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Public Meeting

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300 S. Spring Street, Auditorium
Los Angeles, California

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MARCY SAUNDERS, State Labor Commissioner

TERENCE STREET, Roebbelen Contracting

JOHN HAKEL, Associated General Contractors of California

JAMES MARTENS, Transportation Management Systems

PAUL GLADFELTY, California Mining Association

CHARLES BIRENBAUM, attorney, California Mining Association

KIM WITT, Viceroy Gold Corporation

KEN SULZER, attorney, California Independent Petroleum Association, Association of Energy Service Companies, Independent Oil Producers Agency

ROD ESON, Venoco

DAVE LEFLER, Western Drilling, Inc.

SCOTT WETCH, State Building and Construction Trades Council of California, AFL-CIO

RICHARD HOLOBER, California Labor Federation, AFL-CIO

MATT McKINNON, California Conference of Machinists
PATRICIA GATES, attorney, Northern California District Council of Laborers

JIM SHADWICK, Time Clock Sales and Service

DR. B. J. SNELL, California Nurse-Midwives Association

RUTH MIELKE, certified nurse-midwife

SUSAN BOGAR, certified nurse-midwife

PAULINE GLATLEIDER, certified nurse-midwife

CYNTHIA EVERETT, registered nurse

JILL FURILLO, California Nurses Association

NANCY MARSHUTZ, certified nurse-midwife

BETSY JENKINS, certified nurse-midwife

CHARLET ROGERS, registered nurse

RICHARD SIMMONS, attorney, California Healthcare Association

KATHERINE CONNOLLY, registered nurse

CHARLES LONG, Edison Pipeline and Terminal Company

PAUL LUSSI, Edison Pipeline and Terminal Company

MATT BARTOSIAK, Employers Group

KARLA WILSON, advanced practice nurse

PAMELA MELTON, PARCA

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COMMISSIONER CENTER:  Good morning.  I’m Chuck Center.  I’m the chairman of the Industrial Welfare Commission.  I welcome you to this hearing today.

And just to let you know what we’re going to be doing, our first order of business will be to open up the minimum wage hearing.  And then, after that, depending how long it will take, we will go into AB 60.  And between minimum wage and AB 60 implementation, we’ll break for a short lunch.  I hope we get out of here by five o’clock.

But I will ask you do, in your testimony -- well, first, let’s call -- let’s call the roll, I guess, so we can have a quorum.

Mr. McCarthy?

COMMISSIONER McCARTHY:  Here.

COMMISSIONER CENTER:  Barry Broad?

COMMISSIONER BROAD:  Here.

COMMISSIONER CENTER:  Bill Dombrowski?

COMMISSIONER DOMBROWSKI:  Here.

COMMISSIONER CENTER:  Leslee Coleman.

COMMISSIONER COLEMAN:  Here.
COMMISSIONER CENTER: And Chuck Center. We’re here and we have a quorum, so we can now start this meeting. Thank you.

What we will do -- and I will ask, because there’s a number of speakers here today -- if you have written testimony, just briefly introduce yourself and don’t go into your written testimony. We will review that here at the Commission. And if you -- somebody else comes up and comments on the same comments you want to make, if you could just come up and say you agree with those comments, then we can -- might be able to get out of here before dark. So, we’ll ask that.

And what -- we will first have on the minimum wage --

AUDIENCE MEMBER: (Not using microphone) Can you clarify something really quick? Does that mean all of us who are here for AB 60 are really not needed here till after lunch?

COMMISSIONER CENTER: We have no idea how long the minimum wage will go. If it goes for two hours, if it goes for an hour and a half, or an hour, or four hours. We don’t know.

What we’d like to do now is call up a panel in favor of opening up the minimum wage. And I think Mr.
Pulaski is here. I’d like Mr. Pulaski to start that off.
And when the speakers do come up, we’d ask them
to introduce themselves and the organization they
represent and their title. And if they could possibly
give a business card to the recorder, we’d appreciate
that.

MR. PULASKI: Mr. Chairman, thank you.
Testing.
I have to say, Mr. Chairman, that your mike is
not very strong in the back of the room, and I’m not sure

AUDIENCE MEMBERS: (Not using microphone) Can’t
hear! Can’t hear anything.

MR. PULASKI: That’s the answer to that
question.

COMMISSIONER CENTER: Is yours on?
MR. PULASKI: It’s on, but it’s marginal.
Testing, one, two, three.
COMMISSIONER CENTER: Kind of holler if you can.
MR. PULASKI: I can do that.
COMMISSIONER CENTER: I know you can.
(Laughter)
COMMISSIONER CENTER: And briefly, just to
apologize, our executive director is not here today.
He’s got an illness in the family. And our principal consultant is on his way down, so we have a one-man team here, Christine Morse. So, be patient with us, if you could, please.

MR. PULASKI: Chairman Center?

COMMISSIONER CENTER: Thank you.

MR. PULASKI: Members of the Commission, thank you for your kind attention today.

COMMISSIONER CENTER: Is this for a video?

MR. PULASKI: I’m getting some extra light.

COMMISSIONER CENTER: Okay. Thank you.

MR. PULASKI: May I ask, can the people in the back of the room hear? Yes?

COMMISSIONER CENTER: She’s just running to the audio-visual people now.

THE REPORTER: What is your name?

MR. PULASKI: Art Pulaski, P-u-l-a-s-k-i.

Testing, one, two, three. Can you hear in the back?

Oh, good. Okay.

Chairman, members of the Commission, thank you.

Art Pulaski, California Labor Federation, joined today by a panel of experts, economic analysts, a policy person, representatives and advocates of low-wage workers, and
the real experts, one or two low-wage, minimum-wage workers themselves. We appreciate your kind attention today.

What it reads in the Code of California law, the Commission’s duty, it is to set a minimum wage that is, quote, “adequate to supply the costs of proper living and that eliminates the conditions of labor that is prejudicial to the health and welfare of employees,” end quote. California has the highest cost of living, yet we still become the lowest minimum wage on the West Coast. In Oregon, they recently raised the minimum wage to $6.50 per hour. In Washington State, they also, two weeks from today, will begin the new minimum wage of $6.50 an hour. But more importantly, they will index that minimum wage every year to the cost-of-living increases to the people in the State of Washington.

There is no way that a reasonable person can rationalize that $5.75 per hour, California’s minimum wage, is not sufficient for a full-time, year-round worker to live a life of health and a life of dignity.

You know that nearly one million California workers are earning the minimum wage right now. In addition to that million workers, there are two and a half million more that earn $8.00 an hour or less.
That’s important, for two reasons. One is the federal government says that $8.00 an hour or less is below the poverty level for a family. But secondly, in 1968, some thirty years ago, the minimum wage was at a level that is far above, in real wages, what it is now to us. And there is no way -- and I’d be interested to hear any argument from any person that would say, suggest that we should have a lower comparable living wage today for California’s workers as compared to what we did for them some thirty years ago.

Three and a half million workers in California below the poverty level, below what we were thirty years ago -- those are people that have jobs, that work hard, and I would suggest perhaps that may even work harder than you or me to make a living.

Let me just dispel a couple of myths about minimum-wage workers.

The typical worker at or near the minimum wage in California is an adult, not a teenager, a permanent worker, not a teenager who’s earning extra Christmas cash or a teenager that’s looking to buy a new pair of gym shoes. Eighty-two percent of minimum-wage workers in California are 20 years or older. Three quarters of them are full-time workers, and most of them are the main
breadwinners of their families.

These hard-working Californians support every industry and every community of our state. They are the foundation of our economic success, and they are not sharing in today’s prosperity. For too many workers, today’s booming economy, for them, is bursting their bubble.

We are committed to working with you to enhance the desperate lives of three and a half million workers in California. We rely on you to change the condition of life for California workers. We urge you to take seriously your charge by statute and law of the State of California, and we look to a minimum wage of $8.00 an hour or greater.

Thank you for your kind attention.

(Applause)

COMMISSIONER CENTER: Are there any questions from the Commission?

COMMISSIONER McCARTHY: Yes. I have a question.

COMMISSIONER CENTER: We’ve got a nice buzz here.

MR. PULASKI: That’s the rumble of California workers who are making less than $8.00 an hour. The rumble is getting louder and louder!
(Laughter and applause)

COMMISSIONER McCarthy: You said that your target is $8.00 or greater. Could you give us the full range. What is the “greater” number that you would want?

MR. PULASKI: Well, commissioner, if you look at the comparable wage rate of thirty years ago plus one year, I believe $1.65 an hour, at the current real-wage comparison, it takes you to over $8.04. If you figure a 2 percent cost of living for next year by the time you get done with this, I would say that probably brings us in the realm of $8.20 an hour.

COMMISSIONER McCarthy: So, $8.20 an hour.

A couple of questions here, in terms of who currently receives the minimum wage. You say that basically, most are adult, full-time. Would you -- conceivably, however, many are not. Would you find it -- would you agree, then, that teenagers supported by their families, living at home, would you say they should be exempt from this?

MR. PULASKI: No, sir.

COMMISSIONER McCarthy: All right. So, why not?

I mean --

MR. PULASKI: Because you’ll have a situation where there will be enormous competition of work by
breadwinners and for comparable wages for a comparable kind of work. And how are you going to ask employers to differentiate between teenagers and a 20-year-old breadwinner? And how -- and how do you differentiate between a 19-year-old who is a breadwinner for a young family and a 20-year-old who is a breadwinner for a family?

COMMISSIONER McCarthy: What about tipped employees, many of whom, say, are waiters, waitresses? I was a waiter when I was in college, and I generally received far more from tips in compensation than I did from my base pay. Why -- I mean, if you’re basically saying that -- looking at $8.00 as compensation, why, say, would you not consider excluding, say, tipped employees?

MR. Pulaski: Simply because there ought to be a base rate. It was in effect in 1968 and in all prior years, when we said there’s a minimum base rate for all workers in the state. And it was the equivalent then of what this wage would be now. And we didn’t make exceptions for people --

COMMISSIONER McCarthy: Well, you’re saying what it should be, and we don’t have to consider the implications of it. That doesn’t make a lot of sense.
I’m talking about tipped employees, many of whom -- I earned well beyond the minimum wage when I added my tips in, as I say, as a waiter in college. And, I say, as a -- so, I mean, I see a category of people here who are teenagers or students, supported by their families, receiving, say, in certain kinds of job classifications, significantly more than that. And it’s something one might want to consider. That’s the only point I’m making.

MR. PULASKI: Well, that’s all I would say, that why should we take away from workers what they have historically had?

COMMISSIONER McCARTHY: Well, as I say, I’m not -- I’m talking about tipped employees here.

MR. PULASKI: We’ve always given tipped employees the minimum wage. So, that would take away from them.

COMMISSIONER McCARTHY: Let me -- one final question. It’s just a question out of curiosity. The last raise in the minimum wage was established by -- primarily by the labor movement, who carried it as an initiative on the ballot and did an excellent job in terms of the campaign. There’s no doubt about it. In fact, the major figure behind that -- I saw Richard out
here someplace -- did an excellent job.

Why -- my question is, why, when labor carried this as an initiative on the ballot, why did you not put $8.00 an hour on the ballot when it was being introduced to the voters of the State of California?

MR. PULASKI: Because, sir, we knew that one day we would have an enlightened Industrial Welfare Commission.

(Laughter and applause)

COMMISSIONER McCARTHY: Well, what you’re really saying -- what you’re really saying, Mr. Pulaski, is you didn’t trust the voters of the State of California to give you this. That’s as I see it.

Thank you.

COMMISSIONER BROAD: I just wanted to add, by way of clarification, that a tip credit in California is illegal. And the courts have determined that the Commission has no authority to establish a tip credit. It’s in the Labor Code and it’s a settled issue.

COMMISSIONER CENTER: And one -- kind of more of an analogy, Mr. Pulaski, to the comment about teenage children living at home earning minimum wage, is that much different than an elderly parent living with their children that can’t afford their own house that gets
minimum wage too?

MR. PULASKI: I’m sorry?

COMMISSIONER CENTER: Is there any difference in an elderly parent living with their children that can’t afford to rent a house either and earns minimum wage and gets less because they’re living with their children?

MR. PULASKI: No.

COMMISSIONER CENTER: Thank you.

MR. PULASKI: If there are no other questions, I thank you very much.

(Applause)

COMMISSIONER CENTER: And please, after doing testimony -- it’s going to be a long day -- we would ask please hold the applause.

MS. MARIN: (Through Interpreter) Good morning. My name is Maria Marin. I’m 36 years old. I have three children. One of them is 13, one of them is 7, and the other is 10 months old.

I live in (inaudible), and the reason I’m here today is to tell you about a job earning minimum wage.

I’m a person who has worked here in California for sixteen years now in many jobs, and all of them have been minimum-wage jobs.

I understand that I should be grateful to this
land that gives me a lot of opportunities, but I also
understand that we should be earning a little bit more
for the hard work that we do.

Some of the work that I’ve done is I’ve worked
in hospitals, I’ve worked in housekeeping, I’ve worked in
warehouses, packing food, and unfortunately, a lot of
these jobs not only pay a low wage, but they don’t have
the benefits needed.

And the reason that I’m here today is to talk
about myself and also everybody in -- all the people in
California that, with a higher wage, we could get some of
these benefits that we can’t get, like medical insurance
for our kids and maybe even a better education for our
children so that we might not have to depend on other
government agencies.

And today I’d like to thank you for giving me
this opportunity, and I’d like to ask you that, for the
year 2000, you could think about a higher wage law for
California. And I personally have some goals of getting
-- maybe going -- getting a better career so I could earn
a higher wage, higher than minimum wage.

Thank you.

(Applause)

COMMISSIONER CENTER: Thank you.
Again, we’ll ask you please hold your applause.

A question from the reporter. The spelling of your name?

THE INTERPRETER: Maria, M-a-r-i-a, Marin, M-a-r-i-n.

MR. BARRAGAN: Good morning.

COMMISSIONER CENTER: Good morning.

MR. BARRAGAN: My name is Orlando Barragan, O-r-l-a-n-d-o, Barragan, B-a-r-r-a-g-a-n.

Hi. My name is Orlando Barragan. I’m 19 years old, and I live in (inaudible), California.

I collected 7,536 signatures across the state for people who want the California minimum wage to be higher. These signatures are Los Angeles, Contra Costa, Santa Clara, and Alameda Counties. I’ve been going down the street talking to people who know and understand the difficulty of living on minimum wage. The minimum wage (inaudible), I volunteered for Californians for Justice and other centers. I have seen that the majority of the people with whom I had seen and spoken to have had (inaudible).

To be able to have a job, minimum-wage workers have to get -- have to get another job just to meet their rent, bills, and food. They can’t buy any -- they can’t
get any clothes (inaudible). And this is (inaudible)
they’re living in that condition. Also, when they get a
notice to move, they (inaudible) labor so they won’t
(inaudible). (Inaudible) justice unless we complaint.

Although I’m not a minimum-wage earner, it
affects my community and friends. It is not about me as
an individual; it is about the whole community. I’m here
because, on a personal (inaudible), I now have a high
chance of being minimum wage earner, because two thirds
of minimum-wage earners are people of color, and half are
Latino. It’s not just about economics earnings, it’s
also about racial justice.

Today I’d like to present 7,536 signatures that
we at Californians for Justice collected across the
state. These are people who know that they cannot live
on minimum wage.

(Applause)

MR. BARRAGAN: Are there any questions?
COMMISSIONER BROAD: We need to receive his
signatures.

COMMISSIONER CENTER: Yeah. Can you give us
your signatures too, please?

MR. BARRAGAN: Sure.

COMMISSIONER CENTER: Christine is out, so just
leave them up here for a moment, please.

Thank you.

COMMISSIONER BROAD: I’ll take them.

COMMISSIONER CENTER: Take them, Barry.

COMMISSIONER McCarthy: Or just leave them here. We’ll get them.

COMMISSIONER CENTER: Again, we ask that you be brief, and if you have written testimony, just summarize it. Don’t read the written testimony. Provide it to us and we’ll read it.

Thank you.

MS. CASILLAS: Good morning. My name is Larisa Casillas, and I’m a senior policy associate with Children Now, which is one of California’s largest public advocacy organizations. And I’ll try to be brief.

We know that in California, there are 2.2 million children living in poverty. That’s one out of four children in poverty in California. And as you know, the majority of them have working parents. I’m here to speak a little bit about the consequences, the lifelong consequences, of poverty, which can only have (inaudible).

But anyway, poor children are more likely to be born with low birth rate, cry in infancy, and be a victim
of abuse and neglect. Later in life, poor children are
more likely to repeat a grade or drop out of school and
be the victim of a violent crime.

I wanted to share with you a comment. Last year
I had the pleasure of meeting with working parents
throughout California, and I listened to families
describe how (inaudible) sometimes when family members
are ill (inaudible) about that. And this was from
families that are fortunate enough to have someone to be
able to rely or to lean on during hard times. Families
make up 37 percent of homeless populations, a number that
has increased over the years. And I wanted to add a
comment that had come up while (inaudible), just to
illustrate how inadequate the minimum wage is for raising
a family and to communicate with you the quality of life
that parents and families are -- that poor and neglected
parents and families don’t have.

And a father said, “I work from sunrise to
sunset. I go to work when it’s dark outside and the kids
are in bed. When I come home from work, it’s dark
outside and the kids are in bed. As a father, I feel
bad. I wish I could spend more time with my children.
But what can I do? They need to eat, they need to have a
roof over their heads, they need books.”
For the hundreds of thousands of hard-working parents in California, we need to make it more possible for them to provide for their children. An increase in the minimum wage is one of the many steps we need to take to improve the lives of our children and, indirectly, the quality of life for all Californians.

Thank you.

COMMISSIONER CENTER: Thank you.

(Applause)

COMMISSIONER CENTER: And to clarify -- please, don’t applaud.

To clarify for the speakers, this is opening of the minimum wage hearings. We’ll be conducting wage boards throughout the state next year, so there will be plenty of opportunity to testify at the wage boards too.

Thank you.

FATHER O’CONNELL: Good morning. My name is Father David O’Connell -- that’s O-C-o-n-n-e-l-l -- and I’m pastor of a church in Los Angeles of 4,000 families, most of them poor, Latino, and African-American. And I’m just here this morning to speak on behalf of families in my congregation.

One family that I want to mention is the Lara family, Mr. Jose Lara works full-time, so he’s not able
to keep the family fed because he’s earning minimum wage.

His wife, Gloria, she has now a job with McDonald’s. She’s only on minimum wage. She’s got to be out of the house from three o’clock to eleven o’clock every day, five days a week. She says she’s glad to work and needs the wages or they would not still be able to make ends meet.

And also, I’m worried about the effect this kind of absence of workers from the family is going to have on that family over the long term, where they don’t have a chance to play with the children, to be together as a family, to read to their children, just to be by their children. And this kind of story is repeated all over our city and our state all the time, and I think it’s having a very bad effect on families.

Our state -- not our state, by families, just by accident -- it won’t happen by accident -- we have to do certain things in our state, and our businesses have to help, in trying to support families. The California Budget Project said that two-parent families with one outside parent need an annual income of $31,250 to have a modest standard of living. That’s equivalent to an hourly wage of $15.00 an hour. With two parents working, they need a minimum wage of at least $10.78 an hour. The
single-parent family needs, for a modest living, $17.00
an hour. So, we can see we’re even speaking here today
of very low increments toward that.

I just want to finish off by saying that we need
stable families in our society. We need stable families
more than we need more cheap hamburgers. McDonald’s gets
labor cheaply so they can sell their hamburgers cheaply.
We need stable families a lot more than we need low-
priced hamburgers.

Thank you very much.

COMMISSIONER CENTER: Thank you.

(Applause)

COMMISSIONER CENTER: You guys aren’t paying
attention to the chairman here.

MR. GALPERN: Good morning. Thank you very
much. My name is Dan Galpern. I am from the California
Budget Project, though the previous speaker stole a
little bit of our thunder here. However, I’m going to
make a couple points and perhaps you could follow along
with the remarks that I just handed you that are -- I’ve
handed to you my full testimony -- before you.

Looking strictly to Chart 2, as you can see, the
typical family budget necessary for a family to make ends
meet that was just referred to, a full-time minimum-wage
worker earns less than a third of this statewide basic family budget. Even when you factor in the federal earned income tax credit, that family will only earn 40 percent of the basic family budget. Clearly, the minimum wage is inadequate.

Second, with respect to the impact of minimum wages on the wages of workers, wage and employment trends in California show clearly that recent minimum wage increases have indeed led to real wage gains for low-wage workers, without significant job losses. As you can see in Figure 3 in your packet, the increase in the minimum wage arrested and reversed what was a seven-year decline in its value, and in turn arrested and reversed a decade-long decline in wages at the bottom of the income distribution.

And finally, on the question of job losses themselves, an examination of employment rates reveals that the recent minimum wage hikes in California have been accompanied by declining rates of unemployment. And most significantly -- you can see this on Figure 4 -- for young workers, the unemployment rate has dropped by seven points since January of ’96. Unemployment rates have also dropped for non-white workers and for workers as a whole -- this is California.
And with respect to industries that heavily depend on low-wage workers, particularly retail trade and services, again, the available data provides -- ran to the opposite, about the impact of minimum wage on unemployment. We saw trade employment has grown slowly but steadily since 1996, and service industry employment has grown moderately.

And this basic finding that you can have minimum wage increases leading to real wage gains with no or very little employment losses is consistent with several of the studies that I noted in my full prepared remarks that are before you.

To conclude, then, the weight of evidence supports the point that, first, California’s minimum wage is entirely inadequate to support typical basic expenditures of families, and secondly, that minimum wage increases may have little or no disemployment effect.

COMMISSIONER CENTER: Any questions?

(No response)

COMMISSIONER CENTER: Thank you.

MS. CAMPOS: (Speaks Spanish)

INTERPRETER: She says, “Good morning.” Her name is Josefina Campos. She’s been here for twenty-five years in this country and she’s earned minimum wage for
about seventeen years.

MS. CAMPOS: (Speaks Spanish)

INTERPRETER: She says she works for a company called DC. She has worked for the minimum wage for ten years, and she continues to earn the minimum wage, although they increased the flexibility as she’s been with the company longer.

MS. CAMPOS: (Speaks Spanish)

INTERPRETER: She says she’s supporting -- she’s raised four kids. She’s supporting, currently, only three kids and one grandchild, they doesn’t get any aid from the state or the county for the kids, and that she works normally nowadays, sometimes 12-hour shifts. They count -- they take out of the wages for a 30-cents lunch break. She said it’s very hot (inaudible).

MS. CAMPOS: Gracias.

COMMISSIONER CENTER: Questions?

COMMISSIONER BROAD: Does your employer supply you with any benefits? Do you get, specifically, any paid vacations, health insurance, dental, any insurance of any sort?

MS. CAMPOS: No.

COMMISSIONER BROAD: Thank you.

INTERPRETER: Thank you.
MS. CAMPOS: (Speaks Spanish)

INTERPRETER: She’s a member of a community organization, AHOL.

(Applause)

MR. GARCIA: (Through Interpreter) Good morning. My name is Maximo Garcia and I’m for an increase.

I’ve been a farm worker for five years, and I’ve always earned the minimum wage. That’s $230 a week. After I discount my taxes on that, it’s $200 a week. That $800 a month, with that to pay rent, you have to pay all your bills, you have to pay your transportation on the bus. Another thing, I’m not including medical problems. My wife got sick a few months ago, and we couldn’t pay some repairs. We couldn’t pay for the expenses with this salary.

The minimum wage is not enough for us. And so, I think that it should be taken into account, the meaning of where we are at today, that the minimum wage will not meet our needs, well, basically, for any workers.

Most of the time, the products that we are making, the things that we are working on, we can never afford to buy because our salary isn’t enough for us to be able to pay for the products we make with our own
hands.

And we can’t give the kind of education, what we would like, to our children because our wives and children have to work. With that salary, we can hardly get even closer to our expense. Many parents have no time because we’re not able to be with them because we have to work. The salary is not enough. And anything like our medical expenses, things that we would like to pay for, and healthcare, we’re unable to pay for because our salary is not enough.

Thank you.

(Applause)

MS. BREIDENBACH: Good morning. My name -- good morning. My name is Jan Breidenbach, and I’m the executive director of the Southern California Association of Non-Profit Housing. We are a membership organization dedicated to the production, preservation, and management of affordable housing for low-income people. The core of our membership and our leadership are community development corporations, or CDCs, that are neighborhood community-based nonprofits. These organizations, in this region alone, have built over 30,000 units of housing in the last two decades, producing thousands of jobs and contributing over a billion dollars to the regional
We exist for one reason: low-income workers and their families cannot afford a safe, affordable, and decent place to live. In particular, households that survive on one or even two minimum-wage jobs simply cannot afford to rent.

Let me share some housing information with you. California as a state and Los Angeles as a region both have major affordable housing crises. The state has one of the lowest home ownership rates in the nation at 55 percent, compared to the nation at 67 percent. Los Angeles County has a 48 percent ownership rate, less than half. We are clearly a region of renters because we cannot afford to buy.

But more importantly for our concerns today is the relationship of those of us who are renters and also minimum-wage workers. A recently released national study entitled “Out of Reach: The Gap Between Housing Costs and Income of Poor People in the United States,” by the National Low-Income Housing Coalition, compared the federal minimum wage with rental costs throughout the nation. Recognizing that California’s minimum wage is higher than the federal, this study still found one of the widest gaps in the country in this state.
The study also determined what would be a housing wage, the hourly rate necessary to afford an apartment at the fair market rent. And this is the amount that the government determines, if you are receiving subsidies, and it lags consistently behind actual rents. Throughout the region, the California minimum wage is little more than half what would be required by a housing wage. Rents in Los Angeles and Orange County require at least $16.00 an hour, and San Bernardino and Riverside, they go up to $14.00 an hour.

Another way of looking at this same issue is to calculate how many hours a week must be spent by a worker to earn enough to pay the rent. The number start at about 80 hours a week and continue up until there are no more hours left in the weeks, clearly a fiscal impossibility.

Further, rents tie back to wages. According to Real Facts, a statewide company that quarterly tracks average rents, rents in Los Angeles County are edging up to about $1,000 a month. In the city, they are over $800 a month. We’re talking to get an apartment here. More importantly, they have increased by approximately 6 percent last year and are scheduled to go up another 6 percent the coming year.
So, the economic boom that has created more jobs and restored real estate prices is the very boom that is being lowered on low-wage workers when it comes to housing. All of this situation (inaudible).

Los Angeles County has the highest rate of overcrowding and severe overcrowding in the nation, and all of California is following suit.

Families overpay for rent. The federal definition of affordable housing is no more than 30 percent of income to rent. Overpayment is endemic in California. A study nineteen years ago found 73 percent of all low-income residents paying more than 50 percent of their income to rent.

Families find the other affordable housing, the non-subsidized apartments that actually do rent for $300 a month. These units have a particular name, however. They are called slums, and Los Angeles in particular has an increasing number of them.

The numbers I’ve discussed here are repeated in all national reviews and studies. L.A. and Orange County have the highest ratio of poor families compared to available low-cost units. There’s four families for every one available unit. The low-income houses in our areas are defined by overpayment and overcrowding in
substandard units. The rents are increasing at the quickest rate in the west, particularly in California, and particularly in the Inland Empire.

We have a crisis on our hands, and we can deal with it a number of ones. We would advocate for a two-pronged effort. While we would obviously argue for adequate production of rental subsidies, we believe just as strongly that the minimum wage that is, in fact, a living wage, and is indexed to inflation, is crucial for our neighborhoods and for our moral health. For your information, attached are some charts describing housing statistics throughout the region.

Thank you for the opportunity to address you this morning.

(Applause)

MS. TODASCO: Hello. My name is Ruth Todasco. That’s spelled T-o-d-a-s-c-o. I’m here today representing the Wages for Housework Campaign and affiliated groups and would like to speak in support of a raise in the minimum wage.

Raising the minimum wage is a central issue for women and children. The feminization of poverty has become one of the tenets of the last decade. At least 60 percent of minimum-wage earners are women. The gap
between women’s wages and men’s wages has actually increased during the ‘90’s, from women making 76 cents on a dollar to women making only 74 cents on the dollar. The gap, of course, is even worse for black, Latina, and other women of color, those most likely to be on the minimum wage.

Many experts have expressed a view that welfare reform has contributed to that widening gap. Women also do two thirds of the world’s work, own one percent of the resources, and receive five percent of the pay. As a result of welfare reform, women are now being forced out of the house, often must pay another women who is making minimum wage to take care of her children and do childcare, while she goes out to work for minimum wage and comes home to continue doing housework of all varieties for no wage. In fact, many licensed, exempt childcare workers are being paid by the State of California below the minimum wage, $2.20 an hour.

I want to point out that this work that we are doing, either for free or for $5.75 an hour, is the work of raising the next generation and caring for the sick and elderly, not making bombs or killing people. Soldiers earn more, when you include room and board, and even though they’re -- even though many of them qualify
for food stamps.

Even the Republican mayor of Los Angeles, Richard Riordan, has recently quoted -- was recently quoted as saying, “Employees who earn under $10.00 an hour cannot lead an independent life.” The inability of women to earn wages that will make them and their dependents -- take women -- take them out of poverty will force many back into violent marriages in order to house and feed their children. They will be more vulnerable to rape and beatings. Others will be forced into prostitution to feed their kids. At least it usually pays above minimum wage.

Today you can give millions of women -- and as you listen to this testimony, I hope you will be mindful of what an awesome responsibility and what an opportunity you have. The truth is that keeping the minimum wage so low, coupled with the pay gap between women and men, is a massive subsidy to business, large and small. Women can no longer afford this to be done on the backs of women and children.

A raise in the minimum wage would be a step in the right direction.

Thank you.
MS. LEE: (Through Interpreter) Hi. My name is Jung Hee Lee, and I do work for minimum wage. I have two young children.

About three years ago, I started working at the restaurants in Koreatown. During my employment, I worked in a couple of restaurants. In all these restaurants, I worked about 10 to 12 hours a day, six days a week, receiving $2 to $3 an hour. Currently I make minimum wage, but I barely make ends meet because it’s just not enough.

As a restaurant worker, I work 40 hours a week at a rate of minimum wage of $5.75. The worker makes about $1,000 a month. However, after taking out the tax, for the family of four, the worker is left with only about $800 a month. In my case, I get $800 a month, my salary, plus with about $700 in tips, I make my living. But this is also -- and I get help from my husband’s salary.

I make my living as follows. For a babysitter, I pay about $500; for rent $800; two car payments, $300; food, $400; utilities, $400; gas, about $150; medical bills, $150 or more; and et cetera, about $200, and household supplies. And that totals about $2,500.

It is very difficult for me to have a living
with this situation. I do not know why -- I do not know what’s the point of working when I get home at one o’clock in the morning from my job and see my children and my husband asleep.

After paying the rent, food, and the bills, we barely survive. My co-worker, who works as a cook helper, works about 12 hours a day, six days a week, and makes about $1,400 per month. Latino co-workers, who work as dishwashers, get paid minimum wage. How can they live on minimum wage at 40 hours a week? So, they often have two jobs, morning shift in one restaurant and the afternoon-evening shift at a different restaurant. I’ve heard many stories where a Latino worker gets off at one restaurant and has only about ten minutes to go to his job as fast as he can to another restaurant. That only leaves the worker and family with early in the morning and late in the evening.

This is what we want. We the workers want a guaranteed adequate amount of time spent at work, and guaranteed an adequate amount of wage for what’s done, and guaranteed adequate amount of time to spend with our families. In order for all these things to happen, the minimum wage must go up.

Thank you.
COMMISSIONER CENTER: Thank you.

(Applause)

COMMISSIONER McCARTHY: I have a question. Some weeks, do you work overtime, more than 40 hours a week?

THE INTERPRETER: Can you repeat?

COMMISSIONER McCARTHY: Yeah. Some weeks, do you work overtime, more than 40 hours a week?

MS. LEE: (Through Interpreter) Yes.

COMMISSIONER McCARTHY: Do you receive time and a half when you work overtime?

MS. LEE: (Through Interpreter) No.

COMMISSIONER McCARTHY: That’s illegal.

COMMISSIONER CENTER: Talk to Roger -- the Labor Commissioner is right there. He’ll help you out.

Don’t let her get out of here, Roger.

MS. LEE: (Through Interpreter) Usually, the older schedule, the work is less than 40 hours because they don’t want to pay overtime. So, oftentimes it’s 39 hours, 38 hours, so that these workers are having to work two jobs.

COMMISSIONER McCARTHY: I see. That’s okay.

That’s different.

MR. ECKERT: My name is Judith Eckert, E-c-k-e-r-t, and I’m a member of the United Domestic
Workers, and I work for IHSS, which is In-Home Supportive Services.

I’ve been sitting here watching everyone, and I was trying to imagine you folks up there trying to put yourselves in my shoes. And at one time, I wasn’t in the shoes that I’m sitting in right now, and so I know that it wouldn’t be hard for me to imagine earning minimum wage, except when I was working through high school and college.

One of the things that came out in my observations is everyone in this room is going to have one thing in common: one, they were all going to get old, and God forbid, one of us or all of us in this room have a tragic accident or disease and gets so we become paraplegic or brain-damaged. Everyone who works for IHSS taking care of someone, like one of the members of your home -- it could be your mother, your father, your brother, your sister, or a neighbor -- and everyone in this room is going to end up with one person or more in their family that you’re going to be responsible for, making decisions as to how they’re going to be cared for.

People with IHSS, we don’t -- we receive minimum wage, but we don’t just put in 8 hours a day. Many of us are taking care of family members -- they might be
comatose, they might be paraplegic -- and it’s a 24-hour-
a-day job. At IHSS, they decide how many hours you’re
entitled to. Even though you’re up 24 hours, you might
only be paid for 10 or 15 or 20 hours a week. And at the
rate of minimum wage, it doesn’t cut the bill. Whether
we’re sick or we’re well, we still have to get up and
turn that comatose patient every two hours, 24 hours a
day.

A lot of us might say, “Well, why don’t we
institutionalize them?” But I know a lot of us in this
room are like that, we’d rather have someone take care of
us at home.

On minimum wage, more and more people nowadays
are needing in-home care, and we’re finding it’s a lot
cheaper to have people take care of us at home than it is
to take care of us in a convalescent home that costs over
$15,000 a month.

But none of these people in this room that are
working for minimum wage, whether they’re waitresses,
whether they’re in-home care services, or whether they’re
laborers, they’re all sure of one thing that all of us up
here have, and that’s to have a life with dignity and
respect. And when they’re earning minimum wage, they
can’t have that. Their children aren’t having good meals
at home. They don’t have their family at home to help
take care of them because mom and dad are working around
the clock, whether it’s in your home or whether it’s
someplace else. And those children need to have their
parents also.

But they need money to do this. They need money
to pay for their medical bills. They need money for
food. And if we don’t tie these people to a life that’s
(inaudible) -- in my case, I lost a special job -- I was
never making minimum wage since high school. I lost
many-thousand-dollar-a-year jobs because my son’s in a
coma and my daughter has (inaudible). I work 24 hours a
day. I work for In-Home Support Services, and I can’t
get another job right now. I had five surgeries just to
take care of my children, and the five surgeries were
physical surgeries, my hands and my arms and my elbows,
from lifting 121 pounds. And I’m saying these people --
$8.00 an hour isn’t even enough. I know what I used to
need to buy when I was making a regular job, when I was
in a regular job. Even $15.00 an hour is more like what
people need to live a good life. Money and a good life
(inaudible).

I don’t have anything more to say, but I
understand these people, neighbors, make at least $10.00
an hour, and these people put their hearts into a lot of work. When you pay wages and tips, they might make a tip, but that doesn’t mean that everyone in this room pays the minimum tip of 15 percent. You know, how many of us walk away and just throw a dollar on the table, no matter how much we paid. And these folks work a lot.

And I’ve got a waitress that I -- I know there’s lots of people who don’t pay a lot of tips, even though you think of them as giving out their tips. Most of them live off tips when they’re in college, but you can’t (inaudible).

Anyway, that’s what I have to say.

(Applause)

MS. LYLES: Good morning. My name is Carol Lyles, L-y-l-e-s. I’m a Los Angeles County homecare worker. I’ve been a minimum-wage earner most of my adult life. I’m part of the group of workers, SEIU 434B, 7,400 strong, who are basically working to establish a formula. The work we provide through our procurement and assistance saves the state millions of dollars annually. Those savings should be passed to providers who do not get employee benefits such as medical and dental insurance. They should be employed as the source.

The minimum wage increase would allow any worker
to get the medical and dental insurance and protection he needs.

In closing, I would like to invite each and every one of you on the panel to become a homecare worker or a minimum-wage worker for at least one day.

(Applause)

COMMISSIONER CENTER: Thank you.

MR. PULASKI: Mr. Chairman, members of the Commission, thank you again for your kind indulgence. I want to thank the panel for their taking their time to join us today and give their testimony to all of you.

With your indulgence, I understand that Assemblyman Wally Knox is in the back of the room, has arrived, and needs to catch a plane to go elsewhere. He is the chief author of AB 60, the daily overtime bill, which you are taking in front of you now. So, with your permission, I’d like to acknowledge and invite the Assemblyman to come forward.

COMMISSIONER CENTER: Thank you.

MR. PULASKI: Assembly Member Wally Knox.

(Applause)

ASSEMBLYMAN KNOX: Thank you very much, Chair Center, commissioners, and working people gathered here today. I want to thank you for allowing me to go out of
order and to briefly address you on the subject matter you’ll be dealing with later in the day, that is, the 8-hour day issue. And in particular, I want to thank those people who are here today to testify on the minimum wage for granting me the courtesy of going out of order to address this other issue that’s of major concern to every working person in the State of California.

