Farmworker Profile

The makeup of the agricultural work force is a key factor in planning farmworker housing initiatives. This chapter provides a profile of the population surveyed by the Trust.

Household Composition

Of those surveyed, 77% indicated they were living with family, while 23% described themselves as unaccompanied individuals who were not living with relatives or anyone else with whom they shared finances. Approximately 53% of those surveyed were married, while 30% were single.

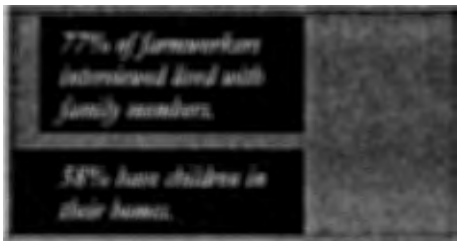
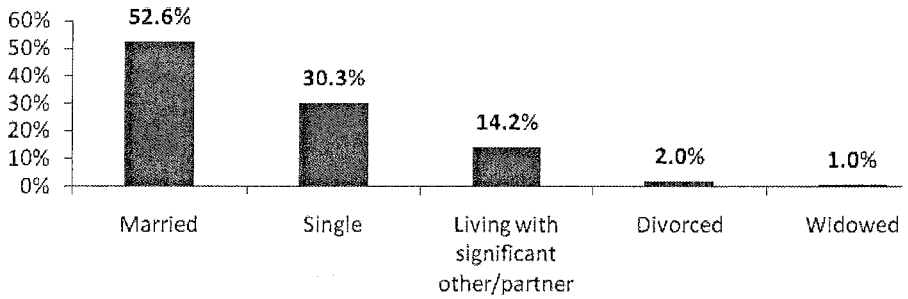


Figure 1: What is your marital status?



Fifty-eight percent of those surveyed were living with at least one of their own children in the household; 88% of the households with children were two-parent households. Extended families were relatively common, as were unrelated individuals living in the household. The average accompanied household included 2.6 farmworkers.

Figure 2: Family Relatives Living With You in Washington

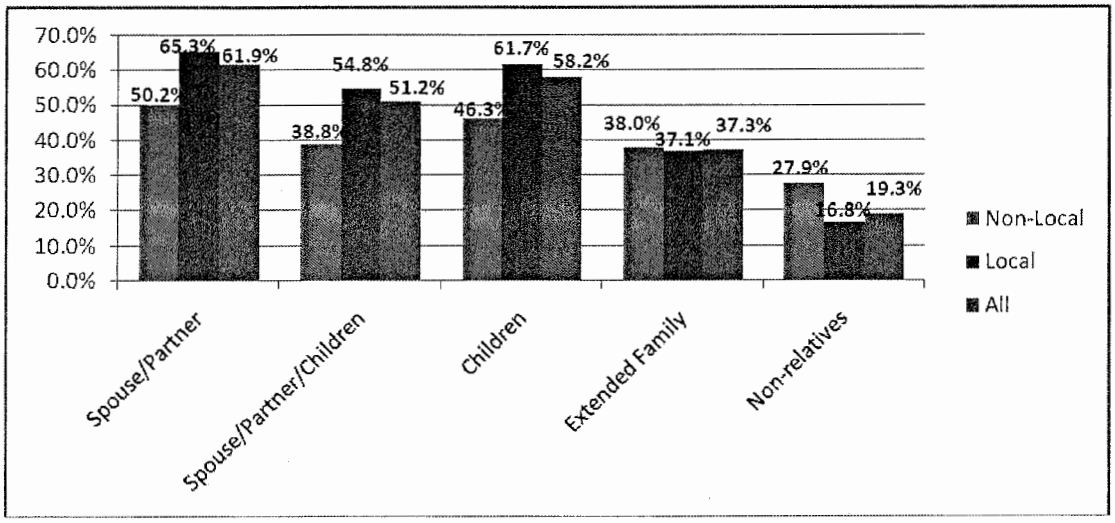


Figure 3: Accompanied & Unaccompanied Households

	Non-Local		Local		All	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Accompanied Households	492	58.6%	1,682	84.7%	2,174	77.0%
Unaccompanied Households	347	41.4%	303	15.3%	650	23.0%

Figure 4: Farmworkers Per Household

	Non-Local	Local	All
Average all households	2.07	2.27	2.21
Average accompanied households	2.83	2.50	2.57

One in three respondents reported that they had a spouse/significant other or child who was not living with them while they were working. The majority of spouses and children were in Mexico, and nearly one-third lived elsewhere within Washington State. Many of these respondents bear the expense of maintaining two homes.

Households had an average of more than 2 farmworkers.

Figure 5: Do You Have a Spouse/Significant Other or Children (under age 18) Who Do Not Live With You Here?

Response	Frequency	Percent
Yes	894	31.5%
No	1,945	68.5%
Total	2,839	100.0%

Figure 6: Where Does Your Spouse or Significant Other (not with you here) Live?

Response	Frequency	Percent
Washington	241	30.4%
Oregon	5	0.6%
California	102	12.9%
Other US state	4	0.5%
Mexico	436	55.1%
Other Country	4	0.5%
Total	792	100.0%

Figure 7: Where Do Your Children (under the age of 18) Who Don't Live With You Reside?

Response	Frequency	Percent
Washington	456	30.9%
Oregon	7	0.5%
California	133	9.0%
Other US state	15	1.0%
Mexico	856	58.0%
Other Country	9	0.6%
Total	1,476	100.0%

Ethnicity

Respondents were asked to choose an ethnicity that best describes them. Of those surveyed, 95% described themselves as "Mexican" or "Mexican American." Approximately 3% said they were "Indigenous Mexican," while fewer than 2% identified themselves as "Central American."

These results were similar across the five regions, however Region 1(Lewis, Clark, Snohomish, Skagit and Whatcom Counties) had a notably higher proportion of respondents self-identified as Indigenous Mexican (23%) and Central American (9%.)

Figure 8: **Which of the Following Best Describes You?**

Response	Frequency	Percent
Mexican/Mexican American	2,699	95.1%
Mexican (Indigenous)	86	3.0%
Central American (e.g. Guatemala, El Salvador, Nicaragua)	47	1.7%
African American	3	0.1%
Asian/Pacific Islander	2	0.1%
Caucasian	2	0.1%
Total	2,839	100.0%

Language and Literacy

Approximately 94% of the participants in the survey listed Spanish as the primary language spoken in their household, 5% listed indigenous languages and 1% listed English.

Respondents whose primary language was *not* English were asked about their English reading and writing skills. More than 77% of the respondents stated they could neither read nor write in English. Approximately 15% stated that they could read and write in English, while 6% could read, but not write in English. According to both directors of Basic Skills at Wenatchee Valley College and Skagit Valley College, areas that serve many farmworkers, the demand for ESL courses is high and increasing.[13] When harvest season begins in the spring, ESL enrollment declines because many students stop attending classes to work in agriculture.[14] The nature of the agricultural harvest season can make it difficult for farmworkers to complete or enroll in ESL classes.

Those respondents who indicated that Spanish was *not* their primary language were asked about their Spanish reading and writing skills. Over 77% of these respondents stated they had Spanish reading and writing skills. Almost 18%, however, stated they could neither read nor write in Spanish. This illiteracy rate among farmworkers has recently been addressed by many Washington community colleges and public schools that began to host CONVEyT, a Spanish literacy program offered by the Mexican government.[15] Schools have experienced success with CONVEyT but continue to face the challenge of maintaining students throughout the harvest season.

[13] Larry Ruddell, Interview by Rosalinda Mendoza. May 13, 2008.
[14] Interview with a Director of Basic Skills. May 13, 2008.
[15] "Portal to Opportunity." *Northwest Education*, (Spring 2006). <http://www.nwrel.org/nwedu/11-03/portal/>.

Figure 9: What is The Primary Language You Speak At Home?

Response	Frequency	Percent
English	31	1.1%
Spanish	2,672	93.9%
Indigenous languages	142	5.0%
Total	2,845	100.0%

Figure 10: Can You Read and Write in Basic English? (If primary language is not English)

Response	Frequency	Percent
Yes, read and write	415	14.9%
Read only	165	5.9%
Write only	23	0.8%
Neither read or write	2,191	78.4%
Total	2,794	100.0%

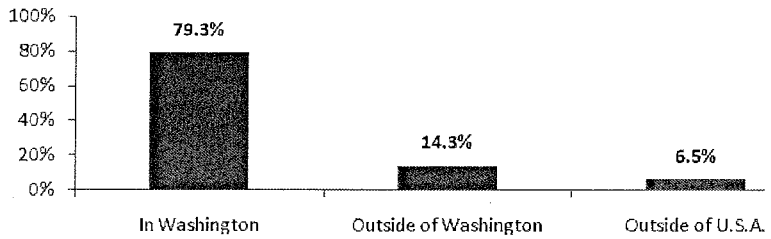
Figure 11: Can You Read and Write in Basic Spanish? (If primary language is not Spanish)

Response	Frequency	Percent
Yes, read and write	134	77.5%
Read only	5	2.9%
Write only	3	1.7%
Neither read or write	31	17.9%
Total	173	100.0%

Permanent Place of Residence

Respondents were asked what city, state or country they considered their permanent place of residence. Nearly 80% of the respondents were permanent residents of Washington, while 14% resided in another state within the United States. Almost 95% of those residing in another state lived in California and 3% in Oregon. Less than 7% considered a country outside of the United States their permanent residence. Of these respondents, 99% listed Mexico as their home.

Figure 12: Where is Your Permanent Residence?



N=2,845

Figure 13: Washington Residents: How Long Have You Been Living Within 75 Miles of This Area?

Years	Frequency	Percent
Less than one year	361	16.0%
One year to less than 5 years	764	33.9%
5 years to less than 10 years	530	23.5%
10 years or more	596	26.5%
Total	2,251	100.0%

Figure 13 includes respondents whose primary residence is in Washington whether they travel for work or not. Half of all respondents had lived more than five years within 75 miles of where the interview was conducted in Washington. Figure 13 understates the length of residence because respondents may have lived even longer in the state, but not in the community where they were surveyed.

Figure 14: Where is Your Permanent Residence Outside of Washington?

Response	Frequency	Percent
California	385	94.8%
Oregon	12	3.0%
Texas	7	1.7%
Florida	1	0.3%
Idaho	1	0.3%
Total	406	100.0%

Figure 15: Where is Your Permanent Residence Outside of the U.S.A.?

Response	Frequency	Percent
Mexico	182	99.5%
El Salvador	1	0.6%
Total	183	100.0%

Local/Non-Local Workers

Approximately 30% of the respondents reported that they worked part of the year at locations where they could not return to their primary home each night, while 70% indicated they always work in the same area as their residence. Respondents who live away from home were asked how much time they spent away from home for work. Over 21% spent less than 30 days living away from home, 31% travel for one to three months, 28% travel for three to six months and 19% are away from home from six months to one year.

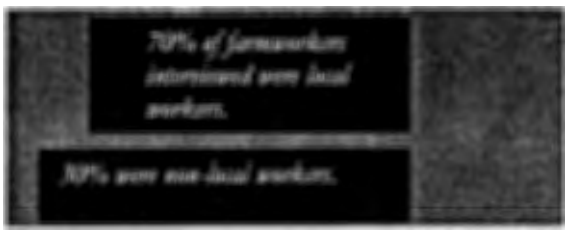


Figure 16: Non-Local Workers: During the Last 12 Months, How Much Time Was Spent Living Away From Home in Washington Because You Were Working in Agriculture?

Response	Frequency	Percent
Less than 30 days	172	21.4%
One month to less than three months	252	31.4%
Three months to less than six months	223	27.8%
Six months to less than nine months	115	14.3%
Nine months to one year	40	5.0%
Total (includes only those who travel)	802	100.0%

Employment

Years Working in Washington Agriculture

Roughly 63% of the respondents reported working in agriculture in Washington for more than five years, with more than one-third saying they have been employed in farm work here for over ten years. Nearly one-third of the respondents always work for the same employer(s), while 43% indicated they go wherever they can find work. About 11% reported that this is the first time they have worked in Washington agriculture.

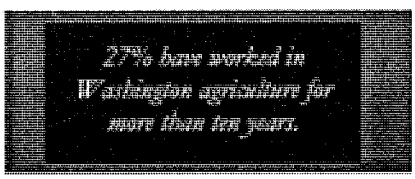


Figure 17: How Long Have You Been Working in Agriculture in Washington?

Response	Frequency	Percent
Less than 6 months	153	5.4%
Six months up to one year	70	2.5%
More than one year but less than two years	198	7.0%
More than two years but less than five years	634	22.3%
More than five years but less than 10 years	739	26.0%
More than 10 years	1,043	36.8%
Total	2,837	100.0%

Figure 18: When Working in Washington, Do You Work For the Same Employer(s) Each Year?

	Non-Local		Local		All	
Response	Frequency	Percent	Frequency	Percent	Frequency	Percent
This is the first time I've worked in Washington	113	13.6%	185	9.4%	298	10.7
Yes, I always work for the same employer(s)	144	17.3%	736	37.5%	880	31.5
No, I work for different employers each year, depending on where I can find work	462	55.5%	733	37.4%	1,195	42.8
Some employers are the same and some are different	113	13.6%	308	15.7%	421	15.1
Total	832	100.0%	1,962	100.0%	2,794	100.0%

Future Employment Plans

Respondents were asked how much longer they plan to work in agriculture in Washington. One in four of the respondents intend to work in agriculture for more than ten years, while 11% stated they would stay for more than five years, but less than ten. Forty percent of the respondents said that they did not know how much longer they would be working in agriculture, while 10% stated they would stay in agriculture for less than one year. The high percent who answered "don't know" to this question highlights the challenge of maintaining a stable agricultural workforce.

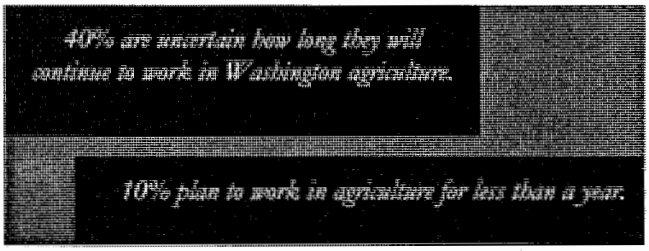
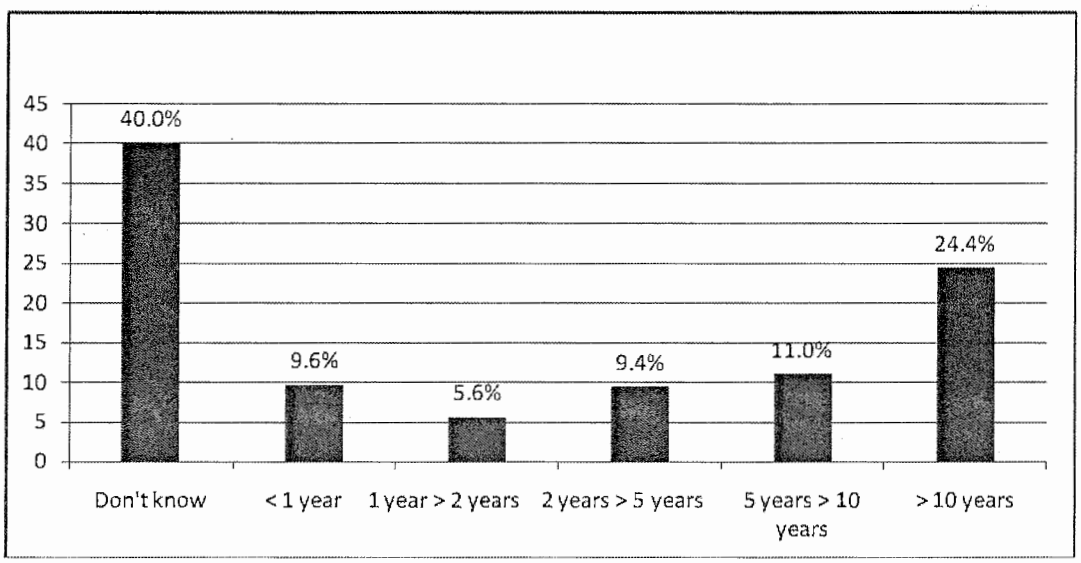
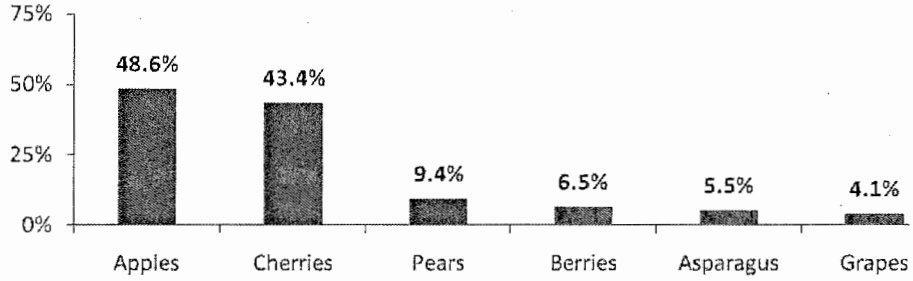


Figure 19: How Much Longer Do You Think You Will Be Working in Agriculture in Washington?



Crops and Work Tasks

Figure 20: What Crops Were You Working Within the Last 30 Days? (Top 6 responses)



Multiple response question with 2,837 respondents offering 3,723 responses.

Figure 21: **What Crops Were You Working Within the Last 30 Days? (All responses)**

Response	Frequency	Percent
Apples	1,380	48.6%
Cherries	1,231	43.4%
Pears	267	9.4%
Berries	183	6.5%
Asparagus	155	5.5%
Grapes	115	4.1%
Miscellaneous vegetable	84	3.0%
Onions	62	2.2%
Hops	54	1.9%
Peaches & nectarines	48	1.7%
Nursery	38	1.3%
Forestry	31	1.1%
Other agricultural activity	27	1.0%
Potatoes	25	0.9%
Food processing/cannery	13	0.5%
Mint	9	0.3%
Fish/Shellfish	1	0.0%

Multiple response question with 2,837 respondents offering 3,840 responses.

Nearly half (49%) of all respondents reported they had worked on the state's top cash crop (apples) within the past 30 days. Respondents worked an average of 1.31 crops (non-duplicated). Respondents were also asked which tasks they had performed within the last 30 days. On average, survey respondents performed 1.52 jobs during the past month such as picking, thinning and pruning crops.

Income

The average personal income reported by all participants for 2005 was $12,327, with fewer than 7% reporting earnings of more than $20,000 last year. This finding is in the middle of the earnings range reported by the Washington Employment Security Department for workers employed only in agriculture ($9,124) and those who are also employed in nonagricultural sectors ($15,313). Over 50% of the respondents reported that there were two or more wage earners in their household. The average for all households surveyed was more than two farmworkers per household. The average household income earned in 2005 by those surveyed was $17,596, about $3,400 below the federal

poverty level for a family of four. Household income varied by region, with households in Region 3 earning just $12,791 in 2006, while those in Region 5 earned $21,425 on average.

Figure 22: Household Income As a Percentage of 2006 Area Median Income

Income	Frequency	Percent		Income	Frequency	Percent
≤ 30% AMI	647	40.9%		Extremely Low Income (≤ 30% AMI)	647	40.9%
> 30% to ≤ 50% AMI	582	36.8%		Very Low Income (0% to 50% AMI)	1,229	77.7%
> 50% to ≤ 80% AMI	308	19.5%		Low Income (0% to 80% AMI)	1,537	97.2%
> 80% AMI	45	2.8%				N = 1,582
Total	1,582	100.0%				

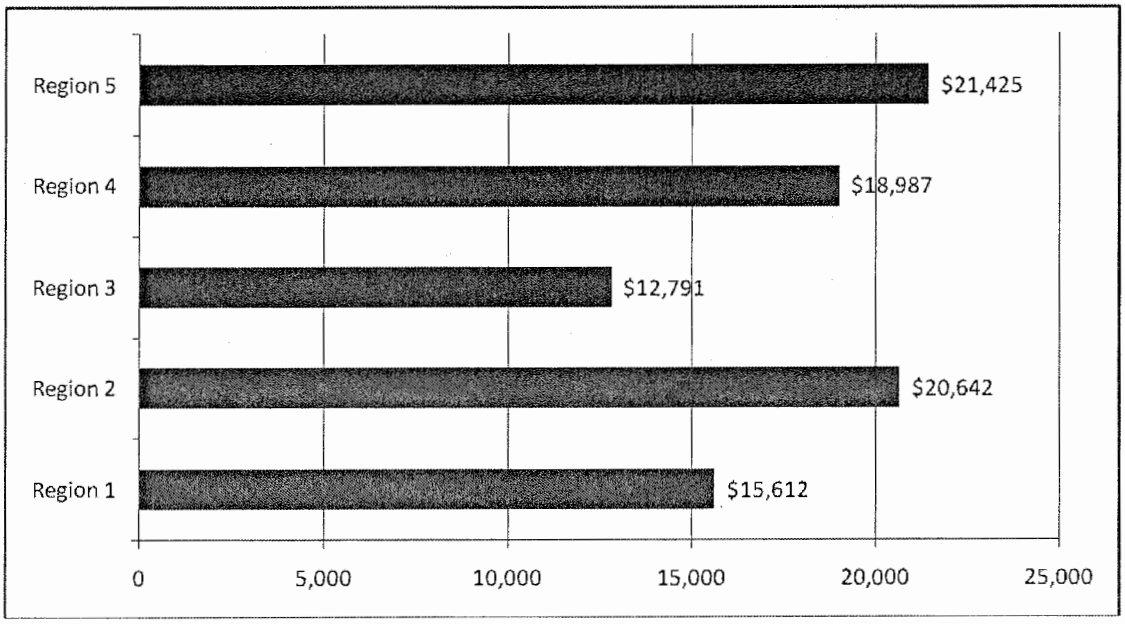
Figure 23: Average Personal & Household Income

Response	Non-Local	Local	All
Average Personal Income	$10,891	$12,961	$12,328
Average Household Income	$13,553	$19,369	$17,596

Figure 24: How Many People Contribute Income (actual dollars) to Your Household?

Response	Frequency	Percent
1	1,198	49.4%
2	734	30.3%
3	191	7.9%
4	141	5.8%
5	86	3.5%
6	44	1.8%
7	13	0.5%
8	11	0.5%
9	5	0.2%
12	1	0.0%
Total	2,424	100.0%

Figure 25: Average Household Income by Region



Region 1: Clark, Lewis, Skagit, Snohomish, and Whatcom Counties
Region 2: Yakima County
Region 3: Chelan, Douglas, and Okanogan Counties
Region 4: Adams and Douglas Counties
Region 5: Benton, Franklin and Walla Walla Counties

CHAPTER TWO
Housing Issues

- Housing Conditions
- Housing Costs
- Crowded Housing Units
- The Importance of Housing in Life Decisions
- Housing Preferences
- Homeownership

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Housing Issues

Housing Conditions

Overview: Primary Housing Need Indicators

Three primary indicators are conventionally examined in assessing housing need: substandard housing, cost-burden and crowding. The prevalence of these indicators as reported by survey respondents are discussed in more detail later in this chapter and summarized below with the respondents' incomes by household size as a percentage of the 2006 Washington Statewide Area Median Income (AMI).[19] The prevalence of the primary housing need indicators is similar to the Washington State findings of the national farmworker survey conducted by the Housing Assistance Council (HAC) in 2000.

Figure 26: Household Income As a Percentage of 2006 Area Median Income

Income	Frequency	Percent		Income	Frequency	Percent
≤ 30% AMI	647	40.9%		Extremely Low Income (≤ 30% AMI)	647	40.9%
> 30% to ≤ 50% AMI	582	36.8%		Very Low Income (0% to 50% AMI)	1229	77.7%
> 50% to ≤ 80% AMI	308	19.5%		Low Income (0% to 80% AMI)	1537	97.2%
> 80% AMI	45	2.8%				N = 1582
Total	1582	100.0%				

Figure 27: Housing Need Indicators

(1) Substandard Housing	Non-Local	Local	All
Homeless (unstructured housing, e.g. car, shed)	15%	2%	6%
Housing Problems	42%	33%	36%
(2) Cost-Burden	**Renters**	**Homeowners**	**All**
Severe cost-burden (>50% of Income)	19%	27%	20%
Cost-Burden (>30% of Income)	42%	63%	44%
(3) Crowding			**All**
Crowded housing units (more than 1.01 persons/room)			32%

[19] Area Median Incomes (AMI) are established annually by the U.S. Department of Housing and Urban Development and are used by many affordable housing programs.

Current Living Situation

Figure 28: Which of the Following Responses Most Accurately Describes Your Living Situation?

Response N=2803	Non-Local	Local	All
Renting a house, apartment, mobile home	30.4%	57.8%	49.8%
Live in labor camp	36.5%	12.1%	19.3%
Own a house	3.0%	14.3%	10.9%
RV, camper, trailer	7.8%	7.3%	7.5%
Unstructured housing (car, shed, etc.)	14.8%	2.4%	6.0%
Rent a cot/bed/bunk per day	6.3%	5.9%	6.0%
Rent room in motel	1.2%	0.2%	0.5%
Total	100.0%	100.0%	100.0%

Figure 29: Farmworkers Living in Employer Provided Housing

	Non-Local	Local	All
Live in employer provided housing	24.1%	13.6%	16.7%

Strategies to Find Housing

Those who traveled and sought housing other than their permanent residence were asked how they found their temporary housing. More respondents found housing through family and friends than through their employer. More than 14% stated that they were unable to find housing and camped out, lived in a car, or a homeless shelter.

Figure 30: Non-Local Workers: When Staying Away From Home Overnight, How Did You Find Housing?

Response	Frequency	Percent
Family or friends told me where I could find housing	174	20.7%
Employer provided housing	149	17.8%
Stayed with family or friends	148	17.6%
Employer told me where I could find housing	126	15.0%
Unable to find housing (e.g. camped out, lived in car, homeless shelter, etc.)	118	14.1%
Local housing or other service agency	68	8.1%
I found housing (hotel, rent a place) by myself	28	3.3%
Other	17	2.0%
Newspaper/radio	2	0.2%

Multiple response question with 839 respondents offering 830 responses.

Barriers to Finding Housing

Of the farmworkers interviewed, 38% reported having experienced difficulties in renting housing. Barriers included problems with affordability, availability and discrimination.

Figure 31: **If You Have Had Difficulty Renting Housing In This Area, What Barriers Have Prevented You From Being Able To Rent a Place to Live Here?**

Response N=991 (includes only those reporting difficulty)	Frequency	Percent
No housing available	446	45.0%
Not having money needed up front (deposit, first or last month rent)	432	43.6%
Can't find a place you can afford	276	27.9%
Have language barriers	237	23.9%
Landlord requires a lease and I don't need housing for that long	177	17.9%
Face discrimination barriers	149	15.0%
Other	24	2.7%
Don't meet requirements	14	1.4%
Too many people	7	1.0%
Not enough places/bad conditions	7	1.0%

Multiple response question with 991 respondents offering 1,769 responses.

Housing Problems

More than one-third (36%) of respondents cited problems with their housing, with an average of 2.3 problems per unit. This finding is close to the 40.1% substandard units HAC found in its 2000 survey that included an inspection of each unit by the surveyor. More non-local farmworkers reported housing problems than did local workers who do not travel. The 2000 Census found only 1.1% of rural Washington housing units lacked complete plumbing, compared to 3.6% of survey respondents.

