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FOREWORD

JEREMY MATTHEWS
Editor-in-Chief

The San Joaquin Agricultural Law Review is proud to present Volume 28. On behalf of the Editorial Board, we would like to express our most sincere gratitude to all those who contributed to this volume, particularly our professional contributors, staff writers and faculty advisors. Many friends, family, and supporters contributed to the completion of this publication. For that, we are thankful.

Law in the agricultural industry includes many diverse topics and concerns. The professional contribution to Volume 28 illustrates how “nudging” offers a key policy tool to drive the expansion of traditional courses of action, controlling the problem of excess nutrient pollution in America’s prominent water from within the cooperative federalism framework through the Clean Water Act. In *A Nudge or a Shove: Environmental Federalism and Non-Point Source Pollution*, Matthew Walker and Bryan Andres address how although The Clean Water Act’s structure of cooperative federalism leaves states to handle runoff issues, inaction by many states and the absence of a clear solution has prompted lawsuits by two groups; namely, environmental groups seeking more aggressive intervention and lobbying groups vowing to protect their agricultural industry from increased regulation. The water quality standard setting process provides new mediums in which to nudge. When programs and policies intended to nudge turn into a shove, however, the judiciary plays an important role in preserving the balance. Contrasting approaches in each watershed in the upper Mississippi River Basin provide insight to crafting policies that shift towards balanced and effective nutrient pollution controls before imposition of additional legislation. The article explores the cooperative federalism framework and how the statutory framework is susceptible to nudges within the state and federal relationship and how existing uses of nudging in the Clean Water Act water quality standard development process. Walker and Andres conclude by evaluating the role of the courts in arbitrating the balance of interests within a nudge and examining nudging implicit in voluntary nutrient programs, and recounting when arbitration does not go far enough.

The comments written by Volume 28’s staff members continue to show the diversity of issues and concepts within agricultural law. In the comment, *A High Price for Freedom: Transforming Farmowners’ Contract-*

Based Employment Rights Into Due Process Protection, Mr. Ali Huda analyzes how the Gerawan Farming, Inc., in *Gerawan Farming, Inc. v. Agricultural Labor Relations Board*, levied a substantive due process challenge against sections 1164 to 1164.13 (the “Contract Dispute Resolution Act,” or “CDRA”) of California’s Agricultural Labor Relations Act (“ALRA”). The comment summarizes the history of the ALRA, as well as the Contract Dispute Resolution Act, amended in 2002 into the ALRA. Within the legal framework of the substantive due process doctrine through landmark United States Supreme Court jurisprudence, the comment discusses the facts of the *Gerawan* case that raise the substantive due process issues. Under the Fourteenth Amendment of the United States Constitution, which may invalidate the CDRA portions of the ALRA, Mr. Huda applies the substantive due process framework to the facts of the *Gerawan* case to determine whether an employer’s “liberty of contract” is a recognizable fundamental right. The comment concludes with a recommendation for the United States Supreme Court to use to review in future cases.

In *Adhesion Contracts: Friend or Foe to Small Farm Owners*, Ms. Danielle Patch discusses the challenges that arise when small farm owners sign contracts with large agricultural corporations. Within the framework of due process, public policy, and contract law, specifically adhesion contracts, arbitration clauses, and unconscionability claims, the comment relates an in-depth history into how large agricultural companies have gained a large portion of the industry. The comment further delineates the contracts that small farm owners frequently encounter. Evaluating the issues of mutual assent, modern constitutional contract clause interpretation, and the quality of representation that small farm owners have available, the comment concludes with a discussion of potential remedies that may offer protection for small farm owners from contracts of adhesion.

