

11-1-2019

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Kate McIlvanie

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### Suggested Citation

Kate McIlvanie, Comment, Seeking Equality in Wages for Employees with Intellectual and Developmental Disabilities, 40 N. Ill. U. L. Rev. 70 (2019).

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# Seeking Equality in Wages for Employees with Intellectual and Developmental Disabilities

KATE MCILVANIE<sup>1</sup>

*This Comment discusses the little-known exception to the minimum wage within the Fair Labor Standards Act that allows individuals with intellectual and developmental disabilities to be paid at a rate below the federal minimum wage rate. Starting with background information regarding the progression of labor laws, this Comment addresses the current paradigm of the “sheltered workshop” and the current protections for persons with intellectual and developmental disabilities in the workforce. It will provide specific examples of exploitation that has occurred as a result of this practice, as well as an overview of opposing arguments in the controversy surrounding the subminimum wage. Additionally, this Comment will provide a look into how developments in this area are being addressed at the federal and state levels and why the allowance for a subminimum wage as applied to intellectually and developmentally disabled persons should be discontinued.*

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1. Third-year law student at Northern Illinois University College of Law. Sister and friend to a brother whose courage and perseverance while navigating this world with an intellectual and developmental disability is unparalleled.

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## I. INTRODUCTION

Amid the heated discussions in the United States regarding increases to the federal and state minimum wages, another controversy has been brewing that does not share the same amount of societal awareness.<sup>2</sup> It is not common knowledge that there are exceptions to minimum wage laws that allow the payment of subminimum wages to certain categories of people such as student workers, employees that receive gratuities, and workers with disabilities.<sup>3</sup> But perhaps the most concerning of these is the payment of subminimum wages to developmentally disabled persons working for employers with a 14(c) certificate.<sup>4</sup> Considering the discoveries of exploitation of persons who have intellectual and developmental disabilities (I/DD) at the hands of their employers,<sup>5</sup> there is now considerable controversy in the discussion as to whether the certificate programs operating pursuant to

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2. *Why America Needs a \$15 Minimum Wage*, ECON. POL'Y INST. (Feb. 5, 2019), <https://www.epi.org/publication/why-america-needs-a-15-minimum-wage/> [<https://perma.cc/9C6A-7EP2>].

3. *Questions and Answers About the Minimum Wage*, U.S. DEP'T LABOR, <https://www.dol.gov/whd/minwage/q-a.htm> [<https://perma.cc/27MR-H8JS>] (identifying provisions of the FLSA that allow exceptions to the minimum wage laws for workers with disabilities, student workers, workers under age twenty, and tipped employees).

4. *Subminimum Wage Employment for Workers with Disabilities*, U.S. DEP'T LABOR, <https://www.dol.gov/whd/workerswithdisabilities/about.htm> [<https://perma.cc/9ANZ-DCKS>].

5. Rabbi Ruti Regan, *Minimum Wage Shouldn't Be Something You Work Your Way Up to, Even if You Have Disabilities*, NBCNEWS (July 31, 2018), <https://www.nbcnews.com/think/opinion/minimum-wage-shouldn-t-be-something-you-work-your-way-nena896131> [<https://perma.cc/63E9-F5KS>].

section 14(c) of the Fair Labor Standards Act of 1938<sup>6</sup> should be phased out or left alone.<sup>7</sup>

Naturally, there are strong arguments on both sides of the issues stemming from employers currently operating under 14(c) certificates, including Community Rehabilitation Programs (CRPs), parents, guardians and caregivers, and people with intellectual and developmental disabilities.<sup>8</sup> This Note explores the relationship of the Fair Labor Standards Act of 1938 and newer developments in disability laws to the opposing positions regarding the 14(c) certificates to show that payment of subminimum wages to employees with I/DD should end.

## II. BACKGROUND

Prior to the Supreme Court's reversed position in *West Coast Hotel Company v. Parrish* in 1937, the Court had held multiple federal and state attempts at labor law reforms as unconstitutional.<sup>9</sup> However, after the Court's decision in *Parrish* that upheld Washington's state minimum wage law as constitutional, the door was opened for other attempts at labor reform.<sup>10</sup> At the front of the movement for labor reform was President Franklin Delano Roosevelt, who sent a labor standards bill to Congress in 1937.<sup>11</sup> After a contentious journey through the Senate and House committees with numerous amendments, the bill was approved and sent to President Roosevelt for signature on June 25, 1938.<sup>12</sup> On October 24, the Fair Labor Standards Act of 1938 (FLSA), also known as 29 U.S.C. §§ 201-262, was put into effect.<sup>13</sup>

The FLSA is commonly known for increasing the protections of employees by establishing a federal minimum wage that is enforced by the

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6. U.S. DEP'T OF LABOR, WH PUB. NO. 1318, THE FAIR LABOR STANDARDS ACT OF 1938 (2011), <https://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf> [<https://perma.cc/7Z7U-NBS3>].

7. *Community Rehabilitation Programs List*, U.S. DEP'T LABOR (July 1, 2019), <https://www.dol.gov/whd/specialemployment/CRPlist.htm> [<https://perma.cc/HN4X-T7HK>].

8. Clair Zillman, *Disabled Workers Left in the Cold on Minimum Wage*, FORTUNE (Feb. 12, 2014), <http://fortune.com/2014/02/12/disabled-workers-left-in-the-cold-on-minimum-wage/>. *But see* David Ordan, *Eliminating Subminimum Wage Waivers Will Harm Hundreds of Thousands of People With Disabilities*, THE HILL (Aug. 10, 2018), <https://thehill.com/opinion/healthcare/401273-eliminating-subminimum-wage-waivers-will-harm-hundreds-of-thousands-of> [<https://perma.cc/CW9G-7TP5>].

9. *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

10. *Id.*

11. Jonathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, U.S. DEP'T. LABOR, <https://www.dol.gov/general/aboutdol/history/flsa1938> [<https://perma.cc/Z2KG-RKXN>].

12. *Id.*

13. U.S. DEP'T OF LABOR, *supra* note 6, at 44-46.

Wage and Hour Division (WHD) of the United States Department of Labor (DOL).<sup>14</sup> What is not commonly known, however, is that the provisions built into the FLSA create certain exemptions to the federal minimum wage paid in accordance with the FLSA.<sup>15</sup> According to the Department of Labor:

The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students), as well as full-time students in retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed. Employment at less than the minimum wage is authorized to prevent curtailment of opportunities for employment. Such employment is permitted only under certificates issued by WHD.<sup>16</sup>

As stated, the purpose behind the exceptions was to offer employers the benefit of paying their employees that fall into one of the aforementioned categories less than minimum wage to prevent restriction in employment opportunities for those citizens.<sup>17</sup> To get the benefit of paying subminimum wages, employers have to obtain an “authorizing certificate from the Wage and Hour division” of the Department of Labor.<sup>18</sup> This certificate, allowed by Section 14(c) of the FLSA (29 U.S.C. § 214(c)), determines the wages of employees with disabilities by calculating a commensurate wage rate based upon the worker’s individual productivity compared to an experienced employee without a disability.<sup>19</sup>

Since 1938, other efforts at reform specifically aimed at preventing restrictions in employment for individuals with disabilities have been enacted.<sup>20</sup> The Americans with Disabilities Act (ADA) was passed in 1990 and provides additional assistance for people with disabilities not only with

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14. *Handy Reference Guide to the Fair Labor Standards Act*, U.S. DEP’T LABOR (Sept. 2016), <https://www.dol.gov/whd/regs/compliance/hrg.htm> [<https://perma.cc/585C-YSC3>].

15. *Id.*

16. *Id.*

17. *Id.*

18. *Fact Sheet #39: The Employment of Workers with Disabilities at Subminimum Wages*, U.S. DEP’T LABOR, <https://www.dol.gov/whd/regs/compliance/whdfs39.pdf> [<https://perma.cc/73BZ-CWRE>].

19. *Id.*

20. *Subminimum Wage Employment for Workers with Disabilities*, *supra* note 4.

employment opportunities, but also with transportation and accessibility.<sup>21</sup> One of the most notable uses of the ADA was in 1999, when two individuals with I/DD sued Georgia health care officials for violating Title II of the ADA by keeping them institutionalized.<sup>22</sup> Title II of the ADA pertains to the access of public services and mandates that “no qualified individual with a disability shall . . . be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”<sup>23</sup> In *Olmstead v. L.C.*, the Supreme Court held that segregation of people with disabilities was discrimination, violating Title II of the ADA. The opinion by Justice Ginsburg stated:

States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.<sup>24</sup>

As a result of the *Olmstead* decision, extensive efforts were made by the Civil Rights Division of the Department of Justice to enforce the eradication of unjustified segregation of people with disabilities and to ensure access to services “in the most integrated [noninstitutionalized] setting[s]” based upon their needs.<sup>25</sup> Additionally, in 2009, President Barack Obama directed the Civil Rights Division to increase enforcement efforts after initiating the “Year of Community Living,”<sup>26</sup> resulting in the collaboration of state and local government officials, disability rights groups and attorneys, and Department of Health and Human Services representatives, to design an effective program enforcing the integration requirement of Title II of the ADA across the country.<sup>27</sup>

These ongoing efforts to increase integration and access to services for people with disabilities through enforcement of Title II of the ADA have brought awareness to another problem, namely the segregation of people

21. *Id.*

22. *Olmstead v. L.C.*, 527 U.S. 581, 589 (1999). *See also* U.S. Dep’t of Justice, Civil Rts. Div., *Olmstead: Community Integration for Everyone*, ADA, <https://www.ada.gov/olmstead/index.htm> [<https://perma.cc/Z6KW-D4XL>] [hereinafter *Olmstead: Community Integration for Everyone*].