Figure 32: **Percent and Average with Housing Problems:**

Response	Non-Local	Local	All
Have housing problem(s) N=2,845	42%	33%	36%
Average number of problems (only respondents with problems) N=1,012	2.01	2.44	2.30

Figure 33: Do You Currently Have Any of the Following Problems Where You Are Living:

Response N=1,012 (includes only those reporting problems)	Percent Reporting Yes
Cracking, peeling or chipping paint (lead-based?)	27.2%
Mice	22.8%
Roaches	18.7%
Appliances don't work/no appliances	17.6%
Heating problems/no heating	16.9%
Leaking faucets/plumbing	16.8%
Electrical problems	15.8%
Holes in the wall or floor	15.4%
Draft through windows/holes	12.6%
Poor water quality (can't drink the water)	12.5%
Leaking ceiling	11.5%
Toilet doesn't flush/plumbing doesn't drain	4.5%
Insufficient water supply	3.9%
No plumbing/toilet	3.6%
Waste water/sewage on top of ground	0.8%

Housing Costs

The federal standard for housing affordability is paying no more than 30% of household income for housing costs including utilities. Households paying more than 30% of their income are defined as cost-burdened. Those paying more than 50% of their income are defined as severely cost-burdened.

Nearly half of all respondents (44%) were cost-burdened. Included in that figure are the 20% of respondents who were severely cost-burdened. Cost-burden was also calculated separately for renters and for homeowners with the latter group reporting nearly two-thirds as cost-burdened (see table below). HAC's findings for housing cost-burden are available at the regional level and similar to the Trust survey, they found 45.8% of farmworkers in the Northwest were cost-burdened. In comparison, the 2000 Census found only 29.3% of rural Washington households suffered cost-burden.

Figure 34: Housing Cost-Burden

	Renters (N=1226)		Homeowners (N=163)		All (N=1389)	
Percent of Household Income Paid for Housing and Utilities	Frequency	Percent	Frequency	Percent	Frequency	Percent
More than 30% and up to 50%	279	22.8%	59	36.2%	338	24.3%
More than 50% (severe cost-burden)	231	18.8%	44	27.0%	275	19.8%
Total	510	41.6%	103	63.2%	613	44.1%

Crowded Housing Units

The U.S. Census Bureau defines crowded housing units as those with more than 1.01 persons per room, not including hallways or bathrooms. The 2000 Census found 5% of rural housing units in Washington State were overcrowded. The Washington State Farmworker Survey was not able to precisely match the Census definition of overcrowded units as interviewees were only asked how many formal bedrooms they had but an approximate measurement was made.

32% were living in overcrowded units.

For the purposes of this study only housing units with bedrooms separate from common areas (e.g. apartments, single family homes, mobile homes) were included. Each unit was assumed to also include a kitchen and common room, but not a formal dining room since most farmworker housing units do not have formal dining rooms. About 32% percent of respondents were estimated to be living in crowded conditions.

Another indicator of crowding is the number of bedrooms currently occupied versus the number needed. Approximately 64% of respondents reported needing three or more bedrooms. Only 34% currently live in that size unit and thus 30% likely live in overcrowded conditions. HAC's 2000 national survey found that 58% of farmworker units in Washington were overcrowded. Motel units were included in the HAC figure, which were not included in the overcrowding estimate used in this report.

Figure 35: **If Your Living Situation is a House, Apartment, Condominium, Triplex, Mobile Home, or Labor Camp With Bedrooms, How Many Formal Bedrooms Are There in This House or Structure?**

Response	Frequency	Percent
1 bedroom	615	25.9%
2 bedrooms	962	40.5%
3 bedrooms	689	29.0%
4 bedrooms	102	4.3%
5 bedrooms	7	0.3%
6 bedrooms	2	0.1%
7 bedrooms	1	0.0%
Total	2,378	100.0%

Figure 36: **How Many Bedrooms Would Be Enough?**

Response	Frequency	Percent
1 bedroom	189	7.5%
2 bedrooms	715	28.4%
3 bedrooms	1,122	44.6%
4 bedrooms	448	17.8%
5 bedrooms	35	1.4%
6 bedrooms	6	0.2%
Total	2,515	100.0%

Importance of Housing in Life Decisions

There is evidence in the survey results to suggest that improvements in housing could help to attract and retain farmworkers. Approximately 91% of respondents stated they would be more likely to continue working in agriculture if more or better housing were available. Over 93% of non-local workers said the availability of better housing would encourage them to continue coming to Washington to work, and 73% said they would be more likely to stay in Washington permanently.

Housing Preferences

Factors Affecting the Choice of Housing

When asked to rank thirteen factors affecting the choice of housing in terms of importance, more than 85% of the farmworkers who responded ranked cleanliness, cost, a safe neighborhood, and working appliances as very important, followed by enough bedrooms, a safe place for children to play nearby, and nearby medical care, each of which was listed as very important by more than 73% of the respondents.

One-half of the respondents identified cost as the single most important factor in selecting housing. Over 14% stated that a safe neighborhood was the most important, while 7% listed location near employment as the most important.

Figure 37: In General, How Important Are the Following When Considering Housing:

Response	Very important	Somewhat important	Not very important	Not at all important
Is clean	89.1%	6.2%	1.2%	0.2%
Is the least costly	88.9%	7.5%	1.6%	0.7%
In a safe neighborhood (away from crime, drugs and gangs)	87.9%	6.6%	2.0%	0.8%
Has working appliances like a stove, refrigerator, washer and dryer	86.8%	8.8%	1.3%	0.5%
Has enough bedrooms	78.6%	15.3%	2.6%	0.7%
A safe place for children to play nearby	77.4%	9.9%	6.5%	3.3%
Located near medical care	73.6%	15.6%	6.8%	1.2%
Located on or near the farm or orchard where you are working	67.1%	17.8%	11.6%	2.0%
Located with others who speak your language	66.5%	17.3%	11.1%	3.1%
Located near schools or child care	63.8%	15.9%	12.9%	5.0%
Located with others from your community	60.6%	19.2%	14.1%	3.4%
Located near your church	58.7%	21.8%	13.0%	3.4%
Located near shops and entertainment	52.9%	21.1%	18.1%	4.5%

Figure 38: Which One of These is Most Important to You?

Response	Frequency	Percent
Is the least costly	1,412	50.2%
In a safe neighborhood (away from crime, drugs and gangs)	402	14.3%
Located on or near the farm or orchard where you are working	203	7.2%
Located near medical care	199	7.1%
A safe place for children to play nearby	126	4.5%
Located near schools or child care	123	4.4%
Has enough bedrooms	94	3.3%
Is clean	74	2.6%
Located with others who speak your language	44	1.6%
Has working appliances like a stove, refrigerator, washer	4	1.5%
Located with others from your community	35	1.2%
Located near shops and entertainment	32	1.1%
Located near your church	27	1.0%
Total	2,814	100.0%

On-farm vs. Off-farm Housing

All respondents were asked whether they would prefer to live in on-farm housing or off-farm/in-town housing; 53% of the respondents preferred to live in town, while 39% preferred to live in on-farm housing. 8% did not express a preference.

Even though more non-local workers preferred housing in the community, still a significant portion preferred living on-farm. Of those who preferred to live *on-farm*, almost 86% stated a major reason was proximity to work. Of those who preferred to live *in town*, 67% stated the reason was they wanted to be close to services, schools, churches and the community. Almost 33% of the respondents who want to live in town also cited the ability to work wherever they want to; while almost 21% said they preferred the independence of living away from their workplace.

Figure 39: If the Costs to You of On-Farm and Off-Farm/In-Town Housing Were the Same, Which Would You Prefer to Live In?

	Non-Local		Local		All	
Response	Frequency	Percent	Frequency	Percent	Frequency	Percent
On-farm housing	327	43.8%	656	36.6%	983	38.7%
Off-farm/in-town housing	369	49.5%	979	54.6%	1,348	53.1%
No preference expressed	50	6.7%	158	8.9%	208	8.2%
Total	746	100.0%	1,793	100.0%	2,539	100.0%

Figure 40: Why Would You Prefer to Live in On-Farm Housing?

Response	Frequency	Percent
Close to work	840	85.5%
Ability to work on the farm	228	23.2%
Quiet, peaceful, private	38	3.9%
More secure, more freedom	22	2.2%
Like nature, animals, fresh air, don't like cities	21	2.1%
Work one place, stable work	8	0.8%
Other	2	0.2%

Multiple response question with 983 respondents offering 1,159 responses.

Figure 41: Why Would You Prefer to Live in Off-Farm/In-Town Housing?

Response	Frequency	Percent
Close to services, schools, churches, and the community	908	67.4%
Ability to work where I want to	443	32.9%
Independence of living away from my workplace	279	20.7%
Ability to live there year-round	218	16.2%
More secure, more freedom, comfortable	24	1.8%
Safe from pesticides, chemicals	12	0.8%
Expenses (get more money per hour)	4	0.3%
Always problems, don't like it in the camp	2	0.1%
Other	3	0.2%

Multiple response question with 1,348 respondents offering 1,893 responses.

Renter's Housing Preferences

Respondents were also asked whether they would rather rent or own their housing. The 32% who favored *renting* split roughly evenly between on-farm (37%) or in-town housing (34%), and 28% did not state a preference.

Those who favored renting housing were also asked who they would like to manage their housing unit. Over 45% of the respondents reported that it didn't matter who managed their housing. Although 37% preferred renting on-farm, only 29% preferred their employer to manage their housing. Fourteen percent preferred a community based housing organization and 11% a private landlord.

Figure 42: When Working in Washington Would You Prefer to Rent or Own Your Own Home, Apartment, or Trailer?

Response	Frequency	Percent
Rent	770	31.9%
Own	1,497	62.0%
Neither	148	6.1%
Total	2,415	100.0%

Figure 43: If You Would Prefer to Rent Your Housing, Would You Prefer to Live In:

	Non-Local		Local		All	
Response	Frequency	Percent	Frequency	Percent	Frequency	Percent
Housing not at your place of employment	162	46.4%	83	22.9%	245	34.4%
Housing provided at your place of employment	125	35.8%	140	38.6%	265	37.2%
Doesn't matter	62	17.8%	140	38.6%	202	28.4%
Total	349	100.0%	363	100.0%	712	100.0%

Figure 44: If You Would Prefer to Rent Your Housing, Would You Prefer Your Housing To Be Managed By:

	Non-Local		Local		All	
Response	Frequency	Percent	Frequency	Percent	Frequency	Percent
Private landlord	24	6.8%	58	15.5%	82	11.2%
Your employer	94	26.6%	117	31.2%	211	28.9%
A community based organization	70	19.8%	32	8.5%	102	14.0%
Myself	8	2.3%	2	4.5%	10	1.4%
Doesn't matter	158	44.6%	166	44.3%	324	44.4%
Total	354	100.0%	375	100.0%	729	100.0%

Homeownership

Although only 11% of survey respondents owned their homes, the majority (62%) expressed an interest in buying a home of their own (Figure 42). Almost 15% were actively planning to purchase a home in Washington within the next year, but described a variety of challenges.

Over half of the 348 respondents actively pursuing homeownership reported struggles with down payment, closing costs, and qualifying for a mortgage. Almost half expressed an interest in credit and homeownership counseling. The importance of pre-purchase and post-purchase counseling is also indicated by the high incidence of cost-burden among respondents who already own their home (63%). This is further emphasized by a 2008 study findings that Latino borrowers and borrowers in Latino neighborhoods consistently pay higher loan fees other things being equal (e.g. credit history, loan size, etc.).[20] The potential home buyers showed a very strong interest in self-help, with more than 93% stating that they would be interested in helping to build their own home if it would lower the cost.

Figure 45: **Are You Actively Planning to Purchase Your Own Home in Washington Within the Next 12 Months?**

Response	Frequency	Percent
Yes	348	14.8%
No	1,999	85.2%
Total	2,347	100.0%

Figure 46: **Where are You in the Home Buying Process?**

Response	Frequency	Percent
Still thinking about owning a home	161	46.3%
Saving for a down payment	145	41.7%
Shopping for a loan	38	10.9%
Actively house hunting	37	10.6%
Made an offer on a house/loan in progress	21	6.0%
Other	7	2.0%

Multiple response question with 348 respondents offering 409 responses.

[20] U.S. Department of Housing and Urban Development, "A Study of Closing Costs for FHA Mortgages, "*Office of Policy Development and Research.* (May 2008). <http://www.huduser.org/Publications/pdf/FHA_closing_cost.pdf>.

Figure 47: Do You Need Assistance With Any of the Following in Buying Your House?

Response	Frequency	Percent
Credit or debt counseling	166	47.7%
Learning about what affordable housing options are available	151	43.4%
Information on how to purchase a home	137	39.4%
Down payment assistance	124	35.6%
Other things about buying a home	10	2.9%
I don't need assistance	36	10.3%

Multiple response question with 348 respondents offering 624 responses.

Figure 48: What Obstacle(s) Do You Believe Has/Have Prevented You From Being Able to Successfully Purchase a Home?

Response	Frequency	Percent
Not having enough money for a down payment and closing costs	188	54.0%
Not having enough income to make monthly payments/qualify for a home loan	182	52.3%
Lack good enough credit to qualify for a home loan	83	23.9%
Do not understand the home buying process/Not sure how to get started	150	43.1%
Not being able to afford a home in a neighborhood that you like and can afford	50	14.4%
Face language barriers that prevent you from purchasing a home you want	36	10.3%
Face discrimination barriers that prevent you from buying the home you want	24	6.9%
Other	4	1.1%
I don't feel I face any barriers	18	5.2%

Multiple response question with 348 respondents offering 735 responses.

Figure 49: Would You Be Interested in Helping to Build Your Own Home if it Would Reduce the Cost?

Response	Frequency	Percent
Yes	325	93.4%
No	11	3.2%
Don't know	12	3.4%
Total	348	100.0%

CHAPTER THREE
Health and Child Care Issues

- Health/Dental Insurance Coverage
- Sources of Care
- Recent Use of Health Services
- Exposure to Pesticides
- Interest In Health Education
- Child Care
- Transportation to Services

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Health and Child Care Issues

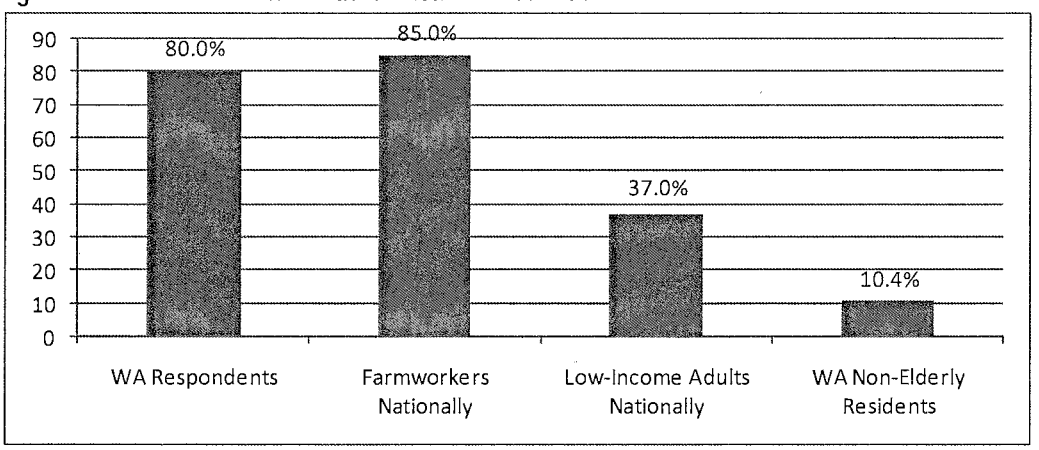
Health/Dental Insurance Coverage

Eight in ten farmworkers interviewed did not have any medical insurance compared to only 10% of non-elderly residents in Washington.[23] Sixty-seven percent of the respondents stated that neither they nor anyone in their family had medical insurance. Just 15% of those surveyed had dental insurance for themselves or any family member while more than 50% of Washington's population has dental coverage.[24] Poor living conditions or lack of housing has been shown to create additional health challenges both in adults and children.[25] As noted previously, more than one third of farmworkers interviewed reported to be cost-burdened (44%) or living in overcrowded (32%) or substandard housing conditions (36%).

Figure 50: Do You or Anyone in Your Family Who Lives With You Now Have Medical Insurance?

Response	Frequency	Percent
Yes, I do	114	4.1%
Yes, my family member(s) does	370	13.3%
Yes, both I and my family member(s) do	443	15.9%
No	1,853	67.0%
Total	2,780	100.0%

Figure 51: Farmworkers Without Health Insurance[26]



[23] Washington State Office of Financial Management.
[24] "Millions in this state must do without vital dental coverage," *The Seattle Times* on the Web. July 20, 2004. <http://seattlepi.nwsource.com/local/182826_dental20.html>.
[25] Funders' Network for Smart Growth and Livable Communities, "How Housing Affects Child Well-Being," (2006). <http://www.fundersnetwork.org/usr_doc/Housing_and_Child_well_being.pdf>.
[26] "Migrant and Seasonal Farmworkers: Health Insurance coverage and Access to Care," The Henry J. Kaiser Family Foundation: Kaiser Commission on Medicaid and the Uninsured, April 2005.

Figure 52: Do You or Anyone in Your Family Who Lives With You Now Have Dental Insurance?

Response	Frequency	Percent
Yes	428	15.4%
No	2,357	84.6%
Total	2,785	100.0%

Of the 16% who indicated that they had health insurance for their family and themselves, the majority (66%) of the coverage was provided by the State's Basic Health Plan which offers low-cost health care insurance. Less than 3% stated that they had Workers' Compensation as their insurance implying that only 14 of the 2,845 farmworkers interviewed were aware that they were entitled to this coverage through their work.

Approximately 46% of those with some form of coverage indicated that the plan required them to pay a deductible. Of those, more than one in three stated that the deductible had prevented them from visiting the doctor.

Figure 53: What Kind of Health Insurance Do You Have?

Response	Frequency	Percent
Basic Health	370	66.4%
Medicaid ("medical coupons")	51	9.2%
Provided by employer of another family member such as your spouse	29	5.2%
Private insurance	28	5.0%
Employer-provided	18	3.2%
Medicare	16	2.9%
Workers' Compensation	14	2.5%
Family Medical	13	2.3%
Pregnancy Medical	7	1.3%
Alien Emergency Medical	3	0.5%
Other	6	1.1%

Multiple response question with 557 respondents offering 555 responses.

Figure 54: What Does this Insurance Cover?

Response	Frequency	Percent
Your children	674	72.7%
You	535	57.7%
Your spouse/partner	345	37.2%
Other family member	22	2.4%
Father/Mother	21	2.3%
Brother/Sister	19	2.0%
Other	15	1.6%

Multiple response question with 927 respondents offering 1,631 responses.

Figure 55: What Kind of Health Insurance Does Your Family Member(s) Have?

Response	Frequency	Percent
Children's Health Insurance ("medical coupons")	446	54.9%
Basic Health	268	33.0%
Medicaid ("medical coupons")	230	28.3%
Medicare	44	5.4%
Family Medical	21	2.6%
Private Insurance	20	2.5%
Provided by employer of another family member such as your spouse	17	2.1%
Pregnancy Medical	10	1.2%
Employer-provided	8	1.0%
Worker's Compensation	6	0.7%
Alien Emergency Medical	2	0.2%

Multiple response question with 813 respondents offering 1,072 responses.

Figure 56: What Type of Children's Health Insurance Does Your Family Member Have:

Response	Frequency	Percent
Medical Coupons	112	27.9%
Children's Medical	109	27.2%
Medicaid	105	26.2%
Basic Health Plus	25	6.2%
Community Health Insurance Program Medical	20	5.0%
Healthy Kids	17	4.2%
Other	13	3.2%
Total	401	100.0%

Figure 57: Do You or Family Member Make Monthly Payments For This Insurance?

Response	Frequency	Percent
Yes	417	47.1%
No	469	52.9%
Total	886	100.0%

Figure 58: If Yes, How Much Do You/Family Member Pay Per Month?

Response	Frequency	Percent
$20 or less	158	42.0%
$21 - $40	86	22.9%
$41 - $80	81	21.5%
More than $80	51	13.6%
Total	376	100.0%

Figure 59: Do You Have to Pay Something – Such as a Co-Pay – Every Time You Visit a Doctor?

Response	Frequency	Percent
Yes	408	46.0%
No	478	54.0%
Total	886	100.0%

Figure 60: If Yes, Has this Ever Prevented You From Visiting The Doctor?

Response	Frequency	Percent
Yes	140	35.1%
No	259	64.9%
Total	399	100.0%

Figure 61: Does Your Insurance Cover Medicine the Doctor Might Prescribe?

Response	Frequency	Percent
Yes	654	76.4%
No	202	23.6%
Total	856	100.0%

Sources of Care

Respondents were asked where they usually sought health care services. Nearly 70% of the respondents stated they rely upon a community clinic or migrant health clinic when they need health care. Approximately 13% go to a hospital emergency room, almost 12% don't have a regular place they go for health care and 7% said they did not know where to go for care.

Figure 62: Where Do You Normally Go in This Area For Health Care?

Response	Frequency	Percent
Community Clinic/Migrant Health Clinic	1,973	69.3%
Hospital/Emergency Room	363	12.8%
Have no place I/we regularly go for health care	330	11.6%
Do not know where to go for health care	204	7.2%
Private Doctor	115	4.0%
Urgent Care Center	92	3.2%
Health department	36	1.3%
Healer (Curandero/a)	33	1.2%

Multiple response question with 2,845 respondents offering 3,146 responses.

Recent Use of Health Services

Nearly two-thirds of the respondents (66%) said they had not been to a doctor in the past twelve months. The respondents that had seen a doctor cited routine checkups (40%) and illness (39%) as the most common reason for seeking care.

More than one in four of those surveyed indicated they had never seen a dentist, while another 13% had not seen a dentist in more than five years. Dental problems were cited by more than half of those who reported not receiving needed health services during the past year.

Figure 63: Have You Been To a Doctor In The Last 12 Months?

Response	Frequency	Percent
Yes	957	33.7%
No	1,881	66.3%
Total	2,838	100.0%

Figure 64: What Reason Did You Visit The Doctor?

Response	Frequency	Percent
Routine Check-up	380	39.7%
Illness	373	39.0%
Pregnancy	89	9.3%
Immunizations	73	7.6%
Took Child for Health Care	72	7.5%
Work-related Illness or Injury	55	5.7%
Non-work-related Accident	49	5.1%
Chronic Health Problem	51	5.3%
Mental Health Care	19	2.0%
Domestic Violence	2	0.2%
Substance Abuse	1	0.1%

Multiple response question with 957 respondents offering 1,164 responses.

Figure 65: How Long Has it Been Since You Last Visited a Dentist, Hygienist, or Orthodontist?

Response	Frequency	Percent
Have never visited	724	28.6%
1 to 6 months ago	423	16.7%
7 to 12 months ago	252	9.9%
More than one year, up to 2 years ago	465	18.3%
More than 2 years, up to 5 years ago	356	14.0%
More than 5 years ago	315	12.4%
Total	2,535	100.0%

More than 36% of all respondents stated that they or a member of their family had needed medical care in the previous twelve months. Although 92% of those needing care stated that they were able to receive it, more than 5% reported that they were not able to receive needed medical or dental care during the past year. Of those cases, 76% were seeking care for themselves and 26% for their child.

Respondents cited lack of insurance (40%) as the major reason for being unable to receive care followed by cost (35%) and not able to leave work (13%).

Figure 66: **Have You or Anyone in Your Family Needed Medical or Dental Attention in the Last 12 Months?**

Response	Frequency	Percent
Yes	1,035	36.6%
No	1,720	62.4%
Total	2,755	100.0%

Figure 67: **If You or Anyone in Your Family Has Needed Medical or Dental Attention in the Last 12 Months, Were You Able to Receive It?**

Response	Frequency	Percent
No, we were not able to receive medical care or dental care	55	5.4%
No, we were not able to receive medical care but we were able to receive dental care	7	0.7%
No, we were not able to receive dental care but we were able to receive medical care	16	1.6%
Yes, we were able to receive the medical or dental care we needed	943	92.4%
Total	1,021	100.0%

Figure 68: **If You or Family Member Was Not Able to Receive Medical or Dental Attention, Was This You, a Child (under age 18), or An Adult?**

Response	Frequency	Percent
You	59	75.6%
Child	20	25.6%
Adult	28	35.9%

Multiple response question with 78 respondents offering 107 responses.

Figure 69: What Type of Medical or Dental Care Did You Need That You Were Unable to Receive?

Response	Frequency	Percent
Illness	19	24.4%
Routine Medical Check-up	14	17.9%
Help with Painful Teeth	14	17.9%
Cavity(ies) Filled	10	12.8%
Tooth (teeth) Pulled	9	11.5%
Routine Dental Check-up	8	10.3%
Chronic Health Problem	5	6.4%
Immunizations	2	2.6%
Pregnancy Care	2	2.6%
Work-related Illness or Injury	2	2.6%
Non-work-related Accident	1	1.3%
Mental Health Care	1	1.3%
Took Child for Health Care	1	1.3%
Other Medical Care	1	1.3%

Multiple response question with 78 respondents offering 89 responses.

Figure 70: What Type of Medical or Dental Care Did Your Family Member Need That They Were Unable to Receive?

Response	Frequency	Percent
Routine Medical Check-up	14	17.9%
Illness	13	16.7%
Cavity(ies) Filled	13	16.7%
Help with Painful Teeth	9	11.5%
Immunizations	7	9.0%
Routine Dental Check-up	7	9.0%
Tooth (teeth) Pulled	7	9.0%
Took Child for Health Care	6	7.7%
Pregnancy Care	3	3.8%
Chronic Health Problem	1	1.3%
Mental Health Care	1	1.3%
Other Dental Care	2	2.6%

Multiple response question with 78 respondents offering 83 responses.

Figure 71: Why Were You Unable To Get The Help You Needed?

Response	Frequency	Percent
No Insurance	31	39.7%
Cost	27	34.6%
Not Able to Leave Work to Get Care	10	12.8%
Could Not Find a Doctor or Dentist Who Would See Me/Family Member	7	9.0%
Citizenship/Immigration Issues	6	7.7%
Language	5	6.4%
Hours the Health Facility Was Open (not open when you/they could go)	5	6.4%
Faced Discrimination When Getting Care	5	6.4%
Don't Know Where To Go To Get Care	4	5.1%
Uncomfortable With the Doctors in This Area	3	3.8%
Could Not Understand Telephone System at Medical Office So Could Not Make an Appointment	3	3.8%
Lacked Transportation To Get There	1	1.3%

Multiple response question with 78 respondents offering 107 responses.

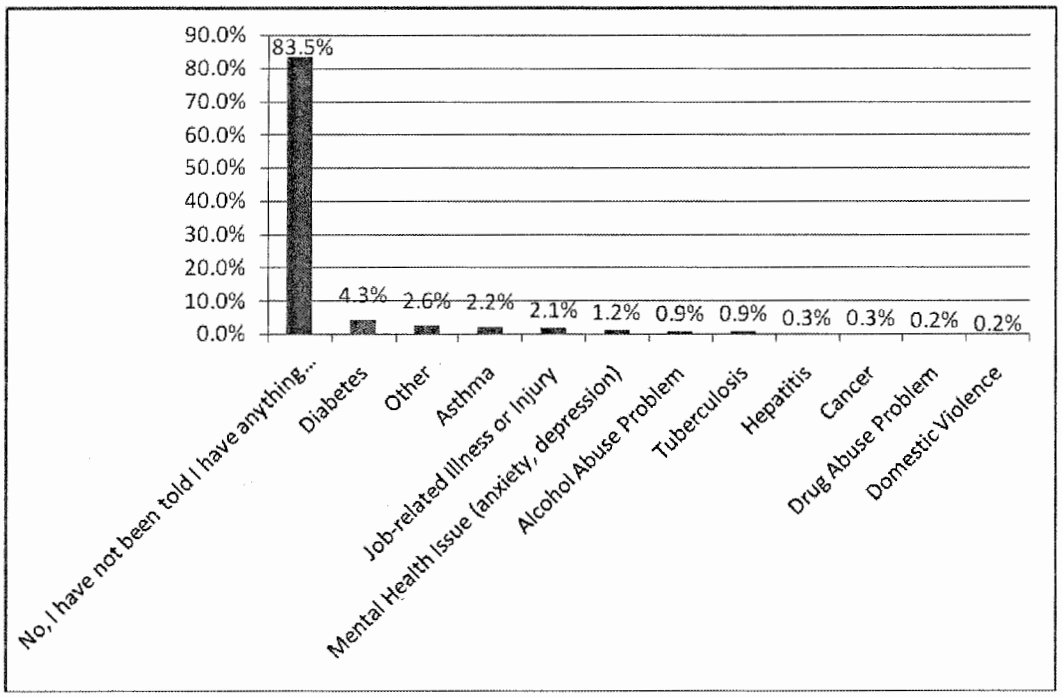
Figure 72: Why Was Your Family Member Unable To Get the Help They Needed?

