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What Hath Zoe Baird Wrought? The New FICA Amendments on Domestic Service Employees

by Marc Linder

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In the midst of partisan recriminations over legislative gridlock, Republicans and Democrats took time out in October to congratulate themselves on a piece of work well done. This achievement of "justice, fairness, civility"¹ was, according to Rep. Andrew Jacobs, D-Ind., the chairman of the Subcommittee on Social Security of the House Ways and Means Committee and one of the chief promoters of the legislation, "a pleasant effort to correct the egregious wrong that has occurred by the inadvertence of the U.S. Government to the taxpayers of this country."² And Rep. Jim McCrery, R-La., added that the bill in question gave the members a chance to "do something that we seldom do here, and, that is, to make the lives of many hard-working Americans a little bit simpler."³

What exactly was this bipartisan sweetness and light that sailed through Congress with nary a "no" vote? It was Congress, after two years of debate, getting, as Senate Finance Committee Chairman Daniel Patrick Moynihan, D-N.Y., put it, "to do a Zoe Baird bill."⁴

Although political amnesia has already dimmed the memory of the "fury"⁵ in 1993 over revelations that presidential nominees had failed to pay employment taxes for their maids and nannies, the public had clear-

ly been offended by the fact that wealthy people nominated to high offices to enforce and interpret the law had themselves violated the rights of their own low-paid domestic employees. The scandal created the impression that Congress would act to deter such wrongdoing. In a surprising switch, however, the hard-working people whom Congress has now helped are not the household workers, but their privileged employers.

Householders' excuse for noncompliance with the law had been the paperwork requirements and the nuisance of making small payments for children who babysit and mow the lawn. In response, Congress has now made it easier for employers to comply with the Internal Revenue Code by permitting them to report Social Security taxes on their personal income tax returns.⁶ Congress also accommodated employers on the second issue by excluding from coverage all persons under the age of 18 for whom domestic employment is not the principal occupation.⁷ Even after having achieved Senator Moynihan's cherished goal of "decriminaliz[ing] baby-sitting"⁸ and having given the estimated 75 to 90 percent of household employers who are scofflaws⁹ everything they wanted, Congress was, however, still not satisfied.

If, as *The New York Times* reported, Congress originally set out "to make it easier for well-off people to pay Social Security . . . taxes for their domestic help,"¹⁰ it wound up making it easier and lawful *not* to pay those taxes. Thus, the legislators, not a few of whom themselves had complained about having to comply with the legal niceties of employing domestic workers,¹¹ granted themselves and the affluent people

¹Social Security Domestic Employment Reform Act of 1994, section 2(b), as published in 140 *Cong. Rec.* at H11010 (to be codified at IRC section 3510).

²Social Security Domestic Employment Reform Act of 1994, section 2(a)(1)(C).

³Gary Klott, "Relief in Store for Employers of Household Help," *Chicago Tribune*, Oct. 18, 1994 at 5 (Lexis).

⁴"Raising Wage Threshold Will Not Boost Compliance," *Lab. Rel. Rep.*, July 26, 1993, at 410, 411.

⁵David Rosenbaum, "Overhaul Set for Domestic-Help Rule," *N.Y. Times*, Mar. 5, 1993, at A8, col. 3 (nat. ed.).

⁶*Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Workers: Hearing Before the Subcommittee on Social Security and Subcommittee on Human Resources of the House Ways and Means Committee*, 103d Cong., 1st Sess. 20 (1993) (Rep. Klug); 140 *Cong. Rec.* at H11018 (Rep. McCrery).

¹140 *Cong. Rec.* H11019 (daily ed. Oct. 6, 1994).

²140 *Cong. Rec.* at H11014.

³140 *Cong. Rec.* at H11018.

⁴"Nanny Tax" Bill Delayed Until Next Year as Finance Approves "Clean" SSA Bill," *Daily Report for Executives*, Nov. 22, 1993, at 223 (Lexis).

