

NOTE

MAKING HISTORY RHYME: USING A CENTURY-OLD PROPOSED CONSTITUTIONAL AMENDMENT TO REGULATE THE CHILD LABOR CRISIS

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Child labor is on the rise. There has been no new sweeping federal legislation regulating child labor since the passage of the Fair Labor Standards Act nearly ninety years ago, and in recent years, states have been rolling back their individual protections one by one. This Note examines one possible means of course correcting this worrying trend: reviving the lost Child Labor Amendment, first proposed in 1924. Though the Child Labor Amendment fell short of the number of states necessary for ratification, its story does not have to be over.

This Note contends that the Child Labor Amendment can be an extremely useful tool by promoting uniformity of legislation and reducing the influence of the Supreme Court in future attempts to pass federal legislation limiting child labor. But only through understanding why the Child Labor Amendment failed in the first place can we improve on our past rather than repeat it.

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INTRODUCTION

The United States believes it has conquered the issue of child labor, despite it being the only United Nations (UN) member state not to have ratified the UN Convention on the Rights of the Child, and similarly one of only eleven countries that have yet to ratify International Labor Organization (ILO) Convention No. 138 - Minimum Age Convention.¹ The U.S. proffers that it has protections in place domestically that obviate the need for ratification, and that, in any case, Americans do not want international laws interfering with their own.²

But, contrary to what the average American may think, child labor is not a thing of the past. Though child labor has been regulated at the federal level by the Fair Labor Standards Act (FLSA) and at the state level to varying degrees of success, there exist large gaps in legislation that allow child labor to persist.³ In particular, the FLSA sets the minimum bar for child labor protections federally, yet allows for several concerning child labor practices, including a blanket exemption for certain types of agricultural labor and a youth subminimum wage that allows employees under twenty years of age to be paid just \$4.25 per hour.⁴ In the agricultural sector in particular, the Government Accountability Office estimates that 100,000 child farmworkers suffer from injuries annually, and that children make up approximately twenty percent of farming fatalities.⁵

In addition to existing gaps in legislation, individual states have also weakened protections against child labor at an increasing rate since the COVID-19 pandemic.⁶ In 2024 alone, six states rolled back child labor laws,

¹ Callie King-Guffey, *How Do US States Measure up on Child Rights?*, Human Rights Watch (Sept. 7, 2023), <https://www.hrw.org/feature/2022/09/13/how-do-states-measure-up-child-rights>; Arianna Braga, *How do US states measure up to children's rights?*, Humanium (Nov. 8, 2022) [https://www.humanium.org/en/how-do-us-states-measure-up-to-childrens-rights/C138 – Minimum Age Convention, 1973 \(No. 138\)](https://www.humanium.org/en/how-do-us-states-measure-up-to-childrens-rights/C138-Minimum-Age-Convention,1973(No.138)), International Labour Organization (Oct. 31, 2025), https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312283:NO.

² King-Guffey, *supra* note 1.

³ See generally Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (1938).

⁴ 29 U.S.C. §206(g)(1).

⁵ *Child Labor in the United States*, American Federation of Teachers (Mar. 20, 2025), <https://www.aft.org/community/child-labor-united-states>.

⁶ Nina Mast, *Child Labor Remains a Key State Legislative Issue in 2024*, Economic Policy Institute (Feb. 7, 2024), <https://www.epi.org/blog/child-labor-remains-a-key-state-legislative->

including a new Indiana law that eliminated hour restrictions and hazardous agricultural work protections for sixteen- and seventeen-year-olds.⁷

The state of child labor in the United States begs three central questions: (1) how did we get here, (2) what can be done to fix it, and (3) is the solution feasible (and if not, what can be done to make it more feasible)? All three questions center around a proposed Constitutional amendment from 1924 that passed both houses of Congress but stalled in the ratification stage: the Child Labor Amendment (CLA).⁸ This Note will first focus on why the ratification of the CLA failed in 1924 and how the backlash from that failure contributed to intentional gaps in the FLSA. Next this Note considers how the ratification of the CLA today can supplement the FLSA to close those gaps, and why the CLA can achieve more cohesive and lasting change than updating the FLSA or waiting on individual states to pass more stringent protections. Lastly, it establishes why the United States post-pandemic is in a better position to ratify the CLA now than it ever has been and provides an analysis on which remaining states that have not yet ratified the CLA would most likely vote in favor of it in the event of a renewed push for ratification.

I. THE EFFECT OF THE CHILD LABOR AMENDMENT ON THE FAIR LABOR STANDARDS ACT

The CLA is a simple proposal, reading:

Section 1. Congress shall have power to limit, regulate, and prohibit the labor of persons under 18 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.⁹

However, Congress had made prior attempts to eradicate child labor.

issue-in-2024-state-lawmakers-must-seize-opportunities-to-strengthen-standards-resist-ongoing-attacks-on-child-labor-laws/.

⁷ Nina Mast, *More states have strengthened child labor laws than weakened them in 2024*, Economic Policy Institute, (June 12, 2024), <https://www.epi.org/blog/more-states-have-strengthened-child-labor-laws-than-weakened-them-in-2024-this-year-state-advocates-were-better-equipped-to-organize-in-opposition-to-harmful-bills/>.

⁸ 65 Cong. Rec. H7251 (daily ed. Apr. 26, 1924) (statement of Rep. Hickey); Betsey Wood, “The Forgotten History of the Child Labor Amendment,” *Time* (May 13, 2024), <https://time.com/6970389/child-labor-amendment-forgotten/>.

⁹ 65 Cong. Rec. H7251 (daily ed. Apr. 26, 1924).

A. Attempts to Eradicate Child Labor, 1900-1924

House Representative Israel Moore Foster (R-OH) proposed the CLA on the heels of two back-to-back Supreme Court frustrations when the Keating-Owen Child Labor Act of 1916 (“Keating-Owen Act”) and the Revenue Act of 1919, both aimed at curtailing child labor, were ruled unconstitutional by the Supreme Court of the United States.¹⁰

The Keating-Owen Act derived its power from the Commerce Clause and banned the interstate sale of products from distributors in various industries that employed certain types of child labor.¹¹ Specifically, the Keating-Owen Act in effect banned children under fourteen years of age from working in factories, shops, or canneries; children under sixteen from working in mines; and more broadly, children under sixteen from working anywhere that employed children overnight, over eight hours daily, or more than six days per week.¹² Author of the *Southern Textile Bulletin* and active lobbyist against child labor laws, David Clark, searched for a test case to get the Keating-Owen Act invalidated as unconstitutional.¹³ He eventually succeeded after paying a mill employee a substantial sum of money to use his two teenage sons as the test case to bring before a hand-picked sympathetic federal judge.¹⁴ Before the Great Depression and before President Roosevelt’s New Deal, the Supreme Court forcefully upheld the freedom to contract, and generally struck down federal legislation seen as an encroachment upon this right.¹⁵ Thus, in 1918, the Supreme Court narrowly ruled to strike down the Keating-Owen Act.¹⁶ David Clark personally celebrated reducing the statute to a “scrap of paper.”¹⁷

The Revenue Act of 1919, also known as the Child Labor Tax Law, made another effort to regulate child labor.¹⁸ The statute once again targeted what Congress largely considered to be the worst and most dangerous working conditions for children: mines, quarries, canneries,

¹⁰ See *Hammer v. Dagenhart*, 247 U.S. 251 (1918) (ruling the Keating-Owen Act to be unconstitutional because it was an overreach of the Commerce Clause); see also *Bailey v. Drexel Furniture Co.*, 259 U.S. 20 (1922) (holding that the Child Labor Tax Law impermissibly infringed on States’ Tenth Amendment rights); Keating-Owen Child Labor Act (1916), National Archives (Feb. 8, 2022), <https://www.archives.gov/milestone-documents/keating-owen-child-labor-act>.