Response	Frequency	Percent
No Insurance	20	25.6%
Cost	20	25.6%
Not Able to leave work to get care	5	6.4%
Citizenship/immigration issues	3	3.8%
Hours the Health Facility Was Open (not open when you/they could go)	3	3.8
Language	2	2.6%
Don't Know Where To Go To Get Care	2	2.6%
Faced Discrimination When Getting Care	2	2.6%
Lacked Transportation To Get There	1	1.3%
Could Not Find a Doctor or Dentist Who Would See Me/Family Member	1	1.3%

Multiple response question with 78 respondents offering 59 responses.

Respondents were asked whether they had ever been told by a physician that they had significant health problems, the majority (84%) reported that they had never been told they had any of those problems. Roughly 4% reported diabetes, lower than the approximately 10% of Latino Americans and the 6% of the entire U.S. population with diabetes.[27] Nearly 1% reported that they had been told they had tuberculosis.

Figure 73: **Have You Ever Been Told By a Doctor or Other Health Care Professional You Have Any of the Following?**



[27] The George Washington University, "Health Information: General Diabetes Statistics." <http://209.85.215.104/search?q=cache:ZAxjlfAgvtMJ:www.gwdocs.com/health/eHA-eHA_Content_C-Generic_Content_Page_Template_1131123677673.html+washington+latinos+with+diabetes&hl=en&ct=clnk&cd=23&gl=us>.

Pesticide Exposure

Nearly 8% of those surveyed reported that they or a family member had been told by a health care professional that they had been exposed to pesticides. Respondents were then asked if they or a family member thought they had been exposed to pesticides. Almost 14% indicated they believed they had been exposed to pesticides and about 57% of those respondents sought medical attention.

Respondents that didn't seek medical help experienced eye problems (45%), headaches (44%) and skin irritation (43%) which led them to believe they had been exposed to pesticides. Both respondents and their family members cited inability to afford a doctor as the number one reason for not seeking medical help for pesticide exposure.

Figure 74: Have You or a Family Member Ever Been Told By a Doctor or Other Health Care Professional That You Have Been Exposed to Pesticides?

Response	Frequency	Percent
Yes	215	7.7%
No	2,578	92.3%
Total	2,793	100.0%

Figure 75: Did You Ever Think You Had Been Exposed to Pesticides But Did Not Seek Medical Help?

Response	Frequency	Percent
Yes, but did not seek medical attention	160	6.0%
Yes, and did seek medical attention	208	7.8%
No	2,288	86.1%
Total	2,656	100.0%

Figure 76: Did a Family Member Ever Think They Had Been Exposed to Pesticides But Did Not Seek Medical Help?

Response	Frequency	Percent
Yes, but did not seek medical attention	91	3.5%
Yes, and did seek medical attention	70	2.7%
No	2,474	93.9%
Total	2,635	100.0%

Figure 77: What Made You Think You Had Been Exposed to Pesticides?

Response	Frequency	Percent
Eye Problem	72	45.0%
Headache	71	44.4%
Skin Problem	68	42.5%
Nausea/Vomiting	24	15.0%
Dizziness	22	13.8%
Respiratory Problems	21	13.1%
Numbness/Tingling	9	5.6%
Neurological Problems	5	3.1%

Multiple response question with 160 respondents offering 292 responses.

Figure 78: What Made You Think a Family Member Had Been Exposed to Pesticides?

Response	Frequency	Percent
Skin Problem	43	47.3%
Eye Problem	38	41.8%
Headache	24	26.4%
Respiratory Problems	14	15.4%
Dizziness	10	11.0%
Nausea/Vomiting	8	8.8%
Numbness/Tingling	4	4.4%
Neurological Problems	2	2.2%
Other	1	1.1%

Multiple response question with 91 respondents offering 144 responses.

Figure 79: Why Didn't You Seek Medical Help?

Response	Frequency	Percent
Couldn't afford cost to go to a doctor	57	35.6%
Did not want to take time off work	56	35.0%
Health problems (symptoms) went away	33	20.6%
Did not know where to go for help	29	18.1%
Had no way to get to a doctor	19	11.9%
Afraid you/they would get in trouble if you/they went to a doctor for pesticide exposure; e.g. might get fired	17	10.6%
Too far to go to the doctor	10	6.3%
Supervisor/manager wouldn't fill out an accident report	3	1.9%
Supervisor/manager told you/them not to go	2	1.3%

Multiple response question with 160 respondents offering 266 responses.

Figure 80: Why Didn't Family Member Seek Medical Help?

Response	Frequency	Percent
Couldn't afford cost to go to a doctor	38	41.8%
Did not know where to go for help	20	22.0%
Did not want to take time off work	14	15.4%
Health problems (symptoms) went away	12	13.2%
Afraid you/they would get in trouble if you/they went to a doctor for pesticide exposure; e.g. might get fired	10	11.0%
Had no way to get to a doctor	8	8.8%
Too far to go to the doctor	3	3.3%
Supervisor/manager told you/them not to go	2	2.2%
Supervisor/manager wouldn't fill out an accident report	1	1.1%

Multiple response question with 91 respondents offering 108 responses.

Interest in Health Education

Farmworkers surveyed were asked about their interest in learning more about health issues. More than half wanted information on dental care (59%) and health insurance eligibility (56%); while 45% stated they wanted more information on good nutrition. Approximately one in three was interested in obtaining information on child health, cancer checkups, treating chronic illnesses, pesticide health and safety and immunizations.

Figure 81: Would It Be Helpful To You To Have Information Available About Any of The Following Health Care Issues?

Response	Frequency	Percent
Dental Health	1,668	58.6%
Health Insurance Eligibility	1,604	56.4%
Good Nutrition	1,288	45.3%
Infant/Child Health	1,021	35.9%
Cancer Check-ups (pap smears, breast examinations, prostate exam, other)	976	34.3%
Treating Chronic Illness (such as diabetes, asthma)	969	34.1%
Pesticide Health and Safety	955	33.6%
Immunizations	807	28.4%
Mental Health (anxiety, depression)	695	24.4%
Substance Abuse (alcohol, tobacco or drugs)	668	23.5%
Maternal Health/Pregnancy	595	20.9%
Domestic Violence	509	17.9%
I do not need information about any of the above	213	7.5%

Multiple response question with 2,845 respondents offering 11,968 responses.

Child Care

The survey asked farmworkers if they had children under age 13 who needed child care but were not able to receive it. Over 21% indicated they had young children who needed child care and 20% of those were not able to secure child care. Respondents unable to receive day care services reported cost (35%) as the top reason. One in ten stated they did not know where to go for child care, 10% stated that local child care centers were full and another 10% said facilities were not open when they needed care. The Washington State Child Care Resource & Referral Network found that over the past five years the number of family child care facilities declined by 17% and only 44% of the existing centers offer non-standard hour care (evenings, weekend and/or overnight).[28]

Figure 82: **Do You Have Young Children (under the age of 13) in Washington That Need Day Care, But Are Not Able to Receive It?**

Response	Frequency	Percent
I do not have any young children	1,797	63.5%
No, my children receive day care	487	17.2%
No, my children do not need day care	427	15.1%
Yes, I have children that need day care but are not able to receive it	118	4.2%
Total	2,829	100.0%

Figure 83: **What Is The Reason That They Are Unable to Attend or Receive Day Care?**

Response	Frequency	Percent
Cost	41	34.7%
Don't know where to go to get care	13	11.0%
Day care centers are all full	12	10.2%
Hours the day care facility is open (e.g. not open early enough)	12	10.2%
No day care in the area	9	7.6%
Day care doesn't accept infants	6	5.1%
Uncomfortable with day care providers in this area	5	4.2%
Lack transportation to get there	4	3.4%

Multiple response question with 118 respondents offering 102 responses.

[28] Washington Child Care Resource & Referral Network, "Child Care in Washington State," (2007), 1-3.

Transportation to Services

Public transit options in many rural areas are limited or non-existent, so farmworkers need access to private vehicles. The majority of respondents reported they usually have reliable transportation to services, while nearly one-tenth did not.

Figure 84: Do You Usually Have Reliable Transportation to Other Services That You Need In Washington, Such as The Grocery Store, Church, School, the Doctor, or Other Appointments?

Response	Frequency	Percent
Yes	2,509	90.3%
No	270	9.7%
Total	2,779	100.0%

CHAPTER FOUR
Civic Engagement

- Civic Engagement
- Use of Public Services

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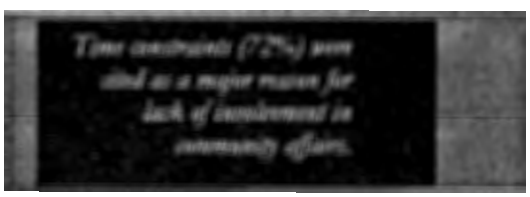
Civic Engagement

Respondents were asked a series of questions about their participation with others in the community. More than one in seven respondents reported being actively engaged in civic affairs. Almost 30% reported that they donated money to an organization that improves local conditions and 16% donated time. More than 12% attended a public meeting or rally that addressed local issues. Limitations on farmworkers' community involvement was attributed to time constraints (86%) and too much work (81%) which were the top reasons reported by farmworkers surveyed.

Of those who had engaged in organized community improvement efforts (422 respondents), the largest numbers worked on political campaigns or issues (75%), school-related issues (64%), sports (61%) and housing issues (60%).



When asked whether their efforts to improve conditions had been successful, the response varied dramatically by issue. Almost 65% of respondents who had worked on neighborhood clean-ups said they had been at least somewhat successful, followed by housing issues (62%), health issues (54%) and sports (53%). Those who had been involved in crime prevention reported the least success (37%).

Respondents were then asked how much influence "people like you" have over various issues. Few of those surveyed felt they had some or a lot of influence on political issues (18%) or crime (29%) compared to the 50% on health issues.

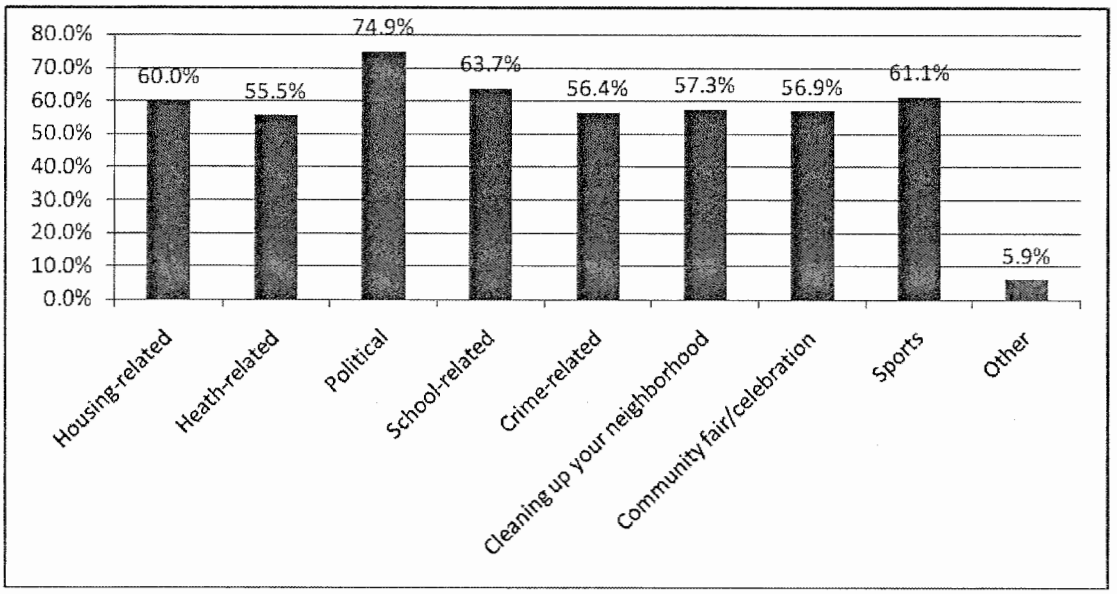
Figure 85: **Have You Ever Joined With Others in Your Community in Washington to Work Together to Fix or Improve Something in Your Local Washington Community?**

Response	Frequency	Percent
Yes	422	15.2%
No	2,356	84.8%
Total	2,778	100.0%

Figure 86: In the Last Twelve Months, Have You:

Response	Frequency	Percent
Donated money to an organization that helps people or improves conditions in your community	831	29.7%
Contributed your time to an organization that helps people or improves conditions in your community	435	15.6%
Attended a public meeting, rally or other event to address problems in your community	341	12.3%
Contacted a public official about problems in your community	154	5.5%

Figure 87: What Issue/s Did You Work On?



Multiple response question with 422 respondents offering 2,075 responses.

Figure 88: Were You Successful in Fixing or Improving the Issue(s) You Were Working On:

Response	Yes, a lot	Yes, somewhat	Not much	Not at all
Housing-related	34.3%	28.2%	24.1%	13.5%
Health-related	31.0%	22.5%	28.2%	18.3%
Political	19.3%	26.9%	28.9%	24.9%
School-related	29.9%	20.7%	27.4%	22.0%
Crime-related	20.4%	16.2%	37.0%	26.4%
Cleaning up your neighborhood	41.1%	23.7%	21.9%	13.2%
Community fair or celebration	15.2%	24.4%	33.2%	27.2%
Sports	30.3%	22.9%	22.5%	24.2%

Figure 89: Are You Currently a Member of Any of The Following in the Washington Area:

Response	Frequency	Percent
Local religious organization such as a church, synagogue, mosque, or temple	1,249	44.5%
Local sports or athletic organization	348	12.8%
Local educational or parent's organization such as a PTA	179	6.5%
Worker cooperative	133	4.8%
Health cooperative	127	4.6%
Local community or neighborhood group such as a block association or neighborhood watch	105	3.7%
Local political organization	44	1.6%
Local home owners or housing association	42	1.5%
Labor union	32	1.2%

Figure 90: How Much Influence Do You Think People Like You Can Have Over The Following Issues:

Response	A lot of influence	Some influence	A little influence	No influence at all
Housing-related	30.8%	16.9%	26.2%	26.1%
Health-related	30.8%	18.8%	24.8%	25.7%
Political	7.5%	10.8%	23.6%	58.1%
School-related	21.6%	17.5%	22.9%	38.0%
Crime-related	14.8%	14.1%	25.9%	45.2%
Cleaning up your neighborhood	26.1%	18.9%	24.2%	30.7%
Community fair or celebration	16.3%	17.7%	26.3%	39.7%
Sports	23.9%	18.6%	23.8%	33.7%

Figure 91: State If This Is a Major Reason, Minor Reason, or Not a Reason at All That You Have Not Gotten Involved:

Response	A major reason	A minor reason	Not a reason at all
Don't have time	72.1%	13.5%	14.4%
Work too much so not enough time to get involved	66.8%	14.5%	18.7%
Don't know how to go about getting involved	53.2%	22.5%	24.3%
Never thought about it	46.5%	21.4%	32.1%
Don't think I would be able to change anything	42.8%	26.4%	30.8%
Don't really feel part of any neighborhood or community here	40.4%	20.8%	38.8%
Not interested in getting involved with neighborhood or community problems	38.4%	25.0%	36.7%
Move too much to get involved	35.1%	17.9%	47.1%

Use of Public Services

Only 3.3% reported participating in TANF, the program most closely associated with public assistance or "welfare," compared to the 3.8% of Washington residents.

The majority (66%) of farmworkers surveyed reported that neither they, nor their family are receiving any form of public assistance or social services. Of those who do participate in such programs, the highest rates of participation are in the Women Infants Children program (WIC), which provides health and nutritional support for pregnant women and young children (15%), and food stamps (12%). Only 3.3% report participating in TANF, the program most closely associated with public assistance or "welfare," compared to the 3.8% of Washington residents.[29]

Figure 92: Are You or a Family Member Living With You Currently Using Any of the Following Services?

Response	Frequency	Percent
Not Receiving Any Assistance	1,798	65.5%
WIC (Women's Infants and Children Program)	404	14.7%
Food Stamps	337	12.3%
Medicaid	295	10.7%
Healthy Families	199	7.2%
Unemployment Insurance	133	4.8%
TANF (Temporary Assistance for Needy Families)/ Work First/"Welfare"	91	3.3%
Other	83	3.0%
Medicare	53	1.9%
Healthy Kids	50	1.8%
Low Income Home Energy Assistance Program (LIHEAP)	18	0.7%
Housing Assistance Services	9	0.3%
Supplemental Security Income (SSI)	8	0.3%
Disability Insurance	5	0.2%
Section 8 Rental Assistance	4	0.2%
Legal Services	3	0.1%
Social Security Disability Insurance (SSDI)	2	0.1%
Veteran's Pay	1	0.0%

[29] Washington State Department of Social and Health Services, "Washington State: DSHS Client Services," *Research and Data Analysis Division*, (2006). <http://www.dshs.wa.gov/pdf/ms/rda/clientdata/06State.pdf>.

CHAPTER FIVE
Methodology

MAR 0749

Methodology

The Trust hired Applied Survey Research (ASR), a California firm with experience in surveying economically disadvantaged populations, to conduct the survey. ASR had recently completed a survey of farmworkers in two California counties. Research consultant Alice Larson, Ph.D., a nationally-recognized expert in enumerating farmworker populations, was also engaged by the Trust to serve as a liaison with ASR, and help analyze results. Trust Board members also assisted in various roles, in particular with the design and implementation phases where their input could be most useful.

Past experience of the research team, as well as discussions with Trust Board members and others familiar with the farmworker community, determined that direct interviews would be the best approach for gathering information from farmworkers. Other methods, such as survey by mail or telephone, holding focus groups or the indirect approach of talking with knowledgeable individuals, were seen as reaching only limited segments of the population.

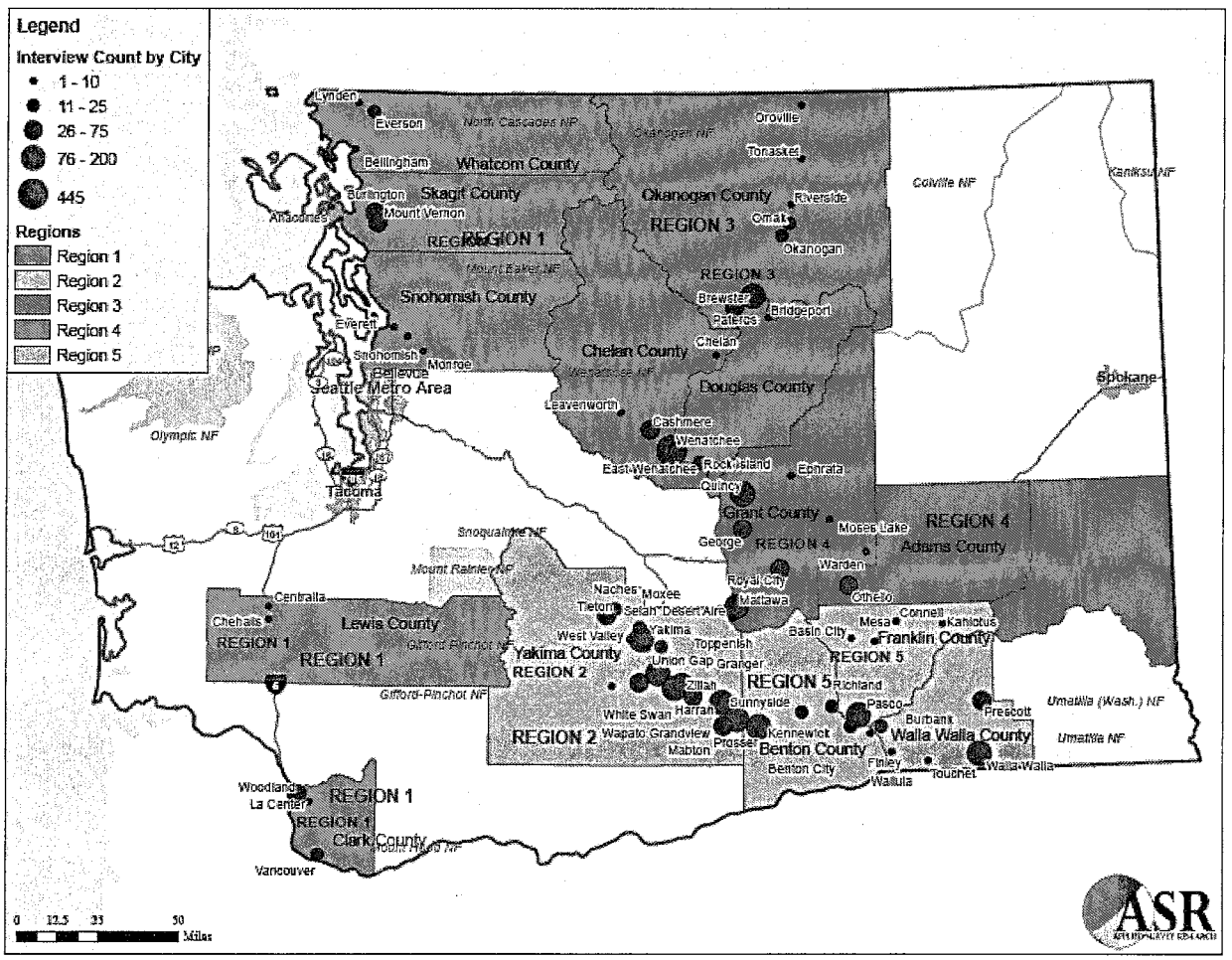
Selection of the Survey Population

The research team considered all employment categories under the broad term "agriculture," covering activities in crop production, livestock, dairy, poultry, forestry, fishing, nurseries/greenhouses and food processing. In consultation with the Trust Board, the research team selected crop production as the agricultural category whose workers were most in need of housing and decided to limit survey participation to workers in this category. Since many farmworkers participate in more than one type of agricultural activity, survey responses to work history questions provide limited information on some of the other categories.

The desire was to talk to farmworkers throughout the state and capture information spanning an entire agricultural season. This emphasis on diversification and inclusion formed the framework for much of the survey work. Accordingly, the methodological process was designed around three considerations: location, time and movement.

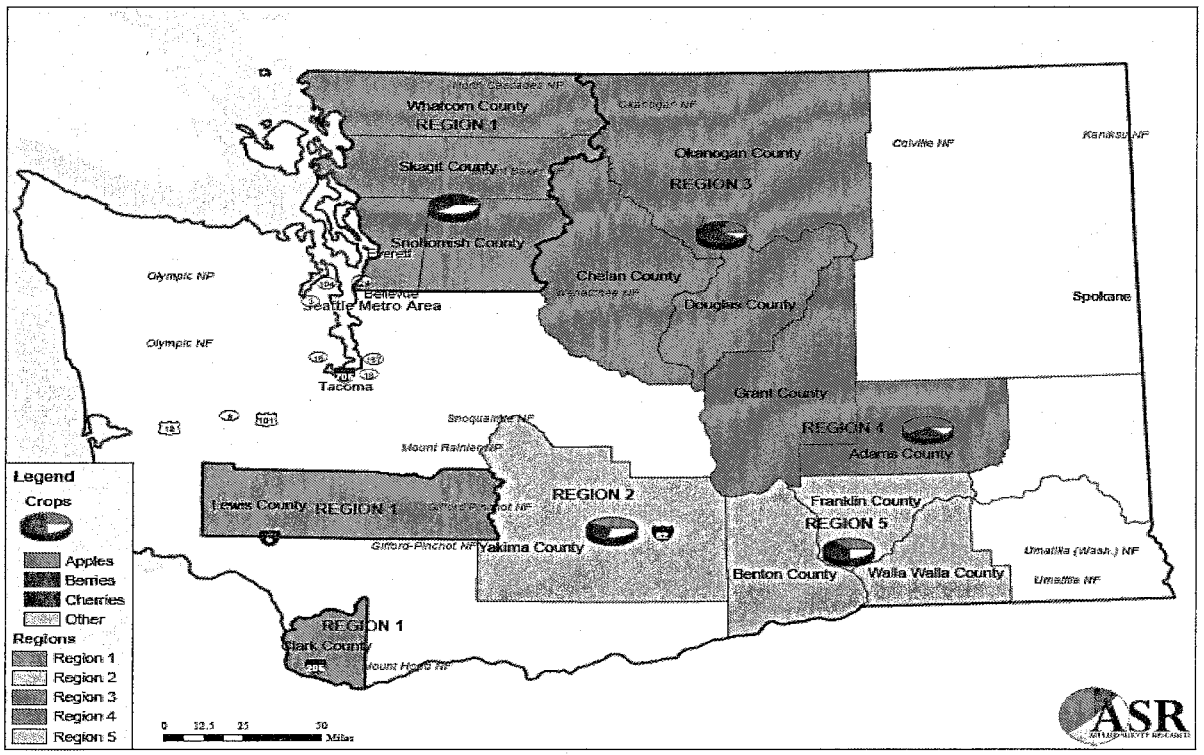
Location: The research team examined the state agricultural regions designated by the Washington State Employment Security Department (ESD) as a way to look at hand-labor crop production throughout Washington. It was found that 95% of hand-labor crops were contained within five of the six regions and concentrated in fourteen counties. These counties were targeted for this survey.

Figure 93: Interview Count by Geographic Area



Time: The primary agricultural season in Washington stretches from March through November, with workers engaged in a range of crop activities. The Trust team understood that different farmworkers may be employed in various crops; e.g., those cutting asparagus in the spring might not be the same individuals who pick apples in the fall. Because both worker characteristics and housing situations might differ depending on task and crop, survey targets were established to capture both the variety of Washington crops and the full growing season across the state. The ESD annual report *Agricultural Workforce in Washington State* offered estimates of workers by crop, location and task. This information was used to establish a survey target grid.

Figure 94: Crops by Region



Movement: Changing agricultural production needs, availability of workers and the presence of housing are factors determining whether individuals who are employed seasonally live permanently or temporarily within an area. Washington has always had "migrant workers" from other communities who arrive when concentrated labor is needed to harvest crops, as well as a workforce that lives locally and engages in longer term crop production tasks. It was assumed that the housing situation and needs for each of these groups could differ and that each should be included in the survey.

Sampling Plan

A random survey of the farmworker population was desired for this research but was found to be problematic given the emphasis on diversity of location, crop and season. Randomization was limited by resources, survey mechanics and outside influences present at the time of the survey.

The primary difficulty lay in defining a sample frame from which to choose survey participants. This term refers to the ability to draw up a list which would include every farmworker so that each had an equal chance for selection if a sample were drawn from the list. With a large enough sample, the chances would be good that those chosen for the survey would represent all individuals who are farmworkers.

The challenge became developing this list. For example, there is no complete list of locations in which farmworkers reside. Using only a partial list, such as labor camps and apartments, would miss other locations such as cars, tents and owned houses. The characteristics and housing needs of those residing in this latter type of housing might differ from individuals who live in camps or apartments.

The research team made an extensive effort to develop a sampling frame built around work location as a way to randomize survey participant selection. After much effort, it was found that compiling a statewide list of all agricultural employers was very difficult. Additionally, a test of this method determined many employers were hesitant to allow the survey team access to work sites, while the length of the survey prohibited interview during work hours and arranging later interviews presented logistical problems. The survey period also coincided with a time when immigration officials were conducting workplace raids, creating an atmosphere of fear in regard to contact at place of employment. All of these issues caused the research team to conclude that this approach was not practical.

