

**ESSENTIAL BUT UNDERVALUED: EXAMINING
WORKPLACE PROTECTIONS FOR
DOMESTIC WORKERS**

HEARING

BEFORE THE

**SUBCOMMITTEE ON WORKFORCE
PROTECTIONS**

OF THE

**COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES**

ONE HUNDRED SEVENTEENTH CONGRESS

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**ESSENTIAL BUT UNDERVALUED: EXAMINING
WORKPLACE PROTECTIONS FOR
DOMESTIC WORKERS**

Thursday, July 28, 2022

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WORKFORCE PROTECTIONS,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:18 a.m., 2175 Rayburn House Office Building, Washington, DC, Hon. Alma Adams (Chairwoman of the Subcommittee) presiding.

Present: Representatives Adams, Takano, Jayapal, Stevens, Scott (Ex Officio), Keller, Stefanik, Miller-Meeks, Good, Cawthorn, Steel, and Foxx (Ex Officio).

Staff present: Brittany Alston, Staff Assistant; Nekea Brown, Director of Operations; Ilana Brunner, General Counsel; Rashage Green, Director of Education Policy; Rasheedah Hasan, Chief Clerk; Sheila Havenner, Director of Information Technology; Eli Hovland, Policy Associate; Stephanie Lalle, Communications Director; Kevin McDermott, Director of Labor Policy; Kota Mizutani, Deputy Communication Director; Max Moore, Policy Associate; Kayla Pennebecker, Staff Assistant; Mason Pesek, Labor Policy Counsel; Veronique Pluviose, Staff Director; Dhrtvan Sherman, Staff Assistant; Banyon Vassar, Deputy Director of Information Technology; Sam Varie, Press Secretary; ArRone Washington, Clerk/Special Assistant to the Staff Director; Cyrus Artz, Minority Staff Director; Caitlin Burke, Minority Professional Staff Member; Michael Davis, Minority Legislative Assistant; Cate Dillon, Minority Director of Operations; Mini Ganesh, Minority Staff Assistant; Trey Kovacs, Minority Professional Staff Member; John Martin, Minority Deputy Director of Workplace Policy/ Counsel; Hannah Matesic, Minority Director of Member Services and Coalitions; Audra McGeorge, Minority Communications Director; and Ethan Pann, Minority Press Assistant; Gabriella Pistone, Minority Staff Assistant; Krystina Skurk, Minority Speechwriter; Ben Ridder, Minority Professional Staff Member; Kelly Tyroler, Minority Professional Staff Member; Joe Wheeler, Minority Professional Staff Member.

Chairwoman ADAMS. The Subcommittee on Workforce Protections will come to order. Welcome everyone. I note that a quorum is present. The Subcommittee is meeting today to hear testimony on “Essential But Undervalued: Examining Workplace Protections for Domestic Workers”. This is a hybrid hearing pursuant to House

Resolution 8 and the regulations thereto. All microphones both in the room and on the platform will be kept muted as a general rule to avoid unnecessary background noise.

Members and witnesses will be responsible for unmuting themselves when they are recognized to speak or when they wish to seek recognition. When members wish to speak or seek recognition, they should unmute themselves and allow a pause of 2 seconds to ensure the microphone picks up their speech. I also ask that members please identify themselves before they speak. Members who are participating in person should not be logged onto remote platform—should not be logged onto the remote platform, in order to avoid feedback, echoes, and distortion.

Members participating remotely shall be considered present in the proceeding when they are visible on camera, and they shall be considered not present when they are not visible on camera. The only exception to this is if they are experiencing technical difficulty and inform the Committee staff of such difficulty. If any member experiences technical difficulty during the hearing, you should stay connected on the platform, make sure you are muted, and use your phone to immediately call the Committee's IT director, whose number was provided in advance.

Should the Chair need to step away for any reason, another Majority member is hereby authorized to assume the gavel in the Chair's absence. In order to ensure that the Committee's 5-minute rule is adhered to, staff will be keeping track of time using the Committee's digital timer on the remote platform. For members participating in person, the timer will be broadcast in the Committee room on the television monitor as part of the platform gallery view, and visible in its own thumbnail window. The Committee room timer will not be in use. For members participating remotely, this will be visible in gallery view in its own thumbnail window on the remote platform.

Members are asked to wrap up promptly when their time has expired. Finally, when the recent guidance—while the recent guidance from the Office of the Attending Physician has made mask-wearing optional at this time, please know that we have in our midst at both the member and staff levels individuals who are immune-compromised, and who will have immediate—and who may have immediate family members who are immune compromised as well, or those who are not vaccinated either due to medical reasons or because the vaccine is not yet available to children under 6 months of age.

Therefore, the Committee strongly recommends that masks continue to be worn out of concern for the safety of unvaccinated and immune-compromised Committee members and staff and their families.

Pursuant to Committee Rule 8(c), opening statements are limited to the Chair, excuse me, and the Ranking Member. This allows us to hear from our witnesses sooner and provides all members with adequate time to ask questions. I recognize myself now for the purpose of making an opening statement.

Today, we are meeting to examine the important role domestic workers play in our Nation's households and economy, as well as our responsibility to better meet their needs. As a daughter of a do-

mestic worker, I am proud to serve as Chair for this hearing. Across the country, domestic workers are the professionals who care for our children, support our older or disabled family members, and care for our homes. Most of these workers serve as home care aides and direct support professionals, helping older and disabled Americans with daily tasks, including preparing meals, managing medications, and providing transportation.

No matter who they support, domestic workers' services are incredibly valuable not only to those who receive them, but also to the family caregivers who would otherwise spend their time on this important work. In other words, domestic workers allow Americans to live with dignity and independence and make it possible for family caretakers to contribute to their communities. Although domestic workers vital to the everyday lives of countless Americans, Federal labor laws do not sufficiently protect domestic workers.

In fact, employment protections for domestic workers were explicitly carved out for our foundational labor and employment law in the 1930's, the result of racist efforts to exclude industries in which Black workers were concentrated. To this day, domestic workers who remain overwhelmingly women of color, are denied collective bargaining rights, safety and hazard protections, and protections against discrimination, harassment, or retaliation.

The lack of basic protections and the historic segregation of women of color in employment has created a severe wealth gap for domestic workers and left them with vulnerable—and left them vulnerable to abuse and discriminate. For example, on average domestic workers earn just over \$12 per hour, compared to a median wage of nearly \$20 for other workers. Even worse, reports have found high rates of wage theft against domestic workers. As a result, domestic workers are three times as likely to be living in poverty as other workers, and almost three times as likely to either be in poverty or be above the poverty line but still without sufficient income to make ends meet. Tragically, we know domestic workers are also vulnerable to sexual harassment, sexual abuse, and other forms of physical violence. Simply put, our Nation relies on domestic workers to care for our children, families, and homes, without giving them the basic resources to care for themselves and their families.

This injustice does not just hurt domestic workers. It also directly affects those who rely on them, particularly as the demand for domestic workers rapidly increases. Over the next decade, domestic worker occupations are expected to increase more than three times faster than other occupations. According to the Service Employees International Union, the country will require 4.7 million domestic workers by 2028. In 2019, there were only roughly 2.2 million domestic workers.

If we want to meet this expected demand and successfully recruit and retain domestic workers to address this care deficient, and if we believe these professionals deserve fair pay and decent working conditions, then we must give greater attention to legislative solutions. To that end, Representative Jayapal's Domestic Workers Bill of Rights Act would take critical steps to support these invaluable workers.

I applaud Representative Jayapal's leadership, and her long-standing commitment to fighting for our domestic workers, and I'm glad to be a co-sponsor on this important legislation. As we will hear today, Representative Jayapal's legislation would finally extend basic workplace protections to domestic workers and strengthen the means to enforce those protections. I look forward to hearing from our witnesses and working with my colleagues on improving the lives of domestic workers and ensuring that our loved ones can access the care they need. I now recognize the distinguished Ranking Member for the purpose of making an opening statement.

[The Statement of Chairwoman Adams follows:]



OPENING STATEMENT

House Committee on Education and Labor
Chairman Robert C. "Bobby" Scott

Opening Statement of Chair Adams (NC-12)

Subcommittee on Workforce Protections

Essential but Undervalued: Examining Workplace Protections for Domestic Workers

Thursday, July 28, 2022 | 10:15 a.m.

Today, we are meeting to examine the important role domestic workers play in our nation's households and economy as well as our responsibility to better meet their needs.

As the daughter of a domestic worker, I am proud to serve as Chair for this hearing.

Across the country, domestic workers are the professionals who care for our children, support our older or disabled family members, and care for our homes.

Most of these workers serve as home care aides and direct support professionals, helping older and disabled Americans with daily tasks, including preparing meals, managing medications, and providing transportation. No matter who they support, domestic workers' services are incredibly valuable—not only to those who receive them, but also to the family caregivers who would otherwise spend their time on this important work.

In other words, domestic workers allow Americans to live with dignity and independence and make it possible for family caretakers to contribute to their communities.

Although domestic work is vital to the everyday lives of countless Americans, federal labor laws do not sufficiently protect domestic workers. In fact, employment protections for domestic workers were explicitly carved out of our foundational labor and employment law in the 1930s—the result of racist efforts to exclude industries in which Black workers were concentrated. To this day, domestic workers—who remain overwhelmingly women of color—are denied collective bargaining rights, safety and hazard protections, and protections against discrimination, harassment, or retaliation.

The lack of basic protections—and the historic segregation of women of color in employment—has created a severe wealth gap for domestic workers and left them vulnerable to abuse and discrimination.

For example, on average, domestic workers earn just over \$12 per hour, compared to a median wage of nearly \$20 for other workers. Even worse, reports have found high rates of wage theft against domestic workers. As a result, domestic workers are three times as likely to be living in poverty as other workers, and almost three times as likely to either be in poverty or be above the poverty line but still without sufficient income to make ends meet.

Tragically, we know domestic workers are also vulnerable to sexual harassment, sexual abuse, and other forms of physical violence.

Simply put, our nation relies on domestic workers to care for our children, families, and homes without giving them the basic resources to care for themselves and their families.

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Over the next decade, domestic worker occupations are expected to increase more than three times faster than other occupations. According to the Service Employees International Union, the country will require 4.7 million domestic workers by 2028. Yet, in 2019, there were only roughly 2.2 million domestic workers.

If we want to meet this expected demand and successfully recruit and retain domestic workers to address this care deficit, and if we believe these professionals deserve fair pay and decent working conditions, then we must give greater attention to legislative solutions.

To that end, Representative Jayapal's *Domestic Workers Bill of Rights Act* would take critical steps to support these invaluable workers. I applaud Representative Jayapal's leadership and her longstanding commitment to fighting for our domestic workforce—and I am glad to be a cosponsor on this important legislation. As we will hear today, Representative Jayapal's legislation would finally extend basic workplace protections to domestic workers and strengthen the means to enforce those protections.

I look forward to hearing from our witnesses and working with my colleagues on improving the lives of domestic workers and ensuring that our loved ones can access the care they need.

Mr. KELLER. Thank you, Madam Chair. All work and all people have dignity and respect. The last thing in-home care providers and employers need is more government mandates such as H.R. 4826. Instead, Congress should advance pro-growth policies that reflect the needs of our modern economy and workforce. Unfortunately, many of the Nation's workforce laws and policies are outdated. The Fair Labor Standards Act or FLSA was enacted 84 years ago and affects nearly every workplace across the country.

Committee Republicans understand the reality and are ready to work to streamline and modernize Federal wage and hour policies to meet the needs of our 21st century workforce. H.R. 4826 fails to do this. This legislation looks backward, harms every worker's—the very workers Democrats claim they intend to help, and limits consumer access to desperately needed in-home care services. This excessively broad legislation also wrongly lumps health care workers and home health aides in with workers traditionally considered domestic staff.

The legislation goes too far. It authorizes the Labor Department to enter and inspect individuals' homes. H.R. 4826 also applies Title VII of the Civil Rights Act to all employers with just one employee instead of 15. This unprecedented law, few families have the resources to navigate complex wage and hour laws. This could drive Americans to find alternatives that put home health aides and personal care assistants out of work, exacerbating the existing labor shortage of in-home care workers.

Less access to home health care will force more Americans into institutionalized settings, which will hurt the individuals who prefer to remain at home. This legislation is overly punitive, threatens American families with massive regulatory penalties for first-time violations, and puts families at greater risk of lawsuits. This kind of punitive enforcement is not the answer, particularly for families already struggling to navigate a worker shortage, record high inflation, and rising labor costs.

Republicans are committed to a forward-looking agenda that will offer all Americans more opportunities to achieve success. Modernizing the FLSA to meet the ever-evolving needs of a workforce that increasingly desires flexibility, choice and mobility will be an important part of that effort. In contrast, Democrats are pushing leg-

isolation that will take decisions out of the hands of workers and job creators and put them in the hands of Washington politicians. Thank you, and I yield back.

[Pause.]

[The Statement of Ranking Member Keller follows:]

**07/28/2022 – Workforce Protection Subcommittee Hearing: Essential but Undervalued:
Examining Workplace Protections for Domestic Workers**

Opening Remarks from WP Ranking Member, Rep. Fred Keller:

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In contrast, Democrats are pushing legislation that will take decisions out of the hands of workers and job creators and put them in the hands of Washington politicians.”

Ms. JAYAPAL. Without objection, all other members who wish to insert written statements into the record may do so by submitting them to the Committee Clerk electronically in Microsoft Word format by 5 p.m. on August 11th. I will now introduce the witnesses.

Ms. Ai-jen Poo is the president of the National Domestic Workers Alliance and the executive director of Caring Across Generations. Ms. Poo is a nationally recognized expert on elder and family care and a leading advocate for the rights of domestic workers.

Dr. C. Nicole Mason is the president and chief executive officer of the Institute for Women's Policy Research. Dr. Mason is an expert, one of the Nation's more foremost experts on intersectional research and has spearheaded research on issues relating to economic security, poverty, and women's issues. Her expertise provides a deep understanding of the issues facing our Nation's domestic workers, and the potential policy solutions to address them.

Mr. Paul DeCamp is a member of the law firm Epstein Becker and Green PC. Mr. Decamp is an expert on wage and hour issues and has previously served as the administrator of the Department of Labor's Wage and Hour Division under the George W. Bush administration.

Ms. Dana Barnett is the Washington State organizer for Hand in Hand, the Domestic Employers Network. As an employer of a domestic worker herself, Ms. Barnett is an advocate for strong labor standards for domestic workers and has previously served as chair of Seattle's Domestic Workers Standards Board and of course that is my district. Thank you so much to you for being with us and thank you to all of our witnesses for being with us.

We appreciate all of you for participating today, and we look forward to your testimony. Let me remind the witnesses that we have read your written statements and they will appear in full in the hearing record. Pursuant to Committee Rule 8(d) and Committee practice, each of you is asked to limit your oral presentation to a 5-minute summary of your written statement. Before you begin your testimony, please remember to unmute your microphone and during your testimony staff will be keeping track of your time, and the timer is visible to you at the witness table.

Please be attentive to the time, wrap up when your time is over and remute your microphone. We will let all the witnesses make their presentations before we move to member questions. When answering a question, please remember to unmute your microphone. The witnesses are aware of their responsibility to provide accurate information to the Subcommittee, and therefore we will proceed with their testimony. I will first recognize with Ms. Poo.

**STATEMENT OF AI-JEN POO, PRESIDENT, NATIONAL
DOMESTIC WORKERS ALLIANCE**

Ms. POO. Thank you Congresswoman, Congresswoman Adams, Chairwoman Adams, Ranking Member Keller, Chairman Scott, Ranking Member Foxx and members of the Committee. Thank you for the opportunity to testify in support of the Domestic Workers Bill of Rights, introduced by Congresswoman Pramila Jayapal, and by Senators Kirsten Gillibrand and Ben Ray Lujan. I commend you for holding this groundbreaking hearing today for a workforce composed overwhelmingly of women, majority women of color, and im-

migrants who have struggled for generations to be recognized as workers equal to others.

This moment is historic. To all the domestic workers who are watching and to all who have come before, this is your moment. Thank you for the essential work you do. As we speak, there are millions of working parents and family caregivers counting on nannies, home care workers and cleaners to enable them to work. This is the work that produces the human potential of our children, the quality of life of our aging elders, and supports the dignity and independence of our loved ones with disabilities.

The act of caring for others is what makes us human, and the COVID-19 pandemic helped us remember how essential care is to our lives, especially for women. It remains some of the most insecure and undervalued work in the economy. Rather than the dignified profession it is, domestic work is still treated as “help” and less than real work. The jobs are low-quality, low-wage jobs, where women work incredibly hard and still live in poverty, face rampant discrimination and harassment, and find themselves without a simple sick day when a pandemic hits.

This is due in part to a long history of exclusion from foundational labor laws rooted in the legacy of slavery in America, and because this workplace is hidden, isolated behind closed doors in private homes. The Domestic Workers Bill of Rights Act, H.R. 4826, is designed to specifically address this reality. It will ensure the workforce is treated like other workers in our economy, with access to safe workplaces, sick leave, overtime pay and protection from discrimination and harassment.

A standards board will allow employers, enforcement agencies, and workers to work together to improve the industry, and finally this bill makes these protections real by providing resources for implementation. Ever since they were carved out of protections in the 1930’s, domestic workers have sought to reverse their exclusion. Nearly a 100 years later, domestic workers are galvanized behind this bill, building upon years of legislative progress we have made in ten states and two major cities.

Employers, family caregivers and consumers also support this bill, recognizing that a protected care workforce is the backbone of a strong economy. As the Nation ages, we will need this workforce more than ever, and because this work cannot be automated or outsourced, care jobs will be a large share of the jobs of the future and must be protected.

In the 24 years I have organized alongside domestic workers, I have seen nannies show up for every milestone in a child’s life, decades after they are no longer in their care. Home care workers who are the most emotional person at a funeral of a client that they have just lost. House cleaners who are the last to be evacuated during a fire, and the first to return to clean in the aftermath. I would like to recommend this Committee hear directly from the women who care for the most precious elements of our lives. You will find domestic work is much more than meets the eye. They are teachers, nurses, confidantes, coaches, event planners and much more. We must pass the National Domestic Workers Bill of Rights to help make these jobs good jobs, and to finally recognize this essential

workforce for the dignified profession it is. I look forward to your questions. Thank you.

[The prepared statement of Ms. Ai-jen Poo follows:]

“Essential but Undervalued: Examining Workplace Protections for Domestic Workers”

Workforce Protections Subcommittee in the House Education and Labor Committee

July 28, 2022

Statement of Ai-jen Poo, President, National Domestic Workers Alliance and Executive Director, Caring Across Generations

Introduction

Chairwoman Adams, Ranking Member Keller, and Members of the Committee, thank you for the opportunity to testify in support of H.R. 4826, the Domestic Workers Bill of Rights, introduced by Congresswoman Pramila Jayapal in the House of Representatives and by Senators Kirsten Gillibrand and Ben Ray Lujan in the Senate.

My name is Ai-jen Poo, and I am the President and co-founder of the National Domestic Workers Alliance (NDWA) and Executive Director of Caring Across Generation (CAG). Founded in 2007, NDWA is the home for the 2.2 million domestic workers who work as nannies, home care workers, and house cleaners in private homes, providing care and cleaning services. Our community includes over 395,000 domestic workers across 76 local organizations and our online network in all 50 states, working to achieve economic security and opportunity.

Caring Across Generations was founded in 2011 to bring together family caregivers, care workers, people with disabilities and older Americans to advocate for a strong care infrastructure that would support us all to live, work, care and age with dignity. Caring Across Generations is working to create a culture that values care and caregiving, and policies that support universal access to long-term services and supports, childcare, paid family and medical leave benefits and a strong care workforce. We work with a diverse network of over 100 national, state and local advocacy organizations and unions, including caregiver, aging, disability rights and justice, disease prevention groups, women’s organizations and more.

Together, NDWA and Caring Across Generations have worked for a decade to bring attention to the growing need for a strong care infrastructure, and the urgency of transforming domestic worker jobs into good jobs with family-sustaining wages and benefits.

In my testimony, I will trace the historical exclusion of domestic workers from core workplace protections to the substandard wages, benefits and working conditions that domestic workers experience today. I will explain how the Domestic Workers Bill of Rights would help this uniquely vulnerable and undervalued workforce by ending the ongoing exclusions from federal laws and by strengthening core workplace protections. I will also explain how investing in domestic workers will not only support the economic security of this workforce, but directly benefit the families they care for and support the overall health of our economy.

Domestic Workers Have Historically Been Underpaid and Undervalued

Persistent and systemic racial and gender discrimination have diminished the value of labor done inside the home, such as cooking, cleaning, child care, and care for the aging and people with disabilities. The work has long been relegated to “women’s work” and “help,” or less than real work, as opposed to the dignified profession it is for millions of workers. Congress codified this devaluation in New Deal era laws when it enacted the Fair Labor Standards Act (FLSA) to establish the minimum wage and the National Labor Relations Act (NLRA) to guarantee employees the right to organize and form labor unions.¹ Although these landmark pieces of legislation transformed our economy and workplace conditions for many workers, the explicitly excluded domestic workers and agricultural workers. Southern congressmen refused to support the labor law provisions of the New Deal if they covered the two occupational categories where Black workers were concentrated at the time.²

Domestic workers remained entirely excluded from the FLSA until 1974, when the organizing of domestic workers led to more domestic workers being included in minimum wage and overtime protections.³ Domestic workers were subsequently excluded – and remain largely excluded today – from the protections of the Occupational Safety and Health Act, Title VII of the Civil Rights Act of 1964, and the Family and Medical Leave Act. The legacy of discrimination against and devaluation of domestic workers continues to shape the reality of domestic workers today; the Domestic Workers’ Bill of Rights could change this trajectory, and help transform these jobs into good, family-sustaining jobs.

Similar to when the New Deal was enacted, Black women and other women of color are highly concentrated in the domestic workforce. Today, the domestic workforce is 90 percent women, over half of whom are women of color, and over a third who are immigrants.⁴ Approximately 63 percent of home care workers,⁵ 67 percent of house cleaners,⁶ and 43.5 percent of in-home childcare workers are women of color.⁷

Domestic workers do the essential work that enables other caregivers, mostly women, to go to work – a need made abundantly clear during the height of the COVID-19 pandemic. They

¹ National Labor Relations Act, 29 U.S.C. §§ 151-169 (1935)

² Sean Farhang and Ira Katznelson, The Southern Imposition: Congress and Labor in the New Deal and Fair Deal, *Studies in American Political Development*, p. 15 (2005).

³ Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, § 7, 88 Stat. 55, 62 (1974).

⁴ Julia Wolfe, Jori Kandra, Lora Engdahl, & Heidi Shierholz, Economic Policy Institute (EPI), Domestic Workers Chartbook (May 14, 2020), available at <https://www.epi.org/publication/domestic-workers-chartbook-a-comprehensive-look-at-the-demographics-wages-benefits-and-poverty-rates-of-the-professionals-who-care-for-our-family-members-and-clean-our-homes/>.

⁵ Christian Weller, Beth Almeida, Marc Cohen, & Robyn Stone, Leading Age, Making Care Work Pay, (Sept. 2020) available at <https://leadingage.org/sites/default/files/Making%20Care%20Work%20Pay%20Report.pdf>.

