

TESTIMONY BEFORE THE SENATE COMMITTEE ON HUMAN SERVICES

MINNESOTA LEGISLATURE

MARCH 20, 2023

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Disabled workers in the “14(c)” program are paid wages below the minimum that enable them to work for private sector businesses either on site, or in employment centers where projects are completed under contract such as recycling or kit assemblies. I know because my disabled daughter Elizabeth is employed at such a center and has worked there for over ten years.

Advocates of ending these private sector jobs by eliminating the “subminimum wage” include the recent task force of the DHS on Eliminating the Subminimum Wage (whose foregone conclusion is enshrined in its title).

They and the authors of the current bill have made two major errors--with terrible consequences for disabled adults working at these jobs. The current bill misapprehends both the basic realities of the Minnesota labor market and undermines the standards of equity it purports to defend.

Our disabled daughter Elizabeth, who is 35, has worked successfully and with real job satisfaction at an adult employment center with her peers for the past decade. Her earnings are modest--but that is hardly the point. Our experience belies descriptions of workplaces like hers as Dickensian dens that “segregate disabled people from their communities” to engage in “monotonous work”. Far from placing them in an environment in which they are exploited, such centers protect vulnerable adults from the risks and possible abuse they would face in an unfettered job market.

Elizabeth receives a wage based on an established record of her productivity, which is not sufficient to support her, but does not cause her federal disability income to be reduced. Some of her co-workers stay at the center while others go into the community to work at businesses such as local supermarkets, where they are carefully supervised but in no way segregated.

I will make four points.

First, suppose an employer at a supermarket faces the choice of hiring someone to stock shelves. One applicant can stock them at twice the rate of another applicant, who has cerebral palsy. Both are required to be paid the same minimum wage. Who will get the job? Probably not the disabled worker. Without the subminimum wage allowance, even employers who want to hire the disabled will have a disincentive to do so and many more such workers will never find jobs at all. If the price of something is increased, the quantity demanded will tend to decrease. Workers with disabilities are no exception to the elementary principles of the law of demand. Forcing them into a higher wage bracket is a form of cruelty to make the forcers feel virtuous.

Second, paying all workers, disabled or not, the same wages confuses two types of equity. One is that those similarly situated should be treated the same. The other is that those who are not similarly situated should be treated differently. Those advocating the elimination of subminimum wages confuse the first type of equity with the second. A worker with cerebral palsy is not the same as a worker without it, and they should not be treated as if they are.

No one would deny the right of any worker to seek employment at any wage at or above the minimum. But to deny the opportunity to make less than the minimum wage to those disabled workers who desire and enjoy such employment is to deny both market reality and their own reality of disability. In the end, it will mean that many more such workers will be closed out of the marketplace and will remain unemployed and home alone. It may also cause many disabled adult employment centers to shut down, reminiscent of Reagan era efforts to close centers for the mentally ill and leave them to fend for themselves.

Third, this bill has been supported in the name of freedom of choice: freedom to choose by those working at less than minimum wage and find competitive jobs outside of their current workplaces. But two separate measures of this freedom tell a very different story, and offer added evidence against this proposition. First, the U.S. Civil Rights Commission, in a 2020 report, received nearly 10,000 comments (9700) on ending the 14(c) wage, from all 50 states. Ninety-eight percent (98%) of these comments supported keeping this wage program in place (U.S. Civil Rights Commission, 2020, p. 89). Second, the Minnesota Vocational Rehabilitation Service (VRS) is required to counsel any disabled person receiving below minimum wages and encourage them to find other wage employment. It found that in the six years of this counselling, over 90 percent of the roughly 6000 people receiving this service did not want to leave their current below minimum wage jobs. Can you blame them? Do you respect their freedom of choice?

Fourth, evidence from three other states that have eliminated below minimum wages is deeply disturbing, as reported by a national group representing autistic adults (NCSA, 2018). In Maine, two-thirds of disabled former workshop employees are now unemployed. Those who are still working work an average of 12 hours a week, the lowest average in the country. In Washington State, 80 percent of those with severe cognitive impairment remain unemployed. In Vermont, there are now fewer developmentally disabled adults in supported employment than in 2002, when employment workshops closed. As the document citing these failures states in conclusion: “when sheltered workshops close, participants often end up idle at home, not in competitive, minimum wage jobs”.

Let me summarize. First, this bill will raise unemployment among disabled workers, as it has in other states. Second, it is unfair and inequitable in failing to acknowledge disability as differentiating some people from others and meriting appropriate accommodations. Third, it patronisingly denies the disabled the freedom to choose to work at 14(c) wages when they have expressed a clear preference for doing so. Fourth, it runs directly in the face of the evidence from other states that a dismal future awaits those disabled adults when below minimum wages are eliminated and their workplaces close.

