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WORKER-DRIVEN SOCIAL RESPONSIBILITY:

A New, Proven Model for Defining, Claiming, and Protecting Workers' Human Rights

SUSAN L. MARQUIS
School of Public and International Affairs
Princeton University

clean slate for worker power

CLJE CENTER FOR LABOR & A JUST ECONOMY

Introduction

Building fires and factory collapses in Bangladesh. Modern-day slavery in U.S. agriculture. Sexual harassment and assault in the movie industry. Firings and violence against workers in retaliation for reporting abuses or trying to organize. Over the past two decades—often in response to the uncovering of another scandal of inhuman working conditions, rampant wage theft, or forced labor—there's been increased attention to the need to enforce the human rights of workers to safe working conditions and fair pay. The increased attention is new, but the problem of abuse and exploitation of low-wage workers is not. Within agriculture, physical abuse and wage theft go back to the tragic history of enslaved workers, continue through our nation's Jim Crow era, and, as will be demonstrated below, are with us today. Industrialization brought new avenues to not only exploit factory workers but to also place them in significant physical danger. And globalization has meant that the multinational corporation behind your favorite brand of jeans is likely to have an international supply chain riddled with unsafe working conditions, below-poverty wages, rampant wage theft, and even cases of forced labor or modern-day slavery. Increased attention to who was making your iPhone, "fast-fashion," or chocolate gave rise to a raft of highly touted "solutions" and a new social responsibility industry. Recent research and evaluations demonstrate that these solutions of corporate social responsibility (CSR), multi-stakeholder initiatives (MSIs), and "transparency legislation" have been ineffective at best and exacerbating at worst. They have protected and even strengthened corporate brands while creating a new industry of social responsibility certification, auditing, and labels. What they have not done is protect the workers themselves. In fact, more than one report has indicated that the "cosmetic compliance" enabled by CSR, MSIs, and toothless transparency legislation is actually worse than doing nothing, misleading customers and citizens that something is being done while the denial of workers' human rights continues.[1]

Sharpening our focus to large-scale agriculture in the United States, the U.S. government, both federal and state, has been unable to ensure the health and safety of farmworkers—as true today as it was 50 or 150 years ago. If anything, the problem of abuse in the fields is worse than that within any U.S. industry. Farms are in remote areas and the workers themselves are spread throughout vast fields, making observation difficult. Attention is paid to sneakers and smartphones in a way not often found with commodity tomatoes. America's fraught history in agricultural labor extends back to the legacy of slavery on the East Coast and a long stream of encouraged, exploited, and discriminated-against immigrant workers—from Mexico, Japan, China, the Philippines, and Central America—on the West Coast. Black workers in the East left slavery only to

[1] MSI Integrity, *Not Fit-for-Purpose*, 2020; Re:Structure Lab, *Due Diligence and Transparency Legislation*, April 2021.

find themselves in a Jim Crow environment described as "worse than slavery."[2] Immigrant labor, combined with vast open spaces, established industrial agriculture in the West at a scale never imagined in the East. In recent decades, the differences between East and West farmworkers have narrowed, but the invisibility, punctuated by resentment when noticed, remains. Add to this the constant market pressure to keep labor costs down and profits up, and the result is a never-ending cycle of abuse.

There has been a bright light of not only hope but real and positive change in the darkness of continuing violence and human rights violations. Amidst the failure of one "groundbreaking" program after another, there has been one approach that has demonstrated the ability to effectively eliminate this abuse. Worker-driven social responsibility (WSR) is a "new" model for defining, claiming, and protecting workers' human rights, establishing its roots in Florida's farm fields before CSR or MSIs were confidently declared the answer for ending abuse in corporate supply chains. The seeds of WSR germinated in Florida's sandy soil in the 1990s, coming to maturity in the second decade of the 2000s, when the Coalition of Immokalee Workers (CIW) designed, fought for, and established the Fair Food Program. In Fair Food Program fields, abuse long endemic to our nation's large-scale agricultural operations is now effectively eliminated. This worker-driven social responsibility model has now extended to new areas of agriculture, particularly dairy, and other low-wage production including the global garment industry, as well as emerging expansions in U.S. construction and the U.K. fishing industries.

Following just behind this quickening of WSR's application in multiple sectors is a cluster of new analyses, reviews, reports, and endorsements identifying WSR as a unique social responsibility program with demonstrated effectiveness in ending abuse and protecting workers' rights within corporate supply chains. WSR's success is not just in identifying and prosecuting abuse when it happens but also in prevention by eliminating the conditions that allow wage theft, beatings, rape, and forced labor to exist. Nonprofits, nongovernmental organizations (NGOs), academics, and government agencies have highlighted WSR as the "gold standard" and the rare case of proven effectiveness in social responsibility programs.

The remainder of this paper will first look at the design, development, and implementation of the WSR model, reviewing its origins with the CIW's Fair Food Program. In particular, we will examine in detail the major elements that have become the distinctive characteristics of worker-driven social responsibility, even as it is applied more broadly and in new sectors. With this foundation, we will next dive into the data and documented results of the Fair Food Program, exploring the program's effects since

[2] David Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice*, Free Press, 1996; *Harvest of Shame*, CBS, November 25, 1960.

the Fair Food Program, WSR, or any social responsibility program matter little if they don't result in real and sustainable change in the lives and livelihoods of workers.

Next, we'll examine extensions of the Fair Food Program into new WSR programs and initiatives in a range of sectors and industries, once again followed by the results. Expansion within agriculture is both important and expected; as interesting are the applications of WSR in sectors beyond agriculture. The next question is to ask whether other models protect workers within corporate supply chains. What are they and how effective are CSR and MSIs programs, such as Fair Trade, the Rainforest Alliance, and the Equitable Food Initiative? Many of these CSR and MSIs programs have received a great deal of media and corporate attention and are well-known to consumers. Multiple evaluations and reports published over the last five years have examined individual programs and compared them across the social responsibility sector.[3] The evidence of success within the social responsibility and worker protection sector is thin, at best, and the results are often disheartening. The good news is that each evaluation is now able to go into greater detail and review actual results rather than aspirations and promises since many of the CSR and MSIs programs have now existed for a decade or more. We are able to compare effectiveness within these programs and with WSR with the metrics that matter: eliminating abuse, protecting reasonable pay, and ensuring "clean" supply chains and production.

The last section of this paper looks to the future and opportunities for real and sustainable change far beyond Florida's farm fields. How does WSR evolve and expand? How does WSR apply to a world of changing environments and emerging crises? And what are the new possibilities for the U.S. government, long unwilling or unable to protect the workers that put food on our tables and clothes on our backs, to move from commending and validating to actively leveraging WSR through federal buying power and incentives within procurement processes?

[3] The number of recent evaluations of CSR and MSIs and comparisons to the Fair Food Program and WSR coming out in the past few years, and even past few months, has been extraordinary. I'll note that each time I've "completed" this paper, a new report is released, requiring another revision. Please have patience with this author!

Roots in the Fields: The Coalition of Immokalee Workers and the Fair Food Program

From its earliest days, agriculture in the United States has been characterized by sub-poverty pay and abusive working conditions, from the southeastern to the western agricultural states. Florida may have been the worst of it. No doubt, the work was back-breaking: 10-hour days in the Florida heat and humidity, twisting and tossing the hard green tomatoes into your bucket and then running between the rows, bucket on your shoulders, to the truck and tossing the whole 34-pounds up to the dumper, getting your chit and heading back to crouch down and do the whole thing again. And again. And again. Two and half tons later, it's the end of the day and you hope to have made minimum wage. For most workers in Florida's tomato (as well as citrus, melon, and sugarcane) fields, the hard work and wretched wages came with widespread abuse. Wage theft, no shade or water, verbal and physical abuse, sexual harassment and assault, and gun violence were rampant in the state, which was once referred to as "ground zero for modern-day slavery."[4]

But Florida has a more positive claim to fame. There's been a transformation in its tomato fields and in the tomato farms up the eastern seaboard. Thanks to the Coalition of Immokalee Workers and its Fair Food Program,[5] the abuse that has been a constant for more than 300 years of U.S. agricultural history has been eliminated. Modern-day slavery and forced labor are effectively nonexistent in these Fair Food fields, as are physical and gun violence, and sexual assault. Wage theft and verbal abuse are rarities and, when found, are quickly investigated and resolved. Worker pay has increased by 60 to 100 percent. Producers have also benefited from a more stable workforce and improvements in safety and productivity. More importantly, the Fair Food Program has transformed the tomato industry's reputation from "ground zero" to "best workplace environment in U.S. agriculture."[6] The benefits of the Fair Food Program extend beyond

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[4] "Ground-zero…" U.S. Attorney Doug Molloy, several sources; U.S. Senate Committee on Health, Education, Labor, and Pensions, "Examining Ending Abuses and Improving Working Conditions for Tomato Workers," April 15, 2008, Mary Bauer testimony; Kevin Bales and Ron Soodalter, *The Slave Next Door; Human Trafficking and Slavery in America Today;* University of California Press, 2009, p. 51.

[5] A note on sources: In addition to cited academic, government, nonprofit and private sector reports, and media accounts, this paper draws on interviews, emails, text messages, and site visits. Interviews, emails, and text message exchanges cited in this paper occurred between 2011-2017 and 2021-2023. These interviews and communications were with the following members of the Coalition of Immokalee Workers and Fair Food Standards Council: Greg Asbed, Lucas Benitez, Matthew Stark Blumin, Laura Safer Espinoza, Laura Germino, Steve Hitov, and Gerardo Reyes. Two additional interview sources for this paper are those conducted in 2015-2016 with Miguel "Mike" Rios, Regional Enforcement Coordinator, Wage and Hour Division, US Department of Labor and in 2009-2017 with David Wang, private businessman and philanthropist. Citations will be listed by name, e.g., Greg Asbed, interview, and specific date if the information is from a single interview.

[6] Steven Greenhouse, "In Florida Tomato Fields, a Penny Buys Progress," *New York Times*, April 24, 2014.

those provided to the workers. Individual growers and producers no longer have to wrestle with class action lawsuits, slavery and forced labor prosecutions, and Department of Labor (DOL) and Equal Employment Opportunity Commission (EEOC) cases that characterized the industry for years. Buyers of Fair Food Program tomatoes (and peppers, potatoes, cucumbers, peaches, and flowers) protect the integrity of their brand with a supply chain guaranteed to be clean and fair.

For history and context behind the Fair Food Program, let's go back to those Florida farm fields and the ecology in which the farmworkers sought to define, claim, and protect their human rights of freedom from fear and violence, as well as advocate for workplace health and safety and fair pay. On the large farms where the tomatoes were planted and harvested, workers toiled in the Florida heat without shade, water, or toilets; beatings and physical violence were common; gun violence was not uncommon; and nearly all suffered from wage theft of their below-poverty wages. In the early 1990s, farmworkers formed the Coalition of Immokalee Workers,[7] first coming together to recognize their shared experience of abuse and to understand the causes of that abuse. The CIW established what had never existed before in Florida or in large-scale agriculture in the south and across much of the U.S.: a shared voice for farmworkers to call out the abuses of brutal working conditions and low pay, as well as to bring to attention issues, such as the exorbitant prices for food and the Naples-level rents for mold-infested, crowded trailers where many farmworkers lived. The group took its name from Immokalee, the unincorporated town in south-central Florida that became home each fall for migrant farmworkers who prepared and harvested winter crops in Florida. Each spring, these migrant workers flowed north through the eastern states, following the seasons and harvesting the produce that feeds much of the United States: citrus in Florida, onions and watermelons in Georgia, potatoes on the Eastern Shore of Virginia and Maryland, and blueberries and corn in New Jersey. Tomatoes, however, were predominantly harvested during the winter months and into the early spring; in the 1990s and early 2000s, Florida tomato growers produced 95 percent of the fresh tomatoes consumed in the United States from late fall to early summer.[8]

By the late 1990s, the CIW ensured workers' voices were being heard and had the growers' attention. CIW's activities, which included protesting the brutal beating of a teenage worker, staging annual strikes for increasing "piece rates," and staging a nearly month-long hunger strike—combined with early leveraging of the internet—brought the farmworkers' issues to the attention of faith groups and students and also gained

[7] In its earliest days, the Coalition of Immokalee Workers was known as the Southwest Florida Farmworker Project. The group changed its name to the CIW in 1995.
[8] Well into the 2000s, Florida-grown tomatoes made up 90 percent or more of the fresh tomatoes consumed in the off season. Recently, an increasing share of off-season tomatoes has been grown in greenhouses, but the percentage is still small. Florida still provides approximately 90 percent of the market from November until May.

national attention from the likes of former President Jimmy Carter. In contrast with traditional unions, the CIW had moved from targeting individual growers and employers to taking on the Florida tomato industry as a whole. Unlike generations before, these workers had defined a shared consciousness and an understanding of their situation in the fields, building a collective commitment to pursuing change in their situations.

The success was real, but it was also limited. Their nearly eight years of work resulted in positive changes, but increasing the price paid per bucket of tomatoes from 40 to 45 cents wasn't ending worker poverty and wage theft, and denying a crew boss a work crew as the result of a beating wasn't enough to put a stop to endemic abuse. As the century turned, it became increasingly clear that the traditional toolkit of workers' rights couldn't get the job of transformational change in agricultural labor done. The CIW's strategy had to change—and, in fact, it did. Over the next months, the workers' coalition stepped back and lifted their eyes up from the immediate factors in their environment to the system as a whole. Instead of focusing their protests solely on the crew leaders and growers, the CIW redirected its focus to look at the system—the food chain—from end to end. Their central question was, "Why are farmworkers poor?" As they questioned and considered, and probed and analyzed, the simplest answer—because they were paid so little—expanded into two threads.[9]

The first thread was that farmworkers were paid so little because they had so little power. Farmworkers (and domestic workers) were excluded from the foundational laws of U.S. labor rights, the National Labor Relations Act (NLRA) and the Fair Labor Standards Act (FLSA),[10] enacted in the mid-1930s. Exacerbating the problem was that federal and state governments were either unable or unwilling to enforce wage and criminal law in the agricultural industry. Farmworkers had fewer rights than most American workers and little effective recourse to pursue violations.

As important were the realities of the agricultural market itself. Although the growers and their crew bosses controlled working conditions and pay in the fields, they held little relative power within the system as a whole. Florida tomatoes—as well as citrus and most other produce—are commodity products. Two factors of this commodity supply

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[9] This analysis is included in greater length in Susan L. Marquis, *I Am Not A Tractor: How Florida Farmworkers Took on the Fast Food Giants and Won,* Cornell University Press*,* 2017*;* and Greg Asbed, "Coalition of Immokalee Workers: '*¡Golpear a Uno Es Golpear a Todos!*' To Beat One of Us Is to Beat Us All," in Cynthia Soohoo, Catherine Albisa, and Martha F. David, eds., *Bringing Human Rights Home, Volume 3: Portraits of the Movement*, Praeger Publishers, 2008.

[10] National Labor Relations Act 1935, https://www.nlrb.gov/guidance/key-reference-materials/national-labor-relations-act; Note Section 3 in Definitions: "the term 'employee'…" ; Fair Labor Standards Act 1938 at https://fraser.stlouisfed.org/title/fair-labor-standards-act-1938-5567/fulltext; Note Sec 3 (f) "Agriculture" includes…; Sec 7, and Sec 13.; Fair Labor Standards Act as amended 2011, https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf.

chain were directly relevant to the CIW's objectives. First, the growers or producers had little to no "public face" or identity. Other than perhaps at a local level of embarrassment, there was no real market effect of calling out a grower for abuses in their fields or abysmal pay. The other reality of the produce market was that the growers did not set the price of tomatoes—the buyers did. Fast-food and supermarket chains and food service corporations held the market power, rendering the growers—the seemingly all-powerful lords of the fields from the farmworkers' perspective—humble price-takers in the larger market where they sold their produce. As these industries consolidated to fewer and larger buyers, and investors and financial law emphasized shareholder return, corporate leadership focused on pushing costs and prices down. As the CIW learned, growers facing small profit margins resisted even the smallest of wage increases because "the tractor doesn't tell the farmer how to run his farm."[11]

The CIW leveraged "popular education," brought to Immokalee by Haitian and Mexican farmworkers, to support workers' analysis of their shared situation and development of potential solutions and strategies. Now-iconic, early CIW cartoons illustrating the workers' situation initially showed a farmworker toiling while carrying a crew boss on his back. On the boss's shoulders sat the grinning grower. As the CIW rethought its strategy in its search for transformational change, the coalition realized the cartoon had to be redrawn. The revised version featured the worker carrying others on his back, but the top of the stack now shows today's major corporate buyers, with Taco Bell being the first to climb on top of the cartoon human tower. By "looking outside the farm gate," CIW could see that the food supply chain began with the workers and ends with the corporate buyers who control prices and the market. What CIW realized is that the buyers could control both the price and the behavior of the growers. In 2000, coalition members saw the pride that buyers like Taco Bell took in negotiating lower prices from their suppliers. Looking at the supply chain from end to end, CIW members asked, "If they can drive down the price, why can't we force them to drive up the price [and pay the farmworkers more]?" More broadly, they asked, "What is the power these companies have, and can we use that power to change our lives?"[12]

CIW ultimately recognized the major buyers' vulnerability and potential pressure points. The CIW's objectives were guaranteeing a living wage for farmworkers; ridding the fields of violence, sexual harassment, and chemical poisoning; and ensuring farmworkers had a meaningful place at the table when growers were making decisions that affected workers' health, safety, and pay. Fast-food chains, grocery store chains,

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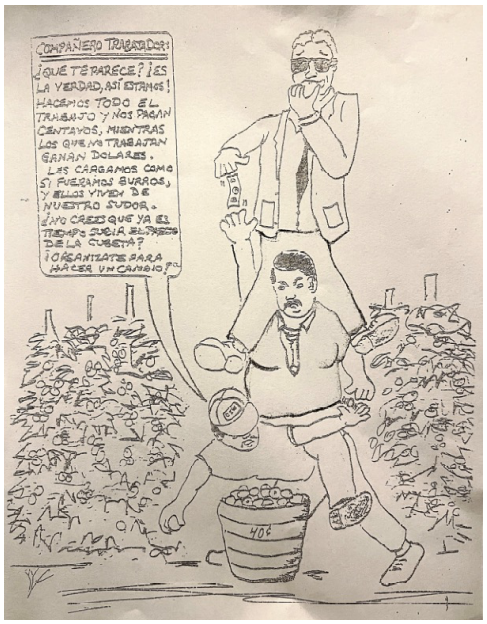
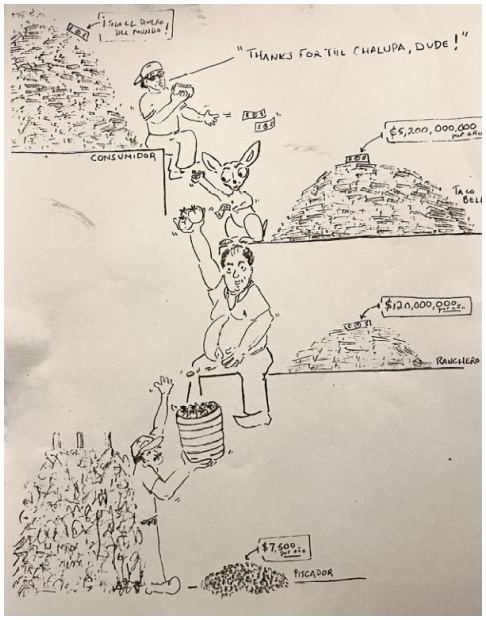
[11] Curtis Krueger, "Striking for Pay, Pride," *St. Petersburg Times*, December 19, 1999; U.S. Senate, Committee on Health, Education, Labor, and Pensions, "Examining Ending Abuses," quote from Lucas Benitez's testimony.