I did not come to give a speech. I came to briefly comment on two aspects of the bill. So, this will not be rhetorical at all; I’ve simply come to present information to this Commission regarding two of the issues that I know you will be grappling with, with regard to the 8-hour day. Very briefly, those two issues are: Was AB 60 intended to cover the construction industry? And the second issue pertains to the aspect of the bill that deals with the healthcare industry and nursing in particular.

Here’s why I came today. I came to tell you the author’s intent. The author’s intent was very simple. The bill was intended to cover the construction industry in the State of California. That was the intent of the bill from the beginning. It remains so through the final signature of the Governor. And it’s my joy to be here as author of the bill to present that information to you.
If you have questions in that regard, I’d be happy to respond to them.

The second reason I’m here today is to bring you information that has nothing to do with my intent or anyone’s intent. It’s information that I’m reluctant to bring you. It’s discouraging news. And that is this: it has come to my attention, and I’ve been able to confirm, that a small number, but a significantly large minority number, of healthcare institutions are engaged in aggressively slashing base pay for nursing employees in anticipation of the January 1st implementation date of AB 60. It is astonishing that these actions would be taking place at this particular moment in time, astonishing that during the holiday season people’s base pay rates would be cut. And as author of the bill, I have to say it is astonishing and of dubious legality -- at best, dubious legality -- for persons’ base pay to be cut expressly in anticipation of the implementation date of a bill, the policy of which is to foster good pay for employees. That flies in the face of the fundamental policy of the bill itself.

It’s important for me to bring this information to you today.

Chairman Center, I have written you a somewhat
lengthier letter on this topic.

And I thought that it was imperative for me to come here and provide a sense of that to you for your consideration. It’s something that the State of California needs to pay attention to.

We’ve worked hard on this measure. I believe it’s a workable measure. And it’s clear to everyone who worked on the measure that we reached out to the healthcare community to draw them into one of the more complex aspects of the negotiations of the measure, how to handle overtime issues in the healthcare industry. We asked the industry, “Put your concerns on the table,” and they did. And we believe we dealt with the concerns honorably.

To now found a few dissident organizations attempting to end-run the fundamental policy of the bill, to the detriment of their own employees, during a holiday season, is astonishing. I’m sorry to have to bring you that information, but I think it is my duty.

COMMISSIONER CENTER: Mr. Knox, I have a question. You mentioned the construction industry, but if you read the bill, it says “any work.” So, effective January 1, it says “any work” is covered under daily overtime. There’s also other industries that were
considered exempt but never formally exempted by the IWC
-- that would be mining, oil drilling, and logging.
Wouldn’t they also be covered, effective January 1st too?

ASSEMBLYMAN KNOX: Yes, I believe so.
COMMISSIONER CENTER: Thank you.

ASSEMBLYMAN KNOX: The level of controversy is
not as high as you might perceive. That’s why I took it
upon myself to point to that. Believe me, as you well
know, there are a host of other issues as well. And if
we had six hours, we could go over them. But I thought
I’d limit my comments.

COMMISSIONER CENTER: Yeah. We’ve been going
over them a lot, so --

ASSEMBLYMAN KNOX: I’ve worked on the bill for a
while, and I do have to say, as far as what you’ve heard,
that was a great committee sitting in front of Dan
Galpern, who was the lead staff person on this
legislation, everyone who worked on the legislation knows
him by first name and knows him for his hard work.
COMMISSIONER CENTER: Thank you.

Any questions?

COMMISSIONER DOMBROWSKI: Yeah. Assemblyman
Knox, just -- I, for one, was kind of blindsided by this
construction industry issue when it came up. I didn’t
think it was --

AUDIENCE MEMBERS: (Not using microphone) Can’t hear you!

COMMISSIONER DOMBROWSKI: Can you explain why there’s this confusion? I’m still trying to sort it out.

ASSEMBLYMAN KNOX: I can give you my impression, Mr. Dombrowski. It’s my impression that the confusion may arise because there was relatively little discussion of the issue in the course of the bill. And at the same time, the bill had vigorous discussions about how should we handle the nursing issue, and literally twenty other issues were wrestled with vigorously. At no point during the legislation, it’s my recollection, did the construction industry begin to raise cares and concerns about particular drafting of the bill. For that reason, that whole aspect of the bill simply was not -- it wasn’t even discussed. And I believe that may have led some folks to misunderstand it. That’s my take, more of a psychological interpretation than a legal interpretation.

COMMISSIONER CENTER: Thank you, Mr. Knox.

ASSEMBLYMAN KNOX: I want to again thank you for your courtesies, and in particular, I want to go out of my way to thank everyone that came here to testify on minimum wage for their courtesy in allowing me to address
this other important issue.

Thank you.

(Applause)

COMMISSIONER CENTER: Do we have any other people who want to testify in favor of raising the minimum wage?

Why don’t we just have a showing of hands?

People in favor of raising the minimum wage, can you just --

(Show of hands)

AUDIENCE MEMBER: (Not using microphone) Can you repeat that?

COMMISSIONER CENTER: People that are in favor of raising minimum wage?

Okay. Thank you.

People opposed?

(Show of hands)

COMMISSIONER CENTER: Oh, boy. We have some speakers, I guess. But we have to have some -- this is going to take a little while, but we will conduct hearings and we’ll see where it goes.

But thank you very much for the testimony.

(Applause)

COMMISSIONER CENTER: I think we have some -- a
number of employer groups that would like to come up and
testify about the minimum wage. Can you come up as a
panel and sit in the front row?
(Pause)
COMMISSIONER CENTER: I’ve got a sign-up list.
Do you want me to go by the sign-up list?
Okay. I want you guys -- work it out. Okay.
(Pause)
MR. ROSS: Yeah, Mr. Center and commissioners,
my name is Jon Ross. I’m here today on behalf of the
California Restaurant Association. I’ll limit my remarks
today the adequacy of the current minimum wage.
With me is Ted Burke, of the Shadowbrook
Restaurant in Santa Cruz, who will speak after me for a
moment on how he, as one restaurant operator, has
adjusted to the near 35 percent increase in the minimum
wage that’s occurred in the course of the past few years.
We’ve distributed written remarks to you. Also,
I’ve got a couple of charts. I’m going to truncate my
remarks here in the interests of time.
First, I’d like to take a moment to review the
standard that has been employed over the years to
determine whether the state minimum wage is adequate. As
I hope my comments will demonstrate, based on the
traditional standard employed to determine adequacy by this Commission, and most recently by the people of California when they passed the Living Wage Act of 1996, it’s our conclusion that a minimum wage increase at this time would be premature.

That said, we stand ready to help you in your deliberations and want to work with you to address the many important and valid policy considerations that were raised earlier this morning by the earlier panelists.

As was stated earlier, the California Labor Code requires you to review whether wages paid to employees may be inadequate to supply the costs of proper living. That standard has guided this Commission’s deliberations since 1913. We believe, therefore, that the best measure of the adequacy of the current minimum wage is determined best by looking at how the standard has been applied over time and how the current minimum wage compares to the implementation of the standard over that period.

First, in our review, we looked at the historic average of the state minimum wage. Where perhaps we differ from the panel that you heard from first this morning that spoke about the minimum wage that existed in 1968, which was an all-time historic high, what we have done is we’ve looked at the minimum wage in every year
since 1956, adjusted that minimum wage for inflation to real dollars, and come up with what the average minimum wage has been in the state, adjusted for inflation, in today’s dollars.

That number, as the chart demonstrated, is roughly $5.85, adjusted for inflation, in real-time dollars. And that number presumably was reached over the years by looking at the standard test you’re looking at and coming to a conclusion as to what was adequate.

Second, we looked at how this panel construed adequacy when it was last charged with that review, or determining whether or not the minimum was. In 1988, the IWC adopted a minimum wage of $4.25. That minimum wage, deemed adequate by this body then, adjusted for inflation, today would equal approximately $5.67.

Finally, as noted earlier, the people of the state, in 1996, were asked to establish a minimum wage that was sufficient to raise people out of poverty and provide proper living to people of the state. The people of the state in 1996 concluded that as of March 1, 1998, that level was $5.75. In our view, a substantial departure from that level set by the people three years ago to the level we hear this morning, in the $8.00 range, would necessarily involve a reformulation of the
policy considerations that underlie what is adequate. And while we can all have a debate about what should and shouldn’t be the necessary -- or the appropriate considerations, as I suspect will happen in the course of the next few months, I would certainly argue that employing the considerations that this Commission and others have looked at over the period of the last 43 years, you’d reach a far different conclusion.

Finally, before I turn it over to Ted, two more points.

Is it the appropriate time now to increase the minimum wage? In 1998 when the minimum wage was last raised by this Commission, the wage in effect at that time was $3.35. It was better than 26 percent less than the then-average minimum wage historically at that point, a far greater gap, certainly, than exists today between the current wage of $5.75 and the average historical rate of $5.85.

When the people moved in 1996 to raise the minimum wage, they were acting at a time when the minimum wage was at a four-year low. We don’t face nearly the same circumstance today. Again, the $5.75 was established as an appropriate wage in March of ’98, and it’s been a very short time since that period.
A final point, and then I’ll conclude. You heard some testimony today about the effect of raising the minimum wage on jobs, and it was asserted that the increase in the minimum wage over the last few years has not resulted in job loss, and, in fact, there’s been job growth over that period. That’s true. But we think that that’s a rather limited statement. If you look at -- we provided a chart -- where the job growth has occurred, it’s been very uneven. While we’ve seen a huge job growth in various sectors of the economy, the job growth in the retail, restaurant, and other sectors that employ historically more minimum-wage or entry-level workers has risen at a rate, job growth rate, far below the state average job growth in that time. So, while we’ve had an increase in the economy, an increase in jobs generally, the effect on these sectors of the economy, we think, has been dampened to a great extent by the 35 percent increase in the wage levels when you look back over that period.

With that, unless there are questions, I’d like to turn it over to Mr. Ted Burke.

COMMISSIONER McCARTHY: I’d like to make a comment, in light of some of the remarks you said. Let me
-- by way of background here, I guess I’ve earned the reputation over the years on this Commission as being someone who’s, above everything else, I think, committed to the processes of our political system, our democratic system. And sooner or later down the line, I seem to have antagonized everyone, which told me I thought I was doing a pretty good job.

And specifically, some time ago, I’d say, I objected and voted against altering the laws with regard to overtime, on the basis that since a vote had been introduced into the Assembly and the Legislature and they had voted against repealing our overtime laws, I thought it was extremely arrogant, you know, on the part of the Commission, among other things, to have an end run around the will of the Legislature, which is clearly superior in our political system to this Commission.

I mention that by way of background, because it raises, I think, a much more important issue with regard to the overtime issue. And that’s that we had a public initiative, where the voters of this state, okay, voted on a measure that was largely introduced and proposed by labor as a living wage at the current level. And the voters of that state overwhelmingly indicated not only that they supported that, but that, obviously,
implicitly, they had the right in that situation to set
the minimum wage.

And what we are in the process of doing is
taking a position here where, while the voters of the
state were useful for the time being, now they’re
inconvenient, so what we’re going to do is essentially
take an end run around something that was passed just a
few -- few years ago. And I think this is a rather grave
situation.

Now, some people will say it doesn’t appear that
way at all. But let me ask you this. If today we were
considering or beginning to consider lowering the minimum
wage below what the voters of the state had established
just a few years ago, I’m sure, as you are, that all hell
would break out and we would be accused of usurping the
power of the voters of this state. However, since we
want -- since some want to go in the opposite direction,
I’m sure you will never hear that argument from that side
of the thing.

And I just -- as I say, I’m not here at this
point to argue what is the proper wage or not, but rather
to introduce what I think is a very serious issue, that
since we took the extraordinary step as a state to bring
this issue, not before the Commission, but before the
voters, recently to do so, all right, and now to
basically exclude the voters and the will of the voters
from the decision that was made, I think this bears some
attention and some concerns.

And that’s -- that’s just an observation I want
to make. And as I say, it’s a very serious consequence,
not in this day and age when we do whatever it takes to
get whatever we want, but I think, in the greater scheme
of things, I do think it’s a very serious issue.

Anyways --

(Applause)

COMMISSIONER CENTER: Go ahead, Barry.

COMMISSIONER BROAD: First a comment. If you
actually read the initiative, what it says is that the
Industrial Welfare Commission shall have a minimum wage
of “no less than $5.75 an hour.” So, the voters have
made it quite clear that we have the power to raise it.
It wasn’t setting the level of the minimum wage for all
time.

And I, having been one of the people that
drafted that initiative, I -- it was very clear in my
mind what we were doing at that time and presenting to
the people of the State of California. That was raising
the minimum wage to a level that would be adequate for
the time covered by the initiative, but not forever and
for all time.

Let me ask you this question, Mr. Ross. In the
period of 1913 to the present, has the California
Restaurant Association ever supported an increase of the
minimum wage?

(Laughter)

MR. ROSS: I can speak to the period for which
I’ve been involved with the Restaurant Association, which
is two years. And recently, that I know, they have not.

COMMISSIONER BROAD: Okay. So, then -- okay.

So, if we go back historically, that they’ve opposed the
initiative, they opposed increases in the minimum wage
before this Commission, that means they had some idea of
what the minimum wage ought to be. And how far do we go
back before we figure out what the Restaurant Association
thinks is the proper minimum wage? 25 cents and hour?

MR. ROSS: Certainly not. And, Mr. Broad, my
comments here today are -- one is an adequate wage now
and an adequate wage as the statute defines it. And I
suppose the position of the Association in the past has
been based on their view of adequacy at that time. But
currently, given the history of the last few years and
the wage over time -- excuse me -- the wage today is much
closer to the historic sense of adequacy.

Second, just to clarify, we don’t question the authority of this body to raise the minimum wage. That’s not the point of our -- of my testimony, nor would I say it would be inconsistent with the will of the people for this body to take some action. Clearly you have the statutory ability to do that.

What I’m trying to suggest is that there are certain policy considerations inherent in what the people did and in what the IWC has done over time when reaching conclusions of adequacy, and that a substantial departure from where the people arrived at their conclusion in 1996 would certainly involve a different menu of policy considerations than that have been historically employed.

COMMISSIONER BROAD: Thank you.

COMMISSIONER McCARTHY: Just a quick rejoinder, if I may. With regard to the initiative, my colleague and friend here and I disagree. I think that the fact of the matter is, whatever the legal argumentation that’s presented is, that the level that was put in the initiative was not $8.00 an hour, and the reason that labor did not put $8.00 an hour into that initiative is because they knew damn well the voters of the State of California would not approve it. And whatever else one
might want to say, I think that I would say that’s pretty clear.

And as far as our authority, of course we have the legal authority, and of course the initiative didn’t mean to tie our hands, as Mr. Broad says, forever. But 1996 today is not forever. We’re talking about very recent history, with a small, but very small, change in the cost of living.

COMMISSIONER CENTER: I’m on here as another labor appointee. Barry’s the smart one, so I had to get down to basics to understand things.

I used to, when I -- in 1968, I think I was working at a Taco Bell in Long Beach, and I don’t know what the minimum wage was -- it was a dollar and something -- but I remember the cost of the taco was 19 cents. That’s how much -- could you give me a chart and a price of -- what the minimum wage is now compared to the cost of the taco at Taco Bell, by the next hearing?

MR. ROSS: Certainly.

COMMISSIONER CENTER: To me, that’s a basic understanding.

MR. ROSS: But I think, inherent in what we’ve done, we’ve tried to adjust wages in ’68 to the present and wages in ’56 to the present, counting changes in
things like the increase in the price of the taco.

COMMISSIONER CENTER: Yeah. Well, that’s how much things cost. And that’s basic stuff. I’d like to have that information if I can get it.

MR. ROSS: Can I introduce briefly Ted Burke? Ted is with the Restaurant Association and owns a restaurant in Santa Cruz and, I think, would like to share his perspective on how the minimum wage works in practice.

MR. BURKE: Good morning, Chairman Center and commissioners. As Jon Ross introduced me, my name is Ted Burke, and I’m a restaurateur from northern California, the Santa Cruz area. And I’ve traveled some distance today because changing the current minimum wage, or the starting wage, as I like to call it, is that my important to my ability to operate my restaurant in a manner that truly provides a net benefit to my employees.

You just heard, and you will hear, some good arguments today, by representatives of the California Restaurant Association and others, to move slowly in modifying California’s current minimum wage. Of course, as a restaurant employer, one might say I am biased. However, I truly believe that any disinterested third party that reviews carefully CRA’s testimony would find
their arguments compelling. I urge you to be that noninterested or nonbiased third party and find that after California voters increased the minimum wage 35 percent over 18 months, there needs to be a compensating period of time for an employer to absorb such an increase before it’s modified again.

But beyond the legal arguments and beyond all the statistical information that CRA and others on both sides have offered, let me briefly tell you about the effect on my business from changing the starting way.

As background, I am an independent restaurant operator. My partner and I have worked in the restaurant industry for nearly thirty years. I started out as a part-time food server the summer after graduating from college, having completed my military service. I was on my way to graduate school that summer, and I was paid a dollar an hour after the modest in meal prices available then. I had never before worked in a restaurant. I soon found that I was earning so much in tips that summer that I postponed studies for a semester in order to build a financial nest egg sufficiently large enough that I wouldn’t have to work while attending graduate school.

In the months following that summer, I fell in love with the restaurant industry. I was asked to accept
a manager position, and I did. I have never left Shadowbrook, where I ended up buying the business in 1978.

And why am I telling you all this? First, to let you know that minimum wage is just a starting wage. There is so much opportunity for those who start out inexperienced but work hard in this industry to succeed, to get promoted, to become supervisors, managers, and even owners. It happens all the time.

Charles Halliday worked as a minimum-wage food server and later as manager at Shadowbrook. Today he is president of the Florida Hotel and Restaurant School in West Palm Beach.

Greg Alexander was a busboy earning minimum wage at Shadowbrook, and later assistant manager. Today he is the new owner of a three-restaurant chain in Mammoth Lakes.

Bob Montague worked at Shadowbrook and earned minimum wage. Today he is the chef-owner of Café Sparrow in Napa.

There are many, many other stories about people who began at the lowest rung and quickly moved up the economic ladder. Every single individual who holds a supervisory or management position at Shadowbrook today...
started out earning minimum wage.

However, just as it was when I was hired, there needs to be an economic environment that encourages and allows employers to hire people that unskilled and then provide some training. Regrettably, one of the most significant responses to the last increase in minimum wage has been a reluctance to hire and invest in people that are unskilled. We can no longer afford to take the chance with unskilled or inexperienced workers that my employer took when he hired me, and that I took when I hired Greg and Charles and Bob. It’s just way too expensive now to risk hiring an inexperienced worker. Instead, in recent years we reluctantly tell promising workers to come back after they get more work experience.

When the minimum wage burden has less an economic impact than it does not, we can afford to take some chances in hiring inexperienced workers, but not any more.

There are some who would say, “Well, just raise your prices,” as though that simple action would solve the economic squeeze that results from large mandated wage adjustments. I often find myself asking in response, “Don’t these people realize that if I could raise my prices higher and find that the public would
just go along with them, that I would have already done that?" The reason that prices are where they are is because they were as high as they can go before the public starts finding alternative places to go, such as lower cost, less service restaurants, or even take-home meals from high-end grocery stores. And when that happens, job numbers go down, work hours diminish, and my contributions to my community, in the form of taxes and charitable giving, shrink.

Commissioners, there are real consequences to raising starting wages beyond levels that are affordable. I couldn’t raise my menu prices 35 percent in eighteen months to compensate for the last increase. Instead, we now close one half-hour earlier every night of the week. We reduced our kitchen payroll by restructuring our menu to replace labor-intensive items with those that require very little time to prepare. And we now serve lunch in our lounge during the day with a limited menu and three employees rather than with an extensive menu and full-service staff in the dining room.

For business to continue having the type of worker the minimum wage was meant to hire, and for employees to find first-time work and get sufficient amounts of it, we need to let some time go by after the
huge increase of 35 percent.

I would hope that I could again be able to imitate my hiring experience by having the opportunity to hire inexperienced and unskilled youth at a starting wage that is affordable, that allows for training, and provides an opportunity for everyone to succeed.

Thank you very much for listening.

COMMISSIONER CENTER: Thank you.

Any questions?

(No response)

COMMISSIONER CENTER: Thank you.

(Applause)

COMMISSIONER CENTER: You guys got -- I’ve got a list. You want to go by the list? All right. I’ll go by the list. That way, somebody won’t get mad at me -- unless you’re ready, Julie.

MS. BROYLES: (Not using microphone) Not yet.

COMMISSIONER CENTER: Okay.

MR. ALBA: Hi. Good morning, everybody -- or afternoon.

I want to say a little bit about myself --

MS. BROYLES: (Not using microphone) Jamie, your name.

COMMISSIONER CENTER: Name?

COMMISSIONER McCARTHY: You might pull the mike in a little closer.

MR. ALBA: Is that --

COMMISSIONER McCARTHY: Yeah.

MR. ALBA: Okay.

I was a busboy for many years. I was a waiter for many years, and a manager for many years. I now own two restaurants and I have about 300 employees.

Now, what I want you to know is, is that the busboys, the waiters are not --

AUDIENCE MEMBER: (Not using microphone) Speak into the mike!

AUDIENCE MEMBER: (Not using microphone) Can’t hear.

COMMISSIONER CENTER: Speak into the microphone.

MR. ALBA: Sorry.

The busboys and the waiters who work at our stores are not minimum-wage employees. The busboys make between $10 and $12 an hour, and the waiters make between $20 and $40 an hour. I think the people who are here are mostly restaurant people because we’re the ones who are most adversely affected by increasing minimum wage because we, in essence, pay a minimum wage, yet we pay
taxes on it, tips as well. So, these people are, in fact, not minimum-wage employees.

I have nine minimum-wage employees. The reason -- the nine happen to be dishwashers. These people, at this point, don’t speak any English and are starting at the bottom to work their way up. Most of the dishwashers, we try to bring them in as prep people, and then we try to put them on the hot line and cold line as we move them up. It’s a solid wage for these people.

What I want to tell you is, is when I was a busboy, I supported myself. When I became a waiter, I supported my wife and my children. As a manager, I did the same. And obviously, as an owner, I do that as well.

Interestingly enough, today we cannot find the people to hire and pay $7 or $8 an hour to, because there’s people -- the people out there are not trained to do much within our industry. And so, we need to bring them in, cultivate them, train them, and bring them up.

But the people who work the front of the house, which is approximately 70 percent of the people, are minimum-wage employees on one hand, and tipped employees on the other hand. So, they’re making a substantial amount more than minimum wage.

And I don’t know other industries, and I can’t
speak for other industries. I can only speak for the restaurant industry. We have gotten eaten up over the last seven or eight years. And as the gentleman before me spoke, it’s true, you can’t raise your prices 35 percent. But we’re increasing -- we’ve gotten -- we’ve had to pay 35 percent more than the minimum wage. And for the front of the house, it’s ridiculous. It really is. There’s nobody who’s a minimum-wage employee. I know I’ve said this three or four times, but I’m saying it even one more time before I finish. They’re making $20 to $40 an hour, and they work anywhere from 20 to 35, 40 hours a week. So, for that, a raise is -- it’s unfair to our industry.

That’s all I really wanted to say. Would anyone like to ask me any questions?

COMMISSIONER CENTER: Thank you.

We have -- do you want to go first, Julie, for the Chamber people?

MS. BROYLES: Good afternoon, Mr. Chairman, members. If I can find the microphone here, I’m Julianne Broyles, with the California Chamber of Commerce, and I’m very pleased to be able to talk to you today.

The minimum wage is an issue of concern to certainly a significant number of small businesses in
California. And I’m not here today in opposition or in support, but to add some points for you to consider as you deliberate these very important issues.

The minimum wage in California certainly, as it’s been discussed by other speakers, is where people with no skills start their career, for the most part. And as they gain skills, as different research that we will be submitting to the Commission as part of our comments, indicates, 40 percent of them are earning substantially more than the minimum wage after just the first four months, and almost 60 percent are earning even higher amounts by end of their first year as their skill base goes up.

Some other issues that don’t seem to get mentioned very often is the issue of what the minimum wage has as an impact on other parts of a business’ operation. Now, I remember the last time this whole issue was being discussed by the Commission, and I got a call from a reporter. It was a young reporter from the Los Angeles going, “I am very upset. I just came back from getting a cup of coffee next door and I felt I just had to call someone who was involved in the minimum wage process to complain about it.” And I said, “Well, what is the issue?” She said, “Well, there’s a notice on the
front of this shop saying that as a result of the
increase in the minimum wage, that they were raising
their menu across the board by about 4 or 5 percent” -- I
don’t think it was any higher than five. And she said,
“I want to know, isn’t it illegal for an employer to pass
on the minimum wage increase to their customers?”

(Laughter)

MS. BROYLES: I said, “No, it’s not. It’s what
normally happens.” And anywhere where an employer can’t
or a business can’t, the reason it costs you money is
producing your product or your service usually is passed
on to the consumer. And that’s rather a vicious cycle
that you see ensue. You have the minimum-wage worker
who’s saying, “I’m not making enough now to make ends
meet; therefore, the minimum wage should be increased.”
If the minimum wage is increased, then the business then
raises the prices of whatever they’re doing to -- you
know, for their product or their service, and then that
minimum-wage worker then, of course, is going to be
paying more for that product or service, therefore
necessitating yet another increase in the minimum wage.
So, you do have a cyclic effect as a result.

But other ways that minimum wage impacts a
business is possibly -- and it’s something that I have
researched before -- the workers’ compensation insurance premium price, in that for every 25 cents, on average, that the minimum wage goes up, you have about a $30-million increase on the workers’ comp premiums throughout the state, overall, on average, because as business people know, your workers’ compensation insurance is first calculated on the size of your payroll. If the payroll goes up, there’s a -- as a -- and we calculated this -- of course, that’s with a -- certain number of employers who probably have minimum-wage workers as a significant part of their workforce. You can see how the increase really can add up, how you have just a -- you know, at the very beginning of this, there was talk about an $8.50 increase -- you’re looking about a $750-million increase in workers’ comp rates across the board, just with what they’re discussing as their number.

And, again, that’s probably not what’s going to be the prime issue for this board, but certainly that should give you some food for thought.

Some other issues that you may want to consider is what California is right now. Now, these are numbers either from the Bureau of Economic Analysis in Washington, D.C., that advises the White House on the
condition of the economy, or from the Bureau of Census. And these are all from 1998 and 1999 numbers.

An issue that -- some of the numbers that you might find of interest, but per capita income, on average, in California, is $27,503. That puts us about thirteenth in the rank of all the states in terms of per capita income. But you have to think about what we also do in per capita taxes. Per capita taxes, we are number four in the country, and we are number two in the country with the escalation of taxes over just the last year. Taxes went up in California over a year -- from a year ago to now by 6.6 percent. From where they were in per capita taxes, they’ve gone up 11.4 percent overall.

Additionally, when you look at these numbers, you have to think there are other ways to make California an affordable place for people to work and leave. And that’s really what you have an obligation as a Commission, because you’re supposed to look at what makes California affordable for everyone, not just minimum-wage workers, but for everyone in the state. And you have to look at what the impact is on, say, housing cost, what -- and figure in, if you do this, what is the increase in tax rates that might ensue, what is the increase and the impact on insurance rates, what does this do to make
healthcare more or less affordable, what does this do to make the cost of a meal more or less affordable.

And all these things have to -- I’m hoping are going to be sitting in the back of your mind as you look at numbers and different deliberations concerning minimum wage, because it’s not an easy task. I’m hoping, at times, as we go through these hearings, to provide more and more economic information to you on this issue. And again, the California Chamber has not taken a position on the increase in the minimum wage at this time because there is not a concrete number, unless the Commission is going to set one today, that we can actually provide specific comments on.

But at this time, I certainly hope that you will look at the California Chamber of Commerce as a resource. We have over 11,000 members, almost 12,000 members now, who employ over three and a half million workers in the State of California. And through our local chambers, we’re able to reach out to about a few hundred thousand employers, to provide information and data for this Commission. So, I hope you will take them up on that.
MS. BROYLES: Yes, I understand that.

COMMISSIONER CENTER: And we’ll be conducting wage boards.

I know we -- Mr. McCarthy and I, we sat with another commissioner when they were doing the initiative, and hopefully, the employers don’t do “the sky is falling” and start doing away with the senior citizen discounts, before we conduct all our business, in restaurants again. That’s not very nice.

MS. BROYLES: I don’t think I was saying the sky is falling. I’m asking for you to consider how to make the sky not fall and make sure that, if you’re looking at increasing the minimum wage, that you do so in a reasonable manner and based on reasonable facts.

COMMISSIONER CENTER: And we will do that.

Thank you.

MR. HEIDT: Good afternoon, commissioners. My name is Horace Heidt, and I currently the president of Sherman Oaks Chamber of Commerce. We’re a small chamber in the heart of the City of Los Angeles, and we’re committed to protect the rights of our small business members.

I guess the best way to give us notoriety is we are in Wally Knox’s district; he is our Assemblyman. And
one of the main reasons I appear today is we have tried
to explain some of the needs of our businesses
in this district at our Government Affairs Committee
meetings, and we really haven’t had a good response. We
really feel we haven’t been listened to. And I’m hoping
-- hoping that this board will take a little time to
consider that this great State of California is made up
of more than just entry-level employees. There are --
there are many people in the state -- I think we have 33
million residents and 16 million workers. And we have to
consider all of them.

And I would like to echo, before I start, one
thing that I think is the biggest mistake any of us can
make politically in this state, and that’s not listening
to the will of the voters, because when you don’t listen
to the will of the voters, most young people coming in to
our country or growing up here lose the will to be
involved in politics. They feel that they’re not
listened to, why even -- why even care? Why even
participate?

So, I really think it’s important to listen. I
don’t know this year there’s been an agenda not to listen
to the small business owners, because I believe all the
statistics show that the growth in employment in this
state comes from small business. That is simply a fact.

Our membership is made up of mom-and-pop restaurants, shopping malls, doctors, drugstores, grocery stores, car dealers, insurance, manufacturers, communication businesses, retail stores, bank, apartment complexes, theaters, artists -- go on and on -- they are all small business people. They are all small people that started at the bottom of the businesses and worked very, very hard to become owners and managers of their companies.

Those small business owners are having a very tough time today making ends meet. I’m an apartment house owner. I happen to have 80 percent older, retired people in my complex. We’re under rent control. Because we have older people, I have to have a large staff to take care of them. Last night, one of the husbands of one of the residents went out and no one knew where he was. I was at my business to eleven o’clock trying to locate him and placate the fears of his wife. That takes a step. That takes extra time.

If the wage, the entry-level wage, of my staff members keeps on going up, and also, if AB 60, which I’ll discuss later, is applied, we have to cut down on our staffing. We can’t have the number of people to care for
these people. And I just feel the state isn’t going to be there at eleven o’clock at night to see that these people are cared for.

So, there’s really two sides to the story, and I think there are other ways of helping these good people that are here today that are concerned about affordable living. There’s other ways to help them.

My biggest problem with minimum wage, it’s across the board. It’s one suit fits everybody, one wage is for every industry. I just think that’s absolutely absurd. That is not scientific, it is not flexible, it is not workable. I don’t know what the problems are with other owners in different industries. I know one of my employees is a nurse, and she has to work two jobs to make ends meet.

-- to make ends meet, but she does work those two jobs. And she’s happy to do it. And I -- I can’t -- I know that industry is very concerned about AB 60, but that’s another subject.

The other ways that I think the minimum wage should be taken care of is, I would feel better if you would pinpoint the industries where there are the greatest abuses and try to do something for that particular industry, instead of just blanketing every
single employer in the state. I mean, I think it’s pretty cavalier that you think you know the problems of every employer in the state. We’re in the business of providing goods and services and do the best job we can. And we have very individualized problems, so you could pinpoint industries.

Another thing, I really feel, in this country, this great country of ours, that minimum wage is a federal issue. It should be set by the federal government, not each individual state, because if ours is higher than the next state, then we have a competitive disadvantage in this state.

And I agree and will echo, of course, the speakers before me: minimum wage is an entry-level wage. It’s a starting wage for kids in high school, for people that may want a second job, for people that want to make some extra money. But when you raise minimum wage, you’re just raising the cost of living in California. Every service will go up. The cost of a babysitter will go up, the cost of food will go up, the cost of getting gas will go up, the cost of electricity will go up. All the city services, all the costs of your apartment will go up. I look at it like a high jumper that’s supposed to go over six feet. So, you raise the minimum wage so
it’s only five feet, but by raising the wage, you’ve got
to raise the bar another foot. So, you’re really just
making the cost of living more in this state. And the
more it costs, the less people will be able to live here,
and the less competitive we will be in this now world
market, world economy, which we have.

I have a few more comments, and I thank you for
listening to me.

Taking away minimum wage also, I feel, will take
jobs away from people. Employers will be caught. We
feel, as employers, that we contribute to society by
hiring the people. That’s how we make a difference. We
want full employment for our country and our state. With
raising the minimum wage, we will be not allowed to hire
more people. We will actually maybe have to reduce the
number of people. And small businesses are supposed to
be the engine for creating more employment.

Finally, I would just like to say that raising
the minimum wage raises the cost of doing business across
the board and will deal a severe blow to the prosperity
of our state. We need to be more competitive. We need
to hire more people.

Again, I will say there isn’t one person in my
business that is working now at a minimum wage. They are
all working far above it. But for the very first job, before I got to know what their skills were, before I had the ability to see if they were interested in the type of work that I do, it gave me a chance to hire more people than I’m able to do.

I thank you very much for listening to me, and I’m sorry that I was not eloquent enough to discuss this issue. But please don’t forget small businesses. They’re the engine of prosperity in this country, and they have to be able to make it too. And if you want to look at any statistics, look at the number of businesses going out of business in this state. Look at the number of bankruptcies. I would love to have some report on the record number of bankruptcies that are going on this year with small business, because they can’t make it. They can’t make ends meet.

Thank you very much.

COMMISSIONER CENTER: Just a question. And Dan Galpern testified earlier, from the California Budget Process (sic), and it showed, after the initiative passed and the minimum wage increased, that unemployment went down in California.

MR. HEIDT: Employment went down?

COMMISSIONER CENTER: Unemployment went down.
MR. HEIDT: That -- that may be due to other factors. There’s a tremendous influx of people into California. You remember that Hong Kong has now become part of China. There was a mass exodus from that -- from that country to California, bringing a lot of money and a lot of people here. There are many other reasons why California has less unemployment right now.

And one of the problems for employers that really needs to be considered, we’re having a hard time finding qualified employees. You know, we honestly need people that speak English, because my old -- my older tenants speak English. And I have to have someone that can come to them and talk to them, in my industry. And we need more qualified, educated workers.

And I mention as another alternative, as other people did, nothing is more important than education, and trade schools and training. If you want to take money and put it somewhere, put it into educating our people in our state and training them to do a good job so we can serve each other better, because that’s all we’re doing. We’re serving each other. We’re supplying goods and services to each other. And there has to be a relationship between your qualifications and how hard you work and the result and what the business does in its
goods and services. If you just get it automatically, you just automatically get this and you don’t have to do anything, it creates havoc with the employer-employee relationship.

COMMISSIONER CENTER: Any more questions?
MR. HEIDT: Thank you.
COMMISSIONER CENTER: Do you have anything?
(No response)
COMMISSIONER CENTER: Thank you.
I’ve got a list. Do you want me to call names or jump up or --
MS. BROYLES: Sure.
COMMISSIONER CENTER: All right. I lost it now already.
We’ve got Sandra (sic) Frohlich.
MS. FROHLICH: Sondra.
COMMISSIONER CENTER: Sondra. That’s why --
they just jumped up.
MS. FROHLICH: A very common challenge for people.
I’m Sondra Frolich. I’m currently the executive director of the Sherman Oaks Chamber of Commerce. I’ve been in Chamber management for more than twenty years.
And I would like to make a couple of comments from my
experience.

When the initiative was proposed for the ballot, one of our gas station owners -- and I shouldn’t say -- I had all these thoughts that a gas station was one of the minimum-wage places -- the owner said, in the course of the Chamber’s discussion about the pros and cons, that he didn’t really like to hire somebody at minimum wage, but he found it very necessary. The reason he didn’t like it is that he recognized that it was not going to support a family or the majority of the needs of most individuals, but in hiring, it was necessary because of the training when somebody was just starting in the business. And his goal was that that employee, for six or eight months at the outset, would have become better skilled and, consequently, would be promoted, both to more responsibility and a higher pay.

And I think that is the attitude of a great many business owners. It would appear from some of the remarks from some of the employees they may not believe that the business owner has that at heart, but I think a great many of them do.

Another thing that, again, disturbed me earlier when employees were speaking about working at minimum wage and having no benefits, I don’t think they are aware
of how many small business owners have no personal
benefits. I could take you into the south San Fernando
Valley and introduce you to business owners who have no
medical insurance for themselves, who lack many of the
things that are commonly considered to be employee
benefits. And so, the fact that the minimum-wage
employees are not being provided with those benefits is
perhaps not as unique as many of us might believe.

Also, I would like you to take into
consideration the many legislative mandates that are
being placed on business ownership these days. It’s not
only the workers’ comp percentage going up, of which
Julianne spoke, but it seems as if every session of the
Legislature addresses some business employee-related
problems, and they end up saying, “Well, the business
owner can just take care of this problem.” And so, there
are a great many pressures and additional expenses beyond
just paying wages.

Thank you.

COMMISSIONER CENTER: Thank you.

