

# EXAMINING THE LAWS AFFECTING THE CHILD FARM WORKER AND THEIR IMPACT ON THE AMERICAN TAXPAYER

## I. INTRODUCTION

Our nation's agricultural industry saves money daily by allowing children to work in our fields. The United States Department of Labor ("DOL") and state laws protect children and regulate the hours and conditions under which they may be employed. Generally, the Fair Labor Standards Act ("FLSA") restricts the amount of hours children may work.<sup>1</sup> However, the children working on farms are exempt from these guidelines; they have their own, more lenient, set of rules.<sup>2</sup>

Many laws and rules govern the farm worker. The Environmental Protection Agency ("EPA") controls the use of pesticides and the DOL controls the agricultural worker.<sup>3</sup>

This Comment examines whether these laws truly protect the child farm worker. Discussion will include: how labor standards for children in agriculture differ from those for non-farm jobs;<sup>4</sup> how the use of lawful pesticides directly affects the health of the child farm worker; and how pesticide exposure may cause illness, criminal behavior and death.

Most farm workers live in poverty.<sup>5</sup> At the expense of the American taxpayer, our government provides food and health care to the poor. The

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<sup>1</sup> United States Department of Labor, Youth & Labor, Nonagricultural Employment, available at <http://www.dol.gov/dol/topic/youthlabor/Nonagriculturalemployment.htm> (last visited Jan. 29, 2006).

<sup>2</sup> United States Department of Labor, Employment Standards Administration, Wage and Hour Division, Fact Sheet #40, available at <http://www.dol.gov/esa/regs/compliance/whd/whdfs40.htm> (last visited Jan. 29, 2006).

<sup>3</sup> The National Agricultural Law Center, Labor-An overview (2005), available at <http://www.nationalaglawcenter.org/assets/overviews/labor.html>.

<sup>4</sup> United States Department of Labor, *supra* note 2.

<sup>5</sup> United States Department of Labor, Income and Poverty (2005) available at <http://www.dol.gov/asp/programs/agworker/report/ch3.htm> (last visited September 17, 2006).

amount of tax dollars spent on our prisons has never been greater.<sup>6</sup> Are the laws governing the child farm worker contributing to this?

Lenient labor laws and lawful pesticide use provide a significant economic benefit to the farmer. The logical assumption would be this savings translates into an economic benefit to the American consumer. This Comment also examines how the laws governing the child farm worker may simply shift the expense from the farmers to the American taxpayer.

## II. BACKGROUND

### A. History of Child Labor Laws

As the nineteenth century came to an end, many women and children were working in factories; the conditions were harsh and the wages substandard.<sup>7</sup> In 1912, Massachusetts enacted the first law affecting child labor.<sup>8</sup> This law established a minimum wage for both women and minors.<sup>9</sup> In 1916, Congress passed the first child labor bill.<sup>10</sup> However, in 1918, the Supreme Court held the law unconstitutional, stating that Congress overstepped the purpose of the government's power to regulate interstate commerce.<sup>11</sup> The Court's decision confused many people; they wondered why the Court did not find *Hammer v. Dagenhart* an ethical dilemma.<sup>12</sup> The majority of citizens thought it was the Court's responsibility to uphold the honor and the moral standards upon which our country was founded.<sup>13</sup> In December of that same year, a second child labor

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<sup>6</sup> See generally United States Dept. of Justice, Bureau of Justice Statistics Prison Statistics available at <http://www.ojp.usdoj.gov/bjs/prisons.htm> (last visited Jan. 27, 2006) (prison population statistics indicating an increase).

<sup>7</sup> Encyclopedia of Everyday Law, *Wage and Hour Laws*, <http://law.enotes.com/everyday-law-encyclopedia/wage-hour-laws> (last visited Jan. 29, 2006).

<sup>8</sup> *Id.*

<sup>9</sup> Wikipedia, the Free Encyclopedia, *Minimum Wage*, <http://law.enotes.com/everyday-law-encyclopedia/wage-hour-laws> (last visited Jan. 29, 2006).

<sup>10</sup> Keating-Owen, *Child Labor Act of 1916*, available at <http://www.ourdocuments.gov/doc.php?flash=true&doc=59>. (last visited Jan. 29, 2006) (act banned the sale of products from any factory, shop, or cannery that employed children under the age of 16 and from any facility that had children under the age of 16 work at night or for more than 8 hours during the day).

<sup>11</sup> *Hammer v. Dagenhart*, 247 U.S. 251 (1918).

<sup>12</sup> Sharron Solomon-McCarthy, *The History of Child Labor in the United States: Hammer v. Dagenhart* (2005), available at <http://www.yale.edu/ynhti/curriculum/units/2004/1/04.01.08.x.html#e>.

<sup>13</sup> *Id.*

bill was passed.<sup>14</sup> It, too, was held unconstitutional by the Supreme Court.<sup>15</sup>

Several years later, in 1924, the 68th Congress approved a Child Labor Amendment.<sup>16</sup> The Amendment proposed, “to grant Congress exclusive authority to legislate on the subject of child labor and to force state law to yield to federal law.”<sup>17</sup> The states never ratified this amendment.<sup>18</sup> After eighty-two years, this amendment is still subject to ratification by the state legislatures and remains pending before Congress.<sup>19</sup>

In 1938, the Fair Labor Standards Act was passed which established a minimum wage and prohibited most minors from working.<sup>20</sup> The Supreme Court upheld the FLSA as constitutional in 1941.<sup>21</sup>

States are permitted to enact and enforce more restrictive laws, however, “if the employment falls under FLSA jurisdiction, then both federal and state laws apply and the most restrictive law (whether it is the state or the federal) is followed.”<sup>22</sup> Today, the FLSA restricts the amount of hours children sixteen years of age and under may work, and does not allow anyone under the age of fourteen to work in a non-agricultural

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<sup>14</sup> *Id.*

<sup>15</sup> *Bailey v. Drexel Furniture Co.* 259 U.S. 20 (1922) (The Court found that the Child Labor Tax Law was an impermissible attempt by Congress to interfere with regulation of child labor, an exclusive state function, through imposition of a penalty and was not an allowable excise tax).