[12] As told in Marquis, *Tractor*, p. 49 from Greg Asbed and Laura Germino, interview, November 3, 2015; Greg Asbed, email, January 17, 2017.

and food service companies—all large corporate buyers—had market power and money that dwarfed that of their suppliers, the growers. Corporate buyer power continued to push prices down for tomatoes and similar commodities. That same power could push prices and wages up and require growers to end the wage theft and abuse rampant in their fields. The consumers were the answer to the question of how to convince these major buyers to use their power in this way, rather than to make farmworkers poor.[13] One more revision was made of the iconic cartoon, this time adding in the consumer munching on a chalupa. Taco Bell may be worth billions, but the money in the market is controlled by consumers. By establishing a common cause with consumers, CIW and its new allies could demand a new kind of food from the retailers: fair food.





Cartoons are a powerful element of the Coalition of Immokalee Workers' popular education toolkit. These cartoons illustrated the farmworkers' analysis of their shared situation in the mid-1990s and then their new understanding circa 2000 when they looked at the food supply chain in its entirety and developed the principles of what became the Fair Food Program. Cartoons courtesy of the CIW.

The Campaign for Fair Food was the result—connecting with consumers, particularly students and faith-based organizations, to go after the brands of the fast-food giants and major supermarkets that turned their eyes away from slavery in the fields that supplied their restaurants and stores. The vision was not simply to win a campaign or two but to change the power relationship between buyers and farmworkers. A common cause between consumers and farmworkers changed the market to change conditions in the

[13] As told in Marquis, *Tractor*, chapter 3; Greg Asbed, Lucas Benitez, Laura Germino, David Wang, interviews; Asbed, "Coalition of Immokalee Workers," in Soohoo, Albisa, David, *Bringing Human Rights Home*.

field, but changing power relationships and shifting the balance is not easy. It takes time, persistence, and staying on "true north." But the need to change that power relationship was existential for the farmworkers, and the CIW spent the next decade going from idea to implementation.

The CIW let it be known that Taco Bell, and eventually other chains including McDonald's and Burger King, was purchasing tomatoes from growers who paid sub-poverty wages to their workers and tolerated physical abuse and even modern-day slavery. The story of the Campaign for Fair Food is well-told in books and articles. It began with a small group of farmworkers and their allies protesting outside of a Taco Bell on a Fort Myers roadside along the Gulf Coast of Florida. They called for a nationwide boycott of Taco Bell, a boycott that did not end until four years later when Yum! Brands, the major corporation that owned Taco Bell signed an agreement with the CIW. This first Fair Food Agreement included the "penny-per-pound" premium paid by Taco Bell (discussed below) to the people who picked their tomatoes and their commitment to require their suppliers, the growers, to end the wage theft and rampant abuse in their fields with immediate market consequences for non-compliance with Fair Food Program standards. Prior to the agreement, CIW's Campaign for Fair Food gained traction and allies. Students followed the farmworkers' lead and called for kicking Taco Bell off of college campuses. Faith-based organizations, particularly the United Church of Christ, T'ruah (originally Rabbis for Human Rights), and the Presbyterian Church (USA), provided moral reinforcement, new audiences, and food and housing as the CIW spread the word. The Campaign for Fair Food kicked off just as the internet age came into being. The CIW's website was one of the first to use the platform to get the word out, share videos and photos of actions (years before the advent of YouTube and Facebook), and keep their growing group of supporters informed.

In 2005, with the Taco Bell signing, the farmworkers of the CIW had not just gained their voice—they had gained the first legally binding agreement with a major corporation to protect workers' human rights in the corporation's supply chain. With each new signature from a major corporate buyer, the Fair Food Program moved closer to implementation and establishing the foundation for WSR.[14]

Five years later, the Campaign for Fair Food was still rolling and new Fair Food Agreements had accumulated. McDonald's was next after Taco Bell, followed by all of Yum! Brands' subsidiaries (Kentucky Fried Chicken, Long John Silver, and more), Burger King, and later Chipotle. Other brands signed on because they believed the Fair

[14] Marquis, *Tractor*, pp. 54–60, 64–65; Asbed, "Coalition of Immokalee Workers," in Soohoo, Albisa, and David, *Bringing Human Rights Home*, p. 21; Greg Asbed, interview, 2015; Lucas Benitez, interview, 2011; CIW, "Florida Farmworkers Cross Country, Take Fight for Human and Civil Rights to Fast-Food Giant Taco Bell, February 25-March 10, 2004; CIW, "Coalition of Immokalee Workers 2005 Taco Bell Truth Tour," 2005; CIW, "Taco Bell Agreement Analysis,"March 10, 2005.

Food Program made sense or because they saw the wave coming toward them, including Subway, Compass Foods, Bon Appetit, Aramark, and Whole Foods. After an extensive campaign, Trader Joe's signed, and Fresh Market followed suit. In 2014, Walmart helped pave the way for expansion up the East Coast of the U.S. Ahold USA (Food Lion, Giant, and Stop and Shop, among other brands) signed a year later after shareholder pressure.[15]

Convincing the major buyers to sign on was an extraordinary accomplishment. But while it was necessary, it was not sufficient. The missing piece was the growers, the owners of the farms where the abuses occurred. The critical moment occurred in the fall of 2010 when, after nearly 20 years of presenting a solid wall in opposition to the CIW's call to the table, Jon Esformes and Pacific Tomato Growers broke away. Esformes met with the CIW and ultimately signed the first Fair Food Agreement between the CIW and a major grower. Soon after, all of the major growers, collectively producing 95 percent of Florida's fresh tomatoes, joined Pacific. With agreements in place with buyers and growers, the CIW was able to move forward and bring the Fair Food Program to life beginning in 2011.[16]

Implementation Matters: Building the Fair Food Program and Extending Worker-Driven Social Responsibility

There are four primary actors within the Fair Food Program and in most other WSR programs: the CIW and farmworkers;[17] the growers; the corporate buyers; and the Fair Food Standards Council, established by the CIW. The program itself has five major elements. The combination and comprehensiveness of these elements have been essential to the program's success.[18] The first of these, and the foundation of the

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[15] Fair Food Program, https://fairfoodprogram.org/partners/, as of June 24, 2022; Marquis, *Tractor*, pp. 68–70, pp. 149–154, 157– 166.

[16] Kaufman, "The Wall Comes Tumbling Down," *The Nation*, October 18, 2010; Lucas Benitez, Greg Asbed, Jon Esformes, and Steve Hitov, interviews; CIW, "Lucas Benitez of the CIW Speaks" October 3, 2010; Williams, "Tomato Struggle Over After Immokalee Coalition Signs Historic Deal," *Fort Myers News-Press*, November 16, 2010; Barry Estabrook, "A Sweet Deal for Tomato Workers: Coalition of Immokalee Workers and Florida Tomato Growers Exchange Reach Landmark Labor Agreement," *Politics of the Plate*, 2010; CIW, "Historic Breakthrough in Florida's Tomato Fields," November 16, 2010. Details of Jon Esformes' history and decision and the ultimate signing of the members of the Florida Tomato Growers Exchange to Fair Food Agreements are found in Marquis, *Tractor*, Ch. 4.

[17] The farmworkers of the CIW are often referred to as "rights holders" in discussions of social responsibility programs.

[18] The elements of the Fair Food Program—the *Code of Conduct*, monitoring through the complaint line and audits, worker education, investigations and corrective action plans, and market consequences—are found in some form in all of the Fair Food Standards Council annual reports (all available online at https://www.fairfoodstandards.org/reports/ and the Fair Food Program website at https://fairfoodprogram.org/about/); two of the more recent descriptions are found in the FFSC *2017 Annual Report*, p. 14 (short description), and a longer description, including the diagram included in this paper, is in the FFSC *2021 Annual Report*, pp. 8, 10–11, 60–61.

program, is a set of standards called the *Code of Conduct* and its supporting *Guidance Manual*. The next element is a comprehensive monitoring and reporting system of the growers' compliance with the code. The monitoring program is significantly strengthened by the third element of the program, a worker education program that ensures workers know their rights and responsibilities and equips workers to act as frontline monitors, 24/7. Fourth, when workers or auditors report potential violations of the code to the program's complaint mechanism, the third-party Fair Food Standards Council investigates and, in the case of confirmed violations, develops corrective action plans that the growers must execute to return to compliance. If any grower does not take the required actions and fix the problem, the Fair Food Standards Council invokes market sanctions, the fifth element and the unique power behind the entire program, suspending the grower from the Fair Food Program and blocking access to partner buyers (e.g., Taco Bell, Burger King, McDonald's, Whole Foods, Compass, or Walmart).[19]

In addition to the above elements, the program includes the Fair Food Premium, also known as the "penny-per-pound" paid by corporate buyers as a bonus to each worker for the tomatoes they pick on top of the going piece rate paid by the growers. Variations of this premium are found in most of the WSR programs discussed later in this paper.[20]

The Code of Conduct and the Guidance Manual

Let's look at each element in a bit more detail. Central to the Fair Food agreements signed by the major buyers is the *Code of Conduct*, a set of standards for working conditions and workers' rights on Fair Food farms. The CIW developed the code in the earliest days of the campaign. Although the code has since evolved within the CIW, the essential concepts are found today in the broader worker-driven social responsibility

[19] You may find the full *Code of Conduct* in any of the Fair Food Standards Council's annual reports, including Fair Food Standards Council, *2013 Annual Report*, November 1, 2013, pp. 50–55, the *Code of Conduct* and selected guidance and pp. 15–31 Code Requirements; Fair Food Standards Council, *2021 Annual Report*, September 2, 2021, pp. 69–73, *Code of Conduct* and pp. 30–60 Code Standards and Seasons 8 and 9 Results. Both reports are found at https://www.fairfoodstandards.org/reports/. The development, evolution, and content of the code and the *Guidance Manual* are discussed at length in Marquis, *Tractor*, particularly pp. 70, 112–113, 122–123, 132–34, 103–109, 122, 170, 175, and 240–243.

[20] The participating buyers pay this premium when they purchase the tomatoes. The penny-per-pound premium is passed directly to the workers by the growers as a line item in each worker's paycheck. The buyers also pay a small additional amount to the growers to cover the administrative costs of managing and calculating the premium. It's important to note that the CIW has not agreed to simply increase the price corporate buyers pay for Fair Food tomatoes and other agricultural products. In addition to higher wages, the payment of a premium that is passed through to workers by the growers or other producers demonstrates direct responsibility of the buyer for the people within its supply chain. Details on how the CIW developed the idea of the premium, how it is calculated and administered, and its effects during the first five years of the program are found in Marquis, *Tractor*, pp. 47–49, 53, 67–68, 103, 156–157, 208–209, and are based on interviews with the CIW, the Fair Food Standards Council, and David Wang. The premium is also discussed in the FFSC annual reports, on the Fair Food Program website (identified above), and in the Milk With Dignity Standards Council website.

model. Each corporation that signed the Fair Food Agreement committed to requiring its suppliers to comply with the code.

The code itself is more detailed—running about six pages and covering 32 requirements or standards—than typical corporate social responsibility statements. Instead of broad or vague feel-good statements about respecting all workers written by corporate teams, the Fair Food Program's *Code of Conduct* is the embodiment of the very idea of being "worker-driven." The opening standard is the requirement to follow all applicable laws and regulations. After that, the issues covered and the standards set come directly from the workers.[21] They address the real issues found in Florida's farm fields and agricultural labor more broadly, identifying problems that could not be known from the outside.

The *Code of Conduct* has two sections. The first focuses on "Employment Practices and Minimum Requirements for Participating Growers." Topics include the "penny-per-pound" premium pass-through, the Fair Food premium mentioned earlier, paid by buyers and passed through by the growers using their pay system. Standards include the direct hiring of farmworkers as employees by the growers, a requirement that has grown in importance with the rising number of H–2A agricultural workers. Other standards include the recording of all "compensable hours"; transparency of grower practices; health and safety requirements (e.g., chemical sprays, fresh water and sanitation facilities, thunderstorms); and the mandatory education of all workers on their legal rights, rights according to the code, and their avenues for recourse.[22] The second section of the *Code of Conduct* lists types and specific violations and their consequences for the grower, farm management, and crew leaders. The most severe, or "zero tolerance," violations are known as Article 1 violations. Use of forced labor or illegal child labor results in the immediate suspension of a grower from the Fair Food Program and thus loss of access to the participating buyers' purchasing. Also within this category are the use or display of a weapon of any kind, use or threat of physical violence by a supervisor or crew leader, and sexual harassment involving physical contact. Each of these results in suspension if the grower does not immediately terminate the violator. The next level of less severe violations (e.g., sexual harassment not involving violence or physical contact, wage violations, negligent endangerment, or retribution against a worker who filed a complaint) requires growers to move quickly and take corrective action, mitigating and eliminating the offense. If the grower fails to do so, they are suspended

[21] Fair Food Program, *Code of Conduct*.
[22] This requirement gets far less attention than most of the other categories within the code's standards, but it was a significant organizational and cultural change for Florida's growers and many other large growers in the United States. Fair Food Farms may not contract with crew leaders or crew bosses for work crews, as a system that had allowed growers to disavow responsibility for working conditions or abuse. Direct hiring of farmworkers by the growers immediately changed the perspective of many growers and farm managers since workers were now employees and not simply "inputs" like fuel, seed, or fertilizer.

from the program. The importance and distinctiveness of these "market consequences" will be discussed in more detail below. In more recent versions, the last section of the code provides a policy for the entry and re-entry of growers into the Fair Food Program.[23]

Often lost in the discussion (or debate) over the Fair Food Program compared to other social responsibility or workers' rights programs is what it takes to bring such a program to life. How do you move from an idea to an operational program and then success? Campaigns, slogans, and publicity are invaluable in bringing attention to issues and problems and then galvanizing supporters to fight for justice and the righting of wrongs. But what happens next will make the difference in whether those affected by these wrongs will see real and positive change. Having a plan for when the battle is won is the first step, but paying attention to the implementation of that plan is essential. Thinking through the details and what it would take to move from the Campaign for Fair Food into the Fair Food Program on Fair Food farms is one of the reasons the Coalition of Immokalee Workers' work is the rare example of an effective social responsibility program.

Attention to what it would take to implement the *Code of Conduct* was already in the CIW's thoughts as its members wrote the original code and modified the standards over the years leading up to the establishment of the Fair Food Program. Where the rubber meets the road is in the *Guidance for Implementation of the Fair Food Code of Conduct*, eventually referred to as the "Guidance Manual."[24] This is the supplement that supports the implementation of the *Code of Conduct*. The *Guidance Manual* provides the detail necessary to move from the "policy" of the code to the implementation of the Fair Food Program.[25] Growers and CIW members of the working group, established by the coalition in late 2011, worked through the details needed in the 43-page manual so that workers, crew leaders, and supervisors could actually follow the standards of the code.

It is worth a brief detour to describe what is the iconic example of the detail required for successful implementation and the worker-driven nature of the Fair Food Program. Early in the working group's efforts to come to a consensus about the detail needed to implement the *Code of Conduct*, they took on the most basic of issues: what it meant to "fill" a bucket of tomatoes. Tomato workers are usually paid a "piece rate" per bucket filled with green field tomatoes. Practically shoveling the tomatoes with their hands, the workers quickly fill large buckets and hoist them on their shoulders for the run down the

[23] Fair Food, *Code of Conduct*, version 2 (2015) and current version (2022), http://www.fairfoodstandards.org/resources/Fair-Food-Code-of-conduct/; Fair Food Standards Council, *Fair Food Program Annual Report*, 2021, Appendix C, pp. 69–73.
[24] CIW, *Guidance for Implementation*.
[25] Marquis, *Tractor*, p. 107.

row to the flatbed trucks parked there. Tossing the bucket up to the "dumpers" who empty the bucket into large bins, the worker then catches the empty bucket with a chit or ticket inside. At the end of the day, the chits are used by crew leaders and supervisors to calculate how much the worker has earned. What the workers of the CIW knew was that the definition of a "filled" bucket was one of the most frequent triggers of violence in the tomato fields. A bucket filled to the rim weighs about 32 pounds. The triggers occurred when crew leaders would require workers to pick more than a "full" bucket by mounding tomatoes on top. By "cupping" the tomato bucket, known as the "*copete*," the crew leader could increase the weight by as much as 10 percent. Since crew leaders were paid by weight and tomato pickers paid by bucket, the crew leader would gain an extra 10 percent and the tomato picker would lose a bucket for every 10 picked. If the farmworker tossed up a bucket without the *copete*, he or she was likely to have it thrown back in their face or dumped on the ground, rendering it no longer eligible for packing.[26] Unsurprisingly, the disagreements and frustration over how tomato buckets were filled in the hot Florida sun frequently led to threats of violence or actual violence, fights, or beatings.