Any questions?

(No response)

COMMISSIONER CENTER: Jim, I don’t see your name
on here. You probably can’t talk here.
MS. FROLICH:  Pardon me?

COMMISSIONER CENTER:  No, I was talking to Jim Abrams.

MS. FROLICH:  Oh.

MR. ABRAMS:  It’s on the one outside.

COMMISSIONER CENTER:  Okay.  Then we’ll let you talk.

(Laughter)

COMMISSIONER BROAD:  Can we vote on that?

COMMISSIONER CENTER:  No.  Be courteous.

(Laughter)

MR. ABRAMS:  Thank you, Mr. Chairman and members of the Industrial Welfare Commission.  I’m Jim Abrams, executive vice president of the California Hotel and Motel Association.

And I’d like to take perhaps a different tack with respect to this whole issue, because I think statistics, to the extent that they are thrown out at this kind of proceeding, can be very misleading.  And while it’s true, for example, that California has the lowest unemployment that it’s enjoyed in many, many, many decades, we still have the highest unemployment rate in the country.  So, it can go both ways, and I think that misses the point, quite frankly.
And a couple of people who have spoken today, and some of the questions that some of you have asked, have pointed up what I think is, hopefully, an avenue that you will explore, and that is to take the minimum wage and not apply it across the board, one-size-fits-all. The gentleman from the Sherman Oaks Chamber of Commerce told you this. And I think that as we go forward in the wage board process, people in the public, employers and employees, need some guidance from you.

For example, I think we need to pinpoint exactly what it is that you want to know about or the wage board wants to know about, in terms of what the minimum wage is designed to do. Mr. Pulaski read from the code, from the Labor Code. And that is certainly what the legislative mandate of this Commission is. However, the statistics that you hear thrown around or talked about -- let’s take $8.00 an hour, for example, to hit the poverty line for a family -- I will submit to you that the minimum wage is not designed to deal with a family of two people, three people, four people. And how big is a family? We heard a number of people talk this morning, earlier on, about dependents, two, three, four, five dependents. Should the minimum wage be a function of whether I have five
dependents or two dependents? I submit to you that, no, it should not be.

The minimum wage, as I think many people originally envisioned it and, I believe, got lost in the mix, is to -- I would submit to you, is to deal with what it takes to take care of the health and welfare, proper costs of living, of a single employee.

Now, I think if you say to yourself, "We have to presume that people don’t live by themselves -- many of them do -- but that people live in family units, and therefore we have to be able to support a family," that’s -- that’s saying basically that two people doing the same work, we’re going to pay everybody as though you are married or have a significant other and you’ve got a lot of dependents. And that becomes the floor, when, in fact, that is not what it takes to supply the proper costs of living for someone who is an individual employee.

So, I think it is incumbent upon the Commission to tell the public, which will come before you and testify at the wage board hearings and subsequent hearings on this issue, is the minimum wage designed to take care of a hypothetical single person, a family of two, three, or four, because depending on what you select
as your target, what you feel your legislative mandate is, right or wrong, it will focus and change dramatically the outcome of the testimony that’s presented to you and, I submit to you, the outcome of your own individual deliberations.

Secondly, I think it’s critical to look at -- and whether it’s a family or one person, whatever you decide is the target of the minimum wage mandate from the Legislature -- I think you need to say to yourself that the minimum wage needs to focus in on, with some degree of individuality, but not worker by worker -- some degree of individuality based on that person’s circumstances.

For example, I think it’s very critical that you look at the whole issue of tipped employees. And while I appreciate what Mr. Broad says, that Labor Code Section 351 and sections around that have been held by the California Supreme Court to preclude a separate, lower minimum wage for tipped employees, I think it is incumbent upon this Commission to not only make decisions that the minimum wage, for example, will or will not go up, or go up by so many dollars, or whatever else, but to find out really what it takes to best serve the needs of the employees of the State of California. And if you, for example, come to the conclusion that there should be
a separate minimum wage for tipped employees, I think it is inherent in your duty and I think you have a mandate to tell the Legislature, “We suggest to you that you, the Legislature, look at the question of whether or not there should be -- Labor Code Section 351 should be amended to permit some sort of a -- either a lower minimum wage for tipped employees or a tip credit, which is common throughout the United States, with the exception of about four or five states.” The fact that the law today may prohibit you from setting up a separate, lower, or different minimum wage for tipped employees does not preclude you from voicing your opinion, based on all the input -- this is where the input comes from, is through the Industrial Welfare Commission. You’re the only ones who really have the hearings all around the state. And if you come to the conclusion that a legislative change is needed, I think it is your obligation to tell the Legislature, “Here’s a suggestion.” Obviously, you can’t order them to do anything, but you can make suggestions based on your input. You are the experts, and you have the ability to go and get information.

The same thing is true with the comment, as it was stated in the earlier hearing. People had testified in favor of being able to go on 12-hour days. I
appreciate that AB 60 doesn’t allow that at the present
time. But if, in the course of your hearings, you come
to the conclusion that that is a good social goal, then I
think you have the obligation -- I think you certainly
have the right -- the mandate from the Labor Code to tell
the Legislature and the decision-makers of the state that
this is something that they should look at as a desired
social goal.

I also think it’s important to look at the fact
that this affects a great many people. They are
teenagers living at home, supported in other
circumstances, who are getting their first jobs and for
whom their skill levels are, at best, perhaps minimal, in
terms of what the employer needs. And I think that it is
certainly within your right to say that we are going to
recognize that differential, and that we are going to
recognize that people who don’t have a lot of work
experience, who are just brand new to the workforce,
should perhaps be -- we should perhaps provide incentives
for employers for hiring these people by recognizing the
fact that their productivity level, when they first enter
a lot jobs, when their job skills are not yet refined --
should perhaps be different than the minimum wage for
someone who is working full-time, is on his or her own,
with or without a family, depending on where you set the
target.

And also, I would like to propose to you that
you let it be known whether or not you are willing to
take testimony, whether you’re willing to consider what I
will call a system of setoffs. And I’m speaking strictly
for myself -- I’m not speaking on behalf of the Hotel and
Motel Association, and I haven’t asked my board whether
they think this is a good idea or a bad idea -- but I
think that, as the lady from the Sherman Oaks Chamber of
Commerce who spoke -- and I apologize for forgetting her
name -- it is true that a great many people don’t have
any benefits. But I think that if you assume, for the
sake of argument, that the minimum wage should go up --
I’m not advocating that -- that employers who now provide
benefits that really make it possible for people to have
a better standard of living, whether it’s health
insurance, transit assistance, childcare assistance, 401K
plans, whatever it happens to be, health clubs, whatever
it is, that if you make up a list of what you feel are
socially desirable goals, things you want to do for
workers to make their standard of living better, I would
submit to you that one of the best ways to do that is to
tell an employer that, “We are going to raise the minimum
wage" -- and I’ll just use this as a hypothetical; I’m not advocating raising it, or certainly not to the $8.00 that Mr. Pulaski recommended -- but, “However, if the XYZ Hotel or the ABC Restaurant or So-and-So Service Station provides healthcare benefits or provides childcare, provides transit assistance, that there ought to be a tradeoff.” I would submit to you it ought to be a dollar-for-dollar tradeoff, not below the $5.75; if I’m not getting that, then you go back to square one.

But, for example, in the case of healthcare, in our small office we have eight people, and we pay about $250 a month for healthcare for our employees, for a single employee, more if there’s a dependent. And that works out to -- if you figure 160 hours a month, that works out to what? -- about $1.50 an hour, give or take a little bit. I would submit to you that if I gave an employee $8.00 an hour, he could not, on that difference between the $5.75 and the $8.00, take that money and go out and buy him the kind of healthcare that the employers provide through group coverage. And if I provide that kind of benefit, should not I have an incentive to do that, particularly if I don’t now provide it? I would submit the answer is yes. We all would like employers to provide health insurance.
But secondly, what you’re doing is taking away the incentive for an employer to take away some benefits that he now provides them. And I think it is certainly true that -- or we might argue that raising the minimum wage throws people out of work or not, but it’s certainly true that employers in many industries, not across the board, but certainly many industries, have to look at the level of benefits they provide. They may not now be able any longer to provide healthcare to their employees. And they say to the employees, “I have to now have you pay 10 or 20 or 30 or 40 or 20 percent a month towards your health insurance because I can’t afford to pay 100 percent of it,” or “I can no longer contribute anything to your 401K plan.” So, while it might not necessarily in unemployment or disemployment, I think that if you as a Commission decide this is something you’re interested in, I think you need to tell the public, “Come to us and tell us what are you providing in the way of benefits, what does this cost you per employee or per work unit, whatever else it is?” How can we look at molding something that’s truly creative instead of the usual ‘Don’t raise the minimum wage,’ ‘Raise it to $3 million,’ and it ends up somewhere in the middle or it doesn’t change at all? I think the Commission needs to tell the
public that come to these wage board hearings what kinds
of creative opportunities and ideas that you’d like to
hear about, what kind of information do you want, so that
you don’t get the same old rhetoric. And I don’t mean
that disrespectfully of anybody’s comments; it’s where
we’ve been.

And I think -- I think the key, really, to go
forward -- and I don’t know, Mr. Center, if you’re going
to be announcing the kinds and numbers of wage board
hearings and planning or anything else, what kinds of
boards, at the beginning of the year, but I think it is
time for the Commission to start to focus in on really
who the minimum wage is designed to help. And that will
determine an awful lot of what is done. I think you
should look at some creative ways. I would suggest to
you -- my personal suggestion -- that looking at
incentives to provide extra benefits or not lowering
existing benefits is a good social goal and needs to be
factored into the minimum wage equation, and that looking
at brand new hires, people who are living at home, who
really have an independent source of income and living,
needs to be factored into the equation as well.

Thank you for your time. It’s been a long
morning for you, but I’d be happy to answer any questions
that you have.

COMMISSIONER BROAD: Mr. Abrams, you know, I have that strange distinction of actually being a business owner, a small business owner, with two employees, so I feel your pain. But also, I think I’m deeply familiar with the advantages of being a small business owner that this society provides. And while there’s a lot of moaning and groaning here, there are significant advantages.

In terms of the incentives that our society provides, one need not go any farther than the Tax Code to look at the incentives that employers are given to provide these benefits. They are 100 percent -- they can be written 100 percent off against your income in any given year. Beyond that write-off, how much of a subsidy do the taxpayers of the United States pay to low-wage employers to keep them, you know, in their Jaguars? I mean, that’s really ultimately what it comes to.

MR. ABRAMS: May I respond?

COMMISSIONER BROAD: Please.

MR. ABRAMS: Mr. Broad, with all respect, sincerely and personally, if this is going to be a debate about tax credits and small business employers driving Jaguars and the salaries of CEOs of Fortune 500
companies, then -- and I mean this sincerely, Barry, with respect -- that’s not where I believe this discussion should go.

The Tax Code says that ordinary -- expenses incurred in the ordinary -- necessary and ordinary course of doing business are deductible. There are a lot of things, education expenses, and things like that. There are a lot of employers who, right now, cannot afford to provide healthcare. If they did provide healthcare, they could probably write it off. They can’t afford it.

So, my question to you as a body responsible for the health and welfare of the whole economy and the employees in it, in a roundabout, very connected way, is, “If you raise the minimum wage, is there a social value in telling an employer that we would also like you to provide healthcare? You can’t -- we really don’t think we can make you do both. You can provide better healthcare for that employee because you are a group than that employee can provide on his or her own, no matter how high we raise the minimum wage, within reason. And therefore, we want to at least consider whether that is a proper thing to do.” I’m not telling you it is or it isn’t, but I think if the Commission says, “Damn it, employers are driving Jaguars and they’ve got 100 percent
tax write-offs," I think a golden opportunity will be missed.

COMMISSIONER McCARTHY: Yeah. I think there are some excellent suggestions here. I don’t know how they are practically implemented.

And this is a little off of what you said, but I know a lot of minimum-wage employees do not receive benefits. But among those who do, I suspect one has to take into account that a major increase in the minimum wage will lead to a reduction in the benefits of those who do receive benefits.

MR. ABRAMS: Tax write-offs -- a 100 percent tax write-off doesn’t mean it is still a profitable good thing for a business to do.

COMMISSIONER McCARTHY: No. And as evidence of that, I would cite a man I greatly respect, Assemblyman Knox, in talking about AB 60 this morning before us. I mean, what he pointed out is there’s something out there called a market, and the effort on the part of the healthcare industry to reduce base pay to kind of compensate for the increase in overtime pay is indicative of that. I’m not necessarily supportive of that, but I’m just saying there is a market out there. And that’s not the only consideration, and maybe not the major
consideration, but it is something to be taken into account, as well as your own suggestions.

COMMISSIONER CENTER: Thank you, Mr. Abrams.

MR. ABRAMS: Thank you very much.

COMMISSIONER CENTER: Any other speakers on the minimum wage?

(No response)

COMMISSIONER CENTER: With that, we’ll adjourn until 1:15, and we’ll -- it’s 45 minutes.

(Thereupon, at 12:30, the public meeting was recessed for lunch.)

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AFTERNOON SESSION

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(Time noted: 1:20 p.m.)

COMMISSIONER CENTER: Thank you.

Right now I want to introduce Marcy Saunders, who’s the State Labor Commissioner. She’s got some draft language on their interpretation of AB 60, and she’d like to comment on that.
MS. SAUNDERS: Good afternoon.

I have presented to you today our interpretations -- Division of Labor Standards Enforcement -- interpretations of AB 60. Just let me explain to you that it’s taken us approximately two months, with the work of Counsel Miles Locker, some of my other attorneys, and my senior staff. We have done a lot of research, and investigation, and studying into this bill to bring forward to you these interpretations.

These interpretations for enforcement of that bill will go into effect on January 1st, and we’ll continue to enforce the bill based on these interpretations, unless we hear something different from the IWC, either changes in wage orders, amendments to regulations, or new regulations.

And if you have any -- if you questions, I’d be happy to answer them.

COMMISSIONER BROAD: Madame Labor Commissioner, with respect to construction, mining, drilling, and logging, what is your -- what is your interpretation of how they will be dealt with starting on January 1?

MS. SAUNDERS: I included in the packet that I gave you -- it is an interpretation, but unless something happens otherwise, unless you address the issue
concerning those four industries prior to January 1st as to being exempted or included, they will automatically be included on January 1st, in -- for overtime, under AB 60, and everything else that is involved in AB 60, not just the overtime.

COMMISSIONER CENTER: Did you cover them on a specific wage order?

MS. SAUNDERS: No, we did not. We just said that our interpretation of the statute, AB 60, is that -- we felt that those four industries were covered, unless somebody on the IWC -- or you voted differently prior to January 1st.

COMMISSIONER CENTER: Thank you.

I’ve misplaced it. Could I get another copy too?

MS. SAUNDERS: Sure.

COMMISSIONER CENTER: I don’t know where I put it.

COMMISSIONER BROAD: Yeah, me neither.

COMMISSIONER CENTER: Yeah. We need copies. Go ahead.

COMMISSIONER DOMBROWSKI: I have -- it’s a legal question, maybe, for Marguerite.
What is our authority before January 1st on the 
four industries?

MS. STRICKLIN: The statute doesn’t go into 
effect until January 1st, so the Commission can’t act 
until after that date.

MS. SAUNDERS: Correct.

COMMISSIONER McCARTHY: Are we not in the 
position -- do we not have legal authority to grant those 
exemptions under prior authority today?

MS. STRICKLIN: No. In order to act on any 
industry not covered -- if the position is that they are 
not covered, and that’s the position that the IWC has 
taken in the past -- with the advent of AB 60, if you 
believe they are covered and you want to exempt them, 
then you have to call wage boards, get a finding from the 
place to hold hearings, and then act. And there’s 
nothing in AB 60 that would allow you not to have wage 
boards, as far as I see it.

COMMISSIONER CENTER: So, we could open that 
wage board today, for those industries?

MS. STRICKLIN: But you’d have to have 
recommendations for wage board members. You could ask 
that --
AUDIENCE MEMBERS: (Not using microphone) Can’t hear you.

MS. STRICKLIN: You’re going to have to get recommendations for wage board members. In your packets, there’s a -- information on wage boards, with the statute and the regulations, as well as a summary.

The Commission could vote, under 1173, if that’s their position, to open wage boards on all four of those industries.

COMMISSIONER CENTER: Thank you. Thank you, Ms. Saunders.

COMMISSIONER McCARTHY: But -- I’m sorry. Could I --

COMMISSIONER CENTER: I’m sorry.

COMMISSIONER McCARTHY: I’m sorry, Chuck.

COMMISSIONER CENTER: I thought you were finished.

COMMISSIONER McCARTHY: Yeah. It was my fault. But if we determine that they, these industries, have operated, even if it weren’t written, but that they have operated under exemptions and were considered by the Commission to have operated under exemptions, would the same rulings apply, in terms of wage boards, or what?
MS. STRICKLIN: If the Commission takes the position that AB 60, as of January 1st, includes those four industries, in order to exempt them, you would have to call wage boards.

COMMISSIONER McCARTHY: Well --

AUDIENCE MEMBERS: (Not using microphone) Can’t hear!

COMMISSIONER McCARTHY: But if we took the position that they were not included because they were -- can we do that? -- that they -- in other words, that they have exemptions, that they are considered exempt?

COMMISSIONER BROAD: I don’t think that the Commission has the authority to take a vote on whether someone is exempt -- is excluded or included under AB 60. That’s for the courts to determine. They either are or they are not on January 1.

And from my opinion, it’s pretty obvious that they are. As such, it seems that we can convene wage boards to determine, for example, whether we want to have one wage board cover all four industries, one wage order cover all four of those industries, or four, or three, or two, or to consider any possible exemptions within those industries that we -- that we’re lawfully permitted to do after convening wage boards. But I don’t think we can
vote today and, you know, with that vote, exempt those
industries. I don’t think we have the power to do that.

COMMISSIONER CENTER: And I would agree with
that. So does our attorney.

MS. STRICKLIN: That’s correct.

COMMISSIONER CENTER: Yeah. Okay.

What I’d like to do now -- I know we have sign-
up lists, but I think, in order to get out of here, we
need to expedite it a little bit. So, I want to go off
the list and bring up industries, and so maybe we won’t
duplicate the testimony.

Oh, yeah. First we have our draft proposals for
our interim orders that we’ll vote on in January. And we
have two drafts, and we’d like to choose one to put out
today.

So, I’d entertain a motion to adopt the draft
that we were provided later on in the day, since the
original one.

COMMISSIONER DOMBROWSKI: So moved.

COMMISSIONER BROAD: Second.

COMMISSIONER CENTER: All in favor?

COMMISSIONER BROAD: Excuse me.

COMMISSIONER CENTER: Okay. Go ahead.

COMMISSIONER BROAD: I’d like to do one thing.
COMMISSIONER CENTER: Okay.

COMMISSIONER BROAD: I’d like to add, on Page 2, after it says, “No person” -- under Section 3, “Administrative, Executive, and Professional Employees,” in the second sentence of that paragraph, it says, “No person shall be considered to be employed in an administrative, executive, or professional capacity unless the person is primarily engaged in the duties which meet the test of the exemption and earns a monthly salary equivalent to no” -- it should say -- “of no less than two times the state minimum wage for full-time employment.”

I’d like to add the following sentence: “Labor Code Section 515(a) mandates that the Commission conduct a review of the duties which meet the test of the exemption, and that any hearing conducted pursuant to that subsection be conducted no later than July 1, 2000.”

So, what I’m doing is making a substitute motion that we adopt the second proposal with that change.

COMMISSIONER CENTER: Okay. Do I have a second on the substitute motion?
COMMISSIONER COLEMAN: I will.

COMMISSIONER CENTER: All in favor of the substitute motion, “aye.”

(Chorus of “ayes”)

COMMISSIONER CENTER: Opposed?

(No response)

COMMISSIONER CENTER: All in favor of -- the substitute motion passes.

All in favor of the first motion to adopt this draft regulation to distribute at the end of this hearing? All in favor, say “aye.”

Oh, a question?

COMMISSIONER DOMBrowski: Just one comment to the public, that there’s a -- it is a draft interim order that we had tried to work on. We don’t have consensus on all items in this order. And the intent, from my perspective, is to get a document out there that gives everyone something to look at and to comment on over the next whatever it is until our next meeting. So, this is very much a work in progress, and I want to emphasize that to people, that we do need to hear from you after you see this thing and give us some feedback.

COMMISSIONER CENTER: Okay. And that’s -- and we need to get input on these orders, but we need to have
this typed up. I don’t know if we can get that done or not, Christine, from -- and fax it down today if we can.

        All right. We want to commend Christine. She’s been working very hard. Michael’s here to help too.

        So, we have a motion and a second. All in favor?

        (Chorus of “ayes”)

        COMMISSIONER CENTER: Opposed?

        (No response)

        COMMISSIONER CENTER: Motion passes. Thank you.

        Yes. And if you don’t get it, it’ll be published on the Web site, or you can write to the Industrial Welfare Commission in Sacramento.

        Now I’d like to bring up the representatives from the -- oh, sorry -- from the construction industry, the worker guys -- or the construction guys, not the worker guys, and the mining, logging, and oil, if we can all sit up here. But first we want to go to construction, and in any order you guys so choose.

        MR. STREET: My name is Terence Street, T-e-r-e-n-c-e, last name Street, S-t-r-e-e-t. I’m the chief executive officer and president of Roebbelen Contracting in northern California. We’re also a member of the Construction Employers Association, which represents
approximately 100 building employers. Again, I’m speaking to purely the construction industry.

We are in support of AB 60. I think our biggest confusion is how it eventually is going to implement itself, which I think will be through the wage boards.

We currently have approximately 400 employees on the payroll now. We are represented by a collective bargaining agreement, and we do encourage the payment of overtime. One of the key reasons that we have that’s motivated us to encourage the payment of overtime is to discourage, as much as possible, the use of overtime, and that is the main reason my superintendents and project managers -- purely the safety issue. I think we’re in an inherently dangerous industry. I think the Legislature has spoken in a very definite fashion with the legislation that went through this last year that safety should be a major concern to anybody in any industry coming up this next year.

We have found that prolonged periods of overtime, our accidents become -- we become much more susceptible to accidents from the crews being tired. It’s a very physical job site -- industry that we’re in, and it’s a problem that we try to avoid and stay away from. So, I think that’s what I’d like to say on that.
That’s what I would say.

COMMISSIONER CENTER: Any questions?

(No response)

COMMISSIONER CENTER: Thank you, Mr. Street.

MR. HAKEL: Good afternoon. I’m John Hakel, H-a-k-e-l. I’m the executive director of Governmental Relations for the AGC of California, the largest general contractors trade group in the state.

You already have my written testimony, but I just wanted to go over a few points that I’d like to reconfirm and see if you have any questions about.

AGC of California believes that there have been -- a historical precedent has been established and that the Commission should continue to exempt construction from its regulations. If it cannot facilitate this first request, then the Commission should initiate discussions with affected parties and develop a separate wage order that will meet the needs of the industry and its workers.

If the Commission agrees with a separate wage order, then the AGC is requesting a temporary delay on the implementation of the regulations until the affected parties can draft mutual, acceptable regulations.

Finally, the AGC of California is requesting that due to the complexity of this act and the continuing dialogue
surrounding the implementation of the act, that a
moratorium be placed on its enforcement procedures.

In closing, I’m speaking on behalf of the AGC of
California and its 1,100 members statewide. It should be
acknowledged that AGC is available to the Commission as a
comprehensive resource to the question that’s being posed
today.

Thank you.

COMMISSIONER CENTER: Excuse me. So, you
disagree with Mr. Street that -- you’re still looking for
exemptions to overtime? Working excessive overtime is
safe in your industry?

MR. HAKEL: I think we have to go back and
dialogue with that. We do realize that, with the type of
work we do have, the most important part of any job site
would be safety. But I think we have to, I think, sit
down with the -- with the Commission and go over some of
those points.

COMMISSIONER CENTER: Thank you.

Any questions?

Yeah, go ahead.

COMMISSIONER DOMBROWSKI: Excuse me. Hello?
Did you testify on the bill when it was in the
hearing in the Legislature? Were you involved at all in
that regard?

MR. HAKEL: I don’t believe we did. To the -- to the extent of actual testimony, that I’m not sure of. I believe we had written testimony. Were we there physically? I do not know.

COMMISSIONER DOMBROWSKI: And then, if I heard you right, one of your requests was for a moratorium on enforcement. Is that --

MR. HAKEL: Until we know exactly what the language and how you are to enforce it. I think it would be somewhat difficult until we know exactly the language, for our contractors to make sure that we are on the true extent of this effort.

COMMISSIONER DOMBROWSKI: I guess I -- you’re asking legal questions, aren’t you? I don’t -- I don’t know if we have any authority to do -- I mean, the law becomes the law on January 1st.

MR. HAKEL: Right. And that we do know, but the exact definition of it, the actual implementation of it, I believe, from what I’m hearing, is still being -- this is why you’re going around the state --

COMMISSIONER DOMBROWSKI: Correct. Correct.

MR. HAKEL: -- to get the language so we, as general contractors, know the full breadth of what it is.
And if we’re -- once we know the full breadth, I think
the implementation of it will be much easier for general
contractors to follow so we will not be in any type of
violation.

COMMISSIONER DOMBROWSKI: Okay. I guess -- and
I do have to apologize, because I did not get to read the
Labor Commissioner’s document yet, but maybe it’s spelled
out in there, so -- the way it goes down.

COMMISSIONER CENTER: A question. Are you more
-- I think the Labor Commissioner will be enforcing in
January. I don’t know if we could even request her to
not enforce the law. Are you speaking more to the actual
wage orders that cover --

MR. HAKEL: I would think -- right, until we
realize exactly if we do go to any wage order and there
are time limits as it relates to that enforcement part of
it, then we’d like to hold off until you’re done going
down that path, and so our members have to abide by those
certain rules. Does that make sense to you?

COMMISSIONER CENTER: I don’t know. Let’s think
about that one.

Any more construction industry people?

MR. MARTENS: Good afternoon, gentlemen --
ladies and gentlemen.
Barry, I haven’t seen you in a long time.

COMMISSIONER CENTER: Closer to the mike, if you can, please.

MR. MARTENS: My name is James Martens. I manage a trucking company that deals exclusively in transportation of construction commodities. And I’m not sure that the transportation exemption is going to fall into my arena or not. I’m quite confused on, literally, where I’m going here, without seeing these documents that you drafted and now amended and made some changes, because this will make a dramatic impact on the California trucking construction industry, which I know quite well. And there are about 8,000 small employers in this business, with probably two to four or five drivers, and maybe a handful of fifty companies that have in excess of 25 or 30 trucks. And the impact of overtime on the delivery of construction products is going to be a major -- major, major impact on the -- definitely the way the construction industry receives our prices, our delivery contracts. Everything is going to be upside down, unless I -- unless I can be assured that the transportation exemptions falls to construction trucking.

COMMISSIONER BROAD: Well, the first question to ask yourself is whether your industry was originally
covered by Order 9. That is to say, was it considered -- and I just don’t know the answer, and I think you should probably talk to the Labor Commissioner’s office, because if it’s considered part of the trucking industry as opposed to construction --

MR. MARTENS: I spoke to somebody, and he believes that it is exempt, but he has not got enforcement orders of what AB 60 is going to do. So, you know, he’s in the same dilemma as --

COMMISSIONER BROAD: Well, nothing in what we are doing affects the trucking industry exemption that’s contained in any of the wage orders.

MR. MARTENS: Any of them?

COMMISSIONER BROAD: It is in all the wage orders.

MR. MARTENS: I can take that to the bank?

(Laughter)

COMMISSIONER BROAD: Might not be much of a deposit.

(Laughter)

MR. MARTENS: Well, not to belabor the dilemma that we’re in, because, you know, these -- the industry delivers all of its commodities by the ton, not by the hour. 85 percent of it is delivered by the ton. And
it’s totally controlled by the contractor on the other end as to how fast he wants it and how slow he wants it, and whether he wants it after three o’clock in the afternoon, so mostly we’ll be on overtime hours.

COMMISSIONER BROAD: Well, I believe, in all likelihood, that you -- that dump truck operations are considered covered by Order 9, as all other trucking operations. And there has always been that exemption. So, if there -- which covers you if you are -- if your drivers’ hours of service are regulated by DOT or the California Highway Patrol -- and there’s nothing that we’re proposing that alters that.

COMMISSIONER CENTER: But you -- just a comment -- you might want to, you know, talk with the Labor Commissioner, because if you’re delivering but you’re in the actual construction project, like you’re delivering asphalt, where you’re actually pouring the asphalt out there -- I don’t know. You need to talk to the Labor Commissioner on that.

COMMISSIONER BROAD: Right.

COMMISSIONER CENTER: That could be a different issue.

MR. MARTENS: Okay. So, that would be the Labor Commissioner.
COMMISSIONER CENTER: Yeah.

MR. MARTENS: Well, I will speak to them.

COMMISSIONER CENTER: Any more construction industry?

(No response)

COMMISSIONER CENTER: How about mining?

AUDIENCE MEMBER: (Not using microphone) I’m sorry. What?

COMMISSIONER CENTER: Mining.

MR. GLADFELTY: Mr. Chairman and members, Paul Gladfelty, representing the California Mining Association. Let me make a couple comments with regard to mining.

We believe that the mining industry really should be viewed on two segments, one of which is metal mining, the other of which is other types of mining.

With respect to metal mining, we believe that the law as it relates to overtime provisions and premium wage rates are covered under previous legislation, which is Bustamante legislation, AB 739.

With respect to other types of mining -- rock, sand and gravel, and so on -- we certainly believe that the Industrial Welfare Commission has the authority to regulate this industry.
We look forward to working with the Industrial Welfare Commission with respect to whether or not mining should have a separate wage order or whether or not it should be consolidated under manufacturing or some other wage order. We don’t have a position at this time on that. But I can tell you that there have been mining operations that have, in the past and currently, operated under the manufacturing wage order.

COMMISSIONER CENTER: Thank you.

Any questions?

(No response)

COMMISSIONER CENTER: Next is the timber industry.

MR. BIRENBAUM: We’re still on mining.

COMMISSIONER CENTER: Oh, mining. I’m sorry.

MR. BIRENBAUM: Thank you, Mr. Chairman.

Charles Birenbaum, with Thelen, Reid & Priest. I was asked to come before the Commission, so I thank you and the other commissioners, the Labor Commissioner, chief attorney of the Division of Labor Standards Enforcement and other members of the public.

The reason the California Mining Association asked me to make a brief statement before you is because of my involvement in the enactment of AB 739. That goes
to the subject just mentioned, that companies engaged in underground mining, or have plants or smelters for the reduction and refining of ore, should be specially treated. And to address a point made by one of the commissioners earlier, you do have the jurisdiction to interpret AB 60; that’s clear. What we want to make sure is that you interpret it in a way that is consistent with another statute, AB 739. That’s essential, because if you create a conflict between the statutes, it will create confusion and it will dash the hopes and interests of many workers in plants and smelters for reduction and refining of ores and metals.

The plain language of AB 60 gives you that authority, but also, it leads to that conclusion. The statute expressly addresses virtually every industry. And even though the industries covered by AB 739, which is in Labor Code Sections 750, 750.5, 751.8, was before the Senate and the Assembly, they chose not to include it in AB 60. In Sections 517 and 1182.3 through 1182.10, we have mention of the ski industry, commercial fishing, healthcare, horse racing, pharmacists, outside sales, organized camps in agriculture, and railroad employees. Other industries are mentioned by the five wage orders that were the subject of the repeal of daily overtime by
this Commission in January of last year, Wage Orders 1, 4, 5, 7, and 9.

Even though these very specific industries and wage orders were referenced, those companies and employees covered by AB 739, Labor Code 750 et seq., were not. They were deliberately left out. And it’s essential that this Commission honor the statutory intent there, the legislative intent there in that statute.

It makes a lot of sense because 750 and the employees it regulates is broader than AB 60. It puts greater -- greater impositions on employers in that industry before those employers can enjoy the kind of overtime rights the statute provides. In essence, it provides for up to 12 hours of straight-time work in the mining industry. Why is that important to the mining industry? Employees have to travel from very far to get to their places of work. If straight-time shifts up to 12 hours were no longer permitted because this Commission decided AB 60 extended to those employees and their employers, they would have to work more days per work and commute more, which would affect their personal lives, their income, and all the things that they sought under AB 739.

The legislative history of AB 60 supports what
I’m urging you to do. The supporters of AB 60 were very careful to point out that the purpose of the statute was to remedy the IWC actions in repealing daily overtime in the wage orders I referenced earlier. It was not intended to affect Labor Code Section 750 and AB 739.

We submitted a statement to the Commission which makes these points in greater detail, so I won’t hammer it any further. But I will point out one thing: the Industrial Welfare Commission has “welfare” in it for a good reason. It’s the welfare of the working public in the state. And as the next speaker will address, the employees of employers in plants and smelters for the reduction and refining of ore and metals in this state demanded the AB 739 result. It was worked out with organized labor in the legislative process and was agreed to by every essential major group involved. So, we hope that you interpret AB 60 in a way that is consistent with AB 739 and permits the continued practice of 12-hour shifts at straight time in that industry.

Thank you.

(Applause)

COMMISSIONER BROAD: I have a question.

Well, I tend to agree with you; it’s a more specific statute. It wasn’t dealt with by AB 60, and
therefore, if we adopt a wage order affecting the mining industry, it should include those provisions that are in the statute, which are binding, I believe, on this Commission.

My question goes to, if we do a wage order, you’re not saying that we don’t have the jurisdiction to put in that wage order other things that are normally in wage orders that -- you know, like breaks, rest time, meal periods, all those issues -- temperature -- there’s a whole series of things beyond simply overtime and the amount of overtime.

MR. BIRENBAUM: Right.

COMMISSIONER BROAD: So, I want you to comment on that.

MR. BIRENBAUM: Sure. Thank you.

Two points. One is that to the degree the Commission decides to issue a wage order, the first question will be whether the Commission has jurisdiction to do it. Insofar as any wage order for the kind of employees covered under Labor Code 750 is involved, I think it would be ultra vires, meaning out of your jurisdiction, to issue a wage order that conflicts with that statutory scheme.

Whether you have jurisdiction to regulate those
employees in other ways that do not conflict with that
statute is a separate issue. I don’t have the answer for
that right now. My hunch is that you probably do, but I
don’t have the -- I have not studied that issue
sufficiently to give you a good answer on it.

COMMISSIONER BROAD: Thank you.

MR. BIRENBAUM: The only other point there
that’s suggested by your question is whether you can
issue an exception for people covered by Labor Code
Section 750 under Section 515 of AB 60. And I believe
that you cannot if you don’t have jurisdiction over them
in the first instance. And I think that’s the wiser
interpretation to ensure that we don’t have a conflict
between AB 60 and AB 739.

COMMISSIONER CENTER: Thank you.

MR. WITT: Mr. Birenbaum, are you finished?

Okay. I’m Kim Witt. I’m the manager of human
resources for the Viceroy Gold Corporation.

Again, we’d like to attest here that there is a
difference between metal mining and any of the other
aggregate operations. Our employees commute an average
of an hour and a half to two hours each way to work each
day. We were approached by the employees in the early
‘90’s, and because of the statute, 750, we were not able
to allow them extended work shifts.

In 1995, when the law passed, we saw great improvement in morale, and we’ve seen an improvement in safety. Our employees are able to spend more quality time at home, as was testified in the -- in the Assembly hearing earlier. They’re able to work in a situation where they cut one third of their commute times out.

Each year, our employees working the schedules permitted by 750 and other sections, are able to see 14 weeks of family time per year, because of the way the schedules work. There isn’t a problem with safety, because we’ve seen an improved safety record.

In 1995, when we took the poll of the Nevada operations working the 12-hour shifts used in metal mining, 18 out of the 20 operations in the State of Nevada were working the extended shifts.

Again, our employees vote each year. Since the implementation of 750, each December we have conducted elections, and 100 percent of our employees have voted to continue this schedule.

We would appreciate any assurance you can give to us in maintaining 750. If there are other wage orders for the other mining industry companies, we would be more than happy to help work through the details or provide
you with any information you need.

Thank you.

THE REPORTER: Your card, please.

COMMISSIONER CENTER: Thank you.

Anybody else from the mining industry?

(No response)

COMMISSIONER CENTER: Timber industry.

(No response)

COMMISSIONER CENTER: All right. How about oil drilling?

MR. SULLER: Good afternoon, Chairman Center and members of the Commission. My name is Ken Suller. I represent the California Independent Petroleum Association, the Association --

AUDIENCE MEMBERS: (Not using microphone) Use the mike!

MR. SULLER: -- the Association of Energy Service Companies, and the California Independent Petroleum Association. With me today are Dave Lefler, from Western Drilling, and Rod Eson, from Venoco.

As you know, our industry has historically not been covered by the IWC’s orders, as we’ve discussed. The DLSE has -- I want to clarify a couple of -- a couple of brief points before turning it over to Ron and to Dave
-- but I want to make a couple of preliminary points.

The DLSE has termed this, in various forms, as an “exemption,” an “exclusion,” an “exception,” “noncoverage.” To clarify the position of at least our industry, we are just not covered. That is our legal position currently, as we sit here today.

It is also our position that we are not covered by AB 60. This doesn’t cover our industry, despite comments by the commissioner. The legislative counsel’s digest doesn’t say anywhere in it that our four industries are covered, so we respectfully disagree with the Labor Commissioner and Assemblyman Knox. He may have understood that construction and oil and other industries were included. I don’t believe his colleagues understood that.