⁵Nancy Gibbs, "Thumbs Down," *Time*, Feb. 1, 1993, at 26 (Lexis).

with whom they apparently can identify a tax break that eliminates or reduces the Social Security benefits of those who clean their houses and care for their children. This Scrooge-like act was implemented by quintupling the exclusion of taxable wages from \$50 per quarter to \$1,000 per year per employer and adjusting it for future inflation.¹² This change, which, in the understatement of the tax year, *The New York Times* called "potentially less helpful to the domestic workers themselves" than their employers,¹³ is especially shameful because it was made in spite of an estimate by the Social Security actuary that it might deprive hundreds of thousands of household employees of disability insurance and old-age pension credits.¹⁴

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Why does this exclusion injure domestic workers? Tens of thousands of full-time employees work only one day every two weeks or a half-day every week for the same family. In many labor markets, where below-minimum wage (\$4.25) to \$5 per hour is the going rate for such work,¹⁵ workers will fall short of the \$1,000 threshold, causing all that hard work and income to disappear as far as the Social Security Administration is concerned. If all of a domestic worker's jobs fit this description, she will receive no Social Security credits for the year.

Such an outcome contradicts the original purpose of the low quarterly wage threshold. When Congress first covered domestic employees in 1950, it coupled the \$50-per-quarter test with a requirement that the worker also be "regularly employed," which it defined as working at least 24 days per quarter for an employer. In criticizing this provision, Senator Lehman observed that "it would not cover the typical household worker who is hired to work by the day — in other words, the great number of people who work for the same employer on the same day each week, but on each day of the week for a different employer. These people are just as regularly employed as those covered by H.R. 6000. These people are just as much in need of Social Security — perhaps even more so. . . ."¹⁶ Precisely to avoid this inequity, Congress removed the "regularly employed" test four years later.¹⁷ The trend away from residing in

the employer's house and toward part-time work, which was already observable in the late 1940s,¹⁸ has intensified, so that only 11 percent of domestic workers were still living in their employer's household by the early 1970s and 6 percent by the late 1970s.¹⁹

Congress was well-aware of the harsh effect of the higher threshold. Because the \$1,000 per employer barrier would cause many workers to "fall between the cracks,"²⁰ some legislators proposed aggregating wages²¹ in order to avoid the "absurd" result that a worker with \$9,000 in annual wages would receive no social security credits.²² And Rep. Jacobs himself characterized an earlier bill that he estimated would have expelled 16 percent of domestic employees from participating in the system as "the fairest approach on balance. . . ."²³ In spite of the massive exclusions, Rep. Barbara Kennelly, D-Conn., maintained that the final revision was "not for the elite of America . . . it is for the working men and women who have to count on their Social Security. This is for working people," who will no longer "find themselves ineligible for benefits after a lifetime of work" because their employers failed to pay their employment taxes.²⁴

What reasoning could have led legislators to believe that this one-sided amendment would ever redound to the benefit of its victims, who have for years been harmed by an unparalleled rate of employer noncompliance with FICA obligations as a result of which household employees account for one-tenth of all Social Security earnings records problems?²⁵ The amendment's backers rely on mere speculation in support of their goal of avoiding the embarrassment associated with massive violation and nonenforcement of the law: kicking the most vulnerable workers out of the Social Security system through a higher wage threshold "might induce more people to comply with the law."²⁶

¹²Amendments to Social Security Act: Hearings Before the House Comm. on Ways & Means, 79th Cong., 2d Sess. 550 (1946) (statement of Margaret Plunkett, chief, Div. of Legis., Women's Bureau, DOL).

¹³U.S. Employment Standards Administration, *Private Household Workers*, tab. 2 at 36 (1974); U.S. Women's Bureau, *Women Private Household Workers: A Statistical and Legislative Profile* 3 (1978).

¹⁴Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Workers at 18, 24 (Rep. Meek and Rep. Reynolds).

¹⁵Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Workers at 24 (Rep. Reynolds and Rep. Meek).

¹⁶Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Workers at 27 (Rep. McDermott).

¹⁷Letter from Rep. Andy Jacobs Jr. to Author (June 1, 1993). 140 Cong. Rec. at H11016.