⁶ EPI, Domestic Workers Chartbook, *supra* note 5

⁷ *Id.*

constitute one of the fastest growing sectors of the economy due to the growing need on the part of working families for care - from child care to support for older adults and people with chronic illnesses or disabilities. Yet, domestic workers are routinely underpaid, earn poverty wages, and suffer economic insecurity. Because these are occupations that can't be outsourced or automated, they will be a large share of the jobs of the future, further underscoring the urgency of improving the quality of the jobs.

According to a 2020 report by the Economic Policy Institute, the typical domestic worker is paid just \$12.01 per hour. In contrast, a typical non-domestic worker is paid \$19.97 – a nearly 40 percent wage differential.⁸ Depressed wages run across various domestic worker occupations. On average, house cleaners are paid \$11.89 an hour, nannies are paid about \$11.60 an hour, non-agency home care workers are paid about \$11.89 and agency-based home care workers are paid about \$12.08 an hour.⁹

Domestic workers are also three times as likely to be living in poverty compared to other workers and more likely to fall below the twice-poverty threshold.¹⁰ House cleaners have twice-poverty rates of nearly 55% and nannies have twice-poverty rates of 39%, compared to roughly 17% of workers in nondomestic occupations.¹¹

Furthermore, domestic workers are far less likely to receive benefits and basic-needs assistance. Fewer than one in ten domestic workers are covered by an employer-provided retirement plan and one in five receives health insurance coverage through their job.¹² According to a 2011 survey conducted by NDWA of more than 2,000 domestic workers, 82% of domestic workers were not entitled to a single paid sick day.¹³ Although access to paid sick leave has improved, a 2022 report by PHI looking at state paid sick leave laws across the country revealed that while four states implemented new paid sick leave policies during the first year and half of the COVID-19 pandemic (May 2020 to August 2021), just 18 states have paid sick leave policies, and eligibility for some of those policies varied based on tenure, hours worked, and/or employers size.¹⁴ In addition, many immigrant domestic workers are excluded from much-needed safety net programs, such as nutrition, healthcare and housing assistance.¹⁵

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Linda Burnham and Nik Theodore, Home Economics: The Invisible and Unregulated World of Domestic Work ("Home Economics") (2012), at 30, available at <https://www.domesticworkers.org/wp-content/uploads/2021/06/HomeEconomicsReport.pdf>.

¹⁴ Kezia Scales & Stephen McCall, PHI, Essential Support: State Hazard Pay and Sick Leave Policies for Direct Care Workers During COVID-19 (July 12, 2022), available at <http://www.phinational.org/resource/essential-support-state-hazard-pay-and-sick-leave-policies-for-direct-care-workers-during-covid-19/>.

¹⁵ National Immigration Law Center, Overview of Immigrant Eligibility for Federal Programs available at https://www.nilc.org/issues/economic-support/table_ovrn_fedprogs/.

Domestic workers' low wages and high poverty rates impact not only domestic workers themselves, but also their families. Most domestic workers are parents. In February 2022, NDWA conducted a survey of more than 900 Spanish-speaking domestic workers, where we learned that approximately 7 in 10 domestic workers are parents or guardians to at least one child under the age of 18.¹⁶

The failure to include domestic workers in federal protections, combined with intersecting biases, means that most domestic workers work incredibly hard, and still can't make ends meet. The COVID-19 pandemic exacerbated the vulnerabilities of the domestic workforce, pushing the workforce toward a financial cliff almost overnight. Over the course of 2020 and 2021, our members endured persistent food and housing insecurity, income loss, and unemployment.¹⁷ Over two years into the pandemic, domestic workers continue to face low wages and high levels of joblessness. An NDWA survey of our members showed that in the second quarter of 2022, 20% of respondents were jobless.¹⁸ The same data showed that 79% of domestic worker respondents faced food insecurity, and 42% experienced housing insecurity.

In the next three sections, I will expand on three key issues which highlight the substandard wages and poor working conditions that domestic workers face: workplace harassment, wage theft and lack of paid sick leave.

Domestic Workers Experience Disproportionate Levels of Workplace Harassment

Domestic workers are particularly vulnerable to workplace harassment and abuse. Domestic workers who are directly employed by private households are excluded from anti-harassment and anti-discrimination protections under Title VII of the Civil Rights Act of 1964 because the protections apply only to employers with 15 or more employees.¹⁹ Even domestic workers who work for an employer, such as an agency, with 15 or more employees are vulnerable to exploitation.

Women in low-wage jobs and predominantly female occupations experience higher rates of sexual harassment and assault, but despite the prevalence, their experiences are often overlooked.²⁰ Domestic workers in particular tend to work alone and in isolated environments

¹⁶ NDWA Labs, [Domestic Workers and Family Caregiving: Findings from a Survey of Spanish-Speaking House Cleaners, Nannies, and Homecare Workers](https://static1.squarespace.com/static/5fa48611e8c1e35b60fa89a71/624381dfa12bbc4561ed531c/1648591328025/Domestic+Workers+and+Family+Caregiving_NDWA+Labs.pdf) (March 2022), available at https://static1.squarespace.com/static/5fa48611e8c1e35b60fa89a71/624381dfa12bbc4561ed531c/1648591328025/Domestic+Workers+and+Family+Caregiving_NDWA+Labs.pdf.

¹⁷ NDWA Labs, [Domestic Workers Economic Situation Reports](https://www.ndwalabs.org/publications/#economic-situation) (from January 2021 to June 2022) available <https://www.ndwalabs.org/publications/#economic-situation>.

¹⁸ NDWA Labs, [Domestic Workers Economic Situation Report, June 2022](https://www.ndwalabs.org/economic-june-2022), available at <https://www.ndwalabs.org/economic-june-2022>.

¹⁹ 42 U.S.C. § 2000e(b).

²⁰ New America, [Making Ends Meet in the Margins: Female-Dominated, Low-Wage Sectors](https://www.newamerica.org/better-life-lab/reports/sexual-harassment-severe-and-pervasive-problem/making-ends-meet-in-the-margins-female-dominated-low-wage-sectors/) (2018) available at <https://www.newamerica.org/better-life-lab/reports/sexual-harassment-severe-and-pervasive-problem/making-ends-meet-in-the-margins-female-dominated-low-wage-sectors/>.

because their workplaces are private households. Harassment is then compounded by lack of connection to other workers, immigration status, and language barriers.²¹

In a set of June 2022 surveys conducted by NDWA and NDWA Labs of more than 700 domestic worker members and affiliated workers, workers frequently identified other forms of discrimination, such as verbal, psychological, or physical abuse as a key safety concern. These recent surveys echo older NDWA survey data. A 2011 survey of more than 2,000 domestic workers found that 36 percent of live-in workers and 19 percent of all domestic workers had been threatened, insulted, or verbally abused in the previous 12 months.²²

Even in cases where domestic workers want to report workplace violations, they may be deterred by retaliatory consequences, such as termination and the inability to support themselves and their families, and in some cases, threats of violence.²³ Immigrant workers may fear the threat of detention or deportation, and live-in domestic workers risk being without a place to live.

One of our members named Deborah, from New York state, got her first job as a nanny when she was 16 years old. She was excited to be able to help her family financially. She cared for a 3 year-old boy while his parents were at work. One day, her employer, the child's father, arrived home and immediately went to take a shower. He called for her to help him with something. When she arrived at the bathroom door with the child, he exposed himself to Deborah. She was paralyzed by shock and fear. She took the child to another room, but the father followed them. He began to touch and sexually assault Deborah in front of his child. Luckily, a neighbor knocked on the door and she was able to get away from him. She ran out of the house, and left the job. Out of fear and shame, she kept silent about the experience for almost two decades.

Nina, a homecare worker from Florida, worked as a live-in caregiver to a male employer. On her very first night on the job, he asked her to get into bed with him. Over the course of the next several months, he groped her repeatedly. Nina felt she could not tell the agency who assigned her because she knew they would take her off the job, and she needed the income. Isolated and alone, she did not know where to turn for help. She left as soon as she could find another job, and it wasn't until months later that she learned he had harassed others who worked there. The trauma has stayed with her for years.

Domestic Workers Are Subject to Rampant Wage Theft

Domestic workers, like workers in other low-wage industries, suffer high rates of wage theft, further compounding the economic insecurity of working in a sector where low wages with few benefits and protections are the norm. Wage theft takes many forms: payment of wages below the minimum wage, failure to pay over time, asking employees to work off the clock, late payment, employers taking unlawful deductions, and misclassifying employees as independent contractors, among others. A 2008 survey of more than 4,000 workers in low-wage industries

²¹ Vox, [Women of color in low-wage jobs are being overlooked in the #MeToo moment](https://www.vox.com/identities/2017/12/19/16620918/sexual-harassment-low-wages-minority-women) (Dec. 19, 2017) available at <https://www.vox.com/identities/2017/12/19/16620918/sexual-harassment-low-wages-minority-women>.

²² [Home Economics, supra n.14.](#)

²³ *Id.*, at 34 (identifying common reasons domestic workers did not report problems at work).

revealed that 26 percent were paid less than minimum wage in the week prior to the survey, and nearly 1 in 5 surveyed workers suffered overtime violations.²⁴

The violations in the domestic work sector are equally, if not more, pervasive. A 2014 report by the National Employment Law Project estimated that 17.5% of home care workers experienced minimum wage violations, and 82.7% experienced overtime violations.²⁵ Wage theft is another reflection of the undervaluing of domestic work and the impunity that is too often the norm in this industry.

Similarly, a survey of domestic workers in New Jersey conducted in 2020 found that more than half (57 percent) of the domestic workers had suffered wage theft, and many faced multiple forms.²⁶ The same study found that workers are often knowledgeable about their rights, but face significant barriers to enforcement. Few felt empowered to enforce their rights, some because they worried that complaints could lead to immigration-based threats or threats of firing, and others because they did not know how to enforce their rights.²⁷

In my experience with domestic workers, the structure of the workplace, inherent in domestic work — intimate, one-on-one relationships with employers who likely only have one or two employees — makes it extremely difficult for workers to report violations, and poses some unique challenges for enforcement agencies.

For example, one NDWA member, Lorena,²⁸ lives in a border town in Texas. She has been a domestic worker for the past 18 years. She left a job as a live-in domestic worker because the situation was unbearable. The employers held all of her belongings; she was only allowed two changes of clothes. They withheld her wages, and threatened to call immigration to report her. Because of these threats, Lorena felt that her only option was to leave her job.

Another member who lives in California, Diana has worked as a domestic worker for nearly 10 years, in a range of jobs - as a nanny, a house cleaner, and a caregiver. In one of her jobs as a live-in nanny, she worked between 12 and 20 hours a day for a total of \$350 a week, without overtime pay. She was routinely paid late. One day, out of the blue after working during a

²⁴ Anette Bernardt, et al., Broken Laws. Unprotected Workers: Violations of Employment and Labor Laws in America's Cities. NELP (2009), <https://www.nelp.org/publication/broken-laws-unprotected-workers-violations-of-employment-and-labor-laws-in-americas-cities/>.

²⁵ Catherine Ruckelshaus, et al., Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work, NELP (May 2014), at 14, <https://www.nelp.org/wp-content/uploads/2015/02/Whos-the-Boss-Restoring-Accountability-Labor-Standards-Outsourced-Work-Report.pdf>.

²⁶ Center for Women and Work, Rutgers University, Domestic Workers in New Jersey, (Sept. 2020), at 14, https://smir.rutgers.edu/sites/default/files/Documents/Centers/CWW/Publications/cww_domestic_workers_report.pdf.

²⁷ *Id.*, Domestic Workers in New Jersey, at 15-16. See also, National Employment Law Center, Broken Laws. Unprotected Workers: Violations of Employment and Labor Laws in America's Cities, (2009) available at <https://www.nelp.org/publication/broken-laws-unprotected-workers-violations-of-employment-and-labor-laws-in-americas-cities/>

²⁸ Name changed to protect privacy

family trip, she was fired upon return, without notice or severance. If not for a friend who gave her a place to stay that night, she would have had nowhere to go.

The consequences of wage theft are not marginal. Rampant wage theft deprives workers in low-wage industries billions of dollars annually — workers who often have the least economic security as it is — and the theft of their income can cause workers to rely more on the public safety net, straining public resources and poverty reduction efforts. A study conducted by the Economic Policy Institute looking at just one form of wage theft — payment of less than the applicable minimum wage — in the 10 most populous U.S. states, found approximately 17 percent of the low-wage workforce was subjected to this form of wage theft, amounting to the theft of more than \$8 billion annually.²⁹

Domestic Workers Generally Lack Access to Paid Sick Leave

Most domestic workers have no access to paid time off of any kind, including sick leave. Some cities and states that have passed paid sick days and paid leave legislation have included protections for domestic workers, but those are the exception. Therefore, taking time off means losing income; no work, no pay, no matter the circumstances — childbirth, illness, or care for a loved one in need. As noted above, few domestic workers have access to paid sick days, the consequences of which became dire during the pandemic.³⁰

For example, Gail is a house cleaner, and one of our NDWA members from New York City. She does not have paid sick time or paid time off of any kind and lives paycheck-to-paycheck. When she had to have surgery for fibroids, the recovery time was two months. She wanted to be sure she was fully healed before she went back to work. However, she spent her recovery worrying about how to pay rent, as she did not have paid time off and only one of her clients continued to pay her wages. It was a hard time for Gail as her bills piled up.

During the pandemic, domestic workers were at a greater risk of contracting COVID-19 because they generally work indoors and, by necessity, in close proximity to their employers and the children or adults for whom they may care. Domestic workers frequently work for multiple employers, further increasing the likelihood of exposure to the virus,³¹ putting them, their families, and their clients at greater risk. Among Black immigrant domestic workers surveyed in

²⁹ Economic Policy Institute, Employers Steal Billions from Workers' Paychecks Each Year, (2017) available at https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/?gclid=Cj0KCQjwz96WBhC8ARIsAATR252qMs5XUqOjEu3iu24Y5-aleUb-TYd5gRC0oQzmQyN_kWcitHf9-nEaAtWfEALw_wcB.

³⁰ See, *supra*, n.14-15; Institute for Policy Studies, Rebekah Entralgo, The Fight for Equal Pay Must Include Domestic Workers (March 4, 2021), available at <https://inequality.org/great-divide/equal-pay-domestic-workers/>.

³¹ Adding to the risk, health and safety protections are routinely overlooked for domestic workers. A 2020 survey of Black immigrant domestic workers in Massachusetts, Miami-Dade, and New York City revealed that 73% had not received personal protective equipment from their employers. See Institute for Policy Studies, Notes from the Storm: Black Immigrant Domestic Workers in the Time of COVID-19 (2021), available at <https://www.domesticworkers.org/wp-content/uploads/2021/06/IPS-WDiB-survey-brief-English.pdf>.

February 2021 in Massachusetts, Miami-Dade, and New York City, 50 percent had worked in environments where they or others had COVID.³²

The lack of paid time off and other benefits puts workers at increased risk. June, a home care worker and NDWA member in Miami, Florida, shared, “Another home care worker I know got COVID at work from her boss’s children. She was from Haiti and undocumented and didn’t have health insurance. She was afraid to go to the hospital and she died. We buried her.”³³

Once the pandemic started, teleworking and taking paid time off was not an option for these frontline workers. Few had a safety net to fall back on when they were met with abrupt cancellations from clients and did not know when their clients would contact them again for work. According to a survey conducted by NDWA during the first 6 months of the pandemic, only 14% of respondents had applied for unemployment insurance, and less than a third received an economic stimulus payment.³⁴

Lack of paid sick leave also created barriers to domestic workers accessing COVID-19 vaccines. Although interest in vaccination and vaccination rates among our surveyed domestic worker members was high, nearly half of the domestic workers we surveyed in June 2021 identified side effects from the vaccine as a “very important reason” regarding the inability to take time off work to recover. More than a third of unvaccinated domestic workers surveyed identified the inability to take time off work to get vaccinated as a “very important reason” that they had not done so yet.³⁵

Given that the typical domestic worker is a mother and the primary breadwinner, unpaid loss of work, whether because of sickness or COVID-related loss of income, led to almost immediate and persistent food and housing insecurity for their households.³⁶ As a result, domestic workers often have few options but to keep going in person to work, whether in the face of a global pandemic or routine illnesses, placing themselves, their families, and their clients at increased risk.

³² Institute for Policy Studies, *The Other Side of the Storm: What Do Black Immigrant Domestic Workers in the Time of Covid-19 Teach Us About Building a Resilient Care Infrastructure?*, (June 2022), available at <https://www.domesticworkers.org/wp-content/uploads/2022/06/The-Other-Side-of-the-Storm-June-2022-Final.pdf>.

³³ *Id.*

³⁴ NDWA Labs, *6 Months in Crisis: The Impact of COVID-19 on Domestic Workers* (Oct. 2020) available at https://www.domesticworkers.org/wp-content/uploads/2021/06/6_Months_Crisis_Impact_COVID_19_Domestic_Workers_NDWA_Labs_1030.pdf

³⁵ NDWA Labs, *73% of Domestic Workers Report Having Received at Last One COVID-19 Vaccine Dose* (June 23, 2021), <https://www.ndwalabs.org/vaccine-june-2021>.

³⁶ NDWA Labs, *2021 Overview: Domestic Workers Economic Situation* (May 2022) available at https://static1.squarespace.com/static/5fa48611e8c1e35b60fa89a71/627956863246664d2800e17b/1652119175329/2021+Overview_+Domestic+Workers+Economic+Situation.pdf

H.R. 4826 Would Provide Domestic Workers with Federal Recognition and Strengthen Workplace Protections

Congress should enact H.R. 4826, the National Domestic Workers Bill of Rights,³⁷ which was re-introduced this Congress by Congresswoman Pramila Jayapal and Senators Kirsten Gillibrand and Ben Ray Lujan. It is the first national legislation designed to grant core workplace protections to domestic workers throughout the country.

H.R. 4826 builds on NDWA's organizing over the last decade, advocacy that has resulted in the passage of domestic worker bills of rights in ten states and two major cities.³⁸ In addition, domestic workers in Chicago now have a right to a written contract and paid sick days;³⁹ domestic workers in San Francisco have the right to paid sick leave;⁴⁰ and domestic workers in New York City are covered under anti-harassment and anti-discrimination protections.⁴¹ These new city and state level laws have helped to establish new norms, allowing domestic workers to assert equal rights as workers, negotiate for fair pay and working conditions and file complaints in situations of abuse.

In states like Virginia and New Mexico, domestic workers now finally enjoy the rights to state minimum wage law protections, and more domestic workers in Hawaii are covered under its state minimum wage law. In New York, Illinois, California and Oregon, the passage of state-level domestic worker bills of rights meant that domestic workers were entitled to overtime pay under state law or were entitled to it at the same rate as other workers. These local and state laws also typically extend protections against discrimination and harassment, paid time off, meal and rest breaks, a right to notice of termination, and enhanced retaliation protections.

While local and state laws are critical to protecting domestic workers' rights, much more is needed to establish a national standard. Basic fairness and safety at work should not depend on the good will of an employer or the particularities of a state. The Domestic Workers Bill of Rights would provide the equal rights, dignity, and recognition that the workers who work in our homes deserve.

H.R. 4826 ends the remaining exclusions from overtime protections, ensuring domestic workers who are privately paid and live in their employers homes receive fair compensation and treatment. Furthermore, this bill will improve workplace protections — including ensuring that domestic workers have paid sick leave to take care of themselves or family members who are ill. It will also strengthen workplace harassment and discrimination protections and safe and

³⁷ Domestic Workers Bill of Rights, H.R. 3670/S. 2112 (2019) <https://www.congress.gov/bill/116th-congress/house-bill/3760/text>.

³⁸ The ten states are Oregon, California, Connecticut, Illinois, New York, Massachusetts, Hawaii, Nevada, New Mexico and Virginia. The two major cities are Seattle and Philadelphia.

³⁹ Chicago Municipal Code 6-120-020, Contracts for domestic workers; Chicago Municipal Code 6-105-045, Paid sick leave.

⁴⁰ San Francisco Paid Sick Leave Ordinance, Administrative Code, Chapter 12W

⁴¹ New York City Admin. Code § 8-107(23). *See also* Local Laws of the City of New York, No. 88 (2021), available at <https://www1.nyc.gov/assets/cchr/downloads/pdf/amendments/Local-Law-88.pdf>.

healthy measures. Finally, this bill makes protections real by providing resources for community education and outreach and anti-retaliation provisions to address barriers to implementation and enforcement.

The bill also includes a standards board to bring domestic workers, employers, and government together to make on-going recommendations and ensure that implementation takes into account the perspectives of stakeholders and the unique complexities of this sector.

H.R. 4826 is an Investment in Workers, Families and the Economy

Addressing the needs of domestic workers is a win-win-win which will provide a direct benefit to this workforce and their families, while strengthening support for the families they care for, enabling their contributions to the growth and health of the US economy and society.

Improving Economic Security for Domestic Workers

The Domestic Workers Bill of Rights will, first and foremost, boost job quality and domestic workers' economic security. Domestic work is among the few categories of jobs that cannot be outsourced or automated, where the demand is set to grow due to the growing aging population that is opting to age at home and in the community, as opposed to in nursing homes. We cannot risk continuing to relegate this class of work to poverty wage work.

For individual domestic workers, better job quality – fair wages, time off, strong protections, training and access to benefits – will offer economic resilience and more freedom. In turn, that will have a ripple effect in improving food security, housing access and health outcomes for their families.⁴² By investing broadly in the domestic workforce – 90 percent women, the majority of whom are women of color and immigrants – Congress can address longstanding inequality in our economy and labor market, while strengthening our workforce as a whole, with more support for our shared caregiving and domestic needs.

Providing Support for Working Family Caregivers

Improving the quality of work for domestic workers directly benefits the families they care for. Nannies, house cleaners and direct care workers allow people to go to work knowing that their homes and family members are in the hands of professionals. In turn, those families and their workplaces are better able to thrive. That is why we call these job-enabling jobs.

That domestic workers are integral to the rest of the workforce came into sharp focus during the pandemic. By April 2020, nearly 22 million jobs were lost, more than half of which were held by women – in part because of increased caregiving responsibilities.⁴³ There were especially high numbers of departures from low-wage jobs among women living with children.⁴⁴ This was also

⁴² Aspen Institute, *To Build Back Better, Job Quality is the Key* (April 2021) available at <https://www.aspeninstitute.org/wp-content/uploads/2021/03/To-Build-Back-Better-Job-Quality-Is-the-Key.pdf>

⁴³ National Women's Law Center, *Women's Jobs Are Being Added Back to the Economy But Many Need Improving* (June 2022), available at <https://nwlc.org/resource/womens-jobs-are-being-added-back-to-the-economy-but-many-need-improving/>.

⁴⁴ *Id.*

true for domestic workers. NDWA's survey data from February 2022 found that 8 in 10 domestic workers reported having to reduce their work hours or leave a job altogether.⁴⁵ If there is an adequate supply of paid caregivers, it enables millions of other working-age adults to go to work — across every industry in the economy.

If our domestic workforce is secure, the working parents and family caregivers who rely upon them are more secure, and the businesses *they* work for, are in turn more secure.