¹¹ Keating-Owen Child Labor Act, Pub. L. No. 64-249, 1916 U.S.C.C.A.N. (39 Stat.) 675, *invalidated by* *Hammer*, 247 U.S. 251 (1918).

¹² *Id.*

¹³ Bart Dredge, *David Clark’s “Campaign of Enlightenment,”* North Carolina Department of Natural and Cultural Resources, 30, 38 (2014).

¹⁴ *Id.* at 38-39.

¹⁵ See generally *Lochner v. New York*, 198 U.S. 45 (1905).

¹⁶ Dredge, *supra* note 13, at 38.

¹⁷ *Id.* (internal quotation marks omitted).

¹⁸ See generally Title XII of an act entitled “An Act To provide revenue, and for other purposes,” Pub. L. No. 65-254, 1919 U.S.C.C.A.N. (40 Stat.) 1057, *invalidated by* *Bailey*, 259 U.S. 20 (1922).

workshops, factories, and general manufacturing establishments.¹⁹ The constraints of the Child Labor Tax Law bore a strong resemblance to those of the Keating-Owen Act, but with a tax functioning as a deterrent rather than an outright ban.²⁰ The Child Labor Tax Law imposed a ten percent tax on the net profits of employers who employed children under sixteen in mines or quarries.²¹ In the rest of the industries listed, it imposed this tax on employers who employed children under fourteen at all, or children between fourteen and sixteen overnight, over eight hours daily, or more than six days per week.²² Congress deliberately restricted the Child Labor Tax Law to a tax rather than an outright ban to avoid another suit from David Clark, who once again handpicked a case to strike down the attempt to regulate child labor.²³ This time, the Supreme Court struck the Child Labor Tax Law down because the tax imposed functioned as a penalty rather than a tax.²⁴ The Court primarily characterized the tax as “a heavy exaction for a departure from a detailed and specified course of conduct in business,” and it provided an exception for good faith ignorance, which is more indicative of a penalty than a tax.²⁵

Despite judicial setbacks, sentiment against child labor, at least in centralized industries and mining, remained high.²⁶ Notably, Lewis Hine, a photographer for the National Child Labor Committee (NCLC), photographed children in the workplace throughout the 1910s, which helped publicize the issue.²⁷ Faced with strong judicial opposition, Congress looked to a more permanent fix to the child labor problem: a constitutional amendment regulating child labor.

B. The Rise and Fall of the Child Labor Amendment, 1924-1937

The CLA enjoyed substantial popularity while Congress voted on it, passing the House and Senate with 297 and 61 yes votes, respectively.²⁸ The Amendment also had the benefit of bipartisan support: both Presidents Harding and Coolidge supported the CLA, and President Coolidge made

¹⁹ *Id.*

²⁰ Keating-Owen Child Labor Act, Pub. L. No. 64-249, 1916 U.S.C.C.A.N., (39 Stat.) 675, *invalidated by* Hammer, 247 U.S. 251 (1918).

²¹ “An Act To provide revenue, and for other purposes,” Pub. L. No. 65-254, 1919 U.S.C.C.A.N. (40 Stat.) 1057, *invalidated by* Bailey, 259 U.S. 20 (1922).

²² *Id.*

²³ 57 Cong. Rec. S609 (daily ed. Dec. 18, 1918) (statement of Sen. Hardwick) (Senator Hardwick directly acknowledged Clark as the orchestrator of the Keating-Owen Act’s demise); Dredge *supra* note 13 at 40.

²⁴ Bailey, 259 U.S. 20, 36 (1922).

²⁵ *Id.*

²⁶ *National Child Labor Committee Collection*, LIBRARY OF CONGRESS (Dec. 28, 2024), <https://www.loc.gov/collections/national-child-labor-committee/about-this-collection/>.

²⁷ *Id.*

²⁸ 65 Cong. Rec. H7294-7295 (daily ed. Apr. 26, 1924) (statement of Rep. Garrett); 65 Cong. Rec. S10142 (daily ed. Jun. 2, 1924).

a point to mention that Congressional approval came from both parties.²⁹ However, several key points of contention that had simmered under the surface during Congressional deliberations rose to prominence when it came time for the states to ratify the CLA.

Foremost among the conflicts discussed in deliberations was the belief that some types of child labor, particularly agricultural work, were good for children.³⁰ Representative McSwain, arguing against the amendment, claimed that “everybody with common sense will admit [sic] that farm labor does not hurt children—physically, morally, or intellectually. It is out in the open sunshine where health and strength are gained.”³¹ These proponents of child agricultural labor ignored supporters of the amendment like Representative Butler, who pointed out that “[y]ou can work a child to death on a farm as well as you can in a factory.”³² Those against the CLA also claimed that it would interfere with parents’ right to control their own children, with Representative Sumners asserting that the CLA unduly “thrusts itself between the parent and the child.”³³ The detractors of the CLA also viewed it as socialist or communist legislation, especially since its most ardent supporters, the NCLC and the National Education Association, supported compulsory schooling.³⁴

Lastly, those looking to defeat the CLA played into the ever-fraught tensions along the North-South divide using all the above. Southern, agricultural-based states argued that evils like child sweatshops plagued primarily Northern states like New Jersey, and those children who did suffer in the Southern canneries or other industrialized work were few and far between, such that local legislation and community outreach could easily right those wrongs.³⁵ Opponents of the CLA claimed that its supporters threw around an inflated number of child laborers (1,000,000) to scare the general public into thinking the issue was widespread. In reality, nearly 600,000 of those children (primarily in Southern states) performed farm work, which a majority of people believed did not need to be regulated due to its redeeming qualities.³⁶ In short, opponents asserted that New England created the problem of hazardous child labor and the South should not be dragged into the folds of federal overreach for other states’ failures.³⁷

²⁹ Grace Abbott, *Federal Regulation of Child Labor, 1906-1938*, SOCIAL SERVICE REVIEW, 409, 420 n. 80 (1939).

³⁰ 65 Cong. Rec. H7254 (daily ed. Apr. 26, 1924) (statement of Rep. Montague).

³¹ 65 Cong. Rec. H7308 (daily ed. Apr. 26, 1924) (statement of Rep. McSwain).

³² *Id.* at H7270 (statement of Rep. Butler).

³³ 65 Cong. Rec. H7262 (daily ed. Apr. 26, 1924) (statement of Rep. Sumners).

³⁴ *Id.*

³⁵ Farmers States Rights League, *What Clear Thinkers Are Saying About The “Child Labor Amendment”*, Reno Evening Gazette, at 5 (Nov. 18, 1924).

³⁶ 65 Cong. Rec. H7284 (daily ed. Apr. 26, 1924) (statement of Rep. Graham).

³⁷ *Id.* at H7254 (statement of Rep. Montague).

