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

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

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

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

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

Subminimum wage paid to people with
disabilities in programs they operate under the critical issues for many -- are critical issues for many people with disabilities and their families. It is an area where people react strongly because the question of how people structure their time, their livelihood, and their lives are at stake.

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

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

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

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

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

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

CHAIR LHAMON: Thank you, Commissioner Kladney. I will now turn us to begin our briefing with a few housekeeping items. I echo Commissioner Kladney's deep thanks to the Commission staff who
researched and brought today's briefing to being, including our expert team who have worked on logistics. I also thank Staff Director Morales for his leadership.

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

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

Congress charges this Commission with hearing testimony from all sides of the issues that we evaluate. We welcome frank and open sharing of views, and I know that the topics we address, including this one, generally raise issues about which people feel strongly, sometimes with strongly opposing views.
We welcome the debate and we look forward ultimately to sharing the Commission's conclusions in a report that will follow this briefing.

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

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

For any member of the public who would like to submit materials for our review, our record will remain open until December 15, 2019. Materials, including materials submitted anonymously, can be submitted by mail to the U.S. Commission on Civil Rights, Office of Civil Rights...
Evaluation, 1331 Pennsylvania Ave., NW, Suite 1150, Washington, DC 20425, or by email to subminimumwages@USCCR.gov.

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

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

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

Panelists, please notice the system of lights that we have set up. When the light turns
from green to yellow, that means two minutes remain. When the light turns red, that means you should stop speaking. My fellow Commissioners and I will do our part to keep our questions and comments concise.

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

Congressman Scott, please begin.

PANEL ONE:

THE FEDERAL GOVERNMENT'S ROLE

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

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

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

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

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

In other words, 14(c) certificates legally permit employers to pay individuals the subminimum wage based on, based not on performance
or skill, but based on their ability status alone.

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

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

The Developmental Disabilities Bill of Rights provides people with developmental disabilities the opportunity to shape and access community services, individualized supports, and other forms of assistance. Finally, the Americans with Disabilities Act guarantees equal opportunities for individuals with disabilities in all areas of public life.
Decades after the passage of these federal protections, Congress has a responsibility to ensure that workers with disabilities can access fair wages alongside their non-disabled peers and opportunities to meaningfully contribute to their communities. Opponents have argued that phasing out the subminimum wage will burden businesses relying on 14(c) certificates and restrict opportunities for workers with disabilities, but the evidence shows otherwise.

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

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

Even in states where 14(c) certificates are still allowed, like my home state of Virginia, some providers have discontinued the subminimum
wage in favor of inclusive workplaces that meet the needs and preferences of workers. As these workplaces shift towards inclusivity, workers with disabilities have more opportunities to leave 14(c) workplaces, gain new skills, and find fully integrated employment.

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

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

And that’s why I introduced the Transformation to Competitive Employment Act to accompany the Raise the Wage Act to ensure that workers with disabilities can successfully transition out of subminimum wages under 14(c). This bill provides states and employers across the
country with resources to work with the disability community towards creating fully integrated competitive employment opportunities for individuals with disabilities.

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

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

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

Thank you, and I look forward to the
CHAIR LHAMON: Thank you, Congressman Scott. I'll open for questions. Commissioner Narasaki.

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

REPRESENTATIVE SCOTT: Good morning.

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

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

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

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

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

REPRESENTATIVE SCOTT: School-based?

COMMISSIONER NARASAKI: Certificates.

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

COMMISSIONER NARASAKI: Okay, thank you.

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

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

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

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

COMMISSIONER ADEGBILE: Good morning, Congressman Scott.

REPRESENTATIVE SCOTT: Good morning.

COMMISSIONER ADEGBILE: Thank you for your testimony. Congressman Scott, you spoke a little bit about this 14(c) exemption being one of
the only pieces of our law that tolerates on its face a particular type of differential treatment based on status. I'm interested in your views about whether today continuing that --

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

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

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

You ought not to be able to pay them a differentiated wage just because they have a disability. And we found that in most of the people on 14(c) could, perhaps with a little support, make a full minimum wage.
There are other parts of the Raise the Wage Act, the tipped minimum wage, the youth minimum wage, that are both phased out. But with the workers with disabilities, there's no excuse. Some of them are making like a penny an hour, I mean, just not getting anything at all. On average, it's about $2.50, when the minimum wage is $7.25.

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

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

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

CHAIR LHAMON: Madam Vice Chair.

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

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

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

And so there's a lot of technology that can allow people to do jobs that they couldn't have done before. And what the transition legislation
will do is to identify what people can do and then
figure out what jobs they can perform effectively
with the appropriate technology. And so I think
when 14(c) was, first came about, you didn't have
those kind of supports, and you do now.

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

REPRESENTATIVE SCOTT: Thank you.

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

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

And then Alison Barkoff, thank you,
Director of Advocacy at the Center for Public
So we'll begin with Ms. Ziegler. Please proceed.

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

MS. ZIEGLER: Good morning, Commissioners.

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

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

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

The Wage and Hour Division is a federal
law enforcement agency with the mission to promote and achieve compliance with the labor standards that protect and enhance the welfare of workers in the United States. In addition to the FLSA, Wage and Hour administers and enforces over a dozen laws which cover private, state, and local government employment.

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

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

Wage and Hour has a responsibility to carry out a rigorous, consistent, and effective program to obtain and maintain compliance with the statutory and regulatory requirements of Section 14(c).
To maximize resources, Wage and Hour balances key strategies and a multi-pronged approach to effect compliance, including outreach and education to employers and employees, partnerships with stakeholders, the promotion of public awareness through media activities, and enforcement, including both complaint- and agency-based investigations.

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

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

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

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

Since 2008, Wage and Hour has published numerous guidance documents, including fact sheets, letters to certificate holders, public PowerPoint presentations, guidance on compliance with the Rehabilitation Act Section 511 requirements, and other materials. Wage and Hour maintains a robust website of information and compliance assistance materials for all employers, as well as any interested stakeholders.
While the 14(c) program is one of the many program areas that Wage and Hour enforces, we investigate on average approximately eight percent of the total universe of certificate holders each year to determine compliance with the requirements of the Section 14(c) program. This represents proportionately more employers than we investigate in any other program area that Wage and Hour enforces.

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

Compliance actions are initiated both in response to complaints and data-driven, agency-initiated investigations. In the event that Wage and Hour discovers a deficiency during the course of an investigation, investigators charge a violation and inform the employer of the issues. Wage and Hour provides compliance assistance to help the employer correct the errors and seeks an appropriate remedy.
Generally, only after the employer has corrected the issues and agreed to compliance will Wage and Hour collect back wages and conclude its investigation. Nearly every case is resolved through administrative means. However, when that is not possible, Wage and Hour uses every appropriate tool to remedy the violations, including certificate revocation and legal action.

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

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

To enhance our enforcement efforts with respect to 14(c) certificate holders, over the last several years Wage and Hour has taken a more strategic approach to strengthen its enforcement and administration of the Section 14(c) provisions,
thereby ensuring that employers are held accountable for understanding and complying with the law.

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

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

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

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

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

NEIL ROMANO, CHAIRMAN

NATIONAL COUNCIL ON DISABILITIES

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

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

Some people will testify before this body about the importance of maintaining the choice or option to work for subminimum wages. The belief
that someone would choose to make less money for
their work is, in and of itself, a demonstration of
how certificate holders do not believe that people
with disabilities are whole people capable of
making even the most basic decisions beneficial to
themselves.

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

It helps to remember 14(c)'s age. It
became legal to pay people with disabilities below
the minimum wage in 1938, when there was no
federally protected civil rights for anyone, let
alone people with disabilities. Anything done for
people with disabilities in the 1930s, like
affording them the opportunity to earn pennies an
hour, was charity because a lack of belief in
people with disabilities was the game at that time.
However, since the 1930s, society and people with disabilities have come to expect far more out of their lives than past public policies allowed. Today we have different words for the opportunity to work for pennies an hour, words like discrimination and exploitation.

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

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

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

And to be clear, whether performing tasks like bagging screws or untangling hangers,
there is financial benefit to the CPRs in the work these individuals are doing. In many instances, these individuals are performing tasks that fulfill contracts the CPRs -- CRPs, excuse me, I do have dyslexia -- the CRPs have with the outside businesses.

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

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

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

As someone who has toured dozens of sheltered workshops around the country, some very clean and well-lit, and others dim, dirty, and
poorly ventilated, it should be everyone's concern that there's no required reporting of injuries or illnesses that occur in facilities where some of our most vulnerable Americans work.

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

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

In 2018, Wage and Hour investigated another 201 cases, 83% of which were found with violations, resulting in nearly $2.6 million in back wages, and impacting 9,133 employees. And we
just heard of another investigation that was just about on the same level.

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

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

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

That's why we're delighted that Wage and Hour recently converted its 14(c) application from paper to an electronic format, because there is great opportunity to collect, aggregate, and
analyze information in a way that was not previously available. When NCD first called for the phase-out of 14(c), no state or local governments had eliminated them. Many have now.

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

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

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

MR. ROMANO: Okay.

CHAIR LHAMON: Ms. Barkoff.

ALISON BARKOFF, DIRECTOR OF ADVOCACY,

CENTER FOR PUBLIC REPRESENTATION

MS. BARKOFF: Good morning, Commissioners, and thank you for inviting me to testify today. My name's Alison Barkoff, and I've spent more than 20 years enforcing disability
rights laws. I'm currently at the Center for Public Representation, but I've also had the privilege of working on enforcement at the Departments of Justice, Health and Human Services, and Labor.

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

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

The ADA prohibits discrimination by public entities and requires them to provide services in the most integrated setting, meaning a setting where people with and without disabilities can be alongside each other. The Supreme Court in Olmstead v. L.C. interpreted the integration mandate to mean that unjustified segregation is
discrimination and held that people with disabilities have a civil right to inclusion in all aspects of life.

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

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

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

In December 2017, at the urging of the sheltered workshop lobby, DOJ rescinded guidance about the application of Olmstead to states' employment systems to, quote unquote, afford
further discussion with relevant stakeholders. To date, DOJ has not engaged stakeholders further, and this important guidance to public entities remains withdrawn.

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

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

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

In 2014, the Centers for Medicare and Medicaid Services issued a new rule called the HCBS settings rule to advance the civil right of people with disabilities under Olmstead by ensuring that
all people receiving Medicaid HCBS have
opportunities for competitive integrated employment
and are not limited to segregated placements.

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

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

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

RSA has provided little technical
assistance or public data on states' implementation around sheltered workshops. While preliminary data from individual states shows that many people in sheltered workshops, when asked, say they would like to work in competitive integrated employment, without technical assistance and data, we can't know if these individuals' rights are being vindicated.

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

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

I will end by briefly talking about the Department of Labor, which oversees Section 14(c). In WIOA, Congress created a federal advisory committee made up of stakeholders with a range of perspectives, including providers who use 14(c) certificates. I was privileged to serve as a member of this committee.
The committee unanimously concluded that Section 14(c) is outdated and antithetical to every civil rights law relating to people with disabilities and recommended its phase-out.

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

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

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

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

I'll open for questions. Commissioner Narasaki.

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

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

I can certainly say that while we're
here talking about this issue, for many people with disabilities, particularly intellectual disabilities, the default that for a very long time for students with disabilities, families are told, well, we're working on transition, and the transition is to the sheltered workshop that, at least historically, had been connected to the school.

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

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

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

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

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

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

COMMISSIONER NARASAKI: So what more
can agencies be doing to make sure that there's enforcement? How well are they educating parents about the rights of their children?

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

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

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

COMMISSIONER NARASAKI: Thank you.
MS. BARKOFF: Thank you.

CHAIR LHAMON: Commissioner Kladney.

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

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

COMMISSIONER ADEGBILE: What is that state, Commissioner?

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

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

MS. BARKOFF: This is where the role of the federal government is so key. The federal government, especially in the last few years, has really kind of backed away from technical
assistance and from guidance from agencies. But that is absolutely what needs to happen. Again, these laws are fairly new.

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

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

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

COMMISSIONER KLADNEY: Thank you. Mr. Romano, there are witnesses that are going to appear here later today that believe that people with intellectual disabilities are more vulnerable than people who don't have those disabilities, and
as a result, need a controlled workspace where they
can be protected as opposed to integrated
employment. I was wondering if you had any
thoughts on that.

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

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

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

You know, when we hear a workshop
saying that people are going to get fired, I'm
deeply concerned about that, I'm deeply concerned
for the parents. That's really gut-wrenching for
me. But the fact of the matter is what they're
actually saying is we don't want to pay the minimum
wage so we're going to fire them.
So the very people that are saying that, you know, we care about these people are the same ones who are saying we're going to dump you the minute we have to pay more. That's unacceptable. So for us to sit and talk too much about transition and to look too much about transition, and as this panel, you know your jobs, obviously you're very, very good at it.

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

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

COMMISSIONER KLADNEY: Thank you. Ms. Ziegler, and Mr. Romano, because I know you've been to a lot of sheltered workshops, I'm interested in, I saw an old certification application. I know you have a new one. The old one, they listed all the
names, which I didn't get to see any, of the participants in the work centers. And then across the page, they had their hourly wage.

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

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

When you've seen that we've blacked out the information for privacy reasons, blacked out the information on employees. With the new application, the employer is to provide us, in addition to the name of the individual, the primary disability affecting the employee's productivity, the primary job that the individual is performing,
and the primary rate of pay, whether that's a piece rate or an hourly.

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

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

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

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

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

COMMISSIONER KLASTNEY: Do you have a copy of that letter?

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

COMMISSIONER KLASTNEY: Thank you, I appreciate it.

MR. ROMANO: No problem at all.

COMMISSIONER KLASTNEY: Madam Chair.

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

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

CHAIR LHAMON: Okay, thank you. Mr.
Romano, I was struck in your written statement that you said that there is not a topic about which you feel more strongly than ending subminimum wages for people with disabilities. That was incredibly powerful statement in the abstract, and coming from you, given the scope of the work that you do with respect to disabilities.

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

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

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

And the worst part for me is that someone who works in this field, to walk into a
member's office or to meet with someone and have them say, well, you know, Neil, you know, maybe we can't push too far. Maybe they really aren't as good as. I've heard these arguments before. I've read more about the Civil War than probably anyone in this room, and those were the same, exact arguments used for slavery.

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

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

CHAIR LHAMON: Thank you. You also referenced in your testimony today an extreme lack
of data about persons with disabilities in employment. And I take it notwithstanding that extreme lack of data, you don't think the nation should wait before transitioning --

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

CHAIR LHAMON: No, go ahead.

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

(Laughter.)

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

My point is that we have to look at it from a different point of view. However, I am thrilled that Wage and Hour -- I think that comes a little later in my talk. I am thrilled that Wage
and Hour has put their data now on a computer. They've computerized that.

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

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

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

So I'm very happy that we're getting the data, but once again, I'm the one that's going to keep looking at you all and saying I don't want to get involved in the fog of the data when the fact of the matter is this is not what we're talking about.
CHAIR LHAMON: Thank you. Ms. Barkoff, you also mentioned the absence of effective data, and I want to pose the same question to you, do you think that we should wait for better data before, we as a nation should wait for better data before making a transition to this program?

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

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

And I just, I would like to just briefly touch on the question from Commissioner Kladney, which we hear sometimes, which is people are safer when they are segregated.
We know from the last 60 years of institutionalizing people, of putting people in segregated settings, that when they are in settings with only other people with disabilities and paid staff and no external eyes and no people who care about them because they know them, not because they have to, people are incredibly unsafe. One of the best protections for people with disabilities, and I have seen this in my brother's life, is people knowing him.

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

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

MS. BARKOFF: Sure.

CHAIR LHAMON: You noted that the Department of Justice rescinded guidance applicable in this area. I will say that this Commission
voted to criticize that rescission, and so I appreciate your raising the topic. I'd like to know if it's your view that federal enforcement of federal civil rights laws is or could be sufficient to protect people's rights in this area.

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

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

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

So it is absolutely critical that the federal government take a strong enforcement role
on all of these civil rights issues.

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

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

CHAIR LHAMON: Thank you. Commissioner Kladney.

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

(Laughter.)

COMMISSIONER KLADNEY: But I have to prioritize. And I was going to ask one of these questions later. The first question I have is Commissioner Narasaki asked you about the school-to-workshop pipeline. But the other half of that is the counseling that is supposed to take place annually at the community rehabilitation providers.
And my question is is almost with the schools and all the school districts, you have the states and all the VR people and all the community. How is that being done? Because it's my understanding they're supposed to be counseled and plans developed on several levels, the discovery plan, the career development plan, the individual placement and support.

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

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

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

It is absolutely critical that you can't just walk in and say to someone who's spent 20 years in a sheltered workshop and may not know
what competitive integrated employment is, oh, do you want something different.

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

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

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

And we do not know that yet. And that is a huge civil rights violation that is happening each day as we go in and ask these people and give them hope for this opportunity and then don't take the next step to make it happen.
COMMISSIONER Kladney: And the question I was going to ask later, but I'm going to ask now and then ask again later is Olmstead cases, Oregon and Rhode Island. It seemed to me after reviewing those cases and seeing what went on in those states that that goes on in every state. So why only those two states?

Ms. Barkoff: So I'm happy to bring 48 more. My organization is involved in Oregon.

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

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

So, again, if we have to bring 48 more
cases, we will. But what would be much more effective is really trying to help states move in that direction by saying, here's the rules of the road, we will give you technical assistance, we'll give you funding like the Transformation to Competitive Employment Act.

But I suspect we will be bringing more cases soon.

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

CHAIR Lhamon: Okay. Commissioner Kirsanow.

COMMISSIONER Kirsanow: Thank you, Madam Chair. And thanks to all of the witnesses. And thanks to staff for putting together this panel.

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

What's the aggregate number of individuals who are covered under a 14(c) certificate? It looked to me to be about 300,000. Is that -- anyone know?
MS. ZIEGLER: I think this is mine to answer.

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

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

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

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

MR. ROMANO: No, and I like data. I like data. Let me just suggest that part of that is the fact that you have -- it depends on who you talk to. And it's a shifting opinion.
If you talk to the people who run workshops, the number gets lower and lower. If you talk to me, sometimes the number gets higher.

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

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

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

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

When you look at the universe, if they're correct that the universe is 145,000 people, and 9,000 people in one test, in one...
grouping, 9,000? So you're talking about, you know, X percentage, a large percentage. They've all been mistreated or mishandled with their dollars that they get? It's a big problem.

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

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

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

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

COMMISSIONER KIRSANOW: Thanks.

MS. ZIEGLER: Sure. Thank you. One
place you can look for data on -- and again, this
is the snapshot in time. But on our website, we do
have information about the number of workers. And
we believe that that is accurate based on the
applications that we've received and gives you a
good idea of the number of workers, although not
the universe.

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

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

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

COMMISSIONER KIRSANOW: Okay. And am I
correct? When I go through the materials, it seems
as if -- and I'm not sure. But when I look at
them, this is somewhat conjecture, it appears as if
the average hourly wage in private sector 14(c)
institutions is higher than it is in CRPs. Does that sound right?

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

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

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

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

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

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

Explain that part to me. And then I'll have a follow-up question, whose wages are
calculated pursuant to it. So are they getting the minimum wage or not?

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

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

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

MS. ZIEGLER: Yes.

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

MS. ZIEGLER: Yes.

VICE CHAIR TIMMONS-GOODSON: So my question is, are there any lessons that we can learn, or that we have learned since we, basically since 2015 we see it in action? You know, we see this new policy that some are advocating. We see
it in action. So are there any lessons, that's for anybody, that we have learned or can take from that?

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

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

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

They'll raise their wages or, as I said before, some people will say they'll fire these people. Well, that's -- you know, they'll be out of work. Well, that's just delightful. That just shows exactly how much they care about these people that they're nurturing and loving and blah, blah,
blah. So, if you change the wage, they'll just can them.

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

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

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

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

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

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

And we're starting to see what's happening. Again, it is the combination of, you know, setting very clear expectations about wages, working with providers to change their models.
Again, I think you'll be hearing from some providers later, including from states that have said you have four years, we're moving away from sub-minimum wage, you're going to move from being a facility-based sheltered workshop to helping support people in employment.

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

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

CHAIR LHAMON: Commissioner Narasaki.

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

So is it that, because in order to be
precise in whatever recommendation gets made, is it that the data is there but not being collected and not being mandated to be shared to the department, or does the department have it and is not sharing it? Where is the issue?

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

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

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

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

And it's not really engaging someone in what we -- we really make a big distinction between choice and an informed choice. And especially for people with disabilities, they may need information
in an accessible way, in an experiential way to
make those decisions, benefit counseling being part
of it.

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

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

CHAIR LHAMON: Thank you. Commissioner
Adegbile.

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

(Laughter.)

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

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

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

MS. BARKOFF: So I have a really hard time thinking of any guardrail in Section 14(c) other than how do we make sure people are paid and the wages are calculated pursuant to a system that's inherently discriminatory.
I mean, none of us do time trials at our jobs. So the guardrail is, okay, we might go in and make sure you're doing your time trials right, that you've filled out the paperwork right. So that to me does not feel like there are any civil rights protections in 14(c).

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

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

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

CHAIR LHAMON: Before the rest of the panel answers the question, and while I do want to
get to that, I also just want to make sure our record is clear.

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

MS. BARKOFF: No.

CHAIR LHAMON: Okay.

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

CHAIR LHAMON: Thank you.

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

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

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

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

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

MR. ROMANO: There are -- right.

COMMISSIONER ADEGBILE: Right?

MR. ROMANO: Right.

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

MR. ROMANO: Correct

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

MR. ROMANO: Right.

COMMISSIONER ADEGBILE: But we're just
trying to understand to inform our recommendation.
MR. ROMANO: There's the -- the guardrails I don't believe exist. I guess I made that point clear. Thank you.

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

MS. ZIEGLER: Yes.

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

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

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

Only after the employer has made appropriate corrections and made a commitment to future compliance will we talk about back wages and
seek to resolve the case.

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

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

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

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

And we work with other agencies, including the Office of Disability Employment Policy within the Department of Labor, because they do focus on capacity building and assisting states and providers in helping to move people to
competitive integrated employment.

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

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

MS. ZIEGLER: Yes.

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

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

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

MS. ZIEGLER: Six total.

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

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

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

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

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

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

And I also want to point out, as I have in my testimony, that while there is a regulatory
standard that these certificates should only be granted or renewed when necessary to address a lack of opportunities, there is absolutely no standard for that.

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

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

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

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

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

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

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

CHAIR LHAMON: Okay. Thank you.

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

CHAIR LHAMON: Okay.
COMMISSIONER ADEGBILE: I heard that there are exemptions from OSHA requirements in certain workplaces. I guess the question is whether or not they're workplaces. Is that the rationale?

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

COMMISSIONER ADEGBILE: Okay.

MR. ROMANO: It's training.

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

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

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

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

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

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

So, you know, that is part and parcel of it. It's a shell game of what you ask, how you ask, and making sure that you continually put your finger on -- I'm continually putting my finger on the concept that this is from the outset, from the
outset an egregious violation of who we are as a
people more than anything else that I care about.

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

COMMISSIONER KLADNEY: Thank you. Thank you. Thank you. Thank you.

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

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

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

We are endeavoring to use all the tools
we have. We're also engaging in more certificate
denials than we have in the past. But, obviously,
more tools would help us better enforce the law.
COMMISSIONER KLADNEY: And was that a CRP that had those violations, that got revoked?

MS. ZIEGLER: Yes.

COMMISSIONER KLADNEY: Thank you.

MS. ZIEGLER: Yes.

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

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

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

PANEL TWO - DATA REGARDING SUBMINIMUM WAGES AND COMPETITIVE INTEGRATED EMPLOYMENT

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

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

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

Mr. Butterworth, proceed.

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

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

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

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

Slide.

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

The average wage in 2018 --

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

DR. BUTTERWORTH: There we go.

The average wage in 2018 was $3.34 an hour for that group of people, compared to over $10 an hour for their peers working in competitive integrated employment. Put another way, people in
facility-based work earned on average about $2,600 a year. People in the individual jobs earned well over $12,000 a year on average.

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

Slide, please.

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

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

What do people want? One of the most powerful datapoints from the National Core Indicators Project, data collected by state IDD agencies, addresses the goals of people who are not
working in a community job. Almost half of them say they want a job in the community. And this speaks directly to unrealized goals and dreams.

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

Slide.

First, a few notes about "What are the trends?" was the next question we were asked.

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

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

In contrast, participation in facility-
based work has dropped steadily since 1999, a
drop of over 64,000 people.

Slide, please.

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

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

What do the data say about our ability
to do this differently is an important part of our
work. The evidence suggests that both states and
providers can support people in high quality jobs
without relying on subminimum wage options.

A few examples:

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

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

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

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

Three states, New Hampshire, Maryland, and Alaska, and the City of Seattle, have legislation that prohibits subminimum wage, with
more considering it. Many more states have IDD policy that restricts the use of facility-based work or payment of subminimum wage.

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

Thank you.

CHAIR LHAMON: Thank you, Mr. Butterworth.

Ms. Grossi.

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

CHAIR LHAMON: I think your microphone is not on.

DR. GROSSI: Pardon me?

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

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

DR. GROSSI: That's okay.

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

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

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

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

In my written testimony, I shared a
national study that was conducted over 18 years ago of individuals who were in sheltered workshops or 14(c) settings and left and obtained competitive integrated employment. It was thought of at the time that people in sheltered workshops weren't the people who were able to be working competitively. The study showed otherwise.

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

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

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

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

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

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

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

Next slide.

The next slide somewhat reinforces what Dr. Butterworth mentioned. The own guardianship, we have been collecting data for the last two years on individuals who are their own guardian. For the
first time in Indiana we have an individual who terminated their guardianship and moved to what we -- replaced it with a supported decision making agreement. We are hopeful that this momentum will continue and decisions will be made, but we are starting to look at what has happened to individuals, how they are making their decisions about their lives.

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

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

And, obviously, as Dr. Butterworth
said, the wages are very similar to the national.

Next slide.

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

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

Next slide.

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

We know the how to get a job. We know the how to support people to keep a job. We need
to understand why this isn't happening, and about the informed choices about a variety of experiences and safeguards. We need states to ensure service plans engage and equip individuals with information and experiences and opportunities to understand options to make that informed choice.

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

And so, I’ll open for questions. Commissioner Kladney.

COMMISSIONER KLDANEY: Thank you, Madam Chair.

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

DR. BUTTERWORTH: Yes.

COMMISSIONER KLDANEY: And competitive integrated employment. So, can you give us your thoughts on how many people in work centers you think could successfully engage in competitive integrated employment?

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

DR. BUTTERWORTH: My belief is that anybody can work. Now, you know, in the general
labor force of people without disabilities, there
everybody doesn't work. There are people who have
critical illnesses or for some other reason aren't
engaged in work, or are independently wealthy and
aren't engaged in work.