23. 42 U.S.C. § 12132 (2018).

24. *Olmstead*, 527 U.S. at 607.

25. *Id.* at 589. *See also Olmstead: Community Integration for Everyone*, *supra* note 22.

26. Proclamation No. 8398, 74 Fed. Reg. 37,921 (July 29, 2009).

27. *Olmstead: Community Integration for Everyone*, *supra* note 22.

with disabilities in employment situations. According to the ADA, many states have provided “unnecessarily segregated” employment services in the form of sheltered workshops.<sup>28</sup> According to the ADA, these sheltered workshops (now referred to as work centers) provide “rehabilitation services, day treatment, training, and/or employment opportunities to individuals with disabilities.”<sup>29</sup> However, these workshop programs have been under scrutiny for being restrictive to people with disabilities in obtaining integrated employment opportunities and being overly segregated (meaning individuals with I/DD are isolated from working with nondisabled persons other than support staff).<sup>30</sup> For example, in 2014, the DOJ, through the Civil Rights Division, initiated an investigation into Rhode Island’s sheltered workshop and day programs to determine whether there were violations of Title II of the ADA, as interpreted by the holding in *Olmstead*.<sup>31</sup> The investigation resulted in the nation’s first statewide settlement agreement.<sup>32</sup> The State of Rhode Island had to agree to comply with all the mandates contained within the settlement agreement to correct all the violations of the integration requirements of Title II of the ADA as stated in *Olmstead* for the DOJ to resolve its investigation and avoid litigation.<sup>33</sup> Remedies included providing employment placement support to over three thousand individuals with I/DD that were working in the sheltered workshops and providing transitional support to young persons with I/DD coming out of

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28. U.S. Dep’t of Justice, Civil Rts. Div., *Fighting Discrimination in Employment Under the ADA*, ADA, <https://www.ada.gov/employment.htm> [<https://perma.cc/W8XB-YLF3>] [hereinafter *Fighting Discrimination in Employment Under the ADA*].

29. See *Wage and Hour Division (WHD)*, U.S. DEP’T LABOR, <https://www.dol.gov/whd/foh/ch64/64k00.htm> [<https://perma.cc/LE7E-K73J>] (advising that Sheltered Workshops are now referred to as Work Centers).

30. *United States v. Rhode Island Consent Decree*, § II(A)(10), 4 (April 9, 2014), <https://www.ada.gov/olmstead/documents/ri-olmstead-statewide-agreement.pdf> [<https://perma.cc/H3N9-JQLG>] [hereinafter *Consent Decree*].

A “sheltered workshop” is a facility-based service that congregates individuals with I/DD who perform work tasks inside of the facility. Sheltered workshops are operated by service provider entities. In general, a sheltered workshop employs only individuals with I/DD or other disabilities except for service support staff. Individuals with I/DD are frequently paid less than minimum wage for work performed. In sheltered workshops, individuals with I/DD have limited or no engagement with nondisabled peers, coworkers, and customers, except for provider agency support staff.

*Id.*

31. U.S. Dep’t of Justice, *U.S. v. Rhode Island*, ADA (2014), [https://www.ada.gov/olmstead/olmstead\\_cases\\_list2.htm#ri-state](https://www.ada.gov/olmstead/olmstead_cases_list2.htm#ri-state) [<https://perma.cc/222G-TKAH>] [hereinafter *U.S. v. Rhode Island*].

32. *Id.*

33. See *Consent Decree*, *supra* note 30, at § I (A-H), 1-2.

high school to find community employment.<sup>34</sup> The State of Oregon also accepted a settlement agreement in the first national class action lawsuit challenging a state funded sheltered workshop program for violating the ADA by having unnecessary segregation in its sheltered workshops.<sup>35</sup>

Other significant efforts in federal action for enacting changes in the labor field for people with disabilities were also occurring in 2014. In February 2014, President Obama signed Executive Order 13658, “Establishing a Minimum Wage for Contractors.”<sup>36</sup> This order raised the minimum wage for workers included under covered federal contracts (including workers with disabilities) to \$10.10 an hour<sup>37</sup> with an increase to \$10.60 an hour beginning on January 1, 2019.<sup>38</sup> Additionally, the Workforce Innovation and Opportunity Act (WIOA) was signed in July 2014.<sup>39</sup> The WIOA increased the accessibility to workforce services for people with disabilities to assist in training and gaining “competitive integrated employment.”<sup>40</sup>

With the increased governmental scrutiny of sheltered workshops to ensure compliance with the ADA required integration in employment for people with I/DD and the increase in minimum wages pursuant to Executive Order 13658, it would seem like these actions would be benefitting people with I/DD in employment situations. However, it is interesting to note that the wage increase only applies to individuals employed under certain types of “covered contracts.”<sup>41</sup> These contracts include procurement construction contracts covered by the Davis-Bacon Act, service contracts covered by the Service Contract Act, and contracts for concession (where the federal government grants a right to use federal property for furnishing services).<sup>42</sup> Executive Order 13658 also applies to new AbilityOne contracts, contracts that are awarded or renewed after January 2015, but does not apply retroactively.<sup>43</sup> The AbilityOne program is a national network of nonprofit agencies that employ people who are blind and people with sig-

34. *U.S. v. Rhode Island*, *supra* note 31.

35. See Press Release, U.S. Dep’t. of Justice, Justice Department Reaches Landmark Settlement Agreement with State of Oregon Regarding Americans with Disabilities Act (Dec. 30, 2015), <https://www.justice.gov/opa/pr/justice-department-reaches-landmark-settlement-agreement-state-oregon-regarding-americans> [<https://perma.cc/E86M-JMGR>].

36. *Subminimum Wage Employment for Workers with Disabilities*, *supra* note 4.

37. *Id.*

38. Minimum Wage for Contractors; Updating Regulations to Reflect Executive Order 13838, 83 Fed. Reg. 48, 537 (Sept. 26, 2018) (to be codified at 29 C.F.R. pt. 10).

39. *Subminimum Wage Employment for Workers with Disabilities*, *supra* note 4.

40. *Id.*

41. *Fact Sheet: Final Rule to Implement Executive Order 13658, Establishing a Minimum Wage for Contractors*, U.S. DEP’T LABOR, <https://www.dol.gov/whd/flsa/eo13658/fr-factsheet.htm> [<https://perma.cc/2V9J-J9KG>] [hereinafter *Fact Sheet: Final Rule to Implement Executive Order 13658*].

42. *Id.*

43. *Id.*

nificant disabilities to produce and sell products and services to the federal government.<sup>44</sup> In total, the Department of Labor estimates that around two hundred thousand workers benefit from Executive Order 13658.<sup>45</sup>

Though regulation is moving in the right direction for providing an increased wage to many workers, it does not repeal the subminimum wage exceptions for all employees with disabilities. Most notable is that subminimum wages are still being paid to people with developmental disabilities through granted 14(c) certificates. According to the Wage Hour Division of the DOL, 14(c) certificates can be issued to (1) Community Rehabilitation Programs (CRPs), (2) establishments employing patient workers, (3) business establishments, and (4) school work programs.<sup>46</sup> Perhaps the most common type of organization that 14(c) certificates are issued to are Community Rehabilitation Programs (CRPs).<sup>47</sup> CRPs are described by the DOL as “[n]ot-for-profit agencies that provide rehabilitation and employment opportunities for people with disabilities. Some may be affiliated with national organizations such as Goodwill Industries or The Arc, while others are private not-for-profit organizations located solely within their local communities.”<sup>48</sup> CRPs are also extensively used by the AbilityOne program to function as the employer of record for the participants and qualify for the 14(c) minimum wage exception.<sup>49</sup>

The WHD has a spreadsheet of all CRPs in the nation that have been issued 14(c) certificates under the Fair Labor Standards Act.<sup>50</sup> According to the data from the WHD on the CRP list, there are over 1,700 CRPs across the nation employing over 124,000 workers and paying them subminimum

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44. *FAQs*, U.S. ABILITY ONE COMMISSION, [https://www.abilityone.gov/abilityone\\_program/faqs.html#1](https://www.abilityone.gov/abilityone_program/faqs.html#1) [https://perma.cc/FUF8-SMYN].

45. *See Fact Sheet: Final Rule to Implement Executive Order 13658*, *supra* note 41. *See generally* Minimum Wage for Contractors; Updating Regulations to Reflect Executive Order 13838, 83 Fed. Reg. 48,537 (Sept. 26, 2018) (to be codified at 29 C.F.R. pt. 10). Pursuant to Executive Order 13838 signed by President Trump, the DOL updated the Federal Register to reflect increases in minimum wage rate to \$10.60 effective January 1, 2019, for employees under covered contracts and \$7.40 for tipped employees. *Id.* E.O. 13838 also created an exemption to E.O. 13658 for contracts connected to seasonal recreational services. *Id.*

46. U.S. Dep’t of Labor, Section 14(c) of the Fair Labor Standards Act 27, <https://www.dol.gov/whd/sec14c/14c-presentation.ppt> [https://perma.cc/L4AB-PAY5].

47. *Id.*

48. *Wage and Hour Division (WHD)*, *supra* note 29.

