



To: Honorable Ed Gomes, Senate Co-Chair Labor & Public Employees Committee and Honorable Peter Tercyack, House Chairman Labor & Public Employees Committee

From: Elly Kugler and Rocio A. Avila, National Domestic Workers Alliance

Re: Testimony in Support of SB 393 – An Act Concerning Domestic Workers

Date: March 8, 2016

Good afternoon and thank you for the opportunity to testify today.

The National Domestic Workers Alliance (“NDWA”) organizes domestic workers in the United States for respect, recognition and improved labor standards. Through leadership development, strategic campaigns, legislative change and alliance building we are building a powerful movement for social, racial and global justice. We are member-ship based organization that represents 53 affiliate organizations in 26 cities and 18 states- all of which are working to redress the inequities faced by domestic workers.

NDWA testifies today in support of **SB 393- An Act Concerning Domestic Workers**. A bill sponsored by the Brazilian Worker Center (“BWC”), whose one of our affiliate member organizations in Connecticut. BWC has been at the forefront advocating on behalf of Connecticut’s domestic workers for several years.

Domestic workers comprise a growing workforce that has been historically excluded from basic workplace protections, such as minimum wage, overtime, anti-discrimination protections, health and safety and the right to organize. NDWA has led the movement both at the federal level and in several states to pass Domestic Worker Bill of Rights (DWBOR’s) to eliminate the exclusions¹. These exclusions can be traced back not to rational public policy motivations, but rather to politically motivated carve-outs done on a federal level in order to appease racist legislators which were then mirrored in state labor protections.²

¹ Several states have recently expanded protections for domestic workers through DWBOR’s: 1) NY (2010); 2) Hawaii (2013); 3) California (2013); 4) Massachusetts (2014), 5) Oregon (2015) and Connecticut (2015).

² “There has always been a difference in the wage scale of white and colored labor. . . . You cannot put the Negro and the white man on the same basis and get away with it.” Statement of Representative J. Mark Wilcox in 1937, opposing the proposed Fair Labor Standards Act if FLSA equalized wages of white and black workers, as reported in *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from*

Domestic workers provide in-home services such as childcare, home care to seniors and persons with disabilities, and housekeeping. The unique nature of domestic work subjects domestic workers to extreme exploitation and abuse.

In 2015, NDWA supported Connecticut’s SB 446³, which successfully extended anti-discrimination and harassment protections to domestic workers. We also applaud the success of the Task Force on Domestic Workers and its recommendations, which for the most part, provided a legislative model for lifting industry standards for domestic workers in the 2016 legislative session.

SB 393 is a result of the Task Force’s recommendations, which if passed, would close exemptions for domestic workers in the state’s workplace laws and establish new crucial and sensible industry-specific protections.

I. Connecticut Domestic Workers Need to be Included in Basic Labor Protections

Currently, some sectors of domestic workers are excluded from certain Connecticut worker protections, and in other cases the language of the protections is unclear. The Connecticut Bill should ensure that all domestic workers are entitled to protection from harassment and discrimination⁴; give homecare workers employed in private homes basic rights under the Connecticut Minimum Wage Act⁵; make domestic workers eligible for worker’s compensation if the worker earns \$1,000 or more per calendar quarter.

a. Many of these worker carve-outs are modeled on biased federal law exclusions

In many cases where domestic workers are explicitly carved out of protections, those exclusions are modeled after the exclusions in the Fair Labor Standards Act (“FLSA”) – the federal law that set the original floor for worker wage and overtime protections. Domestic workers were originally excluded from FLSA not for a valid policy reason but because Southern senators were unwilling to pass a law that equalized the wages of an overwhelmingly African American and female workforce.⁶ Since its passage,

the National Labor Relations Act, Juan F. Perea, 72 OH ST. L.J. 95, 115 (2010); “The president was quick to reassure, when asked if Fair Labor Standards Act (FLSA) would “force” Southern housewives to “pay your negro [sic] girl eleven dollars a week.” He replied that no wage and hour bill would “apply to domestic help.”” Eileen Boris & Premilla Nadasen, *Domestic Workers Organize!*, 1089-7011 WorkingUSA: The Journal of Labor and Society 413, 420 (Dec. 2008)

³ See- <https://www.cga.ct.gov/2015/ACT/PA/2015PA-00249-R00SB-00446-PA.htm>

⁴ Makes all domestic workers eligible for protections under the Act regardless of the number of employers. Right now the Connecticut’s Human Rights Statute only applies to workplaces of three or more workers.

