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FOREWORD

ALLISON RYAN
Editor-in-Chief

San Joaquin Agricultural Law Review is proud to present Volume 26. On behalf of the Editorial Board, we wish to give a sincere and heartfelt thank you to all those who contributed to this volume, particularly our professional contributions, staff writers, and faculty advisors.

Agricultural law comprises a vast array of topics. The three professional contributions of Volume 26 all discuss varying aspects of the agricultural realm. In *Estate Planning, Business Continuation, Transition and Succession for Farmers*, Ms. Shayna W. Borakove, Esq. addresses the importance of Estate Planning for Farmers. In determining the future of a farm, the farm family often desires to treat their children equitably, which gets complicated if the farm involves an on-farm successor or if no children want the farm, but the parents wish to still have the farm provide ongoing income for their children. In either case, it is pertinent that the farmer makes arrangements for the future of their farm. In her article, Ms. Borakove discuss the varying business structures inherent to farming before providing relevant considerations in selecting which business structure would best fit the farmer's needs. She continues her discussion by comparing the various entities involved and describing the various methods of converting the farm from one type of business entity to another. Ms. Borakove then addresses dissolution planning, giving examples of the options available to a farmer. She concludes her article by providing an example of a general family farm and after providing details of their assets, gives an example of their estate and business planning.

Dr. Sreejith S. G. in *A Revolution in Social and Legal Change: The Kerala-Model Resistance Against Pesticide Overuse Through Organic Farming*, discusses the impact of social and legal change and challenges the idea that legal change is the only mode of social change. He goes on to provide a general theory of social change, by providing an example of the revolution of the Southern Indian state of Kerala as a case study, questioning the conventionality that legal change is a prerequisite for social change and establishes that social change is not limited to just legal change. He follows this discussion by demonstrating that law is not the sole causal agent for social change and that law does not undergo a major transformation alongside social change. The article build a new theory of social revolution and change that not only restructures our understanding of social change but

also prompts us to reflect on the role of law in causing social transformations.

In *Cow Pie Policy: The Reasoning of CARE v. Cow Palace Under the Resource Conservation and Recovery Act and its Implications for Agricultural Manure Management*, Mr. Beriah Smith, Esq. discusses the impact of *Cnty. Ass'n for Restoration of the Env't, Inc. v. Cow Palace, LLC*, 2013 WL 3179575, (E.D. Wash. June 21, 2013) on the agricultural industry and environmental law. Traditionally cow manure has been exempt as a fertilizer, but in this case, CARE claims that the manure has been over-applied to the point where it could no longer be considered a fertilizer but as a solid waste. Mr. Smith's article discusses the major disputed issues of the case by first giving an overview of the history of the case and those issues. He then describes how manure can become a solid waste and that there should be some practical limits to classifying manure as such. He then discusses the anti-duplication provision of the Resource Conservation and Recovery Act, concluding by suggesting that the courts adopt an analysis similar to a federal pre-emption, to resolve disputes of when the Act is pre-empted by other federal statutes. Mr. Smith finishes his article by analyzing the feasible remedies available and outlining steps farmers should take to avoid litigation and agency enforcement action.

The comments written by Volume 26's staff members continue to show the vast diversity of issues and concepts within agricultural law. Ms. Christina Cardenas discusses the increased use of Genetically Modified Organisms ("GMO") and Genetic Engineering ("GE") in the United States since the 1990's and the major concerns regarding the effects these products may have in the future on the human body. In the article *Genetically Modified Organisms and School Lunches: Genetically Modified Foods Should Not Be Allowed In Our Nation's Schools*, Ms. Cardenas discusses the history of GMOs and GE, the regulations of those products in other countries versus the regulations placed in the United States. She discusses the research showing the increased concerns and health risks with consumption of these products mainly due to the increased use of pesticides and herbicides on these crops, provides information regarding the "probable carcinogenic" warning placed on the use of the products, and why the FDA, who is authorized to regulate Genetically Modified Organisms in the United States, states that there is no material difference between GMO's and conventional foods. She then recommends that these food products be banned from school meals to protect children from consuming "probable carcinogenic" foods to prevent future health concerns and recommends different meal options and preparations that can be incorporated into their school meals.

In Defending Our Freedom to Needing the Defending: an Exploration of the Food Severed to Our Nation's Armed Forces and the Endless Impact it has on Them, Ms. Andrea Chapman discusses the food regulations for American service members. Her comment demonstrates that even with weight regulations and mandatory fitness programs for American service members, there is still a weight epidemic within all military service branches and the food they are being fed has a significant role in that. She then explores the background of the military and their physical requirements, before analyzing the ways military members are served food, dependent on whether the member is currently living on or off base. Ms. Chapman then analyzes the past and current food systems that are provided both on land and for members deployed on a ship, before going into detail about the new food program that all branches of service will be required to follow. She then provides opinions from past and current service members regarding the current food system and their outlook on the new food program, discussing role food plays in morale; where the fault should fall when a service member falls out of body standards; the effect on national security due to the epidemic; the money expended for weight related disability; as well as the remedies the military and the Department of Defense (“DOD”) actively have. She then recommends the various ways and numerous programs the military and DOD have in place that actively strive to remedy this weight epidemic American military members are suffering from, before concluding that although there is room for improving the food provided for American service members, the new food program seems to be what will have the greatest impact on the epidemic and be able to turn it around.