¹⁸Lucinda Harper, "Many Flout the Law on Reporting Taxes for Domestic Help," *Wall St. J.*, Apr. 15, 1992, at A1, col. 1, A13, col. 5. See also U.S. Government Accounting Office, *Social Security: Information About the Accuracy of Earnings Records* 17 (GAO/HRD-91-89FS, 1991).

¹⁹House Panel Votes to Alter Taxes on Domestic Workers," *N.Y. Times*, Apr. 30, 1993, at A12, col. 6 (nat. ed.).

¹²Social Security Domestic Employment Reform Act of 1994, section 2(a)(1)(A) (to be codified at IRC section 3121(a)(7)).

¹³Michael Wines, "Panel Eases Employers' Tax on Domestic Workers," *N.Y. Times*, May 12, 1993, at C18, col. 3, 6 (nat. ed.).

¹⁴"Ways and Means Outrage," *Wash. Post*, May 13, 1993, at A26 (opinion editorial) (Lexis).

¹⁵U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook: 1994-95 Edition* 326 (Bulletin 2450, 1994).

¹⁶96 Cong. Rec. 5989 (1950).

¹⁷S. Rep. No. 1987, 83d Cong., 2d Sess., reprinted in 1954 U.S.C.C.A.N. 3710, 3717.

This justification turns out to be such a thin reed that not even the IRS gives it credence. A U.S. Treasury Department economist, Allen Lerman, noted that the fact that employment taxes constitute such a high proportion of the first several thousand dollars of wages would give employers an incentive to "churn," that is, to fire workers just before their total payments to the workers reach the wage threshold.²⁷ And former IRS Commissioner Shirley Peterson predicted that compliance rates "would fall 'straight to zero.'"²⁸ Under these circumstances, only a perverted sense of humor could have prompted the Senate to label one of its Zoe Baird bills the Occasional Employment Equity Act.²⁹

Only a perverted sense of humor could have prompted the Senate to label one of its Zoe Baird bills the Occasional Employment Equity Act.

It is precisely the lowest-paid workers who most need Social Security. It was as true in 1950 as it is today that, in Senator Lehman's words, it is "utterly unrealistic to expect" domestic workers — and "obviously impossible" for them — to finance their retirement security out of their current earnings.³⁰ To penalize them as a favor to their employers, whose annual incomes may be 10 or even a 100 times greater, and then to celebrate the step as a benefit to "hard-working Americans" is scandalous. Old-age pensions, unemployment compensation, and disability insurance are as much integral parts of the social wage as the minimum wage. Depriving household employees of such protections is therefore as vindictive today as excluding them from the statutory minimum wage was until two decades ago, when Senator Harrison Williams observed that it was outrageous that taxpayers had to subsidize, in the form of public assistance, the payment of substandard wages by an employer who could afford to hire a private household employee.³¹

Household workers and other low-wage, isolated, nonunionized workers especially need the protections of labor and employment tax laws, including Social Security, minimum wage, and unemployment and workers' compensation, because they lack the bargaining power to capture enough income to provide for their old age and possible future disability or unemployment. It was precisely to avoid forcing domestic workers on to welfare that Congress decided to cover them under the national wage and hour law.³² It is

emblematic of the sea change in attitudes toward societally caused poverty that some economists claim that it is irrelevant whether low-wage workers are eligible for Social Security retirement benefits because they might still qualify for Supplemental Security Income payments.³³ They fail to appreciate the enormous difference between an entitlement to a Social Security Old-Age pension and relegation to the intrusive and demeaning poor-law system, which is based on a means test that may trigger suspension or termination of payments.³⁴

In the wake of the Zoe Baird bill debate, some have suggested that the solution to employer noncompliance is to recognize that non-live-in domestic workers cleaning houses for several people "are better described as contractors." As self-employed businesspeople,³⁵ "it makes more sense to let them take responsibility for themselves." To imply that household employers are capable of filing tax forms for their employees or that consultants, therapists, and artists can be trusted with self-employment forms but not maids, some have argued, signifies disrespect and is demeaning.³⁶

Judged by these lights, most household employers had been treating their workers respectfully for decades. Even before the Zoe Baird scandal, the *Wall Street Journal* reported on the front page (on income tax filing day) in 1992 that: "The most common defense of those families who are caught cheating is to say they thought their maid or nanny was actually an independent contractor, not an employee."³⁷ How prophetic!

