# WRITTEN TESTIMONY CONCERNING THE "DIGNITY AT WORK ACT" House No. 3843 -- Senate No. 1185

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Joint Committee on Labor and Workforce Development
General Court, Commonwealth of Massachusetts

Dear Members of the Joint Committee on Labor and Workforce Development:

I write to comment on the "Dignity at Work Act" (DAWA), filed during the current session as House No. 3843 and Senate No. 1185.

As a preliminary matter, I also acknowledge that I have authored the bill language of related legislation known as the Healthy Workplace Bill, currently re-filed as Senate No. 1200 (Sen. Paul Feeney, lead sponsor), and which is once again before this Committee. I am submitting a separate statement in support of Senate No. 1200.

The Dignity at Work Act is proposed with the best of intentions. In fact, I agree wholeheartedly with its underlying objective of providing every worker with a baseline of dignity on the job.[2] However, after close review of the bill itself, I find that DAWA is deeply problematic in several critical respects, including, but not limited to, the following:

- **Micro-managing everyday workplace interactions** -- By imposing a loosely defined, but legally actionable version of dignity (Sec. 1 "right to dignity" definition) and broad definition of workplace bullying (Sec. 1 "workplace bullying" definition, including "other objectionable behaviors," *even if unintended*) upon every worker, volunteer, and organization, DAWA threatens to elevate the normal ups-and-downs of on-the-job interactions into threats and counterthreats of filed complaints.

- **A flood of filed complaints challenging management decisions** -- DAWA allows workers to question a vast array of discretionary management

[1] Institutional affiliation provided for identification purposes only.
[2] I have said as much in a law review article, David C. Yamada, *Human Dignity and American Employment Law*, 43 UNIVERSITY OF RICHMOND LAW REVIEW 523 (2009), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1299176.

decisions and employee behaviors on grounds that they are denials of dignity that may lead to liability. For example, per Sec. 3(a)(1), DAWA makes actionable, among other things, undefined "insulting or offensive language," "personal criticism," "overbearing" supervision, and assignments "unreasonably below" a worker's skill level. Consequently, DAWA opens the door to a flood of filed complaints, in turn driving up litigation costs for everyone and making it much harder to distinguish between relatively petty matters and genuine instances of targeted abuse and mistreatment.

- **Workers and volunteers at risk** – DAWA permits workers in all sectors and volunteers in civic and non-profit organizations to file administrative and legal claims against each other for a full range of damages in response to perceived transgressions of personal dignity (Sec. 1, definition of "employee" or "worker" covering volunteers). By doing so, DAWA potentially weaponizes everyday disagreements, enables mobbing situations against unpopular workers or volunteers (*i.e.*, used as a legal tool to bully or abuse someone), and may well require workers and volunteers to obtain liability insurance to cover potential claims brought against them for even unintended slights or transgressions.

- **Significant fiscal impact** -- By creating a new administrative agency to investigate and enforce a heavy and steady flow of complaints, DAWA will have a considerable fiscal impact, requiring funding comparable to (and possibly greatly than) that budgeted for the Massachusetts Commission Against Discrimination.

We badly need to provide workers with protections against targeted, severe workplace bullying. While DAWA would certainly address that need, it also significantly overreaches, to the detriment of workers, volunteers, employers, and the legal system. I respectfully suggest that the Healthy Workplace Bill, Senate 1200, is a better, fairly balanced, and more precisely drafted choice for addressing abusive behavior at work.

Respectfully submitted,
*David C. Yamada*