



# BOREALIS

LAW PLLC

Andrew Schmidt  
Borealis Law PLLC  
97 India Street  
Portland, ME 04101  
andy@maineworkerjustice.com  
207-619-0320

March 25, 2024

Senator Michael Tipping, Senate Chair  
Representative Amy Roeder, House Chair  
Joint Standing Committee on Labor and Housing  
c/o Legislative Information Office  
100 State House Station  
Augusta, ME 04330

Re: Limited Opposition to LD 2273 / All Workers Must Have Access to the Courts

Dear Senator Tipping, Representative Roeder, and Members of the Joint Standing Committee on Labor and Housing,

I am a lawyer with two decades of experience representing agricultural workers along with thousands of other low-wage, often immigrant workers. In law school, I visited apple pickers in remote orchards to talk about their rights, and early in my career, I represented Peruvian shepherds in the Colorado Mountains. More recently, I have helped wreath workers in Maine. Today, I also testify on behalf of the Maine Employment Lawyers Association (MELA), the largest organization of civil rights lawyers in Maine with about 75 member attorneys who represent employees in labor and employment matters across the state.

While we support mandating that farm workers in Maine be paid the minimum wage, we cannot support the bill in its current form because the absence of a private right of action perpetuates the very inequality that the bill seeks to rectify. By denying farm workers access to the courthouse, we would effectively endorse a system of second-class rights for some of our most vulnerable workers.

This limitation starkly contrasts with the rights available to other minimum wage workers in Maine who can initiate personal lawsuits for wage violations. Attorneys can represent these workers and collect attorneys' fees from the offending employer at the end of the case. Such disparity not only relegates farmworkers' rights to a secondary status but also,

in reality, renders them largely unenforceable when the Department of Labor is unable or unwilling to address all violations.

A worker's ability to go to court is fundamental to ensuring their rights are protected, by redressing wrongs, but also by deterring wrongful conduct in the first place.

In light of these concerns, we urge the committee to amend the bill to include a private right of action for farmworkers. Such an amendment would bring farmworkers' rights in line with those of other workers in Maine, reaffirming our state's dedication to fairness, equality, and justice for all laborers, regardless of their field or background.

Any concern of gates opening to a flood of lawsuits is unfounded. Farmworkers will continue to face significant hurdles to upholding their rights because of physical isolation, language barriers, and lack of connection in the community. I do not anticipate more than a few cases a year. However, the minimum wage law with the ability to go to court would provide a crucial avenue for legal intervention in particularly severe cases. When attorneys become aware of these grave violations, this right of private action becomes a powerful tool, enabling us to stand up effectively for these workers' rights. It is also unfair to the employers doing the right thing when they have to compete against employers that will cheat workers knowing the Department of Labor lacks the resources to discover most violations or to effectively challenge many that they do discover.

We support the proposal that farmworkers in Maine receive an equal minimum wage of \$14.15 per hour. This is a crucial stride towards rectifying long-standing injustices in our labor system, particularly for the migrant workforce predominantly comprising non-white workers. But justice requires that the courthouse doors be open to all workers equally.

Thank you for considering this vital issue. Let us work together to build a more just and equitable Maine for all workers.

Sincerely,

Andrew Schmidt  
Borealis Law  
97 India St.  
Portland ME 04101