Why does this seemingly small issue matter? To begin with, this is the issue through which the CIW and the growers first found their way to solving problems together through the working group, a capability that is still needed today when crises arise or environments shift. CIW staff members and growers alike were pulling out the large plastic buckets to figure out how to implement the code in the fields. A standard weight didn't work because buckets move fast as the farmworkers race up the rows and the dumpers catch one bucket after another in rapid succession. As the group shifted to the idea of a "visual standard" that could easily be determined, they realized the key was to not allow any full tomato above the rim, since this would create a loophole that could be easily exploited by the dumpers and crew leaders. The result was a simple standard, easily applied in the field: "No single tomato can be fully above the rim."[27]

What this example demonstrates about the value of "worker-driven" standards and implementing details is that this "*copete*-level" knowledge—whether in tomatoes, blue jeans, or microchips—could not come from the outside. The farmworkers of the CIW knew from their experience that disagreements about the *copete* were the most frequent trigger of violence in the fields. Violence would be reduced if the standard were clear, easily applied, and rigorously enforced. They also knew that ending the *copete* would immediately increase their wages by 10 percent. Worker-driven standards address the

[26] Because of food safety regulations, tomatoes dumped on the ground could not be put back in the bucket and sold, and the worker is not paid for harvesting them.
[27] Laura Germino and Greg Asbed, interview, April 2013; Leonel Perez, interview, November 2015; Steve Hitov, interview, July 2016.

priorities and reality of workers 'environment, and, when monitored and enforced, protect workers' rights and reduce or end abuse.

Monitoring and Enforcement

Codes of conduct are common to social responsibility programs. The primary problem is not a lack of declared standards but in ensuring these standards are enforced. Enforcement requires the power to demand access and effective monitoring. Enforcement requires the power to implement corrective actions that change the conditions in the fields or other workplaces. "Compliance" is where social responsibility programs, well-intentioned or not, fall down. The first steps in ensuring compliance are monitoring compliance with standards, reporting potential violations, and then enforcing the standards. Monitoring for most social responsibility programs is done through auditing. Social responsibility audits are now a significant industry with for-profit and nonprofit companies paid for by major corporate buyers; multi-stakeholder initiatives, such as Fairtrade International, the Global Network Initiative, or the Rainforest Alliance; or efforts to enforce government-established "transparency legislation."[28]

Whether the standards and audits were undertaken with all good intentions or, as highlighted in the recent MSI Integrity report, for the purposes of appearing to address causes of abuse,[29] social responsibility audits have an extensive track record of being ineffective, sometimes to tragic effect. A garment manufacturing factory at Rana Plaza in Bangladesh was in a social responsibility program supported by Walmart, JCPenney, The Children's Place, and other major U.S. companies, complete with standards and audits. The facility had been audited by an outside, for-profit auditing firm and certified not long before it collapsed in 2013, killing 1,138 workers and injuring more than 2,000.[30] Returning to Florida's tomato industry, in 2005 the Florida Fruit and Vegetable Association, including the tomato growers, established the Socially Accountable Farm Employers (SAFE) program in response to the CIW's Campaign for Fair Food and its seminal agreement with Taco Bell. This industry-supported group, in partnership with the nonprofit Redlands Christian Migrant Association, developed standards for worker treatment, pay, and housing and contracted with Intertek, an international social responsibility audit firm, to monitor and verify compliance. On November 20, 2007, Intertek and SAFE declared that Florida's tomato growers had met

[28] MSI Integrity, *Not Fit-for-Purpose*, July 2020; see pp. 232–236 for the list of MSIs examined in this excellent evaluation of MSIs. Re:Structure Lab, *Due Diligence and Transparency Legislation*, April 2021.
[29] MSI Integrity, *Not Fit-for-Purpose*, pp. 86-100, as well as the executive summary.
[30] Stephanie Clifford and Steven Greenhouse, "Fast and Flawed Inspections of Factories Abroad," *New York Times*, September 1, 2013; David Jamieson and Emran Hossain, "Bangladesh Collapse Shows Safety Audit Shortcomings," *Huffington Post*, May 4, 2013; David Jamieson, "Safety Inspections by Social Audit Firms for U.S. Companies Called 'Façade' by Labor Groups," *Huffington Post*, April 23, 2013."

all of the standards and were free from worker abuse. On that very day, three tomato workers showed up in the CIW's office and the Collier County sheriff's office to report their escape from two years of captivity and abuse by the Navarrete family, crew bosses for some of the state's major tomato producers. The SAFE program collapsed once the news came to light the next month.[31]

When the CIW moved from the campaign's victories to establishing the Fair Food Program, they initially worked in late 2010 and early 2011 with an existing audit company to establish their monitoring program. Rana Plaza had not yet happened and the consulting industry for social responsibility programs was just gaining steam. Firms, including Verité, SGS Group, Social Accountability International, Fair Labor Association, and Intertek, were established in the emerging industry. Verité was a leader in the field with a good reputation, having worked with reputable brands including Patagonia. As CIW launched the pilot of the Fair Food Program with two growers early in 2012, they signed on with Verité and moved to put the new program in place. As it turns out, it's hard to do a high-quality and effective social responsibility audit in any industry, and agriculture was new not only to Verité but to the social responsibility industry as a whole. Additionally, Verité, like other social responsibility audit firms, audits for many certifications across multiple industries with countless standards. Getting into the details needed for effective standards was not and is not what they do. CIW knew that it was essential to be attentive to the worker-driven standards, and to talk to as many workers as possible on each farm. The combination of the *Code of Conduct* and the *Guidance Manual* produced more than 400 requirements and standards for the audit teams to monitor. The CIW's approach ran counter to the consulting firm model of templates and checklists, combined with standardized and replicable processes to minimize time spent in the audit and reporting.[32] Verité was in line with the rest of the industry in interviewing about 5 percent of the workers and regarding interviewing 10 to 15 percent as extraordinary.[33] CIW intended to interview all the workers on small farms and at least half of workers on large farms.

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[31] Cory Reiss, "Growers Seeking SAFE Haven, *The Ledger*, January 26, 2006; CIW, "Fresh Allegations of 'Human Slavery' Emerge from the Tomato Fields of Immokalee," December 10, 2007; Barry Estabrook, *Tomatoland: How Modern Industrial Agriculture Destroyed Our Most Alluring Fruit,* Andrews McMeel Publishing, 2011; Amy Bennett Williams, "Immokalee Family Sentenced for Slavery: Each Navarrete Boss Gets 12 Years in Prison," *Fort Myers News-Press*, December 20, 2008.

[32] The challenge of these early audits is covered in detail in Marquis, *Tractor*, and is based on interviews including Laura Safer Espinoza, Randall Sean Sellers, Fair Food Standards Council staff, April 29, 2013; as well as Steve Hitov, June 2015; and a sample audit by Verité of Rosita Knitwear factory in Bangladesh.

[33] The weaknesses, shortfalls, and overall ineffectiveness of prevailing social auditing practices is highlighted time and again in evaluations of corporate social responsibility programs, MSIs, and transparency legislation. As one evaluation stated in its recommendations, "End prevailing social auditing 'rubber stamping' practices which lead to dangerous and exploitative worksites being certified." Re:Structure Lab, *Forced Labour Evidence Brief: Due Diligence and Transparency Legislation*, April 2021, p. 17.

With the arrival of spring 2012 and the end of the pilot season, it was clear to the CIW staff that the problem was not just with Verité. No existing social auditing firm could do what the CIW believed was necessary for a social responsibility program to be effective. Having learned from the pilot, CIW moved to establish a monitoring and reporting system that included audits, a complaint line, and a worker education program. This combination was an entirely new approach to compliance monitoring and enforcement, necessitating that CIW build the infrastructure to support it.

The result was the Fair Food Standards Council (FFSC), a third-party agency initially focused on the tomato industry and now supporting compliance with the Fair Food Program's standards across a range of agricultural products. The FFSC was and is responsible for monitoring and enforcing the standards and requirements for the *Code of Conduct* and the *Guidance Manual* for growers, buyers, and workers.[34] Three aspects of the monitoring program should be highlighted. First, there are three types of audits within the program. Fieldwork and farmworker audits require extensive time by FFSC investigators in the field and in worker housing areas. Investigators interview a minimum of 50 percent of each farm's field workers with 75 percent or more of workers on smaller farms. The second audit type is a "systems audit," focusing on grower and farm management and the systems they have in place to comply with the code. These systems include timekeeping and payroll, as well as health and safety standards and processes. Systems audits include extensive interviews with farm staff, from crew leaders and supervisors to managers and corporate officers. The information from systems audits is cross-checked with the farmworker interviews to ensure accuracy and consistency. An example of this might be confirming that field workers received the required rights and responsibilities education, when they received it, and whether they were compensated for this time as required by the code. The last category of audits is the financial audit, which includes checking for potential wage theft, a minimum-wage analysis, and appropriate passing on of the Fair Food Premium or "penny-per-pound" paid for by corporate buyers.[35]

The second significant aspect of the Fair Food Program's monitoring and reporting system, the complaint line, avoids the weakness of social responsibility programs that rely on audits. Complaint lines or hotlines, particularly when accompanied by protection from retribution, are the most effective form of monitoring since they uncover violations of standards as they happen and where they happen. Complaint lines aren't new to agriculture. Sticking close to home, the U.S. DOL's Wage & Hour Division has long had

[34] Fair Food Standards Council annual reports are found at https://www.fairfoodstandards.org/reports/. Details of the FFSC's founding, organization, staff, and work (auditing, investigating, and enforcement) may be found in Marquis, *Tractor*, drawn from interviews with the Fair Food Standards staff and personal observation from participation in field audits.

a complaint line. The intentions of the division and its complaint line are good, providing a way for workers to raise concerns and report potential violations (e.g., wage theft and overtime violations) without coming into the government office. But the DOL hotline has had limited effectiveness for agricultural workers due to limited hours, limited language capabilities, and limited accessibility for migrant workers with limited Spanish or English capabilities living in temporary housing and working 10-hour days.[36]

In contrast, the Fair Food Program and Fair Food Standards Council has established a highly effective, responsive complaint line. The complaint line, in combination with worker education and wide provision of the hotline number, provides continuous and comprehensive monitoring by the farmworkers of every row, in every field, on every farm. Through the worker education program described below, workers know the *Code of Conduct* and its standards. The workers also know how each farm operates, its processes and procedures, and the behavior of every crew leader, supervisor, and manager. The Fair Food Program hotline number is provided to every worker on their paystub, at worker education sessions, posted at the work sites, and in cards handed out in worker education or audits. The technology is simple, using cell phones and live people available 24/7 speaking Spanish, English, and Haitian Creole (the FFSC also has access to Indigenous languages commonly spoken by workers from Guatemala and southern Mexico through the CIW, if needed). Growers may maintain a line themselves or, as most choose, use the complaint line run by the Fair Food Standards Council.[37] Most calls come in during the evenings or on weekends, and staff members are trained to work with workers who may be upset or frightened and for whom Spanish may be a second language. They reassure the caller and gather the information that is needed to begin an investigation.[38]

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[36] Miguel Rios, Department of Labor, Wage and Hour Division, interview and email, August 20-22, 2016. The author spent significant time on the DOL website and calling various phone numbers. "How to File a Complaint" sends you back to the same pages over and over again. The phone number 1-866-487-9243 lists the laws and regulations that the division enforces and does not enforce (e.g., unemployment insurance) and then sends the caller back to the website. If you hang on long enough, you can type in the zip code of your employer and are sent to the appropriate district or field office. If outside of the 8:00 AM to 4:30 PM ET window, call back the next day or hang on for the general DOL national phone line that is open from 8:00 AM to 8:00 PM ET. There is a menu option for Spanish. Relevant websites for information and videos are: https://www.dol.gov/agencies/whd/workers; U.S. DOL W&H Division, "Know Your Rights" videos, https://www.youtube.com/watch?v=SUstGnmxP9I; Worker.gov, https://www.worker.gov/es/.

[37] Complaints may come in through the FFSC or a grower-run hotline, and the CIW also receives or discovers complaints. If the grower maintains a hotline, workers may still call the FFSC hotline. CIW-received complaints may be about actions on a Fair Food-participating farm or on a farm outside of the program. In the latter case, complaints are usually made by workers who have worked on Fair Food farms and received the *Rights and Responsibilities* booklet or the worker education program. See *Fair Food Standards Council Annual Report,* 2021, p. 67 for the number and source of complaints by season.

[38] CIW, *Guidance for Implementation*; Lindsey Adams, interview; described in more detail, Marquis, *Tractor*, pp. 128-130.

There's more to why the Fair Food Program hotline works. Answering the phone is step one. Step two is speaking the language of the caller[39] and understanding the environment in which they work—agricultural field work. Step three is quickly following up to ensure that if the person or their coworkers are at risk, they can be protected, or if they are wronged through a wage or pay violation that it can be rectified on a timeline that can still benefit the worker. Expertise and a timely response are tied together.

The database is the third distinctive aspect of the monitoring and reporting program. When a complaint call comes in, the staff member enters all of the information into the Fair Food Standards Council's database. This initial contact report triggers an automated email to the entire FFSC staff, the CIW staff, and the CIW's counsel. The database is the collective brain of the FFSC and may be unique in the protection of workers' rights and complaint and grievance systems. It is the backbone of the Fair Food Program's monitoring and reporting infrastructure. The comprehensiveness of the database is remarkable, containing every crew leader, assistant crew leader, and person in the supervisory structure by name, nickname, and contact information. It includes all information from every audit and investigation by the FFSC, as well as all information from every complaint line call into the FFSC, growers, or the CIW. The database covers the tomato and other produce and flower farms in the Fair Food Program and includes any complaints made by farmworkers who moved to growers outside of the FFP, but used the FFP hotlines or contacted the CIW. All FFSC staff have access to the database, allowing easy hand-off of cases from one staffer to another.[40] The comprehensiveness of the database and what is now more than 10 years of records is a remarkable resource for the FFSC and CIW within the Fair Food Program when it is needed to support investigations of worker abuse or modern-day slavery by law enforcement and other agencies outside of the program.

Worker Education

Audits and complaint lines are critical for monitoring and reporting violations of the Code of Conduct. To report a violation, whether through the complaint line or audit interviews, workers must know their rights and must be confident that they will be protected from retribution if they make a report.[41] The DOL and the laws it enforces

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[39] Just a few years ago, there was an increase in the number of Haitian workers on Fair Food Program farms. Seeing the increase in numbers, the Fair Food Standards Council increased its Haitian-Creole speaking staff. In addition, the FFSC addressed the related issues of discrimination and a lack of Creole-speaking grower staff; FFSC, *2021 Annual Report*, p. 52.

[40] Fair Food Standards Council, interviews, 2011-2015; Laura Safer Espinoza and Sean Sellers, email, June 16, 2015. Covered in Marquis, *Tractor*, p. 129–30.

[41] This same point is made in the MSI Integrity report *Not Fit-for-Purpose*; "grievance mechanism… accessibility requires consideration of the barriers that affected stakeholders may face, such as 'language, literacy, costs, physical location[,] and fears of reprisal," p. 166; MSI Integrity also notes that "a grievance mechanism is only effective to the extent that its users know that it exists. Yet… only 6 of the 24 [multi-

require employers to post basic rights, such as payment for all hours worked at minimum wage or higher. Gun violence, beatings, and forced labor are, of course, illegal. That being said, the wage and hour protections within the DOL's purview are limited, and language and knowledge of where to look makes it less likely that agricultural or other low wage workers are likely to find what they need.

The Fair Food Program addresses these challenges directly through worker-to-worker education programs on rights and responsibilities, the third major element of the WSR model. The CIW runs the program, and its requirements are laid out in the Code of Conduct. Fair Food Program participating growers must hold an informational session for every worker when they are hired. The growers' sessions usually include company policy and procedures but must also include information on applicable laws and regulations and the Fair Food Program Code of Conduct. Every worker receives a copy of the booklet *Know Your Rights and Responsibilities* (*Conoce Tus Derechos y Responsabilidades*) and watches the CIW-produced training video featuring CIW staff members and other farmworkers demonstrating workers' rights through a series of scenarios and discussions. Rights covered include prohibition of *el copete* or "cupping" of tomato buckets, the need for the worker to clock in at the beginning and end of each day from the time they enter the grower's property, the right to work free from sexual harassment, as well as the Fair Food penny-per-pound premium for tomatoes. Workers are also informed of their responsibility not to abuse the complaint system and not to "fluff" tomato buckets so that they look fuller than they are. Included in the video are farmworkers explaining that workers have "*el derecho de quejarse sin miedo*," or the right to file a complaint without fear of retribution.[42]

The value of these initial training materials is reinforced and amplified in the mandatory in-person, on-the-farm worker education sessions required for every farm at the beginning of each season, which runs from November through March in Florida and late spring into the summer as the seasonal crops move further north. CIW farmworkers present the material found in the booklets and videos, but the value of in-person sessions goes beyond the nuts and bolts of the code. The very holding of these sessions on the farms, with workers compensated for the training time, sends a strong message of support for the program. This message of support is reinforced when crew leaders, supervisors, and even company leadership attend the sessions. All may ask questions and discuss what is being presented or incidents that have happened over the course of working on the farm. Workers can raise questions about the *copete* or a supervisor's behavior. Crew leaders can complain about how the code is enforced. But there is trust

stakeholder initiatives] with a grievance mechanism… require potential complainants be given information about the complaint process," p. 168.

[42] CIW, Code of Conduct; CIW "Know Your Rights and Responsibilities"; CIW, "CIW Training Video for Fair Food Code of Conduct."

in the exchanges—trust that there will be no retribution and that solutions will be found.[43]

Investigations and Corrective Action Plans

So, the Fair Food Program is on the right track. Farmworkers within the Fair Food Program know their rights and the requirements of the *Code of Conduct*. They can easily report problems and potential violations of the code without fear of retribution. Audits can uncover issues that must be addressed in order for the grower to be in compliance. But what happens next? If problems are to be fixed, working conditions to improve, and workers to trust the program, something has to happen as a result of their reporting. This is where investigations and corrective action plans come in, the fourth major element of the Fair Food Program.

Fixing the problem requires understanding what happened, who is responsible, and whether the issue is due to just individual behavior or is a process or systemic issue for the farm and grower.[44] The Fair Food Standards Council determines how complaints will be investigated and whether they come in through the FFSC or grower hotline or through the CIW. No matter which organization receives the complaint—the grower, CIW, or FFSC—all must be notified within two working days. In general, the FFSC investigates complaints related to Fair Food farms and the CIW investigates complaints outside of the program. When a complaint is called in regarding a non-Fair Food farm, the protocol of letting the grower know does not apply. In fact, investigations of complaints from outside the program are often conducted in secret given the risk to workers without the protection of the Fair Food Program. The CIW can access the FFSC database to inform investigations outside the program.

