



FARMWORKER JUSTICE

Senator Chambliss's HARVEST of Shame: Job Loss and Wage Cuts for American Farmworkers

On July 19, 2011, Senator Saxby Chambliss (R-GA) introduced the HARVEST Act of 2011, S. 1384. The HARVEST Act would transform the agricultural labor force into a guestworker system with no meaningful protections. Chambliss's HARVEST Act would minimize government oversight of a massively expanded H-2A program, slash wages and other worker protections, limit the ability of legal aid lawyers to protect the few remaining rights of guestworkers, and make other changes to ensure farmers have ready access to a steady stream of cheap replaceable workers.

While Congressional inaction on immigration policy and the current focus on immigration-enforcement have created a dire situation for agricultural employers and farmworkers, the majority of whom lack authorization to work, guestworker proposals such as Chambliss's would only worsen the situation. Chambliss's bill would allow employers to bring in hundreds of thousands of new guestworkers under exploitative job terms with little government oversight, resulting in massive job loss for US workers. And the bill would do nothing to give the many undocumented workers already here productively harvesting our crops an opportunity to earn legal immigration status and help our agricultural sector prosper. Instead, Sen. Chambliss and others have returned to failed past proposals. There is a solution to stabilize the farm labor force and ensure fair treatment of farmworkers: provide undocumented farmworkers with the opportunity to earn legal immigration status with a path to citizenship and remove employer incentives to rely on guestworkers instead of hiring US workers.

Some of the most significant provisions in Chambliss's HARVEST of Shame are as follows:

Eliminating Job Protections for U.S. workers: In this time of record job loss and unemployment, Chambliss would make it even harder for U.S. workers to get jobs by reducing meaningful recruitment and job protections for U.S. workers. Chambliss would remove the "50% rule," the principal method of giving U.S. workers a job preference with employers that hire H-2A guestworkers based on a claimed labor shortage. The "50% rule" requires employers to hire any qualified U.S. worker who applies for work during the first half of the season, even if a guestworker must be discharged (which rarely happens). A Congressionally-required study concluded that the rule should be extended. The Chambliss bill also would limit the ability of U.S. workers to learn about job opportunities by reducing requirements for job postings and limiting the role of state workforce agencies.

Slashing Wage Rates: Farmworkers are among the lowest paid workers in our country and there is widespread agreement, even amongst conservatives like Rep. Steve King (R-IA), that wages for farmworkers should be higher. **Yet the Chambliss bill would slash the H-2A program's already inadequate wage rates and set them at an arbitrary, non-market-based level.** 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 guestworkers have little ability to request higher wages and US workers can be rejected if they seek higher wages than those offered to guestworkers). The current AEW formula is a regional average hourly wage rate for field and livestock workers, as measured by the Department of Agriculture's annual Farm Labor Survey of non-supervisory farm and ranch workers. Chambliss would change the AEW so that it is merely 15% higher than the state or federal minimum wage. This change lowers current H-2A wage rates. At \$9.12/hour, the Georgia AEW is one of the lowest in the country, yet it would decrease by around \$1.00 per hour under Chambliss's bill. If the minimum wage does not increase, then the Chambliss AEW calculation would prevent H-2A wages from rising even if the labor market improves and non-H-2A wages rise.

Extending the H-2A Program to Year-Round Jobs in Agriculture and Meat Processing: The bill would change dramatically the nature of the H-2A guestworker program, which is currently limited to temporary or seasonal agricultural positions, by expanding the program to include year-round jobs in agriculture, meat processing, and dairy, among other sectors. Chambliss's bill would alter fundamentally the labor relations system in these occupations by turning stable permanent positions into temporary guestworker jobs. The H-2A program is premised on the idea that it may be difficult to find US workers for temporary or seasonal work. That same logic does not apply to year-round employment in industries such as meat packing.

Creating an especially exploitative guestworker program on the US-Mexico border: Chambliss's bill would further expand the H-2A program by allowing agricultural employers to arrange for guestworkers to cross from Mexico into the United States daily without providing housing. Employers claim these workers live in border towns and should be allowed to return home to their families at night. The reality is that many of these cross-border workers are interior migrants from distant towns in Mexico and have no homes to return to at night; they will end up sleeping on the street or crowded into dangerous housing in a Mexican border town. An H-2A worker who truly lives in Mexico along the border and wishes to commute daily can always decline the housing, but it should not be removed from the program.

Treating workers like replaceable machinery: The HARVEST Act does not provide an opportunity for current undocumented agricultural workers to earn the right to obtain legal permanent immigration status or citizenship. Instead, the Chambliss bill unrealistically expects current undocumented farmworkers to come out of the shadows to register and pay a \$500 fine to work one season in the H-2A program, at jobs that last between a few weeks and 10 months, before being forced to return to their home countries. The result? Few undocumented workers would accept such conditions with no potential for them or their family members who are already living here to legalize their status; instead, they will be pushed further underground and become even more vulnerable to poverty and abuses.

Removing Government Oversight: The Chambliss bill would change the H-2A program from a labor certification to a labor attestation program, meaning employers simply promise to comply with required job terms and other requirements, with limited government oversight. Chambliss also would move the application process and enforcement of the worker protections from the US Department of Labor to the U.S. Department of Agriculture, despite its lack of experience enforcing labor protections and despite the fact that all other guestworker programs are run by the DOL. Both

of these changes would result in extremely limited oversight of a program that is already rife with abuses, with no countervailing rights or enforcement mechanisms for workers.

Reducing travel-expense reimbursements to which workers are entitled: For many years, H-2A program employers have had to reimburse workers for their in-bound transportation costs after one-half of the season has elapsed and then pay for their travel home if they complete the season. The Chambliss bill would require only that employers pay for travel costs to and from the place from which the worker was approved to enter the U.S., which could be a U.S. consulate hundreds of miles from the worker's home. In addition, this bill would essentially allow H-2A employers to reduce the workers' wages below the federal minimum wage by imposing on the workers the obligation to absorb visa, transportation and other costs related to entering the U.S. These provisions would drive foreign workers further into debt, making them even more vulnerable to exploitation.

Eliminating guaranteed housing for workers: For decades, the H-2A program has required that non-local workers receive free housing that meets safety standards, but under the Chambliss bill employers could choose to provide a housing allowance if the state's Governor has certified that there is sufficient farmworker housing available in that area. Because there is a dire shortage of affordable, safe, healthy housing for farmworkers, the longstanding requirement that employers provide farmworkers housing should not be changed.

This bill would limit judicial relief and legal assistance, leaving US and foreign workers without means to protect their few remaining protections. The bill would limit the ability of federally funded legal aid programs to represent any farmworkers not present in the country at the time of legal assistance. In the few instances where legal representation is possible, attorneys for H-2A workers, unlike any others, would be required to submit a request for mediation before filing a lawsuit and would be barred from filing a lawsuit if the mediator finds that the employer corrected the violation. A mediator should not have authority to bar claims from going to court—that is not mediation at all but rather a discriminatory denial of access to the courts. Chambliss's bill also attempts to intimidate U.S. farmworkers from seeking relief under the principal federal employment law for farmworkers, the Migrant and Seasonal Agricultural Worker Protection (which does not cover H-2A guestworkers), by awarding attorney's fees and other expenses to a prevailing defendant. Farmworkers are not entitled to attorneys' fees and Chambliss's bill would only give employers this right.