<sup>16</sup> Wikipedia, The Free Encyclopedia, *Unsuccessful Attempts to Amend the U.S. Constitution*, available at [http://en.wikipedia.org/wiki/Unsuccessful\\_attempts\\_to\\_amend\\_the\\_U.S.\\_Constitution](http://en.wikipedia.org/wiki/Unsuccessful_attempts_to_amend_the_U.S._Constitution) (last visited Jan. 27, 2006).

<sup>17</sup> *Id.* (The amendment reads: “Section. 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under the age of eighteen years of age. Section. 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress”).

<sup>18</sup> *Id.* (The child labor amendment was ratified by 28 states. With 50 states in the Union, the ratifications of 10 additional states would be required to incorporate the proposed child labor amendment into the federal constitution).

<sup>19</sup> Wikipedia, the Free Encyclopedia, *Child Labor Amendment*, available at [http://en.wikipedia.org/wiki/Child\\_Labor\\_Amendment](http://en.wikipedia.org/wiki/Child_Labor_Amendment).

<sup>20</sup> Sloan Work and Family Research Network, Boston College, Volume 6 (2004), available at [http://wfnetwork.bc.edu/The\\_Network\\_News/01/The\\_Network\\_News\\_Timeline01.pdf](http://wfnetwork.bc.edu/The_Network_News/01/The_Network_News_Timeline01.pdf).

<sup>21</sup> Encyclopedia of Everyday Law, *Children’s Rights*, available at <http://law.enotes.com/everyday-law-encyclopedia/89885> (last visited Jan. 29, 2006).

<sup>22</sup> Child Labor Coalitions, *Child Labor in the US*, available at <http://www.stopchildlabor.org/USchildlabor/fact1.htm> (last visited Jan. 30, 2006).

job.<sup>23</sup> Consequently, children working in agriculture continue to be exempt from many of these laws.

### B. *The Condition of the Farm Worker*

The depressed working conditions of the American farm worker have been documented for over a century.<sup>24</sup> Evidence demonstrates most children born into a farm worker family begin a disadvantaged life, far below the poverty level;<sup>25</sup> the majority will experience hunger and substandard living conditions.<sup>26</sup> Numerous children work in the fields with their families<sup>27</sup> to supplement the families' income.<sup>28</sup> Those children lucky enough not to work, must still play in the fields because these families simply cannot find or afford childcare.<sup>29</sup>

In 1960, *The Harvest of Shame*, a documentary produced by journalist Edward R. Murrow, aired on CBS Reports.<sup>30</sup> This controversial program revealed "the exploitation of farm workers in America."<sup>31</sup> It exposed the desperate poverty among the farm workers, the low pay and the poor working conditions they endured.<sup>32</sup> Labor Secretary James P. Mitchell participated in the documentary, and when discussing child farm labor illustrated how "beans were in competition with school among migrant workers, and beans were winning."<sup>33</sup> Forty-five years later, the same illustration can still be made.

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<sup>23</sup> U. S. Dept. of Labor, Fair Labor Standards Act Advisor (2006), available at <http://www.dol.gov/elaws/faq/esa/flsa/028.htm> (Youths fourteen and fifteen years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs no more than three hours on a school day or eighteen hours in a school week. Eight hours on a non-school day or forty hours in a non-school week).

<sup>24</sup> FLOC, Farm workers and Farm Labor Conditions, (Jan.1, 2000), <http://www.iupui.edu/~floc/fws.htm>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Association of Farmworker Opportunity Programs, Child Labor, Children in the Fields, Jan.19, 2006, <http://www.equinemicrotek.com/childlabor.htm>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Discovery Times: Harvest of Shame, available at <http://times.discovery.com/convergence/harvestofshame/harvestofshame.html> (last visited on Jan. 14, 2006). (Harvest of Shame was produced by David Lowe and was the final documentary of broadcasting news legend Edward R. Murrow).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> U.S Department of Labor, Wirtz Labor Library, Danger: Children at Work, available at <http://www.dol.gov/oasam/library/special/child/childexh2.htm> (last visited Jan. 14, 2006).

Today, most adult migrant farm workers are considered educationally deprived; eighty percent are functioning at a fifth grade literacy level or less.<sup>34</sup> The conditions of employment vary; farms with less than ten workers are exempt from providing drinking water or toilets for the farm workers.<sup>35</sup> “As a result, one in six farm worker adults and children working in U.S. agriculture lack access to toilets.”<sup>36</sup>

In 1988, the general population had a life expectancy of seventy-three, whereas the farm worker could only expect to live to the age of forty-nine.<sup>37</sup> Evidence exposed in a 2003 study may have explained this shortened life expectancy. The study found that forty-seven percent of migrant and seasonal farm workers did not have enough food for their families and fifteen percent of these families either reduced the size of their child’s meal or simply did not eat the entire day.<sup>38</sup> The study also revealed that farm workers raising children were four times more likely to have less access to food than the general population of the United States.<sup>39</sup> Working conditions in agriculture continue to be unlike any other workplace in America.<sup>40</sup>

### C. Federal Labor Laws Governing the Child Farm Worker

Initially, the FLSA only restricted children from agricultural employment during the hours they were required to be in school, even though the FLSA added extra protections for children working in other occupations.<sup>41</sup> Originally, these differences may have been explained. At the time the FLSA was passed, the family farm was a significant part of the United States’ agricultural industry.<sup>42</sup> Any restrictions on child labor

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<sup>34</sup> Farm Worker Conditions, *Report on the Mt. Olive Pickle Boycott and Migrant Farm Worker Conditions*, September 18, 2000, <http://www.nccusa.org/publicwitness/mtolive/conditions.html>.