What I’d like to do is two things today. I’d like to let Mr. Eson and Mr. Lefler provide some factual context on two different parts of the oil industry. And there are different parts of this industry, and I think it’s important for the Commission to understand what those are. And second, I’d like to supplement the comments I made on November 15th regarding some very narrow legal issues with respect to the ability of the IWC to include the oil industry in an interim wage order,
assuming that -- for purposes of argument, that AB 60 covers the oil industry.

With that, I’ll turn it over to Rod Eson.

COMMISSIONER McCARTHY: Could I make -- could I make just a comment -- could I just make a comment on your remarks first?

With regard to your saying you didn’t -- with regard to Assemblyman Knox, I might point out he did not say that he thought that -- if I heard him correctly, he did not say that he thought that oil, mining, and lumber were covered by AB 60. He was only addressing construction. And then, when he was asked if he thought construction was covered -- perhaps it’s one’s interpretation of the English language -- he -- he -- it was less than compelling -- he said, “I believe so.” Now, common English usage says that that is less than an absolute conviction.

But whatever it may be, I’m sure he -- and he doesn’t speak for the rest of the Legislature in terms of their understanding whether they were covered either.

COMMISSIONER CENTER: Being a lobbyist in the Legislature, sometimes people vote on things they don’t understand too. It happens once in a while.

MR. ESON: Mr. Chairman, members, my name is Rod
Eson, E-s-o-n. I’m executive vice president and co-founder of an oil company based in Santa Barbara. And the company is Venoco, V-e-n-o-c-o. We’re a company, one of the larger independents, headquartered in the State of California, with approximately 190 employees. About 100 of those employees work in our offshore facilities, either on platforms or on on-shore facilities that are specifically related to offshore platforms. We produce, both within the state water, meaning within the three-mile limit of the coastline, as well as on the outer continental shelf or federal waters.

I would like to first give you a little bit of an idea what kind of work these people do and why we feel the implementation of AB 60 would put a hardship on our employees. The type of work they do is typically a seven-on, seven-off, meaning they work seven days straight, 12 hours a day. This is both the people on the platforms as well as on the facilities. In many cases -- which isn’t the case for our company, but a lot of other companies -- people that work on the platforms alternate with people that work on-shore.

As you can well understand, the ability to produce oil and gas safely is a tremendous concern to everyone, so it’s extremely important that these people
understand all the processes involved, from the point at which the oil is extracted and the gas is extracted to the point that the oil and gas go into marketable lines. There’s a lot of processes that go on. Any glitch along the way can create a release of gas to the atmosphere or an oil spill, and no one wants that. I think the industry has proven over the last thirty years that it’s got an exceptional environmental record, from the standpoint in the last thirty years total average amount of oil that has been released into the ocean from any spill whatsoever, from 27 operator platforms, averages 28 barrels a year. To put that in perspective, off the coast of Santa Barbara called Oil Point, we have approximately 5,000 gallons every day of oil that’s leaked into the ocean from natural seepage.

What this would do to our employees, it would decrease their flexibility. Many of these employees, which, I will say, on the offshore platforms and on-shore facilities, are very highly paid employees -- these are not minimum-wage people. These people typically make between $50,000 and $70,000 a year. They’re very highly skilled. This is not a physical labor industry, it is a technology -- an industry that uses some brawn, but certainly requires the use of the brain.
If we were to implement the AB 60, it would really unnecessarily burden these employees. Our employees very much appreciate the compressed workweek. Many of them have second jobs. A lot of them, as in other industries, prefer to live as many as 150 or more miles from their point of departure. And these people go to platforms either via helicopter or boats, depending upon the distance out and currents. In some instances, in some state platforms, the people actually go home at night and don’t spend the night on the platform, but they still work the 12-hour days.

These people enjoy, many of them, a second job. We have employees that are in family businesses during their 26 weeks of off time that they work. A lot of these people do volunteer work. They enjoy the opportunity to spend their quality time with their families, to understand and have the ability for participation in their children’s school activities.

Safety and environment, as I mentioned, is our primary concern. One of the things that we have found in this industry, and a lot of companies have found the same thing that we have, which is really in contrast to construction: most of the accidents in our business tend to happen in the first hour of shift work, primarily
because it’s not a physical operation that we’re dealing with, so it’s not a fact of being tired. Typically, accidents occur because you have a change of operator. Someone may have made a change to the status quo and did not properly transfer that information to the next operator. So, we’ve found that it typically is on the first hour of work.

If we were to make other arrangements, as has been suggested -- “Well, simply put a third shift on; that’ll take care of your problem” -- in a lot of the platform stations, there aren’t rooms for an additional sixty or seventy people to be spending the night out there. You obviously then have a 16 hours or so of wasted down time. It’s tough enough for a lot of these guys and women to have 12 hours of down time between working. They are very interested in getting the job done, doing it right, and getting -- and getting home.

One of -- and I think that probably the bigger reason for that, there are not enough workers if we decided to add a third shift. Quite frankly, it’s very difficult today to get these skilled workers working in the oil industry. Everybody today sees the high gasoline prices and they think, “You must be doing really well.” I think that it’s important to understand that’s -- a lot
of that is taxes and refining, but you only have to go
back two years to look at the lowest oil prices of ninety
years. At that point in time, we lost 12,000 workers
from our industry, many of them from the offshore set.
So, if we wanted to go get those third-shift people, we
couldn’t do it.

In summary, to implement this would mean,
basically, it’s additional cost to the companies,
additional cost and burden to the employees. If you add
additional costs to these offshore operations, which you
need to understand are now in the hands of independent
companies -- with one exception, Exxon, all of these
platforms are held by independents. Why is that?
Because the majors that previously opened them found the
economics declining. So, these are marginal fields, and
these independents are much better at keeping them
operating.

So, what can happen with increased costs, you’re
going to have premature abandonment on the fields, you’d
have additional costs and overhead to the oil companies,
and with premature abandonment of the fields, just
because we don’t produce offshore doesn’t mean it won’t
be consumed. We produce 800,000 barrels of oil in
California, and we consume 2.3 million. What that means
is there would be increased tanker traffic. This tanker traffic would be under foreign flags, with a lot less control than we have over our offshore platforms today. Ultimately, that could possibly mean even higher gasoline prices.

Thank you very much for your time.

COMMISSIONER CENTER: Yeah. Just a comment, maybe a question.

Right now, your industry considers itself not covered by AB 60, and the Labor Commissioner would possibly disagree with that -- disagree with that in January. In order for the Industrial Welfare Commission to discover what’s going on with the industry, we have to convene wage boards to interview affected workers and the employers to possibly provide exemptions. Until we can do that, then you’re going to maybe be covered under overtime. Would you support a separate order for your industry? Otherwise, you possibly will be under Order 4 or some other order.

MR. ESON: I don’t want to speak for the entire industry. I think that Kim will be addressing that, from a broad perspective. This is my own view.

COMMISSIONER CENTER: Well, until that position is taken, then, we can’t help you. That’s a problem for
us and for you, I think.

Thank you.

Question?

COMMISSIONER COLEMAN: I have a question. Were you surprised to learn that you were covered?

MR. ESON: We were surprised to hear that -- yes, that we were covered. We assumed we were not, which is why we did not get involved in the process in the Legislature.

COMMISSIONER COLEMAN: Okay. So, you weren’t involved in the AB 60 discussions?

MR. ESON: No. We just assumed that we were not covered.

COMMISSIONER CENTER: Back to -- originally, I was involved in the early, early drafting of the bill. But once I got reappointed to the Industrial Welfare Commission, I pulled out of it. In early discussions with our people, we always considered all workers to be covered in California. That’s why the bill was drafted that way. So, it surprised me a lot of people didn’t understand that after the bill was passed.

COMMISSIONER McCARTHY: I don’t know if it’s relevant or of any assistance, but as the one member up here who served the longest on this Commission, it
certainly was the operating assumption -- more than
assumption -- it was
-- as far as we were concerned, it was fact -- as I say,
that your industry was exempt from the wage orders that
were existing, as were the others under discussion today.

COMMISSIONER BROAD: I just had a quick factual
question. How many employees are employed on the 27
offshore platforms, all together?

MR. ESON: It would be an estimate, but I know a
lot of the companies. Probably in the neighborhood of
400 or 500. Once again, we’re talking the onshore
facilities that relate to the platforms, because, again,
they are an integral part, and you need to have
continuity of the -- it’s very important to understand
these flow streams and processes. You don’t want to do
something small in the onshore facility and end up
creating a problem in the offshore facility. That’s why
I’m getting a lot of this going back and forth. So, I’m
adding people that are on the onshore facilities to the
platform. In the neighborhood of 300 to 500 people.

COMMISSIONER BROAD: Well, wouldn’t the -- now
I’m a little confused. I would assume that the onshore
facilities are part of the manufacturing wage order and
always have been. You’re not drilling. They’re not?
MR. ESON: No.

COMMISSIONER BROAD: Thank you.

MR. ESON: Thank you.

COMMISSIONER CENTER: Thank you.

MR. LEFLER: Commissioners, good afternoon. And I’m Dave Lefler with Western Drilling of Taft, California, one of the favorite spots to stop as you drive through. But we’re over on the west side of the valley, in Kern County. Kern County is a large producing oil state in itself; we’re right behind California. We produce about 650,000 barrels of oil a day, a tremendous amount of asset for the local community.

What my concern is, and our employees’ concerns, is that they would lose the opportunity to continue to work compressed work schedules such as Rod described. And I’d like to talk about also exporting jobs out of California, because I think sometimes we forget what some of these actions that we take end up doing. And so, what I want to talk about a little bit today is that.

We see that the implementation of AB 60, the 8-hour overtime regulation, into our industry that has been basically excluded -- not exempted, but excluded -- over the years would increase our drilling costs significantly. Currently, we’re paying about 25 percent
more per hour for our drilling crews than they are anywhere else in the U.S. So, we’re paying our people well.

The other thing that happens in our industry in the area is that we have to compete with other -- other capital investments for these companies. And so, if our costs go up, the number of wells will go down that are drilled in California. That means that jobs will be exported out of California.

Currently, we’re paying our drillers about $20 an hour. They do get some overtime at the current time, and so they make $50,000 to $60,000 a year, on these -- on their first job, their daylight job, so to speak. AB 60 would increase our costs by another 20 percent, and therefore we’d be up about 45 percent more than other areas and regions within the U.S. So, definitely, we’d be diluting out of the area.

One recent development in our local economy in Taft was that one of these drilling and service companies went out of business and auctioned their rigs. Their rigs did not stay in California. They went to Canada, Oklahoma, and Texas. Jobs left with those rigs. Each rig is about 28 people. That’s 28 families every time one of those moves out of the state.
Also, our employees enjoy the 12-hour shifts because it compresses their workweek. They work seven on, seven off, which I think was talked about here before. It provides them with more continuous time off with their families to do the things that they want to do. Some of them have second jobs, as Rod had indicated. And some of them, of course, do a lot of volunteer work.

Our employees came to us at Western Drilling just a little over a year ago and asked to go on 12-hour shifts. We did that. We implemented that for them. The morale immediately increased. Their safety record increased dramatically. We’re having about one half of the incidences -- recordable instances we were having a year ago, so significant safety improvement.

Also, our employees have found that they like having two weekends off a month now. Previously, they had one weekend a month with their families, and now it’s two weekends. They basically work a half a year; they’re on vacation the other half. It’s a wonderful schedule.

Also, for commute, our people travel anywhere from about 100 to 150 miles to a rig site, so they’re traveling a lot, commuting a lot. This reduces the number of times they travel, instead of the traditional 8-hour rotating schedule.
Another item that was touched on by Rod is the increasing fuel costs. I believe that California will experience an increase in gasoline pump costs if we implement this within our industry. As production drops because of the number of wells drilled, so will the mix of low-cost crude oil from California. And as that happens, it will be displaced with higher-cost imported oil. Also, increased tanker activity along our coast will bring increasing imports to support California’s lifestyle. And that’s not going to change with a slight increase in cost.

Thank you for your time and attention. Are there any questions?

COMMISSIONER CENTER: Yeah, I have a question, or a comment. I’m still bewildered here. The way I read the statute, it’s my opinion you’ll be covered. I guess that’s the way the Labor Commissioner will read the statute. It will be in court, I’m sure.

In order for our Commission -- and again, I’ll reiterate that -- to investigate your industry, we have to convene wage boards. And later on, you go to court and you lose your court case, maybe. Then you’d have to come to us and petition for wage boards. That’s a long process. It would -- I would think it would be better
for your industry to convene wage boards right away, because we’re not determining whether you’re covered or not, we’re just investigating your industry, for the welfare of the workers, which might mean 12-hour shifts on offshore oil facilities are better for the workers.

You know, I just wonder what your opinion is on that.

MR. LEFLER: I think that’s an area that we’ll have Ken address. I think one of the real issues brought up by -- in Leslee’s question was that we did not believe -- and we still do not believe -- that we are covered by this AB 60. The legislative intent, which was given to us through our Assemblyman before was that it was not Knox’s intent to include our industry, or mining, or the on-site construction in it. And that was their understanding as a Democratic caucus, but that is -- it got lost somewhere in the translation.

COMMISSIONER CENTER: Yeah, but that’s --

MR. LEFLER: That’s just a comment, and that’s our opinion.

COMMISSIONER CENTER: Yeah, I’m not -- but again, the statute trumps our regulation.

Just -- I’d like to have it -- maybe you can explain it to me, because I think there might be some
issues in your industry, but we can’t start the process until the process is started.

MR. LEFLER: We understand that. Thank you for the opportunity.

MR. SULZER: I thought I’d rest with the last points. One -- you indicated at the last hearing that you expected to be sued by one side or the other. It may be that we’ve got a collateral challenge in court as to the jurisdiction of AB 60. I don’t think that has anything to do with if there’s any legal --

AUDIENCE MEMBERS: (Not using microphone) Can’t hear! Microphone!

MR. SULZER: -- there’s any legal reason not to go ahead with the investigatory process, if it’s the IWC’s opinion that our industry is covered, and go through it. I don’t think they’re -- I think we can do them both at the same time.

COMMISSIONER CENTER: That we can do wage boards whether we think your industry is covered or not? Can we?

MR. SULZER: You’re saying that to me or asking that?

COMMISSIONER CENTER: Yeah. Can we? To investigate your industry and prepare in case you are
covered. I think it’s beneficial for your industry.

MR. SULZER: I agree.

COMMISSIONER CENTER: Would you support that?

MR. SULZER: I don’t see any reason why we don’t -- we’ll get back to you -- I don’t see any reason why we wouldn’t go on collateral paths. And this kind of leads into my next set of comments, which is really on a technical legal issue which really does address the wage board issue.

And that is, we’ve heard some discussions and understand that we may be -- our industry may be included in an interim wage order. Even if these industries are -- are covered by AB 60, assuming for purposes of argument, our association believes that including us in an interim wage order would be unlawful because AB 60 does not repeal or eliminate Part Four of the Labor Code, which is Sections 1171 through 1182-point-whatever of the Labor Code.

We believe that AB 60 -- number one, we believe that AB 60 did not intend for the IWC to regulate previously unregulated industries, without ever convening a wage board at all, ever. We don’t think that’s true. Obviously, for every other industry, there’s been a wage board, and they’ve been exempted, regulated, and so
forth. But there’s never been a wage board for our industry.

    One reason that’s an appropriate interpretation here, the wage board -- historically, the wage board process has been a substitute for other process, to substitute for the APA, the Administrative Procedure Act, from which the IWC is exempt. We don’t -- we don’t have -- our industry will never have either one of those practices ever. We’ll have an interim wage order governing us without ever going through the wage board process, if we are included in your interim wage orders.

    Having said that, Section 517 of AB 60 does say the IWC can more or less regulate people covered by AB 60 without convening wage boards. Importantly, it does not say “notwithstanding all the requirements of Part Four of the Labor Code.” That’s the only requirement of Part Four of the Labor Code that AB 60 accepts.

    In order to get the oil industry or construction or mining or logging, to get them regulated in the first place, because they weren’t -- they haven’t been regulated, you have to convene the process set forth in Part Four. Okay? If you believe that wage boards aren’t required, then you still have to do the other processes set forth in Part Four of the Labor Code. And those
processes are proposing regulations, sending out a notice of hearing, I believe preparing the reports of the public, get to hold hearings on those proposed regulations in at least three cities, you have to notify associations and employees of those hearings. And unless and until the IWC does this, it follows these processes, absent -- even absent wage boards, you can’t validly regulate a previously unregulated industry with respect to overtime.

The statute could have clearly said none of these requirements apply, go ahead and regulate everybody. It doesn’t say that. The only exception to Section 1171, et seq., is the appointment and convening of the wage boards themselves. All the other duties of the IWC are still there, they’re still in the Labor Code, they were not repealed.

And it’s quite clear that the Legislature considered this, because it did repeal a couple of sections, or at least one section of Part Four of the Labor Code, specifically. So, they did grasp and understood this part of the Labor Code was there. At best for the IWC, there’s a conflict between two statutes. And I believe that it’s appropriate, however, that the procedures of 1171, et seq., other than
convening wage boards, must be followed before there’s any valid wage order that covers the oil industry. That may not be true with respect to all the other industries, but with respect to those four industries, it’s got to be true. It’s the only way you can read these two statutes together, if you read the exception for convening wage boards in Section 517 appropriately.

Importantly, there’s a recent appellate decision that’s as yet unpublished. It’s Baker v. Veico Drilling. Baker v. Veico Drilling was under the current Labor Code, not under AB 60, but Veico Drilling does interpret Part Four of the Labor Code, 1171, et seq. It says those provisions are mandatory. They must be followed or you are not regulated. And on that basis -- on that basis, Veico Drilling was -- it was determined that they were not regulated, they were excluded from regulation by DLSE through the failure of the IWC to go through the other processes, or the processes in 1171, et seq., Part Four of the Labor Code.

That’s still in the Labor Code. People kind of forgot about it, didn’t look at it, and maybe thought the language “without convening wage boards” erased that whole part of the statute. Obviously, it did not. If the Legislature intended to do so, it could have said,
like it said in the last legislation, “Notwithstanding the provisions of Part Four.” It did not say that, and those provisions still exist, and they prevent the IWC from regulating our industry in an interim wage order, or any type of wage order, without going through those processes. That’s a statutory interpretation point.

Probably the bigger point, and why this is somewhat confusing, is we believe that Section 517, which says you can put together wage orders without convening wage boards, we don’t believe it was intended to regulate anybody other than the people who had their 8-hour daily overtime taken away, people in the wage orders that were -- that had daily overtime taken away, 1, 4, 5, 7, and 9. These were previously people who lost their daily overtime, and the act is the restoration of daily overtime. That’s the title of it. We don’t believe that Section 517 was meant to cover previously completely unregulated industries with respect to overtime.

The bottom line of this argument, I think, is that if these industries are going to be regulated, the Legislature would have to state so. And it turns the argument on its head: we have to hold wage boards to hold an exemption. That argument -- to create an exemption. That argument is wrong. You have to hold
wage boards in order to regulate the industries through
the scheme that’s set up by AB 60, and that is wage
orders, wage boards, and so forth. And that’s still
mandatory, it’s still in the Labor Code. AB 60 did not
repeal it, and the Legislature didn’t say otherwise.

COMMISSIONER CENTER: Thank you.

And the Veico decision that’s unpublished,
everybody has. They did not address AB 60, I don’t
think, in that decision.

MR. SULZER: No. Correct. They specifically
said, “We’re not addressing AB 60.” However, the part
that I’m talking about is Part Four of the Labor Code.
They did address that and said that’s mandatory. If you
don’t do that, you’re not regulated, period. That’s the
holding. You can’t -- that part of the Labor Code is
still in there. So, at best, you could argue it
conflicts with AB 60, but it doesn’t conflict with AB 60,
because all AB 60 accepts is the actual convening of the
wage boards themselves. Other things the IWC is supposed
to do before putting out a wage order, holding a hearing,
proposing the regulations, doing it in three cities, et
cetera, need to be done before we can be regulated at
all.

So, as of January 1, we are not encompassed by
the 8-hour day. And if you were to put in an interim wage order, say, January 15th, January 20th, without going through the processes in Part Four, it would be invalid, and certainly as to our industry.

COMMISSIONER BROAD: Okay. So, if that’s the case, then with respect to the other parts of the bill that allow us to do things without convening wage boards, we need to hold hearings in three different cities and so on and so forth. Is that your position?

MR. SULZER: Which other parts?

COMMISSIONER BROAD: The parts that deal with hospitals, and deal with stable employees, and deal with the procedures for alternative workweeks, and deal with commercial fishing. It’s only you guys that that amounts to?

MR. SULZER: I don’t know the answer to that. I’m talking about these industries that were previously unregulated. My comments are limited to those industries. I don’t know the answer.

COMMISSIONER BROAD: But the statute --

MR. SULZER: But it does create an issue. As you say it, it does create an issue. Can you regulate anyone without going through 1171, et seq., procedures other than the wage boards?
COMMISSIONER BROAD: So, then, perhaps if we were to --

MR. SULZER: I don’t know.

COMMISSIONER BROAD: -- decide without convening wage boards that we wanted, in a final order to be issued before July, to permit hospitals to have 12-hour days, and we didn’t do what you’re saying, then our decision would be unlawful and they wouldn’t be able to have them.

MR. SULZER: I can’t address the hospitals specifically, but my position would be you certainly have valid wage orders. Section 21 says the old wage orders are still in place, so --

COMMISSIONER BROAD: I believe, Mr. Sulzer, you may be helping your client, but you’re not helping some other people in this room.

(Laughter)

COMMISSIONER BROAD: Now let me ask you this question.

MR. SULZER: The answer is I don’t know the answer.

COMMISSIONER BROAD: Okay. You and I have discussed this bill --

MR. SULZER: Yes.

COMMISSIONER BROAD: -- many times. It would
make a very good MCLE course for attorneys. Let me just say my response to what you’re saying.

This is a remedial statute, given liberal construction under the precedent of the California Supreme Court in previous cases. Section 510 applies to every single worker in the State of California.

You began by saying -- every single employee in the State of California. You began by saying, “Well, where is the oil industry mentioned in here?” Well, where is any industry mentioned in here? They’re not in AB 60 because the bill covers all workers.

And I think, in my opinion -- and obviously, you can take this to a judge who’s better prepared to make a definitive decision on any of this -- but once you, I think, agree that this is a statute of general application, it covers everybody unless you can find an exemption within the bill. And the exemptions are quite clear, whether there’s an alternative workweek, and so on and so forth. With regard to your industry, the only provision of the bill that deals with these four industries says that the Commission --

“Nothing in this section requires the Commission to alter any exemption from provisions regulating hours of work that was
contained in any valid wage order in effect in 1997."

Now, I know that the first rule of statutory construction is plain meaning. And I find nowhere in any wage order of this Commission that there is an exemption for these industries.

Now, you may be right that -- and you can take it to court -- you may be right that we can’t, on an interim basis, do what we’re doing. Well, then, perhaps you’re just left with the Labor Commissioner’s interpretation that, automatically, every worker who is not otherwise exempted falls under Wage Order 4 on January 1. And that may be where you are.

So, it’s a conundrum, I think, for your position, that any way you look at it, I believe that they’re covered. And the question is whether you want to -- and you’re perfectly free to do this -- whether you want to resist that legally and, you know, take your case to court, or whether you want to accept the Labor Commissioner’s view that these people are covered by Wage Order 4. And if the Labor Commissioner is correct, your industry will be racking up huge overtime costs, starting on January 1, irrespective of what this Commission does. Or you can take the view, I think suggested by our
chairman, that perhaps you support convening wage boards and understand that on a temporary basis, that the workers in these industries would be covered under those provisions of AB 60 that cover every single worker in the state.

So, anyway, that’s my view of it, or response, I guess. Thank you.

MR. SULZER: Any further questions?

COMMISSIONER CENTER: We’re here to help.

(Laughter)

COMMISSIONER CENTER: Anybody else from the industry?

(No response)

COMMISSIONER CENTER: Thank you very much. Labor folks, I think.

Scott, do you want to go first? Building trades and --

MR. WETCH: Thank you, Mr. Chairman. Scott Wetch, with the State Building and Construction Trades Council, on behalf of the more than 300,000 organized men and women of the construction trade in California.

First, I’d like to say that we -- I want to make just a few simple points. I don’t want to be repetitive of what other people have said, but we share the view
that Assembly Member Knox made earlier today, that AB 60 clearly covers the construction industry. Moreover, we feel that the legislative history and record is clear to this point. Anyone who participated in the deliberations with AB 60 was aware the issue of it applying to on-site construction was out there. Many of the opposition groups that opposed AB 60 used that very argument in their propaganda to lobby against the bill.

Now, what I want to do is look at the -- first of all, associate myself with the opinion of Commissioner Broad in regard to the statutory construction and the reading of -- the very plain reading of AB 60. A basic tenet of statutory construction is that there is no such thing as an implied exemption. An exemption, by definition, must be affirmative. AB 60 covers California workers not expressly exempted under the bill or an existing wage order prior to 1998.

As we all know, and as was stated here just a few minutes ago, nowhere in either AB 60 or in existing wage orders is there an exemption from daily overtime for employees in the construction industry. The argument that somehow the construction industry is exempt by custom is not worthy of serious consideration.
In regard to testimony earlier from the representative of the Associated General Contractors, we also agree, simply, that the Commission does not have the authority under AB 60 to provide some sort of a moratorium effective January 1 from the provisions of AB 60. The Legislature specifically, in adopting -- in their adoptive deliberations for AB 60, chose to specify certain exemptions. To use the argument made by the gentleman representing the drilling industry, certainly in applying those specific exemptions, they considered all exemptions and they chose not to explicitly exempt the construction industry, and, for that matter, the drilling and mining and logging industries.

Given the testimony from the Labor Commissioner and her plans to enforce AB 60 effective January 1, and given the obvious confusion and misinformation out there amongst the construction sector in regards to AB 60, we would urge the Commission to adopt an interim order to ensure that employees, effective January 1, 2000, receive daily overtime after 8 hours.

In addition, we would urge the Commission to issue a notice to this effect, to be posted in conspicuous places -- so all employers in the construction industry -- we think that’s vitally
important to clear the air on this issue as soon as possible.

In conclusion, we would additionally urge the Commission to act expeditiously to address the myriad of other outstanding issues regarding working conditions in the construction industry, and we will look forward in the coming weeks and months to work with the Commission to draft a wage order for the construction industry that accomplishes that.

Thank you.

MR. HOLOBER: Good afternoon, Chairman and members of the Industrial Welfare Commission. My name is Richard Holober, representing the California Labor Federation, AFL-CIO. We’ve just given you some written testimony that covers various subjects regarding implementation of AB 60.

On this question of coverage of these industries, let me make it very clear that the Industrial Welfare Commission and the Legislature have concurrent jurisdiction over the subject matter of wages and hours and conditions in California. And in the past, the IWC had a fairly broad discretion in choosing coverage and non-coverage. That discretion is now considerably reduced as a result of AB 60.
So, we agree that the chairman’s interpretation is correct.

What you can do right now is quite limited in terms of interim regulations that would effectuate AB 60. The reason you want interim regulations, I think, is to allow everybody in the state, employers as well as workers, to understand as quickly and as clearly as possible, what the new law is, what the responsibilities are of employers, what the rights are of the workers.

Now, when we drafted AB 60, we tried to save the Commission a little bit of the headache and some extra work, knowing how much work you will be doing.

COMMISSIONER CENTER: Nice try.

MR. HOLOBER: Right.

(Laughter)

MR. HOLOBER: We think we did do that, although we’ve got a lot of work to do. And we did that by saying if an exemption was in a wage orders, which means it is spelled out in English, in plain, simple English, in a wage order that was in effect before January 1st of 1998, that unless AB 60 specifically repealed that exemption or eliminated that exemption, that was grandfathered, that exemption was still in place.

So, for example, there is an exemption for the
immediate family members of the business owner. There is an exemption for public employees. Those are not in dispute. The IWC adopted those exemptions through a process that was lawful, and they will remain in place.

So, we get to the question of these four industries. There is no exemption in any wage order that was in effect before 1998 for those four industries. And, in fact, during the prior course of testimony, hearings, discussions with the Director of Industrial Relations, the industries that we’re now talking about were all discussed. In fact, opponents made a real point of trying to encourage opposition by pointing out that these industries will now, for the first time, be clearly regulated.

Now, we’re not making an opinion here on whether DLSE and the Labor Commissioner was right or wrong in their discretion that they had under the old regime not to enforce wage orders. I know there’s a dispute about that, and we don’t have a position on that. But the point is, on January 1st of next year, those industries are covered. We believe the chairman’s correct, that if they want to ask this Commission for an exemption, there’s a process. It’s a fairly lengthy process, so if they’re interested in trying to move that along, they
would be wise to ask for you to begin a review.

Let me make one final comment about the underground mining and smelting industry, because that is somewhat unique here. And I was involved, representing the California Labor Federation, when we negotiated the bill, AB 739, with the California Mining Association. And we would agree that that is a unique situation. That situation resulted from a unique previous set of circumstances. It’s the only industry, private industry in California, that had an 8-hour day law on the books. In fact, overtime was prohibited; it wasn’t a question of being paid time and a half. You could not work more than 8 hours in the underground mining and smelting industry.

There was a collective bargaining exemption. There was a federal court case, a Viceroy Gold case, that concluded that unless there was a method for workers not represented by a labor organization to also get an alternative workweek, that the collective bargaining exemption would no longer be valid. As a result of that court case, we came up with a parallel way, through an election, for workers who are not represented by a union to have an alternative workweek.

In some ways, Section 750 is better language than what we had in the wage orders because of some of
the procedures that guide the conduct of elections are better procedures. So, in fact, we were trying, in earlier drafts of AB 60, to recommend that the Commission some of those election procedures. And you’ll have the opportunity to do that in the spring.

So, with that one special case of underground smelting and mining, which we do believe is regulated by another provision of the Labor Code, these industries are covered. There’s not much -- there’s nothing the IWC can do, short of convening wage boards to look at those industries. If you don’t put something out to the public as a courtesy to help them comply with the law, then those industries are going to proceed at their peril, because the law is the law, and we trust that this Labor Commissioner will enforce the law.

We also have other issues. I don’t know if this is the time to address those.

COMMISSIONER McCARTHY: I had some questions. With regard to whether -- with regard to whether these industries were exempt, you say they were not exempt. Are you saying, then, that they were acting illegally all of these years in not paying the time and a half?

MR. HOLOBER: No. What I’m saying is, first, we’re not entering an opinion on what would have been
correct or what would have been correct before 1998. I know that there’s a debate about that.

The point is this: the Labor Commissioner, as I understand it, chose in its discretion not to enforce in those industries. And we believe they will not have that discretion on January 1st, because the statute clearly covers them. Your interpretation of wage orders becomes irrelevant on January 1st.

COMMISSIONER McCARTHY: But you don’t have any opinion whether or -- I mean, if you’re saying they might have been acting legally, then you’re saying they might have been exempt. If you’re saying they were not exempt, then it seems, by conclusion, or --

MR. HOLOBER: No. No.

COMMISSIONER McCARTHY: What am I missing here?

MR. HOLOBER: Well, we’re here on AB 60, and not --

COMMISSIONER McCARTHY: Well, you made comments about what you thought the status was, though, prior to this.

MR. HOLOBER: Yeah. My -- my -- let me repeat my -- if an exemption is in a wage order, spelled out, clearly spelled out, like members of the immediate of a business owner, public employees. There are certain
transportation industry exemptions, cab drivers, there
are certain that are very clearly stated in the text of a
wage order. AB 60 allows those exemptions to remain in
place, until the IWC chooses to convene wage boards and
maybe change those exemptions.

If you look at the wage orders, you will not
find any reference in those wage orders to construction,
logging, drilling, and mining. Therefore, as
Commissioner Broad pointed out, they are covered under AB
60.

If you’re asking me to --

COMMISSIONER McCARTHY: No, but you’re -- but --

MR. HOLOBER: -- making a legal opinion as to
the back --

COMMISSIONER McCARTHY: No, I’m not asking a
legal -- I’m asking your judgment.

MR. HOLOBER: -- back pay owed to workers, I
don’t have an opinion right now.

COMMISSIONER McCARTHY: Yeah. I mean, the
statute doesn’t say “written.” It says “exemption.” And
so, I’m asking you if you thought they were exempt or not
exempt.

MR. HOLOBER: I think I’ve answered the
question.
COMMISSIONER CENTER: Yeah. It’s my understanding there’s never been formal action by the IWC to exempt those industries, and it’s not mentioned in the orders.

MR. HOLOBER: Well, let me -- I know there’s been verification in an unpublished opinion that just came out. And if you look at Wage Order 4, the logical conclusion there would be, if you look at who is covered, for example, bundlers and bill-posters, whatever they are, I would like you to show me when a wage board was convened that set -- that dealt with conditions in the bundling industry and the bill-posting industry, in the copy-holding industry. There’s a very lengthy list of specific industries and occupations named. And then there’s a general statement that says, basically, everybody else.

So, I think that decision is -- it was wise that it was not published, because it’s simply logical.

COMMISSIONER McCarthy: Well, I would just add -- say, with regard to whether or not they had a prior exemption -- and I think your wording that -- well, that the Labor Commissioner chose not to exercise their discretion, I think the Labor Commissioner concluded they were exempt, as did the IWC conclude that they were
exempt, whether it was
-- whether it was written or not.

And I’m not -- now, did the Labor Federation
file complaints, either with the Labor Commissioner in
years gone by or with the IWC, that you had a group here
that was not exempt that was actually illegally?

MR. HOLOBER: Okay. First, the -- you’ve got
two agencies. There’s the Labor Commissioner and the
IWC. To my knowledge, the IWC has not addressed this
issue. The Labor Commissioner had addressed it by
choosing not to take cases that were filed, even though
cases have been filed in those industries.

So, I think this is really more of an issue for
the Labor Commissioner. We agree with what we heard
today, which is that AB 60 will cover those industries.
Now, there’s a process to go through if those industries
want to seek an exemption. But AB 60 is going to be the
law on the 1st. It is a very broad question in terms of
coverage: you’re covered unless there is a specific,
statement either in the bill or written in plain English in
a wage order, saying you’re not covered. It’s not an
interpretation question, whether the Labor Commissioner
made a right or wrong decision. We’re talking about
January 1st, there are new rules. And I think those
industries need to be very careful that -- you know, they
could very well be racking up a very large judgment if
they don’t comply.

COMMISSIONER CENTER: The reason I’m doing these
industries is I think they’re holding a gun to their head
by not putting out wage boards, which I think we could
probably do if we had the votes -- and I don’t think we
do right now. But I think it’s to their benefit to open
up wage boards right now. Let’s not argue whether
they’re covered or not, but -- you know, but that’s my
opinion.

And patient -- the nurses are next, so --

(Applause)

MR. McKINNON: My name is Matt McKinnon. I’m
the executive secretary for the Machinists Union in the
State of California through the California Conference of
Machinists. And our organization represents
approximately 100,000 working and retired members in the
state, working in virtually every industry, including the
four industries that have been discussed today.

Where I’d like to start out is almost where the
last testimony left off. It is very clear to our
organization from the very beginning of supporting AB 60
that we wanted no more loopholes, no more holes, and let
the IWC work out where the exceptions should be -- no exemptions. Now, what happened during the process of the legislation was that there were exemptions made, and there were debates and there were negotiations about exemptions. These four industries discussed today did not get exemptions, and we think AB 60 is very, very clear on that point.

Now, with respect to the question of having wage boards and wage orders, we do, however, favor going through that process. We think that’s the right thing to do. We think that’s the fair thing to do. Maybe in the past in this process, some folks in labor didn’t feel that they were treated fairly. That doesn’t mean we’re going to go stand away. We think that there are reasons to have wage boards discuss the conditions in the industry protected and make the rules, instead of having checkerboard rules that were built up over sixty years, with holes and exemptions and all kinds of things. AB 60 drew a line that’s very, very clear. And from this point forward, we need to have wage boards determine where we go on that.

Of the four industries that are mentioned, the one that we have the largest amount of members and other workers that work with those members that would be
affected is in the lumber industry, in the logging industry. And in the logging industry, I deal primarily with two different companies. Neither of those companies came to testify today. I talked to both of those companies, and neither of them had major objections to what I was doing. And, in fact, one of them said, “We work people 8 hours a day because it’s safer that way. The only thing we want to talk to you about is lunch breaks, because we have people working out in the cold and the rain for hours. And can they work through their lunch breaks? Is there a way of working that out?”

That’s an appropriate place for a wage board to convene and work out a wage order to figure out what the best course is in that specific industry.

So, again, clearly, from the Machinists Union, we think AB 60 is clear. We think it drew a line. We think the exemptions that are in it are in it because they were negotiated and put in it. Otherwise, it seems to us that there ought to be wage boards and wage orders issued.

Thank you.

MS. GATES: Good afternoon, commissioners and staff. I think I’m probably going to make the nurses very happy to hear that I believe I’m the last person to
testify on the construction industry.

(Applause)

MS. GATES: They deserve a commendation for how long they have waited today to be heard.

I guess I’m the -- the construction group was the second longest people to forbear, and I will go very quickly. I have submitted to all the commissioners and to the staff attorney a copy of oral testimony, which I promise the chairperson here today that I will not read into the record. And, in fact, I will make my testimony very brief. The people who’ve already testified here today involving the construction industry have most of the ground that I thought I would need to cover, and now I don’t.

I need to introduce myself. My name is Patricia Gates. I’m an attorney with the Law Offices of Van Bourg, Weinberg, Rosenfeld, and Roger, and I’m here today at the request of the Northern California District Council of Laborers, and I’m here to speak in support of daily overtime for all California construction employees.