References

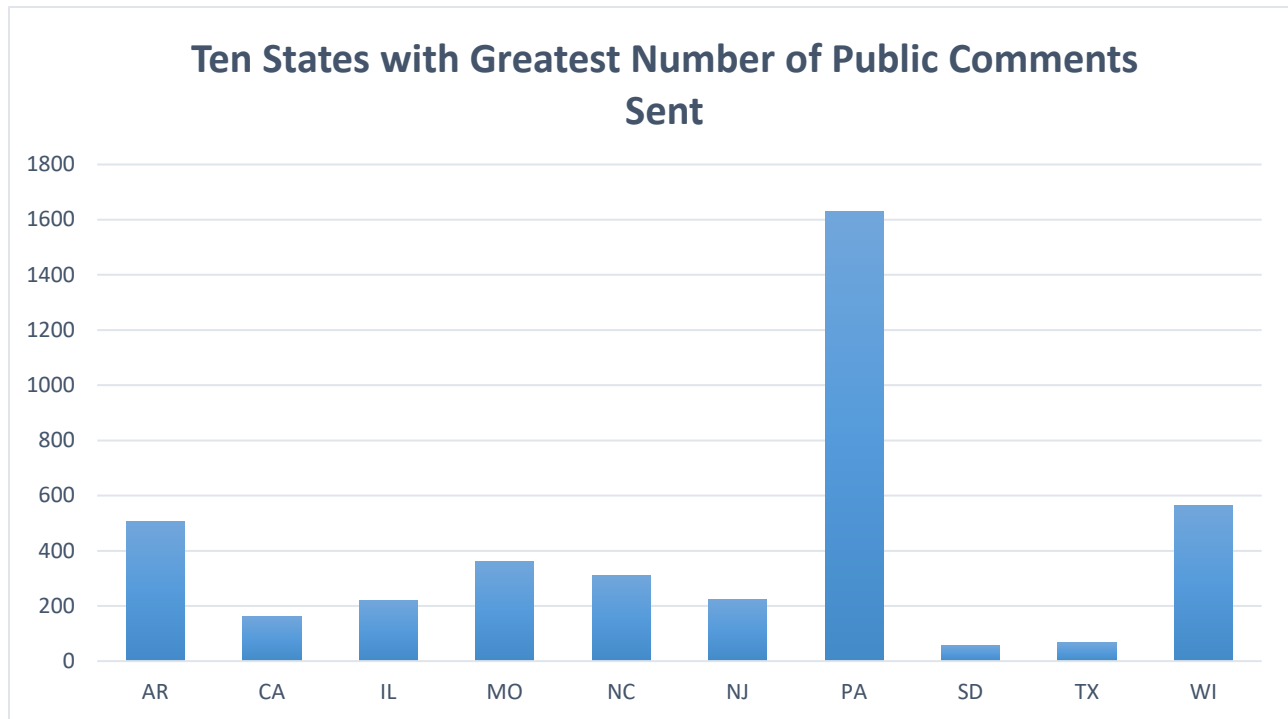
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U.S. Civil Rights omission. 2020. *Subminimum Wages: Impacts of the Rights of People with Disabilities*.
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Subminimum
Wages:
Impacts on the
Civil Rights of
People with
Disabilities

**U.S. Commission on Civil
Rights 2020 Statutory
Enforcement Report**

Chart 2.9



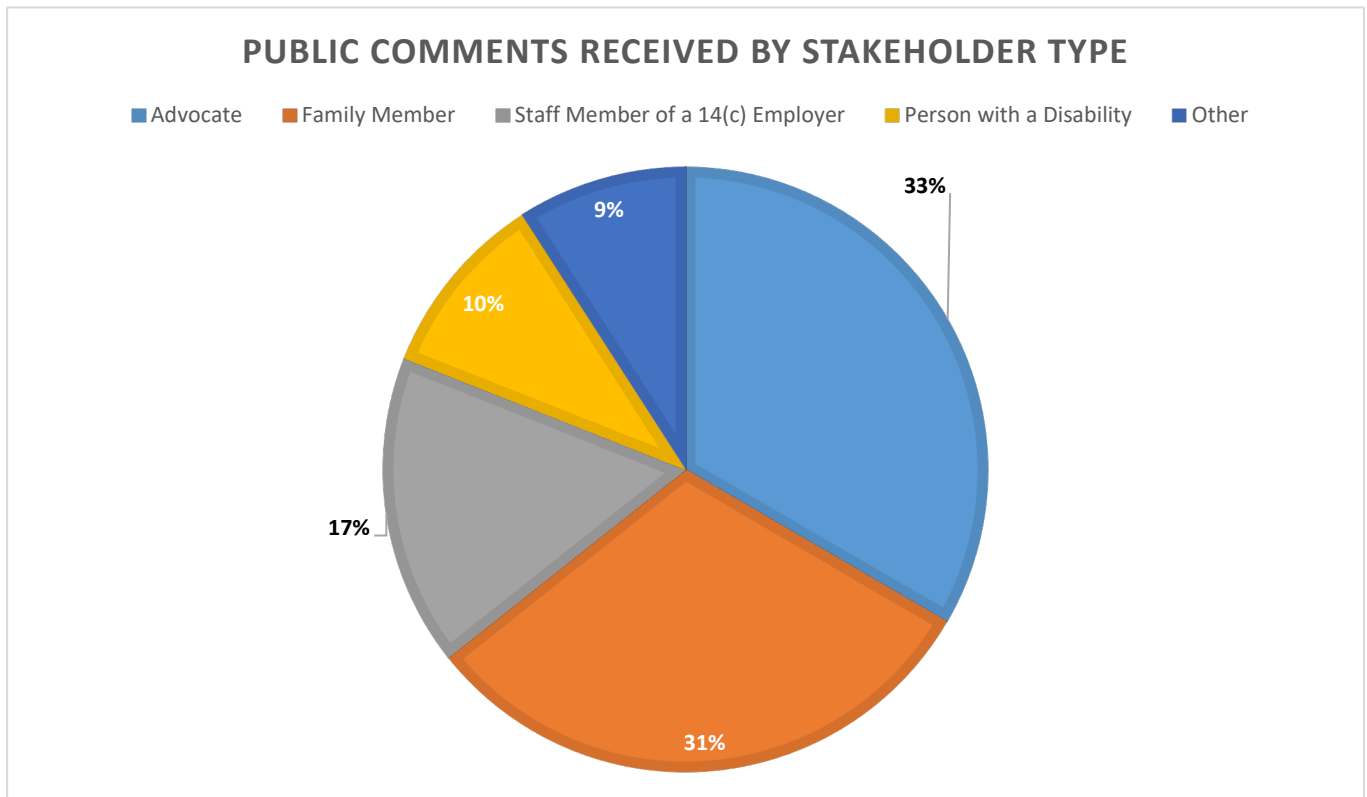
Source: U.S. Commission on Civil Rights

The Commission received comments from various different stakeholders with interest in the 14(c) program.⁵⁵² Thirty-three (33%) percent of the comments received came from an advocate. Thirty-one percent (31%) of comments received were sent by a family member of a person with a disability, seventeen percent (17%) came from staff members of 14(c) certificate holders. Self-identified individuals with disabilities made up ten percent (10%) of all public comments the Commission received. Nine percent of individuals who submitted public comments did not fit into any of the aforementioned categories.