A critical and differentiating element of Fair Food Program (or CIW) investigations, particularly in comparison to more traditional legal processes, is that the complaint investigation and resolution process moves quickly. Rapid resolution is particularly important, given that the workforce has high turnover and often moves with the seasons. Simple issues such as a missing paycheck are resolved in a few days, while more complicated cases may take one to two weeks. This level of speed is possible because of the expertise of the FFSC in the tomato and other produce industries, backed by the expertise of the workers in the CIW. Whether the investigation determines if there is a code violation or not, any worker who makes a complaint receives direct follow-up from the FFSC (or CIW) on the results. Within the Fair Food Program, if the investigation reveals a *Code of Conduct* violation, the FFSC works with the grower to

[43] See any of the Fair Food Standards Council annual reports as well as Marquis, *Tractor*, pp. 132–138.
[44] The *Guidance Manual* includes the details of the investigation process, corrective action plans, and follow up. Specific examples and the discussion of public apologies comes from FFSC interviews with Sean Sellers.

develop a corrective action plan to resolve the issue and prevent any recurrence of the violation. The FFSC ensures the grower carries out the plan. As the Fair Food Program has matured, the grower and the FFSC take the approach of "risk prevention." While there was mistrust and hostility in the early years of the program, growers have come to appreciate finding out about the problem and that the FFSC uses the assumption going in that growers want a healthy and safe environment for their workers.

Corrective action plans are intentionally practical and often creative in their solutions. Actions required may be as simple as writing up a crew leader, providing education on the standards, and then monitoring the crew leader's performance. More significant discipline, such as suspension without pay or termination, is sometimes required. In the case of systematic failures, the FFSC may work with growers to strengthen their human resources (HR), payroll, or accounting systems to ensure all paychecks are delivered and all hours appropriately compensated. The Fair Food Program requires that all workers are directly employed by the grower, rather than through the contract labor system common in agriculture. Workers are now paid with checks distributed by the crew leader or farm management, and growers increasingly use debit cards under the control of individual workers. Whenever checks are used, workers must sign for their checks. Creativity comes into play when a corrective action plan draws on the "communitarian" nature of the code. For cases in which a worker has been humiliated or abused, the plan can include a public apology by the grower to gathered workers. In such instances, the growers will apologize for the incident, make clear the specific behavior that was wrong, and affirm the company's support of the code of conduct and the Fair Food Program. There is no requirement for the victim to confront the violator in public or to come forward to their supervisors.[45]

Market Sanctions

It's important to note that all is not love and roses in the Fair Food Program. This was particularly true in the early years. The CIW and FFSC were "forging the path by walking it" in those early years, or perhaps building the plane while flying it. If there are still few if any worker rights programs like the Fair Food Program, there were zero when the growers signed Fair Food agreements in late 2010. The first few years, growers—particularly those not part of the working group—were skeptical at best and resentful most of all. The tractor was telling them how to run their farms. There was little trust or respect in the system. It was then that the power behind the Fair Food Program—market

[45] See most Fair Food Program annual reports, particularly the *2021 Annual Report*, pp. 36, 38, https://fairfoodprogram.org/wp-content/uploads/2022/02/Attachable-Size-SOTP-2021-Report.pdf and the *2018 Annual Report*, p. 15, https://fairfoodprogram.org/wp-content/uploads/2022/02/Fair-Food-Program-2018-SOTP-Update-Final.pdf; CIW, *Guidance for Implementation*. Also, interviews Judge Laura Safer Espinoza, 2012–2017; Greg Asbed and Matthew Stark Blumin notes of clarification, October 2022.

sanctions and legally-binding contracts between the buyers and the CIW—was asserted. It is the power of the market that backs up the *Code of Conduct* and the FFSC. Taco Bell, McDonald's, Whole Foods, Compass, and the other buyers must suspend purchases from growers who have been suspended from the program for violations of the standards as determined by the FFSC.[46] If a grower commits one of the Article 1 violations or does not quickly execute the corrective action plan, they are suspended from the Fair Food Program and lose a third or more of the company's market. Only when the FFSC confirms grower compliance after a suspension may buyers purchase tomatoes or other program produce from that grower. Suspensions were more frequent during the first years of the program and do still occur. But with time and increased trust, it's become more frequent that the growers are often appreciative of the FFSC uncovering a problem and working with them to resolve it. The possibility of a suspension is always there, and direct market consequences require farms to comply with the code or standards, allow education in the fields, allow audits to take place, and collaborate with audits and complaint investigations, as well as compel growers to comply with corrective action plans to get back into compliance with the standards. As the popular education cartoon illustrated, power flows from the market: the consumers who buy tacos from Taco Bell and the fast-food giants who buy the growers' tomatoes. Market consequences are why the Fair Food Program works. As we'll see below, the lack of market consequences is behind the inability of other social responsibility programs to enforce their standards. A social responsibility program could have all the other mechanisms (at least on paper)—standards, education, monitoring—but they cannot effectively ensure workers' rights without the market power to back them up.[47]

What Difference Has the Fair Food Program Made?

A "penny-per-pound" Fair Food Premium for all workers, the *Code of Conduct*, monitoring through rigorous audits and the complaint line, worker education, investigations, and corrective action plans with the entire program backed by immediate market consequences—that's the essence of the Fair Food Program and the basis of what has become worker-driven social responsibility. But what difference does it make? The

[46] There is some complication in the details depending on the specifics for each buyer. All buyers are committed to not buying Florida tomatoes from a grower who is suspended from the program. A large subset of Fair Food buyers participates outside of Florida for tomatoes and other categories of produce. Some of the newer growers in expansion crops (e.g., sweet potatoes) are smaller and so the "buy-only" requirement operates as a "buy-first" requirement until the available supply increases.

[47] Although the FFSC does not usually announce suspensions of specific growers, they are easily identified by looking at the Fair Food Program and Fair Food Standards Council websites: https://fairfoodprogram.org/partners/, https://www.fairfoodstandards.org/resources/, or the (nearly) annual Fair Food Standard Council reports and the list of partners showing who's in and who is no longer on the list. The *2021 FFSC Annual Report,* pp. 66-67, has a wealth of data on compliance scores by category and year; probations and suspensions by season; complaints by outcome (e.g., valid, code violation resolution reached, no violation of code but resolution reached…) by season; complaints by source; and days to case resolution.

Fair Food Program or WSR only have value if workers lives are changed for the better through significant increases in pay, safe working conditions, and freedom from fear and physical abuse. It is important to note that the objective in all of this is not just responding to and restituting wage theft or abuse, but to *prevent* these violations from occurring, particularly the extremes of assault and forced labor. The goals of WSR programs are to use market consequences to leverage the power of prevention and seek to eliminate the conditions that have allowed violence and modern-day slavery to exist.

Let's look at the data. What difference has the Fair Food Program made in workers' lives? We will remind ourselves of the program's objectives and then summarize what's been accomplished relative to those objectives.

With the announcement of the Campaign for Fair Food and Taco Bell boycott in 2001, the CIW intended to ensure that farmworkers were paid more, that they were safe in the fields, and that they had an influential seat at the table during decisions that directly affected both of these issues on the farms.

Starting with the fundamentals, three aspects of the FFP directly increase workers' pay. The penny-per-pound Fair Food Premium paid by the participating buyers is a 32-cents-per-bucket increase, or approximately a 50 to 70 percent pay increase, depending on the going piece rate.[48] The FFP participating buyers make up about 20 to 30 percent of the fresh tomato market.[49] All workers receive the premium, but the percentage increase varies based on the work they are doing, the amount of tomatoes or other covered products they harvest, and the percentage of a specific grower's buyers participating in the Fair Food Program. As of October 2022, buyers have added $40 million and counting to farm payrolls through the Fair Food Premium.[50] Enforcement of the *Code of Conduct* has also increased worker pay through effective elimination of wage theft. The *copete* is prohibited. Workers are paid for every hour they are at work, including waiting

[48] The price growers paid per bucket of tomatoes ("rounds," or the commodity slicing tomatoes) has seen slow growth over the last 25 years. Starting at about 40–45 cents per bucket at the time of the CIW's founding in the early 1990s through most of the first decade of the 2000s, it increased to between 50 and 60 cents per bucket with the start of the Fair Food Program. Five years into the program, most growers were paying between 55 and 60 cents, and the current price, as of July 2022, is about 60 cents per bucket. The current price information comes from the FFSC and CIW. Judge Laura Safer Espinoza and Matthew Stark Blumin, text messages and emails, July 2022; Greg Asbed, email, October 2022.

[49] This share of the market has been true since the major grocery and retail chains of Ahold and Walmart joined in 2015 and 2014, respectively, see Fairfoodprogram.org/partners.

[50] The Fair Food Program website still shows the paid premium amount $38,716,007, but the CIW provided an updated number in October 2022. You can see the number reported on the website at https://fairfoodprogram.org/results/. It is important to note that none of the premium goes to the Coalition of Immokalee Workers as an organization. The premium is paid only to those working on Fair Food farms and applies to tomatoes, other produce, or flowers (see below) that are products covered by Fair Food agreements with buyers, as confirmed by Matthew Stark Blumin, interview and email, July 2022.

time and training. Growers now directly employ and pay farmworkers, rather than contracting to crew leaders.

In addition to increases coming directly from the Fair Food Program, the program indirectly unleashed a new competition among growers for workers, resulting in an increase in the "piece rate" or hourly wages, depending on the grower and the produce, within a few years of the program's establishment. Added together, the premium and enforcement of the code's standards, as well as an increase in wages or piece rates due to increased competition, the Fair Food Program has resulted in a living and reliable wage for workers.

Next up, we explore the FFP's protection of the basic human right of dignity and safety at work. It's tempting to jump right to the extreme abuses of violence, sexual assault, child labor, and forced labor, but let's begin with the lower-level health and safety of everyday life in the farm fields to see how the reduction in these more routine risks ays the foundation for eliminating the more extreme abuses. We cannot forget that farm work is dangerous work, with machinery, chemicals, and heat during the harvest season. And farmworkers have had little protection from these dangers, either because they've been excluded from workplace protection through federal and state legislation or the remoteness and size of the fields that has made oversight difficult. The use of chemicals without regard to farmworker safety has been common in agriculture, with workers caught in the spray or harvesting from plants drenched in chemicals. The lack of shade and clean water creates its own kind of hell for workers in the relentless heat and humidity of Florida. The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) does not have national heat illness prevention standards. Only a small handful of states, including California and Washington, have such standards for outdoor work. These programs have been only minimally effective since they are plagued by the lack of monitoring and enforcement common to government worker protection laws and regulations.[51] For generations, right up until the establishment of

[51] As an example, California did not have any heat illness prevention standards until 2005, and the initial standards were voluntary. More specifically, required standards were issued in 2015, and California was then one of only three states with such standards, the others being Washington and Minnesota (Minnesota standards are for indoor work only). The California standard covers heat, water, and shade. It is of note that worker heat-related deaths have not decreased, likely because of weak oversight and enforcement, in part due to staffing shortages. According to a former California/OSHA inspector who tracks OSHA staffing on his InsideCalOSHA.org blog and quoted by NPR, the state has about 195 OSHA inspectors for 1 million companies and 18 million employees. OSHA has not adopted a national heat standard and frequently decides not to penalize companies when workers die from heat illness, nor does OSHA follow up to ensure these companies comply with measures OSHA imposes after a heat-related death. In October 2021, DOL and OSHA announced that they were opening a period for public comment to gain different perspectives as they prepare to develop a proposed national standard for heat illness prevention. Department of Industrial Relations, State of California, *Heat Illness Prevention Standards*, 2015; "Heat is Killing Workers in the US," *National Public Radio*, 2021; U.S. DOL, OSHA, *Press Release*,

the Fair Food Program, toilet facilities were few to nonexistent in farm fields. Women, in particular, wrestled with the indignity of finding a private space. In contrast, the Fair Food Program has detailed requirements for moveable shade, bathrooms, and clean drinking water that are easily accessible for workers. To avoid chemical exposure, crew leaders receive "spray maps" each morning, reporting which chemicals will be used and when to avoid re-entry and inadvertent exposure. All workers receive instructions on what to wear to protect themselves from the sun and gloves to avoid chemical residues. Every farm must have a health and safety plan and train its staff on it to identify and treat potentially injured workers. Audits, the hotline, and detailed and reported data confirm that Fair Food growers are effectively 100 percent compliant with these requirements.

Through requirements for shade and water, protective clothing, and health and safety plans, the Fair Food Program's emphasis on prevention reduces injuries and illness common in agricultural labor. Prevention can also take on bigger issues by eliminating the conditions that allow violence to fester and then explode. CIW workers knew that lower-level harassment and abuse provided a welcoming environment for more extreme abuses. It's not enough to have zero tolerance for the extremes of forced labor, child labor, gun and physical violence, and sexual assault.[52] It is essential to address the lower-level harassment and abuse long characteristic of agricultural work. Yelling, screaming, refusing to allow breaks for water or rest, and beatings if someone complained—all of these actions were the routine background noise for the farmworkers before the Fair Food Program. On the bus at 5:00 AM. Sit on the bus while the dew dried. Line up in the rows five minutes before picking started. The whistle blows and you crouch down and get picking. Stand up and yelled at to keep working. Sneak out of the rows to drink water or pee and hope you aren't caught. And always the risk that you are caught and threatened or beaten. This is how the small things lead to the big things that must be prevented.

The Fair Food Program has brought the small routine abuses under control.[53] Observe any FFSC audit and note that as the investigators walk through the rows, the workers

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September 2021; U.S. DOL, OSHA, *Heat Standards*, https://www.osha.gov/heat-exposure/standards; U.S. U.S. DOL, OSHA, "US Department of Labor initiates rulemaking to protect workers, outdoors and indoors, from heat hazards amid rising temperatures," October 2021.

[52] See any of the Fair Food Standards Council annual reports on the Fair Food Program, but particularly the *2021 Annual Report* for not only program descriptions, but vast amount of data at https://www.fairfoodstandards.org/reports/. For more detail on preventing forced labor through preventing lower-level harassment and abuse, see interviews with Laura Germino, Coalition of Immokalee Workers, 2011–2017. For more on the CIW's anti-slavery program, see https://ciw-online.org/slavery/.

[53] See FFSC annual reports, particularly the 2021 report, with data on the source, number, and type of complaints during the 10-plus years of the Fair Food Program. See also Steven Greenhouse, "In Florida Tomato Fields, a Penny Buys Progress," *New York Times,* April 25, 2014, and detailed evaluations in Marquis, *Tractor*.

they talk to share freely, even as their hands stay busy grabbing tomatoes and earning a living. Other workers shout out and walk up to two investigators in conversation, despite crew leaders being nearby, and share concerns about a new bus driver. Just as remarkable is that all the workers know of the Fair Food Program, the hotline, and their rights and responsibilities.[54]

One of the most challenging "small" issues has been sexual harassment of women farmworkers. The nature of the work, the lower percentage of women in the field in comparison to men, cultural difference in tolerance for harassment, and the roughness of the agricultural environment can exacerbate the problem. An additional challenge is that the harassment can come not only from crew leaders and supervisors but also from co-workers. Human Rights Watch outlined the key factors that increased the vulnerability of women to sexual harassment and sexual assault, stating the critical need to end this behavior.[55] The *Rights and Responsibilities* handbook states that women have the right to work without harassment,[56] but the CIW quickly saw the complete lack of appropriate anti-sexual harassment training material for farm labor. With the support of a Department of Justice grant, the CIW, Fair Food Standards Council, and Pacific Tomato Growers/Sunripe partnered with VIDA Legal Assistance and Futures Without Violence to develop training material for farmworkers and supervisors. The new program is groundbreaking in its anti-sexual-violence and -sexual-harassment curriculum for agricultural workers—farmworkers, crew leaders, supervisors, and senior management. The new training, combined with the foundational elements of the Fair Food Program, has effectively eliminated sexual assault and greatly reduced sexual harassment through safeguards, reporting, and consequences. Across the Fair Food farms, workers and management have seen that harassment that would never have been reported in the past such as "a slap on the butt, an arm on the shoulder," now results in the firing of the supervisor or crew leader.[57]

What about the extremes: physical and gun violence, sexual assault, child labor, and forced labor or modern-day slavery? Each of these is a "zero-tolerance" violation of the *Code of Conduct* requiring immediate termination of the violator and/or suspension of the grower from the Fair Food Program. Forced labor, modern-day slavery, and child labor have been eliminated from the Fair Food farms with the only exception being a

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[54] Personal observation and interviews with FFSC staff, 2011–2017.
[55] Human Rights Watch, *US: Sexual Violence, Harassment of Immigrant Farmworkers,* 2012.
[56] CIW, "Know Your Rights and Responsibilities," *Worker Education Handbook.*
[57] Description of actions resulting in firing comes from Vera Chang, "After #MeToo, This Group Has Nearly Erased Sexual Harassment in Farm Fields, *Civil Eats*, March 9, 2020, quoting Judge Laura Safer Espinoza. CIW and the FFSC's sexual harassment training program has been covered widely to include an early story by Deepa Fernandes in 2014 on PRI The World, *Lessons for Hollywood's Women from Florida's Tomato Pickers*; Marquis, *Tractor*; PBS Frontlines' documentary *Rape in the Fields,* https://www.pbs.org/wgbh/frontline/documentary/rape-in-the-fields/ and the "Women in the Fields" focus in FFSC Annual Report 2021, pp. 22-23.

case during the 2015–2016 season. The offending grower was removed from the program, and those involved were convicted. Shocking as it was, the system worked. Reports of physical violence, threats of deportation, and debt bondage were made through the FFSC hotline. Immediate investigation made clear that the complaints were valid, and the case was referred to law enforcement. The two crew leaders involved were convicted and sentenced to prison.[58] Prevention also occurs in the swift, public, and meaningful consequences for those who violate the *Code of Conduct*. In the past, before the Fair Food Program, and today, outside of the Fair Food Program, crew leaders who would steal wages and beat or rape workers would get away with it. Other crew bosses, seeing no consequences for worker abuse, wouldn't hesitate to follow suit. Workers saw only risk and no hope in complaining. On Fair Food farms today, previously untouchable crew leaders and farm bosses who rob, beat, or rape their workers are either caught and fired following an investigation or convinced by the inevitability of consequences not to do so. Workers see their power in reporting abuse and violation of the standards. And people who would have been victims of these crimes in the past are not.