Benefits for Care Businesses and the Broader Economy

In the home care industry, low wages and lack of meaningful workplace protections has resulted in high turnover rates and chronic worker shortages. The constant turnover ultimately hurts the quality of care received by older adults and people with disabilities and complex medical needs. The turnover is costly to agencies that constantly need to hire and train new workers, and also leads to higher costs for taxpayer supported programs that fund home care services. Ensuring that domestic workers have financial security and job satisfaction will improve job performance and reduce turnover, both of which will improve an employer's bottom line.

Strengthening wages and protections for domestic workers will help stabilize and grow the economy. Low-quality, low-paying jobs in domestic work creates insecurity, inequality and instability for the domestic workforce, their families, the families they serve and industries across the economy. At the same time, this workforce is growing, due to the growth in demand on the part of working families and an aging nation. These are jobs that cannot be outsourced, or automated. We have an historic opportunity to protect these jobs, and put the workforce on a pathway to economic mobility. Good jobs for domestic workers benefit everyone.

Conclusion

Domestic workers take care of some of the most precious elements of our lives, from our children to our parents to our homes. The pandemic reinforced just how essential they are as many households nearly collapsed without their support. And yet, domestic work remains among the most vulnerable and least protected jobs. The workforce has been systematically written out of most workplace protections, as a reflection of a long history of racial exclusion in our law and policy and a byproduct of outdated and unjust cultural norms that define work in the home as "help," or less than real work. The stark power imbalance, isolation and the unique challenge of having the home as a workplace requires the establishment of the specific protections outlined in the Domestic Workers Bill of Rights. The professionals responsible for nurturing the potential in our children, or supporting the dignity of our aging loved ones and loved ones living with disabilities, should not have trouble feeding or caring for their own children and families. By passing the Domestic Workers Bill of Rights, Congress can honor and protect the labor of care that serves as the foundation of our economy.

⁴⁵ NDWA Labs, *Domestic Workers and Family Caregiving*, *supra*, n.17.

Ms. JAYAPAL. Thank you, Ms. Poo. The Chair now recognizes Dr. Mason for 5 minutes.

**STATEMENT OF DR. C. NICOLE MASON, PRESIDENT AND CEO
OF INSTITUTE FOR WOMEN'S POLICY RESEARCH**

Dr. MASON. Good afternoon, Chair Adams, Ranking Member Keller, and members of the Subcommittee. My name is Dr. C. Nicole Mason, and I am the president and CEO of the Institute for Women's Policy Research, an economic think tank focused on women's economic security, and understanding women's labor force participation.

Thank you for holding this hearing and for the invitation to testify today about essential workplace protections for domestic workers. The title of this hearing, "Essential But Undervalued," regrettably but aptly describes the situation facing domestic workers. This work, ranging from caring for our children to caring for our homes, to ensuring the health of our elders, makes all other work possible.

While the pandemic shined a light on the harm resulting from the lack of employment protections for this workforce, it is important to note that this harm long predates the pandemic. Despite the essential nature of domestic work, it is and has been undervalued in our economy due to its roots, enforced enslavement, and indentured servitude. As a result, domestic workers, who are disproportionately women of color, were left out of a variety of Federal labor protections throughout the 20th century, leaving these workers particularly vulnerable to poverty and exploitation.

The vulnerability of this workforce due to the lack of labor protections was exposed clearly during the COVID-19 "she-cession." Domestic workers were among those most impacted as employers closed their homes. Many of these workers were unable to access unemployment support and did not have sufficient access to paid sick leave or health insurance. Nevertheless, domestic workers are a growing segment of the economy, and the demand for such care work will continue to increase as our population ages. The most recent data from the Bureau of Labor Statistics show that 15,000 home health care jobs have been added since February 2020. The International Labor Organization estimates that domestic workers make up 2.3 percent of total employment worldwide, with more than 2.2 million workers in the United States.

Over 90 percent of these workers are women, and more than half are black, Latina, or Asian American/Pacific Islander. The domestic worker labor force is a clear example of occupational segregation, resulting in women's work being undervalued and Congress can and should act to address these issues. The Institute for Women's Policy Research has long researched many of the labor issues included in Congresswoman Jayapal's legislation, The Domestic Workers Bill of Rights, and we support the inclusion of domestic workers in common workplace rights and protections, such as paid sick days and protection from harassment and discrimination.

We also support the establishment of additional protections such as fair scheduling and access to affordable health care and retirement benefits. We have been advocating for paid family and medical leave since 1987. A 2021 IWPR survey of women workers found

that over one-third, 37.5 percent, employed full-time report they do not have paid sick leave, and 65 percent of full-time workers surveyed report they do not have paid family leave.

Domestic workers are significantly less likely to have access to paid sick days or family and medical leave, a problem that this legislation would address. Additionally, domestic workers often lack clearly defined working hours and control over their schedules, resulting in low wages, uncompensated overtime and fickle scheduling. Literature, the literature consistently show that temporal instability in the workforce is associated with psychological distress, poor sleep quality and unhappiness. Unpredictable work schedules have been found to increase workers reporting work/life conflict. Just-in-time scheduling practices put workers in a vulnerable financial position, both by destabilizing earnings and by disrupting their access to safety net programs, and make it difficult for them to arrange childcare, attend school or pick up a second job.

Domestic workers experience multiple compounding negative consequences due to the lack of necessary workplace protections, many of which we have studied. For example, in 2018 we found that only 13 percent of women domestic workers had access to a pension plan, and only 24 percent had access to employer-provided insurance. In 2020, we conducted a study that estimated the lifetime cost of sexual harassment on workers and found that physically isolated workplaces rife with power imbalances were the No. 1 risk factor for sexual harassment.

Fundamentally, the workplace structure of domestic worker—domestic work systematically creates vulnerability for workers. We estimate that the cost of sexual harassment for a home health aide was more than \$128,000 over the course of a lifetime. These costs further exacerbate an economically insecure situation for domestic workers. These women face a workplace in which many of our basic, many of our basic labor rights do not apply, and their wages consistently fall behind the wages of all other workers.

Domestic workers make at least \$7 an hour less than all other workers. This is the widest gap—this gap is widest for nannies, who make a median average of \$11.60. Enacting the Domestic Workers Bill of Rights is essential, and will ensure domestic workers receive basic workplace—

Ms. JAYAPAL. Dr. Mason, if you could just wrap up. Your time has expired.

Dr. MASON. Yes, oh, oh, goodness. In addition to the important provisions of the Domestic Workers Bill of Rights, IWPR supports pay equity, enhanced enforcement of anti-harassment law and other protections. Thank you.

[The prepared statement of Dr. C. Nicole Mason follows:]

House Committee on Education and Labor, Subcommittee on Workforce Protections hearing entitled "*Essential but Undervalued: Examining Workplace Protections for Domestic Workers*," Thursday, July 28, 2022, at 10:15 a.m. (Eastern Time).

Dr. C. Nicole Mason
Written Testimony

Good afternoon, Chair Adams, Ranking Member Keller, and members of the subcommittee, my name is Dr. C. Nicole Mason and I am the President of the Institute for Women's Policy Research, an economic think tank focused on women's economic security and understanding women's labor force participation. Thank you for holding this hearing and for the invitation to testify today about essential workplace protections for domestic workers.

The title of this hearing, "Essential but Undervalued," regrettably but aptly describes the situation facing domestic workers. This work – ranging from caring for our children to caring for our homes to ensuring the health of our elders – makes all other work possible. While the pandemic shined a light on the harm resulting from the lack of employment protections for this workforce, it is important to note that this harm long predates the pandemic. Despite the essential nature of domestic work, it is and has been undervalued in our economy due to its roots in forced enslavement and indentured servitude. As a result, domestic workers, who are disproportionately women of color, were left out of a variety of federal labor protections throughout the 20th century leaving these workers particularly vulnerable to poverty and exploitation.

The vulnerability of this workforce due to the lack of labor protections was exposed clearly during the COVID-19 recession. Domestic workers were among those most impacted as employers closed their homes. Many of these workers were unable to access unemployment support and did not have sufficient access to paid sick leave or health insurance. Nevertheless, domestic workers are a growing segment of the economy and the demand for such care work will continue to increase as our population ages. The most recent data from the Bureau of Labor Statistics shows that 15,000 home health jobs have been added since February 2020. The International Labor Organization estimates that domestic workers make up 2.3 percent of total employment worldwide, with more than 2.2 million workers in the United States. Over 90 percent of these workers are women, and more than half are Black, Latina, or Asian American/Pacific Islander. The domestic worker labor force is a clear example of occupational segregation resulting in women's work being undervalued and Congress can and should act to address these issues.

The Institute for Women's Policy Research has long researched many of the labor issues included in Congresswoman Jayapal's legislation, the Domestic Workers Bill of Rights, and we support the inclusion of domestic workers in common workplace rights and protections such as paid sick days and protection from harassment and discrimination. We also support the establishment of additional protections, such as fair scheduling and access to affordable healthcare and retirement benefits.

IWPR has been advocating for paid family and medical leave since 1987. Yet, a 2021 IWPR Survey of women workers found that over one-third of women (37.5 percent) employed full-time report they do not have paid sick leave—and 65.2 percent of full-time workers surveyed report they do not have paid family leave. Domestic workers are significantly less likely to have access to paid sick days or family and medical leave, a problem that this legislation would address.

Additionally, domestic workers often lack clearly defined working hours and control over their schedules, resulting in low wages, uncompensated overtime, and fickle scheduling. Academic literature consistently show that temporal instability in the workforce is associated with psychological distress, poor sleep quality, and unhappiness. Unpredictable work schedules have been found to increase workers reporting work-life conflict. “Just-in-time” scheduling practices put workers in a vulnerable financial position—both by destabilizing earnings and by disrupting their access to safety net programs—and make it difficult for them to arrange childcare, attend school, or pick up a second job. Systemic lack of affordable child care and lack of access to child care beyond the traditional nine to five schedule makes it difficult for domestic workers to balance work with taking care of their children.

Domestic workers experience multiple, compounding negative economic consequences due to the lack of necessary workforce protections – many of which IWPR has studied. For example, in 2018, IWPR found that only 13 percent of women domestic workers had access to a pension plan and only 24 percent had access to an employer-provided insurance plan. In 2020, IWPR conducted a study that estimated the lifetime costs of sexual harassment on workers and found that physically isolated workspaces rife with power imbalances were the number one risk factor for sexual harassment. Fundamentally, the workplace structure of domestic work systematically creates vulnerability for workers. IWPR estimated that the costs of sexual harassment for a home health aide was more than \$128,000 of the course of a lifetime. Domestic workers also reported experiencing physical strain, depression, and psychological trauma due to their experience with sexual harassment.

These costs further exacerbate an economically insecure situation for domestic workers. These women face a workplace in which many of our most basic labor rights do not apply and their wages consistently fall behind the wages of all other workers. Domestic workers make at least \$7 an hour less than all other workers. This gap is widest for nannies who make a median average of \$11.60. Domestic workers are also more likely to work part-time, compounding a low hourly wage. Even among care workers, workers who are employed in the home are the lowest paid. The dominance of women and women of color in this low-paid, yet critical work is a significant contributor to the gender and racial wage gap.

Enacting the Domestic Workers Bill of Rights is essential and will ensure domestic workers receive basic workplace protections. In addition to the important provisions of the domestic worker’s bill of rights, IWPR supports pay equity, enhanced enforcement of anti-harassment law, \$15 minimum wage, and affordable, universal childcare that also works for those who need childcare beyond 9-5. The economic security and mobility of domestic workers depend on our investment in this essential workforce. Congress must ensure that these workers are included in common workplace rights and protections and that new protections be established to address the unique challenges of domestic work by passing the Domestic Workers Bill of Rights.

Ms. JAYAPAL. Thank you, Dr. Mason. The Chair now recognizes Mr. DeCamp for 5 minutes.

**STATEMENT OF PAUL DeCAMP, MEMBER OF THE FIRM,
EPSTEIN, BECKER & GREEN.**

Mr. DeCAMP. Good morning, Chair Adams, Ranking Member Keller and distinguished members of the Subcommittee. Thank you for inviting me to testify at this hearing to address H.R. 4826, the Domestic Workers Bill of Rights Act. I am here today to express my opposition to this bill. I would like to begin by stating my support for a number of the policy goals reflected in the legislation. Domestic service workers are an important part of the workforce, and they deserve the opportunity to perform their work free of harassment, discrimination or deprivation of the wages they have earned.

This particular bill, however, is not the way to further these goals. H.R. 4826 would impose extraordinary costs and burdens on the individuals and families who employ these workers, far out of proportion to any benefit the workers would receive, while at the

same time all but ensuring a constitutional challenge that could result in the sharp curtailing of congressional power under the Commerce clause. In this instance, Federal legislation is not the answer.

A few of the provisions of H.R. 4826, which would apply to families who employ a covered nanny, babysitter, housekeeper, nurse, home health aide or personal care assistant in their home for as little as 8 hours a week, illustrate the sweeping nature of what the bill would require. Detailed written agreements setting forth all job duties, the frequency of those duties and the worker's schedule or anticipated hours of work; paid sick leave of up to 56 hours per year; written notice of any change in scheduled working hours at least 72 hours in advance; uninterrupted 30-minute meal breaks for each 5 hours' work and uninterrupted 10-minute rest breaks for each 4 hours' work.

Damages and penalties under the bill include such items as economic damages and recovery for non-monetary injury, including injury to reputation, character, or feelings. Interest-liquidated damages, attorney fees, expert witness fees and litigation costs. An hour of pay for each meal or rest period missed, up to two total hours of additional pay per workday. A \$5,000 penalty for any flaw in the mandatory written agreement, and civil money penalties of up to \$15,000 for each and every violation of these new requirements, or up to \$25,000 for any subsequent violation, without any requirement that the violation was intentional or willful.

In addition, this bill would change the definition of employer in Title VII of the Civil Rights Act of 1964, which currently applies only to businesses that employ 15 or more employees, by lowering that threshold to just a single employee. That change would apply to every industry and worker, not just to domestic service employment. This enormous expansion of Federal authority into household employment and into plainly local arrangements raises at least two significant problems.

The first is a practical one. Most Federal employment laws have long-excluded small employers for a variety of reasons, mainly involving the disproportionate burden that compliance imposes on small businesses. The rights reflected in our laws are very important to workers, but they come at a cost in terms of added expense and time employers must spend in learning the laws, maintaining proper records, and responding to allegations of violations.

In short, our legal system is not particularly efficient at sorting out which employment law claims have or lack merit. As a society, we tend to view coping with inefficient agency and judicial proceedings as a cost of doing business, an obligation that companies of a certain size need to shoulder as part of participating in our economy. Congress has also long understood that employment law compliance and defending against claims can overwhelm and destroy a small business, the typical mom-and-pop operation. This is true with much greater force with respect to household employment, where it is literally individuals, mothers, fathers and other family members who will shoulder the burdens under H.R. 4826.

These burdens will arise in the context where the households are not conducting a business and cannot simply adjust their prices to make up for these compliance costs.

The second major problem with such a dramatic extension of Federal regulatory authority into people's homes is that it pushes and likely exceeds the boundaries of congressional authority under the Commerce clause. Given the current configuration of the Supreme Court, along with Justice Thomas's long-standing and clearly expressed desire to rewrite entirely the Court's approach to interpreting the Commerce clause, enacting this bill would likely result in a pyrrhic victory.

Congress may find itself with substantially less authority to legislate, and with many current statutes vulnerable to challenge. This concludes my prepared remarks. I welcome any questions the members of the Subcommittee may have. Thank you.

[The prepared statement of Paul DeCamp follows:]

**STATEMENT
OF
PAUL DECAMP**

**ON: ESSENTIAL BUT UNDERVALUED:
EXAMINING WORKPLACE PROTECTIONS FOR
DOMESTIC WORKERS**

**TO: THE UNITED STATES HOUSE OF
REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
SUBCOMMITTEE ON WORKFORCE
PROTECTIONS**

**BY: PAUL DECAMP
MEMBER
EPSTEIN, BECKER & GREEN, P.C.**

DATE: JULY 28, 2022

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STATEMENT OF

PAUL DECAMP
EPSTEIN, BECKER & GREEN, P.C.

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON WORKFORCE PROTECTIONS

HEARING

ESSENTIAL BUT UNDERVALUED:
EXAMINING WORKPLACE PROTECTIONS FOR DOMESTIC WORKERS

JULY 28, 2022

Good morning, Chair Adams, Ranking Member Keller, and distinguished members of the Subcommittee.

Thank you for inviting me to testify at this hearing to address the treatment of domestic workers under federal employment statutes.¹ My testimony will focus on the Subcommittee's consideration of H.R. 4826, the "Domestic Workers Bill of Rights Act."

I am a member of the law firm Epstein, Becker & Green, P.C., where I co-chair the national Wage and Hour Practice.² I have devoted most of my professional efforts over the past quarter-century to wage and hour issues. In 2006 and 2007, I served as Administrator of the U.S. Department of Labor's Wage and Hour Division, the chief federal officer appointed by the President of the United States responsible for enforcing and interpreting the Nation's wage and hour laws, including the Fair Labor Standards Act (the "FLSA").

My practice focuses on helping businesses pay their people correctly. I have advised clients across the country in a broad range of industries regarding virtually every significant area of wage and hour compliance, including employee versus independent contractor status, classifying workers as exempt or non-exempt for purposes of overtime and minimum wage requirements, identifying compensable work, calculating overtime, providing meal and rest breaks, and more. I also regularly represent businesses in state and federal administrative agency proceedings, as well as class action and other complex litigation matters throughout the United States. Over the years I have handled numerous matters concerning the treatment of domestic workers under federal and state law.

¹ I am testifying today in my individual capacity. The opinions expressed in my written and oral testimony are my own and do not necessarily reflect the views of my firm, its attorneys, its clients, or anyone else.

² Epstein, Becker & Green, P.C. is a national law firm with approximately 330 attorneys focusing in our core practice areas of employment, labor, and workforce management; health care and life sciences; and litigation. We have roughly 150 attorneys in offices across the country advising, counseling, and litigating on behalf of employers large and small, including with respect to the full range of wage and hour issues arising under federal, state, and local laws.

I have testified before Congress on several prior occasions—both during and after my time with the Department of Labor—concerning wage and hour policy and enforcement issues, including before this Subcommittee in 2007, 2014, and 2021. I speak and write on these topics frequently, and I am a member of the *Law360* Employment Editorial Advisory Board and the American Employment Law Council.

Today I testify in opposition to H.R. 4826. The legislation seeks to advance clearly laudable and important goals of protecting vulnerable workers in domestic service from a wide range of harms that these individuals should never have to face. This particular bill, however, is not the way to accomplish that result. H.R. 4826 would impose extraordinary costs and burdens on the families who employ these workers far out of proportion to any benefit the workers would receive, while at the same time all but ensuring a constitutional challenge that could result in the sharp curtailing of congressional power under the Commerce Clause. Instead, state and local laws, which have already begun to address these concerns, are the best method to ensure that domestic service workers receive the wages and working conditions that they deserve.

I. HISTORY OF THE DOMESTIC WORKER PROVISIONS OF THE FLSA

A. The FLSA as originally enacted: limited coverage

The original version of the FLSA as enacted in 1938 applied to only a small portion of the Nation’s workforce. This is because the statute required employers to provide minimum wage and overtime only to those employees “engaged in commerce or in the production of goods for commerce[.]”³ a concept known as “individual coverage.” This early version of the law extended these protections only to workers personally engaged in interstate commerce, regardless of the extent to which the employer happened to engage in interstate commerce. Congress enacted the FLSA against the backdrop of significant then-recent skepticism from the Supreme Court regarding the exercise of Commerce Clause power in New Deal legislation, and tying federal authority to impose wage standards to a requirement that an individual employee engage in interstate commerce was an effort to provide a clear basis for Congress to regulate.⁴

The limited coverage of the 1938 version of the FLSA prevented the law from applying to domestic employees—i.e., those who perform services in or around the residence of another. To the

³ Fair Labor Standards Act of 1938, Pub. L. ch. 676, § 6(a), 52 Stat. 1060, 1062 (June 25, 1938) (minimum wage requirement); *see also id.* § 7(a), 52 Stat. at 1063 (identical verbiage for overtime requirement).

⁴ The drafters repeatedly voiced concerns about federal power in this area. A House committee report on an early draft of the bill stated that “[t]he bill has been drafted in accordance with the principles of constitutional law, particularly those enunciated in the recent minimum wage and Labor Relations Board decisions of the Supreme Court of the United States [.]” and noted that the legislation “applies only to industries engaged in the production of goods for interstate commerce and directly affecting interstate commerce. It does not affect the purely local intrastate business.” H. Rep. No. 75-1452, at 9 (1937). Eight months later, the same committee described the bill as “provid[ing] for the establishment of fair labor standards in employments in and affecting interstate commerce” and cautioned that “[t]he Federal Government cannot and should not attempt to regulate the wages of all wage earners throughout the United States.” H. Rep. No. 75-2182, at 1, 6 (1938). Echoing these concerns, the Senate noted that “[t]he bill carefully excludes from its scope business in the several States that is of a purely local nature. It applies only to the industrial and business activities of the Nation insofar as they utilize the channels of interstate commerce, or seriously and substantially burden or harass such commerce.” S. Rep. No. 75-884, at 5 (1937).

Congress of 1938, it was all but inconceivable that the Commerce Clause would allow federal regulation of the wages and hours of household employees.⁵

B. The 1961 FLSA amendments: enterprise coverage

In 1961, Congress amended the FLSA in several key respects. Congress expanded the law's coverage by creating a second basis for the law to apply to a worker: employment "in an enterprise engaged in commerce or in the production of goods for commerce[.]"⁶ a concept referred to as "enterprise coverage." The 1961 amendments limited enterprise coverage to businesses that, depending on their industry, had minimum annual sales or revenues at levels ranging from \$250,000 to \$1,000,000.⁷

The stated legislative purpose behind the enterprise coverage dollar thresholds was "a way of saying that anyone who is operating a business of that size in commerce can afford to pay his employees the minimum wage under this law."⁸ By the same token, Congress indicated that the enterprise coverage standard should protect "small local independent business"⁹—"so-called 'mom and pop' stores[.]"¹⁰ These amendments, while expanding the bases for FLSA coverage, did not reach domestic service employment.

C. The 1974 amendments: domestic service employment first covered by the FLSA, with live-in domestic workers exempt from overtime

In 1974, Congress extended the reach of the FLSA even further, this time to an estimated 1,285,000 employees in domestic service.¹¹ Congress added the following statement to the FLSA in order to make the case for federal authority to legislate as to these workers: "Congress further finds that the employment of persons in domestic service in households affects commerce."¹² The amendments extended the FLSA's minimum wage protection to "[a]ny employee . . . who in any workweek is employed in domestic service in a household" or "who in any workweek . . . is employed in domestic

⁵ It was not until *Wickard v. Filburn*, 317 U.S. 111 (1942), that the Supreme Court adopted a much more expansive conception of Congress's authority under the Commerce Clause, allowing federal legislative authority to attach based on the effect that aggregations of a multitude of small local actions can have on interstate commerce, rather than looking at each local action in isolation.

⁶ Fair Labor Standards Amendments of 1961, Pub. L. No. 87-30, § 5(b) (minimum wage requirement), 75 Stat. 65, 67 (May 5, 1961); *see also id.* § 6(a) (same verbiage added for overtime requirement), 75 Stat. at 69.