⁵ Right now, some homecare workers are excluded and the law’s language is confusing about whether nannies are included – this modification clarifies that only casual babysitters are excluded from these protections, and all other domestic workers are included

⁶ “There has always been a difference in the wage scale of white and colored labor...You cannot put the Negro and the white man on the same basis and get away with it.” Statement of Representative J. Mark Wilcox in 1937, opposing the proposed Fair Labor Standards Act if FLSA equalized wages of white and black workers, as reported in *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, Juan F. Perea, 72 OH ST. L.J. 95, 115 (2010); “The president was quick to reassure, when asked if Fair Labor Standards Act (FLSA) would “force” Southern housewives to “pay your negro [sic] girl eleven dollars a week.” He replied that no wage and hour bill would

FLSA has been amended to provide protections for most domestic workers. Most recently, the Department of Labor addressed the exclusion of certain federally-exempt homecare workers who provide companionship services by revising federal regulations that significantly narrowed the federal exemption of home care workers. Because the Connecticut Minimum Wage Act⁷ explicitly tracks (FLSA's) regulations, this means that the Connecticut Minimum Wage Act covers domestic workers to the same extent as the FLSA. The regulations went into effect last fall. This statutory language may continue to create confusion about the scope of the law.

b. Analogous inclusions have been successful in NY, HI, CA, MA, and OR

Several states have recently expanded protections for domestic workers through Domestic Worker Bills of Rights. The Massachusetts DWBOR,⁸ passed 2014, includes domestic workers in the State's anti-discrimination law and also grants domestic workers the right to a written notice with terms of employment and a notice of termination of at least 30 days or severance pay based on average wages. The Hawaii DWBOR,⁹ passed in 2013, protects domestic workers against employment discrimination in terms, conditions, and privileges of employment. The New York DWBOR,¹⁰ passed in 2010, provides a special cause of action for domestic workers who are subjected to unwelcome sexual advancements and harassment and provides three paid days off.

For each of the five states that have passed domestic worker rights legislation, carving workers into basic protections was a key component of the bill. The Hawaii bill¹¹, which passed in 2013, included most domestic workers in wage and hour and anti-discrimination protections. The 2013 California bill entitled a broader set of domestic workers to overtime pay. The 2014 Massachusetts bill included domestic workers in an already existing right to maternity leave and passed strong privacy and anti-trafficking provisions. Oregon passed bill in 2015,¹² which extended domestic workers with anti-discrimination and harassment protections, use of kitchen facilities to cook their own meals and 24 hours off on the 7th day of a workweek for a live-in domestic worker.

II. Domestic Workers Need Industry-Specific Protections

Domestic workers engage in specialized labor and like any other industry, their work has risks and problems unique to the industry. Connecticut already has specialized protections specific to the needs of workers in particular industries.¹³ Connecticut domestic workers need clear expectations about job conditions, laid out in writing; increased worker health and safety protections; enhanced protections for

“apply to domestic help.” Eileen Boris & Premilla Nadasen, *Domestic Workers Organize!*, 1089-7011 WorkingUSA: The Journal of Labor and Society 413, 420 (Dec. 2008)

⁷ See- Conn. Gen. Stat. § 31-58 (f)

⁸ MA S 2132.

⁹ HI SB535 HD2. More information at <http://labor.hawaii.gov/domestic-workers-rights/>

¹⁰ NY Exec Law § 290, 296-B et seq.