49. ADVISORY COMMITTEE ON INCREASING COMPETITIVE INTEGRATED EMPLOYMENT FOR INDIVIDUALS WITH DISABILITIES, INTERIM REPORT 93 (Sept. 15, 2015), <https://www.dol.gov/odep/pdf/20150808.pdf> [https://perma.cc/VE6Y-QNFX] [hereinafter ACICIEID INTERIM REPORT].

50. *Community Rehabilitation Programs (CRPs) List*, U.S. DEP’T LABOR (July 1, 2018), <https://www.dol.gov/whd/specialemployment/CRPlist.htm> [https://perma.cc/HN4X-T7HK] [hereinafter *CRP List*].

wages as of July 1, 2018.<sup>51</sup> The WHD is responsible for reviewing the certificate applications and issuing the certificates; it is also responsible for overseeing the payment of subminimum wages to persons with disabilities.<sup>52</sup> To regulate the programs that pay subminimum wages, the WHD requires compliance with certain provisions created for CRPs employing workers with disabilities.<sup>53</sup> The criteria for determining the wage rates that will be paid are based upon the following:

- (1) The nature and extent of the disabilities of the individuals employed as these disabilities relate to the individuals' productivity;
  - (2) The prevailing wages of experienced employees not disabled for the job who are employed in the vicinity in industry engaged in work comparable to that performed at the special minimum wage rate;
  - (3) The productivity of the workers with disabilities compared to the norm established for nondisabled workers through the use of a verifiable work measurement method (see §525.12(h)) or the productivity of experienced nondisabled workers employed in the vicinity on comparable work; and,
  - (4) The wage rates to be paid to the workers with disabilities for work comparable to that performed by experienced nondisabled workers.
- (b) In order to be granted a certificate authorizing the employment of workers with disabilities at special minimum wage rates, the employer must provide the following written assurances concerning such employment:

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51. *Id.* See also ADVISORY COMMITTEE ON INCREASING COMPETITIVE INTEGRATED EMPLOYMENT FOR INDIVIDUALS WITH DISABILITIES, FINAL REPORT 28 (Sept. 15, 2016), [https://www.dol.gov/odep/topics/pdf/ACICIEID\\_Final\\_Report\\_9-8-16.pdf](https://www.dol.gov/odep/topics/pdf/ACICIEID_Final_Report_9-8-16.pdf) [<https://perma.cc/FSF8-RD75>] [hereinafter ACICIEID FINAL REPORT].

Based on April 2015 data from WHD, there are 2,820 entities in the United States which hold Section 14(c) subminimum wage certificates, almost all (89%) of whom are Community Rehabilitation Programs (CRPs) serving individuals in congregate settings. [I]n 2014, 75 percent of individuals with I/DD receiving day or employment services through a state I/DD system are in a sheltered or facility-based environment.

*Id.*

52. *Subminimum Wage Employment for Workers with Disabilities*, *supra* note 4.

53. *Subminimum Wage Provisions*, U.S. DEP'T LABOR, <https://www.dol.gov/whd/specialemloyment/> [<https://perma.cc/9VJP-W3TG>].

- (1) In the case of individuals paid hourly rates, the special minimum wage rates will be reviewed by the employer at periodic intervals at a minimum of once every six months; and,
- (2) Wages for all employees will be adjusted by the employer at periodic intervals at a minimum of once each year to reflect changes in the prevailing wages paid to experienced nondisabled individuals employed in the locality for essentially the same type of work.<sup>54</sup>

### III. GROWING CONCERNS WITH THE 14(C) CERTIFICATE PROGRAM

Given the oversight and regulation by the WHD of the 14(c) certified organizations and the payment of subminimum wages, it is of interest to note that there have been considerable concerns regarding the certificate process in the past. In 2012, the National Council on Disability (NCD), “an independent federal agency charged with advising the President, Congress, and other federal agencies regarding policies, programs, practices, and procedures that affect people with disabilities,”<sup>55</sup> established a committee to research and analyze the 14(c) provision of the FLSA.<sup>56</sup> The committee met with “individual workers with disabilities, family members, parents and siblings, workshop operators who hold 14(c) certificates, state policymakers, and operators of supported employment programs.”<sup>57</sup> The committee also made site visits in Vermont, New York, Oregon, Washington, South Dakota, Louisiana, and Ohio to evaluate the success of the programs and oversights used at the state level.<sup>58</sup> After its research and evaluation, the committee’s findings and recommendations were sent to President Obama.<sup>59</sup> The committee stated that “[s]heltered workshops [were] ineffective at transitioning individuals with disabilities to integrated employment” and urged for the phase out of the discriminatory 14(c) program, though the report noted that a transition period and increased infrastructure would be

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54. 29 C.F.R. § 525.9 (1989) (identifying criteria for employment of workers with disabilities under certificates at special minimum wage rates).

55. *About Us*, NAT’L COUNCIL ON DISABILITY, <https://www.ncd.gov/about> [<https://perma.cc/7FAJ-HR8E>].

56. Nat’l Council on Disability, SUBMINIMUM WAGE AND SUPPORTED EMP. 9 (Aug. 23, 2012), [https://www.ncd.gov/sites/default/files/NCD\\_Sub%20Wage\\_508.pdf](https://www.ncd.gov/sites/default/files/NCD_Sub%20Wage_508.pdf) [<https://perma.cc/R223-NGDG>] [hereinafter NCD 2012 REPORT].

57. *Id.*

58. *Id.* at 25-37. Sites visited were Burlington, Vermont; New York, New York; Salem, Oregon; Vancouver, Washington; Pierre, South Dakota; Baton Rouge, Louisiana; and Columbus, Ohio. *Id.* at 5.

59. *Id.* at 1.

needed to support attempts at integrated employment.<sup>60</sup> Despite the advocacy of the NCD, the 14(c) certificates allowing payment of subminimum wages to people with disabilities have not been phased out and more certificates are being issued to CRPs (sheltered workshops).<sup>61</sup>

After the WIOA was signed into effect in 2014 (perhaps in response to the findings of the NCD), Congress directed the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (ACICIEID) to submit a report to the Secretary of Labor (SOL) and Congress.<sup>62</sup> Pursuant to section 461 of the WIOA, the ACICIEID was charged with providing the SOL and Congress with their findings and recommendations “to increase competitive employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities;” as well as the use and oversight of “the certificate program as carried out under section 14(c) of the Fair Labor Standards Act of 1938.”<sup>63</sup> On September 15, 2016, the Advisory Committee submitted the Final Report to the SOL and Congress with the following recommendations concerning the 14(c) certificate programs:

1. Congress should amend Section 14(c) of FLSA to allow for a well-designed, multi-year phase-out of the Section 14(c) Program that results in people with disabilities entering CIE (competitive integrated employment).
2. WHD should engage in stronger enforcement of 14(c) certificates and should use a strict standard for issuance or renewal of 14(c) certificates only when “... necessary in order to prevent the curtailment of opportunities for employment ...”
3. In addition to technical assistance activities recommended in other sections of this report, federal agencies that have responsibility either through WIOA or other federal initiatives to increase CIE for people with significant disabilities – including the DOL, the U.S. Departments of Health and Human Services and Education, and the Social Security Administration -- should coordinate provision of technical assistance resources for states to encourage transforming 14(c) certificate holders to employment agencies that offer CIE.<sup>64</sup>

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60. NCD 2012 REPORT, *supra* note 56, at 10.

61. *CRP List*, *supra* note 50.

62. ACICIEID FINAL REPORT, *supra* note 51, at ii.

63. *Id.*

64. *Id.* at 29-31 (emphasis omitted).

Pursuant to the committee's report, competitive integrated employment is a key concern and primary goal for persons with I/DD.<sup>65</sup> While not surprising given the visibility and concern of integrating living and employment conditions after *Olmstead*, it is interesting to note that the committee's definition and goal of integrated employment is distinctly contrary to that of the sheltered workshop paradigm. Integrated employment is the situation where nondisabled persons and persons with disabilities are working in the same employment settings and not in a setting where the nondisabled persons are primarily support staff and not coworkers as in sheltered workshops.<sup>66</sup> While sheltered workshops have not been federally prohibited, there has been a negative connotation surrounding them since *Olmstead* brought more visibility to the plight of people with I/DD which has led to a call for a phase out. As a result, there is proposed legislation that would redefine the meaning of "competitive integrated employment" to a definition favorable to the position of sheltered workshops and others that will be discussed later.<sup>67</sup>

#### IV. EXPLOITATION AND MISUSE OF THE 14(C) CERTIFICATE PROGRAM UNCOVERED

While the segregation of sheltered workshops has received more attention from the Department of Justice after the settlement agreements with Rhode Island and Oregon for violations of the ADA,<sup>68</sup> the Fair Labor Standards Act of 1938 still enables certain entities to apply for a 14(c) certificate from the Wage and Hour Division of the Department of Labor, permitting them to pay their employees with disabilities a subminimum wage, a wage lower than the established minimum wage requirement.<sup>69</sup> There are certain measures that have to be followed in order for employers to qualify for certificates which are contingent upon the type of employer and the scope of the work, but the Wage and Hour Division is responsible for monitoring the compliance of the employers with the required measures.<sup>70</sup> Despite the alleged monitoring conducted by the Department of Labor to ensure protection and compliance, there have been several in-

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65. *Id.* at 6.