<sup>35</sup> Child Labor Coalition, *Children in the Fields Campaign Fact Sheet 9*, available at <http://www.stopchildlabor.org/Consumercampaigns/fields.htm> (last visited Jan. 9, 2006).

<sup>36</sup> *Id.* (Farms with 11 or more workers, even when toilets and drinking water are provided, the facilities only have to be located within one-quarter mile of where the workers are working).

<sup>37</sup> *Id.*

<sup>38</sup> Wake Forest University Baptist Medical Center, *Latino Farm Workers can’t Afford Sufficient Food*, March 6, 2003, [http://www.eurekalert.org/pub\\_releases/2003-03/wfub-lfw030603.php](http://www.eurekalert.org/pub_releases/2003-03/wfub-lfw030603.php).

<sup>39</sup> *Id.*

<sup>40</sup> Natural Resources Defense Council, *Trouble on the Farm*, Introduction <http://www.nrdc.org/health/kids/farm/intro.asp> (last visited Jan. 30, 2006).

<sup>41</sup> United States General Accounting Office, *Report to Congressional Requesters, Child Labor in Agriculture Chapter 3* (1998), available at <http://www.gao.gov/archive/1998/he98193.pdf>.

<sup>42</sup> *Id.*

during that era may have caused an undue hardship on these farmers.<sup>43</sup> During this period, farm work was considered a favorable work environment; in fact one view expressed was “work on a farm was free from the moral turpitude of city sweatshops.”<sup>44</sup> Nationally, there was little focus on education; the expectation was when a child reached his teens, he would quit school and take over the family farm.<sup>45</sup>

Since the 1930s, many changes in our society have taken place; for example, our nation has placed an importance on the safety, education and the well being of our children.<sup>46</sup> “Congressional Amendments to the FLSA have expanded protections for children working in agriculture.”<sup>47</sup> In 1949, the FLSA prohibited children from working in agriculture during school hours, even if these children were not required by state law to attend school.<sup>48</sup>

In 1966, the law was expanded to forbid children under sixteen from working in a variety of hazardous agricultural jobs.<sup>49</sup> In 1974, the FLSA was again expanded to prohibit children under the age of twelve from working on a farm, unless they were working on the same farm as their parent or with parental consent.<sup>50</sup>

Still today, the federal laws for child labor in agriculture differ from those for children in non-farm work.<sup>51</sup> The federal child labor provisions which regulate agriculture do not require minors to obtain “working papers” or “work permits” to legally work.<sup>52</sup> The federal law allows a parental exemption for children who work in agriculture, which states, “[y]outh of any age may be employed at any time, in any occupation in agriculture on a farm owned or operated by their parent or a person

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<sup>43</sup> United States General Accounting Office, Report to Congressional Requesters, Child Labor in Agriculture Chapter 3 (1998), available at <http://www.gao.gov/archive/1998/he98193.pdf>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* (Before this amendment a child of any age could perform any occupation. This change was likely because the agricultural industry was becoming more mechanized and was increasing the use of pesticides).

<sup>50</sup> *Id.*

<sup>51</sup> U.S. Dept. of Labor, Youth & Labor, Agricultural Employment, available at <http://www.dol.gov/dol/topic/youthlabor/Agriculturalemployment.htm> (last visited Oct. 22, 2005).

<sup>52</sup> U.S. Dept. of Labor, Employment Standards Administration, Child Labor Requirements in Agricultural Occupations, Child Labor Bulletin 102 (2004), available at <http://www.dol.gov/esa/regs/compliance/whd/childlabor102.pdf>.

standing in place of their parent.”<sup>53</sup> This law means minors under the age of sixteen may be employed during school hours if employed by their parent or a person standing in the place of their parent.<sup>54</sup> As a result, children can work for unlimited time periods.<sup>55</sup> In fact, children of any age may work for limitless hours as long as their parents operate the farm.<sup>56</sup> Federal law allows a thirteen-year-old child to work in the fields in 100-degree heat. However, a child this young may not work at any-time in an air-conditioned office.<sup>57</sup> It was reported child farm workers work an average of thirty hours per week.<sup>58</sup> Most of this time is while school is in session.<sup>59</sup> Missing so much school and working such long hours makes it almost impossible for any child to be successful at school.<sup>60</sup> In fact, fifty percent of the children who consistently work in the fields never graduate from high school.<sup>61</sup>

In 2004, the United States Census Bureau reported a person of any race, without a high school diploma, earned substantially less than his or her counterpart who obtained one.<sup>62</sup> In contrast, attending several college classes increased their earnings by over twelve thousand dollars per year.<sup>63</sup> Without a formal education, these children have little chance of breaking the cycle of poverty.

The statistics vary on the number of children working in agriculture; therefore, we do not know how many children will be affected. However, the United Farm Workers union (“UFW”) estimated the number of children working in agriculture is close to 800,000.<sup>64</sup> This number is astounding.

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<sup>53</sup> U.S. Dept. of Labor, FLSA, Exemptions from Child Labor Rules in Non-Agriculture, available at <http://www.dolgov/esa/flsa/cl/exemptions.asp> (last visited Jan. 30, 2006).

<sup>54</sup> U.S. Dept. of Labor, Code of Federal Regulations Pertaining to the U.S. Dept of Labor, July 20, 1951, available at [http://www.dol.gov/dol/allcfr/Title\\_29/Part\\_570/29CFR570.70.htm](http://www.dol.gov/dol/allcfr/Title_29/Part_570/29CFR570.70.htm) (A person "standing in place of a parent" generally means one who takes a child into his or her home and treats the child as part of their own family, including educating and supporting the child).

