns that people do

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1 have something to do during the day.

2 Now, the wraparound services then also
3 allow you not to have to go back to the segregated
4 program, like we've kept these segregated programs
5 going because there are gaps in people's social
6 networks, their valued social rules, their
7 engagement in their community, their memberships
8 and associations that they might have, these are
9 things that aren't always given the attention that
10 they might need.

11 It isn't necessarily an alternative to
12 work. Some people consider wraparound services,
13 you have work and then you have the alternative to
14 work, and that fills up your week and for some
15 people that may be it, but for most of us, as John
16 was saying, you want to make good money and so if
17 you're underemployed, you want your wraparound
18 services to focus on those things that we all do to
19 improve our economic well-being.

20 Again, the families can be involved in
21 that. That can be a process that sometimes during
22 discovery when we're figuring out what people want
23 to do for work, we also discover other things that
24 they're very excited about. You know, John's
25 working, John's also taking classes.

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1 So we can help figure out what a full,
2 rich life looks like where people are fully
3 participating in their community in ways that make
4 sense for them.

5 CHAIR LHAMON: Thank you. Mr.
6 Gardiner, it looked like you might want to get in
7 on that conversation. But if you could turn your
8 microphone on when you do it.

9 MR. GARDINER: I was --

10 CHAIR LHAMON: Could you just push talk
11 on your microphone?

12 MR. GARDINER: Okay. Yes, I do think
13 that having these wraparound services is important
14 and there absolutely needs to be, as I said
15 earlier, like, a framework in place before 14(c) is
16 revoked.

17 CHAIR LHAMON: Thank you. Commissioner
18 Kladney?

19 COMMISSIONER KLADNEY: Thank you, Madam
20 Chair. Ms. Ford, on your website, you had -- I saw
21 on your blog, you had ten blockades to integrated
22 employment for disabled people and one was
23 automation. And in that blog, it said new digital
24 kiosks and restaurants, 10 to 15 years, so many
25 millions of jobs would be gone. Working in

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1 restaurants, food prep, timekeeping, clerks,
2 payroll, light truck, things like that.

3 So I was wondering, I was looking at
4 the work you offer in your work center and it's
5 retail ticketing, collating, shrink wrapping, heat
6 sealing, promotional services, labeling, pallet
7 displays, unit packing, hand packing.

8 Are you -- because it's only a 10 or 15
9 year transition now that many of these things won't
10 even lead to any employment, is your center
11 changing and bringing in more technology so that
12 people can learn jobs that because as a
13 rehabilitation center, we're rehabilitating people
14 to go into employment, are -- have you done any of
15 that?

16 MS. FORD: Well, we are looking into,
17 yes, automation machines. We do have a lot of
18 placements in Amazon and Blue Apron, those kinds of
19 companies that do exactly what we still do.

20 So those are jobs that are still
21 available.

22 COMMISSIONER KLADNEY: Well still --
23 but you said 10 or 15 years they're not going to
24 be.

25 MS. FORD: Well, we're concerned about

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1 it as well and we are looking into other options so
2 that we can find training-types of activities where
3 participants would get specific training for
4 fields. Not something, you know, we just hired a
5 new COO who's from the business world, to make
6 those connections because it is going to be
7 extremely important.

8 That's why we got into the café
9 business and we have a, you know, a café in one of
10 our other townships that's very community-based.
11 We do have retail sales, we have a lot of contacts
12 with a lot of the food stores.

13 So we do have a lot of trial work. We
14 have a lot of participants who go out into the
15 community to try different -- we're developing our
16 employer pool. That's the big thing right now.
17 And continuing to do that. We keep putting more
18 people in employment to find those connections.

19 It's so important to develop the
20 partnerships with community and what will be
21 needed --

22 COMMISSIONER KLADNEY: So --

23 MS. FORD: -- so that we know.

24 COMMISSIONER KLADNEY: So if you expand
25 those services, your work center will become

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1 smaller in terms of --

2 MS. FORD: That's what the plan will
3 be. Of course.

4 COMMISSIONER KLADNEY: Okay. And one
5 more question, please, Ms. Moore. When you were
6 talking about wraparound services with the Chair's
7 question, I think Congressman Scott this morning
8 spoke about somebody in his office who has a
9 relative that does work part-time and then in the
10 alternative, he works at a training stable of some
11 sort.

12 Is that the kind of thing you're
13 talking about where people can volunteer or go on
14 day services or have people go out with them and do
15 things during the day if they don't choose to do a
16 job?

17 MS. FORD: I think best practice for
18 working-age adults would be to say, what are the
19 culturally typical things that people do who are
20 underemployed and I would begin there before I
21 started creating a new continuum of day things that
22 people do.

23 What happens, what we've seen in the
24 data, and Dr. Butterworth can speak to this, some
25 of the states that did a full-on blast, you know,

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1 meaningful day that wasn't employment-focused for
2 working-age adults, ended up submarining their
3 employment programs and a part of that would be for
4 people who had a limited frame of reference for
5 work when they'd see that maybe the people they
6 were living with going to go bowling and they were
7 going to go to work.

8 So it's kind of human nature to go, I
9 might rather go bowling, but really meeting the
10 mandates of the Developmental Disabilities Act,
11 Olmstead, and the Americans With Disabilities Act,
12 we really want to give people access to the same
13 kind of lifestyles we all have.

14 So I would caution us against creating
15 a different set of routines and rhythms and social
16 rules for people with disabilities as we have
17 created for ourselves because the best way for
18 people to connect with each other and build a sense
19 of identification is to realize that we have more
20 in common than not. And the best way to do that is
21 to have typical -- cultural and typical routines
22 and rhythms and roles.

23 Now having said that, this isn't
24 workfare, you know, there may be people who can
25 afford to, because they have other resources, only

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1 work a little bit, and want to explore other kinds
2 of vocations, and that's fine.

3 I just think we very quickly go to
4 giving up on people having, like, the same kind of
5 roles that we have, and I would caution against
6 that.

7 COMMISSIONER KLADNEY: Thank you very
8 much. I have nothing further.

9 CHAIR LHAMON: I'm astonished. With
10 that, we will thank this panel and I very much
11 appreciate your testimony and we'll pause for just
12 a moment to allow the panelists to clear this table
13 for our next speaker to proceed.

14 (Pause) CHAIR LHAMON: We will
15 now hear from Governor Tom Ridge who is the Chair
16 of the National Organization on Disability.
17 Governor Ridge?

18 **GOVERNOR TOM RIDGE**

19 **CHAIR, NATIONAL ORGANIZATION ON DISABILITY**

20 GOVERNOR RIDGE: Thank you, Madam
21 Chairman, Distinguished Colleagues, your colleagues
22 on the Panel, I want to thank you for the
23 opportunity to appear before you today. It's an
24 honor, frankly, for me to appear as Chairman of the
25 National Organization on Disability.

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1 A variety of life experiences got me to
2 the point where this is a great personal interest
3 of mine, and for the organization has given me the
4 privilege to serve as Chairman since I left public
5 service in 2005 is both a personal honor and a
6 privilege for me as well. So I'm very pleased to be
7 here.

8 I also want to acknowledge the comments
9 of my fellow panelists and commend them for their
10 passion and their commitment and for bringing their
11 expertise and their remarks.

12 The National Organization on Disability
13 is a private, non-profit organization that promotes
14 the full participation in contributions of America's
15 57,000,000 people with disabilities in all aspects
16 of our daily lives. We primarily focus at NOD on
17 increasing employment opportunities. We live in a
18 culture where your sense of self-worth is not so
19 much what people do for you, but what you can do for
20 yourself. We kind of embody that mindset.

21 Nearly 80 percent of working-age
22 Americans with disabilities are not employed. The
23 core civil rights vision of the Americans With
24 Disabilities Act and other disability rights have
25 informed the approach NOD takes to improving the

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1 lives of children and adults with disabilities.

2 The historic Civil Rights Act of 1964
3 unequivocally told the world that discrimination
4 based on race, color, religion, sex, or national
5 origin, would not be tolerated within the United
6 States of America. The ADA expanded the Civil Rights
7 Act's powerful and historic protection to include
8 people with disabilities. All Americans should have
9 the same opportunity to pursue their dreams.

10 Over the past several months, actually
11 it's well over a year, I had the privilege through
12 my work with NOD to meet with many of the leaders of
13 some of the largest, most politically influential,
14 most passionate and compassionate and effective
15 disability organizations in America who put aside
16 their very specific agendas and individual
17 priorities and we look for common ground, we look
18 for common cause. We found it.

19 Collectively, we represent a powerful
20 constituency that concluded that we would
21 collaborate to bring more workers with disabilities
22 into the competitive labor market with fair wages.
23 We concluded that we would work together to phase
24 out 14(c) of the Fair Labor Standards Act, which
25 sanctions paying individuals with disabilities less

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1 than the minimum wage.

2 We concluded this is a civil rights
3 issue, and that 14(c) is inconsistent with the
4 fairness and equal opportunity guaranteed to every
5 American under existing laws.

6 Now some people, and I think you
7 probably know this, who work under 14(c)
8 certificates, earn pennies per hour. We see this as
9 a civil rights issue. No one, in my judgement, and
10 in the judgement of a lot of other people,
11 regardless of their creed, their race, their gender,
12 their age, their sex, should be subject to such
13 economic discrimination.

14 This system tells Americans with
15 disabilities and it tells their families and the
16 people that love and support them, that you're not
17 worth the same as other Americans. Society values
18 you and your work and your labor less. This practice
19 is contrary to the Americans with Disabilities Act,
20 which sought to achieve fairness by providing
21 statutory protection of the rights of Americans with
22 disabilities to compete on a level playing field
23 with their non-disabled peers.

24 Back in 1938, when the Fair Labor
25 Standards Act legislation was first passed, everyone

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1 assumed that a worker with disability was just going
2 to be less productive than a non-disabled worker. In
3 retrospect, I say respectfully to those who were
4 well-intentioned at the time, it has proven to be a
5 very flawed assumption.

6 We certainly want to be fair to the
7 intent of that original legislation, which was
8 clearly at a minimum, to give individuals with
9 disabilities an opportunity to work in the, to enter
10 the workforce. However, 80 years later, the law
11 still contains section 14(c).

12 Now after 80 years, we know that workers
13 with disabilities, given equal opportunity and
14 appropriate from time to time tools or technology,
15 can perform as well as their non-disabled
16 counterparts.

17 NOD certainly has proven this. Each year
18 we recognize businesses through our Leading
19 Disabilities Employers Seal. We applaud
20 organizations that lead the way in disability
21 inclusion and tap into the many benefits of hiring
22 talent with disabilities. We have plenty of
23 testimony of high rates of productivity and
24 dedication, and greater employment engagement across
25 the broader workplace.

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1 The experience of these companies
2 confirms that individuals with disabilities perform
3 beyond those 80-year-old expectations and do as well
4 and sometimes better than their non-disabled peers.

5 There are some well-intentioned
6 advocates that express concern that the elimination
7 of 14(c) would severely limit opportunities for new
8 Americans with disabilities, who may use these
9 workshops as both a place for meaningful social
10 intervention and a respite for caregivers. We
11 understand these concerns, but remind them that
12 there are other options available.

13 14(c) is not a funding program, it is a
14 certificate. Federal funding will still be available
15 to support individuals with disabilities in other
16 ways. Person-centered planning, where funding goes
17 directly to the individual with a disability instead
18 of a 14(c) certificate-holding agency is an
19 excellent option.

20 Person-centered planning gives an
21 opportunity for individuals with disabilities to
22 have a greater say, a greater voice in their life,
23 in their own direction.

24 Let me give you a great example. At NOD,
25 we love our executive director, Carol Glazer, and

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1 her son Jacob, severely disabled. But he has
2 meaningful part-time employment. Thanks to a person-
3 centered planning model, Jacob works part-time,
4 above minimum wage, at the NBA store in New York
5 City. Medicaid pays for his job coach in the store.

6 He also volunteers in integrated
7 settings the rest of his time, takes weekly classes
8 in art, music, cooking, fitness, self-improvement.
9 We believe that transitioning federal support toward
10 a person-centered planning model will give people
11 more choices than they realize. Jacob has choices.
12 We think everybody should have choices.

13 Individuals with disabilities, parents
14 and care-givers can then choose to use federal
15 funding for job coaches, supporters, or collaborate
16 with these agencies. Eliminating 14(c) would give
17 individuals with disabilities and their families and
18 the organizations that support them, give them a lot
19 greater flexibility.

20 All this being said, we understand that
21 transitioning away from our current model will take
22 some time and some resources. We believe that
23 support to the states and providers to transition
24 away from 14(c) is necessary to make this program
25 and the transition successful and effective.

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1 In 2016, the Advisory Committee on
2 Increasing Competitiveness Integrated Employment for
3 Individuals with Disabilities released a report. You
4 probably know the committee was comprised of
5 Government officials, self-advocates, providers of
6 employment services, representatives of national
7 disability advocacy organizations, experts all over
8 the place.

9 The Advisory Committee called on
10 Congress to allow for a multi-year well-planned
11 phase-out of 14(c). It detailed how the federal
12 government could assist with building the capacity
13 of services to the systems to provide alternatives
14 to those provided under programs using the 14(c)
15 certificates.

16 Similarly, the National Council on
17 Disabilities released a report. The National
18 Council, as you know, is an independent federal
19 agency charged with advising the president and
20 Congress and other federal agencies regarding
21 policies that affect people with disabilities.

22 They also recommended phasing out 14(c),
23 while providing increased capacity support as well.
24 It also recommended the Department of Labor issue a
25 two-year moratorium on any new 14(c) certificates

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1 and that oversight of the system be increased until
2 the phase-out is complete. Madam Chairman, may I
3 have another minute and a half?

4 CHAIR LHAMON: Yes, you may.

5 GOVERNOR RIDGE: I've got to ask
6 permission.

7 CHAIR LHAMON: I appreciate it.

8 GOVERNOR RIDGE: Thank you. These are two
9 very established and very respected groups. The
10 federal government should note that they concluded
11 the same thing, should phase out 14(c), and provide
12 support to ensure the transition is both smooth and
13 effective.

14 That is why the National Organization on
15 Disability, along with more than a dozen groups with
16 whom we are working, support the Transformation to
17 Competitive Employment Act, introduced by Senators
18 Casey and Van Hollen and Representatives Bobby Scott
19 and Cathy McMorris Rodgers.

20 We know this legislation was crafted
21 specifically and carefully to phase out 14(c), while
22 providing resources to states, service providers,
23 subminimum wage certificate holders, and other
24 agencies to ensure inclusive wrap-around services
25 for individuals with disabilities. These resources

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1 could be used to help provide and create new models
2 of workforce opportunities for individuals with
3 disabilities that don't rely on subminimum wage.

4 To conclude, I say this respectfully. In
5 2019, 80 years after the passage of the Fair Labor
6 Standards Act, it's tough to, I don't think there's
7 any excuse for treating an entire class of workers
8 differently from others based solely on their
9 disability. I think such treatment is
10 discriminatory. Just as it would be discriminatory
11 if it was applied to individuals because of their
12 race, their gender, their sex, whatever.

13 All Americans, including those with
14 disabilities, must have a chance to have the
15 financial freedom and security we all seek. Their
16 sense of self-worth and the value of their labor
17 requires society to protect their right to secure
18 employment at least at the minimum wage. After 80
19 years, phasing out Section 14(c) is a step that
20 hopefully we will take to move all of us closer to
21 that national goal.

22 It's long past time to take this fair
23 and, I think, common sense step in the march to
24 freedom for all Americans with disabilities. Madam
25 Chairwoman, I want to thank you for giving me the

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1 opportunity to share these thoughts with you and
2 your colleagues on the panel. As someone who has
3 spent most of my life in public service, I also want
4 to thank you for your public service. It's a
5 pleasure to appear before you. Thank you very much.

6 CHAIR LHAMON: Thank you, Governor Ridge.
7 I'll open for questions.

8 COMMISSIONER ADEGBILE: I think by
9 tradition we have round one of Commissioner's
10 Kladney's questions.

11 (Laughter.)

12 CHAIR LHAMON: But if you're formulating
13 yours, I can start with mine.

14 COMMISSIONER KLADNEY: I'm still
15 thinking.

16 CHAIR LHAMON: Okay. I will start with
17 mine. This is a first, Governor Ridge.

18 In your written testimony, you noted
19 that Medicaid dollars will be available to support
20 individuals with disabilities as necessary, and you
21 shared Jacob's story in a very concrete and helpful
22 way as you spoke. We received written testimony from
23 Representative Grothman, who challenges that notion
24 and asserts that Medicaid may cover some of the
25 costs of support services, but instead family

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1 members may need to leave their jobs for help.

2 In your experience, is Medicaid
3 sufficient to meet the need, and if it is not, do
4 you recommend a fix to Medicaid for that purpose?

5 GOVERNOR RIDGE: I think it's a fair
6 question. I'm going to defer to those people behind
7 me who deal with it operationally on a day-to-day
8 level to respond. Let me say to you that the
9 Medicaid dollars should be sufficient, hopefully, if
10 we're interested in the transition for this self-
11 directed planning, and if they're not, we ought to
12 include more.

13 I'm a strong believer that disabilities
14 in the United States, it's a part of our human
15 condition. It's a part of who we are. People are
16 born with disabilities, during the course of their
17 life they may become disabled, they may go in the
18 military and be disabled, it's part of who we are as
19 330,000,000 Americans. At some point in time, I
20 think this country should stand up and say all
21 right, you have more challenges than most, and we as
22 a society are going to everything we can to help you
23 overcome those challenges.

24 And so I say to you, in response to that
25 very thoughtful, probably objection, I think, I

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1 would like to think that Medicaid dollars would be
2 enough. If there's not enough in appropriation, we
3 get Congress to give them more, and if not then I
4 personally think it's incumbent upon us as a society
5 to make sure there is enough funds available.

6 CHAIR LHAMON: Thank you. Commissioner
7 Kladney?

8 COMMISSIONER KLADNEY: I just have one
9 question, actually. I was wondering, this is a non-
10 partisan issue. I was wondering how you have found
11 or gone through that territory with people. I mean,
12 have you found it partisan at all? Or is it, has to
13 do with people who --

14 GOVERNOR RIDGE: I think that's a great
15 question. I think some of the concerns that I've
16 heard expressed are those, and I try to refer to it
17 in my remarks, who see even if they're getting
18 pennies per hour it's not so much they're getting
19 rewarded or compensated for the work, it is a place
20 for people to go. And so they see it as a respite, a
21 lot, for the caregivers.

22 Mom and Dad, brother and sister, and
23 what we're saying, if you have the self-centered,
24 you can provide with those dollars, with that
25 agency, other opportunities to help that individual

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1 grow, to learn, to expand, and it doesn't have to
2 be.

3 It's just like Jacob. He has a part-time
4 job with above minimum wage and he does volunteer
5 work through the Agency. So I find more the concern
6 from those who provide the services. Obviously they
7 want to be in control of the dollars, and I prefer
8 the individual over the service provider. Let the
9 individual determine which services they need and
10 then let the service provider adapt to the customer.

11 But I think it's not so much a partisan
12 issue, I think it's an understandable, we've been
13 doing it for 80 years this way, we're not going to
14 want to change, but I think that after 80 years,
15 with all the learnings we've had with regard to
16 people in the workplace, their determination, their
17 capabilities, now with adaptive technology --

18 There's some that will take advantage of
19 it but for those who may not, there may be a small
20 portion who may not be able to do that, the
21 wraparound service, there will be other ways to at
22 least enhance the quality of their lives. And I
23 think that's what we're trying to do. I think we can
24 serve both objectives.

25 CHAIR LHAMON: Thank you. Madam Vice-

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1 Chair?

2 VICE-CHAIR TIMMONS-GOODSON: Yes. Thank
3 you so very much, Governor, for being with us. Our
4 research and the readings that we have done thus far
5 as a commission makes it clear that this is a non-
6 partisan issue.

7 I listened with fascination your telling
8 us about the gathering of the group that met, and
9 how you came together putting aside perhaps many
10 differences, but agreed that in fact 14(c) was
11 unfair, that it had no place in the America that we
12 love today, and that on its way to elimination we
13 should phase it out.

14 I was wondering whether the group
15 discussed at all during that time, how it is that
16 they might help this change in the law come about.
17 It's one thing to say we ought to do this, this is
18 what ought to happen, but it's quite another getting
19 it done and I'd just be interested to hear what
20 ideas may have come out of that meeting that might
21 help.

22 GOVERNOR RIDGE: It's a wonderful
23 question, and some of them, I think, are going to be
24 testifying later. They can speak to their own
25 motivation, but NOD -- If you have a disability,

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1 we're for you. We're agnostic with regard to the
2 disability. You can get Autism Speaks, the National
3 Federation of the Blind, the Downs Syndrome group,
4 you get all these wonderful organizations together,
5 and I've spent a lot of time in government and
6 politics, let's see how many people are affected
7 with disabilities in this country.

8 The estimates might be in excess of
9 50,000,000 and they've got brothers and sisters and
10 moms and dads, so politically, in terms of the
11 constituency that's a pretty powerful group if
12 collectively their efforts are focused.

13 That's one of the reasons we said early
14 on at the meetings, every one of those organizations
15 has a legitimate but different and specific
16 interest. So what is it that cuts across all of
17 these organizations so we can speak with one voice?
18 We think speaking with one voice will hopefully
19 generate the kind of support we need in order to get
20 this through the halls of Congress and to your
21 point, to get the bipartisan support necessary to
22 get it to the president's desk.

23 It's a great question. Strength in
24 numbers, I think is the answer. Good math.

25 CHAIR LHAMON: Commissioner Narasaki?

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1 COMMISSIONER NARASAKI: Thank you. It's
2 very good to see you.

3 GOVERNOR RIDGE: Yes, ma'am. Thank you.

4 COMMISSIONER NARASAKI: We had
5 Congressman Bobby Scott here this morning,
6 testifying about two specific bills, the Raise the
7 Wage Act, HR582, and Transformation to Competitive
8 Employment Act, HR873. Does your organization have a
9 position about those two bills? Are there things
10 that you like about it, things that you don't like
11 about it?

12 GOVERNOR RIDGE: We basically, the
13 Transformation to Competitive Employment Act has
14 been our primary focus, so we would say NOD
15 enthusiastically embraces it, but as one who's been
16 given the privilege to work with and lead, we
17 understand how the system works. There may be some
18 adaptations or accommodations that have to be made
19 along the way.

20 But ultimately if we have to do that in
21 order to achieve our long-term goal, no more 14(c),
22 people-centered approach, we'll work it. Right now
23 we just put our arms around that legislation that
24 has bipartisan support in the House, and we're
25 working on bipartisan support in the Senate. Thank

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1 you for the question.

2 CHAIR LHAMON: Thank you. Commissioner
3 Adegbile, want to bring us home?

4 COMMISSIONER ADEGBILE: Sure. Governor
5 Ridge, thanks for your testimony. As we think about
6 change in this area, and legislative reform, I guess
7 there may be three buckets of defenses that people
8 may have of the current regime.

9 One, some people may say that it's
10 fundamentally fair and attach themselves to that 80-
11 year-old notion. I don't think there are a lot of
12 people in that category. There are some who may be
13 concerned about the costs. What are the costs of
14 moving away from the particular regime and the
15 supports that would be needed under a different
16 regime? You've spoken a bit to that.

17 The third are the folks who are worried
18 about some of the unintended consequences of even a
19 phased-out transition, and I'm wondering if you
20 could help illuminate for us what your sense is of
21 why we can be assured that those unintended
22 consequences should not stand in the way of reform
23 in this area?

24 GOVERNOR RIDGE: I think it's a wonderful
25 question. I'm not here to say that the transition

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1 will be easy for everyone, so I'll try to be
2 empathetic and responsive at the same time. I do
3 push back against the notion that the perfect is the
4 enemy of the good. There'd be far, far more men and
5 women with disabilities who would be advantaged by
6 this overwhelmingly than not.

7 But there may be a small cadre who view
8 it and may have some particular problems associated
9 with the transition. Then it's up to us and it's up
10 to the disability advocacy groups and organizations
11 to make sure that we help them overcome, if we have
12 to modify the legislation. But I just, I think it's
13 a fair question.

14 Most of the resistance that I've heard,
15 and my colleagues may speak to you even deeper about
16 more resistance, is that there's not a place for
17 these individuals to go. Well, there are plenty of
18 places to go but they can be volunteering their
19 services or you can be using these dollars to help
20 them improve their quality of lives in so many other
21 different ways.

22 So I think it's a fair question. I guess
23 my ultimate response is that the perfect is not the
24 enemy of the good and the imperfections, it's up to
25 all of us to figure out how we can deal with it.

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1 COMMISSIONER ADEGBILE: Thank you.

2 CHAIR LHAMON: Thank you very much,
3 Governor Ridge. We really appreciate your time.

4 GOVERNOR RIDGE: Thank you for the
5 opportunity to spend some time with you this
6 afternoon.

7 CHAIR LHAMON: With that, we will pause
8 until 2:00 p.m., when we will start Panel Four.

9 (Whereupon the above-entitled matter
10 went off the record at 1:08 p.m. and
11 resumed at 2:00 p.m.)

