Farmworkers' Right to Overtime Pay:
Employers' Report has Flawed Methodology and Misleading Conclusions

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Recently, a coalition of agricultural employer organizations commissioned a report that appears to show that granting farmworkers the same rights to overtime pay as enjoyed by employees in most other industries would result in significant negative impacts for both farmers and their employees.[1] Unfortunately, the report is based on flawed methodology and therefore has produced conclusions that are not credible.

Flawed Methodology

<u>A meaningless survey</u>:

At the heart of the Highland report is a survey of agricultural employers. However, Highland explains that the survey was "not designed to be statistically representative."[2] But this violates the fundamental principle that distinguishes credible survey data from what the courts deem "junk science." It's not clear why Highland did not design a survey guaranteed to represent a cross-section of average Oregon farmers. But the result is not simply that the survey's numbers might be off by a little; it's that the authors have no idea how far off their numbers are, and therefore the survey is meaningless as a guide for policy makers.

Highland says that 10% of farmers replied to their survey. But there is no way to know if this group of respondents is overly concentrated in one crop, one part of the state, one size of farm, or one political ideology. What we do know is that the respondents likely include the most politically motivated farmers in the state. The associations that paid for this study are all lobbying organizations. The survey was conducted by having these organizations reach out to their members, asking them to fill out an online form. It's likely that those who responded are those most closely engaged with these organizations, with the strongest feelings about legislative issues. For instance, the survey respondents come from the Farm Bureau and other employer associations, who encouraged their member companies to fill out an online form. Since all of these associations are lobbying organizations, it is possible that the respondents represent those employers with the strongest political feelings about the issue. But political motivations often lead to that are more emotionally charged than economically accurate.

<u>Internal contradictions</u>:

The unreliability of Highland's survey data is made clearer by the fact that the findings are marked by internal contradictions. For instance, the vast majority of farmers in Highland's survey say that if farmworkers have a right to overtime pay, they will no longer let employees work more than 40 hours per week, resulting in reduced total pay.[3]

But to reduce hours worked, farmers have to hire more workers during the peak harvest season, and this is impossible, because these same employers report that there is a severe shortage of farm labor (which will only get worse if Oregon becomes the only state on the west coast to deny overtime pay).[4] These two claims – that there is a severe labor shortage and that farmers will hire more peak-season workers rather than pay overtime wages – cannot both be true. That farmers report them both as true points to the fundamentally unreliable – and ultimately meaningless -- nature of this data.

Similarly, Highland reports that the cost of higher wages cannot generally be passed on to consumers in the form of higher crop products. Thus, the entire cost of increased wages has to be absorbed by farmers; the report projects that this will reduce statewide net farm cash income by 32% to 47%, with the result of "some producers going out of business and … reduced overall agricultural production."[5] Highland explains that since "agricultural commodities are traded on national and global markets," producers are "price takers, not price setters." The one exception to this rule are "specialized products," for which employers can raise prices. But elsewhere in the report, Highland notes that fully 70% of the value of Oregon's crop production comes from specialty crops.[6] This means that a significant portion of the cost of higher wages for Oregon farmworkers can be passed on to consumers. But Highland never makes this calculation – instead showing numbers that assume 100% of the cost must be borne by employers.

<u>High estimates of farmworker wages results in exaggerated projections of employer hardship</u>:

By overestimating the current wages earned by Oregon farmworkers, the Highland report also overestimates the cost of overtime wages. There are three specific concerns with the report's wage data:

- The report calculates an average wage for all farm employees, including supervisors and machine operators, which significantly overstates the real wage level of the majority of farmworkers.[7]
- Highland reports employers' payments to labor contractors as if these are employee wages, when in reality labor brokers typically retain one-quarter or more of this payment, resulting in dramatically lower employee wages.
- Highland failed to report the significant proportion of farmworkers currently earning less than minimum wage, despite this data being readily available in the same U.S. Bureau of Labor Statistics tables that Highland used elsewhere in the report.

<u>Failure to consult relevant literature</u>:

The authors of the Highland report state in their introduction that their approach to the study was "to use all available sources of information that could shed light on" the issue. However, there are several recent studies by credible authorities that address this same topic but reach different conclusions.[8] These studies were ignored by the Highland authors.

<u>Failure to consult farmworkers leads to condescending and paternalistic conclusions</u>:

The Highland authors state that their work is based on "interviews conducted with representatives from both farmworker advocacy organizations and farm advocacy organizations."[9] Yet the one "farmworker advocacy" group identified in the report -- the California Farmworker Federation – is actually a management-dominated organization, whose president is a former HR manager and current farm labor contractor employing 4,000 farmworkers, whose chairman is an operations manager at a vineyard, and whose treasurer runs a contract labor service managing 2,500 employees.[10] By contrast, Highland did not interview or survey any of the well-known and readily available organizations of farmworkers, including the United Farm Workers, PCUN (Pineros y Campesinos del Noroeste), or VOZ Workers' Rights Education Project. As a result, the report ends up taking on a paternalistic and condescending tone, suggesting that farmworkers advocating for overtime wages don't understand what's good for them, and need employers' association to identify what's in workers' best interest.