<sup>55</sup> Shelly Davis, *Child Labor in Agriculture* (1997), available at <http://www.eric-digests.org/1997-4/labor.htm>.

<sup>56</sup> *Id.*

<sup>57</sup> Association of Farmworker Opportunity Programs, Child Labor, Children in the Fields, Jan.19, 2006, <http://www.equinemicrotek.com/childlabor.htm>.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> United States Census Bureau, Income in 2003 by Educational Attainment (2004), available at <http://www.census.gov/population/socdemo/education/cps2004/tab08-1.pdf>.

<sup>63</sup> *Id.*

<sup>64</sup> Farm Worker Conditions, *supra* note 33.

*D. State Laws vary for Children Working in Agriculture*

States are allowed to establish their own laws governing child labor in agriculture; nevertheless, "agriculture employment is exempted from or is not listed among the covered sectors in the child labor laws of seventeen states."<sup>65</sup> Through this power, some states are attempting to protect our children; the state of Connecticut restricts any child under the age of fourteen from work in agriculture.<sup>66</sup> Unfortunately, the state provides an exemption similar to the federal law, which states "[s]aid provisions shall not apply to work performed for an employer engaged in agriculture by members of his immediate family."<sup>67</sup> Connecticut does require children sixteen and under to have a proof of age certificate or an agriculture permit,<sup>68</sup> thus providing more protection than the federal law.

In addition, the State of California sets the minimum age for agricultural employment outside school hours, at twelve years of age.<sup>69</sup> Again, the minimum age does not apply if a child is working for his parent or guardian or on premises the parent owns, operates or controls.<sup>70</sup> No permit is required and no occupational restrictions apply.<sup>71</sup>

These laws do not provide adequate protection for the children. In California, between 1980 and 1989, at least "forty-two children under the age of fifteen died as a result of farm related accidents."<sup>72</sup> "It is suggested that the actual number of farm-related deaths among children may be twenty-five percent greater than was observed."<sup>73</sup>

Contrast the regulations enacted by California and Connecticut with the laws governing a child farm worker in Delaware. Delaware has not set a minimum age for employment during school hours or outside

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<sup>65</sup> United States Department of Labor: State Child Labor Laws Applicable to Agriculture Employment, Jan. 1, 2005, available at <http://www.dol.gov/esa/programs/whd/state/agriemp2.htm> (The seventeen states are Alabama, Delaware (non-hazardous employment), Georgia, Kansas, Kentucky, Louisiana, Maryland (non-hazardous employment), Mississippi, Montana, Nebraska, North Carolina, Okalahoma, Rhode Island, Tennessee, Texas, West Virginia (non-hazardous employment), and Wyoming).

<sup>66</sup> *Id.*

<sup>67</sup> State of Connecticut, Department of Agriculture, Chapter 422, Section 22-16 (2006), available at <http://www.cga.ct.gov/2005/pub/Chap422.htm>.

<sup>68</sup> United States Department of Labor, *supra* note 64.

<sup>69</sup> California Child Labor Laws, Department of Industrial Relations, Division of Labor Standards Enforcement (2000), available at <http://www.dir.ca.gov/dlse/CLLPamphlet2000.pdf>.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Child Labor Coalition, *supra* note 34.

<sup>73</sup> *Id.*



school hours.<sup>74</sup> Farm work is exempt for children, unless performed in hazardous occupations.<sup>75</sup> Furthermore, Delaware does not prohibit any hazardous occupations in agriculture; instead, it adopts by reference the federal list and then provides an exemption for those children working with adult supervision.<sup>76</sup> Some states have not changed their child labor laws since the early 1900s.<sup>77</sup> As a result, the most antiquated sections of both state and federal law govern the child farm worker.<sup>78</sup>

### E. Enforcement of the Laws

The number of complaints regarding child labor violations is few.<sup>79</sup> It takes an accident or a fatality to uncover violations and even then, only small fines are imposed.<sup>80</sup> Twenty percent of all farm fatalities involve children.<sup>81</sup> In 1998, the General Accounting Office stated that over one hundred thousand children and teens working on farms were injured each year.<sup>82</sup>

The Wage and Hour Division (“WHD”) is responsible for enforcing the child labor provisions of the FLSA.<sup>83</sup> Regulations for the health and safety of agricultural workers are the responsibility of the EPA and the Occupational Safety and Health Administration (“OSHA”).<sup>84</sup> Regrettably, these two agencies have no duty to inspect for child labor violations.<sup>85</sup>

A 2003 survey taken by the National Consumers League for the Child Labor Coalition revealed “539 compliance officers are responsible for enforcing all state labor laws (including child labor)” in the thirty-nine

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<sup>74</sup> United States Department of Labor: State Child Labor Laws Applicable to Agriculture Employment, *supra* note 64.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Child Labor Coalition, Child Labor Abuses Remain a Problem in the U.S. The Child Labor Coalition’s Response to the State of the Union Address, (1999), available at <http://www.stopchildlabor.org/pressroom/childpr122.html>.

<sup>78</sup> *Id.*

<sup>79</sup> Shelly Davis, *Child Labor in Agriculture*, (February, 1997), available at <http://www.ericdigests.org/1997-4/labor.htm>.

<sup>80</sup> *Id.*

<sup>81</sup> Association of Farmworker Opportunity Programs, Child Labor, Children in the Fields, Jan. 19, 2006, available at <http://www.equinemicrotek.com/childlabor.htm>.

<sup>82</sup> *Id.*

<sup>83</sup> U.S. Dept. of Labor, Employment Standards Administration Wage and Hour Division (2005), available at <http://www.dol.gov/esa/whd>.

