

Committee on Labor and Workforce Development

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The Washington Lawyers' Committee for Civil Rights and Urban Affairs (the "Committee"), writes in strong support of the Domestic Worker Bill of Rights. The District of Columbia has an important opportunity to rectify a racist legacy that intentionally excluded Black workers from worker protections. This bill will further racial justice by protecting over 47,000 domestic workers in the District of Columbia metro area, the majority of whom are women of color, from unscrupulous employers and discrimination in the workplace.

At the Committee, our mission is to strive for equity, and we in particular recognize the legacy of race discrimination. We litigate on behalf of workers, in particular low-income workers of color, and we run a Workers' Rights Clinic serving D.C. residents. Domestic workers constitute a small portion of workers that seek legal advice. The Domestic Worker Bill of Rights will provide essential funding for education, outreach, and other support services that will play a crucial role in helping domestic workers know their rights and connect with legal services. It is the hope of the Committee that our Clinic will see an increase in domestic workers pursuing access to justice as a result of this outreach campaign.

I. Passing the Domestic Worker Bill of Rights furthers racial justice by rectifying the racist legacy of domestic worker exclusions.

Passing the Domestic Worker Bill of Rights is a matter of racial justice. Domestic workers, predominantly women of color who work as nannies, house cleaners, and home care workers, continue to be excluded from federal and state worker protections. Within the District of Columbia, domestic workers still lack equal rights to those of other workers.

The D.C. Occupational Health and Safety code explicitly excludes domestic workers, and only domestic workers, from its protections, using dated and demeaning language. The code defines "employee" as "an individual working for an employer . . . but does not include domestic servants."¹ Similarly, the D.C. Human Rights Act defines contains an exclusion for "domestic servants, engaged in work in and about the employer's household."²

¹ D.C. Code § 32-1101 (5) ("Employee means an individual working for an employer for a salary, wage, or other compensation or pursuant to any other contractual obligation, but does not include domestic servants.") The D.C. Occupational Health and Safety Act was codified in 1988.

² D.C. Code § 2-1401.02 (10). The D.C. Human Rights Act was codified in 1977.



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These D.C. exclusions are a holdover from slavery,³ adopting federal statutory language rooted in a legacy of racism. In the wake of the economic crisis of the Great Depression, President Roosevelt promulgated the New Deal, promising a social safety net that would protect American workers. A suite of sweeping legislation established the first federal minimum wage rate, overtime protections, a standard working week, Social Security, welfare, unemployment insurance, union rights, and more.

However, these protections failed to protect a large portion of American workers, specifically Black workers. The Social Security Act, National Labor Relations Act, and Fair Labor Standards Act all enacted separate workers' protections for white and Black workers. Federal laws written in race-neutral language intentionally excluded agricultural and domestic workers as an occupational proxy for the exclusion of Black Americans and other workers of color from New Deal protections made available to most whites.⁴

This was no accident. During the New Deal era, Southern congressmen launched a systematic, targeted campaign to exclude Black employees from federal worker protections to preserve the quasi-plantation style of agriculture that pervaded the still segregated Jim Crow South through sharecropping structures.⁵ “While they supported reforms that would bring more prosperity to their relatively poor region, they rejected those that might upset the existing system of racial segregation and exploitation of blacks.”⁶ The agricultural exclusion targeted Black men, while Black women were equally excluded through the domestic worker and home health care exclusions.⁷

During the Depression, Black Americans were “the most disadvantaged major group in American society.”⁸ Despite the abolition of slavery, the postbellum southern economy depended on the continued exploitation and subjugation of Black labor. White southerners enforced the economic and social subordination of Blacks through exploitation, violence, and segregation.⁹

³ Tess Bon, *Activist: Exclusion of domestic workers from federal labor law ‘a legacy of slavery,’* The Hill (July 16, 2019), <https://thehill.com/hilltv/rising/453397-activist-exclusion-of-domestic-workers-from-federal-labor-laws-alegacy-of>.

⁴ See, e.g. Juan Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72(1) OHIO ST. L.J. 95 (2011).

⁵ Sean Farhang & Ira Katznelson, *The Southern Imposition: Congress and Labor in the New Deal and Fair Deal*, 19 STUD. AMER. POL. DEV. 1, 6, 12-13 (Spring 2005); Ira Katznelson, Kim Geiger & Daniel Kryder, *Limiting Liberalism: The Southern Veto in Congress, 1933-1950*, 108 POL. SC. Q. 285, 290 292-93 (1993).

