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August 10, 2021

Lorena Gonzalez  
Chair, Committee on Appropriations  
Assembly Appropriations Committee  
State Capitol, Room 2114  
Sacramento, CA 95814

Via email: [apps.committee@assembly.ca.gov](mailto:apps.committee@assembly.ca.gov)

Dear Assembly Member Gonzalez:

Human Rights Watch is pleased to support Senate Bill 639 (SB 639), a bill that would overturn the discriminatory practice of paying workers with disabilities in California less than the state minimum wage.

As one of the world's leading independent organizations dedicated to protecting human rights, Human Rights Watch seeks to protect the human rights of all people, including people with disabilities. We document human rights violations in more than 100 countries around the world including the United States.<sup>1</sup> We oppose current laws that allow employers to pay subminimum wages to employees with disabilities because it is inconsistent with international human rights law. It also undermines nondiscrimination protections under the US Americans with Disabilities Act.

Currently, under section 14(c) of the federal Fair Labor Standards Act (FLSA), the California Labor Commission is authorized to issue certificates to employers allowing them to pay employees with disabilities less than the state minimum wage. This is based on the discriminatory assumption that wages should be downwardly adjusted for employees whose



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<sup>1</sup> For more information on Human Rights Watch's reporting on the United States, please visit: <https://www.hrw.org/united-states>; and for more information Human Rights Watch's reporting on the rights of people with disabilities, please visit: <https://www.hrw.org/topic/disability-rights>.

disabilities make them unable to work in typical work settings because they are not as productive as their peers without disabilities.<sup>2</sup>

This practice discriminates against people with disabilities by stripping them, on the explicit basis of their disability, of employment protections that other workers have. Such protections are necessary to ensure workers can earn a living wage and have an adequate standard of living, as provided for under international human rights standards.<sup>3</sup>

This discrimination is also inconsistent with Article 27 of the Convention on the Rights of Persons with Disabilities (CRPD), which requires governments to “Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment...” and “protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value.”<sup>4</sup>

SB 639 would signal a commitment to the equal labor rights for workers with disabilities, including by ensuring workers with disabilities earn at least the minimum wage.

The practice of permitting employers to pay workers with disabilities less than the minimum wage also risks enabling breaches of the Americans with Disabilities Act of 1990 (ADA), which protects employees with disabilities from discrimination in employment. Section 12112(a) of the ADA states that:

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.<sup>5</sup>

One example is the 2012 case *Equal Employment Opportunity Commission v. Hill Country Farms, Inc.*, in which the US District Court for the Southern District of Iowa ruled under the

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<sup>2</sup> Disability Rights California, “SB 639 Sample Support Letter,” undated, [https://www.disabilityrightsca.org/system/files/file-attachments/SB-639\\_%28Durazo%29\\_sample\\_letter\\_of\\_support.rtf](https://www.disabilityrightsca.org/system/files/file-attachments/SB-639_%28Durazo%29_sample_letter_of_support.rtf) (accessed August 10, 2021).

<sup>3</sup> Convention on the Rights of Persons with Disabilities (CRPD), G.A. Res. 61/106, Annex I, UN GAOR, 61<sup>st</sup> Sess., Supp. (No. 49) at 65, UN Doc. A/61/49 (2006), entered into force May 3, 2008. See also, International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, arts. 7 and 11; and Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), arts. 23 and 25. The US has not ratified the ICESCR.

<sup>4</sup> CRPD, art. 27.

<sup>5</sup> A “covered entity” is an employer, employment agency, labor organization, or joint labor-management committee. Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, July 26, 1990, Stat. 328.

ADA that Hill Country Farms, Inc., an employer who had for several years obtained a certificate under FLSA Section 214(c), had discriminated against 32 workers with intellectual disabilities, who “were performing productively and effectively as non-disabled workers,” yet were paid far less than other workers, substantially below the minimum wage.<sup>6</sup> The Equal Employment Opportunity Commission (EEOC) continued litigation following the verdict and secured back pay for the employees who suffered discrimination.<sup>7</sup>

Although this success demonstrates the use of litigation as a means of recourse, not all workers with disabilities have easy access to the legal system. This issue of access is of particular significance as workers with disabilities who have been given much less than the living wage may experience greater difficulties in securing representation and may experience financial hardship.

Although section 14(c) of the FLSA’s original intent was to promote employment for people with disabilities, organizations of persons with disabilities, including Disability Rights California, as well as the fact-finding federal agency, the US Commission on Civil Rights, report that the legislation has adversely impacted workers with disabilities by leading to practices including paying workers with disabilities less than the state minimum wage; segregating them into separate working centers; and denying protections that are available to workers who do earn at least the minimum wage, such as by prohibiting workers with disabilities from unionizing.<sup>8</sup>

We support SB 639 because we believe that it will end a harmful and discriminatory practice in California against people with disabilities and further align California legislation with protections guaranteed under the ADA and the CRPD. We urge you to vote in favor of SB 639.

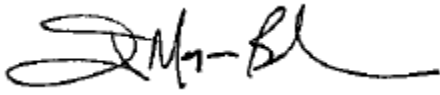
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<sup>6</sup> US Commission on Civil Rights (USCCR), “Subminimum Wages: Impacts on the Civil Rights of People with Disabilities,” September 2020, <https://www.usccr.gov/pubs/briefing-reports/2020-09-17-Subminimum-Wages.php>, pp. 24-25 (accessed April 20, 2021); *Equal Employment Opportunity Commission v. Hill Country Farms, Inc.*, United States District Court for the Southern District of Iowa, September 18, 2012 [899 F. Supp. 2d 827]

<sup>7</sup> USCCR, “Subminimum Wages: Impacts on the Civil Rights of People with Disabilities,” p. 25.

<sup>8</sup> Disability Rights California, “California is One Step Closer to Paying Workers with Disabilities Minimum Wage for Their Labor”, March 25, 2021, Disability Rights California press release, <https://www.disabilityrightsca.org/press-release/california-is-one-step-closer-to-paying-workers-with-disabilities-minimum-wage-for#:~:text=SB%20639%20would%20prohibit%20paying,disabilities%20to%20competitive%20integrated%20employment> (accessed August 10, 2021); Jeong Park, “Thousands of California Workers Legally Make as Little as \$2 an Hour. Why that could change,” *Sacramento Bee*, April 20, 2021, <https://www.sacbee.com/news/equity-lab/accountability/article250671614.html> (accessed August 10, 2021); USCCR, “Subminimum Wages: Impacts on the Civil Rights of People with Disabilities,” pp. 7, 14 (accessed April 20, 2021). According to the USCCR report, “some employers who hold a Section 14(c) certificate have employed are mainly employed with other people with disabilities and not integrated into a broader community or work setting,” p. 7.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jane Buchanan', with a long horizontal flourish extending to the right.

Jane Buchanan  
Deputy Director  
Disability Rights Division  
Human Rights Watch

cc: Members of the Committee on Appropriations  
Frank Bigelow (Vice Chair)  
Isaac G. Bryan  
Lisa Calderon  
Wendy Carrillo  
Ed Chau  
Megan Dahle  
Laurie Davies  
Vince Fong  
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Robert Rivas  
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Senator María Elena Durazo,  
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