Ninety-eight percent (98%) of people who sent a comment to the Commission expressed the opinion that the government should keep the 14(c) program. One percent (1%) of comments received advocated for the repeal or phase-out of 14(c), and another one percent (1%) of public comments did not express an opinion on whether to maintain 14(c) or do away with the program.

⁵⁵² Stakeholders who sent public comments to the Commission may be identified by multiple categories.

Chart 2.10



Source: U.S. Commission on Civil Rights

The majority of the public shared their opinion with the Commission by adding their signatures to online petitions. Many of the petition signatures came from A-Team, a grassroots organization that supports the continued use of 14(c) certificates. One A-Team petition consisting of 4,687 signatures simply stated, “Support people with disabilities to choose where they want to work.”⁵⁵³ Another petition circulated by A-Team to supporters of 14(c) consisting of approximately 1,452 signatures cautioned that, “If Section 14c were to be eliminated from the [[Fair Labor Standards Act], individuals with the most significant disabilities will lose their work opportunities and will be subject to staying at home, eventually succumbing to the desolation that can result from being inactive and unemployed. Everyone has a right to work.”⁵⁵⁴ The A-Team petitions included signatures from people in all 50 states. The Commission also received a petition organized by Lighthouse Vocational Services, a 14(c) workshop located in Pennsylvania signed by 1,296 individuals that stated, “Support Employment CHOICE for People with Disabilities.”⁵⁵⁵

⁵⁵³ A-Team Petition received Dec. 2019 (4,687 signatures).

⁵⁵⁴ A-Team Petition received Dec. 2019 (1,452 signatures).

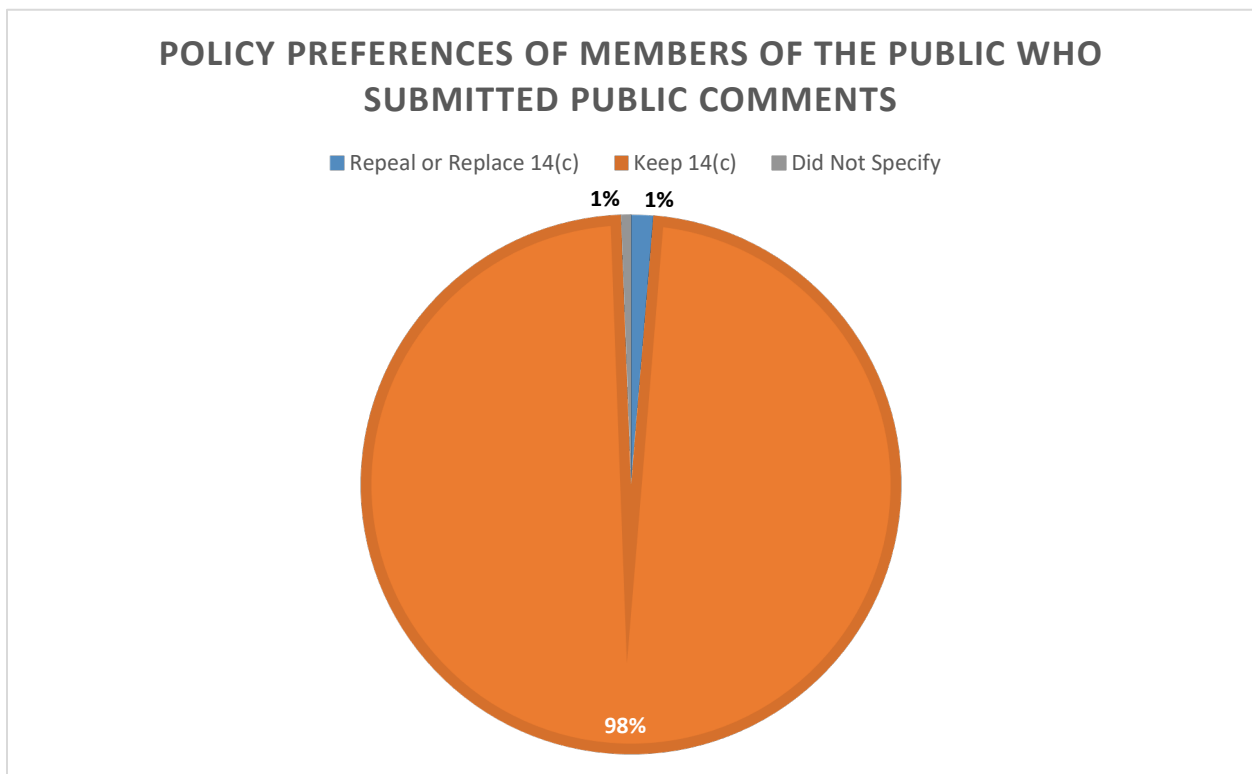
⁵⁵⁵ Lighthouse Vocational Services Petition received Dec. 2019 (1,296 signatures).