Nevertheless, the CLA passed muster in Congress. While state legislators voted on its ratification, David Clark returned to the national stage to denounce the proposed amendment.³⁸ He founded and funded the Farmers' States Rights League (FSRL) and repeatedly spoke against the CLA in the *Southern Textile Bulletin*.³⁹ Among such statements, he claimed that the CLA was "designed to equalize the supposed disadvantages of New England," playing off the existing cultural divide.⁴⁰ Clark also directly called out the CLA's strongest supporters. He published an open letter to the publicity director of the NCLC in which he called her a "well-paid lobbyist" conducting "a campaign of deliberate and willful misrepresentation," which was particularly ironic considering Clark simultaneously secretly funded a grassroots lobbyist group.⁴¹ At times, he even resorted to outright insults, such as when he called the executive secretary of the National Education Association a "papsucker who. . . expects to get a fat job" for his support of the CLA.⁴²

Under the guise of the FSRL, Clark also spread propaganda against the CLA in other publications. The FSRL published an article in the *Reno Gazette* claiming that proponents of the CLA wanted to take children from their families so "they will from the very start remain under the beneficial influence of communist kindergarten and schools."⁴³ The league made it appear as though any sensible farmer would oppose the CLA, when in reality the majority of farm organizations, including the National Grange, spoke in support of the amendment.⁴⁴ Clark did not create the animosity toward the CLA so much as astroturf misinformation and crude callouts that reinforced the negative preconceptions opponents of the amendment already held, but the strategy was undeniably influential.⁴⁵

Clark's influence aside, publications like the *Manufacturers Record Publishing Co.* published their own propaganda in opposition to the CLA, including a 1924 issue accusing the Russians, and more specifically the Bolsheviks, of creating the Amendment.⁴⁶ One edition claimed that, "[i]f adopted, this amendment would be the greatest thing ever done in America in behalf of the activities of Hell. It would make millions of young people under 18 years of age idlers in brain and body and thus make them the devil's best workshop."⁴⁷ Even U.S. Congressman McSwain

³⁸ *Id.* at H7312 (statement of Rep. Tucker).

³⁹ David Clark, *Coming Out Into the Open*, *Southern Textile Bulletin*, May 15, 1924, at 20.

⁴⁰ Dredge, *supra* note 13, at 31; *Id.* at 43-45.

⁴¹ David Clark, *Coming Out Into the Open*, *Southern Textile Bulletin*, May 15, 1924, at 20.

⁴² David Clark, *Tit for Tat*, *Southern Textile Bulletin*, Dec. 4, 1924, at 22.

⁴³ Farmers States Rights League, *What Clear Thinkers Are Saying About The "Child Labor Amendment"*, *Reno Gazette*, Nov. 18, 1924.

⁴⁴ 65 Cong. Rec. H7254 (daily ed. Apr. 26, 1924) (statement of Rep. Hersey).

⁴⁵ See generally Dredge, *supra* note 13, at 37.

⁴⁶ Abbott, *supra* note 29, at 422-423 n.36.

⁴⁷ *Id.*

declared on the floor of the House of Representatives that the CLA promoted “Prussianism,” and that the sentiments therein were “not American democracy.”⁴⁸

After the first six ratifications pre-1931, support for the CLA stalled for some time. However, fourteen more states ratified the CLA in quick succession in 1933, once the Great Depression began softening the states’ opinions on the expansion of federal power.⁴⁹ Eight additional states ratified the CLA between 1933 and 1937 as President Roosevelt personally advocated for the passage of the proposed Amendment.⁵⁰ His endorsement proved to be a double-edged sword, as it sharpened focus on the CLA among both President Roosevelt’s allies and enemies and made the issue decidedly more partisan in the process.⁵¹ As of May 2024, only twenty-eight of the required thirty-eight states had ratified the CLA, with all but one of them being a state that fought for the North during the Civil War.⁵²

C. *The Interim Years, 1927-1938*

While the CLA floundered in hardline anti-child labor protection states, the United States entered the Great Depression. President Roosevelt, as part of the New Deal, ushered in the passage of the National Industrial Recovery Act (NIRA) in 1933.⁵³ The NIRA included the National Recovery Administration (NRA), which, most importantly for child labor, allowed industries to create their own fair codes of competition.⁵⁴ This kind of collusion would ordinarily be banned under Section 1 of the Sherman Antitrust Act.⁵⁵ The majority of industries were centralized enough to draft their own codes and decided, of their own volition, to set minimum age requirements, the most popular being sixteen.⁵⁶

The NRA’s Administrator for Industrial Recovery, Hugh Johnson, openly rejoiced at the influx of child labor regulation amongst the nation’s largest industries, especially the cotton textile industry.⁵⁷ He reasoned that

⁴⁸ 65 CONG. REC. H7308 (daily ed. Apr. 26, 1924) (statement of Rep. McSwain).

⁴⁹ Abbott, *supra* note 29, at 423.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Jessie Kratz, Unratified Amendments: Regulating Child Labor, NATIONAL ARCHIVES, (Mar. 24, 2020) <https://prologue.blogs.archives.gov/2020/03/24/unratified-amendments-regulating-child-labor/> (last visited Dec. 20, 2024); Wood, *supra* note 8.

⁵³ Milestone Documents: National Industrial Recovery Act (1933), NATIONAL ARCHIVES, <https://www.archives.gov/milestone-documents/national-industrial-recovery-act> (last visited Dec. 20, 2024).

⁵⁴ *Id.*

⁵⁵ Sherman Antitrust Act (1890), §§ 1–7, 15 U.S.C. § 1 (stating that “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.”).

⁵⁶ See generally U.S. NATIONAL RECOVERY ADMINISTRATION, CODES OF FAIR COMPETITION Nos. 1–57, (1933).

⁵⁷ *Id.* at 12–13.

President Roosevelt held the intrinsic notion that employers “would be glad to do much by general agreement that no single employer would dare to do separately.”⁵⁸ No single company could afford to break from the profit-maximizing mold on its own, and so it relied on the weakening of antitrust regulations that President Roosevelt provided to craft child labor protections.

Though eventually declared unconstitutional, the NIRA and its accompanying industry Codes addressed child labor on an industry-by-industry basis and signaled to Congress that support for child labor regulation, at least in industrialized fields, remained high.⁵⁹ On an economic and cultural level, this made sense. The NIRA included a mandatory minimum wage, and when there is high unemployment coupled with a minimum wage, it makes logical sense to prioritize paying grown adults.⁶⁰ From a productivity perspective, adults can work longer and harder hours on average, and from a societal perspective, employers would rather pay the main breadwinner of a family over a child who may just be supplementing their family income.⁶¹ Notably, the entertainment industry set several minimum age requirements, including the Legitimate Full Length Dramatic And Musical Theatrical Industry, which set their minimum age at sixteen unless granted permission by the government.⁶²

However, this left unregulated and decentralized industries out in the cold. Industries like textiles, mining, and lumber were centralized and operated with sufficient industry oversight to come up with these Codes through self-governance and internal voting.⁶³ But the agricultural sector, particularly small, family farms, was and remains less centralized. Setting a sector-wide minimum age would be extremely difficult to accomplish logistically, and it would clash with the established point of wanting to let parents decide what’s best for their own children.