12 **PANEL FOUR: TRANSITIONING FROM 14(C) PROGRAMS**

13 CHAIR LHAMON: We will get started with
14 our fourth panel. Thank you all for coming back
15 after lunch. In the order in which our panelists
16 will speak, they are Jennifer Mathis, who is
17 Director of Policy and Legal Advocacy and Deputy
18 Legal Director for Bazelon Center for Mental Health
19 Law and, I note with gratitude, also a member of the
20 Commission's Maryland State Advisory Committee.
21 Thank you for your service.

22 And then Julie Christensen, who is
23 Director of Policy and Advocacy of the Association
24 of People Supporting Employment First.

25 Then Lilia Teninty, who is at the Office

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1 of Developmental Disability Services Director at the
2 State of Oregon Department of Human Services.

3 Then Carol Ann "Cari" DeSantis, who is
4 President and CEO of Melwood.

5 And finally, Bryan Dague who is Think
6 College Vermont Program Coordinator and Research
7 Assistant Professor, College of Education and Social
8 Services, University of Vermont. Thank you. Ms.
9 Mathis, please begin.

10 MS. MATHIS: Thank you for the invitation
11 to speak today about these important issues. I am
12 the Director of Policy and Legal Advocacy at the
13 Bazelon Center for Mental Health Law, which is a
14 national non-profit organization that advances the
15 rights of people with mental disabilities in all
16 areas of life, including employment.

17 Employment is among the Bazelon Center's
18 highest priorities, as it is for most of the
19 disability community. While Americans have made
20 great strides in integrating people with
21 disabilities into the mainstream of society, we have
22 a long way to go still when it comes to employment.
23 People with disabilities continue to participate in
24 the labor force at less than half the rate of people
25 without disabilities, and only about 20 percent of

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1 people receiving public mental health services have
2 any form of employment.

3 Despite the proven success of supported
4 employment and customized employment, these services
5 have been scarce. As a result, for far too many
6 people with disabilities the only options are
7 sheltered workshops, sometimes paying subminimum
8 wages, and day programs that do not lead to
9 employment at all. We have the tools to change this.

10 Supported and customized employment have
11 been tremendously successful in helping people with
12 the most significant disabilities secure and
13 maintain employment. These are evidence-based
14 practices that help people with disabilities work in
15 jobs that pay competitive wages in integrated
16 settings in the community.

17 Supported employment is founded on the
18 belief that every person with a disability is
19 capable of working competitively in the community if
20 the right kind of job and work environment, can be
21 found. These services help people find jobs that
22 align with their interests and strengths.

23 Supportive employment services include
24 identifying people's skills, interests and career
25 goals to help match the person with a suitable job,

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1 helping individuals conduct an individualized job
2 search, providing on-the-job help such as counseling
3 and interpersonal skills training to help a person
4 succeed, helping individuals and their employers
5 identify needed accommodations, developing
6 relationships with employers to understand their
7 business needs and match individuals with jobs,
8 identifying how jobs might be restructured to
9 facilitate employment of people with disabilities
10 while meeting employers' needs, and providing
11 benefits counseling to help individuals understand
12 the impact of work on their public benefits.

13 Supported employment has proven far more
14 successful than other services in helping people
15 with disabilities get and keep jobs. For example,
16 for individual placement and support, or IPS
17 supported employment, which serves people with
18 psychiatric disabilities, about 60 percent of
19 participants are employed at any given time,
20 compared with 23 percent of people who receive other
21 mental health day services.

22 In sheltered work settings, by contrast,
23 the GAO study found that only 5 percent, and you've
24 heard lower numbers earlier today, participants ever
25 left the workshops to move to integrated employment.

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1 Increasingly, states have recognized the success of
2 supported and customized employment, and a majority
3 have issued employment first policies, recognizing
4 that competitive integrated employment should be the
5 default option for people with disabilities.

6 Over the last several years, an
7 increasing numbers of states have outlawed
8 subminimum wages for people with disabilities,
9 including New Hampshire, Maryland, Alaska, and
10 Oregon. Some states have banned subminimum wages for
11 state employees or for state contractor employees
12 like Washington and Texas.

13 Other states have effectively eliminated
14 subminimum wages when they stopped funding sheltered
15 workshops, including Vermont and Maine. Still other
16 states, including Oregon and Rhode Island, that
17 you've heard about earlier today, have dramatically
18 decreased the use of subminimum wages due to
19 settlement agreements in cases challenging needless
20 reliance on sheltered work and segregated day
21 settings.

22 In addition, the federal government has
23 eliminated subminimum wages for people with
24 disabilities employed by companies that have service
25 contracts with the federal government, starting in

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1 January 2015.

2 This momentum to eliminate subminimum
3 wages reflects a growing recognition that successful
4 transitions away from subminimum wages are possible
5 if the right steps are taken. We can learn from
6 experiences in states like Vermont, where subminimum
7 wages ended years ago, and Rhode Island and Oregon,
8 where Olmsted settlements brought big decreases in
9 subminimum wage sheltered work and big expansions of
10 competitive integrated employment.

11 These experiences show that systemic
12 transitions can succeed when effective supports are
13 made available, staff are adequately trained,
14 technical assistance is available to assist with
15 transition, benefits counseling is available,
16 families receive full information, and funding and
17 rate structures are adjusted to support transition.

18 Bryan Dague will talk in more detail
19 about the experience in Vermont, where since closing
20 the last of the sheltered workshops in 2003, the
21 rates of people with disabilities in competitive
22 integrated employment are now nearly two and one-
23 half times the national average.

24 Lilia Teninty will talk about the
25 experience in Oregon, where the Olmsted employment

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1 settlement has led to significant positive changes
2 as well.

3 In Rhode Island, as a result of the
4 settlement agreement to close the front door to
5 sheltered workshops and provide opportunities for
6 people with disabilities to transition from
7 segregated subminimum wage employment to competitive
8 integrated employment, the state more than doubled
9 the number of people with disabilities in
10 competitive integrated employment over five years,
11 and reduced the number of people with disabilities
12 in sheltered workshops by 90 percent.

13 The National Council on Disability's
14 2018 report, *From the New Deal to the Real Deal*,
15 offers insight into measures that stakeholders have
16 found most important to support successful
17 transitions, such as adequate training of qualified
18 staff, belief of provider leadership and staff in
19 individuals' ability to work, and commitment to the
20 values of competitive integrated employment,
21 assistance from centers that provide technical
22 assistance on converting from sheltered workshops to
23 supporting individuals in competitive integrated
24 employment,
25 incentives for competitive integrated employment

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1 outcomes, including outcome-based payment
2 mechanisms, using successes to educate staff and
3 families about what is possible, and bridge funding
4 to support the initial transition to a new model.
5 Employment is not only important to help people with
6 disabilities to achieve financial independence and
7 self-sufficiency, it is also a key aspect of
8 people's sense of purpose and participation in
9 valued social roles and in mental health recovery.
10 it helps ensure autonomy, dignity and choice.

11 Subminimum wage employment undermines
12 these key goals. We should be working to phase out
13 subminimum wage employment and build the capacity
14 that is needed to offer people competitive
15 integrated employment opportunities instead.
16 Experience tells us that this can be done if we take
17 the right steps. Thank you.

18 CHAIR LHAMON: Thank you, Ms. Mathis. Ms.
19 Christensen?

20 DR. CHRISTENSEN: Good afternoon, and
21 thank you for the invitation to share comments this
22 afternoon. I'm the Director of Policy and Advocacy
23 at the Association for People Supporting Employment
24 First, or APSE. APSE is the only national non-profit
25 organization dedicated to employment first, a vision

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1 that all people with disabilities have a right to
2 competitive employment in an inclusive workforce.

3 In 2009, APSE became one of the first
4 advocacy organizations to publicly call for the
5 phase out of subminimum wage of people with
6 disabilities. The questions asked of this panel
7 aimed to understand the implications of
8 transitioning employment programs from paying the
9 subminimum wage under 14(c), and from offering
10 services in segregated or sheltered work settings.
11 To begin with, I'd like to make a distinction
12 between the two separate but related concepts in
13 question today.

14 There are two avenues through which
15 individuals with disabilities can be paid below the
16 federal minimum wage. The first is the use of 14(c)
17 certificates. The other is through Medicaid,
18 specifically prevocational in group-supported
19 employment services. It's important to understand
20 the interface of the two, because any change to one
21 may impact the other.

22 Regardless of which side of the 14(c)
23 debate any of today's panelists may represent, I
24 believe we all agree that it is vital to ensure that
25 no individual with a disability is left without

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1 necessary supports and services as a result of any
2 policy change.

3 APSE came into existence simultaneous to
4 a significant federal investment in implementing
5 supported employment services in the late 1980s. The
6 field has grown tremendously over the past few
7 decades, yet supported employment remains the most
8 widely accepted evidence-based and cost-effective
9 practice for improving competitive integrated
10 employment outcomes of people with disabilities.

11 Over the past two decades, APSE member
12 organizations who previously operated facility-based
13 sheltered workshop programs utilizing Medicaid
14 funds, have transformed to a service delivery model
15 that promotes competitive integrated employment.
16 Supported employment is a critical component of this
17 transition.

18 There is clear evidence that sheltered
19 workshops and similar programs can be changed, and
20 that services can be successfully provided in a way
21 that is in sync with our national disability policy,
22 a full integration and inclusion of people with
23 disabilities.

24 Regardless, prevocational services are
25 currently allowable through the Medicaid waiver, and

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1 under Medicaid rule an individual is eligible for
2 compensation up to 50 percent of the minimum wage
3 while receiving these services.

4 CMS is clear that prevocational services
5 are not an end point, but a time-limited service for
6 the purpose of helping someone obtain competitive
7 employment. However, in direct violation of the
8 rights of people with disabilities, it is not
9 uncommon to find individuals who have been receiving
10 services in these programs for decades.

11 Regardless, when Medicaid funding is
12 involved, the law is clear. Services must be
13 integrated and the ability to earn a full wage must
14 be the goal, and to deny opportunities when using
15 Medicaid-funded services is a clear violation.

16 However, the continued utilization of
17 14(c) is a slightly different matter. 14(c) is not
18 prevocational, it's a legal designation for work
19 completed by individuals with disabilities who are
20 not working at 100 percent productivity. It's
21 important to note that 14(c), under that Fair Labor
22 Standards Act of 1938, was hugely progressive at the
23 time.

24 The goal was to help injured veterans
25 assimilate back into the workforce during a period

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1 of time when our society largely institutionalized
2 people with disabilities, but in 2019, 14(c) is used
3 to pay mostly people with intellectual and
4 developmental disabilities a subminimum wage despite
5 the fact that the law was never conceptualized for
6 this population. Arguably, the continued use of
7 14(c) now perpetuates the stigma of what people with
8 disabilities can be reasonably expected to
9 contribute.

10 Consider this. My very first job, I was
11 not very productive. Fortunately, I was not expected
12 to perform 100 percent all the time. I was provided
13 additional training, I was cross-trained for other
14 tasks that I might be better suited for. When all
15 available options were exhausted and I was still not
16 performing to expectations, I was, as I like to
17 think about it, provided the opportunity to pursue
18 other employment options.

19 Throughout the entire process, I was
20 paid minimum wage. The minimum wage is exactly that,
21 a minimum wage. It is the lowest amount an employer
22 is legally allowed to pay an employee. That is,
23 unless you have a disability.

24 In fact, people with disabilities are
25 the only protected class of U.S. citizens under

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1 federal employment discrimination law, for which
2 there is an exemption from the minimum wage. This
3 fact in and of itself is a civil rights issue.

4 You've asked us to comment on the trends
5 in 14(c). There has been a steady decline in the
6 number of active certificates and the number of
7 individuals served. Some of this decrease is
8 accounted for by state level initiatives. During the
9 2019 legislative session, 12 states had proposed
10 legislation calling for some level of phase out of
11 14(c) and subminimum wage. To date, four states have
12 phased out subminimum wage by a legislative action.

13 Despite the limitations of available
14 data we've discussed today, there are positive
15 trends that can be observed, looking at the data
16 that we do have. Of critical concern in the
17 discussion is ensuring that there is adequate
18 funding and capacity within the service delivery
19 system to support the successful transition of
20 individuals into competitive integrated employment.

21 A cursory analysis of state-level
22 investments in integrated employment funding,
23 simultaneous to the phase out of 14(c), suggests the
24 relationship between the two may have an impact on
25 outcomes.

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1 For example, in the year that 14(c) was
2 phased out in Vermont, the state investment in
3 integrated employment funding increased by
4 approximately two million dollars. At the same time,
5 a moderate increase in the employment rate for
6 people with disabilities was achieved.

7 In closing, some today are going to
8 argue and will argue that there are people that, due
9 to the severity of their disability, simply cannot
10 work competitively. It is my opinion that to accept
11 this as truth is to summarily discriminate against
12 people with disabilities by applying an inherently
13 unfair standard of low expectations for their
14 potential contributions to our society.

15 Bill Stumpf, a parent-advocate from
16 Iowa, summarizes it best. When I'm asked this
17 question, he says, I respond to that by
18 acknowledging that I used to be one of the people
19 who believed that, but now I've seen what is
20 possible. I'm not saying it is easy to accomplish,
21 but it is possible, and to accept anything less is
22 to deny the rights of people with disabilities.

23 At the end of the day it cannot be
24 ignored that the only protected class of employee
25 for which there is an exemption from the basic right

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1 of earning a minimum wage is people with
2 disabilities. When federally funded programs and
3 services contribute to this systematic
4 discrimination, the U.S. Government is complicit in
5 devaluing their existence.

6 There is much work to be done to
7 untangle the current systems that economically
8 disadvantage people with disabilities. However, it
9 is good work and it is the right work. Thank you for
10 your time.

11 CHAIR LHAMON: Thank you, Ms.
12 Christensen. Ms. Teninty.

13 MS. TENINTY: Good afternoon, my name is
14 Lilia Teninty, I'm the Director of the Office of
15 Developmental Disabilities Services for the State of
16 Oregon. Thank you for inviting me to be a part of
17 this briefing.

18 Oregon is an Employment First state.
19 This means we support people to fully participate in
20 all aspects of their community. This includes
21 employment.

22 The Office of Developmental
23 Disabilities, along with our partners Vocational
24 Rehabilitation and the Department of Education, have
25 worked diligently over the last six years to align

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1 our services and collaborate to ensure every
2 Oregonian, regardless of their level of support
3 need, who wants to work has the supports and
4 services in place to get, keep, and advance in a
5 job.

6 Self-advocates and their families have
7 told us that they want to be fully included in their
8 community and they want to have opportunities for
9 jobs with fair wages and opportunities for
10 advancement. Businesses and communities benefit
11 when people with disabilities are integrated into
12 every aspect of our work force.

13 People with significant disabilities who
14 were once considered not able to work can thrive in
15 the work force and add value to the economy. I'd
16 like to tell you first about a woman named Linda.
17 She's 62 years old and went to a segregated school
18 and was told her only option for employment was in a
19 sheltered workshop.

20 She fought to go to a regular high
21 school, earn a bachelors degree, and despite this,
22 she was still told her only option was a sheltered
23 workshop, because she uses a wheelchair and has
24 significant communication barriers.

25 As a result of Oregon's Employment First

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1 focus, Linda opened a file with Vocational
2 Rehabilitation and in 2018, was hired at Portland
3 State University's Universal Design Lab. Today, she
4 is a research assistant at that lab.

5 In Oregon, a crucial aspect of
6 transforming our service system was and is to focus
7 on high school transition-age youth. We want the
8 expectation to be that every student, including
9 those with disabilities, will go on to higher
10 education, technical training, or jobs, like their
11 peers. To achieve these goals, we need to stop the
12 school to sheltered workshop pipeline.

13 We issued a policy in 2015 ending any
14 new entries into sheltered workshops and making it
15 clear that funding for sheltered workshops will end
16 in 2020. At that time, we had about 40 sheltered
17 workshop providers. Currently, there are five
18 sheltered workshops in Oregon, and I can say that by
19 September 2020, we will not have any.

20 The impact of this cannot be overstated.
21 Our goal is that kids, regardless of their
22 disability, grow up with the same expectations as
23 any other child, to become contributing members of
24 their communities.

25 This year, four teens with intellectual

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1 and developmental disabilities were cast as
2 professional actors in a production of Hairspray put
3 on by the Oregon Shakespeare Festival. They were
4 paid as professional actors like their cast mates.

5 Luke was one of these teens. He is 14
6 years old, uses a wheelchair and a communication
7 device. As a result of this experience, Luke and
8 his family fully expect he will continue to pursue
9 employment opportunities in his community, no
10 sheltered work for him.

11 The story of this musical was carried in
12 media outlets throughout Oregon and I am sure helped
13 other youth with disabilities and their family see
14 what is possible with the right support and
15 encouragement.

16 In 2015, when Oregon closed the front
17 door to sheltered workshops, there were 3,711 people
18 in sheltered workshops, making an average of \$4.74
19 per hour, well below minimum wage at that time.
20 Some individuals made as little as ten cents an
21 hour.

22 Today, there are less than 300 people
23 that remain in sheltered workshops and those that
24 remain make an average of 490 cents an hour.
25 Additionally, as of September 2019, there are 2,107

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1 people with intellectual and developmental
2 disabilities in competitive integrated employment,
3 making an average of \$11.71 per hour.

4 Earlier this year, the Oregon
5 legislature addressed the wage issue with Senate
6 Bill 494. No employer in Oregon will be allowed to
7 pay below minimum wages as of July 1, 2023.

8 We expect this legislation will have the
9 largest impact on our qualified rehabilitation
10 facilities who do not receive ODDS funding for the
11 work done by people with disabilities in these
12 settings.

13 The demand to end subminimum wage for
14 people with disabilities came from many individuals,
15 families, advocacy groups, and provider agencies who
16 have seen the powerful impact of Employment First
17 policies.

18 To achieve these goals established in
19 our Employment First policy, we created stronger
20 partnerships with Vocational Rehabilitation and
21 local school systems at the state and local levels.

22 We offered transformation grants to
23 provider agencies to help them plan and execute
24 their organization's transformation from segregated
25 employment settings into entities that help people

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1 access competitive integrated employment. We funded
2 technical assistance for every facility-based
3 employer provider in the state.

4 We recognize that, for many individuals
5 and families, the staff and leadership of their DD
6 provider agency are trusted more than bureaucrats at
7 the State, no matter how well-intentioned we may be.
8 Getting the support and buy-in from local DD
9 provider agencies and case management entities was
10 critical in this process.

11 Grants, ongoing technical assistance,
12 developing outcome-based payment methodologies, and
13 walking with these agencies through every aspect of
14 the transformation process were key to implementing
15 our Employment First policy.

16 We cannot emphasize enough how important
17 it is to engage our partners in this work and
18 provide as much support as possible as these are
19 major systems changes. Oregon continues to be a
20 national leader in serving people with intellectual
21 and developmental disabilities in their community.

22 In Oregon, there are no institutional
23 settings for people with intellectual and
24 developmental disabilities, everyone has access to a
25 wide array of services, if they are determined to be

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1 eligible, and our Employment First work continues to
2 put us at the forefront of supporting people to be
3 fully participating members of their communities.
4 Thank you for your time.

5 CHAIR LHAMON: Thank you, Ms. Teninty.
6 Ms. DeSantis?

7 MS. DESANTIS: Good afternoon and thank
8 you so much for having me --

9 CHAIR LHAMON: If you would push Talk on
10 your microphone.

11 MS. DESANTIS: Sorry. Thank you so much
12 for having me here today. My name is Cari DeSantis,
13 I'm the President and CEO of Melwood, a Maryland
14 based CRP.

15 In 1963, on seven acres of unimproved
16 land across from Andrews Air Force Base, a group of
17 parents pitched an Army tent and began to lay the
18 foundation for a place where people of differing
19 abilities could gain job skills and share in the
20 American dream of dignity and independence through
21 self-generated income. That was the beginning of
22 Melwood.

23 Today, Melwood has over 1,600 employees,
24 of which nearly 1,000 are people of differing
25 abilities, working across five Melwood campuses and

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1 more than 60 federal job sites. We also train,
2 place, and support approximately 250 people each
3 year in competitive work, in communities throughout
4 the DMV.

5 We start by believing that anything is
6 possible, when people of differing abilities can
7 pursue their potential. Melwood's employees work
8 hard and take pride in the work that they do, and
9 because of that, we are able to deliver performance
10 excellence and quality service for our customers.

11 As a nonprofit dedicated to advancing
12 the idea of workplace inclusion, we run our
13 organization like any \$110 million business, only
14 the margins from our contracts are reinvested into
15 support services and innovative programs that create
16 even more opportunities for people of differing
17 abilities to enter the workforce.

18 When I was hired as Melwood's President
19 and CEO in early 2013, I learned for the first time
20 about time trials, commensurate wages, and the Fair
21 Labor Standards Act Section 14(c). Having spent
22 most of my career in human services, I felt that
23 this practice was wrong, discriminatory, and counter
24 to the Melwood vision.

25 Let me tell you about time trials. Time

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1 trials caused our employees to feel extremely
2 anxious and stressed, as employees knew that their
3 performance could reduce their wages and harm their
4 ability to live happy independent lives.

5 The time trials did not take into
6 consideration factors that affect all of us, like
7 whether we have a health problem that day or
8 personal issues, something that could impact our
9 ability to perform that task.

10 More importantly, time trials just
11 reminded our employees that they were different. It
12 focused on their disability, not on their ability to
13 work or their value to the customer. The average
14 employee lost five hours of productive time as a
15 result of each time trial, not including the loss of
16 productivity due to the anxiety distraction. Some
17 of our federal customers went so far as to ban time
18 trials on site, because of the productivity and
19 distraction concerns.

20 In addition to the immediate concerns of
21 lost wages and lost productivity, these time trials
22 also impacted the overall long-term morale of our
23 employees. A review found that almost half of our
24 HR complaints and vocational support crises calls
25 were related to time trials.

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1 Faced with all of these concerns, one of
2 my first initiatives in 2013 was to begin phasing
3 out the use of our 14(c) Certificate. First, we
4 eliminated subminimum wages. Next, we ended time
5 trials for any employees who had scored 100 percent
6 during two consecutive time trials.

7 In 2015, we studied the impact on our
8 organization of these initial phase-outs. At that
9 time, 396 employees across 26 work locations were
10 still covered by 14(c) and subjected to time trials.
11 We reviewed the financial impact on our organization
12 of the 14(c) Certificate, including the increase of
13 direct labor costs to our customers, as well as the
14 savings realized by eliminating the overall overhead
15 of the program.

16 We determined that the increase in
17 direct labor costs to Melwood for the first fiscal
18 year would be about \$500,000. We also calculated
19 that the annual cost to administer the 14(c) program
20 was approximately \$135,000, and trending upward
21 fast.

22 In January of 2016, we recommended to
23 the board of directors that we eliminate the use of
24 14(c) and relinquish our certificate altogether.
25 This was a bold step, but the board concurred.

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1 Since then, wages for workers of
2 differing abilities at Melwood have been determined
3 by the prevailing wage, time in position, and other
4 policies that affect all of our employees.

5 Melwood has not suffered from this
6 policy, but instead, we have grown from a \$90
7 million to a \$110 million organization just in this
8 couple of years. The average wage for a worker of
9 differing abilities working on a Melwood contract is
10 now \$15.68 per hour and every Melwood employee is
11 entitled to our excellent employee benefit plans,
12 including health insurance and retirement
13 contributions.

14 In the nearly four years since
15 relinquishing our 14(c) Certificate, we have proven
16 that the financial cost of discontinuing 14(c) was
17 not only manageable, but a good investment that
18 allowed Melwood to continue to grow and deliver on
19 our mission.

20 We increased employee morale and
21 employee satisfaction, and we now operate at more
22 than 60 contract sites in Maryland, D.C., and
23 Virginia, and soon, North Carolina, as we continue
24 to develop new business opportunities and serve even
25 more people.

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1 According to the 2017 Melwood economic
2 impact report, Melwood workers of differing
3 abilities earned more than \$27.7 million in wages
4 and paid approximately \$6 million in federal, state,
5 and local taxes.

6 Through their spending in their
7 communities, Melwood's workers have generated an
8 additional 135 jobs in other businesses in the
9 region, for a total induced economic output of
10 nearly \$19 million in the DMV.

11 We will soon celebrate 30 years since
12 passage of the Americans with Disabilities Act. It
13 is well past time for us to live up to the ideals of
14 the ADA by eliminating Section 14(c).

15 The continued use of 14(c) reinforces a
16 demonstrably false and discriminatory narrative that
17 people of differing abilities are not capable of
18 doing much, that they don't warrant investment, and
19 that they aren't going anywhere.

20 It is a bigotry of low expectations that
21 foreshadows and often directly causes a life of
22 poverty, segregation, and dependency on public
23 support. One self-advocate I have heard, a guy with
24 Down Syndrome who has spoken against 14(c) so very
25 poignantly, said that the subminimum in subminimum

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1 wages communicates as subhuman.

2 Today, there are so many hundreds of
3 thousands of people of differing abilities who are
4 paid an average of \$2.15 or less, and this is
5 totally unacceptable.

6 As a nation, we can do better. We must
7 do better. We've made great strides in improving
8 and ending inequalities in the workplace for women,
9 people of color, LGBTQ+ individuals, and now, we
10 must do the same for people of differing abilities.
11 Thank you.