Data Collection

The survey instrument covered five major topic areas: demographics, work history, housing, health and civic involvement. Screening questions were developed to ensure those interviewed were currently employed in crop production. Instrument construction began with examination of questionnaires used in previous farmworker research. Several drafts were created and refined through review by the research team, Trust staff, Board members and others.

The final questionnaire was translated into Spanish. This version became the primary survey instrument. Interviewers familiar with languages spoken by indigenous peoples provided translation of the questions when necessary. This allowed individuals who spoke those dialects, rather than English or Spanish, to be included in the survey.

Interview Team Selection and Training

The Trust understands that people tend to be more responsive if interviewed by individuals from their own community. Service providers use this approach by employing community outreach workers or *promotores* who know how to best offer information to others with similar backgrounds. This is the basis of the growing discipline of "community based research."

Local community-based organizations were asked to serve as survey coordinators within their area. Every individual involved in the study received training on interview techniques and survey protocols.

Rosalinda Guillen, a State Field Coordinator highly experienced in working with farmworkers, was hired to oversee all local activities. She traveled continuously during the survey period, coordinating tasks, monitoring activities, and troubleshooting. Her work was essential to the success of this survey.

Survey Sites

A pilot test of the draft questionnaire and survey protocols was conducted in the fall of 2005. Results were assessed, community interviewers debriefed and revisions made in accordance with test results.

Starting in 2006, interviews were conducted at a variety of places including food establishments, work sites, community fairs, social service agencies, laundromats, churches, parks, residences, and other locations. Lists of places frequented by farmworkers were developed by local interviewers and coordinators. Once on-site, interviewers were instructed to approach potential respondents using a random selection interval. For example, if the selection interval was seven, the surveyor would stand near the entrance to the site and approach every seventh person and ask them to participate. This method was used whenever possible, although sometimes respondents who were available were interviewed, i.e. a convenience sample.

Figure 95: Where Was This Survey Conducted?

Response	Frequency	Percent
Market/co-op	654	23.2%
Housing complex	870	30.9%
Park/sports complex	421	14.9%
Laundromat	211	7.5%
Flea market	199	7.1%
Food establishment	79	2.8%
Church	39	1.4%
Workplace	189	6.7%
Other	158	17.8%
No Answer	25	1.0%
Total	2,845	100.0%

Interviews ranged from 30 to 60 minutes in length. Surveys were conducted at various times during the day and days of the week. Respondents were given phone cards as a thank you for their participation.

Research Limitations

This is the largest direct survey of farmworkers ever conducted in Washington State, gathering information from 2,845 individuals; however, assurance can only be made that the results reflect the responses of those who were interviewed. Although a great deal of attention was given to incorporating respondent variability in regard to survey location, time of year and variety of crops, the study was unable to employ a totally randomized process for data collection.

Definitional Considerations

Service programs, regulatory agencies and research conducted with farmworkers employ a wide range of definitions to describe the population due to the diversity of employees. A variety of descriptive terms were considered for this study and the following definitions were selected:

Local Farmworker/Non-Local Farmworker: "Seasonal farmworker" and "migrant farmworker" are terms commonly used to describe individuals who are employed in agricultural tasks on a temporary basis. This report refers to these two types as "local farmworkers" and "non-local farmworkers." Local farmworkers are individuals who live and work locally in the same community. However, non-local or migrant farmworkers are defined differently by various entities based usually on travel distance to work or primary place of residence. The Washington State Farmworker Survey asked respondents for both types of information. One question inquired if workers travel more than 75 miles one way for seasonal agricultural jobs. A second question asked if workers are unable to return to their usual residence overnight because of their employment in agriculture. For analysis purposes, this study used the second definition of a non-local farmworker, unable to return to their usual abode.

Accompanied/Unaccompanied:

For the purposes of this study, the term "accompanied" is used to refer to individuals who, at the time of the survey, were living with others whom they helped support financially. If the respondent said they lived alone or with other people who were unrelated and/or not financially dependent on them, they are described as "unaccompanied."

Appendix – A
Acknowledgements

MAR 0757

Acknowledgements

The Washington State Farmworker Housing Trust wishes to acknowledge the contributions of the following individuals and organizations to the successful completion of this Survey.

Founder of the Trust

United States Senator Patty Murray

Board of Directors

President: Mario Villanueva (Catholic Charities Housing Services, Yakima)
Vice President: Steve Witte (United Farm Workers, Vancouver/Portland)
Secretary: Gloria Burton (Grupo México, Seattle)
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Billie Health (Rural Community Assistance Corporation, Olympia)
Dixie Kracht (Creative Housing Solutions, Yakima)
Alicia McRae (Chelan County/Wenatchee Housing Authority, Wenatchee)
Marty Miller (Office of Rural and Farmworker Housing, Yakima)
John Smith (Incorporator/Community Stakeholder, Mt. Vernon)
Stella Vasquez (Yakima Valley Farmworkers Clinic, Toppenish)
Tomás Villanueva (Farmworker Advocate, Toppenish)
Michael Youngquist (Grower Representative, Mt. Vernon)

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Janet Abbett (Washington State Department of Community, Trade and Economic Development)
Mary E. McBride (Office of U.S. Senator Patty Murray)

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Affiliations shown for identification purposes only.

Sponsors

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Daniel J. Cowan

Additional photos provided courtesy of Skagitonians to Preserve Farmland, Washington Grower's League, United Farm Workers and the Seattle Post-Intelligencer.

Appendix – B
Survey Instrument

MAR 0763

EQUIPO DE ENCUESTADORES

VIVIENDAS PARA CAMPESINOS DE WASHINGTON

TABLA DE RECHAZOS

Tipo de Rechazo **(Seleecione uno)**	Número de Rechazos **(Haga una marca por rechazo** *(ej:* ~~IIII~~ **)**
No quiso participar	
No hubo tiempo	
No elegible	
*Barrera en el lenguaje	

* Si el lenguaje es una barrera, por favor escriba el tipo de lenguaje o dialecto que impide al entrevistado participar en el estudio (Haga esto por cada "Barrera de lenguaje" que encuentre:

_____

_____

WASHINGTON STATE FARMWORKER

Introducción

Hola. Mi nombre es _____. Y represento el Washington State Farmworker Housing Trust (WSFHT), que es un grupo dedicado a mejorar las condiciones de vivienda de los trabajadores del campo. Con el fin de tener un mejor entendimiento de las necesidades de vivienda de los trabajadores del campo, le estamos pidiendo su participación en este estudio. El estudio tiene preguntas acerca del tipo de trabajo que Ud. realiza, su situación de vivienda, disponibilidad de acceso a servicios de salud y algunas otras cosas. La duración del cuestionario es de alrededor de 30 minutos. Usted no necesita responder aquellas preguntas que considere incómodas o que no se sienta bien respondiéndolas; sin embargo el estudio será más efectivo en la medida en que los entrevistados contesten la mayoría de las preguntas. Toda información que Ud. comparta con nosotros en este estudio permanece confidencial a nivel individual, razón por la cual no se pregunta por su nombre, dirección ni ninguna otra cosa que lo identifique. En agradecimiento por el tiempo que dedica a responder a este cuestionario, le regalaremos una tarjeta para llamadas telefónicas. ¿Le interesa participar en este estudio? (Si responde que si desea participar continúe con las preguntas. En caso contrario agradezca al entrevistado y marque en la tabla de la sección anterior el tipo de rechazo obtenido).

S1. Ha respondido Ud. esta encuesta?

1 Si **(Termine la entrevista y agradezca al entrevistado. Marque "No elegible" en la tabla de rechazo)**
2 No
3 No sabe **(No lea. Termine la entrevista y agradezca al entrevistado. Marque "No elegible" en la tabla de rechazo)**
4 Prefiere no contestar **(No lea. Termine la entrevista y agradezca al entrevistado. Marque "No elegible" en la tabla de rechazo)**

Para comenzar, me gustaría hacerle unas preguntas acerca de su actual trabajo, así como del hogar y sitio de vivienda.

Información acerca del lugar de trabajo

(Si la respuesta a la pregunta 1 es obvia (la persona es entrevistada en un rancho) marque la respuesta adecuada y continúe con la pregunta 2.)

1. ¿Trabaja o ha trabajado durante los últimos 12 meses en un rancho, finca o viñedo en procesos como siembra, cultivo, cosecha de productos agrícolas?

1 Si
2 No **(Termine la entrevista y agradezca al entrevistado. Marque "No elegible" en la tabla de rechazo)**
3 No sabe **(No lea. Termine la entrevista y agradezca al entrevistado. Marque "No elegible" en la tabla de rechazo)**
4 Prefiere no contestar **(No lea. Termine la entrevista y agradezca al entrevistado. Marque "No elegible" en la tabla de rechazo)**

2. Si está empleado actualmente en labores agrícolas, ¿Dónde esta trabajando principalmente? **(Lea las opciones y seleccione solo una respuesta)**

1 Un rancho, huerta o viñedo
2 Un invernadero o greehouse
3 Una fábrica de conservas/ enlatados **(Termine la entrevista y agradezca al entrevistado. Marque "No elegible" en la tabla de rechazo)**
4 Una planta de empaque, **(Termine la entrevista y agradezca al entrevistado. Marque "No elegible" en la tabla de rechazo)**
5 Una planta procesadora de alimentos **(Termine la entrevista y agradezca al entrevistado. Marque "No elegible" en la tabla de rechazo)**
6 No sabe **(No lea. Termine la entrevista y agradezca al entrevistado. Marque "No elegible" en la tabla de rechazo)**
7 Prefiere no contestar **(No lea. Termine la entrevista y agradezca al entrevistado. Marque "No elegible" en la tabla de rechazo)**

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Fecha de la entrevista: __ __ / __ __ / __ __
mm dd yy

Hora comienzo de la entrevista:

__ __ : __ __ *A.M. / P.M*

3. ¿Cuánto tiempo lleva trabajando en agricultura?

- O Menos de 6 meses
- O Seis a 11 meses
- O Un año hasta un año y 11 meses
- O Dos años hasta 4 años y 11 meses
- O Cinco años hasta 9 años y 11 meses
- O Diez años o más
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

10. Mientras estaba viviendo lejos de su hogar, ¿Cómo hizo para encontrar un lugar para dormir en las noches?
(Lea las opciones y marque todas las que apliquen)

- O Incapaz de encontrar hospedaje (Ej. campamento, vive en un carro, resguardo para desamparados, etc.)
- O Se quedó en hogares de familiares o amigos
- O Familiares o amigos me dijeron donde podría encontrar hospedaje
- O El empleador facilitó el lugar de vivienda
- O El empleador me dijo donde podría encontrar hospedaje
- O A través de una agencia que ayuda con asuntos de vivienda
- O Periódico/radio
- O Otro (especifique) _____
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

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11. Vamos a hablar acerca del trabajo que Ud. esta realizando actualmente y durante los últimos 30 días en agricultura asi como también de su situación de vivienda aquí en Washington en los últimos 30 días. *(Si el entrevistado menciona más de un tipo de cosecha o de actividad/tarea agrícola, anote cada una de ellas en una línea)*

Cosecha	Tarea	Lugar (ciudad/pueblo más cercano)	Condado	Condición de vivienda

Nota para el entrevistador: Gente que actualmente trabaje en elaboración de conservas, una planta de procesamiento de alimentos, o una planta de empaques no son elegibles para participar en este estudio, como tampoco lo son aquellos que actualmente estén supervisando personal.

12. Vamos a hablar ahora acerca del trabajo que Ud. ha hecho en agricultura y de su situación de vivienda en cada uno de esos trabajos en los últimos 12 meses. *(Lea la lista de opciones de vivienda. Coloque solamente un tipo de cosecha y de tarea por cada mes. Por favor marque para cada mes el tipo de cosecha en que trabajó así el trabajo o la tarea que haya sido realizada sea la misma y ésta se haya extendido por varios meses o por todo el año. Si el entrevistado trabajo en más de una cosecha en un mismo mes, anote solamente la cosecha donde trabajó más tiempo en ese mes) [Entrevistador: anote "NA" para aquellos casos de "No respuesta".*

MES	Cosecha	Tarea	Lugar (ciudad, pueblo, estado o país más cercano	Condado (Escriba "99" si no es un Condado de Washington	Condición de vivienda
ENERO					
FEBRERO					
MARZO					
ABRIL					
MAYO					
JUNIO					
JULIO					
AGOSTO					
SEPTIEMBRE					
OCTUBRE					
NOVIEMBRE					
DICIEMBRE					

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13. Ahora me gustaría tener información acerca de las personas que forman su hogar y que están viviendo actualmente con Ud. aquí en Washington. Esto incluye a los miembros de su familia así como también a aquellas otras personas que Ud. ayuda a mantener financieramente. Una vez mas, solo estoy interesado en aquellas personas que están viviendo con Ud. en estos momentos.

a. Relación familiar con el entrevistado *(Marque todas las que apliquen)*	b. Edad	c. Sexo *(Marque una)*	d. ¿Esta persona trabaja en el campo? *(Marque una)*	e. ¿Está esa persona empleada en labores distintas al campo? *(Marque una)*	F. ¿Está esa persona empleada en labores distintas al campo? *(Marque una)*	G. ¿Está esa persona empleada en labores distintas al campo? *(Marque una)*
O Esposo(a)/ Pareja		O M O F	O Si O No	O Si O No	O Si O No	
O Hijo(a)		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O Hijo(a)		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O Hijo(a)		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O Hijo(a)		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O Hijo(a)		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O Hijo(a)		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O Hermano(a)		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O Hermano(a)		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O Padre		O M O F	O Si O No	O Si O No	O Si O No	
O Madre		O M O F	O Si O No	O Si O No	O Si O No	
O Tío(a)		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O Abuelo(a)		O M O F	O Si O No	O Si O No	O Si O No	
O Sobrino(a)		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O Otro pariente		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O Otro pariente		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O No- pariente		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O No- pariente		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O No- pariente		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O No- pariente		O M O F	O Si O No	O Si O No	O Si O No	O Si O No
O No- pariente		O M O F	O Si O No	O Si O No	O Si O No	O Si O No

O No aplica, vivo solo y pago por una cama

Total Personas *(sume todas las personas del hogar y verifique con el entrevistado)*

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14. ¿Cuál es su estado civil?
- O Casado(a)
- O Unión libre / relación de pareja
- O Soltero(a)
- O Divorciado(a)
- O Viudo(a)
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

15. ¿Tiene un(a) esposo(a)/pareja o un hijo(a) menor de 18 años y que no viva aquí con Ud.?
- O Si
- O No *Vaya a preg 17*
- O No sabe (No lea) *Vaya a preg 17*
- O Prefiere no contestar (No lea) *Vaya a preg 17*

16. ¿Dónde vive su (esposo(a), pareja, hijos menores de 18 años)?

	Washington	Oregon	California	Otro Estado de U.S. *(Anote el estado)*	Mexico	Otro *(Especifique en la línea)*
Esposo(a)	O	O	O	O _____	O	O _____
Pareja	O	O	O	O _____	O	O _____
Hijo(a) #1	O	O	O	O _____	O	O _____
Hijo(a) #2	O	O	O	O _____	O	O _____
Hijo(a) #3	O	O	O	O _____	O	O _____

17. ¿Tiene hijos menores de 13 años aquí en Washington que requieran de servicios de guardería y/o cuidado infantil, y que no haya sido posible tener acceso a estos servicios?
- O Si, tengo hijos menores de 13 años que requieren de servicios de guardería y/o cuidado infantil y no ha sido posible recibirlos
- O No, mis hijos si tienen servicios de guardería y/o cuidado infantil *(Vaya a la pregunta 19)*
- O No, mis hijos no necesitan guardería y/o cuidado infantil *(Vaya a la pregunta 19)*
- O No, no tengo hijos menores de 13 años que requieran servicios de guardería y/o cuidado infantil *(Vaya a la pregunta 19)*
- O No sabe (No lea) *(Vaya a la pregunta 19)*
- O Prefiere no contestar (No lea) *(Vaya a la pregunta 19)*

18. ¿Por qué razones él o ellos no han podido tener acceso a estos servicios de guardería y/o cuidado infantil? *(Lea las opciones y marque todas las que apliquen)*
- O Costo/precio
- O No hay este tipo de servicios en el área
- O La guardería/centro no acepta bebés
- O Las guarderías no aceptan mas niños (llenas)
- O No sabe a donde ir para pedir este servicio
- O No tiene transporte para poder llevar los niños
- O El horario de servicio de la guardería (Ej. no esta abierto a la hora en que puede dejar los niños)
- O No se siente a gusto con el personal que atiende las guarderías en esta área
- O Otro (Por favor especifique) _____
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

Ahora voy a hacerle una serie de preguntas acerca de su actual lugar de vivienda aquí en Washington.

19. ¿Vive Ud. en una vivienda facilitada por su empleador?
- O Si
- O No
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

20. ¿Cuál de las siguientes opciones de respuesta describe mejor su actual situación de vivienda?
- O Renta de casa/apto
- O Dueño de casa o condominio
- O Renta diaria de cama/litera/catre
- O Vive en exteriores(carpa, auto, etc)
- O Camper/trailer (casa móvil/rodante)
- O Trailas fijas
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

20a. Si los costos que tuviera que pagar por una vivienda dentro del rancho o fuera del rancho/ la ciudad fueran los mismos, ¿en cuál de las dos preferiría vivir?
- O La vivienda del rancho *(Continúe con la preg 20b y luego vaya a la preg 21)*
- O La vivienda fuera del rancho/ la ciudad *(Vaya a la preg 20c)*
- O No sabe (No lea) *(Vaya a la preg 21)*
- O Prefiere no contestar (No lea) *(Vaya a la preg 21)*

20b. Por qué prefiere vivir en una vivienda en el rancho? *(Lea las opciones y marque todas las que apliquen)*
- O Cerca del trabajo
- O Costo
- O Facilidad para ir a trabajar en el rancho
- O Otra(Especifique)_____
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

20c. Por qué prefiere vivir en una vivienda fuera del rancho/la ciudad? *(Lea las opciones y marque todas las que apliquen)*
- O Cerca de servicios tales como escuelas, iglesias y la comunidad
- O Tener la independencia de vivir lejos del lugar de trabajo
- O Posibilidad de poder vivir allí todo el año
- O Posibilidad de poder trabajar donde yo quiera
- O Otra(Especifique)_____
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

21. ¿En qué lugar se encuentra su sitio de vivienda permanente?
- O En Washington): ciudad_____
- O Fuera de Washington: estado _____
- O Fuera de U.S.A: país _____

21a. Desde hace cuanto (en años y meses) ha estado viviendo en esta área, osea alrededor de 75 millas a la redonda de este lugar?

Años ____ **Meses** ____

22. ¿Cuál es la cantidad total pagada por Ud. o su familia por hospedarse en este tipo de vivienda?

$ ____ pagados de manera:
- O Mensual
- O Semanal
- O Diario
- O Usted
- O Su familia
- O No vive en este tipo de unidades de vivienda
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

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23. ¿Además del pago que hace por su lugar de vivienda, paga Ud. adicionalmente por alguno de los siguientes servicios?
(Lea las opciones y marque todas las que apliquen)

- O Electricidad
- O Gas o propano
- O Agua
- O Basura
- O Alcantarillado / aguas negras (Sewer)
- O Otro (Por favor especifique) _____
- O Yo pago un valor adicional, pero no sé cuales son los cargos
- O No, no pago nada adicional *Vaya a preg 24*
- O No sabe (No lea) *Vaya a preg 24*
- O Prefiere no contestar (No lea) *Vaya a preg 24*
- O No aplica (No lea) *Vaya a preg 24*

23a. ¿Cuál es el costo mensual que paga por este(os) servicio(s)?

$ _____

- O No aplica
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

24. Si su lugar de vivienda es una casa, apartamento, condominio, triplex , casa móvil,traila fija o barracas de trabajo con dormitorios, ¿Cuántos cuartos "formales" para dormir hay en esa vivienda o lugar? (Un cuarto de dormir típico es aquel donde la gente duerme y además posee un área diseñada para el closet o guardarropa)

_____ Número de cuartos de dormir

- O No aplica *Vaya a preg 26*
- O No sabe (No lea) *Vaya a preg 26*
- O Prefiere no contestar (No lea) *Vaya a preg 26*

25. Ahora me gustaría saber más acerca de donde pasan la noche la gente y cuantas personas duermen en cada área.

25a. ¿En cuál de las siguientes áreas de esta vivienda duermen personas? *(Lea las opciones y marque todas las que apliquen)*	25b. Número de personas que duermen en esta área *(escriba el número de personas que duerme en cada una de las áreas seleccionadas en la pregunta 25a)*
O Cuartos de dormir	_____
O Sala	_____
O Área del comedor	_____
O Pasillo/entrada/vestíbulo	_____
O Área/bodega donde guardan herramientas	_____
O Garaje	_____
O Sótano	_____
O Ático	_____
O Otro (Por favor especifique)	_____
Número total de personas en todas las áreas	

- O No sabe (No lea)
- O Prefiere no contestar (No lea)

26. ¿Tiene actualmente alguno de los siguientes problemas en el sitio en que ahora esta viviendo?
(Lea las opciones y marque todas las que apliquen)

- O Aparatos que no funcionan (refrigerador / estufa/ lavadora, etc) / No hay aparatos
- O Huecos en la pared o en el piso
- O Problemas eléctricos
- O Problemas de calefacción / no hay calefacción
- O Goteo de llaves / plomería
- O No tiene cañerías/ tasa del baño
- O Goteras en el techo
- O Insuficiente disponibilidad de agua
- O Mala calidad del agua (no se puede beber el agua)
- O Pintura, peladuras en la pintura
- O Filtraciones de aire por huecos en paredes o marcos de las ventanas
- O Ratones
- O Cucarachas
- O El inodoro no descarga el agua / la cañería no permite drenaje
- O Aguas negras que se rebotan por las cañerías
- O Vive en un vehículo, en exteriores o fuera de una vivienda
- O Otros problemas (especifique) _____
- O No tengo ninguno problema
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

Ahora voy a preguntarle acerca del lugar donde preferiría que estuviera su vivienda así como las características que le gustaría que tuviera su hogar en el futuro.

27. Si hubiera mayor disponibilidad de vivienda para adquirir o con mejores condiciones en esta área, cree Ud. que le gustaría: ***(marque la respuesta a cada pregunta que representa mejor su opinión)***

	Sí	*No*	*No aplica*	*No sabe (no lea)*	*Prefiere no contestar (No lea)*
a. ¿Quedarse en Washington permanentemente?	O	O	O	O	O
b. ¿Continuar viniendo a Washington a trabajar?	O	O	O	O	O
c. ¿Traer a su familia a Washington a vivir con usted, si ellos aun no están viviendo con Ud.?	O	O	O	O	O
d. ¿Continuar trabajando en agricultura?	O	O	O	O	O
e. ¿No viajar mas de 75 millas de ida a trabajar en las granjas?	O	O	O	O	O
f. Mas o mejor vivienda no es importante para mi	O	O	O	O	O
g. Estoy contento con mi vivienda aquí en Washington	O	O	O	O	O

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28. En general ¿qué tan importante es para Ud cada una de las siguientes afirmaciones cuando esta buscando vivienda? ***(marque el nivel de importancia en cada pregunta en una escala de 1-4)***

	1 - Muy importante	2 - Algo importante	3- No muy importante	4 -Nada importante	No sabe (no lea)	Prefiere no contestar (No lea)
a. Sea la menos costosa para mi	O	O	O	O	O	O
b. Este ubicada lo más cerca posible al rancho /huerta donde trabaja actualmente	O	O	O	O	O	O
c. Este ubicada cerca de escuelas o guarderias	O	O	O	O	O	O
d. Este localizada cerca a almacenes y áreas de entretenimiento	O	O	O	O	O	O
e. Este localizada cerca de lugares que presten servicios de salud	O	O	O	O	O	O
f. Este localizada en un lugar donde haya otras personas de su comunidad	O	O	O	O	O	O
g. Este localizada donde haya cerca otras personas que hable su mismo idioma	O	O	O	O	O	O
h. Este localizada cerca de su iglesia	O	O	O	O	O	O
I. Sea un lugar seguro para que los niños puedan jugar en los alrededores	O	O	O	O	O	O
j. Sea un vecindario seguro (lejos del crimen, drogas y pandillas)	O	O	O	O	O	O
k. Funcionen bien los aparatos tales como estufa, nevera, lavadora, secadora, etc	O	O	O	O	O	O
l. Sea un lugar limpio	O	O	O	O	O	O
m. Tenga suficientes cuartos de dormir ***(Haga pregunta 28m.1 si responde "muy" o "algo" importante)***	O	O	O	O	O	O

28m.1. ¿Cuántos cuartos de dormir considera que son suficientes? _____ ☐

28a. Cuál de las anteriores razones que le acabo de leer es la mas importante para Ud.?

[Entrevistador: escriba la letra aquí] ☐

28b. Y Cuál es la segunda mas importante para Ud.?

[Entrevistador: escriba la letra aquí] ☐

29. Si Ud. Ha tenido alguna dificultad rentando una vivienda en esta área, ¿cuáles han sido las situaciones/barreras que le han dificultado poder rentar una vivienda para poder vivir en este lugar? ***(Lea las opciones y marque todas las que apliquen)***

- O No aplica a mi caso por que soy dueño de mi propia vivienda aquí
- O No he tenido dificultad de rentar una vivienda aquí
- O No tener el dinero suficiente para pagar por adelantado (depósito, primer o último mes de renta)
- O No he encontrado un lugar que pueda pagar
- O No hay vivienda disponible
- O El arrendatario solicite un contrato de arriendo por un período de tiempo mayor al que yo necesito estar
- O Dificultades por discriminación
- O Dificultades por no hablar inglés
- O Por asuntos de inmigración o ciudadanía
- O Otro (Por favor especifique) _____
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

30. ¿ Mientras trabaja en Washington preferiría rentar o ser propietario de una casa, apartamento o trailer?

- O No aplica porque yo tengo mi propia vivienda en Washington *Vaya a preg 37*
- O Rentar
- O Ser propietario *Vaya a preg 32*
- O Ninguna de las dos *Vaya a preg 32*
- O Otro (especifique _____) *Vaya a preg 32*
- O No sabe (No lea) *Vaya a preg 32*
- O Prefiere no contestar (No lea) *Vaya a preg 32*

30a. Como Ud. me dijo que prefiere rentar una vivienda, quisiera que me dijera en cuál de las siguientes condiciones quisiera hacerlo: ***(lea las opciones y escoja una)***

- O Una vivienda que NO se encuentre en el lugar en que trabaja
- O Una vivienda facilitada por el lugar en que trabaja
- O No importa donde se encuentre la vivienda
- O No sabe (No lea)
- O Prefiere no contestar (No lee)

31. Preferiría que el lugar de vivienda que renta sea administrado por: ***(lea las opciones y escoja una)***

- O Un administrador independiente
- O Por su empleador
- O Una organización religiosa
- O Una organización comunitaria /un centro de salud comunitario
- O Las autoridades locales responsables de la vivienda
- O Otro (especifique _____)
- O No importa. Me de lo mismo
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

Ahora me gustaría saber lo que Ud. ha pensado acerca de la posibilidad de tener vivienda propia en Washington, y si es así, los problemas e inconvenientes que haya podido tener en su esfuerzo de comprar su vivienda.

32. ¿Esta Ud. actualmente planeando comprar vivienda en Washington en los próximos 12 meses?