⁷ *See id.* § 2(c) (adding, *inter alia*, new FLSA sections 3(r) and 3(s), which define the terms "enterprise" and "enterprise engaged in commerce or in the production of goods for commerce"), 75 Stat. at 65-66. Congress has modified the annual dollar volume threshold for enterprise coverage over the years. The current standard is \$500,000. *See* 29 U.S.C. § 203(s)(1)(A)(ii).

⁸ S. Rep. No. 87-145, at 5 (1961).

⁹ *Id.* at 41.

¹⁰ *Id.* at 45.

¹¹ H. Rep. No. 93-913 (1974), *as reprinted in* 1974 U.S.C.C.A.N. 2811, 2842.

¹² Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, § 7(a), 88 Stat. 55, 63 (1974), codified at FLSA section 2(a), 29 U.S.C. § 202(a).

service in one or more households, and . . . is so employed for more than 8 hours in the aggregate[.]”¹³ The amendments also extended overtime protection to these workers.¹⁴ The legislative history cited Department of Labor statistics indicating that more than half of all domestic workers work less than 15 hours per week, that only about one in ten works more than 40 hours a week, that “the great preponderance of the household workforce is comprised of female employees,” and that “the median age of the household worker has climbed to 50, or 10 years older than the average for female workers.”¹⁵

Congress chose, however, to provide exemptions for two groups of household workers. First, the 1974 amendments created a minimum wage and overtime exemption for “any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves [.]”¹⁶ Second, these amendments created an overtime-only exemption for “any employee who is employed in domestic service in a household and who resides in such household[.]”¹⁷

II. THE KEY PROVISIONS OF THE DOMESTIC WORKERS BILL OF RIGHTS ACT

The main provisions of H.R. 4826 affecting domestic service workers and the families who employ them are the following:

1. Section 3(a)(5)(B) defines “domestic services” to include “services performed by individuals such as companions, babysitters, cooks, waiters, butlers, valets, maids, housekeepers, nannies, nurses, janitors, laundresses, caretakers, handymen, gardeners, home health aides, personal care aides or assistants, and chauffeurs of automobiles for family use.”
2. Section 101 repeals the FLSA section 13(b)(21) overtime exemption, codified at 29 U.S.C. § 213(b)(21), for “any employee who is employed in domestic service in a household and who resides in such household[.]”
3. Section 102(a) creates a new FLSA section 8, which among other things would require that employers of live-in domestic service workers provide:
 - Written notice of termination of employment within 48 hours of the termination;

¹³ Pub. L. No. 93-259, § 7(b)(1) (creating new FLSA section 6(f)), 88 Stat. at 63.

¹⁴ *Id.* § 7(b)(2) (creating new FLSA section 7(j)), 88 Stat. at 63. Specifically, FLSA section 7(j) provides for a right to overtime independent of whether the employer is a covered enterprise or whether the worker engages in commerce: “No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a) [referring to the FLSA’s general overtime obligation at section 7(a)].” 29 U.S.C. § 207(j).

¹⁵ H. Rep. No. 93-913, as reprinted in U.S.C.C.A.N. at 2842.

¹⁶ Pub. L. No. 93-259, § 7(b)(3) (creating new FLSA section 13(a)(15)), 88 Stat. at 63.

¹⁷ *Id.* § 7(b)(4) (creating new FLSA section 13(b)(21)), 88 Stat. at 63.

- Subject to certain exceptions, at least 30 days of continued housing, either within the household or at “another premise of a comparable lodging condition” or else two weeks of severance pay; and
 - Telephone and internet access if the household has such facilities, along with opportunities for the employee “without interference by the employer . . . to send and receive communications by text message, social media, electronic or regular mail, and telephone calls.”
4. Section 103 provides for liquidated (i.e., double) damages for violations of the severance pay or continued housing provision, and fines of up to \$2,000 “for each violation” involving use of the telephone, internet, text messaging, social media, or electronic or regular mail.
5. Section 110 requires written agreements for all domestic service employees setting forth, *inter alia*:
- “All responsibilities to be performed by the covered domestic worker . . . and the regularity in which such responsibilities are to be performed.”
 - The “required working hours for any work week[.]”
 - If varied, “a good faith estimate of the days and hours for which the covered domestic worker will be expected to work . . . including, at minimum . . . the average number of hours the covered domestic worker will be expected to work . . . each week during a typical 90-day period” and “the amount of notice that the domestic work hiring entity will provide to the domestic worker in advance of scheduled work hours . . . which shall not be less than 72 hours before such scheduled work hours are to begin[.]”
 - “Information about policies, procedures, and equipment related to safety and emergencies.”
 - The agreement “may not . . . contain . . . a mandatory pre-dispute arbitration agreement for claims made by a covered domestic worker against a domestic work hiring entity regarding the legal rights of the worker” or “a non-disclosure agreement . . . or non-disparagement agreement[.]”¹⁸

¹⁸ The text of the bill creates ambiguity regarding whether the prohibition on non-disclosure agreements and non-disparagement agreements is limited to banning provisions that “limit[] the ability of the covered domestic worker to seek compensation for performing domestic services after the worker ceases to receive compensation from the domestic hiring entity for the performance of domestic services” or whether the prohibition sweeps more broadly.

6. Section 111 requires that domestic service workers receive “not less than 1 hour of earned paid sick time for every 30 hours worked,” up to “56 hours of paid sick time a year,” which “shall carry over from one year to the next.”
7. Section 112 requires employers to “communicate in writing . . . any change to the scheduled work hours of a domestic worker, including any on-call shifts, not less than 72 hours before the domestic worker is scheduled to begin work” and to pay a worker the full rate of pay for any scheduled hours canceled or reduced after a worker arrives for work, or one half of the employee’s normal rate of pay for any canceled or reduced scheduled hours if the change comes less than 72 hours in advance of the work.
8. Section 115 requires that domestic workers receive uninterrupted meal breaks of at least 30 minutes for each five hours worked and uninterrupted rest breaks of at least 10 minutes for each four hours worked, subject to an exception for circumstances where “the safety of an individual under the care of the domestic worker prevents the domestic worker from taking such break.”
9. Section 117 sets forth a range of prohibited acts, including discharging, retaliating against, or discriminating against a domestic worker for a range of reasons, with a “presumption of retaliation”—rebuttable only by “clear and convincing evidence”—if a discharge or other action occurs “within 90 days of the individual involved asserting any claim or right under this subtitle[.]”
10. Section 118 creates both a private right of action and government enforcement, allowing for various types of recoveries, including:
 - Economic damages and recovery for nonmonetary injury, including to “reputation, character, or feelings”;
 - Interest, liquidated damages, attorneys’ fees, expert witness fees, and litigation costs;
 - For meal and rest period violations, an hour of pay at the employee’s normal rate per violation, capped at two hours of pay per work day;
 - For any violation of any requirement relating to the lengthy and detailed written agreement required by section 110, a penalty of \$5,000; and
 - For actions brought by the Secretary of Labor, civil money penalties of up to \$15,000 for any violation of any of the requirements of the law, or up to \$25,000 for any “subsequent violation.”

11. Section 131 reduces the employee coverage threshold in Title VII of the Civil Rights Act of 1964 from 15 employees to just one.¹⁹

III. H.R. 4826 IMPOSES SUBSTANTIAL COMPLIANCE BURDENS ON FAMILIES WITHOUT PROVIDING A COMMENSURATE BENEFIT TO DOMESTIC WORKERS.

A. Why Congress Typically Excludes Small Employers From The Scope Of Federal Employment Statutes

Many of our most important federal employment laws, including the FLSA and Title VII, have long excluded some or all small employers from their coverage.²⁰ This is so for several reasons.

First, as one scholar has noted, “the implicit exemption of small employers from the FLSA in 1937-1938 resulted from the trepidations of the legislative drafters in the Roosevelt administration and Congress that the Supreme Court might strike down the statute as an unconstitutionally broad exercise of the legislature’s commerce power.”²¹ In his address to Congress upon the introduction of the FLSA, President Franklin Roosevelt acknowledged that “there are many purely local pursuits and services which no Federal legislation can effectively cover.”²² When Congress added enterprise coverage to the FLSA in 1961, “the use of a dollar-volume exemption level was designed to ‘provide more than adequate assurance that the newly covered enterprises will be those plainly engaged to a substantial extent in interstate commerce and should make it abundantly certain that no small local business will be affected.’”²³

Second, another writer has identified “the most popular explanation” for small business exemptions in employment laws as “that a small firm might be overwhelmed by the burden of compliance”²⁴ such that there is a need “to relieve small firms of the otherwise disproportionate costs they

¹⁹ The first part of Title VII’s definition of “employer” currently reads as follows: “The term ‘employer’ means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year[.]” 42 U.S.C. § 2000e(b). Section 131 of H.R. 4826 would change “fifteen” to “one” in that definition.

²⁰ See Richard Carlson, *The Small Firm Exception and the Single Employer Doctrine in Employment Discrimination Law*, 80 ST. JOHN’S L. REV. 1197, 1197-98 & nn.5-6 (2006) (citing *St. Louis Consol. Coal v. Illinois*, 185 U.S. 203, 208 (1902), *McLean v. Arkansas*, 211 U.S. 539, 551-52 (1909), and *Middleton v. Tex. Power & Light Co.*, 249 U.S. 152, 155-57 (1919), as examples of cases upholding exemptions in employment laws for small employers).

²¹ Marc Linder, *The Small-Business Exemption Under the Fair Labor Standards Act: The “Original” Accumulation of Capital and the Inversion of Industrial Policy*, 6 J.L. & POL’Y 403, 416 (1998) (arguing generally against having a dollar threshold for enterprise coverage under the FLSA and suggesting that some members of Congress and the George H.W. Bush Administration did not understand the impact of the 1989 FLSA Amendments and their raising of the enterprise coverage threshold to \$500,000).

²² *Id.* at 418 (quoting *The President Recommends Legislation Establishing Minimum Wages and Maximum Hours*, reprinted in THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT: 1937 VOLUME: THE CONSTITUTION PREVAILS 209, 210-11 (1941)).

²³ *Id.* at 420 (quoting S. Rep. No. 87-145, at 44 (1961)). The same author referred to the 1974 congressional finding that the employment of domestic service employees in households affects commerce as “verg[ing] on a constitutional provocation[.]” *Id.* at 421.

²⁴ Carlson, *supra* note 20, at 1198.

might bear[.]”²⁵ Indeed, “Judge Posner . . . began his opinion in *Papa* with the premise that the small firm exemption [to Title VII] was to relieve small firms of the ‘crushing expense of mastering the intricacies’ of discrimination law.”²⁶ A review of “[t]he record of congressional proceedings leading to Title VII confirms that this was an important justification for the exemption.”²⁷ The idea is that “a firm with very few employees lacks the economies of scale enjoyed by a firm employing a larger workforce. Costs of learning and implementing the law do not vary in direct proportion to the number of employees.”²⁸

Moreover, “[b]eyond the cost of discrimination law compliance . . . is the potentially catastrophic cost of litigation—defense and liability for a single discrimination lawsuit.”²⁹ The owners of many small businesses “operate their businesses as a source of self-employment, and not just as an investment. . . . Frequently, they . . . bear all the risks of business. If competitive pressures prevent a small firm from passing disproportionate costs on to customers, the impact has a direct impact on the owner’s livelihood.”³⁰

And “in a very small firm the owner may be a general manager, front line supervisor, and production worker all in one. He does not specialize in human resources or administrative services, either by training or actual work, and he probably lacks the resources to employ a specialist.”³¹ Any “additional work and responsibility imposed by any new regulation is not only a financial burden, it is also a burden on his personal time and energy.”³² When “an applicant or employee sues the small firm, the owner/manager will also bear the burden in personal time, energy, and stress in responding to charges, negotiating, and preparing for trial.”³³

With regard to discrimination laws—and this holds true for wage and hour laws as well—these laws “provide a plausible basis for argument in many cases in which the evidence is mainly subjective and circumstantial. Even if the employer had a legitimate reason for an adverse action, the employer could still be liable if prejudice was one of the ‘motivating factor[s].’”³⁴ In that type of proceeding, “[p]roving or disproving all the circumstances and motivations for the employer’s decision can involve

²⁵ *Id.* at 1205.

²⁶ *Id.* at 1247 (quoting *Papa v. Katy Indus., Inc.*, 166 F.3d 937, 940 (7th Cir. 1999)).

²⁷ *Id.* & n.233 (citing 110 Cong. Rec. S7073 (1964) (statement of Sen. Stennis); 110 Cong. Rec. S7074 (1964) (statements of Sens. Stennis and Long); 110 Cong. Rec. S13085, 13092 (1964) (statement of Sen. Cotton), 118 Cong. Rec. S2387, 2410 (1972) (statements of Sens. Stennis and Fannin regarding 1972 amendments); 118 Cong. Rec. 2389-90 (1972) (statement of Sen. Allen regarding 1972 amendments)).

²⁸ *Id.* at 1247.

²⁹ *Id.* at 1249.

³⁰ *Id.*

³¹ *Id.* at 1249-50.

³² *Id.* at 1250.

³³ *Id.*

³⁴ *Id.* at 1251 (citing 42 U.S.C. § 2000e-2(m)).

many easily disputed facts. Defending against a discrimination claim is not only expensive, but frequently uncertain, and the ultimate resolution is often in the hands of a jury.”³⁵ And even “[i]f an employee’s claim has no merit, the claim might still have enough ‘nuisance’ value to fortify the employee’s demand for some settlement price. These opportunities for private enforcement may be necessary to level the playing field between a very large firm and an individual employee[.]” but for small employers “Title VII’s private enforcement procedures might seem to turn the individual employee into a Goliath.”³⁶

Third, exempting very small employers from federal employment laws serves “to preserve a right of ‘personal relationships beyond government intervention[.]’”³⁷ There are, indeed, “reasons to be more protective of personal relations within a small firm than within a large firm.”³⁸ It should come as no surprise that “the enforcement process and remedies that go along with Title VII and other discrimination laws can be disruptive of personal relations within the firm, and more so in small firms than in large ones.”³⁹ In “a large firm, the effect of difficult relations on productivity can be diluted by the size of the workforce or by transfers. For a small firm, the tension between one employee and the owner/manager could become an overwhelming distraction.”⁴⁰

The proposed change to Title VII’s employee threshold is not, of course, limited to domestic service employment. That change would affect every industry and thus involves costs and implications far broader than this one category of work. No public policy germane to protecting domestic service workers supports changing the Title VII threshold for any other industry.

All of these considerations regarding why federal employment laws typically exclude various small businesses apply with even greater force when the employer is a family and the worker or workers at issue perform services within the employer’s home. Not every employer of a domestic service worker is a Bill Gates or an Elon Musk, with lawyers and human resources personnel at the ready to assist with managing employment law compliance. Instead, the much more common scenario is that the employer is a family, often one where there is either a single parent or two parents who have jobs outside the home, without the resources to obtain legal or other specialized compliance advice, and for whom the cost of defending a single lawsuit or Department of Labor investigation could be financially devastating. This is part of why then-Governor Jerry Brown of California vetoed a similar bill in 2016.⁴¹

In addition, various businesses that operate in conjunction with domestic service work, such as entities that provide home health aides and personal care aides, would face significant operational

³⁵ *Id.*

³⁶ *Id.* at 1252.

³⁷ *Id.* at 1205.

³⁸ *Id.* at 1263.

³⁹ *Id.*

⁴⁰ *Id.* at 1263-64.

⁴¹ See *California Gov. Brown Vetoes Domestic Workers Rights Bill*, <https://www.foxnews.com/politics/california-gov-brown-vetoes-domestic-workers-rights-bill> (Dec. 4, 2016). Gov. Brown later signed into a law a significantly pared-back version of the legislation.

and practical challenges as well as increased operating costs due to the various proposed documentation and scheduling requirements. This is in addition to the increased exposure they would face from private claims and Department of Labor enforcement activity. Those increased burdens on these businesses would make it more difficult for them to employ workers, which in turn could limit employment opportunities for the very people H.R. 4826 tries to help.

B. H.R. 4826 Would Deliver Little Tangible Benefit To Domestic Workers And Could Cause Them Considerable Harm.

Much of the harm that H.R. 4826 seeks to mitigate is already unlawful under a multitude of state laws. Physically assaultive behavior by employers is already unlawful in every state in the Nation. When employers fail to abide by their promise to pay wages, workers in every jurisdiction may sue to recover, often with enhanced remedies such as double or treble damages. And so far, at least ten states and two cities have enacted a version of the Domestic Workers Bill of Rights.⁴²

With respect to overtime for live-in domestic service workers, the net result is unlikely to increase worker earnings. So long as employers provide at least the pertinent minimum wage, they would remain free to adjust employees' base hourly rates so that the total weekly earnings end up essentially unchanged. Another possibility is that employers would simply cut employee hours to avoid the overtime premium. Either way, the workers are, by and large, unlikely to receive additional compensation as a result of this type of bill, and they could well end up with less.

IV. H.R. 4826 INVITES A CONSTITUTIONAL CHALLENGE THAT COULD UNDO 80 YEARS OF COMMERCE CLAUSE JURISPRUDENCE.

Lastly, it is important to think carefully before unleashing an extensive statutory and, eventually, regulatory employment law regime on America's households. The 1974 FLSA amendments, which first extended FLSA coverage to domestic service employees, did so with surprisingly little public awareness. In my experience, most practicing employment lawyers, let alone non-lawyers, do not realize that FLSA sections 2(a), 6(f), and 7(j) render families who hire household employees potentially subject to the federal minimum wage and overtime requirements. There has been little or no litigation regarding the permissibility of the 1974 amendments with respect to these workers under the Commerce Clause because, by and large, the public has not felt an effect from those statutory changes, and any cases that would arise are typically too small to warrant litigation.

That dynamic would change overnight if H.R. 4826 were to become law. Without belaboring the point, it is apparent that at least some members of the Supreme Court have a strong desire to rewrite the Nation's Commerce Clause jurisprudence. Although under the Commerce Clause case law that prevailed from the time of *Wickard*⁴³ until 1995 there was a fairly strong sense that Congress could regulate nearly anything it wanted to based on the argument that the aggregated effect of a multitude of purely local events could affect interstate commerce, the Supreme Court's decision in

⁴² See Chelsey Sanchez, *Domestic Workers Deserve Rights, Too*, <https://www.harpersbazaar.com/culture/politics/a39936731/domestic-workers-sexual-harassment-assault-bill-of-rights/> (May 13, 2022) (noting passage of legislation in California, Connecticut, Hawaii, Illinois, Massachusetts, Nevada, New Mexico, New York, Oregon, and Virginia, as well as Philadelphia and Seattle).

⁴³ See *supra* note 5.

*United States v. Lopez*⁴⁴ and *United States v. Morrison*⁴⁵ should give Congress pause. One commentator has referred to *Lopez* as a “stunning reversal of [the Court’s] 60-year-old expansive and deferential commerce power jurisprudence[.]”⁴⁶

Of particular interest is the fact that Justice Thomas in both *Lopez* at *Morrison* concurred separately, indeed devoting approximately 20 pages to the issue in *Lopez*, advocating for no less than a complete overhaul of the Court’s approach to the Commerce Clause because, in his view, “our case law has drifted far from the original understanding of the Commerce Clause.”⁴⁷

If the Court were ultimately to adhere to *Wickard*, there is a decent chance that H.R. 4826 would stand as a proper exercise of Commerce Clause authority. But if Justice Thomas’s *Lopez* concurrence were to become the Court’s prevailing approach to adjudicating Commerce Clause cases, there is a very significant likelihood that efforts to apply the FLSA and Title VII to households would not succeed. And that would in turn likely lead to invalidating many other federal statutes on similar grounds.

One cannot reliably predict how the Supreme Court might approach a case in the future, but Congress may wish to pause before engaging in further “constitutional provocation.”⁴⁸

V. CONCLUSION

For these reasons, I encourage the Subcommittee to reject H.R. 4826. There is an inadequate factual record to support this legislation, the likely results would be far more harm than good, and in key respects the proposal raises significant constitutional concerns. Chair Adams, Ranking Member Keller, and members of the Subcommittee, thank you for the opportunity to share these views with you today. Please let me know what else I can do to help you in this matter.

⁴⁴ 514 U.S. 549 (1995) (striking down the Gun-Free School Zones Act on Commerce Clause grounds).

⁴⁵ 529 U.S. 598 (2000) (striking down the Violence Against Women Act on Commerce Clause grounds).

⁴⁶ Linder, *supra* note 21, at 421 n.56.

⁴⁷ *Lopez*, 514 U.S. at 584 (Thomas, J., concurring); *see also Morrison*, 529 U.S. at 627 (Thomas, J., concurring).

⁴⁸ *See* Linder, *supra* note 21, at 421.

Ms. JAYAPAL. Thank you, Mr. DeCamp. We will now hear from Ms. Barnett. You are recognized for 5 minutes.

STATEMENT OF DANA BARNETT, WASHINGTON STATE ORGANIZER, HAND IN HAND, THE DOMESTIC EMPLOYER NETWORK

Ms. BARNETT. Thank you to Chair Adams, Ranking Member Keller and members of the Workforce Protection Subcommittee for inviting me to speak today and thank you Representative Jayapal for your leadership on this issue. I am here today to provide testimony in support of creating rights and protections for domestic workers through a National Domestic Workers Bill of Rights, and to share my experiences both as a nanny and house cleaner employer, and as an advocate for the rights of domestic workers.

My husband Dan and I moved to Seattle from Philadelphia 10 years ago for his job. A couple of years after we moved, we were overjoyed to welcome our child. Being new to Seattle, however, we did not have a local support network of family and friends, and we felt overwhelmed juggling childcare and returning to work outside the home. When my maternity leave ended, we decided to hire a nanny to take care of our newborn. Our nanny took amazing care of our 3-month-old and made us feel he was safe and in good hands.

Initially it was challenging, because we had never employed someone in our home. I later found a sample work contract from Hand in Hand. The contract provided guidance on wages, benefits, working conditions, and other employer responsibilities. In the stress of transitioning from being with my new baby full time to going back to working outside the home, it was so helpful to have clear guidelines and expectations for managing his care with our nanny, work that I was already doing.

Later, we hired a house cleaner to come to our home once a month. Having a house professionally cleaned helped us balance our work and parenting schedules and brought more order to our household. Our son was touched by the care that she took in assembling his stuffed animals on his freshly made bed. Once again, we used the resources from Hand in Hand to create clear agreements, as well as to understand local labor law.

Seattle was the first city to pass a municipal law creating protections for domestic workers. The domestic workers' ordinance created a Domestic Workers Standards Board of workers and employers. In 2019, I had the honor of being appointed to the Standards Board, where I then served as the co-chair for 2 years alongside Silvia Gonzalez, an extraordinary domestic worker leader. The Board held focus groups and conducted surveys with workers and employers in Seattle. We conducted outreach and education to inform the community about the law. We made additional policy recommendations based on the input that we gathered.

The Board also created, provided critical feedback to the City about how to best implement and enforce the ordinance. A domestic workers' standards board is one way that a disparate industry can come together to discuss challenges and opportunities. In Seattle, our outreach implementation support and recommendations to the

City Council and Mayor's Office have provided much-needed clarity for employers and workers.

A national standards board is part of the Domestic Worker Bill of Rights and would ensure that the workers are not—and employers are not struggling to find information and resources, and that employees can understand their rights at work.