12 CHAIR LHAMON: Thank you, Ms. DeSantis.
13 Mr. Dague?

14 DR. DAGUE: Thank you. Good afternoon
15 and thank you for the opportunity to speak about the
16 work being done in Vermont and around the country to
17 fully include people with intellectual and
18 developmental disabilities into our society.

19 I'm often asked, when did Vermont decide
20 to change sheltered workshops? The answer is,
21 Vermont's transition away from sheltered workshops
22 began in 1980, with the Supported Employment
23 Demonstration Project.

24 Key leaders within the State of Vermont
25 and the University of Vermont were driven by the

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1 values and belief that people with disabilities
2 deserve to be part of the community like everyone
3 else, not institutionalized or segregated.

4 The Supported Employment Demonstration
5 Project started in a sheltered workshop in Barre,
6 Vermont. Staff found community-based employment for
7 workers, with support and training from agency job
8 coaches.

9 It took about three years to
10 successfully move about 70 people out of the
11 facility into community employment. The success of
12 this Demonstration Project led to replication sites
13 throughout the state.

14 Since the initial Supported Employment
15 Demonstration Project, inclusive employment of
16 individuals with intellectual and developmental
17 disabilities has steadily increased.

18 The sheltered workshops gradually closed
19 as people found employment in the community or
20 became involved in other community services. In
21 2002, Vermont closed its last sheltered workshop for
22 people with intellectual and developmental
23 disabilities, becoming the first state with no
24 sheltered work.

25 Vermont's current rate of employment for

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1 individuals with intellectual and developmental
2 disabilities is 47 percent, compared to the national
3 average of 19 or 20 percent. The agency that housed
4 the last sheltered workshop actually has an
5 employment rate closer to 75 to 80 percent.

6 The vast benefits of employment for
7 people with disabilities include increased income, a
8 sense of contribution, skill acquisition, increased
9 confidence, independence, identity, social
10 connections, and the opportunity for people to
11 develop meaningful careers.

12 Employers and communities benefit from
13 the social inclusion and diversity people with
14 developmental disabilities bring to the workforce
15 through improved morale, customer loyalty, overall
16 productivity, and their unique gifts and talents.

17 Observing people with developmental
18 disabilities productively engaged in the workforce
19 helps employers and community members see the
20 valuable contributions of people with disabilities.
21 The shift in philosophy and practice from facility-
22 based to community-based employment services also
23 shifts energy and resources.

24 Since Vermont has no segregated
25 employment, other opportunities are nurtured and

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1 supported, including Project SEARCH programs, the
2 high school vocational training program. There's
3 three locations of Project SEARCH in Vermont.

4 There's post-secondary education
5 programs, like Think College at the University of
6 Vermont, that's a post-secondary ed program for
7 students with intellectual disabilities. That has
8 been going since 2010. And College Steps has
9 replicated that program at three other state
10 colleges in Vermont.

11 There's the SUCCEED Program, which is
12 another post-secondary transitional living program.
13 As well as Global Campus, which is a lifelong
14 teaching and learning program.

15 So, there are numerous educational and
16 vocational training programs for people. People who
17 would have been relegated to sheltered workshops are
18 now students in these education and vocational
19 programs, resulting in employment.

20 As the Director of the Think College
21 Program at the University of Vermont, I see the
22 positive impact this program has, not only on the
23 students, but for the entire University community.
24 Students with intellectual and developmental
25 disabilities today are preparing for community life

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1 and employment, not segregated sheltered work.

2 The subminimum wage model is outdated
3 and not needed when there are so many other options
4 available. Services have improved so much over the
5 years with supported employment, customized
6 employment, self-employment, and expanding post-
7 secondary education programs.

8 We need to continue to improve and
9 expand these services and not hold onto antiquated
10 models with low expectations that hold people back.
11 When institutions and sheltered workshops no longer
12 exist, the overall culture changes.

13 When people with disabilities are in and
14 part of the community, the community is richer for
15 it. Employers will hire and include people with
16 disabilities at a competitive wage. When there are
17 no sheltered workshops, it becomes the norm. The
18 expectation is to be part of the community,
19 including work.

20 I understand the transformation of
21 services can seem difficult and daunting, but it can
22 and should be done. We've been hosting the
23 Sheltered Workshop Conversion Institute since 2007,
24 to provide assistance to states and agencies with
25 this transformation, and many organizations have

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1 been successful.

2 Successful agencies have been forward-
3 thinking in changing their culture and services to
4 meet the needs of future generations, not holding
5 onto outdated models. Younger families are seeking
6 community inclusion, not segregation.

7 It has been 17 years since we had
8 sheltered workshops in Vermont and we have not
9 looked back. It is time to look forward and create
10 a better and more inclusive world for people with
11 disabilities. Thank you.

12 CHAIR LHAMON: Thank you, Mr. Dague.
13 I'll open now for questions from fellow
14 Commissioners. Commissioner Kladney?

15 COMMISSIONER KLADNEY: Thank you, Madam
16 Chair. Ms. Mathis, we've had some testimony here
17 today that subminimum wage work is therapeutic for
18 people with mental health challenges. How would you
19 respond to that?

20 MS. MATHIS: I think, if you actually
21 talk to folks who have run mental health systems,
22 who have expertise in mental health and employment,
23 most of them will say that employment is the best
24 treatment for mental health, that employment is key
25 to mental health recovery, and that working in an

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1 environment like a sheltered workshop, especially
2 with subminimum wages, which conveys, I think as
3 folks have talked about, that a person is really of
4 diminished value, is damaging to people's mental
5 health.

6 And I think there have been some studies
7 about, certainly, underemployment, unemployment, and
8 the impact on people's mental health being
9 devastating.

10 COMMISSIONER KLADNEY: Thank you. Ms.
11 Teninty, did I say that right?

12 MS. TENINTY: Teninty.

13 COMMISSIONER KLADNEY: Teninty, thank
14 you. How difficult was it to change the culture
15 from work centers to competitive integrated
16 employment? And how many issues do you face, what
17 issues do you face when you work with employers
18 trying to get them to hire people with disabilities?

19 MS. TENINTY: Good question. I would
20 say, in terms of what issues do we face?, and I say
21 we as a state, I'm not representing a provider
22 agency, I can just say from looking at what
23 occurred, I think some of the biggest challenges we
24 faced were around perceptions and changing the ideas
25 behind what people with intellectual and

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1 developmental disabilities are capable of.

2 People go into this line of work because
3 they care about people with intellectual and
4 developmental disabilities, and that is true for our
5 provider agencies that at one point were offering
6 sheltered work, segregated employment opportunities.

7 And so, it was really an effort to help
8 their boards of directors, who are often volunteers,
9 they're often community members, parents of people
10 who work in the segregated environment, to help them
11 really see what was possible.

12 And to invest, financially, from the
13 state perspective, in helping them, by providing
14 transition support, technical assistance, laying out
15 plans for how the organization could move in that
16 direction. I will -- it's not an easy process.

17 I've talked to several executive
18 directors throughout the process, and I think I can
19 say one of the challenging things that many of them
20 get to a point where they recognize, is the workers,
21 their staff that they have working in the sheltered
22 environment is not the staff they need to be the
23 ones going out and trying to seek competitive
24 integrated employment for people.

25 And so, we offered training through APSE

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1 and other entities, and they could put people
2 through that training, but ultimately there were
3 staffing decisions that had to be made based on the
4 direction they were going.

5 Family resistance in those
6 organizations. I've attended many family meetings
7 for family members who worked in these environments,
8 who just absolutely are very resistant.

9 Very similar, honestly, to what I've
10 experienced and others have experienced when we move
11 forward with closing institutional settings, it's a
12 very similar dynamic. And it's just the reality of
13 what people have come to expect and what they want
14 for their family member, and it's helping them move
15 forward with seeing what's possible, the bigger
16 goals and ideas.

17 And to the second part of your question,
18 the challenges that we continue to face today,
19 honestly, I'll speak to one that is not unique to
20 Oregon. A lot of it ties back to the workforce for
21 our provider agencies, who are doing job coaching
22 and supported employment and going out and doing job
23 development, that continues to be a challenge for
24 us.

25 And other pieces of it, we think we are

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1 about through a final step with our friends at the
2 Centers for Medicare and Medicaid Services, getting
3 approval on an outcome-based payment methodology
4 that we've been working on now for about five years.
5 Once we have that, that will be a hurdle that we
6 will have overcome, I would say. So, I think those
7 are currently issues.

8 Another piece that I would say that we
9 have worked hard on and has been a challenge is,
10 again, along with the public perception is employer
11 perception, and we've had a big, very successful I
12 Work We Succeed marketing campaign in the community.

13 Initially, it was targeted toward
14 individuals and family members, helping them
15 understand what was possible. We've shifted now and
16 we're focusing on employers and holding up employers
17 that hire people with intellectual and developmental
18 disabilities as examples of what's possible to their
19 colleagues and other business owners in their areas.

20 COMMISSIONER KLADNEY: Thank you. Mr.
21 Dague, you mentioned about the seminar that you run.

22 DR. DAGUE: Yes.

23 COMMISSIONER KLADNEY: Is this approach
24 being adopted in places other than states that have
25 eliminated 14(c)? And how are these programs funded

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1 with federal money?

2 DR. DAGUE: Well, I know the State of
3 Ohio has done a lot in terms of transforming their
4 services. And I think they've done an excellent job
5 with that, because they've put in money and
6 resources and training for their agencies to do
7 that. As far as other states, it varies. I know
8 New York State has done some work, Ohio, it all
9 depends on the state and what their initiatives are.

10 COMMISSIONER KLADNEY: Okay. And how
11 about the funding? How's that work for you?
12 Because I understand that it's not easy all the time
13 to get the funding.

14 DR. DAGUE: It's not easy all the time.
15 Again, it sort of goes back to the states and how
16 their Medicaid waivers are funded. Vermont has
17 chosen to individualize the budget, so the budgets
18 are built around the individual's needs. Some other
19 states kind of divide it evenly amongst everybody,
20 so that leaves very little money for services for
21 each person.

22 COMMISSIONER KLADNEY: I think you said
23 47 percent of people have found --

24 DR. DAGUE: Yes.

25 COMMISSIONER KLADNEY: -- competitive

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1 integrated employment.

2 DR. DAGUE: Right.

3 COMMISSIONER KLADNEY: So, that would
4 leave 53 percent that have not, is that correct?

5 DR. DAGUE: Yes.

6 COMMISSIONER KLADNEY: So, what do those
7 folks do?

8 DR. DAGUE: Well, some of them are
9 looking for work. Some are choosing not to work.
10 We're sort of more of an Employment First state, the
11 policy and philosophy, more than policy, so we don't
12 require people to work, so if people choose not to
13 work, that is up to them. Others are choosing
14 community-based services rather than employment. We
15 really push employment, that's our preferred option,
16 but it's still up --

17 COMMISSIONER KLADNEY: Community-based
18 services being?

19 DR. DAGUE: Well, they can use their
20 Medicaid waiver, ours are divided into either
21 employment supports or community supports. So, they
22 could use their individual budgets for more
23 community-based activities, which could include
24 volunteer work or going to the YMCA or local clubs
25 or activities and things like that.

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1 COMMISSIONER KLADNEY: Okay. Ms. Teninty
2 talked -- did I say that right? Good -- spoke about
3 problems with job developers and job coaches, and
4 it's my understanding that that problem, with those
5 two professions, seems to go through the states that
6 have gotten rid of 14(c).

7 DR. DAGUE: Well, yes, I would say that
8 the direct support professionals is kind of a crisis
9 level throughout the country, that we need a lot
10 more people to work than are willing to do that. A
11 lot of it is the wages.

12 And one of the questions earlier was how
13 to develop a career path for that? And we're
14 working on that, we're looking at that at the
15 University of Vermont right now, to see if we can
16 develop more kind of certificate programs, to train
17 people, so that they understand that it is a career
18 track. And that would make them eligible to sit for
19 the CCEP certification that national APSE offers, to
20 give it more of a credible career.

21 COMMISSIONER KLADNEY: And one last
22 question, would it be -- what would see and would it
23 be worthwhile to come to Vermont to see how you
24 function?

25 DR. DAGUE: Sure.

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1 (Laughter.)

2 DR. DAGUE: Come and visit.

3 COMMISSIONER ADEGBILE: Depends on the
4 month.

5 (Laughter.)

6 DR. DAGUE: Yes.

7 (Laughter.)

8 DR. DAGUE: Yes, come in the fall or
9 spring. But I'll address the employers, because one
10 of the issues, I think, that happens is that, when
11 we don't have wheltered workshops or, institutions
12 or Sheltered Workshops, the community gets more used
13 to us knocking on their doors asking for jobs. So,
14 they're familiar with the concept of supported
15 employment, to the point where sometimes they tell
16 you that you're bothering us.

17 So, we've developed what they call
18 business account managers in the six regional areas
19 of Vermont for VocRehab, so that one person is sort
20 of the point person for employers. So, that
21 business account manager does the outreach, kind of
22 keeps the accounts of local employers, to kind of
23 consolidate it a little bit for all the service
24 providers.

25 COMMISSIONER KLADNEY: I think I have to

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1 yield, thank you.

2 (Laughter.)

3 CHAIR LHAMON: Commissioner Narasaki?

4 COMMISSIONER NARASAKI: Thank you. I
5 have a couple questions. One is for Ms. Mathis.
6 So, some argue that in the area of, I don't know the
7 right terminology or pronouncement, the SWEP, the
8 school-based 14(c) Certificates, there's only a
9 handful remaining, right?

10 And some have called for the immediate
11 revocation of them, because they believe they
12 conflict with the existing law. So, I wanted to get
13 your take on that.

14 MS. MATHIS: Well, I think, certainly to
15 the extent that they are being used now to serve
16 folks, and really, I think, transition folks from a
17 school setting into sheltered work, they needlessly
18 segregate people with disabilities. I think they
19 probably are in conflict with, certainly at a
20 minimum, federal civil rights laws, the ADA, Section
21 504.

22 It's complicated, but I think that there
23 is a, very much like the lawsuits in Oregon and in
24 Rhode Island, I think an ADA issue and probably an
25 ADA violation. So, I think with all of these, I

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1 would say they should be phased out, certainly,
2 phased out just like 14(c) Certificates.

3 I don't know how many precisely there
4 are at this point, but I think generally everyone
5 seems to agree that, to the extent that we should
6 eliminate these subminimum wage certificates, it's
7 important to ensure that we have the alternatives,
8 that the infrastructure is there.

9 And so, that is why I think folks have
10 mostly said, we shouldn't necessarily cutting
11 everything off tomorrow, but we should make sure
12 that we are working with states, working with, in
13 this case, schools, to actually make sure that they
14 have the supports in place to support people in
15 integrated alternatives.

16 COMMISSIONER NARASAKI: So, what's the
17 argument for not just immediately ending them, but
18 actually having a phase-out? Is it really the same
19 situation as for the other kinds of programs or is
20 there a different argument to be made?

21 MS. MATHIS: I mean, I think that, to the
22 extent that we -- I don't know if others want to add
23 to this --

24 COMMISSIONER NARASAKI: Sorry, I don't
25 mean to be --

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1 MS. MATHIS: -- but to the extent that --

2 COMMISSIONER NARASAKI: -- picking on
3 just you.

4 MS. MATHIS: No, no, no, that's fine.
5 But I think we do need to, I think, do some work to
6 build -- we have the capacity, we have done it, we
7 know how to do it, but it isn't there everywhere, I
8 think.

9 So, rather than sort of ending
10 everything tomorrow, I think it would be important
11 to say, here's our plan and here's the time frame
12 over which we're going to do it and here's what we
13 think we need, here's how we're going to achieve it,
14 and have a reasonable and fairly quick goal to do
15 that.

16 COMMISSIONER NARASAKI: Great, thank you.
17 Ms. Teninty, so, we heard testimony from a prior
18 witness that they're starting to see the kids who
19 did go into integrated work right from school now
20 starting to come back, or seek sheltered situations.

21 From what happened in Oregon, are you
22 seeing that, or Vermont, are you seeing that, and if
23 so, what kinds of changes are necessary in order to
24 help them be successful so they don't end up needing
25 to come back?

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1 MS. TENINTY: I would say -- thank you
2 for the question. I would say, in Oregon, we
3 wouldn't see that, because we've closed the door to
4 the sheltered workshops. So, once transitioning
5 youth transition into competitive integrated
6 employment or other opportunities, there isn't an
7 avenue for them to come back into a sheltered
8 workshop setting.

9 So, what we have in our system is we
10 offer a wide array of services, in addition to
11 employment-related services, that we partner with
12 Vocational Rehab on. The DD system has a wide array
13 of services, we do a lot of one-to-one individual
14 community support in Oregon for people with
15 intellectual and developmental disabilities.

16 And then, I would also say, in a case of
17 a youth who transitions to work and then maybe is
18 not successful, to use the example we heard earlier
19 about having other opportunities to go look for
20 other things, we would want them to come back
21 through, through Vocational Rehabilitation, go
22 through another process.

23 Maybe the job wasn't a good fit, maybe
24 we didn't have a clear idea of exactly the type of
25 opportunity that they were most interested in. And

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1 then, we'd want them to try again, just like we
2 would expect with people without disabilities.

3 COMMISSIONER NARASAKI: So, I get that
4 you don't have the sheltered work, but do you have
5 day programs? Is that a number that --

6 MS. TENINTY: We --

7 COMMISSIONER NARASAKI: -- is going up,
8 as it is in some places?

9 MS. TENINTY: We do have day programs and
10 we do have people who do a mix of employment and
11 day-type services. We have seen, I'm trying to
12 think back to the latest data I saw, I think we've
13 seen an increase in the use of day services.

14 In Oregon, one of the uniquenesses that
15 I mentioned earlier about our system is that we
16 don't have waiting lists. We don't have a system
17 where people wait to get onto a waiver. If you're
18 determined IDD eligible in Oregon, you automatically
19 have access to services, which is really good in a
20 lot of ways.

21 It in some ways, though, exacerbates the
22 issue I mentioned earlier about capacity for all
23 types of our providers, not just employment
24 providers. And so, it may be that people choose a
25 service or go to a service while they're waiting for

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1 capacity in another area or another service.

2 So, we do have people who are doing a
3 number of different things, small group employment,
4 maybe, in addition to competitive integrated
5 employment, competitive integrated employment with
6 one-to-one, what we call ADL/IADL support in the
7 community, going grocery shopping, doing other
8 activities in the community. So, we do have people
9 who have, definitely have a lot of people with that
10 kind of mix.

11 COMMISSIONER NARASAKI: And in Vermont?

12 DR. DAGUE: Yes, we don't have, well, we
13 don't have people returning, because we don't have
14 the sheltered workshops anymore, but I think the
15 larger issue of this is that the key is really good
16 training and supported employment and customized
17 employment.

18 So, if someone is really well-trained
19 and versed in how to do a good assessment and
20 discovery, get to know that individual, what their
21 skills and abilities are, what the best environment
22 will be for them, combined with employer engagement
23 and knowing how to approach those employers and sort
24 of negotiating or carving a job for that person, if
25 that's really done effectively, then they're going

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1 to be happy in that job and we won't see them coming
2 back.

3 So, I think that training is really key,
4 because we don't talk -- we use terms like
5 conversion and transformation rather than closure,
6 because we really want this to be a transition of
7 services, not just closing a sheltered workshop, but
8 transitioning from sheltered employment to good
9 community-based employment.

10 COMMISSIONER NARASAKI: Thank you. One
11 more question. So, Ms. DeSantis, I was very
12 impressed that Melwood was really looking at the
13 full picture of what does it cost to actually
14 implement this program and, particularly, what the
15 cost of doing this kind of testing. Are you aware,
16 have there been other studies or other companies who
17 have looked at it this way, and what have they come
18 up with?

19 MS. DESANTIS: Specifically about the
20 time trials?

21 COMMISSIONER NARASAKI: Time trials or
22 just, does it make economic sense to --

23 MS. DESANTIS: Yes. I'm not aware of
24 other studies that have been done. We needed the
25 justification to go to our board and say, hey, this

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1 is, first of all, it's not right, and here's the
2 numbers, this is what it's going to take for us to
3 make that transition. And so, we undertook the
4 study.

5 And that was part of the reason why it
6 took us a couple of years to do the phase-in and we
7 couldn't just do it immediately, because we needed
8 to know what it was going to take and how to get
9 there. But I'm not aware of any other studies that
10 have been done at this point.

11 COMMISSIONER NARASAKI: And you feel that
12 actually without having to work within the 14(c)
13 system, that you've now been able to thrive?

14 MS. DESANTIS: Oh, absolutely. The
15 impact on our morale, not just for the employees who
16 were affected by the increased wages, but the
17 employees around them as well, it sort of creates a
18 much more equal environment for all of us. And, you
19 know what, it's really enhanced teamwork and
20 pitching in to help each other when needed.

21 I should note that we also have
22 vocational support services that we offer to about
23 700 of the 1,000 employees who have a specific
24 diagnosis, and that also helps as well.

25 And that helps our managers who are

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1 managing employees of differing abilities to be able
2 to understand maybe what's going on or to work
3 through a challenging period. Or if there's a
4 breakdown of some sort, our voc support people are
5 able to step in. So, that's made a huge difference.

6 But in terms of the raising the salaries
7 and the -- I just think it really goes to the sense
8 of self-worth that, you and I are doing the same
9 job, I should be -- maybe I'm a little bit slower,
10 but we're still doing the same job and we're getting
11 it done. And I think there's a lot of value in that
12 and we believe it's really impacted our bottom line.

13 COMMISSIONER NARASAKI: And how did you
14 get the parents to buy-in?

15 MS. DESANTIS: So, the vast majority of
16 the people were already working for us. And so, I
17 think the parents felt safe with Melwood, we have a
18 good support system. We've always had a good
19 support system in place for our workers. So, and I
20 don't know that that was a big challenge at all.

21 There -- we have great benefits as well
22 and they've been able to have benefits, just like
23 the rest of us. And so, in terms of health
24 insurance and, like I said, retirement contributions
25 and everything else, it's really the big picture.

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1 And I think the parents are happy that their son or
2 daughter really could have a future and could be
3 working toward independence.

4 And I know, I always look at any of the
5 situations I come across in my entire career of
6 social services, if this were my child or my loved
7 one, what would I want? And that's the approach
8 that we've taken and it seems to have worked.

9 COMMISSIONER NARASAKI: Great, thank you.

10 MS. DESANTIS: Thank you.

11 CHAIR LHAMON: Commissioner Adegbile?

12 COMMISSIONER ADEGBILE: Thanks for the
13 testimony. I have a question, Mr. Dague, about the
14 Vermont experience. What were those stats again,
15 with 53 percent that are not yet employed? Is --

16 DR. DAGUE: Well, many of them are
17 looking for work, they're in sort of the job
18 development process, or they may have chosen not to
19 pursue employment at this point.

20 COMMISSIONER ADEGBILE: So, I'm trying to
21 figure out how that stat relates to the stat we
22 heard from another panelist about the Vermont
23 experience being two times above, more than two
24 times above the national average in employment after
25 abolition. Are these like different stats that are

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1 swimming around? I'm just trying to understand what
2 the experience is.

3 DR. DAGUE: Well --

4 CHAIR LHAMON: The national average is
5 very low.

6 DR. DAGUE: Yes, the national --

7 COMMISSIONER ADEGBILE: So, that's that
8 answer.

9 DR. DAGUE: Yes, the national average of
10 employment is about 19 or 20 percent of people with
11 intellectual and developmental disabilities.

12 COMMISSIONER ADEGBILE: So, the 47, then,
13 is that number? Because it's so low elsewhere?

14 DR. DAGUE: Yes.

15 COMMISSIONER ADEGBILE: Okay. And
16 earlier we heard, and I'll broaden this to the rest
17 of the panel, earlier we heard some testimony about
18 a concern about moving away from the 14(c) regime
19 and the impacts it would have on a certain age
20 demographic that participates in it. And I'm
21 wondering if folks have any experience or reaction
22 to the concern that stepping away from 14(c) could,
23 in effect, leave certain populations stranded or
24 without adequate alternatives?

25 DR. DAGUE: Well, I would refer to the

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1 first report by the National Council on Disability
2 that came out in 2012, and they came out with a set
3 of recommendations saying to target sort of the
4 newer folks first.

5 People that have been there for the
6 shortest amount of time, target them for supported
7 employment first. Then the second third that have
8 been there the middle amount of time, to target them
9 second, because you are going to have the third
10 group, which is probably more retirement age.

11 And we saw that with the last sheltered
12 workshop in Vermont, that some of these folks had
13 been in their workshop for their lives. So, they
14 weren't really looking for community-based
15 employment, they were looking for more of a
16 retirement plan.

17 So, that's one recommendation I would
18 have, to take it kind of in those stages. I've
19 recommended like a three to five-year plan for
20 converting a sheltered workshop.

21 COMMISSIONER ADEGBILE: Did others want
22 --

23 DR. CHRISTENSEN: Yes, if I could --

24 COMMISSIONER ADEGBILE: -- to get -- Ms.
25 Christensen?

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1 DR. CHRISTENSEN: If I could add to that,
2 because in the earlier testimony, we were
3 discussing, what about folks who are 45, 50-plus?
4 And one of the things that we need to consider is --

5 COMMISSIONER ADEGBILE: I object to that
6 being characterized as old.

7 (Laughter.)

