

**Testimony in Support of H5263
House Labor Committee
Submitted by Jordan G. Mickman
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Rhode Island Center for Justice (CFJ) is a non-profit public interest law firm that provides free legal services to low-income residents throughout Rhode Island. The CFJ represents low-wage workers in Rhode Island, including domestic workers who would be directly impacted by this amendment. The CFJ strongly supports S0323/H5263.

Shamefully, Rhode Island continues to enforce a Jim Crow law of the early 20th century. The domestic worker exemption in state and federal minimum wage laws only exists because Senators representing the states making up the former Confederacy demanded the accommodation in 1938. The Black people working on the farms and in the homes of the wealthy mattered so little to Congress in 1938 that their interests were sacrificed to pass the Fair Labor Standards Act.

Just as we know Black Lives Matter, we also know that domestic workers are employees. S0323 and H5263 present the state an opportunity to reverse nearly a century of lawful exploitation by clearly stating that domestic workers are employees entitled to state wage and hour protections. Rhode Island should join California, Connecticut, Hawaii, Illinois, Massachusetts, New York, Nevada, and Oregon by extending labor protections to domestic workers.

The Fair Labor Standards Act was enacted in 1938, 15 years before the US Supreme Court struck down the “separate but equal” doctrine in *Brown vs Board of Education* and nearly 25 years before the Civil Rights Acts of 1964 established a statutory scheme to address employment discrimination. Although there was some momentum to provide workers with safer conditions and minimum wages, it did not extend to all workers. To better understand what was happening in the US Senate in 1938, consider this: on February 21, 1938, the Senate ended a 30-day Southern filibuster against the Wagner-Van Nuys Anti-Lynching Bill, voting 58-22 to lay it aside.¹ The Senate could not whip the votes to pass an anti-lynching bill. Similarly, racist members of Congress were standing by to filibuster any law that would provide equality to black workers. The Fair Labor Standards Act requirement that all workers be paid a minimum wage, including Black workers, would not garner the necessary votes to overcome such a filibuster. The solution of the day was to pass the FLSA with an exemption for farm workers and domestic workers.

With the introduction of S0323/H5263 before this body, the state can finally act to reverse this racist legacy. A decision must be made whether to expressly reaffirm this discriminatory exemption or to affirmatively act to reject it. Anything short of immediate passage of this legislation is tacit support of the racist filibuster that led to the creation of the exemption.

¹ <https://archive.nytimes.com/www.nytimes.com/library/national/race/022238race-ra.html>

Rhode Island law currently excludes “[a]ny individual employed in domestic service or in or about a private home” from the definition of “employee” under Chapter 28-12, entitled “Minimum Wages.” Research from the Economic Policy Institute revealed that 95% of in-home domestic workers in Rhode Island identify as female. These women are performing important work caring for people who are elderly, disabled, and children, and also keeping homes safe and clean. However, these workers are without legal when an employer² chooses to pay wages below the state minimum. Individuals performing childcare, janitorial, maintenance, cleaning, and other similar jobs are entitled to minimum wage in almost any setting in Rhode Island, except for when those services are performed in a private home. Just as Congress did in 1938, Rhode Island has sacrificed the labor rights of vulnerable and isolated employees without providing them any benefit.

To be clear, current Rhode Island law would permit an employer to pay an in-home domestic worker \$2.00 an hour for an 80-hour work week. Moreover, it is common practice for an employer to deduct costs such as room and board from these already sub-minimum wages. At the Center for Justice, we have had to advise one domestic worker, a person who is a black immigrant, that she had no viable claim for unpaid wages against her former employer. Based on our calculations, if she was an employee entitled to minimum wage, overtime, and liquidated damages a court might have awarded her between \$70,000 and \$400,000. Instead, she was kicked out of the home she had lived in and worked in without notice, access to unemployment benefits, or any meaningful claim for relief. It was our job to deliver the message that the way she was treated was sanctioned by Rhode Island law.

S0323/H5263 would correct this injustice by providing domestic workers with nothing more than what similarly situated workers earn in any employment setting that is not a private home. Given the history and ongoing injustice of the domestic worker exemption from the state minimum wage law, we ask that this Committee vote to approve this legislation.

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² If a domestic worker is not an employee, the person or entity that they work for cannot be an employer. What exactly is the legal description of this relationship?