



NORTH CAROLINA GROWERS ASSOCIATION INC.

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

“American Specialty Agriculture Act”

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Testimony of H. Lee Wicker

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Vass, North Carolina

Good morning Mr. Chairman and Committee Members, I'm Lee Wicker, Deputy Director of the North Carolina Growers Association. Thank you for holding this hearing regarding employment in labor intensive agriculture.

Jobs, Jobs, Jobs – you hear it every day....we need more jobs in America. We need to create more jobs and protect the jobs we currently have. Not all jobs are equal. It must be understood, that in order to plant, tend and harvest crops, farmers need temporary, seasonal (mostly unskilled) labor. And for most Americans – a temporary, seasonal job, paying under \$10 an hour, out in the elements, performing physically demanding labor – these low skilled jobs aren't what our citizens want in order to provide for themselves and their families. Americans want full time, permanent jobs. And Agriculture provides these kinds of jobs to Americans, too. In fact, H-2A has the potential to be a great jobs program saving and creating full-time, permanent

jobs for Americans. We've seen in North Carolina how this can work. The NC Growers Association is the largest H-2A program participant in the country – we currently have over 600 farmers who employ over 6000 H-2A workers who perform seasonal, temporary tasks – which then enables these same 600 farmers to hire several thousand Legal US workers on their farms to do permanent, full-time, higher skills jobs. Another 18,000 jobs can be attributed both upstream and downstream from the farm gate through the economic impact of the 600 NCGA farmers. But in order for these 20 to 25 thousand full time permanent jobs to exist, farmers need temporary seasonal farm workers as well – and for those jobs, farmers have two realistic options, navigating H-2A or hiring illegals.

When it was originally created, the H-2A program was a great concept. But unfortunately, unintentionally vague statutory language has resulted in politically motivated and ideologically based litigation and allowed bureaucrats to change the intent of Congress – making H-2A a program that is too litigious, too expensive and too difficult to navigate for most farmers. In 2008, new rules written under USDOL Secretary Elaine Chao made real improvements to the H-2A program – and more new farmers signed up to use the program. But in 2010, the H-2A rules were re-written by current USDOL Secretary Hilda Solis – creating rules and regulations that are absolutely horrendous for farmers – causing farmers to flee from the program and return to hiring illegal workers. H-2A has great potential – but only if Congress will fix it once and for all so that it is a workable and predictable program for farmers. This has the potential to improve wages and working conditions on all labor intensive farms.

The four biggest problems that preclude farmers from participating: H-2A is currently too expensive, too bureaucratic, too unlikely to deliver a workforce to the farm on time to perform time sensitive crop activities, and too likely to draw attacks from ideologues and bureaucrats. These problems undermine farmer confidence and make illegal workers a more attractive option.

Farmers need relief from the fluctuating, arbitrary wage rate of the Adverse Effect Wage Rate. This year, the Adverse Effect Wage Rate in North Carolina is \$9.30 an hour. When you add in the benefits package of free transportation, free government-inspected housing, workers compensation insurance – that is a total H-2A cost of \$12 - \$14 per hour. That is much higher than what most family farmers can afford to pay for labor costs – especially when they see their competitors, who are employing illegal workers, are paying only \$7.25 an hour with no benefits – it is not hard to see why most farmers in America don't use the H-2A program. When the public policy debate heats up about farm labor, we frequently hear worker advocates scream about the past and cite what the 60 year old Bracero program was like and insist that all guestworker programs are the same. The fact is there is no legitimate comparison. One last point on wages – according to NC State University economists Dr. Mike Walden and Dr. Blake Brown - every 10% increase in the H-2A wage rate above the Federal minimum wage results in about a 4% decrease in employment of full-time, permanent higher skilled US jobs. The American Specialty Agriculture Act provides a more realistic market based prevailing wage as a floor - which incidentally surpasses the Federal minimum by approximately 10% in NC, on average. Under the current program H-2A wages are nearly 30% higher than Federal minimum. This is not sustainable. If the 15 year trend in AEWR increases holds, in a few years we could be at 150% of Federal minimum wage. Wage improvements will make H-2A a more viable

alternative to employing illegal aliens and will give farmers confidence they can participate in the program successfully.