- Bobby Ray Inman, who was constrained to request that President Clinton withdraw his nomination as secretary of Defense in 1994, claimed that the woman with a seventh-grade education who had cleaned his house one to three times a week for eight years was an independent contractor because she had driven herself to and from work and been paid a flat fee. At least he could advance the excuse that his knowledge of tax law derived from his handy *Ernst & Young Tax Guide*.³⁸
- The Iowa Attorney General, Bonnie Campbell, was presumably more learned in the law. Yet she too claimed after the fact that she had thought her regular cleaning woman was an in-

³³See, e.g., Gary Galles, "Nanny-Tax Nest Egg for the Social Security System," *Sacramento Bee*, Nov. 26, 1994, at B7 (Lexis) (op-ed).

³⁴42 U.S.C. section 1382.

³⁵Cheryl Koehler, Letter to the Editor, *N.Y. Times*, Dec. 11, 1994, section 4 at 11, col. 1 (nat. ed.).

³⁶Katherine Rabenau, Letter to the Editor, *N.Y. Times*, Apr. 12, 1994, at A12, col. 4-5 (nat. ed.).

³⁷Harper, note 25, *supra*.

³⁸Statement of Bobby Ray Inman on Withdrawing His Nomination, *N.Y. Times*, Jan. 19, 1994, at A16, col. 1 (nat. ed.); Eric Schmitt, "Discussing Tax Stand, Inman Says Maid Was 'Contractor,'" *N.Y. Times*, Jan. 19, 1994, at A17, col. 1 (nat. ed.).

²⁷"Raising Wage Threshold Will Not Boost Compliance," note 9 *supra*, at 411. See also *Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Workers* at 21 (Rep. Sanlorum).

²⁸"Raising Wage Threshold Will Not Boost Compliance," note 9 *supra*, at 411.

²⁹S. 402, 103d Cong., 1st Sess. (1993).

³⁰96 Cong. Rec. at 5989.

³¹120 Cong. Rec. 5278 (1974).

³²120 Cong. Rec. 5276-77 (1974) (Sen. Williams).

dependent contractor. The excuse in her case was that her husband, himself a self-employed lobbyist who hired the cleaning person, presumably detecting close parallels in their career trajectories, "just considered her to be an independent contractor."³⁹

- When Judge Stephen Breyer's nomination to the U.S. Supreme Court faltered at news that he too had failed to pay employment taxes on behalf of the woman who had cleaned his house one or two mornings a week for 13 years, one of his supporters, Senator Hatch, the ranking Republican on the Judiciary Committee, helped out: "Even the I.R.S. would have to admit that there is a close question as to whether she would qualify as an independent contractor or an employee."⁴⁰

Senator Hatch's certainty is, in light of the IRS's firm position on the issue, puzzling at the very least. In his testimony before the House Ways and Means subcommittees in the aftermath of the Zoe Baird debacle, Marshall Washburn, the Compliance 2000 executive of the IRS, stated that: "in almost all cases, workers who perform these services will in fact be employees of the person in whose home they are performed and not independent contractors." He explained that the 20-factor employment relationship test used by the IRS served to clarify "whether the person for whom services are performed has the right to direct and control the performance of the service. In the case of domestic services, the person in whose home the services are performed is almost invariably the person who has this right." And just in case anyone might have seen the vista of a loophole opening up in the phrase "almost invariably," Washburn quickly explained that the other person who might have the right to control in question is a commercial housecleaning business.⁴¹ In other words, household workers are always some employer's employees and entitled to all the protections and benefits associated with coverage under the Social Security Act.