66. See discussion of work centers and sheltered workshops, *supra* notes 29, 30.

67. *Some Law Makers Seek to Rewrite the Rehabilitation Act with Controversial New Bill*, ABILITY MAG., <https://abilitymagazine.com/rehabilitation-act-hr-5658> [https://perma.cc/7G5R-98Y6].

68. *Fighting Discrimination in Employment Under the ADA*, U.S. DEP'T JUSTICE, <https://www.ada.gov/employment.htm> [https://perma.cc/762K-64XY].

69. *Subminimum Wage Employment for Workers with Disabilities*, *supra* note 4.

70. *Id.* (discussing compliance of the subminimum wage employment requirements).

stances where exploitation of people with developmental disabilities by their employers have been discovered, other than the ADA violations discovered by the DOJ in Rhode Island and Oregon.<sup>71</sup>

Perhaps one of the most well-known offenders of subminimum wage exploitation is Goodwill Industries.<sup>72</sup> Goodwill Industries is a network of about 161 independent Goodwills operating in North America with more than 3,300 retail stores and outlets combined.<sup>73</sup> Goodwill Industries International also describes itself as a \$5.59 billion nonprofit organization with a mission to “enhance the dignity and quality of life of individuals and families by strengthening communities, eliminating barriers to opportunity, and helping people in need reach their full potential through learning and the power of work.”<sup>74</sup> Ironically, an NBC investigation discovered that Goodwill Industries, as a 14(c) certificate holder, had several locations paying workers with disabilities as low as ten cents an hour, which is legal pursuant to the 14(c) exception calculating subminimum wages based upon time studies—taking a stopwatch and measuring the amount of time it takes a disabled person to complete a task compared to the amount of time it takes a nondisabled person.<sup>75</sup> While these wages are legal, the publication of this pay gap sparked criticism and concern, especially since there are many Goodwill executives making well over \$500,000 a year and Goodwill admits that it is a \$5.59 billion nonprofit organization<sup>76</sup> paying subminimum wages to its disabled employees.<sup>77</sup>

A more recent example of exploitation of the 14(c) subminimum wage exception occurred in Illinois during 2018.<sup>78</sup> Acting on a tip, the Department of Labor investigated allegations concerning Rock River Valley Self Help Enterprises.<sup>79</sup> Rock River Valley Self Help Enterprises (Self Help) was a nonprofit recycling, packaging, and pallet manufacturer located in Sterling, Illinois, that employed workers with disabilities and paid them

71. Anna Schechter et al., *More Disabled Workers Paid Just Pennies an Hour*, NBCNEWS (Aug. 10, 2013), <https://www.nbcnews.com/news/investigations/more-disabled-workers-paid-just-pennies-hour-v19916979> [<https://perma.cc/4HD4-NKY4>].

72. *Id.*

73. *About Us*, GOODWILL INDUSTRIES INT’L, INC., <http://www.goodwill.org/about-us/> [<https://perma.cc/4P4U-NJWT>].

74. *Id.*

75. Schechter, *supra* note 71.

76. *About Us*, *supra* note 73.

77. Schechter, *supra* note 71.

78. Rep. Gregg Harper, *It’s Time to Ensure Workplace Protections for People with Disabilities*, THE HILL (June 6, 2018), <https://thehill.com/blogs/congress-blog/labor/394167-its-time-to-ensure-workplace-protections-for-people-with-> [<https://perma.cc/QZ9M-ZY92>].

79. *U.S. Department of Labor Acts to Protect Individuals with Disabilities from Workplace Exploitation*, U.S. DEP’T LABOR (Apr. 23, 2018), <https://www.dol.gov/newsroom/releases/whd/whd20180423> [<https://perma.cc/769C-R7NW>] [hereinafter *DOL News Release*].

below minimum wages pursuant to their 14(c) certificate.<sup>80</sup> The Wage and Hour Division of the DOL investigated this organization and discovered that Self Help failed to conduct timely wage surveys and time studies on the work performed by employees with disabilities and that about 250 workers with disabilities were improperly paid.<sup>81</sup> Additionally, Self Help attempted to “mislead and obstruct” the WHD “investigation by concealing relevant information, hiding work that” was undocumented but performed by workers with disabilities.<sup>82</sup> It was also discovered that Self Help had “paid workers with gift cards” rather than the wages owed to them.<sup>83</sup> As a result of the findings, the Wage and Hour Division revoked the 14(c) certificate from Self Help after the investigation and after Self Help’s failure in correcting the violations after being provided time to come into compliance.<sup>84</sup> Self Help’s certificate was also revoked retroactively, so the organization will have to pay the federal minimum wage of \$7.25 per hour in back wages to all workers paid subminimum wages for the past two years and Self Help’s pending application to renew their certification was denied.<sup>85</sup>

In reaction to the disgust felt over the exploitation of some of the most vulnerable citizens in the nation, there has been a growing restlessness with the plight of the developmentally and intellectually disabled person in the workforce culminating in a call for action to be taken.<sup>86</sup> In fact, public officials and disability and civil rights activists are calling for reform of the subminimum wage exceptions for disabled persons allowed by the Fair Labor Standards Act of 1938.<sup>87</sup> In April of 2018, seven senators took up the call and urged the Department of Labor to phase out the certification programs and implement integration procedures.<sup>88</sup> Senators Elizabeth Warren,

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80. *Id.* See also Katrina Lamansky, *U.S. Dept. of Labor Says Sterling Nonprofit Exploited 250 Workers With Disabilities*, WQAD (Apr. 24, 2018), <https://wqad.com/2018/04/24/sterling-il-company-with-mission-to-employ-people-with-disabilities-found-to-be-exploiting-them-instead> [<https://perma.cc/X7TX-HSYQ>].

81. *DOL News Release*, *supra* note 79.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. NCD 2012 REPORT, *supra* note 56. Efforts in reform have been supported by recommendations from the NCD in 2012 that called for the gradual phase out of the use of 14(c) certificates to avoid exploitation and to lead to the integration and equality for disabled person, but it was largely ignored. *Id.*

87. See Harper, *supra* note 78 (calling for the passing of the TIME Act in response to publicized exploitation).

88. Letter from Elizabeth Warren et al., U.S. Sen., to Alexander Acosta, Sec’y U.S. Dep’t of Labor (Apr. 23, 2018), <https://www.warren.senate.gov/imo/media/doc/2018.04.23%20Letter%20to%20DOL%20on%20Subminimum%20Wage%20for%20Workers%20with%20Disabilities.pdf> [<https://perma.cc/U6YT-4LMN>] [hereinafter Letter from Elizabeth Warren].

Robert Casey, Jr., Patty Murray, Chris Van Hollen, Margaret Wood Hassan, Tammy Duckworth, and Bernard Sanders sent a five-page letter to the Secretary of the U.S. Department of Labor, Alexander Acosta, on April 23, 2018.<sup>89</sup> In this letter, the senators voiced concern over the subminimum wage exceptions allowed by section 14(c) of the FLSA being used by employers to discriminate against workers with disabilities.<sup>90</sup> The senators also voiced concern over the certificate program being used to set “low expectations for workers with disabilities” in sheltered workshop settings that are not integrated.<sup>91</sup> In light of the potential for abuse and discriminatory effects of the 14(c) certificate program, it is unsurprising that the senators called for a phase out of the subminimum wage exception:

Numerous self-advocates and experts in the disability community have recognized that the subminimum wage has a high potential for abuse. The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, created by the bipartisan Workforce Innovation and Opportunity Act, released a final report in fall 2016 (“Advisory Committee Report”) recommending a “well-designed, multi-year phase-out of the Section 14(c) Program that results in people with disabilities entering CIE [competitive integrated employment].” That report also detailed a number of steps that the Wage and Hour Division of the Department can take to strengthen the enforcement of 14(c) certificates and to ensure that they are issued only when “necessary in order to prevent the curtailment of opportunities for employment,” as current regulation requires. Because of the inherently discriminatory nature of the program, we agree that it should be phased out in a responsible way.<sup>92</sup>

The letter continues on to request information regarding the Department of Labor’s oversight of the 14(c) certificate program, like the number of certificate holders and the rates of pay persons with disabilities are receiving at the federal and state levels.<sup>93</sup> Additionally, the senators called for “at least an annual” public report providing specific information about the number of employees being paid subminimum wages under a certificate granted by the Wage and Hour Division, the number of investigations and inspections per-

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89. *Id.*

90. *Id.*

91. *Id.* at 1.

92. *Id.* at 2.

93. Letter from Elizabeth Warren, *supra* note 88, at 3.

formed by the WHD of facilities operating under a 14(c) certificate, the procedures for evaluating employer applications for a certificate, and the number and nature of violations of the FLSA and other labor laws that the WHD has observed in the employers using the certificates.<sup>94</sup>

While this letter from senators to the DOL sparked conversation and publicity over the exploitation and use of the 14(c) certificate programs in the country, there has not been a documented response providing the requested information. Even with the publicity and urging for reform of the subminimum wage exceptions to the FLSA, a key legislative move for phasing out the 14(c) certificate program has not been passed.<sup>95</sup> The Transitioning to Integrated and Meaningful Employment (TIME) Act was introduced to the House of Representatives in 2015 and is still in the Subcommittee on Workforce Protections.<sup>96</sup> This Act “[d]irects the Secretary of Labor to discontinue issuing to any new profit or non-profit or governmental entity special wage certificates . . . Prescribes requirements for a three-year phase-out of all certificates. Amends the Fair Labor Standards Act of 1938 to repeal authority and requirements for the issuance of such certificates three years after enactment of this Act. Requires revocation of any certificates remaining at that time.”<sup>97</sup> There is still an ongoing push by advocates in Washington to pass the TIME Act.<sup>98</sup> For example, Kayla McKeon, the first Capitol Hill lobbyist with Down syndrome,<sup>99</sup> is working with the National Down Syndrome Society (NDSS) to meet with members of Congress to advocate for the passing of the TIME Act.<sup>100</sup> In a video with over two million views, Ms. McKeon is shown speaking with different lawmakers

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94. *Id.* at 3, 4.