⁶ Perea, *supra* note 4 at 98.

⁷ Ariela Migdal, *Home Health Care Workers Aren't Guaranteed Minimum Wage or Overtime, and the Legacies of Slavery and Jim Crow Are the Reason Why*, ACLU Women's Rights Project, (May 6, 2015).

⁸ Perea, *supra* note 4 at 100 (quoting RAYMOND WOLTERS, *The New Deal and the Negro, in THE NEW DEAL: THE NATIONAL LEVEL* 170 (John Braeman, Robert H. Bremner, David Brody eds. 1975).

⁹ *Id.* at 102. At the time of the New Deal, Southern states excluded black citizens from voting through legally mandated racial segregation or force. National Employment Law Project, *From Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers, and Tipped Workers from the Fair Labor Standards Act: Hearing before the U.S. House of Representatives Education and Labor Committee, Workforce Proections Subcommittee* 8 (May 3, 2021) [hereinafter “NELP”].



At the time, the majority of Blacks lived in the South and were disproportionately employed in agricultural and domestic labor.¹⁰ Of Black Americans in the labor force, 60% were either agricultural laborers or domestic servants.¹¹ 95% of domestic workers were Black women who lived in the South.¹² Any initiative that sought to improve the economic welfare of Blacks was a threat to the southern political economy — a threat which southern Democrats in Congress were united in quashing.¹³

At the time of the New Deal, southern Democrats dominated Congress and held the balance of power, controlling 35% of Senate seats and a large number in the House as well.¹⁴ As one scholar has noted:

Equal pay would have sent a powerful message of the equal worth and dignity of black workers. Equal pay would have made it easier for black workers to free themselves from economic dependence on southern whites intent on oppressing them. Federal enforcement of fair labor standards would have given blacks a powerful federal ally in their fight for equality. Southern congressmen could not countenance such radical changes in the ability of southern whites to exploit southern blacks.¹⁵

Examination of the legislative history of landmark New Deal laws reveals both how southern legislators, blatantly motivated by racial bias, secured the exclusion of large swaths of black workers from critical protections, and how black civil rights leaders raised alarms about the detrimental effects of structural racism on black workers.

The National Industrial Recovery Act of 1933 (NIRA), predecessor to the National Labor Relations Act, called for codes of fair competition, with fixed minimum wages and maximum hours in different industries.¹⁶ Racism was readily apparent in the debates on these codes, with southern manufacturers arguing that they should be allowed to pay black workers less than whites.¹⁷ One southern employer testified, “a negro makes a much better workman and a much better citizen, insofar as the South is concerned, when he is not paid the highest wage.”¹⁸ Ultimately, an explicit racial differential was abandoned in favor of occupational and geographical based industry codes that served as a race-neutral proxy to disadvantage Black workers.¹⁹ This, combined with lack of enforcement of industry codes, prompted widespread skepticism among blacks about the

¹⁰ HARVARD SITKOFF, *A NEW DEAL FOR BLACKS* 37 (1952).

¹¹ Larry DeWitt, *The Decision to Exclude Agricultural and Domestic Workers from the 1935 Social Security Act*, 70(4) SOCIAL SECURITY BULLETIN 50 (2010).

¹² Rinku Sen, *Domestic Workers – Organizing with Love*, 17(2) RACE, POVERTY & THE ENVIRONMENT 31 (Fall 2010).

¹³ Perea, *supra* note 4 at 102.

¹⁴ Farhang & Katznelson, *supra* note 5 at 1.

¹⁵ Perea, *supra* note 4 at 116.

¹⁶ *Id.* at 104.

¹⁷ *Id.* at 105.

¹⁸ *Id.* (quoting RAYMOND WOLTERS, *The New Deal and the Negro*, in *THE NEW DEAL: THE NATIONAL LEVEL* 99 (John Braeman, Robert H. Bremner, David Brody eds. 1975)).

¹⁹ *Id.* at 106.