- O Si
- O No *Vaya a preg 37*
- O No sabe (No lea) *Vaya a preg 37*
- O Prefiere no contestar (No lea) *Vaya a preg 37*

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33. ¿En qué etapa del proceso de compra de vivienda se encuentra Ud. actualmente?)
(Lea las opciones y marque todas las que apliquen)

- O Aún estoy pensando en adquirir la vivienda
- O Ahorrando para poder pagar la cuota inicial
- O Buscando la aprobación un crédito de vivienda
- O Buscando el tipo y lugar de la vivienda
- O Ya hizo una oferta por una vivienda
- O En proceso de aprobación del crédito de vivienda
- O Otro (Por favor especifique) _____
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

34. ¿Necesita asistencia para la compra de su vivienda en alguno de los siguientes aspectos?
(Lea las opciones y marque todas las que apliquen)

- O Asesoría en el crédito o la deuda de la vivienda
- O Asistencia en el pago de la cuota inicial
- O Conocer acerca de opciones de viviendas disponibles de acuerdo con su presupuesto
- O Información de cómo adquirir una vivienda
- O Otras cosas acerca de la compra de vivienda (Especifique el tema) _____
- O No necesito asistencia
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

35. ¿Cuáles cree que son los obstáculos que le han dificultado poder comprar finalmente una vivienda?
(Lea las opciones y marque todas las que apliquen)

- O No haber tenido suficiente dinero para poder la pagar la cuota inicial y otros costos básicos para el cierre del negocio
- O No haber tenido suficientes ingresos para poder hacer los pagos mensuales
- O No ha podido acceder a una vivienda en un vecindario que le gusta y que esta en capacidad de pagar
- O No haber tenido suficientes ingresos para que le aprobaran un préstamo para vivienda
- O Carencia de suficiente buen crédito para poder aplicar a un préstamo de vivienda
- O No estar seguro de cómo comenzar
- O No entender el proceso de adquisición de vivienda
- O Problemas de discriminación que le limitan la posibilidad de adquirir la vivienda que Ud. quiere
- O Barreras por el lenguaje que le limitan la posibilidad de adquirir la vivienda que Ud. quiere
- O Por asuntos de inmigración
- O Otro (especifique) _____
- O No creo que haya tenido ningún obstáculo o dificultad
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

36. ¿Estaría interesado en ayudar en la construcción de su propia vivienda si esto le reduce los costos de la misma?

- O Sí
- O No
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

Información sobre Salud
Ahora me gustaría hablar acerca del tema de las condiciones de salud suyas y de su familia

37. ¿Tiene aseguranza de salud médica usted o algún miembro de su familia que esté viviendo actualmente con Ud.?

- O Sí, yo tengo
- O Sí, personas de mi familia lo tienen
- O Sí, tanto yo como los demás miembros de mi familia lo tienen
- O No *Vaya a preg 43*
- O No sabe (No lea) *Vaya a preg 43*
- O Prefiere no contestar (No lea) *Vaya a preg 43*

38. ¿Qué clase de aseguranza médica tiene Ud. o algún miembro de su familia? ***(Lea las opciones y marque todas las que apliquen. Si la aseguranza aplica para el entrevistado, marque su respuesta en la columna de "Usted". Si la aseguranza aplica para un miembro de la familia, marque su respuesta en la columna de "Miembro(s) de su familia.")***

	Usted	Miembro(s) de su familia
Seguro propio/privado	O	O
Basic Health	O	O
Medicaid	O	O
Worker's Compensation	O	O
Aseguranza de salud para niños *(Ask question 38a)*	☐	O
Aseguranza a través del empleador	O	O
Medicare	O	O
Family Medical	O	O
Healthcare for workers with disabilities	O	O
Alien Emergency Medical	O	O
Pregnancy Medical	O	O
Aseguranza a través del empleador de otro miembro del hogar(Ej. Esposo/a)	O	O
Otro *(Especifique en la tabla)*	O	O
No sabe *(No lea)*	O	O
Prefiere no contestar *(No lea)*	O	O

(Haga pregunta 38a si el entrevistado respondió que tiene "aseguranza de salud para niños" y que corresponde a la opción 5 de esta pregunta. En caso contrario vaya a la pregunta 39)

38a. Tipo de aseguranza de salud médica para niños:

- O Children's Medical - Aseguranza privada para niños
- O CHIP Medical
- O Medicaid
- O Healthy Kids
- O Basic Health Plus
- O Otro (Especifique) _____
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

39. ¿A qué miembros del hogar cubre (la/las) aseguranza(s) que me mencionó?
(Lea las opciones y marque todas las que apliquen)

- O Usted
- O Su esposo(o) / pareja
- O Sus hijos
- O Otro (Especifique) _____
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

40. ¿Realiza pagos mensuales por esta aseguranza?

- O Sí *Vaya a preg 40a*
- O No *Vaya a preg 41*
- O No sabe (No lea) *Vaya a preg 41*
- O Prefiere no contestar (No lea) *Vaya a preg 41*

40a. ¿Cuánto paga mensualmente por esta aseguranza?

$_____ ☐☐☐

- O No sabe (No lea)
- O Prefiere no contestar (No lea)

41. ¿Debe pagar algún valor adicional cada vez que visita al doctor (un co-pago)?

- O Sí *Vaya a preg 41a*
- O No *Vaya a preg 42*
- O No sabe (No lea) *Vaya a preg 42*
- O Prefiere no contestar (No lea) *Vaya a preg 42*

41a. ¿El hecho de tener que hacer pagos adicionales por cada visita a hecho que Ud. haya limitado sus visitas al médico?

- O Sí
- O No
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

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42. ¿Su aseguranza cubre las medicinas que el doctor le prescribe?

- O Si
- O No sabe (No lea)
- O No
- O Prefiere no contestar (No lea)

43. ¿A qué lugar acostumbra a ir en esta área cuando requiere de servicios de salud?
(Lea las opciones y seleccione máximo 2 respuestas)

- O Clínica de la comunidad
- O Doctor particular
- O Centro de emergencias
- O Departamento de salud del condado
- O Hospital / Sala de emergencia
- O Curandero(a)
- O Otro (Por favor especifique) _____
- O No tiene un lugar en especial a donde ir por servicios de salud
- O No sé a donde ir cuando necesito servicios de salud
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

44. ¿Ha visitado al doctor en los últimos 12 meses?

- O Si *Vaya a preg 45*
- O No *Vaya a preg 46*
- O No sabe (No lea) *Vaya a preg 46*
- O Prefiere no contestar (No lea) *Vaya a preg 46*

45. ¿Cuál fue el motivo de su visita al doctor?
(Lea las opciones y marque todas las que apliquen)

- O Chequeo de rutina
- O Inmunizaciones
- O Embarazo
- O Enfermedad
- O Accidente no relacionado con el trabajo
- O Accidente/herida relacionado con actividades en el trabajo
- O Problema crónico de salud
- O Salud mental
- O Llevando al niño a un chequeo
- O Abuso de sustancias
- O Violencia doméstica
- O Otro (Por favor especifique) _____
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

46. ¿Ha necesitado Ud. o algún miembro de su familia servicios médicos o dentales en los últimos 12 meses?

- O Si
- O No *Vaya a preg 51*
- O No sabe (No lea) *Vaya a preg 51*
- O Prefiere no contestar (No lea) *Vaya a preg 51*

47. ¿Si Ud. o algún miembro de su familia tuvo la necesidad de atención <u>médica o dental</u> en los últimos 12 meses, tuvieron la posibilidad de recibir dicha atención?

- O No, no tuvimos la posibilidad de recibir atención médica o dental *Haga pregs 48-50*
- O No, no tuvimos la posibilidad de recibir atención médica pero si pudimos recibir la atención dental *Haga pregs 48-50*
- O No, no tuvimos la posibilidad de recibir atención dental pero si pudimos recibir la atención médica *Haga pregs 48-50*
- O Si, si tuvimos la posibilidad de recibir atención médica o dental que necesitamos *Vaya a preg 51*
- O No sabe (No lea) *Vaya a preg 51*
- O Prefiere no contestar (No lea) *Vaya a preg 51*

48. ¿La persona que necesitó de estos servicios fue Ud., un hijo (menor de 18 años), u otro adulto de su familia?
(Lea las opciones y marque todas las que apliquen)

- O Usted
- O Hijo
- O Adulto
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

49. ¿Qué tipo de servicio de salud era el que necesitaba Ud. y/o los otros miembros de su hogar? ***(Lea las opciones y marque todas las que apliquen. Marque el número de su respuesta bajo la columna "Usted" ú "Otro familiar" según sea el caso en la pregunta en que aplique)***

	Usted	Miembro(s) de su familia
1. Chequeo de rutina	O	O
2. Inmunizaciones	O	O
3. Embarazo	O	O
4. Enfermedad	O	O
5. Accidente no relacionado con el trabajo	O	O
6. Accidente/Lesión relacionado con actividades en el trabajo	O	O
7. Problema crónico de salud	O	O
8. Salud mental	O	O
9. Llevando al niño a un chequeo	O	O
10. Abuso de sustancias	O	O
11. Violencia doméstica	O	O
12. Otro tipo de cuidado médico *(Especifique en la tabla)*	O	O
13. Chequeo dental de rutina	O	O
14. Arreglo de caries	O	O
15. Ayuda con dolor de dientes	O	O
16. Sacar dientes/muelas	O	O
17. Otro tipo de cuidado dental	O	O
18. No sabe *(No lea)*	O	O
19. Prefiere no contestar *(No lea)*	O	O

50. ¿Por qué razón Ud. o los miembros de su familia no pudieron recibir los servicios de salud que necesitaban?
(Lea las opciones y marque todas las que apliquen. Marque el número de su respuesta bajo la columna "Usted" ú "Otro familiar" según sea el caso en la pregunta en que aplique).

	Usted	Miembro(s) de su familia
1. No tenía aseguranza	O	O
2. Costo	O	O
3. Idioma	O	O
4. Asuntos de inmigración	O	O
5. Carencia de transporte para poder ir	O	O
6. El horario de servicio del centro de salud (no estaba abierto cuando Uds. fueron/podían ir)	O	O
7. No tenía posibilidad de salir del trabajo para ir a recibir la atención requerida	O	O
8. No sabía a donde ir para recibir los servicios de salud necesitados	O	O
9. No se siente a gusto con los doctores de esta área	O	O
10. Se sintió discriminado cuando buscó los servicios de salud	O	O
11. No pudo entender el sistema telefónico del lugar consultado y por lo tanto no pudo solicitar una cita	O	O
12. No pudo encontrar un doctor o dentista que quisiera verlo a Ud. o a su familia	O	O
13. Otro *(Especifique en la tabla)*	O	O
14. No sabe *(No lea)*	O	O
15. Prefiere no contestar *(No lea)*	O	O

51. ¿Tiene aseguranza de salud dental usted o algún miembro de su familia que esté viviendo actualmente con Ud.?

- O Si
- O No
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

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52. ¿Hace cuanto fue la última vez que Ud. visitó a un dentista, higienista u ortodoncista? ***(Lea las opciones y marque solo una)***

- O Nunca lo ha visitado
- O Hace 6 meses
- O 7 a 12 meses
- O Mas de 1 año, hasta 2 años
- O Mas de 2 años, hasta 5 años
- O Mas de 5 años
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

53. ¿Le ha sido diagnosticado por un doctor u otro profesional de la salud alguna de las siguientes condiciones? ***(Lea las opciones y marque todas las que apliquen)***

- O Asma
- O Diabetes
- O SIDA (HIV / AIDS)
- O Hepatitis
- O Tuberculosis
- O Cáncer
- O Enfermedades o heridas relacionadas con el trabajo
- O Asuntos de salud mental (ansiedad, depresión, otros asuntos de salud mental)
- O Abuso en el uso drogas
- O Abuso del uso de Alcohol
- O Violencia Doméstica
- O Otro (especifique) _____
- O No creo que haya tenido ningún obstáculo o dificultad
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

54. ¿Le ha sido dicho por un doctor u otro profesional de la salud que Ud. ha sido expuesto a pesticidas?

- O Si
- O No *Vaya a preg 56*
- O No sabe (No lea) *Vaya a preg 56*
- O Prefiere no contestar (No lea) *Vaya a preg 56*

55. ¿Tuvo Ud. alguno de los siguientes problemas de salud cuando se le dijo que había sido expuesto a pesticidas ? ***(Lea las opciones y marque todas las que apliquen)***

- O Problemas de piel
- O Problemas en los ojos
- O Nausea / Vómito
- O Dolor de cabeza
- O Partes del cuerpo sin sensación / Hormigueo
- O Mareo/vértigo
- O Problemas Respiratorios
- O Problemas Neurológicos (Ej. Tembladera, dificultad de mover las manos o pies u otros problemas similares)
- O Otro (especifique) _____
- O No tenía ningún problema
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

56. ¿Considera que Ud. o algún miembro de su familia ha sido expuesto a pesticidas pero no ha buscado atención médica para esto? ***(Marque una respuesta para "Usted" y/o para "Familiar")***

	Usted	Familiar
Si, pero no buscó atención médica	O	O
Si, y si buscó atención médica *Vaya a preg 59*	O	O
No *Vaya a preg 59*	O	O
No sabe (No lea) *Vaya a preg 59*	O	O
Prefiere no contestar (No lea) *Vaya a preg 59*	O	O

57. ¿Qué le hizo pensar que Ud. o ellos habían sido expuestos a pesticidas? ***(Lea las opciones y marque todas las que apliquen. Marque el número de su respuesta bajo la columna "Usted" o "Familiar" según sea el caso en la pregunta en que aplique)***

	Usted	Familiar
1. Problemas de piel	O	O
2. Problemas en los ojos	O	O
3. Nausea / Vómito	O	O
4. Dolor de cabeza	O	O
5. Partes del cuerpo sin sensación / Hormigueo	O	O
6. Mareo/vértigo	O	O
7. Problemas Respiratorios	O	O
8. Problemas neurológicos(Ej. Tembladera, problemas de movimiento)	O	O
9. No sabe *(No lea)*	O	O
10. Prefiere no contestar *(No lea)*	O	O
11. Otro *(Especifique en la tabla)*	O	O

58. ¿Por qué no buscaron ayuda médica? ***(Lea las opciones y marque todas las que apliquen. Marque el número de su respuesta bajo la columna "Usted" o "Familiar" según sea el caso en la pregunta en que aplique)***

	Usted	Familiar
1. No quería perder horas de trabajo	O	O
2. No sabía a donde ir para recibir este tipo de ayuda	O	O
3. No tenía forma alguna de poder acceder a un doctor	O	O
4. Muy lejos para poder ir al doctor	O	O
5. Los problemas de salud (síntomas) desaparecieron	O	O
6. Miedo a que Ud. o su familiar pudieran meterse en un problema si iban a un doctor mencionando que la razón era exposición a pesticidas; Ej. Ser echados del trabajo	O	O
7. No podía asumir el costo de pagar la cita con el doctor	O	O
8. Supervisor/ administrador les dijo que era mejor no ir al doctor	O	O
9. Supervisor/administrador no quiso diligenciar un reporte de accidente laboral	O	O
10. Otro (Especifique)	O	O
11. No sabe (No lea)	O	O
12. Prefiere no contestar (No lea)	O	O

59. ¿Cuáles de los siguientes asuntos de salud le gustaría tener información disponible? ***(Lea las opciones y marque todas las que apliquen)***

- O Salud Dental
- O Salud para niños/ bebés
- O Vacunas
- O Embarazo y salud materna
- O Salud mental (ansiedad, depresión, otros asuntos de salud mental)
- O Violencia doméstica
- O Abuso de sustancias (alcohol, tabaco o drogas)
- O Chequeos pare el cáncer (examen del seno, prueba de cáncer cervical, examen de próstata, otros)
- O Tratamientos de enfermedades crónicas (tales como diabetes, asma)
- O Buena nutrición
- O Elegibilidad para una aseguranza de salud
- O Cuidados y situaciones de salud con relación a los pesticidas
- O Otro (especifique) _____
- O No necesito información acerca de nada de lo anterior
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

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Involucramiento Cívico

Cambiando de tema, ahora quisiera hacerle algunas preguntas acerca del tipo de involucramiento que Ud. tiene con la comunidad donde vive la mayoría del tiempo que se queda aquí en Washington cuando trabaja en actividades agrícolas.

60. ¿Qué tanta influencia piensa que personas como Ud. pueden tener en los siguientes asuntos: ***(Marque para cada afirmación un nivel de influencia dentro de la escala de 1-4)***

	Mucha influencia	*Alguna influencia*	*Poca influencia*	*Ninguna influencia*	*No sabe*	*No contesta*
a. Asuntos de vivienda	O	O	O	O	O	O
b. Servicios de Salud	O	O	O	O	O	O
c. Asuntos Políticos	O	O	O	O	O	O
d. Asuntos escolares	O	O	O	O	O	O
e. Asuntos relacionados con el crimen	O	O	O	O	O	O
f. El aseo/mejoramiento del vecindario	O	O	O	O	O	O
g. Ferias comunitarias o festividades	O	O	O	O	O	O
h. Deportes	O	O	O	O	O	O

i. Otro *(Por favor especifique)*_____

61. ¿Alguna vez se ha reunido con otros miembros de su comunidad en Washington para trabajar en arreglar algún problema o mejorar alguna situación de su comunidad local en Washington?

O Si
O No *Vaya a preg 64*
O No sabe (No lea) *Vaya a preg 64*
O Prefiere no contestar (No lea) *Vaya a preg 64*

62. ¿En qué asuntos trabajó/participó Ud.? ***(Lea las alternativas y marque todas las que apliquen)***

O Asuntos de vivienda
O Servicios de Salud
O Asuntos Políticos
O Asuntos escolares
O Asuntos relacionados con el crimen/seguridad
O El aseo/mejoramiento del vecindario
O Ferias comunitarias o festividades
O Deportes
O Otro
O No sabe (No lea)
O Prefiere no contestar (No lea)

Si en pregunta 62 solo marco <u>No sabe</u> o <u>prefiere no contestar</u>, vaya a la pregunta 64

63. ¿Fueron exitosos los esfuerzos en arreglar o mejorar los asuntos en que estuvo trabajando? ***(Para cada asunto marcado en la pregunta 63, lea las opciones "Mucho, algo, no mucho, o nada" y marque una respuesta en cada afirmación utilizando la escala de 1-4. Cuando termine con la pregunta 63, vaya a la pregunta 65).***

	Si, mucho	*Si, en algo*	*No mucho*	*No, para nada*	*No sabe*	*No contesta*
a. Asuntos de vivienda	O	O	O	O	O	O
b. Servicios de Salud	O	O	O	O	O	O
c. Asuntos Políticos	O	O	O	O	O	O
d. Asuntos escolares	O	O	O	O	O	O
e. Asuntos relacionados con el crimen	O	O	O	O	O	O
f. El aseo/mejoramiento del vecindario	O	O	O	O	O	O
g. Ferias comunitarias o festividades	O	O	O	O	O	O
h. Deportes	O	O	O	O	O	O

64. Hay un gran número de razones por las cuales personas como Ud. podrían no querer involucrarse en actividades para resolver problemas de su vecindario o comunidad. Voy a leerle algunas de estas razones y quisiera que me dijera para cada una de ellas si esta es una razón principal, una razón menor o si no es una razón para que Ud. no se haya involucrado en actividades comunitarias: ***(Marque una respuesta en cada afirmación)***

	Razon principal	*Razón menor*	*No es una razón*	*No sabe*	*No contesta*
a. No tiene tiempo	O	O	O	O	O
b. No piensa que Ud. pueda cambiar nada	O	O	O	O	O
c. No sabe como involucrarse con actividades de la comunidad	O	O	O	O	O
d. No esta interesado en involucrarse con problemas ni del vecindario ni de la comunidad	O	O	O	O	O
e. Nunca ha pensado acerca de esto	O	O	O	O	O
f. Cambia muy a menudo de vivienda como para estar pensando en involucrarse con una comunidad	O	O	O	O	O
g. Tiene que trabajar demasiado así que no tiene tiempo para estar involucrándose en otras cosas	O	O	O	O	O
h. Realmente no siente que forme parte de la comunidad en que esta actualmente	O	O	O	O	O

65. Voy a leerle una lista de actividades que las personas pueden o no hacer. En los últimos 12 meses Ud. : ***(Marque la respuesta apropiada para cada afirmación)***

	Si	*No*	*No sabe*	*No contesta*
a. ¿Hizo donaciones en dinero a una organización que ayuda a mejorar las condiciones de la gente en su comunidad?	O	O	O	O
b. ¿Contribuyó con su tiempo en una organización que ayude a la gente o que mejora las condiciones de su comunidad?	O	O	O	O
c. ¿Contactó a un oficial público acerca de problemas en su comunidad?	O	O	O	O
d. ¿Asistió a reuniones públicas u otro tipo de evento que discutiera problemas de su comunidad?	O	O	O	O

66. Voy a leerle una lista de organizaciones y asociaciones, y quisiera que me dijera si Ud. pertenece o es miembro actualmente de alguna de ellas en el área de Washington: ***(Marque la respuesta apropiada para cada afirmación)***

	Si	*No*	*No sabe*	*No contesta*
a. ¿Una organización religiosa local tal como una iglesia, sinagoga, mezquita o templo?	O	O	O	O
b. ¿Un grupo del vecindario que se dedica a realizar actividades para la comunidad tales como bazares, bingo, vigilancia, etc?	O	O	O	O
c. ¿Una organización educativa o de padres de familia tal como PTA?	O	O	O	O
d. ¿Una organización política?	O	O	O	O
e. ¿Una asociación de propietarios de vivienda?	O	O	O	O
f. ¿Un sindicato?	O	O	O	O
g. ¿Una Cooperativa de trabajadores?	O	O	O	O
h. ¿Una Cooperativa de salud?	O	O	O	O
i. ¿Una organización local de tipo deportivo?	O	O	O	O

j. Otro (Por favor especifique) _____

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67. **¿Tiene Ud. usualmente y de manera consistente transporte tanto para ir como para regresar del trabajo en Washington?**
- O Si
- O No
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

68. **¿Tiene Ud. usualmente y de manera consistente transporte que le permita ir a otras partes que Ud. necesite, tales como un supermercado, la iglesia, la escuela, el doctor, u otro tipo de citas?**
- O Si
- O No
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

Acerca de Usted

Ya para finalizar tenemos unas pocas preguntas sobre usted.

69. **¿Cuál es su fecha de nacimiento?**

Mes ☐☐ / Día ☐☐ / Año ☐☐

70. **¿Cuál es el idioma que se habla principalmente en su hogar?**
- O Si *Vaya a preg 72*
- O No *Haga preg 71 y luego vaya a preg 73*
- O Otro (Especifique)_____ *Vaya a preg 71*
- O No sabe (No lea) *Vaya a preg 71*
- O Prefiere no contestar (No lea) *Vaya a preg 71*

71. **¿Puede leer y escribir un inglés básico?**
- O Si, leerlo y escribirlo
- O Solo leerlo
- O Solo escribirlo
- O Ni leerlo ni escribirlo
- O Prefiere no contestar (No lea)

72. **¿Puede leer y escribir un español básico?**
- O Si, leerlo y escribirlo
- O Solo leerlo
- O Solo escribirlo
- O Ni leerlo ni escribirlo
- O Prefiere no contestar (No lea)

73. **¿Con cuál de los siguientes grupos étnicos se identifica o considera que pertenece?**
- O Mexicano
- O México-americano
- O Indigena mexicano
- O Centro América (Ej. Guatemala, El Salvador, Nicaragua)
- O Nativo americano / Indigena americano
- O Afro americano
- O Asiático / Islas del Pacífico
- O Caucásico
- O Filipino
- O Multi-racial / Multi-étnico
- O Otro (Especifique) _____
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

74. **¿Cuál fue su ingreso personal total anual el último año?**

$ _____ ☐☐☐☐☐
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

75. **Los ingresos que Ud. obtuvo por trabajos en agricultura en los últimos 12 meses fueron:**
- O Menos de $3000
- O $3000 - $ 4500
- O Mas de $4500
- O No sabe
- O Prefiere no contestar (No lea)

76. **¿Cuántas personas de su familia contribuyen con ingresos (en dólares) a la economía de su hogar ?**

 # de personas _____ ☐
- O No sabe (No lea) *Vaya a preg 77*
- O Prefiere no contestar (No lea) *Vaya a preg 77*

76a. **Teniendo en cuenta que tanto Ud. como otros miembros del hogar contribuyen con ingresos a la familia, ¿Cuál fue el ingreso total familiar anual en el último año?**

$ _____ ☐☐☐☐☐
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

76b. **El ingreso familiar obtenido y correspondiente al trabajo en agricultura en los últimos 12 meses fue de:**
- O Menos de $3000
- O $3000 - $ 4500
- O Mas de $4500
- O No sabe
- O Prefiere no contestar (No lea)

77. **¿Esta Ud. o algún miembro de su familia que viva actualmente con usted utilizando alguno de los siguientes servicios?** ***(Lea las opciones y marque todas las que apliquen)***
- O TANF (Temporary Assistance for Needy Families)/ Work First/"welfare"
- O Estampillas para alimentos
- O Aseguranza para dishabilitados
- O Aseguranza por desempleo
- O Pago de veterano
- O WIC (Women's Infants and Children Program)
- O Servicios legales
- O Servicios de asistencia para vivienda
- O Section 8 asistencia para vivienda
- O Basic Health
- O Low Income Home Energy Assistance Program (LIHEAP)
- O Supplemental Security Income (SSI)
- O Social Security Disability Insurance (SSDI)
- O Medicaid
- O Medicare
- O Healthy Kids
- O Otro (especifique) _____
- O No recibe ningún tipo de ayuda o asistencia
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

78. **¿Cuál es el Nombre del rancho a en que ud trabaja?**

_____ ☐☐☐
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

79. **¿En que condado esta trabajando actualmente (Nota: si trabaja en mas de un condado pregunte por el condado en que dedica mayor tiempo de trabajo)?**

Condado de _____ ☐☐
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

80. **¿Cuál es la ciudad mas cercana al sitio donde esta trabajando actualmente?**

Ciudad _____ ☐☐
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

81. **¿Forma parte del programa de las visas tipo visitante-trabajador denominada H2A?**
- O Si
- O No
- O No sabe (No lea)
- O Prefiere no contestar (No lea)

EQUIPO DE ENCUESTADORES

VIVIENDAS PARA CAMPESINOS DE WASHINGTON

Refusal Table

Type of Refusal **(Choose one)**	Number of Refusals **(Use one tally mark per refusal)**
Did not want to participate	
No time	
Not eligible	
*Language barrier	

*If there was a language barrier, please list the types of languages or dialects that prevented the respondent from participating in the survey (do this for each tally of "Language Barrier":

_____

_____

WASHINGTON STATE FARMWORKER

Introduction

Hello. My name is _____. I'm working with the Washington State Farmworker Housing Trust (WSFHT), a group that is working to improve housing conditions for farmworkers. In order to have a better understanding of farmworkers' housing needs, we are asking workers to participate in this survey. The survey includes questions about the kind of work you do, your housing situation, your health care, and a few other things. It will take about 30 minutes. You do not have to answer any questions that you do not feel comfortable with, but our survey will be most effective if you answer as many questions as you can. All of the information that you share with us is confidential. No identifying information, such as your name or address, will be reported to anyone. To thank you for answering our questions, we will give you a phone card in return for your time and ideas. Would you like to continue? **(If yes, continue with questions. If no, please thank respondent and mark appropriate refusal in the refusal table)**

S1. Have you previously completed this survey?

( ) 1 Yes **(Stop interview and thank respondent. Mark "Not eligible" in the refusal table)**

( ) 2 No

( ) 3 Don't know **(Don't read. Stop interview and thank respondent. Mark "Not eligible" in the refusal table)**

( ) 4 Prefer not to answer / refused **(Don't read. Stop interview and thank respondent. Mark "Not eligible" in the refusal table)**

To start, I'd like to ask you a few questions about your current work and your household.

