

Please Help Defeat Senator Chambliss's Amendments to the AgJOBS Farmworker Immigration Compromise

By Farmworker Justice, www.farmworkerjustice.org

The coalition of farmworker, civil rights, labor, religious, Latino, immigrant rights organizations and agricultural employers that support the AgJOBS farmworker immigration compromise ask you to defeat the changes proposed by Senator Saxby Chambliss (R-Ga.). Senator Chambliss's proposed amendments would create a harsh new agricultural guestworker program under which workers would not have the right to earn permanent immigration status and guestworkers would be denied the federal minimum wage and access to our justice system.

Amendments Weakening Wage and Other Protections of the H-2A Guestworker Program

Amendment 4009 would change the AgJOBS compromise on wage rates and slash the H-2A program's already inadequate wage rates by eliminating the protection of the adverse effect wage rate and the federal minimum wage from H-2A workers. Currently, H-2A employers must pay the highest of three wage rates—the state or federal minimum wage, the “Adverse Effect Wage Rate” (AEWR), or the local prevailing wage. The AEWR was created under the Bracero guestworker program as a necessary protection against depression in prevailing wages (wage rates often stagnate because the guestworkers have little ability to demand higher wages). Sen. Chambliss himself described the effect of his provision as cutting H-2A program wage rates by roughly \$3.00 per hour!!

The AGJOBS compromise already addresses the H-2A wage issue. **AgJOBS would reduce the adverse effect wage rates for each state by about 10% by setting them at the rates in effect on January 1, 2003, and would then freeze the AEWR's for three years, while two studies are performed to examine H-2A wage rates and make recommendations to Congress.** If Congress were to fail to enact an adverse effect wage rate formula within 3 years, the AEWRs would be adjusted at the end of 3 years by the cost of living. The AEWR issue is a complex one and is best left to the studies agreed to in the AgJOBS compromise.

There is no valid justification for Sen. Chambliss's proposal to make the federal minimum wage inapplicable to H-2A guestworker employers. The proposed redefinition of the “prevailing wage” is also objectionable. Both the foreign workers and U.S. workers employed at H-2A program employers would suffer a loss of income, further destabilizing the farm labor force. This proposal to slash H-2A wage rates and eliminate effective regulation of them are a one-sided, one-dimensional approach at the expense of vulnerable farmworkers.

Amendment 4010 would eliminate the H-2A guestworker program's “50% rule,” the principal method of giving U.S. workers a job preference. The “50% rule” requires H-2A employers to hire any qualified U.S. workers who apply for work during the first half of the season, even if a guestworker must be discharged (which rarely happens). U.S. workers deserve the first chance for jobs at employers in the U.S. Due to the nature of agriculture, which often involves varying times for the start of the work and a gradual development leading up to the peak season, it makes perfect sense to ensure that qualified job applicants are hired even after the first

“official” day of work. A U.S. Department of Labor study on the 50% rule done during the first Bush Administration concluded that the 50% rule should be continued because elimination of the rule would foreclose legitimate employment opportunities for U.S. farmworkers while imposing no “significant burden, financial or otherwise . . . on employers or workers.”

Amendment 4014 would strike the AgJOBS provision of a private right of action in federal court for H-2A guestworkers to enforce certain employment terms. This aspect of the AgJOBS compromise was key to farmworker advocates accepting many of the other changes to the H-2A program. Farmworkers deserve the right to seek justice in an impartial forum.

Amendments Limiting Legal Services Eligibility of Farmworkers

For the few remaining protections available to farmworkers, Sen. Chambliss’s amendments would limit judicial relief and legal assistance for farmworkers. Amendment 4031 would prohibit Legal Services Corporation’s (LSC) legal aid programs from representing an H-2A guestworker for violation of his/her rights once the worker is outside the country. Since H-2A workers only remain in the U.S. for a few months to a few weeks, this effectively means that there can be no representation of H-2A workers whose rights are violated. The bill also would limit the ability of legal aid to communicate with clients by allowing employers to prohibit them from entering their labor camps unless they submit evidence of a pre-arranged appointment with a specific worker. In the few instances where legal representation is possible, the legal aid attorneys, unlike any others, would be required to submit a request for mediation before filing a lawsuit for a worker. Also, this amendment, as well as **amendment 4015**, would provide for attorney fees to the prevailing party, an attempt to intimidate farmworkers from seeking justice.

Amendment 4013 and 4033 would strike language from AgJOBS that is intended to ensure that applicants for adjustment to temporary residence (blue card status) would be eligible for federally-funded legal services regarding their application. Preventing farmworkers from receiving assistance with their applications would reduce the ability of eligible workers to participate in this program. Few private attorneys in rural areas are available or affordable for farmworkers.