Public Comments Favoring Section 14(c)

Common sentiments expressed in letters that support keeping 14(c) include the value in knowing that a loved one has a place to go each day, and the sense of value that one receives from being employed and receiving a paycheck, no matter how small. Family members of people with disabilities in particular argued that they and their relatives with disabilities should be able to choose where to work, and that working in 14(c) workshops is a choice that should not be taken away by federal legislative action. Many fear that after eliminating subminimum wage employment, people with disabilities will not be able to effectively compete in the open market and will end up unemployed. One commenter expressed that:

[Sheltered workshops] provide much more than a salary for people with I/DD. They provide an opportunity for an enriching life. Please do not eliminate sheltered workshops. These workshops serve a very needed and important role in the lives of people with disabilities. Many of these people do not understand the concept of money. Taking away the environment in which they thrive and feel comfortable would do more damage than increased wages would do good.⁵⁵⁶

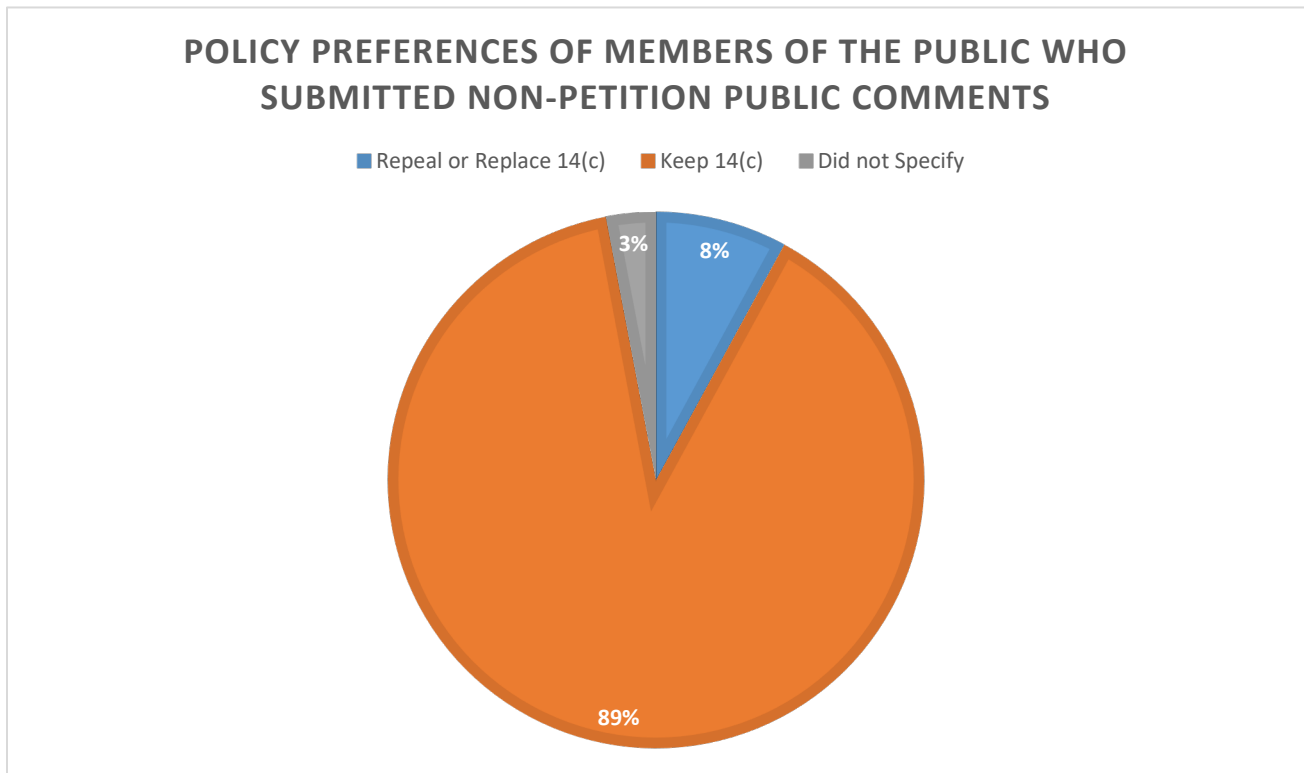
Chart 2.11



Source: U.S. Commission on Civil Rights

⁵⁵⁶ Public Comment No. 509 for the Subminimum Wages Briefing before the U.S. Comm'n on Civil Rights.

