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U.S. Commission on Civil Rights Hearing
Subminimum Wages: Impacts on the Civil Rights of People with Disabilities

Panel Three: The Nature of 14c Programs

Good morning, and thank you for inviting me to participate in this critical briefing. I appreciate the opportunity to discuss the importance of advancing competitive, integrated employment for people with disabilities, and the negative impacts of paying people subminimum wages under Section 14(c) of the Fair Labor Standards Act.[1]

I am the Executive Director of The Georgia Advocacy Office, the designated Protection and Advocacy System for People with Disabilities in Georgia[2]. Our highest priorities are preventing abuse, neglect and discrimination, and ensuring that all people with disabilities have opportunities to be fully integrated in community life. For the vast majority of people, this means working in competitive integrated employment – jobs in the community where people with disabilities work alongside co-workers without disabilities and are paid fair wages. They are not structured into segregated, subminimum wage employment settings because it is their only option. I'm also the President of TASH, an international advocacy organization whose mission is to include all people with disabilities in community life, regardless of type or level of disability.

It's astonishing to me that- in 2019, almost 2020- we are still talking about the "pros and cons" of paying American Citizens subminimum wages. When I came into the disability field in 1976, I was shocked to discover that people with disabilities were so often segregated from their peers simply for being born with a disability. I researched how this could possibly be the case and discovered that people with disabilities were segregated during the day in sheltered workshops and other segregated settings. I now have 43 years of experience assisting people with significant disabilities to access real jobs- competitive, integrated employment- and to discover and pursue their chosen career path.

It's crucial to understand the historical underpinnings of how this whole question of subminimum wage began in the first place. When veterans were returning home from WWII with a variety of disabilities, there was a benevolent, if misguided notion, that these heroes- who were willing to take a bullet for their last employer- might not be capable of contributing within the regular American workforce. The idea of a 'set aside' emerged. Organizations called sheltered workshops were created as places for veterans to go and to make semblance of

[1] 29 U.S.C. 214(c)(2)(B)
[2] 42 U.S.C. 1801 et seq

productive contributions. This coincided with the Fair Labor Standards Act of 1938[3], intended to secure American workers the right to be paid at least minimum wage. One notable distinction in the Act was the permission granted to discriminate against people with disabilities. The Act allowed the payment of subminimum wages to people with disabilities based on the belief that their work was of lesser value, and their "productivity" did not warrant a competitive wage. This fundamental belief, and resulting low expectations of people with disabilities, has been the driver for the past 80+ years behind the opportunities people with disabilities do or do not have access to.

Unfortunately, the special permission within FLSA to discriminate against people with disabilities, predates the Rehabilitation Act of 1973[4], the Americans with Disabilities Act, US Supreme Court *Olmstead*[5] decision, and the Work Innovation and Opportunity Act (WIOA)[6], all of which have advanced community integration and competitive integrated employment without eliminating the subminimum wage. We now have decades of research and demonstration of the capabilities and contributions of people with significant disabilities with access a broad range of career options, including high tech jobs, healthcare occupations, performing arts. That is, virtually every type of job that exists in our economy.

By contrast, this panel is answering the question about the "nature of 14c" experiences of people with disabilities making subminimum wages. Over the past 4 decades I've had the opportunity to work in 49 states assisting people with disabilities to leave segregated settings and obtain real jobs. As we consider the nature of the 14c subminimum wage on the experience of people with disabilities, I'll offer a few examples from across the country.

I met a man packaging holiday lights in sheltered workshop in NM. For our purposes, I will call him Mark. Mark was paid subminimum wages through the 14c provision the sheltered workshop operated under. He mastered the job and spent up to 30 hours a week packaging these lights. He was paid $29 and some change, every two weeks. So, Mark made a little less than $15 a week for his capable labor. As is the case in many sheltered workshops, often there was no alternative contract work available. For roughly 10 months out of the year, there was insufficient work to keep Mark and the other people the workshop had recruited into their program engaged in productive work. The practice of the workshop was to put the same work materials- the holiday lights- in front of the person, with no explanation that this was not in fact "live work." Instead, it was considered "simulated work." Mark was expected to continue to work industriously for his 30 hours a week. And even though he had mastered the work, when the workshop didn't have any paid work available, he was paid a training wage of 10% of his regular wage. In this case, that meant making $2.98 every two weeks. Such is nature of 14c subminimum wage schemes.