To drive home the point to employers who might be thinking of joining or remaining in the ranks of the majority who violate their obligations under the Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA), the IRS also publishes a special circular for household employers. Here the IRS announces that it has created a virtual irrefutable presumption that, where no intervening cleaning business is in the picture, the service recipient is the employer. The IRS thus stresses that: "It does not matter if you exercise this control as long as you have the legal right to control both the method and the result of the services." And for those who might like to

believe that they can waive control by spending the cleaning day outside the house without telling the cleaning person exactly how to sweep the floor, the IRS admonishes taxpayers that a maid is not like a piano teacher or a plumber: "You pay a worker to care for your child and clean your house while you are away from home. You have the right to tell the worker what needs to be done and how you want it done. The worker is your employee." Moreover, the fact that the household employee works only part time for someone⁴² because she also cleans 10 other families' houses does not mean that she is not the employee of each and every one of those persons.⁴³

Those who argue that household workers can escape the inequities of the new FICA amendments by becoming rugged individualists apparently believe that "employee" and "self-employed" are merely arbitrary names that the parties can change at will. As Washburn explained to the Ways and Means subcommittee: the parties "cannot negotiate away or do away with the employer-employee relationship."⁴⁴ For the benefit of the would-be nominalists, the IRS states emphatically: "It does not matter if you call an employee something else, such as an independent contractor."⁴⁵ The employer's mantra-like incantation of *independent contractor* does not make the cleaning person a self-employee any more than calling her the Queen of England makes it so. Under the nineteenth-century common law as well as under modern welfare and labor-protective statutes, domestic workers have always been and remain the archetypical controlled servant and dependent employee.⁴⁶

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Advocates of the voluntaristic transmogrification of household employees into self-employed businesspeople overlook the consequences.⁴⁷ Self-employees, for example, are excluded from the unemployment compensation systems. Precisely because they face "serious unemployment problems," Congress finally incorporated

³⁹John Carlson, "To Pay or Not to Pay?" *Des Moines Register*, Feb. 10, 1993, at 1A, col. 1, 2A, col. 2.

⁴⁰Richard Berke, "Judge's Friends Try to Save Candidacy for High Court," *N.Y. Times*, June 14, 1993, at A10, col. 1, 3 (nat. ed.).

⁴¹*Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Workers* at 38.

⁴²U.S. Internal Revenue Service, *Employment Taxes for Household Employers 2* (Publication 926, rev. ed. 1992).

⁴³Lawrence Kobrin & Richard Reinhold, "Domestic Employment Checklist," *N.Y.S.B.J.*, July-Aug. 1992, at 28.

⁴⁴*Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Employees* at 59.

⁴⁵IRS, *Employment Taxes for Household Employers*, note 42 *supra*, at 2.

⁴⁶Marc Linder, *The Employment Relationship in Anglo-American Law: A Historical Perspective* (1989); David Katzman, *Seven Days a Week: Women and Domestic Service in Industrializing America* (1981 [1978]).

⁴⁷See, e.g., *Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Workers* at 91-96 (statement of Gerald Moran).

household employees into FUTA.⁴⁸ Similarly, the self-employed are excluded from the short-term disability insurance programs that some states maintain for workers who do not meet the 12-month test of the federal disability insurance program.⁴⁹ And although the two systems are not legally linked, it is virtually precluded that any household worker classified as self-employed for Social Security purposes would be found covered under any state workers' compensation program.

The suggestion that the solution to employer non-compliance is nominal self-employment not only ignores the worker's expulsion from the minimal social wage system that has been achieved in the United States, but also fails to recognize that such a self-employee will pay more for less. If minimum-wage workers "do not feel they can afford to buy into the Social Security system, much less pay income tax"⁵⁰ as employees, how can they possibly do so as self-employees? When an employer deducts the 7.65-percent FICA tax⁵¹ from the federal minimum hourly wage of \$4.25,⁵² the employee is left with \$3.925. When the self-same self-employee pays both the employer's and the employee's share in the form of the 15.3-percent tax on self-employment income,⁵³ her net pay is only \$3.60. What possible rationale would motivate anyone to pay more for less?