95. Transitioning to Integrated and Meaningful Employment Act, H.R. 188, 114th Cong. (2015).

96. *Id.*

97. *H.R. 188—TIME Act*, CONGRESS (Apr. 29, 2015), <https://www.congress.gov/bill/114th-congress/house-bill/188> [<https://perma.cc/9NHB-SWZY>].

98. Tom Ridge, *TIME to Act on Real Employment for People with Disabilities*, THE HILL (May 18, 2016, 6:26 PM), <https://thehill.com/opinion/op-ed/280438-time-to-act-on-real-employment-for-people-with-disabilities> [<https://perma.cc/3UDP-CL7K>].

99. Allison Klein, *This Woman Is an Exceptionally Effective Capitol Hill Lobbyist. She Also Has Down Syndrome*, WASH. POST (June 8, 2018, 7:00 AM), [https://www.washingtonpost.com/news/inspired-life/wp/2018/06/08/this-woman-is-an-exceptionally-effective-capitol-hill-lobbyist-she-also-has-down-syndrome/?utm\\_term=.1265c0c477ec](https://www.washingtonpost.com/news/inspired-life/wp/2018/06/08/this-woman-is-an-exceptionally-effective-capitol-hill-lobbyist-she-also-has-down-syndrome/?utm_term=.1265c0c477ec) [<https://perma.cc/XX2P-SLLU>].

100. Meghan Holohan, *Kayla McKeon Is the First D.C. Lobbyist with National Down Syndrome Society*, TODAY (Oct. 24, 2018, 3:41 PM), <https://www.today.com/health/kayla-mckeon-first-d-c-lobbyist-national-down-syndrome-society-t140585> [<https://perma.cc/RU5U-5KEN>].

and describing her journey to Washington.<sup>101</sup> The video also shows the NDSS explaining how the use of the certificate program allows the payment of subminimum wages to people like Kayla McKeon who are “differently abled.”<sup>102</sup>

## V. OPPOSITION TO TERMINATING SUBMINIMUM WAGES

While discussions and petitions to reform and/or outlaw the 14(c) certificate program are ongoing, new certificates are still being issued or renewed to organizations whether they are sheltered workshops or community rehabilitation programs.<sup>103</sup> Naturally, the urging for the phase out of the certificate program and allowance of subminimum wages has been met with resistance from a variety of fronts.<sup>104</sup> Perhaps the most opposition comes from the American Congress of Community Supports and Employment Services (ACCSES),<sup>105</sup> a network of over 1,200 organizations providing services to people with disabilities around the nation.<sup>106</sup> More simply, ACCSES is a lobbyist group for sheltered workshops, community rehabilitation programs, and employers employing people with disabilities at subminimum wages.<sup>107</sup> ACCSES is against the phase out and argues that employment opportunities for people with disabilities will be dramatically lowered without a subminimum wage to incentivize employers to hire them.<sup>108</sup> In 2012, ACCSES responded to the NCD’s report regarding the subminimum wage and published its opinion of Section 14(c) of the FLSA by writing a six-page letter to President Obama.<sup>109</sup> This letter questioned the validity of the findings in the 2012 report,<sup>110</sup> particularly the NCD’s

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101. AJ+, *Kayla McKeon Is A U.S. Lobbyist Inspiring Others With Down Syndrome*, FACEBOOK (Oct. 22, 2018), <https://www.facebook.com/ajplusenglish/videos/361164787959148/UzpfSTewMDAwMTI2NjQ5NTYwMToyMTkzMDIzODU0MDgzMTQz/> [<https://perma.cc/8UGE-5Z34>].

102. *Id.* See also Klein, *supra* note 99.

103. *CRP List*, *supra* note 50.

104. See Zillman, *supra* note 8 (discussing ACCSES opposition of phase out of 14(c) certificates).

105. See CURLIE DIRECTORY, <https://curlie.org/Society/Politics/Lobbying/> [<https://perma.cc/STQ3-Q7GB>] (identifying what ACCSES stands for).

106. *About Us*, ACCSES, <https://accses.org/about-us> [<https://perma.cc/S6QJ-QHTX>].

107. *Id.* But see Regan, *supra* note 5.

108. See Regan, *supra* note 5.

109. Letter from Terry R. Farmer, Chief Executive Officer, ACCSES, to President Obama (Aug. 28, 2012), <https://accses.org/press-room> (last visited Dec. 27, 2019) (follow the sixth link under ACCSES Public Documents, ACCSES Letter to President Obama [hereinafter ACCSES Letter]).

110. NCD 2012 REPORT, *supra* note 56.

recommendation to phase out the 14(c) certificates to remove the federal minimum wage exception:

We disagree with NCD's assertion, however, that discrimination includes paying less than the minimum wage. An individual with a disability who is not capable of meeting productivity standards (with or without reasonable accommodations) is not considered "qualified" under the ADA and therefore is not entitled to the employment protections against discrimination under the ADA. In order to prevent the curtailment of employment for such individuals (i.e., individuals who are unable to meet qualification standards), Section 14(c) of FLSA provides for the payment of a commensurate wage. Thus, payment of a commensurate wage in accordance with FLSA is not discrimination.<sup>111</sup>

ACCSES also argues that changes to the subminimum wage exception will result in limited employment opportunities for people with I/DD.<sup>112</sup> Simultaneously, ACCSES supports sheltered workshop and community rehabilitation program availability for persons with I/DD and opposes the NCD's recommendations to phase out these structures:

[B]y eliminating and restricting appropriate and justified options and opportunities to work, these recommendations and statements violate the tenets of self-determination, informed choice, and person-centered planning--concepts that are fundamental to disability employment policy. And most importantly, as a direct result of these recommendations, hundreds of thousands of people with disabilities will most likely become unemployed or lose the opportunity to become employed in the future.<sup>113</sup>

ACCSES's argument that an increase in wages for persons with I/DD to meet the federal minimum wage for all other workers and a phase out of the sheltered workshop and community rehabilitation programs will result in fewer employment opportunities articulates the fear that many families have regarding a potential phase out of these programs and the push to

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111. ACCSES Letter, *supra* note 109, at 2 (internal citation omitted).

112. *Employment of Individuals with the Most Significant Disabilities*, ACCSES (July 2012), <https://accses.org/CMS/Resources/dropbox/accsespositionon14c.pdf> [<https://perma.cc/R95A-CM3E>].

113. ACCSES Letter, *supra* note 109, at 1, 2.

eliminate the subminimum wage exceptions.<sup>114</sup> However, an increase in wages and a mandatory shift to integrated employment has the potential to negatively impact the business of the organizations operating under 14(c) certificates, namely the sheltered workshops that ACCSES supports.<sup>115</sup>

Similarly, Goodwill Industries opposes a phase out of the Section 14(c) provision allowing for the payment of subminimum wages to persons with disabilities pursuant to receipt of a certificate from the Department of Labor.<sup>116</sup> To advocate its opposition to a phase out of the 14(c) certificates, Goodwill Industries published a press release urging Congress to preserve section 14(c) and the subminimum wage for people with disabilities in order to enable Goodwill to maintain employment training and opportunities for persons with disabilities.<sup>117</sup> In this paper, Goodwill paints a grim picture of the fate of their employees with disabilities that would be affected by eliminating the 14(c) certificates:

Those individuals with significant disabilities who were offered an opportunity to work but were determined to be unable (with or without reasonable accommodations) to meet productivity standards likely would not be retained and would be replaced by persons with less significant disabilities or those with higher productivity capacity, (i.e., individuals who are able to meet the qualification and productivity standards with or without reasonable accommodations).

Without Section 14(c), people with significant disabilities deemed not qualified to work would be forced to stay at home, enter day habilitation centers (if a space were available) or live in institutions. In short, eliminating or phasing out the special minimum wage would likely result in many individuals with significant disabilities receiving no wages instead of earning special minimum wages. Furthermore, they would be denied the tangible and intangible benefits

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114. Ordan, *supra* note 8.

115. Nat'l Council on Disability, FROM THE NEW DEAL TO THE REAL DEAL: JOINING THE INDUSTRIES OF THE FUTURE 56, 57 (Oct. 11, 2018), [https://ncd.gov/sites/default/files/New%20Deal%20to%20Real%20Deal%20FINAL\\_508.PDF](https://ncd.gov/sites/default/files/New%20Deal%20to%20Real%20Deal%20FINAL_508.PDF) [<https://perma.cc/7U3H-RHWN>] [hereinafter NCD 2018 REPORT].

116. *Employment of People with Disabilities through FLSA Section 14(c)*, GOODWILL INDUSTRIES INT'L, INC., <http://www.goodwill.org/wp-content/uploads/2013/06/goodwill-14c-fair-wages-position-paper.pdf> [<https://perma.cc/X6R7-X6X3>].