One commonly held misunderstanding is that people making subminimum wages in sheltered workshops are different than their peers with disabilities who work in competitive, integrated employment making the same wages as their non-disabled coworkers, with the same benefits, opportunities for advancement, and the same level of interaction with non-disabled peers as their

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[3] 29 U.S.C. 201, et seq.

[4] 29 U.S.C. 701 et seq.

[5] *Olmstead v. L.C.*, 527 U.S. 581 (1999)

[6] 29 U.S.C. 3101 et seq.

coworkers that don't have disabilities. This is simply not true. What IS different are the beliefs held about the individuals with disabilities, and the expectations and resulting opportunities and supports offered. We have many decades of research and demonstration of what people with disabilities are capable of when given the chance. There are countless stories of people who were long in 14c situations and are now competitively employed.

We will be hearing about the landmark *Lane v Brown*[7] case today – largely from attorneys and people functioning as an arm of the court. My own experience with *Lane* was as an expert for the plaintiff class. I bring up this case to highlight the importance of people with disabilities having **real jobs** in regular work places, making the same wages – not subminimum wages- as their nondisabled coworkers. One of my roles in the case was to visit with class members whom the state reported as working in real jobs in competitive, integrated employment. I met a man I will call Jerry. Jerry worked for years in a family business, making a very substantial salary. When the circumstances of his family changed, he was sent to a sheltered workshop, where he remained for many years. Jerry's "job" consisted of being handed a dirty rag after lunch at the sheltered workshop. Workshop staff asked him if he "wanted to work," which, in this case meant wiping down tables. This had nothing to do with his previous work experience, his skills or preferences (he loved working outdoors). If he spent a few seconds or a few minutes doing this task, he was paid less than a dollar a week, based on prorating minimum wage based on the minutes he worked. Such is often the nature of 14c work for people with disabilities.

Thankfully, as we will hear from others today, progress has been made in Oregon to significantly reduce the census of sheltered workshops through supporting people with intellectual and developmental disabilities to access competitive, integrated employment. The *Lane* case requires the use of evidence-based practices, those practices known to work, to successfully increase competitive integrated employment for people with disabilities in Oregon. One such best practice is providing "wrap around" services for people who are working part time. This allows the person with a disability to engage in activities that enhance their career path and economic security, and become more fully integrated into community life during a day that complements the person's work hours.

Another "best practice" required by the *Lane* case is ending the practice of youth in special education classrooms practicing for a future in sheltered workshops, doing work that doesn't necessarily exist in the competitive labor market, and limiting the vision for the kinds of work and work settings the person would be offered after graduating from high school. The *Lane* case cut off the pipeline from school to segregated work. In line with the Work Innovation and Opportunities Act requirements, students are having internships and trial work experiences, and person-centered vocational assessments as part of their transition from school to work. The expectation is competitive, integrated employment and informed choice as part of their transition from school to adulthood.

In Georgia, where I run the Protection and Advocacy System for People with Disabilities, we monitor sheltered workshops to make sure that students are getting the information, opportunities and supports to access real jobs when they graduate from high school. There are 33 sheltered workshops that pay people with disabilities subminimum wages in Georgia. These workshops

[7] *Lane v. Brown*, 166 F. Supp. 3d 1180, 2016

are all over the state, both in metro and rural areas. In one workshop, people with disabilities clean coat hangers as part of a workshop contract with a local dry-cleaning business for use in between customers. Such is often the nature of 14c work, they make pennies on the dollar.

When Section 14c of the Fair Labor Standards Act became law, the intention was to address what was expected to otherwise be a curtailment of employment opportunities for people with disabilities. What we have come to understand over the past 80+ years, is that **the utilization of Section 14c subminimum wage certificates is precisely what curtails employment opportunities for people with disabilities.**

After decades of research and demonstration of what people with disabilities are capable of, and with the advances in assistive technology, systematic instruction, workplace flexibility, and customized employment, it is time for us to seriously consider the 2016 recommendations made by the WIOA Advisory Committee[8] to responsibly phase out the use of subminimum wages as several states have already demonstrated is possible.

Thank you.

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[8] *Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities.* Washington, DC; The United States Senate Committee on Health, Education, Labor and Pensions, The United States House of Representatives Committee on Education and the Workforce. 2016