

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

Testimony before the Subcommittees on
Civil Rights and Human Services & Workforce Protections,

Committee on Education and Labor,
United States House of Representatives

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

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

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

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

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

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

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

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

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

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

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

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

In my opinion, a number of Monica's former disabled classmates and acquaintances who are in sheltered workshops not only want to hold competitive, integrated jobs but also have the attributes necessary to do so if only they were given access to effective job supports and job accommodations, and the opportunities to acquire skills.

Because the Fair Labor Standards Act of 1938 allows 14(c) certificate holders to pay subminimum wage to their disabled workers, a 2017 – 18 national survey of these workers, conducted in part by John Butterworth at U. Mass Boston's Institute of Community Inclusion, found that the average wage of disabled workers in sheltered workshop was \$3.34 per hour, and that such workers earned an estimated average of \$213.76 per month.¹ Nearly half (or 46 percent) of subminimum wage earners and those who engaged in non-work activities who were funded by states' IDD agencies wanted well-paying jobs and career paths towards economic self-sufficiency.²

Furthermore,

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

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

² *ibid*, p. 4.

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

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

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

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

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

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

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

⁶ Ibid, p. D-237

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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