TESTIMONY OF JONATHAN C. PUTH ON BEHALF OF THE METROPOLITAN WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION CONCERNING THE BUDGET SUPPORT ACT APRIL 14, 2016

To the Chair and Members of the Committee, I am honored to testify on behalf of the Metropolitan Washington Employment Lawyers Association (MWELA) regarding the Budget Support Act.

I am Immediate Past President of MWELA, an association of over 300 lawyers who primarily represent employees and who are dedicated to the advancement of employee rights and the proper administration of law. MWELA is among the largest and most active affiliates of the National Employment Lawyers Association (NELA), the country's largest bar association that advances equality and justice in the workplace and whose members represent individuals in employment disputes. As a member of a small law firm, 100% of my practice is devoted to the representation of employees, a significant portion of whom assert claims under the District of Columbia Human Rights Act.

The Council has consistently worked to ensure that the District of Columbia Human Rights Act remains one of the most robust and effective anti-discrimination statutes in the country. Our law prohibits workplace discrimination against a broad spectrum of employees and promises "to secure an end in the District of Columbia to discrimination for any reason other than that of individual merit. . . ." D.C. Code § 2-1401.01. An essential aspect of that aim is to ensure that targets of invidious discrimination and retaliation be afforded complete relief, including an award of pre-judgment and post-judgment interest on awards of lost pay.

Interest is not a windfall or even extra measure of relief, but simply a manner of accounting for the time value of money when wages are unlawfully withheld. Under the federal Civil Rights Act counterpart to the DC Human Rights Act, the Supreme Court holds that an award of interest on lost pay is a required "element of complete compensation" in order to "to make "persons whole for injuries suffered through past discrimination." *Loeffler v. Frank*, 486 U.S. 549, 557-58 (1988) (*citing Albemarle Paper Co. v. Moody*, 422 U.S. 405, 421 (1975)). Our Court of Appeals has also consistently interpreted the Human Rights Act to provide for interest on awards in discrimination cases both in the public and private sectors, and interest is provided for in regulations implementing

the Human Rights Act. *D.C. Office of Human Rights v. D.C. Dep't of Corr.*, 40 A.3d 917 (D.C. 2012); 4 DCMR § 214.5.

Importantly, our Human Rights Act provides for an election of remedies by which a target of employment discrimination may bring claims in court, or may instead pursue their claims administratively before the Commission on Human Rights. D.C. Code §§ 2-1403.16, 2-1403.10. One amendment under consideration by this Committee may be asserted to severely limit remedies available to individuals who choose to assert claims of discrimination in the administrative forum.

MWELA opposes the amendment entitled "District of Columbia Government Award of Interest and Interest Rate Amendment Act of 2016" because, if implemented, it may remove an essential element of relief to proven targets of discrimination who brought their claims before the Commission on Human Rights rather than in court. The amendment would add a new section to the District of Columbia Administrative Procedures Act as follows:

> Notwithstanding any other provision of law, unless a statute has expressly authorized or authorizes the award of interest to a prevailing party in an administrative adjudication, no pre-award or pre-decision interest or post-award or post-decision interest may be ordered by any reviewing administrative hearing officer, administrative law judge, administrative hearing tribunal, or any court reviewing an award or decision arising from an administrative adjudication.

Because the express language of our Human Rights Act does not contain a reference to interest, this change may be claimed to overturn governing regulation and the interpretation of our Court of Appeals that affords interest on lost pay and other expenses to individuals who were unlawfully deprived of wages due to workplace discrimination.

This language may erode the promise of the Human Rights Act to fully compensate proven targets of discrimination simply because the complainant has chosen to move forward in the administrative forum. The language of the amendment is not confined to claims by District of Columbia government

employees alone, but rather may affect all employees who bring discrimination claims before the Commission on Human Rights. MWELA is unaware of any reasoned rationale for limiting relief because claims are adjudicated in an administrative forum rather than in court. While we would equally oppose any measure that purports to limit interest for public sector employees alone, the Budget Support Act appears to be an inappropriate vehicle for a potentially much broader change in the law, which could affect a much larger class of private sector individuals whose awards will have no impact on the budget whatsoever.

Additionally, we would expect the District of Columbia to argue that the amendment disallows an award of interest to individuals in proceedings before the Office of Employee Appeals and the Public Employees Relations Board. Whatever the merits of balancing the budget, it should not be accomplished at the expense of workers whose wages were unlawfully withheld.

We urge the Committee to reject this aspect of the amendment.

Secondly, MWELA is concerned about the amendment entitled "Tort Notice Budget Technical Amendment Act of 2016," which would amend Section 12-309 of the Code to require notice to the mayor within 6 months whenever an action is brought "against an officer or employee of the District of Columbia government or an individual otherwise entitled to be defended and indemnified by the District of Columbia Government." This amendment might be read to inadvertently erode a law passed only last year by the Council that expressly exempted claims under the Human Rights Act from the notice requirements of Section 12-309. D.C. Code § 2-1403.16(c) ("The notice requirement of § 12-309 shall not apply to any action brought against the District of Columbia under this section.") The Council acted to remove the application of Section 12-309 to claims under the Human Rights Act because in typical circumstances the government and its agents are already given notice of claims of discrimination through complaints made with the Office of Human Rights. The Council acted to ensure that multiple technical requirements would not weaken our Human Rights Act. Because the Human Rights Act prohibits discrimination by individuals and entities that are subject to indemnification by the District, this change could erode the recently passed amendment to the Human Rights Act that removes the 12-309 roadblock to the assertion of rights under the Act.

Finally, we understand that the Office of the Attorney General has sought additional budget authority to support enforcement against wage theft in the District of Columbia. MWELA is fully supportive of strict enforcement of our laws against wage theft and views expansion of enforcement authority favorably.

Thank you for the opportunity to present this testimony.

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