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Statement of Theodore C. Whitehouse and Casey Anderson of the Council for Court Excellence before the Committee on Finance and Revenue of the Council of the District of Columbia

Bill 22-0668, the “Local Work Opportunity Tax Credit Amendment Act of
2018.”

October 30, 2018

Introduction

Good morning, Chairman Evans, and members of the committee. My name is Ted Whitehouse, I am Senior Counsel to Willkie Farr & Gallagher LLP, a Board Director of the Council for Court Excellence (CCE), and Chair of CCE’s Reentry Subcommittee. With me today is Casey Anderson, Development Manager and Policy Analyst at CCE. I appear today as a CCE Board Director and not in any other capacity. To be clear, no judicial members of CCE participated in the formulation of this testimony.

CCE is a local nonpartisan civic organization founded in 1982 to improve the administration of justice in the courts and related agencies in the District of Columbia. The organization has been addressing the systemic effects of collateral consequences, including barriers to employment, since 2005. CCE’s first work in this area resulted in the D.C. Council passing the Criminal Record Sealing Act of 2006. Since then, CCE has issued several reports highlighting the barriers to reentry facing returning citizens in the District and testified here on issues ranging from occupational licensing for people with criminal records to establishing a local clemency board.

This testimony addresses B22-0668, the Local Work Opportunity Tax Credit Amendment Act of 2018. We thank Councilmembers Robert White, Bonds, Silverman, Cray, Cheh, McDuffie, Grosso, Nadeau, and Trayon White for introducing the bill, and you, Chairman Evans, for calling this hearing.

The D.C. Council has recently begun addressing the myriad barriers to employment in the District for people with criminal records. For example, Ban the Box legislation now prohibits employers from asking about a criminal record on employment applications, postponing those inquiries until after a conditional job offer is made.¹ This is a step in the right direction, and we commend the Council for your efforts, but the unemployment rate among returning citizens tells us there is more work to be done.

One person CCE interviewed for our reentry report explained the situation, saying that Ban the Box “is great for people like me... but at the same time, there’s no way I can hide that I’ve been in prison for 20 years, just no way. Because I’m a returning citizen, I can only get a part-time job at Safeway, even though in prison I learned how to do legal work.”²

Criminal records are stigmatizing, no matter the type of offense, the final disposition, or even when it occurred. In recent survey of US employers, 73% of respondents stated that even a nonviolent misdemeanor conviction would be “somewhat” or “very influential” in their decision not to extend a job offer.³ Providing a tax credit for businesses that hire returning citizens is one way of incentivizing businesses to overcome that stigma.

¹ Beyond Second Chances: Returning Citizens’ Re-Entry Struggles and Successes in the District of Columbia, 48. Council for Court Excellence (December 2016).

² Beyond Second Chances: Returning Citizens’ Re-Entry Struggles and Successes in the District of Columbia, 49. Council for Court Excellence (December 2016).

³ Beyond Second Chances: Returning Citizens’ Re-Entry Struggles and Successes in the District of Columbia, 42. Council for Court Excellence (December 2016).

CCE endorses B22-0668 and our testimony today will address three issues affected by the bill: 1) employer benefits, 2) the impacts of unemployment, and 3) racial disparities.

1) Employer Benefits

Employers are often hesitant to hire someone with a criminal record, but these hesitations often stem from stereotypes of people with criminal records as unreliable or lazy employees. However, recent research shows these to be misconceptions, revealing higher retention rates and higher motivation levels among employees with criminal histories. PastForward, an organization connecting returning citizens with employers in Maryland, explains that “Ex-offenders are often more motivated to work and more grateful for the chance to prove themselves.”⁴

One example can be found at the nation’s largest employer, the U.S. military, where enlistees with felony records were 33 percent more likely to be promoted to sergeant than those with no conviction history, irrespective of other factors, including educational background. Enlistees with felony records have a similar attrition rate with the rest of enlistees, and are no more likely to be discharged for a negative reason like poor performance or misconduct.⁵

These results are not unusual. Just over the border in Maryland, Total Wine & More, a company experiencing the excessively high employee turnover rates endemic to the retail industry, found that annual turnover was on average 12.2 percent lower for employees with criminal records.⁶ Speaking about the company’s commitment to second chance and the low turnover rates, owner David Trone said, “It is about giving individuals the opportunity to turn

⁴ Hammerwold, S. (2016). Common Myths about Hiring the Formerly Incarcerated. Pacific Reentry Career Services.