The elimination of these zero-tolerance violations on Fair Food farms has not been due to a positive change in agricultural labor in the United States or around the world. Farmworkers in large-scale agriculture in Europe continue to face abusive conditions like those found in the U.S.[59] As will be discussed later, several large cases of forced labor and violent abuse of farmworkers have come to light in this last year.[60] It's of note that none of these cases occurred on Fair Food Program farms, but the CIW's Anti-Slavery Program that investigates forced labor operations on non-FFP farms was involved in uncovering and assisting in the investigation in several of these cases.[61]

Systemic change is not easy. To change the system, the CIW has long argued that workers must be part of the decisions that affect their lives and working conditions. Has the CIW and the Fair Food Program succeeded in this audacious goal? Not just token representation but real influence and power? What does this look like? Sharing the table

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[58] CIW, "Fair Food Standards Council unearths forced labor case on Fair Food Program Farm," April 6, 2016; U.S. DOJ, US Attorney's Office, Southern District of Florida, "Two Mexican Nationals Charged with Conspiracy to Provide and Obtain Forced Labor," March 18, 2016; U.S. DOJ, U.S. Attorney's Office, South District of Florida, "Two Mexican Nationals Sentenced to Prison for Participating in Forced Labor Scheme," Press Release, January 9, 2017.

[59] Susan L. Marquis, "Europe should follow Florida's example for how to treat farmworkers," *UPI,* August 5, 2019, https://www.upi.com/Top_News/Voices/2019/09/05/Europe-should-follow-Floridas-example-for-how-to-treat-farmworkers/1911567696734/.

[60] U.S. DOJ, U.S. Attorney's Office, Middle District of Florida, Press Release, September 2021.

[61] CIW, ciw-online.org, "Latest slavery indictments expose exploitive nature of H-2A 'guestworker' program," October 2021; Laura Germino, text messages/conversation, July 2022; U.S. DOJ, "Owner of Farm Labor Contracting Company Pleads Guilty to Racketeering Conspiracy Involving Forced Labor," Press Release, September 27, 2022, https://www.justice.gov/opa/pr/owner-farm-labor-contracting-company-pleads-guilty-racketeering-conspiracy-involving-forced.

with the other two partners in the program—growers and corporations—but also shifting the power balance such that workers can define and claim their human rights?

Evidence of systemic change begins with the Fair Food agreements. Fourteen corporate buyers and a dozen major growers have signed legally binding agreements with the farmworkers of the CIW. Workers and their expertise drove the Fair Food *Code of Conduct*. The *Guidance Manual* was developed by the workers of the CIW with implementation input from growers. Education and training on the standards are provided by *Rights and Responsibilities* booklets prepared by the CIW and in-person education sessions run and presented by workers on the CIW staff. Workers lead the efforts of grower health and safety committees, joined by HR and operational staff from each producer.[62] Combining worker education with the grievance hotline, farmworkers are the frontline monitors of their own rights and grower compliance with the code. And none of this would be possible without the market power harnessed in the workers' Fair Food agreements with the brands. These agreements, requiring market sanctions for violations of the *Code of Conduct*, document the shift in the balance of power between buyers and farmworkers in their supply chains. These agreements and resulting market consequences also make it possible for all the other elements of the Fair Food Program to be deployed daily by workers and the Fair Food Standards Council in the fields via audits, complaints, investigations, and corrective action plans.

Building from Strength: From FFP to WSR

Once the Fair Food agreements were in place with corporate buyers and major growers, the CIW turned to the implementation of the Fair Food Program. Workers, growers, corporations, and the Fair Food Standards Council each had a role to play in the Fair Food ecology of worker-driven standards, education, monitoring and enforcement, and immediate market sanctions combined with the direct support of workers by corporate buyers through the Fair Food Premium.

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[62] Interviews with Pacific Tomato Growers HR and Health and Safety Committee members, Fall 2015; FFSC, A*nnual Report 2021,* 2022, pp. 16, 32, 54, 56; Karl Schneider, "Florida Coalition Protects Farmworkers from Rising Temperatures Amidst Climate Chain," *Naples Daily News,* September 3, 2021. The committees are composed primarily of farmworkers, with a requirement to include a minimum of five workers and a representative from each work crew, along with members of the company's HR department. The committees must meet monthly and provide a communication channel between the field-level workforce and growers' management teams. Worker representatives alert management to existing or potential health and safety concerns to include lack of proper sanitation, concerns about the water supply, or dangerous agricultural practices. The code's requirement for these committees took longer to broadly implement than other requirements but nearly all growers are now in full compliance. Many growers have found the committees useful for identifying problems such as burns when transplanting seedlings and guiding new protocols for addressing COVID-19.

This comprehensive approach forms the foundation of what is now known as worker-driven social responsibility (WSR). The path to the broader application of WSR begins with the expansion of Fair Food Program.

The Fair Food Program's first major expansion occurred after Walmart joined as a participating buyer in 2014. With Walmart's market power and encouragement, participating growers expanded the program to their farms and operations up the East Coast in Georgia, the Carolinas, Virginia, Maryland, and New Jersey. Several growers subsequently added new crops to the mix such as peppers.[63] Another large grower, with tomatoes in Tennessee, joined in 2020. In recent years, the CIW has signed on smaller operations, including lettuce, dill, and sweet potatoes in Virginia (2021), and peaches and melons in Colorado (2022). Some of the largest additions to the Fair Food Program have been two major flower producers. The Dutch company Bloomia, with one of their three operations worldwide located in Virginia, joined in 2020. Dos Gringos, a Mexican flower corporation, signed one of their producers in California, a sunflower farm called Sun Valley Wholesale Florist. These new additions are stretching the Fair Food Program, moving it closer to the broader WSR applications, since flowers are not "food" but are still clearly agriculture. The Fair Food Program portfolio is undergoing a significant diversification from its roots in the Florida tomato industry, and the pace of that diversification is increasing. The program's funding has also diversified. Significant funding continues to come from philanthropic foundations, but the Fair Food Program now has a rapidly growing "sustainers" program for individual donors, similar to the *National Public Radio* model. As WSR models expand, the CIW receives consulting fees for assisting in this work. Two of the major participating buyers pay buyers' fees to support the Fair Food Program and the Fair Food Standards Council, as do new and small buyers such as co-op grocery stores and the first prepared foods company, Soupergirl.[64] International expansion has brought in additional funders, including Humanity United and its supporting expansion to the U.K. fishing industry.[65] As will be discussed below, there is potential for federal government funding for pilots and related procurement programs.

[63] Pacific Tomato Growers added strawberries to the program in 2016, but ended that effort in recent years. Jon Esformes, interview, 2016; Matthew Stark Blumin, interview, October 2022.
[64] See "Current Partners" on https://fairfoodprogram.org/partners/; Emily Baron Cadloff, "The CEO Who Wants Us to Care More About the Humanity Behind our Food," *Modern Farmer*, July 23, 2022, https://modernfarmer.com/2022/07/soupergirl-humanity-behind-food.
[65] Additional information on funding from Humanity United, from Jason Holland, "New collaboration looks to expose, end labor violations in UK fishing industry," *Seafood Source*, September 1, 2022; "ITF and FFP join forces to end exploitation in UK fishing industry," *The Fishing Daily*, September 1, 2022; and Greg Asbed and Matthew Stark Blumin, interviews, November 2022.

As the FFP expanded, opportunities for broader applications of WSR began to take root. As described earlier, the nine-story building collapse in Bangladesh[66] Rana Plaza was the deadliest accident in the modern garment industry—but only one of a long series of disasters compounding a history of low wages and abusive working conditions in the garment industry. Outrage over Rana Plaza was immediate, with media attention and consumer pressure for enforceable protections for garment workers reaching unprecedented levels. With the Fair Food Program now several years into its implementation and already demonstrating significant results, workers and human rights leaders—including two longtime and crucial U.S.-based organizations in the sector, the Worker Rights Consortium (WRC) and United Students Against Sweatshops (USAS)—had a new model for real, worker-led, market-backed human rights enforcement in corporate supply chains from which to draw inspiration for building a sustainable solution. The result was a new agreement, the Accord on Fire and Building Safety in Bangladesh, signed later in 2013.[67] The accord drew heavily from the WSR model, including requiring independent inspections, implementation of corrective action plans, financial support (or premiums) for investment in safety, termination of relationships with suppliers who don't comply, and training on safety and rights for workers. The accord was most recently renewed in 2021, including a significant expansion of its remit (now covering health and safety issues more broadly, growing from its earlier, more limited focus on building and fire safety) and geographic scope (most likely first to Pakistan, codified in the 2021 version of the accord). Today, its life-saving protections cover over 1.5 million workers.[68]

Another early, highly successful replication of the WSR model was in the Vermont dairy industry with Migrant Justice. Migrant Justice is a human rights organization established in 2009 and led by immigrant dairy farmworkers in Vermont Although dairy farms require far fewer workers than commodity produce agriculture, the industry was rife with similarly severe and systemic human rights violations: sub-poverty wages, high rates of injury and illness, poor housing conditions, and violence. Migrant Justice reached out to the CIW in 2014. Seeing the transformational changes in Florida's tomato fields, they adopted the WSR strategy in designing the Milk with Dignity Program for dairy farmworkers. In 2017, Ben & Jerry's became the first major corporation to sign a contract with the immigrant farmworkers of Vermont's dairy industry and join the Milk with Dignity Program. Like the Fair Food Program, Milk with Dignity calls on retail food corporations to take responsibility for the people and

[66] WSR Network, "Accord on Fire and Building Safety in Bangladesh," wsr-network.org; Greenhouse, "Fast and Flawed Inspections."
[67] Bangladesh Accord, https://bangladeshaccord.org; WSR Network, Accord on Fire and Building Safety, https://wsr-network.org/success-stories/accord-on-fire-and-building-safety-in-bangladesh/.
[68] Workers Rights Consortium, "Workers Rights Consortium Welcomes Successor Worker Safety Agreement to Bangladesh Accord," https://www.workersrights.org/communications-to-affiliates/wrc-welcomes-successor-worker-safety-agreement-to-bangladesh-accord/.

working conditions in their supply chains. The solution is a legally binding, worker-driven program that includes enforceable standards, rigorous monitoring processes, and market consequences for standards violations. The Milk with Dignity Standards Council handles the hotline, conducts audits and investigations, and develops and enforces corrective action plans. Worker education and the collective defining and solving of problems are central to Migrant Justice's work and are critical in ensuring the success of the monitoring program. There are market-based incentives for farmers to join the program and market consequences when dairy farmers do not comply with the standards. Participating corporations pay a premium to farmworkers. The Milk with Dignity Program also includes elements not included in the Fair Food Program, such as paid time off, paid sick time, and premium funds that may be used by the farms for investment in achieving the *Code of Conduct* standards and to reward compliance.

Milk purchased by Ben and Jerry's in the northeast comes through the Milk with Dignity Program, and Ben and Jerry's requires its approximately 65 supplier farms in New York and Vermont to come into compliance with the Milk with Dignity standards.[69] Migrant Justice is currently focusing its campaign on Hannaford, a long-time American supermarket chain operating in New England and upstate New York.[70] The workers on farms producing Hannaford-brand milk face the same challenges as those who supplied Ben and Jerry's prior to the corporation joining the Milk with Dignity Program. Hannaford is proud of its corporate supply chain standards, though, like other CSR programs, the effectiveness of the monitoring, complaint line, investigations, and enforcement has yet to be seen.[71]

Returning to the garment industry, a new WSR program came to life in Lesotho in 2019. The Nien Hsing Textile Company in Lesotho, its workers and unions, and partners—including two Lesotho women's rights organizations—announced a WSR agreement to address long-standing issues of sexual harassment and gender-based violence. With an agreement covering five factories, more than 10,000 apparel workers, largely women, benefit. The company supplies several major apparel brands, including Levi's, Kontoor Brands, and The Children's Place (also buyers of garments from the Rana Plaza

[69] Migrant Justice, "About the Milk with Dignity Program," https://migrantjustice.net/about-the-milk-with-dignity-program.
[70] Hannaford was founded in the mid-1800s and is now owned by the Ahold Delhaize corporation, one of the participating buyers in the CIW's Fair Food Program. See https://www.hannaford.com/; https://www.aholddelhaize.com/brands/.
[71] Mitch Wertlieb, Elodie Reed, Karen Anderson, Maria Aguirre, "Why Migrant Justice will campaign outside of Hannaford stores on May 1," *Vermont Public Radio,* April 29, 2022, https://www.vermontpublic.org/vpr-news/2022-04-29/why-migrant-justice-will-campaign-outside-hannaford-stores-on-may-1; Migrant Justice, "Adopt a Hannaford Action Toolkit," 2022, https://migrantjustice.net/sites/default/files/2022%20Adopt%20a%20Hannaford%20Action%20ToolKit.pdf; Migrant Justice, "It was a matter of life and death: Join farmworkers at Hannaford HQ to demand Milk with Dignity," 2022, https://migrantjustice.net/7-29-hannaford-hq.

factories). Several WSR principles are featured in the agreement, including the right to file a complaint with an independent monitoring body without fear of retribution. The independent group investigates the complaint and impose remedies, including firing the perpetrator of the harassment or coercion. Worker education and non-retaliation provisions, as well as the workers' right to associate, all reflect the WSR approach. Perhaps most importantly, the agreement is binding, and there are market consequences for violating the program's terms.[72]

In 2022, the International Transport Federation and the Coalition of Immokalee Workers announced a new collaboration to bring the Fair Food Program to the fishing industry in the United Kingdom. Rampant abuse, extending to forced labor, of migrant fishers working in the industry has received significant attention from news media and nonprofit investigations and reports.[73]

The U.K. expansion demonstrates a difference between protecting the rights of farmworkers and other low-wage workers in the United States and internationally. In the U.S., agricultural workers are excluded from the National Labor Relations Act of 1935 and the resulting right to organize. To this day, farmworkers' right to organize is limited and their ability to do so varies from state to state. The U.S. has what are often viewed as unfavorable labor laws regarding secondary agreements by unions, limiting the ability of unionized sectors to establish broader WSR programs. As a result, the pursuit of WSR initiatives has largely come from workers in sectors without the right to organize. Internationally, the dynamic is entirely different, and unions have often enthusiastically stepped up to the plate. WSR agreements have been signed by unions in Bangladesh, Lesotho, and the U.K.

Inspired by the CIW's approach to women's rights and anti-sexual violence and harassment training, the WSR model has been a significant reference for the modeling industry. The Model Alliance has asked the CIW and the Fair Food Standards Council to advise them as they develop their RESPECT program with code-like standards and

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[72] Workers Rights Consortium, "Leading apparel brands, trade unions and women's rights organizations sign binding agreements to combat gender-based violence and harassment at key supplier's factories in Lesotho," August 15, 2019, https://www.workersrights.org/press-release/leading-apparel-brands-trade-unions-and-womens-rights-organizations-sign-binding-agreements-to-combat-gender-based-violence-and-harassment-at-key-suppliers-factories-in-lesotho/; WSR Network, "Gender Justice in Lesotho Apparel," https://wsr-network.org/success-stories/gender-justice-in-lesotho-apparel.

[73] E.g., University of Nottingham Rights Lab, *Report: Letting Exploitation Off the Hook*, May 2022, https://www.nottingham.ac.uk/Research/Beacons-of-Excellence/Rights-Lab/resources/reports-and-briefings/2022/May/Letting-exploitation-off-the-hook.pdf; "Migrant Workers 'exploited and beaten' on U.K. fishing boats," *The Guardian,* May 17, 2022, https://www.theguardian.com/global/2022/may/17/migrant-workers-exploited-and-beaten-on-uk-fishing-boats; Business and Human Rights Resource Center, "UK: Report finds "rampant exploitation and abuse" on U.K. Fishing Boats," May 17, 2022, business-humanrights.org/en/latest-news/uk-report-finds-rampant-exploitation-and-abuse-of-migrant-workers-on-uk-fishing-boats-incl-physical-violence-racial-discrimination/.

worker education. This program has been recognized in the media as ambitious and groundbreaking.[74]

A more fully developed example of the adoption of WSR programs in new sectors is found in St. Paul and Minneapolis, Minnesota, where construction workers have joined with the worker center *Centro de Trabjadores Unidos end la Luch* (CTUL)[75] to protest wage theft and forced labor, particularly with subcontractors and the non-union sector of the state's construction business. Learning of the CIW's Fair Food Program and the WSR model, these workers established the Building Dignity and Respect Program and a *Code of Conduct* (the BDR Code) for workers in the Twin Cities. The BDR Code ensures compliance with minimum legal standards, such as preventing wage theft, inhumane working conditions, and even forced labor. The Building Dignity and Respect Standards Council (BDC) will provide third-party monitoring. This is an emerging program, and BDC is talking with developers who would require contractor compliance with the code. More promising are new partnerships with community council to pressure developers seeking new permits.[76] In addition, advocates for the program are also working to partner with the Minneapolis government to require construction companies working on City projects to join the BDR program. This move toward partnering with governments as "major buyers" in their procurement programs is an emerging theme in WSR, discussed later in this report.[77]

Each of these cases replicates or draws significantly from the WSR model—the model's key principles and essential mechanisms—first established through the Fair Food Program. And each of these has seen demonstrable results. Dairy workers, through Migrant Justice and the Milk with Dignity Program, have seen significant improvement in health and safety, nearly all workers (89 percent) are paid at least Vermont or New York state minimum wage, 85 percent of participating farms provide paid sick leave, and hundreds of complaints of code violations are resolved, most within two days.[78] The

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[74] FFSC, *Annual Report 2021*, p. 25; Greg Asbed, interview, February 2022; www.hollywoodcommission.org; Vanessa Friedman, "Modeling in the #TimesUp Era," *Respect*, September 6, 2018, www.modelalliance.org/respect.

[75] Prior to this effort, CTUL won a major campaign against janitorial subcontractors of Target. They turned to the WSR model because of the difficulty of organizing in the construction industry. Service Employees International Union, "SEIU Congratulates CTUL," https://www.seiu.org/2014/06/seiu-congratulates-ctul--a-minneapolis-workers-cen; St. Paul Unions, "After Years of Fighting, Janitors Celebrate Historic Agreement with Target, Union Advocate," June 11, 2014, https://advocate.stpaulunions.org/2014/06/11/after-years-of-fighting-janitors-celebrate-historic-agreement-with-target/; Matt Stark Blumin, interview, October 10, 2022.

[76] BDC's mission is to advance the human rights of the workers that are building our communities. Building Dignity and Respect website, https://www.buildingdignityandrespect.org/.

[77] Matthew Stark Blumin and Greg Asbed, interviews and emails, 2022.