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

Because what became really clear is
that we just weren't putting them in the right work
situation, that a big part of this is the match.
Someone who struggles, at least compared to a time
study standard in a workshop, probably isn't in the
right place to work, for them and for their
interests. The guy who had very poor attention
task is a good example of that. We need to do a
better job of thinking about that.

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

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

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

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

COMMISSIONER KLADNEY: Yes.

DR. BUTTERWORTH: -- in the rules?

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

DR. BUTTERWORTH: Yeah.

COMMISSIONER KLADNEY: But, I mean,
there are other areas as well that I probably can't
codify right now.

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

COMMISSIONER KLANDNEY: Right.

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

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

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

So, what would I want to know, you
know, at a simple level? At a simple level I would
want those to be individual conversations, not
showing a video. But I would want to know something, I would want to know at a very simple level how many people said that they were interested in working. And if a state is very different from another state, I'd want to pursue why that is.

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

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

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

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

COMMISSIONER KLADNEY: Has there been
any data collected on pre-employment training program and its success or non-success? I don't know how to say it. I don't want to say failure.

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

DR. BUTTERWORTH: Yeah.

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

DR. GROSSI: Right.

COMMISSIONER KLADNEY: -- in your documents.

DR. BUTTERWORTH: Uh-huh.

COMMISSIONER KLADNEY: No idea?

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

COMMISSIONER KLADNEY: And where would you get that if it was avail -- I mean, how would you get it available? From which organizations and
when, and could that be a recommendation we would make?

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

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

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

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

I would say the other datapoint that's really -- that's missing or insufficient at this
point is outcomes from schools. There is, there is a measure that schools are required to provide, Indicator 14 for special education services, that addresses employment outcomes. But the collection of it is pretty inconsistent.

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

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

DR. BUTTERWORTH: Are they engaged?

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

COMMISSIONER KLANDNEY: The chair would be very happy to hear that this is my last question.

(Laughter.)

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

(Laughter.)

COMMISSIONER KLANDNEY: Do you have any statistics -- I mean, I've read 3 to 5 percent of
people in CRPs move to competitive integrated employment. Is that an accurate figure? I mean, it's not very many.

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

COMMISSIONER Kladney: CRPs aren't supposed to report that anywhere?

DR. BUTTERWORTH: There's no place --

DR. Grossi: No.

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

COMMISSIONER Kladney: Okay. I didn't mean to interrupt there.

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

It's hard to say it's just closure of
facility-based work. It's a combination of closure of support for facility-based work and an investment in building capacity for the alternative, competitive integrated employment, but in those states we're seeing significant growth.

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

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

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

DR. GROSSI: It was two percent ever --

COMMISSIONER KLADNEY: '79?

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

COMMISSIONER KLADNEY: Thank you.

CHAIR LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: So, I suspect there is no data bias. The question, are there any data related to the relative employment levels for individuals with disabilities in states that prohibit subminimum wage versus those that still maintain a subminimum wage, wage and employment levels?
DR. BUTTERWORTH: There are. And most of the states that prohibit subminimum wage are states that have a robust focus on employment. I mean, they kind of go hand in hand.

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

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

So, yeah, those states are. I mean, it is a whole package. There was some reference earlier to the WIOA report, the committee report on competitive integrated employment. It is a whole package. I mean, it's not just about ending facility-based work or subminimum wage employment, it's about building the capacity of your system to...
effectively support people in the alternatives. States that have put a firm stamp on that goal and created accountability about that goal do much better.

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

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

CHAIR LHAMON: Madam Vice Chair.
VICE CHAIR TIMMONS-GOODSON: Thank you very much, Madam Chair.

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

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

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

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

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

VICE CHAIR TIMMONS-GOODSON: Thank you.

CHAIR LHAMON: Commissioner Narasaki.

COMMISSIONER NARASAKI: Yes. Thank you.

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

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

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

The other piece of it is that because of the demands of schools right now, they really aren't equipped or have the expertise in employment and dealing with businesses. So, it was about
bringing everyone's expertise together. And we
embedded a provider and what we named a career
coach in the school and acted as that liaison
between the school and the providers and the
families.

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

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

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

And, in fact, they were a support to
vocational rehabilitation. So they got all the
information they needed so that that information, and it facilitated the intake, and so that we can get services much quicker, that the last year that services were much more immersed. And this was before WIOA. So this, we started this study two years before WIOA.

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

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

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

People got confused and they didn't know what to do. So, one of the big lessons were the impact of really good policies. And we forget
what happens to people at the local level.

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

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

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

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

So, what do we need to dig in there?

DR. GROSSI: I think that we need to
understand who are on the 14(c) and what happens
after they are no longer on 14(c). And I think that nationally we are seeing the same thing. We're seeing a rise. John's graph showed it. And I think that many states would show it that what happens if someone leaves a 14(c). Who are they? Where are they going?

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

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

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

CHAIR LHAMON: But two minutes.

(Laughter.)

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

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

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

COMMISSIONER KLADNEY: If the answer is
more than two minutes you should submit it in writing because I have another question.

    DR. BUTTERWORTH: I'll talk really fast.

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

    COMMISSIONER KLANDY: Uh-huh.

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

    At a federal government level, given that these are also funded services, I think it's very reasonable for the primary funders, particularly Medicaid in this case, to require that they have outcome data reported on employment outcomes and status for folks. That's something that doesn't exist at this point.
The National Core Indicators data does give a pretty good national picture, but that's a sample of people. It's a voluntary program managed by state IDD agencies. So, I would like to see that --

COMMISSIONER Kladney: Mandatory reporting you mean.

Dr. Butterworth: -- brought up to a federal level in the same way that the voc. rehab agencies are required to report outcomes because that's fundamental to their mission.

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

Dr. Grossi: Yes.

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

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

Dr. Grossi: I think the career path could happen depending on the agency. But I think, as many of my colleagues and CRPs and agencies say to me is that when the workforce, when our
economy's not doing so well it's easy to find them. When it's doing really well, it's really hard to be able to keep them because of the pay.

COMMISSIONER KLADNEY: Thank you.

DR. GROSSI: And pay is a big issue.

CHAIR LHAMON: Thank you both for your work before today and for your presentations today. We'll take a brief break and reconvene at 11:30 for our third panel.

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

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

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

PANEL THREE, THE NATURE OF EXISTING 14(C) PROGRAMS

CHAIR LHAMON: In the order in which they will speak they are Michele Ford who is President and CEO of Inroads to Opportunities; John Anton who is a Legislative Specialist, Massachusetts Down Syndrome Congress; Ruby Moore who is the Executive Director, Georgia Advocacy
Ms. Ford, please begin. And if you would turn your microphone on.

MICHELE FORD, PRESIDENT AND CEO,
INROADS TO OPPORTUNITIES

MS. FORD: Okay, thank you.

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

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

The specialists do monitor us monthly, so we have someone come out to the agency monthly and do the WIOA, 511's, but also to see all of the
participants on a regular basis who enter the agency.

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

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

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

So, I also want it to be known that
it's just not developmentally disabled individuals that use and work under 14(c). We have a mental health program. 45 percent of our participants have other diagnoses and multiple diagnoses. May have a mental health and a developmental, may have a physical disability, substance abuse addictions, those kinds of things. So, it's not just the DDD community.

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

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

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

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

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

The problem is that now three and four years later we are now seeing referrals back to the Work Activity Program, parents and participants wanting to coming back. They were either unsuccessful or they just don't want that service and they're waiting. We try to always engage people, to say try, try, try. See if you can get into community employment and then we'll take a
look down the road at what other options if that's not working for you.

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

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

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

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

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

I think there just needs to be more research as to where people are going in those states that don't have it. I don't, I don't particularly -- we have a small day program for people going into retirement because many of our
folks you can't retire if you're in a residence, so you still have to go somewhere. So we have, because they're familiar with us, we have a very small, we only have seven people in it. But I have agencies that I work with that have over 200 people now in their day programs. And I don't know that that's any better, or is better than preparing yourself continually and having pride in what you do every day in your work and a job.

And that's really all I have to say.

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

Mr. Anton.

JOHN ANTON, LEGISLATIVE SPECIALIST,

MASSACHUSETTS DOWN SYNDROME CONGRESS

MR. ANTON: Good morning.

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

MR. ANTON: Good morning, everybody.

CHAIR LHAMON: Good morning.

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

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

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

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

(Laughter.)

Then I attended the local sheltered workshop which had a waiver. They had us doing jobs such as packing items, piecework. It was very boring and unsatisfying for me. My friends would be sitting around playing cards, watching videos, and hanging out with nothing to work on.
In addition, I got paid very little for the work. It was only a few dollars a week sometimes. I went to the supervisor and said I wanted to do something more challenging. He told me it was not possible. So I quit.

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

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

Along with other self-advocates I have come to D.C. with the National Down Syndrome Society buddy walk on the Capitol to advocate for policies to ensure meaningful jobs, healthcare, and other important issues. Currently I work at the
Mass Down Syndrome Congress and I make above minimum wage.

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

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

For many years people told me that my goals were too high. And I persisted. Look at me now. And all about respect, dignity as a citizen for me is not being stigmatized by labels which belong on jars, not people.
Our motto is "Nothing About Us Without Us." People with disabilities need real jobs and real pay. Martin Luther King, Jr., inspires me. And like Reverend King, I feel strongly about my human rights. Like him, I have a dream. I dream that people will be able to afford and to live independently, or with supports needed, work at a fair wage, and be happy in their communities.

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

And thank you for your time.

CHAIR LHAMON: Thank you, Mr. Anton.

Ms. Moore.

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

I'm actually astonished that in 2019, almost 2020, we're still having the conversation
about whether we should be paying American citizens less than minimum wage.

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

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

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

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

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

So -- well, I'm going to give a couple of examples from my own life. I have family members with disabilities who are working in a broad range of business and industry, everything from healthcare professions to performing arts to
my dad had worked for NASA, I'm a protection and advocacy director. I previously ran an employment agency for 16 years and got a lot of people jobs who were accused of being unemployable.

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

I met a man in a sheltered workshop in New Mexico, I'll call him Mark for the purposes of our discussion. Anyway, he was being paid sub-minimum wages to put holiday lights in little bags, you know, to do the packaging thing which is very typical of the kinds of contract work often that we find in sheltered workshops, and he had mastered the job and industriously did it 30 hours a week, and he was paid $29 and some change every two weeks. So a little less than $15 an hour in order to do a job he had mastered. And as is often the case in some of the sheltered workshops is they don't always have enough standard hours of work to keep the people employed who they've recruited to their program. And so --
CHAIR LHAMON: Just to make sure your testimony is correct, I think it was $15 a week.

MS. MOORE: Excuse me?

CHAIR LHAMON: $15 a week. Not $15 an hour.

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

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

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

Another example is from Oregon and you'll hear later from, I think Lilia's here to talk about Oregon, and if you want to ask me
questions about the Lane case, I'd love to answer them. Anyway, I met a man named Jerry and he was also in a sheltered workshop, but previously, he had worked for his family business, and he had worked for years making a very substantial salary. And then some changes happened in his family and he got sent to a sheltered workshop.

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

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

So I just want to close by saying we did work hard. Alison and I were both on the WIOA
Advisory Committee. There are substantial recommendations in there. We gave a lot of attention to what to do about 14(c) and had suggested a very responsible measured phase out of 14(c) that allows for minimizing the adverse impact on people who had been in that status for a long time.

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

CHAIR LHAMON: Thank you, Ms. Moore.

Mr. Gardiner?

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

These work relationships contribute to the polarization and stratification of work and engender alienation in people who are forced to work in sheltered workshops for subminimum wages, like what John Anton mentioned here with his
terrible experiences with sheltered workshops and how he felt demeaned by them.

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

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

Last month was National Disability Employment Awareness month, but clearly not enough is being done to improve our employment rates. Subminimum wage jobs are not doing what they were ostensibly designed to do. And as Ruby Moore said earlier, these issues with subminimum wages and the ethical concerns surrounding them are not new.
Nearly 60 years ago, the founder of the National Federation for the Blind, Jacobus tenBroek, wrote an article called the Character and Function of Sheltered Workshops. In this piece, he directly likened sheltered workshops to prisons and other institutions that are designed to keep designated groups away from the rest of society, rather than integrating them as full members.

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

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

The problem with subminimum wage work is that it engenders stereotyping. It sends the message, as several other panelists have said, that if you are a worker with a disability, who is deemed to be somehow less productive than other
members of society, then you are only worth being paid pennies on the dollar.

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

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

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

And admittedly, this issue is very personal to me. I, myself, have disabilities. I am autistic, I'm on the autism spectrum, and I was diagnosed at a young age, and I'm fortunate enough to be part of the generation in which the ADA was
passed. I was five years -- no, four years old, I think, when it was passed, and around five when the IDEA was passed.

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

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

I am extremely fortunate and there are
other people who are not, and that's why I'm here. I want to make sure that everybody has the right to participate in work that has meaning for them. That will give them the fulfillment they need. That will give them a living wage. That will help them. That they can get benefits. They can get insurance. They can make -- and that they have the right supports to accomplish that because, of course, the whole idea of disability, the whole social model of disability is the need -- an extended need for support compared to the general population.

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

When these community-based -- these initiatives to establish community-based employment are talking about implementing supports and are emphasizing the importance of support in employment. There are, like, support in employment programs, job coaches, and several other forms of scaffolding that can be used in lieu of these sheltered workshops that sort of sequester people
with disabilities away from the general population.

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

Thank you.

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

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

MR. ANTON: Yes.

COMMISSIONER KLADNEY: -- thanks for coming. There's going to be some testimony later about people with disabilities and competitive integrated employment that have a diminished social life and friendships because of that. Can you describe how your social life and friendships are today and also describe how they were when you were in the work center?
MR. ANTON: I did have a lot of friends.

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

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

COMMISSIONER KLABNEY: Today, or?

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

COMMISSIONER KLABNEY: That was in the work center. Is that correct?

MR. ANTON: Yes.

COMMISSIONER KLABNEY: And today, do you have friendships today and a social life?

MR. ANTON: Yes, I do.

COMMISSIONER KLABNEY: Can you tell me about it a little? Describe it a little?

MR. ANTON: I live in a house with L'Arche Irenicon and I have a lot of friends. My friend, Jimmy, and the staff that I work with, I get along very well, and we're friends. We do social activities and stuff like that and I also go to Northpoint Bible College in Bradford, in Haverhill, and I'm taking classes in learning how to become a pastor.
COMMISSIONER KLADNEY: Great. Thank you very much. Ms. Moore, my question is, you go to the 33 work centers in Georgia. Is that correct?

MS. MOORE: Yes.

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

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

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

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

MS. MOORE: Right. It means
experientially based practices where they're having trial work experiences, you have a person-centered vocational assessment that is based on your assets and your skills and your interests and it helps people to discover what their interests are.

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

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

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

COMMISSIONER KLANDNEY: Thank you. I'm
sorry, I can't read your name.

MS. FORD: Michelle Ford. Sorry.

COMMISSIONER KLASTNEY: Oh, there we go.

Ms. Ford --

MS. FORD: Yes.

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

MS. FORD: No. We always have work.

We may not have --

COMMISSIONER KLASTNEY: Work for everyone.

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

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

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

COMMISSIONER KLASTNEY: Oh, I'm sorry, Madam Chair.

CHAIR LHAMON: Thank you.
COMMISSIONER KLADNEY: I'm just --

CHAIR LHAMON: So eager.

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

COMMISSIONER KLADNEY: Yes.

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

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

MS. FORD: It does change. Yes. Well, we did at one point prior to probably five or six years ago, had 231. We now have 199, but we also have mental health folks who also use the work
program. As I said, it's two separate types of activity.

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

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

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

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

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

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

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

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

MS. FORD: The dialogue that they use?
Yes, I could have one sent to you. Yes.

COMMISSIONER Kladney: Thank you.

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

COMMISSIONER Kladney: No. I want to
ask all the questions.

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

COMMISSIONER NARASAKI: We know it's
true.

COMMISSIONER Kladney: Go ahead.

CHAIR LHAMON: Oh, Commissioner
Narasaki?

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

MS. FORD: No. I think there's always
work available. Plus a lot of other agencies are
doing different types of things, computer
recycling, document destruction, call centers,
there's a lot of different types of -- it's not
just the usual labeling or repairing or whatever.

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

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

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

MS. FORD: Well, you know, in New
Jersey there are how many school districts? Tons.
And each transition program and what they do for
their students is different. So, you know, we work
with seven or eight schools and they all have
different ways of looking at transition.
I think, you know, the younger --
dealing with students younger, having seamless
service so that they go into the adult community
and they have a job coach that they know, I think
that's important.

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

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

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

I think that some things, what a
workshop does offer is time. Employment --
employers have expectations and they can't give you
all the time sometimes you need.
COMMISSIONER NARASAKI: Great. Thank you. So, Ms. Moore, I wanted to take you up on your invitation to ask you about the litigation. I'm particularly interested again, in sort of the, what you might have found in terms of the core -- the key age group of the youth in transition.

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

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

We had ended the practice of special ed programs preparing people for sheltered work and made sure that people got to have internships and the same kind of things that their peers were having. That they had work experiences before they
left school so that it was a little more precise
kind of matching that could happen because people
had a frame of reference for thinking about what
they might want to do and some people could be
leaving with jobs, like, their typical peers. So
that was important.

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

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

Then we also had to deal with, you know, sort of the gatekeepers in the system
because, respectfully, the conversation for the population that I'm talking about that often ends up in sheltered workshops, a 10 to 20 minute conversation is not enough counseling for people to know what you're talking about, to make an informed choice, and to make sure that, you know, they're actually engaging with somebody who knows what resources are available, what good practices are, and so forth.

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

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

MS. MOORE: Well, I think that, you know, the whole proliferation of the day programs, the segregated day programs, ironically, came out
initially came out of the deinstitutionalization movement because people were coming out of institutions and a lot of attention was paid towards, what's home going to look like?

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

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

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

So the way that we worked through that on an individual basis was listening to the concerns of the family members. I didn't find in the 16 years that I ran New England Business
Associates, we didn't find any family members who were attached to the idea of segregation being a good idea, but they did have very real concerns and I -- we respected that.

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

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

We found that kind of engagement with the family and addressing every single one of their
concerns was what was needed in order for it to be successful. I am a parent, I'm a grandparent, nobody knows my kids better than me, and I absolutely, you know, respected that all those family members probably felt the same way.

COMMISSIONER NARASAKI: Thank you.

CHAIR LHAMON: Commissioner Adegbile?

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

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

MR. GARDINER: I think it's important -

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

MR. GARDINER: Sorry. I think it's important to note that sort of this aerial view of
the issue, kind of the issues that kind of inform
the reasons why some people are being paid sub-
minimum wage in the first place, and on a more
practical level, understanding, A, how people end
up in these subminimum wage jobs, and B, how the
use of subminimum wages for people with
disabilities may intersect with other forms of
marginalization.

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

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

I think it's important to have as much
empirical data as possible, along with qualitative observations and personal testimony and experiences.

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

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

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

You already have some of those hooks. You have some examples, and we can help you with this. In looking at states, I brought up Oregon because it's kind of a test kitchen. The template
for coming into compliance with Olmstead, ADA, WIOA, and HCBS is there.

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

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

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

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

When we got some momentum going back in
the 80s, it began by Madeleine Will and others having sort of the presence of mind to say a percentage of resources needs to either be created or redirected that actually goes to the end of, you know, technical assistance and transformation. And for that kind of cultural shift to happen, the states need some support.

CHAIR LHAMON: Are there other recommendations?

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

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

COMMISSIONER ADEGBILE: Thank you.

MS. FORD: I think --

COMMISSIONER ADEGBILE: Mic.

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

I know we said that they're not given informed choice, well, many of them are given
informed choice now and that came about and it's a very good thing, but our median population is 48. We have a lot of people who are older, and I think that needs to be considered.

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

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

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

So I think they need to be considered in this.
COMMISSIONER ADEGBILE: Thank you.

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

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

MR. ANTON: Because --

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

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

I used to help pull all the work in from outside and I noticed a heavy load of boxes
that we needed to carry in and all the other people
looked at me and says to me, it's basically, you
can do all the work for us and stuff like that, and
I said uh-huh. It's all about us and stuff like
that.

Yeah, because when I worked I'm in
charge of getting paid and I'm always happy to get
paid all the time for the work that I do.

CHAIR LHAMON: Terrific. And we can
come back. One of the things that you mentioned in
your written testimony was that in the other models
that the money goes to the agency and not to the
participant and so that participant doesn't have as
much choice about who works with the participant,
and I wondered if you could talk about whey that
makes a difference.

MR. ANTON: It's good to work one on
one with a staff person sometimes and I also -- I
like to be in charge of my own money for one thing
and -- because the more work I did, the more I get
paid.

CHAIR LHAMON: Thank you very much.
Ms. Moore, in your written testimony, you talked
about wraparound services as one best practice that
can support competitive integrated employment and I
wonder if you could share with us more about what wraparound services are and why you consider them the best practice.

MS. MOORE: Thank you for asking that because I think that also gets another elephant in the room that we've been kind of poking at a little bit.

Not everybody works full-time and so the practice has been for a long time if people, especially if they live in a group home or if they live at home and their family members work, that they’re, you know, functionally kind of homeless for a good part of the week.

So if people are working part-time, what we usually do is the wraparound services that are very effective are those that are essentially still aimed at the same goal of advancing your career, building your network, acquiring new skills, possibly trying out other work that you might want to do.

What all of us do when we feel like we're underemployed or not particularly thrilled with the job we have -- don't tell me if you're not thrilled with the job you have -- but it's also, it addresses the families’ concerns that people do
have something to do during the day.

    Now, the wraparound services then also
allow you not to have to go back to the segregated
program, like we've kept these segregated programs
going because there are gaps in people's social
networks, their valued social rules, their
engagement in their community, their memberships
and associations that they might have, these are
things that aren't always given the attention that
they might need.

    It isn't necessarily an alternative to
work. Some people consider wraparound services,
you have work and then you have the alternative to
work, and that fills up your week and for some
people that may be it, but for most of us, as John
was saying, you want to make good money and so if
you're underemployed, you want your wraparound
services to focus on those things that we all do to
improve our economic well-being.

    Again, the families can be involved in
that. That can be a process that sometimes during
discovery when we're figuring out what people want
to do for work, we also discover other things that
they're very excited about. You know, John's
working, John's also taking classes.
So we can help figure out what a full, rich life looks like where people are fully participating in their community in ways that make sense for them.

CHAIR LHAMON: Thank you, Mr. Gardiner, it looked like you might want to get in on that conversation. But if you could turn your microphone on when you do it.

MR. GARDINER: I was --

CHAIR LHAMON: Could you just push talk on your microphone?

MR. GARDINER: Okay. Yes, I do think that having these wraparound services is important and there absolutely needs to be, as I said earlier, like, a framework in place before 14(c) is revoked.

CHAIR LHAMON: Thank you. Commissioner Kladney?

COMMISSIONER KLANDNEY: Thank you, Madam Chair. Ms. Ford, on your website, you had -- I saw on your blog, you had ten blockades to integrated employment for disabled people and one was automation. And in that blog, it said new digital kiosks and restaurants, 10 to 15 years, so many millions of jobs would be gone. Working in
restaurants, food prep, timekeeping, clerks, payroll, light truck, things like that.

So I was wondering, I was looking at the work you offer in your work center and it's retail ticketing, collating, shrink wrapping, heat sealing, promotional services, labeling, pallet displays, unit packing, hand packing.

Are you -- because it's only a 10 or 15 year transition now that many of these things won't even lead to any employment, is your center changing and bringing in more technology so that people can learn jobs that because as a rehabilitation center, we're rehabilitating people to go into employment, are -- have you done any of that?

MS. FORD: Well, we are looking into, yes, automation machines. We do have a lot of placements in Amazon and Blue Apron, those kinds of companies that do exactly what we still do.

So those are jobs that are still available.

COMMISSIONER Kladney: Well still -- but you said 10 or 15 years they're not going to be.

MS. FORD: Well, we're concerned about
it as well and we are looking into other options so that we can find training-types of activities where participants would get specific training for fields. Not something, you know, we just hired a new COO who's from the business world, to make those connections because it is going to be extremely important.

That's why we got into the café business and we have a, you know, a café in one of our other townships that's very community-based. We do have retail sales, we have a lot of contacts with a lot of the food stores.

So we do have a lot of trial work. We have a lot of participants who go out into the community to try different -- we're developing our employer pool. That's the big thing right now. And continuing to do that. We keep putting more people in employment to find those connections.

It's so important to develop the partnerships with community and what will be needed --

COMMISSIONER KLANDNEY: So --

MS. FORD: -- so that we know.

COMMISSIONER KLANDNEY: So if you expand those services, your work center will become
smaller in terms of --

MS. FORD: That's what the plan will be. Of course.

COMMISSIONER KLADNEY: Okay. And one more question, please, Ms. Moore. When you were talking about wraparound services with the Chair's question, I think Congressman Scott this morning spoke about somebody in his office who has a relative that does work part-time and then in the alternative, he works at a training stable of some sort.

Is that the kind of thing you're talking about where people can volunteer or go on day services or have people go out with them and do things during the day if they don't choose to do a job?

MS. FORD: I think best practice for working-age adults would be to say, what are the culturally typical things that people do who are underemployed and I would begin there before I started creating a new continuum of day things that people do.

What happens, what we've seen in the data, and Dr. Butterworth can speak to this, some of the states that did a full-on blast, you know,
meaningful day that wasn't employment-focused for working-age adults, ended up submarining their employment programs and a part of that would be for people who had a limited frame of reference for work when they'd see that maybe the people they were living with going to go bowling and they were going to go to work.

So it's kind of human nature to go, I might rather go bowling, but really meeting the mandates of the Developmental Disabilities Act, Olmstead, and the Americans With Disabilities Act, we really want to give people access to the same kind of lifestyles we all have.

So I would caution us against creating a different set of routines and rhythms and social rules for people with disabilities as we have created for ourselves because the best way for people to connect with each other and build a sense of identification is to realize that we have more in common than not. And the best way to do that is to have typical -- cultural and typical routines and rhythms and roles.

Now having said that, this isn't workfare, you know, there may be people who can afford to, because they have other resources, only
work a little bit, and want to explore other kinds of vocations, and that's fine.

I just think we very quickly go to giving up on people having, like, the same kind of roles that we have, and I would caution against that.

COMMISSIONER KLADNEY: Thank you very much. I have nothing further.

CHAIR LHAMON: I'm astonished. With that, we will thank this panel and I very much appreciate your testimony and we'll pause for just a moment to allow the panelists to clear this table for our next speaker to proceed.

(Pause) CHAIR LHAMON: We will now hear from Governor Tom Ridge who is the Chair of the National Organization on Disability. Governor Ridge?