Chart 2.12



Source: U.S. Commission on Civil Rights

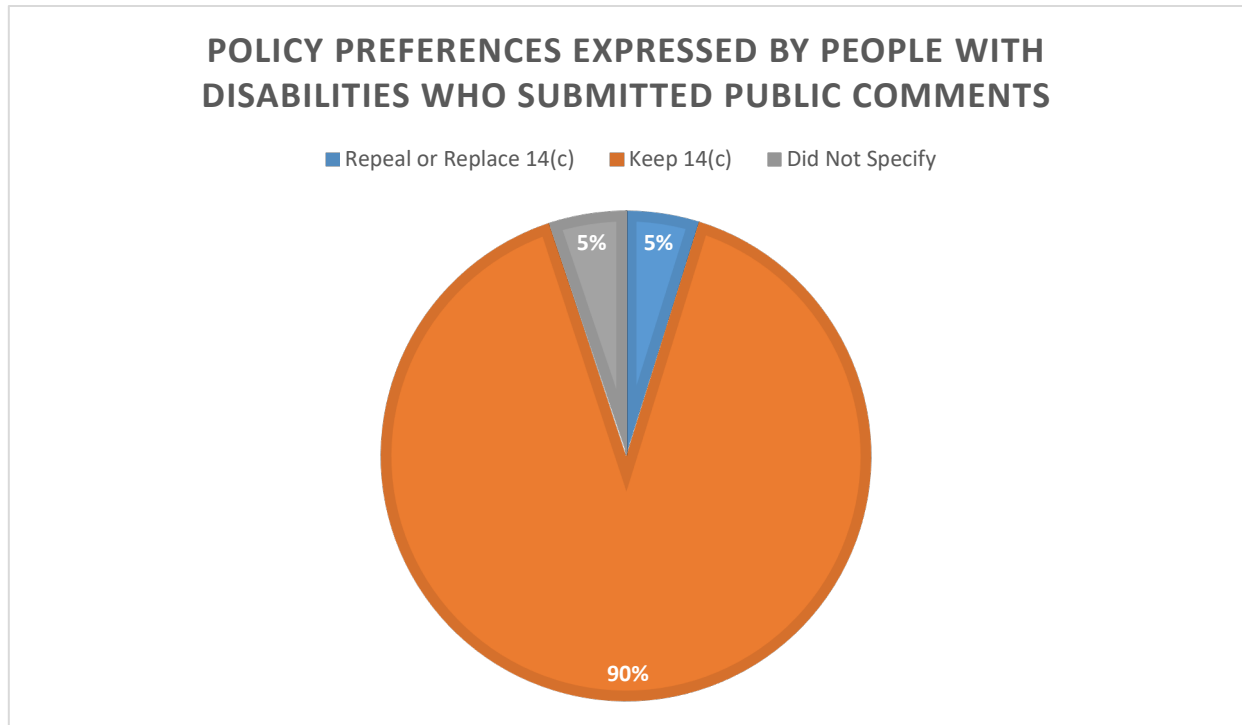
Many of the public comments the Commission received from people with disabilities expressed concern about losing a job or stated that the commenter enjoyed his or her job and did not want it to disappear. Some people with disabilities expressed that having the 14(c) program as an employment option protects their rights, and that it would be a violation of their civil rights to take away the choice to work for a 14(c) employer at a subminimum wage. One person with a disability emphasized the importance of choice, stating “I am here because I choose to be here and because this job matters to me. When you write your report on places like where I work, please remember me and don't take away my right to choose where I work.”⁵⁵⁷ Another commenter stated that “I like being able to work and don't want to work at different places and feel like repealing [14(c)] would not let me continue working.”⁵⁵⁸ People with disabilities also shared their concern that they may end up making less money if 14(c) were to be eliminated or phased out either due to not being able to work as many hours as before, or due to losing their employment completely.⁵⁵⁹

⁵⁵⁷ Public Comment No. 6,444 for the Subminimum Wages Briefing before the U.S. Comm'n on Civil Rights.

⁵⁵⁸ Public Comment No. 480 for the Subminimum Wages Briefing before the U.S. Comm'n on Civil Rights.

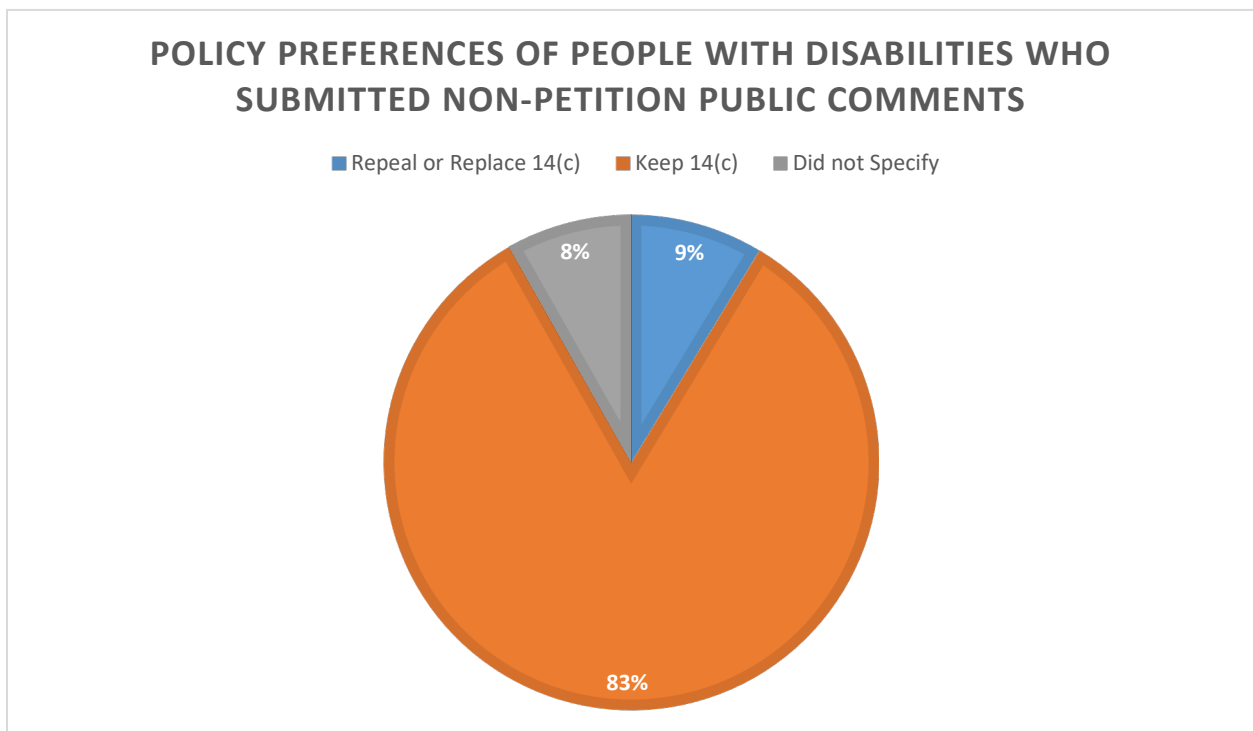
⁵⁵⁹ See e.g., Comment Nos. 273, 1,200, 1,330, 2,095, for the Subminimum Wages Briefing before the U.S. Comm'n on Civil Rights.