I have to say that it was incredibly gratifying to hear one construction industry employer actually raise and testify that he was -- he encourages payment of time and a half in the construction industry in order to
increase safety and decrease accidents on the job.
That’s the kind of employer cooperation which is
incredibly gratifying, I would think, for a board like
this to hear.

I’ve heard other employer representatives
testifying today, and I was amazed at maybe their naïveté
to think that this board is supposed to do what’s good
for business. This board has a very specific statutory
mandate, and that’s to look after the welfare of working
people in the state. It is a partisan board.

I’d like to also say that as to the unpublished
opinion, the Veico decision that people from the oil
drilling industry have raised. I think that that
rebuttal is fairly and, actually, very adequately,
handled by one of the commissioners, Commissioner Broad.
I would say that in addition to what Commissioner Broad
said and, I think, what was implied in what he said, was
that this board not only has had broad statutory
authority that goes all the way back to 1913; the
legislative mandate and the legislative delegation of
power to this board, to the Commission, has grown over
time, culminating in 1998 -- or 1999, with the passage of
AB 60. So, I think what is implied is that whatever the
court reviewed, the court did not review the authority of
this Commission to act since AB 60. And that authority
was made even more broad.

There’s -- I’d also like to say that AB 60 is a
-- is considered a remedial type of legislation. And I
think that this was already stated, but the particular
case that addresses this is a case known as Industrial
Welfare Commission v. Superior Court, and I briefed that
in the testimony that I gave to you. That decision was
made after employer groups managed to hijack the wage
orders issued by this Commission for a period of almost
ten years during the 1970’s. Finally, in 1980, the
California Supreme Court in a unanimous decision said
that employer groups going into Superior Court to get an
injunction -- and these were injunctions that held up
enforcement of wage orders for every worker in California
-- they said those days were finished.

This is the last thing I will say. The Supreme
Court actually did an extraordinary thing; it exercised
original jurisdiction, at the request of then-Attorney
General George Deukmejian, and heard the case only three
months after the employers who were attempting to hold up
the enforcement of these wage orders, they -- the Supreme
Court heard that case three months after the first cases
were in Superior Court, and they took the case in the
next term and issued a truly extraordinary opinion, which I hope every member of the Commission will read, because it really constructs, almost like a -- almost like a law school course, an MCLE course in itself -- about the legislative history, the powers of this board, and also the kind of authority that’s given to interpret legislation in a -- not in a narrow way, as the oil industry would have us interpret it, but in a very broad way, as is appropriate for remedial legislation.

And with that, I will end, unless there’s any questions.

COMMISSIONER CENTER: Getting back to the issue of the wage boards, don’t you think it’s a benefit for the industries to open up the boards if they want any relief under AB 60?

MS. GATES: I think it would be a benefit to industry to tailor their orders, their wage orders, to the needs of their individual industries. That’s the idea of -- I think that’s why there are, right now, twelve industry orders and only three occupational orders. The occupational orders are much more broadly drawn.

COMMISSIONER BROAD: Mr. Chairman, I would be prepared to make a motion at this time that we move
forward to convene -- and before I do this, I need to ask our legal counsel a question.

Do we -- would the proper motion be four wage orders, because there are four industries, or four wage boards because there are four industries, or one wage board that can make recommendations as to how many wage orders there should be?

Sorry.

MS. STRICKLIN: That’s really, I think, the Commission’s choice. I mean, if you are asking for a suggestion for me, I would say it’s going to be four wage boards.

COMMISSIONER CENTER: I’m sorry. Could you repeat that, please? To convene the four wage boards.

MS. STRICKLIN: Four wage boards.

COMMISSIONER BROAD: I guess the question I have goes to the issue of -- there may be some issue where construction is in one, and the other three industries are in another one, or another two, or another three. And what I want to make sure is that we would be proceeding lawfully so that we would give ourselves the maximum flexibility, based on what these wage boards or wage board members recommend in making that kind of a decision.
MS. STRICKLIN: I would think you would want four different wage boards, because you would want people who were somewhat familiar with those particular industries. The differences between the two rather than one, or deciding if they should all go into one, because the wage orders are going to have more information than just what, say, AB 60 does, in terms of overtime. There are going to be things that are specific to that industry, just as the person testified that the timber industry one has a concern about being able to have lunch time -- work through their lunch time. So, that may not be a concern, necessarily, in construction, oil, mining.

COMMISSIONER BROAD: Yeah, although my concern would be that you have the construction industry, which clearly has probably several million employees working in it, and the oil drilling industry, which may have several thousand. And I don’t know whether a separate wage order is appropriate for 2,000 people or 1,500 people. It may be that they should be in with these other resource-based industries like timber.

MS. STRICKLIN: That might be a question for the wage board.

COMMISSIONER BROAD: In other words, we would do four wage boards and charge them with the issue of
whether they should be included?

MS. STRICKLIN: Yes.

COMMISSIONER BROAD: Would we then have the power, if they came back, to create one for all of them, or two or three or four? Would we --

MS. STRICKLIN: The Commission’s duty with the wage board report is to take -- once you get a two-thirds vote of in the wage board, it would have to be included in any regulation, if there is one put out, unless the Commission finds that it would be detrimental to the health and welfare of the employees.

So, it would depend on what the report of that wage board was.

COMMISSIONER CENTER: Barry, let me -- before you finish your motion -- and hoping that some of the arguments some other commissioners, I would hope for a second so the other commissioners are -- I wouldn’t want to second it and have the motion die, really.

COMMISSIONER MCCARTHY: Well, in that case, could I make a comment before you finish?

COMMISSIONER CENTER: Yes.

COMMISSIONER MCCARTHY: Certainly the Commission has every right to convene wage boards. That’s not in question. And it may very well wish to do so. And as
the chair has said, it may be in the advantage of some of
the industries where the dispute’s taking place to
participate in it.

I would -- I would just suggest that you may --
there’s not an immediate urgency. I think one may want
to wait perhaps a month, to the next meeting anyway,
simply to see if we can have the industries cooperatively
come on board.

For example, the mining industry, when you
raised the issue, Chuck, they said that it sounded good
but they’d like to get back to you.

So, rather than sort of coming across as
stuffing it down people’s throat, perhaps I think maybe
the -- this can be discussed or we can get a response
back in the interim, and then, in any event, as the
Commission wishes, simply act next month.

So, I’m not arguing against the motion as much
as raising the point here that maybe -- the timing --
maybe one wants to wait till the next meeting.

COMMISSIONER COLEMAN: Yeah. I’m somewhat
inclined to agree with that. I know we’ve asked a couple
of the folks testifying their opinion about the wage
boards, but I just wonder, procedurally, whether we want
to give them the opportunity to think about that and then
petition the Commission to do that.

COMMISSIONER CENTER: Have them petition us, rather than losing the vote.

COMMISSIONER BROAD: Well, I think, given those statements, let’s -- why don’t we just wait till January?

(Laughter)

COMMISSIONER CENTER: And we might wait for these industries to petition us, which might be way down the road somewhere.

With that, we want to -- thanks for the patience. I know people came in early and signed up, and you’ve been here for a long time. One individual -- and I hate to wait -- well, he was first on the list, I think, and he’s driven 145 miles. Is he still here?

AUDIENCE MEMBER: (Not using microphone) He’s third.

COMMISSIONER CENTER: He’s third? Okay.

Okay. So, the nurses were first, then, right?

DR. SNELL: But he can go before us.

COMMISSIONER CENTER: Okay. Okay. Well, you ladies are used to working 12 hours a day anyway.

(Laughter)

COMMISSIONER CENTER: Excuse me. Nurses -- I’m sorry.
And you said you’d be brief too, Mr. Shadwick.

MR. SHADWICK: Well, first off, I have to make a couple of comments. I’d very much like to thank Christine Morse and Mike Moreno and your staff up there in Sacramento. All phone calls, all faxes were received in great courtesy, and I want that so noted for those people.

COMMISSIONER CENTER: Thank you.

MR. SHADWICK: The reason why I’m here is I need clarification, and I’m not an attorney. But I work for a company called Time Clock Sales and Service. We have seven offices in the state and over 100 employees. We sell and service time clock equipment and software throughout the whole state. So, I think, personally, we have a liability factor in making sure that what we sell, we know what we’re telling our customers. Even though we’re not attorneys, on the back of our contracts it says you tell us.

So, let me ask my first very important question, is how do you recognize the 24-hour cycle? There is what the company has their date change time each and every day, and some companies may choose midnight, some companies 3:00 a.m., some at 6:00 a.m. And they’ll use that as their guideline for their 24-hour cycle. I have
heard that your policy is that it’s going to be the employee, when they first punch in the first payday of the workweek, as my interpretation.

COMMISSIONER CENTER: I think that’s probably a -- should be referred to the Labor Commissioner’s office. Would you like to -- or maybe even you could meet with Miles.

MS. SAUNDERS: (Not using microphone) We have it.

COMMISSIONER CENTER: Pardon?

MS. SAUNDERS: (Not using microphone) We have it in that thing that we gave you, that unless they designate what it’s going to be, we’re going to say that it’s midnight to midnight.

COMMISSIONER CENTER: That’s how the Labor Commissioner will enforce.

MR. SHADWICK: Okay. So, the companies cannot take the rule of saying, “Our date change is six o’clock in the morning.”

MS. SAUNDERS: (Not using microphone) Yes, they can.

MR. SHADWICK: Oh. Oh, yes, they can?

COMMISSIONER DOMBROWSKI: And if they don’t do that, then the Labor Commissioner’s interpretation says
that they will be in default, for those employers who
don’t pick a separate starting time. That’s in the
document.

COMMISSIONER CENTER: Okay. And I haven’t read
it yet.

MR. SHADWICK: All right. My next question is
the -- on the 24 hours, in order for companies here in
California to operate, you have companies that you
interface, and they have their own time payroll systems
outside of the state. And it helps me -- it may seem
strange -- but I would like to see put in the law for the
employees here in California that all time is set per
Pacific Standard Time, and not -- 24-hour Pacific
Standard Time, not Eastern Standard Time and Midwest
Standard Time, as far as designating their times. The
basic reason is that it’s the Internet, other ways of
pulling in time and regulating what’s going on in our
state outside of the state.

And then they’ll stand there and say, “Well, we
do all of our payroll on the East Coast.” And that’s the
end of it. They won’t talk any further than that.

So, we think, in California, it would help our
employees throughout the state. And that’s basically my
area.
COMMISSIONER BROAD: Just so I understand this, what you’re saying is it should be the time -- employers, wherever they’re located, who are paying employees in the State of California, use the time --


COMMISSIONER BROAD: -- or whatever the time it is in California at that time.

MR. SHADWICK: That’s right.

(Laughter)

COMMISSIONER BROAD: And that makes sense to me. I certainly wouldn’t want to use Texas time here if we’re all on California time.

COMMISSIONER CENTER: Or in Asia.

COMMISSIONER BROAD: Or -- yeah.

MR. SHADWICK: Well, it may seem strange, but you just told me earlier it’s midnight, correct? It’s 00:00, here in California, unless they establish their time. But if they’re in Texas, they’re two hours behind us -- or ahead of us, I should say. So, the two hours that they’re ahead of us, they’re using that as their guideline, which could be interpreted as Texas time and not Pacific time, and you have to figure in the time.

COMMISSIONER BROAD: Well, I guess I’m confused. I mean, the worker gets to work at eight o’clock in the
morning California time, right?

MR. SHADWICK: That’s right. I agree with that.

COMMISSIONER BROAD: If the person works for nine hours, they’re going to get an hour of overtime, no matter what time it is in Texas, right?

MR. SHADWICK: Well, I’ve seen differently.

The main thing I’m looking at, where a company says, “These are my rules and this is how it’s going about,” you know.

COMMISSIONER BROAD: Okay.

MR. SHADWICK: It may seem strange, but --

COMMISSIONER BROAD: It does.

MR. SHADWICK: As time goes on, I’ve seen it many times.

The next thing is when you count your time. My next question is when someone comes to work, are you going to be counting -- are you allowed to count the time in 24 hours or the quarter of an hour? Are you saying when they come in five minutes late that they’re allowed to round the time back to eight or round forward to 8:15?

COMMISSIONER CENTER: All this stuff should be referred to Miles Locker and the Labor Commissioner.

MR. SHADWICK: Okay. Then I’m done.

COMMISSIONER CENTER: And you might be able to
do that outside. He’s the chief counsel for the Labor
Commissioner.

MR. SHADWICK: Okay. Thank you.

COMMISSIONER CENTER: Thank you. That’s all a
Labor Commissioner interpretation. Thank you.

Yeah. I want to thank them for their patience
and hear the nursing industry now.

DR. SNELL: Chairman Center and commissioners, I
appreciate the opportunity to talk with you today. My
name is Dr. B. J. Snell. I’m the representative of the
California Nurse-Midwives Association and a practicing
certified nurse-midwife here in the State of California.
I’ve submitted to you written testimony that will speak
to a lot of what I’m going to talk about today, but
wanted to give you some of the information that will
preface many of those that will come after me.

It’s come to our attention that the Industrial
Relations Department and attorneys that represent the
California employers are planning to implement AB 60 in
the realm of the certified nurse-midwife here in the
State of California. Many of us are employees. We work,
certainly, longer than 8 hours. If you review the
literature or know of anyone who has had a baby or been
in a family that has had a baby, they don’t read the
Industrial Relations information on the wall, and they
certainly take longer than 8 hours to get here.

Continuity of care is certainly a premise that
is very important to our profession and certainly the
families that we serve. And the continuity of care has
been shown to reduce both problems that occur during
labor, birth, and pregnancy as well as improve our
outcome. And so, by taking away our ability to provide
longer than an 8-hour period of time with a family will
certainly compromise not only us as employees, but will
compromise the families that we serve.

We are primary care providers for women and
newborns, and from that have extensive background and
education in healthcare of women and newborns. We are
certified through the State Board of Registered Nursing
and have had to have completed an accredited program of
study at a post-baccalaureate level. Many nurse-midwives
are certainly prepared at the master’s level as well.

The Nurse Practice Act, the regulations that
establish distinct requirements for the practice of a
certified nurse-midwife, would make it clear that we are
responsible for providing a different scope of practice
and a different scope of care than would be permitted by
a registered nurse. This is because of the care that we
do provide at the professional level for our clients.

According to the national standards as well as state standards that are upheld here in the State of California by the California Nurse-Midwives Association, nurse-midwifery practice is the independent management of women’s healthcare, and nurse-midwives are committed to maintaining a high standard of professional care. We collect and assess client data, develop and implement our plans of management, and evaluate the outcomes of our care. And the practice of nurse-midwifery is -- a hallmark of nurse-midwifery practice is the continuity of patient care.

Clearly, the Nurse Practice Act and regulations and the national state standards that -- national and state standards provide documentation that nurse-midwives function as professional who engage in work that is primarily managerial, intellectual, and creative, and requires the exercise of discretion and independent judgment. Even though the Act specifically named registered nurses, employees who engage in the practice of nurses, for being exempted unless they meet certain criteria, it is clear that nurse-midwives who provide this care have not been employed to function only at the level of the registered nurse. They have been employed
to improve the care of the patients and decrease costs of
the facilities that employ them. That is why the
additional post-graduate education is necessary and
required for us to be able to practice.

In the past, the vast majority of nurse-midwives
are either salaried employees, contract employees, or
have independent practices and businesses. And one of
our midwives that are here today will talk a little about
the independent practices.

Few CNMs -- certified nurse-midwives -- are paid
an hourly wage with overtime. They are -- they are
considered salaried employees, and therefore, overtime
does not apply to their wages. Salaries are commensurate
with their additional responsibility and the type of work
that requires the continuity of care that we need to
provide. Again, these responsibilities are above and
beyond those of the registered nurse at the staff level.

In summary, a large portion of the practice of
nurse-midwifery is caring for women and their newborns
that require longer than 8 hours at a time. If it occurs
that this Commission -- or the implementation of AB 60
does take effect January 1, many of the nurse-midwives
that are now practicing and providing care for women
throughout California will not be able to provide the
care that they’ve been providing in the past.

It may also impact the women in the state because nurse-midwifery services are a mandated service available to women under the rules and regulations of the Health Care Financing Administration, and therefore both Medicare and Medicaid or MediCal regulations require that women have access to nurse-midwifery services. And those services have been defined as not just providing outpatient or ambulatory care services, but do provide that continuity of care.

On a personal level, I am part of a group of nurse-midwives that practice in Orange County. These nurse-midwives are salaried within the organization and therefore not impeded from the provision of continuity of care. The group of midwives that I work with are concerned about this change and the impact it will have on their personal lives and their professional care.

In response to Assemblyman Knox’s comments earlier today, I agree that it is deplorable that there may be a reduction of base pay in anticipation of the implementation of this -- these regulations, and I certainly would not support that practice. However, I would appeal to the Commission to please review the work of advanced practice nurse -- obviously, I’m specifically
speaking to nurse-midwives -- of those of us that do practice in the continuity fashion and need to be able to be there longer than 8 hours at a day. It would put us at great stress to not be able to provide that care. I would welcome any comments from the Commission.

(Applause)

COMMISSIONER BROAD: I just have a question for you. The statute’s quite explicit, as you pointed out. And your argument, if I understand it, is that you’re not employed to practice registered nursing, you’re employed to practice something else beyond registered nursing.

DR. SNELL: Beyond registered -- we are all licensed as registered nurses.

COMMISSIONER BROAD: Okay. Okay. That was my question.

DR. SNELL: We’re certified as advanced practice.

COMMISSIONER BROAD: And who certifies you?

DR. SNELL: The Board of Registered Nurses.

COMMISSIONER BROAD: So, in other words, you -- in effect, you’re a registered nurse with a certified specialty? Is that how --

DR. SNELL: That’s correct. If I can draw an
analogy, physicians are licensed as medical doctors. They then subspecialize in either obstetrics and gynecology, family medicine, anesthesiology, and they have additional certification, and therefore they practice in that specialty. Nurse-midwives are in the -- have a similar parallel, in that we are licensed -- our base license is as a registered nurse. However, we are hired and practice as nurse-midwives, as our specialty and our education allows us to do.

COMMISSIONER BROAD: Thank you.

COMMISSIONER CENTER: Thank you.

DR. SNELL: Thank you.

THE REPORTER: Commissioner Center, could -- I’d like to get names before people start speaking.

COMMISSIONER CENTER: Okay.

THE REPORTER: Is that possible?

COMMISSIONER CENTER: Yes.

DR. SNELL: I’m sorry. I thought I just said that. My name is Dr. B. J. Snell, S-n-e-l-l.

MS. MIELKE: Hi. My name is Ruth Mielke. I’m also a certified nurse-midwife, and I actually also, in addition to Dr. Snell, submitted written testimony, which I will summarize at this time.

I’m a certified nurse-midwife, CNW, with a
practice downtown in Los Angeles. My actual practice is at California Hospital Medical Center, probably a mile from here. Since 1991 when we started the practice, we have attended over 10,000 births of women in Los Angeles, and the practice provided excellent care, shown in our excellent outcomes.

And again, as Dr. Snell very well described, we don’t just practice in an 8-hour day. When we started the practice, it was clear that we’d deliver a full scope of women’s health services that were needed to provide care in a variety of settings. To date, the settings include two different clinics, a third clinic which we will starting as well, in addition to our in-patient or the hospital work. As you are aware, it’s a 24-hour-a-day, seven-day-a-week commitment to provide that care.

And again, all of us familiar with childbirth do know that the birth tends to occur when it needs to occur, not when the time clock seems to telling us. I work in a clinic that works a 10-hour day, and I work at one that works an 8-hour day. I take calls in the hospital -- that can be 12 hours or it can be 24 hours. In my clinic last night, I saw patients that were scheduled to see me in the afternoon. Many of them do have dates within the next couple of weeks. At five
o’clock my second week, my day was over. A patient came
in with twins who needed to be seen. I would not give a
second thought, ever, due to the fact that patient needed
care, but I feel that if I’m compelled to be thinking
about an 8-hour or 12-hour, whatever hour day, that
patient care could be impacted.

I want to mention a little bit more -- and I
know we’re referred to as nurses -- many of us here have
been practicing midwifery for many years. I’ve been
practicing as a midwife for fifteen years. I am
licensed, as mentioned before, as a registered nurse.
I’m also licensed as a nurse-midwife in the State of
California. Midwifery practice is much different than
the practice of a registered nurse.

I just want to spell out, very quickly, in
summary, those -- the differences. We do convey written
and verbal orders for medications, treatments, procedures
which must be carried out by nursing personnel, as would
a doctor. We do make independent decisions for
treatments, restrictions, or medication as needed. We do
independently manage normal women and their babies for
both outpatient services, birth, and post-partum care.
We are entitled to carry malpractice insurance, as would
a physician, you know, like a specialty. We’re
credentialed by various provider groups. We are members of independent physician associations, IPAs. Insurers pay us for our service; we are reimbursed by third-party payers, as would a provider physician be.

In summary, the profession of midwifery meets the intellectual and independent decision-making criteria required of exempt employees who are not, technically, in a supervisory capacity. To implement AB 60 as this language is currently written, by which we’re seen as registered nurses, prohibits the practice of midwifery and will ultimately affect our ability to provide excellent, cost-effective care to uninsured and under-insured women, who comprise the bulk of our clients.

Thank you.

(Applause)

MS. BOGAR: Hello. My name is Susan Bogar, and I’m a certified nurse-midwife as well. And I’ve submitted written testimony to the committee, so I won’t repeat my testimony. But I just want to make a couple of points.

I’ve been a nurse-midwife for seventeen years, for ten in California. I’ve worked in several states, always in my career as a nurse-midwife as a salaried, exempt employee.
When I first heard about AB 60 and the fact that attorneys were interpreting that nurse-midwives would now be treated as nonexempt employees under this law, I was astounded, because I don’t quite understand how we are supposed to perform our scope of practice, which the state has enabled us to do by law, and be a nonexempt employee. So, the assumption that sort of one-size-fits-all, if you’re not a manager you’re a nonexempt employee, you know, doesn’t apply to my profession.

I hope that the intent of this law was not to put nurse-midwives out of business. I fear that it might. I have already spoken to midwives in this state who’ve been told that as of January 1st, they’re only to work 8-hour days. And their employees, who are physicians in small group practices, are starting to conclude, “Why should we hire a midwife? You know, she’s not going to be able to deliver any babies, I’m going to have to do all that extra work at night, she’s just going to work in the office.” They’re extremely threatened and distressed by this. My employer has also concluded, on advice of an attorney, that this should apply to nurse-midwives. And I’ve had hours of argument with people in the administration at my employer about this, that it makes no sense. Like you say, it makes absolutely no
sense. We can’t do our jobs under this law.

My concern, as I’ve heard you talking to people from other industries, is that apparently, as of January 1, this is the law, and that we must make a request -- we request that -- for a wage -- I think that’s what I’d want to know. I mean, what is our course of action here? And it’s going to take a year? Because you’re going to put people out of business.

COMMISSIONER DOMBROWSKI: The process is that any commissioner can make a motion to call a wage board. So, what you’ve presented is very useful to that ultimate decision.

MS. BOGAR: So -- and my concern, though -- I know how things tend to happen -- is that this could take a really long period of time, and that -- and that people are actually going to be prevented from practicing, either by their employers, who are going to decide it’s not worth it to employ them any more, or they’re too expensive.

You know, we -- we function -- as you’re probably getting the drift of -- more similarly to a physician provider than a registered nurse. And, in fact, we compete in some -- in some ways. We compete in the marketplace with them.
So, I -- you know, my -- I’m concerned for my profession. I happen to work in a situation where there’s a number of us. You know, some of us may be able to work under this law, but there are lots of midwives out there in small practices, two or three people in the practices. You know, there’s no way you can comply with this law in a situation like that.

COMMISSIONER CENTER: Thank you.

COMMISSIONER McCARTHY: Let me -- pardon me, ma’am.

MS. BOGAR: Yeah.

COMMISSIONER McCARTHY: As I say, maybe -- this is addressed to the other commissioners and to our attorney as well. I think the case is -- you know, I think the case is pretty compelling. Can we not establish an exemption? I mean, as I read it, the copy of AB 60, we may establish exemptions from the requirement of overtime that the thing -- provided that the employee is primarily engaged in the duties which meet the test of the exemption. Employees -- you know, this is sort of the professional exemption.

MS. BOGAR: Yes.

COMMISSIONER McCARTHY: And here it says we do not -- all we have to do is conduct a review, and then we
do have to convene a public hearing, but we don’t have to
cvene a wage board to enact this. And, you know, I
think the case that’s been made by the midwives is pretty
compelling, that -- I mean, if -- it seems to me, but I
can only speak for myself -- if, really, what we’re
talking about is destroying a whole profession here, that
there is a means available for us to act in a very quick
fashion, as I say, so as to avoid that from happening.
Is that not correct?

COMMISSIONER CENTER: But we can’t act until the
statute comes into effect.

COMMISSIONER McCARTHY: That’s correct. But, I
mean -- so, I mean, there will obviously -- we can’t do
that today, and --

MS. BOGAR: January 2nd, perhaps?

COMMISSIONER McCARTHY: I don’t know.

(Laughter)

COMMISSIONER McCARTHY: But, you know, it
doesn’t require the whole lengthy process of a wage
board.

COMMISSIONER CENTER: And I wouldn’t hire the
attorney from the oil companies to help you there.

(Laughter)

MS. BOGAR: No problem. We don’t have the money
for that.

COMMISSIONER McCARTHY: But, no, I just -- but I
want to appraise (sic) you of that, and that’s something
you might want to keep before the board, the possibility,
given the -- given the kind of dire situation which you
face, of
-- you might want to keep that before the board, the
notion -- if the board is willing to have its own quick
review and then to call, as soon as possible, a public
meeting so as to be able, if the Commission chooses, to
go forward and grant the exemption so that it can be done
quickly.

MS. BOGAR: Can we request that of you?

COMMISSIONER McCARTHY: What’s the process,
actually, on that?

MS. STRICKLIN: There are several. You could
petition the Commission, which is one of the things
Commissioner Center mentioned.

AUDIENCE MEMBERS: (Not using microphone) Talk
louder. Louder!

MS. STRICKLIN: -- which is one of the things
Commissioner Center mentioned before. You can petition.
There’s a procedure where the Commission has 120 days
within which to decide to deny the petition or have a
wage board.

But it seems to me, under AB 60, the healthcare industry in general does have an exemption until July 1st of 2000, for the 12-hour shifts. So --

MS. BOGAR: Yeah, but we sometimes exceed 12 hours. I mean, there’s one thing in midwifery here, dealing with women in labor, but we’re not -- we don’t work in shifts. We’re not shift workers. That’s why this is a big problem for us.

MS. STRICKLIN: So, it seems to me that you would want to go -- either a commissioner could propose that an exemption should be made for registered certified midwives, or you could petition --

MS. BOGAR: Advanced practice nurses.

MS. STRICKLIN: Advanced -- whatever the title is -- I’m sorry -- or you could petition the Commission for an exemption. Those are your two routes.

COMMISSIONER McCARTHY: Well, but we don’t need a wage board, do we? I mean, can’t we -- if we were -- as I read this, if we -- this states --

MS. STRICKLIN: What are you reading from?

COMMISSIONER McCARTHY: Pages 8 and 9, Section 9, Article 515 -- that if we -- we have within our authority, basically, to, as I understand it, give them
an exemption on the basis of professional qualifications,
which would avoid the necessity to hold a wage board, if
we chose -- if the Commission chose to do that.

MS. STRICKLIN: If the Commission chose to do that. I’m not sure where you’re reading from, if that’s Section 515.

COMMISSIONER McCARTHY: It says, “The Industrial Wage (sic) Commission may” --

MS. STRICKLIN: What section of 515?

COMMISSIONER McCARTHY: Section (a). Section (a).

COMMISSIONER CENTER: You’d better look at Section (f).

COMMISSIONER McCARTHY: (f)?

Well, I’m not saying we do that. I’m just saying that if there is a possibility of doing this, that these midwives should be at least appraised (sic) of that so that there’s -- you know, as I say, it’s up to the Commission to decide whether to --

COMMISSIONER CENTER: The thing to do would be to file a petition.

COMMISSIONER McCARTHY: Right. All right. And get a copy of the bill.

COMMISSIONER COLEMAN: I have a question. If
this profession already meets the professional exemption
test, though, then wouldn’t they be exempt under the
current statute?

COMMISSIONER CENTER: Up to 12 hours.

MS. STRICKLIN: No. If you --

COMMISSIONER COLEMAN: No, the professional exemption.

COMMISSIONER CENTER: Oh, professional exemption.

MS. STRICKLIN: The only thing in AB 60 that’s --
-- they’re registered nurses --

COMMISSIONER COLEMAN: Right.

MS. STRICKLIN: -- an exemption, are administrative or executive -- I believe that’s -- that’s the problem.

MS. BOGAR: That’s the problem.

MS. STRICKLIN: And now if you’re talking about a registered nurse, I think that’s why Commissioner Broad asked you the question if you were hired to do something other than a registered nurse. If there’s something more or above that, then perhaps this doesn’t apply to you.

But that’s -- that’s why I think probably a petition to show the differences between what a registered nurse does and a certified midwife would be
helpful, or for a commissioner to make that motion, that
perhaps that be looked into. Those are the two routes
that I see.

COMMISSIONER COLEMAN: And you can make a motion
for that?

COMMISSIONER CENTER: Yes. Well, let’s -- it
doesn’t go into effect until January 1st.

MS. BOGAR: So, state your motion! Come on, folks! You all appear to have unanimity on there.

(Applause)

MS. BOGAR: Do it!

COMMISSIONER McCARTHY: Well, I guess the
question is whether we have the legal authority to make –
- to implement an appeal process within a bill that
doesn’t take place till January 1st.

COMMISSIONER CENTER: It doesn’t exist till
January.

COMMISSIONER McCARTHY: Legally, that’s the
problem. I’m with you, but I don’t know if we can do it.

MS. BOGAR: Okay.

MS. GLATLEIDER: Good afternoon. Thank you for
this opportunity to speak before you. My name is Pauline
Glatleider. I’m a certified nurse-midwife practicing at
California Hospital, also here in downtown Los Angeles.
I am also a member of the medical staff at California Hospital, and I’m an employee in the hospital. Currently, there have already been changes made in the way that I can practice midwifery, so that my ability to be able to be with a woman throughout her whole labor is not possible. If you would calculate out what it would cost if we were hourly wage earners, it would be prohibitive to pay someone time and a half or double time when a woman’s labor exceeds 12 hours, 18 hours. Further, I think it’s already been commented on, and I will second that, that we do meet the criteria for a professional exemption, based on the scope of our practice.

I’d like you to know that California has the most nurse-midwives in the United States. If, in fact, we are found to be nonexempt employees, this can have consequences for our profession across the country. The American College of Nurse-Midwives totally supports our position that we are professional exempt employees, if we are employees or if we’re in our own practice.

Finally, I just want to also reiterate that research has shown that continuity of care by the same care provider has -- has implications on the outcomes for mothers and babies, both in their pregnancies -- in a
study that was done in the early ‘60s and most recently, it has been shown that the care of nurse-midwives through the labor and birth process can significantly reduce the morbidity of women and babies, significantly reduce Caesarean section rates. We have, as was said, cared for over 10,000 women in our practice at California Hospital, and consistently our Caesarean section rate has been between 3 and 4 percent, an excellent outcome for babies. And that has been consistent over almost a ten-year period.

So, I would urge you to perhaps make a motion today that, in fact, as soon as you meet in January, that this will be one of the first things on the table so that it will not interrupt our ability to care for women -- for women and babies.

And currently, things have changed in our practice, and unless there’s some immediate relief, we will come -- it may affect how we care for women -- it will affect how we care for women and outcomes for moms and babies.

COMMISSIONER McCARTHY: Well, I’d like to -- you know, are there -- are there witnesses against taking a contrary view with regard to this?
COMMISSIONER McCARTHY: Well, then I think we’ll withhold any possible motion till we hear both sides. I think that’s only fair and reasonable.

COMMISSIONER CENTER: Yeah.

COMMISSIONER McCARTHY: Don’t you?

MS. EVERETT: I just want to say quickly that I work 12-hour shifts. I want to keep my 12-hour shifts. Hospitals can’t afford to pay us time and a half, and our wages are already --

COMMISSIONER CENTER: State your name and --

MS. EVERETT: Oh, I’m sorry. Hi. My name is Cindy Everett, E-v-e-r-e-t-t.

They’re already trying to cut down on --

COMMISSIONER CENTER: What are you, a registered nurse?

MS. EVERETT: Registered nurse.

AUDIENCE MEMBER: (Not using microphone) Can’t hear.

MS. EVERETT: They’re already cutting down our wages for the time and a half, already taken away 12-hour shifts. We all want to work our 12-hour shifts, and we’re all very upset --

AUDIENCE MEMBERS: (Not using microphone) Can’t
hear you! Can’t hear you!

MS. EVERETT: Sorry. I just want to say I’m a registered nurse. We want to keep our 12-hour shifts.

We want to work our 12-hour shifts. We work three days a week. We have time for our family, we have time for school that we won’t have with 8-hour shifts. We have long drives to work. And I have up here, if the Commission wants it, a copy of the proposed plan -- whatever you call it -- where the wage goes down.

COMMISSIONER CENTER: How, originally, you guys established a 12-hour shift was by election.

MS. EVERETT: Yes.

COMMISSIONER CENTER: I mean, when you established the 12-hour shifts?

MS. EVERETT: Originally -- I started working there over -- about ten years ago, mainly because of the 12-hour shift.

COMMISSIONER CENTER: So, you’re okay until July 1st.

MS. EVERETT: No. They say, as of January 1st, they’re putting us on 8-hour shifts. Most of the nurses are leaving.

COMMISSIONER BROAD: I guess I’m a little confused. There’s nothing -- AB 60 does not alter any
12-hour shifts for nurses. It couldn’t conceivably be changed until July 1.

MS. EVERETT: Well, that’s not what’s happening in my hospital.

COMMISSIONER BROAD: Well, is it possible that your employers are just taking this opportunity to lower your wages, and that’s what this is really about?

(Audience murmuring)

MS. EVERETT: It’s just that my nurse supervisor isn’t here, and I would love for you to talk to them, and you can ask them those questions. But I thought we need to know.

COMMISSIONER BROAD: Well, I mean, there’s a real difference here. You know, what offends me here is it may be -- it may be, or it may not be, that there’s a legal problem with what they’re doing. What offends me greatly is that these employers would lower your wages and change your shifts and do all this stuff, and then blame AB 60, blame the Legislature, blame the Governor, and blame us!

(Applause)

MS. EVERETT: Well, if you want to say -- I’ve given you the plans, a copy of the plans, for you.

They’d probably say that -- for the overtime is what
they’re done, is told us that we will not get time and a half. When it comes through, we will still get -- our base rate’s been decreased -- we would still come home with the same paycheck. We would still come home with the same paycheck, due to the time and a half. Do you understand that?

COMMISSIONER CENTER: Not really, but I don’t understand what your employer is doing to you either.

MS. FURILLO: Well, we do. We can clarify. We understand exactly what the employer is doing. We can clarify that.

MS. MARSHUTZ: Excuse me. I was number two on the list.

MS. FURILLO: Yes. My name is Jill Furillo. I am a registered nurse and representative of the California Nurses Association. We represent 30,000 registered nurses in California, and we represent over 100 nurses in hospitals and healthcare facilities in the State of California.

And actually, I have to say that we’re currently engaged in an unprecedented campaign to organize thousands more nurses in facilities up and down the state. We’ve actually -- we haven’t seen anything like this in the State of California, ever, the requests for
representation by unions. And I guess we have to ask why
is this happening? Why is this happening now?

The biggest factor out there right now has to do
with this issue. The nurses and families fell victim
again to the hospital industry’s drive for maximum
profits at the expense of caregivers who keep these
hospitals afloat. Since December 1st, we have received
over 250 phone calls, letters, and e-mail messages from
nurses who are frightened, hysterical, and extremely
confused about what’s going on with AB 60. With little
more than maybe three days’ notice, they have been told
that they must vote to lower their own pay or lose their
12-hour shifts. And they’re saying this is because of AB
60.

These are pseudo-elections, and they’re bogus,
phony, and completely unnecessary under the provisions of
AB 60, as we all know. Hospitals have an exemption till
July 1st, 2000, at which time the Industrial Welfare
Commission will be convening wage boards and wage orders
to -- to consider what this issue is going to be. But
yet the hospitals have decided to act, even though they
were one of the few industries that were given an
exemption under this law. They have decided to act
against the nurses.
Thousands of nurses will be taking significant losses in pay, benefits, and their retirement compensation. And I have to tell, I believe the nurses already do not have the best retirement compensation, for many, many reasons. All of us know this is unnecessary. I have in my hand a document that was circulated by the California Healthcare Association. That is the industry association representing most of the hospitals in the state. And it’s very interesting what the document says, because what it says is that if you -- if you were compliant with the law prior to 1998, then you do not have to go through this process, meaning if you had -- if you were on 12-hour shifts and you had had an employee vote, then you’re fine until July 1st, 2000. So, then we start hearing from thousands of nurses that, well, they’re being told they’re not fine, according to their hospital attorneys, which then makes us believe that they’re out -- they were out of compliance with the law prior to 1998.

And actually, what we want --

THE REPORTER: Ms. Furillo --

MS. FURILLO: Okay, okay.

COMMISSIONER CENTER: Okay. Are you ready now?