<sup>84</sup> United States to General Accounting Office Child Labor in Agriculture, Chapter 4, pg 38 (1998), available at <http://www.gao.gov/archive/1998/he98193.pdf>.

<sup>85</sup> *Id.*

states that responded.<sup>86</sup> Of these, only twenty-eight officers are responsible for investigating child labor violations exclusively.<sup>87</sup> Twenty-two states have ten or fewer compliance officers responsible for enforcing labor laws, including child labor.<sup>88</sup> The total inspections are down from 2002.<sup>89</sup> Only seven states reported inspections in which child labor compliance in agriculture was the target.<sup>90</sup> Many young children continue to work in the fields; however, because of the exemptions provided by the FLSA and the state laws, they are working legally.<sup>91</sup>

### III. PESTICIDE EXPOSURE

#### A. Failure to Protect

Child farm workers routinely work in fields sprayed with pesticides; they are exposed to the same pesticide levels as adults, yet likely face a far greater health risk.<sup>92</sup>

Attempting to correct this situation, the bill H.R. 5309 was introduced to the 107th Congress.<sup>93</sup> This bill would have amended the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”) and charged the EPA with the responsibility to consider the benefits of a pesticide against the health risk posed by the pesticide itself.<sup>94</sup> Unfortunately, Congress failed to act on this bill.<sup>95</sup> Sessions of Congress last for two years, and at the end of each session, all proposed bills and resolutions that have not passed are cleared from the books.<sup>96</sup> As a result, this bill never became

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<sup>86</sup> Child Labor Coalition, 2003 Child Labor State Survey,(2003), available at <http://www.stopchildlabor.org/USchildlabor/StateSurvey2003.htm>.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Child Labor Coalition, State Child Labor Survey Reveals Lackluster Enforcement Efforts (2004), available at <http://www.stopchildlabor.org/pressroom/2003statesurvey.html>.

<sup>92</sup> Association of Farmworker Opportunity Programs, *supra* note 26 (In June 1998, Jose Antonion Casillas, a seventeen-year-old migrant farm worker suffered a brain hemorrhage and died suddenly. “The youth had mistakenly been sprayed with organophosphate pesticides twice the prior week”).

<sup>93</sup> H.R. 5329, 107th Cong. 2d. Session (2002), available at <http://thomas.loc.gov/cgi-bin/query/z?c107:H.R.+5329>.

<sup>94</sup> *Id.*

<sup>95</sup> H.R. 5329, 107th Cong. (2002), available at <http://www.govtrack.us/congress/bill.xpd?bill=h107-5329>.

<sup>96</sup> *Id.*

law.<sup>97</sup> There is no current legislation introduced to control the use of pesticides on our farms.

The United States General Accounting office issued a report in 1992 which estimated approximately 300,000 farm workers suffer from pesticide poisoning each year.<sup>98</sup> Studies indicate “forty percent of all farm workers have been sprayed directly or by pesticide drift.”<sup>99</sup> It was estimated less than ten percent of farm workers are familiar with the symptoms that indicate pesticide poisoning.<sup>100</sup> These workers did not appear to “understand the concept of pesticide entry interval,” nor had they “received any training on how to protect themselves from pesticides.”<sup>101</sup> That same year, the EPA promulgated the Agricultural Worker Protection Standard (“WPS”), regulations which require all farm workers receive basic training on the dangers of pesticides, how to protect themselves, and ensure easy access to application information for specific pesticides.<sup>102</sup>

The WPS also requires employers to train employees how to protect themselves from pesticide exposure and how to mitigate exposure.<sup>103</sup> The owner or the employer has the chief responsibility of training his employees.<sup>104</sup> The question is: Are these farm workers being trained? In 2001, the EPA sponsored a project designed to “initiate discussions on farm worker safety training and pesticide issues.”<sup>105</sup> In the meetings, the farm workers revealed, “[t]he employers do not provide personal protective equipment nor are the farm workers aware of what pesticides are applied on the farm.”<sup>106</sup> The farm workers “do not want to ask in fear of losing their job.”<sup>107</sup> These laws will not benefit the workers if they are not enforced.

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<sup>97</sup> *Id.*

<sup>98</sup> Farm Labor and Pesticides, *The Use of Pesticides in New Mexico*, (2005), available at <http://www.farmworkers.org/pestieng.html>.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> EPA Office of Prevention, Pesticides, and Toxic Substances, *How to Comply with the Worker Protection Standard for Agricultural Pesticides: What Employers Need to Know* (2005), available at <http://www.epa.gov/agriculture/htc.html>.

<sup>105</sup> Memorandum from Marylou Verder-Carlos on Group Discussions of Farm Workers Safety to Charles M. Andrews, (2002), available at <http://edis.ifas.ufl.edu/pdf/CV/CV136800.pdf>.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

In addition to gaps in enforcement, the problem is further exacerbated by gaps in the regulations themselves. Owners of agricultural establishments and members of their immediate family are exempt from many WPS requirements.<sup>108</sup> This means a young child working on a farm owned or operated by his parents is not only exempt under the labor laws, he is also exempt from the regulations of the WPS.<sup>109</sup>

### *B. Effect on the Child Farm Worker*

Children generally may be exposed to pesticides from many sources; “farm children, however, are likely to experience higher levels of exposure from more sources.”<sup>110</sup> It is important to pay attention to a farm child’s health because “farm children are like canaries in the coal mine.”<sup>111</sup> Years ago, canaries, because of their small bodies, were placed in mine shafts to determine if there were dangerous conditions.<sup>112</sup> “More susceptible than humans to the poisonous gas, the birds would suffer the health effects before the miner, providing an early warning.”<sup>113</sup> Farm children receive the highest pesticide exposure in America.<sup>114</sup> “Children, like canaries, have greater susceptibility to the health effects.”<sup>115</sup>

America’s most vulnerable citizens face exposure to hazardous pesticides.<sup>116</sup> In this country, it is estimated that over one million children of farm workers live near farms.<sup>117</sup> In fact “more than three-hundred thousand farmers’ children under the age of six live on farms.”<sup>118</sup> Although these children are especially vulnerable to the toxic effects of the pesticides, they are continually exposed to them.<sup>119</sup> Children are exposed while they play outdoors from the air that drifts from the fields.<sup>120</sup> They

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<sup>108</sup> EPA Office of Prevention, Pesticides, and Toxic Substances, How to Comply with the Worker Protection Standard for Agricultural Pesticides: What Employers Need to Know (2005), available at <http://www.epa.gov/agriculture/htc.html>.