Chart 2.13



Source: U.S. Commission on Civil Rights

Chart 2.14



Source: U.S. Commission on Civil Rights

Another person with a disability discussed the social benefits received from work, stating, “I have been working 6 months but before I had no social life and was bored. The repeal of 14c would result in me losing friends and being unhappy.”⁵⁶⁰ One person with a disability wrote about how employment at a 14(c) site adds value beyond a paycheck:

I like working at the workshop because I feel safe. It is easy to make friends. I like the different jobs we do (some better than others).

I use the money I earn to pay my share of rent at my brothers [sic] house. I am also able to take vacations with my family.

I think it would be hard to work at a normal job and compete with other high school graduates. IF [sic] I were not able to work and earn money, I would be sad because I could not afford things and I would be bored sitting around all day.⁵⁶¹

Some people with disabilities who wrote to the Commission did not feel that the 14(c) program violated their rights. One commenter stated, “no one where I work feels as though their rights are being violated, or that they are being segregated in any way.”⁵⁶²

Family members or relatives of people with disabilities are an important constituency to include when debating the future of the 14(c) program. As discussed herein, studies show that family members are integral to change in 14(c) programs, often expressing concern or fear that their child or relative with a disability will not adapt well to integrated employment opportunities, or that they will not be able to find any employment in the competitive market.⁵⁶³ The Commission received hundreds of comments from family members of people with disabilities, the majority of whom supported the continuation of the 14(c) program. Many family members of people with disabilities expressed the concern that their family members with disabilities were either unable to work in the community because of their disability, or that they had tried to obtain a job in the community and were unable to find employment. The parents of two people with disabilities wrote to the Commission explaining that:

[W]e depend on section 14C certificates to provide them the opportunity to work and earn a wage. Our children are unable to work in the community because of so many safety issues and the need for constant supervision. They have been working in a sheltered workshop

⁵⁶⁰ Public Comment No. 1,047 for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights.

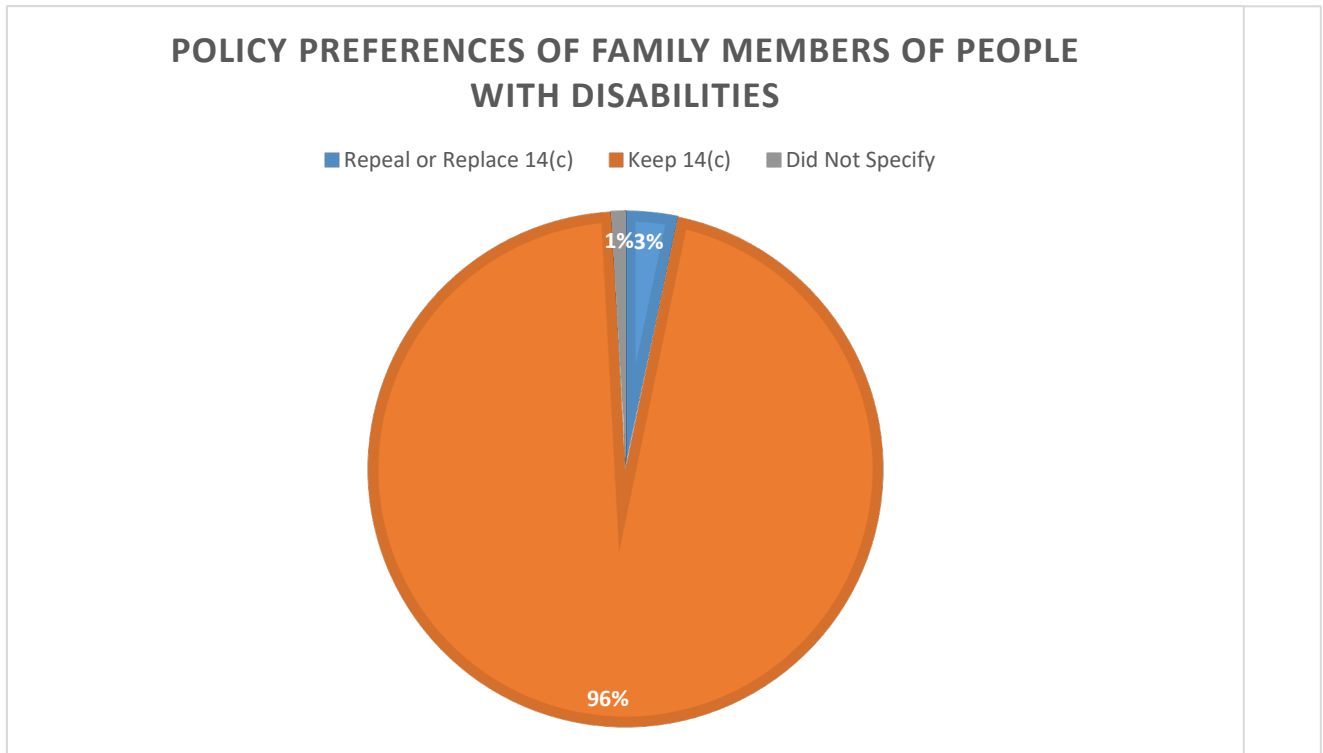
⁵⁶¹ Public Comment No. 408 for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights.

⁵⁶² Public Comment No. 838 for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights.