GOVERNOR TOM RIDGE

CHAIR, NATIONAL ORGANIZATION ON DISABILITY

GOVERNOR RIDGE: Thank you, Madam Chairman, Distinguished Colleagues, your colleagues on the Panel, I want to thank you for the opportunity to appear before you today. It's an honor, frankly, for me to appear as Chairman of the National Organization on Disability.
A variety of life experiences got me to the point where this is a great personal interest of mine, and for the organization has given me the privilege to serve as Chairman since I left public service in 2005 is both a personal honor and a privilege for me as well. So I'm very pleased to be here.

I also want to acknowledge the comments of my fellow panelists and commend them for their passion and their commitment and for bringing their expertise and their remarks.

The National Organization on Disability is a private, non-profit organization that promotes the full participation in contributions of America's 57,000,000 people with disabilities in all aspects of our daily lives. We primarily focus at NOD on increasing employment opportunities. We live in a culture where your sense of self-worth is not so much what people do for you, but what you can do for yourself. We kind of embody that mindset.

Nearly 80 percent of working-age Americans with disabilities are not employed. The core civil rights vision of the Americans With Disabilities Act and other disability rights have informed the approach NOD takes to improving the
lives of children and adults with disabilities.

The historic Civil Rights Act of 1964 unequivocally told the world that discrimination based on race, color, religion, sex, or national origin, would not be tolerated within the United States of America. The ADA expanded the Civil Rights Act’s powerful and historic protection to include people with disabilities. All Americans should have the same opportunity to pursue their dreams.

Over the past several months, actually it's well over a year, I had the privilege through my work with NOD to meet with many of the leaders of some of the largest, most politically influential, most passionate and compassionate and effective disability organizations in America who put aside their very specific agendas and individual priorities and we look for common ground, we look for common cause. We found it.

Collectively, we represent a powerful constituency that concluded that we would collaborate to bring more workers with disabilities into the competitive labor market with fair wages. We concluded that we would work together to phase out 14(c) of the Fair Labor Standards Act, which sanctions paying individuals with disabilities less
than the minimum wage.

We concluded this is a civil rights issue, and that 14(c) is inconsistent with the fairness and equal opportunity guaranteed to every American under existing laws.

Now some people, and I think you probably know this, who work under 14(c) certificates, earn pennies per hour. We see this as a civil rights issue. No one, in my judgement, and in the judgement of a lot of other people, regardless of their creed, their race, their gender, their age, their sex, should be subject to such economic discrimination.

This system tells Americans with disabilities and it tells their families and the people that love and support them, that you're not worth the same as other Americans. Society values you and your work and your labor less. This practice is contrary to the Americans with Disabilities Act, which sought to achieve fairness by providing statutory protection of the rights of Americans with disabilities to compete on a level playing field with their non-disabled peers.

Back in 1938, when the Fair Labor Standards Act legislation was first passed, everyone
assumed that a worker with disability was just going
to be less productive than a non-disabled worker. In
retrospect, I say respectfully to those who were
well-intentioned at the time, it has proven to be a
very flawed assumption.

We certainly want to be fair to the
intent of that original legislation, which was
clearly at a minimum, to give individuals with
disabilities an opportunity to work in the, to enter
the workforce. However, 80 years later, the law
still contains section 14(c).

Now after 80 years, we know that workers
with disabilities, given equal opportunity and
appropriate from time to time tools or technology,
can perform as well as their non-disabled
counterparts.

NOD certainly has proven this. Each year
we recognize businesses through our Leading
Disabilities Employers Seal. We applaud
organizations that lead the way in disability
inclusion and tap into the many benefits of hiring
talent with disabilities. We have plenty of
testimony of high rates of productivity and
dedication, and greater employment engagement across
the broader workplace.
The experience of these companies confirms that individuals with disabilities perform beyond those 80-year-old expectations and do as well and sometimes better than their non-disabled peers.

There are some well-intentioned advocates that express concern that the elimination of 14(c) would severely limit opportunities for new Americans with disabilities, who may use these workshops as both a place for meaningful social intervention and a respite for caregivers. We understand these concerns, but remind them that there are other options available.

14(c) is not a funding program, it is a certificate. Federal funding will still be available to support individuals with disabilities in other ways. Person-centered planning, where funding goes directly to the individual with a disability instead of a 14(c) certificate-holding agency is an excellent option.

Person-centered planning gives an opportunity for individuals with disabilities to have a greater say, a greater voice in their life, in their own direction.

Let me give you a great example. At NOD, we love our executive director, Carol Glazer, and
her son Jacob, severely disabled. But he has meaningful part-time employment. Thanks to a person-centered planning model, Jacob works part-time, above minimum wage, at the NBA store in New York City. Medicaid pays for his job coach in the store.

He also volunteers in integrated settings the rest of his time, takes weekly classes in art, music, cooking, fitness, self-improvement. We believe that transitioning federal support toward a person-centered planning model will give people more choices than they realize. Jacob has choices. We think everybody should have choices.

Individuals with disabilities, parents and care-givers can then choose to use federal funding for job coaches, supporters, or collaborate with these agencies. Eliminating 14(c) would give individuals with disabilities and their families and the organizations that support them, give them a lot of greater flexibility.

All this being said, we understand that transitioning away from our current model will take some time and some resources. We believe that support to the states and providers to transition away from 14(c) is necessary to make this program and the transition successful and effective.
In 2016, the Advisory Committee on Increasing Competitiveness Integrated Employment for Individuals with Disabilities released a report. You probably know the committee was comprised of Government officials, self-advocates, providers of employment services, representatives of national disability advocacy organizations, experts all over the place.

The Advisory Committee called on Congress to allow for a multi-year well-planned phase-out of 14(c). It detailed how the federal government could assist with building the capacity of services to the systems to provide alternatives to those provided under programs using the 14(c) certificates.

Similarly, the National Council on Disabilities released a report. The National Council, as you know, is an independent federal agency charged with advising the president and Congress and other federal agencies regarding policies that affect people with disabilities.

They also recommended phasing out 14(c), while providing increased capacity support as well. It also recommended the Department of Labor issue a two-year moratorium on any new 14(c) certificates.
and that oversight of the system be increased until
the phase-out is complete. Madam Chairman, may I
have another minute and a half?

CHAIR LHAMON: Yes, you may.

GOVERNOR RIDGE: I've got to ask
permission.

CHAIR LHAMON: I appreciate it.

GOVERNOR RIDGE: Thank you. These are two
very established and very respected groups. The
federal government should note that they concluded
the same thing, should phase out 14(c), and provide
support to ensure the transition is both smooth and
effective.

That is why the National Organization on
Disability, along with more than a dozen groups with
whom we are working, support the Transformation to
Competitive Employment Act, introduced by Senators
Casey and Van Hollen and Representatives Bobby Scott
and Cathy McMorris Rodgers.

We know this legislation was crafted
specifically and carefully to phase out 14(c), while
providing resources to states, service providers,
subminimum wage certificate holders, and other
agencies to ensure inclusive wrap-around services
for individuals with disabilities. These resources
could be used to help provide and create new models of workforce opportunities for individuals with disabilities that don't rely on subminimum wage.

To conclude, I say this respectfully. In 2019, 80 years after the passage of the Fair Labor Standards Act, it's tough to, I don't think there's any excuse for treating an entire class of workers differently from others based solely on their disability. I think such treatment is discriminatory. Just as it would be discriminatory if it was applied to individuals because of their race, their gender, their sex, whatever.

All Americans, including those with disabilities, must have a chance to have the financial freedom and security we all seek. Their sense of self-worth and the value of their labor requires society to protect their right to secure employment at least at the minimum wage. After 80 years, phasing out Section 14(c) is a step that hopefully we will take to move all of us closer to that national goal.

It's long past time to take this fair and, I think, common sense step in the march to freedom for all Americans with disabilities. Madam Chairwoman, I want to thank you for giving me the
opportunity to share these thoughts with you and your colleagues on the panel. As someone who has spent most of my life in public service, I also want to thank you for your public service. It's a pleasure to appear before you. Thank you very much.

CHAIR LHAMON: Thank you, Governor Ridge. I’ll open for questions.

COMMISSIONER ADEGBILE: I think by tradition we have round one of Commissioner's Kladney's questions.

(Laughter.)

CHAIR LHAMON: But if you're formulating yours, I can start with mine.

COMMISSIONER Kladney: I'm still thinking.

CHAIR LHAMON: Okay. I will start with mine. This is a first, Governor Ridge.

In your written testimony, you noted that Medicaid dollars will be available to support individuals with disabilities as necessary, and you shared Jacob's story in a very concrete and helpful way as you spoke. We received written testimony from Representative Grothman, who challenges that notion and asserts that Medicaid may cover some of the costs of support services, but instead family
members may need to leave their jobs for help.

In your experience, is Medicaid sufficient to meet the need, and if it is not, do you recommend a fix to Medicaid for that purpose?

GOVERNOR RIDGE: I think it's a fair question. I'm going to defer to those people behind me who deal with it operationally on a day-to-day level to respond. Let me say to you that the Medicaid dollars should be sufficient, hopefully, if we're interested in the transition for this self-directed planning, and if they're not, we ought to include more.

I'm a strong believer that disabilities in the United States, it's a part of our human condition. It's a part of who we are. People are born with disabilities, during the course of their life they may become disabled, they may go in the military and be disabled, it's part of who we are as 330,000,000 Americans. At some point in time, I think this country should stand up and say all right, you have more challenges than most, and we as a society are going to everything we can to help you overcome those challenges.

And so I say to you, in response to that very thoughtful, probably objection, I think, I
would like to think that Medicaid dollars would be enough. If there's not enough in appropriation, we get Congress to give them more, and if not then I personally think it's incumbent upon us as a society to make sure there is enough funds available.

CHAIR LHAMON: Thank you. Commissioner Kladney?

COMMISSIONER KLADNEY: I just have one question, actually. I was wondering, this is a non-partisan issue. I was wondering how you have found or gone through that territory with people. I mean, have you found it partisan at all? Or is it, has to do with people who --

GOVERNOR RIDGE: I think that's a great question. I think some of the concerns that I've heard expressed are those, and I try to refer to it in my remarks, who see even if they're getting pennies per hour it's not so much they're getting rewarded or compensated for the work, it is a place for people to go. And so they see it as a respite, a lot, for the caregivers.

Mom and Dad, brother and sister, and what we're saying, if you have the self-centered, you can provide with those dollars, with that agency, other opportunities to help that individual
grow, to learn, to expand, and it doesn't have to be.

It's just like Jacob. He has a part-time job with above minimum wage and he does volunteer work through the Agency. So I find more the concern from those who provide the services. Obviously they want to be in control of the dollars, and I prefer the individual over the service provider. Let the individual determine which services they need and then let the service provider adapt to the customer.

But I think it's not so much a partisan issue, I think it's an understandable, we've been doing it for 80 years this way, we're not going to want to change, but I think that after 80 years, with all the learnings we've had with regard to people in the workplace, their determination, their capabilities, now with adaptive technology --

There's some that will take advantage of it but for those who may not, there may be a small portion who may not be able to do that, the wraparound service, there will be other ways to at least enhance the quality of their lives. And I think that's what we're trying to do. I think we can serve both objectives.

CHAIR LHAMON: Thank you. Madam Vice-
Chair?

VICE-CHAIR TIMMONS-GOODSON: Yes. Thank you so very much, Governor, for being with us. Our research and the readings that we have done thus far as a commission makes it clear that this is a non-partisan issue.

I listened with fascination your telling us about the gathering of the group that met, and how you came together putting aside perhaps many differences, but agreed that in fact 14(c) was unfair, that it had no place in the America that we love today, and that on its way to elimination we should phase it out.

I was wondering whether the group discussed at all during that time, how it is that they might help this change in the law come about. It's one thing to say we ought to do this, this is what ought to happen, but it's quite another getting it done and I'd just be interested to hear what ideas may have come out of that meeting that might help.

GOVERNOR RIDGE: It's a wonderful question, and some of them, I think, are going to be testifying later. They can speak to their own motivation, but NOD -- If you have a disability,
we're for you. We're agnostic with regard to the
disability. You can get Autism Speaks, the National
Federation of the Blind, the Downs Syndrome group,
you get all these wonderful organizations together,
and I've spent a lot of time in government and
politics, let's see how many people are affected
with disabilities in this country.

The estimates might be in excess of
50,000,000 and they've got brothers and sisters and
moms and dads, so politically, in terms of the
constituency that's a pretty powerful group if
collectively their efforts are focused.

That's one of the reasons we said early
on at the meetings, every one of those organizations
has a legitimate but different and specific
interest. So what is it that cuts across all of
these organizations so we can speak with one voice?
We think speaking with one voice will hopefully
generate the kind of support we need in order to get
this through the halls of Congress and to your
point, to get the bipartisan support necessary to
get it to the president's desk.

It's a great question. Strength in
numbers, I think is the answer. Good math.

CHAIR LHAMON: Commissioner Narasaki?
COMMISSIONER NARASAKI: Thank you. It's very good to see you.

GOVERNOR RIDGE: Yes, ma'am. Thank you.

COMMISSIONER NARASAKI: We had Congressman Bobby Scott here this morning, testifying about two specific bills, the Raise the Wage Act, HR582, and Transformation to Competitive Employment Act, HR873. Does your organization have a position about those two bills? Are there things that you like about it, things that you don't like about it?

GOVERNOR RIDGE: We basically, the Transformation to Competitive Employment Act has been our primary focus, so we would say NOD enthusiastically embraces it, but as one who's been given the privilege to work with and lead, we understand how the system works. There may be some adaptations or accommodations that have to be made along the way.

But ultimately if we have to do that in order to achieve our long-term goal, no more 14(c), people-centered approach, we'll work it. Right now we just put our arms around that legislation that has bipartisan support in the House, and we're working on bipartisan support in the Senate. Thank
you for the question.

CHAIR LHAMON: Thank you. Commissioner Adegbile, want to bring us home?

COMMISSIONER ADEGBILE: Sure. Governor Ridge, thanks for your testimony. As we think about change in this area, and legislative reform, I guess there may be three buckets of defenses that people may have of the current regime.

One, some people may say that it's fundamentally fair and attach themselves to that 80-year-old notion. I don't think there are a lot of people in that category. There are some who may be concerned about the costs. What are the costs of moving away from the particular regime and the supports that would be needed under a different regime? You've spoken a bit to that.

The third are the folks who are worried about some of the unintended consequences of even a phased-out transition, and I'm wondering if you could help illuminate for us what your sense is of why we can be assured that those unintended consequences should not stand in the way of reform in this area?

GOVERNOR RIDGE: I think it's a wonderful question. I'm not here to say that the transition
will be easy for everyone, so I'll try to be empathetic and responsive at the same time. I do push back against the notion that the perfect is the enemy of the good. There'd be far, far more men and women with disabilities who would be advantaged by this overwhelmingly than not.

But there may be a small cadre who view it and may have some particular problems associated with the transition. Then it's up to us and it's up to the disability advocacy groups and organizations to make sure that we help them overcome, if we have to modify the legislation. But I just, I think it's a fair question.

Most of the resistance that I've heard, and my colleagues may speak to you even deeper about more resistance, is that there's not a place for these individuals to go. Well, there are plenty of places to go but they can be volunteering their services or you can be using these dollars to help them improve their quality of lives in so many other different ways.

So I think it's a fair question. I guess my ultimate response is that the perfect is not the enemy of the good and the imperfections, it's up to all of us to figure out how we can deal with it.
COMMISSIONER ADEGBILE: Thank you.

CHAIR LHAMON: Thank you very much, Governor Ridge. We really appreciate your time.

GOVERNOR RIDGE: Thank you for the opportunity to spend some time with you this afternoon.

CHAIR LHAMON: With that, we will pause until 2:00 p.m., when we will start Panel Four.

(Whereupon the above-entitled matter went off the record at 1:08 p.m. and resumed at 2:00 p.m.)

PANEL FOUR: TRANSITIONING FROM 14(C) PROGRAMS

CHAIR LHAMON: We will get started with our fourth panel. Thank you all for coming back after lunch. In the order in which our panelists will speak, they are Jennifer Mathis, who is Director of Policy and Legal Advocacy and Deputy Legal Director for Bazelon Center for Mental Health Law and, I note with gratitude, also a member of the Commission's Maryland State Advisory Committee. Thank you for your service.

And then Julie Christensen, who is Director of Policy and Advocacy of the Association of People Supporting Employment First.

Then Lilia Teninty, who is at the Office
of Developmental Disability Services Director at the State of Oregon Department of Human Services.

Then Carol Ann “Cari” DeSantis, who is President and CEO of Melwood.

And finally, Bryan Dague who is Think College Vermont Program Coordinator and Research Assistant Professor, College of Education and Social Services, University of Vermont. Thank you. Ms. Mathis, please begin.

MS. MATHIS: Thank you for the invitation to speak today about these important issues. I am the Director of Policy and Legal Advocacy at the Bazelon Center for Mental Health Law, which is a national non-profit organization that advances the rights of people with mental disabilities in all areas of life, including employment.

Employment is among the Bazelon Center's highest priorities, as it is for most of the disability community. While Americans have made great strides in integrating people with disabilities into the mainstream of society, we have a long way to go still when it comes to employment. People with disabilities continue to participate in the labor force at less than half the rate of people without disabilities, and only about 20 percent of
people receiving public mental health services have any form of employment.

Despite the proven success of supported employment and customized employment, these services have been scarce. As a result, for far too many people with disabilities the only options are sheltered workshops, sometimes paying subminimum wages, and day programs that do not lead to employment at all. We have the tools to change this.

Supported and customized employment have been tremendously successful in helping people with the most significant disabilities secure and maintain employment. These are evidence-based practices that help people with disabilities work in jobs that pay competitive wages in integrated settings in the community.

Supported employment is founded on the belief that every person with a disability is capable of working competitively in the community if the right kind of job and work environment, can be found. These services help people find jobs that align with their interests and strengths.

Supportive employment services include identifying people's skills, interests and career goals to help match the person with a suitable job,
helping individuals conduct an individualized job search, providing on-the-job help such as counseling and interpersonal skills training to help a person succeed, helping individuals and their employers identify needed accommodations, developing relationships with employers to understand their business needs and match individuals with jobs, identifying how jobs might be restructured to facilitate employment of people with disabilities while meeting employers' needs, and providing benefits counseling to help individuals understand the impact of work on their public benefits.

Supported employment has proven far more successful than other services in helping people with disabilities get and keep jobs. For example, for individual placement and support, or IPS supported employment, which serves people with psychiatric disabilities, about 60 percent of participants are employed at any given time, compared with 23 percent of people who receive other mental health day services.

In sheltered work settings, by contrast, the GAO study found that only 5 percent, and you've heard lower numbers earlier today, participants ever left the workshops to move to integrated employment.
Increasingly, states have recognized the success of supported and customized employment, and a majority have issued employment first policies, recognizing that competitive integrated employment should be the default option for people with disabilities.

Over the last several years, an increasing numbers of states have outlawed subminimum wages for people with disabilities, including New Hampshire, Maryland, Alaska, and Oregon. Some states have banned subminimum wages for state employees or for state contractor employees like Washington and Texas.

Other states have effectively eliminated subminimum wages when they stopped funding sheltered workshops, including Vermont and Maine. Still other states, including Oregon and Rhode Island, that you've heard about earlier today, have dramatically decreased the use of subminimum wages due to settlement agreements in cases challenging needless reliance on sheltered work and segregated day settings.

In addition, the federal government has eliminated subminimum wages for people with disabilities employed by companies that have service contracts with the federal government, starting in
January 2015.

This momentum to eliminate subminimum wages reflects a growing recognition that successful transitions away from subminimum wages are possible if the right steps are taken. We can learn from experiences in states like Vermont, where subminimum wages ended years ago, and Rhode Island and Oregon, where Olmsted settlements brought big decreases in subminimum wage sheltered work and big expansions of competitive integrated employment.

These experiences show that systemic transitions can succeed when effective supports are made available, staff are adequately trained, technical assistance is available to assist with transition, benefits counseling is available, families receive full information, and funding and rate structures are adjusted to support transition.

Bryan Dague will talk in more detail about the experience in Vermont, where since closing the last of the sheltered workshops in 2003, the rates of people with disabilities in competitive integrated employment are now nearly two and one-half times the national average.

Lilia Teninty will talk about the experience in Oregon, where the Olmsted employment
settlement has led to significant positive changes as well.

In Rhode Island, as a result of the settlement agreement to close the front door to sheltered workshops and provide opportunities for people with disabilities to transition from segregated subminimum wage employment to competitive integrated employment, the state more than doubled the number of people with disabilities in competitive integrated employment over five years, and reduced the number of people with disabilities in sheltered workshops by 90 percent.

The National Council on Disability's 2018 report, From the New Deal to the Real Deal, offers insight into measures that stakeholders have found most important to support successful transitions, such as adequate training of qualified staff, belief of provider leadership and staff in individuals' ability to work, and commitment to the values of competitive integrated employment, assistance from centers that provide technical assistance on converting from sheltered workshops to supporting individuals in competitive integrated employment, incentives for competitive integrated employment.
outcomes, including outcome-based payment mechanisms, using successes to educate staff and families about what is possible, and bridge funding to support the initial transition to a new model. Employment is not only important to help people with disabilities to achieve financial independence and self-sufficiency, it is also a key aspect of people's sense of purpose and participation in valued social roles and in mental health recovery. It helps ensure autonomy, dignity and choice.

Subminimum wage employment undermines these key goals. We should be working to phase out subminimum wage employment and build the capacity that is needed to offer people competitive integrated employment opportunities instead. Experience tells us that this can be done if we take the right steps. Thank you.

CHAIR LHAMON: Thank you, Ms. Mathis. Ms. Christensen?

DR. CHRISTENSEN: Good afternoon, and thank you for the invitation to share comments this afternoon. I'm the Director of Policy and Advocacy at the Association for People Supporting Employment First, or APSE. APSE is the only national non-profit organization dedicated to employment first, a vision
that all people with disabilities have a right to competitive employment in an inclusive workforce.

In 2009, APSE became one of the first advocacy organizations to publicly call for the phase out of subminimum wage of people with disabilities. The questions asked of this panel aimed to understand the implications of transitioning employment programs from paying the subminimum wage under 14(c), and from offering services in segregated or sheltered work settings.

To begin with, I'd like to make a distinction between the two separate but related concepts in question today.

There are two avenues through which individuals with disabilities can be paid below the federal minimum wage. The first is the use of 14(c) certificates. The other is through Medicaid, specifically prevocational in group-supported employment services. It's important to understand the interface of the two, because any change to one may impact the other.

Regardless of which side of the 14(c) debate any of today's panelists may represent, I believe we all agree that it is vital to ensure that no individual with a disability is left without
necessary supports and services as a result of any policy change.

APSE came into existence simultaneous to a significant federal investment in implementing supported employment services in the late 1980s. The field has grown tremendously over the past few decades, yet supported employment remains the most widely accepted evidence-based and cost-effective practice for improving competitive integrated employment outcomes of people with disabilities.

Over the past two decades, APSE member organizations who previously operated facility-based sheltered workshop programs utilizing Medicaid funds, have transformed to a service delivery model that promotes competitive integrated employment. Supported employment is a critical component of this transition.

There is clear evidence that sheltered workshops and similar programs can be changed, and that services can be successfully provided in a way that is in sync with our national disability policy, a full integration and inclusion of people with disabilities.

Regardless, prevocational services are currently allowable through the Medicaid waiver, and
under Medicaid rule an individual is eligible for compensation up to 50 percent of the minimum wage while receiving these services.

CMS is clear that prevocational services are not an end point, but a time-limited service for the purpose of helping someone obtain competitive employment. However, in direct violation of the rights of people with disabilities, it is not uncommon to find individuals who have been receiving services in these programs for decades.

Regardless, when Medicaid funding is involved, the law is clear. Services must be integrated and the ability to earn a full wage must be the goal, and to deny opportunities when using Medicaid-funded services is a clear violation.

However, the continued utilization of 14(c) is a slightly different matter. 14(c) is not prevocational, it's a legal designation for work completed by individuals with disabilities who are not working at 100 percent productivity. It's important to note that 14(c), under that Fair Labor Standards Act of 1938, was hugely progressive at the time.

The goal was to help injured veterans assimilate back into the workforce during a period
of time when our society largely institutionalized people with disabilities, but in 2019, 14(c) is used to pay mostly people with intellectual and developmental disabilities a subminimum wage despite the fact that the law was never conceptualized for this population. Arguably, the continued use of 14(c) now perpetuates the stigma of what people with disabilities can be reasonably expected to contribute.

Consider this. My very first job, I was not very productive. Fortunately, I was not expected to perform 100 percent all the time. I was provided additional training, I was cross-trained for other tasks that I might be better suited for. When all available options were exhausted and I was still not performing to expectations, I was, as I like to think about it, provided the opportunity to pursue other employment options.

Throughout the entire process, I was paid minimum wage. The minimum wage is exactly that, a minimum wage. It is the lowest amount an employer is legally allowed to pay an employee. That is, unless you have a disability.

In fact, people with disabilities are the only protected class of U.S. citizens under
federal employment discrimination law, for which there is an exemption from the minimum wage. This fact in and of itself is a civil rights issue.

You’ve asked us to comment on the trends in 14(c). There has been a steady decline in the number of active certificates and the number of individuals served. Some of this decrease is accounted for by state level initiatives. During the 2019 legislative session, 12 states had proposed legislation calling for some level of phase out of 14(c) and subminimum wage. To date, four states have phased out subminimum wage by a legislative action.

Despite the limitations of available data we’ve discussed today, there are positive trends that can be observed, looking at the data that we do have. Of critical concern in the discussion is ensuring that there is adequate funding and capacity within the service delivery system to support the successful transition of individuals into competitive integrated employment.

A cursory analysis of state-level investments in integrated employment funding, simultaneous to the phase out of 14(c), suggests the relationship between the two may have an impact on outcomes.
For example, in the year that 14(c) was phased out in Vermont, the state investment in integrated employment funding increased by approximately two million dollars. At the same time, a moderate increase in the employment rate for people with disabilities was achieved.

In closing, some today are going to argue and will argue that there are people that, due to the severity of their disability, simply cannot work competitively. It is my opinion that to accept this as truth is to summarily discriminate against people with disabilities by applying an inherently unfair standard of low expectations for their potential contributions to our society.

Bill Stumpf, a parent-advocate from Iowa, summarizes it best. When I'm asked this question, he says, I respond to that by acknowledging that I used to be one of the people who believed that, but now I've seen what is possible. I'm not saying it is easy to accomplish, but it is possible, and to accept anything less is to deny the rights of people with disabilities.

At the end of the day it cannot be ignored that the only protected class of employee for which there is an exemption from the basic right
of earning a minimum wage is people with disabilities. When federally funded programs and services contribute to this systematic discrimination, the U.S. Government is complicit in devaluing their existence.

There is much work to be done to untangle the current systems that economically disadvantage people with disabilities. However, it is good work and it is the right work. Thank you for your time.

CHAIR LHAMON: Thank you, Ms. Christensen. Ms. Teninty.