The motivation is presumably not to pay any tax at all. What advocates of in-name-only self-employment overlook is that unlike the recipients of services performed by other workers, household employers are not even required to file Form 1099-MISC because they are not "engaged in a trade or business and making payment in the course of such trade or business to another person."⁵⁴ The fact that there is therefore no paper trail is a virtual invitation to the worker not to report that income to the IRS. Such a step would, however, be short-sighted. First, because female private household workers are the lowest-paid employees in the United States — in 1993 their average full-time weekly earnings were \$183, only 40 percent of the national median⁵⁵ — their income may well be too low to generate any income tax liability. And second, because their income is so low they are also probably entitled to an earned-income tax credit, which was originally designed to reimburse low-wage workers for regressive payroll tax deductions.⁵⁶ With an income at about

the equivalent of the minimum wage for full-time year-round employment (\$8,425-\$11,000) and two or more children, they would be entitled to the maximum refundable credit of \$2,528 in 1994.⁵⁷

Why do many people regard those they bring into their houses to clean or take care of their children as somehow not deserving the safety net that cushions the economic falls of normal workers?

A variant of the argument that household workers should by fiat declare themselves self-employed is the claim that, rather than being coerced by greedy employers, it is the workers themselves who "choos[e] to operate outside of the Social Security system."⁵⁸ To the extent that this assertion is at all reflective of reality, it overlooks a number of important considerations. First, the only reason that domestic workers might find it plausible that their employers would be willing to pay them off the books is that they know that the IRS and state employment and workers' compensation agencies have, through a regime of nonenforcement, tolerated an environment of lawlessness among domestic employers. Any employee who tried waltzing into the payroll office of the Ford Motor Company, for example, with the proposition that he be paid off the books would doubtless find himself inundated with Homeric laughter or in receipt of a pink slip. If these agencies enforced the law, the rate of compliance among household employers would rise dramatically. Second, those household workers who might be tempted to dig an even deeper hole for themselves by not reporting their income are merely engaged in a futile attempt to make up for what their employers refuse to pay them. If they were paid a living wage, they would feel less impelled to resort to short-sighted measures. The social security system is a frankly paternalistic regime, which society has imposed on working people for their own long-term good. As even *Glamour* magazine admonished its readers, "You probably wouldn't take a job that didn't offer unemployment insurance or Social Security benefits; why should she [your nanny]?"⁵⁹

Public debate over the enactment of the Zoe Baird bill has mirrored the original furor over the illegal employment of household workers in that employees' interests have been largely ignored in both contexts. Instead, discussion has focused on the obligations of the household employers and the practical advantages

⁴⁸William Haber & Merrill Murray, *Unemployment Insurance in the American Economy: An Historical Review and Analysis* 164 (1966).

⁴⁹Although California has permitted self-employed to elect coverage under the disability benefit system of the state unemployment compensation statute, very few have opted in. Marc Linder, *Farewell to the Self-Employed: Deconstructing a Socioeconomic and Legal Solipsism* 111 n.40 (1992).

⁵⁰Koehler, Letter to the Editor.

⁵¹IRC section 3102(a).

⁵²29 U.S.C. section 206(a), (b), & (f).

⁵³IRC section 1401(a)-(b).

⁵⁴IRC section 6041(a).

⁵⁵*Employment & Earnings*, Jan. 1994, tab. 56 at 243, 245.

⁵⁶IRC section 32; *Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Workers* at 53 (testimony of Marshall Washburn).

⁵⁷House Committee on Ways & Means, *Overview of Entitlement Programs*: 1994 Green Book, 103d Cong., 2d Sess. tab. 16-11 at 700, tab. 16-13 at 704 (Committee Print, WMCP 103-27, 1994).

⁵⁸Murray & Bedick, Letter to the Editor, *N.Y. Times*, Dec. 11, 1994, section 4, at 11, col. 1 (nat. ed.).

⁵⁹Barbara Quint, "Paying for Child Care," *Glamour*, Feb. 1993, at 100, 101.

they derive from Congress's reduction of those burdens, with scant mention of the importance of employment and tax laws for low-wage workers.⁶⁰

Why do many people regard those they bring into their houses to clean or take care of their children as somehow not deserving the safety net that cushions the economic falls of normal workers? Why do people who would heap contempt on the claims of cynically self-interested farmers that their migrant workers are independent contractors not think twice about pinning that label on their "domestic help"?