8 COMMISSIONER ADEGBILE: Just for the
9 record.

10 DR. CHRISTENSEN: Older, didn't I say
11 older?

12 CHAIR LHAMON: Based on personal
13 experience.

14 DR. CHRISTENSEN: I'm in the -- well,
15 yes.

16 COMMISSIONER NARASAKI: I join you in
17 that objection.

18 (Laughter.)

19 DR. CHRISTENSEN: That's fair. But one
20 of the things I think we need to look at, and I'm so
21 appreciative of all the questions we've had around
22 transition-age youth, we have so much more in place
23 for young folks, through special education services
24 under IDEA, through Pre-ETS and WIOA, there's a lot
25 more in place to help folks who are younger

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1 transition.

2 To the point that was made earlier, what
3 about folks who did not benefit from that? And I
4 think that's one of the reasons why, I'll speak for
5 APSE, we appreciate the approach of the
6 Transformation to Competitive Employment Act,
7 because it recognizes that we need to think about
8 this in a purposeful way.

9 There are some folks that may want to
10 retire with dignity from what they have considered
11 to be work up until that point. And who are we to
12 say that that's not a viable option, when they did
13 not benefit from the laws and the opportunities that
14 we now offer for youth?

15 MS. MATHIS: Yes.

16 COMMISSIONER ADEGBILE: Why don't we go
17 to Ms. Mathis --

18 MS. MATHIS: Okay.

19 COMMISSIONER ADEGBILE: -- and then, Ms.
20 DeSantis?

21 MS. MATHIS: I would just add, I think
22 that has generally been a favored approach, to focus
23 on folks who are younger and have not had many years
24 of experience, where they have sort of gotten used
25 to working in a certain setting and coming to tell

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1 them, now, we want you to do something else, or
2 we're offering you something else.

3 It's always more difficult, I think, for
4 people to make choices about things that seem harder
5 to envision because they've lived their whole lives
6 a certain way. However, I do think that it's
7 important, just as it has been in transformations of
8 service systems with living settings and what we
9 offer people, to not abandon those folks either.

10 Because it may take more conversations,
11 it may take more assistance and helping people to
12 envision what life could be, what it would mean to
13 work, what it could look like, more visits in the
14 community, more engagement with peers, with people
15 who are working, with people who have been in their
16 situation.

17 But as anybody who has done sort of
18 systems change will tell you, I think some of the
19 people who have benefitted the most and the people
20 whose lives change the most are, in a good way, are
21 people who initially were resistant or reluctant,
22 people who couldn't envision it, people who needed a
23 lot of help.

24 And so, I would say that, yes, while I
25 think people often will focus on what sometimes

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1 people call low-hanging fruit, or people who it
2 would be an easier transition for, an easier
3 conversation with, we should not abandon the folks
4 for whom it might be more challenging.

5 MS. DESANTIS: As a service provider, I
6 would like to offer a couple of thoughts. So, we
7 are an employment agency, as well as a service
8 provider. And on the service side, we focused a lot
9 on transitioning youth.

10 The young people coming out of school
11 today, this generation, their expectations are so
12 much greater and their parents' expectations are so
13 much greater than the generation before them,
14 clearly, maybe even the half generation before them.

15 And they have grown up with cell phones
16 and iPads and computers and smart TVs and all of
17 this. And so, we have to -- I think it's incumbent
18 upon us as service providers to think about what
19 does that future for them look like, what could it
20 look like?

21 One of the things that Melwood is
22 piloting now is a program we call abilIT, which is,
23 we've partnered with an online cybersecurity
24 technology training program and wrapped our
25 rehabilitative services and our Pre-ETS type of

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1 programming around that, to teach young people, and
2 it's open to anyone, but it's primarily the younger
3 ones who have accessed it, to be able to take
4 certifications for getting into the IT field.

5 We started in the spring, we've had, I'm
6 going to say we've maybe had about 40 people go
7 through it now. About, so far, about half have
8 gotten, more than half have gotten their
9 certifications. Half of them have gotten a job or
10 decided they wanted to go on to college.

11 I mean, these are the kinds of things
12 that we have to think about for our young people.
13 We also -- I believe it's incumbent upon us to think
14 about, where is the workforce in general going and
15 what is the impact of the gig economy, remote work,
16 and all of those kinds of things that, at any age
17 one could do, but again, it goes to the point of
18 much older folks that we've been working with maybe
19 have not had the access to computers or the ability
20 to really be able to engage in that.

21 But let me tell you about this older
22 group of women that we have in our Waldorf location,
23 Waldorf, Maryland. We call them the Super Sewers.
24 This is a group of women, I'm going to say the
25 average age is probably maybe in the 50s somewhere,

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1 and their group caregiver taught them how to sew a
2 number of years ago.

3 And today, they make quilts and blankets
4 and placemats and pillowcases and all of these
5 things, and then they sell them at bazaars and
6 things, and then they get paid for that. So, it's
7 sort of that, the way of the future, it's sort of
8 the Etsy model, I call it.

9 So, there are a lot of creative ways we
10 can think about helping our individuals move not
11 only into competitive integrated employment, but
12 into the gig economy and into new ways of working
13 that is affecting all of us in the workplace.

14 And I think it's incumbent upon us, as
15 sort of the helpers in this situation, to enable
16 families and individuals to think about something
17 different, a different way of what the future might
18 look like.

19 CHAIR LHAMON: Thank you. Madam Vice
20 Chair?

21 VICE CHAIR TIMMONS-GOODSON: Thank you
22 very much, Madam Chair. Ms. Christensen, you say
23 that APSE was the first advocacy organization to
24 call for the phase-out of Section 14(c). And so, I
25 was just wondering, why it is that you, I think I've

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1 heard the answer to this, but why is it that your
2 organization chose to elect a phase-out model rather
3 than calling for the abolishment of 14(c)
4 altogether?

5 DR. CHRISTENSEN: And just to be clear,
6 we're one of --

7 (Laughter.)

8 VICE CHAIR TIMMONS-GOODSON: Okay.

9 DR. CHRISTENSEN: I don't want to go on
10 the record --

11 VICE CHAIR TIMMONS-GOODSON: Okay, all
12 right.

13 DR. CHRISTENSEN: -- I have no idea who
14 said it first.

15 (Laughter.)

16 DR. CHRISTENSEN: But regardless, it's an
17 excellent question. And I think from APSE's
18 perspective, as an organization, we came into
19 existence through the lens of supported employment.
20 And there's a recognition that this takes time.

21 And so, when we think about the reasons
22 why folks may not be working, our members are
23 experts in doing this. Our members are the ones who
24 have figured out how to make it happen, which was
25 discussed earlier, that doesn't make it easy, but

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1 that it can happen.

2 Whether it's better training, better
3 technology, better resources, better job fit, I
4 mean, all of those things play into the equation.
5 But what our members would also recognize is that we
6 don't have a service system that is currently funded
7 and currently has the capacity to reach the goals
8 that we want.

9 So, if we wave a magic wand, let's just
10 say, and 14(c) is not our reality when we wake up
11 tomorrow morning, there would be people with nowhere
12 to go, because the service system is not yet
13 prepared to provide the level of supports that are
14 needed for every single person to have access to
15 competitive integrated employment. That does not
16 mean we should not be working towards that goal.

17 VICE CHAIR TIMMONS-GOODSON: And that's
18 what I thought I heard, that's the answer I thought
19 I heard to the question.

20 DR. CHRISTENSEN: Thank you for letting
21 me clarify.

22 (Laughter.)

23 VICE CHAIR TIMMONS-GOODSON: But I think
24 what you've said here is a testament to the
25 complexity of this issue. You can see why folks

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1 would argue there ought to be a choice. And while
2 paying, integrating folks fully would be the perfect
3 solution, as I think the governor or somebody
4 mentioned, let's not let the perfect destroy the --

5 DR. CHRISTENSEN: The good.

6 VICE CHAIR TIMMONS-GOODSON: -- good or
7 whatever. But I was wondering about expectations,
8 managing expectations. And so, if someone could
9 talk to me about -- I heard one time how when a
10 child sees more or sees better, he or she wants
11 better, wants more, and so, that's related to
12 expectations.

13 But as we move away from 14(c), can
14 someone talk to me about managing the expectations,
15 getting parents, some are already wanting more and
16 seeing more and better for their students, as they
17 transition from high school, and then, there are
18 others that might not quite be there, but any that
19 wish, please talk to us about expectations and the
20 role that expectations plays in this issue.

21 DR. CHRISTENSEN: So, I think it's an
22 excellent question, and what I would say in return
23 is that I think the systems rise to meet
24 expectations. And what we don't have right now is
25 that high expectation that this is what we should be

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1 expecting for every U.S. citizen, we have too many
2 avenues that allow for us to say, except for this
3 person.

4 So, pardon me, I call myself a true
5 inclusionist, in the sense that we're really good at
6 saying, we believe in the inclusion of everybody,
7 except when. Except when we're worried about their
8 safety. Except when we're worried about fill-in-
9 the-blank.

10 And if we are going to be an inclusive
11 society, then that means that we have to all
12 inherently own that we have exactly the same
13 expectations for all citizens, regardless of whether
14 or not disability is part of that equation.

15 MS. DESANTIS: I think about the
16 expectations we had of women in science over the
17 years. When I was coming up, women in business,
18 women in science, we -- and then, think about today,
19 the emphasis on STEM for girls, and Girl Scout
20 troops and YWCAs and everybody is emphasizing the
21 STEM, the science, technology, engineering, and
22 math, for girls.

23 That goes directly to your point of
24 expectations. We are saying to those young girls,
25 we expect that you can do this. If you're

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1 interested in this, we expect you can do it and
2 here's how. We're going to help you learn that
3 skill, so that if you want a career in science,
4 technology, engineering, and math, you'll be able to
5 find it.

6 To me, it's the same thing. If we
7 expect more, if we expect that each individual has
8 abilities, as I said in my remarks, we start with
9 the notion that anything is possible. You might
10 need some training, you might need some support, you
11 might need somebody there coaching you and pushing
12 you, and maybe it's a parent, maybe it's a teacher,
13 maybe it's a coach, maybe it's your service
14 provider. But to me, that's the expectation
15 question and we've seen so many examples throughout
16 history, the same thing applies here in my
17 estimation.

18 DR. DAGUE: And I agree. The -- we can't
19 start too young with the families. When my niece
20 with Down Syndrome was three months old, my sister
21 asked me to come to present at her family group.
22 And I do adult employment, so I went and talked
23 about the employment services for adults with
24 disabilities, which a lot of people thought was kind
25 of inappropriate for a three-month-old. But --

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1 (Laughter.)

2 DR. DAGUE: But I think it changed a lot
3 of the families' minds from that very start, because
4 I was able to show them individuals with significant
5 disabilities working in the community. I think that
6 changed their expectations.

7 Kansas University has a family
8 employment awareness training, which targets young
9 families, to teach them about, raise expectations,
10 teaching them about benefits, about employment
11 programs. So, they're not thinking about segregated
12 sheltered services, they're starting at a very young
13 age thinking about life in the community, community-
14 based jobs, post-secondary programs like our Think
15 College program.

16 I was at one conference for Think
17 College and did a panel presentation and there was a
18 mom that was at my table who had a five-year-old
19 with Down Syndrome and she came to the conference
20 because she heard about these programs and wanted to
21 know, what do I need to do to prepare my son to be
22 able to be eligible for a program like this and how
23 do I pay for it? So, she was starting at a very
24 young age, of raising those expectations.

25 MS. TENINTY: I'd like to add, if I can?

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1 That's been a fundamental part of the work we've
2 done in Oregon, is changing expectations. That's a
3 big part of the marketing effort that went out and
4 why we targeted individuals and families first, was
5 to really help raise expectations.

6 I do want to, though, tie this back a
7 little bit to the question that was asked earlier,
8 because I would say, from the experience we've had,
9 and while, yes, in terms of older adults in
10 sheltered work --

11 CHAIR LHAMON: Commissioner Adegbile's
12 age.

13 MS. TENINTY: Yes.

14 (Laughter.)

15 MS. TENINTY: Older adults --

16 COMMISSIONER ADEGBILE: We are protected
17 under federal civil rights law, just for the record.

18 (Laughter.)

19 MS. TENINTY: Older adults in these
20 settings, we definitely took the approach that was
21 laid out here by a few of my fellow colleagues who
22 are testifying, of focus on the younger individuals
23 who have been in these settings the shortest period
24 of time.

25 What I would say about that, though, is

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1 some of the most exciting transformation stories,
2 individual success stories, we have are actually
3 with adults who I feel in my heart had the
4 expectation that they wanted to work in competitive
5 integrated employment their entire lifetime, but
6 just were not given the avenues or the opportunity
7 to do it. The woman I mentioned earlier in my
8 testimony is in her 60s and she got her job last
9 year, in 2018.

10 Another gentleman in his 40s had been in
11 day program and sheltered work for many, many years.
12 His parents really never expected him to get a
13 competitive integrated job, they looked at this
14 whole effort with high suspicion.

15 Just a few weeks ago, the father of that
16 gentleman came to Washington to testify in a
17 Congressional briefing, talking about how his son
18 now has a job in the community, is making over \$11
19 an hour, and he understands now that his son has so
20 much more potential and it's just made a huge
21 improvement in his life.

22 So, I think there's valid approach to
23 moving this work forward in other states, in other
24 systems, people have been in these settings the
25 least amount of time.

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1 I also don't -- I would hope, though, in
2 doing so, we don't give up on the fact that we've
3 got people who are in that older age group who also
4 want the opportunity to have competitive integrated
5 employment.

6 CHAIR LHAMON: Thank you.

7 MS. TENINTY: Thank you.

8 CHAIR LHAMON: So, we are past time, but
9 I think Commissioner Kladney has one last very brief
10 question.

11 COMMISSIONER KLADNEY: My question is
12 very brief, I don't know about the answer.

13 (Laughter.)

14 COMMISSIONER KLADNEY: Mr. Dague, and
15 anybody else on the panel, during the time we were
16 doing research for this project, we looked at the
17 State of Maine and they had, apparently, from what I
18 read, some issues, and still have some issues
19 regarding the transition. And I understand that the
20 other five states that have transitioned have had an
21 easier time of it.

22 Do you know what the problems were in
23 Maine and if they can be rectified or what the
24 situation is?

25 DR. DAGUE: I'm not entirely sure, but I

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1 think you're referring to, I think it's called the
2 Chimes report, is it the Chimes report that reported
3 on Maine's services?

4 COMMISSIONER KLADNEY: I can't remember,
5 I'm old.

6 DR. DAGUE: Yes, but I think that was
7 very questionable.

8 COMMISSIONER KLADNEY: Well, there was a
9 report that said that there were lines at Vocational
10 Rehabilitation and long waits, because they didn't
11 have enough people at VocRehab to assist folks. And
12 that's all I read --

13 DR. DAGUE: Okay.

14 COMMISSIONER KLADNEY: -- that's all I
15 remember.

16 DR. DAGUE: Yes, I'm not sure about that,
17 but I think this sort of goes back to what I said
18 earlier, more that planful conversion, just sort of
19 shutting down a workshop and then having people wait
20 in line is not effective use of services, it's sort
21 of like help one person at a time and gradually get
22 them out.

23 COMMISSIONER KLADNEY: So, are you --

24 CHAIR LHAMON: So, with that, we will say
25 thank you.

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1 (Laughter.)

2 CHAIR LHAMON: We very much appreciate
3 your time. And we'll be back at 3:20.

4 (Whereupon, the above-entitled matter
5 went off the record at 3:15 p.m. and resumed at 3:20
6 p.m.)

7 CHAIR LHAMON: So we'll now proceed to
8 Panel 5, which is about reform to the 14C Program at
9 the federal level. In the order in which they will
10 speak, our panelists are Representative Glenn
11 Grothman, who is a member of House Committee on
12 Education and Labor, and Kate McSweeney, who is Vice
13 President of Governmental Affairs and General
14 Counsel at ACCSES, the voice of disability service
15 providers.

16 Then Anil Lewis, who is the Executive
17 Director of Blindness Initiatives at the National
18 Federation of the Blind, and Brian Collins, who is
19 Senior Manager for Planning, Change Management, and
20 Accessibility at Microsoft. And finally, Regina
21 Kline, who is a partner at Brown, Goldstein, and
22 Levy. Thank you. So Congressman Grothman, please
23 begin.

24 **PANEL FIVE: REFORM TO THE 14(C) PROGRAM**

25 **AT THE FEDERAL LEVEL**

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1 REPRESENTATIVE GROTHMAN: Thank you.
2 I've never been before at a hearing exactly like
3 this, so I'm kind of disappointed we're having it
4 here because I've been involved in this issue off
5 and on for many years. I'm a congressman who
6 represents 10 counties in the State of Wisconsin,
7 and in those 10 counties we right now have 10 active
8 -- I don't know what the politically correct name is
9 right now -- work centers.

10 I've toured them all, and was a state
11 senator, I've toured another, so I'm very familiar
12 with 11 of them. I hope you've all toured them and
13 toured several because really, you're going to find
14 out more in the first two hours at a work center
15 than you will sitting here and reading all the legal
16 mumbo jumbo that you're going to get.

17 There are tremendous things to look at
18 because you see people who most of us would think of
19 have been dealt a tough lot in life, and they're
20 smiling and happy and are so proud to have lives
21 like their siblings and friends -- to go to work
22 every day, to earn a paycheck.

23 Usually they're subsidized in other ways
24 because they have different abilities, you know. We
25 have SSI or SSDI programs, so they don't have to

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1 earn enough to pay for a \$700-a-month apartment or
2 anything like that. But they're very proud of the
3 situation as I am, and as a result I've always been
4 kind of considered an advocate for them.

5 Since being involved in this issue, not
6 just 14(c) but other issues as well, it stunned me
7 that some of the bureaucrats who have to make
8 decisions on this have never toured the work
9 centers, which is just almost beyond belief.
10 Because, at least where I'm from in Wisconsin, we
11 have, I would say, that there are a couple of
12 counties that don't, but we have almost at least one
13 per county, and in the larger counties they have
14 more than that.

15 And it's scary that people could ruin
16 the lives of so many people dealt a difficult
17 problem without having a chance to tour them. I'd
18 almost really rather say I'll step down, let's drive
19 a few miles into Virginia or Maryland and look at
20 what we have. But these are my opinions.

21 All of my 10 work centers are non-
22 profit. The people who work there, if you get to
23 know them, are saints. As I understand it, before I
24 was here some people were denigrating them a little
25 bit. People who spend their life working with

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1 handicapped, working with people who are non-verbal,
2 working with people who have to be toileted, are
3 saints. They're not doing it to make money; they
4 are not doing it to take advantage of people, okay?
5 And you should be appalled if anybody says anything
6 else about these folks.

7 Like I said, the pride in meeting these
8 people is tremendous. We are actually going to have
9 an awards ceremony for them tonight back in
10 Sheboygan. I'm going to miss it because I want to
11 testify before you folks. Some of the people who
12 work here work in the community a few days a week,
13 five or six days a week, and they may enjoy working
14 that. But a lot of those people work five or six
15 hours a week, and are only able to work five or six
16 hours a week. Then they go back to the work center
17 where they get supervision and they deal with a
18 staff who knows how to manage people who may have a
19 personality problem, may only be able to move one
20 arm; may not be able to hold their head up, that
21 sort of thing.

22 In some of these work centers 85 to 90
23 percent of the people work for under minimum wage.
24 If you ever tour a work center, you know exactly why
25 that is -- because you are dealing with people who

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1 have been dealt a tough lot in life. I mean, if you
2 can only move one arm, if you have to hold
3 somebody's head up, if you have a personality thing
4 where you might have a fit or something like that,
5 it's hard to find an employer who is going to pay
6 \$7.50 an hour for that. But in a work center you
7 can pay them \$1.50, two bucks, four bucks an hour,
8 and together with subsidizing with SSI or SSDI, they
9 can do okay.

10 They are trained, or hopefully can work
11 in the community. Some make it; some can't. Some
12 make it for short periods of time because employers
13 will help them a great deal. I think a little bit
14 of the confusion on this issue stems from the type
15 of jobs that some of these folks get. I recently
16 toured a -- there is one of my counties that's
17 trying to shut down their work center, and they
18 invited me as the congressman to a place where
19 somebody who had previously worked at a work center
20 had worked, and she was working for eight hours a
21 week.

22 And it was nice to be in the community,
23 and the employer said she was the best employee they
24 ever had, which is what you would say. And she was
25 very nice to have this young gal -- I won't give her

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1 name, we'll call her Suzie -- very nice. We are so
2 happy to have Suzie here. She's the best employee
3 we have.

4 I then talked to the employer in her
5 office, and she was very happy to have Suzie there,
6 but she had to have somebody, not a job coach in the
7 sense that it was paid for by somebody else, but one
8 of her own employees monitor Suzie all the time.
9 She was doing it as a community service, not because
10 Suzie had been held back all this time, working in a
11 work center; she was doing it as charity. That is
12 what happens some of the time, and that's fine.

13 We have wonderful businesses in America.
14 Sometimes it's charity; a profitable business can
15 take in somebody for four or five hours a week. But
16 one shouldn't get confused when that happens that
17 they were being held back before. You just found a
18 nice business who, through their community service,
19 would do that. I think if you talked to people in
20 facilities like this and they compare it to their
21 job on the outside, some prefer to be in a work
22 center. You are dealing with nice people,
23 continuity. They make friends there for maybe 30
24 years of their lives, both the people with
25 disabilities and the people without the

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1 disabilities, which is kind of an improvement over
2 maybe a fast food place where you get all new people
3 again and again or may have to look for a new job.

4 If you talk to these folks, they
5 frequently would even prefer the work center, and it
6 offends me that anybody would say we would shut down
7 the work center with all these happy, productive
8 people because we arrogantly know what will make
9 them happier. You should not take away that option
10 from people, and when you deal with people with
11 these handicaps, once you tour three or four of
12 these you will very quickly see that no amount of
13 dreaming can say that there is going to be a job
14 that's going to pop up for these people to work 35
15 hours a week out in the community for \$7.50 an hour.
16 It's just not going to happen.

17 I'm struck by a guy recently do a rule
18 you're not dealing with today. He was borderline
19 quadriplegic. I ran into him and his dad. He was
20 told he's probably going to make a buck an hour. He
21 was told, for certain reasons, he couldn't work at
22 the work center anymore. He was crushed. He's
23 actually above-average intelligence, but this was
24 his life for the last seven or eight years, and his
25 job was every bit as important --

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1 CHAIR LHAMON: Representative Grothman,
2 your time is up, but we'll look forward questions.

3 REPRESENTATIVE GROTHMAN: Okay.

4 CHAIR LHAMON: Ms. McSweeny?

5 MS. MCSWEENY: Thank you. Madam Chair,
6 I'm going to -- can you hear me?

7 CHAIR LHAMON: If you push talk, we'll
8 be able to hear you. Thank you.

9 MS. MCSWEENY: Thank you so much. I was
10 going to take you up on your invitation to not read
11 my statement aloud because I've noticed all day that
12 you had read the statements. I do encourage anybody
13 who's watching though to find it on our website.

14 I wanted to talk a little bit about some
15 of what we've heard today in addition to what we had
16 in the statement. My name is Kate McSweeny; I am
17 the Vice President of Governmental Affairs and
18 General Counsel for ACCSES. We represent disability
19 service providers from across the country.

20 I am what was referred to earlier as the
21 sheltered workshop lobby, and there's nothing wrong
22 with that because I don't even know what sheltered
23 workshop means. I got involved in this about four
24 years ago. I had a great job as a lawyer, and sort
25 of inadvertently started doing a little bit of work

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1 for ACCSES, and really fell in love with the issues
2 and the people.

3 I ended up leaving my law firm, taking a
4 massive pay cut, coming to ACCSES, and taking on
5 this role. So I'm proud -- I'm proud to lobby for
6 them. I'm not a lobbyist by profession; I've never
7 lobbied before. I was a broadcaster for 22 years,
8 and then I became a litigator. Now suddenly I'm a
9 registered lobbyist, but on one issue, and it is the
10 issues that relate to people with disabilities and
11 the services that they need, and the providers, so
12 many of the providers who provide those services.

13 I want to talk about what you didn't get
14 to hear today because there were so many people who
15 wanted to talk about from one perspective, and it's
16 a lot of opinion. The people you haven't heard from
17 are the people who are working under certificates,
18 the people who are really concerned about their
19 jobs, the people that the Congressman was referring
20 to, but who I see in every state, because I travel
21 and visit work centers everywhere. The work centers
22 that some people described today, I don't recognize
23 that. I see places that are really no different
24 from the places that I worked at times in my life
25 and spent a lot of time in.

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1 I see people who are so incredibly
2 dedicated to serving the people who are working
3 there, people who take incredible pride in their
4 work, both as the providers and the people who are
5 working there who are receiving services and at the
6 same time, have jobs.

7 Some people make more than minimum wage;
8 some people make less than minimum wage. Some
9 people split up their day and perhaps do competitive
10 work in the morning and then maybe do a day program
11 in the afternoon. There's a lot of accommodation to
12 help people live full and robust lives, and there
13 were a lot of denigrating things said today that I
14 find very concerning, because that should not --
15 that shouldn't be part of the discussion.