The ordinance is making a difference for domestic workers. Just this past month, a live-in domestic worker won a settlement of over \$71,000, because her household employer had not paid the minimum wage and overtime mandated by law. It is critical that bad actors in industries, all industries, face consequences. The ordinance is not just about providing accountability for bad actors. The employers I speak with every day want to know their responsibilities and how to comply with them. They are relieved to know the workers in their homes have protections. The ordinance is also making a difference for employers. I now work with Hand in Hand, where I conduct education and outreach to domestic employers in Seattle. I hear time and time again that the guidance created by the law is beneficial to them. It leads to better care, better quality of work and less stress for everyone involved, worker and employer.

The pandemic has brought into sharper relief what we have always known that care is essential and that domestic workers are essential workers. Domestic work takes place in our homes, our most intimate space. These are the workers who are taking care of our children, our elders, ourselves. Why would we not want to ensure that we take care of the people who are taking care of us? Everyone benefits when domestic workers have rights. Thank you, and I welcome your questions.

[The prepared statement of Dana Barnett follows:]

Written Testimony

Dana Barnett, Hand in Hand

Labor Protections Subcommittee of the Congressional Committee on Education and Labor

Thank you to Chairwoman Adams, Ranking Member Keller, and members of the Workforce Protections Subcommittee for inviting me to speak today.

My name is Dana Barnett and I live in Seattle Washington with my husband and our 8-year-old son. I have been a volunteer member of the Seattle Domestic Workers Standards Board and currently work for Hand in Hand: The Domestic Employers Network, which is a national organization that engages people who employ domestic workers in creating equitable working relationships. I am here today to provide testimony in support of creating rights and protections for our country's domestic workforce - nannies, house cleaners and home care workers - through a National Domestic Workers Bill of Rights.

My husband, Dan, and I moved to Seattle from Philadelphia 10 years ago for his job at the University of Washington. A couple of years after we moved, we were overjoyed to welcome our child. Being new to Seattle, however, we did not have a local support network of family and friends, and we felt overwhelmed juggling childcare and returning to work outside the home. So, when my maternity leave ended, we decided to hire a nanny to care for our newborn.

Our nanny took amazing care of our 3-month-old, and made us feel that he was safe and in good hands. Initially it was challenging because we had never employed someone in our home. I later found a sample work contract from the organization I now work with, Hand in Hand. The contract provided guidance on wages, benefits, working conditions, and other employer responsibilities. In the stress of transitioning from being with my new baby full time to going back to working outside the home, it was so helpful to have clear guidelines and expectations for managing his care with our nanny.

Later, we hired a house cleaner to come to our home once a month. Having our house professionally cleaned helped us to balance our work and parenting schedules and bring more order to our household. Our son was touched by the care that she took in assembling his stuffed animals on his freshly made bed. Once again, we used the resources from Hand in Hand to create clear agreements as well as to understand local labor laws.

Seattle was the first city to pass a municipal law, the Domestic Workers Ordinance, creating protections for domestic workers. The Ordinance created a Domestic Workers Standard Board, which is a community advisory body of domestic workers and employers. The board partners with Seattle Office of Labor Standards to ensure enforcement of the Ordinance and expand protections for this workforce.

In 2019, I had the honor of being appointed to the standards board where I served as the co-chair for two years alongside Silvia Gonzalez, an extraordinary domestic worker leader. The

board held focus groups and conducted surveys with workers and employers in Seattle to collect further community input. We conducted outreach and education to inform the community about the law, and we made additional policy recommendations based on the input that we gathered. One recommendation is to provide domestic workers access to paid time off, a right that, as COVID has shown, is key to public health. The board also provided feedback to the city about how to implement and enforce the Ordinance. Last year, the City Council approved a budget to implement our recommendations.

The Domestic Worker Standards Board is one way that a disparate industry can come together to discuss challenges and opportunities. In Seattle, our outreach, implementation support, and recommendations to the City Council and the Mayor's Office have provided much needed clarity for employers and workers. A national standards board is part of the Domestic Worker Bill of Rights, and would ensure that employers aren't struggling to find information and resources, and employees understand their rights at work.

The Ordinance is making a difference for domestic workers. Just this past month, a live-in domestic worker won a settlement of over \$71,000 because her household employer had not paid the minimum wage and overtime mandated by law. It is critical that bad actors in all industries face consequences. But the Ordinance is not just about providing accountability for bad actors. The employers I speak with every day want to know their responsibilities and how to comply with them. They are relieved to know that employees in domestic work situations have worker protections.

The Ordinance is also making a difference for employers. In addition to my work on the Standards Board, I now work as an organizer with Hand in Hand, where I do education and outreach to domestic employers in Seattle. I hear time and time again from employers that the law is beneficial to them by creating clear guidance on how to manage a worker in their home. It leads to better care, better quality of work, and less stress for everyone involved—worker and employer.

The pandemic brought into sharper relief what we've always known - that care is essential and that domestic workers are essential workers. Domestic work takes place in our homes, our most intimate space. These are the workers who are taking care of our children, our elders, ourselves. Why wouldn't we want to ensure that we take care of the people who are taking care of us? Everyone benefits when workers have rights.

Bio

Dana Barnett is the Seattle / Washington Organizer for Hand in Hand: The Domestic Employers Network. Prior to joining Hand in Hand, Dana worked for over two decades as a mediator and trainer, both on staff of organizations like the Washington State Bar Association and the Mediation Center of Dutchess County, and as a consultant with community groups, schools, and nonprofit organizations. Dana became involved with domestic worker rights in 2019 and served as a member of the Seattle Domestic worker standards board where she was the co-chair. Dana is currently a member of the Washington State Labor & Industry Domestic Workers Workgroup on workers' compensation. She has a Master's degree in Social Justice Educational Studies from State University of New York New Paltz.

Ms. JAYAPAL. Thank you so much Ms. Barnett, and I see that our wonderful Chairwoman Adams has returned, so let me return the gavel back to you, Madam Chair, and inform the Chair that we are at member questions.

Chairwoman ADAMS. Thank you very much and thank you Representative Jayapal for helping out. Under Rule Committee 9(a), we will now question witnesses under the 5-minute rule. I will be recognizing Subcommittee members in seniority order. Again, to ensure that the members' 5-minute rule is adhered to, staff will be keeping track of time. Please be attentive to the time, wrap up when your time is over and mute your microphone. As Chair, I now recognize myself for 5 minutes.

Dr. Mason, domestic workers are especially vulnerable to being misclassified as independent contractors rather than employees, stripping them of the few existing rights under the law, such as minimum wage and overtime. Can you talk more about the impact that this misclassification has on domestic workers in terms of underpayment of wages?

Dr. MASON. Thank you so much for this question. When domestic workers are excluded from basic protections, we saw what happened during the COVID-19 recession. Many domestic workers did not have access to unemployment insurance. They also, during a health care—a global pandemic, did not have paid sick or family medical leave or health insurance. When we think about and talk about the wages, we know that domestic workers are paid significantly less than other workers on average by \$7.

The lack of basic protections that we are advocating for in the National Domestic Workers Bill of Rights would remedy that, and provide very basic protections for domestic workers, including higher wages, paid sick and family leave, and flexible and fair scheduling.

Chairwoman ADAMS. Thank you. Ms. Poo, can you talk more in detail about why domestic workers are more vulnerable to discrimination, harassment, and retaliation, and how is the bill addressing these issues?

Ms. POO. Yes, Madam Chair. Domestic workers, it has been well-documented that there is a long history of exclusion of basic, from basic rights and protections that Dr. Mason mentioned. What it creates is a power imbalance in the workplace, which makes it extraordinarily difficult for domestic workers to negotiate for something as simple as a sick day or a morning to go to a child's PTO meeting. The vulnerability is really heightened with lack of job se-

curity, and therefore rights are incredibly hard to enforce, and many rights that most of us take for granted simply don't exist.

Chairwoman ADAMS. Thank you. Dr. Mason, what is the cost to families, especially to women, in terms of labor force participation and earnings if they cannot work because they do not have someone to take care of the children, elders, and disabled relatives at home?

Dr. MASON. At the start of the pandemic, women made up more than 50 percent of the U.S. workforce. Two months later, many millions of women had exited the workforce, and a lot of it is due to the lack of care, employers closing their homes, and so women were not able, you know, excuse me, remote work, women having to stay home. Right now, we are in a place where women are trying to reenter the workforce but without care and workers, they will not be able to not only reenter the workforce but sustain employment.

Many workers, care workers, because of the lack of protections, were forced out of the labor force. We lost a significant number of care workers over the pandemic when employers closed their homes and childcare centers closed down. Many of those workers have not returned to the workforce, and what became really crystal clear during the pandemic is that those workers were underpaid, they did not have access to paid sick and family leave, and they were having trouble providing for their own families.

Many of those workers have not returned. This bill would make sure that workers are paid fairly, they have access to benefits like paid sick and family leave and health insurance, those things that all workers need in order to not only provide for their families, but make sure they have adequate care for themselves.

Chairwoman ADAMS. Thank you so much. I want to thank both of you for underscoring the importance of this vital workforce. They do so much to ensure our society functions smoothly, and we as Congress now must do it with them to protect and support them. I want to now recognize the Ranking Member for the purpose of questioning the witnesses.

Mr. KELLER. Thank you, Madam Chair. Mr. DeCamp, a provision in this bill gives domestic employees a right of action to recover damages for the cost reasonably related to any injury, to their reputation, character or feelings sustained. Could you discuss some of the unintended consequences of providing employees the right to recover damages related to the injury of their feelings?

Mr. DECAMP. Expanding recoveries into that sort of area invites litigation. It invites adversarial relationships between the workers and the employers. It creates dollar signs in the eyes of plaintiffs' lawyers when workers have an issue with their employer, to go out and make demands for very large sums of money. These are not figures that are capped in the bill. It is not \$50 or \$100; it could be millions of dollars.

We do not know, and that presents enormous pressure and challenges for a small employer when that small employer is literally a household, to deal with that kind of pressure. It creates all kinds of additional costs associated with employing individuals.

Mr. KELLER. Thank you. Also, Mr. DeCamp, it has been well-documented that there is a shortage of home health care aides across

the country, forcing many individuals with disabilities, people that are sick and the elderly out of their homes into institutional settings. As America's population ages, there will be an increased demand for home health aides. If Congress were to pass H.R. 4826, what impact do you believe this radical policy change would have on the domestic services industry?

Mr. DECAMP. I think it could have a lot of consequences, the first of which would be to increase the cost to employers of having these workers come and do their work in the first place. I think the bill creates lots of challenges with regard to who exactly is the employer when we are talking about home health aides and we are talking about personal care assistants. That is separate from the issue of nannies and housekeepers and the like.

When we are talking about individuals who are often employed by third parties, oftentimes paid in part through Federal funds, it can create blurred lines as to who is even the employer. When you are creating this kind of liability here, and you are increasing the costs to employers of even having this work available, you price people, consumers out of the market for those services. I think that puts pressure on the market. It makes the services less accessible to the individuals who need them.

Mr. KELLER. Okay, the other thing that I would just say is the Fair Labor Standards Act is over 80 years old, and there is bipartisan agreement that many of the FLSA's provisions and regulations are outdated and overly complex. Do you agree with that view?

Mr. DECAMP. Yes.

Mr. KELLER. Okay, and can you identify elements of the FLSA that should be updated to meet the needs of our 21st-century workforce?

Mr. DECAMP. We are 84 years into the statute, and we still have serious challenges identifying who is even a covered employee under the statute, in terms of who is an employee versus who is an independent contractor or other type of worker, who is a joint employer. These are largely unsettled issues. There are some clear lines, but there are a lot of gray lines, especially when we are talking about smaller employers and this type of informal relationship.

The standards for figuring out what is compensable work. We still see cases going to the Supreme Court on that issue, identifying what counts as work, how we count—how we identify and pay for that. We also see significant challenges figuring out who ought to be exempt from the overtime provisions, the standards regarding who is exempt. Who is an exempt administrative employee, for example, is—it befuddles everyone, including the Department of Labor.

I think the clearest example of this is that the U.S. Department of Labor itself, the Wage and Hour Division, the agency that I used to run, misclassified its own investigators for the first 30 plus years of the agency's existence. That was not through any kind of willful intention; that was not through any desire on the part of the agency to cheat its workers. It just did not know what the administrative exemption meant and got it wrong with regard to its investigators.

If the Wage and Hour Division cannot get these issues right, what hope does the moms and pops have in their household for applying these rules?

Mr. KELLER. There would be additional rules then under this legislation that people would have to try and navigate and determine how to apply?

Mr. DECAMP. On top of their day job and on top of managing their household, yes.

Mr. KELLER. It certainly does not seem to be conducive to making sure people have the care they need in their homes, but also are able to treat the people that come in fairly. There are people that if they treat somebody else unfairly, that's tragic and should not happen. I think there is a better way to do things, and I appreciate your time today. Thank you.

Mr. DECAMP. Thank you.

Chairwoman ADAMS. Thank you very much, and I want to now recognize the gentlelady from Washington, Ms. Jayapal. You are recognized for 5 minutes ma'am.

Ms. JAYAPAL. Thank you, Madam Chair, and thank you so much for your leadership and for bringing into the room your own personal story, being the daughter of domestic workers. I actually think there are a number of people. I remember the late, great, wonderful colleagues of ours John Lewis when I introduced the bill, telling me about his mother, who was a domestic worker as well. I also want to thank Chairman Scott for making this hearing happen today, and for his leadership on this issue.

These workers were on the front lines of the pandemic, and yet as you have heard, domestic workers are denied the same health and safety and wage protections that most workers get, and they lack much-needed paid sick leave. I think the pandemic really put in focus the importance of domestic workers, but the demand for childcare workers and home care aides was skyrocketing even before the pandemic. My Domestic Workers Bill of Rights Act, which enjoys the support of President Biden, Vice President Harris and Labor Secretary Walsh, would ensure that domestic workers are afforded safe workplaces, paid sick leave, fair hours and will help us to fill the urgent need for childcare and home care.

I would venture a guess that there is not a single member on this Committee that does not in some way, shape or form act as an employer of a domestic worker, and I hope that as we go through this hearing, people will keep those people in mind because these are real people that we are talking about.

Ms. Poo, if I desperately needed help to care for an elderly parent or a child with a disability, how long might it take me to hire a domestic worker?

Ms. POO. Right now, there are many domestic workers who are looking for work, and in fact we are at about in our—according to our most recent surveys, there is about a 20 percent unemployment rate among domestic workers, and many who are currently employed are underemployed. This part of the impact of the COVID-19 pandemic.

At the same time, the low wages in this workforce make it really difficult for domestic workers to sustain in this work, which is why the Domestic Workers Bill of Rights is so very important. When it

comes to cost to families, the most costly thing is actually not having access to a strong workforce, to be able to meet the care needs that we have as families.

Ms. JAYAPAL. How will this bill increase the supply of childcare workers and home health aides, and I might just point out that there's about 120,000 people on the Medicaid waiting list right now. How would this bill help with that?

Ms. POO. This bill would ensure basic protections equal to other workers for this workforce, which is the foundation of the CARE economy. We have already talked about how this work enables millions of working people to go to work every day. Having access to sick days, meal and rest breaks, workplace protections and training, all of which are addressed in this legislation, will help secure and also attract a strong workforce for the future.

Ms. JAYAPAL. What about the quality of care? Would it help increase the quality of care, and if so, how?

Ms. POO. It would absolutely increase the quality of care. There is significant data that shows that when wages and quality of jobs improve, so does the quality of care.

Ms. JAYAPAL. Ms. Barnett, as a parent employing a domestic worker, and thank you for telling us your story, what changes did you notice in the quality of care that your children received after the implementation of Seattle's Domestic Workers Bill of Rights?

Ms. BARNETT. Thank you for the question. Well, first off, I think the fact of the ordinance existing helped establish more fair and reasonable employment relationships in our workplaces. I think just bringing the conversation, bringing the recognition to us employers that our home is a workplace helps to create a better workplace and work environment.

For me, recognizing that I was now an employer, especially as somebody who had not been an employer before and in the past I had even been a nanny myself when I was younger. Just recognizing that although this relationship might feel very personal, might feel like the worker, my home, you know, I care about her, feels like family to me, recognizing that I am her employer and there is an imbalance there, and there are a lot of things that I need to consider and think about to help that relationship much and increase the quality because she is happier in the home, and felt comfortable coming to us to talk to us about any issues that arose, any things, you know. It just gave us all more space to have a better relationship and to have better care for my child.

Ms. JAYAPAL. Thank you so much. My time has expired. Care work is the foundation of our economy. It is the work that makes all other work possible. Thank you, Madam Chair. I yield back.

Chairwoman ADAMS. Thank you very much. I want to yield to the gentlelady from Iowa, Ms. Miller-Meeks. You are recognized for 5 minutes.

Ms. MILLER-MEEKS. Thank you very much Madam Chair, and I thank our witnesses for being here. Interestingly enough, although I am a physician now, both my husband as nurses, and when I was a student nurse, we both were domestic workers.

I am very concerned about some of the provisions in this bill. Having had a mother who had Alzheimer's, who I cared for her and also utilized care, I am very concerned about provisions in this bill

that would allow workers to notify that they needed a temporary schedule change or a schedule change, and then how families would adapt to that as families are now considered to be employers under this bill.

I am concerned about whether a babysitter or a childcare sitter would be considered to be a domestic worker, and whether those provisions of this bill would apply to them. I have tremendous concerns with this bill in the format that it is presented to us today. I can also tell you, having traveled my district both as a physician, delivering care in numerous communities, doing voluntary care, that I have already had related to me how individuals who, with disabilities, in wheelchairs, have had already problems under current existing regulation, of how current existing regulation is limiting their access to care.

Mr. DeCamp, the Government Accountability Office conducted an analysis of the Obama administration's companion care rule, and this is the reference I am saying when I have had people with disabilities contact me, which extended wage and hour requirements to more home care employees. The GAO's analysis found that some home care providers discontinued certain live-in care programs due to the increased cost of the rule. Do you think this bill would cause similar problems and limit access of people who need in-home care?

Mr. DECAMP. Yes, and I think that is the same dynamic that I testified to briefly earlier. I think that as the cost to employers of purchasing these services goes up because of these ancillary issues, the litigation expense, the other costs that go with this bill, it prices consumers out of the market for these services. I think that that will limit care.

Ms. MILLER-MEEKS. We just heard that supposedly this bill would increase quality, and I can tell you, having been throughout the entire health care system both as—in academic medicine, in military medicine, in private practice, as an employee, that I have yet to see all of those studies come forth that we have an increase in quality. Our overburdensome regulations actually push care down to lower-level providers, not higher level providers.

For example, the bill requires a study of domestic employees' access to benefits and training opportunities. However, the bill fails to require any study on the impact of the bill's mandates and the effect they may have on consumers and access to in-home services, and whether or not they are quality services. When Congress proposes radical amendments to long-standing legislation, do you think it is important for legislators to study the potential impact of their legislation and what it would have on the industry, especially we are now talking about families before imposing such burdensome mandates?

Mr. DECAMP. Well, of course. I mean any kind of significant Federal legislation will have costs, and it will have unintended costs as well, unintended consequences, and these need to be anticipated and they need to quantify so that Congress can make an informed decision about the costs and benefits of the full scope of what the bill will involve.

I think that is critical here. Among other things, we see the economic data relied on for the wage levels, from a study from 2019. Those numbers may be good for 2019, but the numbers for today

may be very different. I mean I looked at ZipRecruiter.com this morning, and it indicated that the average wage for domestic service is about \$20 an hour, and that for live-in domestic service, it is about \$37.55 per hour.

That does not purport to be a definitive economic study. That is just what is available today on ZipRecruiter.com. It is an indication of the need to make sure that we are dealing with current valid data in making these assessments.

Ms. MILLER-MEEKS. It would be your opinion, your learned opinion, that the increased cost of compliance and mandates of this bill would limit families' ability to afford adequate care services?

Mr. DECAMP. Absolutely.

Ms. MILLER-MEEKS. Thank you so much. I yield back my time.

Chairwoman ADAMS. Thank you very much. I want to yield 5 minutes to the gentleman from Virginia, Mr. Good. You are recognized for 5 minutes.

Mr. GOOD. Thank you, Madam Chairman, thank you to our witnesses. Thank you for holding this hearing today. It continues to—this hearing continues to illustrate what I have said many times, the disdain, the contempt with which the Majority party looks at business owners, employers, job creators generally, and the attitude that is continued to be demonstrated, that left to their own devices, employers would abuse and exploit, or are abusing and exploiting their workers, and you continue to have government-proposed solutions to problems that largely do not exist, and to just make it more difficult for employers and businesses and job creators again across the country.

In this case here, in this proposal and this bill, that would, for example that would mandate that domestic workers—so home health care workers—many of us are caring for our parents, our grandparents. That is a cultural array, a widespread issue now today for so many folks taking care of those who need help at home. This would mandate that in-home health care workers, in-home caretakers, for example, would have to be paid—have earned sick time and would have to have rest breaks and meal breaks for which I presume they would not be permitted to do any work or to be on call.

We have, you have an in-home health care worker for your mother or your grandparent, who now you have to provide, under this proposal, time off during the day, break time, meal time, during which they couldn't be on call or have—be able to, be asked to provide, to do work for the individual. I guess you would need two people now instead of one, would you? You would have to bring somebody in to cover? I mean how would that impact practically? How would that apply practically in the home there?

Mr. DeCamp, I am sorry.

Mr. DECAMP. I will note in fairness there is an exception to the meal and rest requirements for individuals who are responsible for the personal safety of an individual, so that requirement is alleviated where personal safety would be at issue. For a number of these types of workers, that exemption might not apply. The issue is if the coverage is essential, if you have to have somebody and it is not a personal safety issue, then you would need a second worker there, or you would have the option of paying for two addi-

tional hours of pay at the employee's regular rate for every day worked.

Mr. GOOD. One of the other provisions is that it would amend Title VII of the Civil Rights Act to apply to every employer, not just those with 15 or more. If a family, let us say a Christian family wants to have a Christian in-home health care worker to look after their loved one, someone that is going to help take care of them and that was a part of what they were looking for, someone like them, if you will, in the home, how would this impact that ability.

Mr. DECAMP. Oh goodness, nobody knows. I think that that would potentially raise serious constitutional issues, and right now Title VII would not allow an employer to choose or not choose a worker based on religion, when religion was not essential to the function itself. Here, trying to figure out whether the law would allow a Christian family or a family of any denomination to choose a care provider based on their denomination. The bill on its face does not allow it. I think that would be a matter left for litigation, and a litigation on that kind of matter could bankrupt a family.

Mr. GOOD. To think that we would open up a family to punitive action by the Federal Government on that basis, let alone litigious action because they want to choose whomever they want to take care of, on whatever basis they want to basically, to come into the home to take care of their loved one, whether it was a child who had a special need, whether it was again a parent or someone who had a special need. Further thoughts that you might have on what that would do to those individuals?

Mr. DECAMP. I think it would drive a lot of people out of the market for purchasing those services in the first place because it is just too much of a headache. It is too much of a risk to take. You are going to expose yourself as a family to bankrupting level litigation and enforcement exposure to have somebody in your home.

Mr. GOOD. Thank you for your candid answers, and I yield back, Madam Chairman.

Chairwoman ADAMS. Thank you very much. I want to recognize the Ranking Member of Ed and Labor, the gentlelady from North Carolina, Dr. Foxx. You have 5 minutes.