MS. FURILLO: Yeah. Okay. So, we’ve been
somewhat -- we find that it’s very possible that many, many hospitals in the state were out of compliance with the law prior to 1998 and are now having these bogus elections, which really are not even required under the current law, up until January 1st, because we all know that those wage orders were eliminated by the previous IWC.

I think the real facts -- those are the real facts that they’re not telling the nurses. They don’t know -- hospitals already decided to eliminate the previous wage order that they never requested and repeatedly violated -- that they never respected. Now they are here with -- you know, crying about their problem, but the reality is, is that they were violating the law before.

They have engaged in abusive practice against the nursing staffs with these, quote, “bogus” elections and lowering the pay of the nurses. And this is abominable.

We are witnessing the kind -- they’re going after nurses, whipping up all kinds of untrue statements about AB 60, they’re not -- they’re not really playing up the fact that they, in fact, do have this exemption, and so the nurses are very confused.
The fact remains that in our facilities and under our contracts, thousands of nursing staff, nurses and nurse practitioners that we represent, will continue to work 12-hour shifts and will continue to do so with the exemption that they have. We have always supported the previous wage order that did allow the nurses to have 12-hour shifts with an employee vote. It was the hospitals that came before this body to argue that that be eliminated, and that’s why we are on them. It was the greed of the hospital industry.

I think that what we really need to do there is to look at -- the IWC should investigate the recent abusive practices of the hospital industry in cutting nurses’ salaries, benefits, and pension. I think there needs to be an investigation. And I think that what need to do, and the CAN is calling upon the IWC to investigate, fully investigate those hospitals that may have been out of compliance with the law, because, in fact, there may be thousands and thousands of nurses in the state that could potentially be due back wages and back wages for the time and a half after 8 hours, if their -- if their employers did not have the employee vote.

We know that this Commission is going to be
considering wage orders in the future. Our position has always been that nurses need to have protection, whether it’s a 10-hour shift, an 8-hour shift, a 12-hour shift. Protections need to be in place for the nurses so that they’re not abusing -- and the hospital industry is again showing their true colors, that they’re really out for greed and they’re not out to protect the nurses.

So, we look forward to working with you on crafting those wage orders that will take into account the work that all of our nurses do in the practice of nursing. And I would contend that registered nurse-midwives, or nurse practitioners, they are engaged in the practice of nursing, and I think we need to craft the wage order so that we can look at what everybody’s doing and the work that’s done in the future.

COMMISSIONER CENTER: Thank you.

Let me get back on -- was there Pauline -- there was no -- all right.

COMMISSIONER BROAD: Settle down, now.

MS. MARSHUTZ: My name is Nancy Marshutz, and I’m a certified nurse-midwife. And I’m not mad at anyone.

(Laughter and applause)

MS. MARSHUTZ: I feel that that I am an advanced
practice nurse and have received additional education and 
licensure to practice differently than someone who does 
shift work. That’s what does make a difference between 
an advanced practice nurse and a nurse who does punch in 
on the clock.

I not only have worked as a nurse since 1960 to 
1983, but then I became a nurse practitioner from 
California State and also became a nurse-midwife with 
USC. My responsibilities have been both with private 
practice since 1984, and also I’ve worked as a staff 
nurse-midwife at a local hospitals. Both positions have 
responsibilities of a nurse-midwife, caring for -- for a 
full-scope care of well women interdependently with the 
physician. Our care does not rely upon a time clock, as 
has been said before. The California Legislature even 
recognized this when they amended the Nurse Practice Act 
to require special certification and licensure for nurse-
midwives to practice as an advanced practice nurse.

Although we have “nurse” in our title, it just 
means that we have a foundation of knowledge of nursing. 
Our scope of practice includes ambulatory care in ante 
partum and partum and post-partum periods, and knowledge 
of caring for well women from puberty to menopause. In 
hospitals, some nurse-midwives are on hourly and per-diem
status. I have experienced both, and our care for the
well women does not limit itself by a time clock.

Limiting such a flexible position would affect
our ability to compete with other professions, but most
importantly in loss of services to our clients.

COMMISSIONER CENTER: Excuse me. Could I do a
time out?

We’re going to be here all night. If you have
written testimony --

MS. MARSHUTZ: It’s very short.

COMMISSIONER CENTER: Okay. Just -- and anybody
else, if you have written testimony, just submit it and
summarize.

And how many more midwives want to talk?

MS. MARSHUTZ: One more.

COMMISSIONER CENTER: Okay.

MS. MARSHUTZ: So, we think that it’s going to
be cost-prohibitive for a person to measure what we do to
individualize and personalize this care.

And I would like to ask for an amendment or an
exemption for nurse-midwives and other advanced practice
nurses from the bill limitations and ask that we not be
lumped together with nursing. We have been exempt for
overtime within our profession for many years and feel
that it would restrict our practice and the value to our
community.

Thank you.

COMMISSIONER CENTER: Thank you.

MS. JENKINS: Hello. My name is Betsy Jenkins, also a certified nurse-midwife. I have submitted written testimony, so I won’t repeat it, except to reiterate what has already been said.

I think the passage of AB 60 is a threat to midwifery practice by not making us exempt from the overtime laws. I think one of the hallmarks of midwifery care is support and comfort to women during labor, which cannot be done in an 8-hour shift. Midwives are independent and collaborative professionals, which includes knowledge, judgment, authority, and accountability required to manage patient care. We are requested that we retain our professional exempt status and not be subject to the overtime regulations that are in AB 60.

Thank you.

COMMISSIONER CENTER: Thank you.

Okay. Now I’ve got to get back on the list.

I have Pauline -- yeah, she’s already spoken, Pauline --
MS. GLATLEIDER: (Not using microphone) I’ve already spoken.

COMMISSIONER CENTER: Okay, sorry.

Charlet Rogers.

We’re only doing nursing still, though.

MS. ROGERS: My name is Charlet Rogers, and I’m work in intensive care at Holy Cross -- Providence Holy Cross in Mission Hills, which is in the northeast San Fernando Valley, a very busy trauma center.

Two issues here. Continuity of care is relevant to all areas of practice. Even though --

(Applause)

MS. ROGERS: Even though in-hospital nurses work at an hourly rate, when I get a trauma admission, it does not wait for me to have lunch. The trauma patient who’s bleeding or in respiratory distress, or any other patient who is not having a baby, does not wait to -- is not stabilized while we’re changing shifts and giving reports to the oncoming shifts. So, continuity of care is, as I said, an issue for all areas of patient care.

Number two, I can only speak for the hospital that I work at. We also took a reduction in our hourly rates of pay unless we worked nine hours or less, and then we’d go back up to premium pay. Premium pay is also
paid for PTO and for, quote-unquote, “nonproductive”
time, which means meetings, things like that, that are
not directly patient care-related.

I am not privy to -- to the hospital
administration, so I really have no idea if they’re
telling us lies or giving us a fish story or not. I just
-- I’m not in a position to know that. However, at my
hospital, based upon the -- how I’ve been treated, which
has been very well in the years that I’ve been there --
I’ve been at Holy Cross for eighteen years. They were
bought by Providence about three or four years ago. And
again, these past three or four years have also been
happy.

I do believe -- what we were told -- let me just
backtrack a little bit. What we were told is not that
we’re going -- they’re reducing our rates of pay because
of AB 60, but because the hospital cannot afford to pay
overtime at what was our straight-time rates, that the
amount that was given to us for the two sister hospitals
in our regional area was something like $5 million.
Again, is that a true number? I have no way of knowing.

But anyway, AB 60 was not blamed by our
administration, simply that they just, pure and simple,
didn’t have the money to pay us the overtime at our
present straight-time rate. So, what they did was they
factored -- they -- I’m not going to go through all the
math, but they factored that our net pay is the same.
When we voiced our concerns about PTO and if we get sent
home early if the census drops, we get our premium pay.

Holy Cross is in a low-income area. Most of our
-- well, I won’t say “most” -- that’s an exaggeration --
many of our patients do not have insurance. But I know
that the hospital does struggle for money. We have three
units, 24-bed units, eight beds each. We have monitor
equipment that -- other kinds of equipment that we have
to wait to be replaced because I do believe that they
don’t have the funds.

Anyway, basically, that’s what I wanted to say.
The continuity of care is not just a midwife issue; it’s
for all patients, all nursing areas. I do not believe
that my hospital is pulling a fast one on us. I’m no
dummy. It may perhaps -- if I’m naïve about this -- but
I’m no dummy, believe me. I -- I just don’t believe it.

The other issues regarding 12-hour shifts, you
have a whole generation of nurses who know nothing but
12-hour shifts. I’ve been a nurse since 1979, and 12
hours have been in place throughout many hospitals,
probably since 1981, 1982. You have a whole generation
of nurses who have based a lifestyle on the 12-hour shifts. It would be a definite hardship to take that away from us, for all the reasons that have been repeated before -- the extra time, the increased education, for our families, to work extra jobs for extra income.

    Thank you.

    (Applause)

    COMMISSIONER BROAD: I have a question for you. Is it common for nurses on 12-hour shifts, say working three 12-hour shifts in a row, to work more than one job?

    MS. ROGERS: Yes.

    COMMISSIONER BROAD: So, you actually may be working two or three jobs.

    MS. ROGERS: No. What many of us do is we will work overtime at our home hospital. But it varies. I don’t -- I would have no idea what percentage it was. But I can make -- and if I work an extra day, one extra day a week, that’s 48 hours a week -- I can increase my income by $1,000 per month. That isn’t a lot.

    COMMISSIONER BROAD: Let me just recount a small conversation I had with a nurse who’s a friend of mine. She came over to my house. I asked her, “What about the 12-hour shifts?” She said, “Yeah, nurses really want to keep those 12-hour shifts.” And I said, “Well, you know,
there's this argument about continuity of care." And she -- so, I said, "Tell me about continuity of care and all this."

And I want you to react to this, because I'm telling you the honest truth, what she told me.

She said, "Well, it's great -- it may be wonderful for certain lifestyle choices, but after you're -- it's four o'clock in the morning and you've worked eight hours already, those last four hours, you're not doing any favor for your patients. You're tired, you make mistakes."

(Audience murmuring)

COMMISSIONER BROAD: That's what she said.

MS. ROGERS: Could I comment on that?

COMMISSIONER BROAD: Okay.

MS. ROGERS: Every -- every article that I have read has not borne that out, at all. There is one article that I read relative to that was on, quote-unquote, "middle-aged" nurses getting tired. But they saw no --

(Laughter)

MS. ROGERS: -- no evidence of a threat to patient safety, in any literature that I’ve read. And I was at the library doing research on it, and I couldn’t
find it. This goes back to research from the early
1980’s.

COMMISSIONER BROAD: God bless the young, huh?
(Laughter)

COMMISSIONER CENTER: Well, we’re no spring
chickens either, Barry.

COMMISSIONER BROAD: Yeah, I know.

COMMISSIONER CENTER: Thank you.

Like I said, any other nurses that want to
comment on the reduction of their wage rates?

(Show of hands)

COMMISSIONER CENTER: Would -- you guys are all
saying the same thing? Would you -- who --

AUDIENCE MEMBER: (Not using microphone) We
willingly -- we work a lot of 12-hour shifts, and we
willingly agreed to work those same 12-hour shifts for
straight time. We’ve had to -- agreed to that
(inaudible). We love 12-hour shifts.

COMMISSIONER CENTER: But everybody’s aware that
AB 60 allows you to do that until July.

(Audience shouting)

AUDIENCE MEMBER: (Not using microphone) It
says that you can work that 12 hours, but you have to get
time and a half for the last four. Hospitals -- our
hospitals (inaudible).

(Audience murmuring)

COMMISSIONER CENTER: Well, why don't we --

yeah, why don't you come up, Richard? Give them

something to react to.

COMMISSIONER BROAD: Yeah.

(Appause)

MR. SIMMONS: I actually have -- my name is
Richard Simmons, by the way, for the record. I'm an
attorney with the law firm of Sheppard, Mullin, Richter &
Hampton. I'm here today to represent the California
Healthcare Association.

I actually have some comments that I think would
be of benefit to the IWC to hear. I would like to enter
them into the record. We do not have any written
statements that embellish this or reflective statements --
I would like to talk to them -- but I would also like
to offer some responses to the IWC based on questions and
issues that have been raised.

I will tell you that I think that 95 percent --
literally, 95 percent of what Ms. Furillo said, although
perhaps well intended, was absolutely wrong. It did an
injustice to the healthcare industry, it did an injustice
to the intellect of nurses who choose not to be
represented in the healthcare industry, it does an injustice to the patients in the industry, and it is, frankly, offensive. And I would be happy to talk to her intelligently and show her how she’s wrong later.

I also disagree with some of the statements that the --

(Applause)

MR. SIMMONS: -- and suggestions that any hospital that wishes to can simply ride the flow and keep what is currently in effect until July 1st, 2000, is incredibly overly simplistic, and it is not the option that hospitals that intelligently consider the options that are available will choose. And I’ll be happy to explain that to you so you understand why people of good faith and good intentions can reach different conclusions and, apparently, those that have not yet surfaced before this Commission.

I have -- I’ll be happy to respond to your questions, no matter how technical they are, at the outset or at the end. But there are some points that I think the Commission should hear generally, about the issues that are truly significant in the healthcare industry. And if it pleases you, I will start with those and then respond to your technical questions, or I’ll
deal with your technical questions first.

COMMISSIONER CENTER: Make your statement first.

MR. SIMMONS: Thank you.

I would -- I would begin by saying that historically, the California Healthcare Association has worked as closely with this Commission as any trade association that represents employers. I’ve known Mr. Broad for years. We have not always agreed; in fact, we’ve occasionally even had wagers on wage boards years ago. But we have been here and we have acted in good faith. We have sought out the assistance of the Division of Labor Standards Enforcement for years and years and years. We’ve done everything we could to seek the advice of the government, the enforcement officials, and the IWC to make sure the members of CHA were fully apprised of the law, their rights, their obligations. And I think it is an industry that is as compliant as any in the state. And I think the records of the enforcement history will reinforce that point.

In any event, we’re here in good faith today. And the fact of the matter is the California Healthcare Association, CHA, represents many, many members who collectively employ over 350,000 employees in the healthcare industry in California. Many of the members
of CHA, of course, operate hospitals that operate 24 hours per day, 365 days per week (sic). They have unique staffing needs, special requirements that are recognized -- have been recognized by this Commission since 1974 when it first proposed a 10-hour shift just for healthcare, and have been recognized by Congress as well. Congress, the state Legislature, and this Commission have historically recognized the special staffing needs that exist in this organization.

Without getting into all of the issues in great detail, I think, due to time constraints and in deference to the fact that other people, obviously, need to speak and are entitled to speak, I want to focus on four issues this afternoon: first of all, 12-hour shifts, without question the most important, dynamic, challenging issue before the Commission as far as healthcare is concerned; secondly, the 8-in-80 overtime standards, which are critically significant and are not receiving attention as warranted; thirdly, the meal period issues -- and I will submit now that I’ve provided a petition signed by 90 nurses of one hospital, passed to me last night, not solicited, just when they heard I was going to be here today -- each of the 90 nurses indicated her or his own reasons for wanting to have amendments to the meal period
rules -- that is submitted to you -- and finally, the exemption that is provided in AB 60 for certain union employees. Those are the four things that I’d like to talk about.

And I would like to commence by talking about 12-hour shifts, the first and the foremost issue before you, from the healthcare industry’s perspective. I think we have to start off with the acknowledgment that no one disputes that nurses want 12-hour shifts. California Nurses Association was not here today saying it does not want 12-hour shifts or its members don’t want 12-hour shifts. I think they would submit -- at least if, you know, put under oath -- that every collective bargaining agreement they negotiate for nurses contains 12-hour shifts, and indeed, 12-hour shifts at straight time. They know they cannot succeed without giving nurses 12-hour shifts.

Hospitals will tell you the very same thing. Hospitals need to give 12-hour shifts to nurses and other employees. It has become an incredible retention tool to retain qualified, skilled, professional nurses. And by the way, besides anything that this Commission or the Legislature could say, let’s make it real clear, nurses are professionals. You call them what you want; they’re
professionals. No doubt about it.

(Applause and cheering)

MR. SIMMONS: (Inaudible). Beyond that, if you take a look at what the unions say and what management says, the nurses are fully capable to speak for themselves. They’re more articulate than I could ever hope to be. They’ll tell you they want 12-hour shifts. There’s no question about that.

The question is whether you’re going to give them the right to do that, whether the Legislature is going to give them the right to do that. And we have to look historically at what this Commission has recognized. It has heard hundreds of registered nurses and other healthcare employees testify since 1980 about the need for flexibility. What is going on right now, with what we you would describe as a reduced rate, what Mr. Knox described as a slashed rate in order to use a pejorative term to reach a conclusion, what I’d like to call an adjusted rate -- but that’s all semantics, that’s all words.

What it is, is exactly what had to happen in 1980, before the Industrial Welfare Commission first recognized that 12-hour shifts should be allowed at straight time. And what had to happen back then was you
paid a straight-time rate for the first 8 hours, you paid time and a half that straight-time rate for hours over 8, so you could give to nurses essentially the same pay that they received for 40 hours for 36 hours of work. That was the goal. It was not to take advantage to anybody. It wasn’t because hospitals are devils. It’s not because they were the devil incarnate. They were not balls of fire (inaudible), you know, oppress employees. They tried to do the right thing. That’s exactly what they’re trying to do right now.

In 1993, finally, the Industrial Welfare Commission, after a series of years and after a series of amendments, expanded the wage order provisions in 4 and 5 to allow hospitals to give nurses and other healthcare employees the opportunity to work 12-hour shifts at straight time with a 12 and 40 standard. It truly was perfection in terms of the employees and employers. It benefited thousands of employees, thousands of patients, and many, many hospitals. It benefited everybody. It was a win-win situation. But, of course, it ended, or things changed, on January 1st, 1998. And we all know what happened on that date.

But setting that aside, we have to realize that healthcare is plagued with critical labor shortages.
We’re not talking about business here; we’re talking about lives, we’re talking about patients, we’re talking about your parents, your spouses, your children, your family members; we’re talking about labor shortages that healthcare organizations must address in order for people to save lives, what nurses are really there to do. They want to make a fair, honorable wage, clearly. Hospitals want to pay that. But they’re there to save lives. If you really ask them what nurses are there for, they care about patients. That’s why they got into the profession, that’s why they’ve elected to stay in the profession, not because of all the legal gobbledy-gook they were talking about today. We need to provide them the opportunity to do what they want to do, which is to practice their profession.

Now, what we ask and what we urge the Industrial Welfare Commission to do is to provide opportunity, not a grace period that’s going to expire on July 1st that really is meaningless when you really examine it carefully, but to provide hospitals the opportunity to provide healthcare employees, nurses and other healthcare employees, the opportunity to maintain existing 12-hour shifts. Lord knows, if AB 60 had not occurred, 12-hour shifts at straight time would still be in effect. There
would not have been any bump in the road.

AB 60 is, in fact, what has caused people to have to make changes. There’s no doubt it. It’s intellectually dishonest to suggest that anything else has occurred here. What has happened? AB 60 has happened. We want to be able to preserve 12-hour shifts as they exist. And number two, we want the opportunity to create new 12-hour shift programs. As new hospitals open, as new units open, as employees realize that they prefer 12-hour shifts, we want the right to accommodate them. And you know what? We want the same right to accommodate the nurses that are not represented the unions than the small minority of the nurses who choose to be represented by the unions, because nonunion nurses have the same rights. They have the same rights --

(Applause)

MR. SIMMONS: (Inaudible).

In any event, the proposed language that has surfaced through the Industrial Welfare Commission, frankly, is inadequate to accomplish our goals. It is inadequate for several reasons.

First, of course, it would be designed to --

COMMISSIONER CENTER: What proposed language is that?
MR. SIMMONS: The language that deals with healthcare. It’s some of the language that has floated up before the IWC.

COMMISSIONER CENTER: We haven’t provided anything yet, have we?

MR. SIMMONS: No. I don’t think it’s been released publicly, but it’s been floated around. People have seen it.

COMMISSIONER CENTER: Where did you hear that?

MR. SIMMONS: What difference does it make?

COMMISSIONER CENTER: Because it’s not a public document. That’s what difference it makes.

MR. SIMMONS: How exactly does that -- well, if you’ve seen it or not, let me talk about language theoretically, from a concept, if I may, because if there is language out there -- and I’m just going to hallucinate some language -- I’ll talk about and I’ll tell you why it’s inadequate. And if I’m wrong, then please excuse me.

If there is language in effect that refers to 12-hour shift arrangements being limited to licensed employees who are engaged directly in patient care activities, that language is, unfortunately, inadequate, however well intended it may be. The language that may
exist also would narrow, in fact, shrink the grace period provided in AB 60 so it will expire either on July 1, 2000, or, if earlier, the date that the IWC issues new rules. So, that will even contract the exemption so it’s more narrow than the statute itself authorizes.

Furthermore, the statute doesn’t confine the grace period that AB 60 offers to licensed employees or employees directly engaged in patient care. In short, if that language exists -- and I hope that I’m wrong -- I hope it doesn’t exist --

COMMISSIONER BROAD: You are wrong.

MR. SIMMONS: But if it does exist -- great -- then it should not confine the duration of the grace period, it should not confine it to licensed employees, and it should not confine it to employees engaged in patient care positions.

So, if the IWC does consider language for 12-hour shifts, we would ask that it be made available to all healthcare employees.

It should also be remembered that you have departments that consist of both patient care and non-patient care employees who work the same schedules. For example, if a housekeeping employee works in a patient care area, that employee may work a 12-hour shift along
with the RN. There are many other examples I could give you.

COMMISSIONER BROAD: Excuse me. So, your position is that this is about nurses who are engaged in continuity of care, but janitors should work 12-hour shifts without overtime in hospitals?

MR. SIMMONS: No. I didn’t --

COMMISSIONER BROAD: What’s the rationale for that?

MR. SIMMONS: Well, Mr. Broad, I didn’t mention continuity of care. I do intend to mention it, but not in the context in which you’ve raised it. So, if you allow me to state my view --

COMMISSIONER BROAD: Please.

MR. SIMMONS: -- you can criticize it, once it’s been stated. But until I do, I’d just as soon have the opportunity to speak for myself.

The bottom line is that we have healthcare employees, both nursing and other employees, who work 12-hour shifts. While continuity of care may, in fact, be a justification for 12-hour shifts, and it may, in fact, be a reason why 12-hour shifts make eminent sense in the healthcare industry, it is not the only reason. The reason the IWC authorized 12-hour shifts for all
healthcare employees in the past is because employees liked it. They can work a compressed schedule of longer but a fewer number of days, which gives them more days off for other things.

It is true, as you said, that some people may choose other things that include other employment. Other people may choose other things that involve caring for their family or spending time with their family, or pursuing educational interests or travel interests or recreational interests. There are all sorts of things you can do with four days off.

COMMISSIONER CENTER: Can you wrap it up in about two minutes, do you think?

MR. SIMMONS: Okay. Thank you.

Well, the bottom line is that 12-hour shifts promote flexibility. They promote the interests of employees, their families, their patients, and they do promote continuity of care. But that shouldn’t result in overlooking the other things that they provide.

Now, your charge, of course, as has been -- as you have been reminded about, includes protecting the welfare of employees. Let’s talk about the healthcare employees and their welfare.

Given the critical labor shortages that exist in
California, if you remove the authority for flexible scheduling that already exists, then it’s going to exacerbate staffing problems that already exist due to labor shortages. If you exacerbate staffing problems, that’s going to increase the stress for the employees, that’s going to compromise the care of employees -- excuse me -- the care of patients and the nurturing of employees, and it’s going to lead to even greater attrition, which will be a cycle that will undermine the welfare of employees. It will disrupt the lives of nurses who, as has already been said, in some cases have worked 12-hour shifts their entire career, twenty years. So much for 12-hour shifts, an important issue.

Let me talk about the other issues that are important as well.

The second issue I need to address is 8-in-80’s. California employers have been allowed to use an 8-in-80 overtime system under Section 7(j) of the Fair Labor Standards Act, and formerly Section 3(c), now Section 3(b), of Wage Order 5, for many, many years. That recognizes the unique staffing issues in the healthcare industry. It is allowed in every state of which I am aware in the nation. If California abandons or diminishes the authority for 8-in-80 overtime systems, it
would be a tragedy. And they are used by the vast majority of hospitals in California and in the entire nation.

So, what we urge the Industrial Welfare Commission to do with respect to 8-80 -- 8-in-80 arrangements is to preserve the existing rules. And I know there’s some debate as to whether you may do so. I believe, based on my reading of the statute, that you absolutely can. You’re allowed to preserve exemptions, and it is an exemption from a normal 40-hour standard.

Third area: meal periods. There are three issues associated with meal periods that are of critical concern in the healthcare industry. The first is that current law allows an employee to waive their meal period if the nature of their work prevents them from taking 30 minutes off.

COMMISSIONER CENTER: Excuse me. We need to kind of wrap it up, because we’re going to start losing commissioners here pretty quick.

MR. SIMMONS: Okay. I appreciate that. I suppose the best thing I can do is note that the meal period issues are truly of great significance. And if I may, I would submit further documentation --

COMMISSIONER CENTER: In writing to us, please.
MR. SIMMONS: -- that addresses that issue for you.

And finally, the collective bargaining proviso -- and I can say that in 30 seconds. I lectured recently with the general counsel of the Labor Commissioner, in whom I have great respect -- I think he is truly a scholar in the labor area -- and while we both lectured to the State Bar Association, I thought he made the astute point that unless overtime is paid for all overtime hours -- meaning all overtime zones, hours over 8 in a day, unless premiums are paid for all overtime zones, including hours over 8 in a day and hours over 12 in a day and 40 in a week -- then the overtime exemption for collective bargaining agreements would be unavailable.

I understand the Labor Commissioner may have re-evaluated that issue. I understand that there’s room for debate, but I would ask the IWC to clarify its position on that point so we have clarity and we know what the rules are.

Beyond that, I’ll be happy to entertain any questions you may have.

COMMISSIONER CENTER: Just a question. Now, January 1, AB 60 goes into effect. There’s an exemption
for nurses up until July, if they had a legal election
and then two-thirds vote.

MR. SIMMONS: There’s some (inaudible) in that.
May I explain it?

(Audience murmuring)

COMMISSIONER BROAD: Quickly.

COMMISSIONER CENTER: Yeah, quickly, if you
could.

COMMISSIONER BROAD: Well, in a nutshell, it’s
not an exemption, it’s a grace period.

COMMISSIONER CENTER: Right.

MR. SIMMONS: AB 60 has both grace periods and
grandfather provisions. That provision is a grace period
that says, “If you can demonstrate that you complied with
all of the pre-1998 standards, then you can continue what
you have until July 1st, 2000.” That’s true. But you
also have other options. And the problem is, as of July
1, 2000, if you don’t -- if you ride that grace period
out, you’ll have far fewer options available to you then,
if the IWC or the Legislature doesn’t act, than are
available to you right now, which is why so many
hospitals are reacting to the options now.

COMMISSIONER CENTER: Okay. And just a
question. Okay. Now, you’re reducing wage rates to
comply with the overtime, and not knowing what IWC will
do. If, by chance, IWC does act and does an exemption,
will you reinstate the wage rates?

AUDIENCE MEMBERS: (Not using microphone) Yes.
Yes.

MR. SIMMONS: Absolutely. Obviously, it’s a
hospital-by-hospital basis, and hospitals try to do what
employees want them to do, which is why they’re going
through voting procedures now, even though they don’t
have to, by the way.

Can I give you some insight? The statistics I’m
hearing on the adjusted rate system is that upwards of 70
or 80 or 90 percent of the employees who have voted,
through a process that isn’t even required, have said,
“We want 12-hour shifts. We’re happy to go through the
adjustment in the rates in order to maintain 12-hour
shifts under the limitations that exist in AB 60.” It’s
done with full disclosures, group meetings, things that
aren’t even mandated by the law, because employers want
to do the right thing.

COMMISSIONER CENTER: Well, let me continue on.
So, let’s talk about the IWC on 12-hour shifts.

MR. SIMMONS: Well, here’s the dilemma there.
And, by the way, there are some open legal questions, and
I don’t want to say that there are clear answers to all
of these questions.

The Statement of Basis to the wage orders right
now specifically talks about the ability to go to a
reduced rate system, systems that, as I said earlier,
were allowed back in 1980. But the Statement of Basis
actually authorizes it. So, to suggest here it may be
legal, it may be not be legal, it’s clearly legal and the
IWC has said so explicitly in its Statement of Intent and
Statement of Basis.

Now, you have language in AB 60 that talks about
reduced rates being impermissible after January 1st of
the year 2000. I don’t know, frankly, whether that
simply would outlaw reduced rates in connection with 10-
hour shift programs that were rejected, or whether or not
you were going to interpret that to outlaw any type of
rate reduction. But if, in fact, you do construe it
broadly to outlaw any type of rate reduction -- and I
refer to the opposite interpretation, of course -- but if
you did construe it that way, then hospitals that wait
until July 1 will have no option other than basically to
go out of business or to offer only 8-hour shifts, where
employees won’t even have the option to work 12 hours.
That’s the dilemma that AB 60 creates.
Hospitals didn’t create it. Hospitals didn’t want it. I don’t think you saw a lot of hospitals supporting AB 60. So, there you have it. We didn’t draft it. Nobody called me and asked me.

(Laughter)

MR. SIMMONS: Wally Knox didn’t call me and say, “Richard, I understand you” --

COMMISSIONER CENTER: The Chamber didn’t support it either, I don’t think.

MR. SIMMONS: Yeah. “ -- and what do you think about this legislation? Do you have insight to the healthcare industry?” I didn’t get that call. My phone did not ring.

Any other questions?

COMMISSIONER BROAD: Yeah. I have some questions.

I think you’re probably right that there’s nothing that prevents people from lowering base wage rates before January 1. The concern is -- the concern is what the chairman said, which is, then, you lower the base wage rate, then, to go to a 12-hour shift, if we indeed vote to continue 12-hour shifts for nurses, and then you leave people at the same rate of pay. Now, you’re saying that you wouldn’t do that because you just
want to make people --

MR. SIMMONS: Whole.

COMMISSIONER BROAD: -- you just want to make

it whole and stay even. So, you wouldn’t oppose, then, a

provision in the wage order, then, that would require

that they be kept whole, that the former base wage rate

be reinstated as a condition precedent to having a 12-

hour shift like that?

MR. SIMMONS: Well, I can go beyond that. I

agree with your point, by the way, the theme of your

point. And I don’t have any problem with that. I know

of no hospital that would be unwilling to do that. I

think I’d like to see the language, by the way. I’d like

to see my version of that language drafted rather than

yours. But in concept, I do agree with you.

But let me tell you one other thing. I think

employees can be disadvantaged from a benefit

perspective. I’d like to see them made whole there too,

as would hospitals, because some disability programs,

some life insurance programs, pay benefits based on

straight-time earnings without regard to overtime. And

we would like them to get full benefits, completely. So

-- and I think hospitals would be fully supportive of

that.
COMMISSIONER BROAD: Well, I think the hospital industry could take a lot of the -- of the stress of what it’s done here out of the whole process by formally taking that position and writing to the Commission and saying that it would propose to do that.

MR. SIMMONS: Well, can I get a reading from the commissioners right now? Can I ask you -- I know you can’t vote because it’s before January 1st -- would each of you vote in favor of that, were it submitted?

COMMISSIONER BROAD: I don’t think it’s appropriate to ask us to commit to something that we haven’t seen.

MR. SIMMONS: Well, you asked me to commit to something. You wanted the industry to commit to something.

COMMISSIONER BROAD: You don’t have to -- you don’t have to --

(Applause and cheering)

COMMISSIONER BROAD: The industry -- the industry doesn’t have to do anything. I haven’t noticed that the industry has done anything affirmative, generally, in this area at all. So, you know, you don’t support increases in the minimum wage --

MR. SIMMONS: Well, do you want --
COMMISSIONER BROAD: You don’t have to do anything.

MR. SIMMONS: Okay. Let’s say we do it. Let’s say we do what you asked. Will you give us your indication right now -- obviously, you reserve the right to change your mind -- but would you support it, Mr. Broad?

COMMISSIONER BROAD: Support what?

MR. SIMMONS: If there were a proposal to allow 12-hour shifts at straight time, where people were --

COMMISSIONER BROAD: I would certainly be more receptive to it, I’ll tell you that much.

MR. SIMMONS: Well, let’s face it. That’s what would have happened had AB 60 never come along. It would have just been status quo.

COMMISSIONER BROAD: Well, AB 60 would have never come along if what preceded AB 60 had never come along. So, that’s -- but let me ask you this question. I still -- the nurses that have come before us, we’ve only really heard from nurses. We haven’t heard from anybody who works -- and midwives -- but a lot of people work in hospitals, you know, I mean, janitors and food service people, and parking lot attendants and security guards, and secretaries, and all kinds of people
work in hospitals. And what’s different about the good old days with the last IWC and the last administration, what’s different is the fact -- the passage of AB 60. And AB 60, I believe, instructs this Commission to be very wary about deviating from the basic 8-hour-day standard.

Now, what is the rationale for making a parking lot attendant at a hospital be able to be required to work 12-hour shifts, and a parking lot attendant at a movie theater who could not? What’s the difference?

MR. SIMMONS: Well, first of all, I don’t -- I don’t agree with the premise, that -- the premise is that parking lot attendants don’t want to work it and they’d be forced to work it. My view is that thousands of employees in the state have voted in favor of 12-hour shifts on a voluntary basis by two thirds of their number. And it’s not just nurses. It is parking lot attendants, if the employer and employees agree to it.

And let’s face it, you guys recognized it -- you didn’t, but AB 60 recognized it, because the eleventh-hour amendment added the authority for 4-10 arrangements or other flexible arrangements that were in effect on July 1, 1999, on individual -- on an individual basis. A lot of employees want it.
My reason for justifying it is that employees want flexibility. Congress recognized it when they repealed the 8-hour standard in the Walsh-Healey Act, back in 1986. The Industrial Welfare Commission has recognized it. Thousands of people throughout the state have recognized it. You’ve had hundreds of people testifying over this process of hearings, and you’d had hundreds more testify in 1980, 1986, 1989, and 1993, all of which resulted in the expansion of flexibility. People want it. They’re knocking at your door. They’re beating down your door. They say, “We want flexibility.” That’s why it should be allowed.

(Applause)

AUDIENCE MEMBER: Can I ask a question? I would like to know why nurses, who are college-educated professionals, are being considered in the same category as parking lot attendants.

COMMISSIONER BROAD: Actually, the issue is whether parking lot attendants should be treated differently from other parking lot attendants.

AUDIENCE MEMBER: No, no, that is not the issue.

COMMISSIONER BROAD: Yeah, I think it is.

AUDIENCE MEMBER: The issue is, why are nurses being in the same category as other workers who are not
considered to be professionals, as far as a college-educated type of profession. It is blue-collar work and white-collar, if you will, or whatever.

COMMISSIONER BROAD: Well, if you want my opinion, my opinion is that there are many people who are -- who are white-collar that have always been permitted or required to be paid overtime. It’s not -- it’s not -- this is not a distinction people who use their brains and use their hands. It is -- it is the law of the land that people get overtime.

AUDIENCE MEMBER: (Inaudible).

COMMISSIONER BROAD: Yes, it is.

COMMISSIONER CENTER: No more questions from the floor. We’ve got a speaker up here.

Maybe you can come up and address the Commission.

I was on the Commission when the 8-hour day was repealed, along with Mr. McCarthy, and the other labor vote thought he was voting for a study to repeal the 8-hour day. That’s how much the populace spoke on that, and I don’t think he ever did get what he was doing. But that’s old history on that, so --

COMMISSIONER McCARTHY: Mr. Chair, if I could make one -- the issues before the -- that the nurses have
brought forward today are really two distinct issues. I -- you know, I mean, we have the issue that’s under consideration, which is a very serious issue. The other issue, also serious, which is different, was the situation with the midwives. So, before -- I know some -- I think some of the commissioners have to catch a plane, so I would just like to introduce a quick motion, if I may, before we continue with the testimony here, that -- that one of the first items of business in the next meeting is consideration of the exemption on professional grounds for midwives.

AUDIENCE MEMBER:  (Not using microphone) Advanced practice nurse is a term, is an umbrella term, for midwives, some of whom are specialists, nurse practitioners, nurse anesthetists, who have not yet had the opportunity to talk.

COMMISSIONER McCARTHY: Well, I -- we can broaden that if we wish. I guess, at the moment, since we’ve heard --

MR. SIMMONS: Is it who shouts the loudest, or are we going to just let people comment out of the audience?

COMMISSIONER McCARTHY: Well, I introduced a
motion, and we can introduce other ones if somebody wishes. But I’ll stick with that motion with regard to the issue that was brought up with the midwives, that we at least consider it at the next meeting, given the seriousness of charges there.

Second to it?

(No response)

COMMISSIONER McCARTHY: Well, this is very -- this is different. I mean, some of the others, we will have a hearing before July 1st. On the basis of what the midwives said, as I said, this is a little -- this is of greater urgency and immediacy in terms of their professional survival, from what I can tell. So, considering one at the next meeting doesn’t preclude considering anything else at a later meeting.

COMMISSIONER COLEMAN: Can I ask, procedurally? What we can do is agendize that for the next meeting as one of the first acts of business.

COMMISSIONER CENTER: Well, if you want to make a resolution to do that, that’s fine, but I don’t think we can make motions on the statute until it comes into effect in January.

COMMISSIONER McCARTHY: No, I’m not making a motion on the statute. I just made -- my motion was to
consider, to put on the agenda consideration of this at that point. That’s all my motion was, not prejudging how the Commission will decide or vote on it, just to consider at least at the time.