[78] Following the model of the Fair Food Program, Migrant Justice and the Milk with Dignity Standards Council releases regular reports with impressive amounts of data. Since being established in 2017, the MDSC issued a comprehensive report in 2020 on the first two years of the program (2018-2019), and then an update report in 2021 on the 2020 season. See https://www.milkwithdignity.org/impact.

Bangladesh Accords made possible inspections from independent auditors who uncovered more than 100,000 safety violations in the covered factories, with more than 90 percent of these verified as fixed as of 2018. Upward of 300 joint labor-management safety committees are in place, and more than 300 safety complaints have been reported through the accord's complaint mechanism and resolved, and organizers estimate that "the [a]ccord has very likely saved hundreds of lives."[79] WSR is newer to the Nien Hsing Textile Company in Lesotho, but recent reports indicate that these factories are rare exceptions in Lesotho's massive garment business. As of May 2021, the WSR program is still in effect in Nien Sieng's three factories. The program became fully operational in February 2021, and, although limited by COVID-19, hundreds of employees and supervisors had received training and are able to file grievances without retaliation. Third-party investigations are effective. Workers covered by the agreement feel safer than is true in the other factories, including those such as Hippo Knitting manufacturing for the high-profile brand Fabletics co-founded by Kate Hudson.[80]

Is It That Good? How Does Worker-Driven Social Responsibility Compare?

Having looked at the data from the Fair Food and WSR programs, let's take a look at the evaluations and comparisons conducted by external organizations and assessments by independent nonprofit, academic, and private sector centers and organizations.

First, some context. Corporate social responsibility programs gained attention in the 1990s and early 2000s as the treatment of workers and environmental impacts in multinational corporate supply chains came to light. Consumers were outraged, and corporations realized they had to do something to protect the brands that drove their sales. Nike was one of the first high-profile cases in the 1990s, paying pennies to those making high-end basketball shoes, as well as the uncovering of multiple cases of forced labor and child labor in Nike's supply chain.[81] In the 2000s, increasing attention was

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[79] WSR Network, "Accord on Fire and Building Safety"; Julie Kuenneke and Re/make, "FAQ: International Accord," Re/make, January 26, 2022, https://remake.world/stories/faq-everything-you-need-to-know-about-the-international-accord/.

[80] Note the role COVID-19 and economic factors have played in the significant economic downturn in Lesotho's garment industry. It is not clear what effect this has had on the WSR program in the Nien Sieng factories. Business and Human Rights Resource Center, "Landmark WSR Agreement Signed in Lesotho Apparel Industry," August 2019, https://www.business-humanrights.org/it/ultime-notizie/landmark-wsr-agreement-signed-in-lesotho-apparel-industry/; Jasmin Malik Chua, "Levi's, Wrangler in Lesotho Lays Off Half Its Workforce," *The Sourcing Journal*, August 20, 2021, https://sourcingjournal.com/topics/labor/levis-wrangler-nien-hsing-textile-lesotho-garment-workers-union-coronavirus-296892/; "Sexual Abuse in Factories," *Lesotho Times*, May 2021, https://lestimes.com/sexual-abuse-at-factories/.

[81] Nike lists abuses at Asian factories, "https://www.theguardian.com/business/2005/apr/14/ethicalbusiness.money"; "Disaster of the Day: Nike," Forbes, February 22, 2001,

paid to the garment industry overall in the face of a series of disasters for suppliers supporting major retailers, including Walmart, the Gap, and Sears, particularly in factories in Bangladesh and Pakistan. Foxconn, a major supplier for Apple and Hewlett-Packard, was the focus of outrage directed at the tech industry when there was a sharp increase in suicide among the company's employees due to low pay and brutal working conditions. And fast-food companies and grocery stores had their own supply chain issues highlighted by the Coalition of Immokalee Workers.

Oftentimes, the response of the corporation was to establish their own corporate social responsibility programs with a set of published standards and sometimes an audit program either through their own auditors or an outside firm. Whether garment or cell phone factories, farm fields or basketball shoe manufacturing, CSR programs have time and again shown to be ineffective in protecting workers. These programs are generally designed to first protect the corporation's brand, and even when well-intended, fall short in compliance.

It was increasingly obvious to the nonprofits, NGOs, and human rights groups in the civil society sector that CSR programs were failing to protect workers within corporate supply chains. At the same time, governments hosting these multinational corporations in the U.S. or internationally were not establishing or enforcing laws to end the abuse. By end of the first decade of the 2000s, a new approach to social responsibility was gaining traction. Multi-stakeholder initiatives (MSIs) are partnerships between corporations, civil society organizations (CSOs)—including nonprofits and nongovernmental organizations—and some governments, with the declared intent of addressing these "governance gaps" and holding corporations accountable for the abuse of workers, the environment, and other societal damage in corporate supply chains. MSIs took a "regulatory" approach with standards agreed to by the participating companies, a collaborative governance system that included the partner organizations, and established mechanisms to oversee or monitor compliance with the standards. [82]

The challenges of MSIs and the weaknesses of these collaborations were identified nearly a decade ago, replicating the weaknesses of CSR programs. Organizations such as

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https://www.forbes.com/2001/02/22/0222disasternike.html?sh=7b4e6d2d5ee9. It is of note that Nike has continued to face extensive accusations of benefiting from suppliers who abuse workers and utilize forced labor. See Niniek Karmini & Stephen Wright, "Nike Faces New Worker Abuse Claims (Indonesia)," Associated Press, July 14, 2011, via Business & Human Rights Resource Center, https://www.business-humanrights.org/en/latest-news/nike-faces-new-worker-abuse-claims-indonesia/; Sarah Johnson, "Wage theft in Primark, Nike, and H&M Supply Chain – report," The Guardian, July 2, 2021, https://www.theguardian.com/global-development/2021/jul/02/wage-theft-in-primark-nike-and-hm-supply-chain-report.

[82] MSI Integrity, *Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights, and Global Governance*, July 2020. The specific description of the regulatory approach is found on p. 11. I will draw upon this report several times in this paper.

the Open Society Foundations and academics, including James Brudney and Jennifer Gordon, noted that the voluntary nature of corporate social responsibility programs and multi-stakeholder initiatives, combined with the lack of robust monitoring, complaint, investigation, and resolution systems—much less market consequences—resulted in standards and stated concern for workers with little behind them.[83] Several of these early evaluations looked at MSIs across sectors. The Fair World Project's 2016 *Justice in the Fields* report looked in detail at seven farmworker rights and protection programs (including the Fair Food Program) that had some sort of "fair trade" label and certification. Evaluated programs included high-profile certifications used by many consumers as guideposts to ethical purchases—programs such as Fair Trade USA, Fair Trade International, the Rainforest Alliance, and the Equitable Food Initiative. The CIW's Fair Food Program received the highest recommendation and validation by the Fair World Project. The report highlighted the distinctive and effective combination of worker-to-worker education, audits combined with the 24/7 hotline, and immediate market consequences for violations of the *Code of Conduct*. The Fair World Project applauded the power of the "immediate loss of valuable markets" as an undeniable sanction as compared to the incentive of using a label or penalty of losing the certification of the other programs.[84]

More recently, as MSIs have established a track record over the past ten years, there have been a series of detailed evaluations of the impact of MSIs on the stated objectives of protecting workers and the environment from abuse. There's no hyperbole in saying that each of these evaluations from nonprofits, NGOs, and government agencies have declared that the worker-driven social responsibility model is the only effective workers' rights, human rights, protection in a sea of ineffective, and often well-known, social responsibility programs.

The most comprehensive program evaluation is the previously mentioned MSI Integrity report released in 2020, *Not-Fit-for-Purpose*.[85] MSI Integrity took on the task of evaluating the results of this "[g]rand [e]xperiment: the rise of international standard-

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[83] James Brudney," *Decent Labour Standards in Corporate Supply Chains:* The Immokalee Workers' Model," and Jennifer Gordon, "Roles for Workers and Unions," both in Joanna Howe and Rosemary Owens, eds., *Temporary Labour Migration in the Global Era: The Regulatory Challenges,* Hart Publishing, 2016, pp. 320-376; Open Society Foundation, "*The Problem of Multi-stakeholder Initiatives*," June 11, 2014.

[84] Fair World Project, *Justice in the Fields*, 2016. The entire report is well worth reading but particular note should be taken of pp. 16-21 covering third-party audits and violations and on-farm monitoring and enforcement of rights and standards. Also of note is that the Fair Food Program is the only program to require direct hiring of workers by the growers.

[85] MSI Integrity, *Not Fit-for-Purpose*. The report has an excellent Executive Summary and Summary of Key Insights, followed by a discussion of the aims, knowledge base/data, analytical framework, and limitations of the report. It is, however, worth spending time going into the details of each "Insight" and the data and findings supporting this evaluation. The seven core areas of evaluation are found on p.19. The list of MSIs evaluated is found on pp. 232-236.

setting multi-stakeholder initiatives in human rights." They examined 40 MSIs across 15 countries. Multi-stakeholder initiatives focused on agricultural workers include Rainforest Alliance, Fairtrade International, Food Alliance, and the Equitable Food Initiative. MSI Integrity's evaluation tool looked at seven factors: human rights scope and mandate, standards, internal governance, effective implementation mechanisms, ongoing development and review of the MSI, the level of involvement of the affected community, and the level of transparency and accessibility (essentially self-reporting by the program and its members) of the MSI. Spend any time with this 200+ page report that took a decade to conduct and assess and there is no doubt the bloom is off the rose. What was viewed as a powerful collaboration between corporations and large "civil society" organizations to protect the human rights of workers across industries has been a profound disappointment. Asking the fundamental question, "Have MSIs delivered on their promise to protect human rights?" MSI Integrity answers "no." "MSIs are not effective tools for holding corporations accountable for abuses, protecting rights holders against human rights violations, or providing survivors and victims with access to remedy." The primary conclusions or "insights" of the evaluation[86] make clear that despite the endorsement of powerful actors – including international institutions (particularly inclusion in the United Nations Guiding Principles),[87] governments and major civil society organizations – MSIs "have not lived up to their promise of advancing rights holder protection against business-related abuses." In fact, "MSIs better serve corporate interests than rights holder interests." Weaknesses in these programs include "rights holders… largely absent from MSI governance and implementation," "narrow or weak standards that overlook the root causes of abuse," weak monitoring and compliance, and program designs that do not "provide rights holders with access to effective remedy." Perhaps worse than being ineffective, the report draws the damning conclusion that MSIs "draw attention away from key human rights abuses or create a misperception that they are being adequately addressed."[88]

The detailed breakdown of the failure of MSIs to meet their claims of effectively ending business-related human rights abuses and the astonishing, if not entirely surprising, negative effect of exacerbating the abuses by providing cover to corporations unwilling to accept responsibility for their supply chains is heartbreaking for readers and life-threatening to those working in the affected industries. But there is hope in *Not Fit-for-Purpose*—and not just hope, but a solution for addressing the root causes and symptoms of human rights abuses in corporate supply chains. Throughout their report, MSI Integrity holds up worker-driven social responsibility as an effective alternative to MSIs.

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[86] Insights are summarized in the introductory sections and then explained and supported in detail in the bulk of the report from pp. 29-217.
[87] United Nations, Office of the High Commission on Human Rights, *United Nations Guiding Principles on Business and Human Rights, 2011.*
[88] MSI Integrity, *Not Fit-for-Purpose*, p. 90.

In its executive summary, the report notes that to be effective in "protective or accountability realms," whether government regulation or private governance, programs must be rights holder-centric and not controlled by corporations or institutions being held accountable. Such an approach is possible, "as these are the bedrock principles of worker-driven social responsibility (WSR) initiative…initiatives [that] are designed by and for workers and include legally enforceable standards."[89] WSR's unique effectiveness is recognized throughout MSI Integrity's report, identifying the WSR model as the "gold standard" that "bridge(s) the governance gaps that MSIs had promised to fill."[90] Notably, MSI Integrity emphasizes that WSR is not an evolution of the MSI model but an alternative that responds to the "failings of MSIs and other voluntary corporate codes of conduct by creating legally enforceable obligations for members and centering rights holders in the design and implementation of its systems."[91] WSR is "strikingly different" from MSIs with its elements of supply chain transparency, worker education, independent complaint and investigation mechanisms, and economic mechanisms for enforcing remediation. WSR "demonstrates the process of designing governance initiatives—who is involved and how much power they have—is intertwined with substantive rights outcomes and upholding established rights protections."[92]

MSI Integrity's comprehensive evaluation is not the only recent assessment and comparison of multi-stakeholder initiatives and validation of WSR. OXFAM was asked by the Marks & Spencer's (M&S) department store chain to provide an independent evaluation of the corporation's supply chain.[93] Their 2021 report highlights Marks & Spencer's adoption of "ethical trade" in their supply chain and business processes, codifying their global sourcing principles more than 20 years ago. M&S requires their suppliers to meet these standards, conducts site visits, and applies sanctions when standards are not met, "reserv[ing] the right to walk away."[94] M&S participates in several MSIs, including the Ethical Trade Initiative. Yet, even with this strong corporate commitment to principled procurement and trade, M&S has wrestled with the same ineffectiveness of these programs and other well-intentioned supply chain and human rights efforts. The retailer asked OXFAM to conduct an independent assessment of the effectiveness of their ethical trade policies and programs, focusing on "worker voice"

[89] MSI Integrity, *Not Fit-for-Purpose*, p. 6.
[90] MSI Integrity, *Not Fit-for-Purpose,* pp. 30-31.
[91] MSI Integrity, *Not Fit-for-Purpose*, pp. 46-47; p.50. On page 47, MSI Integrity provides an interpretation of the major elements of the WSR model, extending it from protecting workers within contracted supply chains to more generalized principles that make clear the differences between WSR and MSIs.
[92] MSI Integrity, *Not Fit-for-Purpose*, p. 220.
[93] Oxfam, *Working in Marks & Spencer's food and footwear supply chains*, January 2021.
[94] Oxfam, *Working in Marks & Spencer's*, foreword.

along with living wages and gender equity, and recommending actions M&S can take "with the wider sector to galvanize substantive change."

Marks & Spencer deserves full credit for requesting the evaluation and then publishing it, despite its sobering conclusion. Transparency is one of the significant failures identified in the MSI Integrity report; M&S is one of the few exceptions to the rule. OXFAM identifies significant issues within M&S's supply chain, including lack of worker representation, few opportunities for workers to raise concerns, and lack of knowledge among workers of grievance mechanisms and low confidence in their effectiveness. Other issues of concern include work poverty, health and safety, and harsh treatment and discrimination. The OXFAM report confirms and documents the weaknesses and ineffectiveness of even well-intentioned corporate social responsibility programs and MSIs. These programs have neither the necessary worker engagement and expertise nor the combination of worker education, comprehensive monitoring, and strong market consequences needed to effect real change. This very point is highlighted in the OXFAM report's endorsement of worker-driven social responsibility programs. The Fair Food Program was emphasized as "the most widely cited example when Oxfam asked 23 experts about effective ways for workers to represent themselves," and noted that workers within the CIW's Fair Food Program "now enjoy some of the highest labour standards in American agriculture."[95]

The most recent critique of the multi-stakeholder initiative approach, and evidence of its weakness, highlights privatization of labor standards in Mexico's agro-export industry through two prominent MSI programs.[96] James Daria argues that these MSI programs "fairwash" fresh produce coming out of Mexico, which is then sold through major labels including Driscoll and Costco. Rancho Nuevo Produce, a berry and tomato operation subcontracted by San Diego-based Andrew and Williamson Fresh Produce (A&W), has received certification by the Equitable Food Initiative (EFI) and Fair Trade USA stating that their farms meet these social responsibility program standards for the fair treatment of workers. Workers on these farms first used social media to bring attention to abusive treatment, including 12 to 13-hour workdays without overtime, frequent seven-hour workweeks, significant harassment and retaliation, and blacklisting from U.S.-based A&W farms. Daria reiterates the findings of the MSI Integrity report: U.S.-based transnational agribusiness corporations use private, MSI labor standards to "fairwash" or cover up labor and food safety violations and repress independent labor organizing in their supply chains. And these corporations do so knowing that these

[95] Oxfam, *Working in Marks & Spencer's*, "Signpost to GOOD PRACTICE 1."
[96] James Daria, "Fairwashing and Union Busting: The Privatization of Labor Standards in Mexico's Agro-export Industry," *Mexican Studies/Etudios Mexicanos*, vol. 38, issue 3, Fall 2022.

social responsibility programs do not protect workers' rights but do protect the corporate brands as socially responsible.[97]

Just a few months after OXFAM's report, a consortium of Stanford, Yale, and Sheffield universities known as the Re:Structure Lab published a report looking at the effectiveness of another strategy to address forced labor in global supply chains: "transparency legislation."[98] Transparency legislation is a government-led effort to require corporations to report on the state of their supply chains, with particular regard to worker abuse and negative environmental impacts. The report examines highly praised legislation in the U.K. and California, viewed by many as groundbreaking in their requirements for ethical supply chains.[99] The conclusions of the study echo the weaknesses found in CSR and MSIs over the past decade. The authors write that "[t]ransparency legislation[,] as a dominant mode of regulation, is not working." The weaknesses of transparency legislation, whether well-intentioned or deliberately watered down, include standards that are too vague, weak, or aspirational so that "corporations can comply with transparency legislation without altering the commercial practices that lead to forced labour and exploitation." The legislation lacks strong sanctions, whether market consequences or financial penalties, for non-compliance, as well as "paths for remedy and redress for victims." The result has been "little action toward meaningful change."[100] Once again, the Re:Structure Lab report offers WSR as the one effective alternative, stating the need for "worker-driven" strategies and "binding worker-driven social responsibility agreements."[101]

Reviewing these analyses and evaluations of high-profile strategies to end systemic abuse of workers in corporate supply chains, the lack of success of strategies that appeared promising is disheartening. The Fair Food Program and other WSR programs are distinctive in their comprehensiveness as is the CIW's early understanding that market power and accompanying market sanctions are necessary to enforce both standards and access to workers and workplaces. One other factor comes to light in understanding the unique effectiveness of worker-driven social responsibility: motivation for pursuing and persisting in systemic change. In the late 1990s, when the CIW gained its expanded understanding of supply chains and the power of corporate buyers, it developed a strategy to shift the power balance between workers and buyers.