Mr. Jesus Pereda, in *Accounting Professionals and California’s Wave of Marijuana Regulation: A Certified Public Accountant’s Plunge Into Servicing Clients Involved in the Marijuana Industry*, analyzes the legal issues a certified public accountant - “CPA” - faces when serving clients in the highly regulated marijuana industry. The comment further examines whether there is adequate protection for CPAs when serving these clients. Due to marijuana’s illegality in federal law, as well as the need for statutory protections and an assuring advisory opinion from state agencies, Mr. Pereda discusses why CPAs are deterred from serving clients in the marijuana industry. The

comment also examines the legal risks such as license revocation for professional ethics violations, liability for mistakes in the highly regulated market, and criminal liability risks that cannot be eliminated by taking practical precautions. Providing an analysis of risk and reward of servicing the marijuana industry with and without statutory protections, the comment concludes with a discussion about why the California State Legislature and the California Board of Accountancy ought to work together to protect CPAs inclined to provide services to recreational marijuana clients.

Mr. August Petersen, in *What You See Is What You Guest: Whether House Bill 6417 is Unconstitutional*, examines how House Bill 6417 - the Agriculture Guest Worker and Legal Workforce Act could establish a guest worker program and mandate employers to use E-verify nationwide. Discussing the historic relationship of immigration law and California agricultural law, and the introduction of House Bill 6417, the comment outlines a legal standard in connection with the fundamental right to pursue a common calling and whether the right of common calling may be protected against disparate treatment effected by the federal government. Discussing whether farming is cognizable as a common calling and how House Bill 6417 may cause labor shortages and unfair competition, the comment concludes with suggestions for better policies for making an authorized workforce, to include amnesty for undocumented persons and subsidies for U.S. worker employment.

In *Language Certification: Obtaining Access to Competent Interpreters for a Growing Indigenous Population in the Central Valley*, Ms. Esmeralda Serapio discusses the issues indigenous farmworkers face due to their inability to speak Spanish or English languages. The comment analyzes the constitutional, federal, and state laws that safeguard an individual's right to obtain a court interpreter. Discussing whether existing laws for interpreters apply to indigenous languages and how speaker's rights may be affected when an interpreter is not provided, Ms. Serapio advocates how to provide competent interpreters for individuals who speak an indigenous Mexican language.

The professional contributions and staff member comments explore diverse areas of agricultural law. We intend Volume 28 to provide information to the community and give analysis of relevant legal issues, as well as to encourage discussion and conversations relating to the solution of legal issues in agricultural law.

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“‘Thank you’ is the best prayer that anyone could say. I say that one a lot. Thank you expresses extreme gratitude, humility, understanding.”
- Alice Walker

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SAN JOAQUIN AGRICULTURAL LAW REVIEW



VOLUME 28

2018-2019

NUMBER 1

TABLE OF CONTENTS

ARTICLES

- A NUDGE OR A SHOVE: ENVIRONMENTAL FEDERALISM AND
NON-POINT SOURCE POLLUTION *MATTHEW WALKER AND BRYAN ANDRES* 1

COMMENTS

- A HIGH PRICE FOR FREEDOM: TRANSFORMING
FARMOWNERS' CONTRACT-BASED EMPLOYMENT RIGHTS
INTO DUE PROCESS PROTECTION..... *ALI HUDA* 41
- ADHESION CONTRACTS: FRIEND OR FOE
TO SMALL FARM OWNERS..... *DANIELLE PATCH* 79
- ACCOUNTING PROFESSIONALS AND CALIFORNIA'S WAVE OF
MARIJUANA REGULATION: A CERTIFIED PUBLIC ACCOUNTANT'S
PLUNGE INTO SERVICING CLIENTS INVOLVED IN THE MARIJUANA
INDUSTRY *JESUS PEREDA, JR.* 103
- WHAT YOU SEE IS WHAT YOU GUEST: WHETHER HOUSE BILL 6417 IS UNCONSTITUTIONAL
..... *AUGUST PETERSEN* 125
- LANGUAGE CERTIFICATION: OBTAINING ACCESS TO COMPETENT
INTERPRETERS FOR A GROWING INDIGENOUS POPULATION IN
THE CENTRAL VALLEY *ESMERALDA SERAPIO* 143