Well, that’s the motion.

COMMISSIONER COLEMAN: I second.

COMMISSIONER CENTER: Call the roll.

COMMISSIONER COLEMAN: Aye.

COMMISSIONER DOMBROWSKI: Aye.

COMMISSIONER McCARTHY: Aye.

Barry?

COMMISSIONER BROAD: Aye.

COMMISSIONER CENTER: Aye.

You guys should have helped Barry on his motion, too, you know.

Okay. I guess --

(Pause)

MS. CONNOLLY: Hello?

COMMISSIONER CENTER: Hello. Excuse me.

Please.

MS. CONNOLLY: My name is Kathleen Connolly, C-o-n-n-o-l-l-y. I’m a registered nurse at Providence Hospital in Burbank.

COMMISSIONER CENTER: Excuse me.
Could you pass those outside, please?

All right.

MS. CONNOLLY: I’ve only been a (inaudible) nurse for (inaudible). The actual facility that I am employed by has 12-hour shifts since the mid-1980’s. But I’m one of the nurses that Mr. Knox talked about that has taken a big cut in pay. It ended up to be 16.66 percent. No matter how you dress it up, it’s a still a big -- big, big cut in pay.

I do not want to work as a nurse five days a week taking care of sick, dying patients working eleven to seven p.m., the shift that I would have to work (inaudible), apparently. I feel that the hospitals did try to do what they could, but what they’re telling us is that we don’t matter. How do you run a hospital without nurses? It’s decreasing our morale and will be a big cut in pay. (Inaudible) the correct pay for the time worked. With the new pay scale, there are different rates that need to be paid out, making it easier for mistakes to be made. Some of us have two jobs to maintain our lifestyle.

On a selfish note, healthcare is not -- healthcare (inaudible). My hospital will lose me and some experienced and valuable nurses. I will not be
practicing in a field that does not also promote employee satisfaction.

I have submitted 31 letters from 12-hour employees in favor of 12 hours who like an assurance of their base pay premium (inaudible). (Inaudible) and we have to take our pay, but if we are exempt, we will go back to the base pay that we are now, base pay for 12 hours straight.

AB 60 needs to be clear as far as healthcare is concerned. I urge you to reinstate Wage Order 4 and 5 so we can continue to give quality care and maintain a 12-hour, flexible work schedule in return for our previous base pay.

(Applause)

COMMISSIONER CENTER: Bill Hoffman.

(No response)

COMMISSIONER CENTER: Charles Long.

Did Kathleen Connolly already speak?

COMMISSIONER BROAD: That was her.

AUDIENCE MEMBER: (Not using microphone) She just spoke.

COMMISSIONER CENTER: Gee, I’m doing good here. It’s getting late.

Oh, which one are you?
MR. LONG: Charles Long.

COMMISSIONER CENTER: Okay, Charles.

MR. LONG: Do we still have the front row open to us?

COMMISSIONER CENTER: Why don’t you -- yeah, people who’ve already spoken. I guess everybody’s waiting -- we’re going to go through the list now. We’ve got -- these are all with you?

MR. LONG: Yes.

COMMISSIONER CENTER: All right. Go ahead. If you have written, if you could submit it to us, maybe, and summarize.

MR. LONG: I’ve done it already.

COMMISSIONER CENTER: Pardon?

MR. LONG: I’ve done it already.

COMMISSIONER CENTER: Okay. And you’re just going to summarize your written testimony?

MR. LONG: I’m not even going to summarize my written testimony. I am open to specific questions.

COMMISSIONER CENTER: Okay.

MR. LONG: We consider it here that you are here to help us, and I would like to understand, or gain some understanding. After being here all day, I’m more
confused than ever.

AUDIENCE MEMBER: (Not using microphone) Can’t hear you.

MR. LONG: I understand -- or I think I understand that we are covered, we have been covered, under Wage Order Number 4. After hearing testimony today, I’m not sure if that wage order is still in effect after January 1st, 2000.

COMMISSIONER CENTER: Yeah. Order 4 will be -- is -- will be in effect in January.

MR. LONG: Not AB 60, but Wage Order Number 4.

COMMISSIONER CENTER: Yeah. Wage Order 4 will still be in effect in January.

MR. LONG: It still will be in effect.

COMMISSIONER CENTER: What kind -- what kind of industry are you involved in?

MR. LONG: Well, it’s oil -- our -- the customers we serve are the oil industry. We store and transfer -- and transport oil for the refineries in the L.A. area.

COMMISSIONER CENTER: Were you covered under overtime -- by the daily overtime law?

MR. LONG: I’m sorry.

COMMISSIONER CENTER: Are you covered -- are you
working -- what are your hours?

MR. LONG: We work in 12-hour shifts.

COMMISSIONER CENTER: 12-hour shifts. And you were doing that prior to the repeal of the 8-hour day?

MR. LONG: We’ve been on 12-hour shifts for seven years.

COMMISSIONER CENTER: Because of the exemption for the oil industry?

MR. LONG: That’s -- Wage Order Number 4 covers (inaudible) professionals. We fall into that, machine operators.

COMMISSIONER CENTER: How were you working 12-hour shifts without overtime?

MR. LONG: Equipment operators. This is in Wage Order 4.

COMMISSIONER CENTER: Okay. Go ahead and I’ll try to figure out where it is. Go on.

MR. LONG: Well, my question is, if Wage Order Number 4 is still in effect after January 1st, then we should be able to continue working on 12-hour shifts.

COMMISSIONER CENTER: You were -- what happened was -- a couple years ago was a repeal of the 8-hour day. Were you working 12-hour shifts then at straight time, prior to that?
MR. LONG: Yes. For the last seven years, we’ve been working 12-hour shifts, actually, and were being paid overtime after 40 hours a week.

AUDIENCE MEMBER: (Not using microphone) Well, that’s what it says in the wage order, is after 40 hours a week.

COMMISSIONER CENTER: That was not prior to the elimination of the 8-hour day. Prior to that, it was overtime after 8 hours. But you were paying -- you were paying 12-hour days prior to that repeal of the wage order?

MR. LONG: Yes. At least I -- I thought we spoke to you, I believe to you, in 1989 and ’90, in Sacramento. And about a year after that -- well, about two years after that, we began working 12-hour shifts.

COMMISSIONER CENTER: I wasn’t on the IWC in ’89.

MR. LONG: Okay. Well, the Commission.

COMMISSIONER CENTER: Maybe we should have -- because I’m not sure if you were exempt going in there or not. Maybe Marcy should go talk to you.

But overtime will be in effect in January.

MR. LONG: Overtime after 8 hours a day?

COMMISSIONER CENTER: Yes. Yes. Unless you
have a specific exemption in your industry.

MR. LONG: Well, that’s my understanding. Well, we don’t -- you say industry, and we’re not part of the oil industry. The oil industry is our customer.

COMMISSIONER CENTER: Then I would think you should have been covered under the 8-hour day prior to the repeal.

MR. LONG: So, we shouldn’t have been -- we should not have been allowed to work the 12-hour shift for the last seven years?

COMMISSIONER CENTER: I think -- yeah, we can’t -- you should talk to the Labor Commissioner on that. That’s a Labor Commissioner issue, not one of our issues. Yeah.

Yeah.

MR. LUSSI: I think what we’re trying to do is we’re trying to see if we are an exemption. And I know we have heard about that. I want to know how we can go and get an exemption. People are -- I heard you guys refer to healthcare workers and janitors in the same sentence. I don’t see why if a group of people, employees, want to work an 8-hour day or a 10-hour day or a 12-hour day, why can’t we let them? I mean, why are you guys -- you guys have the ability to grant
exemptions.

COMMISSIONER CENTER: No, we don’t.

MR. LUSSI: Through a process.

COMMISSIONER CENTER: Through a process for specific industries. But the law changed in January. That order changed, how we do that. I don’t think we can grant you an exemption just --

MR. LUSSI: Well, in AB 60, you guys have a provision to grant exemptions. That’s what it says, doesn’t it?

COMMISSIONER CENTER: For -- for industries.

MR. LUSSI: For industries.

COMMISSIONER CENTER: And what’s your --

MR. LUSSI: My question is, why --

COMMISSIONER CENTER: Explain your industry to me first.

MR. LUSSI: I’m an operator for Edison, a pipeline operator for Edison. We transport and store oil for refineries. We work at a rotating 12-hour shift, 24 hours a day. Without a 12-hour shift, it goes back to 8; there’s no 9’s or 10’s or anything else.

My question is, if a working group wants to stay on the 12-hour shift, why are we not allowed to do that?

COMMISSIONER CENTER: You could go to 10’s, but
the law changed --

MR. LUSSI: There’s no provision for us to go to 10’s because there’s 24 hours in a day. This is our problem, and the same with the nurses and the janitors and the parking lot attendants. We want it, not our companies. We want it. It’s better for us. So, I don’t understand why we cannot get an exemption as an industry.

COMMISSIONER CENTER: Because the law was passed by the Legislature. We cannot change the law.

MR. LUSSI: But you do have a provision --

COMMISSIONER CENTER: Not to change the law.

MR. LUSSI: -- for an exemption to industries.

That’s my only question. My concern is --

COMMISSIONER CENTER: Certain industries.

MR. LUSSI: -- we want to vote to take this, and I don’t understand that -- it says in the bill that you’re available or allowed to give provisions to industries. And I wanted to know, why can’t that happen, because I heard you say before that you’re not allowed -- it goes through a long process.

COMMISSIONER CENTER: We can do certain things, but once the law goes into effect, we cannot supersede the law. And the law changes in January, which really limits the exemptions we can grant. There are specific
industries named in the law.

    MR. LUSSI: But we cannot grant exemptions above
and beyond those certain industries?

    COMMISSIONER CENTER: We can institute wage
boards for industries. And you need to get your industry
people to gather and petition that.

    MR. LUSSI: We have. I think we’ve presented
that to you.

    COMMISSIONER CENTER: That’s a process. Then
we’ll have to investigate your industry and do it that
way. We just can’t grant an exemption without
investigating your industry.

    MR. LUSSI: Yeah. I realize you can’t do that
on the spot. But there is a process.

    COMMISSIONER CENTER: Yeah. Yeah, a process.

    MR. LUSSI: Okay. Thank you.

    COMMISSIONER CENTER: Matthew Bartosiak.

    AUDIENCE MEMBER: (Not using microphone) He’s
here. He just stepped out.

    AUDIENCE MEMBER: (Not using microphone) Next.

    Go on to the next name.

    COMMISSIONER CENTER: Rita McGuire.

    (No response)

    COMMISSIONER CENTER: Denise Smith? Has she
spoken yet?

(No response)

AUDIENCE MEMBER: (Not using microphone) Here’s Matt.

COMMISSIONER CENTER: Oh, there’s Matt.

AUDIENCE MEMBER: (Not using microphone) Hurry up! Make it quick!

AUDIENCE MEMBER: (Not using microphone) May I make a comment?

COMMISSIONER CENTER: Yes.

AUDIENCE MEMBER: (Not using microphone) Can you limit the speakers to maybe five minutes?

AUDIENCE MEMBER: (Not using microphone) Or two!

COMMISSIONER CENTER: I think we’ll limit it to two minutes so we can get out of here.

MR. BARTOSIAK: I can do it.

COMMISSIONER CENTER: Okay.

MR. BARTOSIAK: Thank you very much. My name is Matt Bartosiak, with the Employers Group. We’re a nonprofit human resources association. We help 5,000 member companies statewide, representing 2.1 million employees. We help those companies manage human resources. One of our main activities is advocacy, and
I’m here today to -- and I was here with some employer-members with us, and they had to leave.

I’m here today to talk about, of course, AB 60 and flesh out some of the rules. Before I go into the comments, I’d like to make just a comment. I know you have a lot of people who want to testify all the time, and you try to do it in a cohesive, efficient fashion. But, again, one of these rooms, if one gets up earlier, like two production employees I had that are going to be taking (inaudible) two people here, employees, production workers who came here, unpaid all day, and wanted to talk about their desire to work 12-hour shifts. But I can have written testimony submitted.

Allow me, in the next three and a half minutes, to quickly go over our comments and questions regarding AB 60.

AUDIENCE MEMBER: (Not using microphone) Quiet!

MR. BARTOSIAK: Thank you.

My first set of comments will revolve -- and I have not seen the drafted regulations, so you’ll have to pardon me if these have been addressed.

Still, my first comment addresses -- revolves around alternative workweek issues. The bill does call -
COMMISSIONER CENTER: Are these written comments you’re going to submit to us?

MR. BARTOSIAK: You already have these comments. I submitted them in advance.

COMMISSIONER CENTER: So, briefly summarizing them is what we’re going to do.

MR. BARTOSIAK: I’m just briefly summarizing them.

Regarding the -- AB 60 calls for the Commission to address a designation of work units. And I -- we ask the Commission to be as loose and broad, if you will, as it has been in the past. It’s been an enforcement policy in the past that work units were broadly defined and were left up to the objective business criteria. We ask that that remain, because if it’s too cumbersome or if there’s too many classification rules, they will be less useful in the work environment, for both employers and employees.

Menu of options. I just did take a brief peek at the menu of options draft rules, and I do see that there is some employer control of those so you don’t have everybody signing up for one menu and then the rest remain unstaffed, the other options. If indeed the draft says that, we applaud that.
The disclosure requirement rule for AWS’s -- for alternative workweek schedules -- where they’re supposed to give complete disclosure, I -- again, I have not read the draft, but we think it’s prudent that the disclosure requirements be in a comprehensive fashion, yet in an efficient fashion, one or two weeks, perhaps, and conducted in a process that allow the interest and the momentum of interest in (inaudible) and they keep the process moving. For company employees who can’t work the alternative workweek schedules, we suggest that, again, we leave it up to the employer’s discretion as to what reasonable accommodation means. I know, in terms of employees who are eligible to vote, that reasonable accommodation must be attempted, and it may be attempted for people who join the unit later. And again, we ask that the Commission consider giving employers, who know the needs of their business, true flexibility in defining what is reasonable accommodation -- accommodation.

There are some other issues, like can an alternative workweek schedule be rescinded? Like previous law, after twelve months in practice, the employees may petition to have the vote repealed upon a two thirds vote -- a two thirds petition. They have a process. The Commission is called to stipulate or lay
out conditions under which employers may dissolve the alternative workweek schedule. Such a concept was not in the previous law, and we strongly encourage the Commission to, again, give broad flexibility for an employer to disband an alternative workweek arrangement when it realizes it doesn’t work, and not have to jump through a thousand hoops to do so. If the schedule doesn’t work, let’s not wait till we can’t get product out of the door until we’re ready to disband a schedule that clearly doesn’t work.

My remaining two comments revolve around other issues that AB 60 addressed. We may very well be calling on you for exemption issues. I’d just like to --

COMMISSIONER DOMBROWSKI: Please. We’re really out of time. And if you have written testimony, we will read it.

MR. BARTOSIAK: Okay. In closing, then, I’ll make just one closing comment regarding the outside salespeople and the exemption issues and the meal periods and all these things that you may review. When one does review these elements and these constructs of yours, we ask for broad rules, flexible rules, and concise rules so that the personal needs of employees and the business needs of employers may be met.
Thank you.

COMMISSIONER DOMBROWSKI: Rita McGuire?

COMMISSIONER BROAD: She left.

COMMISSIONER DOMBROWSKI: Denise Smith.

(No response)

COMMISSIONER DOMBROWSKI: I’m going to go through this thing -- Gabo Briones, Children’s Hospital.

MS. WILSON: I’ll take it.

COMMISSIONER DOMBROWSKI: Okay.

MS. WILSON: My name is Karla Wilson. I’m an advanced practice nurse in pediatric oncology at Children’s Hospital, and I’m here with several of my colleagues, and we are representing over 100 advanced practice nurses at Children’s Hospital.

From what has been said earlier today, it’s very clear that the members of the Commission do not really understand what nurses do, let alone what advanced practice nurses do.

AUDIENCE MEMBER: (Not using microphone) Can’t hear you.

MS. WILSON: Oh, sorry.

Advanced practice nurses, as the midwives so well expressed earlier, are nurses who have advanced degrees, or they have extensive experience and training
in specialized areas. Many of us are certified in our
area of specialization, just as I’m certified in
pediatric oncology nursing. Advanced practice nurses
include nurse practitioners, clinic nurse specialists,
case managers, and there are a whole list of other types
of titles of nurses, et cetera.

We have 24-hour accountability for our patients.
We do not work in shifts. We care for patients across a
continuum of areas. We’re the ones who are involved
doing things such as procedures in oncology like bone
marrow (inaudible) and biopsies, lumbar punctures. We do
physical exams. We do education to patients. We are the
source of contact for patients when there are problems.
Patients are followed by us whether they are in the
hospital or whether they’re at home or in the clinics.
We are the --

COMMISSIONER DOMBROWSKI: Is there -- because
we’ve heard from your industry, and I think the best
resolution -- is there anything that hasn’t been said
that you need to say?

MS. WILSON: I think one of the major issues
that has not been said is that AB 60 impedes
professionalizing nurses. And with this, we will have an
exit of nurses from the State of California. We are
already in a nursing shortage. It is going to get worse. And you will not have anyone to assist you with your healthcare in the future.

And I think that nurses need to be exempt from this bill because we are professionals. And we work in creative ways. We are using our intellect, we are working with patients, and the only nurses that are exempt in this bill are nurses who do administration of staff. And there is a whole category of nurses, from the bedside nurses to administrators that are nurses, and nurses as a profession should be exempt from this bill so that we can practice nursing.

Thank you.

(Applause)

COMMISSIONER BROAD: I understand your perspective, but we cannot exempt nurses. That is clear in the statute. We can agree, for example, to permit nurses to work 12-hour shifts. We can do that. But we cannot repeal a statute passed by the Legislature and signed by the Governor that is very clear on its face.

So, while I understand your frustration, that message is something that you have to take to the Legislature. If you want to take something to us that we can act on, it really is over the question of whether we
should approve shifts for nurses longer than 10 hours a day. That’s the issue.

MS. WILSON: I don’t work shifts. I’ve never worked shifts in the thirty-two I’ve been an advanced practice nurse. And there is no other state in the country that advanced practice nurses work shifts. Other professionals, lawyers, educators, scientists, et cetera, they do not work shifts.

COMMISSIONER BROAD: I know. But, look, you have to understand that there are limits of what administrative agencies can do and what the Legislature can do.

This is what the bill says:

"Registered nurses employed to engage in the practice of nursing shall not be exempted from coverage under any part of the orders of the Industrial Welfare Commission unless they individually meet the criteria for exemptions established for executive or administrative employees."

That is the final word. We cannot change that. We cannot -- you may be right, but we cannot change that.

The message that you’re bringing, "We don’t want
to be covered by any rules involving overtime, any wage
and hour rules; we want to be exempt like doctors are
exempt now, we want to be exempt like" --

MS. WILSON: I want to be exempt like any other
professionals.

COMMISSIONER BROAD: Okay. You want to be
exempt like doctors or lawyers. That is specifically not
permitted by this statute. Therefore, to change that,
you have to change the law. We can’t change the law.

And I think you’re going to have to respect that
that is a fact.

MS. WILSON: And then can you give us the
information of how we go about changing the law and how
we identify the exemption?

AUDIENCE MEMBER: (Not using microphone) Or
amending.

MS. WILSON: Or amending the law, or amending AB
60, or the criteria or the definitions.

COMMISSIONER DOMBROWSKI: There is
representation, which I’m sure you have some affiliation
with, that handles that for you. I mean, it’s --

MS. WILSON: I am not a member of CNA, if that
is who you are referring to.

COMMISSIONER DOMBROWSKI: I don’t know -- I
don’t know who you’re -- who you’re represented by.

MS. WILSON: I have written my legislators.

COMMISSIONER DOMBROWSKI: Pamela Melton.

AUDIENCE MEMBER: (Not using microphone) Are you going out of order? Is there a list? I don’t understand.

COMMISSIONER DOMBROWSKI: I’m still on the first page.

COMMISSIONER CENTER: The first page.

MS. MELTON: Thank you very much.

COMMISSIONER CENTER: Which list, this one or the other one?

AUDIENCE MEMBER: (Not using microphone) What happened to this morning’s?

AUDIENCE MEMBER: (Not using microphone) What happened to this morning’s list?

AUDIENCE MEMBER: (Not using microphone) The one that was out there.

COMMISSIONER CENTER: That’s the one, the first page, this morning.

AUDIENCE MEMBER: (Not using microphone) No, I don’t think so.

AUDIENCE MEMBER: (Not using microphone) No, I don’t think so.
COMMISSIONER CENTER: That’s it. This is AB 60, first page, that we had this morning.

MS. MELTON: It’s spelled M-e-l-t-o-n.

COMMISSIONER CENTER: You can take the chair again. You did a good job moving it along.

MS. MELTON: Mr. Chairman, commissioners, thank you. I would like to ask for an exemption for 12 hours for the particular industry I’m representing here today. I work for a nonprofit group in northern California, and we serve children and adults with developmental disabilities. Often they’re dual-diagnosed. We’re mandated by the Department of Social Services and other agencies to provide 24-hour care and respite care.

And the flexibility in the schedule we have now works very well. Employees have come to us and said, “How are we going to handle AB 60?” Again, they do what they do out of passion for bringing these consumers the highest -- to more independence in their lives.

We also provide a three-to-one ratio, which, again, in San Mateo County, we have an unemployment rate of 1.9 percent. We’re struggling with that also.

And I think that’s all I have to say. We’re reimbursed by the hour by the state, and reimbursable at $7.59 an hour. In March of this year, we took a check
and we decided we just couldn’t pay our employees that
dollar, and we increased it to $10.00 an hour, which is the
bottom. But we’re still working to try and increase that wage. And if this goes through, we’re not able to have
the flexibility, then it’s going to be difficult for us to continue to raise -- have a livable wage.

COMMISSIONER DOMBROWSKI: Nancy Payne?
(No response)

COMMISSIONER DOMBROWSKI: Mike Murrey.

MR. MURREY: Good afternoon, commissioners.

I’ll try to be brief so that you can on with our day.

My issue deals with alternate work schedules.

I’m Mike Murrey. I work for Staples’ Distribution Center in Rialto, California. Our employees currently are on 10-hour work schedules.

In the law, Policy 1980, “Alternative Workweeks,” it consisted of hours and days agreed upon.

This resulted in overtime for days not part of the regular schedule. Now, in AB 60, there is no mention of overtime for work in excess of the days scheduled. And you have talked about the time and a half situation, but when it gets to the double time, it gets rather confusing, by saying that double time on those days worked beyond the regularly scheduled workday.
I guess my question for you -- I notice that you put out a new, revised version -- and I had a couple of quick questions. One would be, are the days to be stipulated in the alternative workweek schedule? It appears so when you read the double-time provisions. If the days are stipulated, when does overtime become mandated on days not part of the schedule?

Let me give you an example of one of our work schedules, and maybe this will help clarify. Our employees -- or we call them associates -- will work Monday and Tuesday, be off Wednesday, Thursday, work Friday and Saturday. Now, usually Wednesday is designated by us as an overtime day; they would be scheduled overtime. But there are occasions when an employee will call in sick on Monday. Should I have to pay the double time -- time and a half and then double time on Wednesday? I would hope we wouldn’t, because that’s -- you know, that’s rewarding someone for not coming in to work. We would prefer looking at it after they work 40 hours in a week.

Do you have any comment on that?

If you could look at, I’d thank you.

COMMISSIONER CENTER: Yeah. You could send us a letter, if you want.
MR. MURREY: I already -- you have it.

COMMISSIONER CENTER: Okay. Thank you.

MR. HOLOBER: Thank you. Richard Holober, California Labor Federation.

COMMISSIONER DOMBROWSKI: It’s not three minutes five. We’re going to cut it off at six o’clock. So, let’s try to accelerate, for everybody.

MR. HOLOBER: I will try to be brief. But, you know, I just want to make a preliminary comment.

Last -- this prior year, up until whenever the day was in July that the bill was signed by the Governor --

COMMISSIONER CENTER: Could you speak into the microphone?

MR. HOLOBER: Yes.

This bill, this new law, went through exhaustive hearings, meetings, testimony, discussions with various parties on every conceivable side of the issue. I don’t think there is another piece of legislation that has been vetted as thoroughly as this bill. And I’m disturbed that on the strength of the testimony of two witnesses who started raising an issue, which we believe is very dubious jurisdiction here for the IWC, that commissioners were making motions and setting things for hearing. We
spent an enormous amount of time working on this legislation, and we hope that the Commission will allow for the proper process here for testimony, for proper notice, so that it’s not just a question of who grabs the mike and makes the most noise.

On the question of the hospital industry, I want to make a couple of comments. First, while I think you’ve heard from the attorney half of the story -- the attorney for the Hospital Association -- there’s a whole other half of the story that you have not heard, and that has to do with the economics of this industry and the amazing cost savings that the hospitals achieve when they go from an 8- to a 12-hour shift. And this was discussed at length over a period of about twenty years on this subject. And the final word was the voters voted, and elected a Governor and a Legislature that believe in the 8-hour day as a standard. So, it’s not a question of did they bring 500 people to one hearing. We brought 500 or 1,000 or 2,000 people to hearings as well.

The hospital industry has been the most aggressive industry for twenty years in getting exemptions that nobody else in the State of California ever had. First they got the 12-hour, 36-hour week. That wasn’t good enough. They got the 12-hour day, 40-
hour week. That wasn’t good enough. They got the 80-
hour biweekly payroll period. That wasn’t good enough.
They also got exemptions from who can be designated as an
administrator, an executive, or a manager that no other
industry in California ever got. And that wasn’t good
enough.

So, finally, they came to this Commission and
said, “We don’t want our folks voting on this; we would
like to impose it. Please get rid of the voting
procedure. We don’t want to have any regulations at
all.” And really, part of what you’re seeing today is
the product of the greed of the employers in that
industry.

Regarding the questions of nurse midwives and
other advanced practice nurses, I think there is a real
question before the Commission of whether the so-called
advanced practice nurses are covered by the registered
nurse language. Now, we rewrote that language. The old
language said registered nurses are professionals;
however, they are not exempt unless they meet certain
criteria that would qualify them either as an executive,
administrator, or professional. Well, that’s redundant
language -- that’s confusing language: they’re not
professionals unless they meet the definition of a
professional.

We removed that last phrase. So, now they are not exempt unless they meet the standard definition for an administrative, like someone who supervises a nursing department, or an executive. They can no longer be exempted as professionals. We recognize that they are professionals. We also recognize that they are protected by overtime. The same is true with licensed pharmacists. So, those are two professions that are now given different standards than other professions.

Just a couple of quick points here. On some procedural matters, I don’t know -- I haven’t read your interim regs, but I think there’s a real issue here about who could continue to work a 10-hour day on an individual basis if they were working that 10-hour day on July 3rd, 1999. The issue here is whether that was a voluntary arrangement or not. And our -- we would argue that if an employer imposed a longer than 8-hour day without a vote under the old rules, and if that was a condition of employment, that is not voluntarily working. So, in that case, we don’t believe that an employee would voluntarily continue working -- because their only choice here is to quit their job -- most workers are reluctant to do that.

So, we hope you will pass some very tight
definitions on who could continue to be considered voluntarily working a 10-hour day.

The other point I wanted to make was that I think we need to adopt procedures to repeal alternative workweeks. AB 60 requires you to do that during the spring. But the question is, what happens after January 1st until you adopt final wage orders? Under the old wage orders, there was a process to petition and have a vote to repeal an alternative workweek. And we want to make sure that those kinds of procedures are back in force before you come up with your final procedures.

I think there is a huge issue here regarding the healthcare industry, regarding what the hospitals are doing to workers. You know, you’re seeing an expression of anger, concern, and fear. This is something that the hospitals, I think, have brought on themselves. There’s absolutely no reason that they need to act until summer. And I think what they’re doing is really hurting their standing here.

And I realize there’s probably little, if anything, you can do about it. But I think any expressions you could make would be -- would be helpful to, you know, admonish them from continuing that.

COMMISSIONER McCARTHY: I’d like to just make a
couple comments.

You know, you made the point, you said, well, when you drafted the bill, you said you spoke to everyone so we don’t have to consider this. It’s certainly my impression you didn’t speak to the midwives as a group. That was pretty clear to them here, and maybe the advanced practice nurses. Maybe they just don’t count.

MR. HOLOBER: They testified at the hearings.

COMMISSIONER McCARTHY: The midwives did?

MR. HOLOBER: Yeah. Representatives testified at the hearings before the Legislature made its decision.

COMMISSIONER McCARTHY: Okay. That was -- well, apparently they did. Well, I stand corrected in that case.

So, a lot of them seem not to have been aware of it and don’t seem to have their input. But whatever the case may be, leave it at that.

Go ahead. That’s fine.

MR. HOLOBER: Well, you know, just one other comment. I realize you’re not bound here by NLRB standards, but the NLRB would consider those kinds of advanced practice nurses to be -- share a common community of interests with other registered nurses and would be in the same bargaining unit. I think that’s
just a point you should look at when you make your
decision.

COMMISSIONER DOMBROWSKI: Thank you.

COMMISSIONER CENTER: Sonia Moseley.

And again, in deference to time, if you’d bring
something new forward so -- we’ve got one hour.

MS. MOSELEY: Good afternoon. I gave you my
statement --

COMMISSIONER CENTER: Thank you.

MS. MOSELEY: -- so I won’t go over that. But I
do have to address the issue. I’m currently -- I’m here
-- Sonia Moseley, Executive Vice President of the United
Nurses Associations of California, AFSCME. I represent
some 10,000 registered nurses, and among them are 300
advanced practice nurses, which include registered nurse
practitioners. I represent 100 physicians assistants,
pharmacists, et cetera. I have a group of nurse-midwives
that are asking to come into our union. And I can tell
you, the reason they want to join the union is they do
want to be covered with overtime.

I know there’s a group who don’t want to be
covered, but I ask you to look at this issue. You need
to know it’s not necessarily universal, and it’s not just
nurses, or advanced practice nurses, that are already
represented. The ones that belong to my union are very happy that the overtime will be working, and they know they’re working and should be paid appropriately. So, I would just ask, before you act upon anything, you need to be talking to a broad group of this classification.

And it’s absolutely true what Richard said, nurse anesthetists and nurse practitioners have been put into our bargaining units; it’s the same occupation that registered nurses are. But they are considered employees under the National Labor Relations Act and would be covered as such.

The only thing that I would ask -- and I have it written -- is I concur with the position that’s been presented to you by the California Labor Federation. And it appears that there need to be some interim regulations --

COMMISSIONER CENTER: Grab the mike.

MS. MOSELEY: -- some interim regulations with respect to -- it seems like there’s a dispute over whether we’re covered in the interim if we have a collective bargaining agreement which calls out for straight-time 12-hour shifts. Some of the employers are questioning that. And for the nonunion -- for the nonunion nurses, again, I really sympathize with their
wages having been cut 14 to 16 percent. If there’s anything that can happen to give them some relief in that area, it would be kindly appreciated.

Thank you.

COMMISSIONER CENTER: Thank you.

Bob McCloskey.

MS. ROWE: (Not using microphone) He’s not here.

COMMISSIONER CENTER: Ethel Rowe.

MS. ROWE: (Not using microphone) She’s here.

COMMISSIONER CENTER: All right. You’re the one that had to stay, then.

MS. ROWE: My name is Ethel Rowe, spelled E-t-h-e-l, R-o-w-e. I’m a representative from SEIU Local 399. I submitted my testimony to you. And being here as long as everybody else, I’ve heard a lot of testimony, so I’m going to cut this short.

And I just want to ask the IWC to please quickly help resolve some of the misunderstanding that some of the employers have. We have a collective bargaining agreement. We’re now -- with different employers cutting wages, it’s an open season for them. We’ve told them that they are exempt. They continue to say that they have to do this, and we don’t think that they should be
doing it, so we ask you to act properly to help us
address these employers.

Thank you.

COMMISSIONER CENTER: Thank you.

Susan Mye (sic).

MS. NYE: (Not using microphone) Nye.

COMMISSIONER CENTER: Nye. Sorry.

MS. NYE: (Not using microphone) Ethel and
Richard more than covered it.

COMMISSIONER CENTER: Okay.

Mary McCulley.

MS. McCULLEY: My name is Mary McCulley, and I’m
a nurse practitioner employed in Los Angeles. And I’ll
keep it very brief. I’ve submitted written testimony
also.

One thing I just would really to make clear, I
think that my colleagues, the certified nurse midwives,
presented very eloquently about the importance of
advanced practice nurses being considered separately. I
currently support professional nurses, and I wish they
were all exempt, but I’m not going to address that issue.

Nurse practitioners, nurse anesthetists,
certified nurse-midwives, and clinical nurse specialists
are all designated by the Board of Registered Nursing in
California as advanced practice nurses. Most of us hold graduate degrees and have had to go through training and extra education to be able to provide patient care as a provider.

We do not work at the bedside, we do not work shifts. We work in physician extender roles. In my position, I work in an intensive care unit with a medical team to provide care to patients. And for us to be restricted to 8 hours would definitely take away from patient care and quality that we are able to provide as providers.

I think you have before you so many issues because nursing is such a diverse profession, even in the advanced practice group. But I think that if you can just keep in mind that what we do is a different type of role, as professionals in the advanced practice role. And to restrict does definitely make a difference in what we’re able to do in our profession. And it definitely will impact our hiring in California. I certainly would consider working in another state if I’m not able to practice and provide the care as a nurse practitioner that I’m able to do now.

I’m not going to prolong this because I know we’ve all been here a long time. I just would like to
ask that if you do look at the nurse-midwife or if you
look at the advanced practice group as a whole, because
we all operate under similar statutes that they were
talking about.

COMMISSIONER CENTER: Thank you.
Robert Cantone.
(No response)
COMMISSIONER CENTER: No?
Bob Tollen.
MR. TOLLEN: (Not using microphone) I’m here,
and in view of the hour and what we’ve submitted to you
in writing, we’ll take a pass.
COMMISSIONER CENTER: Very good.
MR. TOLLEN: From the California Ambulance
Association. Thank you.
COMMISSIONER CENTER: Right. We’ll review your
written testimony.
Francine Alba.
MS. ALBA: Hi. I’m Francine Alba, A-l-b-a. I’m
here representing -- from the board of -- I’m on the
board of directors of the Sherman Oaks Chamber of
Commerce, and we have fifty restaurants, over 4,500
people. I run four restaurants, and another owner, whose
letter you have -- she had to leave -- she has seven
restaurants. And together we sat and formulated what we wanted to send to you.

The first thing that I have learned, after being here all day, that I think is evident for everybody, is that one suit does not fit all. It seems to me that the thing that wasn’t considered when this measure was put out is that there are a myriad of people that want choices. I’m a little bit confused, quite honestly, as to who thought it was their right to take choices away.

(Applause)

MS. ALBA: Last time I looked, that’s what I meant -- we still live in America, which means freedom of choice. That means an employer has the freedom to run their business within the Department of Labor standards, and if it wasn’t good enough for an employee, they could go down the block to work with somebody else. As an employee, I certainly had the choice when I was working; if I didn’t like the employer that I was working for, I could leave.

The restaurant industry in particular has far too much competition to force hours on anyone. We barely can get waiters and waitresses to comply with sanitary and uniform standards that we need in the industry. We certainly cannot force hours on anybody.
I feel that in our time, it is no longer necessary for these kinds of measures to be taken to protect the worker. The Department of Labor does a fine job of that. To their credit, the workforce is enormously sophisticated in their labor rights. Even those who do not speak fluent English can teach you a thing or two about the labor laws.

(Laughter)

MS. ALBA: I have found the Department of Labor to be fair, to uphold the laws that need to be done, and I have found the workforce, in ten years of running restaurants, that it’s very clear that if there anything they feel is unfair, that they will go and seek counsel from the Department of Labor. So, I am totally confused as to why choice is being taken away from everyone involved.

Now, my last round with Wally Knox, who, by the way, is my -- my representative and his constituency. Through our Chamber, we had many meetings with him at the eleventh hour of this measure going through, and I’m here to tell you that Wally told us, myself included, that you were the hope for those who were not exempted.

I have sat here for eight hours today hearing you tell people that you cannot do anything about
exempting them. There’s a bit of confusion there,
wouldn’t you say?

COMMISSIONER McCARTHY: You’re right.

MS. ALBA: Technically, a lot of the restaurants
that I came with this morning, a lot of the restaurant
runners and owners, we are competitors, but we stand
together in this.

I want you to know that AB 60 will be thwarted,
and I’m going to tell you how -- not by the employers.
We’re going to comply, because we have turned into
dutiful little labor keepers. We keep the labor laws to
the letter of the law because we cannot afford to do
anything else. And I’m going to tell you how it’s going
to be thwarted. It’s going to be thwarted by the very
people that were meant to be helped by this law.

Our people who work in the restaurant industry
will do the following: they will be -- we will have to
cut the shifts at 8 hours. You’ve already heard
testimony today from a very fine restaurateur on how
market is way too small to be able to absorb this.

However, these very people that you are
attempting to help will then take -- and they will then
drive, causing more congestion and more traffic, to the
next job. Instead of working the 10 or 12 hours that
they wanted to work by their choice, they’re now going to work 16 because they are going to get a second job.

When we put notices up -- because we like to warn everybody way in advance of everything that’s going to happen -- we were inundated. I have a package for all of you to read of those letters.