NIRA. Black activists and media referred to the National Recovery Act as the “Negro Riddance Act,” “Negro Removal Act,” and “Negroes Rarely Allowed.”²⁰

The Social Security Act of 1935 also explicitly excluded agricultural and domestic labor, denying the majority of southern Blacks old-age benefits and unemployment insurance.²¹ The legislation as originally proposed was inclusive and directly referenced domestic workers and other predominantly Black industries as economically disadvantaged groups in need of protection:

“We are opposed to exclusions of any specific industries within the Federal Act” . . .
“[A]gricultural workers, domestic servants, home workers, and the many self-employed people constitute large groups in the population who have received little attention. In these groups are many who are at the bottom of the economic scale.”²²

However, yet again the Roosevelt administration caved to southern Congressional pressure to change the original drafting and exclude agricultural and domestic workers.²³ Testimony by Black civil rights leaders called out the negative effects that these exclusions would have on the Black community. Charles Hamilton Houston, testifying on behalf of the NAACP, stated:

If we follow the history of the workmen’s compensation acts, we know that two great classes of workers who will be excluded from the benefit of unemployment insurance; they are agricultural workers and domestic workers. **Again, 3 out of every 5 Negro workers drop through the holes of the sieve.**²⁴

President Roosevelt was unmoved by the impact on Black workers, stating that “[i]t is not the purpose of this Administration to impair Southern industry by refusing to recognize traditional differentials.”²⁵

The Fair Labor Standards Act of 1938 followed a similar trajectory to the Social Security Act: a broadly inclusive legislative proposal, openly racist resistance from southern Democrats, alarms raised by black leaders, capitulation from the Roosevelt administration, and, finally, exclusion of domestic workers from key worker protections.

During the floor debates on the FLSA, J. Mark Wilcox, a Democrat from Florida stated: “You cannot put the Negro and the white man on the same basis and get away with it . . .

²⁰ *Id.* at 107

²¹ *Id.* at 109.

²² IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE 43 (2005) (quoting U.S. Committee on Economic Security, *Report to the President*, 18, 49 (1935)).

²³ Perea, *supra* note 4 at 110-12 (discussing the legislative history of the Social Security Act).

²⁴ *Economic Security Act: Hearings on H.R. 4120 Before the H. Comm. on Ways & Means*, 74th Cong. 108 (1935) (statement of Charles Hamilton Houston, NAACP) (emphasis added).

²⁵ RAYMOND WOLTERS, NEGROES AND THE GREAT DEPRESSION: THE PROBLEM OF ECONOMIC RECOVERY 145 (1970).



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[I]t just will not work in the South.”²⁶ Democratic Rep. Martin Dies of Texas said, “you cannot prescribe the same wages for the black man as for the white man.”²⁷

Having witnessed the racially discriminatory impact of the NRA and the Social Security Act, Black leaders, again, left no doubt as to the effects of these racially motivated exclusions. John P. Davis, on behalf of the National Negro Congress, testified that:

This bill is supposed to be intended to help those workers whose lack of collective bargaining power renders them capable of exploitation by employers. As it stands it does no such thing . . . The economic crisis has not lifted for the Negro people. Because they are largely unskilled workers, reemployment for them has been slight. **Negro domestic and agricultural laborers—representing the bulk of Negro labor—have had no benefits from the Social Security Act or other protective legislation.**²⁸

Still, the Roosevelt Administration acquiesced to Southern Democrat demands in order to secure the passage of New Deal legislation. In fact, in response to Southern fears that the FLSA would require employers of domestic workers to pay workers the minimum wage, President Roosevelt stated, “no law ever suggested intended a minimum wage and hour bill to apply to domestic help.”²⁹

The exclusions of entire occupations, like agricultural and domestic workers, employed race-neutral language as a compromise meant to accommodate southern demands and avoid alienating northern liberals and Black political support by avoiding an explicit racial exclusion.³⁰ Given that the majority of Black Americans lived in the South, and the majority of black Southerners were employed as agricultural and domestic laborers, these occupational exclusions served to exclude the majority of Black workers from critical New Deal protections.

Domestic workers remained excluded from federal protections until 1974, when Congress expanded FLSA to cover certain domestic workers. A loophole in the 1974 extension to domestic workers continues to exclude “companionship workers” and live-in domestic workers from most protections. In 2015, the D.C. Circuit confirmed that FLSA protections apply to home health care workers in *Home Care Ass’n of America v. Weil*³¹, affording protection in a growing industry in which 91.5% of all workers are women,

²⁶ 82 Cong. Rec. 1404 (1937).

²⁷ KATZNELSON, *supra* note 22, at 60.

²⁸ *The Fair Labor Standards Act of 1937: Joint Hearings on S. 2475 and H.R. 7200 Before the S. Comm. on Education & Labor and the H. Comm. on Labor, 75th Cong. 571 (1937)* (statement of John P. Davis, National Negro Congress).