At this point, President Roosevelt’s advisors declared that he had solved child labor, seemingly indicating that child farmworkers, domestic workers, and other industries not included in the Codes, need not be included under the umbrella of problematic child labor.⁶⁴ But these measures did not last. The Supreme Court struck down the NIRA, and the Codes along with it, returning the federal regulation of child labor back to where it was at the turn of the century.⁶⁵ Frustrated by the Supreme Court overturning his New Deal legislation, President Roosevelt urged the Court

⁵⁸ *Id.* at 13.

⁵⁹ *Id.* at 12-13.

⁶⁰ *See generally id.*

⁶¹ *Id.*

⁶² *Id.* at 89.

⁶³ *Id.*

⁶⁴ *See id.* at 12-13.

⁶⁵ *See generally* Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

to be less stringent in allowing Congress to use the power of the purse.⁶⁶ This power struggle set the stage for the FLSA to pass muster under a new, more progressive Supreme Court.⁶⁷

D. *The Fair Labor Standards Act, 1938-Today*

After much discussion and deliberation, President Roosevelt signed the Fair Labor Standards Act into law on June 25, 1938.⁶⁸ It remains the foremost federal legislation concerning the regulation of child labor.

The FLSA leaves an enormous loophole for anyone looking to employ child laborers: the agricultural industry.⁶⁹ Section 213(c) of the FLSA provides a blanket exemption in the case of “any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed,” so long as the child is over the age of fourteen, between the ages of twelve and fourteen with their parents’ permission, or under twelve on their parents’ farm or a farm with fewer than five-hundred employees with their parents’ permission.⁷⁰ The provisions prohibiting hazardous work include further carveouts for children working on their parents’ farms; even the Secretary of Labor cannot limit children’s work on hazardous farms “where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.”⁷¹

These gaps in agriculture reflect the reticence of Congress to stir up the ire of farmers, who, through David Clark’s influence, played a significant role in stalling the CLA.⁷² The FLSA also came in the midst of the Dust Bowl, a period in which the Great Plains experienced a devastating and prolonged drought.⁷³ At the same time, the prices on agricultural products hit extreme lows due to a supply surplus brought about by the Great Depression.⁷⁴ President Roosevelt signed several pieces of legislation supporting farmers throughout his presidency, including the Agricultural Adjustment Act, the Farm Credit Act of 1933, and the

⁶⁶ See John Q. Barrett, *Attribution Time: Cal Tinney’s 1937 Quip, “A Switch in Time’ll Save Nine,”* 73 OKLA. L. REV., 229, 230 (2021). After President Roosevelt proposed to pack the Supreme Court with justices favorable to his New Deal legislation, the Court became considerably more lenient in allowing regulatory legislation from the federal government, particularly under the Commerce Clause. *Id.* The Court’s change of course is known colloquially as the “switch in time that saved nine.” *Id.*

⁶⁷ See *United States v. Darby*, 312 U.S. 100 (1941) (holding the FLSA constitutional).

⁶⁸ Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219.

⁶⁹ See, e.g., *id.* § 213(c).

⁷⁰ *Id.*

⁷¹ *Id.* § 213(c)(2).

⁷² See Dredge, *supra* note 13, at 41–43.

⁷³ *The Great Depression Hits Farms and Cities in the 1930s*, Iowa PBS, <https://www.iowapbs.org/iowapathways/mypath/2591/great-depression-hits-farms-and-cities-1930s> (last visited Dec. 20, 2024).

⁷⁴ *Id.*

Bankhead–Jones Farm Tenant Act of 1937, which created the Farm Security Administration.⁷⁵ Restricting the total manpower available on farms at this juncture in time would have been counterproductive to the goals of the Roosevelt administration: getting farmers, and the agricultural industry writ large, back on their feet.

The inclusion of a provision in 1949 to limit the agricultural exemption to hours outside school hours also did little to curb the practice overall.⁷⁶ Compulsory schooling hours varied by state and tended to be less stringent in states with high agricultural participation, somewhat negating the purpose of the amendment in the first place.⁷⁷ Additionally, restricting agricultural work for children to non-schooling hours did little for migrant children, who often did not go to school or ceased going to school early into their education, and thus worked on farms full-time.⁷⁸ More broadly, the FLSA is silent on hour protections for sixteen and seventeen-year-olds, another holdover from the societal norms of the 1930s, a time when a much lower percentage of children nationwide completed high school.⁷⁹

The FLSA also exempts the entertainment industry almost in its entirety, stating that the child labor provisions of the Act “shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.”⁸⁰ This exemption is a notable step backwards from the NIRA Codes. Without carveouts to antitrust made possible by the NIRA, industries could not regulate themselves to the same extent as they did under the Codes, and the entertainment industry’s child labor protections suffered for it.⁸¹ The child labor provision of the FLSA did not initially contain an entertainment exemption, but shortly before the Act went to a vote, Representative Jerry Voorhis made a last minute argument for its inclusion.⁸² The exemption passed despite Voorhis’s personal dislike of the idea, and it became known as the “Shirley Temple Amendment,” after the child star whose talents congressmen argued might have been hidden from the world had there been restrictions on children working in entertainment at the time of her debut.⁸³

⁷⁵ *New Deal Programs*, LIVING NEW DEAL, <https://livingnewdeal.org/history-of-the-new-deal/programs/> (last visited Dec. 20, 2024).

⁷⁶ Jennifer Robin Terry, *A Century of Denying Child Labor in America* (Spring 2018) (Ph.D. dissertation, UC Berkeley) (eScholarship), at 86.

⁷⁷ *See id.*

⁷⁸ *Id.*

⁷⁹ *See* 29 U.S.C. §§ 201–219.

⁸⁰ *Id.* at § 213(c)(3).

⁸¹ *Compare* U.S. NATIONAL RECOVERY ADMINISTRATION, CODES OF FAIR COMPETITION Nos. 1–57, (1933) *with* 29 U.S.C. § 213

⁸² 75 CONG. REC. H1602 (daily ed. Dec. 15, 1937) (statement of Rep. Jerry Voorhis).

⁸³ *Id.* Notably, this argument stems from the loss society would experience without being able to see child stars perform, not the welfare of the child.

Section 206 of the FLSA also includes a provision condoning the youth subminimum wage.⁸⁴ This section allows employees under twenty years of age to be paid as little as \$4.25 for the first ninety days of employment.⁸⁵ Such a stark distinction compounds existing divisions in the respect owed to young workers versus older workers, and makes it more difficult for young adults to gain financial independence.⁸⁶ Furthermore, the FLSA also includes similar subminimum wage carveouts for employees with disabilities and tipped workers, which many consider to be highly detrimental to both groups.⁸⁷ As a whole, the subminimum wage reinforces the belief that these workers, already considered lesser than, do not deserve the respect of being paid a full wage.

One might wonder how, with all these gaps, the child labor provisions of the FLSA have remained largely unchanged since its initial passage. It must be understood, however, that the child labor provision of the FLSA was in itself a major victory in the fight against child labor, though few scholars suggest so.⁸⁸ The statute itself relied heavily on the same principles that did not save the 1916 Keating-Owen Act from Supreme Court nullification, but through a combination of the Great Depression, President Roosevelt's personal crusade against the Supreme Court, and the distracting sheen of accompanying wage and hour provisions, it miraculously survived passage unscathed.⁸⁹

II. GAP-FILLING POTENTIAL AND OTHER ADVANTAGES

First and foremost, the CLA reaches a broader scope than the FLSA. The FLSA directly challenged the *Dagenhart* decision and won, but it was never meant to be all-encompassing, especially since some at the time believed (wrongly) that child labor would soon be phased out of American society altogether.⁹⁰ The FLSA merely set the stage for the federal regulation of child labor and proved President Roosevelt's point in bending the Supreme Court toward his more progressive policies.