117. *Id.*

of work: independence, participation, dignity, self-esteem and sense of accomplishment, among others.<sup>118</sup>

While ACCSES, Goodwill, sheltered workshops, and other entities are understandably concerned about potential changes to wages to be paid to employees with disabilities, parents, guardians, and other advocates are also concerned.<sup>119</sup> As David Ordan, a member of the board for Disability Service Provider Network (an advocacy group for people with disabilities based in Wisconsin), bluntly commented in an article addressing concerns related to the potential phase out of the 14(c) certificate/subminimum wage exception and sheltered workshops, “[t]he road to hell is paved with good intentions.”<sup>120</sup> This sentiment is shared by many people who wonder what would happen to those individuals with I/DD if sheltered workshops are forced to close because they cannot afford to pay minimum wage to their employees with disabilities that affect the employees’ job performance.<sup>121</sup> According to Disability Service Provider Network, subminimum wages are useful to people with disabilities to “help them gain entry to the workforce” and are adequate compensation correlated to their productivity.<sup>122</sup> Others view the offering of “a special minimum wage” as an incentive that enables employers to provide employment to individuals with disabilities.<sup>123</sup> Additionally, supporters of this argument believe that sheltered workshops and community rehabilitation programs should not be removed as a viable option for people with I/DD when alternatives to participation in these settings are to either stay at home or go to adult day-care facilities.<sup>124</sup>

The debate between opposing goals in the minimum wage and employment battle for individuals with disabilities is still ongoing at the federal level.<sup>125</sup> In fact, supporters of the 14(c) program and the sheltered workshop/CRP model are optimistically looking towards the future given the current administration.<sup>126</sup> In December 2017, then-Attorney General Jeff Sessions rescinded twenty-five guidance documents that were considered

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118. *Id.* at 8.

119. Ordan, *supra* note 8.

120. *Id.*

121. *Id.*

122. *Id.*

123. Harris Capps & Joan Kelley, *VOR’s Position on Sheltered Workshops*, VOICE OF REASON (Nov. 28, 2016), [https://www.vor.net/images/stories/2016-2017/VOR\\_Statement\\_on\\_Sheltered\\_Workshops\\_11-28-16.pdf](https://www.vor.net/images/stories/2016-2017/VOR_Statement_on_Sheltered_Workshops_11-28-16.pdf) [https://perma.cc/2FTD-CTT3].

124. *Id.* See also Ordan, *supra* note 8.

125. Ridge, *supra* note 98 (supporting phase out of subminimum wage exception). *But see* Ordan, *supra* note 8 (opposing removal of subminimum wage exception).

126. See generally Michelle R. Davis, *Feds Mull Changes to Disability Employment Rules*, DISABILITYSCOOP (July 23, 2018), <https://www.disabilitycoop.com/2018/07/23/feds-changes-employment-rules/25306/> [https://perma.cc/JYY6-HLYB].

“unnecessary, inconsistent with existing law, or otherwise improper.”<sup>127</sup> One of the most contentious documents removed was the *Statement of the Department of Justice on Application of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C. to State and Local Governments’ Employment Service Systems for Individuals with Disabilities* (October 31, 2016).<sup>128</sup> While a statement was posted on the ADA’s Information and Technical Assistance page advising that the removal of this particular guidance document was done “to afford further discussion with relevant stakeholders, including public entities and the disability community, as to how best to provide technical assistance in this area,”<sup>129</sup> there is concern that the removal is a step towards restricting changes in disability rights.<sup>130</sup> According to Eve Hill, former Deputy Assistant Attorney General for the Department of Justice’s Civil Rights Division, the rescinding of this document takes away information vital to understanding compliance and rights under the disability laws in place.<sup>131</sup> There is also concern that this action represents the DOJ’s willingness to protect the livelihood of sheltered workshops and other entities that advocate continued use of the 14(c) wage exception.<sup>132</sup>

Another item of interest that disability groups are closely following is the Workplace Choice and Flexibility for Individuals with Disabilities Act, otherwise known as H.R. 5658.<sup>133</sup> As mentioned previously, H.R. 5658 is proposed legislation that would redefine the meaning of “competitive integrated employment” to a definition favorable to the position of sheltered workshops and other service providers.<sup>134</sup> Pursuant to 29 U.S.C. § 705(5)(B),

[t]he term “competitive integrated employment” means work that is performed on a full-time or part-time basis (including self-employment) – (B) that is at a location where the employee interacts with other persons who are not indi-

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127. *Attorney General Jeff Sessions Rescinds 25 Guidance Documents*, U.S. DEP’T JUSTICE (Dec. 21, 2017), <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents> [<https://perma.cc/ZC29-W2MD>].

128. *Id.*

129. U.S. Dep’t of Justice, Civ. Rts. Div., *Withdrawn Technical Assistance and Guidance Documents*, ADA (Dec. 21, 2017), [https://www.ada.gov/withdrawn\\_olmstead.html](https://www.ada.gov/withdrawn_olmstead.html) [<https://perma.cc/P3FD-3RM6>].

130. David M. Perry, *Companies that Exploit Disabled People Have a Friend in Jeff Sessions*, PAC. STANDARD (Jan. 4, 2018), <https://psmag.com/economics/jeff-sessions-roll-back-disability-rights> [<https://perma.cc/KN76-84A6>].

131. *Id.*

132. *Id.*

133. *Some Law Makers Seek to Rewrite the Rehabilitation Act with Controversial New Bill*, *supra* note 67.

134. *Id.*

viduals with disabilities (**not including** supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons.<sup>135</sup>

The changes proposed by H.R. 5658 would change the definition significantly to the following:

(B) that is at a location where the employee interacts with other persons who are not individuals with disabilities (**including social and interpersonal interactions with colleagues, vendors, customers, superiors, or other such persons who the employee may come into contact with during the work day and across workplace settings, other than** supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons, **except that such inter actions shall not be considered solely at the work unit level.**<sup>136</sup>

H.R. 5658 would also create a new provision, section D, that would apply the term CIE to employers that include “(i) contracts and subcontracts awarded pursuant to chapter 85 of title 41, United States Code; (ii) State set-aside contracts intended to support employment for individuals with disabilities; or (iii) other contracts subject to mandated direct labor-hour ratio of persons with disabilities.”<sup>137</sup> This bill is supported by service/employment providers, like ACCSES, who feel this change will increase the employment opportunities for persons with I/DD through promotion of the AbilityOne program, using sheltered workshops across the nation.<sup>138</sup> Other disability advocates oppose H.R. 5658 as a potential barrier to

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135. 29 U.S.C. § 705(5)(B) (2019) (emphasis added).

136. *The Changes H.R. 5658 Would Make to the Rehabilitation Act*, ABILITY MAG., <https://abilitymagazine.com/h-r-5658-rehabilitation-act-changes/> [https://perma.cc/YJY9-6E5C] (summarizing proposed textual changes to the Rehabilitation Act of 1973).

137. Workplace Choice and Flexibility for Individuals with Disabilities Act, H.R. 5658, 115th Cong. (2018).

138. *See generally Some Law Makers Seek to Rewrite the Rehabilitation Act with Controversial New Bill*, *supra* note 67 (discussing ACCSES’ support). *See also AbilityOne*, ACCSES, <https://accses.org/AbilityOne2016> [https://perma.cc/3LTX-BZZG]. ACCSES explains that the AbilityOne program is being scrutinized by government agencies and that this scrutiny is resulting in the proposed changes to certain definitions. *Id.*

the goal of integrated employment for people with disabilities.<sup>139</sup> The concern is that while sheltered workshops are not prohibited, the segregated environment has great potential for discrimination and exploitation.<sup>140</sup> As Disability Rights group of Wisconsin summarized, “[c]hanging the definition of competitive employment to include non-competitive jobs doesn’t make sense. People with disabilities already can work in non-competitive settings.”<sup>141</sup>

The removal of guidance documents key in understanding and navigating the disability law landscape, the pending legislation, changes in Medicaid,<sup>142</sup> Social Security Income/Supplemental Security Income,<sup>143</sup> and education<sup>144</sup> all have the potential to greatly impact those individuals with I/DD in our nation who are trying to navigate the labor market. While federal turmoil ensues<sup>145</sup> and nothing is set in stone, it is important to pay attention to these areas going forward in order to bring about the best outcome.<sup>146</sup>

#### VI. STATES TAKE ACTION TO DISCONTINUE SUBMINIMUM WAGES FOR EMPLOYEES WITH I/DD

Undoubtedly, there are strong emotions on both sides of the argument for whether the federal phase out of the use of 14(c) certificates to organizations to allow payment of subminimum wages is in the best interest of our citizens with intellectual and developmental disabilities.<sup>147</sup> The answer to

139. *Some Law Makers Seek to Rewrite the Rehabilitation Act with Controversial New Bill*, *supra* note 67.

140. *Id.*

141. *Let Your Voice Be Heard in Congress!*, DISABILITYRTS. WIS., <http://www.disabilityrightswi.org/let-your-voice-be-heard-in-congress/> [<https://perma.cc/4MSH-DGB5>].

142. Vania Leveille & Susan Mizner, *Don’t Underestimate the Catastrophic Impact That the Trump Administration’s Policies Will Have on People With Disabilities*, AM. C.L. UNION (Jan. 23, 2017), <https://www.aclu.org/blog/disability-rights/integration-and-autonomy-people-disabilities/dont-underestimate-catastrophic> [<https://perma.cc/BZ3S-JHAK>].

143. *Social Security and SSI for People with I/DD and Their Families*, THE ARC (July 2015), <https://www.thearc.org/document.doc?id=5269> [<https://perma.cc/CH5M-TJQX>].