MS. TENINTY: Good afternoon, my name is Lilia Teninty, I'm the Director of the Office of Developmental Disabilities Services for the State of Oregon. Thank you for inviting me to be a part of this briefing.

Oregon is an Employment First state. This means we support people to fully participate in all aspects of their community. This includes employment.

The Office of Developmental Disabilities, along with our partners Vocational Rehabilitation and the Department of Education, have worked diligently over the last six years to align
our services and collaborate to ensure every Oregonian, regardless of their level of support need, who wants to work has the supports and services in place to get, keep, and advance in a job.

Self-advocates and their families have told us that they want to be fully included in their community and they want to have opportunities for jobs with fair wages and opportunities for advancement. Businesses and communities benefit when people with disabilities are integrated into every aspect of our workforce.

People with significant disabilities who were once considered not able to work can thrive in the workforce and add value to the economy. I'd like to tell you first about a woman named Linda. She's 62 years old and went to a segregated school and was told her only option for employment was in a sheltered workshop.

She fought to go to a regular high school, earn a bachelors degree, and despite this, she was still told her only option was a sheltered workshop, because she uses a wheelchair and has significant communication barriers.

As a result of Oregon's Employment First
focus, Linda opened a file with Vocational Rehabilitation and in 2018, was hired at Portland State University's Universal Design Lab. Today, she is a research assistant at that lab.

In Oregon, a crucial aspect of transforming our service system was and is to focus on high school transition-age youth. We want the expectation to be that every student, including those with disabilities, will go on to higher education, technical training, or jobs, like their peers. To achieve these goals, we need to stop the school to sheltered workshop pipeline.

We issued a policy in 2015 ending any new entries into sheltered workshops and making it clear that funding for sheltered workshops will end in 2020. At that time, we had about 40 sheltered workshop providers. Currently, there are five sheltered workshops in Oregon, and I can say that by September 2020, we will not have any.

The impact of this cannot be overstated. Our goal is that kids, regardless of their disability, grow up with the same expectations as any other child, to become contributing members of their communities.

This year, four teens with intellectual
and developmental disabilities were cast as professional actors in a production of Hairspray put on by the Oregon Shakespeare Festival. They were paid as professional actors like their cast mates.

Luke was one of these teens. He is 14 years old, uses a wheelchair and a communication device. As a result of this experience, Luke and his family fully expect he will continue to pursue employment opportunities in his community, no sheltered work for him.

The story of this musical was carried in media outlets throughout Oregon and I am sure helped other youth with disabilities and their family see what is possible with the right support and encouragement.

In 2015, when Oregon closed the front door to sheltered workshops, there were 3,711 people in sheltered workshops, making an average of $4.74 per hour, well below minimum wage at that time. Some individuals made as little as ten cents an hour.

Today, there are less than 300 people that remain in sheltered workshops and those that remain make an average of 490 cents an hour. Additionally, as of September 2019, there are 2,107
people with intellectual and developmental disabilities in competitive integrated employment, making an average of $11.71 per hour.

Earlier this year, the Oregon legislature addressed the wage issue with Senate Bill 494. No employer in Oregon will be allowed to pay below minimum wages as of July 1, 2023.

We expect this legislation will have the largest impact on our qualified rehabilitation facilities who do not receive ODDS funding for the work done by people with disabilities in these settings.

The demand to end subminimum wage for people with disabilities came from many individuals, families, advocacy groups, and provider agencies who have seen the powerful impact of Employment First policies.

To achieve these goals established in our Employment First policy, we created stronger partnerships with Vocational Rehabilitation and local school systems at the state and local levels.

We offered transformation grants to provider agencies to help them plan and execute their organization's transformation from segregated employment settings into entities that help people
access competitive integrated employment. We funded technical assistance for every facility-based employer provider in the state.

We recognize that, for many individuals and families, the staff and leadership of their DD provider agency are trusted more than bureaucrats at the State, no matter how well-intentioned we may be. Getting the support and buy-in from local DD provider agencies and case management entities was critical in this process.

Grants, ongoing technical assistance, developing outcome-based payment methodologies, and walking with these agencies through every aspect of the transformation process were key to implementing our Employment First policy.

We cannot emphasize enough how important it is to engage our partners in this work and provide as much support as possible as these are major systems changes. Oregon continues to be a national leader in serving people with intellectual and developmental disabilities in their community.

In Oregon, there are no institutional settings for people with intellectual and developmental disabilities, everyone has access to a wide array of services, if they are determined to be
eligible, and our Employment First work continues to put us at the forefront of supporting people to be fully participating members of their communities. Thank you for your time.

CHAIR LHAMON: Thank you, Ms. Teninty. Ms. DeSantis?

MS. DESANTIS: Good afternoon and thank you so much for having me --

CHAIR LHAMON: If you would push Talk on your microphone.

MS. DESANTIS: Sorry. Thank you so much for having me here today. My name is Cari DeSantis, I'm the President and CEO of Melwood, a Maryland based CRP.

In 1963, on seven acres of unimproved land across from Andrews Air Force Base, a group of parents pitched an Army tent and began to lay the foundation for a place where people of differing abilities could gain job skills and share in the American dream of dignity and independence through self-generated income. That was the beginning of Melwood.

Today, Melwood has over 1,600 employees, of which nearly 1,000 are people of differing abilities, working across five Melwood campuses and
more than 60 federal job sites. We also train, place, and support approximately 250 people each year in competitive work, in communities throughout the DMV.

We start by believing that anything is possible, when people of differing abilities can pursue their potential. Melwood's employees work hard and take pride in the work that they do, and because of that, we are able to deliver performance excellence and quality service for our customers.

As a nonprofit dedicated to advancing the idea of workplace inclusion, we run our organization like any $110 million business, only the margins from our contracts are reinvested into support services and innovative programs that create even more opportunities for people of differing abilities to enter the workforce.

When I was hired as Melwood's President and CEO in early 2013, I learned for the first time about time trials, commensurate wages, and the Fair Labor Standards Act Section 14(c). Having spent most of my career in human services, I felt that this practice was wrong, discriminatory, and counter to the Melwood vision.

Let me tell you about time trials. Time
trials caused our employees to feel extremely anxious and stressed, as employees knew that their performance could reduce their wages and harm their ability to live happy independent lives.

The time trials did not take into consideration factors that affect all of us, like whether we have a health problem that day or personal issues, something that could impact our ability to perform that task.

More importantly, time trials just reminded our employees that they were different. It focused on their disability, not on their ability to work or their value to the customer. The average employee lost five hours of productive time as a result of each time trial, not including the loss of productivity due to the anxiety distraction. Some of our federal customers went so far as to ban time trials on site, because of the productivity and distraction concerns.

In addition to the immediate concerns of lost wages and lost productivity, these time trials also impacted the overall long-term morale of our employees. A review found that almost half of our HR complaints and vocational support crises calls were related to time trials.
Faced with all of these concerns, one of my first initiatives in 2013 was to begin phasing out the use of our 14(c) Certificate. First, we eliminated subminimum wages. Next, we ended time trials for any employees who had scored 100 percent during two consecutive time trials.

In 2015, we studied the impact on our organization of these initial phase-outs. At that time, 396 employees across 26 work locations were still covered by 14(c) and subjected to time trials. We reviewed the financial impact on our organization of the 14(c) Certificate, including the increase of direct labor costs to our customers, as well as the savings realized by eliminating the overall overhead of the program.

We determined that the increase in direct labor costs to Melwood for the first fiscal year would be about $500,000. We also calculated that the annual cost to administer the 14(c) program was approximately $135,000, and trending upward fast.

In January of 2016, we recommended to the board of directors that we eliminate the use of 14(c) and relinquish our certificate altogether. This was a bold step, but the board concurred.
Since then, wages for workers of differing abilities at Melwood have been determined by the prevailing wage, time in position, and other policies that affect all of our employees.

Melwood has not suffered from this policy, but instead, we have grown from a $90 million to a $110 million organization just in this couple of years. The average wage for a worker of differing abilities working on a Melwood contract is now $15.68 per hour and every Melwood employee is entitled to our excellent employee benefit plans, including health insurance and retirement contributions.

In the nearly four years since relinquishing our 14(c) Certificate, we have proven that the financial cost of discontinuing 14(c) was not only manageable, but a good investment that allowed Melwood to continue to grow and deliver on our mission.

We increased employee morale and employee satisfaction, and we now operate at more than 60 contract sites in Maryland, D.C., and Virginia, and soon, North Carolina, as we continue to develop new business opportunities and serve even more people.
According to the 2017 Melwood economic impact report, Melwood workers of differing abilities earned more than $27.7 million in wages and paid approximately $6 million in federal, state, and local taxes.

Through their spending in their communities, Melwood's workers have generated an additional 135 jobs in other businesses in the region, for a total induced economic output of nearly $19 million in the DMV.

We will soon celebrate 30 years since passage of the Americans with Disabilities Act. It is well past time for us to live up to the ideals of the ADA by eliminating Section 14(c).

The continued use of 14(c) reinforces a demonstrably false and discriminatory narrative that people of differing abilities are not capable of doing much, that they don't warrant investment, and that they aren't going anywhere.

It is a bigotry of low expectations that foreshadows and often directly causes a life of poverty, segregation, and dependency on public support. One self-advocate I have heard, a guy with Down Syndrome who has spoken against 14(c) so very poignantly, said that the subminimum in subminimum
wages communicates as subhuman.  

Today, there are so many hundreds of thousands of people of differing abilities who are paid an average of $2.15 or less, and this is totally unacceptable.  

As a nation, we can do better. We must do better. We've made great strides in improving and ending inequalities in the workplace for women, people of color, LGBTQ+ individuals, and now, we must do the same for people of differing abilities. Thank you.  

CHAIR LHAMON: Thank you, Ms. DeSantis. Mr. Dague?  

DR. DAGUE: Thank you. Good afternoon and thank you for the opportunity to speak about the work being done in Vermont and around the country to fully include people with intellectual and developmental disabilities into our society.  

I'm often asked, when did Vermont decide to change sheltered workshops? The answer is, Vermont's transition away from sheltered workshops began in 1980, with the Supported Employment Demonstration Project.  

Key leaders within the State of Vermont and the University of Vermont were driven by the
values and belief that people with disabilities
deserve to be part of the community like everyone
else, not institutionalized or segregated.

The Supported Employment Demonstration
Project started in a sheltered workshop in Barre, Vermont. Staff found community-based employment for
workers, with support and training from agency job coaches.

It took about three years to successfully move about 70 people out of the
facility into community employment. The success of this Demonstration Project led to replication sites
throughout the state.

Since the initial Supported Employment Demonstration Project, inclusive employment of individuals with intellectual and developmental disabilities has steadily increased.

The sheltered workshops gradually closed as people found employment in the community or became involved in other community services. In 2002, Vermont closed its last sheltered workshop for people with intellectual and developmental disabilities, becoming the first state with no sheltered work.

Vermont's current rate of employment for
individuals with intellectual and developmental disabilities is 47 percent, compared to the national average of 19 or 20 percent. The agency that housed the last sheltered workshop actually has an employment rate closer to 75 to 80 percent.

The vast benefits of employment for people with disabilities include increased income, a sense of contribution, skill acquisition, increased confidence, independence, identity, social connections, and the opportunity for people to develop meaningful careers.

Employers and communities benefit from the social inclusion and diversity people with developmental disabilities bring to the workforce through improved morale, customer loyalty, overall productivity, and their unique gifts and talents.

Observing people with developmental disabilities productively engaged in the workforce helps employers and community members see the valuable contributions of people with disabilities.

The shift in philosophy and practice from facility-based to community-based employment services also shifts energy and resources.

Since Vermont has no segregated employment, other opportunities are nurtured and
supported, including Project SEARCH programs, the high school vocational training program. There's three locations of Project SEARCH in Vermont.

There's post-secondary education programs, like Think College at the University of Vermont, that's a post-secondary ed program for students with intellectual disabilities. That has been going since 2010. And College Steps has replicated that program at three other state colleges in Vermont.

There's the SUCCEED Program, which is another post-secondary transitional living program. As well as Global Campus, which is a lifelong teaching and learning program.

So, there are numerous educational and vocational training programs for people. People who would have been relegated to sheltered workshops are now students in these education and vocational programs, resulting in employment.

As the Director of the Think College Program at the University of Vermont, I see the positive impact this program has, not only on the students, but for the entire University community. Students with intellectual and developmental disabilities today are preparing for community life
and employment, not segregated sheltered work.

The subminimum wage model is outdated and not needed when there are so many other options available. Services have improved so much over the years with supported employment, customized employment, self-employment, and expanding post-secondary education programs.

We need to continue to improve and expand these services and not hold onto antiquated models with low expectations that hold people back. When institutions and sheltered workshops no longer exist, the overall culture changes.

When people with disabilities are in and part of the community, the community is richer for it. Employers will hire and include people with disabilities at a competitive wage. When there are no sheltered workshops, it becomes the norm. The expectation is to be part of the community, including work.

I understand the transformation of services can seem difficult and daunting, but it can and should be done. We've been hosting the Sheltered Workshop Conversion Institute since 2007, to provide assistance to states and agencies with this transformation, and many organizations have
been successful.

Successful agencies have been forward-thinking in changing their culture and services to meet the needs of future generations, not holding onto outdated models. Younger families are seeking community inclusion, not segregation.

It has been 17 years since we had sheltered workshops in Vermont and we have not looked back. It is time to look forward and create a better and more inclusive world for people with disabilities. Thank you.

CHAIR LHAMON: Thank you, Mr. Dague. I'll open now for questions from fellow Commissioners. Commissioner Kladney?

COMMISSIONER KLADNEY: Thank you, Madam Chair. Ms. Mathis, we've had some testimony here today that subminimum wage work is therapeutic for people with mental health challenges. How would you respond to that?

MS. MATHIS: I think, if you actually talk to folks who have run mental health systems, who have expertise in mental health and employment, most of them will say that employment is the best treatment for mental health, that employment is key to mental health recovery, and that working in an
environment like a sheltered workshop, especially with subminimum wages, which conveys, I think as folks have talked about, that a person is really of diminished value, is damaging to people's mental health.

And I think there have been some studies about, certainly, underemployment, unemployment, and the impact on people's mental health being devastating.

COMMISSIONER KLADNEY: Thank you. Ms. Teninty, did I say that right?

MS. TENINTY: Teninty.

COMMISSIONER KLADNEY: Teninty, thank you. How difficult was it to change the culture from work centers to competitive integrated employment? And how many issues do you face, what issues do you face when you work with employers trying to get them to hire people with disabilities?

MS. TENINTY: Good question. I would say, in terms of what issues do we face?, and I say we as a state, I'm not representing a provider agency, I can just say from looking at what occurred, I think some of the biggest challenges we faced were around perceptions and changing the ideas behind what people with intellectual and
developmental disabilities are capable of.

People go into this line of work because they care about people with intellectual and developmental disabilities, and that is true for our provider agencies that at one point were offering sheltered work, segregated employment opportunities.

And so, it was really an effort to help their boards of directors, who are often volunteers, they're often community members, parents of people who work in the segregated environment, to help them really see what was possible.

And to invest, financially, from the state perspective, in helping them, by providing transition support, technical assistance, laying out plans for how the organization could move in that direction. I will -- it's not an easy process.

I've talked to several executive directors throughout the process, and I think I can say one of the challenging things that many of them get to a point where they recognize, is the workers, their staff that they have working in the sheltered environment is not the staff they need to be the ones going out and trying to seek competitive integrated employment for people.

And so, we offered training through APSE
and other entities, and they could put people through that training, but ultimately there were staffing decisions that had to be made based on the direction they were going.

Family resistance in those organizations. I've attended many family meetings for family members who worked in these environments, who just absolutely are very resistant.

Very similar, honestly, to what I've experienced and others have experienced when we move forward with closing institutional settings, it's a very similar dynamic. And it's just the reality of what people have come to expect and what they want for their family member, and it's helping them move forward with seeing what's possible, the bigger goals and ideas.

And to the second part of your question, the challenges that we continue to face today, honestly, I'll speak to one that is not unique to Oregon. A lot of it ties back to the workforce for our provider agencies, who are doing job coaching and supported employment and going out and doing job development, that continues to be a challenge for us.

And other pieces of it, we think we are
about through a final step with our friends at the Centers for Medicare and Medicaid Services, getting approval on an outcome-based payment methodology that we've been working on now for about five years. Once we have that, that will be a hurdle that we will have overcome, I would say. So, I think those are currently issues.

Another piece that I would say that we have worked hard on and has been a challenge is, again, along with the public perception is employer perception, and we've had a big, very successful I Work We Succeed marketing campaign in the community.

Initially, it was targeted toward individuals and family members, helping them understand what was possible. We've shifted now and we're focusing on employers and holding up employers that hire people with intellectual and developmental disabilities as examples of what's possible to their colleagues and other business owners in their areas.

COMMISSIONER KLADNEY: Thank you. Mr. Dague, you mentioned about the seminar that you run.

DR. DAGUE: Yes.

COMMISSIONER KLADNEY: Is this approach being adopted in places other than states that have eliminated 14(c)? And how are these programs funded
with federal money?

DR. DAGUE: Well, I know the State of Ohio has done a lot in terms of transforming their services. And I think they've done an excellent job with that, because they've put in money and resources and training for their agencies to do that. As far as other states, it varies. I know New York State has done some work, Ohio, it all depends on the state and what their initiatives are.

COMMISSIONER KLANDNEY: Okay. And how about the funding? How's that work for you? Because I understand that it's not easy all the time to get the funding.

DR. DAGUE: It's not easy all the time. Again, it sort of goes back to the states and how their Medicaid waivers are funded. Vermont has chosen to individualize the budget, so the budgets are built around the individual's needs. Some other states kind of divide it evenly amongst everybody, so that leaves very little money for services for each person.

COMMISSIONER KLANDNEY: I think you said 47 percent of people have found --

DR. DAGUE: Yes.

COMMISSIONER KLANDNEY: -- competitive
integrated employment.

DR. DAGUE: Right.

COMMISSIONER KLANDNEY: So, that would leave 53 percent that have not, is that correct?

DR. DAGUE: Yes.

COMMISSIONER KLANDNEY: So, what do those folks do?

DR. DAGUE: Well, some of them are looking for work. Some are choosing not to work. We're sort of more of an Employment First state, the policy and philosophy, more than policy, so we don't require people to work, so if people choose not to work, that is up to them. Others are choosing community-based services rather than employment. We really push employment, that's our preferred option, but it's still up --

COMMISSIONER KLANDNEY: Community-based services being?

DR. DAGUE: Well, they can use their Medicaid waiver, ours are divided into either employment supports or community supports. So, they could use their individual budgets for more community-based activities, which could include volunteer work or going to the YMCA or local clubs or activities and things like that.
COMMISSIONER KLADNEY: Okay. Ms. Teninty talked -- did I say that right? Good -- spoke about problems with job developers and job coaches, and it's my understanding that that problem, with those two professions, seems to go through the states that have gotten rid of 14(c).

DR. DAGUE: Well, yes, I would say that the direct support professionals is kind of a crisis level throughout the country, that we need a lot more people to work than are willing to do that. A lot of it is the wages.

And one of the questions earlier was how to develop a career path for that? And we're working on that, we're looking at that at the University of Vermont right now, to see if we can develop more kind of certificate programs, to train people, so that they understand that it is a career track. And that would make them eligible to sit for the CCEP certification that national APSE offers, to give it more of a credible career.

COMMISSIONER KLADNEY: And one last question, would it be -- what would see and would it be worthwhile to come to Vermont to see how you function?

DR. DAGUE: Sure.
(Laughter.)

DR. DAGUE: Come and visit.

COMMISSIONER ADEGBILE: Depends on the month.

(Laughter.)

DR. DAGUE: Yes.

(Laughter.)

DR. DAGUE: Yes, come in the fall or spring. But I'll address the employers, because one of the issues, I think, that happens is that, when we don't have sheltered workshops or, institutions or Sheltered Workshops, the community gets more used to us knocking on their doors asking for jobs. So, they're familiar with the concept of supported employment, to the point where sometimes they tell you that you're bothering us.

So, we've developed what they call business account managers in the six regional areas of Vermont for VocRehab, so that one person is sort of the point person for employers. So, that business account manager does the outreach, kind of keeps the accounts of local employers, to kind of consolidate it a little bit for all the service providers.

COMMISSIONER KLADNEY: I think I have to
yield, thank you.

(Laughter.)

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Thank you. I have a couple questions. One is for Ms. Mathis. So, some argue that in the area of, I don't know the right terminology or pronouncement, the SWEP, the school-based 14(c) Certificates, there's only a handful remaining, right?

And some have called for the immediate revocation of them, because they believe they conflict with the existing law. So, I wanted to get your take on that.

MS. MATHIS: Well, I think, certainly to the extent that they are being used now to serve folks, and really, I think, transition folks from a school setting into sheltered work, they needlessly segregate people with disabilities. I think they probably are in conflict with, certainly at a minimum, federal civil rights laws, the ADA, Section 504.

It's complicated, but I think that there is a, very much like the lawsuits in Oregon and in Rhode Island, I think an ADA issue and probably an ADA violation. So, I think with all of these, I
would say they should be phased out, certainly, phased out just like 14(c) Certificates.

I don't know how many precisely there are at this point, but I think generally everyone seems to agree that, to the extent that we should eliminate these subminimum wage certificates, it's important to ensure that we have the alternatives, that the infrastructure is there.

And so, that is why I think folks have mostly said, we shouldn't necessarily cutting everything off tomorrow, but we should make sure that we are working with states, working with, in this case, schools, to actually make sure that they have the supports in place to support people in integrated alternatives.

COMMISSIONER NARASAKI: So, what's the argument for not just immediately ending them, but actually having a phase-out? Is it really the same situation as for the other kinds of programs or is there a different argument to be made?

MS. MATHIS: I mean, I think that, to the extent that we -- I don't know if others want to add to this --

COMMISSIONER NARASAKI: Sorry, I don't mean to be --
MS. MATHIS: -- but to the extent that --

COMMISSIONER NARASAKI: -- picking on just you.

MS. MATHIS: No, no, no, that's fine.

But I think we do need to, I think, do some work to build -- we have the capacity, we have done it, we know how to do it, but it isn't there everywhere, I think.

So, rather than sort of ending everything tomorrow, I think it would be important to say, here's our plan and here's the time frame over which we're going to do it and here's what we think we need, here's how we're going to achieve it, and have a reasonable and fairly quick goal to do that.

COMMISSIONER NARASAKI: Great, thank you. Ms. Teninty, so, we heard testimony from a prior witness that they're starting to see the kids who did go into integrated work right from school now starting to come back, or seek sheltered situations.

From what happened in Oregon, are you seeing that, or Vermont, are you seeing that, and if so, what kinds of changes are necessary in order to help them be successful so they don't end up needing to come back?
MS. TENINTY: I would say -- thank you for the question. I would say, in Oregon, we wouldn't see that, because we've closed the door to the sheltered workshops. So, once transitioning youth transition into competitive integrated employment or other opportunities, there isn't an avenue for them to come back into a sheltered workshop setting.

So, what we have in our system is we offer a wide array of services, in addition to employment-related services, that we partner with Vocational Rehab on. The DD system has a wide array of services, we do a lot of one-to-one individual community support in Oregon for people with intellectual and developmental disabilities.

And then, I would also say, in a case of a youth who transitions to work and then maybe is not successful, to use the example we heard earlier about having other opportunities to go look for other things, we would want them to come back through, through Vocational Rehabilitation, go through another process.

Maybe the job wasn't a good fit, maybe we didn't have a clear idea of exactly the type of opportunity that they were most interested in. And
then, we'd want them to try again, just like we would expect with people without disabilities.

COMMISSIONER NARASAKI: So, I get that you don't have the sheltered work, but do you have day programs? Is that a number that --

MS. TENINTY: We --

COMMISSIONER NARASAKI: -- is going up, as it is in some places?

MS. TENINTY: We do have day programs and we do have people who do a mix of employment and day-type services. We have seen, I'm trying to think back to the latest data I saw, I think we've seen an increase in the use of day services.

In Oregon, one of the uniquenesses that I mentioned earlier about our system is that we don't have waiting lists. We don't have a system where people wait to get onto a waiver. If you're determined IDD eligible in Oregon, you automatically have access to services, which is really good in a lot of ways.

It in some ways, though, exacerbates the issue I mentioned earlier about capacity for all types of our providers, not just employment providers. And so, it may be that people choose a service or go to a service while they're waiting for
capacity in another area or another service.

So, we do have people who are doing a number of different things, small group employment, maybe, in addition to competitive integrated employment, competitive integrated employment with one-to-one, what we call ADL/IADL support in the community, going grocery shopping, doing other activities in the community. So, we do have people who have, definitely have a lot of people with that kind of mix.

COMMISSIONER NARASAKI: And in Vermont?

DR. DAGUE: Yes, we don't have, well, we don't have people returning, because we don't have the sheltered workshops anymore, but I think the larger issue of this is that the key is really good training and supported employment and customized employment.

So, if someone is really well-trained and versed in how to do a good assessment and discovery, get to know that individual, what their skills and abilities are, what the best environment will be for them, combined with employer engagement and knowing how to approach those employers and sort of negotiating or carving a job for that person, if that's really done effectively, then they're going
to be happy in that job and we won't see them coming back.

So, I think that training is really key, because we don't talk -- we use terms like conversion and transformation rather than closure, because we really want this to be a transition of services, not just closing a sheltered workshop, but transitioning from sheltered employment to good community-based employment.

COMMISSIONER NARASAKI: Thank you. One more question. So, Ms. DeSantis, I was very impressed that Melwood was really looking at the full picture of what does it cost to actually implement this program and, particularly, what the cost of doing this kind of testing. Are you aware, have there been other studies or other companies who have looked at it this way, and what have they come up with?

MS. DESANTIS: Specifically about the time trials?

COMMISSIONER NARASAKI: Time trials or just, does it make economic sense to --

MS. DESANTIS: Yes. I'm not aware of other studies that have been done. We needed the justification to go to our board and say, hey, this
is, first of all, it's not right, and here's the numbers, this is what it's going to take for us to make that transition. And so, we undertook the study.

And that was part of the reason why it took us a couple of years to do the phase-in and we couldn't just do it immediately, because we needed to know what it was going to take and how to get there. But I'm not aware of any other studies that have been done at this point.

COMMISSIONER NARASAKI: And you feel that actually without having to work within the 14(c) system, that you've now been able to thrive?

MS. DESANTIS: Oh, absolutely. The impact on our morale, not just for the employees who were affected by the increased wages, but the employees around them as well, it sort of creates a much more equal environment for all of us. And, you know what, it's really enhanced teamwork and pitching in to help each other when needed.

I should note that we also have vocational support services that we offer to about 700 of the 1,000 employees who have a specific diagnosis, and that also helps as well.

And that helps our managers who are
managing employees of differing abilities to be able
to understand maybe what's going on or to work
through a challenging period. Or if there's a
breakdown of some sort, our voc support people are
able to step in. So, that's made a huge difference.