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[97] Daria, p. 381.
[98] Re:Structure Lab, *Forced Labour Evidence Brief*.
[99] This is a report well-worth reading, particularly if you continue to expect governments to actively protect workers, rather than turning to the private sector and nongovernmental organizations.
[100] One of the more damning findings is that transparency laws actually lead to superficial reporting. "Reporting tends to focus on *cosmetic compliance* processes – policies and structures that convey action without achieving the intended goal of addressing human rights abuses – rather than substantive risks and outcomes. Note that the italicization of cosmetic compliance is in the original. Re:Structure Lab, *Forced Labour Evidence Brief,* pp. 5, 9 - 11.
[101] Re:Structure Lab, *Forced Labour Evidence Brief,* pp. 18, 24.

This strategy resulted from CIW workers' analysis of the failure of their original strategy of labor strikes, protests, and hunger strikes to produce transformational change. Farmworkers had come together. Their voices were being heard well beyond Florida. Students and faith communities were now marching with farmworkers. Piece rates were up a bit. But farmworkers were still poor. Physical abuse and wage theft were still rampant in the fields. And new forced labor cases emerged with depressing frequency.

It's here that the difference between a worker-driven strategy and externally driven strategies is perhaps the most stark. With WSR, beginning with the farmworkers of the CIW, the need to develop and pursue an effective strategy to define, claim, and protect their human rights is existential, affecting their very lives. If the original strategy couldn't achieve the wholesale change required for farmworkers to be safe in the fields and earn a living from their labor, then it had to change. Feel-good marches with allies and a higher public profile wasn't enough. The motivation behind a worker-driven social responsibility strategy is of a different depth and quality than from an NGO entering the workers' rights arena with a five-year plan. No matter how well intentioned, success or failure for the nonprofit or NGO is about the success of the program or initiative, not the existence and lives of their community. Not only is their understanding of the problem qualitatively weaker, but the stakes are also lower for an externally driven organization than for the workers who are subject to beatings, rape, and wage theft. Reasonably, the motivation for a company in a corporate social responsibility program is even further removed from the existential motivation of the workers. Corporations address problems in their supply chains because their public relations and brand are taking a beating. They want to protect their brand, not their lives.

For MSIs and social responsibility programs established by NGOs, victory can be defined as "being at the table" as an NGO or worker partner with corporations and agreeing to a set of standards. But, as explained in detail by MSI Integrity, being at the table doesn't take and leverage market power to effectively protect workers. Corporations within the MSI do not give their market power to their "partners." Major buyers, or transnational corporations, have held the power all along. They could fix the abuse within their supply chains if they chose to do so. As has been done to ensure food safety, corporations must move beyond voluntary standards and annual audits to effective monitoring and market sanctions for violators, in order to prevent abuse of workers in the fields and factory floors within their supply chains. Whether CSR, an MSI, or legislative reform, it is difficult to develop an effective solution without the detailed knowledge of the problem that comes from living within the abusive system. Protecting a corporate brand or the continued existence of an NGO results in different strategies and measures of effectiveness than fighting for your human rights. It is nearly impossible to recognize when a strategy is not working, throw it out, start again, and

repeat until you've achieved transformational change unless your very life depends upon it.

Designed for Emergence: WSR in a Changing World

We've seen how worker-driven social responsibility works and why, in the original Fair Food Program as well as in WSR efforts elsewhere in agriculture, manufacturing, and other corporate supply chains. But what about the future? How does WSR evolve and expand? How does WSR respond to changing environments and emerging crises?

To get a sense of the ability of WSR programs to adapt and respond to unexpected changes in their environments, let's look at recent history. In March 2020, the U.S. and the world face a global shock. COVID-19 had arrived in America's schools, offices, and fields. As was true for many low-wage workers in hospitals, grocery stores, and meatpacking plants, those harvesting and processing the food for our tables were declared essential workers.[102] Farmworkers, particularly those working on commodity produce farms, were at significant risk of COVID-19. They work close together in fields and packing houses, often live in crowded, shared housing, and travel on crowded buses and vans to and from the fields.[103] Basic early prevention protocols of social distancing and isolation in case of illness were impossible. Despite the critical nature of their work in feeding the nation—"no farmworkers, no food"[104]—and their high risk of contracting COVID-19, farmworkers were often treated as expendable, left out of testing and then vaccination programs. CIW sent a warning nationwide with an op-ed in the *New York Times* asking, "What happens if America's 2.5 million farmworkers get sick?" and editorials and commentaries appeared around the country joining in the alarm.[105] Not waiting for an answer from the nation (or Florida's government), the CIW and Fair Food Standards Council moved fast. The Fair Food Program was able to use its frontline, worker-driven perspective and existing partnerships with participating growers to connect with several public health NGOs to establish protocols and services that reduced

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[102] Agricultural workers, particularly those in crop production, are included in the 16 critical industrial infrastructure categories of the Cybersecurity and Infrastructure Security Agency and are listed on U.S. Department of Health and Human Services and Centers for Disease Control websites: CISA, "Critical Infrastructure Sectors," https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors.

[103] This particular set of risks is frequently cited. One source is "COVID-19 and Agricultural Workers: A Descriptive Study," *Journal of Immigrant and Minority Health*, October 2021, available through the National Institutes of Health National Library of Medicine website, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8507360/.

[104] Greg Asbed, "What happens if America's 2.5 million farmworkers get sick?" *New York Times,* April 3, 2020.

[105] Janine Zeitlan, "How Florida Left Farmworkers Out of COVID-19 Pandemic Response," *Naples Daily News*, March 28, 2021; Janine Zeitlan, "Nikki Fried to Gov. DeSantis: Give Florida Farmworkers, all Teachers, COVID-19 Vaccines Now," *Naples Daily News*, March 3, 2021; Susan L. Marquis, "Forgotten on the Frontlines of the Food Supply Chain," *RAND Corporation*, April 6, 2020; Asbed, "What Happens If."

the risk of COVID-19, quickly identified infections when they occurred, and vaccinated farmworkers once vaccines were available. These mandatory and enforceable protocols are unknown elsewhere in social responsibility programs.[106]

The Fair Food Program has adapted and responded to another change in the global condition. CIW's workers, the Fair Food Standards Council, and participating growers recognized that changing climate and the resulting greater weather extremes were leading to increased incidents of heat illness. Together, they have developed and instituted a new set of enforceable heat safety standards for the Fair Food Program. As described earlier, these standards go beyond access to shade, water, and elective rest breaks to include mandatory cool-down rest breaks, increased training and monitoring to identify heat stress, and a set of protocols when signs of heat illness are identified by supervisors or coworkers.[107] As OSHA has begun the process of getting approval and feedback on national standards, the FFP's new standards have been held up as comprehensive, effective, and achievable.[108]

Climate change and a pandemic have required the Fair Food Program to use its worker-driven expertise, creativity, and partnerships to adapt and respond. These same attributes have been called into play for a more insidious threat to workers' human rights, a threat that cuts across the agricultural sector and is relevant far more broadly within the United States. Agricultural labor in the U.S. has long been the work of immigrants, whether Chinese, Japanese, Filipino, or Latino workers in the west or enslaved Africans in the East followed by Latino and Haitian workers.[109] The tension between the need for farmworkers and anti-immigration sentiment has resulted in a periodic emphasis on "temporary worker" programs. The World War II Bracero Program, ended in 1964, was such a program. More recently, the US.. established a set of temporary work visas for "seasonal" workers, the H-2A and H-1B visas. The H-2A is specifically for agricultural workers, while the H-1B is for temporary and seasonal workers often employed in vacation towns or factories with seasonal business cycles.

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[106] Details of the Fair Food Program's creation and implementation of "Mandatory COVID-19 Protocols for Fair Food Program Growers" and the collaboration between workers, growers, and NGOs including Doctors Without Borders may be found in FFSC, *Annual Report 2021,* 2022, pp. 18-21. As an example of other social responsibility programs not taking a similar approach to COVID—19, the Equitable Food Initiative issued "best practices" developed by their growers and required some sort of COVID-19 management plan from its participating growers, according to the additional auditor guidance it was considering: Equitable Food Initiative, "COVID-19 Auditor Guidance," https://equitablefood.org/wp-content/uploads/COVID-19-Auditor-Guidance-v1.0.pdf.

[107] Details of the new Fair Food Program heat illness standards may be found in the FFSC, 2021 Annual Report, p. 57.

[108] OSHA, "Heat Exposure Standards," https://www.osha.gov/heat-exposure/standards.

[109] See Eric Schlosser, *Reefer Madness: Sex, Drugs, and Cheap Labor in the American Black Market,* Houghton Mifflin, 2003, Mariner Books; Cletus Daniels, *Bitter Harvest: A History of California Farmworkers, 1870-1941*, Cornell University Press, 1981; Daniel Rothenberg, *With These Hands: The Hidden World of Migrant Farmworkers,* Harcourt Brace, 1998; and a summary of these sources in Marquis, *Tractor*.

These visa programs are touted by supporters, including those on Capitol Hill, as legal and effective alternatives to the challenges of (and to) undocumented workers. As a practical issue, the intense clampdown on immigration and immigration enforcement has increased the costs and risks of growers hiring undocumented workers. As a result, agricultural employers have increasingly shifted to H-2A temporary workers, with the shift becoming apparent in the fields in 2015 and 2016 and then accelerating over the next few years—more than tripling the number of workers and between 95 and 200 percent increases in the number of agricultural firms requesting H-2A labor, depending on crop type.[110]

For background,[111] the H-2A is a "temporary worker" visa, and those who enter the U.S. with this visa are not immigrants. The employer or petitioner requesting H-2A employees must offer jobs that are temporary or seasonal, demonstrate that there are not enough U.S. workers willing and able to do the temporary work, and show that employing H-2A workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. The employer is required to demonstrate a need for a specific number of H-2A employees and actively recruit U.S. workers. Workers must apply for an H-2A visa and come from nations on a list approved by the Department of Homeland Security. H-2A visas are issued for up to a year in length with extensions that are capped at three years. Workers must then remain outside the U.S. for at least three years.

Employers are required to pay H-2A workers the highest of applicable wage rates: the adverse effect wage rate (AEWR),[112] the prevailing wage, the agreed-upon collective bargaining rate, or the federal or state minimum wage. Wages may be calculated on the basis of hourly or "piece" rates of pay. H-2A workers may only stay in the U.S. when working for the employer that applied for the H-2A temporary labor certification.

[110] While the number of H-2A workers has tripled between 2010 and 2019, the number of firms requesting H-2A workers increased by 95 percent. Simnitt and Castillo, "Use of H2A Guest Farm Worker Program More Than Triples," USDA Economic Research Service, September 7, 2021.
[111] Section 218 of the Immigration and Nationality Act authorizes the lawful admission into the United States of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature. More information may be found on the U.S. Customs and Immigration Services website. https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers.
[112] The AEWR was established during the Bracero Program to prevent temporary workers from depressing the wages of U.S. resident workers. The AEWR is established by a USDA regional survey of pay rates for nonsupervisory employees across multiple occupations. The AEWR is, therefore, usually significantly higher than the prevailing wage rate for the more specific agricultural sector. Farmworker Justice AEWR fact sheet, https://www.farmworkerjustice.org/wp-content/uploads/2012/07/AEWR-Fact-Sheet.pdf.

On paper, the H-2A program includes safeguards for workers, such as the requirement for a work contract no later than the first day of work,[113] payment for transportation expenses incurred, provision of housing, and holidays. In implementation, it is increasingly evident that the program's design makes possible the worst aspects of forced labor, and the results can be seen in two of the largest forced labor or modern-day slavery cases in recent U.S. history.[114] As is true for other labor laws in agricultural labor, monitoring is thin, enforcement is weak, and the opportunity for abuse is significant. The very design of the program increases the opportunity for worker abuse or forced labor. Workers must work for their original employer or lose their visa, and most H-2A workers are hired as contract labor on field labor contractor work crews, rather than as direct hires. Wages are fixed (usually at the AEWR), and there is little to no monitoring or enforcement of working conditions and standards. Much of the increase in companies requesting H-2A workers has come from farm labor contractors reflecting both the contractors recruiting agricultural workers from abroad and agribusinesses turning to these contractors to find workers.[115] Recruiters, particularly in Mexico, extort fees for placement, transportation, or visa applications from those seeking work. Workers often take on substantial (and illegal) debt during the recruitment process, and recruiters then threaten workers' families to ensure repayment or coerce forced labor. Although required to do so, employers often refuse to reimburse transportation fees. The required housing may be crowded, unsanitary, and dangerous. Wages are higher but worker protection enforcement is low, so contract labor crew leaders or grower supervisors will work the farmworkers to or near actual death, forcing up productivity even at the cost of heat stress or physical injuries.

As one workers' rights attorney commented, the agricultural labor market has become the "Wild West" in its labor operations. A recent study of calls to the U.S. National Human Trafficking Hotline reports that hotline calls have increased in agriculture, even as they have decreased in other industries. There has been a 70 percent increase in reported labor trafficking victims who hold H-2A visas. H-2A visa holders account for 25 percent of all labor trafficking victims as of September 2020. The report states that 100 percent of these workers experience fraud, the use of debt peonage is rampant, and the vast majority of workers experience abuse and coercion. The authors of the report concluded that "[m]igrant workers, including those in the United States legally on H-2A,

[113] This protection is minimal even if implemented since on the first day of work the foreign worker has travelled to the U.S. and cannot leave the employer, even if the contract is not what they expected, without having to return to their home country.
[114] On how the H-2A visa program runs in practice rather than theory and the abuses of FLCs, see Scott, Leib, and Brown, *Farmworkers, June 2022*, Farm Bill Law Enterprise, pp.3 – 8, 12-13.
[115] Simnitt and Castillo, "Use of H2A Guest Farm Worker Program More Than Triples."

H-1B, and other temporary work visas, routinely face situations of financial exploitation, threats, and unsafe living and working conditions at the hands of their employers."[116]

In late 2021 and early 2022, three major human trafficking and forced labor cases came to light, each case involving multi-state conspiracies with forced labor of Mexican agricultural workers brought to the U.S. on H-2A visas. In January 2022, the U.S. Attorney's office in Columbia, South Carolina, announced the indictment of Elizabeth and Enrique Balcazar, of Balcazar Nature Harvesting, for trafficking seasonal agricultural workers.[117] The CIW uncovered the second case at Los Villatoros Harvesting. The coalition partnered with the Department of Justice in the investigation, resulting in a federal grand jury in Tampa indicting the three people who ran the labor contracting company for subjecting workers employed in Florida, Kentucky, Indiana, Georgia, and North Carolina to forced labor. In February 2023, the Department of Labor announced that Los Villatoros owner Bladimir Moreno was sentenced to nearly 10 years in prison for forced labor operations in Florida and Indiana that supply Walmart, Kroger, and Sam's Club.[118] The third, much larger case, "Operation Blooming Onion," was one of the largest human trafficking cases ever prosecuted in the United States, involving approximately 71,000 workers and nearly $200 million in illegal profits. The investigation and prosecution were so sprawling that they required the collaboration of several federal agencies and more than 200 law enforcement officers and federal agents. The criminal ring worked across Georgia, Florida, and Texas, with workers from Guatemala, Mexico, and Honduras. In October 2021, a grand jury in Georgia indicted 24 people from the Patricio TCO (transnational criminal organization) for forced labor charges affecting more than 100 H-2A workers. Those indicted used illegal recruiting fees, withheld workers' IDs and documents, forced work for little or no pay, and threatened deportation and violence. Two workers died from heat stress, five were kidnapped, and at least one worker was raped.[119]

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[116] Polaris, *Labor Exploitation and Trafficking of Agricultural Workers During the Pandemic*, June 2021.
[117] U.S. Attorney's Office, District of South Carolina, "Multi-count Federal Indictment Returned for Labor Trafficking Violations, Press Release, January 12, 2022, https://www.justice.gov/usao-sc/pr/multi-count-federal-indictment-returned-labor-trafficking-violations.
[118] U.S. DOJ, "Defendants Charged in Connection with Multi-State Racketeering Conspiracy Involving the Force Labor of Mexican Agricultural H-2A Workers," September 2021; "Feds: 3-charged in Mexican Migrant Worker Conspiracy", *Associated Press*, Sept 22, 2021; U.S. DOJ, Office of Public Affairs, "Three of the defendants in the Tampa case were sentenced to prison terms and fines on October 27, 2022," Press Release, October 27, 2022, https://www.justice.gov/opa/pr/three-defendants-sentenced-multi-state-racketeering-conspiracy-involving-forced-labor-mexican; U.S. DOL, "Court Sentences Florida Labor Contractor to Nearly 10 Years in Prison," Press Release, February 2, 2023, https://www.dol.gov/newsroom/releases/whd/whd20230202-2.
[119] U.S. DOJ, US Attorney's Office, Southern District of Georgia, "Human smuggling, forced labor among allegations in south Georgia", Press Release, November 22, 2021; U.S. DOJ, Office of Public Affairs, "Defendants Charged in Connection with Multi-State Racketeering Conspiracy Involving the Forced Labor of Mexican Agricultural H-2A Workers," Press Release, October 27, 2022; Perez, Favakeh, and Kenmore,

As we saw with the pandemic and increased risk of heat stress, the Fair Food Program has not stood still in the face of increased risk to workers due to the design and implementation of the H-2A visa program.[120] The FFP established binding processes, standards, and consequences in cooperation with the Mexican government. Growers and other employers within the Fair Food Program must now use this established "clean channel" for recruiting (i.e., using recruiters who are verified and monitored for ethical and legal hiring of workers). As has been true since the establishment of the Fair Food Program, all workers must be directly hired by participating growers, including H-2A workers, not contract labor. Once hired, workers must receive worker education on their rights and responsibilities, know the hotline, and have freedom from retribution. In addition, the Fair Food Standard Council audits all paperwork for any H-2A hire.

Of note, none of the other social responsibility programs require the direct hire of workers, and most of them have not attempted to address the current crisis through clean-recruiting channels for H-2A workers either.[121] An interesting and concerning exception to the latter is the CIERTO program, created in collaboration with (but not required by) the Equitable Food Initiative program and the United Farm Workers (UFW). CIERTO is a farm labor contractor that is also acting as a recruiter for H-2A workers. The organization is a nonprofit, with UFW leaders and board members serving in CIERTO leadership positions. A first look at this new organization raises the question of whether there may be a conflict of interest between union farmworkers represented by the UFW and H-2A workers recruited and employed by UFW-affiliated farm labor contractor (FLC) CIERTO. CIERTO even offers per-head bonuses to growers who hire CIERTO-recruited H-2A workers from, as described in their program, "high-risk Guatemala." It's also of note that UFW is the only worker organization to endorse the new Farm Workforce Modernization Act, which would expand the H-2A program to new areas of the agricultural industry such as dairy (which is not seasonal) over the objection of farmworker organizations in those areas. CIERTO and EFI declare their intent to establish a "clean channel," although it is not evident that the program has the mechanisms needed to monitor and enforce the required protocols in CIERTO operations in Mexico and Guatemala, and neither EFI nor CIERTO have effective monitoring and enforcement of worker rights standards once the H-2A workers are on

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"Beyond Troubling: Current, former government officials tied to human trafficking probe in Georgia," *US Today Network,* June 15, 2022; Drew Favekeh, "Operation Blooming Onion: Federal Indictment Reveals Modern-Day-Slavery in Georgia," *Savannah Morning News,* updated April 19, 2022; "U.S. attorney reveals massive labor trafficking operation in Georgia," savannahnow.com.