Mrs. FOXX. Thank you, Madam Chairman, and I want to thank the witnesses for being here. Mr. DeCamp, the Jayapal bill grants new enforcement authority to the Secretary of Labor, to investigate employers of domestic employees. This would seem to permit the Secretary to enter and inspect people's homes as he may deem necessary, to determine whether there is a violation of the bill.

Since most domestic services take place in individuals' private residence, are you concerned about granting DOL the authority to enter and inspect the homes of individuals without due process?

Mr. DECAMP. Yes, but I think the dirty little secret of the FLSA is that the Secretary already has that authority by virtue of the 1974 amendments. The Secretary has not used that authority because for the most part people have not had these issues come up. Most people do not even realize that the 1974 amendments applied minimum wage and overtime to domestic service employment, and when these cases come up the Secretary typically does not have to go into people's homes. I think the kind of enforcement mecha-

nisms we are talking about in this bill takes it to a whole new level. It is exponentially greater in terms of the involvement that the Secretary and the Department of Labor would have in these working relationships, and I think it would really lead to this, exactly this concern you are talking about, of investigators showing up at people's homes knocking on the door.

Mrs. FOXX. Thank you, Mr. DeCamp. I should have said at the beginning by the way, just to establish my own bona fides, I worked as a domestic worker. My mother worked as a domestic worker. I did it when I was extremely young, and my mother did it for very many years. I am grateful for all the work experiences that I have had.

Mr. DeCamp, Title VII of the Civil Rights Act applies only to employers with 15 or more employees. H.R. 4826 includes a provision to apply Title VII to any employer with at least one employee, eliminating the small business exemption. You have alluded to this before. Could you discuss the radical nature of this change, and what this would mean for small businesses in the United States, in terms of litigation, risk, and compliance costs?

Mr. DECAMP. It would Federalize all employment throughout the country. It would render the EEOC able to collect data to conduct enforcement proceedings, to authorize individual lawsuits. It would create enormous incentives for workers to be adversarial with their employers, which again for a large employer is part of the cost of doing business. For a home, for a small business, for a mom-and-pop operation, they are not set up to deal with that. They cannot deal with it, and one claim can overwhelm and destroy a business or a home.

Mrs. FOXX. Mr. DeCamp, I am very familiar with the fact that many elderly Americans and individuals with disabilities employ domestic employees directly. In many cases, these individuals need assistance to get dressed, use the restroom and prepare meals. Can you explain the difficulties these individuals who need assistance to accomplish routine tasks, will have complying with the excessive mandates and recordkeeping requirements of the Jayapal bill?

Mr. DECAMP. I think about my practice and the businesses that I represent, typically sophisticated entities with lawyers and H.R. staff and people with MBAs and lots of degrees and lots of money, and they find it next to impossible to comply fully with the Fair Labor Standards Act, the law that is currently on the books. I cannot imagine what individuals, even setting aside the aged and those who have illnesses or disabilities or impairments; even normal individuals, non-lawyers, non-sophisticated entities, trying to deal with the FLSA would be next to impossible.

I cannot even imagine foisting these on my mother, for example, who is in her 70's, and I cannot imagine her trying to work through regulations and to make any sense of it.

Mrs. FOXX. Well, we thank you very much for bringing your perspective and I think the perspective of many here. Committee Republicans understand the reality of the fact that the Fair Labor Standards Act, FLSA, has been in existence for 83 years, and that we need to bring reforms. We are ready to work on a bipartisan manner to streamline and modernize Federal wage and hour policy

to meet the needs of the 21st century workforce. This bill is certainly not the way to go. With that Madam Chair, I yield back.

Chairwoman ADAMS. Thank you. Thank you very much. I want to yield now to the gentleman from North Carolina, Mr. Cawthorn. You have 5 minutes sir.

Mr. CAWTHORN. Thank you, Madam, Chair, and thank you to all our witnesses. Mr. DeCamp, thank you for being with us today. My question is about the portion of your testimony that talks about the types of evidence that can be used in discrimination lawsuits. Many in this world of politics are lawyers well-versed in the ins and outs of policy and statute. For many of my constituents and myself included, this is an alien world.

You argue with regard to discrimination laws, that these provide a plausible basis for argument in many cases, in which the evidence is mainly subjective and circumstantial. Can you expand a bit on how creating circumstances that incentivize subjective and circumstantial evidence could be detrimental to small companies?

Mr. DECAMP. Sure absolutely, and that comes back to the part of my testimony where I talk about how our system is not good at weeding out claims with merit from claims that do not have merit. The laws have important policies behind them, and those are good policies. In figuring out is this individual asserting a right under this law that is an actual violation or are they lying, our system is not good at sorting that out.

When we are talking about whether it is discrimination or these wage and hour issues, you end up with a he said/she said about what happened behind closed doors in somebody's residence, or how many hours somebody worked or didn't work, or did somebody let somebody use the cellphone when they wanted to. There's a \$2,000 penalty for violation in that in the statute, in the bill. These are all circumstances where there would not be easy, objective evidence to verify one way or the other, which means you end up with a proceeding that goes forward in court, requires expenditures of tens or hundreds of thousands of dollars in lawyer's fees, which even if you win the case as an employer, you don't get your money back. It is devastating.

Mr. CAWTHORN. Wow. That would be awful for a small employer. Well Mr. DeCamp, one more question. In your testimony, you make the point that at least some members of the Supreme Court have a strong desire to rewrite the Nation's Commerce clause jurisprudence. You argue that the Supreme Court could either adhere to the *Wickard v. Filburn*, or take the position of Justice Thomas, concurrence in both the *United States v. Lopez* or *United States v. Morrison*. If H.R. 4826 were to become law, what legal ramifications or challenges could we see appear before the Supreme Court in the future.

Mr. DECAMP. I think the law would very quickly, if passed, be subject to a declaratory relief challenge. I think it would likely be upheld in the lower courts, and then it would end up in the Supreme Court. In the Supreme Court, it is anybody's guess as to whether the Court would adhere to a precedent that a majority of the members think is incorrectly decided or go in a different direction.

We know Justice Thomas's view on these issues, and since the decisions in *Lopez* and *Morrison*, one was in 1995, the other was in 2000, every member of the Court has turned over except Justice Thomas. It is a very different court now, and I think that we would be very likely to see at least five justices in the Court adopt Justice Thomas's view of the Commerce clause, which frankly is that if you read Commerce the way that the Supreme Court has read Commerce since 1942, the Commerce clause subsumes 12 of the 18 enumerated powers in Article 1, Section 8.

His argument is it cannot mean that, or you would never have had the Constitution written the way it was written. It is an interesting argument. We do not know whether the Court would take the case. We do not know for sure how it would end up. There are interesting and serious issues that this law would raise if it were enacted.

Mr. CAWTHORN. Well, Mr. DeCamp, thank you very much, and to both of our other witnesses, thank you. To my fellow North Carolinian, Chairwoman Adams, thank you very much, and with that I yield back.

Chairwoman ADAMS. Thank you, thank you Mr. Cawthorn. I want to yield now to the gentlelady from Michigan, Ms. Stevens. You are recognized for 5 minutes ma'am.

Ms. STEVENS. Well, thank you Madam Chair and thank you to Congresswoman Jayapal for both of your leadership on this incredibly important issue and topic, something that is quite profound to bring into the halls of Congress. *Essential, But Unvalued: Examining Workplace Protections for Domestic Workers*. We know, given how the last couple of years have unfolded, that domestic workers are, and their work is only increased in demand, and yet our communities continue to suffer from a national care deficit.

I certainly find this topic quite alarming. I know we have recently had hearings on this Committee focused on the wage theft that has taken place, and we have also had hearing after hearing as we have been pushing to raise the minimum wage, about how women of color in particular are impacted not only by wage theft but by chronic low wages that undervalue their work.

I wanted to ask a question of panelists, and in particular, Ms. Ai-jen Poo, around why have we been seeing women of color in particular be undervalued as domestic workers? Who is rising up to advocate for them and who do they go to as they try and advocate for our domestic workers? Are there State agencies that are receptive to this, to these issues and these complaints, or is this just a missing gap in the process here?

Ms. POO. There are—thank you for the question, Congresswoman. There are several reasons for why this work has been so devalued, and it is rooted in a history of slavery and racism, and also of the devaluing of the work that women do within our homes to care for our families. This work has largely been associated with work that women should do individually inside of our homes, in addition to everything else they do and working full-time outside of the home, and it has also as a profession been associated with women of color.

The first domestic workers in this country were enslaved black women and indigenous women, and to this day the majority women

of color are doing this work. This has led to the discriminatory exclusion of this workforce from protections from some of our most basic labor laws, and an ongoing cultural devaluing of this work and relegating it to the individual responsibilities of women in our households.

Domestic workers have always organized. Ever since the 1880's, when in 1881 the first domestic workers in Atlanta, Georgia went on strike for better pay and better working conditions, to Dorothy Bolden and the National Domestic Workers Union in Atlanta, Georgia in the 1960's and 70's organizing. Today, the affiliates of the National Domestic Workers Alliance all over this country, more than 70 local affiliate organizations advocate on behalf of this workforce and have been successful in passing State laws in ten states and two cities around the country.

Those laws and the last 20 years of lessons from those laws are the building blocks of this Federal Domestic Workers Bill of Rights. We have proven the impact in terms of improving working conditions, allowing workers to negotiate for better protections, preventing wage theft and increasing the quality of care, improving the quality of care for families as a result.

Ms. STEVENS. Well, thank you. Thank you so much for that beautiful articulation steeped in history that we must be recognizing of, and Madam Chair if it is okay, I would just like to yield the remainder of my time to Congresswoman Jayapal.

Ms. JAYAPAL. Thank you, Representative Stevens, for yielding. Ms. Poo, I just wanted to ask you a question. What would happen in the next couple of years or so if Congress did nothing to address the current shortage of quality care?

Ms. POO. I am glad you framed the question in terms of the shortage of quality care because it is often talked about as a labor shortage, and actually it is a shortage of quality jobs. There are many people who want to do this work and simply cannot make ends meet doing it because these jobs are unprotected, they are unstable. In fact, in the small business sector, the biggest pain point among care providers is the inability to attract and retain workers at low pay, without sick pay, without health insurance.

The quality of jobs is simply too low, and as 10,000 people turn 65 every day and we live longer than ever and chronic illnesses like Alzheimer's and other dementias take hold, we will not have a strong workforce in place unless we protect these jobs and make them good jobs.

Ms. JAYAPAL. Thank you, Madam Chair. I yield back.

Chairwoman ADAMS. Thank you very much. I want to yield now to the gentlelady from California, Mrs. Steel. You are recognized for 5 minutes, ma'am.

Mrs. STEEL. Thank you, Madam Chair, and thank you all the witnesses coming out today. Narrowing the companionship services exemption to the Fair Labor Standards Act could drive up health care costs across Southern California and the United States. Changing regulations will cause burdens on families who chose to hire home health aides. As we leave the pandemic, this bill will, could add more complications to these industries that provide vital care for the elderly and disabled.

H.R. 4827 imposes burdensome mandates on families that will inevitably raise the cost of domestic services. Mr. DeCamp, could this legislation eliminate choice for families in need of health care?

Mr. DECAMP. Absolutely. By increasing the cost of services, by increasing the cost of being an employer of someone purchasing these services, it will price people out of the market. It will squeeze those who can afford to do it, who can afford to bring on these types of workers. It will squeeze them in other ways when dollars are tight in today's economy. It will put immense pressure on families, on working families, and it will result, I believe in less care because people being priced out of the market for these services.

Mrs. STEEL. Thank you, and how does this bill compare to the Obama administration's companion care rule?

Mr. DECAMP. They are different in focus, but I think the net result is the same. The companion care rule, among other things, sharply curtailed the overtime and minimum wage exemption for certain companion care services provided in the home, and that increased the cost. We heard remarks earlier today about how that has limited availability, and some people have left the market in terms of providers and also consumers have found it more difficult to get those services. This bill would achieve a similar dynamic by increasing the cost of those services.

Mrs. STEEL. Thank you very much your answers and as you heard from the witness, that H.R. 4827 imposes burdensome mandates, and it is going to be—health care cost is just going to rise up. Thank you very much. Madam Chair, I yield back.

Chairwoman ADAMS. Thank you. I want to yield now 5 minutes to the gentleman from California. Mr. Takano, you are recognized for 5 minutes sir.

Mr. TAKANO. Thank you, Madam, Chair, and thank you to all the witnesses who are with us today. Ms. Poo, Medicaid as you know is the largest funder of long-term care services. What role does Medicaid funding play in improving the wages and working conditions of domestic workers, and ensuring that people with disabilities have access to the care and support that they need to live in the community, rather than in institutional settings?

Ms. POO. Funding for Medicaid is absolutely essential for home and community-based services. There are over 800,000 people currently eligible for these services who are on a waiting list and cannot get access to the services because of lack of funding and the lack of a strong workforce in the Medicaid program. The average wage of a home care worker in the United States is \$18,200 per year.

That is why we deal with high rates of turnover, and we cannot attract and sustain a strong workforce in the home and community-based service program, and also why it was so important that there was funding in the Build Back Better Act to increase resources for the home and community-based service program, that would both expand access to services for people who need them, and to raise wages for the workforce. I do want to urge that Congress consider increasing funding for Medicaid, and as a part of this program as well.

Mr. TAKANO. Well, thank you for that. I have a question, if any of you can answer Ms. Poo, about how Medicaid funds transpor-

tation of, you know, the beneficiaries, people that don't have their automobiles. How is transportation funded?

Ms. POO. I do know that within the Medicaid Home and Community-Based Services Program, there is funding for transportation services for consumers who need them. In terms of the details of that, I can look into it and get back to the Committee.

Mr. TAKANO. Yes, I just—I do not expect an answer now, because it is a little bit—the question is a little far afield, but it struck me that I was just in Vermont speaking a owner of a cab company in Burlington, and I was surprised that they actually have taxicabs in a city that is the size of Burlington. He told me that one of the things that is part of his bread and butter is the Medicaid patients that the hospitals contract his firm with. This particular taxicab has employees, not independent contractors. There is another impact on workers here, and how Medicaid interacts with these transportation services is of interest to me now.

Dr. Mason, what is the domestic worker pay gap? Why is pay for domestic workers so low compared to occupations with similar experience or educational levels in other industries?

Dr. MASON. That is a really good question. The domestic worker pay gap refers to the gap of almost \$7 per hour between domestic workers and all other workers. The gap exists for several reasons. Historically, this work has been performed by women of color, and leading to a systemic devaluing of this labor, as Ms. Poo suggested. Though most of domestics, 64 percent of domestic workers are U.S.-born, they are more likely than other workers to be born outside of the U.S., and they also tend to be older, older than other workers.

What this means is that when we look at the jobs and because of the lack of labor protections and wage regulation, these workers are less likely to have recourse if they are forced to work overtime or not paid a fair wage, and are also not eligible for benefits like unemployment insurance when they lose a job or do not have enough hours.

Mr. TAKANO. Well, thank you. You know, I am one of the leaders in Congress. I take lead, I have taken the lead on the 32-hour work week, which would start overtime pay at 32 hours. I note that I think, I believe the SEIU, who has a strong role in organizing home care workers, took an interest in this legislation. How would maybe with overtime pay that would begin after 32 hours, have a positive effect on this industry?

Dr. MASON. Well, it would absolutely have a positive effect in terms of overall earnings for domestic care workers and other workers as well, and one of the—one of my colleagues points out that workers who—employers would be less likely to pay overtime and cut the hours. We have to know that this work is critical and essential, and so employers depend on this workforce. We need to ensure that those workers have protections, are paid fairly and have access to overtime pay when there is a need.

Mr. TAKANO. Well, thank you. I yield back, Madam Chair.

Chairwoman ADAMS. Thank you very much. I want to yield now to the distinguished Chair of the Ed and Labor Committee, the gentleman from Virginia, Mr. Scott. You are recognized for 5 minutes.

Mr. SCOTT. Thank you, Madam, Chair, and thank you. I want to thank Ms. Jayapal for her leadership on this issue. Let me ask Mr. DeCamp and Ms. Barnett just to quickly comment on whether or not there is a different analysis if we are talking about people that freelance, that is make their own arrangements and get their own jobs, and those that are placed by an agency.

Mr. DECAMP. Thank you for the question. In full disclosure, you are actually the only member on the Committee to whom I have made a donation, so I wanted to be clear about that. The answer is there is a lot of ambiguity with regard to freelancers, the status of freelancers. Are they employees, are they independent contractors? People employed by agencies are clearly employees of the agencies, but may also be joint employees, jointly employed by the households in the circumstance where they would work.

Those are very gray lines, and the Department of Labor has issued regulations on that topic that have been issued and been revoked, and then the revocation got invalidated and the Department's working on new regulations. This has been a gray area in the law under the Fair Labor Standards Act for about 80 years.

Mr. SCOTT. Okay. Ms. Barnett, do you want to comment on that?

Ms. BARNETT. Well, I can speak to in our municipal ordinance in Seattle, that there are clear differences made between who are independent contractors and , who is liability, who is the employer and who is the liability of employers, and so in some cases it might be a joint liability between an employer and an agency. I think there are really clear tests for independent contractors, and the majority of domestic workers are not independent contractors. They are hired by employers, the employers of the household manage their time, tell them the work they want done and often provide the tools of labor. Yes, so I think that it is an issue that has to be really worked out.

Mr. SCOTT. Okay, and we know that several states that have domestic workers have none of the provisions of these laws, a couple of cities. What has been the experience of these laws? Is there any confusion and complications or unintended consequences that have occurred because of that? Let me ask Ms. Poo and again, Mr. DeCamp to comment on that.

Ms. POO. In my 20 years of working on these laws, I have not heard of complications. In fact, what I have heard is that there are improved conditions and enforcement of laws with these laws. For example, the laws that have strengthened overtime protections in states have enabled, have prevented extreme cases of abuse from happening and encouraged workers who are facing extreme forms of abuse and wage theft to come forward, including a recent case from Seattle.

Following the ordinance, a worker came forward with extreme wage theft abuse and was recently awarded a settlement of \$71,000 as a result. It has established that and reinforced this idea that the hallmark of a healthy democracy is one where there are fair and equal protections for workers across the economy, and that domestic workers are workers.

Mr. SCOTT. Thank you.

Mr.

eCamp.

Mr. DECAMP. I think a point to note here is that when an original bill that looked more like this first came before the California legislature, it passed and Governor Brown vetoed it, and then ultimately California enacted and Governor Brown signed, then Governor Brown signed a much more pared back version. I think there was concern, even in California, that this type of set of requirements went too far. They now have a statute, as do a number of other states and some localities. This was concerning even in California.

Mr. SCOTT. The pared-down bill is working in California.

Mr. DECAMP. I do not know whether it is working in California. I have not heard of significant challenges with regard to the application of the bill in California.

Mr. SCOTT. Okay. Mr. Takano just mentioned an 800,000-waiting list on Medicaid. Is that because of limited slots or a limited number of workers willing to take the reimbursement rate?

Ms. POO.

Ms. POO. Limited funding to states to support expanded access to services and wages that are at or lower—

Mr. SCOTT. Well in Medicaid if you are eligible, you get the services.

Ms. POO. Except that many states are not able to deliver on the services to people who are eligible.

Mr. SCOTT. They limit the number of slots?

Ms. POO. Yes.

Mr. SCOTT. That is where you need funding?

Ms. POO. Yes.

Mr. SCOTT. Somebody mentioned, you mentioned a 20 percent unemployment rate. Obviously, that is not for lack of need, and it is because those who are paying it cannot pay the bill. How are we going to increase salaries if people cannot afford it now, unless you do subsidies?

Ms. POO. This is a really important question, and the truth is, is that in this country we are far behind in supporting affordability and accessibility of care for working families across the board. We need a strong childcare program, a strong home and community-based service program. We need paid family and medical leave, and we simply do not have any of those things. Yes, we do need subsidies. We need stronger programs.

Mr. SCOTT. Those programs are—you hooked the fact that they cannot afford, people cannot afford the services to people need more money. You connect the dots with subsidies. Mr. DeCamp, do you want to make a comment on that?

Mr. DECAMP. No, I just think—I think it is an excellent point sir.

Mr. SCOTT. Thank you. Thank you, Madam Chair.

Chairwoman ADAMS. Thank you very much. Thank you, Mr. Chairman. Let me just thank my colleagues. I want to remind my colleagues that pursuant to Committee practice, materials for submission to the hearing record must be submitted to the Committee Clerk within 14 days following the last day of the hearing. By the close of business August 11th, 2022, preferably in Microsoft Word format.

The materials submitted must address the subject matter of the hearing. Only a member of the Subcommittee or an invited witness

may submit materials for inclusion in the hearing record. Documents are limited to 50 pages each. Documents longer than 50 pages will be incorporated into the record via an Internet link that you must provide to the Committee Clerk within the preferred, the required timeframe. Please recognize that in the future, that link may no longer work.

Pursuant to House Rules and regulations, items for the record should be submitted to the Clerk electronically by emailing submissions to Edandlabor.hearings@mail.house.gov. Again, I do want to thank the witnesses for their participation today. Members of the Subcommittee may have some additional questions for you, and we ask the witnesses to please respond to those questions in writing. The hearing record will be held open for 14 days in order to receive those responses.

I remind my colleagues that pursuant to Committee practice, witness questions for the hearing record must be submitted to the Majority Committee staff or Committee Clerk within 7 days. The questions submitted must address the subject matter of the hearing. I now recognize the distinguished Ranking Member for a closing statement.

Mr. KELLER. Thank you, Madam Chair. I would ask unanimous consent to enter into the record letters raising concerns with H.R. 4826 from the Home Health Care Association of America and the Private Care Association.

Chairwoman ADAMS. Without objection, so ordered.

[The letters from Mr. Keller follow:]



July 27, 2022

The Honorable Alma Adams
Chairwoman
Subcommittee on Worker Protections
House Education & Workforce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Fred Keller
Ranking Member
Subcommittee on Worker Protections
House Education & Workforce Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Adams and Ranking Member Keller,

On behalf of the Home Care Association of America (HCAOA), please accept this letter for the record regarding the hearing on July 27, 2022, titled ***“Essential but Undervalued: Examining Workplace Protections for Domestic Workers.”*** The focus of this hearing is on the “Domestic Workers Bill of Rights Act,” (H.R.4826) which the Committee is considering. While supportive of the goals of this legislation, HCAOA must oppose H.R.4826 in its present form.

HCAOA’s over 4,000 members and their caregivers, who provide home care services across the nation, witness the challenges some seniors and individuals with disabilities have in remaining in their homes as they age. Keeping home care affordable, particularly for moderate- and low-income seniors, is a priority for our members. Wages and benefits for home care workers have been on the rise even before the pandemic due to shortages of available workers. Sadly, these increases are pricing some seniors out of the market. Much of home care is family financed and HCAOA is mindful of their concerns relating to cost.

Medicaid is an option for some seniors unable to pay with family finances. Today, many of our HCAOA members cannot participate in Medicaid waiver programs because reimbursement for these services is often less than the labor costs necessary to provide the service.

HCAOA applauds efforts to assist home care and other domestic workers in the U.S. These individuals have been and remain on the front lines of the pandemic caring for seniors and individuals with disabilities. The work they do is very important. Home care workers deserve fair pay and a good work environment, which is what HCAOA members provide today.