Work Information

(If the answer to the Question 1 is obvious (respondent is contacted on a farm) mark response and go to Question 2.)

1. Do you work in crop production agriculture now?

( ) 1 Yes

( ) 2 No **(Stop interview and thank respondent. Mark "Not eligible" in refusal table)**

( ) 3 Don't know **(Don't read. Stop interview and thank respondent. Mark "Not eligible" in refusal table)**

( ) 4 Prefer not to answer / refused **(Don't read. Stop interview and thank respondent. Mark "Not eligible in refusal table)**

2. If you are employed in crop production agriculture now, where are you primarily working? **(Read list and check one)**

( ) 1 A farm or orchard

( ) 2 A nursery or greenhouse

( ) 3 A cannery **(Stop interview and thank respondent. Mark "Not eligible" in refusal table)**

( ) 4 A packing house, **(Stop interview and thank respondent. Mark "Not eligible" in refusal table)**

( ) 5 A food processing plant **(Stop interview and thank respondent. Mark "Not eligible" in refusal table)**

( ) 6 Don't know **(Don't read. Stop interview and thank respondent. Mark "Not eligible" in refusal table)**

( ) 7 Prefer not to answer / refused **(Don't read. Stop interview and thank respondent. Mark "Not eligible" in refusal table)**

If respondent meets all of the above criteria, start interview here:

3. How long have you been working in agriculture? Q3

( ) 1 Less than 6 months

( ) 2 Six months up to one year

( ) 3 More than one year but less than two years

( ) 4 More than two years but less than five years

( ) 5 More than five years but less than 10 years

( ) 6 More than 10 years

( ) 7 Don't know **(Don't read)**

( ) 8 Prefer not to answer / refused **(Don't read)**

4. How long have you been working in agriculture in Washington? Q4

( ) 1 Less than 6 months
( ) 2 Six months up to one year
( ) 3 More than one year but less than two years
( ) 4 More than two years but less than five years
( ) 5 More than five years but less than 10 years
( ) 6 More than 10 years
( ) 7 Don't know **(Don't read)**
( ) 8 Prefer not to answer / refused **(Don't read)**

5. How much longer do you think you will be working in agriculture in Washington? Q5

( ) 1 Less than 6 months
( ) 2 Six months up to one year
( ) 3 More than one year but less than two years
( ) 4 More than two years but less than five years
( ) 5 More than five years but less than 10 years
( ) 6 More than 10 years
( ) 7 Don't know **(Don't read)**
( ) 8 Prefer not to answer / refused **(Don't read)**

6. When working in Washington, do you work for the same employer(s) each year? Q6

( ) 1 This is the first time I've worked in Washington
( ) 2 Yes, I always work for the same employer(s)
( ) 3 No, I work for different employers each year, depending on where I can find work
( ) 4 Some employers are the same and some are different
( ) 5 Don't know **(Don't read)**
( ) 6 Prefer not to answer / refused **(Don't read)**

7. In the last 12 months, did you stay overnight somewhere other than your usual home in Washington to work in agriculture? Q7

( ) 1 Yes
( ) 2 No
( ) 3 I don't have a usual home in Washington
( ) 4 Don't know **(Don't read)**
( ) 5 Prefer not to answer / refused **(Don't read)**

8. In the last 12 months, did you travel more than 75 miles one way from your usual home in Washington to work in agriculture? Q8

( ) 1 Yes
( ) 2 No
( ) 3 Don't know **(Don't read)**
( ) 4 Prefer not to answer / refused **(Don't read)**

9. During those 12 months, how much time was spent living away from home in Washington because you were working in agriculture? Q9

( ) 1 Less than 30 days
( ) 2 One month to less than three months
( ) 3 Three months to less than six months
( ) 4 Six months to less than nine months
( ) 5 Nine months to one year
( ) 6 I do not travel to work in agriculture **(Skip to Question 11)**
( ) 7 Don't know **(Don't read, Skip to Question 11)**
( ) 8 Prefer not to answer / refused **(Don't read, Skip to Question 11)**

10. When staying away from home overnight, how did you find housing? **(Read list and check all that apply)**

Q10_1 Unable to find housing (e.g. camped out, lived in car, homeless shelter, etc.)
Q10_2 Stayed with family or friends
Q10_3 Family or friends told me where I could find housing
Q10_4 Employer provided housing
Q10_5 Employer told me where I could find housing
Q10_6 Local housing or other service agency
Q10_7 Newspaper/radio
Q10_8 Other
Q10_9 Don't know **(Don't read)**
Q10_10 Prefer not to answer / refused **(Don't read)**

Washington State Farmworker Survey

(Key for Question 11 and 12)

Crop Key	Task Key	County Key	Housing / Living Situation Key
1 Apples	1 Ready crops for harvest, but don't pick	1 Adams County	1 RV, camper or trailer
2 Asparagus	2 Pick/harvest	2 Asotin County	2 House you own (including mobile homes)
3 Berries (blueberries, strawberries, raspberries, etc.)	3 Irrigate	3 Benton County	3 House you rent (including mobile homes)
4 Cherries	4 Pack or sort	4 Chelan County	4 Apartment or duplex or triplex or condominium that you rent
6 Fish / Shellfish	5 Weed	5 Clallam County	5 Room in a hotel or motel
7 Hops	6 Thin	6 Clark County	6 Room or bed in rooming house, dormitory, boarding house, or someone else's home
8 Grapes	7 Prune	7 Columbia County	7 Car
9 Nursery	8 Plant	8 Cowlitz County	8 Garage
10 Pears	9 Various greenhouse or nursery tasks	9 Douglas County	9 Storage shed or some other type of shed
11 Potatoes	10 Transport crops	10 Ferry County	10 Tent at a public camp ground (park, KOA, etc.)
12 Onions	11 Apply chemicals (pesticides)	11 Franklin County	11 Tent on private property or at worksite
13 Forestry (tree planting, thinning)	12 Graft	12 Garfield County	12 In the open, not in any type of structure
14 Mint	13 Ornamental accessories	13 Grant County	13 Labor camp – dormitory / barracks
16 Miscellaneous vegetable	14 Drive farm equipment	14 Grays Harbor County	14 Labor camp – family housing unit
17 Food processing / cannery	15 Supervise crew	15 Island County	15 Labor camp – tent
21 No job / unemployed	16 Other	16 Jefferson County	16 Public labor camp
25 Peaches and Nectarines	21 No job	17 King County	17 Other
36 Orange / Lemon	999 No information	18 Kitsap County	999 No information
92 Other agricultural activity		19 Kittitas County	
93 Non agricultural activity		20 Klickitat County	
999 No information		21 Lewis County	
		22 Lincoln County	
		23 Mason County	
		24 Okanogan County	
		25 Pacific County	
		26 Pend Oreille County	
		27 Pierce County	
		28 San Juan County	
		29 Skagit County	
		30 Skamania County	
		31 Snohomish County	
		32 Spokane County	
		33 Stevens County	
		34 Thurston County	

Washington State Farmworker Survey

		35 Wahkiakum County	
		36 Walla Walla County	
		37 Whatcom County	
		38 Whitman County	
		39 Yakima County	
		99 Other state	
		998 Other country	
		999 No information	
50 Don't know **(Don't read)**			
51 Prefer not to answer / refused **(Don't read)**			

11. Please tell me about the work you are doing now and within the last 30 days in agriculture, and about your housing situation in Washington now and in the last 30 days. **(Respondent can give more than one crop and task response, but only put one crop or task per line.)**

Crop	Task	Location (nearest city/town)	County	Housing Situation
Q11A_1	Q11B_1	Q11C_1	Q11D_1	Q11E_1
Q11A_2	Q11B_2	Q11C_2	Q11D_2	Q11E_2
Q11A_3	Q11B_3	Q11C_3	Q11D_3	Q11E_3
Q11A_4	Q11B_4	Q11C_4	Q11D_4	Q11E_4
Q11A_5	Q11B_5	Q11C_5	Q11D_5	Q11E_5
Q11A_6	Q11B_6	Q11C_6	Q11D_6	Q11E_6

Interviewer note: People who say they are working in a cannery, food processing plant, or packing house NOW are not eligible to take the survey. People who are NOW supervising a crew are not eligible to take the survey.

12. Please tell me about the work you have done in agriculture and about your housing situation in the last twelve months. **(Read list of housing / living situation options. Only put one crop or task per line. Please fill out each line even if the crop or task extended over several months or all year. If you worked multiple crops in a month, list the crop that was worked on the most) [Interviewer: Enter "NA" for "No Answer"]**

Month (circle month of interview)	Crop	Task	Location (nearest city, town, state, or country)	Washington State County (Please note if "Outside" of Washington State)	Housing / living situation
a. January	Q12A_1	Q12B_1	Q12C_1	Q12D_1	Q12E_1
b. February	Q12A_2	Q12B_2	Q12C_2	Q12D_2	Q12E_2
c. March	Q12A_3	Q12B_3	Q12C_3	Q12D_3	Q12E_3
d. April	Q12A_4	Q12B_4	Q12C_4	Q12D_4	Q12E_4
e. May	Q12A_5	Q12B_5	Q12C_5	Q12D_5	Q12E_5
f. June	Q12A_6	Q12B_6	Q12C_6	Q12D_6	Q12E_6
g. July	Q12A_7	Q12B_7	Q12C_7	Q12D_7	Q12E_7
h. August	Q12A_8	Q12B_8	Q12C_8	Q12D_8	Q12E_8
i. September	Q12A_9	Q12B_9	Q12C_9	Q12D_9	Q12E_9
j. October	Q12A_10	Q12B_10	Q12C_10	Q12D_10	Q12E_10
k. November	Q12A_11	Q12B_11	Q12C_11	Q12D_11	Q12E_11
l. December	Q12A_12	Q12B_12	Q12C_12	Q12D_12	Q12E_12

Washington State Farmworker Survey

13. Now I'd like to know a little about those in your household currently living with you here in Washington. This includes family members related to you as well as other individuals that you help to support financially. Again, I am only interested in those people living with you right now.

Relationship to you **(Check all that apply)**	Age	Gender (Circle one)	Does this person do farmwork? **(Circle one)**	Is this person employed but not in farmwork? **(Circle one)**	Does this person help pay for household expenses? **(Circle one)**	If child is aged 5 to 18, does this child go to school? **(Circle one)**
		M F 1 2	Yes No 1 2	Yes No 1 2	Yes No 1 2	Yes No 1 2
Q13a_1 Spouse/ Partner	Q13B_1	Q13C_1	Q13D_1	Q13E_1	Q13F_1	
Q13a_2 Child	Q13B_2	Q13C_2	Q13D_2	Q13E_2	Q13F_2	Q13G_2
Q13a_3 Child	Q13B_3	Q13C_3	Q13D_3	Q13E_3	Q13F_3	Q13G_3
Q13a_4 Child	Q13B_4	Q13C_4	Q13D_4	Q13E_4	Q13F_4	Q13G_4
Q13a_5 Child	Q13B_5	Q13C_5	Q13D_5	Q13E_5	Q13F_5	Q13G_5
Q13a_6 Child	Q13B_6	Q13C_6	Q13D_6	Q13E_6	Q13F_6	Q13G_6
Q13a_7 Child	Q13B_7	Q13C_7	Q13D_7	Q13E_7	Q13F_7	Q13G_7
Q13a_8 Sibling	Q13B_8	Q13C_8	Q13D_8	Q13E_8	Q13F_8	Q13G_8
Q13a_9 Sibling	Q13B_9	Q13C_9	Q13D_9	Q13E_9	Q13F_9	Q13G_9
Q13a_10 Parent	Q13B_10	Q13C_10	Q13D_10	Q13E_10	Q13F_10	
Q13a_11 Parent	Q13B_11	Q13C_11	Q13D_11	Q13E_11	Q13F_11	
Q13a_12 Uncle / aunt	Q13B_12	Q13C_12	Q13D_12	Q13E_12	Q13F_12	Q13G_12
Q13a_13 Grandparent	Q13B_13	Q13C_13	Q13D_13	Q13E_13	Q13F_13	
Q13a_14 Niece/ Nephew	Q13B_14	Q13C_14	Q13D_14	Q13E_14	Q13F_14	Q13G_14
Q13a_15 Other relative	Q13B_15	Q13C_15	Q13D_15	Q13E_15	Q13F_15	Q13G_15
Q13a_16 Other relative	Q13B_16	Q13C_16	Q13D_16	Q13E_16	Q13F_16	Q13G_16
Q13a_17 Non-relative	Q13B_17	Q13C_17	Q13D_17	Q13E_17	Q13F_17	Q13G_17
Q13a_18 Non-relative	Q13B_18	Q13C_18	Q13D_18	Q13E_18	Q13F_18	Q13G_18
Q13a_19 Non-relative	Q13B_19	Q13C_19	Q13D_19	Q13E_19	Q13F_19	Q13G_19
Q13a_20 Non-relative	Q13B_20	Q13C_20	Q13D_20	Q13E_20	Q13F_20	Q13G_20
Q13a_21 Non-relative	Q13B_21	Q13C_21	Q13D_21	Q13D_21	Q13F_21	Q13G_21
Q13a_22 Does not apply, I live alone and pay for a bed	Q13B_22					
Total Persons (please add all people in household and verify with respondent)	Q13BTOT					

14. What is your marital status? Q14

( ) 1 Married
( ) 2 Living with significant other / partner
( ) 3 Single
( ) 4 Divorced
( ) 5 Widowed
( ) 6 Don't know **(Don't read)**
( ) 7 Prefer not to answer / refused **(Don't read)**

Washington State Farmworker Survey

15. Do you have a spouse / significant other or children (under the age of 18) who do not live with you here? Q15

( ) 1 Yes

( ) 2 No **(Skip to Question 17)**

( ) 3 Don't know **(Don't read. Skip to Question 17)**

( ) 4 Prefer not to answer / refused **(Don't read. Skip to Question 17)**

16. Where do your spouse, significant other and/or children (under the age of 18) live?

		Washington	Oregon	California	Other U.S. State	Mexico	Other Country
		1	2	3	4	5	6
Q16A_1	Spouse	1	2	3	4	5	6
Q16A_2	Significant other	1	2	3	4	5	6
Q16A_3	Child #1	1	2	3	4	5	6
Q16A_4	Child #2	1	2	3	4	5	6
Q16A_5	Child #3	1	2	3	4	5	6

17. Do you have young children (under the age of 13) in Washington that need day care, but are not able to receive it? Q17

( ) 1 Yes, I have children that are need day care but are not able to receive it

( ) 2 No, my children receive day care **(Skip to Question 19)**

( ) 3 No, my children do not need day care **(Skip to Question 19)**

( ) 4 I do not have any young children **(Skip to Question 19)**

( ) 5 Don't know **(Don't read. Skip to Question 19)**

( ) 6 Prefer not to answer / refused **(Don't read. Skip to Question 19)**

18. What is the reason that they are unable to attend or receive day care? **(Read list and check all that apply)**

( ) Q18_1 Cost

( ) Q18_2 No day care in the area

( ) Q18_3 Day care doesn't accept infants

( ) Q18_4 Day care centers are all full

( ) Q18_5 Don't know where to go to get care

( ) Q18_6 Lack transportation to get there

( ) Q18_7 Hours the day care facility is open (e.g. not open early enough)

( ) Q18_8 Uncomfortable with day care providers in this area

( ) Q18_9 Other

( ) Q18_10 Don't know **(Don't read)**

( ) Q18_11 Prefer not to answer / refused **(Don't read)**

Now, I would like to ask you questions about where you live.

19. Do you live in employer-provided housing? Q19

( ) 1 Yes

( ) 2 No

( ) 3 Don't know **(Don't read)**

( ) 4 Prefer not to answer / refused **(Don't read)**

20. Which of the following responses most accurately describes your living situation? Q20

( ) 1 Renting a house or apartment

( ) 2 Own a house or condominium

( ) 3 Rent a cot / bed / bunk per day

( ) 4 I live outdoors (tent, car, etc.)

( ) 5 Camper

( ) 6 Don't know

( ) 7 Prefer not to answer / refused

( ) 8 Mobile home residency

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20a. If the costs to you of on-farm and off-farm/in-town housing were the same, which would you prefer to live in? Q20A

( ) 1 On-farm housing **(Ask Question 20b, then skip to Question 21)**

( ) 2 Off-farm/in-town housing **(Skip to Question 20c)**

( ) 3 Don't know **(Don't read. Skip to Question 21)**

( ) 4 Prefer not to answer / refused **(Don't read. Skip to Question 21)**

20b. Why would you prefer to live in on-farm housing? **(Read list and mark all that apply, then skip to Question 21)**

( ) Q20B1 Close to work

( ) Q20B2 Cost

( ) Q20B3 Ability to work on the farm

( ) Q20B4 Other

( ) Q20B5 Don't know **(Don't read)**

( ) Q20B6 Prefer not to answer / refused **(Don't read)**

20c. Why would you prefer to live in off-farm/in-town housing? **(Read list and mark all that apply)**

( ) Q20C1 Close to services, schools, churches, and the community

( ) Q20C2 Independence of living away from my workplace

( ) Q20C3 Ability to live there year-round

( ) Q20C4 Ability to work where I want to

( ) Q20C5 Other

( ) Q20C6 Don't know **(Don't read)**

( ) Q20C7 Prefer not to answer / refused **(Don't read)**

21. Where is your permanent residence? Q21

( ) 1 In Washington: What city? _____Q21WASH_____

( ) 2 Outside of Washington: What state? ____Q22STATE_____

( ) 3 Outside of U.S.A: What country? _____Q21OTHER____

21a. How long (in years and months) have you been living within 75 miles of this area?

__ Q21A__ Years

22. What is the total amount paid by **you or your family** for your current housing unit?

$_Q22___ Amount paid:

( ) 1 Do not live in a housing unit

( ) 2 Don't know **(Don't read)**

( ) 3 Prefer not to answer **(Don't read)**

Payments Q22A (month (1) /week (2) /day (3) / Not response (4) / Do not live in a housing unit (5) **(circle one)**

Q22B (you (1) /your family (2) / Not response (3) / Do not live in a housing unit (4) **(circle one)**

23. Do you have to pay extra, in addition to your housing payment, for any of the following? **(Read list and check all that apply)**

( ) Q23_1 Electricity

( ) Q23_2 Gas or propane

( ) Q23_3 Water

( ) Q23_4 Garbage

( ) Q23_5 Sewer

( ) Q23_6 Other

( ) Q23_7 I pay extra, but don't know what the charge is for

( ) Q23_8 No, I do not pay anything extra **(Skip to Question 24)**

( ) Q23_9 Don't know **(Don't read. Skip to Question 24)**

( ) Q23_10 Prefer not to answer / refused **(Don't read. Skip to Question 24)**

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( ) Q23_11 Not applicable **(Skip to Question 24)**

( ) Q23_12 Phone/ cell phone

( ) Q23_13 TV cable / Dish

23a. On average, how much per month do these extra charges add up to? Q23A

_____$ Amount

( ) 997 Not applicable

( ) 998 Don't know **(Don't read)**

( ) 999 Prefer not to answer / refused **(Don't read)**

24. If your living situation is a house, apartment, condominium, triplex, mobile home, or labor camp with bedrooms, how many formal bedrooms are there in this house or structure? (A bedroom is typically a place where people sleep with a built-in closet or wardrobe) Q24

_____ Number of bedrooms

( ) 97 Does not apply **(Skip to Question 26)**

( ) 98 Don't know **(Don't read. Skip to Question 26)**

( ) 99 Prefer not to answer / refused **(Don't read. Skip to Question 26)**

25. Now we'd like to know more about where people sleep and how many sleep in each area.

25a. In which of the following areas do people sleep? **(Read list and check all that apply)**	25b. Number of people that sleep in this area **(please write the number of people that sleep in each area marked in 25a)**
( ) Q25_1 Bedrooms	Q25B_1
( ) Q25_2 Living room (place where people watch T.V.)	Q25B_2
( ) Q25_3 Dining room (place where people eat)	Q25B_3
( ) Q25_4 Hallway	Q25B_4
( ) Q25_5 Storage shed	Q25B_5
( ) Q25_6 Garage	Q25B_6
( ) Q25_7 Basement	Q25B_7
( ) Q25_8 Attic	Q25B_8
( ) Q25_9 Other	Q25B_9
Total Number of People in All Areas	Q25B_10
( ) Q25_10 Don't know **(Don't read)**	
( ) Q25_11Prefer not to answer / refused **(Don't read)**	

26. Do you currently have any of the following problems where you are currently living? **(Read list and check all that apply) MULTIPLE RESPONSE Q26_1 TO Q26_27**

( ) 1 Appliances don't work / no appliances

( ) 2 Holes in the wall or floor

( ) 3 Electrical problems

( ) 4 Heating problems / no heating

( ) 5 Leaking faucets / plumbing

( ) 6 No plumbing / toilet

( ) 7 Leaking ceiling

( ) 8 Insufficient water supply

( ) 9 Poor water quality (can't drink the water)

( ) 10 Cracking, peeling or chipping paint

( ) 11 Draft through windows / holes

( ) 12 Mice

( ) 13 Roaches

( ) 14 Toilet doesn't flush / plumbing doesn't drain

( ) 15 Waste water / sewage on top of ground

( ) 16 Live in car or outdoor living situation

( ) 18 No problems

( ) 19 Don't know **(Don't read)**

( ) 20 Prefer not to answer / refused **(Don't read)**

( ) 21 Temperature (too hot, no air conditioner)

( ) 22 Insect problems (ants, spiders, mosquitoes)

( ) 23 Other bad problems (wood, floor, dirty, carpet, mold)

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( ) 24 Not big enough/ too many people/ no privacy

( ) 25 Not enough water

( ) 26 Landlord problems

( ) 27 Other

Now I'd like to ask you about what type of housing situation you would prefer and what you'd like in terms of housing in the future.

27. If more or better housing were available in this area would you be more likely to:

(Please circle the appropriate response for each question)

	1 - Yes	2 - No	3 - Not applicable	4 - Don't know **(Don't read)**	5 - Prefer not to answer / refused **(Don't read)**
Q27A Stay in Washington permanently?	1	2	3	4	5
Q27B. Continue coming to Washington to work?	1	2	3	4	5
Q27C Bring your family to Washington to live with you if they are not already here?	1	2	3	4	5
Q27D Continue working in agriculture?	1	2	3	4	5
Q27E Not travel more than 75 miles one way to do farm work?	1	2	3	4	5
Q27F More or better housing is not important to me	1	2	3	4	5
Q27G I am content with my housing here in Washington	1	2	3	4	5

28. In general, how important are the following when considering housing?

(Please circle one level of importance on a scale of 1-4 for each question)

	1 - Very important	2 - Somewhat important	3- Not very important	4 -Not at all important	5 - Don't know **(Don't read)**	6 - Prefer not to answer / refused **(Don't read)**
Q28a. Is the least costly for me	1	2	3	4	5	6
Q28b. Located on or near the farm or orchard where you are working	1	2	3	4	5	6
Q28c. Located near schools or child care	1	2	3	4	5	6
Q28d. Located near shops and entertainment	1	2	3	4	5	6
Q28e. Located near medical care	1	2	3	4	5	6
Q28f. Located with others from your community	1	2	3	4	5	6
Q28g. Located with others who speak your language	1	2	3	4	5	6
Q28h. Located near your church	1	2	3	4	5	6
Q28i. A safe place for children to play nearby	1	2	3	4	5	6
Q28j. In a safe neighborhood (away from crime, drugs and gangs)	1	2	3	4	5	6

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Q28k. Has working appliances like a stove, refrigerator, washer and dryer	1	2	3	4	5	6
Q28l. Is clean	1	2	3	4	5	6
Q28m. Has enough bedrooms **(ask Question 28m.1 if "very" or "somewhat" important)**	1	2	3	4	5	6
Q28m1. How many bedrooms would be enough?	↓ ↓ _____					

28a. Which one of what I just read is the most important to you? **[Interviewer: write letter here]** _____ Q28AA

28b. Which of these are the next two (2) most important to you? **[Interviewer: write letters here]** _____ _____ Q28BB

29. If you have had difficulty renting housing in this area, what barriers have prevented you from being able to rent a place to live here? **(Read list and check all that apply)) MULTIPLE RESPONSE Q29_1 TO Q29_12**

( ) 1 This question does not apply because I own my own home here
( ) 2 No difficulty renting housing
( ) 3 Not having money needed up front (deposit, first or last month's rent)
( ) 4 Can't find a place you can afford
( ) 5 No housing available
( ) 6 Landlord requires a lease and I don't need housing for that long
( ) 7 Face discrimination barriers
( ) 8 Have language barriers
( ) 9 Citizenship or immigration issues
( ) 11 Don't know
( ) 12 Prefer not to answer / refused **(Don't read)**
( ) 15 Too many people
( ) 16 Don't meet requirements
( ) 17 Not enough places / bad conditions
( ) 18 Too expensive
( ) 19 Other

30. When working in Washington would you prefer to rent or own your own home, apartment, or trailer? Q30

( ) 1 Not applicable because I own a home in Washington **(Skip to Question 37)**
( ) 2 Rent **(Ask Question 30a)**
( ) 3 Own **(Skip to Question 32)**
( ) 4 Neither **(Skip to Question 32)**
( ) 5 Other **(Skip to Question 32)**
( ) 6 Don't know **(Don't read. Skip to Question 32)**
( ) 7 Prefer not to answer / refused **(Don't read. Skip to Question 32)**

30a. If you would prefer to rent your housing, would you prefer to live in **(Read list and choose one)**: Q30A

( ) 1 Housing not at your place of employment
( ) 2 Live in housing provided at your place of employment
( ) 3 Doesn't matter
( ) 4 Don't know **(Don't read)**
( ) 5 Prefer not to answer / refused **(Don't read)**

31. Would you prefer that your rented housing be managed by **(Read list and choose one)**: Q31

( ) 1 Private landlord
( ) 2 Your employer
( ) 3 A church organization
( ) 4 A community health center or community based organization
( ) 5 The local housing authority
( ) 6 Other
( ) 7 Doesn't matter
( ) 8 Don't know **(Don't read)**
( ) 9 Prefer not to answer / refused **(Don't read)**

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I would also like to find out whether you have thought about owning your own home in Washington and, if so, any problems you have or might experience if you attempted to purchase your own home.

32. Are you actively planning to purchase your own home in Washington within the next 12 months? Q32

( ) 1 Yes

( ) 2 No **(Skip to Question 37)**

( ) 3 Don't know **(Don't read. Skip to Question 37)**

( ) 4 Prefer not to answer / refused **(Don't read. Skip to Question 37)**

33. Where are you in the home buying process? **(Read list and choose one)**

( ) Q33_1 Still thinking about owning a home

( ) Q33_2 Saving for a down payment

( ) Q33_3 Shopping for a loan

( ) Q33_4 Actively house hunting

( ) Q33_5 Made an offer on a house

( ) Q33_6 Loan in progress

( ) Q33_7 Other

( ) Q33_8 Don't know **(Don't read)**

( ) Q33_9 Prefer not to answer / refused **(Don't read)**

34. Do you need assistance with any of the following in buying your house? **(Read list and check all that apply)**

( ) Q34_1 Credit or debt counseling

( ) Q33_2 Down payment assistance

( ) Q33_3 Learning about what affordable housing options are available

( ) Q33_4 Information on how to purchase a home

( ) Q33_5 Other things about buying a home

( ) Q33_6 I don't need assistance

( ) Q33_7 Don't know **(Don't read)**

( ) Q33_8 Prefer not to answer / refused **(Don't read)**

35. What obstacle(s) do you believe has/have prevented you from being able to successfully purchase a home? **(Read list and check all that apply)**

( ) Q35_1 Not having enough money for a down payment and closing costs

( ) Q35_2 Not having enough income to make monthly payments.