⁵⁶³ See, *infra* note 1068.

for approximately 20 years, and they are so happy to be able to work there, and they are thrilled to receive a paycheck every two weeks.⁵⁶⁴

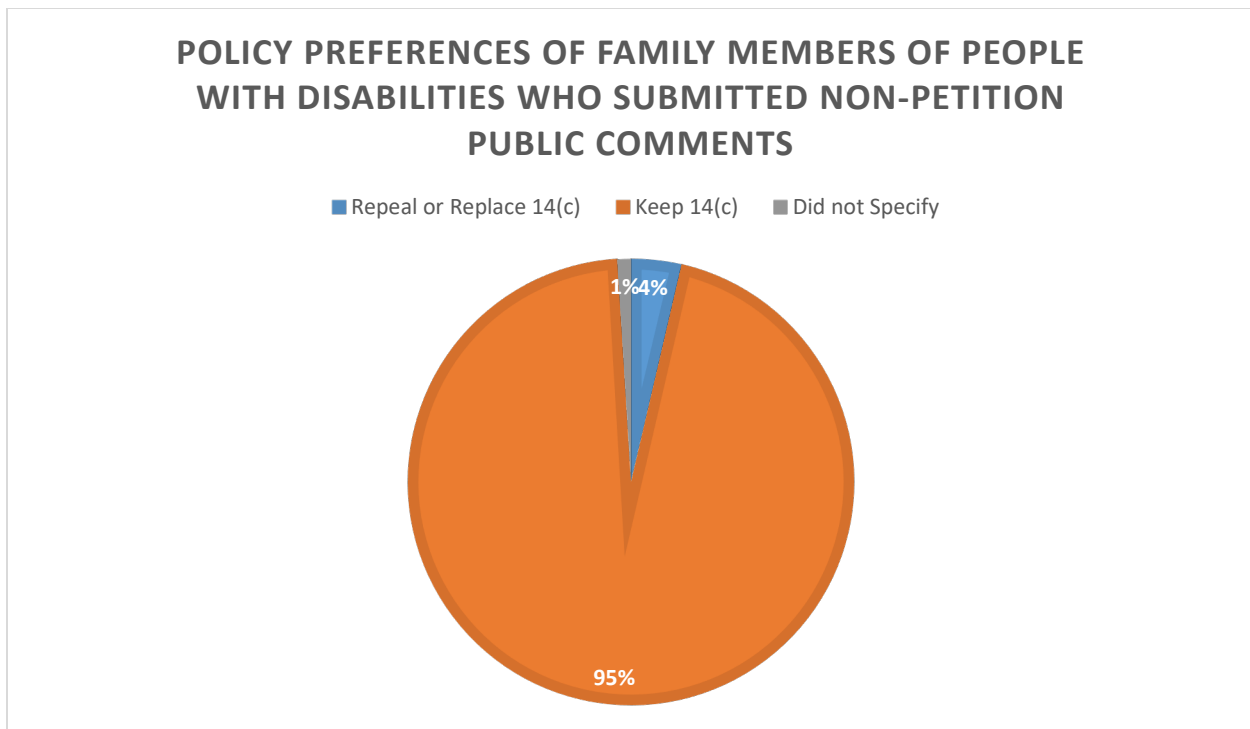
Chart 2.15



Source: U.S. Commission on Civil Rights

⁵⁶⁴ Public Comment No. 337 for the Subminimum Wages Briefing before the U.S. Comm'n on Civil Rights.

Chart 2.16



Source: U.S. Commission on Civil Rights

Another parent who wrote to the Commission was skeptical that many people with intellectual and developmental disabilities would be able to find a job in the community, stating that:

Where are [14(c)] participants going to find jobs out in the community where they can just show up when they want, work part time, work whenever they feel like it, and get paid the same as other people who can work at a 100% production rate vs. a 23% production rate or a 9% production rate? The answer is nowhere. Nobody is going to employ them unless they can perform at the same rate a person without disabilities could perform to.⁵⁶⁵

A parent of a person with a disability told the Commission about how the person had left employment in a 14(c) workshop, and how the parent wished that the person could return to the workshop:

There is a segment of the population that [sic] will never be able to get a minimum wage job in the community and needs the atmosphere of a productive workshop. It's very important to them and their caregivers. Please do not support any proposal that eliminates sub minimum wage jobs. The alternative in my son's life has played out and I wish he

⁵⁶⁵ Public Comment No. 361 for the Subminimum Wages Briefing before the U.S. Comm'n on Civil Rights.

could go back to the productive workshop environment he needs and was so satisfying to him.⁵⁶⁶

Other parents emphasized that the choice to work in subminimum wage employment is the decision of the person with a disability and should not be eliminated. One parent compared the choice to work for a 14(c) certificate holder to the choice to pursue different types of higher education or training opportunities:

This diehard belief in competitive employment, to the exclusion of all other employment options for people with disabilities, is also unfair because it robs people with disabilities of options in life that people without disabilities have available to them. For example, some young adults decide to enroll in highly competitive Ivy League universities, others choose vocational programs at their area community college and still others pursue highly-skilled apprenticeships in the building trades.⁵⁶⁷

Many family members of people with disabilities also wrote that their relatives with disabilities should have the choice to work in 14(c) employment if they so wished, with some arguing that there is a right to work for a subminimum wage or in a sheltered workshop.⁵⁶⁸ Parents of one person with a disability wrote, “[w]e are not concerned with lower pay. We are concerned that the rights of [our child] to work in a fulfilling, safe, stable job where she enjoys being part of a community is [sic] at risk due to wage debate.”⁵⁶⁹

Family members were also very concerned about whether there are adequate alternate opportunities for employment if 14(c) were to be eliminated. Many people who sent comments to the Commission shared that some 14(c) employers provide transportation for people with disabilities to and from their jobs, and that there are not sufficient transportation options available to transport people with disabilities to a job if 14(c) were to be eliminated. One family member of a person with a disability stated, “these programs provide more supervision, which protects a population vulnerable to abuse. Many provide transportation and close to full-time hours, which is extremely helpful for families.”⁵⁷⁰ Another highlighted that 14(c) certificate holders often provide more than employment, stating that:

Programs that use 14c generally provide more supervision than typical workplaces. This helps workers with disabilities be more productive, but it also makes their environment more safe and secure for them. This is a population that traditionally is very vulnerable and

⁵⁶⁶ Public Comment No. 454 for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights.