HCAOA members are already subject to the Fair Labor Standards Act (FLSA) as their caregivers are employees of a company and not operating as independent contractors. HCAOA member companies train, supervise, conduct background checks, and pay appropriate state and federal taxes for their employees. They are also subject to minimum wage and overtime pay provisions of the FLSA. Our members

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additionally comply with state licensure where applicable. As such, HCAOA feels some of the issues addressed in this bill are best left to the states to determine.

A gray market, however, exists within the home care industry. One in which the senior becomes the employer of record, subjecting them to unnecessary financial risk and burden. It is also often not clear whether a worker from a registry has been trained or had a background check. It is clear they are not being supervised, and it is questionable whether appropriate taxes are being paid. HCAOA supports efforts to address misclassification of workers as independent contractors in the home care industry and urges the Committee to do more in this area.

It should also be noted that the definition of "domestic worker" in this bill exempts those home care workers providing "companion care services" and who are covered by the FLSA. HCAOA believes home care workers providing "personal care services" and who are covered by the FLSA should also be exempt from the bill. Since personal care providers qualify as domestic workers under the definition in H.R.4826, HCAOA must oppose the bill as presently written.

HCAOA believes several provisions within H.R.4826 have the potential to make home care services less affordable and thus less available for seniors and individuals with disabilities who count on these essential services to maintain their independence. For example, section 112 regarding scheduling of workers is unnecessary and overly burdensome. Client schedules can change for unforeseen circumstances, and it is not feasible to always give 72 hours of notice to a home care worker when a schedule changes. This level of micromanagement is unnecessary in federal regulation. This should be left to the employer, the worker, and their supervisor to find the best accommodation for the senior and the worker.

HCAOA would appreciate the opportunity to work with the Committee to identify those areas of the bill that do warrant federal regulation and to better focus resources on worker misclassification. Thank you for the opportunity to make brief comments in conjunction with this hearing.

Sincerely,



Vicki M. Hoak, CEO
Home Care Association of America



July 26, 2022

Honorable Alma Adams
 Chairwoman
 Subcommittee on Workforce Protections
 House Committee on Education and Labor
 2436 Rayburn House Office Building
 Washington, D.C. 20515

Honorable Fred Keller
 Ranking Member
 Subcommittee on Workforce Protections
 House Committee on Education and Labor
 1717 Longworth House Office Building
 Washington, D.C. 20515

Dear Chairwoman Adams, Ranking Member Keller, and Members of the Subcommittee:

On behalf of the Private Care Association, Inc., a national association representing for-profit caregiver registries, www.privatecare.org, I am writing to express PCA's concerns with H.R. 4826, the *Domestic Workers Bill of Rights Act* ("DWBRA").

The DWBRA would fundamentally transform the delivery of home care throughout the country. It would do so by requiring the marketplace to operate under a new highly prescriptive delivery model. But PCA is not aware of any empirical evidence suggesting that the theoretically constructed delivery model the DWBRA would create is workable.

The home-care market already is in the midst of an unaffordability crisis for working families that pay for home care with their own private funds or with long-term care insurance they purchased. This is attributable in significant part to government action that severely narrowed the companionship services exemption to the Fair Labor Standards Act ("FLSA")¹ and to significant increases in care provider pay rates that have occurred during the past couple of years.

¹ The companionship services exemption is contained in 29 U.S.C. §213(a)(15). It exempts from the FLSA's overtime and minimum wage requirements "any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves..." The scope of the exemption was narrowed significantly by regulations issued in 2013 (78 Fed. Reg. 60454, 60455 (Oct. 1, 2013)) that became effective January 1, 2015. In WAGE AND HOUR ADVISORY MEMORANDUM No. 2005-1 (Dec. 1, 2005), titled *Application of Section 13(a)(15) to Third Party Employers*, the U.S. Department of Labor explained the rationale for enacting the companionship services exemption as follows:

the Department explained that Congress was mindful of the special problems of working fathers and mothers who need a person to care for an elderly invalid in their home. Opinion Letter from Wage & Hour Div., Dep't of Labor, WH-368, 1975 WL 40991 (Nov. 25, 1975). In particular, legislators were concerned that working people could not afford to pay for companionship services if they had to pay FLSA wages. See 119 Cong.

PCA respectfully urges that Congress allow the home-care market to adjust to the changes already taking place, before enacting new laws that would disrupt the marketplace and drive the cost of home care even higher than the artificially high cost that exists today.

As noted, the DWBRA would impose a new business model on the industry that, at this time, is only a theoretical construct. PCA submits that the new mandates the bill would impose would create significant uncertainty and cause the marketplace to operate less efficiently, to the detriment of domestic workers and their care recipients.

1. The Mandated Termination and Communications Provisions Would Restrict a Live-In Employer's Ability to Manage a Home Care Arrangement

The very first section of the DWBRA imposing a new mandate, namely, Section 102, is representative of the problems that would result from the new business model the DWBRA would impose. These provisions would not permit an employer to terminate a live-in domestic worker for a reason other than abuse, neglect, or other harmful conduct – unless the employer provides the domestic worker with 30 days of free lodging or two weeks of severance pay. But the provisions also require the employer to provide the employee with the ability, and reasonable opportunity, to access telephone and internet services, and permit the employee to send and receive communications by text message, social media, electronic or regular mail, and telephone calls – without the employer's interference. Furthermore, if the employer has telephone or internet services for the household of the employer, the employer would be required to provide the live-in domestic employee with reasonable access to such services, without charge to the employee.

Importantly, Section 117(a) of the DWBRA would make it unlawful for a person to interfere with a domestic worker's exercise of these rights. DWBRA Section 118 would empower the U.S. Department of Labor ("DOL") to assess a civil penalty of up to \$15,000 for a first violation and up to \$25,000 for any subsequent violation.

These provisions would seriously impede a family's ability to manage a live-in home-care arrangement. A live-in employer would be prohibited from interfering with a domestic worker's texting, personal telephone calls, and use of social media. Mindful of the potential civil penalty that could be imposed for interfering with a domestic worker's exercise of these rights, an employer would be reticent to restrain a domestic worker's excessive use of such communication devices, even if such use distracted the worker from providing the needed care. And if the employer were to terminate the worker, the employer would owe the worker either 30 days of free lodging or two weeks' severance pay and possibly be liable for a civil penalty as well.

The requirement that a live-in employer provide a live-in domestic employee with reasonable access to telephone, without charge to the employee, would create its own set of problems. It is not unusual for a domestic worker to have relatives in a foreign country. But the DWBRA would require the employer to provide the domestic worker with access to its telephone service – without charge. Thus, the worker could make expensive international telephone calls to

Rec. 24,797 (statement of Sen. Dominick, discussing letter from Hilda R. Poppell); id. at 24,798 (statement of Sen. Johnston); id. at 24,801 (statement of Sen. Burdick)... As explained above, Congress created the exemption to ensure that working families in need of companionship services would be able to obtain them.... (Emphasis added).

relatives in a foreign country. But due to the potential civil penalty for interfering with a domestic worker's exercise these rights, the employer would be justifiably reticent to ask a worker to pay for such calls.

Finally, if the household of the employer has internet services, the employer would need to provide the domestic worker with access to these services – again, without charge. If the domestic worker does not have a computer, then the employer presumably would need to either share the household computer currently at the house or purchase a new computer that would be dedicated solely to the worker. If the worker were to share the household computer, it is not difficult to imagine many negative outcomes that could result. The worker might have access to the employer's private information or passwords stored on the household computer. And the worker (or the employer) might access inappropriate websites and download content that in some cases could have criminal implications. Such an occurrence would create difficult fact issues as to precisely who was using the household computer when the inappropriate actions occurred.

2. The Written Agreement Mandate Imposes Duties Incompatible with Home Care

Similar impractical duties are contained in the very next substantive section, namely, section 110, which contains new written agreement mandates. These requirements apply to a “domestic work hiring entity” (“DWHE”), which is defined to mean “any person who provides compensation directly or indirectly to a domestic worker for the performance of domestic services.” The scope of this definition is uncertain, as it is not clear under what circumstances a person would be deemed to be providing compensation “indirectly.” A DWHE likely would include at least some caregiver registries as well as employee-based agencies.

The provision would require a DWHE to provide a written agreement to each domestic worker hired by the entity and expected to work at least eight hours per week. The agreement would need to include, among other things, the location where the covered domestic worker will be providing domestic services, all responsibilities to be performed by the covered domestic worker, and the regularity in which such responsibilities are to be performed. In addition, the agreement would need to specify the rate of pay.

There would be no problem for an agreement to include this information if a domestic worker were working a regular schedule at a facility. But it would not be feasible to do so for many domestic workers who provide home care. This is because such a worker could provide services at multiple different locations during a week and even during a day. Similarly, the specific work responsibilities, and the regularity in which such responsibilities will be performed, typically are determined by the care recipient and not by the DWHE. And these responsibilities typically change throughout a week and throughout a day, as the care recipient's needs and preferences change – but without the DWHE's advance knowledge. Finally, for caregiver registries, the rate of pay is separately determined for each specific care recipient for whom a domestic worker performs services.

In sum, the proposed agreement mandates are simply not suitable for the home-care marketplace.

3. The Fair Scheduling Practices Mandate Would Unfairly Penalize Families for Unexpected Developments

Section 112 of the DWBR would impose new mandates that would financially penalize a client who unexpectedly becomes hospitalized or passes away. These requirements would exacerbate the trauma a family experiences upon these occurrences by imposing an additional financial penalty for the occurrence.

The provisions would require a DWHE to communicate any change to a domestic worker's scheduled work hours, including any on-call shifts, not less than 72 hours before the domestic worker is scheduled to begin work.

A domestic worker would need to be paid the regular rate of pay for any scheduled work hours the domestic worker does not work due to a cancellation or reduction in the scheduled work hours after the domestic worker arrives to work for the scheduled work hours, e.g., if a client were hospitalized or were to pass away. And a domestic worker would need to be paid at a rate of ½ of the regular rate of pay if such an event were to occur less than 72 hours prior to the commencement of such scheduled work hours. These costs almost certainly would be passed on directly to the consumer.

These new costs would penalize clients for developments that are out of their control. And in the home-care industry, these events occur on a regular basis.

4. The Mandated Meal and Rest Breaks are Ill-Suited for Home Care and Would Create a Trap for the Unwary

The DWBR, at section 115, would mandate new meal and rest breaks, which would impose a burdensome new recordkeeping requirement – to address a phantom problem. During a typical day in which a domestic worker provides home care, much of the day the worker is present but not actively engaged in any caregiving services. The domestic worker and care recipient typically negotiate among themselves when the worker will take meals and take breaks. PCA members are not aware of any care provider complaints concerning an inability to take appropriate meal time or break time.

But the DWBR would impose specific mandates concerning meal breaks and rest breaks, to formally recognize, as either a meal time or a break time, such times during the day when the worker is not caring for the client. This would translate into a new recordkeeping requirement a DWHE would need to implement, to document the meal times and break times taken by domestic workers – in order to be able to successfully defend against a claim that a domestic worker was denied such mandated time off. It also *could* result in care recipients forming a sharper appreciation of work time versus free time and becoming less permissive of a domestic worker's ability to engage in other activities while not directly caring for the care recipient. They could instead begin requiring a domestic worker to more carefully document how the worker spends time while on the clock.

This mandate also would create a trap for an unwary DWHE that reasonably did not suspect the existence of this type of mandate for this industry.

5. The Expanded Overtime Mandate, Paid Sick Time, and Federally Funded Advocacy Would Exacerbate the Home Care Affordability Crisis

The DWBRA also would contribute to a further escalation in the cost of home care, by repealing the overtime exemption for live-in care, in DWBRA section 101, mandating, at section 111, that a DWHE permit a domestic worker to earn up to 56 hours of paid sick time in a year, and by creating a new federally funded advocacy bureaucracy, at sections 201 et seq, dedicated to developing new ideas for increasing – even further – the pay and benefits of domestic workers.

Unlike a manufacturing business that hires employees to work on an assembly line that mass produces products for sale, where the cost of employees can be allocated among the products being manufactured and purchased by large numbers of consumers, the cost of a domestic worker is allocated to just one consumer, namely, the consumer for whom the worker performs services at any given time.

It follows that the ability to increase the cost of a domestic worker's services is limited by the ability of a single consumer to bear that cost. For many consumers who pay for home care with their own funds or through long-term care insurance, the cost of obtaining the home care they need already is unaffordable. The effect of the DWBR would be to make the cost unaffordable for still more consumers. It would increase the number of consumers who continue to pay taxes that fund home care offered by Medicaid, but who cannot afford to purchase the needed home care for their own family.

6. The Prohibition Against Arbitration is Not Appropriate Until the Class Action Rules and FLSA Fee-Shift Rules are Updated

Finally, section 110 of the DWBRA would prohibit a written agreement from containing a mandatory pre-dispute arbitration agreement for claims made by a covered domestic worker against a DWHE regarding the legal rights of the worker. PCA respectfully submits that Congress should update the class-action and FLSA fee-shift rules before prohibiting these types of agreements.

The current rules governing class action lawsuits have resulted in defendant companies settling lawsuits that could have been successfully defended – because they cannot afford the immense cost of litigating these lawsuits on their merits. And the prohibitive cost is exacerbated by the attorney fee-shift provisions contained in the FLSA, which can result in a defendant company that loses an FLSA lawsuit being liable for not only its own attorney fees but also the attorney fees recorded by the plaintiffs' attorneys.²

To prohibit companies from using an arbitration agreement – without first fixing the class-action and FLSA fee-shift rules – would be highly inequitable.

7. Conclusion

PCA and its members support the rights of home-care providers to control their financial destiny and to increase their earnings. To be sure, the caregiver registries that PCA members operate are designed to provide care providers with an alternative to the fixed pay rates that are

² Sec. 29 U.S.C. §216(b).

offered by employee-based agencies. Registries do not set care provider pay rates but instead empower care providers to determine their own pay rate with their clients.

While PCA, thus, is supportive of home-care providers, it opposes the DWBRA. PCA supports the apparent intention of the DWRA, but we believe its methodology is not suitable for the home-care marketplace. And, for the reasons discussed above, we believe it would seriously disrupt the home care marketplace, to the detriment of domestic workers and the care recipients who utilize their services.

Thank you very much for your consideration. PCA and its members stand ready to work with the Subcommittee in developing new ideas to support the home-care marketplace.

Sincerely,



Marc Spector
President
Private Care Association
president@privatecare.org

cc: Members of the Subcommittee

Mr. KELLER. Thank you. Thank you to the witnesses for participating in today's hearing. It is time to move past the Democrats' permanent pandemic mindset, which has been used to justify more and more harmful government intervention. This hearing has shown us that once again, Democrats fail to recognize that the vast majority of employers care about treating their employees with dignity and respect.

A lot of times we talk about making employees part of the family of the workplace. Now we have legislation that wants to take people being treated like family and create them to be—families and create them to be employers. Committee Republicans support enforcement of the Fair Labor Standards Act and holding bad actors accountable.

However, the crushing mandates and penalties in H.R. 4826 are just another handout to trial lawyers. Employers should be able to operate and families, families, we are talking about families here, should be able to operate without fear of bankruptcy or needing a law degree to understand the complex regulatory environment. The last thing families who have relatives requiring in-home care need is more inflation caused by the Biden administration.

Increased compliance costs will put these valuable services out of reach for more Americans. Democrats should work with Republicans to promote pro-growth and pro-opportunity policies that work for a 21st century economy. I would like to thank our witnesses again for testifying, and I yield back.

Chairwoman ADAMS. Thank you, Mr. Keller. I now recognize myself for the purpose of making my closing statement. Again, thank you to our witnesses for your time and for your testimonies. Domestic workers provide essential care that allows Americans to live with dignity and independence and makes it possible for family caretakers to contribute to their communities. Regrettably, as we have heard today, Federal labor laws do not sufficiently protect workers from abuse and exploitation. As a result, many domestic workers, the majority of whom are women of color, continue to live in poverty. As our witnesses made clear, congressional action is particularly important as demand for domestic care increases amid the national care deficit.

To that end, I look forward to advancing Representative Jayapal's Domestic Workers Bill of Rights Act, to provide domestic workers with fair and decent working conditions, and to ensure that our Nation can recruit and retain the workers we need to care for our loved ones. Thank you. If there is no further business, without objection the Subcommittee stands adjourned.

[Whereupon, at 11:52 a.m., the hearing was adjourned.]

Statement of June Barrett

“Essential but Undervalued: Examining Workplace Protections for Domestic Workers”

July 28, 2022

Workforce Protections Subcommittee in the House Education and Labor Committee

Chairwoman Adams, Ranking Member Keller, and Members of the Committee, thank you for the opportunity to submit a statement in support of H.R. 4826, the Domestic Workers Bill of Rights.

My name is June Barrett. I am a home care worker, organizer, and leader with the We Dream in Black program of the National Domestic Workers Alliance and the Miami Workers Center, and a former Dorothy Bolden Fellow. I have been a domestic worker in the United States for more than 20 year. I am also a proud, queer Jamaican immigrant.

I have enjoyed giving care, but in spite of doing this work for so many years, I have little to no protections and poor wages. As you may know the average salary of a homecare worker is \$17,000 per year. That's not a livable wage. We also need but often cannot access care. Many domestic workers look after others' kids but can't afford childcare for their own children. As I am aging now and approaching 60, after giving care for so many years, I hope that, when my time comes to receive home care, it is quality care.

Like many other domestic workers, I have endured sexual harassment at work. Nannies hearing sexual comments or worse from the fathers of the children they were caring for, house cleaners asked to clean in their bikinis, or home care workers being groped by their clients. Because of the kind of work we do and the lack of protections, sexual harassment at our jobs is a default.

But rarely do you hear about the physical abuse that domestic workers experience – for generations the work that I do has not been protected by workplace law, and respected and valued as essential to our society and economy.

It happened to me when I worked as a live-in caregiver for an older man. The first night I went to work, I went to my room after dinner, and he called me.

He said what's taking you so long? I said I thought you were going to bed. He said you're supposed to get on the bed. So I sat down on it, thinking he needed some support. He said NO, you're supposed to lie in bed with me.

I said no, that's not professional. I was deeply disturbed and didn't sleep much that night. The following morning, he called me in and told me that all the girls who worked there had to sleep in the bed with him. I couldn't believe it.

On another occasion, I went to the bathroom to help him take a shower and he grabbed my breasts. I said what are you doing and pulled away. Another time, he grabbed me and planted his mouth on my neck.

I was scared to call my agency and tell them what was happening because I couldn't afford to lose my job. It was a choice between standing up against sexual assault or getting my medication, paying my rent, and taking care of my family.

For three months, I was sexually harassed and assaulted. Every day, he grabbed my breasts or said something sexual. I was always on edge. As a survivor of childhood sexual violence, this was especially traumatic.

I've heard other stories from other care workers as well.

A woman in her sixties told me that every time she went to work, her patient would 'put his filthy hands on my body.' She was in tears when she told me this.

I left my job after three months because I could no longer handle the abuse. I felt so isolated and alone and did not know where to turn for help. I left as soon as I could find another job, but it took me years to get over the shame and embarrassment I felt.

This shouldn't happen to anyone. It is past time that Congress extended basic workplace protections to nannies, house cleaners, and home care workers like myself. If we had laws that protected domestic workers from physical and sexual abuse at their workplaces, we could ensure the safety and economic well-being for millions of workers across the nation. All workers deserve to work and live in safety.

That is why I am asking you to support the Domestic Workers Bill of Rights and make care jobs good jobs by establishing rights and protections in our workplace. Passing this bill will make sure that workers get the protections and wages that they deserve, and create more pathways for women to work. As care workers who are earning below the poverty level, this bill will help us have affordable child care and access to paid family leave and sick days. The Domestic Bill of Rights also extends protections against harassment to all workers, regardless of the number of people in the workplace. And if and when we do want to come forward, domestic workers will have protections against retaliation.

This hearing marks a new era for domestic workers and our movement — correcting a historical wrong and a huge step for women, for women of color, for immigrant women, for low-wage workers and for all of us. Domestic workers are the future of work and deserve to be recognized and protected. It's time to deliver. That's why Congress needs to pass the Domestic Workers Bill of Rights Act now.

From the bottom of my heart and from the millions of domestic workers across the country, thank you.

“Essential but Undervalued: Examining Workplace Protections for Domestic Workers”
Workforce Protections Subcommittee in the House Education and Labor Committee

Additional Materials to the Subcommittee submitted by Dana Barnett

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Additional Materials to the Subcommittee Submitted by Dana Barnett

Dana Barnett, Responses to Additional Questions from the Subcommittee in the House Education and Labor Committee

- Ms. Barnett, as a domestic worker employer and former Chair of the Seattle Domestic Workers Board, can you share some stories showing how the Seattle City Domestic Workers Ordinance has assisted employers to establish fair and reasonable employment relationships with their domestic workers?
 - a. The fact of the ordinance in itself helps to establish fair and reasonable employment relationships by clearly stating to domestic employers that their home is a workplace. This for many is a revelation and a first step to creating a better work environment.
 - b. The passing of the ordinance, including the creation of the board, has meant that there are resources and education available for employers about how to comply with it. As I have said, most domestic employers want resources, and did not previously have them readily available. Under the ordinance, employers can follow the minimum wage and provide breaks and days of rest. The Ordinance prohibits employers retaining worker's documents or other personal effects. One place where I interact with employers regularly is on local social media groups, mainly parents groups. Members are often posting questions about working with nannies and house cleaners, and are always grateful when I offer them resources and information about the law that answer their questions.
 - c. The questions that I receive the most are about meal and rest breaks - scheduling breaks in many cases hadn't occurred to employers. If it did, they didn't know how to do it. The Seattle Office of Labor Standards Q&A document provides simple answers about how to manage meal and rest breaks, and our model contract includes a sample schedule for meal and rest breaks. Having a plan for giving breaks, which is something that all humans need and will take whether scheduled or not, relieves stress and conflict. The ordinance brings domestic work out of the shadows, which promotes safety and harmony for all parties.

- Ms. Barnett, from the perspective of a domestic worker employer, can you tell us your opinion about Mr. DeCamp's statement, and I quote, that "H.R. 4826 would impose extraordinary costs and burdens on the families who employ these workers far out of proportion to any benefit the workers would receive"?
 - a. The population of people who employ domestic workers are diverse with regard to their income. For higher income families and individuals, there will not be an extraordinary burden to pay workers minimum wage and overtime. For lower and middle income families, paying the minimum wage in some states may limit hours of work, but for the majority this bill will not increase the cost that is being paid.

