

Farmworker Justice Statement on “Save Local Business Act”

House Bill Would Reverse 130 Years of Knowledge on Eradicating Sweatshops

The “Joint Employer” Concept Prevents Escape from Responsibility for the Minimum Wage

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Farmworker Justice opposes the “Save Local Business Act,” HR 3441, introduced in the House today because it would remove an important mechanism to protect farmworkers and other low-wage workers from suffering violations of the minimum wage and child labor requirements.

“The Fair Labor Standards Act of 1938, which sets minimum wage, overtime, and child labor standards, adopted a definition of employment relationships based on 50 years of experience under state laws that evolved to address employers’ efforts to evade child labor and other labor laws. This bill contravenes 130 years of experience in how to address sweatshops and other labor abuses,” said Bruce Goldstein, President of Farmworker Justice, a national advocacy organization for farmworkers. “This bill, if enacted, would result in massive violations of the minimum wage and other labor abuses in agriculture that would harm farmworkers and harm the reputation of the entire agricultural sector.”

Many agricultural workers suffer violations of the Fair Labor Standards Act’s minimum wage and other basic labor protections. Often, when such workers try to remedy illegal employment practices, they run into a problem: the farm operator that really determines their job terms and has the capacity to prevent abuses denies that it is their “employer” for purposes of the minimum wage and other labor protections. Instead, the farm operator claims that a “farm labor contractor” or other intermediary is the sole “employer” of the farmworkers on its farm.

In most such cases, the definition of employment relationships in the FLSA allows courts and the Department of Labor to consider the farm operator and the farm labor contractor to be “joint employers” and jointly responsible for complying with the law. (The FLSA definition of “employ” is to “suffer or permit” someone to work, meaning to acquiesce in, passively allow or affirmatively approve a person’s work.)

The so-called “Save Local Business Act” would change the definitions of employment relationships under the FLSA and the National Labor Relations Act (which

does not apply to farmworkers). Because the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) refers to the definition in the Fair Labor Standards Act, the proposed law may also apply to AWPA. AWPA is the principal federal employment law for farmworkers, regulating employment contracts and the use of farm labor contractors.

This bill would make it far more difficult to hold a farm operator jointly liable for minimum wage violations. A farm operator could make major decisions about the conditions under which farmworkers are employed, but avoid “employer” status by using a farm labor contractor instead of its own supervisor to ensure that its decisions were carried out. This is an old avoidance scheme that has been the subject of numerous lawsuits in which farm operators have been held to be joint employers with their farm labor contractors. This bill seeks to reverse those holdings.

“Farm operators want to assure their profit by exerting substantial control over the work performed on their farm. They should not be able to take advantage of the benefits of their power over workers but use farm labor contracting to escape the responsibility owed to workers,” added Goldstein.