Amendments to Eliminate or Limit the Ability of Farmworkers to Obtain Lawful Permanent Residency

Amendment 4033 would strike the section allowing farmworkers to adjust to lawful permanent residence and would instead require farmworkers granted blue card status to return to their country after 2 years or if they were unemployed for 60 consecutive days. This amendment would drastically change the “blue card” guestworker program in the AgJOBS program. The Chambliss amendments would eliminate the opportunity for undocumented agricultural workers to earn the right to obtain legal permanent immigration status or citizenship. Undocumented workers are likely to avoid his “blue card” program because it would require them to leave the country after only 2 years. This “report to deport” proposal would drive undocumented workers further underground. For those workers who might have had an interest in becoming blue-card

guestworkers under his proposal, the obstacles -- including heavy fines and unrealistic work requirements -- would make the program inaccessible. To the extent it would be used, it would result in exploitation of vulnerable guestworkers and depression in U.S. wages and working conditions. Sen. Chambliss' amendments offer no prospect for stabilizing the work force with legal-resident workers.

The amendment also would remove the AgJOBS language prohibiting the deportation of spouses and minor children of blue card holders, giving these family members the right to travel outside the US and giving spouses the right to apply for a work permit.

Amendment 4012 would eliminate the provision that that an agricultural employer may not fire a blue card worker without just cause and that workers who are wrongfully terminated be credited for the days of work lost toward the prospective work requirement. When a worker is seeking to earn immigration status by proving performance of agricultural work, some unscrupulous employers will threaten them with discharge or refusal to report days actually worked, depriving them of the work experience they need to qualify for immigration status. AgJOBS contains a compromise allowing a simple administrative system to remedy such abuses.

Amendment 4011, also affecting adjustment to lawful permanent residency, would strike a section of AgJOBS enabling H-2A workers employed as shepherders, goat herders, or dairy workers to adjust to lawful permanent resident status.

Amendments to Limit the Ability of Farmworkers to Participate in the Blue Card Program

For those few farmworkers who may be interested in participating in his blue card guestworker program, Sen. Chambliss would make it very difficult to qualify. **Amendment 4008 would redefine the work requirements necessary to participate in the "blue card" earned legalization program.** This amendment would double the eligibility requirement by requiring 150 previous work days *per year* during each of two years, rather than 150 work days in the two year period. It would eliminate the "hours" test for eligibility for blue card status and would require proof of at least 8 hours of work in a day. These provisions are unrealistic and undermine the goal of providing a stable labor supply for agriculture because many farmworkers do not work 150 days per years or 8 hours a day on many days due to the nature of farm work.

Sen. Chambliss would impose heavy fines on agricultural workers. **Amendment 4032** would raise the fine that a worker pays upon adjustment to blue-card status from \$100 to \$1000 and **amendment 4034** would raise the fine that a worker pays upon adjustment to green-card status from \$400 to \$1000. The most recent National Agricultural Workers Survey report indicates that the median individual income range is \$10,000 to \$12,499. These fines would be prohibitive costs for many, many farmworkers, as the costs would amount to approximately 10% or more of their gross wages in a year. Few farmworkers have enough savings to draw upon for such fines.

Amendment Changing the Purpose of the H-2A Program

Senator Chambliss's amendment 4030 would expand the H-2A program from a temporary and seasonal agricultural worker program to one that could include year-round jobs in agriculture, as long as the employer said the job was "temporary." **Amendment 4030** would redefine the nature of work eligible for the H-2A program, changing qualifying work from "temporary or seasonal" work to "temporary work" in the sense that an employer is merely seeking to hire "workers on a temporary basis."

Conclusion: Support AgJOBS

Sen. Chambliss's inability to win passage of similar proposals sought by agribusiness during the 1990's helped lead to labor-management negotiations and the bipartisan Congressional compromise in the Agricultural Job Opportunities, Benefits and Security Act of 2005 ("AgJOBS"), S. 359/H.R. 884.

AgJOBS is a win-win-win compromise that would provide employers and consumers with a stable, legal supply of farm labor by offering farmworkers the opportunity to earn legal immigration status. AgJOBS would improve national security by bringing workers out of the shadows, thereby allowing the government to better focus its resources.

In the event of a future labor shortage, the AgJOBS makes balanced revisions to the H-2A agricultural guestworker program to make the program more accessible to employers while preserving important labor protections for both guestworkers and U.S. workers. The AgJOBS legislation contains many hard fought compromises that were painful to agricultural employers and farmworker advocates- but that is the nature of the compromise. AgJOBS is a realistic and fair solution to the immigration crisis in agriculture.

The Chambliss amendments are neither balanced nor workable.

Farmworker Justice is a national advocacy organization for migrant and seasonal farmworkers.

Bruce Goldstein, Executive Director
Adrienne DeVartanian, Staff Attorney
Farmworker Justice
1010 Vermont Ave., N.W., Suite 915
Washington, D.C. 20910
(202) 783-2628