But in terms of the raising the salaries
and the -- I just think it really goes to the sense
of self-worth that, you and I are doing the same
job, I should be -- maybe I'm a little bit slower,
but we're still doing the same job and we're getting
it done. And I think there's a lot of value in that
and we believe it's really impacted our bottom line.

COMMISSIONER NARASAKI: And how did you
get the parents to buy-in?

MS. DESANTIS: So, the vast majority of
the people were already working for us. And so, I
think the parents felt safe with Melwood, we have a
good support system. We've always had a good
support system in place for our workers. So, and I
don't know that that was a big challenge at all.

There -- we have great benefits as well
and they've been able to have benefits, just like
the rest of us. And so, in terms of health
insurance and, like I said, retirement contributions
and everything else, it's really the big picture.
And I think the parents are happy that their son or daughter really could have a future and could be working toward independence.

And I know, I always look at any of the situations I come across in my entire career of social services, if this were my child or my loved one, what would I want? And that's the approach that we've taken and it seems to have worked.

COMMISSIONER NARASAKI: Great, thank you.

MS. DESANTIS: Thank you.

CHAIR LHAMON: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Thanks for the testimony. I have a question, Mr. Dague, about the Vermont experience. What were those stats again, with 53 percent that are not yet employed? Is --

DR. DAGUE: Well, many of them are looking for work, they're in sort of the job development process, or they may have chosen not to pursue employment at this point.

COMMISSIONER ADEGBILE: So, I'm trying to figure out how that stat relates to the stat we heard from another panelist about the Vermont experience being two times above, more than two times above the national average in employment after abolition. Are these like different stats that are
swimming around? I'm just trying to understand what
the experience is.

DR. DAGUE: Well --

CHAIR LHAMON: The national average is
very low.

DR. DAGUE: Yes, the national --

COMMISSIONER ADEGBILE: So, that's that
answer.

DR. DAGUE: Yes, the national average of
employment is about 19 or 20 percent of people with
intellectual and developmental disabilities.

COMMISSIONER ADEGBILE: So, the 47, then,
is that number? Because it's so low elsewhere?

DR. DAGUE: Yes.

COMMISSIONER ADEGBILE: Okay. And
earlier we heard, and I'll broaden this to the rest
of the panel, earlier we heard some testimony about
a concern about moving away from the 14(c) regime
and the impacts it would have on a certain age
demographic that participates in it. And I'm
wondering if folks have any experience or reaction
to the concern that stepping away from 14(c) could,
in effect, leave certain populations stranded or
without adequate alternatives?

DR. DAGUE: Well, I would refer to the
first report by the National Council on Disability that came out in 2012, and they came out with a set of recommendations saying to target sort of the newer folks first.

People that have been there for the shortest amount of time, target them for supported employment first. Then the second third that have been there the middle amount of time, to target them second, because you are going to have the third group, which is probably more retirement age.

And we saw that with the last sheltered workshop in Vermont, that some of these folks had been in their workshop for their lives. So, they weren't really looking for community-based employment, they were looking for more of a retirement plan.

So, that's one recommendation I would have, to take it kind of in those stages. I've recommended like a three to five-year plan for converting a sheltered workshop.

COMMISSIONER ADEGBILE: Did others want --

DR. CHRISTENSEN: Yes, if I could --

COMMISSIONER ADEGBILE: -- to get -- Ms. Christensen?
DR. CHRISTENSEN: If I could add to that, because in the earlier testimony, we were discussing, what about folks who are 45, 50-plus? And one of the things that we need to consider is --

COMMISSIONER ADEGBILE: I object to that being characterized as old.

(Laughter.)

COMMISSIONER ADEGBILE: Just for the record.

DR. CHRISTENSEN: Older, didn't I say older?

CHAIR LHAMON: Based on personal experience.

DR. CHRISTENSEN: I'm in the -- well, yes.

COMMISSIONER NARASAKI: I join you in that objection.

(Laughter.)

DR. CHRISTENSEN: That's fair. But one of the things I think we need to look at, and I'm so appreciative of all the questions we've had around transition-age youth, we have so much more in place for young folks, through special education services under IDEA, through Pre-ETS and WIOA, there's a lot more in place to help folks who are younger
transition.

To the point that was made earlier, what about folks who did not benefit from that? And I think that's one of the reasons why, I'll speak for APSE, we appreciate the approach of the Transformation to Competitive Employment Act, because it recognizes that we need to think about this in a purposeful way.

There are some folks that may want to retire with dignity from what they have considered to be work up until that point. And who are we to say that that's not a viable option, when they did not benefit from the laws and the opportunities that we now offer for youth?

MS. MATHIS: Yes.

COMMISSIONER ADEGBILE: Why don't we go to Ms. Mathis --

MS. MATHIS: Okay.

COMMISSIONER ADEGBILE: -- and then, Ms. DeSantis?

MS. MATHIS: I would just add, I think that has generally been a favored approach, to focus on folks who are younger and have not had many years of experience, where they have sort of gotten used to working in a certain setting and coming to tell
them, now, we want you to do something else, or we're offering you something else.

It's always more difficult, I think, for people to make choices about things that seem harder to envision because they've lived their whole lives a certain way. However, I do think that it's important, just as it has been in transformations of service systems with living settings and what we offer people, to not abandon those folks either.

Because it may take more conversations, it may take more assistance and helping people to envision what life could be, what it would mean to work, what it could look like, more visits in the community, more engagement with peers, with people who are working, with people who have been in their situation.

But as anybody who has done sort of systems change will tell you, I think some of the people who have benefitted the most and the people whose lives change the most are, in a good way, are people who initially were resistant or reluctant, people who couldn't envision it, people who needed a lot of help.

And so, I would say that, yes, while I think people often will focus on what sometimes
people call low-hanging fruit, or people who it would be an easier transition for, an easier conversation with, we should not abandon the folks for whom it might be more challenging.

MS. DESANTIS: As a service provider, I would like to offer a couple of thoughts. So, we are an employment agency, as well as a service provider. And on the service side, we focused a lot on transitioning youth.

The young people coming out of school today, this generation, their expectations are so much greater and their parents' expectations are so much greater than the generation before them, clearly, maybe even the half generation before them.

And they have grown up with cell phones and iPads and computers and smart TVs and all of this. And so, we have to -- I think it's incumbent upon us as service providers to think about what does that future for them look like, what could it look like?

One of the things that Melwood is piloting now is a program we call abilIT, which is, we've partnered with an online cybersecurity technology training program and wrapped our rehabilitative services and our Pre-ETS type of
programming around that, to teach young people, and it's open to anyone, but it's primarily the younger ones who have accessed it, to be able to take certifications for getting into the IT field.

We started in the spring, we've had, I'm going to say we've maybe had about 40 people go through it now. About, so far, about half have gotten, more than half have gotten their certifications. Half of them have gotten a job or decided they wanted to go on to college.

I mean, these are the kinds of things that we have to think about for our young people. We also -- I believe it's incumbent upon us to think about, where is the workforce in general going and what is the impact of the gig economy, remote work, and all of those kinds of things that, at any age one could do, but again, it goes to the point of much older folks that we've been working with maybe have not had the access to computers or the ability to really be able to engage in that.

But let me tell you about this older group of women that we have in our Waldorf location, Waldorf, Maryland. We call them the Super Sewers. This is a group of women, I'm going to say the average age is probably maybe in the 50s somewhere,
and their group caregiver taught them how to sew a number of years ago.

And today, they make quilts and blankets and placemats and pillowcases and all of these things, and then they sell them at bazaars and things, and then they get paid for that. So, it's sort of that, the way of the future, it's sort of the Etsy model, I call it.

So, there are a lot of creative ways we can think about helping our individuals move not only into competitive integrated employment, but into the gig economy and into new ways of working that is affecting all of us in the workplace.

And I think it's incumbent upon us, as sort of the helpers in this situation, to enable families and individuals to think about something different, a different way of what the future might look like.

CHAIR LHAMON: Thank you. Madam Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Thank you very much, Madam Chair. Ms. Christensen, you say that APSE was the first advocacy organization to call for the phase-out of Section 14(c). And so, I was just wondering, why it is that you, I think I've
heard the answer to this, but why is it that your organization chose to elect a phase-out model rather than calling for the abolishment of 14(c) altogether?

DR. CHRISTENSEN: And just to be clear, we're one of --

(Laughter.)

VICE CHAIR TIMMONS-GOODSON: Okay.

DR. CHRISTENSEN: I don't want to go on the record --

VICE CHAIR TIMMONS-GOODSON: Okay, all right.

DR. CHRISTENSEN: -- I have no idea who said it first.

(Laughter.)

DR. CHRISTENSEN: But regardless, it's an excellent question. And I think from APSE's perspective, as an organization, we came into existence through the lens of supported employment. And there's a recognition that this takes time.

And so, when we think about the reasons why folks may not be working, our members are experts in doing this. Our members are the ones who have figured out how to make it happen, which was discussed earlier, that doesn't make it easy, but
that it can happen.

Whether it's better training, better technology, better resources, better job fit, I mean, all of those things play into the equation. But what our members would also recognize is that we don't have a service system that is currently funded and currently has the capacity to reach the goals that we want.

So, if we wave a magic wand, let's just say, and 14(c) is not our reality when we wake up tomorrow morning, there would be people with nowhere to go, because the service system is not yet prepared to provide the level of supports that are needed for every single person to have access to competitive integrated employment. That does not mean we should not be working towards that goal.

VICE CHAIR TIMMONS-GOODSON: And that's what I thought I heard, that's the answer I thought I heard to the question.

DR. CHRISTENSEN: Thank you for letting me clarify.

(Laughter.)

VICE CHAIR TIMMONS-GOODSON: But I think what you've said here is a testament to the complexity of this issue. You can see why folks
would argue there ought to be a choice. And while paying, integrating folks fully would be the perfect solution, as I think the governor or somebody mentioned, let's not let the perfect destroy the --

DR. CHRISTENSEN: The good.

VICE CHAIR TIMMONS-GOODSON: -- good or whatever. But I was wondering about expectations, managing expectations. And so, if someone could talk to me about -- I heard one time how when a child sees more or sees better, he or she wants better, wants more, and so, that's related to expectations.

But as we move away from 14(c), can someone talk to me about managing the expectations, getting parents, some are already wanting more and seeing more and better for their students, as they transition from high school, and then, there are others that might not quite be there, but any that wish, please talk to us about expectations and the role that expectations plays in this issue.

DR. CHRISTENSEN: So, I think it's an excellent question, and what I would say in return is that I think the systems rise to meet expectations. And what we don't have right now is that high expectation that this is what we should be
expecting for every U.S. citizen, we have too many avenues that allow for us to say, except for this person.

So, pardon me, I call myself a true inclusionist, in the sense that we're really good at saying, we believe in the inclusion of everybody, except when. Except when we're worried about their safety. Except when we're worried about fill-in-the-blank.

And if we are going to be an inclusive society, then that means that we have to all inherently own that we have exactly the same expectations for all citizens, regardless of whether or not disability is part of that equation.

MS. DESANTIS: I think about the expectations we had of women in science over the years. When I was coming up, women in business, women in science, we -- and then, think about today, the emphasis on STEM for girls, and Girl Scout troops and YWCAs and everybody is emphasizing the STEM, the science, technology, engineering, and math, for girls.

That goes directly to your point of expectations. We are saying to those young girls, we expect that you can do this. If you're
interested in this, we expect you can do it and here's how. We're going to help you learn that skill, so that if you want a career in science, technology, engineering, and math, you'll be able to find it.

To me, it's the same thing. If we expect more, if we expect that each individual has abilities, as I said in my remarks, we start with the notion that anything is possible. You might need some training, you might need some support, you might need somebody there coaching you and pushing you, and maybe it's a parent, maybe it's a teacher, maybe it's a coach, maybe it's your service provider. But to me, that's the expectation question and we've seen so many examples throughout history, the same thing applies here in my estimation.

DR. DAGUE: And I agree. The -- we can't start too young with the families. When my niece with Down Syndrome was three months old, my sister asked me to come to present at her family group. And I do adult employment, so I went and talked about the employment services for adults with disabilities, which a lot of people thought was kind of inappropriate for a three-month-old. But --
(Laughter.)

DR. DAGUE: But I think it changed a lot of the families' minds from that very start, because I was able to show them individuals with significant disabilities working in the community. I think that changed their expectations.

Kansas University has a family employment awareness training, which targets young families, to teach them about, raise expectations, teaching them about benefits, about employment programs. So, they're not thinking about segregated sheltered services, they're starting at a very young age thinking about life in the community, community-based jobs, post-secondary programs like our Think College program.

I was at one conference for Think College and did a panel presentation and there was a mom that was at my table who had a five-year-old with Down Syndrome and she came to the conference because she heard about these programs and wanted to know, what do I need to do to prepare my son to be able to be eligible for a program like this and how do I pay for it? So, she was starting at a very young age, of raising those expectations.

MS. TENINTY: I'd like to add, if I can?
That's been a fundamental part of the work we've done in Oregon, is changing expectations. That's a big part of the marketing effort that went out and why we targeted individuals and families first, was to really help raise expectations.

I do want to, though, tie this back a little bit to the question that was asked earlier, because I would say, from the experience we've had, and while, yes, in terms of older adults in sheltered work --

CHAIR LHAMON: Commissioner Adegbile's age.

MS. TENINTY: Yes.

(Laughter.)

MS. TENINTY: Older adults --

COMMISSIONER ADEGBILE: We are protected under federal civil rights law, just for the record.

(Laughter.)

MS. TENINTY: Older adults in these settings, we definitely took the approach that was laid out here by a few of my fellow colleagues who are testifying, of focus on the younger individuals who have been in these settings the shortest period of time.

What I would say about that, though, is
some of the most exciting transformation stories, individual success stories, we have are actually with adults who I feel in my heart had the expectation that they wanted to work in competitive integrated employment their entire lifetime, but just were not given the avenues or the opportunity to do it. The woman I mentioned earlier in my testimony is in her 60s and she got her job last year, in 2018.

Another gentleman in his 40s had been in day program and sheltered work for many, many years. His parents really never expected him to get a competitive integrated job, they looked at this whole effort with high suspicion.

Just a few weeks ago, the father of that gentleman came to Washington to testify in a Congressional briefing, talking about how his son now has a job in the community, is making over $11 an hour, and he understands now that his son has so much more potential and it's just made a huge improvement in his life.

So, I think there's valid approach to moving this work forward in other states, in other systems, people have been in these settings the least amount of time.
I also don't -- I would hope, though, in doing so, we don't give up on the fact that we've got people who are in that older age group who also want the opportunity to have competitive integrated employment.

CHAIR LHAMON: Thank you.

MS. TENINTY: Thank you.

CHAIR LHAMON: So, we are past time, but I think Commissioner Kladney has one last very brief question.

COMMISSIONER KLADNEY: My question is very brief, I don't know about the answer.

(Laughter.)

COMMISSIONER KLADNEY: Mr. Dague, and anybody else on the panel, during the time we were doing research for this project, we looked at the State of Maine and they had, apparently, from what I read, some issues, and still have some issues regarding the transition. And I understand that the other five states that have transitioned have had an easier time of it.

Do you know what the problems were in Maine and if they can be rectified or what the situation is?

DR. DAGUE: I'm not entirely sure, but I
think you're referring to, I think it's called the Chimes report, is it the Chimes report that reported on Maine's services?

COMMISSIONER KLADNEY: I can't remember, I'm old.

DR. DAGUE: Yes, but I think that was very questionable.

COMMISSIONER KLADNEY: Well, there was a report that said that there were lines at Vocational Rehabilitation and long waits, because they didn't have enough people at VocRehab to assist folks. And that's all I read --

DR. DAGUE: Okay.

COMMISSIONER KLADNEY: -- that's all I remember.

DR. DAGUE: Yes, I'm not sure about that, but I think this sort of goes back to what I said earlier, more that planful conversion, just sort of shutting down a workshop and then having people wait in line is not effective use of services, it's sort of like help one person at a time and gradually get them out.

COMMISSIONER KLADNEY: So, are you --

CHAIR LHAMON: So, with that, we will say thank you.
(Laughter.)

CHAIR LHAMON: We very much appreciate your time. And we'll be back at 3:20.

(Whereupon, the above-entitled matter went off the record at 3:15 p.m. and resumed at 3:20 p.m.)

CHAIR LHAMON: So we'll now proceed to Panel 5, which is about reform to the 14C Program at the federal level. In the order in which they will speak, our panelists are Representative Glenn Grothman, who is a member of House Committee on Education and Labor, and Kate McSweeny, who is Vice President of Governmental Affairs and General Counsel at ACCSES, the voice of disability service providers.

Then Anil Lewis, who is the Executive Director of Blindness Initiatives at the National Federation of the Blind, and Brian Collins, who is Senior Manager for Planning, Change Management, and Accessibility at Microsoft. And finally, Regina Kline, who is a partner at Brown, Goldstein, and Levy. Thank you. So Congressman Grothman, please begin.

PANEL FIVE: REFORM TO THE 14(C) PROGRAM

AT THE FEDERAL LEVEL
REPRESENTATIVE GROTHMAN: Thank you. I've never been before at a hearing exactly like this, so I'm kind of disappointed we're having it here because I've been involved in this issue off and on for many years. I'm a congressman who represents 10 counties in the State of Wisconsin, and in those 10 counties we right now have 10 active -- I don't know what the politically correct name is right now -- work centers.

I've toured them all, and was a state senator, I've toured another, so I'm very familiar with 11 of them. I hope you've all toured them and toured several because really, you're going to find out more in the first two hours at a work center than you will sitting here and reading all the legal mumbo jumbo that you're going to get.

There are tremendous things to look at because you see people who most of us would think of have been dealt a tough lot in life, and they're smiling and happy and are so proud to have lives like their siblings and friends -- to go to work every day, to earn a paycheck.

Usually they're subsidized in other ways because they have different abilities, you know. We have SSI or SSDI programs, so they don't have to
earn enough to pay for a $700-a-month apartment or anything like that. But they're very proud of the situation as I am, and as a result I've always been kind of considered an advocate for them.

Since being involved in this issue, not just 14(c) but other issues as well, it stunned me that some of the bureaucrats who have to make decisions on this have never toured the work centers, which is just almost beyond belief. Because, at least where I'm from in Wisconsin, we have, I would say, that there are a couple of counties that don't, but we have almost at least one per county, and in the larger counties they have more than that.

And it's scary that people could ruin the lives of so many people dealt a difficult problem without having a chance to tour them. I'd almost really rather say I'll step down, let's drive a few miles into Virginia or Maryland and look at what we have. But these are my opinions.

All of my 10 work centers are non-profit. The people who work there, if you get to know them, are saints. As I understand it, before I was here some people were denigrating them a little bit. People who spend their life working with
handicapped, working with people who are non-verbal, working with people who have to be toileted, are saints. They're not doing it to make money; they are not doing it to take advantage of people, okay? And you should be appalled if anybody says anything else about these folks.

Like I said, the pride in meeting these people is tremendous. We are actually going to have an awards ceremony for them tonight back in Sheboygan. I'm going to miss it because I want to testify before you folks. Some of the people who work here work in the community a few days a week, five or six days a week, and they may enjoy working that. But a lot of those people work five or six hours a week, and are only able to work five or six hours a week. Then they go back to the work center where they get supervision and they deal with a staff who knows how to manage people who may have a personality problem, may only be able to move one arm; may not be able to hold their head up, that sort of thing.

In some of these work centers 85 to 90 percent of the people work for under minimum wage. If you ever tour a work center, you know exactly why that is -- because you are dealing with people who
have been dealt a tough lot in life. I mean, if you can only move one arm, if you have to hold somebody's head up, if you have a personality thing where you might have a fit or something like that, it's hard to find an employer who is going to pay $7.50 an hour for that. But in a work center you can pay them $1.50, two bucks, four bucks an hour, and together with subsidizing with SSI or SSDI, they can do okay.

They are trained, or hopefully can work in the community. Some make it; some can't. Some make it for short periods of time because employers will help them a great deal. I think a little bit of the confusion on this issue stems from the type of jobs that some of these folks get. I recently toured a -- there is one of my counties that's trying to shut down their work center, and they invited me as the congressman to a place where somebody who had previously worked at a work center had worked, and she was working for eight hours a week.

And it was nice to be in the community, and the employer said she was the best employee they ever had, which is what you would say. And she was very nice to have this young gal -- I won't give her
name, we'll call her Suzie -- very nice. We are so
happy to have Suzie here. She's the best employee
we have.

I then talked to the employer in her
office, and she was very happy to have Suzie there,
but she had to have somebody, not a job coach in the
sense that it was paid for by somebody else, but one
of her own employees monitor Suzie all the time.
She was doing it as a community service, not because
Suzie had been held back all this time, working in a
work center; she was doing it as charity. That is
what happens some of the time, and that's fine.

We have wonderful businesses in America.
Sometimes it's charity; a profitable business can
take in somebody for four or five hours a week. But
one shouldn't get confused when that happens that
they were being held back before. You just found a
nice business who, through their community service,
would do that. I think if you talked to people in
facilities like this and they compare it to their
job on the outside, some prefer to be in a work
center. You are dealing with nice people,
continuity. They make friends there for maybe 30
years of their lives, both the people with
disabilities and the people without the
disabilities, which is kind of an improvement over
maybe a fast food place where you get all new people
again and again or may have to look for a new job.

If you talk to these folks, they
frequently would even prefer the work center, and it
offends me that anybody would say we would shut down
the work center with all these happy, productive
people because we arrogantly know what will make
them happier. You should not take away that option
from people, and when you deal with people with
these handicaps, once you tour three or four of
these you will very quickly see that no amount of
dreaming can say that there is going to be a job
that's going to pop up for these people to work 35
hours a week out in the community for $7.50 an hour.
It's just not going to happen.

I'm struck by a guy recently do a rule
you're not dealing with today. He was borderline
quadriplegic. I ran into him and his dad. He was
told he's probably going to make a buck an hour. He
was told, for certain reasons, he couldn't work at
the work center anymore. He was crushed. He's
actually above-average intelligence, but this was
his life for the last seven or eight years, and his
job was every bit as important --
CHAIR LHAMON: Representative Grothman, your time is up, but we'll look forward questions.

REPRESENTATIVE GROTHMAN: Okay.

CHAIR LHAMON: Ms. McSweeny?

MS. MCSWEENY: Thank you. Madam Chair, I'm going to -- can you hear me?

CHAIR LHAMON: If you push talk, we'll be able to hear you. Thank you.

MS. MCSWEENY: Thank you so much. I was going to take you up on your invitation to not read my statement aloud because I've noticed all day that you had read the statements. I do encourage anybody who's watching though to find it on our website.

I wanted to talk a little bit about some of what we've heard today in addition to what we had in the statement. My name is Kate McSweeney; I am the Vice President of Governmental Affairs and General Counsel for ACCSES. We represent disability service providers from across the country.

I am what was referred to earlier as the sheltered workshop lobby, and there's nothing wrong with that because I don't even know what sheltered workshop means. I got involved in this about four years ago. I had a great job as a lawyer, and sort of inadvertently started doing a little bit of work
for ACCSES, and really fell in love with the issues and the people.

I ended up leaving my law firm, taking a massive pay cut, coming to ACCSES, and taking on this role. So I'm proud -- I'm proud to lobby for them. I'm not a lobbyist by profession; I've never lobbied before. I was a broadcaster for 22 years, and then I became a litigator. Now suddenly I'm a registered lobbyist, but on one issue, and it is the issues that relate to people with disabilities and the services that they need, and the providers, so many of the providers who provide those services.

I want to talk about what you didn't get to hear today because there were so many people who wanted to talk about from one perspective, and it's a lot of opinion. The people you haven't heard from are the people who are working under certificates, the people who are really concerned about their jobs, the people that the Congressman was referring to, but who I see in every state, because I travel and visit work centers everywhere. The work centers that some people described today, I don't recognize that. I see places that are really no different from the places that I worked at times in my life and spent a lot of time in.
I see people who are so incredibly dedicated to serving the people who are working there, people who take incredible pride in their work, both as the providers and the people who are working there who are receiving services and at the same time, have jobs.

Some people make more than minimum wage; some people make less than minimum wage. Some people split up their day and perhaps do competitive work in the morning and then maybe do a day program in the afternoon. There's a lot of accommodation to help people live full and robust lives, and there were a lot of denigrating things said today that I find very concerning, because that should not -- that shouldn't be part of the discussion.

We should all have aspirational goals, and we certainly support all of them. At ACCSES we are all about expanding options, expanding choice, increasing assistive technology, making sure that people have every opportunity that they would like. What we don't want to see are opportunities taken away to meet what somebody else thinks is best for people.

And a number of people talked about eliminating 14(c) immediately. If you want to
eliminate 14(c) immediately, you would throw an awful lot of people out of work. Now, the Congressional Budget Office did a review of the Raise the Wage Act which Chairman Scott mentioned earlier today. It seems like a long time ago now. He spoke of Raise the Wage, and the fact of Raise the Wage would eliminate 14(c) -- it would phase out 14(c).

But the CBO said, they're using over 125,000 people. They had over 125,000 people working under a certificate right now. Some of those people are making more than minimum wage, but let's say 125,000 is the right number. Why are we sitting here arguing over keeping or killing the jobs of 125,000 people who want to keep their job? Why aren't we talking about expanding options, working together? How we can find common ground? That's what the advocacy community should be doing.

I want to do a shout-out to Julie Christensen at APSE. Many of our members are also APSE members; that might surprise people. But we found common ground; we found things to work on together because there is so much to talk about. We don't necessarily agree on 14(c); we don't have to agree. We just -- everybody in the advocacy
community should be pulling in one direction.

But this has become so poisonous. But what are we really talking about? People having jobs; people having the dignity of work, and people working often in work centers where they also have a lot of other opportunities, receive a lot of other services, and have job coaching, supported employment. They have the opportunity to expand their horizons with the help of the community rehabilitation programs. Because one of the things that I want to make really clear is, if community rehab programs cease to exist, you would have to re-invent them, because they are really necessary.

Having people in communities in every state across the country who really are knowledgeable, who really are experienced; I'm sorry, I'm just going to use a colloquialism and say it blows me away when I spend time with the people who are providers across the country that make up ACCSES' members. They are the most impressive people I've ever met, the most caring, most concerned, and they have been depicted in a terrible way over the last few years.

Really, a fire hose has been turned on them by the government and by so many of the
advocacy communities, and it couldn't be more wrong. So I want to underscore what the Congressman said, who we so appreciate, and encourage you to visit a CRP. And if there isn't one near you, or if you don't know one, call me. We'll be happy to make all the arrangements. It's so important. It is just vitally important that you do that.

I want to end on two notes: one is something that a provider in Connecticut said to me the other day when we were talking about community. She said community isn't about geographic location; it's about the people. And that is so true. We have to start letting people with disabilities thrive where they want to thrive, not where we think they should be. Thank you so much.