16 We should all have aspirational goals,
17 and we certainly support all of them. At ACCSES we
18 are all about expanding options, expanding choice,
19 increasing assistive technology, making sure that
20 people have every opportunity that they would like.
21 What we don't want to see are opportunities taken
22 away to meet what somebody else thinks is best for
23 people.

24 And a number of people talked about
25 eliminating 14(c) immediately. If you want to

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1 eliminate 14(c) immediately, you would throw an
2 awful lot of people out of work. Now, the
3 Congressional Budget Office did a review of the
4 Raise the Wage Act which Chairman Scott mentioned
5 earlier today. It seems like a long time ago now.
6 He spoke of Raise the Wage, and the fact of Raise
7 the Wage would eliminate 14(c) -- it would phase out
8 14(c).

9 But the CBO said, they're using over
10 125,000 people. They had over 125,000 people
11 working under a certificate right now. Some of
12 those people are making more than minimum wage, but
13 let's say 125,000 is the right number. Why are we
14 sitting here arguing over keeping or killing the
15 jobs of 125,000 people who want to keep their job?
16 Why aren't we talking about expanding options,
17 working together? How we can find common ground?
18 That's what the advocacy community should be doing.

19 I want to do a shout-out to Julie
20 Christensen at APSE. Many of our members are also
21 APSE members; that might surprise people. But we
22 found common ground; we found things to work on
23 together because there is so much to talk about. We
24 don't necessarily agree on 14(c); we don't have to
25 agree. We just -- everybody in the advocacy

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1 community should be pulling in one direction.

2 But this has become so poisonous. But
3 what are we really talking about? People having
4 jobs; people having the dignity of work, and people
5 working often in work centers where they also have a
6 lot of other opportunities, receive a lot of other
7 services, and have job coaching, supported
8 employment. They have the opportunity to expand
9 their horizons with the help of the community
10 rehabilitation programs. Because one of the things
11 that I want to make really clear is, if community
12 rehab programs cease to exist, you would have to re-
13 invent them, because they are really necessary.

14 Having people in communities in every
15 state across the country who really are
16 knowledgeable, who really are experienced; I'm
17 sorry, I'm just going to use a colloquialism and say
18 it blows me away when I spend time with the people
19 who are providers across the country that make up
20 ACCSES' members. They are the most impressive
21 people I've ever met, the most caring, most
22 concerned, and they have been depicted in a terrible
23 way over the last few years.

24 Really, a fire hose has been turned on
25 them by the government and by so many of the

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1 advocacy communities, and it couldn't be more wrong.
2 So I want to underscore what the Congressman said,
3 who we so appreciate, and encourage you to visit a
4 CRP. And if there isn't one near you, or if you
5 don't know one, call me. We'll be happy to make all
6 the arrangements. It's so important. It is just
7 vitally important that you do that.

8 I want to end on two notes: one is
9 something that a provider in Connecticut said to me
10 the other day when we were talking about community.
11 She said community isn't about geographic location;
12 it's about the people. And that is so true. We
13 have to start letting people with disabilities
14 thrive where they want to thrive, not where we think
15 they should be. Thank you so much.

16 CHAIR LHAMON: Thank you, Ms. McSweeny.
17 Mr. Lewis?

18 MR. LEWIS: First of all, thank you for
19 the opportunity to testify today. My name is Anil
20 Lewis, and I'm the Executive Director of Blindness
21 Initiatives for the National Federation of the
22 Blind.

23 And I want to share on a personal level
24 here, and a professional level, because I can
25 present on this topic from those different

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1 perspectives as a family member of a person with a
2 disability, a consumer of services, a provider of
3 those services, and an advocate to improve those
4 services.

5 Just really quickly, it's in my written
6 testimony, but I'll go over my sibling story, as I
7 call it. My older brother, my older sister, and
8 myself, are all blind. But my brother lost his
9 vision much earlier in his life. He was in
10 elementary, maybe high school at the time; a really
11 bright guy.

12 He went to the School for the Blind in
13 Macon, Georgia, where they didn't really teach him
14 any blindness skills because he had just enough
15 vision where he could read large print, but
16 retinitis pigmentosa is the disease that took our
17 eyesight.

18 It is a degenerative disease, so it
19 progressively got worse. But the long story short
20 is, he did not receive any real quality education.
21 He went into the VR system and rather than dealing
22 with his blindness and teaching him alternative
23 skills of blindness, they tried to place him as a
24 filing clerk. He had to have bottle-bottom glasses,
25 a lighted magnifier, and he had to go and retrieve

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1 files and read this information from print in a dark
2 room. So he failed.

3 And then the VR agency ended up
4 referring him to the Georgia Industries for the
5 Blind, which is a sheltered workshop, and they
6 counted that as a win. And my brother was employed.
7 So comparing that to -- I'll bring it all together
8 hopefully -- my sister, who lost her sight much
9 later. She was in college at the time when she lost
10 her vision, so she had gotten a lot of her
11 education. She also did not get any real blindness
12 skills. She didn't learn how to read Braille;
13 didn't know learn how to travel independently with a
14 white cane; didn't know how to use access
15 technology. She had aspirations of being a lawyer,
16 but instead VR -- she got involved and ended up
17 working at the Industry. So now I have two siblings
18 working at the Georgia Industries for the Blind.

19 I was 25 years old when I lost my sight.
20 It happened fairly quickly over the weekend. I was
21 in college, working on my bachelor's degree in
22 Business Administration at the time. I had done a
23 lot of work at the school, working and going back to
24 school so I could pay for college. So it looked
25 like I had a lot of different job experiences in a

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1 lot of different environments. But when it
2 happened, I'm thinking, wow. I'm going to the
3 Georgia Industries for the Blind, which at that
4 particular point was a subminimum wage workshop.
5 They were paying people piece rate. They were
6 actually encouraging individuals who were on Social
7 Security not to make more money so that they
8 wouldn't lose their Social Security benefits. There
9 were no blind supervisors to be had in the place.
10 It just really wasn't a conducive place for people
11 to really be motivated to do better with their
12 lives.

13 But luckily for me, Dean Carol Pearson
14 at Georgia State University, where I was attending
15 at the time, got involved with me, and she showed me
16 a whole different side of what my true potential
17 could be, based on the proper intervention and
18 services being put into place. So what happened is,
19 I did get some training. I learned how to read
20 Braille; I learned how to travel independently with
21 a long white cane; I learned how to use access
22 technology, and I was able to complete my degree.

23 And because I had gotten so infected
24 with disability to do these things, I was also able
25 to work with my sister, and she in turn went back to

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1 VR and said, look, I want to have some training.
2 And she got training to know how to use access
3 technology. She ended up working at a catalogue
4 place because back then the place to hire and employ
5 blind people was in customer service, because the
6 technology showed that you could listen to a
7 customer in one ear and listen to your computer in
8 the other ear. So everybody who was blind, that was
9 their job that they were placing everybody in.
10 That's when we were in, in vogue, blind people were.

11 So she got a job there, and long story
12 short, now she's working at the General Services
13 Administration as a financial budget analyst. My
14 brother, unfortunately, by the time I was able to
15 get engaged with him and educate myself about what
16 was important and what was possible, I was able to
17 help my sister because she had only been in that
18 environment for a short period of time.

19 But my brother, no. It came too late.
20 He had been institutionalized. He had gotten very
21 comfortable working in that environment. I still
22 believe that he was much brighter than I am, had
23 much more capacity than I. But because he had
24 gotten comfortable -- and I have to admit, I think a
25 little bit afraid -- he was reluctant to leave the

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1 Industries for something better.

2 So I look at this in a way that I think
3 is real. If you don't really address the systems
4 that are in place that prevent individuals from
5 really getting the training that they need, then
6 yes, it's inevitable the subminimum wage workshop is
7 going to exist as that alternative.

8 CHAIR LHAMON: Mr. Lewis, just at your
9 request, I'm giving you a time notice that you have
10 a little less than two minutes left.

11 MR. LEWIS: Wow, that went really
12 quickly.

13 CHAIR LHAMON: You have a little less
14 than two minutes. Keep going.

15 MR. LEWIS: I found the National
16 Federation of the Blind that said that blindness is
17 not the characteristic that defines me or my future.
18 Every day we raise expectations because low
19 expectations create obstacles between blind people
20 and our dreams. So the National Federation of the
21 Blind told me that I could do this.

22 And in the instance where blindness was
23 in the past a reason to have people employed at
24 subminimum wages, now people say no, that's not the
25 case. But now they say it for other disabilities.

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1 My real confession is, I ended up being a service
2 provider. I brought people in; I gave them the
3 tours of the center. I made them think that it was
4 a wonderful place.

5 We finally shut the place down. We got
6 everyone in there a competitive, integrated
7 employment job, and I am just sitting here really
8 feeling sad about what I've perpetuated in doing
9 those tours to give this particular perspective to
10 the Congressman, because there is a better
11 alternative, and if people who are doing the
12 training actually possess the skills to do it,
13 because that's the data that's missing here. We're
14 not evaluating how many people who are providing
15 these services actually have training and skills to
16 provide them. But when people do, then the positive
17 outcomes emerge. Thank you, guys, for the time. I
18 appreciate it.

19 CHAIR LHAMON: Thank you. Mr. Collins?

20 MR. COLLINS: My name is Brian Collins,
21 and I'm a Senior Manager at Microsoft in Redmond,
22 Washington. And I'd like to thank the Commission
23 for the opportunity to share with you my
24 responsibility which is Supported Employment.

25 Our mission at Microsoft is to empower

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1 every individual and every organization on the
2 planet to achieve more. That includes the one
3 billion people with disabilities around the world.
4 We believe that people with disabilities are a
5 strength for our company, and a talent pool that
6 adds not just diversity, but expertise that make our
7 products, our services, and our culture better.

8 Under this guiding principle over the
9 last several years we've launched employment
10 programs focused on bringing the untapped talent of
11 people with disabilities. One of those programs is
12 our Supported Employment Program which is run by our
13 Real Estate and Facilities Group.

14 Since the program started in 2013, over
15 280 supplier positions have been filled by
16 individuals with intellectual and developmental
17 disabilities on Microsoft campuses globally, and
18 that number is steadily growing. The learnings have
19 been immense, and it has helped shape our approach
20 to external staffing. We share these learnings with
21 our supplier base of over 30,000 organizations
22 globally.

23 At the Microsoft Headquarters in
24 Redmond, we have approximately 50,000 employees and
25 visitors that come to the campus every day;

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1 essentially, it's a small city. The Real Estate and
2 Facilities Group deliver services for employees
3 through 50 different vendor companies. These
4 include maintenance, food services, utilities,
5 landscaping, mailroom services, and more.

6 This service-based campus environment
7 creates an opportunity for us to have a real impact
8 in the community in which we live. In 2013, as we
9 created the Supported Employment Program to provide
10 people with intellectual and developmental
11 disabilities the opportunity to obtain and maintain
12 employment. This program includes a host of
13 strategies that help bring and support these
14 individuals into jobs within the Microsoft
15 environment. Our practices include inclusive
16 interviewing and hiring practices, working with job
17 coaches, and of course job customization and
18 providing accommodations.

19 The success of the program does depend
20 on strong partnerships with local vendors and
21 community organizations. The mission of the program
22 is simple: partner with suppliers and local
23 employment agencies to make a substantial difference
24 in the lives of people with intellectual and
25 developmental disabilities who have historically

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1 been overlooked in the jobs market.

2 To date, the program has resulted in
3 external staff with disabilities being employed in
4 full- and part-time roles across 30 different job
5 types. All employees are paid the going rate for
6 their work. All of the workers hired by our
7 suppliers earn a competitive wage and receive
8 benefits from their employers in full- and part-time
9 roles. This is in line with our mission to empower
10 everyone, and our values of inclusion.

11 However, today in parts of the U.S.
12 people with disabilities can be paid less than
13 minimum wage or subminimum wage, sometimes as little
14 as pennies on the dollar. Microsoft does not pay
15 less than the applicable minimum wage. We require
16 our suppliers to do the same because we believe in
17 fair wages for all. In July 2019, additional
18 language was added to our supplier code of conduct
19 to reconfirm the obligation to pay at least
20 applicable minimum wage to everyone.

21 Employment of people with disabilities,
22 including those with intellectual disabilities, is
23 the right thing to do, and it's a business
24 imperative. It's good for the bottom line.
25 Research shows that companies that champion

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1 disability inclusion are more profitable. According
2 to the 2018 Accenture Report, companies that have
3 improved their inclusion of persons with
4 disabilities were four times more likely to have a
5 total shareholder return that outperforms those of
6 their peer group.

7 But numbers are only part of the story.
8 People with disabilities are a strength. There are
9 many examples of employees with disabilities who are
10 more loyal, reducing the cost of turnover, the cost
11 of recruitment, and the cost of onboarding. We've
12 seen employees with disabilities who are more
13 innovative. They challenge the status quo. They
14 invent inclusive solutions. We've seen employees
15 with disabilities teaching their colleagues about
16 communication, inclusion, and empathy.

17 Equally important is the impact that
18 hiring will have on the life of somebody who faces
19 barriers to employment with the unemployment rate
20 for people with disabilities that is twice that of
21 the national average. The opportunity is real, and
22 the opportunity is now.

23 Microsoft is committed to disability
24 employment, and we are committed to helping other
25 employers along the way. We have presented

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1 information about our partnerships, our lessons
2 learned, and the benefits of Supported Employment at
3 various trade fairs. Our efforts to spread the word
4 have included individual meetings with multiple
5 companies, both large and small. And we talked to
6 those who were interested in particularly
7 diversifying their workforces.

8 Microsoft is not alone. For example,
9 earlier this year a sportswear company in the
10 Pacific Northwest started their own Supported
11 Employment program. We are just one of a growing
12 community of employers who understand that
13 disability employment is good values, and it's good
14 for business. To support this information on best
15 practice sharing, Microsoft has created a toolkit
16 and videos, all of which are available online to
17 everybody. Microsoft is committed to continuing to
18 grow and improve our Supported Employment Program.
19 As well as talking to other businesses about
20 reaching out to and removing barriers to employment
21 for people with intellectual and developmental
22 disabilities.

23 We are committed to paying the market
24 wage to people, including those with disabilities,
25 and we require our suppliers to pay the same market

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1 wage as well. We believe in fair wages for all.
2 Thank you very much.

3 CHAIR LHAMON: Thank you, Mr. Collins.
4 Ms. Kline?

5 MS. KLINE: Good afternoon, and thank
6 you for inviting me to participate in today's
7 proceedings. I'm currently a partner at the law firm
8 of Brown, Goldstein, and Levy in Baltimore, Maryland
9 and Washington, D.C., and before that I was senior
10 counsel to the Assistant Attorney General for Civil
11 Rights at the Department of Justice.

12 Prior to that I was a DOJ trial
13 attorney, and in that role as a DOJ trial attorney I
14 was lead counsel on two cases: The United States v.
15 Rhode Island, and the United States v. Rhode Island
16 and the City of Providence, that sought to challenge
17 unnecessary and unjustified segregation under Title
18 II of the ADA and the Olmstead v. LC Supreme Court
19 decision and resulted in the nation's first
20 statewide settlement agreements implementing the
21 promise of Olmstead LC to move individuals from
22 segregated sheltered workshops to competitive,
23 integrated employment.

24 In addition, during the same period of
25 time, I was counsel of record with many of the folks

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1 that you've heard from earlier today. We brought
2 the Lane v. Kitzhaber, United States v. Oregon case,
3 similarly under the promise of Title II of the ADA
4 and Olmstead v. LC, and likewise that resulted in a
5 landmark settlement agreement that will move
6 thousands of people over the next 10 years from
7 segregated sheltered workshops to competitive,
8 integrated employment.

9 Together, these three cases resulted in
10 injunctions that over 11,000 people with
11 intellectual and developmental disabilities will
12 move over the next decade from segregated,
13 subminimum wage labor into real jobs in the
14 community. Over the past eight decades, Americans
15 with intellectual and developmental disabilities,
16 who are blind, with other significant disabilities
17 have been left out of the marketplace. They've just
18 been left out.

19 And they often earn just pennies an hour
20 in these settings, in these sheltered workshops,
21 settings on one erroneous, one primary and principle
22 erroneous assumption, and that is that disability
23 inherently creates insurmountable obstacles to work.
24 And the premise behind that is thereby, it must
25 justify downwardly adjusting wages because

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1 disability is, per se, a reason to do so. And yet
2 we know better. We know that the reality of the
3 ADA, the promise of the ADA, is that it disabused us
4 of this very notion. That it's axiomatic under the
5 ADA; that it is the work environment for which we
6 make modifications.

7 It is not the person that we remove from
8 the work environment; it is the barriers in the work
9 environment that we remove. In fact, the earlier
10 law, the predecessor law to the Americans with
11 Disabilities Act, 1973's Rehab Act, said the same
12 thing. It created a vocational rehabilitation
13 system premised on the idea that there may be people
14 in our country that require supports more than that
15 which would be reasonable for an employer to
16 provide. In those instances, those supports will be
17 provided on the job, in the community.

18 Nevertheless, as a result of the failure
19 of the 14(c) provision to keep speed with these
20 other sensational laws that have brought civil
21 rights to so many Americans, it's out of step. It
22 didn't adapt to these lessons that are formative in
23 these other statutes. And as a result, it's trapped
24 millions of Americans, now and in the future, with
25 the reality of living in the past.

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1 Whether it be living in 1938; whether it
2 be living in the 1973 Rehab Act reality, or whether
3 it be living in pre-1990, we know that the lessons
4 of the ADA have not been incorporated into the way
5 that we currently implement 14(c).

6 And I've got to tell you, we've heard
7 people say that these are opinions. I'm here to say
8 it's not an opinion; it's law. And we should take
9 seriously civil rights laws because that's why we're
10 here. This is a matter of civil rights, and we have
11 a federal statute that's out of step with our
12 foremost laws in this country for people with
13 disabilities, and we need to take action to bring
14 14(c) into step with current reality.

15 So accordingly, we can no longer take
16 the time to debate the merits of whether the 14(c)
17 program needs better enforcement. We don't need
18 additional study to know that it's out of step with
19 current federal civil rights laws. We've got to
20 dive deep; we have to dig deep into solutions.
21 Let's shift today from a discussion about
22 principally whether there is a problem, to how we're
23 going to solve the problem with efficacy and
24 responsibility to the people who deserve jobs in the
25 community.

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1 Make no mistake; objective evidence has
2 established for decades that the program is
3 ineffective; that it's lacking in oversight; that
4 people in it are poor, displaced, under-employed,
5 and that it's out of step with the reality of other
6 people who are working in real jobs in the community
7 with the same or similar disabilities as those who
8 work in 14(c) settings.

9 Federal law, macroeconomic trends, and
10 the preferences of people with disabilities and
11 their families are changing and have shifted
12 dramatically towards competitive, integrated
13 employment over a relatively short period of time.
14 But in the long march progressively over the last 80
15 years, without any significant changes for decades
16 to the Section 14(c) program.

17 To do nothing is absolutely not an
18 option, even in the relatively short term, because
19 the macroeconomic trends in the country are
20 indicating that everyone else in our workforce
21 system is training for 21st century jobs.

22 And yet these are not opinions. I have
23 visited workshops in many states for many years, and
24 people are performing labor on machines that do not
25 exist anywhere else in the market. They are

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1 receiving equipment as donations, because the
2 equipment is no longer pertinent to jobs that exist
3 elsewhere. For people with disabilities, they then
4 use that equipment to make products outside the
5 bounds of any technology.

6 What people are doing in the workshops
7 that I've visited are mostly rote, highly repetitive
8 labor usually by hand, quite often without
9 reasonable accommodations, without assistive
10 technology, without augmentative or alternative
11 communication. And as I've just mentioned, using
12 evidently outdated equipment and production
13 processes that you won't see anywhere else.

14 This is the case even though people with
15 disabilities in the workshops are indeed capable of
16 performing just as well as their non-disabled peers
17 with accommodations and the right equipment, the
18 right individualized services and supports.

19 CHAIR LHAMON: Thank you, Ms. Kline.
20 Can I open up for questions from my fellow
21 Commissioners in just a moment, but Congressman
22 Grothman, I want to start by telling you that I take
23 exception to some of your terminology. My brother
24 has cerebral palsy, and I want you to know that no
25 one in my family ever considered anybody whoever

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1 worked with him or with our family, a saint.

2 We consider those people to be people
3 who had jobs that were fulfilling, and I'm grateful
4 that they had them. I'm grateful for what they did,
5 but my brother has made more than \$7.50 an hour,
6 well since high school in every job he has ever
7 held. He is not distinguishable from the person you
8 described who can only move one arm, and I want to
9 make sure that you know that this bureaucrat is
10 intimately familiar with the issues that you
11 described as we consider this issue. And with that,
12 I'll open for questions from my fellow
13 Commissioners.

14 COMMISSIONER HERIOT: Congressman, I
15 apologize to you on behalf of the Commission. That
16 was rude.

17 CHAIR LHAMON: And I feel very good
18 about letting you know how I felt about what you
19 said.

20 REPRESENTATIVE GROTHMAN: Right. Well,
21 am I supposed to respond to that?

22 CHAIR LHAMON: You are welcome to
23 respond. Would you like to? You should turn your
24 microphone on so that we can get it for the record.

25 REPRESENTATIVE GROTHMAN: I will

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1 emphasize again the importance of having this
2 committee or commission tour work centers on their
3 own. I think every work center I have toured, and I
4 have toured many of them, have examples of people
5 who've moved out of the work center and are working
6 for minimum wage or more in the community, and
7 you've heard other examples here today.

8 But I think if you tour all the work
9 centers you will find people who will not be able to
10 succeed in the community. I think of the tens of
11 thousands of people whose future, their lives, are
12 going to be dependent upon what this group says.
13 And if you make what at least I think is the wrong
14 decision, you can ruin the lives of tens of
15 thousands of people.

16 It is possible that we can do more. For
17 example, with blind people or more with people with
18 certain disabilities; however, everybody who I have
19 talked to who've worked in the 12 workshops that I
20 tour regularly feels very strongly, despite the fact
21 that they try to work with people, despite the fact
22 that they try to train people, there are some people
23 who will not find a job in the community for 30 or
24 35 hours a week.

25 And I beg you to tour these centers,

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1 because you do have the ability to, as I see it,
2 ruin the lives of tens of thousands of people with
3 your decision. I'm sure you've heard testimony
4 today of individuals who worked in a work center and
5 moved on, and that is one of the goals of the work
6 center. And every one of the work centers I tour
7 have done that.

8 But just as there are some people who've
9 moved on, there are some people who aren't going to
10 find it possible to move on. And for those people,
11 their life is going to work every day and earning
12 that one or two or three dollars an hour. And if
13 you take away that option from them, you have the
14 potential to ruin their lives. It is a free
15 country, and guardians or people with these
16 handicaps, they can look for other jobs and good
17 work centers work for other jobs. But I beg you not
18 to take that option away from them and treat them as
19 something less than a free human being.

20 And I think if you take the time to tour
21 three and four work centers for all of you -- I
22 assume you're from all over the country -- I think
23 you are going to find very wonderful employees
24 working there, both people doing all sorts of jobs
25 in those centers, you're going to find a lot of

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1 continuity, and you have to ask yourself, what is
2 going to happen to all of these people if I decide
3 automatically that these people can't work here
4 anymore? And I beg you to do that.

5 I don't know whether as part of your
6 responsibility here, you are required to go out and
7 see the work centers, but you'll learn a lot more
8 from the work centers than you will a battery of
9 lawyers or a battery of politicians talking today.
10 And I beg you to do that because I can see you
11 ruining a lot of lives if you make the wrong
12 decision.

13 CHAIR LHAMON: Thank you for that
14 modified approach, and I don't disagree with you
15 there that it will be beneficial for us to visit
16 work centers. Thank you.

17 REPRESENTATIVE GROTHMAN: Have you seen a
18 lot of them?

19 I have not seen a lot of them, and I
20 welcome the invitation. So thank you very much for
21 the suggestion. Thank you.

22 REPRESENTATIVE GROTHMAN: Come to
23 Wisconsin.

24 CHAIR LHAMON: Commissioner Adegbile?

25 COMMISSIONER ADEGBILE: Madam Chair, one

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1 clarification for the record. So, Congressman, this
2 body issues reports; they can take findings; they
3 make recommendations. The duty, I think as you
4 know, to reflect on federal law is charged with the
5 Congress of the United States. And so we have,
6 since 1957, been here to advise the nation on
7 potential reforms in the area of civil rights as an
8 educative function and advisory body. But it is the
9 Congress of the United States that has the decision-
10 making power in the context of your comment, to
11 determine what the federal law of the United States
12 is.

13 And so what we're trying to do today is
14 receive information from yourself. Earlier one of
15 your colleagues from across the aisle was here,
16 sharing some views about some bills that he has
17 pending to explore these issues in some detail, and
18 then determine if we can put out a report that
19 explores them based on a range of opinions.