<sup>109</sup> *Id.*

<sup>110</sup> Natural Resources Defense Council, Trouble on the Farm, Introduction (1998), available at <http://www.nrdc.org/health/kids/farm/intro.asp>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Beyond Pesticides, EPA Sued for Failing to Protect Farm Children (2005), available at [http://www.beyondpesticides.org/news/daily\\_news\\_archive/2005/06\\_09\\_05.htm](http://www.beyondpesticides.org/news/daily_news_archive/2005/06_09_05.htm).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> EPA, Pesticides: Topical & Chemical Fact Sheet, Pesticides-Spray Drift of Pesticides (1999), available at <http://www.epa.gov/pesticides/factsheets/spraydrift.htm>.

are exposed by the food they eat and the water they drink.<sup>121</sup> A child may even be susceptible to exposure while hugging his farm-working parent from the pesticide residue on the parent's clothing.<sup>122</sup> Many of these same children are also exposed while they work in the fields alongside their parents. There is scientific evidence that children are in danger from pesticide exposure because both their bodies and their brains are still developing.<sup>123</sup>

In 2003, four states and a coalition of farm workers filed lawsuits against the EPA.<sup>124</sup> The suit focused on a group of high-risk pesticides used on fruits, vegetables and nuts commonly eaten by children and requested court orders forcing the EPA to comply with the Food Quality Protection Act of 1996.<sup>125</sup> The Natural Resources Defense Council ("NRDC") suit said, "Some of these pesticides are so toxic that a teaspoon[ful] can cause acute poisoning in people, resulting in seizures and coma."<sup>126</sup> One pesticide is so potent that the EPA says "to protect against acute toxicity, a toddler should not be exposed to an amount weighing less than a single grain of salt per day."<sup>127</sup> The court granted the Defendant's (EPA) motion to dismiss the suit on July 29, 2004.<sup>128</sup>

In June 2005, NRDC filed another lawsuit in the Northern District of California for "failing to protect a generation of America's most vulnerable children."<sup>129</sup> They charged the EPA with "ignoring the special risk to children growing up surrounded by a swirl of chemical poisons on farms[;]" despite their efforts the child farm worker continues to face this risk.<sup>130</sup>

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<sup>121</sup> Beyond Pesticides, *supra* note 115.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> EPA Sued over Kids and Pesticides, Coalition Charges Agency Failed to Protect Children (2003), *available at* <http://msnbc.msn.com/id/3076897> (The suit was brought by the attorneys general of New York, Connecticut, Massachusetts and New Jersey).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *New York v. Unites [sic] States EPA*, 350 F. Supp. 2d 429 (D.N.Y. 2004).

<sup>129</sup> Pesticide Action Network North America, *Farm Children Threatened by Toxic Pesticides, According to Lawsuit (2005)*, *available at* <http://www.panna.org/resources/newsroom/farmKidsRelease.dv.html>.

<sup>130</sup> *Id.*

*C. Pesticides, Brain Damage and the Criminal Mind*

Is the steady diet of violence on television causing our youth to become more aggressive or is it the diet they consume?<sup>131</sup> “Recent studies show that trace levels of multiple pesticides cause increased aggression.”<sup>132</sup> Increasing bodies of studies show that pesticides “decrease mental ability and increase aggressive behavior.”<sup>133</sup> These studies reveal that violent criminals have elevated levels of toxic chemicals in their bodies compared with prisoners who are not violent.<sup>134</sup> Traces of pesticide mixtures are known to induce abnormal levels of thyroid hormones, which have been associated with increased irritability and aggression.<sup>135</sup> “We need to rethink our dependence on processed foods and the release of toxic materials into our agricultural environment,” stated University of California, Santa Barbara researcher and faculty member J. Robert Hatherill.<sup>136</sup> He added, “in addition to checking our children for guns we should be checking their blood for elevated levels of toxic chemicals.”<sup>137</sup> The child farm worker is especially at risk, given he faces exposure from both the foods he eats and the fields in which he works.

There are criminal cases in which experts testified pesticide exposure caused brain damage to the defendants, which contributed to the crimes they committed. The following two cases illustrate this proposition.

In 1989, Raymond Martinez was convicted of capital murder for killing a bar owner during a robbery.<sup>138</sup> Mr. Martinez’s family history indicated his mother had worked, while pregnant with Raymond, in the cotton fields.<sup>139</sup> Raymond Martinez played in these fields as a child.<sup>140</sup> He began to work in these fields at the age of four.<sup>141</sup>

At trial, Mr. Martinez offered David Freeman’s testimony as evidence.<sup>142</sup> Mr. Freeman holds a Masters Degree in Public Health from the Harvard School of Public Health.<sup>143</sup> “His experience and training have

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<sup>131</sup> J.Robert Hatherhill, PH.D, *What’s the Matter with Kids These Days?*, available at <http://www.earthsave.org/newsletters/toxicchemicals.htm>. (last visited Jan. 9, 2006).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> J.Robert Hatherhill, PH.D, *Are Today’s Teens More Toxic?*, available at [http://www.vegsources.com/articles/toxic\\_teens.htm](http://www.vegsources.com/articles/toxic_teens.htm) (last visited at Jan. 9, 2006).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Martinez v. Dretke*, 2003 U.S. Dist. LEXIS 26331 (D. Tex. 2003).