Additional Materials to the Subcommittee Submitted by Dana Barnett

- b. And as I have said, using written agreements is not a burden—it is a relief. It can be challenging managing employment in our homes without clear guidance from the law.
 - c. Rights for workers will increase retention and the quality of work in our home. It will create better relationships with clearer expectations. This bill is well worth the benefits. This bill benefits everyone.
- Ms. Barnett, if enacted, H.R. 4826 would require employers to enter into written agreements with their domestic workers and guarantee fair scheduling practices. Ms. Barnett, how will these requirements benefit domestic workers' employers?
 - a. A written agreement benefits employers in so many ways! Lack of clear communication about expectations is harmful for all working relationships. It is often the source of conflict or a domestic work situation not working out. A written agreement is a place for an employer to communicate their expectations for the work, as well as a way to set up clear schedules, payment, evaluation, process when someone is sick or goes on a vacation, and to make security and privacy agreements. With COVID19, we found that the agreement was a perfect way to address sometimes awkward questions about health and safety practices. It provides a space for important conversations that can otherwise be uncomfortable to have. It is much easier to plan ahead than to react when a situation arises.
- Ms. Barnett, in his testimony, Mr. DeCamp stated, and I quote, that “exempting very small employers from federal employment laws serves ‘to preserve a right of ‘personal relationships beyond government intervention.’” As an employer, do you agree with Mr. DeCamp that the relationships you have with your domestic workers are “personal relationships beyond government intervention” or do you believe that they are employment relationships and that your home is also the workplace of your domestic workers and, as such, subject to government intervention?
 - a. First, the government has been and continues to make an intervention by excluding a sector of workers from basic labor protections. The idea that these relationships are personal is both wrong and dangerous for workers. These are working relationships that happen in our personal spaces. My personal relationships do not involve financial transactions. Of course, my home is the workplace of my house cleaner and nanny. It is where they come to work. Even if I feel that they are like family, I am their employer. I rely on their labor, and they rely on me for their livelihood. My home is their workplace. All workplaces should be regulated to create safety and prevent exploitation.
- Ms. Barnett, do you believe it would be unduly burdensome for employers to pay overtime work to their live-in domestic workers? What do you think about

Additional Materials to the Subcommittee Submitted by Dana Barnett

Mr. DeCamp's statement "with respect to overtime for live-in domestic workers, [that] the net result is unlikely to increase worker earnings ... because employers would simply cut employee hours to avoid the overtime premium"?

- a. The claim that employers would cut hours rather than paying overtime is unfounded speculation. Overtime in a domestic workplace works similarly to the way it does in any workplace. If the employer can't afford to pay for a worker's additional hours, then they can't expect their worker to work those hours.
- b. Our experience with employers of home care workers shows that employers will pay overtime when they need it. Especially now, with the shortage of home care workers, employers who are willing to pay workers fairly for their time, including overtime pay, are much more likely to be able to retain quality care workers.
- c. It's so important for live-in workers to have clearly defined working hours. In Seattle, the Standards Board has heard from many workers, including live-in workers. What we hear is that many live-in workers do not currently have any control over their schedules or hours, and this is something that they want and need.
- d. Lower and middle income employers may face barriers to affording overtime pay, however, we believe that we need more investment in home and community based services and childcare to assist these families to afford the support they need. Domestic workers should not be expected to work overtime without pay and we won't create the workforce needed by continuing to make domestic worker jobs low wage and without benefits.
- e. Isaac Jabola-Carolus, Stephanie Luce, and Ruth Milkman of the City University of New York completed [a research study](#) in 2021 that found that public funding for wages increases and health insurance coverage for home care workers in New York would create savings and tax revenues that would offset the cost. Additionally the study found that "[i]mproving compensation for home care workers would help to alleviate the existing shortages in the occupation, and also spur employment growth in other fields."

Additional Materials to the Subcommittee Submitted by Dana Barnett

Aaron Seyedian Testimony

Thank you to Chairwoman Adams, Ranking Member Keller, and members of the Workforce Protections Subcommittee for having me here today.

My name is Aaron Seyedian. I am a member of Hand in Hand and the founder of Well-Paid Maids, a living-wage home cleaning company that operates in the DC and NY metropolitan areas. Well-Paid Maids has over 30 employees, has been in business since 2017, and has paid out over \$1.5m in living wages to date.

As an employer of domestic workers, I strongly support a Domestic Workers Bill of Rights. Having served more than 3500 customers to date, I know that extending fundamental labor standards will help address rampant worker exploitation in this industry and ensure a level playing field for businesses without harming consumers. In the course of growing my business, I have hired over 100 employees and interviewed hundreds more. While my company takes on people from a variety of professional backgrounds, we have hired many people with prior domestic work experience. Based on what candidates and employees have shared regarding their work history, I can confirm that wage theft, misclassification, and overwork are rampant in this sector and I believe that a Domestic Workers Bill of Rights would be the first step toward curbing these practices.

Furthermore, as the owner of an agency that hires cleaners as W-2 employees and provides them with health, dental, and vision insurance, as well as 22 paid days off per year and employer-paid commuting, I believe that allowing non-agency employers to skirt all basic labor standards is an unfair, anticompetitive practice that drives perverse incentives throughout this industry. As an employer, this is a market fairness issue. In having to compete against non-agency employers that have essentially no legal obligations to their employees, many of my competitors engage in a race to the bottom on labor standards. The same issues I identified above regarding home-based work – wage theft, misclassification, and overwork – are widespread across the greater cleaning industry. A fundamental reason for this stems from companies having to compete on price in an environment where workers can currently be hired without regard to the minimum wage or overtime. A Domestic Workers Bill of Rights would help to address this.

Finally, I am happy to report that based on my experience selling domestic work, consumers will be happy to support this bill. Customers have flocked to my business due to our higher labor standards and they are relieved to find a professionalized solution to their home cleaning needs. By helping to professionalize and elevate this essential work through a Domestic Workers Bill of Rights, the government can help Americans, who by and large want to pay fair wages and provide fair working conditions, hire domestic workers directly with confidence that they are doing it the right way. Furthermore, enacting this bill will help spur positive changes in labor standards throughout the domestic work cleaning industry, including among agency employers. Thank you again for allowing me to speak today. I look forward to your questions.

Additional Materials to the Subcommittee Submitted by Dana Barnett

Steve Way Testimony

My name is Steve Way. I am 31 years old, I am an actor, and I was born with Muscular Dystrophy. For over five years, I have hired personal care attendants to assist me with my basic needs, so I can have a successful career and live a fulfilled life.

The attendants who support me are professionals who act with precision and care to ensure my safety and well-being. I can say with confidence that they are the reason why I'm still here today.

My life has never been more in danger than it has throughout the COVID-19 pandemic. It was my personal care attendants who worked with me to create a plan to stay safe without sacrificing my standard of care.

Let us make no mistake, home care workers are an essential workforce providing millions of people with disabilities and older adults with the care they need to survive, live, and age with dignity— which is why it is so important that they are paid fairly and have the same workplace protections as other healthcare workers. Their care is essential.

Right now, despite the fact that the number of people requiring care is growing, there aren't enough workers to meet the demand. Home care worker turnover rates are also dangerously high. Every day I hear stories from people in the disability community about having to sleep in their wheelchairs, not being able to use the bathroom, or going without meals, because they can't find home care workers. Nobody should have to suffer, or live in fear of injury or death because of lack of care. But that is what is happening throughout this country every day.

We can solve this crisis by making care jobs good jobs. It is time that Congress make long-overdue investments in home and community based services. This will raise wages, increase access to services, and create new and necessary pathways for care jobs in the future. Congress must make this investment now.

We also need to pass the National Domestic Worker Bill of Rights to provide additional necessary workplace protections for home care and other domestic workers. These include protections from harassment, wage discrimination, wrongful termination, and more.

We have a once-in-a-generation opportunity to invest in care solutions that will uplift workers and their families, as well as the people they care for. Investing in HCBS and passing a Domestic Worker Bill of Rights is what we need to ensure a just and caring economy for all.

Additional Materials to the Subcommittee Submitted by Dana Barnett

Meredith Bogue Testimony

Hello, my name is Meredith Bogue, and I appreciate the opportunity to be seen and heard as a caregiver.

Agencies that take half of workers' pay, and families' inability to subsidize poor pay with cash have created a system that puts undue burden on families and exposes the most vulnerable among us to high levels of neglect and abuse.

I inadvertently began working as a caregiver in my early twenties when my then husband returned from his first tour in Iraq with PTSD. He suffered a traumatic brain injury during his second tour, and by age twenty-five, I found myself the unpaid full time caregiver to two young children, a wounded soldier, my paternal grandparents, and my aging mother-in-law.

I am currently a primary caregiver to my grandmothers who are 93 and 101, and live at home with a combination of private and state funded care. Nearly twenty years of family caregiving responsibilities has largely kept me from working full time—a circumstance that has left me more than half a million dollars behind in personal earnings, and prevented me from contributing to the economy. It has changed my relationship with the people I care for, often not for the better.

Worse than my personal financial loss or having to manage my grandmother's bathroom hygiene, is what my cousin is currently enduring. Three years ago, she left her life in Florida and returned to Connecticut to care for her mother. She was paid a stipend by the state that amounted to less than \$5.00 an hour after an agency took nearly half of the state's investment in her. The moment my aunt passed away, she lost that income. Being paid a stipend rather than a salary made my cousin ineligible to collect unemployment benefits. Life insurance only covered the bills that accrued as she waited for the check to arrive.

Today, two months after losing her mother, my cousin is penniless and looking for work in a market that considers her last three years wasted as unskilled labor.

Though the pandemic initially made finding care outside our "bubble" impossible, increased access to care for my grandmothers and the return of my children to school has recently allowed my return to part time work outside the home as a volunteer coordinator for the Jonnycake Center of Westerly, a medium size nonprofit that operates a food pantry, social services office, and 6000 square foot community thrift store serving clients in south western Rhode Island.

As an employer, I don't want to be part of the problem, but I also don't want to be in violation of a contract with an agency by subsidizing poor pay with cash. I'm so grateful for the support our family has benefited from by hiring in-home care for my grandmothers. The work of family caregiving and of the hiring, onboarding, and bureaucratic process of in-home care is incredibly isolating, and there has to be a better

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way, one that underscores the interdependence between worker and employer and ensures that nobody's livelihood comes down to luck. Thank you for your time.

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Donna Schneiderman Testimony

My name is Donna Schneiderman, and I've been a member of Hand in Hand: The Domestic Employer Network since it was created following the passage of the NYS Domestic Workers' Bill of Rights in 2010. And I was actively involved in the campaign for the NYS Bill organizing other employers of domestic workers to advocate for domestic workers' right alongside of and as allies to domestic workers. The campaign energized me then and continues to inspire me to remain part of this movement and speak with you here today.

When I first learned about the movement for domestic workers' rights my husband and I were employers of a nanny for our two daughters – who are now 21 and 24 - and a housecleaner one day a week. Hearing about the campaign was a "light bulb" moment for me as it prompted me to consider our role as employers and our home as another person's workplace.

Although my husband and I had a very good relationship with our nanny, and believed we were decent and fair in how we addressed pay and time off, I often wondered if we were always doing the right thing as employers. I recognized that we lacked guidelines, standards and resources that could help us structure our employer/employee relationship. Instead, we relied on park bench conversations with other parents and nascent-internet searches to figure things out regarding overtime, sick pay and vacation time. All along knowing that it didn't seem right for us to be making decisions about another person's livelihood in this way.

So, when I heard about the campaign for the Domestic Workers' Bill of Rights, it just made sense. I believed then, and still do, that the Bill of Rights is important to employers by providing guidelines that can ensure fairness, and as a result, fosters a respectful workplace that values the work of the employee. This also serves one's children – who benefit from observing those who care for them are respected and valued.

As I became active in the campaign work, and subsequently with Hand in Hand's efforts to educate employers about the Bill of Rights and their role as employers, I've had the honor of partnering with domestic workers, as an employer ally and advocate. I've learned over the years that while there are many employers aiming to be fair, despite the lack of standards, unfortunately there are many employers who actively take advantage of their employees, or who are willfully ignorant at the expense of their employees.

Often this is due to the socio-economic, class and racial equity issues in our society and that lie at the core throughout the history of domestic work. Hearing the workers' stories has energized me even more to continue to be involved in advocating for any measures that raise awareness of the importance of domestic work and improves the standards and economic opportunities for domestic workers.

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If the COVID pandemic has taught us anything - it's that domestic work is essential work; it is the work that makes all other work possible. Domestic workers are the backbone of our economy and deserve the same job protection, benefits, and resources that any other job sector has. And employers need guidelines and standards to ensure that care work is valued, and care workers treated as any other employee – with respect and fair terms.

I'm here today speaking as an employer in favor of the Domestic Worker's Bill of Rights as who knows that even those with the best intentions of being fair employers may not really know what that requires. I believe the national bill of rights will help build a strong foundation from which the domestic workers segment could strengthen and grow. In the ten states and two cities that have introduced policies protecting domestic workers' rights, the process has allowed for increased awareness among employers that their home is a workplace and has paved the way for better working conditions. It's time that federal legislation be made a reality to ensure all 2 million domestic workers in the United States benefit from basic labor policy.

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Jensen Caraballo Testimony

Hello, my name is Jensen Caraballo. I'm here today to speak strongly in support of the Domestic Worker Bill of Rights. This policy is needed for the dignity of all domestic workers who provide critical care to millions of households across the country.

I employ a home attendant in my home, who I hired in order to be able to live in my own home in the community. My other option is to live in a nursing facility. I already spent 7 years institutionalized and I fought hard to get out. My home is the safest place for me to live, because it allows me agency to live as I wish.

People are dying and being abused and neglected every day in nursing homes. Without independence in places like these, people lose their dignity and have to live by values, schedules, and policies that are damaging.

But hiring and retaining a home care attendant isn't easy. First, there is a shortage of workers across the country that is most severe in New York. Home attendants earn very little money for extremely intimate, physical, and emotional work, and many would prefer to work in the service industry, where they can earn more money for less taxing work.

Passing the National Domestic Workers Bill of Rights is one way to encourage more people to into this workforce—when they have recourse against discrimination, wage theft, and unsafe working conditions, more people will want to work in this critical industry and ensure that everyone who wants to live in their homes doesn't face institutionalization.

The basic benefits included in the National Domestic Workers Bill of Rights are absolutely crucial to every worker. And the workers who make many parts of my life possible deserve no less. My ability to live on my own terms depends on my ability to hire someone to work in my home, and that depends on being able to provide that person a job in which they feel dignified, respected, and valued. This is true for all domestic workers, and we must make this the law so that these workers earn basic rights and are empowered to enforce them. Thank you for your time.

Additional Materials to the Subcommittee Submitted by Dana Barnett

Jordan Goldwarg Testimony

Hello, My name is Jordan Goldwarg. I live in Seattle, Washington—the first city to pass municipal legislation giving rights and protections to domestic workers, and I am thrilled to be here today to support the National Domestic Workers Bill of Rights.

As someone who cares deeply about social justice, I have been advocating for domestic worker rights through my involvement with Hand in Hand: The Domestic Employers Network, since 2019. Hand in Hand brings together people like me, who employ someone in our homes—in my case it's a housecleaner named Lincoln—to stand in solidarity with domestic workers in their fight for fair wages, better working conditions, and legal protections.

I also serve on the City of Seattle's Domestic Workers Standards Board, where I work alongside other domestic employers and domestic workers to ensure fair and dignified working conditions for our city's nannies, house cleaners, home attendants, cooks, and gardeners. We are proud to have recently issued our first set of recommendations to the Seattle City Council.

Both as a house cleaner employer and member of the standards board, I have seen first hand the impact of good quality jobs on the quality of care and support workers are able to provide.

First, I believe strongly in the importance of written agreements between domestic workers and employers. In my day job, I serve as the Executive Director of a nonprofit organization, and I see how vital it is—not to mention legally necessary—to have written agreements that cover things like wages, sick leave, and other benefits. My employees take it for granted that these things will be spelled out at the time of hiring, and it should not be any different for the employee who works in my home.

Second, the exclusion of domestic workers from labor protections is part of our shameful racist history. We now have a chance to begin correcting the mistakes of the past by passing a bill of rights that protects against discrimination in employment for domestic workers.

Third, in Seattle, we have also seen that the presence of our Bill of Rights has served as a powerful educational tool to help employers of domestic workers understand that they have responsibilities toward their workers. Creating opportunities for workers to know their rights and employers to know their responsibilities ensures that while much of this work may happen in isolation, learning what governs the industry doesn't have to.

My home is a workplace, as are the homes of millions of others across the country. The workers who provide essential care and support in those homes deserve the same rights and protections as any other workers.

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Cassandra Waters Testimony

My name is Cassandra Waters. As an employer of domestic workers, I strongly support the National Domestic Worker Bill of Rights. I employ house cleaners in my home, and it has been a critical source of support that has enabled me to work outside the home and care for two young children.

The COVID-19 pandemic has underscored how truly essential domestic workers are to our economy and our society, it is long past the time for their work to be recognized and valued. The Bill of Rights is needed so that all domestic workers, who provide vital care to millions of people across the country, are treated with respect and can exercise their fundamental rights. I believe that this bill will benefit everyone.

As an employer, I know that I would benefit from clear rules and regulations. It is hard to figure it out on my own. I have to put more effort personally into trying to figure out how to provide fair working conditions that I would if there were rules in place. While I strive to ensure high standards for the workers in my home, domestic workers shouldn't have to hope for well-intentioned employers to ensure safe and dignified working conditions.

I see increasing protections for domestic workers as a matter of gender equity, both by valuing the overwhelmingly female workforce that does this work and relieving the domestic and caretaking burdens that largely fall to women.

In my day job, I work on issues of gender-based violence and workplace harassment at work, from this work I know that domestic workers face disproportionately high rates of sexual harassment, racial harassment and violence at work. This is why it's particularly unacceptable that domestic workers are currently unprotected in most states.

I'm honored to be working with NDWA to end the historic legacy of racism and sexism that is at the heart of why domestic work is not treated the same as other work, even as the pandemic has driven home how essential domestic work is

I know how much I have relied on domestic workers, to enable me to focus on work, then come home and enjoy time with my family rather than just worrying about a gigantic list of domestic tasks that need to be done. The workers who made that possible for me deserve the same -- fair wages, access to paid leave and respectful and dignified working conditions. I urge you to support this measure.

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Alyce Desrosiers Testimony

Hello, my name is Alyce Desrosiers. I'm the founder and executive director of The Institute for Families and Nannies. I have 27 years of experience working directly with parents and domestic workers supporting them to provide quality childcare. One key indicator of quality care is low turnover.

When parents and domestic workers have contracts defining the terms of their working relationship, turnover rates are low, parents have stable childcare to manage work and family responsibilities and children receive quality care.

Parents and nannies have a unique working relationship that is both professional and personal. Work is in the parent's home and the work is caring for the most important person in a parents' life. The likely economic, social, and cultural differences between parent and domestic worker often create misunderstandings that lead to unnecessary termination. Contracts mitigate these terminations by setting clear expectations on pay, schedules, and responsibilities. Low turnover rates are an indicator of quality care.

Contracts are only one piece of the education puzzle for domestic workers and employers, though. Making sure that domestic workers know their rights and are well-prepared to do these difficult jobs is a critical part of this policy. When domestic workers receive education, job training, and access to information about their rights, the quality of care in private homes is improved. Education and support at work help to professionalize this industry and to end the ongoing casual nature of the work that is both the cause and result of limited policy protections.

The jobs domestic workers are doing in our homes are critical to ensuring that their families are fed and housed. When we deny them basic civil rights like freedom from discrimination and no recourse from the actions of negligent or abusive employers, we are showing how little we value their hard work. This negatively impacts the entire industry, because it underscores the fact that these jobs should be good, dignified jobs. As the need for quality in-home support grows, we have an opportunity to show current and future domestic workers that their work is professional, it is valuable, and in fact, our economy depends on it.

We urge you to ensure domestic workers receive the education, job training, and basic worker rights to ensure quality childcare by passing the National Domestic Workers Bill of Rights.

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Elana Dean Testimony

Hello, my name is Elana Dean. I'm here today in support of the National Domestic Workers Bill of Rights. I have employed both nannies and house cleaners at different points over the past five years. I am a strong advocate for the Domestic Workers Bill of Rights for these nannies and housekeepers, and for other domestic workers, who have provided such important care to my family – and who do so for many families around the country. I know that this bill will benefit everyone – employee and employer alike.

I hired our first nanny when my oldest daughter was a year old because there were no spots open in any daycare nearby. We ended up doing a nanny share with another family in the neighborhood, since we wanted to pay her the going rate and it was too expensive for us to do so alone. A few months into the employment, we began an online search for a contract template. It had become apparent how important it was to have a shared document detailing elements of the job and employment. For example, one day the nanny called in sick, but she noted how she had been hesitant to do so and she wasn't expecting to be paid for that day. Since we hadn't discussed paid sick days - not to mention having it written out in a contract - we don't know if she had felt compelled previously to come to work while sick. This is just one example of something that could have been clarified at the beginning of the working relationship, for both the nanny's and families' benefit.

In 2019, we again hired a part-time nanny to help when my second daughter was an infant. This personal care during a very vulnerable period was so greatly appreciated. Still to this day I am grateful we were able to afford having such a kind and skilled person help us.

I also want to share a bit about my relationship with a number of nannies who used to work at a daycare that my oldest daughter attended until she aged-out, and my youngest daughter attended until the pandemic shutdown. Due to poor working conditions – including lack of PPE during COVID, wage theft, and workplace intimidation – a number of these women were compelled to leave the daycare to find other work. A group of parents, including myself, helped a number of these women connect to nannying jobs in the area. Some have been happy with their new jobs and employers, while others have not been. Many have had difficult and unstable experiences in their new industry. For example, one nanny was offered a position with a family, and then - with no recourse - had her offer withdrawn a few days before the start date. As the sole family earner, with two sons depending on her, she was left in a bind. I have heard a number of stories over the past couple years that similarly underscore the importance of having more workplace protections.

To me, it seems absolutely essential – and basic – to include domestic workers in laws that assure them freedom from discrimination and harassment in the workplace and to a safe and healthy working environment. It seems essential to require written contracts, and to fund community-based enforcement. Have I mentioned that the nannies I have employed and communicate with are all immigrants? From Brazil, Honduras, El

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Salvador. And the house cleaners? From all over Central America and West Africa. These women – women of color, immigrants – are very vulnerable to the whims of their employer. These women also make working and raising children possible. It takes a village, and in *our* society, we often need to hire this village, particularly in the early years of children's lives. We trust them with the most important people in our lives, in our own homes. The basic provisions included in the Domestic Workers Bill of Rights get my full support as an employer, and I hope it is only the start of supporting this essential workforce.

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Julie Horowitz Testimony

As an employer of a nanny and a house cleaner, I learned about the ordinance and best practices for hiring entities through the outreach efforts of Hand in Hand. I wanted to be a fair employer, who lives my values of supporting the rights of domestic workers. But never having been a domestic employer — and never having anticipated or prepared for this role, I didn't know all of the aspects of what to think through, how best to create a contract, knowing what break times should be, and many other elements. Our societal norms of undervaluing domestic workers (and the racism and sexism that underpin this) is so pervasive, despite the critically important role that domestic workers play in supporting the wellbeing of our families. It took active learning and seeking to understand the elements of creating a fair, supportive workplace.

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Richard Lechtenberg Testimony

As an employer of a nanny, it can be confusing and unclear how to be a good employer, and how to follow the local ordinance. Through the educational efforts of organizations like Hand in Hand and other DWSB partners, my family has been able to understand what is required and what is best practice, and make sure we are treating our nanny with the dignity the work deserves. While families like us often don't think of ourselves as employers, outreach and education efforts are essential to making sure we are aware and create safe workplaces. As my partner and I are both working full-time and supporting the COVID-19 response, having someone take care of our son has allowed us to focus and feel secure knowing he is taken care of. Domestic workers make our own work possible.