144. Davis, *supra* note 126.

145. Leveille & Mizner, *supra* note 142.

146. *See generally* Robyn Powell, *For People with Disabilities, Earning Pennies Per Hour Is Only Part of the Problem*, REWIRE.NEWS (May 17, 2018, 11:19 AM), <https://rewire.news/article/2018/05/17/people-disabilities-earning-pennies-per-hour-problem/> [<https://perma.cc/3YK7-E9S5>] (discussing areas such as biases in employment hiring practices and navigating SSI that have an impact for employees with I/DD).

147. *See* Jim Rounds, *The Unintended Consequences of Minimum Wage Increases on the Taxpayer: A Case Study of Services for Individuals with Developmental Disabilities*,

this issue will have widespread repercussions affecting many people from intellectually and developmentally disabled persons, their caregivers, guardians, and parents to current and prospective employers and communities at large. But while the subminimum wage exception remains unchanged at the federal level, many states have taken action into their own hands.<sup>148</sup>

The 2012 NCD Report identified seven states the NCD visited in formulating its recommendations to phase out the use of the 14(c) certificate program.<sup>149</sup> Perhaps the most influential experience came from the visit to Vermont, as Vermont is the first state to eliminate the subminimum wage exception to the FLSA and eliminate the use of sheltered workshops.<sup>150</sup>

Vermont has led the nation with its framework for providing support for its citizens with disabilities to achieve community employment at an equal minimum wage.<sup>151</sup> In 2015, New Hampshire eliminated subminimum wage exceptions for persons with disabilities;<sup>152</sup> and in 2016, Maryland

GOLDWATER INST. (Feb. 5, 2018), <https://goldwaterinstitute.org/article/the-unintended-consequences-of-minimum-wage-increases-on-the-taxpayer-a-case-study-of-services-for-individuals-with-developmental-disabilities/> [<https://perma.cc/9SHH-4XHP>]. *But see* Zillman, *supra* note 8 (supporting the elimination of the subminimum wage exception).

148. *See generally* Lisa Nagele-Piazza, *Lawmakers Work to End Subminimum Wages for Workers with Disabilities*, SOC'Y FOR HUM. RESOURCE MGMT. (Apr. 9, 2018), <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/lawmakers-work-to-end-subminimum-wages-for-workers-with-disabilities.aspx> [<https://perma.cc/2WPY-B9C7>] (discussing states that have eliminated the subminimum wage or are considering it).

149. NCD 2012 REPORT, *supra* note 56.

150. *Id.* *See also* Jennie Masterson, *Op-ed: Vermont Setting the Standard for Supported Employment*, VT. DEVELOPMENTAL DISABILITIES SERVS. DIV. (Jan. 30, 2017), <https://ddsd.vermont.gov/sites/ddsd/files/documents/op-ed-vt-setting-the-standard-for-supported-employment.pdf> [<https://perma.cc/WQ79-NXQZ>].

151. *See id.* *See also* *Vermont Minimum Wage Laws*, EMP. L. HANDBOOK, <https://www.employmentlawhandbook.com/wage-and-hour-laws/state-wage-and-hour-laws/vermont/minimum-wage/#5> [<https://perma.cc/79A2-U2NP>] (“Vermont minimum wage laws do not allow employers to pay employees with disabilities a subminimum wage rate that is less than the standard minimum wage.”).

152. S.B. 47, 2015 Leg., Reg. Sess. (N.H. 2015) (permitting two exceptions to New Hampshire’s Subminimum wage act for high school and post-secondary students and workers with disabilities).

Upon application by a proper post-secondary organization or rehabilitation facility as defined by and in a manner established by the labor commissioner, the commissioner may establish a practical experience/training program at a subminimum wage rate or no wage rate for individuals with disabilities. If such program is established, the commissioner shall establish guidelines to determine whether an employer-employee relationship exists between the parties for work performed through the program that is consistent with state and federal law.

signed into law the phase out of the use of subminimum wages for people with disabilities to be completed by 2020.<sup>153</sup> Alaska also eliminated its subminimum wage exceptions for persons with disabilities effective February 6, 2018.<sup>154</sup> According to Alaska's Department of Labor and Workforce Development Press Release, Acting Commissioner Greg Cashen advised that "[w]orkers who experience disabilities are valued members of Alaska's workforce[.] They deserve minimum wage protections as much as any other Alaskan worker."<sup>155</sup>

While these states have already made changes to their subminimum wage laws for persons with disabilities,<sup>156</sup> there are more places like New York, Hawaii, and the city of Seattle, Washington, that are contemplating making their own changes.<sup>157</sup> In the Midwest, Illinois is seriously considering changing their state subminimum wage law.<sup>158</sup> The Illinois Dignity in Pay Act was introduced into the House on January 31, 2017,<sup>159</sup> and calls for the phase out of the subminimum wage in Illinois.<sup>160</sup> The Dignity in Pay Act is inspired by the law passed in Maryland and it would phase out the use of the subminimum wage exception over a period of four years.<sup>161</sup> It would additionally "require DHS [the Illinois Department of Human Services] to write individual, customized work plans for each disabled worker in a 14(c) position" and "would commission an independent study of the system-wide and individual planning efforts to clarify all the costs and benefits of the changes."<sup>162</sup> The Illinois Network of Centers for Independent Living,<sup>163</sup> a group based in Springfield, Illinois, that advocates "for the in-

N.H. REV. STAT. ANN. § 279:22-aa (2011).

153. *Maryland to Phase Out 14(c) Subminimum Wage*, DISABILITY RTS. MD., <https://disabilityrightsmd.org/maryland-to-phase-out-14c-subminimum-wage/> [<https://perma.cc/WNS2-25L5>].

154. Nagele-Piazza, *supra* note 148. *See also* NCD 2018 REPORT, *supra* note 115, at 16.

155. *Minimum Wage Exemption for Persons with Disabilities Eliminated*, ALASKA DEP'T LAB. & WORKFORCE DEV. (Feb. 16, 2018), <http://labor.alaska.gov/news/2018/news18-04.pdf> [<https://perma.cc/BRT8-LBAS>].

156. *State Laws and Policies*, NAT'L DOWN SYNDROME SOC'Y, <https://www.ndss.org/advocate/ndss-legislative-agenda/employment/state-laws-and-policies/> [<https://perma.cc/6H2A-8KEU>] (showing continuing support for state-level initiatives to phase out subminimum wages for persons with disabilities).

157. Nagele-Piazza, *supra* note 148.

158. DIGNITY IN PAY, <https://www.dignityinpay.org/> [<https://perma.cc/9N8L-QVDN>].

159. H.R. 1592, 100th Gen. Assemb. (Ill. 2017).

160. DIGNITY IN PAY, *supra* note 158.

161. *It's Time for Dignity in Pay*, ILL. NETWORK CTRS. FOR INDEP. LIVING, <https://www.incil.org/its-time-for-dignity-in-pay/> [<https://perma.cc/Q6EY-EWGW>].

162. *Id.*

163. *About INCIL*, ILL. NETWORK CTRS. FOR INDEP. LIVING, <https://www.incil.org/about-us/> [<https://perma.cc/92YZ-7QCQ>].

clusion, integration and independence of people with disabilities statewide,” supports the passing of this Act as a “gigantic leap forward in modernizing the landscape of services and supports designed to assist people with disabilities to secure real work and real wages: competitive, integrated, supported and customized employment for workers, no matter the disability.”<sup>164</sup>

#### VII. TIME TO END THE USE OF SUBMINIMUM WAGES FOR PEOPLE WITH DISABILITIES

The argument that eliminating the subminimum wage exception to the FLSA would only be detrimental to the interests of persons with disabilities is tenuous.<sup>165</sup> The current exception to the federal minimum wage dates back to 1938,<sup>166</sup> a time when persons with disabilities were often institutionalized and considered second class or subhuman and their interests not worth preserving. Now there is a recognition that people with disabilities need to be included and accepted into the community and have their rights considered along with everyone else’s in terms of policy changes.<sup>167</sup> While those who support the use of the sheltered workshop system fear that eliminating the minimum wage exception would result in the closing of sheltered workshops and minimizing options for persons with disabilities,<sup>168</sup> that is likely not the result. This argument stems from the belief that the 1938 “charity” model employs persons with disabilities to give them a sense of worth and purpose and not for personal gain.<sup>169</sup> The fear that sheltered workshops will be unable to support continuous opportunities at the federal minimum wage ignores the fact that the sheltered workshops might just be unwilling to do so.<sup>170</sup> As organizations making use of the 14(c) exception, they are the entities with the most to lose while persons employed with disabilities have the most to gain.<sup>171</sup>

There will still be a choice for persons with disabilities in where they want to work or spend their time just like anyone else, but without a subminimum wage, a company cannot take advantage of them.<sup>172</sup> It is interesting that the federal minimum wage has increased twenty-two times since

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164. *It’s Time for Dignity in Pay*, *supra* note 161.

165. *See* Ordan, *supra* note 8.

166. *Subminimum Wage*, U.S. DEP’T LABOR, <https://www.dol.gov/general/topic/wages/subminimumwage> [<https://perma.cc/RRV9-Z266>].

167. *About Us*, *supra* note 55.

168. Ordan, *supra* note 8.

169. Powell, *supra* note 146.

170. Harper, *supra* note 78.

171. *See* Regan, *supra* note 5.

