



NORTH CAROLINA GROWERS
ASSOCIATION INC.

**Hearing before the House Committee on the
Judiciary
Subcommittee on Immigration Policy and
Enforcement**

H.R. 1773, the "Agricultural Guestworker Act"

2141 Rayburn House Office Building
Thursday, May 16, 2013
10:00 AM

Testimony of H. Lee Wicker

North Carolina Growers Association
Vass, North Carolina

Good afternoon Chairman Gowdy, Ranking Member Lofgren and Committee members, I'm Lee Wicker, Deputy Director of the North Carolina Growers Association. In addition to my position with NCGA, I am also a member of the Board of USA Farmers, the nation's largest organization representing agricultural guest worker employers. NCGA and the USA Farmers Board support Chairman Goodlatte and the cosponsors of this legislation in their

efforts to provide agriculture with a guest worker program that provides reliable access to much needed farm labor. Their ideas for reform offer a balanced approach to address the many problems that plague the H-2A program and farmers, including too much paperwork, too much bureaucracy, too many regulations and too much frivolous litigation. Thank you for holding this hearing on a critical issue for labor intensive Agriculture.

As the largest H-2A Program user in the nation, NCGA currently has 750 farmer/members that will employ more than 7500 H-2A workers and many thousands more U.S. workers this season. With more than 10% of the total agricultural guestworkers employed nationally, NCGA has been the largest program user for more than 15 consecutive years. I am proud of the growers I work for because they strive to be the most compliant farmers in the nation when it comes to the various state and federal labor, employment, worker protection and immigration laws.

In previous hearings on this topic I've highlighted the chronic problems of the current H-2A program that undermine farmer confidence and make hiring illegal workers a better option: H-2A is expensive, overly bureaucratic, unnecessarily litigious, and excludes some farms and activities.

The measured reforms in H.R. 1773 go a long way towards solving the most onerous flaws in H-2A and creating a guestworker program that all agricultural producers can utilize. This proposal is evidence the U.S. can have a workable farmworker program that treats workers well and carefully balances the critical elements of worker protections while promoting economic viability.

This bill makes significant reforms to the prohibitive program costs associated with H-2A and the new H-2C program makes additional improvements in other important areas. The bill provides for a realistic market based prevailing wage as a floor that surpasses the Federal minimum wage. It also authorizes piece rate pay systems on top of the super minimum wage to promote higher earnings as a financial reward for increased worker productivity. The new program allows farmers and farm workers who benefit from working together

in the program to share in the program costs and it offers a structured portability process enabling workers to move from employer to employer.

Importantly, the bill creates a streamlined legal dispute resolution system to solve any farm worker complaints quickly and efficiently, and makes farmer and worker obligations clear and understandable. These improvements will provide a viable alternative to employing illegal aliens and will give farmers and workers confidence they can participate in the H-2C program successfully.

This legislation maintains the long standing protection of giving American workers preferential consideration in obtaining farm jobs by requiring farmers to solicit and hire U.S. workers through the local employment service for 30 days before the jobs begin - prior to any foreign worker being employed. In addition, this bill enables farm workers currently employed on farms without proper legal status to come out of the shadows and continue their employment legally by waiving the 3/10 bar under current law.

The bill maintains valuable employee benefits and critical worker protections for domestic and foreign workers like: continuation of a minimum hours work guarantee, mandatory workers compensation insurance coverage, or state law equivalent, for workplace injuries, and promotes the employment of US workers by requiring non-seasonal ag employers to pay an additional users fee for administration of the new program.

The bill allows farms that currently provide housing to continue offering it as a worker benefit but doesn't prohibit farms without housing from participating in the program. It requires comprehensive recordkeeping and reporting obligations similar to current law. On average, I estimate the wage and benefit package associated with this bill will cost NC farmers, \$10-\$12 per hour. If that is the total cost of the program and those total costs remain predictable and reasonable, then this is a viable alternative to the current program and I think most farmers across the country could use it.

It should be noted that the proposal imposes a robust enforcement regime and maintains a strong penalty structure for violations and severe penalties for

gross material violations with oversight and enforcement authority explicitly provided to USDA. All the economic benefits and worker protections in this bill will provide workers who accept these jobs assurance they will enjoy a higher wage and benefit package, a safer work environment, and quicker resolution of their grievances than if they work on U.S. farms illegally.

It is clear there is bi-partisan bi-cameral consensus that our nation needs a modern and flexible future flow ag guestworker program. This H-2C proposal encompasses many elements of the Senate Gang of Eight ag proposal such as:

- streamlining the attestation based application and having the program administered by USDA
- elimination of the unnecessary and disruptive “50% rule” from the H-2A program
- elimination of the expensive and virtually worthless prescriptive newspaper advertisements required by H-2A
- reduction in the prohibitive overhead costs of the current program through savings on transportation, subsistence and visa fees
- opening the program to all sectors of agriculture, including some food processing
- authorizing longer term visas, when needed, to respond to evolving ag production practices and newly covered sectors
- enabling current undocumented workers a means to obtain legal status and keep working in agriculture
- provides for both at will and contract style agreements under the new program to allow workers and growers flexibility to decide for themselves what works best in certain sectors in different parts of the country
- provides portability so that workers have the ability to seek additional and/or alternative ag work opportunities in the farm work marketplace

Although the 750 farmers of NCGA are strongly opposed to an arbitrary cap in a new agricultural worker program, we acknowledge that the 500,000 per year worker cap in the H-2C program is far more reasonable than the woefully

inadequate 112,333 annual cap currently in the Senate bill. Farmers prefer the program be uncapped to avoid devastating economic losses that will generate unprecedented farm bankruptcies when crops are lost because partisan political systems and administrative processes will never react quickly enough as crops ripen then rot, market opportunities are missed, contracts with customers go unfilled and are subsequently lost, and consumers are forced to pay higher prices while their plates have fewer healthy fresh fruits and vegetables.

While H.R. 1773 is not perfect, the NCGA Board of Directors, all farmers using the current program, voted unanimously to support this proposal and hopes to see some improvements and minor adjustments made as the bill makes its way through the legislative process. It offers great employment opportunities and provides growers with a program that is substantially more predictable and user friendly than H-2A. The delicate balance in this bill between program improvements for farmers and worker benefits and protections, represents a win for farmers, a win for farm workers and secures a safe food supply for Americans into the future.

Passage of H.R.1773 will save and help create more jobs for Americans on the farm and off.

I applaud Chairman Goodlatte and this Committee's leadership on this issue. There is no time to waste; the House should pass this legislation as quickly as possible and send it to the U.S. Senate for passage.

As our nation's long term food production and supply hang in the balance, Congress has a historic opportunity, indeed an obligation, to provide a future flow program for agriculture. It is critical to get this public policy right. Most U.S. farmers cannot afford and many will not survive another 1986 type policy failure.

The H-2C program will provide a fair, predictable, efficient and affordable process for employing workers in agricultural jobs. Farmers and farm workers' want to comply with labor and immigration laws. Congress should pass the Agricultural Guestworker Act so they can.