<sup>139</sup> *Id.* at 31.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 32.

<sup>142</sup> *Id.* at 29.

<sup>143</sup> *Id.* at 28.

focused on mental health issues, and he has studied the effects of pesticides on the human brain.”<sup>144</sup> Mr. Freeman explained, “the effects of pesticides on the human body have been widely known since at least the 1950s.”<sup>145</sup> He further indicated that “scientific evidence shows that people can be affected by these pesticides even in utero.”<sup>146</sup>

Mr. Freeman identified the types of pesticides used in cotton fields in the 1950s and explained how these pesticides can destroy an enzyme in the brain.<sup>147</sup> He used this scenario as an example:

... a person gets cut off by another driver in traffic... [A] normal person might respond by yelling or making hand gestures, but would quickly get over it and resume his normal activity. A person with pesticide poisoning would respond to the same stimulus, but the impulse would not shut down quickly, and that person would continue to engage in angry, possibly escalating, behavior for a longer period of time.<sup>148</sup>

The evidence of pesticide poisoning though compelling was not enough for Mr. Martinez to avoid conviction.<sup>149</sup>

Another inmate, Fernando Caro, is the son of a poor farm laborer.<sup>150</sup> His childhood was spent “working and playing in pesticide-soaked fields.”<sup>151</sup> Caro was convicted for the murders of two “teenage cousins who disappeared while on a bicycle ride and were killed by a close range gunshot to the head.”<sup>152</sup> During the evidentiary hearing, Caro’s defense included expert testimony from a neurologist, a neuropsychiatrist, and a toxicologist.<sup>153</sup> “Each of these expert witnesses testified that, at the time of his trial, he would have found Caro to suffer from brain damage due to exposure to neurotoxicants.”<sup>154</sup> “The District Court ruled that the record ‘irrefutably establishes that Petitioner suffered brain damage as a result

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<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 30.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* (Freedman explained that organophosphates destroys a protective enzyme called cholinesterase).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 1.

<sup>150</sup> *Caro v. Woodford*, 280 F.3d 1247, 1250 (9th Cir. 2002).

<sup>151</sup> *Id.* at 1250. (Agricultural fields surrounded Mr. Caro’s childhood home. The crop dusters flew right over his house to spray the fields. His family cooked, bathed in and drank water contaminated by pesticides. Caro also suffered physical abuse at the hands of his parents).

<sup>152</sup> *Id.* (Mary Booher and Mark Hatcher were cousins, 15 years old. About 7 p.m. on August 20, 1980 they left Hatcher’s home in rural Fresno County for an after dinner bicycle ride. They never returned).

<sup>153</sup> *Id.* at 1251.

<sup>154</sup> *Id.*

of his exposure to toxic pesticides as well as his personal background.”<sup>155</sup> The United States Court of Appeals for the Ninth Circuit later affirmed this finding.<sup>156</sup> This evidence was omitted in his trial and only brought up on appeal.<sup>157</sup> Based on this additional evidence, the court did not overturn his conviction; it did however, vacate his death sentence.<sup>158</sup>

There should be great concern for the children that face “long term, low-level damage that can show up decades after a child has picked his or her last berry.”<sup>159</sup> Based on these two cases, one can see the possible link between pesticide exposure and criminal behavior.

#### IV. THE COST TO THE TAXPAYER

The United States prides itself on its ability to provide to its citizens the cheapest food supply in the world.<sup>160</sup> While this contention may be true, it comes at a cost.<sup>161</sup> “It is an irony that those who labor to put food on our tables cannot themselves afford to buy that food, cheap as it is trumpeted to be.”<sup>162</sup>

Clearly, the child farm worker suffers the consequences of the pesticide exposure, the unsanitary working and the substandard living conditions. Nevertheless, the American taxpayer bears the cost for these conditions. Economic conditions make farm workers less likely to allow their children or themselves to miss a day of work; they are not protected by sick leave.<sup>163</sup> The risk of losing their jobs will cause most farm workers to postpone seeking health care.<sup>164</sup> Most farm workers will delay seeking health care until their conditions necessitate expensive emergency room care.<sup>165</sup> Since most farm workers do not have health coverage for themselves or their children, the American taxpayer shoulders the

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<sup>155</sup> *Id.* at 1252.

<sup>156</sup> *Id.* at 1258.

<sup>157</sup> *Id.* at 1256.

<sup>158</sup> *Id.* at 1257.

<sup>159</sup> Matt Crenson, *Chemicals Jeopardize Child Laborers*, THE ASSOCIATED PRESS, (1997), available at <http://www.ufw.org/ap1215.htm>.