20 And we welcome your charge to us to try
21 to get out and see some of the facilities. I think
22 it's worthwhile. I will make the personal effort.
23 I note also for the record that we're limited by our
24 budgetary allocation. There are lots of things we
25 would like to go see in the country when we study

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1 these issues; we do what we can in that regard. But
2 the points are well taken; seeing is one way to
3 gather information, but I just wanted to make the
4 record clear that we're not deciding. We're making
5 recommendations. In a sense, you and your
6 colleagues are deciding.

7 CHAIR LHAMON: If you just push the talk
8 button on your microphone, then we can hear you.

9 REPRESENTATIVE GROTHMAN: They're not
10 going to take your money. At least in Wisconsin, we
11 have one in all but three counties in the state. I
12 don't know what state you're from, but it shouldn't
13 take an overnight big deal. I think if you poke
14 around, most people here will find one within a half
15 hour of their house.

16 CHAIR LHAMON: Commissioner Kladney?

17 COMMISSIONER KLADNEY: Thank you, Madam
18 Chair. Congressman, thank you for coming. Ms.
19 McSweeney, both of you may want to answer this
20 question, or anybody else on the Panel. Matter of
21 fact, every question I ask, anybody can chime in.

22 You describe people working for 35, 30,
23 35 hours a week at the work centers. How many
24 people in the work centers actually do that versus
25 working 20 hours a week, still going to day

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1 services? I mean, that kind of mix. I mean, there
2 should be some kind of statistics this morning. I
3 think Ms. McSweeny was here, and she heard me. I
4 did a calculation on somebody's certification
5 application where there were 160 people who made
6 zero dollars an hour. So they're not all working
7 all the time. Some are just merely present. Some
8 are in therapeutic day services. I'm just trying to
9 get a picture of this.

10 MS. MCSWEENY: I was very struck by
11 that, because we talked about it as some of the
12 people here have come to provide some comments
13 later.

14 CHAIR LHAMON: Could you push the talk
15 button on your microphone? Thank you.

16 MS. MCSWEENY: I'm sorry. Can you hear
17 me now?

18 CHAIR LHAMON: Yes, thank you.

19 MS. MCSWEENY: We were chatting; some of
20 the people who have come to make some comments, some
21 of the public comments later, and I hope you all
22 will be here to hear them because they've traveled
23 quite a long way. This is such an important issue
24 that you were talking about people earning zero
25 dollars an hour --

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1 COMMISSIONER KLADNEY: Or three cents or
2 five cents.

3 MS. MCSWEENY: You know, people throw
4 those numbers around. Nobody make zero dollars an
5 hour; that would be illegal. One of the things that
6 we're asking for the Panel to get behind is joining
7 to encourage Congress to do a real study on what
8 really happens if people lose these jobs.

9 A lot of times -- you had a lot of
10 really opinion and sort of unfounded commentary
11 today. Not a lot of people here; not a balanced
12 program at all. I mean, you know that. You did the
13 invitations, and Nick has been great to work with,
14 and I appreciate his kindness and the staff here.
15 But there were, what, 25 people who came to provide
16 testimony, and two are supporting continuing to
17 provide a vast and full array of options for people.

18 I don't know that anybody knows the
19 answer to that question, Commissioner. I think that
20 it's all so personalized in terms of people having
21 their own individualized plan when they work at a
22 work center, so they might work a half day, and do a
23 half day of quality day programming.

24 They might do a half day making
25 competitive wage outside somewhere else, and come

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1 back to the work center in the afternoon and work or
2 do a day program. They might split things up
3 because they're not having good days, so they might
4 take a break and go spend time in a day program. It
5 really does vary very much by the individual.
6 Congressman?

7 REPRESENTATIVE GROTHMAN: Yes. I think
8 one of the things, at least in this group, you've
9 got a continuum of people. You've got people who
10 are going to work their way out and make 15 bucks an
11 hour, and you've got people who are very, very, very
12 disabled.

13 And I think some of these people maybe
14 can work an hour a day, and that's one of the
15 reasons why I want you to tour these. Because there
16 are people who imply that everybody in society is
17 going to find 40 hours a week at minimum wage. And
18 if you tour these places, you can find some, but
19 you're going to find people who are very, very
20 severely disabled, and that's a sad thing. But it's
21 just a reality, and if you're operating one of these
22 things you may be able only to get an hour or two a
23 day out of some folks.

24 COMMISSIONER KLADNEY: I just wanted to
25 try and --

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1 REPRESENTATIVE GROTHMAN: And some
2 folks, you're going to get 30 hours. It's just --
3 you've got a continuum of -- disabled is such an
4 all-encompassing term. It means such a wide variety
5 of people, and you're kind of putting them all
6 together in one group like we can treat everybody
7 the same. And they're so widely varied. Like I
8 said, there are people who are incredibly disabled.
9 You've got to think about that before you kick them
10 out.

11 COMMISSIONER KLADNEY: You wanted to
12 comment?

13 MS. KLINE: Yes. If I could have the
14 opportunity to respond to the Congressman just on
15 one small point. You know, we don't know is the
16 answer. You asked a question: Do you have data
17 about how much time people are working in workshops,
18 and the answer is, we don't know.

19 And we should know, because we suspect,
20 from all the people that we represent and all the
21 thousands of people that we hear from regularly that
22 are in workshops, that they're bored; that there is
23 no minimum performance expectation; that there is no
24 training; that there are no standard operating
25 procedures; that there are no accommodations; that

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1 there is no discussion of advancement because the
2 world is flat.

3 And so when you're asking are you
4 working in workshops, it's questionable whether
5 there is work in workshops for much of the day for
6 many of my clients. We should record that
7 information, but even so, we have so little data
8 about what people are doing other than an awareness
9 that they're being supervised for eight hours. So
10 when you're saying a 30.5-hour work week in the
11 workshop in the talking points from the trade
12 association, what they're really saying is:
13 individuals with disabilities are being supervised
14 for 30 hours a week.

15 But people who work in the community,
16 they work every hour that they work in the community
17 meaningfully, and by choice. When they're engaged
18 in a community job like you or I, they're engaged.
19 They're not being supervised; they're living their
20 lives with self-determination.

21 MR. LEWIS: I apologize. I wish I would
22 have been able to go first on the Panel. I got
23 caught up in my emotions and wasn't able to give the
24 best presentation, but to your question: the data
25 doesn't exist, and I don't necessarily know if we

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1 need to be researching that type of data.

2 But one of the things that I actually
3 help run an extended workshop as a sheltered
4 workshop would pay people piecemeal rate. In
5 actuality, there were some instances when they would
6 come in and they wouldn't do any work, and they
7 wouldn't get paid, but we were still getting paid
8 because at that particular time, we were getting
9 paid services from the state to have something for
10 them to do.

11 But the thing that stands out overall
12 is, if we don't start, one, believing first of all
13 that the people have the capacity for competitive
14 employment, then we've already lost. Are there some
15 individuals that are going to be more challenging?
16 Absolutely. In the conversations I've had with
17 individuals who run the workshops, they say it's
18 expensive, and it's difficult. But no one who is
19 really in the space has said it's impossible.

20 So the data we should be looking at is:
21 what is going to be that cost to implement those
22 innovative systems that create opportunity for those
23 individuals who were previously deemed unemployable
24 to obtain competitive integrated employment?
25 Because there are so many examples of people who

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1 have been labeled unemployable, that when they're
2 put in an environment with individuals that believe
3 in their capacity, set their expectations, provide
4 the proper training and support, they obtain
5 competitive, integrated employment.

6 One individual who was in the workshop
7 that I used to give the tour to, and I did that.
8 Brought them in, politicians look, we're doing a
9 wonderful thing, and they were happy, because we
10 made sure that it was fun. But all of them ended up
11 transitioning into jobs that were full-time
12 employment, not just piecemeal stuff that we had
13 when we had it there.

14 But even more importantly, a couple of
15 them actually went out and started making more money
16 than me. So it wasn't even about competitive,
17 integrated employment; they were making more money
18 than I was making. But these were individuals who
19 were deemed that this was the best that they could
20 do, to hang out in our workshop all day.

21 And that's why I'm so emotionally torn.
22 When I did that, I didn't have any ill intent. I
23 wasn't trying to deny these people an opportunity to
24 obtain competitive, integrated employment. I
25 thought I was doing a wonderful thing. I was driven

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1 by my compassion to provide these opportunities that
2 would otherwise not exist for these people, and it
3 was misguided compassion.

4 And because of my ignorance, because I
5 didn't have the skill set to do what I was supposed
6 to be doing, and because of that misguided
7 compassion, these individuals spend significant
8 parts of their lives wasting away in that workshop;
9 making money for our center, but wasting away.

10 So I do have some degree of comfort
11 knowing that I was able to help employ all but one
12 of those individuals that was working in the
13 workshop in a competitive, integrated work
14 environment, and the one person that we weren't, he
15 was a senior gentleman, and we ended up placing him
16 in an environment that had a lot of community
17 support. And I guarantee he was much happier in
18 that environment than he was in the one that we
19 created.

20 COMMISSIONER KLADNEY: Thank you. Mr.
21 Collins?

22 CHAIR LHAMON: It looks like Ms.
23 McSweeny has something to say.

24 MS. MCSWEENY: I can wait.

25 COMMISSIONER KLADNEY: Mr. Collins? To

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1 change up the subject a little, you've described
2 your vendor program, and there's also a direct hire
3 program from Microsoft, isn't there?

4 MR. COLLINS: Yes. We have a number of
5 programs across the company. One in particular is
6 the Autism at Work hiring program. We are now
7 hiring individuals that Microsoft has actually
8 overlooked in the past to become software engineers
9 who work side-by-side with our traditional software
10 engineers.

11 And what we've done there is really
12 change the doorway into Microsoft. We're now
13 looking at doing practical accommodations on
14 examining things like the resume process, the
15 interview process. We're working with our own
16 managers within Microsoft to make them aware of this
17 community that they've overlooked in the past.

18 And as we get them involved in the
19 interview process, we're training those managers
20 again on how to have a practical interview with a
21 person who is on the autism spectrum. That
22 interview is not the traditional type of interview
23 that I know I went through at Microsoft.

24 So I think we've found that sweet spot,
25 and we've opened the door to more people, again, who

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1 have been overlooked in the jobs market and who are
2 more than capable to do great work with our company.

3 COMMISSIONER KLADNEY: It's my
4 understanding the interview process you're talking
5 about for the autism program as well as other
6 disabled people that you directly hire is formulated
7 for them. In other words, what their disability is
8 and how they react to things; I hear you.

9 MR. COLLINS: Yes. So the first thing
10 we do with kind of candidates that we're
11 interviewing now, we ask them, do they need
12 accommodations? Within the autism hiring program we
13 are actually out there and we are looking for
14 candidates who would self diagnosis as being on the
15 autism spectrum. But for all jobs in Microsoft, we
16 are asking people: what accommodations they need in
17 the interview process?

18 COMMISSIONER KLADNEY: And one last
19 question, and this is for anybody on the Panel. My
20 research seems to show that there has not been a
21 suit brought to challenge 14(c) on an equal
22 protection basis. Does anybody believe that it's a
23 violation of the Constitution? I guess not.

24 CHAIR LHAMON: If you would just push
25 talk.

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1 MR. LEWIS: Okay. I thought I turned it
2 off, and back on. Yes, we believe that, and we're in
3 the process of entering into a variety of different
4 lawsuits to address this in different perspectives,
5 but there has been no finding. There has been no
6 closure. We have some active litigation going on
7 now.

8 REPRESENTATIVE GROTHMAN: I'd like to
9 point out --

10 CHAIR LHAMON: If you just push talk.

11 REPRESENTATIVE GROTHMAN: Yes. I'd like
12 to point out something. There was a time in our
13 society -- I don't know, 70, 90, 100 years ago -- in
14 which people with disabilities just sat at home. I
15 can think of one from my lawyer days who I knew.
16 She was great gal, but I mean she stayed at home
17 with her parents her whole life, and her whole life
18 was sitting there, eating, watching TV and never got
19 out of the house.

20 The sheltered workshops were a huge
21 improvement for these folks. They got to meet other
22 people other than just their parents, both people
23 with disabilities and the staff that works in the
24 workshops. They got a degree of independence as
25 they earned some money, okay?

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1 And if we say that everybody's got to
2 meet, got to get to minimum wage, there are some
3 people who will get to minimum wage. And there are
4 a lot of people, and you will see this if you tour
5 three or four of these workshops, who are not going
6 to get to minimum wage. And they are going to wind
7 up back either in day services, as a parent of one
8 of the sons I was talking about referred to as
9 babysitting, as day services, or back at home with
10 their parents watching television.

11 And that would be a tragedy if, out of
12 what our Congress does or what you guys do or
13 whatever, it will be a tragedy if we go back that
14 way and we do pick a few people and set up something
15 for them in the community, but you're going to wind
16 up, I am afraid, of a lot of people going back,
17 getting rid of the social benefits which are huge of
18 being in a workshop, and going back to mom and dad
19 kind of the way folks like this, what their lot in
20 life was like 100 years ago.

21 And you've got to look out because that
22 is something that happened. You know, they didn't
23 set up the subminimum wage to take advantage of
24 people. They set up the subminimum wage because at
25 that time, and I believe to this day there is no way

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1 some of these people are going to be making minimum
2 wage, and we would rather have them in the
3 community, both for the social benefits and their
4 own economic benefits, than sitting at home or
5 sitting in some facility. And that's what you've
6 got to look out for.

7 MS. KLINE: You know, Congressman, I
8 really appreciate you telling the truth about your
9 views, and I think that we can talk here in some
10 common ground. When I've gone around the country,
11 I've met with a lot of community rehabilitation
12 providers and direct support professional staff, and
13 these are, I agree with you, people who have been at
14 the front line of providing service, often for
15 decades with very little resources and inadequate
16 pay. And these are people who have huge
17 responsibility to families in their communities and
18 to the community at large.

19 And what they say quite often, and I'm
20 not sure how this message is landing back here where
21 decisions are made, but what they confide in you is
22 that they're caught in a trap between new and old
23 laws, having to grapple the inconsistencies between
24 the requirements that are demanded of them to
25 measure time with an egg timer, to pay wages in this

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1 archaic and fossilized system of services, and to
2 still give regard to the ADA and Olmstead, to still
3 give regard to the mandate of the Medicaid Act, to
4 still pay homage to WIOA and Section 511.

5 And so I think the stress that direct
6 support professionals are feeling is they lack the
7 professional development, the training, the
8 capacity-building, how to bridge the gap. How do I
9 get from this system to this system? How am I
10 responsible for this? Where is the leadership to
11 support me to support people to leave?

12 And when you're moored to the
13 infrastructure of a building in mini vans and lots
14 of physical infrastructure of what it takes to run a
15 workshop, it requires extra funding, extra support,
16 to try to invest in the business development of
17 these shops in order to switch their business model
18 to support those direct support service
19 professionals and your members in ACCSES and
20 elsewhere around the country to transform.

21 Nobody's losing a job; they're changing
22 the mission of what the outcome of those services
23 is. And let me tell you, the default setting forever
24 has been an over and unjustified reliance on only
25 segregation. The lion's share of federal service

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1 dollars still is poured into segregation to this
2 day.

3 The transformations bill is saying that
4 we will provide more options for people who want to
5 leave, who can and want to work. And we need to
6 support direct support professionals and service
7 providers in order to come along for the ride and be
8 part of the solution.

9 REPRESENTATIVE GROTHMAN: I am glad
10 you're talking about options because that's what
11 we're for here: options. Okay, we don't want to
12 shut down these centers for the people who are happy
13 in the centers. And a lot of them are not going to
14 happy if they leave the centers.

15 And when people say we're shutting down
16 the centers, you're removing options. The centers
17 right now do work to put people in the community.
18 Sometimes they fail; sometimes they succeed, and if
19 you take some time touring these centers, you'll
20 find out why some of them fail. But the fact
21 remains, I know a lot of families with kids in this
22 situation. And if you shut down these centers,
23 you're taking away an option from them.

24 I'll give you one little anecdote. I
25 have a friend who works in one of these centers, and

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1 she had somebody there who worked like five hours
2 outside or six hours outside of the center, and the
3 rest of the time in the center. She asked the gal,
4 which one do you like better? She said, oh, I like
5 my job outside the center, but I like the job in the
6 center because these are my friends.

7 Okay, now that's just one example. But
8 she liked working with the same people she had
9 worked with for the last 20 years. She didn't want
10 to be out in an unfamiliar setting with people who
11 maybe didn't have as much sympathy for her.

12 You're the one who wants to take away
13 that option from her. I'm the one who is defending
14 options, saying that the centers are for some
15 people, and the community is for some people.
16 You're the folks who want to say, We want to get rid
17 of the centers where tens of thousands of people in
18 this country are happy today.

19 CHAIR LHAMON: I appreciate the clarity
20 of this position. I do know that a couple of other
21 commissioners have questions, and Mr. Lewis wanted
22 to get in. So let's -- Mr. Lewis and then Ms.
23 McSweeny, and then we'll move on to other questions.

24 MR. LEWIS: So I just wanted to offer,
25 the question around choice that has not been spoken

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1 to is, we've had, from the previous panels,
2 demonstrations of how entities who have formerly
3 been segregated, some of these work environments
4 have been able to convert again. It's not easy, but
5 that's a choice. So these entities that still want
6 to maintain that use of the subminimum wage
7 provision, it's not a necessity as they continue to
8 try and put it out there. It's a choice because
9 it's been proven that it can be possible.

10 It's just interesting, we're living in
11 like parallel worlds. The founder of the National
12 Federation of the Blind was a constitutional law
13 scholar. Back in 1940, he started the NFB. He
14 actually helped write information that helped with
15 the Brown v. Board of Education Supreme Court
16 decision. But at that same time, they were saying
17 that blind people couldn't work, and they had
18 sheltered workshops.

19 When 14(c) was implemented, you couldn't
20 pay anything less than 50 percent of the minimum
21 wage, and they improved it by saying that saying
22 that you can pay no less than 25 percent of the
23 minimum wage. Then they came back and improved it
24 again and said, well, it's zero. The floor is zero.

25 So all the protections that even in the

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1 initial attempt at implementing the legislation have
2 just fallen short. And the last piece I'll offer
3 related to this is, I do encourage you to go on a
4 tour as well. Being a person who used to give those
5 tours, but I also encourage you to take someone who
6 is knowledgeable about the discovery process,
7 customized employment, a person with a proven
8 history of being able to take and assist people with
9 disabilities, the most significant disabilities,
10 escape those environments and obtain a quality of
11 life that is competitive and integrated.

12 CHAIR LHAMON: Thank you. Ms. McSweeny?

13 MS. MCSWEENY: I just wanted to add that
14 many of our members have used 14(c) certificates,
15 many of them do not, in terms of ACCSES, so I don't
16 want there to be an impression that all of our
17 members use a certificate.

18 All of our members work hard to help
19 people find employment and just expand their lives
20 in all kinds of ways, including finding employment.
21 And that's through job coaches, supported
22 employment, anything that they need. Often, they
23 need drug service supports during the day.

24 I didn't read my statement aloud because
25 I wanted to focus on some very specific things. But

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1 right now the unemployment rate for people with
2 disabilities is 6.9 percent as compared to 3.2
3 percent for people without disabilities.

4 One of the things I said was we should
5 be working together to help educate the business
6 community. Now, I had the good fortune of working
7 for Microsoft at one point in my career, and so I
8 wanted to say to Mr. Collins, you're exactly what I
9 was referring to when I said we need to be working
10 with the business community to really help the
11 business community create opportunities and find
12 opportunities for people with the most significant
13 disabilities and to bring them in.

14 And what you were saying about actually
15 creating an interview process that provides an
16 accommodation is really important. Because that's
17 what we want; we want expanded opportunities. We
18 all want that. Let's work together to achieve that
19 and focus on closing that employment gap, not taking
20 away jobs from people.

21 CHAIR LHAMON: Thank you. Commissioner
22 Kirsanow?

23 COMMISSIONER KIRSANOW: Thank you.
24 Thanks for all the panelists. Mr. Collins used the
25 term barriers to entry, and every time there is an

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1 increase in the minimum wage, there are a
2 significant number of people who are dislocated as a
3 result. The most significant group of people are
4 black teens first, other blacks, but when there was
5 an increase in the minimum wage I think of about 10
6 percent about 20 years ago, someone ran the numbers
7 and showed that the unemployment rate among black
8 teens went up 17 percent. So when you raise the
9 minimum wage, there's a barrier to entry there.

10 And I wonder if anyone has done any kind
11 of analysis, crunch the numbers as to: if 14(c) were
12 eliminated, and we go up to a minimum wage of
13 whatever it may be in the next few years, what will
14 be the barriers to entry? Will there be a
15 dislocation of 5, 10, 15, 30 percent of the
16 individuals currently employed? Because what we're
17 addressing right now is potential elimination of
18 14(c), and will that present a barrier to entry?

19 MS. MCSWEENY: That's precisely the
20 study that does need to be done, and one of the
21 things I commented on, this is the very question
22 that we need to be asking is: what happens when
23 14(c) goes away? There was the main study that was
24 done, but there's very little substance that looks
25 really specifically from an unbiased source, what

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1 happens in those states where 14(c) has been
2 eliminated? Because we can actually really drill
3 down on that and see what people's lives have been
4 like.

5 COMMISSIONER KIRSANOW: Yes. This is
6 not a zero-sum game here. We've got data from -- in
7 1954, before significant increases in the minimum
8 wage, black teens had higher employment rates than
9 white teens. This is before the 1964 Civil Rights
10 Act. This was in Jim Crow South. Then there were
11 significant increases in the minimum wage; black
12 teens now have horrendous employment rates. Right
13 now, the best of all time in the last 40 years, but
14 compared to 1954, labor participation is very low.

15 So when we're talking about something
16 that causes a rise in minimum wage, we're talking
17 about economics here. People have options, and so
18 I'm wondering whether or not people will be
19 displaced in terms of employment, and we haven't
20 even done any studies along these lines.

21 REPRESENTATIVE GROTHMAN: I will point
22 out that there is a bill right now in Congress to
23 raise the minimum wage to \$15 an hour, which passed
24 the House. It's not going to pass the Senate for
25 political reasons. Not political reasons, just a

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1 different viewpoint among the political parties.

2 But in that bill there is the statutory
3 language to get rid of 14(c). And it's not an
4 oversight because we tried to amend that statutory
5 language out. So, you're right -- well, for some of
6 the other reasons you say, I don't like the idea of
7 raising the minimum wage from \$7.50 to \$15.

8 Common sense will tell you, study or
9 not, that if you go up from \$7.50 an hour to \$15 an
10 hour at the same time you get rid of 14(c), it's
11 going to be devastating to the disability community.
12 And people know exactly what they're doing, because
13 we tried to amend it out.

14 In that minimum wage bill today, which
15 depends on what happens politically in the next
16 election, if the people who pushed that bill get
17 what they want, it's 15 bucks an hour for disabled
18 people. And I think it's just going to be
19 devastating for them.

20 COMMISSIONER KIRSANOW: A wage minimum
21 or otherwise presumes a job. When you make
22 arbitrary increases in the minimum wage, very nice
23 and you feel good about it, but what about the
24 people who no longer have a job?

25 And what I'm getting here is the

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1 consensus nobody knows what will happen if you get
2 rid of 14(c).

3 CHAIR LHAMON: It looks like a bunch of
4 (Simultaneous speaking).

5 MR. LEWIS: No one knows the impact
6 overall, but I'd offer two things related to this
7 question. One is, the quota of the unemployment
8 rate for disabilities. That's been one of those
9 kind of red herring statistics.

10 But what's important to understand is,
11 that even with the existence of the sheltered
12 workshops, that statistic has not changed until
13 recently, with respect to the employment of people
14 with disabilities, because we're now going through a
15 model where -- and this is my evolution as well -- I
16 used to help people get employed by saying it's the
17 social, responsible thing to do. This is the way I
18 would introduce them into the corporation.

19 But luckily, I evolved and realized that
20 business, the bottom line is you have to make sure
21 that that person is going to be an asset to the
22 company. So, then I started introducing actual
23 employees into a work environment that show that
24 they demonstrate the skill to meet the bottom line.

25 So, in the past when I introduced them

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1 with the social morally model when business went
2 bad, yeah, they were out of the door.

3 But when I introduced them with being
4 competitive and being a benefit, they were usually
5 the last, if at all, to be let go, if necessary. In
6 many instances, we found that bringing those
7 individuals onboard helped the whole place become
8 more productive.

9 So, related to the statistic, I think
10 that what would be really important if we were to
11 evaluate that is, we have to not just say this
12 person is employed and if it increases, this is what
13 happens, because it may just be a result of this
14 person may be in this place for all of the wrong
15 reasons.

16 But when persons with disabilities is
17 provided the proper training, support and
18 opportunity to obtain a real job, they're going to
19 be subject to the same types of ebbs and flows
20 around economic situation as any other employee.

21 And that's what we're trying to get to.
22 As long as people with disabilities are seen as
23 something different, they need something more, that
24 are a burden rather than an asset, then we're always
25 going to continue to have this discussion and we

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1 won't continue to move the needle into a more
2 positive space.

3 CHAIR LHAMON: Ms. Kline, and then
4 Commissioner Narasaki has a question. But we're
5 past time.

6 MS. KLINE: Yeah. I want to play
7 volleyball with my -- I'm going to volley to Brian
8 here in a second. Because if you talk to your
9 friends at Microsoft, they'll tell you there's a war
10 for talent in this country. They're looking for
11 people with disabilities to hire.