If passed today, the CLA would make it easier to gap-fill where existing legislation does not adequately cover longstanding or novel forms of child labor. Rather than passing amendments to the inherently flawed structure of the FLSA, Congress could more easily pass new statutes to address problems head-on.

⁸⁴ 29 U.S.C. § 206(g)(1).

⁸⁵ *Id.*

⁸⁶ Nina Mast, *Youth subminimum wages and why they should be eliminated*, ECONOMIC POLICY INSTITUTE (Jan. 8, 2024), <https://www.epi.org/blog/youth-subminimum-wages/>.

⁸⁷ *Id.*

⁸⁸ Terry, *supra* note 76, at 35.

⁸⁹ *Id.* at 35-36.

⁹⁰ *See id.* at 37-38.

A. *Compliance with International Standards*

The language of the CLA, “Congress shall have power to limit, regulate, and prohibit the labor of persons under 18 years of age,” would also bring the United States more closely into compliance with the ILO Minimum Age Convention and the UN Convention on the Rights of the Child.⁹¹ The United States has been on the receiving end of much pressure from the UN and the ILO for its reluctance to commit to international standards, and while the CLA would not be an explicit ratification of either Convention, it would be a step closer than where federal regulation currently stands.⁹²

B. *Immunity from the Supreme Court and Other Courts*

A Constitutional amendment would also be virtually immune from being overturned by the Supreme Court.⁹³ This could prove to be particularly important, as the Roberts Court has shown a willingness to overturn precedent when it means returning agency to state governments.⁹⁴ Congress passed the FLSA at a turning point when the nation, the Supreme Court included, allowed the federal government to greatly increase in size and reach. But that pendulum has swung back at a time when child labor law violations and investigations are increasing rapidly.⁹⁵

Without an expansionist mindset or a clear reason to allow sweeping federal bills as the Court had with President Roosevelt’s pressure and the looming shadow of the Great Depression in 1938, the chances of meaningful legislation surviving the Roberts Court remain low, even as organizations like Governing for Impact, the Economic Policy Institute, and the Child Labor Coalition pushed the outgoing Biden administration for additional child labor protections in anticipation of further rollbacks under the Trump administration.⁹⁶ And though the Supreme Court recently expanded the president’s powers in *Trump v. United States*, there would still need to be a president with especially strong convictions about child labor to attempt to use these expanded powers at all.⁹⁷

⁹¹ 65 Cong. Rec. H7251 (daily ed. Apr. 26, 1924); King-Guffrey, *supra* note 1; *Normlex*, INTERNATIONAL LABOR ORGANIZATION, *supra* note 1.

⁹² King-Guffrey, *supra* note 1.

⁹³ Notwithstanding Justice Barrett’s personal belief that the Fourteenth Amendment is unconstitutional. *The legal theories of Amy Coney Barrett, explained*, Vox (Oct. 27, 2020), <https://www.vox.com/policy-and-politics/21453067/amy-coney-barrett-potential-nominee-supreme-court>.

⁹⁴ See *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022) (overturning *Roe v. Wade* and returning abortion legislation fully to the states).

⁹⁵ Mast, *supra* note 6.

⁹⁶ Rachael Klarman, *Organizations urge Biden-Harris Administration to strengthen child labor protections amid rising workplace injuries and violations*, NAT’L CONSUMERS LEAGUE, (Oct. 16, 2024), <https://nclnet.org/organizations-urge-biden-harris-administration-to-strengthen-child-labor-protections-amid-rising-workplace-injuries-and-violations/>.

⁹⁷ See *Trump v. United States*, 603 U.S. 593 (2024).

C. *Shrinking Federal Agencies*

Following the Supreme Court's decision in *Loper Bright*, which overturned the Chevron deference, the power of federal agencies remains uncertain.⁹⁸ Though some federal courts, like the U.S. District Court of Colorado, have attempted to preserve the power of the Department of Labor (DOL) by invoking the Auer deference,⁹⁹ other courts, like the Fifth Circuit Court of Appeals, have been much more willing to strike down DOL rules, even if they are arguably based on internal regulations rather than interpretations of the FLSA.¹⁰⁰ The end of Chevron will not immediately affect existing agency regulations, such as the Hazardous Occupation Orders (HOs). However, it opens the door for states and employers to challenge these rules more easily. They may now argue that the regulations, new or existing, exceed the scope of authority necessary to effectively implement the FLSA.

Relatedly, the second Trump administration has focused on eliminating federal oversight and cutting funds from federal agencies, primarily through executive orders or through the Department of Government Efficiency (DOGE).¹⁰¹ The Trump administration will likely continue limiting DOL regulatory power as it has with other agencies, especially given that (1) Trump already attempted to invalidate DOL rules during his first presidency, and (2) Republican platforms have indicated a willingness to attack existing HOs to make hazardous work more accessible for young people interested in "inherently dangerous jobs."¹⁰²

As such, the CLA could be a valuable tool in creating space for the enforcement of the FLSA and any future child labor legislation separate from the Department of Labor—or in codifying existing HOs—with relative judicial stability. A constitutionally backed law would have strong protection in federal court from any attempts to cancel its effects through an executive order; as a potential parallel, the Trump executive order

⁹⁸ See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

⁹⁹ *Green v. Perry's Rests., Ltd.*, 758 F. Supp. 3d 1312, 1319 (D. Colo. 2024) (citing *Auer v. Robbins*, 519 U.S. 452 (1997), (holding that courts should defer to an agency's interpretation of its own ambiguous regulation).

¹⁰⁰ Daniel Wiessner, *US judge says DOL guidance on tipped worker pay survived end of Chevron*, REUTERS, (Dec. 6, 2024), <https://www.reuters.com/legal/government/us-judge-says-dol-guidance-tipped-worker-pay-survived-end-chevron-2024-12-06/>.

¹⁰¹ See, e.g., Anastasia Obis, *Hegseth cuts \$580 million in contracts, grants with DOGE's help*, FED. NEWS NETWORK, (Mar. 20, 2025), <https://federalnewsnetwork.com/defense-main/2025/03/hegseth-cuts-580-million-in-contracts-grants-with-doges-help/>.