⁵ Jennifer Ludquist, Devah Pater, and Eiko Strater, “Does a Criminal Past Predict Worker Performance? Evidence from American’s Largest Employer,” Working Paper (2016).

⁶ Matt Krumrie, “Why You Should Give Candidates with a Criminal Background a Second Chance,” October 4, 2016.

their lives around. My employees have gone on to do great things.”⁷ But it is also about the bottom line. Better retention rates can significantly reduce an employer’s costs; for lower-skilled white-collar workers, cost estimates for recruiting and training are about \$4,000 per employee.

In order to be successful, this tax credit must incentivize businesses more than it burdens them. Local employers have previously expressed to CCE that they do not claim the federal Work Opportunity Tax Credit for eligible employees due to cumbersome paperwork requirements. CCE recommends that the filing required for businesses to claim the local tax credit be minimal. Additionally, as tax laws are amended, it is imperative that businesses are educated about the changes and benefits. Employers who previously opted to not claim the federal tax credit may decide it is worthwhile if they can now claim the credit on both their federal and local taxes. Executed properly, CCE is confident that this legislation can simultaneously boost businesses and reduce barriers to employment for returning citizens.

2) Impacts of Unemployment

Implementing the “Local Work Opportunity Tax Credit Amendment Act of 2018” can even help improve the local economy, which is negatively impacted by high rates of unemployment among people with criminal histories. Nationally, it is estimated that the employment penalty imposed on people with criminal records results in a loss of \$78-87 billion in annual gross domestic product.⁸

Here in D.C., the unemployment rates among people under the supervision of the Court Services and Offender Supervision Agency (CSOSA) vary depending on where a person lives.

⁷ Trone Private Sector and Education Advisory Council to the ACLU. (2017). Back to Business: How Hiring Formerly Incarcerated Job Seekers Benefits Your Company. Washington, D.C. ACLU.

⁸ Cherie Bucknor & Alan Barber, Center for Economic and Policy Research, “The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies” (2016).

The unemployment rate among supervisees in Police District 2 is highest, at 61 percent, while the unemployment rate in Police District 1 is the lowest in the City – a still staggering 29 percent. Districtwide, 72 percent of returning citizens under CSOSA supervision are considered “employable,” but only 42 percent of these are employed.⁹ If the proposed tax credit helps to reduce unemployment, B22-668 will also enhance public safety in the District. Increased employment levels for people post-incarceration leads to decreases in property crime, drug dealing, and violent crime.¹⁰

3) Racial Disparities

Forty-nine percent of D.C.’s population is black, but more than 96 percent of the people in prison for D.C. Code offenses are black. This racial disparity in incarceration means that the collateral consequences, including unemployment, disproportionately affect black District residents. Not only are D.C.’s black residents more likely to have a criminal record and more likely to be incarcerated, but their records are also more likely to be held against them when seeking a job. A study in New York City study showed that the “criminal record penalty” suffered by white applicants was roughly half the size of that for black applicants with a criminal record.¹¹ A similar study in Milwaukee reiterated this racially disparate “criminal record penalty,” finding that white applicants with a criminal record were more likely to be called back for a job than even black applicants without a criminal record.¹² This bill could help to move the

⁹ CSOSA. (2015). Employment at 90 days and educational attainment of 2015 CSOSA entrants. Unpublished raw data analyzed by authors and on file with CCE.

¹⁰ Urban Institute. (2006). Understanding the challenges of prisoner re-entry: Research findings from the Urban Institute's prisoner re-entry portfolio. Washington, D.C.: Urban Institute.

¹¹ Pager, D., & Western, B. (2009). Investigating prisoner re-entry: The impact of conviction status on the employment prospects of young men. Washington D.C.: DOJ, p. 4.

¹² Pager, D. (2003). The mark of a criminal record. *American Journal of Sociology*, 108(5), 937-75.

district one small step closer to reducing stigma and barriers to employment for DC's black residents, especially those with criminal histories.

Conclusion

CCE wholly supports B22-668, the Local Work Opportunity Tax Credit Amendment Act of 2018. We appreciate the Council's efforts to provide DC's returning citizens with the opportunities they need to transition successfully home and support themselves and their families. Thank you for your time. We are pleased to answer any questions you may have.