CHAIR LHAMON: Thank you, Ms. McSweeny. Mr. Lewis?

MR. LEWIS: First of all, thank you for the opportunity to testify today. My name is Anil Lewis, and I'm the Executive Director of Blindness Initiatives for the National Federation of the Blind.

And I want to share on a personal level here, and a professional level, because I can present on this topic from those different
perspectives as a family member of a person with a disability, a consumer of services, a provider of those services, and an advocate to improve those services.

Just really quickly, it's in my written testimony, but I'll go over my sibling story, as I call it. My older brother, my older sister, and myself, are all blind. But my brother lost his vision much earlier in his life. He was in elementary, maybe high school at the time; a really bright guy.

He went to the School for the Blind in Macon, Georgia, where they didn't really teach him any blindness skills because he had just enough vision where he could read large print, but retinitis pigmentosa is the disease that took our eyesight.

It is a degenerative disease, so it progressively got worse. But the long story short is, he did not receive any real quality education. He went into the VR system and rather than dealing with his blindness and teaching him alternative skills of blindness, they tried to place him as a filing clerk. He had to have bottle-bottom glasses, a lighted magnifier, and he had to go and retrieve
files and read this information from print in a dark room. So he failed.

And then the VR agency ended up referring him to the Georgia Industries for the Blind, which is a sheltered workshop, and they counted that as a win. And my brother was employed. So comparing that to -- I'll bring it all together hopefully -- my sister, who lost her sight much later. She was in college at the time when she lost her vision, so she had gotten a lot of her education. She also did not get any real blindness skills. She didn't learn how to read Braille; didn't know how to travel independently with a white cane; didn't know how to use access technology. She had aspirations of being a lawyer, but instead VR -- she got involved and ended up working at the Industry. So now I have two siblings working at the Georgia Industries for the Blind.

I was 25 years old when I lost my sight. It happened fairly quickly over the weekend. I was in college, working on my bachelor's degree in Business Administration at the time. I had done a lot of work at the school, working and going back to school so I could pay for college. So it looked like I had a lot of different job experiences in a
lot of different environments. But when it happened, I'm thinking, wow. I'm going to the Georgia Industries for the Blind, which at that particular point was a subminimum wage workshop. They were paying people piece rate. They were actually encouraging individuals who were on Social Security not to make more money so that they wouldn't lose their Social Security benefits. There were no blind supervisors to be had in the place. It just really wasn't a conducive place for people to really be motivated to do better with their lives.

But luckily for me, Dean Carol Pearson at Georgia State University, where I was attending at the time, got involved with me, and she showed me a whole different side of what my true potential could be, based on the proper intervention and services being put into place. So what happened is, I did get some training. I learned how to read Braille; I learned how to travel independently with a long white cane; I learned how to use access technology, and I was able to complete my degree.

And because I had gotten so infected with disability to do these things, I was also able to work with my sister, and she in turn went back to
VR and said, look, I want to have some training. And she got training to know how to use access technology. She ended up working at a catalogue place because back then the place to hire and employ blind people was in customer service, because the technology showed that you could listen to a customer in one ear and listen to your computer in the other ear. So everybody who was blind, that was their job that they were placing everybody in. That's when we were in, in vogue, blind people were.

So she got a job there, and long story short, now she's working at the General Services Administration as a financial budget analyst. My brother, unfortunately, by the time I was able to get engaged with him and educate myself about what was important and what was possible, I was able to help my sister because she had only been in that environment for a short period of time.

But my brother, no. It came too late. He had been institutionalized. He had gotten very comfortable working in that environment. I still believe that he was much brighter than I am, had much more capacity than I. But because he had gotten comfortable -- and I have to admit, I think a little bit afraid -- he was reluctant to leave the
Industries for something better.

So I look at this in a way that I think is real. If you don't really address the systems that are in place that prevent individuals from really getting the training that they need, then yes, it's inevitable the subminimum wage workshop is going to exist as that alternative.

CHAIR LHAMON: Mr. Lewis, just at your request, I'm giving you a time notice that you have a little less than two minutes left.

MR. LEWIS: Wow, that went really quickly.

CHAIR LHAMON: You have a little less than two minutes. Keep going.

MR. LEWIS: I found the National Federation of the Blind that said that blindness is not the characteristic that defines me or my future. Every day we raise expectations because low expectations create obstacles between blind people and our dreams. So the National Federation of the Blind told me that I could do this.

And in the instance where blindness was in the past a reason to have people employed at subminimum wages, now people say no, that's not the case. But now they say it for other disabilities.
My real confession is, I ended up being a service provider. I brought people in; I gave them the tours of the center. I made them think that it was a wonderful place.

We finally shut the place down. We got everyone in there a competitive, integrated employment job, and I am just sitting here really feeling sad about what I've perpetuated in doing those tours to give this particular perspective to the Congressman, because there is a better alternative, and if people who are doing the training actually possess the skills to do it, because that's the data that's missing here. We're not evaluating how many people who are providing these services actually have training and skills to provide them. But when people do, then the positive outcomes emerge. Thank you, guys, for the time. I appreciate it.

CHAIR LHAMON: Thank you. Mr. Collins?

MR. COLLINS: My name is Brian Collins, and I'm a Senior Manager at Microsoft in Redmond, Washington. And I'd like to thank the Commission for the opportunity to share with you my responsibility which is Supported Employment.

Our mission at Microsoft is to empower...
every individual and every organization on the planet to achieve more. That includes the one billion people with disabilities around the world. We believe that people with disabilities are a strength for our company, and a talent pool that adds not just diversity, but expertise that make our products, our services, and our culture better.

Under this guiding principle over the last several years we've launched employment programs focused on bringing the untapped talent of people with disabilities. One of those programs is our Supported Employment Program which is run by our Real Estate and Facilities Group.

Since the program started in 2013, over 280 supplier positions have been filled by individuals with intellectual and developmental disabilities on Microsoft campuses globally, and that number is steadily growing. The learnings have been immense, and it has helped shape our approach to external staffing. We share these learnings with our supplier base of over 30,000 organizations globally.

At the Microsoft Headquarters in Redmond, we have approximately 50,000 employees and visitors that come to the campus every day;
essentially, it's a small city. The Real Estate and Facilities Group deliver services for employees through 50 different vendor companies. These include maintenance, food services, utilities, landscaping, mailroom services, and more.

This service-based campus environment creates an opportunity for us to have a real impact in the community in which we live. In 2013, as we created the Supported Employment Program to provide people with intellectual and developmental disabilities the opportunity to obtain and maintain employment. This program includes a host of strategies that help bring and support these individuals into jobs within the Microsoft environment. Our practices include inclusive interviewing and hiring practices, working with job coaches, and of course job customization and providing accommodations.

The success of the program does depend on strong partnerships with local vendors and community organizations. The mission of the program is simple: partner with suppliers and local employment agencies to make a substantial difference in the lives of people with intellectual and developmental disabilities who have historically
been overlooked in the jobs market.

To date, the program has resulted in external staff with disabilities being employed in full- and part-time roles across 30 different job types. All employees are paid the going rate for their work. All of the workers hired by our suppliers earn a competitive wage and receive benefits from their employers in full- and part-time roles. This is in line with our mission to empower everyone, and our values of inclusion.

However, today in parts of the U.S. people with disabilities can be paid less than minimum wage or subminimum wage, sometimes as little as pennies on the dollar. Microsoft does not pay less than the applicable minimum wage. We require our suppliers to do the same because we believe in fair wages for all. In July 2019, additional language was added to our supplier code of conduct to reconfirm the obligation to pay at least applicable minimum wage to everyone.

Employment of people with disabilities, including those with intellectual disabilities, is the right thing to do, and it's a business imperative. It's good for the bottom line. Research shows that companies that champion
disability inclusion are more profitable. According to the 2018 Accenture Report, companies that have improved their inclusion of persons with disabilities were four times more likely to have a total shareholder return that outperforms those of their peer group.

But numbers are only part of the story. People with disabilities are a strength. There are many examples of employees with disabilities who are more loyal, reducing the cost of turnover, the cost of recruitment, and the cost of onboarding. We've seen employees with disabilities who are more innovative. They challenge the status quo. They invent inclusive solutions. We've seen employees with disabilities teaching their colleagues about communication, inclusion, and empathy.

Equally important is the impact that hiring will have on the life of somebody who faces barriers to employment with the unemployment rate for people with disabilities that is twice that of the national average. The opportunity is real, and the opportunity is now.

Microsoft is committed to disability employment, and we are committed to helping other employers along the way. We have presented
information about our partnerships, our lessons learned, and the benefits of Supported Employment at various trade fairs. Our efforts to spread the word have included individual meetings with multiple companies, both large and small. And we talked to those who were interested in particularly diversifying their workforces.

Microsoft is not alone. For example, earlier this year a sportswear company in the Pacific Northwest started their own Supported Employment program. We are just one of a growing community of employers who understand that disability employment is good values, and it's good for business. To support this information on best practice sharing, Microsoft has created a toolkit and videos, all of which are available online to everybody. Microsoft is committed to continuing to grow and improve our Supported Employment Program. As well as talking to other businesses about reaching out to and removing barriers to employment for people with intellectual and developmental disabilities.

We are committed to paying the market wage to people, including those with disabilities, and we require our suppliers to pay the same market
wage as well. We believe in fair wages for all.

Thank you very much.

CHAIR LHAMON: Thank you, Mr. Collins.

Ms. Kline?

MS. KLINE: Good afternoon, and thank you for inviting me to participate in today's proceedings. I'm currently a partner at the law firm of Brown, Goldstein, and Levy in Baltimore, Maryland and Washington, D.C., and before that I was senior counsel to the Assistant Attorney General for Civil Rights at the Department of Justice.

Prior to that I was a DOJ trial attorney, and in that role as a DOJ trial attorney I was lead counsel on two cases: The United States v. Rhode Island, and the United States v. Rhode Island and the City of Providence, that sought to challenge unnecessary and unjustified segregation under Title II of the ADA and the Olmstead v. LC Supreme Court decision and resulted in the nation's first statewide settlement agreements implementing the promise of Olmstead to move individuals from segregated sheltered workshops to competitive, integrated employment.

In addition, during the same period of time, I was counsel of record with many of the folks
that you've heard from earlier today. We brought the Lane v. Kitzhaber, United States v. Oregon case, similarly under the promise of Title II of the ADA and Olmstead v. LC, and likewise that resulted in a landmark settlement agreement that will move thousands of people over the next 10 years from segregated sheltered workshops to competitive, integrated employment.

Together, these three cases resulted in injunctions that over 11,000 people with intellectual and developmental disabilities will move over the next decade from segregated, subminimum wage labor into real jobs in the community. Over the past eight decades, Americans with intellectual and developmental disabilities, who are blind, with other significant disabilities have been left out of the marketplace. They've just been left out.

And they often earn just pennies an hour in these settings, in these sheltered workshops, settings on one erroneous, one primary and principle erroneous assumption, and that is that disability inherently creates insurmountable obstacles to work. And the premise behind that is thereby, it must justify downwardly adjusting wages because
disability is, per se, a reason to do so. And yet we know better. We know that the reality of the ADA, the promise of the ADA, is that it disabused us of this very notion. That it's axiomatic under the ADA; that it is the work environment for which we make modifications.

It is not the person that we remove from the work environment; it is the barriers in the work environment that we remove. In fact, the earlier law, the predecessor law to the Americans with Disabilities Act, 1973's Rehab Act, said the same thing. It created a vocational rehabilitation system premised on the idea that there may be people in our country that require supports more than that which would be reasonable for an employer to provide. In those instances, those supports will be provided on the job, in the community.

Nevertheless, as a result of the failure of the 14(c) provision to keep speed with these other sensational laws that have brought civil rights to so many Americans, it's out of step. It didn't adapt to these lessons that are formative in these other statutes. And as a result, it's trapped millions of Americans, now and in the future, with the reality of living in the past.
Whether it be living in 1938; whether it be living in the 1973 Rehab Act reality, or whether it be living in pre-1990, we know that the lessons of the ADA have not been incorporated into the way that we currently implement 14(c).

And I've got to tell you, we've heard people say that these are opinions. I'm here to say it's not an opinion; it's law. And we should take seriously civil rights laws because that's why we're here. This is a matter of civil rights, and we have a federal statute that's out of step with our foremost laws in this country for people with disabilities, and we need to take action to bring 14(c) into step with current reality.

So accordingly, we can no longer take the time to debate the merits of whether the 14(c) program needs better enforcement. We don't need additional study to know that it's out of step with current federal civil rights laws. We've got to dive deep; we have to dig deep into solutions. Let's shift today from a discussion about principally whether there is a problem, to how we're going to solve the problem with efficacy and responsibility to the people who deserve jobs in the community.
Make no mistake; objective evidence has established for decades that the program is ineffective; that it's lacking in oversight; that people in it are poor, displaced, under-employed, and that it's out of step with the reality of other people who are working in real jobs in the community with the same or similar disabilities as those who work in 14(c) settings.

Federal law, macroeconomic trends, and the preferences of people with disabilities and their families are changing and have shifted dramatically towards competitive, integrated employment over a relatively short period of time. But in the long march progressively over the last 80 years, without any significant changes for decades to the Section 14(c) program.

To do nothing is absolutely not an option, even in the relatively short term, because the macroeconomic trends in the country are indicating that everyone else in our workforce system is training for 21st century jobs.

And yet these are not opinions. I have visited workshops in many states for many years, and people are performing labor on machines that do not exist anywhere else in the market. They are
receiving equipment as donations, because the
equipment is no longer pertinent to jobs that exist
elsewhere. For people with disabilities, they then
use that equipment to make products outside the
bounds of any technology.

What people are doing in the workshops
that I've visited are mostly rote, highly repetitive
labor usually by hand, quite often without
reasonable accommodations, without assistive
technology, without augmentative or alternative
communication. And as I've just mentioned, using
evidently outdated equipment and production
processes that you won't see anywhere else.

This is the case even though people with
disabilities in the workshops are indeed capable of
performing just as well as their non-disabled peers
with accommodations and the right equipment, the
right individualized services and supports.

CHAIR LHAMON: Thank you, Ms. Kline.
Can I open up for questions from my fellow
Commissioners in just a moment, but Congressman
Grothman, I want to start by telling you that I take
exception to some of your terminology. My brother
has cerebral palsy, and I want you to know that no
one in my family ever considered anybody whoever
worked with him or with our family, a saint.

We consider those people to be people who had jobs that were fulfilling, and I'm grateful that they had them. I'm grateful for what they did, but my brother has made more than $7.50 an hour, well since high school in every job he has ever held. He is not distinguishable from the person you described who can only move one arm, and I want to make sure that you know that this bureaucrat is intimately familiar with the issues that you described as we consider this issue. And with that, I'll open for questions from my fellow Commissioners.

COMMISSIONER HERIOT: Congressman, I apologize to you on behalf of the Commission. That was rude.

CHAIR LHAMON: And I feel very good about letting you know how I felt about what you said.

REPRESENTATIVE GROTHMAN: Right. Well, am I supposed to respond to that?

CHAIR LHAMON: You are welcome to respond. Would you like to? You should turn your microphone on so that we can get it for the record.

REPRESENTATIVE GROTHMAN: I will
emphasize again the importance of having this committee or commission tour work centers on their own. I think every work center I have toured, and I have toured many of them, have examples of people who've moved out of the work center and are working for minimum wage or more in the community, and you've heard other examples here today.

But I think if you tour all the work centers you will find people who will not be able to succeed in the community. I think of the tens of thousands of people whose future, their lives, are going to be dependent upon what this group says. And if you make what at least I think is the wrong decision, you can ruin the lives of tens of thousands of people.

It is possible that we can do more. For example, with blind people or more with people with certain disabilities; however, everybody who I have talked to who've worked in the 12 workshops that I tour regularly feels very strongly, despite the fact that they try to work with people, despite the fact that they try to train people, there are some people who will not find a job in the community for 30 or 35 hours a week.

And I beg you to tour these centers,
because you do have the ability to, as I see it, ruin the lives of tens of thousands of people with your decision. I'm sure you've heard testimony today of individuals who worked in a work center and moved on, and that is one of the goals of the work center. And every one of the work centers I tour have done that.

But just as there are some people who've moved on, there are some people who aren't going to find it possible to move on. And for those people, their life is going to work every day and earning that one or two or three dollars an hour. And if you take away that option from them, you have the potential to ruin their lives. It is a free country, and guardians or people with these handicaps, they can look for other jobs and good work centers work for other jobs. But I beg you not to take that option away from them and treat them as something less than a free human being.

And I think if you take the time to tour three and four work centers for all of you -- I assume you're from all over the country -- I think you are going to find very wonderful employees working there, both people doing all sorts of jobs in those centers, you're going to find a lot of
continuity, and you have to ask yourself, what is going to happen to all of these people if I decide automatically that these people can't work here anymore? And I beg you to do that.

I don't know whether as part of your responsibility here, you are required to go out and see the work centers, but you'll learn a lot more from the work centers than you will a battery of lawyers or a battery of politicians talking today. And I beg you to do that because I can see you ruining a lot of lives if you make the wrong decision.

CHAIR LHAMON: Thank you for that modified approach, and I don't disagree with you there that it will be beneficial for us to visit work centers. Thank you.

REPRESENTATIVE GROTHMAN: Have you seen a lot of them?

I have not seen a lot of them, and I welcome the invitation. So thank you very much for the suggestion. Thank you.

REPRESENTATIVE GROTHMAN: Come to Wisconsin.

CHAIR LHAMON: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Madam Chair, one
clarification for the record. So, Congressman, this body issues reports; they can take findings; they make recommendations. The duty, I think as you know, to reflect on federal law is charged with the Congress of the United States. And so we have, since 1957, been here to advise the nation on potential reforms in the area of civil rights as an educative function and advisory body. But it is the Congress of the United States that has the decision-making power in the context of your comment, to determine what the federal law of the United States is.

And so what we're trying to do today is receive information from yourself. Earlier one of your colleagues from across the aisle was here, sharing some views about some bills that he has pending to explore these issues in some detail, and then determine if we can put out a report that explores them based on a range of opinions.

And we welcome your charge to us to try to get out and see some of the facilities. I think it's worthwhile. I will make the personal effort. I note also for the record that we're limited by our budgetary allocation. There are lots of things we would like to go see in the country when we study
these issues; we do what we can in that regard. But
the points are well taken; seeing is one way to
gather information, but I just wanted to make the
record clear that we're not deciding. We're making
recommendations. In a sense, you and your
colleagues are deciding.

CHAIR LHAMON: If you just push the talk
button on your microphone, then we can hear you.

REPRESENTATIVE GROTHMAN: They're not
going to take your money. At least in Wisconsin, we
have one in all but three counties in the state. I
don't know what state you're from, but it shouldn't
take an overnight big deal. I think if you poke
around, most people here will find one within a half
hour of their house.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Thank you, Madam
Chair. Congressman, thank you for coming. Ms.
McSweeny, both of you may want to answer this
question, or anybody else on the Panel. Matter of
fact, every question I ask, anybody can chime in.

You describe people working for 35, 30,
35 hours a week at the work centers. How many
people in the work centers actually do that versus
working 20 hours a week, still going to day
services? I mean, that kind of mix. I mean, there
should be some kind of statistics this morning. I
think Ms. McSweeny was here, and she heard me. I
did a calculation on somebody's certification
application where there were 160 people who made
zero dollars an hour. So they're not all working
all the time. Some are just merely present. Some
are in therapeutic day services. I'm just trying to
get a picture of this.

MS. MCSWEENY: I was very struck by
that, because we talked about it as some of the
people here have come to provide some comments
later.

CHAIR LHAMON: Could you push the talk
button on your microphone? Thank you.

MS. MCSWEENY: I'm sorry. Can you hear
me now?

CHAIR LHAMON: Yes, thank you.

MS. MCSWEENY: We were chatting; some of
the people who have come to make some comments, some
of the public comments later, and I hope you all
will be here to hear them because they've traveled
quite a long way. This is such an important issue
that you were talking about people earning zero
dollars an hour --
COMMISSIONER KLADNEY: Or three cents or five cents.

MS. MCSWEENEY: You know, people throw those numbers around. Nobody make zero dollars an hour; that would be illegal. One of the things that we're asking for the Panel to get behind is joining to encourage Congress to do a real study on what really happens if people lose these jobs.

A lot of times -- you had a lot of really opinion and sort of unfounded commentary today. Not a lot of people here; not a balanced program at all. I mean, you know that. You did the invitations, and Nick has been great to work with, and I appreciate his kindness and the staff here. But there were, what, 25 people who came to provide testimony, and two are supporting continuing to provide a vast and full array of options for people.

I don't know that anybody knows the answer to that question, Commissioner. I think that it's all so personalized in terms of people having their own individualized plan when they work at a work center, so they might work a half day, and do a half day of quality day programming.

They might do a half day making competitive wage outside somewhere else, and come
back to the work center in the afternoon and work or do a day program. They might split things up because they're not having good days, so they might take a break and go spend time in a day program. It really does vary very much by the individual. Congressman?

REPRESENTATIVE GROTHMAN: Yes. I think one of the things, at least in this group, you've got a continuum of people. You've got people who are going to work their way out and make 15 bucks an hour, and you've got people who are very, very, very disabled.

And I think some of these people maybe can work an hour a day, and that's one of the reasons why I want you to tour these. Because there are people who imply that everybody in society is going to find 40 hours a week at minimum wage. And if you tour these places, you can find some, but you're going to find people who are very, very severely disabled, and that's a sad thing. But it's just a reality, and if you're operating one of these things you may be able only to get an hour or two a day out of some folks.

COMMISSIONER Kladney: I just wanted to try and --
REPRESENTATIVE GROTHMAN: And some folks, you're going to get 30 hours. It's just -- you've got a continuum of -- disabled is such an all-encompassing term. It means such a wide variety of people, and you're kind of putting them all together in one group like we can treat everybody the same. And they're so widely varied. Like I said, there are people who are incredibly disabled. You've got to think about that before you kick them out.

COMMISSIONER KLADNEY: You wanted to comment?

MS. KLINE: Yes. If I could have the opportunity to respond to the Congressman just on one small point. You know, we don't know is the answer. You asked a question: Do you have data about how much time people are working in workshops, and the answer is, we don't know.

And we should know, because we suspect, from all the people that we represent and all the thousands of people that we hear from regularly that are in workshops, that they're bored; that there is no minimum performance expectation; that there is no training; that there are no standard operating procedures; that there are no accommodations; that
there is no discussion of advancement because the world is flat.

And so when you're asking are you working in workshops, it's questionable whether there is work in workshops for much of the day for many of my clients. We should record that information, but even so, we have so little data about what people are doing other than an awareness that they're being supervised for eight hours. So when you're saying a 30.5-hour work week in the workshop in the talking points from the trade association, what they're really saying is: individuals with disabilities are being supervised for 30 hours a week.

But people who work in the community, they work every hour that they work in the community meaningfully, and by choice. When they're engaged in a community job like you or I, they're engaged. They're not being supervised; they're living their lives with self-determination.

MR. LEWIS: I apologize. I wish I would have been able to go first on the Panel. I got caught up in my emotions and wasn't able to give the best presentation, but to your question: the data doesn't exist, and I don't necessarily know if we
need to be researching that type of data.

But one of the things that I actually help run an extended workshop as a sheltered workshop would pay people piecemeal rate. In actuality, there were some instances when they would come in and they wouldn't do any work, and they wouldn't get paid, but we were still getting paid because at that particular time, we were getting paid services from the state to have something for them to do.

But the thing that stands out overall is, if we don't start, one, believing first of all that the people have the capacity for competitive employment, then we've already lost. Are there some individuals that are going to be more challenging? Absolutely. In the conversations I've had with individuals who run the workshops, they say it's expensive, and it's difficult. But no one who is really in the space has said it's impossible.

So the data we should be looking at is: what is going to be that cost to implement those innovative systems that create opportunity for those individuals who were previously deemed unemployable to obtain competitive integrated employment? Because there are so many examples of people who
have been labeled unemployable, that when they're put in an environment with individuals that believe in their capacity, set their expectations, provide the proper training and support, they obtain competitive, integrated employment.

One individual who was in the workshop that I used to give the tour to, and I did that. Brought them in, politicians look, we're doing a wonderful thing, and they were happy, because we made sure that it was fun. But all of them ended up transitioning into jobs that were full-time employment, not just piecemeal stuff that we had when we had it there.

But even more importantly, a couple of them actually went out and started making more money than me. So it wasn't even about competitive, integrated employment; they were making more money than I was making. But these were individuals who were deemed that this was the best that they could do, to hang out in our workshop all day.

And that's why I'm so emotionally torn. When I did that, I didn't have any ill intent. I wasn’t trying to deny these people an opportunity to obtain competitive, integrated employment. I thought I was doing a wonderful thing. I was driven
by my compassion to provide these opportunities that
would otherwise not exist for these people, and it
was misguided compassion.

And because of my ignorance, because I
didn't have the skill set to do what I was supposed
to be doing, and because of that misguided
compassion, these individuals spend significant
parts of their lives wasting away in that workshop;
making money for our center, but wasting away.

So I do have some degree of comfort
knowing that I was able to help employ all but one
of those individuals that was working in the
workshop in a competitive, integrated work
environment, and the one person that we weren't, he
was a senior gentleman, and we ended up placing him
in an environment that had a lot of community
support. And I guarantee he was much happier in
that environment than he was in the one that we
created.

COMMISSIONER KLADNEY: Thank you. Mr.
Collins?

CHAIR LHAMON: It looks like Ms.
McSweeny has something to say.

MS. MCSWEENY: I can wait.

COMMISSIONER KLADNEY: Mr. Collins? To
change up the subject a little, you've described
your vendor program, and there's also a direct hire
program from Microsoft, isn't there?

MR. COLLINS: Yes. We have a number of
programs across the company. One in particular is
the Autism at Work hiring program. We are now
hiring individuals that Microsoft has actually
overlooked in the past to become software engineers
who work side-by-side with our traditional software
engineers.

And what we've done there is really
change the doorway into Microsoft. We're now
looking at doing practical accommodations on
examining things like the resume process, the
interview process. We're working with our own
managers within Microsoft to make them aware of this
community that they've overlooked in the past.

And as we get them involved in the
interview process, we're training those managers
again on how to have a practical interview with a
person who is on the autism spectrum. That
interview is not the traditional type of interview
that I know I went through at Microsoft.

So I think we've found that sweet spot,
and we've opened the door to more people, again, who
have been overlooked in the jobs market and who are more than capable to do great work with our company.

COMMISSIONER KLADNEY: It's my understanding the interview process you're talking about for the autism program as well as other disabled people that you directly hire is formulated for them. In other words, what their disability is and how they react to things; I hear you.