12 I've talked to manufacturers. They're
13 looking for people with disabilities to hire. We're
14 at or near full employment. Until recently, people
15 were saying this economy is kicking. It's kicking
16 along. And yet, the absence of people with
17 disabilities in the open market is conspicuous. And
18 so, what are we doing wrong?

19 We're having conversations about whether
20 including them in the federal minimum wage that has
21 been extended to everybody else in the country since
22 1938, will diminish jobs? Well, let's look at the
23 report card.

24 We're sending multiple billions of
25 dollars every year on services in which three to

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1 five percent of people ever leave for the open
2 market.

3 We're doing that with the intentionality
4 for them to leave for the open market. And we're
5 not measuring the results in any other regard.

6 And the employers are knocking on the
7 door saying, give me ready, job-willing candidates.
8 And yet, we've spent all of our time and our
9 resources training people in jobs of the last
10 century.

11 And so, now there's a skills gap as jobs
12 are continuing to change. We're like repairing an
13 airplane mid-flight.

14 CHAIR LHAMON: Thank you, Ms. Kline.
15 Commissioner Narasaki?

16 COMMISSIONER NARASAKI: Well, it's very
17 clear to me that you guys aren't going to be able to
18 convince each other to change your minds, so I'm
19 going to change the subject.

20 (Laughter.)

21 COMMISSIONER NARASAKI: So, we heard a
22 lot of testimony, we've done a lot of reading that
23 says that while there are certainly good employers,
24 good sheltered efforts, the reality is that there
25 are a lot of places that are violating the laws with

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1 impunity and treating, unfortunately, their clients
2 in a way that violates even the basic laws that we
3 have.

4 So, I'd like to ask you, Ms. McSweeny,
5 how would you fix that? Or, do you acknowledge that
6 there are abuses.

7 MS. MCSWEENY: Well, first of all, I
8 will tell you that when there are abuses -- and
9 there are not ACCSES members who have been accused
10 of abuses -- when there are abuses, we applaud the
11 Department of Labor's efforts to penalize or take
12 away a certificate, because we don't tolerate that.

13 (Simultaneous speaking.)

14 COMMISSIONER NARASAKI: But do you have
15 suggestions about how to --

16 MS. MCSWEENY: That is a fact.

17 COMMISSIONER NARASAKI: Do you have
18 suggestions about how to improve it? Because we've
19 heard that there have been almost no
20 decertifications. So, that clearly is not a very
21 huge hammer there, so --

22 MS. MCSWEENY: Well, to be honest with
23 you, it's a little bit like --

24 COMMISSIONER NARASAKI: -- what could we
25 be doing to --

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1 MS. MCSWEENY: -- asking when did you
2 stop beating your wife. Because I don't actually
3 accept the premise of the question because I haven't
4 read what you've read. I only know from my own
5 experience --

6 COMMISSIONER NARASAKI: You don't accept
7 the premise that there are some -- not your members,
8 but that there are clearly -- because there's been
9 enforcement and litigation to the -- that there are
10 some abuses.

11 MS. MCSWEENY: I know that the
12 Department of Labor has done its job and closed down
13 a couple of places and eliminated certificates. We
14 think that's a good thing when that happens.

15 COMMISSIONER NARASAKI: Yes, which is
16 great. So, what else should we be recommending? If
17 14(c) stays in place, then we have to worry about
18 abuses. And so, what else could we put in place?

19 MS. MCSWEENY: I don't think you have to
20 worry about abuses with respect to 14(c) any more
21 than you would have to worry about abuses in any
22 work environment for anyone. I mean, it's --

23 COMMISSIONER NARASAKI: We worry a lot
24 about abuses --

25 MS. MCSWEENY: Exactly. Yeah, but I

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1 don't think that's --

2 COMMISSIONER NARASAKI: But that's why
3 I'm saying, in this situation we're focused on this
4 kind of employment. What --

5 MS. MCSWEENEY: I do think that the --

6 COMMISSIONER NARASAKI: In Commissioner
7 Adegbile's language, what would be additional guard
8 rails to make sure that the people that we all care
9 about are not being abused?

10 MS. MCSWEENEY: I can speak for our
11 members in saying that they are supportive of Wage
12 and Hour's enforcement and appreciate the efforts
13 that Wage and Hour's made.

14 So, the fact that Wage and Hour's said
15 that they were enhancing their enforcement and doing
16 more of that, I think, speaks for itself.

17 CHAIR LHAMON: And Mr. Collins has a
18 recommendation, and then I want to close this out.

19 MR. COLLINS: Yeah, I think one of the
20 areas that we have experienced as we've been out in
21 our industry, with our peer companies and similar
22 real estate and facilities companies and staff,
23 there's a lack of awareness of this talent.

24 One of the first things people ask us
25 is, what is supported employment? And we spend time

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1 talking about that and we talk about the talented
2 folks who are available to work.

3 Regina talked about the low unemployment
4 rate at the moment. Again, we go back to this idea
5 of an untapped talent. Because people, and
6 employers in particular, are not aware.

7 They start off usually in companies
8 because there's a relative of a family member who
9 has a disability, and takes off from there. If
10 you're lucky enough in the enterprise, it might be a
11 family member of influence in that company.

12 And so, one of the ideas is if we can
13 make a stronger awareness of the talent that's
14 available to go do great work in our communities, I
15 think we'll be more successful.

16 CHAIR LHAMON: Thank you very much. I
17 thank this panel for your expertise and for your
18 testimony today, and we will conclude here.

19 We will reconvene at 5:30 p.m. for
20 public comment and any participants in the open
21 public comment period should report back at 5:15 so
22 that we're ready to convene.

23 MS. MCSWEENY: Thanks very much.

24 CHAIR LHAMON: Thank you.

25 (Whereupon the above-entitled matter

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1 went off the record at 4:37 p.m., and
2 resumed at 5:29 p.m.)

3 CHAIR LHAMON: Why don't we get started?
4 Welcome back. We're now going to open for our
5 public comment session. I'm going to give a few
6 opening instructions, which I hope have been
7 provided to each participant already.

8 But just to be clear, we hope that you
9 will tailor your remarks to the topic of today's
10 briefing, which is subminimum wages and the civil
11 rights impacts on people with disabilities.

12 Please state your name for the record so
13 we have it, and please note that the U.S. Commission
14 on Civil Rights has a policy not to defame or
15 degrade any person.

16 Also, this public comment period is a
17 time for Commissioners to listen and not to engage
18 in questions or discussion with presenters.

19 We appreciate your testimony. We're
20 very eager to hear it. And we will not take your
21 short time with questions or dialogue.

22 You will have three minutes to speak,
23 which will be measured by this timer. And please
24 notice the box with the three lights. And when the
25 light turns from green to yellow, that means one

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1 minute remains. And when the light turns red, you
2 should conclude your statement.

3 If you do not conclude, I will cut you
4 off in order to allow time for other participants,
5 for as many of us as possible, in this public
6 comment period.

7 If you have not finished, or if you
8 would like to submit additional information to the
9 Commission, we encourage you to do so by mailing or
10 emailing your written submission to us at the
11 addresses provided on your information sheet. We
12 need to receive that information by December 15,
13 2019.

14 While awaiting your turn, please sit in
15 the numbered chair that corresponds to your ticket.
16 And in order to reduce time between speakers, we ask
17 that you move forward to the microphones before the
18 speaker in front of you has finished. A staff
19 member will direct you to come forward.

20 If you need to step out briefly before
21 it is your turn to speak to use the restroom or
22 otherwise, please let a staff member know so you do
23 not lose your spot, and sign interpreters will be
24 signing during the presentation.

25 I'm going to offer a quick reminder that

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1 the Commission is charged with hearing testimony
2 from all sides of the issues we evaluate, and that
3 may include testimony or statements that can be
4 upsetting.

5 If you have any questions, please ask a
6 staff member. They're all wearing USCCR staff
7 badges. And with that, I will begin with our first
8 public speaker. Thank you.

9 **OPEN PUBLIC COMMENT SESSION**

10 MS. WOODWARD: Thank you for letting me
11 speak to you on such an important issue. Hi, my
12 name is Charlotte Woodward and I am committed to
13 getting people with Down syndrome into meaningful
14 employment.

15 I graduated from Fairfax High School
16 with a standard diploma and went to Northern
17 Virginia Community College, Annandale Campus, to
18 obtain a degree in general studies. I became a
19 certified medical assistant during this time.

20 I graduated from NOVA summa cum laude,
21 and transferred to George Mason University as a
22 junior. I am currently at GMU studying sociology,
23 with a focus in social justice and inequalities,
24 while juggling a part-time job at the National Down
25 Syndrome Society.

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1 My job title is Community Outreach
2 Associate. I'm the editor-in-chief at a self-
3 advocate magazine.

4 As you can tell, having Down syndrome
5 has never held me back from reaching my goals and
6 dreams. I am living proof that people with Down
7 syndrome, along with other conditions, can work.

8 To me, having meaningful employment
9 means having dignity that comes from being a
10 dedicated worker and receiving a living wage.

11 Employment is the cornerstone of living
12 the American dream. The Transformation into
13 Competitive Employment Act is bipartisan legislation
14 designed to strengthen and enhance the disability
15 employment service community systems throughout the
16 states.

17 The goal of the bill is to increase
18 disability employment through expanding the
19 infrastructure for providing services for
20 competitive integrated employment and integrated
21 services, while phasing out special wage
22 certificates under Section 14(c), the Fair Labor
23 Standards Act.

24 I am sick and tired of huge stories
25 about people with Down syndrome and those who have

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1 other medical conditions, being taken advantage of
2 by sheltered workshops.

3 I am sick and tired of society's low
4 expectations about us. I am sick and tired of
5 fighting against this ignorance, stubbornness, and
6 intolerance.

7 How would you feel if you had a child
8 who had a disability, who wants to have a job, can't
9 because they may jeopardize their Medicaid and SSI
10 benefits?

11 The consequences of ignoring this are
12 dire. Without meaningful employment, people with
13 disabilities cannot afford to be economically self-
14 sufficient -- buy a house, get healthcare, start a
15 family and get married, and even go to school.

16 Without employment, people who are
17 differently abled will be forced to choose between
18 employment and poverty --

19 CHAIR LHAMON: Thank you for your
20 testimony. We do need to stop. Thank you. And now
21 the second speaker.

22 MR. WHITE: Good afternoon. My name is
23 James White. I represent Maryhaven Center of Hope,
24 a CRP provider from New York. I appreciate the
25 opportunity to submit comments to this Commission on

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1 a very complex, non-binary issue.

2 I have prepared statements, but I
3 adjusted them a little bit based on being here today
4 and listening to the testimony.

5 In my 25 years experience on my
6 production floor, I have never had card playing, I
7 have never seen segregation, I have never seen
8 discrimination. I certainly have never seen
9 slavery.

10 What I have seen is a wonderful, warm,
11 embracing, nurturing community, which provides
12 employment for individuals with disabilities.

13 I would argue that 14(c) and the
14 employment choice is not contrary to the ADA, nor
15 the Olmstead ruling, because it maintains a full
16 array of service options in the most appropriate
17 settings for those with significant disabilities.

18 The goal of any federal policy should be
19 to ensure that all who want to be employed have the
20 opportunity to be employed. Individuals with the
21 most significant disabilities must have choice.

22 Repealing the 14(c) will eliminate jobs
23 for the most vulnerable and the most underemployed
24 segment of the working age Americans.

25 Having a job is the building block of

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1 accomplishment, pride, and self-esteem. Save this
2 choice.

3 A one-size policy doesn't fit all. We
4 need a full array of services for a fuller range of
5 disabilities. Any policy must broaden the range of
6 choices and options. Repealing 14(c) will eliminate
7 jobs, not add jobs.

8 I was concerned today in today's
9 briefing, about the lack of accurate data on the
10 number of persons receiving 14(c)s nationally. The
11 numbers range from 100,000 to 300,000.

12 Before changing policy, the Commission
13 needs to actively seek direct input from those most
14 vulnerable who will be affected by changes to 14(c),
15 who are presently receiving those benefits.

16 I reference the Committee to, at
17 December 2, '16, a Joint Economic Commission report
18 called The Rewards of Work.

19 Work matters. Extensive research and
20 ample evidence show that meaningful work benefits
21 self-esteem and pride in the individual.

22 If 14(c) policy is repealed, people with
23 significant disabilities would find themselves
24 without employment. I reference the George
25 Washington University Times report in May about the

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1 negative impact of eliminating 14(c).

2 CRPs would not be able to pay full
3 minimum wage and the businesses who contract for
4 services will not be able to pay 100 percent salary
5 for less than 50 percent productivity.

6 The elephant in the room is the Economic
7 Productivity Act. It's the elephant in the room
8 that CRPs don't have the money to pay, businesses
9 don't have the money to pay, and government doesn't
10 have the money to pay.

11 I reference the Department of Labor,
12 Policy Wage and Hourly Division toolkit. Reasonable
13 accommodations are the key to ADA's employment
14 provisions, which protect qualified individuals.
15 Qualified is the key word here. Qualified equals
16 meeting industry productivity standards, with or
17 without reasonable accommodations.

18 CHAIR LHAMON: Thank you for your
19 testimony.

20 MR. WHITE: All right.

21 CHAIR LHAMON: We need to stop there.
22 Next speaker.

23 MR. LIEBERMAN: Madam Chair, members of
24 the U.S. Commission on Civil Rights, thank you for
25 holding this incredibly important briefing today.

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1 My name is Steve Lieberman and I'm the
2 Director of Policy and Advocacy for United Spinal
3 Association.

4 United Spinal is a national 501(c)(3)
5 non-profit membership organization, dedicated to
6 enhancing the quality of life of all people living
7 with spinal cord injuries and disorders, including
8 veterans, and providing support and information to
9 loved ones, care providers, and professionals.

10 We represent over two million Americans
11 with spinal cord injury, paralysis, multiple
12 sclerosis, ALS, spina bifida, and muscular
13 dystrophy.

14 We advocate for full inclusion and
15 participation in all aspects of American life for
16 people with disabilities.

17 Over 80 years ago, my great grandmother
18 came to Washington to attend a White House
19 conference on people with disabilities, where she
20 suggested that the federal government make an effort
21 to encourage the employment of disabled Americans.

22 Her testimony, it is said, contributed
23 to the passage of some of the legislation of that
24 era, such the Wagner-O'Day Act and Section 14(c) of
25 the Fair Labor Standards Act of 1938, which we have

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1 discussed at length here today.

2 The social reformers of the '30's had
3 good intentions. But 80 years on, it is clear that
4 the 14(c) policy has long outlived its expiration
5 date.

6 That we are still, in the year 2019,
7 segregating people from society based on their
8 genetic code or life-altering injury, or a
9 difference in how they process information, is as
10 astounding as it is morally wrong.

11 That we are still, in the year 2019,
12 paying certain people less than everyone else
13 because they are different, is simply repugnant.

14 Such a policy says to every person with
15 a disability in this country, you're worth less than
16 the rest of us.

17 That is wrong and it is long past time
18 that we changed that.

19 United Spinal Association fully supports
20 the Transformation to Competitive Employment Act,
21 which would responsibly phase out the 14(c)
22 certificate program over a period of six years, and
23 ensure that all people with disabilities who want to
24 work will have the opportunity to do so in an
25 integrated workplace.

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1 Both the Republican and Democratic Party
2 platforms called for this in 2016. Additionally, in
3 2016, the Final Report of the Advisory Committee on
4 Increasing Competitive, Integrated Employment for
5 Individuals with Disabilities, as required by the
6 Workforce Innovation and Opportunity Act of 2014,
7 called for the elimination of the 14(c)
8 certificates.

9 The National Council on Disability has
10 also recommended phasing out the 14(c) program, most
11 recently in a report issued last year.

12 The 14(c) model was developed a lifetime
13 ago and its time has passed. Let us all move
14 forward into the future with hope and optimism for
15 the opportunities that exist for all Americans with
16 disabilities. Thank you.

17 CHAIR LHAMON: Thank you. Next speaker.

18 MR. FORSYTHE: Thank you, U.S.
19 Commission and members, for listening.

20 My name is Adrian Forsythe and I am the
21 Advocacy Program Specialist at the National Down
22 Syndrome Society, the leading human rights
23 organization for all individuals with Down syndrome.

24 As the NDSS Advocacy Program Specialist,
25 I participate in advocacy initiatives on the

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1 federal, state, and local levels of government. I
2 am the second registered lobbyist with Down
3 syndrome.

4 I did perform administrative tasks that
5 support the NDSS's National Advocacy and Public
6 Policy Center staff as an Advocacy Program
7 Specialist at NDSS. I've also -- I've earned more
8 than minimum wage.

9 From my observation, I see many people
10 with disabilities facing stereotypes that attract
11 independent decisions that they want to walk.

12 An example of this stereotype is that
13 people don't feel that those people with
14 disabilities can meet the requirements to match the
15 kinds of jobs they want to have.

16 This is called low expectations. People
17 with Down syndrome want to work and have meaningful
18 employment.

19 We have dreams. And we are tired of low
20 expectations. Down syndrome doesn't hold us back.
21 It is those laws that do.

22 We are working on what is called Law
23 syndrome, a series of outdated laws that affect me
24 and my peers with disabilities. Down syndrome
25 doesn't hold me back. Low expectations and old laws

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1 do.

2 I support phasing out 14(c) of the Fair
3 Labor Standards Act, 1938. The reason why, it's
4 outdated practice. Section 14(c) allows employers
5 to pay their employees low wages, sometimes 30 cents
6 an hour.

7 This needs to change. You make your
8 positions against phasing out minimum wage. I have
9 a friend named Tim Capone. He has a severe
10 disability. But he went to Congress and passed
11 bills.

12 So, as you can see, 14(c) does not
13 affect me or my friends. No, we don't.

14 CHAIR LHAMON: Thank you for your
15 testimony.

16 MR. FORSYTHE: Thank you.

17 CHAIR LHAMON: Next speaker.

18 MS. MUSHENO: Thank you for the
19 opportunity to allow us to be part of the record in
20 support of phasing out subminimum wage certificates.

21 My name is Kim Musheno, Vice President
22 of Public Policy for the Autism Society of America.
23 The Autism Society is the nation's oldest and
24 largest organization representing people with autism
25 and their families.

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1 People with autism and other
2 developmental disabilities are among the most
3 unemployed and underemployed segments of our
4 society.

5 The Autism Society believes that if
6 people with disabilities -- even those with the most
7 significant disabilities -- want to work, they
8 should be supported to work in competitive,
9 integrated settings.

10 We believe we should do everything that
11 we can to help people try out different jobs, match
12 individual desires and skills with jobs, and provide
13 training accommodations and supports.

14 If a person with a disability has
15 trouble finding competitive work, they should be
16 supported to participate in meaningful volunteer
17 positions or other activities of their choosing,
18 using the process of self-determination.

19 The Autism Society supports the
20 Transformation to Competitive Employment Act
21 introduced in Congress by Senators Bob Casey and
22 Chris Van Hollen, and Representatives Bobby Scott
23 and Cathy McMorris Rodgers, a bill that supports our
24 goal to increase opportunities for people with
25 autism to gain and retain real jobs for real wages.

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1 We need strong support networks for
2 supported employment and daily supports. That's why
3 we strongly support this bill. It does not just
4 phase out the use of sub-minimum wage certificates,
5 as some of the other bills have done.

6 States applying for these grants must
7 ensure that individuals be supported to transition
8 to competitive employment and receive wraparound or
9 integrated services if needed.

10 The most important goal is to infuse
11 funding so that states can strengthen the service
12 system, the provider network -- including the direct
13 workforce -- that supports people to work, and care
14 for individuals with the most significant
15 developmental disabilities.

16 Our position in support of minimum wages
17 is based on the principle of equity. Current law
18 encourages a business model that takes advantage of
19 people with disabilities.

20 Businesses should not be profiting from
21 paying people with disabilities subminimum wages.
22 The goal of the transformation legislation is to
23 respect people with disabilities by paying them at
24 least minimum wage for the work that they do, and
25 help them live high-quality lives.

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1 The bill does not mandate the closure of
2 non-integrated work centers. It only asks that they
3 change their model to be competitive.

4 It encourages integration. It
5 incentivizes reforms and provides more options, not
6 less.

7 We're not alone in supporting this
8 policy position. We're joined by the Consortium for
9 Citizens with Disabilities Employment Task Force,
10 the Collaboration to Promote Self-Determination, the
11 National Council on Disabilities, the National
12 Organization on Disabilities, and numerous other key
13 stakeholder groups.

14 As you heard from researchers and
15 providers, we know how to do this. The states just
16 need help to do it.

17 CHAIR LHAMON: Thank you for your
18 testimony.

19 MS. MUSHENO: Thank you for your time.

20 CHAIR LHAMON: Next speaker.

21 MS. SACHS: My name is Heather Sachs and
22 I'm the Policy and Advocacy Director for the
23 National Down Syndrome Congress, the country's
24 oldest and largest national organization for people
25 with Down syndrome, their families, and the

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1 professionals who work with them.

2 NDSC provides information, advocacy and
3 support across the life span and works to create a
4 national climate in which all people will recognize
5 and embrace the value and dignity of people with
6 Down syndrome.

7 We believe that all individuals with
8 Down syndrome should have the same rights and
9 opportunities as everyone else.

10 Like so many other disability
11 organizations, NDSC views Section 14(c) as outdated,
12 discriminatory, and reinforcing a life of poverty,
13 segregation and dependency on public support for
14 people with disabilities.

15 We support phasing out 14(c) in a
16 responsible way, along with capacity building for
17 competitive, integrated employment.

18 To that end, NDSC is an active member of
19 the Collaboration to Promote Self-Determination, and
20 is advocating for the passage of the Transformation
21 to Competitive Employment Act.

22 Employment should be an expected life
23 activity for individuals with Down syndrome. And
24 they should have the individual and systemic
25 supports necessary to enable them to find, keep and

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1 succeed in careers in the community, based on their
2 preferences, interests and strengths.

3 We recognize that change isn't easy and
4 that there are some in our community who are content
5 with their current placements in sheltered
6 workshops, and are reluctant to make the transition.

7 Therefore, NDSC advocates for laws and
8 policies that will build infrastructure and
9 transition supports needed to phase out the issuance
10 of subminimum wage certificates, while increasing
11 opportunities for competitive, integrated
12 employment, and putting in place safeguards to
13 protect the interests of any people who are affected
14 by this shift.

15 We've heard from policy experts all day
16 long though. I want to use my remaining time to
17 lift up some of the voices of self-advocates and
18 their families from the Down syndrome community.

19 Tara, a mom of an adult son with Down
20 syndrome from Iowa, shares that her son is an
21 example of how people often get trapped in sheltered
22 workshops because the resources to support them in
23 competitive, integrated employment may not yet be
24 available.

25 She explains that her son Taylor has the

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1 potential to work in the community, but would need
2 job coaching, like so many other people with
3 disabilities who are successfully working need.

4 Obtaining this job coaching has been
5 nearly impossible, due to resource shortfalls. So,
6 he is literally stuck in a sheltered workshop in the
7 meantime.

8 Tara believes that phasing out 14(c),
9 putting more resources into the waivers that provide
10 job coaching assistance, and helping workshops to
11 convert to CIE, will enable people like Taylor to
12 achieve their full potential in the workforce.

13 My friend Rachel, a self-advocate with
14 Down syndrome from Kansas who works in a restaurant,
15 says, it makes my heart sad that some of my friends
16 cannot have jobs that allow them to make money, like
17 their friends.

18 And finally, Cindy, a mom of a young
19 daughter with Down syndrome from California, writes,
20 I believe that subminimum wage is un-American. We
21 have to move away from it because it ultimately
22 keeps our kids in the spin cycle of poverty and
23 dependency. People with Down syndrome are entitled
24 to the same rights and opportunities as the rest of
25 us.

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1 Segregating them in sheltered workshops
2 and paying them pennies on the dollar diminishes
3 their self-worth and dignity. It is simply
4 un-American.

5 CHAIR LHAMON: Thank you for your
6 testimony. Our eighth speaker. Or seventh speaker.

7 MS. NELIS: Hi. My name is Tia Nelis.
8 And I am the Policy and Advocacy Director for TASH.
9 And I wish that you would allow us to answer your
10 questions.

11 As a person with a disability, first I
12 want to tell you that I wish that all my friends
13 could have a job and not work in a sheltered
14 workshop. There are many jobs out there and many
15 different employment opportunities, if we are given
16 the chance.

17 Also, the word handicap is old language.
18 I don't like the word handicap because that already
19 puts a strike against you when someone is describing
20 you, because they just think about how you can't do
21 all those things, and how you don't know how to work
22 in the community, and how you don't know how to have
23 a job.

24 And that is wrong. Second of all, what
25 they talked about earlier is people without

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1 disabilities supporting somebody in the job
2 workforce that wasn't paid to do that. That's
3 called natural supports. Hello.

4 Okay, so I'm going to tell you, when I
5 first started my job at work, when I was at school I
6 was never given the opportunity to have an IEP.