¹⁰² Wiessner *supra* note 100; Veronica Goodman, *Project 2025 Would Exploit Child Labor by Allowing Minors To Work in Dangerous Conditions With Fewer Protections*, CTR. FOR AM. PROGRESS, (Jul. 18, 2024), <https://www.americanprogress.org/article/project-2025-would-10-year-oldsexploit-child-labor-by-allowing-minors-to-work-in-dangerous-conditions-with-fewer-protections/>.

seeking to narrow birthright citizenship has met significant pushback in federal courts for running afoul of the Fourteenth Amendment.¹⁰³

III. WHY THE CLA SHOULD BE PASSED NOW

A. *Turning Tide on Statutory Protections*

In terms of black letter law, many states have been rolling back child labor protections, especially in the wake of the COVID-19 pandemic.¹⁰⁴ Though some states have strengthened their child labor regulations, most have only done so by increasing the penalties levied for breaking existing laws, rather than expanding protections themselves.¹⁰⁵ And in Utah, where new legislation did restrict ten-year-olds working in gardening, countervailing exemptions for parental consent removed many existing age and hour restrictions.¹⁰⁶

Additionally, industries are outpacing laws, and even when individual states pass legislation aimed at emerging areas, they are often too slow or too narrow to prevent widespread harm.¹⁰⁷ For instance, Illinois and a handful of other states recently passed legislation protecting the finances of child social media stars – “kidfluencers” – but do not go so far as to address the other major issues associated with social media fame at a young age, such as hours regulation for filming content.¹⁰⁸ And as it stands, Congress would likely not be able to pass sufficiently targeted legislation without retribution from the Supreme Court. The FLSA leaves significant carveouts for industries where parents do the bulk of employing or managing their own children, like filming social media content, and the Roberts Supreme Court would likely err on the side of parental freedom.¹⁰⁹

B. *What is Different from 1924*

Just as farm work in 1924 bore little resemblance to farm work in the late 1800s, farm work in the twenty-first century is far more industrialized than it was in 1924.¹¹⁰ With the population of the U.S. having roughly tripled

¹⁰³ See *Federal Court Blocks Trump Birthright Citizenship Executive Order*, ACLU (Feb. 10, 2025), <https://www.aclu.org/press-releases/federal-court-blocks-trump-birthright-citizenship-executive-order>.

¹⁰⁴ Mast *supra* note 6.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* (Minnesota being the only true exception, where their new statute eliminated youth subminimum wage, made it possible for illegally employed minors to sue for damages, and established that penalties for employers should be levied per violation, rather than per child).

¹⁰⁷ Ariana Newhouse, *The New Laws Protecting Kid Influencers You Should Know*, THE SHELF, (Mar. 16, 2024) <https://www.theshelf.com/the-blog/kid-influencer-laws/>.

¹⁰⁸ *Id.*

¹⁰⁹ See generally Fair Labor Standards Act of 1938, 29 U.S.C. § 8.

¹¹⁰ USDA ECON. INFO. BULL., THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE AND FARM POLICY, at 6 (2005).

since 1924, the agricultural industry has become heavily mechanized to keep up with demand.¹¹¹ From 1930 to 1960 alone, the number of tractors used on farms in the U.S. increased from 920,000 to 4.7 million.¹¹² With an increase in the use of machinery at all levels of farming and an increase in farming overall comes an increase in potentially hazardous conditions, especially for children. In addition to children working legally on their parents' farms, there has been a large influx of migrant farm workers, and by extension, undocumented child farm workers, over the twentieth century.¹¹³ And these numbers are not always reflected accurately in the census; those working illegally are generally not counted, and in some years, the census takers collected data at lulls in the agricultural season, so the number of children on farms would be much lower than in reality.¹¹⁴

And just as the population has grown considerably in the intervening century, the government has as well. Despite a recent growing sentiment from the Supreme Court and the Republican party advocating for more state-level legislative power, the size of the federal government remains large.¹¹⁵ Specifically, the federal government highly subsidizes farmers. President Roosevelt set a precedent for the government getting involved in the affairs of farmers with the Agricultural Adjustment Act, and in 2021, roughly thirty-four percent of U.S. farm households received payments from the federal government.¹¹⁶

By the same token, societal norms have shifted greatly in terms of what kind of privacy citizens should expect, both culturally and in legislation. Through the start of the twentieth century, and certainly prior to the Great Depression, the idea of the government reaching into the homes of private citizens drew scorn; Rep. Tydings even remarked during the CLA's Congressional deliberations: "I think you are planning Federal interference that will bring resentment and ill feeling toward your Federal Government."¹¹⁷ Today, that sentiment does not hold the same weight, or at least, not in the same way. The expansion of the welfare state and the federal government writ large has softened public perception of the government as a paternalistic figure, even as Trump-era and post-pandemic political polarization

¹¹¹ *Id.*; *Historical Population Change Data (1910-1920)*, U.S. CENSUS BUREAU (Apr. 26, 2021), <https://www.census.gov/data/tables/time-series/dec/popchange-data-text.html>; Njuki, *A Look at Agricultural Productivity Growth in the United States, 1948-2017*, U.S. DEP'T AGRIC. (Mar. 5, 2020), <https://www.usda.gov/about-usda/news/blog/look-agricultural-productivity-growth-united-states-1948-2017>; USDA ECON. INFO. BULL., *supra* note 110.

¹¹² USDA ECON. INFO. BULL., *supra* note 110

¹¹³ *Id.*

¹¹⁴ Terry, *supra* note 76, at 37-28.

¹¹⁵ See generally *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022)

¹¹⁶ See generally Michele Metych, *Agricultural Adjustment Act*, Britannica <https://www.britannica.com/topic/Agricultural-Adjustment-Act> (last visited Dec. 5, 2025); USDA ECON. RSCH. SERV., *COMMERCIAL FARMS LED IN GOVERNMENT PAYMENTS IN 2021*, (MAY 15, 2023), <https://www.ers.usda.gov/amber-waves/2023/may/commercial-farms-led-in-government-payments-in-2021>.

¹¹⁷ 65 Cong. Rec. H7305 (daily ed. Apr. 26, 1924) (statement of Rep. Tydings).

continues to sow general distrust in the government.¹¹⁸ Additionally, the increasing interconnectedness of society has made the cultural expectation of privacy nearly obsolete, even as online movements in favor of home-schooling and overall stronger parental control abound.¹¹⁹ What used to be taboo, like recording videos of strangers in public and sharing them with the general public, has now become the norm.¹²⁰

And immigration, at least as of March 2025, remains more open than it was in 1924.¹²¹ Though the Trump administration has spoken at length about decreasing immigration into the United States, the rhetoric still does not match the pervasiveness of anti-immigration sentiment in the 1920s, which saw the passage of both the Emergency Quota Act and the Immigration Act of 1924; the former of which closed U.S. borders entirely.¹²² Ergo, it can safely be assumed that migrant labor will continue past 2025, and with it, the exploitation of undocumented child farmworkers.

C. *Why Could It Pass Now*

As of 2025, only ten additional states need to ratify the CLA for it to pass.¹²³ Due to the party and platform switch of the mid-twentieth century, as well as shifts in industry over time, geographically, several states that have not yet ratified the CLA would be likely to do so if reintroduced today. For instance, New York, a state with rampant child labor in the early twentieth century, has become a leader in progressive legislation, particularly in regulating child labor.¹²⁴ Northern states like Massachusetts and New York also had strong Catholic coalitions with a vested interest in promoting Catholic schools over public education in the 1920s, which biased them against the CLA at the time due to the Amendment's

¹¹⁸ *Public Trust in Government: 1958-2024*, PEW RESEARCH CENTER, (June 24, 2024), <https://www.pewresearch.org/politics/2024/06/24/public-trust-in-government-1958-2024/>.

¹¹⁹ In addition to calls for homeschooling, rising concerns among parents, particularly in the American right, against mandatory vaccinations, sex ed, and even doctors speaking to their children without them present have risen significantly post-pandemic.