²⁹ VIVIEN HART, *BOUND BY OUR CONSTITUTION: WOMEN, WORKERS, AND THE MINIMUM WAGE* 166 (1994).

³⁰ Perea, *supra* note 4 at 99.

³¹ 799 F.3d 1084 (D.C. Cir. 2015).



57.1% are people of color, and 35.1% are foreign-born.³² Despite these legislative repairs on the federal level, the exclusions in D.C. law persist.

II. Passing the Domestic Worker Bill of Rights will provide vital protections to workers of color in the District of Columbia.

The effects of these racist exclusions persist to this day. The structural racism reinforced in the New Deal depressed Black wages in the decades after the passage of this legislation.³³ Exclusions from federal labor protections and other federal programs meant that Black families, and other families of color, were denied opportunities to accumulate family wealth, widening the wealth gap between workers of color and whites.³⁴

Today, Black, Latinx, and other workers of color are disproportionately represented in the domestic labor sector. There are 2.2 million domestic workers in the United States, and the majority, 57.1%, are workers of color.³⁵ Over a third are foreign-born workers.³⁶ The median real hourly wage for domestic workers lags behind that of other workers, at \$12.01 compared to \$19.97 for all other workers.³⁷

The District of Columbia mirrors national figures. Roughly 47,000 domestic workers live in the D.C. metro area.³⁸ The overwhelming majority of DMV domestic workers are women of color, predominantly foreign-born.³⁹ In an area where the median household income is approximately \$90,000⁴⁰, D.C. metro area domestic workers fall far short, earning, in comparison, median annual earnings of \$21,573.⁴¹

Domestic workers are one of the fastest growing industries in the United States, projected to grow more than three times as fast as other industries by 2028.⁴² Activists assert that domestic work will become one of the biggest workforces in the United States by 2030.⁴³

³² Julia Wolfe et al., Economic Policy Institute, *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*, at Charts 2 and 5, <https://files.epi.org/pdf/194214.pdf>. [Hereinafter “EPI”] Notably, domestic workers are still excluded from the protections available under the National Labor Relations Act and denied the right to collectively bargain. *See, e.g.* Perea, *supra* note 4.

³³ NELP, *supra* note 9 at 9.

³⁴ *Id.* (discussing the research of RICHARD ROTHSTEIN, *THE COLOR OF LAW* (2017)).

³⁵ EPI, *supra* note 32 at 4, Chart 1. Within this, Black workers constitute 21.7%, Hispanic workers 29.1%, and Asian American/Pacific Islander workers 6.3%. *Id.* at 7-8 & Chart 3.

³⁶ *Id.* at 11.

³⁷ *Id.* at 17 & Chart 8.

³⁸ National Domestic Workers Alliance, *DC Domestic Workers Bill of Rights*, <https://www.domesticworkers.org/programs-and-campaigns/developing-policy-solutions/bill-of-rights/current-campaigns/dc-domestic-workers-bill-of-rights/> (last accessed June 14, 2022).

³⁹ *Id.* According to the NDWA, of the roughly 47,000 domestic workers living in the D.C. metro area, 93% are women, 78% are people of color, and 65% are foreign-born. *Id.*

⁴⁰ U.S. Census Bureau, QuickFacts: District of Columbia, <https://www.census.gov/quickfacts/DC> (last accessed June 14, 2022).

⁴¹ National Domestic Workers Alliance, *supra* note 38.

⁴² EPI, *supra* note 35 at 37-38.

⁴³ Lauren Hilgers & Sharif Hamza, *Out of the Shadows*, N.Y. TIMES (Feb. 2019),



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Domestic workers “make[] all other work possible. . . . [w]ithout the millions of domestic workers caring for children, seniors, and individuals with disabilities, and cleaning homes, much of the economy would come to a standstill.”⁴⁴

This Bill of Rights is an opportunity for the District of Columbia to squarely address the root causes of racial inequity and ensure that all workers in the District are protected. This is a chance to rectify the racist exclusions of Black workers from New Deal protections and move towards racial equity.

III. Conclusion

The Washington Lawyers' Committee urges this Council to pass the Domestic Worker Bill of Rights, which will expand critical protections to domestic workers in the District. Thank you for the opportunity to provide testimony on this important issue.

<https://www.nytimes.com/interactive/2019/02/21/magazine/national-domestic-workers-alliance.html>.

⁴⁴ Domestic Workers Bill of Rights Act, S. 2112, 116th Cong., § 2(2) (2019).