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***The pathway to meaningful work for all abilities starts here.***

September 3, 2024

To: Editor, Washington Post

From Kit Brewer, Executive Director, Project CU Inc.

Re: Response to August 30 Articles on 14c

On August 30, I was mentioned in a series of articles by the Washington Post. The quotes were shortened, losing both information and context, and represented a very small portion of an extensive conversation with the authors. The articles strongly criticize a significant employment program for individuals with intellectual and developmental disabilities, authorized under Section 14c of the FLSA, commonly referred to as extended employment or sheltered workshops.

I serve as the Executive Director of Project CU, Inc. in St. Louis, Missouri, and a representative of Missouri’s State Association of Sheltered Workshops (MASWM), I also serve as the Vice President on the Board of Directors for the Coalition of Employment Choice. My involvement in this program and the surrounding debate spans two decades.

Critics of the program argue that 14c is an outdated element of the 1938 Fair Labor Standards Act (FLSA), claiming it is unnecessary, impacts only a few individuals, and, more severely, infringes on the civil rights of the men and women it serves. The main controversies and civil rights evaluations are largely based on two points: the labeling of the Commensurate Sliding Wage Scale solely as a "subminimum wage," and the assertion that a protective environment chosen by the individuals for their services amounts to segregation. Both claims are gross simplifications and unfounded.

I recognize the program as an essential and progressive service and employment opportunity for those facing significant obstacles to conventional employment. These programs offer individuals with intellectual and developmental disabilities (I/DD), mental health conditions, traumatic brain injuries, and other spectrum disorders a viable route to employment. Additionally, some participants may have physical disabilities, visual impairments, and substantial hearing loss alongside I/DD.

Individuals with specialized needs may exhibit challenging behaviors, struggle with learning or retaining information, and require a range of specialized support, including toiletry assistance, medication management, and help with eating and food preparation—services not typically found in most employment settings. Sheltered workshop staff are well-trained to handle these diverse requirements.

Opponents often use narrowly defined terms to criticize sheltered workshops and other protective work environments, attempting to turn these terms against such establishments.

We all interpret terms like inclusion, success, meaningful, and appropriate through our own aspirations, yet these concepts vary as much as we do individually. Inclusion can mean working alongside friends in an immersive setting. Success might be learning new skills, overcoming obstacles, and achieving goals. Finding joy and pride in one's work is meaningful. Crucially, each person should have the autonomy to decide which environment and goals suit their and their loved ones' needs.

For many, career and work choices involve seeking jobs that align with our interests, skills, and income requirements. However, when presented with options, we also look for comprehensive compensation packages, including benefits like insurance and vacation time. Considerations such as commute, proximity to home, or potential relocation are also important. We seek workplaces where we feel safe from both the work and the environment and where the company culture aligns with our personal needs.

In our pursuit of fulfillment, we weigh various factors to determine what best suits us. Terms like "work-life balance," "work-family enrichment," or "resource enhancement" are often used to explain or justify employment decisions. We strive to enhance positive experiences and minimize negative ones in these domains.

Numerous individuals benefit from substantial government or program assistance due to their diagnoses, which may include Medicare, Medicaid, SSI, SSDI, and housing subsidies. When these figures are combined with their income from employment, it provides a more comprehensive view of their full benefit package.

Men and women describe the social aspect of their work as critical to their success. Those who have attempted to transition to other jobs report feelings of isolation, degradation, or mistreatment, highlighting a form of workplace incivility that undermines any chance of a positive work experience.

Why should anyone's assessment of their work-life balance be deemed invalid?

Regrettably, debates on this topic are frequently led by those who are naive to the actual circumstances, unaware of the challenges faced by those employed in sheltered workshops, or the efforts of certificate holders. Some, with a privileged perspective, make choices and mandates for others—not only in the aspiration of creating an ideal workplace but also under the false belief that such a place already exists.

The term "Sheltered Workshop" was originally meant to denote a safe space for individuals vulnerable to harassment, exploitation, or abuse, offering support to foster growth and success. However, it has been misconstrued to imply a segregated and restrictive environment that is inherently abusive, which is a gross misrepresentation.

Critics argue that the certificate program that sanctions these workplaces is outdated and has not evolved from its original intent. These claims are unfounded.

Workshops were initially established to provide employment for blind individuals, with the Perkins Institute for the Blind being founded in Massachusetts as early as 1838. However, the term

"sheltered workshop" emerged in the 1930s when the Fair Labor Standards Act (FLSA) was enacted. Throughout the 19th and most of the 20th centuries, employment efforts primarily focused on the physically disabled, blind, and elderly, while those with intellectual and mental health conditions were largely overlooked until the 1960s.

The inclusion of this previously neglected population, combined with the closure of mental institutions, led to rapid growth in the program, prompting funding and regulatory changes, including the 1966 amendment to the FLSA that introduced a commensurate wage requirement. By 1977, less than 5% of the employed individuals were blind, and fewer than 6% had other physical disabilities. A 2022 Government Accountability Office survey found that over 97% of the employed individuals had significant intellectual and developmental disabilities or a mental health diagnosis.

The program has undergone and continues to undergo changes in the services provided, the populations served, and the removal of barriers to competitive employment. Fortunately, for most individuals with physical disabilities and many on the I/DD spectrum, there are clear and attainable pathways to more traditional employment models. We applaud these successes and the legislative and philosophical shifts that have dismantled numerous obstacles. Yet, disability is diverse; there is no singular, universal access route, nor a set of universal barriers to overcome. Each individual's challenges are unique. Currently, sheltered employment caters to the most vulnerable within the disability community, those for whom a large-scale pathway to the general workforce has not yet been established.

Furthermore, the availability of services and providers that assist individuals in finding alternative employment opportunities and offering ongoing support is on the rise. Many holders of 14c Certificates include these programs as part of their offerings. Since the implementation of its 2016 regulations, the Workforce Innovation and Opportunity Act (WIOA) of 2014 has required annual opportunities under Section 511 for information, meetings, and discussions with State Divisions of Vocational Rehabilitation (VR). At these meetings, individuals may explore other employment and open services, yet less than 2% choose to do so. Section 511 also requires a second opportunity during an individual's first year of sheltered employment and mandates that individuals under 25 first seek VR before considering sheltered employment.

WIOA was partly established to broaden employment opportunities for individuals with disabilities and to reduce and eliminate what were termed "pipelines" into sheltered employment. The question arises: does not the removal of a successful employment option and the coercion of individuals into other options, such as employment and other vocational or day habilitation services, create an equally problematic pipeline? Individuals are entitled to make an informed choice regarding their service, employment, and setting preferences. This right is explicitly recognized in the 1999 Supreme Court case Olmstead v. L.C., 527 U.S. 581, which asserts that individuals are entitled to services and living arrangements in the least restrictive environment, provided the individual does not object to the placement, and the state can reasonably accommodate it.

Critics of 14c certificate providers misrepresent WIOA by claiming that protective settings and service options are overly restrictive, thus removing these choices from the individuals' range of options.

While the 14c certificate program is based on Federal law, its administration and maintenance are handled at the state level. Over many years, significant and individual differences have emerged among states and service providers. Therefore, to guarantee successful outcomes for all participants, ongoing dialogue about best practices is essential. Every individual or group should have access to their preferred employment option.

Respectfully,

Kit

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