<u>Counting costs while ignoring benefits</u>:

The Highland report catalogues a series of potential costs that employers will bear as a result of being required to pay overtime wages. But it ignores a number of ways that this requirement may end up benefiting employers:

- First, higher wages means lower turnover and replacement costs for employers. A study by University of Massachusetts Economics professor Jeanette Wicks-Lim estimates that one-fifth of the cost of increased wages would be offset by lower turnover costs.

- Second, the report documents that the shortage of agricultural labor is significantly reducing farmers' earnings. More than one-third of Oregon producers of vegetables, tree nuts and tree fruits report that they have "lost revenue in many years" due to "farm labor shortages." The same is true for over 40% of berry producers and over 50% of dairy farms.[11]

- Third, the report ignores the positive multiplier effect of farmworkers having more money to spend on local small businesses, and the savings to Oregon taxpayers of fewer farmworkers requiring public assistance to make ends meet.

Highland's predictions don't match the evidence from other states and from the economic literature

The most important thing to know about this report's claims is that the same claims were made in Washington, California and other states; that those states' legislators chose to ignore the claims; and that producers' dire economic warnings have proved false.

When California established overtime rights for farmworkers in 2016, Highland Economics was hired by the Western Growers' Association to conduct a similar analysis.[12] As in Oregon, Highland's California report predicted that a right to overtime would "reduce farmworkers' incomes, reduce farm production and harm the state's economy."[13] In reality, however, none of the predictions contained in that report have come true. For instance, Highland predicted that California would lose up to 78,000 jobs as a result of overtime pay; instead, agricultural employment in the years following adoption of this law was slightly higher than in preceding years.[14] Similarly, Highland predicted that overtime would result in a 45%-70% increase in labor costs for crop production; instead, total annual wages paid to agricultural workers in California grew at a slightly slower rate after the law's implementation than in preceding years.[15]

So too, economic analyses produced by academics and policy scholars have found that including farmworkers in overtime laws would generate significant benefits for farmworkers and their families, at a very modest cost to employers and the public. In the debate over New York's 2019 law, the Fiscal Policy Institute published a report showing that overtime rights would result in a combination of cost savings through increased worker productivity and lower turnover rates; 2) some increase in prices to consumers; and 3) some loss of profit by employers. Even if there was no increase in worker productivity and no decrease in employer profits – so that all the cost increase was borne by consumers – consumer prices would go up by just 2%, the equivalent of raising the price of apples at farmers' markets from $1.50 per pound to $1.53.[16] On the other hand, if the entire cost of overtime wages had to be borne by employers, this would only amount to 9% of employers' net profit.[17] Similarly, a 2020 study conducted by University of Massachusetts economists found that granting overtime rights to farmworkers would increase farms' production costs by an amount equal to just 1.6% of total revenue.

The Highland report is part of a broader political agenda

The Highland report was commissioned by the Oregon Farm Bureau, an employers' lobby with a long track record of opposing employment rights for farmworkers. Employer associations are of course free to voice any political view. But it may be informative for legislators to understand the broader context that this report is part of.

The Farm Bureau's Policy Book shows that the organization is opposed to farm workers' right to paid sick leave, paid family leave, or control over unpredictable scheduling. Likewise, the organization opposes unemployment benefits for farmworkers laid off during slow season, seeks to ban all labor picketing during harvest season, and advocates for allowing farmworkers' housing to be built by unlicensed electricians and plumbers. Finally, the organization is opposed to any minimum wage level set by law, and to any "adverse effect wage" required to ensure that guest workers are not paid at rates below that required by local resident workers.[18]

Nor is this the first time that the Oregon Farm Bureau has predicted that higher wages would have ruinous effects. When Oregon raised its state minimum wage in 2016, the Farm Bureau declared that the wage increase “will force many family farmers to try to find ways to mechanize or transition away from labor-intensive products Oregon is known for… some will give up and sell, while others will simply go out of business.” The Farm Bureau president forecast that the impact of this wage hike -- coupled with other pro-labor laws including sick leave and PERS -- would mean that “many family farms and ranches will have difficulty staying in business.”[19] In reality, the number of Oregon farms continued to grow in the years following the minimum wage increase, and by 2019 the total value of Oregon farm production exceeded $5 billion for the first time ever.[20]

[1] Highland Economics, *Economics of Agricultural Overtime Pay in Oregon: Potential Effects on Farms and Farmworkers*, December 2021. This report was prepared for the Oregon Farm Bureau, with funding from the Oregon Association of Nurseries; Oregon Dairy Farmers Association, Oregon Seed Council, Columbia Gorge Fruit Growers, Associated Oregon Hazelnut Industries, Oregon Wheat Growers League, and Oregon Business and Industry. https://oregonfb.org/wp-content/uploads/2020/08/Economic-Effects-of-Proposed-Oregon-Agricultural-Overtime_Final-with-Surveys.pdf.