[120] H2A workers are not yet used in dairy and so Migrant Justice have not yet had to follow the Fair Food Program in establishing a "clean" H2A process in the Vermont and New York State dairy industry. There are rumblings of the United Farmworkers pushing to establish H2A workers in the dairy industry, via the Farm Workforce Modernization Act (discussed below), thus opening financial opportunities for their CIERTO labor contracting organization, see https://www.washingtonpost.com/made-by-history/2022/12/14/farm-workforce-modernization-act-history/.

[121] Matthew Stark Blumin, interview; Greg Asbed, interview.

U.S. farms.[122] EFI's track record on Mexican farms is also demonstrably poor, with documented retaliation against workers who complain of unsafe conditions.[123]

As the U.S. Department of Justice, Customs and Border Protection (CBP) agency, and Department of Labor have recognized in their recent actions against forced labor in the U.S. and in Mexico, the H-2A program and its documented temporary workers have not prevented forced labor, wage theft, and denial of workers' rights. In fact, as seen in recent cases of forced labor on farms employing H-2A workers, the increased use of this temporary visa program has exacerbated the problem. Each of these agencies has made clear that "worker-driven" solutions have been the only effective approach to identifying and reducing these violations.

Where to Go from Here

With the series of evaluations and reports highlighting worker-driven social responsibility as the "gold standard" for effective social responsibility and workers' human rights programs, the recognition, validation, and enthusiasm for WSR are accelerating. In recent months, further endorsements have come from academic analyses and from U.S. federal and state government agencies. The report from the Farm Bill Law Enterprise, a collaboration between researchers from law schools at Harvard and Pace universities, brings us into the government space with their recommendations on changes to the next farm bill, anticipated in 2023. The report decries farmworker abuse due to the use of farm labor contractors (FLCs), the dangers of heat stress and physical injury, poor wages, and the exploitation of workers through the H-2A visa program. It calls for extensive reforms to the H-2A program. [124]

Significantly, the Farm Bill Law Enterprise report states that "worker-driven social responsibility (WSR) offers an alternative paradigm for ensuring worker protection and empowerment in the agriculture industry." The authors note that "WSR offers viable mechanisms for helping producers make the transition to paying higher wages and improving working conditions…WSR's response puts the onus on those corporate buyers to offer price premiums or other financial contributions to support producers in taking the higher road." Finally, the authors argue, "The downward pressure on prices and balance of power in supply chains are dynamics that Congress should account for in

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[122] State of California, Secretary of State, FY60290, "Statement of Information (Domestic Nonprofit, Credit Union and General Cooperative Corporations, SI-100," Filed August 7, 2018; California Secretary of State Electronic Filing, Corporation – "Statement of Information, CIERTO," Filed March 3, 2021; The Guatemala Workforce Initiative | Cierto, ciertoglobal.org.
Corporate officers are Erik Nicholson, CEO; Teresa Romero, Secretary; Arturo Rodriguez, CFO. Romero and Rodriguez are the current and past president of the United Farmworkers. Nicholson was in UFW leadership and a board member, as well as a founder of the Equitable Food Initiative.
[123] James Daria, "Fairwashing and Union Busting."
[124] Scott, Lieb, and Brown, *Farmworkers, June 2022*, pp. 8-10.

the design of policies…" They call upon Congress to "incentivize[e] the growth of WSR initiatives and focusing attention at the 'top' of the supply chain [and the power of corporate buyers]—specifically, by preferentially providing the many forms of financial support government provides to those farms that join WSR programs[125]." An innovative recommendation in the report is that USDA uses as a model its current requirements for compliance with minimum conservation cases, bringing a similar model to food production. With this approach, USDA would condition programmatic support to agricultural sector employers certifying "when applying for USDA assistance or programs, that they are in compliance with all applicable employment and labor laws and have not committed repeat violations." Similarly, the report notes that requiring certification of compliance with employment and labor laws could also be used to align USDA procurement policy with the public interest through the market power of its Agricultural Marketing Service. The AMS purchases food through its Commodity Procurement Program to support federal food programs, including programs supported by the domestic Food and Nutrition Service and international food assistance programs. Farm Bill Law Enterprise recommends USDA, in both food procurement and in providing agricultural assistance, encourage agricultural employers and producers to participate in a WSR program or enter into a collective bargaining agreement (CBA) with its workers to streamline certification that producers are verifiably in compliance with all relevant employment law.[126]

These recommendations are consistent with the steady stream of endorsements by federal agencies for the Fair Food Program and the worker-driven social responsibility strategy—endorsements and validation that go back to the Department of State, Department of Justice, and White House recognition of CIW's groundbreaking anti-trafficking and modern-day-slavery work as early as 2005. In the past year, these recommendations have moved to an active recommendation of the WSR strategy from agencies in the labor arena. In January 2022, in recognition of the new wave of forced labor cases, including those in Georgia and Florida, the Department of Labor devoted a roundtable discussion on human trafficking and forced labor in agriculture with more than 500 attendees.[127] Senior DOL officials made clear that the Fair Food Program "is something every grower and food retailer should be part of. The program's success is absolutely undeniable." In particular, the discussants emphasized the vulnerability of agricultural workers to human trafficking due to their exclusion from federal and local labor laws and the real fear of retaliation if trafficked workers speak out. This vulnerability and fear, participants emphasized, make even more critical the need for

[125] Essentially using potential federal government support to producers to further incentivize producers to join WSR programs, beyond the incentives offered by corporate buyers required to buy from WSR producers.
[126] Scott, Leib, and Brown, *Farmworkers, June 2022*, pp. 38-40.
[127] U.S. Department of Labor, Labor Trafficking in Agriculture Roundtable, January 2022.

WSR's mandatory and severe market consequences from the next rung up the supply chain when trafficking is uncovered.

The Customs and Border Protection agency agreed with the Department of Labor's assessment and recommendation. In their *Forced Labor Frequently Asked Questions for Industry* publication, the CBP states what has been documented time and again: traditional social responsibility auditing is ineffective, and industry should not rely on it to ensure their supply chains are free from forced labor. Instead, "more investment should be made in worker-driven solutions. Examples of what can be achieved are the Fair Food Program and Bangladesh Accord."[128]

This heightened government endorsement of worker-driven social responsibility and the recognition of both its effectiveness and its potential for supporting government policy goals bring us full circle to government agencies developing strategies for leveraging non-governmental WSR programs in the public interest. One of the distinctive characteristics of the Fair Food Program and WSR more broadly is that real and sustainable change—the protection of workers' human rights and improvement in farmworker pay—has come from outside of the traditional paths of government legislation and regulation. Governments—state, local, and federal within the US and internationally—have long failed to protect farmworkers, and the workers of the CIW stepped in to claim and protect their human rights. WSR's proven effectiveness can now be leveraged by government institutions to align government policies and action—in particular, by conditioning public purchases and other financial incentives at the government's disposal on participation in the FFP—with the public interest.

This potential for partnership is not unprecedented. The Department of Justice became a partner of the CIW in the 1990s as the coalition uncovered modern-day slavery cases, combatting human trafficking and forced labor. We have reached the point where the U.S. government more broadly must make its actions meet its words. To do otherwise is to fall into the same trap of corporations who commit to ending abuse in their supply chains but do so with inspirational words not backed by substance and demonstrated results. Like consumers, federal, state, and local governments have the power of the purse. The power of the invoice, market incentives, and market sanctions coming from participating private sector buyers in the Fair Food Program provides similar power to government agencies seeking clean supply chains free from wage theft, worker abuse, and forced labor.

An example of how to use worker-driven social responsibility to achieve policy goals through government procurement is found in the recent joint work of the Good Food

[128] Customs and Border Protection, Virtual Trade Week, "Forced Labor Frequently Asked Questions," August 2021.

Purchasing Program (GFPP), Health Care without Harm (HCWH), and Real Food Challenge (RFC). Each of these programs focuses on different aspects of procurement—state and local governments (GFPP), schools (RFC), and hospitals (HCWH)—by establishing standards for ethical supply chains and procurement; GFPP, in particular, supports government agencies in achieving these standards. These three groups have come together in establishing the Anchors in Action (AiA) framework for ethical procurement standards, which each organization has committed to integrating into its own standard-setting activity through amendments (with RFC the first to complete its revisions). AiA includes a range of ethical and policy considerations, such as environmental impact or animal welfare[129] and is designed to be adaptable to various institutional sectors, including hospitals, K-12 schools, higher education, municipalities, correctional facilities, and colleges and universities. Real Food Challenge focuses on colleges and universities and their dining services procurement. Good Food Purchasing Program works with municipalities including New York City.[130] The AiA uses a tiered system of standards for the various areas. Directly relevant to the leveraging of WSR by government agencies is the "valued workforce" attribute. The AiA framework reflects the findings of MSI Integrity, Re:Structure, and Justice in the Fields, as well as the government findings referenced above. The AiA framework recommends that government procurement require certification of ending abuse of workers within supply chains. The lowest level of certification is Level 1, which is viewed as "good" for an "on-ramp to Level 2 and 3 food products." The two "valued workforce" programs in Level 1 are Equitable Food Initiative and Fair Trade International "(for coffee, cocoa, and sugar only)." Level 2 certification is "better" with the Food Justice certification of the Agricultural Justice Project. The "best" certification or "gold standard" that every government procurement should adopt or move toward is Level 3. Certification for farms must come from WSR programs, including theMilk with Dignity and Fair Food programs, a union contract for farmworkers, or a worker-owned cooperative.[131]

A similar tool—using WSR certification and/or CBAs to ensure the protection of workers' rights and the end of forced labor in government suppliers in particular, as noted in the Farm Bill Law Enterprise report—is also available to the federal government. Most directly, this application is through the procurement of food products by agencies such as the U.S. Department of Agriculture or the Department of Defense.

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[129] Health Care Without Harm is the third organization, per Anchors in Action, 2022. Real Food Challenge has just released its Real Food Challenge 3.0 (2022) with the third iteration of its standards, drawn directly from the new AiA framework.

[130] See www.goodfoodpurchasing.org.

[131] "Institutions can understand Level 1 as "Good," Level 2 as "Better," and Level 3" as "Best." These levels provide an on-ramp for institutions to continuously improve its food purchasing in value by purchasing food products from higher levels over time. Level 2 and Level 3 have been identified by the AiA framework as the food products that ideally should be purchased." See the Real Food Challenge description of AiA framework and its intent. Real Food Challenge has formally incorporated these standards, strategy, and recommendations into their own guidance. See pp. 15, 17, 19.

Agencies would not direct procurement to specific producers or growers, something generally not allowable under the Federal Acquisition Regulation (FAR). Instead, the certification and verification of meeting standards for workforce protection would be required for contract awards similar to existing requirements for conservation, organic, and "green" chemicals. As a condition of award, suppliers would need to certify that they are protecting workers' rights and that their production is free from forced labor, as demonstrated through participation in a WSR program or a bona fide CBA.[132] The FAR was amended consistent with the 2012 Executive Order 13627 to strengthen the prohibition of forced labor and human trafficking in suppliers for goods and services for federal procurement. The Fair Food Program or other WSR programs that protects workers' rights to human rights, consistent with the recommendation and endorsement of these programs by multiple experts and government actors, are uniquely able to provide such certification. The FAR allows use of a specific service when it is in the public interest and when there is an identifiably limited number of verifiably responsible sources. A collective bargaining agreement through a validated labor union might offer a less comprehensive alternative but would nonetheless be a significant step forward by also providing a legally enforceable grievance process for workers that is protected from retaliation—something that EFI, FTUSA, and other certifications cannot credibly claim.[133]

A second approach for the federal government to leverage WSR as a nongovernmental protection against worker abuse in corporate supply chains has recently been announced by the Department of Labor's International Labor Affairs Bureau.[134] While the DOL does not procure vast amounts of food products like the USDA or DOD, it is

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[132] A variation of this approach is to amend the AGAR (the FAR for agriculture) such that any farms in the government's supply chain that are found to have labor rights violations could be required by USDA to affirmatively demonstrate that they have remediated the abuses before resuming selling to the government. Remediation could be presumptively achieved if the farm joins the FFP. In other words, bad actors would either have to prove they are not bad anymore or join the FFP and be considered "good" again without need for additional proof.

[133] See White House Press Office, Executive Order 13627, 2012, https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe; Federal Acquisition Regulation 6302-116, "Only one responsible source and no other supplies and services will satisfy agency requirements," https://www.acquisition.gov/far/6.302-1; Federal Acquisition Regulation 6302-7 "Public Interest," https://www.acquisition.gov/far/6.302-7.
Federal Acquisition Regulation Subpart 22.17 "Combatting Trafficking in Persons" applies to all acquisitions and 22.1703 applies to importation of goods or for services performed outside of the United States. Another helpful resource is the Department of Homeland Security briefing on using the Federal Acquisition Regulation to prevent forced labor or human trafficking in federal government procurement, http://www.iadlest.org/Portals/0/Files/Documents/DHS/HT/docs/FAR.pdf.

[134] U.S. DOL, Bureau of International Labor Affairs, "US Department of Labor awards $2.5 million grant to promote human, labor rights in the international cut flower supply chains", News Release, February 14, 2023, https://www.dol.gov/newsroom/releases/ilab/ilab20230214#:~:text=WASHINGTON%20%E2%80%93%20The%20U.S.%20Department%20of,Chile%2C%20Mexico%20and%20South%20Africa.

chartered to prevent products produced through forced labor from entering the United States.[135] As the Fair Food Program expands internationally, the Department of Labor can leverage this WSR program to provide private regulation of overseas production of products imported into the United States from nations where state regulation is inadequate. On February 14, 2023, the DOL announced it is funding a pilot to prevent, and study the factors affecting, the use of forced labor in imported products, beginning with the expansion of the Fair Food Program to the cut-flower industry in Chile, South Africa, and potentially Mexico.[136]

The Fair Food Program designed and established the model for the more broadly applied worker-driven social responsibility. Standards come from the worker expertise in their own environment. Effective implementation of the standards requires collaboration between workers and employers. Effective monitoring is built on worker education and supported by a 24/7 grievance hotline and demonstrated responsiveness in investigation and follow-up. The power of WSR comes not just from setting and monitoring standards but also from enforcing them. The power of the market is behind the unique success of the Fair Food Program and the WSR programs that have followed this transformational success.

Conclusion

Worker-driven social responsibility is now found more broadly in agriculture from new produce and flowers to the dairy industry. WSR is foundational to the Bangladesh Accord on Fire and Safety in the international garment industry, now extended to Pakistan,[137] protecting protect women workers in clothing factories in Lesotho, and migrant fishers in the UK. As this report is coming to completion, the Fair Food Program is extending into Chile and South Africa. The jury is no longer out on the effectiveness of high-profile and highly touted corporate social responsibility programs, such as Fair Trade USA, Fair Labor Association, Equitable Food Initiative, or the Ethical Trading Initiative. Intentions may be good but none of these programs have delivered enforceable worker-driven standards that protect workers as well as they protect

[135] See for example, Federal Acquisition Regulations, https://www.acquisition.gov/far/subpart-22.17, "Combatting Trafficking in Persons regarding importation of goods or for services performed outside of the United States."
[136] U.S. DOL, Bureau of International Labor Affairs, "NOI-ILAB-22-10, Project to Expand and Assess Implementation of the Fair Food Program Model for Promotion of Human and Labor Rights Protections in International Agricultural Supply Chains," Grants.gov, November 2022.

[137] Matthieu Guinebalt, "Bangladeshi Accord on Fire and Building Safety to be Adopted Also in Pakistan," *Fashion Network*, December 16, 2022, https://ww.fashionnetwork.com/news/Bangladeshi-accord-on-fire-and-building-safety-to-be-adopted-also-in-pakistan,1468880.html.

brands. More importantly, these failures to deliver are not harmless. They give corporations alternatives to worker-driven social responsibility that appear to be similar in their standards and mechanisms but lack the enforceability and market consequences that are essential to success. Such alternatives may seem appealing because they do not require the hard work necessary to effectively monitor and enforce. But due to retailers and brands grasping for that lower-hanging but lower-quality fruit, workers' human rights are not protected, forced labor continues to exist and even expand, and worker-driven social responsibility programs are not able to gain momentum at the scale and speed needed to transform working conditions throughout corporate supply chains.

The benefits of worker-driven social responsibility programs to every link in food and other corporate supply chains have become evident to all who study, evaluate, and compare social responsibility programs. For those who participate in WSR programs, buyers safeguard their brand with an effective certification of a protected supply chain, with enforcement of legal standards and those of the program's *Code of Conduct* at covered producers. Producers ensure the safety of their workers, improve their production processes, have greater workforce stability, and gain preferential and protected access to a significant part of the market. And the workers? With WSR, workers define and claim their human rights to fair pay, freedom from abuse, safe working conditions, and dignity due to all who work hard. Workers drive and inform the design of WSR programs, and the market ensures the enforcement of the standards and requirements. WSR has proven its effectiveness within the United States and internationally.

Federal, state, or local governments requiring their suppliers to certify valued and protected workers in their production enables government agencies to not just declare but also achieve their policy objective when this certification comes from programs demonstrated to be effective in preventing worker abuse, wage theft, and forced labor, whether that's through the Fair Food Program or other WSR programs. In addition to meeting agency goals, the protection of workers' human rights at the scale of government procurement would transform agriculture and other labor-intensive supply chains. As the integration of the U.S. military in 1948 reflected a country ready for change, active support of worker-driven social responsibility by the actions of the federal government in its own procurement will reflect a country ready to recognize the human rights of every worker.

Susan L. Marquis is the Charles and Marie Robertson Visiting Professor at the Princeton University School of Public and International Affairs and the author of I Am Not a Tractor! How Florida Farmworkers Took on the Fast-Food Giants and Won!*, Cornell University Press, 2017.*

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