MR. COLLINS: Yes. So the first thing we do with kind of candidates that we're interviewing now, we ask them, do they need accommodations? Within the autism hiring program we are actually out there and we are looking for candidates who would self diagnosis as being on the autism spectrum. But for all jobs in Microsoft, we are asking people: what accommodations they need in the interview process?

COMMISSIONER KLADNEY: And one last question, and this is for anybody on the Panel. My research seems to show that there has not been a suit brought to challenge 14(c) on an equal protection basis. Does anybody believe that it's a violation of the Constitution? I guess not.

CHAIR LHAMON: If you would just push talk.
MR. LEWIS: Okay. I thought I turned it off, and back on. Yes, we believe that, and we're in the process of entering into a variety of different lawsuits to address this in different perspectives, but there has been no finding. There has been no closure. We have some active litigation going on now.

REPRESENTATIVE GROTHMAN: I'd like to point out --

CHAIR LHAMON: If you just push talk.

REPRESENTATIVE GROTHMAN: Yes. I'd like to point out something. There was a time in our society -- I don't know, 70, 90, 100 years ago -- in which people with disabilities just sat at home. I can think of one from my lawyer days who I knew. She was great gal, but I mean she stayed at home with her parents her whole life, and her whole life was sitting there, eating, watching TV and never got out of the house.

The sheltered workshops were a huge improvement for these folks. They got to meet other people other than just their parents, both people with disabilities and the staff that works in the workshops. They got a degree of independence as they earned some money, okay?
And if we say that everybody's got to meet, got to get to minimum wage, there are some people who will get to minimum wage. And there are a lot of people, and you will see this if you tour three or four of these workshops, who are not going to get to minimum wage. And they are going to wind up back either in day services, as a parent of one of the sons I was talking about referred to as babysitting, as day services, or back at home with their parents watching television.

And that would be a tragedy if, out of what our Congress does or what you guys do or whatever, it will be a tragedy if we go back that way and we do pick a few people and set up something for them in the community, but you're going to wind up, I am afraid, of a lot of people going back, getting rid of the social benefits which are huge of being in a workshop, and going back to mom and dad kind of the way folks like this, what their lot in life was like 100 years ago.

And you've got to look out because that is something that happened. You know, they didn't set up the subminimum wage to take advantage of people. They set up the subminimum wage because at that time, and I believe to this day there is no way
some of these people are going to be making minimum wage, and we would rather have them in the community, both for the social benefits and their own economic benefits, than sitting at home or sitting in some facility. And that's what you've got to look out for.

MS. KLINE: You know, Congressman, I really appreciate you telling the truth about your views, and I think that we can talk here in some common ground. When I've gone around the country, I've met with a lot of community rehabilitation providers and direct support professional staff, and these are, I agree with you, people who have been at the front line of providing service, often for decades with very little resources and inadequate pay. And these are people who have huge responsibility to families in their communities and to the community at large.

And what they say quite often, and I'm not sure how this message is landing back here where decisions are made, but what they confide in you is that they're caught in a trap between new and old laws, having to grapple the inconsistencies between the requirements that are demanded of them to measure time with an egg timer, to pay wages in this
archaic and fossilized system of services, and to still give regard to the ADA and Olmstead, to still give regard to the mandate of the Medicaid Act, to still pay homage to WIOA and Section 511.

And so I think the stress that direct support professionals are feeling is they lack the professional development, the training, the capacity-building, how to bridge the gap. How do I get from this system to this system? How am I responsible for this? Where is the leadership to support me to support people to leave?

And when you're moored to the infrastructure of a building in mini vans and lots of physical infrastructure of what it takes to run a workshop, it requires extra funding, extra support, to try to invest in the business development of these shops in order to switch their business model to support those direct support service professionals and your members in ACCSES and elsewhere around the country to transform.

Nobody's losing a job; they're changing the mission of what the outcome of those services is. And let me tell you, the default setting forever has been an over and unjustified reliance on only segregation. The lion's share of federal service
dollars still is poured into segregation to this day.

The transformations bill is saying that we will provide more options for people who want to leave, who can and want to work. And we need to support direct support professionals and service providers in order to come along for the ride and be part of the solution.

REPRESENTATIVE GROTHMAN: I am glad you're talking about options because that's what we're for here: options. Okay, we don't want to shut down these centers for the people who are happy in the centers. And a lot of them are not going to happy if they leave the centers.

And when people say we're shutting down the centers, you're removing options. The centers right now do work to put people in the community. Sometimes they fail; sometimes they succeed, and if you take some time touring these centers, you'll find out why some of them fail. But the fact remains, I know a lot of families with kids in this situation. And if you shut down these centers, you're taking away an option from them.

I'll give you one little anecdote. I have a friend who works in one of these centers, and
she had somebody there who worked like five hours outside or six hours outside of the center, and the rest of the time in the center. She asked the gal, which one do you like better? She said, oh, I like my job outside the center, but I like the job in the center because these are my friends.

Okay, now that's just one example. But she liked working with the same people she had worked with for the last 20 years. She didn't want to be out in an unfamiliar setting with people who maybe didn't have as much sympathy for her.

You're the one who wants to take away that option from her. I'm the one who is defending options, saying that the centers are for some people, and the community is for some people. You're the folks who want to say, We want to get rid of the centers where tens of thousands of people in this country are happy today.

CHAIR LHAMON: I appreciate the clarity of this position. I do know that a couple of other commissioners have questions, and Mr. Lewis wanted to get in. So let's -- Mr. Lewis and then Ms. McSweeny, and then we'll move on to other questions.

MR. LEWIS: So I just wanted to offer, the question around choice that has not been spoken
to is, we've had, from the previous panels, demonstrations of how entities who have formerly been segregated, some of these work environments have been able to convert again. It's not easy, but that's a choice. So these entities that still want to maintain that use of the subminimum wage provision, it's not a necessity as they continue to try and put it out there. It's a choice because it's been proven that it can be possible.

It's just interesting, we're living in like parallel worlds. The founder of the National Federation of the Blind was a constitutional law scholar. Back in 1940, he started the NFB. He actually helped write information that helped with the Brown v. Board of Education Supreme Court decision. But at that same time, they were saying that blind people couldn't work, and they had sheltered workshops.

When 14(c) was implemented, you couldn't pay anything less than 50 percent of the minimum wage, and they improved it by saying that saying that you can pay no less than 25 percent of the minimum wage. Then they came back and improved it again and said, well, it's zero. The floor is zero.

So all the protections that even in the
initial attempt at implementing the legislation have just fallen short. And the last piece I'll offer related to this is, I do encourage you to go on a tour as well. Being a person who used to give those tours, but I also encourage you to take someone who is knowledgeable about the discovery process, customized employment, a person with a proven history of being able to take and assist people with disabilities, the most significant disabilities, escape those environments and obtain a quality of life that is competitive and integrated.

CHAIR LHAMON: Thank you. Ms. McSweeney?

MS. MCSWEENY: I just wanted to add that many of our members have used 14(c) certificates, many of them do not, in terms of ACCSES, so I don't want there to be an impression that all of our members use a certificate.

All of our members work hard to help people find employment and just expand their lives in all kinds of ways, including finding employment. And that's through job coaches, supported employment, anything that they need. Often, they need drug service supports during the day.

I didn't read my statement aloud because I wanted to focus on some very specific things. But
right now the unemployment rate for people with disabilities is 6.9 percent as compared to 3.2 percent for people without disabilities.

One of the things I said was we should be working together to help educate the business community. Now, I had the good fortune of working for Microsoft at one point in my career, and so I wanted to say to Mr. Collins, you're exactly what I was referring to when I said we need to be working with the business community to really help the business community create opportunities and find opportunities for people with the most significant disabilities and to bring them in.

And what you were saying about actually creating an interview process that provides an accommodation is really important. Because that's what we want; we want expanded opportunities. We all want that. Let's work together to achieve that and focus on closing that employment gap, not taking away jobs from people.

CHAIR LHAMON: Thank you. Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thank you. Thanks for all the panelists. Mr. Collins used the term barriers to entry, and every time there is an
increase in the minimum wage, there are a significant number of people who are dislocated as a result. The most significant group of people are black teens first, other blacks, but when there was an increase in the minimum wage I think of about 10 percent about 20 years ago, someone ran the numbers and showed that the unemployment rate among black teens went up 17 percent. So when you raise the minimum wage, there's a barrier to entry there.

And I wonder if anyone has done any kind of analysis, crunch the numbers as to: if 14(c) were eliminated, and we go up to a minimum wage of whatever it may be in the next few years, what will be the barriers to entry? Will there be a dislocation of 5, 10, 15, 30 percent of the individuals currently employed? Because what we're addressing right now is potential elimination of 14(c), and will that present a barrier to entry?

MS. MCSWEENY: That's precisely the study that does need to be done, and one of the things I commented on, this is the very question that we need to be asking is: what happens when 14(c) goes away? There was the main study that was done, but there's very little substance that looks really specifically from an unbiased source, what
happens in those states where 14(c) has been eliminated? Because we can actually really drill down on that and see what people's lives have been like.

COMMISSIONER KIRSANOW: Yes. This is not a zero-sum game here. We've got data from -- in 1954, before significant increases in the minimum wage, black teens had higher employment rates than white teens. This is before the 1964 Civil Rights Act. This was in Jim Crow South. Then there were significant increases in the minimum wage; black teens now have horrendous employment rates. Right now, the best of all time in the last 40 years, but compared to 1954, labor participation is very low.

So when we're talking about something that causes a rise in minimum wage, we're talking about economics here. People have options, and so I'm wondering whether or not people will be displaced in terms of employment, and we haven't even done any studies along these lines.

REPRESENTATIVE GROTHMAN: I will point out that there is a bill right now in Congress to raise the minimum wage to $15 an hour, which passed the House. It's not going to pass the Senate for political reasons. Not political reasons, just a
different viewpoint among the political parties.

But in that bill there is the statutory language to get rid of 14(c). And it's not an oversight because we tried to amend that statutory language out. So, you're right -- well, for some of the other reasons you say, I don't like the idea of raising the minimum wage from $7.50 to $15.

Common sense will tell you, study or not, that if you go up from $7.50 an hour to $15 an hour at the same time you get rid of 14(c), it's going to be devastating to the disability community. And people know exactly what they're doing, because we tried to amend it out.

In that minimum wage bill today, which depends on what happens politically in the next election, if the people who pushed that bill get what they want, it's 15 bucks an hour for disabled people. And I think it's just going to be devastating for them.

COMMISSIONER KIRSANOW: A wage minimum or otherwise presumes a job. When you make arbitrary increases in the minimum wage, very nice and you feel good about it, but what about the people who no longer have a job?

And what I'm getting here is the
consensus nobody knows what will happen if you get rid of 14(c).

CHAIR LHAMON: It looks like a bunch of (Simultaneous speaking).

MR. LEWIS: No one knows the impact overall, but I'd offer two things related to this question. One is, the quota of the unemployment rate for disabilities. That's been one of those kind of red herring statistics.

But what's important to understand is, that even with the existence of the sheltered workshops, that statistic has not changed until recently, with respect to the employment of people with disabilities, because we're now going through a model where -- and this is my evolution as well -- I used to help people get employed by saying it's the social, responsible thing to do. This is the way I would introduce them into the corporation.

But luckily, I evolved and realized that business, the bottom line is you have to make sure that that person is going to be an asset to the company. So, then I started introducing actual employees into a work environment that show that they demonstrate the skill to meet the bottom line.

So, in the past when I introduced them
with the social morally model when business went bad, yeah, they were out of the door.

But when I introduced them with being competitive and being a benefit, they were usually the last, if at all, to be let go, if necessary. In many instances, we found that bringing those individuals onboard helped the whole place become more productive.

So, related to the statistic, I think that what would be really important if we were to evaluate that is, we have to not just say this person is employed and if it increases, this is what happens, because it may just be a result of this person may be in this place for all of the wrong reasons.

But when persons with disabilities is provided the proper training, support and opportunity to obtain a real job, they're going to be subject to the same types of ebbs and flows around economic situation as any other employee.

And that's what we're trying to get to. As long as people with disabilities are seen as something different, they need something more, that are a burden rather than an asset, then we're always going to continue to have this discussion and we
won't continue to move the needle into a more positive space.

CHAIR LHAMON: Ms. Kline, and then Commissioner Narasaki has a question. But we're past time.

MS. KLINE: Yeah. I want to play volleyball with my -- I'm going to volley to Brian here in a second. Because if you talk to your friends at Microsoft, they'll tell you there's a war for talent in this country. They're looking for people with disabilities to hire.

I've talked to manufacturers. They're looking for people with disabilities to hire. We're at or near full employment. Until recently, people were saying this economy is kicking. It's kicking along. And yet, the absence of people with disabilities in the open market is conspicuous. And so, what are we doing wrong?

We're having conversations about whether including them in the federal minimum wage that has been extended to everybody else in the country since 1938, will diminish jobs? Well, let's look at the report card.

We're sending multiple billions of dollars every year on services in which three to
five percent of people ever leave for the open market.

We're doing that with the intentionality for them to leave for the open market. And we're not measuring the results in any other regard.

And the employers are knocking on the door saying, give me ready, job-willing candidates. And yet, we've spent all of our time and our resources training people in jobs of the last century.

And so, now there's a skills gap as jobs are continuing to change. We're like repairing an airplane mid-flight.

CHAIR LHAMON: Thank you, Ms. Kline. Commissioner Narasaki?

COMMISSIONER NARASAKI: Well, it's very clear to me that you guys aren't going to be able to convince each other to change your minds, so I'm going to change the subject.

(Laughter.)

COMMISSIONER NARASAKI: So, we heard a lot of testimony, we've done a lot of reading that says that while there are certainly good employers, good sheltered efforts, the reality is that there are a lot of places that are violating the laws with
impunity and treating, unfortunately, their clients in a way that violates even the basic laws that we have.

So, I'd like to ask you, Ms. McSweeny, how would you fix that? Or, do you acknowledge that there are abuses.

MS. MCSWEENY: Well, first of all, I will tell you that when there are abuses -- and there are not ACCSES members who have been accused of abuses -- when there are abuses, we applaud the Department of Labor's efforts to penalize or take away a certificate, because we don't tolerate that.

(Simultaneous speaking.)

COMMISSIONER NARASAKI: But do you have suggestions about how to --

MS. MCSWEENY: That is a fact.

COMMISSIONER NARASAKI: Do you have suggestions about how to improve it? Because we've heard that there have been almost no decertifications. So, that clearly is not a very huge hammer there, so --

MS. MCSWEENY: Well, to be honest with you, it's a little bit like --

COMMISSIONER NARASAKI: -- what could we be doing to --
MS. MCSWEENY: -- asking when did you stop beating your wife. Because I don't actually accept the premise of the question because I haven't read what you've read. I only know from my own experience --

COMMISSIONER NARASAKI: You don't accept the premise that there are some -- not your members, but that there are clearly -- because there's been enforcement and litigation to the -- that there are some abuses.

MS. MCSWEENY: I know that the Department of Labor has done its job and closed down a couple of places and eliminated certificates. We think that's a good thing when that happens.

COMMISSIONER NARASAKI: Yes, which is great. So, what else should we be recommending? If 14(c) stays in place, then we have to worry about abuses. And so, what else could we put in place?

MS. MCSWEENY: I don't think you have to worry about abuses with respect to 14(c) any more than you would have to worry about abuses in any work environment for anyone. I mean, it's --

COMMISSIONER NARASAKI: We worry a lot about abuses --

MS. MCSWEENY: Exactly. Yeah, but I
COMMISSIONER NARASAKI: But that's why I'm saying, in this situation we're focused on this kind of employment. What --

MS. MCSWEENY: I do think that the --

COMMISSIONER NARASAKI: In Commissioner Adegbile's language, what would be additional guard rails to make sure that the people that we all care about are not being abused?

MS. MCSWEENY: I can speak for our members in saying that they are supportive of Wage and Hour's enforcement and appreciate the efforts that Wage and Hour’s made.

So, the fact that Wage and Hour’s said that they were enhancing their enforcement and doing more of that, I think, speaks for itself.

CHAIR LHAMON: And Mr. Collins has a recommendation, and then I want to close this out.

MR. COLLINS: Yeah, I think one of the areas that we have experienced as we've been out in our industry, with our peer companies and similar real estate and facilities companies and staff, there's a lack of awareness of this talent.

One of the first things people ask us is, what is supported employment? And we spend time
talking about that and we talk about the talented folks who are available to work.

Regina talked about the low unemployment rate at the moment. Again, we go back to this idea of an untapped talent. Because people, and employers in particular, are not aware.

They start off usually in companies because there's a relative of a family member who has a disability, and takes off from there. If you're lucky enough in the enterprise, it might be a family member of influence in that company.

And so, one of the ideas is if we can make a stronger awareness of the talent that's available to go do great work in our communities, I think we'll be more successful.

CHAIR LHAMON: Thank you very much. I thank this panel for your expertise and for your testimony today, and we will conclude here.

We will reconvene at 5:30 p.m. for public comment and any participants in the open public comment period should report back at 5:15 so that we're ready to convene.

MS. MCSWEENY: Thanks very much.

CHAIR LHAMON: Thank you.

(Whereupon the above-entitled matter
went off the record at 4:37 p.m., and resumed at 5:29 p.m.)

CHAIR LHAMON: Why don't we get started? Welcome back. We're now going to open for our public comment session. I'm going to give a few opening instructions, which I hope have been provided to each participant already.

But just to be clear, we hope that you will tailor your remarks to the topic of today's briefing, which is subminimum wages and the civil rights impacts on people with disabilities.

Please state your name for the record so we have it, and please note that the U.S. Commission on Civil Rights has a policy not to defame or degrade any person.

Also, this public comment period is a time for Commissioners to listen and not to engage in questions or discussion with presenters.

We appreciate your testimony. We're very eager to hear it. And we will not take your short time with questions or dialogue.

You will have three minutes to speak, which will be measured by this timer. And please notice the box with the three lights. And when the light turns from green to yellow, that means one
minute remains. And when the light turns red, you should conclude your statement.

If you do not conclude, I will cut you off in order to allow time for other participants, for as many of us as possible, in this public comment period.

If you have not finished, or if you would like to submit additional information to the Commission, we encourage you to do so by mailing or emailing your written submission to us at the addresses provided on your information sheet. We need to receive that information by December 15, 2019.

While awaiting your turn, please sit in the numbered chair that corresponds to your ticket. And in order to reduce time between speakers, we ask that you move forward to the microphones before the speaker in front of you has finished. A staff member will direct you to come forward.

If you need to step out briefly before it is your turn to speak to use the restroom or otherwise, please let a staff member know so you do not lose your spot, and sign interpreters will be signing during the presentation.

I'm going to offer a quick reminder that
the Commission is charged with hearing testimony from all sides of the issues we evaluate, and that may include testimony or statements that can be upsetting.

If you have any questions, please ask a staff member. They're all wearing USCCR staff badges. And with that, I will begin with our first public speaker. Thank you.

**OPEN PUBLIC COMMENT SESSION**

MS. WOODWARD: Thank you for letting me speak to you on such an important issue. Hi, my name is Charlotte Woodward and I am committed to getting people with Down syndrome into meaningful employment.

I graduated from Fairfax High School with a standard diploma and went to Northern Virginia Community College, Annandale Campus, to obtain a degree in general studies. I became a certified medical assistant during this time.

I graduated from NOVA summa cum laude, and transferred to George Mason University as a junior. I am currently at GMU studying sociology, with a focus in social justice and inequalities, while juggling a part-time job at the National Down Syndrome Society.
My job title is Community Outreach Associate. I'm the editor-in-chief at a self-advocate magazine.

As you can tell, having Down syndrome has never held me back from reaching my goals and dreams. I am living proof that people with Down syndrome, along with other conditions, can work.

To me, having meaningful employment means having dignity that comes from being a dedicated worker and receiving a living wage.

Employment is the cornerstone of living the American dream. The Transformation into Competitive Employment Act is bipartisan legislation designed to strengthen and enhance the disability employment service community systems throughout the states.

The goal of the bill is to increase disability employment through expanding the infrastructure for providing services for competitive integrated employment and integrated services, while phasing out special wage certificates under Section 14(c), the Fair Labor Standards Act.

I am sick and tired of huge stories about people with Down syndrome and those who have
other medical conditions, being taken advantage of by sheltered workshops.

I am sick and tired of society's low expectations about us. I am sick and tired of fighting against this ignorance, stubbornness, and intolerance.

How would you feel if you had a child who had a disability, who wants to have a job, can't because they may jeopardize their Medicaid and SSI benefits?

The consequences of ignoring this are dire. Without meaningful employment, people with disabilities cannot afford to be economically self-sufficient -- buy a house, get healthcare, start a family and get married, and even go to school.

Without employment, people who are differently abled will be forced to choose between employment and poverty --

CHAIR LHAMON: Thank you for your testimony. We do need to stop. Thank you. And now the second speaker.

MR. WHITE: Good afternoon. My name is James White. I represent Maryhaven Center of Hope, a CRP provider from New York. I appreciate the opportunity to submit comments to this Commission on
a very complex, non-binary issue.

I have prepared statements, but I adjusted them a little bit based on being here today and listening to the testimony.

In my 25 years experience on my production floor, I have never had card playing, I have never seen segregation, I have never seen discrimination. I certainly have never seen slavery.

What I have seen is a wonderful, warm, embracing, nurturing community, which provides employment for individuals with disabilities.

I would argue that 14(c) and the employment choice is not contrary to the ADA, nor the Olmstead ruling, because it maintains a full array of service options in the most appropriate settings for those with significant disabilities.

The goal of any federal policy should be to ensure that all who want to be employed have the opportunity to be employed. Individuals with the most significant disabilities must have choice.

Repealing the 14(c) will eliminate jobs for the most vulnerable and the most underemployed segment of the working age Americans.

Having a job is the building block of
accomplishment, pride, and self-esteem. Save this choice.

A one-size policy doesn't fit all. We need a full array of services for a fuller range of disabilities. Any policy must broaden the range of choices and options. Repealing 14(c) will eliminate jobs, not add jobs.

I was concerned today in today's briefing, about the lack of accurate data on the number of persons receiving 14(c)s nationally. The numbers range from 100,000 to 300,000.

Before changing policy, the Commission needs to actively seek direct input from those most vulnerable who will be affected by changes to 14(c), who are presently receiving those benefits.

I reference the Committee to, at December 2, '16, a Joint Economic Commission report called The Rewards of Work.

Work matters. Extensive research and ample evidence show that meaningful work benefits self-esteem and pride in the individual.

If 14(c) policy is repealed, people with significant disabilities would find themselves without employment. I reference the George Washington University Times report in May about the
negative impact of eliminating 14(c).

CRPs would not be able to pay full minimum wage and the businesses who contract for services will not be able to pay 100 percent salary for less than 50 percent productivity.

The elephant in the room is the Economic Productivity Act. It's the elephant in the room that CRPs don't have the money to pay, businesses don't have the money to pay, and government doesn't have the money to pay.

I reference the Department of Labor, Policy Wage and Hourly Division toolkit. Reasonable accommodations are the key to ADA's employment provisions, which protect qualified individuals. Qualified is the key word here. Qualified equals meeting industry productivity standards, with or without reasonable accommodations.

CHAIR LHAMON: Thank you for your testimony.

MR. WHITE: All right.

CHAIR LHAMON: We need to stop there. Next speaker.

MR. LIEBERMAN: Madam Chair, members of the U.S. Commission on Civil Rights, thank you for holding this incredibly important briefing today.
My name is Steve Lieberman and I'm the Director of Policy and Advocacy for United Spinal Association.

United Spinal is a national 501(c)(3) non-profit membership organization, dedicated to enhancing the quality of life of all people living with spinal cord injuries and disorders, including veterans, and providing support and information to loved ones, care providers, and professionals.

We represent over two million Americans with spinal cord injury, paralysis, multiple sclerosis, ALS, spina bifida, and muscular dystrophy.

We advocate for full inclusion and participation in all aspects of American life for people with disabilities.

Over 80 years ago, my great grandmother came to Washington to attend a White House conference on people with disabilities, where she suggested that the federal government make an effort to encourage the employment of disabled Americans.

Her testimony, it is said, contributed to the passage of some of the legislation of that era, such the Wagner-O'Day Act and Section 14(c) of the Fair Labor Standards Act of 1938, which we have
discussed at length here today.

The social reformers of the '30's had good intentions. But 80 years on, it is clear that the 14(c) policy has long outlived its expiration date.

That we are still, in the year 2019, segregating people from society based on their genetic code or life-altering injury, or a difference in how they process information, is as astounding as it is morally wrong.

That we are still, in the year 2019, paying certain people less than everyone else because they are different, is simply repugnant.

Such a policy says to every person with a disability in this country, you're worth less than the rest of us.

That is wrong and it is long past time that we changed that.

United Spinal Association fully supports the Transformation to Competitive Employment Act, which would responsibly phase out the 14(c) certificate program over a period of six years, and ensure that all people with disabilities who want to work will have the opportunity to do so in an integrated workplace.
Both the Republican and Democratic Party platforms called for this in 2016. Additionally, in 2016, the Final Report of the Advisory Committee on Increasing Competitive, Integrated Employment for Individuals with Disabilities, as required by the Workforce Innovation and Opportunity Act of 2014, called for the elimination of the 14(c) certificates.

The National Council on Disability has also recommended phasing out the 14(c) program, most recently in a report issued last year.

The 14(c) model was developed a lifetime ago and its time has passed. Let us all move forward into the future with hope and optimism for the opportunities that exist for all Americans with disabilities. Thank you.

CHAIR LHAMON: Thank you. Next speaker.

MR. FORSYTHE: Thank you, U.S. Commission and members, for listening.

My name is Adrian Forsythe and I am the Advocacy Program Specialist at the National Down Syndrome Society, the leading human rights organization for all individuals with Down syndrome.

As the NDSS Advocacy Program Specialist, I participate in advocacy initiatives on the
federal, state, and local levels of government. I am the second registered lobbyist with Down syndrome.

I did perform administrative tasks that support the NDSS's National Advocacy and Public Policy Center staff as an Advocacy Program Specialist at NDSS. I've also -- I've earned more than minimum wage.

From my observation, I see many people with disabilities facing stereotypes that attract independent decisions that they want to walk. An example of this stereotype is that people don't feel that those people with disabilities can meet the requirements to match the kinds of jobs they want to have.

This is called low expectations. People with Down syndrome want to work and have meaningful employment.

We have dreams. And we are tired of low expectations. Down syndrome doesn't hold us back. It is those laws that do.

We are working on what is called Law syndrome, a series of outdated laws that affect me and my peers with disabilities. Down syndrome doesn't hold me back. Low expectations and old laws
I support phasing out 14(c) of the Fair Labor Standards Act, 1938. The reason why, it's outdated practice. Section 14(c) allows employers to pay their employees low wages, sometimes 30 cents an hour.

This needs to change. You make your positions against phasing out minimum wage. I have a friend named Tim Capone. He has a severe disability. But he went to Congress and passed bills.

So, as you can see, 14(c) does not affect me or my friends. No, we don't.