7 And then, my voc rehab counselor, who is
8 supposed to believe in me and talk to me about what
9 I can do. I said I wanted to work in child care.
10 And she said to me, well, does your parents have any
11 money to help you go to college to get that degree?
12 I said, no, we don't have that kind of money. My
13 parents can't send me.

14 And so, instead of saying that, oh yes,
15 there's money -- other opportunities out there,
16 there are grants out there to help you go to
17 school -- she didn't do that.

18 What she said to me is, do you want to
19 work in a sheltered workshop? And I said, well,
20 what's that? And she said, it's like factory work.
21 And I said, no, I don't want to work in a factory.

22 Well, it's a good thing that I didn't.
23 I have many friends who worked in a sheltered
24 workshop that don't like it and want to be out.
25 They want to advocate for real jobs in the

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1 community.

2 I got this opportunity to go into many
3 of the jobs that I've had. I worked at the
4 University of Illinois at Chicago for 26 years. And
5 yes, if you look at me, you say, oh, that's because
6 you don't have that significant more of a disability
7 and you can do those things.

8 But guess what? When I first started
9 that, I didn't have that courage. I didn't have all
10 those times to speak out. But guess what? I had
11 people who believed in me and who were there for me,
12 and gave me opportunities to be able to learn those
13 skills and to support me.

14 If you give people the chance and the
15 opportunity, you'll be surprised what they can do.
16 Don't always think of them as they can't, because
17 that's what holds people down.

18 I worked there for 26 years. And guess
19 what? I'm a family member -- the only family
20 member -- who has a pension.

21 Okay, other people have a right to have
22 that. Let's talk about careers. Because when you
23 just talk about jobs, that isn't helping anybody.
24 When you talk about career --

25 CHAIR LHAMON: Thank you for your

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1 testimony.

2 MS. NELIS: -- it makes somebody worth
3 looking at.

4 CHAIR LHAMON: Thank you very much.

5 MS. HAU: My name is Linda Hau and I
6 live in Wisconsin.

7 Provision 14(c) was initially enacted to
8 allow disabled World War I veterans to work at a
9 lower productivity rate and still earn a wage.

10 It is not any less relevant today for
11 those of us whose loved ones are unable to work at
12 the same rate as those more capable.

13 Sheltered workshops have allowed those
14 loved ones to work in an environment where they feel
15 safe, loved and accepted, while having the pride of
16 holding a paying job.

17 They are by no means prisons, but an
18 environment where our loved ones know that they're
19 valued members of society.

20 For the entirety of our son's 41 years,
21 we have heard all the buzzwords, mainstream,
22 inclusion, and community integration. We have also
23 learned that inclusion is often the cruelest form of
24 isolation.

25 Our focus has always been on finding the

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1 most appropriate setting for his well-being. And we
2 have chosen a workshop.

3 We are not lobbyists. We are parents
4 with our son's best interests at heart. Any
5 suggestion that we would allow him to be taken
6 advantage of or discriminated against is an insult.

7 If we lose our chosen workplaces, it
8 will leave our loved ones faced with forced
9 community employment at a taxpayer cost of \$40 per
10 hour for a job coach, day service at a cost of \$10
11 per client, per hour, or simply no employment, which
12 would require residential services at varying costs.

13 Many of these individuals are unable to
14 function in a typical workplace due to behavioral,
15 medical, or physical limitations. They are
16 generally socially ostracized, as they have nothing
17 in common with their coworkers.

18 The inevitable cost to individual mental
19 health then trickles down to the families, who must
20 find alternatives for their loved ones.

21 In our rural communities, there are very
22 few community work options. The estimated cost per
23 hour, per client, in our workshop is about \$6. And
24 they are regulated by OSHA.

25 They happily perform real work, real

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1 jobs, for real companies in the community who
2 subcontract with the workshop in a non-threatening
3 environment.

4 It is likely that without our clients to
5 perform this labor, it would be outsourced to
6 another country.

7 Actions to eliminate 14(c) will violate
8 the civil rights of those for whom this could have
9 devastating consequences. Thank you for allowing me
10 to address you today.

11 CHAIR LHAMON: Thank you for your
12 testimony. Go ahead.

13 MS. EACOBACCI: Good evening. My name
14 is Kimie Eacobacci. The National Federation of the
15 Blind believes that people with disabilities have a
16 right to make employment choices. But we are
17 concerned about the choice to work for a 14(c)
18 provider.

19 Our research has found that the Internal
20 Revenue Service repeatedly upholds its revenue
21 ruling from 1965, that people with disabilities who
22 work in sheltered workshops are not employees for
23 federal employment tax purposes.

24 Their reasoning, in part, is because
25 they do not receive a pay scale comparable to the

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1 private industry.

2 While 14(c) providers call us employees
3 on one hand, they repeatedly mis-classify us as non-
4 employees on the other.

5 We strongly encourage the Commission, in
6 their investigation, to investigate how people with
7 disabilities are classified when they choose to work
8 in a 14(c) program. Thank you.

9 CHAIR LHAMON: Thank you for your
10 testimony. Is that our tenth speaker?

11 MR. PARE: Is that on?

12 CHAIR LHAMON: Yes, it is. You're
13 ready.

14 MR. PARE: All right. My name is John
15 Pare and I'm the Executive Director for Efficacy and
16 Policy at the National Federation of the Blind.

17 Section 14(c) of the Fair Labor
18 Standards Act denies people with disabilities the
19 same wage and hour protections provided to every
20 other American.

21 It identifies people with disabilities
22 as an entire class of people who are to be treated
23 differently, solely on the basis of disability.
24 This is not a choice, an option, or flexibility. It
25 is discrimination, segregation and oppression. It

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1 is statutory low expectations.

2 In the 1990s I began to lose my
3 eyesight. And in the spring of 2001 I lost my job
4 due to my blindness. I had the same low
5 expectations of blind people encapsulated in
6 Section 14(c).

7 But I soon learned that my low
8 expectations were wrong, and that given the proper
9 tools, technology and training, that I could work
10 and compete.

11 Most importantly -- what's most
12 important -- was my rejection of Section 14(c) and
13 its insidious low expectations and discrimination.

14 The message ingrained in Section 14(c)
15 is that there are two classes of people in America,
16 the disabled class and the abled body class.

17 I urge you to reject this two-class
18 system. I urge you to reject able-ism in all of its
19 forms. I urge you to reject 14(c).

20 We are not so different from all of you.
21 People with disabilities want to have a job. We
22 want to be able to earn money to support our
23 families. And we want to be part of the American
24 dream.

25 I look forward to the day when Americans

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1 with disabilities are treated equally in the
2 American employment. Thank you.

3 CHAIR LHAMON: Thank you for your
4 testimony. Our eleventh speaker.

5 MS. GRITSENKO: Hi. My name is Tracy
6 Gritsenko. I come to you today with 35 years of
7 experience in employing people with disabilities.

8 I represent over 6,000 families from the
9 great state of Missouri, who make up an organization
10 called A Team Missouri.

11 We have recently collaborated with 18
12 other states across the United States with the same
13 mission, to give a voice to those not being heard,
14 as we've seen today.

15 I think we can all agree that 14(c)
16 employment is not appropriate for all persons with
17 disabilities. But we must also agree that not all
18 disabilities are the same.

19 It is imperative that we not force a
20 one-size fits all employment solution on a group of
21 people that face such diverse challenges.

22 The removal of 14(c) would eliminate a
23 vital employment option for hundreds of thousands of
24 Americans, leaving many of them sitting at home or
25 relegated to day hab programs.

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1 Some legislators would have you believe
2 that's okay, because that would just simply be
3 collateral damage to the cause.

4 They're not collateral damage. These
5 are people with desires and needs, just like every
6 other citizen of our country.

7 And to be clear, our families do not
8 believe that sitting at home or in a day hab program
9 is an appropriate or desired option for their loved
10 ones.

11 Persons who choose this type of
12 employment for themselves or their loved ones are
13 continually learning new job skills and social
14 skills, making friends, and yes, earning a paycheck.

15 Sometimes this environment can act as a
16 stepping stone to other employment options. And
17 yes, sometimes it is just simply the perfect fit.

18 Our programs provide an atmosphere that
19 allows individuals to build on their self-esteem and
20 confidence by focusing on their abilities, not their
21 disabilities.

22 This work environment meets them exactly
23 where they are and provides them with supports and,
24 if needed, protections, to enable them to succeed in
25 a safe, supported, and understanding atmosphere.

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1 For hundreds of thousands of Americans,
2 this is their informed, intentional choice. And we
3 must honor their right to choose what is best for
4 them or their loved ones.

5 Far too often, lawmakers, along with
6 some disability rights groups, increasingly make
7 these decisions without talking to the very people
8 who are directly impacted by this decision.

9 You have brought in many experts on this
10 topic. But I feel, with all due respect, you have
11 missed out on the single most important group, those
12 that work successfully in these environments and
13 their families. After all, are there any better
14 experts?

15 I have spoken with your office about
16 setting up a national tour of sheltered workshops
17 and it has been well-received. I respect the
18 Commission's commitment to doing thorough research.
19 And I think speaking with the families who choose
20 14(c) and visiting workshops, is critical to that
21 end.

22 I respectfully say it's sort of like
23 giving a movie review without seeing the movie.
24 It's not fair.

25 We talk about enabling and empowering

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1 people to make decisions independently. And we
2 agree, providing a vast array of choices to meet the
3 unique desires and needs of every individual does
4 exactly that, while eliminating 14(c) does the exact
5 opposite.

6 CHAIR LHAMON: Thank you for your
7 testimony.

8 MS. GRITSENKO: Thank you very much.

9 CHAIR LHAMON: Twelfth speaker.

10 MR. BARDEN: Hello Commissioners. Thank
11 you for allowing us to share with you today. You
12 all look nice and cheery, warmed up, and you guys
13 have been here for 20 hours and you're still doing
14 fantastic.

15 My name is Kirt Barden, CEO of
16 Lighthouse Vocational Services, New Holland,
17 Pennsylvania, former executive in transportation,
18 and I have been in this segment industry for four
19 years.

20 So, I'm kind of a new time person in the
21 business world shifting in here. And I want to give
22 you some exciting things that's happening at
23 Lighthouse, but I also want to tell you that I've
24 personally done research with 20 other Pennsylvania
25 workshops, as well as a couple people that's

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1 testifying before you today on the A Team, and we
2 all share some of the same things. The A Team is
3 like in ten states.

4 So, I'm kind of sharing some things that
5 I think they would probably tell you is going on in
6 a lot of cases at their workshop. So, let me share
7 this with you.

8 We have 170 adults with intellectual
9 disabilities based in our workshop. In the last
10 three years, we've raised enough money to put into
11 our workshop adult training rooms, to give our folks
12 an additional dimension of training.

13 Now, this is a workshop. And now we're
14 going to have arts and crafts and music, technology,
15 family life skills, it's exciting what's happening
16 there. We're going to have a sensory room for
17 autism. So, we're going to have a lot of great
18 things.

19 We're going to have a huge great room so
20 that we're inviting the community in for
21 presentations and stuff like that. That's what you
22 can do at the workshop. That's what a lot of
23 workshops in Pennsylvania and throughout these ten
24 states and probably the nation are doing.

25 There are some creative things that we

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1 are -- we're doing some things that are exciting.
2 Okay? We at Lighthouse have 62 people that are now
3 in community participation.

4 We have 30 that are in employment
5 services, where we're looking for jobs for them.
6 And by the way, just a suggestion. Please incentivize
7 businesses. I've taken my business skills and sat
8 down in front of businesses, and when I address them
9 from a needs-based scenario, I find jobs for my
10 people.

11 It's a unique way you can help
12 businesses want to use your people when you've
13 decided to focus on their needs, their specific
14 needs. Eighteen on OVR services, job placement,
15 shadowing, and everything like that. More than half
16 of our people are outside the building.

17 The 14(c) is training for us. Yes, they
18 get paid. But you should see new parents that come
19 to our workshop. And they go, wow, you're doing
20 this, you're doing that.

21 They have a vision of what they might
22 be. They might be able to get trained. I've not
23 heard anything about that today.

24 Also, I got some recommendations for
25 you, because you guys and gals seem like you're

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1 really, really intently listening.

2 One, listen to the parents, please.
3 They're the most important people you need to see.
4 I agree with this young lady. Go to the workshops,
5 talk to some of the parents. They care. And that's
6 per Michele Ford, who just shared it does matter.

7 Transportation's a problem with
8 supported employment. Make sure we do something
9 about transportation.

10 CHAIR LHAMON: Thank you for your
11 testimony.

12 MR. BARDEN: Also, you have no
13 statistics to back up anything. Thank you.

14 CHAIR LHAMON: Thank you very much.

15 MS. RICCOBONO: Good evening. My name
16 is Melissa Riccobono and I'm a member of the
17 National Federation of the Blind.

18 I am here today to urge you to bring an
19 end to 14(c), or to recommend to bring an end to
20 14(c).

21 As a woman who was born blind, I face
22 discrimination every single day. I have a master's
23 degree, I am the proud parent of three children,
24 ages 7, 9 and 13, and my husband and I own our own
25 home. We're taxpayers.

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1 When I walk down the street, I always
2 face the extremely low expectations of people. And
3 it's a problem because I'm at the mercy of their
4 well-meaning, but often misguided, desire to take
5 care of me.

6 And I think that they tend to have these
7 extremely low expectations of what I can do or what
8 I can't do, because they could not imagine how they
9 would function if they suddenly became blind. And I
10 tend to believe that this reaction is very similar
11 for people with other disabilities.

12 I think this is behind the question of
13 phasing out 14(c). We need to open our minds and we
14 need to have faith that people with disabilities
15 have capacity to perform in competitive, meaningful
16 employment when they are given the chance.

17 I mentioned that I am a parent of three
18 children. I have two daughters and both of them
19 happen to be blind. I am here because, like all
20 parents, I want to make the world better for my
21 children.

22 I cannot imagine my daughters being paid
23 less than the minimum wage, and I'm sure that none
24 of you could imagine this happening to your children
25 or your grandchildren.

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1 So, I just urge you to please do your
2 part to put an end to this outrageous and unfair,
3 harmful and discriminatory practice for the adults
4 of today and for the children of tomorrow. Thank
5 you.

6 CHAIR LHAMON: Thank you for your
7 testimony. Our fourteenth speaker?

8 MS. STONEMEIER: Thank you to the
9 Commission for convening this hearing, as well as
10 for the opportunity to offer public comment.

11 My name is Jenny Stonemeier. I am the
12 Executive Director of the Association of People
13 Supporting Employment First, or APSE. I'm also the
14 mother of a 19-year-old young man who experiences
15 disability.

16 The work of supporting individuals with
17 disabilities to find meaningful, competitive,
18 integrated employment is not only my day job, it's
19 my dinner table conversations and my middle-of-the-
20 night worries.

21 I'd like to focus my comments today on
22 what we don't know about the individuals currently
23 receiving services in 14(c) settings.

24 There are no publicly available data
25 that tell us the true number of individuals with

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1 disabilities served under 14(c). This is because
2 the Department of Labor does not require community
3 rehabilitation providers to report the number of
4 individuals served in work centers whose
5 certificates are in pending or renewal status.

6 Critical to this discussion is the
7 recognition that we simply do not have adequate data
8 to assist us in understanding the scope of the 14(c)
9 problem, which is a crucial step to ensuring that we
10 do no harm as we seek to identify public policy
11 answers to rectify the financial discrimination of
12 people with disabilities currently allowed under
13 14(c).

14 In addition to the number of individuals
15 impacted, there are just a few other questions we
16 cannot answer. And this is obviously a shortened
17 list.

18 The age or other demographics of
19 individuals working in 14(c). Are most people
20 nearing retirement, or are the majority still of
21 working age. There are clear implications in how we
22 approach the transition away from 14(c) based upon
23 the answers to these questions.

24 Wage information. Is an average wage
25 closer to \$7.25 an hour or \$.30 an hour? These two

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1 are critical questions to have answers to, in order
2 to provide appropriate retraining necessary to
3 assist in the transition to competitive and
4 community settings.

5 The length of employment. How long have
6 14(c) employees been at their jobs, and to what
7 extent have their wages counted towards Social
8 Security retirement benefits.

9 This is just a partial list of factors.
10 And there are certainly other factors to consider.
11 I want to be clear in stating that none of the
12 questions I have raised should be construed as an
13 argument for perpetuating the practice of 14(c) and
14 subminimum wages for people with disabilities, or to
15 wait until we have answers before taking action.

16 To the contrary, APSE is clear and
17 persistent in its position in calling for the phase-
18 out of 14(c). Rather, I raise these questions to
19 further underscore the opacity of information about
20 the people -- the human beings -- who are currently
21 receiving services under 14(c) certificates.

22 I stress these questions to emphasize
23 the importance of ensuring that APSE continues to
24 advocate for a creation of systems of supports that
25 fully meets the needs of individuals.

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1 CHAIR LHAMON: Thank you for your
2 testimony.

3 MS. STONEMEIER: Thank you.

4 CHAIR LHAMON: Our fifteenth speaker?

5 MR. MANNERS: Hi. My name is Derek
6 Manners. I am an attorney at the tenth biggest law
7 firm in the world. I'm not here representing any
8 organization trying to maintain the status quo. I
9 am here representing myself as an individual who
10 used to work at a subminimum wage job.

11 My current salary, not to brag, is
12 \$250,000 a year. My subminimum wage hourly rate was
13 \$2.25 an hour. I've had the same level of vision in
14 that job and in my current job.

15 And to give you a bit more back story on
16 that, when I was a sophomore, I was acing my
17 classes, on the debate team, on the academic team.

18 But my guidance counselor at my high
19 school thought that because I was a person with a
20 disability, that I would not be able to go to
21 college, and that it was a good idea for me to get
22 experience in the workplace. And so I was placed
23 with a subminimum wage employer because she thought
24 that's all that I would be capable of doing.

25 CHAIR LHAMON: At your request, this is

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1 the two-minute warning.

2 MR. MANNERS: Thank you. My parents,
3 who had my best intentions, agreed with this
4 decision because they didn't know any better and
5 they didn't have full information about my
6 capabilities, nor did I.

7 I enjoyed that job. If you had polled
8 me and asked me how I felt in that job, I would have
9 said I felt rewarded. I would have said that I had
10 friends there. I would have said that that \$2.25 an
11 hour was fair and that I enjoyed my job.

12 I, after a month of working there, was
13 promoted to -- quote, unquote, promoted -- to a
14 manager position where I had the ability to hire and
15 fire people that were able-bodied, that made \$8.50
16 an hour -- four times more than their
17 supervisor -- all on the basis of my disability.

18 The idea that the repeal of 14(c) is
19 somehow a violation of civil rights for people with
20 disabilities is laughable and ignorant.

21 Section 14(c) is on the basis that
22 people with disabilities -- and we heard people say
23 this today -- that it is on the basis that people
24 with disabilities can't perform at the same rate as
25 people who are able-bodied.

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1 CHAIR LHAMON: At your request, this is
2 the one-minute warning.

3 MR. MANNERS: Thank you. But as my
4 situation and so many others that I know
5 demonstrate, that is just not the case.

6 When I was at Harvard Law School, I
7 thought I would be for sure the first blind person
8 to ever go to Harvard, much less -- for sure the
9 only blind person in my class.

10 To my surprise, there were six. There
11 were also people in wheelchairs. There were also
12 people with other disabilities. The range of
13 capabilities for people with disabilities is not
14 something that you can draw from a statistic.

15 So, in the absence of knowing, you have
16 to go with your gut. And your gut should tell you
17 that treating people differently on the basis of a
18 characteristic has always been fundamentally wrong
19 and will continue to be wrong until a history of
20 time is written. So, I urge you to recommend the
21 repeal of 14(c). Thank you.

22 CHAIR LHAMON: Thank you for your
23 testimony. Our sixteenth speaker?

24 MR. LOWTHER: Thank you for having me
25 and thank you for the important work that the

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1 Commission does.

2 My name is Chris Lowther. I'm here on
3 behalf of my pro bono client, Together For Choice.

4 Together For Choice advocates for
5 enhanced options, both in residential and employment
6 situations for individuals with intellectual and
7 developmental disabilities.

8 As you might have gathered from the
9 name, the emphasis is on making sure that this
10 population we're talking about that truly has a
11 diverse range of needs and challenges, has a diverse
12 array of opportunities in front of them.

13 And that's why preserving Section 14(c)
14 is so important for this population. Because,
15 unfortunately -- and while some might dispute this
16 fact, I've met enough parents, I've met enough
17 providers, I've met enough self-advocates in my
18 work -- to know that for some it is just not
19 possible for them to have a competitive, integrated
20 employment job.

21 The cost of money to provide the
22 supports necessary in order for them to perform the
23 job just makes it economically impossible. And once
24 again, unfortunately, I do not see the source of
25 funding to provide the supports that they need in

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1 order to have these jobs.

2 So, for these individuals, without
3 Section 14(c) they will be deprived of the
4 opportunity of earning a paycheck. And they will be
5 deprived of the purpose and the meaning.

6 And I say this as a person with an
7 extended period of unemployment in my life, that I
8 mean that. It is truly a sense of purpose.

9 And so, I know there's been a lot of
10 studies and there's been a lot of policy experts.
11 But unfortunately, the one answer to the question
12 that we just still don't seem to have, is what
13 happens to this population that already has
14 25 percent employment rate, what happens when
15 Section 14(c) disappears?

16 No one seems to know the answer to that
17 question. I think unfortunately, some who are more
18 intellectually honest will say, well, they'll just
19 go to day programs.

20 What about the people who want to earn a
21 paycheck? And I want to remind the Commission that
22 most of the Section 14(c) programs out there are
23 administered through the setting that the individual
24 lives in. And these programs are losing money left
25 and right because it costs money to have the

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1 supports in place.

2 This isn't about someone making money.
3 This isn't about someone getting rich. This is
4 about providing an opportunity for the individual to
5 get to go to work and earn a paycheck. Please keep
6 that in mind as you're working on your
7 recommendation. Thank you.

8 CHAIR LHAMON: Thank you for your
9 testimony. Our last speaker.

10 MS. WILD: Thank you to the Commission
11 for the opportunity to speak today. My name is
12 Susan Wild. And for nearly 30 years I have worked
13 to support and advocate for people with significant
14 developmental disabilities.

15 Never have I found it beneficial to
16 limit the opportunities and choices of those with
17 disabilities. I'm a firm believer that all people
18 have the right to choose their path in life,
19 including those with disabilities.

20 14(c) ensures that people with
21 disabilities have a choice regarding their place of
22 service and employment.

23 Each person in this room made a choice
24 to be here today. Some are here to give a voice to
25 a belief that they feel strongly about. Some are

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1 here on an assignment by their employer. And some
2 are here as just interested spectators.

3 The thing we have in common is that we
4 all had a choice to be here. Choice is the basis of
5 every decision we make every day. We choose our
6 path in life, where we live, who we spend our time
7 with, and what we do for a living.

8 People with significant disabilities
9 should have the right to make the same choices as
10 well.

11 For many individuals with disabilities,
12 the choices for employment are already limited.
13 14(c) is a viable and rewarding choice for those
14 individuals that have not yet achieved the level of
15 skill to be successful in competitive employment.
16 It provides a structured training program and
17 compensated employment to those individuals.

18 The program creates the opportunity to
19 accommodate individuals to work at their own pace
20 and to earn their own special wage, while gaining
21 skills to prepare them for supported employment or
22 competitive employment.

23 While both sides of this discussion feel
24 strongly about their viewpoints, as you've seen
25 today, what really matters here is what is in the

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1 best interests of the people that are participating
2 in the programs, and working under 14(c).

3 I think we can all agree that 14(c) is
4 in need of reform. There has obviously been a
5 change in society and our expectations, from when
6 14(c) was created to today.

7 What has not changed is the basic
8 concept of choice. Eliminating 14(c) is not in the
9 best interests of all. It is, however, a viable
10 choice, and in fact, the choice of thousands of
11 individuals with significant disability.

12 Let's agree to reform 14(c), create new
13 supports and levels of accountability, revise the
14 definitions of 14(c).

15 Let's not eliminate it. Thank you.

16 CHAIR LHAMON: Thank you very much for
17 your testimony.

18 That brings us to the end of our
19 briefing. I thank all of our panelists and our
20 public participants. Today has been tremendously
21 informative. And on behalf of the entire
22 Commission, I thank all who presented for sharing
23 your time, expertise and experience with us.

24 As I said earlier, this record of this
25 briefing remains open until December 15, 2019.

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1 Panelists or members of the public who would like to
2 submit materials for Commission consideration,
3 including if individuals would like to submit
4 anonymously, may mail them to the U.S. Commission on
5 Civil Rights, Office of Civil Rights Evaluation,
6 1331 Pennsylvania Avenue, NW, Suite 1150,
7 Washington, DC, or email them to
8 subminimumwages@usccr.gov.

9 I ask that our attendees move any continuing
10 conversations, which evidently have already begun,
11 outside of the hearing room so our staff can
12 complete logistics necessary to close out. Please
13 make sure you exit the building through the F Street
14 lobby, as the exit to the Pennsylvania Avenue side
15 is closed.

16 If there's nothing further, I hereby
17 adjourn this briefing at 6:20 p.m. Eastern time.
18 Thank you.

19 (Whereupon the above-entitled matter
20 went off the record at 6:20 p.m.)
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