

## **FARMWORKER JUSTICE FUND, INC.-- LEGISLATIVE ALERT**

### **Chambliss Amendment Would Turn Back the Clock to the Pre-1966 Days When Farmworkers Were Excluded from the Minimum Wage**

In the Senate immigration debate, Senator Saxby Chambliss (R-Ga) submitted and spoke on an amendment that would slash wages for US farmworkers and foreign guestworkers in the H-2A agricultural guestworker program. This amendment is an attempt to transform the farm labor force into a system of cheap foreign labor.

Currently, H-2A guestworker employers must pay the highest of the following wage rates: the state minimum wage; federal minimum wage; the state's "Adverse Effect Wage Rate" (AEWR), based on a USDA wage survey; or the local prevailing wage for the particular task. 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 would change the wage requirements to require that H-2A employers would only need to pay the greater of the following: the state minimum wage or the local prevailing wage, as redefined in his bill.

He would abolish the Adverse Effect Wage Rate, despite the fact that it was recognized as necessary even under the old, notorious Bracero program, and even though the current formula was set by the Reagan Administration to lower the previous rates by 20%.

He also would make the federal minimum wage inapplicable to H-2A guestworkers.

Sen. Chambliss himself described the effect of his provision as cutting H-2A program wage rates by roughly \$3.00 per hour in some places.

Agricultural employers were excluded from the federal minimum wage from 1938 until 1966. (They are still excluded from the FLSA's overtime pay obligations.) The federal minimum wage is low, only \$5.15 per hour, lower than the current H-2A wage rates. But at least the FLSA contains a wage floor and a number of protections against employers' evasions of the minimum wage by failing to keep employment records and other requirements. In addition, the Fair Labor Standards Act allows affected workers to file claims with the U.S. Department of Labor or a lawsuit in federal court when the minimum wage is violated. This bill would eliminate these federal remedies and would only allow weaker remedies at the state level.

As to the requirement that employers would need to pay the state minimum wage, the minimum wages in some states, such as Chambliss's home state of Georgia, exclude agricultural workers altogether! Other states do not even have minimum wages and the minimum wages in yet other states, such as cosponsor Sen. Brownback's home state, Kansas, have minimum wages below the federal level. In Kansas, the minimum wage is only \$2.65 per hour!

By eliminating a floor on farmworker wages, Sen. Chambliss would drive farmworker wages lower and lower, satisfying his goal of creating a cheap exploitable labor market for employers. It would also bring misery to farmworkers.

The AGJOBS compromise already includes a measure addressing the AEWR. AgJOBS would lower the H-2A adverse effect wage rates by setting them at the rates in effect on January 1, 2003 and 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, and at the beginning of each year thereafter, based on the previous year's change in the consumer price index, with a maximum increase of 4% per year.

AgJOBS imposes a pay cut on farmworkers. In Georgia, the AEWR this year is \$8.37 per hour. Why? The Department of Labor sets the AEWR's for each state using regional wage surveys of nonsupervisory field and livestock workers from the prior year. These surveys are performed by the U.S. Department of Agriculture as part of its Farm Labor Survey. AgJOBS would lower the AEWR to \$7.28 per hour, a pay cut of \$1.09 per hour. And it would be frozen at \$7.28 for three years.

The AEWR issue is a complex one. The best solution is to leave in place the studies agreed to under AgJOBS. Senator Chambliss's 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. Cheap, exploitable foreign labor is not an appropriate policy.

*The Farmworker Justice Fund, Inc. is a national advocacy, litigation and education organization. For more information contact Bruce Goldstein.*