( ) Q35_3 Not being able to afford a home in a neighborhood that you like and can afford

( ) Q35_4 Have not been able to earn enough money to qualify for a home loan

( ) Q35_5 Lack good enough credit to qualify for a home loan

( ) Q35_6 Not sure how to get started

( ) Q35_7 Do not understand the home buying process

( ) Q35_8 Face **discrimination** barriers that prevent you from buying the home you want

( ) Q35_9 Face **language** barriers that prevent you from purchasing a home you want

( ) Q35_10 Citizenship or Immigration issues

( ) Q35_11 Other

( ) Q35_12 I don't feel I face any barriers

( ) Q35_13 Don't know **(Don't read)**

( ) Q35_14 Prefer not to answer / refused **(Don't read)**

36. Would you be interested in helping to build your own home if it would reduce the cost? Q36

( ) 1 Yes

( ) 2 No

( ) 3 Don't know **(Don't read)**

( ) 4 Prefer not to answer / refused **(Don't read)**

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Health Information

Now I would like to talk to you about a different topic – health issues.

37. Do you or anyone in your family who lives with you now have medical insurance? Q37

( ) 1 Yes, I do
( ) 2 Yes, my family member(s) does
( ) 3 Yes, both I and my family member(s) do
( ) 4 No **(Skip to Question 43)**
( ) 5 Don't know **(Don't read. Skip to Question 43)**
( ) 6 Prefer not to answer / refused **(Don't read. Skip to Question 43)**

38. What kind of health insurance do you or your family member(s) have? **(Read list and circle all that apply. If the insurance applies to the respondent, circle the number under "You." If the insurance applies to a family member, circle the number under "Immediate family member(s).")**

	You	Immediate family member(s)
1 Private insurance	Q38_1	Q38A1
2 Basic Health	Q38_2	Q38A2
3 Medicaid ("medical coupons")	Q38_3	Q38A3
4 Worker's Compensation	Q38_4	Q38A4
5 Children's health insurance ("medical coupons") **(Ask Question 38a)**		Q38A5
6 Employer-provided	Q38_6	Q38A6
7 Medicare	Q38_7	Q38A7
8 Family Medical	Q38_8	Q38A8
9 Healthcare for Workers with Disabilities	Q38_9	Q38A9
10 Alien Emergency Medical	Q38_10	Q38A10
11 Pregnancy Medical	Q38_11	Q38A11
12 Provided by employer of another family member such as your spouse	Q38_12	Q38A12
13 Other	Q38_13	Q38A13
14 Don't know **(Don't read)**	Q38_14	Q38A14
15 Prefer not to answer / refused **(Don't read)**	Q38_15	Q38A15

(Ask 38a if respondent said they have "Children's health insurance," response option 5 in Question 38. For all others, skip to Question 39)

38a. Type of children's health insurance Q38A:

( ) 1 Children's Medical
( ) 2 CHIP Medical
( ) 3 Other
( ) 4 Don't know **(Don't read)**
( ) 5 Prefer not to answer / refused **(Don't read)**
( ) 6 Medicaid
( ) 7 Healthy kids
( ) 8 Basic health plus
( ) 9 Medical coupons

39. Who does this insurance cover **(Read list and check all that apply)**

( ) Q39_1 You
( ) Q39_2 Your spouse / partner
( ) Q39_3 Your children
( ) Q39_4 Other
( ) Q39_5 Don't know **(Don't read)**
( ) Q39_6 Prefer not to answer / refused **(Don't read)**

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40. Do you make monthly payments for this insurance? Q40

( ) 1 Yes **(Ask Question 40a)**

( ) 2 No **(Skip to Question 41)**

( ) 3 Don't know **(Don't read. Skip to Question 41)**

( ) 4 Prefer not to answer / refused **(Don't read. Skip to Question 41)**

40a. If yes, how much do you pay per month? Q40A

$_____ Amount

( ) 1 Don't know

( ) 2 Prefer not to answer / refused

41. Do you have to pay something – such as a co-pay – every time you visit a doctor? Q41

( ) 1 Yes **(Ask Question 41a)**

( ) 2 No **(Skip to Question 42)**

( ) 3 Don't know **(Don't read. Skip to Question 42)**

( ) 4 Prefer not to answer / refused **(Don't read. Skip to Question 42)**

41a. If yes, has this ever prevented you from visiting the doctor? Q41A

( ) 1 Yes

( ) 2 No

( ) 3 Don't know **(Don't read)**

( ) 4 Prefer not to answer / refused **(Don't read)**

42. Does your insurance cover medicine the doctor might prescribe? Q42

( ) 1 Yes

( ) 2 No

( ) 3 Don't know **(Don't read)**

( ) 4 Prefer not to answer / refused **(Don't read)**

43. Where do you normally go in this area for health care? **(Choose up to two responses)**

( ) Q43_1 Community clinic / Migrant health clinic

( ) Q43_2 Private doctor

( ) Q43_3 Urgent care center

( ) Q43_4 Health department

( ) Q43_5 Hospital / Emergency Room

( ) Q43_6 Healer (curandero/a)

( ) Q43_7 Other

( ) Q43_8 Have no place I/we regularly go for health care

( ) Q43_9 Do not know where to go for health care

( ) Q43_10 Don't know **(Don't read)**

( ) Q43_11 Prefer not to answer / refused **(Don't read)**

44. Have you been to a doctor in the last 12 months? Q44

( ) 1 Yes **(Answer Question 45)**

( ) 2 No **(Skip to Question 46)**

( ) 3 Don't know **(Don't read. Skip to Question 46)**

( ) 4 Prefer not to answer / refused **(Don't read. Skip to Question 46)**

45. What reason did you visit the doctor? **(Read list and check all that apply)**

( ) Q45_1 Routine check-up

( ) Q45_2 Immunizations

( ) Q45_3 Pregnancy

( ) Q45_4 Illness

( ) Q45_5 Non-work-related accident

( ) Q45_6 Work-related illness or injury

( ) Q45_7 Chronic health problem

( ) Q45_8 Mental health care

( ) Q45_9 Took child for health care

( ) Q45_10 Substance abuse

( ) Q45_11 Domestic violence

( ) Q45_12 Other

( ) Q45_13 Don't know **(Don't read)**

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( ) Q45_14 Prefer not to answer / refused (**Don't read**)

46. Have you or anyone in your family needed ***medical or dental*** attention in the last 12 months? Q46

( ) 1 Yes

( ) 2 No (**Skip to Question 51**)

( ) 3 Don't know (**Don't read. Skip to Question 51**)

( ) 4 Prefer not to answer / refused (**Don't read. Skip to Question 51**)

47. If you or anyone in your family has needed ***medical or dental*** attention in the last 12 months, were you able to receive it? Q47

( ) 1 No, we were not able to receive medical care or dental care (**Ask Questions 48-50**)

( ) 2 No, we were not able to receive medical care but we were able to receive dental care (**Ask Questions 48-50**)

( ) 3 No, we were not able to receive dental care but we were able to receive medical care (**Ask Questions 48-50**)

( ) 4 Yes, we were able to receive the medical or dental care we needed (**Skip to Question 51**)

( ) 5 Don't know (**Don't read. Skip to Question 51**)

( ) 6 Prefer not to answer / refused (**Don't read. Skip to Question 51**)

48. Was this you, a child (under age 18), or an adult? (**Read list and check all that apply**)

( ) Q48_1 You

( ) Q48_2 Child

( ) Q48_3 Adult

( ) Q48_4 Don't know (**Don't read**)

( ) Q48_ 5 Prefer not to answer / refused (**Don't read**)

49. What type of medical or dental care did you or they need that you / they were unable to receive? (**Read list and circle all that apply. Please circle the number under "You" or "Your family member" for each applicable question**)

	You	Your family member
Routine medical check-up	Q49_1	Q49A1
Immunizations	Q49_2	Q49A2
Pregnancy care	Q49_3	Q49A3
Illness	Q49_4	Q49A4
Non-work-related accident	Q49_5	Q49A5
Work-related illness or injury	Q49_6	Q49A6
Chronic health problem	Q49_7	Q49A7
Mental health care	Q49_8	Q49A8
Took child for health care	Q49_9	Q49A9
Substance abuse care	Q49_10	Q49A10
Domestic violence care	Q49_11	Q49A11
Other medical care	Q49_12	Q49A12
Routine dental check-up	Q49_13	Q49A13
Cavity(ies) filled	Q49_14	Q49A14
Help with painful teeth	Q49_15	Q49A15
Tooth (teeth) pulled	Q49_16	Q49A16
Other dental care	Q49_17	Q49A17
Don't know (**Don't read**)	Q49_18	Q49A18
Prefer not to answer / refused (**Don't read**)	Q49_19	Q49A19

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50. Why were you or they unable to get the help you needed? **(Read list and circle all that apply. Please circle the number under "You" or "Your family member" for each applicable question)**

	You	Your family member
No insurance	Q50_1	Q50A1
Cost	Q50_2	Q50A2
Language	Q50_3	Q50A3
Citizenship/immigration issues	Q50_4	Q50A4
Lacked transportation to get there	Q50_5	Q50A5
Hours the health facility was open (not open when you/they could go)	Q50_6	Q50A6
Not able to leave work to get care	Q50_7	Q50A7
Don't know where to go to get care	Q50_8	Q50A8
Uncomfortable with the doctors in this area	Q50_9	Q50A9
Faced discrimination when getting care	Q50_10	Q50A10
Could not understand telephone system at medical office so could not make an appointment	Q50_11	Q50A11
Could not find a doctor or dentist who would see me / family member	Q50_12	Q50A12
Other	Q50_13	Q50A13
Don't know **(Don't read)**	Q50_14	Q50A14
Prefer not to answer / refused **(Don't read)**	Q50_15	Q50A15

51. Do you or anyone in your family who lives with you now have dental insurance? Q51

( ) 1 Yes
( ) 2 No
( ) 3 Don't know **(Don't read)**
( ) 4 Prefer not to answer / refused **(Don't read)**

52. How long has it been since you last visited a dentist, hygienist, or orthodontist? **(Read list and choose one)** Q52

( ) 1 Have never visited
( ) 2 1 to 6 months ago
( ) 3 7 to 12 months ago
( ) 4 More than one year, up to 2 years ago
( ) 5 More than 2 years, up to 5 years ago
( ) 6 More than 5 years ago
( ) 7 Don't know **(Don't read)**
( ) 8 Prefer not to answer / refused **(Don't read)**

53. Have you ever been told by a doctor or other health care professional you have any of the following? **(Read list and check all that apply)**

( ) Q53_1 Asthma
( ) Q53_2 Diabetes
( ) Q53_3 HIV / AIDS
( ) Q53_4 Hepatitis
( ) Q53_5 Tuberculosis
( ) Q53_6 Cancer
( ) Q53_7 Job-related illness or injury
( ) Q53_8 Mental health issue (anxiety, depression, asuntos de salud mental)
( ) Q53_9 Drug abuse problem
( ) Q53_10 Alcohol abuse problem
( ) Q53_11 Domestic violence
( ) Q53_12 Other
( ) Q53_13 No, I have not been told I have anything on the list
( ) Q53_14 Don't know **(Don't read)**
( ) Q53_15 Prefer not to answer / refused **(Don't read)**

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54. Have you or a family member ever been told by a doctor or other health care professional that you have been exposed to pesticides? Q54

( ) 1 Yes **(Answer Question 55)**

( ) 2 No **(Skip to Question 56)**

( ) 3 Don't know **(Don't read. Skip to Question 56)**

( ) 4 Prefer not to answer / refused **(Don't read. Skip to Question 56)**

55. Did you have any of the following health problems when you were told you had been exposed to pesticides? **(Read list and check all that apply)**

( ) Q55_1 Skin problem

( ) Q55_2 Eye problem

( ) Q55_3 Nausea / vomiting

( ) Q55_4 Headache

( ) Q55_5 Numbness / Tingling

( ) Q55_6 Dizziness

( ) Q55_7 Respiratory problems

( ) Q55_8 Neurological problems (e.g. shaking, hard to move your hands or feet or other similar problems)

( ) Q55_9 Other

( ) Q55_10 No problems

( ) Q55_11 Don't know **(Don't read)**

( ) Q55_12 Prefer not to answer / refused **(Don't read)**

56. Did you or a family member ever think you had been exposed to pesticides but did not seek medical help? **(Circle one response for respondent and/or respondent's family member)**

	You Q56	Your family member Q56A
Yes, but did not seek medical attention	1	1
Yes, and did seek medical attention **(Skip to Question 59)**	2	2
No **(Skip to Question 59)**	3	3
Don't know **(Don't read. Skip to Question 59)**	4	4
Prefer not to answer / refused **(Don't read. Skip to Question 59)**	5	5

57. What made you think you or they had been exposed to pesticides? **(Read list and circle all that apply. Please circle the number under "You" or "Your family member" for each applicable question)**

	You	Your family member
1 Skin problem	Q57A1	Q57B1
2 Eye problem	Q57A2	Q57B2
3 Nausea / vomiting	Q57A3	Q57B3
4 Headache	Q57A4	Q57B4
5 Numbness / Tingling	Q57A5	Q57B5
6 Dizziness	Q57A6	Q57B6
7 Respiratory problems	Q57A7	Q57B7
8 Neurological problems (e.g. shaking, hard to move your hands or feet or other similar problems)	Q57A8	Q57B8
9 Don't know **(Don't read)**	Q57A9	Q57B9
10 Prefer not to answer / refused **(Don't read)**	Q57A10	Q57B10
11 Other	Q57A11	Q57B11

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58. Why didn't you or they seek medical help? **(Read list and circle all that apply. Please circle the number under "You" or "Your family member" for each applicable question)**

	You	Your family member
Did not want to take time off work	Q58A1	Q58B1
Did not know where to go for help	Q58A2	Q58B2
Had no way to get to a doctor	Q58A3	Q58B3
Too far to go to the doctor	Q58A4	Q58B4
Health problems (symptoms) went away	Q58A5	Q58B5
Afraid you/they would get in trouble if you/they went to a doctor for pesticide exposure; e.g. might get fired	Q58A6	Q58B6
Couldn't afford cost to go to a doctor	Q58A7	Q58B7
Supervisor/manager told you/them not to go	Q58A8	Q58B8
Supervisor/manager wouldn't fill out an accident report	Q58A9	Q58B9
Other	Q58A10	Q58B10
Don't know **(Don't read)**	Q58A11	Q58B11
Prefer not to answer / refused **(Don't read)**	Q58A12	Q58B12

59. Would it be helpful to you to have information available about any of the following health care issues? **(Read list and check all that apply)**

( ) 59_1 Dental health

( ) 59_ 2 Infant / child health

( ) 59_3 Immunizations

( ) 59_4 Maternal health/pregnancy

( ) 59_5 Mental health (anxiety, depression, asuntos de salud mental)

( ) 59_6 Domestic violence

( ) 59_7 Substance abuse (alcohol, tobacco or drugs)

( ) 59_8 Cancer check-ups (pap smears, breast examinations, prostate exam, other)

( ) 59_9 Treating chronic illness (such as diabetes, asthma)

( ) 59_10 Good nutrition

( ) 59_11 Health insurance eligibility

( ) 59_12 Pesticide health and safety

( ) 59_13 Other

( ) 59_14 I do not need information about any of the above

( ) 59_15 Don't know **(Don't read)**

( ) 59_16 Prefer not to answer / refused **(Don't read)**

Civic Engagement

I'd like to ask you just a few questions about your involvement in the community where you live most of the time in Washington.

60. How much influence do you think people like you can have over the following issues:

(Please circle one level of influence on a scale of 1-4 for each issue)

	1 – A lot of influence	2 –Some influence	3 – A little influence	4 – No influence at all	5 - Don't know **(Don't read)**	6 - Prefer not to answer / refused **(Don't read)**
Q60a. Housing-related	1	2	3	4	5	6
Q60b. Health-related	1	2	3	4	5	6
Q60c. Political	1	2	3	4	5	6
Q60d. Related to schools	1	2	3	4	5	6
Q60e. Related to crime	1	2	3	4	5	6
Q60f. Cleaning up your	1	2	3	4	5	6

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neighborhood						
Q60g. Community fair or celebration	1	2	3	4	5	6
Q60h. Sports	1	2	3	4	5	6

61. Have you ever joined with others in your community in Washington to work together to fix or improve something in your local Washington community? Q61

( ) 1 Yes

( ) 2 No **(Skip to Question 64)**

( ) 3 Don't know **(Don't read. Skip to Question 64)**

( ) 4 Prefer not to answer / refused **(Don't read. Skip to Question 64)**

62. What issue/s did you work on? **(Check all that apply)**

( ) 62_1 Housing-related

( ) 62_2 Health-related

( ) 62_3 Political

( ) 62_4 Related to schools

( ) 62_5 Related to crime

( ) 62_6 Cleaning up your neighborhood

( ) 62_7 Community fair or celebration

( ) 62_8 Sports

( ) 62_9 Other

( ) 62_10 Don't know **(Don't read)**

( ) 62_11 Prefer not to answer / refused **(Don't read)**

63. Were you successful in fixing or improving the issue or issues you were working on? **(For each issue checked in Question 62, ask "a lot, somewhat, not much, or not at all" and circle the response on a scale of 1-4 for each issue. When you finish asking these questions, skip to Question 65)**

	1 – Yes, a lot	2 – Yes, somewhat	3 – Not much	4 – Not at all	5 - Don't know **(Don't read)**	6 - Prefer not to answer / refused **(Don't read)**
Q63a. Housing-related	1	2	3	4	5	6
Q63b. Health-related	1	2	3	4	5	6
Q63c. Political	1	2	3	4	5	6
Q63d. Related to schools	1	2	3	4	5	6
Q63e. Related to crime	1	2	3	4	5	6
Q63f. Cleaning up your neighborhood	1	2	3	4	5	6
Q63g. Community fair or celebration	1	2	3	4	5	6
Q63h. Sports	1	2	3	4	5	6

64. There are a number of reasons that people like you might not want to get involved in solving problems in their neighborhood or community. For each of the following, please tell me if this is a major reason, minor reason, or not a reason at all that you have not gotten involved:

(Please circle one reason on a scale of 1-3 for each issue)

	1 – A major reason	2 – A minor reason	3 – Not a reason at all	4 – Don't know **(Don't read)**	5 – Prefer not to answer / refused **(Don't read)**
Q64a. You don't have the time	1	2	3	4	5
Q64b. You don't think you would be able to change anything	1	2	3	4	5

Q64c. You don't know how to go about getting involved	1	2	3	4	5
Q64d. You are not interested in getting involved with neighborhood or community problems	1	2	3	4	5
Q64e. You never thought about it	1	2	3	4	5
Q64f. You change where you live too much to get involved	1	2	3	4	5
Q64g. Have to work too much so not enough time to get involved	1	2	3	4	5
Q64h. Don't really feel part of any neighborhood or community here	1	2	3	4	5

65. I'm going to read you a list of things that some people do and others don't. In the last twelve months, have you:

(Please circle the appropriate response for each question)

	1 – Yes	2 – No	3 – Don't know **(Don't read)**	4 – Prefer not to answer / refused **(Don't read)**
Q65a. Donated money to an organization that helps people or improves conditions in your community?	1	2	3	4
Q65b. Contributed your time to an organization that helps people or improves conditions in your community?	1	2	3	4
Q65c. Contacted a public official about problems in your community?	1	2	3	4
Q65d. Attended a public meeting, rally or other event to address problems in your community?	1	2	3	4

66. I'm going to read you a list of organizations and associations. Please tell me if you are currently a member of any of the following *in the Washington area*:

(Please circle the appropriate response for each question)

	1 – Yes	2 – No	3 – Don't know **(Don't read)**	4 – Prefer not to answer / refused **(Don't read)**
Q66a. A local religious organization such as a church, synagogue, mosque, or temple?	1	2	3	4
Q66b. A local community or neighborhood group such as a block association or neighborhood watch?	1	2	3	4
Q66c. A local educational or parent's organization such as a PTA?	1	2	3	4
Q66d. A local political organization?	1	2	3	4
Q66e. A local home owners or housing association?	1	2	3	4
Q66f. A labor union?	1	2	3	4
Q66g. A worker cooperative?	1	2	3	4
Q66h. A health cooperative?	1	2	3	4
Q66i. A local sports or athletic organization?	1	2	3	4

67. Do you usually have reliable transportation to and from work in Washington? Q67

( ) 1 Yes

( ) 2 No

( ) 3 Don't know **(Don't read)**

( ) 4 Prefer not to answer / refused **(Don't read)**

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68. Do you usually have reliable transportation to other services that you need in Washington, such as the grocery store, church, school, the doctor, or other appointments? Q68

( ) 1 Yes
( ) 2 No
( ) 3 Don't know **(Don't read)**
( ) 4 Prefer not to answer / refused **(Don't read)**

About You

We have just a few more questions.

69. What is your birth-date? Q69

Month	Day	Year
— —	— —	— —

70. What is the primary language you speak at home? Q70

( ) 1 English **(Skip to Question 72)**
( ) 2 Spanish **(Ask Question 71; Skip Question 72)**
( ) 3 Other **(Ask Questions 71 and 72)**
( ) 4 Don't know **(Don't read. Ask Questions 71 and 72)**
( ) 5 Prefer not to answer / refused **(Don't read. Ask Questions 71 and 72)**

71. Can you read and write in basic English? Q71

( ) 1 Yes, read and write
( ) 2 Read only
( ) 3 Write only
( ) 4 Neither read or write
( ) 5 Prefer not to answer / refused **(Don't read)**

72. Can you read and write in basic Spanish? Q72

( ) 1 Yes, read and write
( ) 2 Read only
( ) 3 Write only
( ) 4 Neither read or write
( ) 5 Prefer not to answer / refused **(Don't read)**

73. Which of the following best describes you? Q73

( ) 6 Mexican
( ) 7 Mexican American
( ) 13 Mexican (Indigenous)
( ) 4 Central American (e.g. Guatemala, El Salvador, Nicaragua)
( ) 8 Native American / American Indian
( ) 1 African American
( ) 2 Asian / Pacific Islander
( ) 3 Caucasian
( ) 5 Filipino
( ) 9 Multi-racial / Multi-ethnic
( ) 10 Other
( ) 11 Don't know **(Don't read)**
( ) 12 Prefer not to answer **(Don't read)**

74. What was <u>your</u> total personal income last year? Q74

$ _____

( ) 98 Don't know **(Don't read)**
( ) 99 Prefer not to answer **(Don't read)**

75. Was your income from agricultural work in the last 12 months: Q75

( ) 1 Less than $3000
( ) 2 $3000 - $ 4500
( ) 3 More than $4500
( ) 4 Don't know
( ) 5 Prefer not to answer

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76. How many people contribute income (actual dollars) to your household? Q76

    # of people _____

    ( ) 98 Don't know **(Don't read. Skip to Question 77)**

    ( ) 99 Prefer not to answer **(Don't read. Skip to Question 77)**

    76a. Considering what you and the others contributed, what was the total household income for last year? Q76A

    $ _____

    ( ) 98 Don't know **(Don't read)**

    ( ) 99 Prefer not to answer **(Don't read)**

    76b. Was the income from agricultural work you and the others in your household earned in the last 12 months: Q76B

    ( ) 1 Less than $3000

    ( ) 2 $3000 - $ 4500

    ( ) 3 More than $4500

    ( ) 4 Don't know

    ( ) 5 Prefer not to answer

77. Are you or a family member living with you currently using any of the following? **(Read list and check all that apply)**

    ( ) Q77_1 TANF (Temporary Assistance for Needy Families)/ Work First/"welfare"

    ( ) Q77_2 Food stamps

    ( ) Q77_3 Disability insurance

    ( ) Q77_4 Unemployment insurance

    ( ) Q77_5 Veteran's pay

    ( ) Q77_6 WIC (Women's Infants and Children Program)

    ( ) Q77_7 Legal services

    ( ) Q77_8 Housing assistance services

    ( ) Q77_9 Section 8 rental assistance

    ( ) Q77_10 Basic health

    ( ) Q77_11 Low Income Home Energy Assistance Program (LIHEAP)

    ( ) Q77_12 Supplemental Security Income (SSI)

    ( ) Q77_13 Social Security Disability Insurance (SSDI)

    ( ) Q77_14 Other

    ( ) Q77_15 Not receiving any assistance

    ( ) Q77_16 Don't know **(Don't read)**

    ( ) Q77_17 Prefer not to answer / refused **(Don't read)**

    ( ) Q77_18 Medicaid

    ( ) Q77_19 Medicare

    ( ) Q77_20 Healthy kids

78. What is the name of the farm that you work on? Q78

    _____

79. What county do you work in right now? **(NOTE: If more than one county is given, prompt for the county where they work the <u>most</u>)** Q79

    _____ County

80. What is the closest city to where you are currently working? Q80

    _____

81. Are you currently part of a H2A Visa or guest-worker program? Q81

    ( ) 1 Yes

    ( ) 2 No

    ( ) 3 Don't know **(Don't read)**

    ( ) 4 Prefer not to answer / refused **(Don't read)**

Washington State Farmworker Survey

Interviewer Only

82. Interview date Q82

Month	Day	Year
__ __	__ __	__ __

83. Interview completion time

__Q83HOUR __ (hour): __Q83MIN __ (minutes)

84. Language interview conducted in: Q84

( ) 1 English ( ) 2 Spanish ( ) 3 Other

85. Respondent was: Q85

( ) 1 Male ( ) 2 Female ( ) 3 Transgender

86. Interviewer name

_____

87. Where was this survey conducted? Q87

( ) 1 Market / co-op
( ) 2 Park / sports complex
( ) 3 Food establishment
( ) 4 Laundromat
( ) 5 Housing complex
( ) 6 Church
( ) 7 Other
( ) 8 Flea Market

Bibliography

Bernton, Hal. "With shortage of workers, apple crop falls on rotten times." *The Seattle Times* on the Web, October 25, 2006.<http://community.seattletimes.nwsource.com/archive/?date=20061025&slug=applepickers25m>.

Foster, Heath. "Millions in this state must do without vital dental coverage" *The Seattle Times* on the Web. July 20, 2004. <http://seattlepi.nwsource.com/local/182826_dental20.html>.

Funders' Network for Smart Growth and Livable Communities. "How Housing Affects Child Well-Being," (2006). <http://www.fundersnetwork.org/usr_doc/Housing_and_Child_well_being.pdf>.

Housing Assistance Council. No Refuge from the Fields: Findings from a Survey of Farmworker Housing *Conditions in the United States.* Washington D.C.: Housing Assistance Council, 2001.

Kuba, Kathy. Interview by Rosalinda Mendoza. May 13, 2008.

Larson, Alice C. Migrant and Seasonal Farmworker Enumeration Profiles Study: Washington. U.S. Department of Health and Human Services, 2000.

"Portal to Opportunity." *Northwest Education*, (Spring 2006). <http://www.nwrel.org/nwedu/11-03/portal/>.

Ruddell, Larry. Interview by Rosalinda Mendoza. May 13, 2008.

The George Washington University. "Health Information: General Diabetes Statistics." <http://209.85.215.104/search?q=cache:ZAxjlfAgvtMJ:www.gwdocs.com/health/eHA-eHA_Content_C-Generic_Content_Page_Template_1131123677673.html+washington+latinos+with+diabetes&hl=en&ct=clnk&cd=23&gl=us>.

The Kaiser Commission on Medicaid and the Uninsured. "Migrant and Seasonal Farmworkers: Health Insurance Coverage and Access to Care." (April 2005). <http://www.kff.org/uninsured/upload/Migrant-and-Seasonal-Farmworkers-Health-Insurance-Coverage-and-Access-to-Care-Report.pdf>.

U.S. Department of Housing and Urban Development. "A Study of Closing Costs for FHA Mortgages." *Office of Policy Development and Research.* (May 2008). <http://www.huduser.org/Publications/pdf/FHA_closing_cost.pdf>.

