

Memorandum

May 14, 2007

To: States and Localities Drafting Sweat-free Laws and Resolutions
From: Mark Barenberg, Professor of Law, Columbia University
Re: To Bear in Mind, When Drafting Sweat-free Statements

Sweat-free procurement by states and cities is not preempted by federal law. Nonetheless, to ensure the strongest immunity against legal challenges, drafters of any statement, preamble, or resolution regarding sweat-free procurement should bear in mind the following facts:

- *Sweat-free procurement is a form of **ethical purchasing, not regulation**. That is, the purpose is to ensure that taxpayer dollars are not spent on sweatshop production – just as ethical purchasing by private consumers ensures that individual consumers do not spend their dollars on sweatshop production. The purpose is **not to regulate or restructure** the garment (or other) industry. (In the marketplace, some suppliers are sweatshops and some are not. States and cities that commit to sweat-free procurement simply scan the market and choose to buy from those suppliers that are not sweatshops. This constitutes ethical purchasing, not regulation.)*
- *Sweat-free procurement is **not** designed to **boycott** any country or **change the laws or policies** of any government. That is, states and cities simply scan the market and buy from private suppliers who choose to meet certain standards. (This is true even if sweat-free procurement rules require suppliers to adhere to host-country or other legal standards. The supplier can choose to adhere to those standards regardless whether the host-country government actively enforces the standards. Thus, the sweat-free procurement rules require no action by the host-country government.)*
- *Sweat-free procurement requires states and cities to buy products that are made in workplaces that are not sweatshops. It does **not** set standards for the production of **other goods (for other buyers)** that might be made by the same suppliers and the same factories. (That is, a particular factory making goods for states and cities is likely to make goods for other buyers as well. Sweat-free procurement rules apply only to the production of those goods that are sold to states and cities, not to the production of goods sold to other buyers, even if the latter goods are produced by the same supplier or the same factory.)*