¹¹ SB535 HD2. More information at <http://labor.hawaii.gov/domestic-workers-rights/>

¹² see- <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/SB552>

¹³ See, eg, Connecticut regulations for high-risk work (<http://www.ctdol.state.ct.us/wgwkstnd/laws-regs/highrisk-regs.htm#definitions>); protections for cosmetic workers (DOL Sec. 31-62-A2 (http://www.sots.ct.gov/sots/lib/sots/regulations/title_31/060_062.pdf))

live-in workers who are especially vulnerable to abuse and severe labor exploitation; and simple measures that increase workplace fairness and reduce worker poverty.

a. Workers need clear expectations, laid out in writing

Domestic workers have little control over their working conditions. Employment is usually arranged without the benefit of a formal contract.¹⁴ As a result, both workers and employers often face confusion about job hours, payment, and duties – which can lead to both wage theft and exploitation of the worker, and unnecessary strife between workers and employers. Connecticut should require that employers provide a written disclosure at the time of hire that includes pay rate, work hours, wage payment schedule, job duties, availability of leave time, deductions, and worker rights provided under the Bill of Rights – and should commission the Connecticut Department of Labor to create templates employers may use. The Domestic Worker Bills of Rights in Massachusetts included this requirement. In Hawaii, New York and Massachusetts, agencies in charge of worker protections created educational materials for the use of workers and employers.¹⁵

b. Workers who engage in housecleaning are vulnerable to special health risks and need protection

The cleaning products used by housecleaners cause many housecleaners to suffer from health problems, especially since these housecleaners may be spending hours on end using these products. 29 percent of housecleaners suffered from skin irritation, and 20 percent had trouble breathing in the prior 12 months.¹⁶ Epidemiological studies have shown an association between cleaning work, exposure to chemical irritants and asthma, including both new onset asthma, work-exacerbated asthma, and asthma-like symptoms.¹⁷

Connecticut should provide for worker health and safety by giving workers engaged in housecleaning the right to raise health and allergy concerns over cleaning products with employers; the right to request substitutions of cleaning products; and the right to substitute products that are less harmful unless the employer can demonstrate medical necessity

c. Live-in domestic workers are vulnerable to abuse and need specific protections

Live-in workers are in the complex situation of being both employee and tenant, and are often on call for 24 hours a day with no access to uninterrupted sleep. 67 percent of live-in workers are paid below the

¹⁴ Home Economics – The Invisible and Unregulated World of Domestic Work, by the Center for Urban Economic Development at University of Illinois, DataCenter, and NDWA (<http://www.domesticworkers.org/homeeconomics/key-findings>)

¹⁵ See <http://www.mass.gov/lwd/press-releases/governor-signs-domestic-workers-bill-of-rights.html> (MA); <http://labor.hawaii.gov/domestic-workers-rights/> (HI); <http://www.labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm> (NY)

¹⁶ Home Economics – The Invisible and Unregulated World of Domestic Work, by the Center for Urban Economic Development at University of Illinois, DataCenter, and the National Domestic Workers Alliance, available at <http://www.domesticworkers.org/homeeconomics/key-findings>

¹⁷ Quirce S et al. Cleaning agents and asthma (review article) 2010; J Investig Allergol Clin Immunol 2010; Vol. 20(7): 542-550; Found at: <http://www.jiacci.org/issues/vol20issue7/1.pdf>

state minimum wage, and the median hourly wage of these workers is \$6.15.¹⁸ Live-in workers are also often most likely to experience harassment, severe labor exploitation and trafficking – and their current unprotected status leaves them highly vulnerable.¹⁹

Because of their vulnerable situations as both tenants and workers, live-in workers need basic housing protections that are approach the basic standards for other tenants. Specifically, live-in workers need a right to privacy in private living spaces and in a worker’s private communications and protection from seizure of a worker’s documents; 7 days advance notice of termination except in case of worker wrongdoing.

The Massachusetts bill contains extensive privacy protections for live-in workers, and also entitled live-in workers to live in habitable conditions. It also grants workers termination rights if terminated without cause of either a written notice and 30 days lodging or severance pay of two weeks average earnings, with the exception of if there were good-faith allegations of abuse.

d. Domestic workers often labor in conditions of poverty, and need protections that allow them to earn a fair wage and to support their families