⁵⁶⁷ Public Comment No. 433 for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights.

⁵⁶⁸ Commission analysis of public comments shows that 165 comments specifically mention choice as the principal reason to keep the 14(c) program.

⁵⁶⁹ Public Comment No. 1,222 for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights.

⁵⁷⁰ Public Comment No. 362 for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights.

has suffered very high percentages of abuse. Many 14c programs provide transportation services for their employees. This is a huge benefit. Transportation is one of the largest barriers to employment for people with disabilities.⁵⁷¹

Furthermore, commenters stated that some expressed that since many 14(c) certificate holders offer services to people with disabilities other than employment, many of these services would not be provided in their community if 14(c) is eliminated without funding and planning for alternative service providers.⁵⁷² One commenter from New York stated: “People with disabilities want to and can work in mainstream jobs in their community and earn the same as their nondisabled peers but it’s not possible due to the fear of losing benefits and services.”⁵⁷³

⁵⁷¹ Public Comment No. 293 for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights.

⁵⁷² *See e.g.*, Public Comment Nos. 390, 506, 771, 2,031 for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights.

⁵⁷³ Public Comment No. 1,345 for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights.

⁵⁷⁴ Public Comment No. 786 for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights.

NCSA Position Statement on Vocational Options

The NCSA supports implementation of a full range of vocational settings reflecting the diverse needs, competencies, and preferences of this population.

The idea that everyone with autism can achieve competitive, minimum-wage employment given the proper training and supports is pervasive in the disability community, and has resulted in the defunding and closure of alternative forms of employment and more structured settings, such as sheltered workshops and specialized day programs.

Although the chief objection to sheltered workshops is financial exploitation, wage-earning is not the primary purpose of many of these ventures. Importantly, workshop compensation typically represents just a small fraction of the benefits conferred on the disabled individual: the full support package may include Social Security Income (which can be reduced as wages increase), Medicaid-funded supports, in-home assistance, residential care, behavioral support, respite, recreation, and other therapeutic services. This does not even include the money paid to workshops

for providing training and supervision in safe, structured environments – necessary structural fees that often dwarf the compensation paid directly to participants.

Data from states that have closed their sheltered workshops do not necessarily demonstrate a correlated increase in competitive, minimum-wage employment. In Maine, two-thirds of former workshop participants are now unemployed.

Those adults with intellectual and developmental disabilities that do have jobs work only an average of twelve hours a week, which is the lowest average in the country

(<https://docplayer.net/33593240-Transitions-a-case-study-of-the-conversion-from-sheltered-workshops-to-integrated-employment-in-maine.html>). In Washington state, more than

80% of those with severe cognitive impairments remain unemployed ([http://www.chcs.org/media/IDD Service Delivery Systems 082812.pdf](http://www.chcs.org/media/IDD_Service_Delivery_Systems_082812.pdf)). Even Vermont – whose push for

inclusive employment has been celebrated as a tremendous success – reports fewer adults with I/DD in supported employment since closing its sheltered workshops in 2002

(<http://cfi.ucp.org/state-scorecards/>). In short, when sheltered workshops close, participants often end up idle at home, not in competitive, minimum-wage jobs.

Of course, no one should be forced into a sheltered workshop, either. NCSA strongly supports a full range of vocational services to allow autistic adults to pursue competitive, minimum-wage employment. But any coherent vocational policy must acknowledge those whose severe cognitive and behavioral impairments preclude their participation in these settings. This requires accepting diverse definitions of “work.” When critics dismiss workshops as “not real work” and offer day programs as alternatives to severely impaired individuals, they completely disregard the meaning many participants find in their jobs.

As with residential services, the NCSA emphasizes the importance of choice in vocational settings. This includes preserving the critical option of non-competitive employment.

Adopted by NCSA Board of Directors December 10, 2018

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Letter to the Minneapolis StarTribune

March 17, 2023

Elimination will hurt, not help

We read with great interest the front-page article on HF 2513 (["Higher expectations,"](#) March 13), a bill that has been introduced in the House to "end subminimum wages for Minnesotans with disabilities." Unfortunately, while well-intended, it would actually serve to isolate the disabled by eliminating jobs for the ones who are unable to secure jobs in an integrated employment setting. Please let us explain.

One of us is the legal guardian for her disabled sister and can attest to the difficulty she experienced trying to secure employment in a regular job setting. Debbie was with Lifeworks at the time it dropped its piece-rate work in 2017. Instead of working in a supervised work environment that she loved and was good at, she was taken on interview after interview in an attempt to find work at minimum wage. She was rejected and embarrassed again and again in the process. Debbie didn't even want the work she was interviewing for, as she is unable to stand for long periods of time and work an eight-hour shift, as most regular jobs require. Debbie wanted to keep the piece-rate job she had.

After endless interviews, Lifeworks told us there was nothing more it could do and recommended that we find another program. We happily took her out of Lifeworks and enrolled her in Opportunity Partners, which provided piece-rate work, an opportunity to get out of her apartment every day and interact with the staff and co-workers around her. It was and is a perfect fit!

Many employers don't want to pay minimum wage for someone who isn't as productive as a nondisabled person. With piece-rate work they don't have to, plus it creates jobs for those who can't compete in a regular job setting. HF 2513/SF 2669 will eliminate, not create, job opportunities for the disabled. If any disabled person wants a regular job at minimum wage, they are free to interview for one at any time and hopefully get hired. For those who are unable to get hired or unable to perform the work of a regular job, sheltered workshops are an answer to a prayer. State representatives and senators should vote no to HF 2513/SF 2669 to keep as many disabled people as possible working in both settings.

Kathy and John Tyler, Eden Prairie