Because private household service workers are not employed by profit-making businesses, many people who hire them do not regard themselves as real employers or their house cleaners as real employees.⁶¹ Because they perform work that was traditionally done by mothers, wives, grandmothers, daughters, and other female relatives without monetary compensation, some people seem to believe that domestic employees are not even engaged in real work. This devaluation of women's household labor is ironic in light of the ostensible reason for renewed interest in the servant problem — the massive increase in the number of professional women with children employed outside the home. Finally, some employers, imagining that their household servants are merely in transition to something bigger and better, have convinced themselves that it is unnecessary to take the relationship seriously. In fact, however, the median occupational tenure of private household cleaners and servants — six years — is about the same as that of all workers.⁶²

If the better-off do not feel wealthy enough to pay the social wage that other employers must and do pay, it would be macroeconomically more rational for them to change their own sheets and diapers (thus giving effect to Gandhi's insight that "no man is too great to clean up after himself")⁶³ and instead to spend the purchasing power that currently underpays servants to increase the demand for products — and indirectly for the workers who produce them — in industries that have no qualms about complying with mandated social-economic norms. Rather than devaluing workers, an employer's payment of employment taxes is, in the words of the employer of a nanny quoted by *The New York Times*, an expression of respect: "This is a real job.

... And one of the ways you let people know that it is a real job is giving them the things that go with a real job."⁶⁴ Disrespect is shown by employers who, according to the president of one nanny service, "are looking to spend next to nothing on child care. ... The only way to get something for nothing is to find somebody desperate."⁶⁵

In expelling tens of thousands of the most miserably compensated workers from the minimal legislated economic protection that workers have managed to achieve, Congress has reversed a long historical trend toward universal incorporation of the population into the Social Security system. In voting over the past few decades to cover domestic workers under various labor protective laws, Congress and the state legislatures had in effect said that pre-New Deal chiseling was no longer good form. Once Congress radically simplified paperwork for employers, it should have put household workers on a par with other employees, who enjoy first-dollar Social Security coverage. Instead of raising the threshold to \$1,000, Congress should have lowered it to \$1.

In the event, the 103d Congress has effected a partial restoration of the golden days of *laissez-faire* without even requiring chiseling domestic employers to articulate the embarrassing agenda of rolling back coverage at the expense of those whose income may be only 1/10 or 1/100 of their own. That a Congress controlled by Democrats unanimously welcomed this mean-spirited act suggests that the new majority of market-knows-best Republicans may find few obstacles to the dismantling process.

⁶⁰Douglas Martin, "Illegal-Nanny Anxiety Afflicts Nation After Uproar Over Baird and Wood," *N.Y. Times*, Feb. 15, 1993, at A7, col. 4 at col. 6 (nat. ed.).

⁶¹*Id.*

⁶⁰See, e.g., Robert Foley, "The Nanny Trap," *Wash. Lawyer*, Mar-Apr. 1993, at 22; Mark Rome, "Household Workers: A Tax Primer, Part I — Classification," *Tex. B.J.*, May 1994, at 498; Mark Rome, "Household Workers: A Tax Primer, Part III (Consequences of Worker Misclassification)," *Tex. B.J.*, July 1994, at 716; Kathleen Murray, "Nannies and Taxes: Easing the Burden," *N.Y. Times*, Oct. 15, 1994, at 29, col. 3 (nat. ed.).

⁶¹Mary Romero, *Made in the U.S.A.* 4, 14 (1992); *Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Workers* at 18 (Rep. Meek).

⁶²Max Carey, "Occupational Tenure in 1987: Many Workers Have Remained in Their Fields," *Monthly Lab. Rev.*, Oct. 1988, at 3, tab. 3 at 6-10.

⁶³Phyllis Palmer, *Domesticity and Dirt: Housewives and Domestic Servants in the United States, 1920-1945*, at 159 (1989).

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