[2] Highland Economics, *Economics of Agricultural Overtime Pay in Oregon: Potential Effects on Farms and Farmworkers*, December 2021, p. 1. https://oregonfb.org/wp-content/uploads/2020/08/Economic-Effects-of-Proposed-Oregon-Agricultural-Overtime_Final-with-Surveys.pdf.

[3] Highland Economics 2021, p. 11. In wine, berries, grain hops, tree fruits and tree nuts – employers say they will eliminate more than 90% of work over 40 hours/week

[4] Highland Economics 2021, p. 6. Only 25% of employers say they currently can hire enough workers during peak season.

[5] Highland Economics 2021, p. 15.

[6] Highland Economics 2021, p. 2.

[7] For instance, on pp. 39-40, Highland notes that wages for farmworkers and laborers are between $12.50-$13.72, yet they report that "average hourly wage rates across all hired farmworkers in January of 2021 were $17.44."

[8] See Jeanette Wicks-Lim, "Estimates of the Potential Costs and Benefits of Extending Overtime Pay Eligibility to All Farmworkers in Massachusetts," U Mass Amherst, June 2020. https://peri.umass.edu/economists/jeannette-wicks-lim/item/1300-estimates-of-the-potential-costs-and-benefits-of-extending-overtime-pay-eligibility-to-all-farmworkers-in-massachusetts. (Lim is an Economics professor at the University of Massachusetts); Daniel Costa, *Testimony for the Massachusetts Joint Committee on Labor and Workforce Development, Hearing on the Farness for Farmworkers Act*. November 16, 2021. https://www.epi.org/publication/ma-fairness-for-farmworkers-act-testimony. (Costa served as immigration and labor advisor to the California Attorney General during that state's implementation of farmworker overtime rights); and David Dyssegaard Kallick, Margaret Gray and Olivia Heffernan, *Farm Workers' Overtime Pay is Affordable and Long Overdue*, Fiscal Policy Institute, May 2019. https://fiscalpolicy.org/wp-content/uploads/2019/05/Support-the-Farm-Worker-Fair-Labor-Practices-Act.pdf.

[9] Highland Economics 2021, p. 10.

[10] California Farmworker Federation, https://californiafarmworkers.org/who-we-are-2/board-of-directors/. Accessed January 26, 2022.

[11] Highland Economics 2021, Figure ES-6, page 7.

[12] Western Growers, *Economic Study Details Harmful Impacts of CA Overtime Bill*. August, 15, 2016. https://www.wga.com/blog/economic-study-details-harmful-impacts-ca-overtime-bill.

[13] Western Growers, *Economic Study Details Harmful Impacts of CA Overtime Bill*. August, 15, 2016. https://www.wga.com/blog/economic-study-details-harmful-impacts-ca-overtime-bill.

[14] In the four years leading up to the California law (2012-16), total agricultural employment in the state averaged 414,500; in the four years since passage (2017-20) total agricultural employment averaged 415,625. *Agricultural Employment in California*, California Employment Development Department, Detailed Agricultural Employment and Earnings Data Tables, 2020 4th Q Benchmark. Accessed 1-24-22. https://www.labormarketinfo.edd.ca.gov/data/ca-agriculture.html.

[15] Total annual wages for California agricultural labor increased at a rate of 5.5% per year in the five years before phase-in, and at a rate of 4.9% per year in the two years following phase-in. Daniel Costa, *Testimony for the Massachusetts Joint Committee on Labor and Workforce Development, Hearing on the Farness for Farmworkers Act*. November 16, 2021. https://www.epi.org/publication/ma-fairness-for-farmworkers-act-testimony.

[16] The Economic Policy Institute issued its own report based on the Fiscal Policy Institute's findings. https://www.epi.org/blog/farmworkers-in-new-york-deserve-overtime-pay/.

[17] https://fiscalpolicy.org/wp-content/uploads/2019/05/Support-the-Farm-Worker-Fair-Labor-Practices-Act.pdf.

[18] Oregon Farm Bureau, Policy Book 2022, Chapter XI, *Labor*. https://oregonfb.org/wp-content/uploads/2022/01/2022Labor.pdf. Accessed January 28, 2022.

[19] "Oregon's Food Producers Dismayed by Minimum Wage Vote," Oregon Farm Bureau, 2016. https://oregonfb.org/oregons-food-producers-dismayed-by-minimum-wage-vote. Accessed January 28, 2022.

[20] See Sean Nelson, "Value of Oregon agriculture, food and fiber sector exceeds $42 billion, number of farms grow, report shows," Oregon State University News, September 29, 2021, https://today.oregonstate.edu/news/value-oregon-agriculture-food-and-fiber-sector-exceeds-42-billion-number-farms-grow-report; and Bruce Sorte, Jeffrey Reimer and Gordon Jones, *Oregon Agriculture, Food and Fiber: An Economic Analysis*, Oregon State University, August 2021. https://agsci.oregonstate.edu/sites/agscid7/files/main/about/oragecon_report_2021.pdf.