CHAIR LHAMON: Thank you for your testimony.

MR. FORSYTHE: Thank you.

CHAIR LHAMON: Next speaker.

MS. MUSHENO: Thank you for the opportunity to allow us to be part of the record in support of phasing out subminimum wage certificates.

My name is Kim Musheno, Vice President of Public Policy for the Autism Society of America. The Autism Society is the nation's oldest and largest organization representing people with autism and their families.
People with autism and other developmental disabilities are among the most unemployed and underemployed segments of our society.

The Autism Society believes that if people with disabilities -- even those with the most significant disabilities -- want to work, they should be supported to work in competitive, integrated settings.

We believe we should do everything that we can to help people try out different jobs, match individual desires and skills with jobs, and provide training accommodations and supports.

If a person with a disability has trouble finding competitive work, they should be supported to participate in meaningful volunteer positions or other activities of their choosing, using the process of self-determination.

The Autism Society supports the Transformation to Competitive Employment Act introduced in Congress by Senators Bob Casey and Chris Van Hollen, and Representatives Bobby Scott and Cathy McMorris Rodgers, a bill that supports our goal to increase opportunities for people with autism to gain and retain real jobs for real wages.
We need strong support networks for supported employment and daily supports. That's why we strongly support this bill. It does not just phase out the use of sub-minimum wage certificates, as some of the other bills have done.

States applying for these grants must ensure that individuals be supported to transition to competitive employment and receive wraparound or integrated services if needed.

The most important goal is to infuse funding so that states can strengthen the service system, the provider network -- including the direct workforce -- that supports people to work, and care for individuals with the most significant developmental disabilities.

Our position in support of minimum wages is based on the principle of equity. Current law encourages a business model that takes advantage of people with disabilities.

Businesses should not be profiting from paying people with disabilities subminimum wages. The goal of the transformation legislation is to respect people with disabilities by paying them at least minimum wage for the work that they do, and help them live high-quality lives.
The bill does not mandate the closure of non-integrated work centers. It only asks that they change their model to be competitive.

It encourages integration. It incentivizes reforms and provides more options, not less.

We're not alone in supporting this policy position. We're joined by the Consortium for Citizens with Disabilities Employment Task Force, the Collaboration to Promote Self-Determination, the National Council on Disabilities, the National Organization on Disabilities, and numerous other key stakeholder groups.

As you heard from researchers and providers, we know how to do this. The states just need help to do it.

CHAIR LHAMON: Thank you for your testimony.

MS. MUSHENO: Thank you for your time.

CHAIR LHAMON: Next speaker.

MS. SACHS: My name is Heather Sachs and I'm the Policy and Advocacy Director for the National Down Syndrome Congress, the country's oldest and largest national organization for people with Down syndrome, their families, and the
professionals who work with them.

NDSC provides information, advocacy and support across the life span and works to create a national climate in which all people will recognize and embrace the value and dignity of people with Down syndrome.

We believe that all individuals with Down syndrome should have the same rights and opportunities as everyone else.

Like so many other disability organizations, NDSC views Section 14(c) as outdated, discriminatory, and reinforcing a life of poverty, segregation and dependency on public support for people with disabilities.

We support phasing out 14(c) in a responsible way, along with capacity building for competitive, integrated employment.

To that end, NDSC is an active member of the Collaboration to Promote Self-Determination, and is advocating for the passage of the Transformation to Competitive Employment Act.

Employment should be an expected life activity for individuals with Down syndrome. And they should have the individual and systemic supports necessary to enable them to find, keep and
succeed in careers in the community, based on their preferences, interests and strengths.

We recognize that change isn't easy and that there are some in our community who are content with their current placements in sheltered workshops, and are reluctant to make the transition.

Therefore, NDSC advocates for laws and policies that will build infrastructure and transition supports needed to phase out the issuance of subminimum wage certificates, while increasing opportunities for competitive, integrated employment, and putting in place safeguards to protect the interests of any people who are affected by this shift.

We've heard from policy experts all day long though. I want to use my remaining time to lift up some of the voices of self-advocates and their families from the Down syndrome community.

Tara, a mom of an adult son with Down syndrome from Iowa, shares that her son is an example of how people often get trapped in sheltered workshops because the resources to support them in competitive, integrated employment may not yet be available.

She explains that her son Taylor has the
potential to work in the community, but would need job coaching, like so many other people with disabilities who are successfully working need.

Obtaining this job coaching has been nearly impossible, due to resource shortfalls. So, he is literally stuck in a sheltered workshop in the meantime.

Tara believes that phasing out 14(c), putting more resources into the waivers that provide job coaching assistance, and helping workshops to convert to CIE, will enable people like Taylor to achieve their full potential in the workforce.

My friend Rachel, a self-advocate with Down syndrome from Kansas who works in a restaurant, says, it makes my heart sad that some of my friends cannot have jobs that allow them to make money, like their friends.

And finally, Cindy, a mom of a young daughter with Down syndrome from California, writes, I believe that subminimum wage is un-American. We have to move away from it because it ultimately keeps our kids in the spin cycle of poverty and dependency. People with Down syndrome are entitled to the same rights and opportunities as the rest of us.
Segregating them in sheltered workshops and paying them pennies on the dollar diminishes their self-worth and dignity. It is simply un-American.

CHAIR LHAMON: Thank you for your testimony. Our eighth speaker. Or seventh speaker.

MS. NELIS: Hi. My name is Tia Nelis. And I am the Policy and Advocacy Director for TASH. And I wish that you would allow us to answer your questions.

As a person with a disability, first I want to tell you that I wish that all my friends could have a job and not work in a sheltered workshop. There are many jobs out there and many different employment opportunities, if we are given the chance.

Also, the word handicap is old language. I don't like the word handicap because that already puts a strike against you when someone is describing you, because they just think about how you can't do all those things, and how you don't know how to work in the community, and how you don't know how to have a job.

And that is wrong. Second of all, what they talked about earlier is people without
disabilities supporting somebody in the job workforce that wasn't paid to do that. That's called natural supports. Hello.

Okay, so I'm going to tell you, when I first started my job at work, when I was at school I was never given the opportunity to have an IEP.

And then, my voc rehab counselor, who is supposed to believe in me and talk to me about what I can do. I said I wanted to work in child care. And she said to me, well, does your parents have any money to help you go to college to get that degree? I said, no, we don't have that kind of money. My parents can't send me.

And so, instead of saying that, oh yes, there's money -- other opportunities out there, there are grants out there to help you go to school -- she didn't do that.

What she said to me is, do you want to work in a sheltered workshop? And I said, well, what's that? And she said, it's like factory work. And I said, no, I don't want to work in a factory.

Well, it's a good thing that I didn't. I have many friends who worked in a sheltered workshop that don't like it and want to be out. They want to advocate for real jobs in the
I got this opportunity to go into many of the jobs that I've had. I worked at the University of Illinois at Chicago for 26 years. And yes, if you look at me, you say, oh, that's because you don't have that significant more of a disability and you can do those things.

But guess what? When I first started that, I didn't have that courage. I didn't have all those times to speak out. But guess what? I had people who believed in me and who were there for me, and gave me opportunities to be able to learn those skills and to support me.

If you give people the chance and the opportunity, you'll be surprised what they can do. Don't always think of them as they can't, because that's what holds people down.

I worked there for 26 years. And guess what? I'm a family member -- the only family member -- who has a pension.

Okay, other people have a right to have that. Let's talk about careers. Because when you just talk about jobs, that isn't helping anybody. When you talk about career --
testimony.

MS. NELIS: -- it makes somebody worth looking at.

CHAIR LHAMON: Thank you very much.

MS. HAU: My name is Linda Hau and I live in Wisconsin.

Provision 14(c) was initially enacted to allow disabled World War I veterans to work at a lower productivity rate and still earn a wage.

It is not any less relevant today for those of us whose loved ones are unable to work at the same rate as those more capable.

Sheltered workshops have allowed those loved ones to work in an environment where they feel safe, loved and accepted, while having the pride of holding a paying job.

They are by no means prisons, but an environment where our loved ones know that they're valued members of society.

For the entirety of our son's 41 years, we have heard all the buzzwords, mainstream, inclusion, and community integration. We have also learned that inclusion is often the cruelest form of isolation.

Our focus has always been on finding the
most appropriate setting for his well-being. And we
have chosen a workshop.

We are not lobbyists. We are parents
with our son's best interests at heart. Any
suggestion that we would allow him to be taken
advantage of or discriminated against is an insult.

If we lose our chosen workplaces, it
will leave our loved ones faced with forced
community employment at a taxpayer cost of $40 per
hour for a job coach, day service at a cost of $10
per client, per hour, or simply no employment, which
would require residential services at varying costs.

Many of these individuals are unable to
function in a typical workplace due to behavioral,
medical, or physical limitations. They are
generally socially ostracized, as they have nothing
in common with their coworkers.

The inevitable cost to individual mental
health then trickles down to the families, who must
find alternatives for their loved ones.

In our rural communities, there are very
few community work options. The estimated cost per
hour, per client, in our workshop is about $6. And
they are regulated by OSHA.

They happily perform real work, real
jobs, for real companies in the community who subcontract with the workshop in a non-threatening environment.

It is likely that without our clients to perform this labor, it would be outsourced to another country.

Actions to eliminate 14(c) will violate the civil rights of those for whom this could have devastating consequences. Thank you for allowing me to address you today.

CHAIR LHAMON: Thank you for your testimony. Go ahead.

MS. EACOBACCI: Good evening. My name is Kimie Eacobacci. The National Federation of the Blind believes that people with disabilities have a right to make employment choices. But we are concerned about the choice to work for a 14(c) provider.

Our research has found that the Internal Revenue Service repeatedly upholds its revenue ruling from 1965, that people with disabilities who work in sheltered workshops are not employees for federal employment tax purposes.

Their reasoning, in part, is because they do not receive a pay scale comparable to the
private industry.

While 14(c) providers call us employees on one hand, they repeatedly mis-classify us as non-employees on the other.

We strongly encourage the Commission, in their investigation, to investigate how people with disabilities are classified when they choose to work in a 14(c) program. Thank you.

CHAIR LHAMON: Thank you for your testimony. Is that our tenth speaker?

MR. PARE: Is that on?

CHAIR LHAMON: Yes, it is. You're ready.

MR. PARE: All right. My name is John Pare and I'm the Executive Director for Efficacy and Policy at the National Federation of the Blind.

Section 14(c) of the Fair Labor Standards Act denies people with disabilities the same wage and hour protections provided to every other American.

It identifies people with disabilities as an entire class of people who are to be treated differently, solely on the basis of disability. This is not a choice, an option, or flexibility. It is discrimination, segregation and oppression. It
is statutory low expectations.

In the 1990s I began to lose my eyesight. And in the spring of 2001 I lost my job due to my blindness. I had the same low expectations of blind people encapsulated in Section 14(c).

But I soon learned that my low expectations were wrong, and that given the proper tools, technology and training, that I could work and compete.

Most importantly -- what's most important -- was my rejection of Section 14(c) and its insidious low expectations and discrimination.

The message ingrained in Section 14(c) is that there are two classes of people in America, the disabled class and the abled body class.

I urge you to reject this two-class system. I urge you to reject able-ism in all of its forms. I urge you to reject 14(c).

We are not so different from all of you. People with disabilities want to have a job. We want to be able to earn money to support our families. And we want to be part of the American dream.

I look forward to the day when Americans
with disabilities are treated equally in the American employment. Thank you.

CHAIR LHAMON: Thank you for your testimony. Our eleventh speaker.

MS. GRITSENKO: Hi. My name is Tracy Gritsenko. I come to you today with 35 years of experience in employing people with disabilities.

I represent over 6,000 families from the great state of Missouri, who make up an organization called A Team Missouri.

We have recently collaborated with 18 other states across the United States with the same mission, to give a voice to those not being heard, as we've seen today.

I think we can all agree that 14(c) employment is not appropriate for all persons with disabilities. But we must also agree that not all disabilities are the same.

It is imperative that we not force a one-size fits all employment solution on a group of people that face such diverse challenges.

The removal of 14(c) would eliminate a vital employment option for hundreds of thousands of Americans, leaving many of them sitting at home or relegated to day hab programs.
Some legislators would have you believe that's okay, because that would just simply be collateral damage to the cause.

They're not collateral damage. These are people with desires and needs, just like every other citizen of our country.

And to be clear, our families do not believe that sitting at home or in a day hab program is an appropriate or desired option for their loved ones.

Persons who choose this type of employment for themselves or their loved ones are continually learning new job skills and social skills, making friends, and yes, earning a paycheck.

Sometimes this environment can act as a stepping stone to other employment options. And yes, sometimes it is just simply the perfect fit.

Our programs provide an atmosphere that allows individuals to build on their self-esteem and confidence by focusing on their abilities, not their disabilities.

This work environment meets them exactly where they are and provides them with supports and, if needed, protections, to enable them to succeed in a safe, supported, and understanding atmosphere.
For hundreds of thousands of Americans, this is their informed, intentional choice. And we must honor their right to choose what is best for them or their loved ones.

Far too often, lawmakers, along with some disability rights groups, increasingly make these decisions without talking to the very people who are directly impacted by this decision.

You have brought in many experts on this topic. But I feel, with all due respect, you have missed out on the single most important group, those that work successfully in these environments and their families. After all, are there any better experts?

I have spoken with your office about setting up a national tour of sheltered workshops and it has been well-received. I respect the Commission's commitment to doing thorough research. And I think speaking with the families who choose 14(c) and visiting workshops, is critical to that end.

I respectfully say it's sort of like giving a movie review without seeing the movie. It's not fair.

We talk about enabling and empowering
people to make decisions independently. And we agree, providing a vast array of choices to meet the unique desires and needs of every individual does exactly that, while eliminating 14(c) does the exact opposite.

CHAIR LHAMON: Thank you for your testimony.

MS. GRITSENKO: Thank you very much.

CHAIR LHAMON: Twelfth speaker.

MR. BARDEN: Hello Commissioners. Thank you for allowing us to share with you today. You all look nice and cheery, warmed up, and you guys have been here for 20 hours and you're still doing fantastic.

My name is Kirt Barden, CEO of Lighthouse Vocational Services, New Holland, Pennsylvania, former executive in transportation, and I have been in this segment industry for four years.

So, I'm kind of a new time person in the business world shifting in here. And I want to give you some exciting things that's happening at Lighthouse, but I also want to tell you that I've personally done research with 20 other Pennsylvania workshops, as well as a couple people that's
testifying before you today on the A Team, and we all share some of the same things. The A Team is like in ten states.

So, I'm kind of sharing some things that I think they would probably tell you is going on in a lot of cases at their workshop. So, let me share this with you.

We have 170 adults with intellectual disabilities based in our workshop. In the last three years, we've raised enough money to put into our workshop adult training rooms, to give our folks an additional dimension of training.

Now, this is a workshop. And now we're going to have arts and crafts and music, technology, family life skills, it's exciting what's happening there. We're going to have a sensory room for autism. So, we're going to have a lot of great things.

We're going to have a huge great room so that we're inviting the community in for presentations and stuff like that. That's what you can do at the workshop. That's what a lot of workshops in Pennsylvania and throughout these ten states and probably the nation are doing.

There are some creative things that we
are -- we're doing some things that are exciting. Okay? We at Lighthouse have 62 people that are now in community participation.

We have 30 that are in employment services, where we're looking for jobs for them. And by the way, just a suggestion. Please incentify businesses. I've taken my business skills and sat down in front of businesses, and when I address them from a needs-based scenario, I find jobs for my people.

It's a unique way you can help businesses want to use your people when you've decided to focus on their needs, their specific needs. Eighteen on OVR services, job placement, shadowing, and everything like that. More than half of our people are outside the building.

The 14(c) is training for us. Yes, they get paid. But you should see new parents that come to our workshop. And they go, wow, you're doing this, you're doing that.

They have a vision of what they might be. They might be able to get trained. I've not heard anything about that today.

Also, I got some recommendations for you, because you guys and gals seem like you're
really, really intently listening.

One, listen to the parents, please. They're the most important people you need to see. I agree with this young lady. Go to the workshops, talk to some of the parents. They care. And that's per Michele Ford, who just shared it does matter.

Transportation's a problem with supported employment. Make sure we do something about transportation.

CHAIR LHAMON: Thank you for your testimony.

MR. BARDEN: Also, you have no statistics to back up anything. Thank you.

CHAIR LHAMON: Thank you very much.

MS. RICCOBONO: Good evening. My name is Melissa Riccobono and I'm a member of the National Federation of the Blind.

I am here today to urge you to bring an end to 14(c), or to recommend to bring an end to 14(c).

As a woman who was born blind, I face discrimination every single day. I have a master's degree, I am the proud parent of three children, ages 7, 9 and 13, and my husband and I own our own home. We're taxpayers.
When I walk down the street, I always face the extremely low expectations of people. And it's a problem because I'm at the mercy of their well-meaning, but often misguided, desire to take care of me.

And I think that they tend to have these extremely low expectations of what I can do or what I can't do, because they could not imagine how they would function if they suddenly became blind. And I tend to believe that this reaction is very similar for people with other disabilities.

I think this is behind the question of phasing out 14(c). We need to open our minds and we need to have faith that people with disabilities have capacity to perform in competitive, meaningful employment when they are given the chance.

I mentioned that I am a parent of three children. I have two daughters and both of them happen to be blind. I am here because, like all parents, I want to make the world better for my children.

I cannot imagine my daughters being paid less than the minimum wage, and I'm sure that none of you could imagine this happening to your children or your grandchildren.
So, I just urge you to please do your part to put an end to this outrageous and unfair, harmful and discriminatory practice for the adults of today and for the children of tomorrow. Thank you.

CHAIR LHAMON: Thank you for your testimony. Our fourteenth speaker?

MS. STONEMEIER: Thank you to the Commission for convening this hearing, as well as for the opportunity to offer public comment.

My name is Jenny Stonemeier. I am the Executive Director of the Association of People Supporting Employment First, or APSE. I'm also the mother of a 19-year-old young man who experiences disability.

The work of supporting individuals with disabilities to find meaningful, competitive, integrated employment is not only my day job, it's my dinner table conversations and my middle-of-the-night worries.

I'd like to focus my comments today on what we don't know about the individuals currently receiving services in 14(c) settings.

There are no publicly available data that tell us the true number of individuals with
disabilities served under 14(c). This is because the Department of Labor does not require community rehabilitation providers to report the number of individuals served in work centers whose certificates are in pending or renewal status.

Critical to this discussion is the recognition that we simply do not have adequate data to assist us in understanding the scope of the 14(c) problem, which is a crucial step to ensuring that we do no harm as we seek to identify public policy answers to rectify the financial discrimination of people with disabilities currently allowed under 14(c).

In addition to the number of individuals impacted, there are just a few other questions we cannot answer. And this is obviously a shortened list.

The age or other demographics of individuals working in 14(c). Are most people nearing retirement, or are the majority still of working age. There are clear implications in how we approach the transition away from 14(c) based upon the answers to these questions.

Wage information. Is an average wage closer to $7.25 an hour or $.30 an hour? These two
are critical questions to have answers to, in order to provide appropriate retraining necessary to assist in the transition to competitive and community settings.

The length of employment. How long have 14(c) employees been at their jobs, and to what extent have their wages counted towards Social Security retirement benefits.

This is just a partial list of factors. And there are certainly other factors to consider. I want to be clear in stating that none of the questions I have raised should be construed as an argument for perpetuating the practice of 14(c) and subminimum wages for people with disabilities, or to wait until we have answers before taking action.

To the contrary, APSE is clear and persistent in its position in calling for the phase-out of 14(c). Rather, I raise these questions to further underscore the opacity of information about the people -- the human beings -- who are currently receiving services under 14(c) certificates.

I stress these questions to emphasize the importance of ensuring that APSE continues to advocate for a creation of systems of supports that fully meets the needs of individuals.
CHAIR LHAMON: Thank you for your testimony.

MS. STONEMEIER: Thank you.

CHAIR LHAMON: Our fifteenth speaker?

MR. MANNERS: Hi. My name is Derek Manners. I am an attorney at the tenth biggest law firm in the world. I'm not here representing any organization trying to maintain the status quo. I am here representing myself as an individual who used to work at a subminimum wage job.

My current salary, not to brag, is $250,000 a year. My subminimum wage hourly rate was $2.25 an hour. I've had the same level of vision in that job and in my current job.

And to give you a bit more back story on that, when I was a sophomore, I was acing my classes, on the debate team, on the academic team.

But my guidance counselor at my high school thought that because I was a person with a disability, that I would not be able to go to college, and that it was a good idea for me to get experience in the workplace. And so I was placed with a subminimum wage employer because she thought that's all that I would be capable of doing.

CHAIR LHAMON: At your request, this is
the two-minute warning.

MR. MANNERS: Thank you. My parents, who had my best intentions, agreed with this decision because they didn't know any better and they didn't have full information about my capabilities, nor did I.

I enjoyed that job. If you had polled me and asked me how I felt in that job, I would have said I felt rewarded. I would have said that I had friends there. I would have said that that $2.25 an hour was fair and that I enjoyed my job.

I, after a month of working there, was promoted to -- quote, unquote, promoted -- to a manager position where I had the ability to hire and fire people that were able-bodied, that made $8.50 an hour -- four times more than their supervisor -- all on the basis of my disability.

The idea that the repeal of 14(c) is somehow a violation of civil rights for people with disabilities is laughable and ignorant.

Section 14(c) is on the basis that people with disabilities -- and we heard people say this today -- that it is on the basis that people with disabilities can't perform at the same rate as people who are able-bodied.
CHAIR LHAMON: At your request, this is the one-minute warning.

MR. MANNERS: Thank you. But as my situation and so many others that I know demonstrate, that is just not the case.

When I was at Harvard Law School, I thought I would be for sure the first blind person to ever go to Harvard, much less -- for sure the only blind person in my class.

To my surprise, there were six. There were also people in wheelchairs. There were also people with other disabilities. The range of capabilities for people with disabilities is not something that you can draw from a statistic.

So, in the absence of knowing, you have to go with your gut. And your gut should tell you that treating people differently on the basis of a characteristic has always been fundamentally wrong and will continue to be wrong until a history of time is written. So, I urge you to recommend the repeal of 14(c). Thank you.

CHAIR LHAMON: Thank you for your testimony. Our sixteenth speaker?

MR. LOWTHER: Thank you for having me and thank you for the important work that the
Commission does.

My name is Chris Lowther. I'm here on behalf of my pro bono client, Together For Choice.

Together For Choice advocates for enhanced options, both in residential and employment situations for individuals with intellectual and developmental disabilities.

As you might have gathered from the name, the emphasis is on making sure that this population we're talking about that truly has a diverse range of needs and challenges, has a diverse array of opportunities in front of them.

And that's why preserving Section 14(c) is so important for this population. Because, unfortunately -- and while some might dispute this fact, I've met enough parents, I've met enough providers, I've met enough self-advocates in my work -- to know that for some it is just not possible for them to have a competitive, integrated employment job.

The cost of money to provide the supports necessary in order for them to perform the job just makes it economically impossible. And once again, unfortunately, I do not see the source of funding to provide the supports that they need in
order to have these jobs.

So, for these individuals, without Section 14(c) they will be deprived of the opportunity of earning a paycheck. And they will be deprived of the purpose and the meaning.

And I say this as a person with an extended period of unemployment in my life, that I mean that. It is truly a sense of purpose.

And so, I know there's been a lot of studies and there's been a lot of policy experts. But unfortunately, the one answer to the question that we just still don't seem to have, is what happens to this population that already has 25 percent employment rate, what happens when Section 14(c) disappears?

No one seems to know the answer to that question. I think unfortunately, some who are more intellectually honest will say, well, they'll just go to day programs.

What about the people who want to earn a paycheck? And I want to remind the Commission that most of the Section 14(c) programs out there are administered through the setting that the individual lives in. And these programs are losing money left and right because it costs money to have the
supports in place.

This isn't about someone making money. This isn't about someone getting rich. This is about providing an opportunity for the individual to get to go to work and earn a paycheck. Please keep that in mind as you're working on your recommendation. Thank you.

CHAIR LHAMON: Thank you for your testimony. Our last speaker.

MS. WILD: Thank you to the Commission for the opportunity to speak today. My name is Susan Wild. And for nearly 30 years I have worked to support and advocate for people with significant developmental disabilities.

Never have I found it beneficial to limit the opportunities and choices of those with disabilities. I'm a firm believer that all people have the right to choose their path in life, including those with disabilities.

14(c) ensures that people with disabilities have a choice regarding their place of service and employment.

Each person in this room made a choice to be here today. Some are here to give a voice to a belief that they feel strongly about. Some are
here on an assignment by their employer. And some are here as just interested spectators.

The thing we have in common is that we all had a choice to be here. Choice is the basis of every decision we make every day. We choose our path in life, where we live, who we spend our time with, and what we do for a living.

People with significant disabilities should have the right to make the same choices as well.

For many individuals with disabilities, the choices for employment are already limited. 14(c) is a viable and rewarding choice for those individuals that have not yet achieved the level of skill to be successful in competitive employment. It provides a structured training program and compensated employment to those individuals.

The program creates the opportunity to accommodate individuals to work at their own pace and to earn their own special wage, while gaining skills to prepare them for supported employment or competitive employment.

While both sides of this discussion feel strongly about their viewpoints, as you've seen today, what really matters here is what is in the
best interests of the people that are participating
in the programs, and working under 14(c).

I think we can all agree that 14(c) is
in need of reform. There has obviously been a
change in society and our expectations, from when
14(c) was created to today.

What has not changed is the basic
concept of choice. Eliminating 14(c) is not in the
best interests of all. It is, however, a viable
choice, and in fact, the choice of thousands of
individuals with significant disability.

Let's agree to reform 14(c), create new
supports and levels of accountability, revise the
definitions of 14(c).

Let's not eliminate it. Thank you.

CHAIR LHAMON: Thank you very much for
your testimony.

That brings us to the end of our
briefing. I thank all of our panelists and our
public participants. Today has been tremendously
informative. And on behalf of the entire
Commission, I thank all who presented for sharing
your time, expertise and experience with us.

As I said earlier, this record of this
briefing remains open until December 15, 2019.
Panelists or members of the public who would like to submit materials for Commission consideration, including if individuals would like to submit anonymously, may mail them to the U.S. Commission on Civil Rights, Office of Civil Rights Evaluation, 1331 Pennsylvania Avenue, NW, Suite 1150, Washington, DC, or email them to subminimumwages@usccr.gov.

I ask that our attendees move any continuing conversations, which evidently have already begun, outside of the hearing room so our staff can complete logistics necessary to close out. Please make sure you exit the building through the F Street lobby, as the exit to the Pennsylvania Avenue side is closed.

If there's nothing further, I hereby adjourn this briefing at 6:20 p.m. Eastern time.
Thank you.

(Whereupon the above-entitled matter went off the record at 6:20 p.m.)