Connecticut domestic workers are 94% female, and racially diverse: 58% white, 20% Latino, 17% African American, and 2% Asian.²⁰ This is a growing industry - Connecticut is projected to have a 39% increase in the need for home health aides alone by 2022.²¹ However, although this industry is growing, it is growing with poverty wages. Domestic workers struggle to make ends meet. In the New England area, 42% of homecare workers must rely on some form of public assistance to survive.²² Nationally, at least 48% of domestic workers were paid an hourly wage below what is needed to adequately support a family.²³ Domestic workers experience acute financial hardships. Many indicate that their most basic needs go unmet. 60 percent spend more than half of their income on rent or mortgage payments. 37 percent of workers paid their rent or mortgage late during the year prior to being interviewed. 40 percent paid some of their other essential bills late during the same time period. 20 percent report that there were times in the previous month when there was no food to eat in their homes because there was no money to buy any.²⁴

At the same time, domestic workers face injury and illness on the job, but cannot afford to take time off to recover. 38 percent of workers suffered from work-related wrist, shoulder, elbow, or hip pain in the past

¹⁸ Home Economics – The Invisible and Unregulated World of Domestic Work, by the Center for Urban Economic Development at University of Illinois, Data Center, and NDWA (<http://www.domesticworkers.org/homeeconomics/key-findings>)

¹⁹ Beyond Survival: Organizing to End the Trafficking of Domestic Workers, available at <http://www.domesticworkers.org/beyondsurvival>

²⁰ Economic Policy Institute analysis of Current Population Survey Outgoing Rotation Group microdata, *available at* <http://www.epi.org/files/2013/in-home-workers-state-tables.pdf>

²¹ PHI State Data Center, *available at* <http://phinational.org/policy/states/connecticut/>

²² *Id.*

²³ Home Economics – The Invisible and Unregulated World of Domestic Work, by the Center for Urban Economic Development at University of Illinois, Data Center, and NDWA (<http://www.domesticworkers.org/homeeconomics/key-findings>)

²⁴ *Id.*

12 months. 31 percent suffered from other soreness and pain in the same period. 29 percent of caregivers suffered a back injury in the prior 12 months.²⁵ 36 percent of nannies contracted an illness while at work in the prior 12 months.²⁶

Domestic workers need baseline protections that allow them to earn fair compensation. Workers should get advance notice of termination. In addition, domestic workers should be able to earn annual paid leave²⁷, should be entitled to one day off per calendar week.

The Massachusetts law contained protections against unfair pay deductions, including a prohibition on deductions for meals, rest periods, lodging, sleeping periods without the written consent of the worker. The New York bill banned deductions from paycheck for broken items and required written notice of all deductions. The New York law required that workers get a day of rest every seven days or else overtime pay for working the seventh day, and three paid days of rest per year. The Massachusetts bill requires a 24 hour weekly rest period and a monthly 48 hour rest period.

III. Au-Pairs Should be included in SB 393

During the Task Force process, the Cultural Care Au Pair²⁸ agency testified. They advocated for au-pairs in the state of Connecticut to be exempted from future state legislation proposed for domestic workers. And, in fact, the Task Force’s recommendations did not exempt them.

Nonetheless, we want to clarify the federal regulations (22 C.F.R. 62.31), which govern the au pair program, and also to dispel the confusion surrounding the inclusion of au pairs under the Massachusetts Domestic Workers Bill of Rights²⁹ (MDWBR). The State Department operates the au pair program under the authority to promote cultural exchange in 8 U.S.C. § 1101(J) (the J-visa) and extensive implementing regulations. The program operates through 15 sponsor organizations designated by the State Department, who then place the au pairs with individual families.³⁰ Families and the au pair agencies argued that the federal regulatory scheme for au pairs preempted Massachusetts’s employment law. Federal preemption would not simply affect the MDWBR—it could also preempt the state’s minimum wage and overtime law.

It is important for this Committee to note that after much debate in Massachusetts about whether or not au pairs, in fact, were included in MDWBR, Attorney General Maura Healy of Massachusetts settled the

²⁵ Id.

²⁶ Id.

²⁷ Paid leave accrues at the rate of one hour of leave for every 40 hours worked, up to 56 hours per year

²⁸ See- http://go.culturalcare.com/au-pair-general-1-hf.html?utm_source=google&utm_medium=ppc&utm_campaign=Beta+-+Cultural+Care&utm_term=+cultural++care&ls=Online+Marketing&lsd=Google+PPC&sfc=701i0000001KYwY&sfcs=Responeded&gclid=CJez-eiKsMsCFZNhfGodWPEL6Q

²⁹ See- chapter 148 of the Acts of 2014, as codified at G.L. c. 149, § 190, and related regulations.