¹²⁰ Jason Okundaye, *Why it's time to stop filming strangers in public for social media thrills*, THE GUARDIAN, (Jan. 25, 2023).

¹²¹ *Compare* Emergency Quota Act of 1921, Pub. L. No. 67-5, 42 Stat. 5 (1921) (repealed by the Immigration Act of 1924, Pub. L. 68-139, 43 Stat. 153); Immigration Act of 1924, Pub. L. 68-139, 43 Stat. 153, (amended by Immigration and Nationality Act of 1965, 8 U.S.C. ch. 12) (establishing strict immigration quotas for people coming from outside Northwestern Europe) with Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (1965).

¹²² Emergency Quota Act of 1921, Pub. L. No. 67-5, 42 Stat. 5 (1921), *repealed by* Immigration Act of 1924, Pub. L. 68-139, 43 Stat. 153; Immigration Act of 1924, Pub. L. 68-139, 43 Stat. 153 (1924), *amended by* Immigration and Nationality Act of 1965, 8 U.S.C. ch. 12.

¹²³ Wood, *supra* note 8.

¹²⁴ *Hours of Work for Minors*, NEW YORK STATE DEPARTMENT OF LABOR, <https://dol.ny.gov/hours-work-minors#:~:text=New%20York%20State%20has%20one,when%20school%20is%20in%20session> (last visited Dec. 20, 2024) ("New York State has one of the strictest child labor laws in the country").

association with promoting compulsory public schooling.¹²⁵ Today, these states have robust public education systems, and the issue of private school education is no longer as closely entwined with the issue of child labor.¹²⁶

On a broader level, the 2024 Democratic Party Platform included the following: “We’ll strengthen enforcement and penalties for safety, wage, and other labor and employment violations. And, Democrats will continue to aggressively hold companies accountable for violating child labor law.”¹²⁷ The 2024 Republican Party platform did not mention labor goals or child labor goals.¹²⁸ Vermont, Delaware, Maryland, and Rhode Island would also, based on their status as reliably Democratic states, likely ratify the CLA if it came to their legislature today. In fact, the CLA passed the Connecticut House of Representatives in May 2024 with a vote of eighty-eight in favor and fifty-five opposed, and the resolution has been introduced in the Senate for full ratification as of 2025.¹²⁹

But the United States has been approaching an inflection point. Literacy rates have dropped since the start of the pandemic,¹³⁰ and homeschooling rates have skyrocketed despite several of the most prominent homeschooling programs lacking the structure and resources to ensure academic progress.¹³¹ ACT data from 2023 also shows that only one in five recent high school graduates demonstrate the skills necessary to succeed in introductory college courses.¹³² These statistics exist against a backdrop where an increasing number of Americans say that they have “little or no confidence in higher education,” which matches the recent uptick in trade school enrollment among Generation

¹²⁵ Abbott, *supra* note 29, at 424.

¹²⁶ *Public School Rankings by State 2024*, WORLD POPULATION REVIEW, <https://worldpopulationreview.com/state-rankings/public-school-rankings-by-state> (last visited Dec. 20, 2024).

¹²⁷ *2024 Democratic Party Platform*, THE AMERICAN PRESIDENCY PROJECT, (Aug. 19, 2024), <https://www.presidency.ucsb.edu/documents/2024-democratic-party-platform>.

¹²⁸ *2024 Republican Party Platform*, THE AMERICAN PRESIDENCY PROJECT, (Jul. 8, 2024), <https://www.presidency.ucsb.edu/documents/2024-republican-party-platform>.

¹²⁹ Hudson Kamphausen, House Votes Yes On Federal Child Labor Amendment, Waits For Senate, *CT News Junkie*, (May 1, 2024) <https://ctnewsjunkie.com/2024/05/01/house-votes-yes-on-federal-child-labor-amendment-waits-for-senate/>; RESOLUTION RATIFYING THE PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PERMITTING CONGRESS TO REGULATE CHILD LABOR, *Connecticut General Assembly File No. 152*; H.R. 48, 2025, 152 Gen. Assembl. (Conn.).

¹³⁰ Sarah Hernholm, *Rise Of Homeschooling Is Making A Transformative Impact On Education*, FORBES, (Apr. 30, 2024), <https://www.forbes.com/sites/sarahhernholm/2024/04/30/rise-of-homeschooling-and-its-transformative-impact-on-education/> (As of the end of 2023, two-thirds of American children struggle to read proficiently).

¹³¹ Liz Mineo, *A warning on homeschooling*, THE HARVARD GAZETTE, (May 15, 2020), <https://news.harvard.edu/gazette/story/2020/05/law-school-professor-says-there-may-be-a-dark-side-of-homeschooling/> (“Law School professor says there is little legal oversight of educational standards or safeguards against abuse”).

¹³² Bruno V. Manno, *Are High School Graduates Ready For College?*, FORBES, (May 28, 2024), <https://www.forbes.com/sites/brunomanno/2024/05/28/are-high-school-graduates-ready-for-college/>.

Z students.¹³³ Additionally, the second Trump administration began the process of shuttering the Department of Education wholesale in 2025.¹³⁴ The intersection of rising anti-intellectualism and the growing ease with which children can find employment, legal or otherwise, points toward a future in which child labor may soon reach a level of societal and legal normalization not seen since the CLA was first proposed.

D. Potential Roadblocks and Solutions

Of course, if passing the CLA were simple or straightforward, it likely would have been done already. Firstly, the issue of inertia. Though Connecticut stands on the precipice of ratifying the CLA, the average constituent likely does not know the CLA ever existed, much less that it can still be ratified today.¹³⁵ New Hampshire, however, may provide a solution. In 2024, the New Hampshire House voted to reaffirm its 1933 ratification of the CLA. Similar affirmations by some of the twenty-eight states that have ratified the Amendment so far may encourage holdout states, especially those more likely to support it after the twentieth century party realignment, to reconsider the proposed Amendment they rejected nearly a century ago.¹³⁶ There should also be a push from media, whether through mainstream news or social media platforms, to bring awareness that the CLA can still be an option for states to ratify.¹³⁷

Secondly, agrarian reason has not dissipated with time. Both the Obama and Biden administrations attempted to curb child labor in agriculture, and were met with considerable pushback.¹³⁸ Most notably, both administrations worked through the DOL to draft new HOs that brought the agricultural sector more directly under the FLSA.¹³⁹ The strongest attempt came in 2011, when the DOL under the Obama administration proposed a new Hazardous Occupations order to more thoroughly cover

¹³³ Jeffrey M. Jones, *U.S. Confidence in Higher Education Now Closely Divided*, GALLUP, (Jul. 8, 2024), <https://news.gallup.com/poll/646880/confidence-higher-education-closely-divided.aspx>; Olivia Sanchez, *While some students skip college, trade programs are booming*, AP NEWS, (Apr. 17, 2023), <https://apnews.com/article/community-college-trade-school-075d7e7e2b0dc659920a9be6d054c8b2>.

¹³⁴ *Fact Sheet: President Donald J. Trump Empowers Parents, States, and Communities to Improve Education Outcomes*, THE WHITE HOUSE, (Mar. 20, 2025), <https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-empowers-parents-states-and-communities-to-improve-education-outcomes/>.