<sup>160</sup> Farm Worker Conditions, Report on the Mt. Olive Pickle Boycott and Migrant Farm Worker Conditions, September 18, 2000, available at <http://www.nccusa.org/publicwitness/mtolive/conditions.html>.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> National Center for Farmworker Health, Facts About Farmworkers, available at <http://www.ncfh.org/docs/fs-Facts%20about%20Farmworkers.pdf> (last visited Jan. 9, 2006).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*



cost.<sup>166</sup> Economists estimate pesticide use impacts the health of our nation at the cost of approximately \$786 million dollars per year.<sup>167</sup>

Many farmworkers need food stamps to survive. In California, the normal thirty day eligibility requirement for Food Stamps is waived if the family has “[n]o more than \$100 liquid resources and at least one member is a migrant or seasonal farm worker.”<sup>168</sup> Migrant or seasonal farm workers may have other special rights if they are homeless. Migrant or seasonal farm workers who live in temporary housing may qualify as homeless.<sup>169</sup> Farmworkers receiving food stamps and other government benefits do so at the expense of the American taxpayer.<sup>170</sup>

In some states, farm workers are rarely entitled to occupational rehabilitation, disability compensation or worker compensation benefits.<sup>171</sup> In fact, there are only twelve states that offer workers’ compensation to farm workers equal to the amount other workers are receiving.<sup>172</sup> This provides a tremendous saving to the employer. The Insurance Information Institute, a research organization, estimates the average cost of workers’ compensation insurance nationwide has increased by fifty percent since 2000. The critics suggest these “rates are stratospheric.”<sup>173</sup> However, most farmers are not paying for this coverage.<sup>174</sup>

Farmers are saving money in a multitude of ways while being subsidized by the government. The cost to American taxpayers is staggering. In the past ten years, taxpayers spent \$143.8 billion on farm subsidies alone, with over \$104 billion going to the top ten percent of those receiv-

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<sup>166</sup> *Id.*

<sup>167</sup> Natural Resources Defense Council, *Trouble on the Farm*, Executive Summary (2005), available at <http://www.nrdc.org/health/kids/farm/exec.asp>.

<sup>168</sup> State of California, *Coversheet to the Application for Cash Aid, Food Stamp and or Medi-Cal* (2006), available at <http://www.dss.cahwnet.gov/pdf/SAWS1.pdf>.

<sup>169</sup> *Farmworkers Rights Under the Food Stamp Program* (2006), available at [http://www.lsnc.net/fsguide/Part\\_L/Part\\_L\\_-\\_96\\_Farm\\_Workers\\_\\_Rights\\_Under\\_FS\\_Program.htm](http://www.lsnc.net/fsguide/Part_L/Part_L_-_96_Farm_Workers__Rights_Under_FS_Program.htm).

<sup>170</sup> U.S. Code Collection (2006), available at [http://www.law.cornell.edu/uscode/html/uscode07/usc\\_sec\\_07\\_00002011----000-.html](http://www.law.cornell.edu/uscode/html/uscode07/usc_sec_07_00002011----000-.html) supra note 210. (The Food Stamp program permits low-income households to obtain a more nutritious diet by increasing food purchasing power for all eligible households).

<sup>171</sup> Food Security Learning Center, *Migrant & Seasonal Farmworkers Policy Initiatives* (2005), available at [http://www.worldhungeryear.org/fslc/faqs/ria\\_009a.asp?](http://www.worldhungeryear.org/fslc/faqs/ria_009a.asp?).

<sup>172</sup> *Id.*

<sup>173</sup> Joshua Kurlantzick, *Staying Alive, How Your Business Can Survive the Killer Costs of Workers’ Compensation* (January, 2004), available at <http://www.entrepreneur.com/article/0,4621,312256,00.html>.

<sup>174</sup> *Id.*

ing subsidies.<sup>175</sup> Farm worker leaders argue that when the farm worker receives public assistance, it is really just another political subsidy to the farmer.<sup>176</sup> The farmer does not have to provide benefits and can pay the farm worker a lower wage than employers in other industries must pay. In essence, the taxpayer is paying the difference.<sup>177</sup>

## V. RECOMMENDATIONS

The entire agricultural business must face reform. Of course, any proposed reform will undoubtedly face vehement opposition.<sup>178</sup> For example, on “October 28, 2005 the House Agricultural committee approved a budget reconciliation measure that will drop three hundred thousand people, most of them in working-poor families, from the Food Stamp Program, while rejecting President Bush’s proposal to ‘limit’ farm subsidy payments to \$250,000 per person annually.”<sup>179</sup> This type of politics harms the American taxpayer. The government should not subsidize any farmer that allows farm workers to work in unsafe, unhealthy or unsanitary conditions. If the government is going to provide for the farmer, the farmer should certainly provide for the farm worker. All farmers must ensure proper working conditions for the farm workers they employ.

The FLSA needs to be amended. The laws governing children working in agriculture must be as strict as the laws governing all other child labor. The parental exemption needs to be removed. School attendance must be enforced and work hours must be limited. It is clear the EPA needs to do more to protect our children from pesticide exposure. The WPS needs to apply to all farm workers, including the children of the owners and operators. The child farm worker needs to have the laws protect him, regardless of who employs him. Lastly, the enforcement of all the laws enacted by our government is critical to the protection of our children.

## VI. CONCLUSION

American consumers must realize that the small amount of money they are saving at the grocery store check-stand is offset tremendously by the tax burden the agricultural industry imposes. The taxes that hard-

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<sup>175</sup> New EWG Farm Subsidy Database Reignites Reform Efforts (Nov. 1, 2005), *available at* <http://www.ewg.org/farm/findings.php> (The top ten percent of the recipients are some 312,000 large farming operations, cooperatives, partnerships and corporations that collected, on average, more than \$33,000 every year).

<sup>176</sup> FLOC *supra* note 23.

<sup>177</sup> *Id.*

<sup>178</sup> New EWG Farm Subsidy *supra* note 174.

<sup>179</sup> *Id.*

working Americans pay should not end up in the pockets of the farmers, while the farm workers suffer such unbearable working conditions. Sadly, not much has changed since the *Harvest of Shame* aired in 1960. In a civilized society there is no excuse for children to live or work in such horrid conditions. Pesticides pose a serious threat to our children. The public must demand change.

Consumers must find a way to make Congress understand the urgency of this situation. The American public must make Congress aware that we will no longer accept the mere introduction of legislation. Congress must be willing to pass legislation in order to protect our children and ultimately ourselves.

DEDE J. AGRAVA