172. *Id.*

1938,<sup>173</sup> while the federal 14(c) exception to the minimum wage has remained in full effect.<sup>174</sup> Productivity standards and time tests<sup>175</sup> are not used to calculate the federal minimum wage applied to employees in general. However, employees with disabilities must face the obstacle of justifying their hourly pay based upon subjective tests at least every six months.<sup>176</sup> This is just an additional hoop that persons with disabilities must overcome in an already complex environment that no other citizen of the United States must face.<sup>177</sup> While the FLSA was a step in the right direction, for its time, it is not sufficient for protecting the rights and interests of our citizens with disabilities today.<sup>178</sup>

It could also be argued that this discussion is best left to the states to decide, but that excuse is not valid.<sup>179</sup> Persons with disabilities often must rely on benefits from the federal government to pay for housing and services to survive.<sup>180</sup> If the decision to eliminate subminimum wages for persons with disabilities is made solely at the state level, there could be federal consequences such as a deduction or even elimination in necessary federal benefits.<sup>181</sup> There are citizens eligible for minimum wages that still need the support to survive and it has been argued that even the current minimum wage is insufficient to support a living wage.<sup>182</sup> How can we expect a subminimum wage to support individuals with disabilities and then threaten to decrease their needed federal support?<sup>183</sup> In 2019, the maximum amount of Supplemental Security Income (SSI) that can be paid on a monthly basis is “\$771 for an eligible individual, \$1,157 for an eligible individual with an

173. *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938-2009*, U.S. DEP'T LABOR, <https://www.dol.gov/whd/minwage/chart.htm> [<https://perma.cc/E2RM-5TZM>].

174. *Subminimum Wage Provisions*, *supra* note 53.

175. *Section 14(c) Online Calculators User Guide*, U.S. DEP'T LABOR, <https://www.dol.gov/whd/specialemloyment/calculatorGuide.pdf> [<https://perma.cc/SJ5Z-LXT7>].

176. U.S. Dep't of Labor, Wage & Hour Div., *supra* note 18, at 2.

177. *Id.*

178. *See* Regan, *supra* note 5.

179. Sheela Nimishakavi, *Will Subminimum Wages for the Disabled Finally End?*, NONPROFIT Q. (Mar. 20, 2018), <https://nonprofitquarterly.org/2018/03/20/will-subminimum-wages-disabled-finally-end/> [<https://perma.cc/DYA7-WQ7J>].

180. Powell, *supra* note 146.

181. David Hoff, *Minimum Wage Increase: What It Means for People with Disabilities*, INST. FOR COMMUNITY INCLUSION (Jul. 2007), [https://www.communityinclusion.org/article.php?article\\_id=204&staff\\_id=21](https://www.communityinclusion.org/article.php?article_id=204&staff_id=21) [<https://perma.cc/XRF8-HA62>].

182. *Social Security and SSI for People with I/DD and Their Families*, *supra* note 143, at 9.

183. *Id.*

eligible spouse, and \$386 for an essential person.”<sup>184</sup> The Arc of the United States, an organization advocating for people with I/DD,<sup>185</sup> has found that even with federal benefits, “2 in 5 SSI beneficiaries live in poverty and 3 in 5 live under 150% of poverty. But if SSI were excluded from total household income, nearly 8 in 10 beneficiaries would live in or near poverty.”<sup>186</sup>

The current way of issuing certificates to entities authorizing them to pay subminimum wages must end for the sake of employees with disabilities. Repeated urging for increased oversight of the 14(c) certificates by the WHD has not worked.<sup>187</sup> The NCD called for increased supervision of the WHD and DOJ in its 2012 report<sup>188</sup> and the letter by senators<sup>189</sup> requested information about WHD’s oversight; however, exploitation, misuse, insufficient supervision and information regarding the 14(c) program continues and results in estimated numbers of persons employed at subminimum wages because the WHD does not have clear documentation.<sup>190</sup> In NCD’s 2018 follow up of their 2012 report’s recommendations, the NCD stated that “NCD remains concerned that employers may continue to pay subminimum wages without a certificate because oversight is severely lacking.”<sup>191</sup> The NCD also noted WHD has been inconsistent in how they report the total number of people paid under the 14(c) certificates:

WHD currently reports a total of 141,081 individuals paid under 14(c) certificates in 2018 . . . However, in the same month that it supplied NCD with this data, it provided a wildly different estimate to Congress of approximately 321,131 workers employed by 14(c) certificate-holders . . . WHD has clarified that the 141,081 estimate represents only those workers employed at the certificate holder’s main establishment, whereas 321,131 represents the estimated total of workers employed at all establishments associated with the certificate holder.<sup>192</sup>

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184. *SSI Federal Payment Amounts For 2019*, SOC. SECURITY ADMIN., <https://www.ssa.gov/oact/cola/SSI.html> [<https://perma.cc/45DD-2S5L>].

185. *History of The Arc*, THE ARC, <https://www.thearc.org/who-we-are/history> [<https://perma.cc/3AXQ-6P7P>]

186. *Social Security and SSI for People with I/DD and Their Families*, *supra* note 143, at 10.

187. NCD 2018 REPORT, *supra* note 115, at 121-24.

188. NCD 2012 REPORT, *supra* note 56.

189. Letter from Elizabeth Warren, *supra* note 88, at 3, 4.

190. NCD 2018 REPORT, *supra* note 115.

191. *Id.* at 26.

192. *Id.* at 22.

NCD is also concerned that although the WHD data suggests a decrease in the number of holders for 14(c) certificates and a corresponding decrease in the use of the certificates to pay subminimum wages, the data is not reflecting the number of people paid subminimum wages under AbilityOne contracts,<sup>193</sup> and NCD is concerned that “[o]ther providers may stop paying workers’ wages altogether, as they move them to other segregated settings like day programs, group employment or enclaves, respite or other settings under the same provider’s service umbrella; and these workers would not be reflected in the overall number of 14(c) employees.”<sup>194</sup>

The first step to progress since 1938 would be to eliminate the 14(c) exception of the FLSA and increase the wage of persons with disabilities being paid a subminimum wage to the current federal minimum of \$7.25 per hour.<sup>195</sup> The next step would be to streamline the resources and government agencies that are available for persons with disabilities for greater efficiency and accessibility to those with I/DD. The current system with multiple agencies with various levels of oversight and control are convoluted to say the least. There are many disability resource centers across the nation trying to help persons with I/DD navigate the chaos,<sup>196</sup> but these centers face an ever-changing landscape of support, funding, programs, and application process. Eliminating the 14(c) certificate system would also reduce the pull on the WHD’s resources for controlling the application processes, the documentation, the wage calculations, and renewals. These steps should be taken to modernize how persons with intellectual and developmental disabilities are treated and integrated into our society and are a part of improving our society moving forward.

### VIII. CONCLUSION

The federal minimum wage was created by the FLSA in 1938.<sup>197</sup> The purpose of this law “was to stabilize the post-depression economy and protect the workers in the labor force.”<sup>198</sup> The minimum wage was also “designed to create a minimum standard of living to protect the health and

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193. *Id.*

194. *Id.* at 25.

195. *Minimum Wage*, U.S. DEP’T LABOR, <https://www.dol.gov/general/topic/wages/minimumwage> [<https://perma.cc/YB2N-LAKJ>].

196. *ILRU Directory of Centers for Independent Living (CILs) and Associations*, INDEP. LIVING RES. UTILIZATION, <https://www.ilru.org/projects/cil-net/cil-center-and-association-directory> [<https://perma.cc/4984-BJJH>] (tool to locate disability resource and independent living centers across the nation).

197. *Minimum Wage*, *supra* note 195.

198. *Minimum Wage*, CORNELL L. SCH., [https://www.law.cornell.edu/wex/minimum\\_wage](https://www.law.cornell.edu/wex/minimum_wage) [<https://perma.cc/VFR6-5E4F>].

well-being of employees.”<sup>199</sup> While this minimum wage floor is appreciated by many citizens and is utilized, this protection is not guaranteed for those with disabilities in the American workforce.<sup>200</sup> Section 14(c) of the FLSA authorizes the payment of wages below the federal minimum to workers with disabilities that are deemed to be unable to meet certain productivity standards.<sup>201</sup> The calculation of these wages is supposed to be monitored by the WHD of the Department of Labor<sup>202</sup> to ensure compliance with the FLSA to avoid exploitation and misuse.<sup>203</sup> However, there have been multiple instances of misuse and exploitation of the 14(c) system of paying subminimum wages and no way to calculate how many instances the WHD has not identified and corrected problems.<sup>204</sup>

With the growing acknowledgment of the need for inclusion of persons with intellectual and developmental disabilities in the community, the elimination of the subminimum wage exception to the FLSA is the first, correct step in promoting equality and integration with all other members of the workforce that are assured a minimum wage. There should no longer be an exception that allows, and even promotes, organizations to benefit from labor provided by persons with I/DD at subminimum wages. With the trend growing towards personalized education plans and employment service models that better prepare and provide individualized support for community integrated job placements, it is time to leave the antiquated stereotypes of employees with I/DD in the past and move forward with valuing their labor the same as any other employee in the United States who is entitled to a minimum wage.

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199. *Id.*

200. *Subminimum Wage Employment for Workers with Disabilities*, *supra* note 4.

201. *Id.*

202. *Section 14(c) Online Calculators User Guide*, *supra* note 175.

203. U.S. Dep’t of Labor, Wage & Hour Div., *supra* note 18.

204. *See* Regan, *supra* note 5.