¹³⁵ H.R.J. Res. 48, 2025 Gen. Assemb., Reg. Sess. (Conn. 2025).

¹³⁶ H.R. Res. 24, 2024 Gen. Court, Reg. Sess. (N.H. 2024).

¹³⁷ See, e.g., Suzanne Blake, *Map Shows States That Haven't Approved Congress Limiting Child Labor*, NEWSWEEK, (Dec. 11, 2024) <https://www.newsweek.com/map-shows-states-that-havent-approved-congress-limiting-child-labor-1999346>.

¹³⁸ Sophie Hayssen, *Child Labor in the U.S.: Despite Laws, Kids Work in Agriculture, Fast Food, Industry*, TEEN VOGUE, (Mar. 13, 2023), <https://www.teenvogue.com/story/child-labor-us-how-common>.

¹³⁹ Terry, *supra* note 76, at 156.

child farmworkers, but it was quickly rebuked by former vice-presidential candidate Sarah Palin.¹⁴⁰ Mitt Romney directly attacked Obama over the issue on the 2012 campaign trail, insinuating that the Obama administration wanted to tell parents “what their 15-year-old sons and daughters can and can’t do on the family farm.”¹⁴¹ Obama quickly backtracked, and the DOL withdrew its proposal, along with a statement clarifying that the Obama administration was committed to respecting “the rural way of life.”¹⁴²

If farmers’ rights remain directly entangled in any discussion of expanding federal child labor regulations, anyone hoping to revive the CLA will have to separate the two issues. A century ago, David Clark played off the fears of rural America to shut down the CLA, and opponents to child labor regulation continue to use those same tactics today.¹⁴³ An anti-misinformation campaign would be difficult given the current political climate and the advent of politics through social media, but it would be a necessary step to counteract the bad press the CLA would receive from the start. Politicians seeking to shift the focus away from the potential loss of child labor on farms can also put their weight behind alternative measures to increase the agricultural workforce in the United States.

The Blue Card initiative, introduced several times by Democratic Senator Dianne Feinstein and initially supported by Republican Senator Saxby Chambliss, would be one such program. It sought to supplement the H-2A agricultural guest worker visa program by creating a path to legal work papers for undocumented farmworkers, thereby stabilizing the agricultural workforce for both workers and employers.¹⁴⁴ In theory, the Blue Card initiative would obviate much of the need for H-2A visa requests, meaning that agricultural employers would not need to search for seasonal workers on short notice and would thus rely less on child labor.

Behind agricultural concerns lies the broader parental interest problem. Just because children can and do suffer educational, mental, and physical harm from working at young ages, does not mean that child labor cannot sometimes be the best imperfect solution for a family facing poverty. This is particularly true for undocumented families, where the lack of formalized benefits or healthcare can strain finances and necessitate supplemental income.¹⁴⁵ Beyond logistical concerns, many parents also believe that they should have complete control over their children’s lives without government interference. Although the CLA passed the

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 156-57.

¹⁴³ Reno Gazette, *What Clear Thinkers Are Saying About The “Child Labor Amendment”*, NEWSPAPERS.COM, NOV. 18, 1924 at 5.

¹⁴⁴ See Agricultural Worker Program Act of 2019, S.175, 116th Cong. (2019); S.2087, 109th Cong. (2005) (bill to amend the Immigration and Nationality Act to provide for the employment of foreign agricultural workers, and for other purposes).

¹⁴⁵ Kamphausen, *supra* note 129.

Connecticut House, and has been introduced in the General Assembly as recently as 2025, opposition at all stages expressed a similar concern, with Representative Howard stating that “[i]f Congress were to pass that law, [prohibiting labor under 18] they wouldn’t be able to have their kids working and collecting a paycheck until 18.”¹⁴⁶

Representative Howard’s statement highlights that, unlike agricultural concerns, which are rooted in a somewhat realized fear of the federal government seeking to exert control over family farms, the broader parental or familial issue is a hypothetical one. Congress has not proposed a law prohibiting all work by individuals under 18, and the likelihood of them doing so remains extremely low. This impasse between imagined fear and reality has occurred before. During the 1924 congressional debates over the CLA, several representatives pointed out that Congress would never seek to pass a law prohibiting the employment of minors wholesale, but the mere possibility of such a law was enough to turn a significant number of representatives firmly against the proposition.¹⁴⁷

Even with a few states that would almost certainly pass the CLA if it came before their legislatures today, uncertainty persists regarding the future political landscape of the United States. The CLA did not become a partisan issue until President Roosevelt began shaping the Democratic Party into the more progressive of the two major national parties, but today the framing of the child labor debate reflects a decidedly pro-regulation Democratic stance versus an anti-regulation Republican one.¹⁴⁸

Breaking down the numbers, there are seven states among the holdouts that have a reliably Democratic majority sufficient to tip the odds in favor of the CLA passing on a renewed proposal: New York, Vermont, Massachusetts, Rhode Island, Maryland, Virginia, and Hawaii.¹⁴⁹ Among the remaining states, South Dakota, Nebraska, Missouri, Tennessee, South Carolina, Mississippi, Alabama, Florida, Louisiana, Texas, Alaska, North Carolina, and Georgia, only Nebraska passed legislation in 2024 that further regulates child labor.¹⁵⁰ Any serious attempt to renew a push for CLA ratification would need to include an individualized strategy directed at the two or three states most likely to break with the Republican Party line on this issue.¹⁵¹

¹⁴⁶ *Id.* (internal quotation marks omitted).

¹⁴⁷ See generally 65 CONG. REC. H7243-7322 (daily ed. Apr. 26, 1924).

¹⁴⁸ Terry, *supra* note 76, at 156.

¹⁴⁹ *Electoral Map: Blue or Red States Since 2000*, 270TOWIN, <https://www.270towin.com/content/blue-and-red-states> (last visited Dec. 20, 2024).

¹⁵⁰ Mast, *supra* note 6 (LB 906 Increases penalties for child labor violations and broadens the power of the DOL).

¹⁵¹ For instance, messaging in Georgia could draw on the backlash to statements made by a Georgia Republican congressman, who suggested that child labor laws should be repealed so that, instead of getting free lunch, children could work to feed themselves. Rebecca Shabad, *Republican congressman suggests some children receiving free school lunches should work at*

CONCLUSION

In the century since the first proposal of the Child Labor Amendment, many assumed that the issue of child labor would eventually fade, the states would regulate it out of existence on their own, or that society would progress to the point where the practice would naturally fall out of favor. For a time, that seemed to be the case, but child labor never truly disappeared, and, in many states, it is once again on the rise. Although the FLSA remains landmark legislation, it lacks the reach necessary to adequately address child labor concerns at the federal level.

Many of the complaints that defeated the CLA in the 1920s persist today, including agrarian concerns, states' rights issues, and defensiveness concerning parental authority. Yet in many ways, Americans, and the United States as a whole, are better prepared to confront those challenges now than they were a century ago. The rise of a larger federal government over the twentieth century, coupled with the mid-century party switch, places the CLA in a stronger position than it has been in for decades. Furthermore, the troubling state of public education in the United States, an institution long associated with lower rates of child labor, combined with the rollback of many statewide child labor protections, has created an urgent situation. The Child Labor Amendment may not offer an immediate solution to the problems posed by child labor, but it represents an important first step—a step that may only remain feasible for a short window of time.