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SPEAKER OF THE HOUSE

Tuesday, April 18th, 2023

Testimony of Speaker Rachel Talbot Ross presenting
***LD 398, An Act to Make Agricultural Workers and Other Related
Workers Employees Under the Wage and Hour Laws***
***LD 525, An Act to Protect Farmworkers by Allowing Them to
Organize for the Purposes of Collective Bargaining***
and in support of
LD 1483, An Act to Protect the Rights of Agricultural Workers
Before the Joint Standing Committee on Labor & Housing

Senator Tipping, Representative Roeder and esteemed members of the Joint Standing Committee on Labor and Housing, I am Rachel Talbot Ross. I represent House District 118 which is the Portland neighborhoods of Parkside, Bayside, East Bayside, Oakland and the University of Southern Maine Campus and I also have the distinct honor of serving as the Maine Speaker of the House. I am here today to present **LD 398, An Act to Make Agricultural Workers and Other Related Workers Employees Under the Wage and Hour Laws** and **LD 525, An Act to Protect Farmworkers by Allowing Them to Organize for the Purposes of Collective Bargaining**. I am also here in support of **LD 1483, An Act to Protect the Rights of Agricultural Workers** though I will not be discussing that in detail.

The Equal Protection Clause of the United States Constitution provides, "No state shall ... deny to any person within its jurisdiction the equal protections of the laws." Similarly, Article 1, section 6-A of the Maine Constitution has the following language, "No person shall be ... denied the equal protection of the laws." I ask you to keep those constitutional principles in mind as you consider my testimony this afternoon.

Historically, agricultural workers, or *farmworkers*, have been specifically excluded from basic labor laws that protect most workers. They have been denied equal protection under both federal and state law. Currently, in 2023, Maine farmworkers are still not considered *employees* under fundamental state labor law.

District 118: Portland neighborhoods of Parkside, Bayside, East Bayside, Oakdale and the University of Southern Maine Campus

work is available. Farmworkers who work year-round in Maine work long hours and have precious little free time to come to Augusta.

Couple that with the fact that neither state nor federal laws protect farmworkers who might want to form a union, collectively bargain, or even talk to their fellow workers about improving their working and living situations, and it is easy to see why the lives and working conditions of many of these workers have changed little since Edward R. Murrow's *Harvest of Shame* was produced and televised in 1960, over 60 years ago. Unlike almost every working person in Maine and throughout the United States, farmworkers can still be fired for simply talking about their working and living conditions and bringing those concerns to their employers. If they talk to their co-workers about seeking to change their wages or working conditions, they can lose their housing and lose their jobs while thousands of miles from their homes. Those firings have been and remain *legal* even though I believe they are both immoral and unjust. Please know that I readily acknowledge that many, if not most, farmers who employ migrant, seasonal, and year-round farmworkers treat them with great dignity and respect.

Non-farmworker employees who are not represented by a union still have significant rights under the National Labor Relations Act (NLRA). That federal law and the National Labor Relations Board (NLRB) protect the rights of employees to engage in “concerted activity,” which is when two or more employees take action for their mutual aid or protection regarding the terms and conditions of their employment. A single employee may also engage in protected concerted activity if he or she is acting with the authority of other employees, bringing group complaints to the employer’s attention, trying to induce group action or seeking to prepare for group action. If farmworkers do any of those things, they can be summarily fired, and that firing remains legal in Maine.

A few examples of the legally protected concerted activities that non-farmworkers can engage in are:

- Two or more employees addressing their employer about improving their pay;
- Two or more employees discussing work-related issues beyond pay, such as safety concerns, with each other; and
- An employee speaking to an employer on behalf of one or more co-workers about improving workplace conditions.

Farmworkers do not have this basic protection. This is one of the main reasons their lives remain so difficult and their earnings so low. Farmworkers are

do better as a Legislature, as a people and as a state. Passing LD 525 could be the first step in making that a reality.

I will now turn to LD 398 which deals with the state minimum wage and overtime for farmworkers.

Under current Maine labor law, in 2023, farmworkers are not considered employees under wage and hour laws. As a result, they are not protected by Maine's minimum wage and overtime laws found at 26 M.R.S. § 664 (1) and (3). They are not provided the legal protections enjoyed by just about every other working person in Maine. Under current law, farmworkers in Maine, with limited exceptions, are only legally entitled to the federal minimum wage of \$7.25 an hour, a figure that has not changed since 2009. While farmworkers in Maine generally make more than that amount, they are not legally protected by Maine's minimum wage provisions, and they receive no benefits or legal protection when it comes to overtime.

Why is this still the case in 2023?

In the 1930s, Congress passed a package of significant labor laws as part of the New Deal Congress established minimum wages, though it was set lower for farmworkers. The New Deal also provided overtime pay and the right for workers to organize and collectively bargain. They did not provide any of those legal benefits and protections to farmworkers. I have already explained the significant impact that the exclusion from the protections regarding organizing have had and continue to have on the lives of farmworkers and will not repeat that here.

The legislative history of laws regarding wages paid to farmworkers is clear. Members of Congress, particularly Southern lawmakers, were adamant that setting a floor on wages would undermine a lingering plantation system. Eliminating the historic wage disparities between farmworkers who were black and other people of color was not welcome. Democratic Representative Edward Cox said that it would allow for the **“elimination and disappearance of racial and social distinctions, and... throw into question the determination of the standards and customs which shall determine the relationship of our various groups of people in the South.”**

Florida Representative James Mark Wilcox said **“[t]here has always been a difference in the wage scale of white and colored labor... Now such a plan might work in some sections of the United States but those of us who know the**

Other states have enacted laws to provide farmworkers with both minimum wage and overtime protection. Specifically, regarding just overtime, some states including California, Hawaii, Maryland, Minnesota, Washington, and New York have done so, along with the District of Columbia.

Those other states also provide the same minimum wage to farm workers as is paid to all other working people. Those state wages are substantially higher than the stagnant federal minimum wage of \$7.25 an hour. Are Maine's farmworkers worthy of similar legal protections? In my mind, the answer is clearly yes. The time is right to extend the fundamental protections long contained in Maine's wage and hour laws to all of Maine's working people, including farmworkers.

In closing, it goes without saying that, if there are no farms, there is no food and no farm workers. Farmers and farmworkers are all hardworking people. We also know that there are serious and deeply entrenched structural and systemic problems in our country with the way farm owners are compensated for the food they produce, and we must change that. But we cannot solve those problems by continuing to deprive farmworkers of basic labor rights by maintaining laws based on historical inequities.

Thank you for your time and attention this afternoon. I am happy to answer any questions you have.