Farmers who use H-2A are plagued by lawsuits from ideologues. The complex, constantly changing rules are a boon for plaintiff lawyers – many of whom are ideologically opposed to the H-2A program. In North Carolina for example, Legal Aid has dedicated itself to filing harassing lawsuits on farmers who are merely trying to obey the law and hire LEGAL H-2A workers. Since 1989, NCGA has been sued over 30 times and has paid over \$5 million dollars in attorneys fees and settlement costs. This is a common experience among H-2A employers. This harassment should be stopped. Farmers have to sign contracts with arbitration/mediation clauses every day – they should be allowed to have these same agreements with their workers.

U.S. Citizen Preference. The American Specialty Agriculture Act continues a long standing principal of giving American workers preferential consideration in obtaining these jobs by requiring farmers to first solicit U.S. workers through the local employment service and prescriptive newspaper advertisements before foreign workers may be employed. Obviously if an American worker wants these jobs, then they should be hired first.

Farmers need a simplified program that is not so bureaucratic. The American Specialty Agriculture Act allows farmers and farm workers who benefit from working together in this program to share in the costs, offers structured portability, encourages a streamlined legal dispute resolution system to solve farm worker complaints quickly and efficiently, provides authority to USDA for streamlined administration of the program that make farmer obligations clear and understandable.

While the American Specialty Agriculture Act is not perfect in all areas, from the perspective of a group of long term H-2A program users this bill is close enough. The reforms to the agricultural guestworker program proposed in the American Specialty Agriculture Act go a long way towards solving the four most onerous flaws with the program. This bill is also evidence that the U.S. can have a workable farmworker program that treats workers well and carefully balances all the critical elements, worker protections and economic viability. The American Specialty Agriculture Act maintains valuable economic benefits and critical worker protections for domestic and foreign workers like: the $\frac{3}{4}$ guarantee, mandatory workers compensation insurance coverage for work place illnesses and injuries, and conditional prospective in and outbound transportation and subsistence reimbursement that are articulated clearly in the legislative language. It continues the requirement to provide free inspected on farm housing and offering a housing voucher provision that will allow farmers without on farm housing to participate. The bill requires comprehensive recordkeeping and reporting obligations identical to current law. And the bill imposes a robust enforcement regime and maintains a strong penalty structure for violations with severe penalties for gross material violations. All the economic benefits and worker protections in the American Specialty Agriculture Act will provide workers assurances that if they accept these jobs they will enjoy a higher wage, benefit package, a safer work environment, and quick resolution of their grievances when compared to non H-2A workers.

The NCGA Board of Directors, who are all farmers who have participated in H-2A for at least twenty years have voted unanimously to endorse and support the American Specialty Agriculture Act. This legislation offers great employment opportunities and provides growers with a program that is substantially more predictable. On behalf of the members of NCGA and program users throughout the nation I applaud Chairman Smith's leadership on this issue. There is no time to waste; the House should pass this agricultural guestworker reform legislation as quickly as possible.

The NCGA Board of Directors also voted unanimously to join the U.S. Chamber of Commerce in supporting H.R. 2164, the Legal Workforce Act because it is time to level the playing field for all employers. More than twenty states have already enacted some version of E-Verify in the vacuum of Federal inaction. Recent decisions from the Supreme Court are signals that it is time for Congress to lead and pass a national standard so that employers, including farmers, operating in multiple states can more easily comply with the law. Some in agriculture are ringing the alarm bell in an effort to scare farmers into opposing H.R. 2164. Companion passage of the American Specialty Agriculture Act will certainly help to make the transition even easier for our industry.

In closing, farmers need an agricultural guestworker program that provides a predictable, efficient and affordable process for hiring workers for temporary, seasonal jobs. Farmers and farm workers want to comply with labor and immigration laws. Congress should pass the American Specialty Agriculture Act so they can.