Mr. Jeremy Matthews, in *AFFH Role in Housing Policy Without Long-lasting Reform for Agricultural Workers*, analyzes the Department of Housing and Urban Development’s regulation known as Affirmatively Furthering Fair Housing (“AFFH”) to provide understanding for its purpose, scope, and impact on migrant workers. The comment begins with a historic overview of affordable housing programs in the United States and the motivations and bipartisan efforts necessary for their creation. Mr. Matthews then provides an introduction about how AFFH may impact agriculture workers, before reviewing the factual background and timeline of housing programs and providing information about housing and employment conditions for agriculture workers. He then takes a closer look at the Fair Housing Act of 1968 and the Migrant Seasonal Agricultural Protection Act to understand what type of benefits these Acts have for the agricultural worker. He follows this closer look with a discussion of the role of the Housing and Urban Development department and AFFH. He then explores

how AFFH may be used to establish liability through the disparate impact theory, how AFFH may open the door for the federal government's role in land use, and how that may affect the agriculture worker, as well as analyze why executive orders are vulnerable to repeal and can be an ineffective way of implementing policy changes. Mr. Matthews then provides recommendations on how bipartisan support can help create sustainable housing policy that will have a positive effect on agricultural workers, before concluding that sound effective housing policy is necessary and possible through bipartisan public service.

In *No Hablo Ingles: Monolingual Spanish Farmworkers Exposed to "Economic Poison" with Little Protection*, Ms. Jennifer Nguyen-Bui discusses the impact of pesticides not having bilingual labeling even though farmworker community is increasingly comprised of immigrants who do not speak English as a first language. The comment explores the inherent issue that farmworkers are facing because of their inability to read, heed, and comprehend the pesticide labels, as well as having access to the labels. Ms. Nguyen Bui provides background information on the history of pesticide regulation, pesticide protections, and the process of granting registration or licenses for pesticide use. She continues by providing background information regarding the Workers Protection Standard ("WPS"), and the employers' duty to follow the WPS. She then addresses the debate over the need for bilingual labeling and the revisions to the WPS that will become effective in January 2017, as well as drawing parallels with other laws and regulations that require employers and businesses to keep the parties informed by placing posters in a conspicuous place and in a language common to the workers. She follows this discussing by providing recommendations for eliminating pesticide exposure and pesticide related injuries and promoting a healthier and safer working environment for the farmworkers. The comment displays that pesticide handlers need to have the warning labels in Spanish to better protect themselves, their families, and the environment because if the pesticide labeling information is also on a poster the rest of the farmworkers would be protected, allowing them to read and heed the warnings. Finally, she concludes that the importance of providing bilingual labeling and the failure to address the problem will result in an increase in pesticide exposure, which can be prevented if protective measures are used.

Mr. John Soares discusses the lack of clarity regarding Ag Data ownership between farmers who produce the data from their harvests and the agricultural companies that analyze that data. In the comment titled, *The New Frontier: How Sharing of Big Data in Agriculture Interferes with the*

Protection of Farmers' Ownership Rights Over Their Data, Mr. Soares details that farmers generally own their data but neither current law or the agricultural industry adequately define or protect the farmers' property rights in the data. He presents background information on how Ag Data is generated and categorized, as well as the details on how and why farmers have turned to agricultural companies for data analysis. Mr. Soares goes on to address the concerns arising from the advancements in agricultural technology as they impact data ownership and how existing legal standards may provide potential protection to farmers' data ownership rights, but ultimately prove to be inadequate. He then recommends implementation of better contract practices, new legislative protections, and data consolidation, which would allow farmers to benefit from, maintain control over, and retain legal protection over their Ag Data.

In *Death by a Thousand Cuts: Regulatory Takings Under The Endangered Species Act*, Ms. Annemarie Taylor examines the effects of the 2016 changes to the Endangered Species Act and the difficulties, both economic and legal, that small landowners and agricultural business face if they fall under its parameters. Ms. Taylor examines the expansion of the Act that accompany new changes some key definitions in 2016. Her legal analysis demonstrates the history of the reluctance of the courts to use the Penn Central Balancing Test in Endangered Species litigation, and the difficulties landowners/farmers and ranchers face in proving a regulatory takings under the Penn Central Test. Ms. Taylor then recommends changes to the Endangered Species Act to including changes to the law to reduce the constant litigation by Environmental groups and redirecting of the money to education/partnership programs to establish educational programs where agriculture and the Department of Fish and Wildlife work to together to make the lands hospitable to both wildlife/native plants and farming/ranching activities.

All of the professional contributions and staff member comments explore just a glimpse of the many facets of agricultural law. Volume 26 seeks to provide information to the community, give analysis of relevant legal issues and provoke discussion on how to best move forward in the realm of agriculture. These issues presented are just a few of the many varied and diverse issues confronted by those whose lives and interests are touched by agriculture.

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