³⁰ U.S. DEP’T OF STATE, J-1 VISA SPONSOR ORGANIZATIONS: AU PAIRS, <http://j1visa.state.gov/participants/how-to-apply/sponsor-search/?program=Au%20Pair>.

issue last year by promulgating regulations that reflect their inclusion.³¹ While the issue has been settled in Massachusetts, we strongly recommend that this Committee agree to include CT au pairs in SB 393.

IV. Fixing the Domestic Work Industry is a Team Effort

Workers, employers and employment agencies and the Connecticut government will all have to collaborate to raise industry standards. This collaboration is necessary given the fast pace of growth in this industry and the poor conditions in which many domestic workers currently labor. In order to allow all members of the industry to raise standards, Connecticut's law should allow employers to sue other employers for repeated failures to comply with the domestic worker rights laws, and the state should create clear materials developed in collaboration with workers and consumers to ensure all parties understand their rights and responsibilities.

V. Summary SB 393- An Act Concerning Domestic Workers

Includes domestic workers in the protections that other workers enjoy:

- Give homecare workers employed in private homes basic rights under the Connecticut Minimum Wage Act³²
- Make domestic workers eligible for worker's compensation if the worker earns \$1,000 or more per calendar quarter³³
- Ensure all domestic workers are entitled to protection from harassment and discrimination³⁴

Ensure workplace fairness and prevent poverty:

- Annual paid leave time³⁵
- One day off per seven-day calendar week - with one-and-a-half times the worker's regular rate of pay if she voluntarily agrees to work on this seventh day.
- Seven days advance notice of termination or severance pay for live-out workers and fourteen days of advance notice of termination for live-in workers, except in cases of worker wrongdoing.

³¹ <http://www.mass.gov/ago/docs/regulations/940-cmr-32-00.pdf>

³² Right now, some homecare workers are excluded and the law's language is confusing about whether nannies are included – this modification clarifies that only casual babysitters are excluded from these protections, and all other domestic workers are included

³³ This modifies the CT Worker's Compensation Law, which currently only applies to domestic workers who work 26 hours a week or more for a single employer – this also brings the Worker's Compensation Law in line with the Connecticut Unemployment Insurance law.

³⁴ Makes all domestic workers eligible for protections under the Act regardless of the number of employers. Right now the Connecticut's Human Rights Statute only applies to workplaces of three or more workers.

³⁵ Paid leave for part-time workers- 72 hours and 120 hours for full-time workers annually

Address problems specific to the domestic work³⁶ industry:

- Clear expectations, laid out in writing: Written disclosure at the time of hire of pay rate, work hours, wage payment schedule, job duties, availability of leave time, deductions, and of the rights provided under the Bill of Rights
- Protections for worker safety: Workers have the right to raise health and allergy concerns over cleaning products with employers; have the right to request substitutions of cleaning products, and may substitute products that are less harmful unless employer can demonstrate medical necessity
- Basic decent housing and fair pay for live-in workers:
 - A right to privacy in private living spaces and in a worker’s private communications and protection from seizure of a worker’s documents
 - 7 days (live-outs) or 14 days (live-ins) advance notice of termination except in case of worker wrongdoing
- Improving the industry and worker access to protections:
 - A private right of action with attorney’s fees and an administrative mechanism for enforcing the Bill of Rights provisions
 - Workers are protected from retaliation for enforcing these new rights.
 - Industry employers can target companies that break the law to cut corners. Agency employers have standing to sue other employers who repeatedly violate employers have standing to sue other employers who repeatedly violate this law. Third-party employers – including registries – are jointly and severally liable for violations under this law.
 - The Connecticut Department of Labor ensures that workers and consumers know their rights and responsibilities under SB 393.

³⁶ “Domestic workers” defined here as individuals employed to perform work of a domestic nature in or about a private home, including, but not limited to, housekeeping, house cleaning, home management, nanny services including childcare and child monitoring, caretaking of individuals in the home including sick, convalescing and elderly individuals, laundering, cooking, home companion services and other household services for members of households or their guests in private homes. Not included are babysitters employed on a casual basis and personal care attendants employed through state-funded programs.

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