There’s a faction of the workforce in the restaurant that’s being very overlooked. First of you, you have to remember there’s two kinds of restaurant industry: there’s the big, huge, corporate industry with bigger margins, and then there’s the smaller groups that I’m here to speak for. Within that group, there is a huge workforce that is growing daily, that I’m sure is not new to you -- not just in our industry -- it’s everywhere -- it’s the single mother. They have a particular problem, in that they have to both be a mother and they have to work. We have a huge number of these gals. And they make their own schedules.

We pride ourselves, in our company, and most of the people that I know, in letting our employees make their own schedules. We feel, “Happy schedules, happy employees, happy campers result in happy customers.”

They make their own schedules. They want to go to school. They have visitation from the dad, or not.
They have difficulty in childcare. So, they all make their own schedule, and we let them do that.

When we put this notification up, they were the first people we heard from, because they’re going to be cut at 8 hours. What’s worse is they can’t make the money that they were used to making, and they can’t extend their daycare situation to now continue to work for the amount of hours that they were used to working in a few days over a whole week.

The other group that we heard from was students, because they work their school schedule around. They work a couple of long days for that money that they need. They are being supported by parents, but they need extra money, and they have to work in school, at their schoolwork. We’re going to lose most of that workforce because they cannot work 8 hours. Many of them work split shifts, or they’ll come for a couple of days with long hours, and we won’t see them again till the next week.

COMMISSIONER CENTER: A question. But, first, what do you propose we do to resolve this?

MS. ALBA: Well, my question to Wally Knox was why wasn’t the restaurant industry being exempt, because we have so many problems in this state that are
indigenous to only California -- such as tip credit and other things that we haven’t -- have not been given to this industry. But he said it was too late for that because he had heard from enough of us. He told me we needed to come to you, that you were the guys that anybody that got messed over or glossed over, glossed over for exemption, it would be handled with the IWC. We need flexible schedules, is what we need.

COMMISSIONER CENTER: It’s our opinion that we don’t have the authority to exempt now because of the statute. I think your resolution is going back to the Legislature, if that’s your problem. But I don’t know what we can do for you.

MS. ALBA: You don’t know -- you don’t know what you’ll do for me.

COMMISSIONER CENTER: I don’t know what we could -- what we could do for you.

MS. ALBA: I’m glad I got up at six o’clock in the morning to come and hear that!

COMMISSIONER McCARTHY: Well, I’m confused. I mean, as I say, this is all new and it’s understandable there’s confusion. But the bill, which I have in front of me -- and maybe, as I say -- I’m not saying I’m not in error -- but to read you the exact language, the bill,
you know, that we’re talking about, would,

“-- authorize the Industrial Welfare Commission
to review, retain, or eliminate exemptions from
the hours requirements that were contained in a
valid wage order in effect in 1997, and would
authorize the Commission to establish additional
exemptions therefrom for the health or welfare
of employees in any occupation, trade, or
industry, until January 1st, 2005.”

That sounds to me like we can make exemptions. And as I
say, I know -- I know there’s honest disagreement.
Nobody here, none of us, is trying to sell you a bill.
But that’s my interpretation. And --

MS. ALBA: Well, the author of the bill himself
told me at Art’s Deli in Studio City, with the rest of my
Chamber, please come to the IWC hearings if we were left
out of the exemptions, and he does see that the
restaurant industry does have some unique problems
indigenous only to the restaurant industry.

COMMISSIONER BROAD: Okay. Let me ask you this
question. Basically, from 1913 to January of 1998, you
were under the system that we’re going back to on January
1 of 2000. So, this is my question to you. You had this
thing, whatever it is, all this flexibility, for exactly
two years, but in the previous years -- and I know there’s been restaurants in the State of California in all that time, including yours, presumably -- you functioned under the system that we’re going -- how did you manage to function with single mothers and students and so forth in the period for that industry from January -- from 1913 to January of 1998?

MS. ALBA: Well, I can’t speak for 1913, but there was a big, huge, riotous celebration when it went back to the 40-hour week for the staff. As I said, the restaurant employers themselves will just have to employ more people and have strict standards of the 8-hour day. And that’s how we did it.

However, we do have employees that are crying out -- and I promised I would cry out with them and for them -- that they want to be able to have the choice. And really, that’s what I’m here about, is choices. I don’t understand why the choices have been taken away. I don’t understand why free enterprise is no longer free enterprise. I don’t understand why the government -- I don’t understand why your staff are not being subjected to AB 60.

(Applause)

MS. ALBA: When Wally -- when we met with
Senator Alarcon and Wally and the rest of our guys who represent us, we asked them if their staff was going to be held under this measure, and they said no. Clearly, it must be -- there must be some people besides the unions that need to be thought about -- besides union people, there must be other people that need to be consider when you consider implementing this measure.

COMMISSIONER DOMBROWSKI: Ma’am, you have an effective association, the Restaurant Association, that’s involved with us. Jon Ross spoke here this morning. I mean, the question, I don’t think, is that -- we do have the authority to establish exemptions. The question is how you get three votes.

So, I would suggest you work on the process through your association.

COMMISSIONER CENTER: Put your guys to work.

MS. ALBA: Well, I’m here because I don’t want to sit back and let somebody else do the work that hasn’t been accomplished fully. And I want you to know that there are real, living, breathing people out there who are going to be affected by this, that there are gals who have problems, that have a child and need to work. We employ all these people, they’re all our employees. And they want the freedom of choice, because I think that’s
what we’re about.
And, yes, we have talked to CRA about this.
Thank you.
COMMISSIONER CENTER: Okay. Thank you.
James Martens.
COMMISSIONER BROAD: He spoke.
COMMISSIONER CENTER: He already spoke.
MR. SIMMONS: If I can make a point, I was in a
-- yeah -- I was listed as a group, and these people came
at in at a quarter to nine this morning, and they have
not --
COMMISSIONER CENTER: I’m going through the
list.
MR. SIMMONS: But they’re just not on the list,
because they were listed as a group. That’s my point.
COMMISSIONER CENTER: Well, when we get done
with the list, they can speak, if we’re still here at
six.
AUDIENCE MEMBER: (Not using microphone) We’ve
also been here early. We’ve all been here early.
COMMISSIONER CENTER: Is there James Martens
here, please?
COMMISSIONER BROAD: He spoke.
COMMISSIONER CENTER: Okay.
AUDIENCE MEMBER: Harris.

COMMISSIONER CENTER: Harris, sorry. Okay.

MS. NOWICKI: I’m last on the list, I think.

I’m Donna Nowicki, N-o-w-i-c-k-i, Children’s Hospital of Los Angeles. I’m a nurse practitioner and family practice nurse.

And the only thing I’m going to add to what’s been said already is just, one, I want advanced practice to be looked at again, because I think there’s some misunderstanding of what advanced practice does. And number two, then, if jobs really are being threatened -- if I leave -- I start at 6:15 -- if I leave at 2:45 in the afternoon, I leave when the emergency rooms are just getting busy, when the clinics are just getting busy. I’m a consultant. They call me. They expect me to be there.

They’re threatening with substituting nurse practitioners with physicians’ assistants, because physicians’ assistants are not mentioned in this bill.

So, our jobs are being threatened, and I just -- I just want to leave that where it is. I’ll send you a letter. 

COMMISSIONER CENTER: Thank you.
MS. NOWICKI: Thank you.

COMMISSIONER CENTER: Susan Carson.

MS. CARSON: I think everything’s in my testimony I’ll give you.

COMMISSIONER CENTER: Thank you.

Fred Mills.

(No response)

COMMISSIONER CENTER: Marianne Cotter.

(No response)

COMMISSIONER CENTER: Cynthia Everett.

AUDIENCE MEMBER: (Not using microphone) She already spoke.

COMMISSIONER CENTER: Kari Ratterich (sic), from Longs Drugs.

(No response)

COMMISSIONER CENTER: Jane Downs.

MS. DOWNS: I’ll be very brief. My name is Jane Downs, D-o-w-n-s. I come with no union or lawyer. I’m a self-made woman. I have a company called Along Came Mary! Productions. We are a catering and party production company.

We are an industry all of our own. We are a party production and catering company. We range in events from 100 people to 5,000 people. We employ people
sometimes one day a week for 12 hours. Sometimes these
people work for us ten times in a year, and that’s it.
But sometimes it’s 500 people at a time, and that’s the
volume for us.

I’m sure that AB 60 was not meant to devastate
small businesses, but it will. It will hurt us very
badly. We would like to ask for an exemption. I don’t
know who to go to. We don’t have a union or labor
organization. We are unto ourselves.

On a related note, when the law changed a couple
of years ago so that it was a 40-hour workweek, we raised
what we pay people. We don’t pay one person under $10.00
an hour, not one. And we did that to allow for the
change so that people would get basically what they got
before. And so, when that law changed, we thought it was
there for good. We didn’t think that it would change in
a couple of years based on some legislation.

So, I think we stand alone. I doubt if there
are other people in my industry here, but I’m fighting
for my company. This would be a huge -- hundreds -- at
least, I think, between $50,000 and $100,000 a year this
would mean to us in overtime. We had a party last week
for 8,000 people. We had 600 people employed. They
worked on an average of 12 to 14 hours in one day.
That’s all they worked the rest of the whole week.

That’s all. Thank you.

COMMISSIONER CENTER: Thank you.

(Applause)

COMMISSIONER CENTER: Hermie --

MS. MONTANI: (Not using microphone) Yes.

Hermi Montani, right here.

COMMISSIONER CENTER: Yeah.

(Laughter)

COMMISSIONER CENTER: Bingo.

MS. MONTANI: You know, I have the same problems as everybody, and I come in front of you to talk to you about a solution.

I am in the cheese manufacturing business, and I come here not to represent my employer; I come here to represent my employees. My employees were very much in tune with what the law was before. And you know how it is, once you get a taste of something good, you don’t want to go back to that other stuff, in reference to what you mentioned before. We worked 8 hours, and that was life, and that’s all they had. Now they got a taste of 12 hours. At the beginning, they didn’t really want it. They got a taste of 12 hours.

We have single moms. And what they do is they
switch and they take care of each other’s kids, because we have two teams, Team A and Team B. We have fathers -- this is a small community -- that’s about 300 employees. We have fathers that take turns in coaching the soccer team for their kids, because they all go to the same soccer team. We have the coaches and the assistant coaches.

And our employees, we met with our employees, we heard the petition, we went to an attorney. We wanted to find out could we do what they wanted. They said no, the law didn’t allow it. We came with -- they came up with a solution: “Do the alternative workweek, 10-hour day, pay us 2 hours of overtime, so we end up working 12 hours. You’re happy, we’re happy.” One week, they work three days; the following week, they work four days. At the end of the pay period, because we have biweekly pay periods, they end up working over 80 hours, 84 hours, but they end up getting paid like 12 or 13 hours of overtime. We as an employer do not mind paying that overtime.

So, what I am here to ask of you -- and I submitted information that was written up by our employees, because we wanted to be as real as possible -- you have to dot all your i’s and cross all your t’s; otherwise, you get slapped.
I’d like for you to please consider that, read it, and say yes to our employees. They can have 12 hours. We’re willing to pay the overtime. So, if you do say yes, is it going to be before January 1st? Otherwise, I have been practically interviewing employees up the ying-yang, not knowing if we’re going to hire them or not. And I’m being honest with them, and I told them that maybe we will hire them throughout the rest of the year because our business is growing. Okay?

And that’s all I’m here to ask. I come with a solution. I have the same problem as everybody else, but I come with a solution. And I’d like for you to please consider that solution and allow us to put that forth.

Do you have any questions?

COMMISSIONER McCARTHY: No, but I have a quick comment. I realize the lateness of the day, so I’ll keep it brief.

But, you know, the Commission does have, as I say, authority, it seems to me, to make many exemptions, but in reality, the number of exemptions that can possibly be granted, simply for calendar reasons if nothing else, is limited.

And I would really urge people to not get sidetracked necessarily exclusively with this Commission.
I mean, there are other ways of skinning a cat. And I
would urge you, all of you, anyone who’s upset, to write
their legislators --

    MS. MONTANI:  We did. I did.

    COMMISSIONER McCARTHY:  -- and write the
Governor and --

    MS. MONTANI:  I did.

    COMMISSIONER McCARTHY:  Well, do it again. Do
it more often. I mean, it’s the old premise: if you
can’t make them see the light, maybe they’ll feel the
heat.

And --

    MS. MONTANI:  Well, I didn’t vote for this
Governor.

    COMMISSIONER McCARTHY:  Well, whatever. I
wouldn’t say that in your letter, but I -- no, I am
serious, that there is -- you know, maybe in the longer
term, whatever --

    MS. MONTANI:  I voted for people that I think
are really good; I don’t care what party they belong to.

    COMMISSIONER McCARTHY:  But I -- turn the heat
on.

    MS. MONTANI:  I did. And you know what?

They’re already third-degree burned, and they’re still
not feeling any pain, you know, because he’s not the one that has to deal with the rest of us labor people. Thank you.

COMMISSIONER DOMBROWSKI: Hang on.

COMMISSIONER CENTER: Please --

COMMISSIONER DOMBROWSKI: Just as a take-off of what you said, I talked with Commissioner Broad about this, and I’m going to submit a letter to the Labor Commissioner, but a couple of companies that contacted us and raised a question about, if they voted in alternative workweeks and these alternative workweeks entailed working more than 10 hours, but they were willing to pay overtime for anything over 10 hours, was that permissible? And as far as we can see, from our perspective, we think that is. And we’re going to submit that to the Labor Commissioner and just get that abated.

MS. MONTANI: Thank you. I really, really appreciate even that you’re considering that thought, really. I really do. Thank you.

COMMISSIONER CENTER: Thank you.

Bob Hay.

MR. HAY: My name is Bob Hay, H-a-y, General Manager of Poly-Tainer, Incorporated, a plastics flow-molding, manufacturing and molding company, in Simi
Valley, 250 employees. We’re working 12-hour shifts. We are on 24-7. Our machines run continuously. All our employees, it’s the same deal. Everybody wants to stay on 12-hour shifts. Once they’ve been there, they don’t want to go back. Yeah, we may have before, but we don’t want to do it again.

So, if you feel comfortable with going to AWS, voting in a two-thirds vote on that 10-hour straight time and 2 hours overtime, I mean, is that something I can take back and implement tomorrow?

COMMISSIONER BROAD: Well, I suggest that you take a look at AB 60. I’m willing to sign the letter asking for an interpretation of this with Commissioner Dombrowski.

However, if you read -- and I don’t want to be -- I’m going to say this on the record, and I’m not -- I’m not trying to confuse you, but Section 511(b) of the Labor Code, which is a new section, says:

“An affected employee working longer than eight hours but not more than 12 hours in a day pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of no less than one and one-half times the regular rate of pay
of the employee for any work in excess of the
regularly scheduled hours established by the
alternative workweek agreement and for any work
in excess of 40 hours per work.”

Then it goes on to say for hours beyond 12, it’s double
time. And that seems quite clear on its face to me, that
if you have a regularly scheduled 4-10 arrangement and
you require employees to work two more hours, that you
would owe one and a half times their normal rate of pay,
overtime pay, for hours 10 through 12, or 10 and 11.

That is my sense of what the statute --

MR. HAY: 11 and 12. 11 and 12.

COMMISSIONER CENTER: Yeah, 11 and 12.

COMMISSIONER BROAD: Yeah. 11 and 12 -- I’m
sorry. 11 and 12. That, to me, seems quite clear on the
face of the statute. And the difficulty --

MR. HAY: Well, the problem --

COMMISSIONER BROAD: -- the difficulty for us is
that it’s not really appropriate for us to sit up here
and pass on people’s individual questions as such. That
is the interpretive role of the Labor Commissioner. And
we’re not meant -- it’s not meant to dodge this. And
perhaps it’s appropriate for us, when we issue this
interim wage order, that on the back of that wage order
where we are allowed to put our reasons for why we’re
doing what we’re doing, that we address this issue. And
I would encourage you to write us and say, “Please
address this issue when you draft your Statement of
Reasons.”

And hopefully, between now and that time, we’ll
have an opinion back from the Labor Commissioner. It may
already be in the document that the Labor Commissioner
gave to us today. I don’t know -- we’ve haven’t had a
chance to read that. So -- and you should probably read
that as well.

But, I think, in the meantime, you know --

MR. HAY: Well, here is the issue, though. I
mean, I’ve talked to at least a dozen lawyers. I mean,
you can’t get the same guy to say the same thing in the
same sentence. I mean, they’re constantly changing their
view of what is this animal and how do we skin it.

And so, as they look at it, they said, “Well, if
you do that, then you’re really running 12-hour shifts,
and that’s not what the law is trying to do. They’re
trying to get you to go to like four 10’s, something that
lends to 40 hours a week."

COMMISSIONER BROAD: Well, see, I disagree with
that. What the law says is that if you work a person
beyond 8 hours a day, you pay time and a half, beyond --

MR. HAY: 12, double.

COMMISSIONER BROAD: Right. It is a -- overtime is a penalty, in effect. It’s always been a penalty on employers for working longer than, quote, the “standard” 8-hour day. When you have an alternative workweek, you’re sort of shifting that arrangement of what the standard day is. And that’s what AB 60 does, in my opinion.

And then, I think the bill quite clearly says that beyond that schedule, you have to pay overtime. Now, that doesn’t say you can’t go beyond that schedule. And, you know, with all deference -- I know -- I’m a lawyer, married to a lawyer, and know a lot of lawyers -- but a lot of lawyers can be wrong too, and a lot of lawyers can give advice which, you know, may get their clients into litigation rather than solving a problem. But I think you can get a more definitive answer by writing the Labor Commissioner and getting an answer. And I think that that’s something that you can take to the bank.

MR. HAY: Okay.

AUDIENCE MEMBER: (Not using microphone) Where can we get a copy of that -- I mean, what they just gave
you?

AUDIENCE MEMBER: (Not using microphone) He indicated that it would be on the Web within a week.

COMMISSIONER CENTER: On the Web site?

AUDIENCE MEMBER: (Not using microphone) On the DLSE Web within a week.

MR. HAY: Then, unless you have any other questions, I’ve already submitted testimony. And I just wanted you to have this, but I don’t think these people have a clue, what the hell they’re talking about, because this is really going to effect these manufacturing facilities in the most negative fashion. And I told that to Wally while he was here, and I gave him a copy of what I submitted to you.

I don’t want to take any more time.

COMMISSIONER CENTER: Thank you.

Is this Gabie Lopez?

MS. LOPEZ: I just want to say that I wasn’t going to be here today. The only reason I came in was that, this morning, one of my employees brought four sheets of signatures that various employees got together. And I knew Bob was coming -- and he’s my co-worker that just came and spoke to you about the problems that they’re going to have if we go back to 8 hours. Two of
them are single members who -- the way we work, they are able to live in the same home. Both of them work 12 hours. They get overtime every week. They each have two children. But because of the way they work, they’re able to not pay childcare, not have to pay for carpooling because they swap cars.

So, where is helping the employees and where is it hurting them? I just -- I don’t know. The only reason I came in is to bring the petition that they signed. It is in Spanish. Well, basically, they think that it’s our decision to go back to five days, 8-hour days -- five 8-hour days. And they basically are petitioning for, please, the company to take them into consideration.

And what I just told her was, understand that this isn’t something that we are doing. It’s something that the company cannot afford the cost to continue to work 12 hours. And that’s why we’ll go back to the 8 hours.

So, even though it is in Spanish, it was something that they brought to me in the morning, and I thought that the least I could do was would bring it in and submit it to you with the letter that Bob drafted.

COMMISSIONER CENTER: Thank you.
Thomas Halter.

(No response)

COMMISSIONER CENTER: John Zaimes.

(No response)

COMMISSIONER CENTER: James Davis.

MR. DAVIS: Hi. James Davis. And after sitting here all day, I’ve learned two things: one, the Labor Code has nothing to do with delivering babies; and, number two, if you masturbate long enough, you go blind.

(Laughter)

MR. DAVIS: The reason I’m here is I’m one of the plaintiffs’ counsel who are prosecuting the class action cases on the exempt employee issue, where companies are taking a thousand employees at a time and saying they’re exempt, and then working them 80 or 90 or 100 hours a week.

And when you approach them on it and you say, “But” -- they’re entitled to individual prove-ups of exempt status -- “when are you going to do it?” the answer is, “Never. You can’t make us. We don’t got to.”

And what I would like to see, and what I’m requesting of the Commission, either in the wage orders themselves under the section that refers to administrative, professional, managerial exemptions, or
on the note on the back, simple language that says, “You have to do the audit before you make them exempt. You can’t make them exempt by a blanket rule, work them hundreds of millions of dollars of overtime, and then wait to get caught.” It’s a criminal violation to not pay wages. And it shouldn’t take plaintiffs’ counsel suing companies for hundreds of millions of dollars to get the companies to realize this isn’t how the system works. And somebody needs to do something about that.

COMMISSIONER BROAD: Well, let me just ask you this question -- I mean, I’m quite sympathetic to this, and there’s been tremendous abuse of this in the last decade -- but, I mean, if we require them to somehow perform an audit, they’re just going to fake the audit if they want to reach the right result. So, what’s your response to that?

MR. DAVIS: The answer is, is that we have the experts that do those sort of audits for us. And we know that the audits can’t be faked, for the simple reason that, one, you look at what the company’s manuals and procedures and policies are. One of the things that I always ask the defense experts and the company presidents is, “Why don’t you just incorporate the statutory language in your manual and then train your managers so
that they know what ‘exempt’ means?” That seems like a
real simple thing. “We don’t want to, we never have, we’re not going to.”
And in regards to the time, it’s very simple. You do you time studies. And despite the fact that I’ve taken on a labor expert who says, “Well, yeah, I watched the guy for six hours,” “Yeah, but did you watch him for a year?,” because that’s the issue. “Nobody ever does that.”

And that’s why -- what we would like to see is the just the power to be able to go in on a preliminary injunction and say, “If you haven’t audited the class of 1,000 people, don’t treat them as exempt.” The burden is on the employer, but there’s no enforcement, other than paying money, a million dollars down the road.

COMMISSIONER CENTER: We’re going to have a special hearing on duties and exemptions and -- later on. You should be at that hearing to testify --

MR. DAVIS: Thank you very much.

COMMISSIONER CENTER: -- and bring some data.

Thank you.

B. J. Snell.

DR. SNELL: (Not using microphone) I’ve already testified.
COMMISSIONER CENTER: Okay. M. K. --

MS. DETE: (Not using microphone) Dete.

COMMISSIONER CENTER: Dete.

MS. DETE: (Not using microphone) Ginny Pinkerton will read our remarks, for the California Association for Health Services at Home.

COMMISSIONER CENTER: Are they written remarks?

MS. PINKERTON: Brief, yes. Yes.

COMMISSIONER CENTER: Okay, because we’re down to fifteen minutes, ten minutes, to get out of here, so -

MS. PINKERTON: Well, if there’s such a thing as triple time, I think we’re on it now.

My name is Ginny Pinkerton, and I’m the chair of the board of directors for the California Association for Health Services at Home, or CAHSAH. And I was an owner-operator of a home care agency for eight years, and I’m now the director of quality management for a company called AccentCare.

I want to thank you, at this late hour of the evening, for permitting me to share the concerns of CAHSAH and home care providers, which I don’t believe I’ve heard too much of today.

The California Association for Health Services
at Home represents home care providers throughout California, including licensed Medicare-certified home health agencies, hospices, home care aide organizations, home infusion pharmacies, home medical equipment dealers, as well as independent clinicians, rehabilitation agencies, and so on. And the hallmark of home care is the ability to provide affordable, personalized care in a setting that the client and the patient prefers, which is in their own home. And as you’ve heard from the midwives earlier, a lot of times these situations don’t follow an 8-hour workday.

There are approximately 1,180 home health agencies in California. And in the past two years, 235 agencies of those agencies were closed. However, there is an expected increased need for registered nurses for home health, at about 11.37 percent over the three-year period of 1997 to 1999. And that is the second highest rate of growth for all our employer categories.

The need for home care will only increase over time. Baby Boomers will reach the age of 60 by the year 2006, in waves of more than one million per year on a national basis. And California seniors age 65 and older will reach 4.1 million statewide by 2005. So, the need for home care is growing. And that reflects not only the...
public preference for home and community-based care 
rather than institutional care, but California’s policy 
preference as well, which includes the concept of aging 
in place and independent living for the elderly and the 
disabled.

This will manifest itself in the need for 
additional skilled home care providers and home care 
aides, as noted by the Development Department’s 
projections, which project an approximate increase of 81 
percent in the need for personal home care aides and so 
on in the healthcare industry by the year 2002. With the 
need and desire for healthcare expected to increase, the 
need for flexibility to provide these services in the 
homes of the disabled and the elderly will become 
increasingly important.

Many home health and hospice agency patients 
require visits that are beyond the normal workday to 
receive needed medical services in their home. Without a 
flexible work environment, which has been discussed many 
times today, interruptions in patient care as a result of 
shift changes will only increase. Not only will the 
provisions of AB 60 disrupt continuity of care received 
by patients, it limits both agency and staff flexibility 
in responding to patient needs in the home.
For example, a developmentally disabled child receives skilled nursing care in the home 12 hours a day. Because of the nursing shortage, which has also been discussed today, and for continuity of care reasons, it’s critical to have that shift covered by one nurse. This patient would then be institutionalized if home care providers cannot provide that shift care.

The other example would be a family of a loved one who’s dying able to maintain that person at home only because of the respite provided at night by 12-hour shift care and the availability of hospice nurses at any hour of the day and night -- again, affordable because of the exemption from overtime. The hospice patient also needs an evening or night visit for pain control or assisting with other end-of-life issues. Without this flexible care, the terminal client would be more than likely ending their life in a skilled nursing facility without their family present.

You know, I won’t even really talk to you much about the employee flexibility issues that are also critical in the home care industry. That’s what attracts nurses to this industry. And if that ability were compromised or not maintained, it would not only impact the ability of employees to maintain that flexible work
schedule, but also serious access to care issues as well.

Another point I wanted to just make very quickly, and that is the cost of overtime. And the reason I bring that up is important, is that approximately 83 percent of home health care in California is paid for by Medicare and MediCal programs, neither of which provide for overtime. Medicare decreased its reimbursement for home health services by 20 percent with the Balanced Budget Act of 1997, and the MediCal program is on a fixed reimbursement schedule, which does not allow for any overtime.

So, for example, a child, a ventilator case, a ventilator-dependent child or a child with G2, a medically fragile child that needs 16 hours of care of home, you know, what’s the option then? The option of an agency with slim margins is to reduce the care to that child, reduce the care to that senior, or reduce benefits to employees.

So, we would urge you again to continue to consider maintaining that 12-hour shift exemption for our industry.

Thank you.

COMMISSIONER CENTER: Thank you.

Who’s all left to testify?
MR. DIAZ: Well, there’s a problem -- I have a question, Mr. Chairman.

COMMISSIONER CENTER: Yeah.

MR. DIAZ: I drove 175 miles to get here to be the first one to sign in on the sheet, and I have not been called, nor has the colleague. We’ve lost a couple of our witnesses.

COMMISSIONER CENTER: Well, I called the first one on the sheet. What sheet were you on?

MR. DIAZ: The first sheet for testifying on AB 60, this morning, when they opened the doors to the building. But that’s here nor there.

COMMISSIONER CENTER: Yes.

MR. DIAZ: We had submitted some testimony in Sacramento. We represent the California Nursing Home Association.

COMMISSIONER CENTER: Written testimony or oral?

MR. DIAZ: Well, it was submitted in writing, but we also had individual owners here today.

Unfortunately, somewhere that list is missing. I spoke with the clerk about four hours ago, what happened to it, and it’s not there. And we also still have an owner-operator here. But I know the time is running late.
We ditto most of the comments by all the professional nursing categories. We have a significant labor shortage.

Without making it an issue, I just wanted to make you aware that we were one of the first people to sign in.

COMMISSIONER CENTER: Okay.

MR. DIAZ: And that sheet is not --

COMMISSIONER CENTER: Well, part of the problem --

THE REPORTER: What is your name, sir?

MR. DIAZ: Joseph Diaz.

COMMISSIONER CENTER: There’s just a couple of -- if you didn’t get the copy of the draft orders that’s on the Internet, at www.dir.ca.gov, and also you can submit written testimony, if you don’t get to testify, to that e-mail address or to the IWC at 1121 L Street, Suite 300, Sacramento.

MS. VERA-SCHUBERT: Commissioner?

COMMISSIONER CENTER: Yes.

MS. VERA-SCHUBERT: I have not heard from my industry at all, and I’m not sure if you’re calling it a night. But I also got up super-early, and I had a big problem to find out who would take care of my kids if I
came.

COMMISSIONER CENTER: Anybody else that has not heard from their industry here?

(Show of hands)

COMMISSIONER CENTER: Which industry are you from?

AUDIENCE MEMBER: (Not using microphone) We’re pharmacists. I don’t know if that’s healthcare or what, but --

MS. VERA-SCHUBERT: Yeah. I’m also a pharmacist. And if I could come up --

COMMISSIONER CENTER: Why don’t both of you come up together?

MS. VERA-SCHUBERT: Okay. I’m a pharmacist. Thank you very much.

My name is Monica Vera-Schubert, and I’m a community pharmacist and have been for over ten years. If you talk about the image of pharmacists -- and that was mine fifteen years ago when I decided to go to college and what I wanted to do -- I thought of a pharmacist as a person who stands behind a counter and transfers pills from one container to the next. That image still stays alive, and I feel that that is one of the reasons for this law. And I can tell you, when I
worked in a pharmacy as a college students, my eyes
opened up.

Since I’ve been a pharmacist, I’ve been able to
-- I feel I’ve been able to make an impact in lives.
I’ve seen not only myself, but other pharmacists,
actually deal with drug interactions, catch and counsel
prescriber errors, combat food-drug interactions. Who
best but the pharmacist would know about medication?

But not all just about the profession, but
talking about my personal life also, when I chose --
choose a company to work for, a 12-hour shifts, it was
for purely reasons that were financial, but now it evolve
to the reasons of having two small kids. I want to be at
home with my kids. I love working seven days out of the
fourteen. I won’t be having that luxury any more.

I have -- when I -- when my kids were small, I
hired babysitters in the house. Those stories that you
hear about kids being abused? That happened to me. My
biggest worry is to leave my kids alone with a stranger.
And right now, I’m very lucky to have my parents take
care of my kids. When my parents become senior citizens,
they can’t do it past the schedule that I’ve been blessed
with. So, I’m asking you.

Also, in my free time, as a lot of other
pharmacists enjoy their free time, we go out and we do patient education. Right now, I work in a pharmacy school and we go out to the L.A. Unified School Districts to kids that are under-served, that are absent, because they don’t understand asthma. I go out and I teach them all about asthma.

Also -- and I’ll talk about it real quick -- I go to mentor. I talk to kids -- again, under-served areas -- about the importance of higher education.

So, please, I’m asking you to consider pharmacists as health professionals, but also consider them -- consider the time and their lives, the schedules that they’ve adapted to, and how it will affect not only them, but their families.

Thank you.

MS. FLASTER: Annette Flaster, staff pharmacist at a hospital for thirty years. And I just have a couple of things to say.

I was very disappointed when I found out that we were going to be -- lose our professional status -- and that’s basically what it becomes. After thirty years, I’ve been told that I really don’t know if I’m being taken advantage of, and that I’m a fool if I work 10-hour shifts.
And another thing that -- you know, nurses have their shifts, they -- you know, they deal with the patients directly. We don’t deal with them, necessarily, directly. However, when there is a rush in the hospital and things get busy, you can’t leave exactly at the time you’re supposed to leave. Now that I work for a private corporation, they are very indignant. You have to check out. We don’t pay overtime.

Well, for years, you just stayed and you worked, and that was it. You know, you didn’t make a big deal about it. You just did your job and you went. And now you can’t take the risk of checking out, coming back, helping your colleague. And then what happens if you should get injured? You know, you’re not under compensation any more because you’re back -- you’re not there. But you can’t see somebody working along and possibly, you know, having the patient care jeopardized because of things like that, in a timely manner, because there isn’t the staff. And this is specifically --

COMMISSIONER DOMBROWSKI: Excuse me. Excuse me.

MS. FLASTER: Yes, sir.

COMMISSIONER DOMBROWSKI: Is your bottom point that you want to have 12-hour days?

MS. FLASTER: I personally work 10-hour shifts.
COMMISSIONER DOMBROWSKI: Today, under the law, you can go into four 10-hour days.

MS. FLASTER: Well, I’m not sure what the company will do because it’s a big corporation.

COMMISSIONER DOMBROWSKI: Okay.

MS. FLASTER: However, the thing is, it’s not just that. It’s the fact that it’s overtime. Why should one hour of pharmacy work be more important than another hour? In my mind, every hour I work is equally valid as another hour. I don’t think a pharmacist should be paid overtime. You know, that — that, in fact, limits my working ability. Right now, I can go work at a sister hospital —

COMMISSIONER DOMBROWSKI: Well, just —

MS. FLASTER: -- and work an extra day and, you know, not have to worry about it because I’m an exempt employee. So, I can work here extra and there extra, and I can work and earn my keep.

COMMISSIONER DOMBROWSKI: I understand. And we -- just -- we have heard testimony now in three different -- or two different hearings from pharmacists, so the issue is not -- has been brought in front of the IWC. And I, obviously, am one who is sympathetic to that, as my other commissioners know.
We are trying to figure out how to address that.

MS. FLASTER: Right.

COMMISSIONER DOMBROWSKI: But I know there’s one other gentleman who wants to talk, and we’re running out of time.

MS. FLASTER: Do I pay malpractice insurance? Am I no longer suable if I’m not a professional? That’s my question, you know. And I don’t like the idea that, you know, my representative, Wally Knox, felt that they know better how to run our lives and take away, again, personal freedoms that are not -- you know, why don’t state employees have to have the same restrictions put upon them as private-sector employees? How are they better? I don’t think they are. I mean, that’s my point.

COMMISSIONER CENTER: Thank you.

MR. GOLDSTEIN: Hi. I’m Morrie Goldstein. I work for the Guild for Professional Pharmacists. That’s the largest bargaining unit for pharmacists in the State of California.

I’ve submitted some documentation to you, and that was to ask for an exception -- exemption for the graveyard, or nighttime-graveyard pharmacists. This is not -- I’m not here for the union pharmacists, of course,
so that bargaining unit will override this AB 60 without a problem. What we’re concerned about is the other pharmacists, the nonunion pharmacists. I’m telling you that, if you can, look for an exemption for these seven-day-on, seven-day-off graveyard pharmacists, which they love, and that’s the lifestyle for them.

I’ve never been in a meeting where everybody -- all the employees were so damn happy. I really feel bad for the pharmacists here, what an unhappy group they are -- I’m going to have to yell at them. All the guys here seem to be -- the employers seem to be treating them perfectly. I’m sorry. We’re glad that you passed AB 60. It’s terrific. We support it wholeheartedly.

There are certain exemptions, just like we talked about. But let me tell you, if all employers -- and if there are any still left here, they should listen -- if all of you treated your employees as happily as -- as graciously as all the other people here do, or at least seemingly does, we wouldn’t have this bill. This bill came about because pharmacists were being treated sub-human. A bathroom break was unheard of.

Barry, I think you’ve heard some of these stories through the CPHA, and I won’t repeat any of them. Anyway, do consider the exemption for the graveyard
pharmacists.

Thank you.

COMMISSIONER CENTER: Thank you.

And I’d announce that our next hearing will be
at the California State Capitol, June -- excuse me --
June, I wish it was June, but it’s not, it’s January --
January 28th in Room 4203, I think. And we’ll get notice
out. We’re looking at ten, maybe earlier.

And thanks for everybody --

COMMISSIONER DOMBROWSKI: Chuck, just one thing,
I think, before you close.

We don’t know if it’s John’s last meeting or
not, and I just would like to have the Commission
recognize his efforts in the last four years.

COMMISSIONER CENTER: Yes. And especially
because I served with John --

(Applause)

COMMISSIONER CENTER: -- during some very
volatile hearings on the repeal of the 8-hour day.

COMMISSIONER McCARTHY: Oh, this is nothing,
really!

COMMISSIONER CENTER: Yeah, this is easier.

COMMISSIONER McCARTHY: I won’t tell you what
happened.
1  COMMISSIONER CENTER: We had guns at one
2  hearing. It was pretty cool.
3  Thanks for everybody’s cooperation.
4  Do you want to make a motion to adjourn?
5  COMMISSIONER DOMBROWSKI: So moved.
6  COMMISSIONER CENTER: Sorry.
7  AUDIENCE MEMBER: (Not using microphone) I just
8  have one question for you on something that you said that
9  --
10  COMMISSIONER BROAD: How about afterwards?
11  COMMISSIONER CENTER: Yeah, afterwards.
12  AUDIENCE MEMBER: (Not using microphone) Oh,
13  I’m so sorry.
14  COMMISSIONER CENTER: Anybody make a motion to
15  adjourn?
16  COMMISSIONER DOMBROWSKI: So moved.
17  COMMISSIONER BROAD: Second.
18  COMMISSIONER CENTER: All in favor, aye?
19  (Chorus of “ayes”)
20  COMMISSIONER CENTER: Motion carries.
21  Thank you.
22  (Thereupon, at 6:00 p.m., the public
23  meeting was adjourned.)
24  --o0o--
CERTIFICATE OF TRANSCRIBER

--o0o--

I, Cynthia M. Judy, a duly designated

transcriber, do hereby declare and certify under penalty
of perjury under the laws of the State of California that
I transcribed the five tapes recorded at the Public
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the foregoing pages constitute a true, accurate, and
complete transcription of the aforementioned tapes, to
the best of my abilities.

Dated: December 30, 1999

______________________________

CYNTHIA M. JUDY, Transcriber