Washington Child Care Resource & Referral Network. "Child Care in Washington State." (2007). <http://www.childcarenet.org/partners/data/2007-statewide.pdf/view>.

Washington State Department of Community, Trade and Economic Development Housing Division. "Washington State: Ten-Year Homeless Plan." Olympia: Washington State Department of Community, Trade and Economic Development, 2006.

Washington State Department of Social and Health Services. "Washington State: DSHS Client Services." *Research and Data Analysis Division*, (2006). <http://www.dshs.wa.gov/pdf/ms/rda/clientdata/06State.pdf>.

Washington State Employment Security Department. *2006 Agricultural Workforce in Washington State.* Olympia: Washington State Employment Security Department, 2007.

Washington State Employment Security Department. *2007 Agricultural Workforce in Washington State.* Olympia: Washington State Employment Security Department, 2008.

Washington State Office of Financial Management, "Characteristics of the Uninsured: 2006." *Washington State Population Survey,* no. 41(December 2006). <http://www.ofm.wa.gov/researchbriefs/brief041.pdf>.

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Area: Washington
Period: May 2016

Occupation (SOC code)	Employment(1)	Annual mean wage(2)	Annual median wage(2)
Farmworkers and Laborers, Crop, Nursery, and Greenhouse(452092)	10490	27430	25160
Farmworkers, Farm, Ranch, and Aquacultural Animals(452093)	950	31200	29990

Footnotes:
(1) Estimates for detailed occupations do not sum to the totals because the totals include occupations not shown separately. Estimates do not include self-employed workers.
(2) Annual wages have been calculated by multiplying the hourly mean wage by 2,080 hours.

SOC code: Standard Occupational Classification code -- see http://www.bls.gov/soc/home.htm

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One occupation for multiple geographical areas

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Occupation: Farmworkers, Farm, Ranch, and Aquacultural Animals(SOC code 452093)
Period: May 2016

Area name	Employment(1)	Annual mean wage(2)	Annual median wage(2)
East Washington nonmetropolitan area(5300004)	110	24430	23330
Kennewick-Richland, WA(0028420)	80	23310	20370
Mount Vernon-Anacortes, WA(0034580)	50	30540	29740
Seattle-Bellevue-Everett, WA Metropolitan Division(0042644)	260	33470	32930
Seattle-Tacoma-Bellevue, WA(0042660)	410	32590	31400
Southwest Washington nonmetropolitan area(5300002)	60	36390	39490
Spokane-Spokane Valley, WA(0044060)	40	29560	28650
Tacoma-Lakewood, WA Metropolitan Division(0045104)	(8) -	31160	29850
Yakima, WA(0049420)	50	30940	28280

Footnotes:
(1) Estimates for detailed occupations do not sum to the totals because the totals include occupations not shown separately. Estimates do not include self-employed workers.
(2) Annual wages have been calculated by multiplying the hourly mean wage by 2,080 hours.
(8) Estimate not released.

SOC code: Standard Occupational Classification code -- see http://www.bls.gov/soc/home.htm

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One occupation for multiple geographical areas

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Occupation: Farmworkers and Laborers, Crop, Nursery, and Greenhouse(SOC code 452092)
Period: May 2016

Area name	Employment(1)	Annual mean wage(2)	Annual median wage(2)
Bellingham, WA(0013380)	(8) -	25850	24350
Central Washington nonmetropolitan area(5300003)	610	29860	28660
East Washington nonmetropolitan area(5300004)	1090	27460	24010
Kennewick-Richland, WA(0028420)	(8) -	23760	23030
Mount Vernon-Anacortes, WA(0034580)	(8) -	30550	32290
Olympia-Tumwater, WA(0036500)	(8) -	27720	27250
Seattle-Bellevue-Everett, WA Metropolitan Division(0042644)	1090	27060	25320
Seattle-Tacoma-Bellevue, WA(0042660)	1180	27630	25570
Southwest Washington nonmetropolitan area(5300002)	250	29340	24780
Spokane-Spokane Valley, WA(0044060)	80	26710	24230
Tacoma-Lakewood, WA Metropolitan Division(0045104)	90	34430	29570
Walla Walla, WA(0047460)	110	23900	23350
Wenatchee, WA(0048300)	(8) -	29240	27200
Yakima, WA(0049420)	4520	27680	25640

Footnotes:
(1) Estimates for detailed occupations do not sum to the totals because the totals include occupations not shown separately. Estimates do not include self-employed workers.
(2) Annual wages have been calculated by multiplying the hourly mean wage by 2,080 hours.
(8) Estimate not released.

SOC code: Standard Occupational Classification code -- see http://www.bls.gov/soc/home.htm

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EXHIBIT

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Posted March 21, 2017 at 5:25 pm by **Philip Martin** and **Daniel Costa**

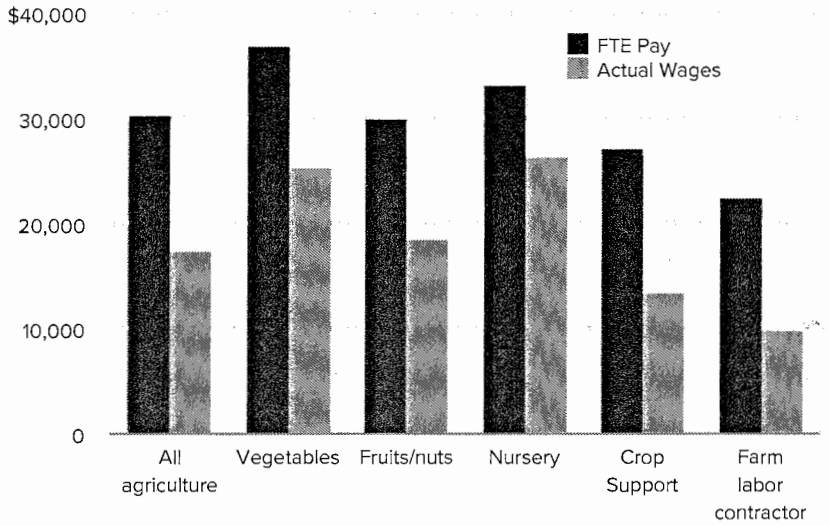
Farmworker wages in California: Large gap between full-time equivalent and actual earnings

A report in the *LA Times* last week explored why farmers in the Central Valley are having a hard time finding enough workers, despite reportedly paying up to 40 percent more than the California minimum wage. "Today, farmworkers in the state earn about $30,000 a year if they work full time—about half the overall average pay in California," notes the *Times*. "Most work fewer hours." The second sentence here is key: most farmworkers are not employed 40 hours a week 52 weeks a year, so most earn far less than $30,000 per year. In fact, in 2015, workers who received their primary earnings from agricultural employers earned an average of $17,500—less than 60 percent of the average annual wage of a full-time equivalent (FTE) worker in California.

Many farmworkers are paid an hourly rate higher than California's minimum wage—**$10.00 or $10.50 an hour** in 2017, depending on whether the employer has 25 or less, or 26 or more employees, respectively—and workers who are paid piece rates, which reflect how much they pick or prune, often earn $12 to $14 an hour. Many young male farmworkers aim to earn $100 a day, which is $12.50 an hour for an eight-hour day and $14.30 an hour for a seven-hour day. But farmworkers typically are not employed in agriculture year-round. Many farm jobs are seasonal, and few workers migrate between California farming regions—those who pick vegetables in southern California deserts between January and May rarely move to the San Joaquin Valley to pick fruit between July and September.

FIGURE A

Annual full-time equivalent (FTE) and average wages for California farmworkers, 2015



Note: All wages shown are in 2015 dollars.

Source: Quarterly Census of Employment and Wages (Bureau of Labor Statistics, U.S. Department of Labor), https://www.bls.gov/cew, and special tabulations provided to the authors by CA Employment Development Department (March 7, 2017).

So what's behind the "about $30,000 a year" for a farmworker's annual pay? Employers report employment and wages when they pay unemployment insurance taxes, and these data are published as the **Quarterly Census of Employment and Wages** (QCEW). According to the QCEW, 16,400 California agricultural establishments employed an average of 421,300 workers during 2015 and paid them $12.8 billion, or $30,300 per year for a FTE employee, equivalent to $14.60 an hour for 2,080 hours of work.

However, the QCEW grossly undercounts the number of agricultural employees and therefore overstates the pay per employee. The average employment measurement in the QCEW accounts for workers on the payroll for the payroll period that includes the 12th day of the month. Most farmworkers are paid weekly, so employment covers workers employed for the second week of the month. However, employers report wages for *all* workers who were hired during the month, including those employed at the beginning and end of the month—even if they weren't employed during the payroll period covering the 12th day. Dividing total wages by average employment in California agriculture reported in the QCEW generates the $30,300 earnings of an FTE employee.

The California Employment Development Department extracted all Social Security Numbers (SSNs) reported by agricultural establishments and found 848,000 unique SSNs in 2015, which, compared with the 421,300 workers reported by the QCEW, means there were an

average of two workers per FTE farm job. We assigned workers to the commodity or North American Industry Classification System (NAICS) code in which they had their maximum earnings, and found that 705,000 had their highest earnings in agriculture. *Their* average earnings were $17,500—just over half of the FTE average.

Furthermore, most workers are brought to farms by crop support services companies or agents, such as farm labor contractors (FLCs), who usually pay lower-than-average wages. (**The most recent data available show** that in March 2014, workers hired directly by farmers had average hourly earnings of $14 an hour, compared with $12.55 for those brought to farms by FLCs.)

The gap between average FTE earnings and actual earnings for farmworkers is widest for the grouping with the largest number of workers: those employed by FLCs. In 2015, an average worker employed by an FLC full-time and year-round for 2,080 hours would have earned $22,500 or $10.80 an hour. In fact, the average annual earnings of the almost 300,000 FLC employees were less than $10,000, suggesting just under $10 an hour for 1,000 hours of work.

When thinking about and analyzing the wages of farmworkers, it's of the utmost importance to consider what they're actually paid—not what they would earn if they worked full-time year-round, since very few of them do.

(For more on information, analysis and data on farmworkers, **Rural Migration News** is an invaluable resource.)

EXHIBIT

28

Findings from the National Agricultural Workers Survey (NAWS) 2013-2014

A Demographic and Employment Profile of United States Farmworkers

Research Report No. 12

U.S. Department of Labor
Employment and Training Administration
Office of Policy Development and Research

MAR 0807

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Findings from the National Agricultural Workers Survey (NAWS) 2013-2014

A Demographic and Employment Profile of United States Farmworkers

U.S. DEPARTMENT OF LABOR
THOMAS E. PEREZ, SECRETARY

EMPLOYMENT AND TRAINING ADMINISTRATION
PORTIA WU, ASSISTANT SECRETARY

OFFICE OF POLICY, DEVELOPMENT AND RESEARCH
ADELE GAGLIARDI, ADMINISTRATOR

December 2016

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It was written by:

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EXECUTIVE SUMMARY

This report is the twelfth in a series of Department of Labor publications on the demographic and employment characteristics of hired agricultural workers in the United States (U.S.). It examines recent information on the demographics and employment characteristics of those who perform U.S. crop work. The primary focus of this report is the presentation of findings for the period covering fiscal years 2013 and 2014. These findings are based on data collected from face-to-face interviews with 4,235 crop farmworkers through the U.S. Department of Labor's National Agricultural Workers Survey (NAWS) between October 1, 2012 and September 30, 2014.

Birthplace, Ethnicity, and Race

Sixty-eight percent of hired farmworkers interviewed in fiscal years 2013-2014 were born in Mexico, 27 percent were born in the U.S., four percent were born in Central America, and a small portion (1%) originated from various other regions, including South America, the Caribbean, Asia, and the Pacific Islands. Eighty percent of all farmworkers were Hispanic. Among U.S.-born workers, 27 percent were Hispanic. In terms of race, 38 percent of farm workers self-identified as White, one percent as American Indian or Alaska Native, and two percent as Black or African American. Fifty-nine percent of respondents categorized their race with an open-ended "other" response. Five percent of farm workers were identified as indigenous.

Employment Eligibility and Number of Years in the U.S.

Just more than half of all farm workers in 2013-2014 had work authorization (53%): 31 percent were U.S. citizens, 21 percent were legal permanent residents, and one percent had work authorization through some other visa program. Among citizens, 87 percent were born in the U.S. and 13 percent were naturalized citizens.

On average, foreign-born farmworkers interviewed in 2013-2014 first came to the U.S. 18 years before being interviewed. Most respondents had been in the U.S. at least five years, with 38 percent arriving five to 14 years prior to their NAWS interview and 55 percent arriving 15 years or more prior. Newcomers, those first arriving to the U.S. within a year of their NAWS interview, comprised only two percent of the hired crop labor force. Eighty-four percent of farmworkers were settled workers and 16 percent were migrants.

Demographics and Family Composition

Males comprised 72 percent of the hired crop labor force in 2013-2014. Farmworkers were relatively young, their average age being 38. Forty-four percent of workers were under the age of 35, 42 percent were ages 35 to 54, and 14 percent were age 55 or older.

Sixty-three percent of farmworkers were married, 29 percent were single, and eight percent were separated, divorced, or widowed. More than half of the workers had children (57%), and at the time they were interviewed, farmworker parents had an average of two minor children living in their households. Sixty-nine percent of parents had one or two children, 23 percent had three children, and nine percent had four or more children.

Thirty-nine percent of farmworkers were living apart from all nuclear family members at the time of their interview. Sixty-seven percent of the unaccompanied were single workers without children, 25 percent were parents, and nine percent had a spouse but no children.

Language and Education

In 2013-2014, 74 percent of farmworkers said that Spanish was the language in which they are most comfortable conversing, 24 percent said English was, and two percent reported an indigenous language. The average level of formal education completed by farmworkers was eighth grade. Three percent of workers reported that they had no formal schooling and 36 percent reported that they completed the sixth grade or lower. Twenty-one percent of workers said they completed grade 7, 8, or 9, and 28 percent said they completed grade 10, 11, or 12. Eleven percent of workers reported completing some education beyond high school. Thirty-seven percent of workers reported having taken at least one adult education class in the U.S.

In rating their English language skills, 27 percent of farmworkers reported that they could not speak English "at all", 43 percent said they could speak English "a little" or "somewhat", and 31 percent said they could speak English "well". In terms of their ability to read English, 38 percent of workers reported they could not read English "at all", 31 percent said they could read English "a little" or "somewhat", and 30 percent said that they could read English "well".

Housing

Fifty-four percent of farmworkers interviewed in 2013-2014 reported that they lived in housing they rented from someone other than their employer, 25 percent of workers said they lived in a home owned by themselves or a family member, and one percent said they paid rent for housing provided by the government, a charity, or other organization. Eighteen percent of workers lived in employer-provided housing: 13 percent received it free of charge, two percent paid rent either directly or via payroll deduction, and three percent had other arrangements with their employers that were not specified.

Sixty percent of all farmworkers reported living in detached, single-family houses, 18 percent said they lived in mobile homes, 17 percent lived in apartments, and four percent lived in various other types of housing including duplexes or triplexes, dormitories or barracks, and motels or hotels. Thirty-one percent of farmworkers lived in "crowded" dwellings, defined as housing units in which the number of persons per room was greater than 1.0.

When asked how far their current farm job was from their current residence, 13 percent of workers reported that they lived where they worked, 75 percent lived fewer than 25 miles from their current farm job, 11 percent lived between 25 and 49 miles from work, and two percent lived between 50 and 74 miles from work. Fifty-nine percent of workers drove a car to work, 13 percent rode with a "raitero", and six percent took a labor bus.

Job Characteristics and Employment History

In 2013-2014, 85 percent of farmworkers were employed directly by growers and 15 percent were employed by farm labor contractors. At the time of interview, 41 percent of farmworkers were working in fruit and nut crops, 21 percent in vegetable crops, and 22 percent in horticulture. Another 13 percent were working in field crops and three percent were working in mixed crops. Twenty-six percent of farmworkers were performing pre-harvest tasks, 23 percent were

harvesting crops, 18 percent were performing post-harvest activities, and 33 percent were performing technical production tasks.

In the 12 months prior to being interviewed, respondents spent an average of 35 weeks employed in farm work and performed an average of 192 days of farm work. Workers worked an average of five days per week for their current employer and reported an average of 44 work hours in the previous week. The majority of workers said that their basis for pay was an hourly wage (83%), and workers reported earning an average of $10.19 per hour.

Forty-six percent of farmworkers said that they were covered by Unemployment Insurance if they were to lose their current job, 51 percent said they would receive workers' compensation if they were injured at work or became ill as a result of their work, and 14 percent reported that their employer offered health insurance for injury or illness suffered while not on the job.

Farmworkers in 2013-2014 worked for an average of one U.S. farm employer in the 12 months prior to being interviewed. Seventy-nine percent of workers reported having worked for only one farm employer in the previous 12 months, 13 percent worked for two employers, and eight percent had three or more farm employers. At the time of interview, farmworkers had been employed by their current farm employer for an average of seven years.

Sixteen percent of farmworkers had full-year farm employment the previous year; they had only farm work in their 12-month retrospective work histories (i.e., they had no periods of non-farm work, no periods living in the U.S. but not working, and no time abroad in the 12 months prior to interview), and they worked 50 or more weeks the previous year. Workers spent an average of six weeks employed in non-farm work, two weeks abroad, and nine weeks living in the U.S. but not working. Twenty-five percent of farm workers held at least one non-farm job in the previous 12 months, and those who held a non-farm job worked an average of 25 weeks in non-farm employment. The majority of farm workers interviewed in 2013-2014 expected to continue doing farm work for at least five years (78%).

Income and Assets

Farmworkers' mean and median incomes from agricultural employment the previous year were in the range of $15,000 to $17, 499. Sixteen percent of workers earned less than $10,000 from agricultural employment during the previous calendar year, 33 percent had earnings of $10,000 to $19,999, 22 percent earned 20,000 to 29,999, and eight percent earned $30,000 or more. Sixteen percent of respondents reported no income from agricultural employment the previous year.

Workers' mean and median total family incomes the previous year were in the range of $20,000 to $24,999. Thirty-three percent of farmworkers reported total family income of less than $20,000, 27 percent said their family income was $20,000 to $29,999, and 30 percent had a family income of $30,000 or more. Thirty percent of farmworkers had family incomes below poverty.

Nearly two-thirds of farmworkers stated that they owned or were buying at least one asset in the U.S. (65%), usually a vehicle. Sixteen percent of farm workers either owned or were in the process of buying a home in the U.S.

In 2013-2014, 19 percent of the farmworkers reported that someone in their household received a benefit from at least one contribution-based program, including disability insurance, Unemployment Insurance, or Social Security. Sixteen percent of households received payments from Unemployment Insurance, two percent received payments from disability insurance, and another two percent received Social Security payments. Forty-eight percent of farmworkers reported that they or someone in their household used at least one type of public assistance program in the previous two years. The most common programs utilized were Medicaid (37%), WIC (18%), food stamps (16%), and public health clinics (10%).

Health Care

Thirty-five percent of farmworkers interviewed in 2013-2014 reported that they had health insurance. Among them, 31 percent said their employer provided the insurance, 37 percent reported that they had insurance provided by the government, 19 percent said that they or their spouse paid for insurance themselves, seven percent reported that they had insurance under their spouse's employer's plan, and six percent reported that they were covered by a family member other than the spouse, such as a parent. Among workers with spouses, 45 percent said their spouse had health insurance, and among workers with minor children, 89 percent reported that all or some of their children had health insurance.

Sixty-two percent of farmworkers used a health care provider in the U.S. sometime in the last two years. The last time they visited a health care provider, 35 percent of workers went to a private medical doctor's office or private clinic, 32 percent said they visited a community health center or migrant health clinic, 19 percent saw a dentist, and 10 percent went to a hospital.

Forty-three percent of farmworkers paid for their last health care visit out of their own pockets, 12 percent said that they had Medicaid or Medicare, nine percent said the majority of the cost was covered by health insurance that they or their family had purchased themselves, and 11 percent reported that the cost was covered by health insurance provided by their employer. Nine percent of workers stated that they went to a pubic clinic that did not charge for the visit, four percent reported that they used some combination of sources to pay, they were covered by worker's compensation, or that they were billed for service but did not pay, and the remaining 11 percent provided a variety of other responses. The most common difficulty farmworkers said they faced when they needed to access health care was that health care visits were too expensive (reported by 26% of respondents).

INTRODUCTION

The U.S. Department of Labor's National Agricultural Workers Survey (NAWS) is an employment-based, random-sample survey of U.S. crop workers that collects demographic, employment, and health data in face-to-face interviews. The survey began in Federal Fiscal Year (FY) 1989; since then over 61,000 workers have been interviewed. The primary purposes of the NAWS are to monitor the terms and conditions of agricultural employment and assess the conditions of farmworkers. The survey also generates information for various Federal agencies that oversee farmworker programs.

The NAWS is a survey of hired workers who are currently employed in crop and crop-related work. To be interviewed, workers must be hired by an eligible establishment and working at an eligible task. Eligible establishments are those classified in the North American Industrial Classification System (NAICS) as Crop Production (NAICS code 111) or as Support Activities for Crop Production (NAICS code 1151). NAICS 111 comprises establishments such as farms, orchards, groves, greenhouses, and nurseries that are primarily engaged in growing crops, plants, vines, or trees and their seeds. NAICS 1151 includes establishments primarily engaged in providing support activities for growing crops. Examples of support activities include supplying labor, aerial dusting or spraying, cotton ginning, cultivating services, farm management services, planting crops, and vineyard cultivation services.

Eligible tasks include work in all phases of crop production (pre-harvest, harvest, and post-harvest), as well as supervising workers, operating machinery, and packing crops. Workers who pack crops, however, are interviewed only if the packing facility at which they are employed is on or adjacent to the sampled crop producer, and the facility is owned by and primarily packs crops for that producer.

The NAWS sampling universe <u>does not include</u>:

- persons employed at eligible establishments who do not perform crop-related work, such as secretaries or mechanics, unless such workers also perform crop-related work; and
- crop workers with an H-2A visa (a temporary-employment visa for foreign agricultural workers).

Both migrant and seasonal crop workers are sampled in the NAWS.

The NAWS is unique for its broad coverage of the characteristics of hired crop workers and their dependents and its nearly year-round interviewing schedule. Data are collected throughout the year, over three cycles, to reflect the seasonality of agricultural production and employment. The NAWS differs from many Federal worker surveys in that: 1) it is an establishment survey (workers are sampled at their workplaces); 2) only currently employed persons are sampled; and 3) data is collected through face-to-face interviews with farmworkers.

The use of an employer-based sample rather than a household-based sample increases the likelihood that migrant workers will be interviewed in the NAWS. Multi-stage sampling is implemented to account for seasonal and regional fluctuations in the level of farm employment. To capture seasonal fluctuations in the agricultural work force, the sampling year is divided into three interviewing cycles. For each cycle, there are six levels of selection:

- region;
- single counties or groupings of counties called farm labor areas (FLA), which constitute the primary sampling unit;
- county
- ZIP Code region;
- employer; and
- respondent.

A full description of the survey's sampling design is available in the Statistical Methods of the National Agricultural Workers Survey (https://www.doleta.gov/pdf/NAWS%20Statistical%20Methods%20AKA%20Supporting%20Statement%20Part%20B.pdf).

The NAWS has benefited from collaboration with multiple Federal agencies, which continue to share in the design of the questionnaire. Information provided through the NAWS informs the policies and programs of the many Federal government agencies that protect and provide services to migrant and seasonal farmworkers and their dependents.

Topics Covered

This report presents information collected from face-to-face interviews with 4,235 crop workers interviewed between October 1, 2012 and September 30, 2014. It is organized into nine chapters, each beginning with a summary of the chapter's key findings. The report also contains two appendices: Appendix A describes the procedures used to select the sample workers and Appendix B contains a table of the means and percentages of the principle variables presented in the report.

Chapters 1 through 3 summarize the demographic characteristics of farmworkers, including place of birth, ethnicity and race, work authorization, gender, age, marital status, household size and structure, education, and language ability. Chapter 4 discusses farmworkers' housing, including the types of housing they live in, the location of their housing in relation to their jobs, and crowded conditions. Chapter 5 summarizes the characteristics of farm jobs, including crops and tasks, job recruitment, hours and wages, and benefits. Chapter 6 gives an overview of farmworkers' participation in U.S. agricultural and non-agricultural sector employment, and chapter 7 discusses the degree to which workers had full employment in farm work and their plans to remain in farm work. Chapter 8 presents information on farmworkers' income, assets, and use of assistance programs, and chapter 9 summarizes health insurance coverage for farmworkers and their family members, health care utilization in the U.S., and barriers to health care access.

CHAPTER 1: Birthplace, Employment Eligibility, and Migrant Types

U.S. FARMWORKERS' NATIONAL ORIGINS; RACE AND ETHNICITY; FOREIGN-BORN WORKERS' FIRST ARRIVAL TO THE U.S.; WORK AUTHORIZATION; INTERNATIONAL AND DOMESTIC MIGRANTS

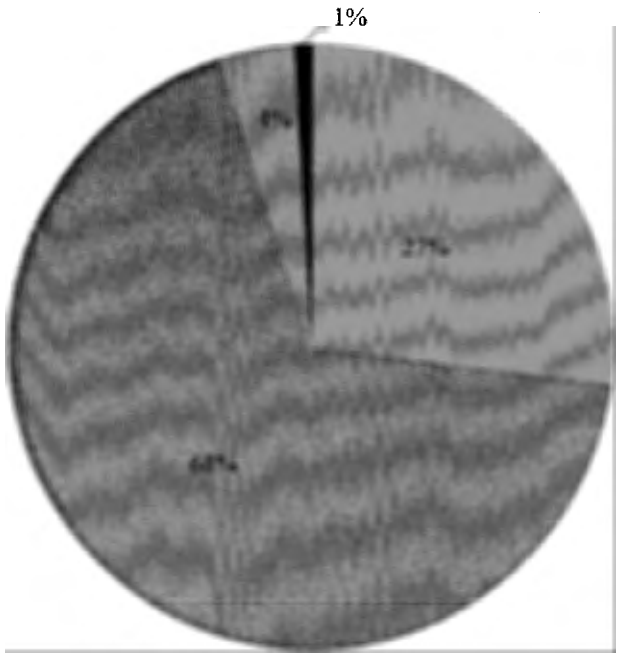
Summary of Findings:

- Approximately two-thirds of hired farmworkers were born in Mexico (68%).
- Eighty percent of all farmworkers were Hispanic. Among U.S.-born workers, 27 percent were Hispanic.
- Thirty-eight percent of farmworkers self-identified as White, one percent as American Indian or Alaska Native, and two percent as Black or African American. Fifty-nine percent of respondents categorized their race with an open-ended "other" response.
- Five percent of farmworkers were identified as indigenous.
- Newcomers to the U.S. comprised only two percent of the hired crop labor force.
- Just more than half of all farmworkers had work authorization (53%).
- The vast majority of farmworkers were settled workers (84%). Sixteen percent were migrant.

Place of Birth

Approximately two-thirds of the hired farmworkers interviewed in 2013-2014 were born in Mexico (68%) and nearly three in ten workers were born in the U.S. (27%). Four percent of farmworkers were born in Central America and a small portion (1%) originated from various other regions, including South America, the Caribbean, Asia, and the Pacific Islands (figure 1.1).

Figure 1.1: Place of Birth, 2013-2014



Ethnicity and Race

Hispanic origin, as defined in the US, can be viewed as the heritage, nationality group, lineage, or country of birth of the person or the person's parents or ancestors.[1] Foreign-born workers may more readily identify with a national origin rather than an abstract ethnicity concept such as Hispanic or Latino. Workers born in the U.S., or those who have been in the U.S. for several years, may have a better understanding of the U.S-based ethnicity label system.

To capture Hispanic identity, farmworkers were asked to indicate which of a variety of categories best described them. Eighty percent of workers identified themselves as members of a Hispanic group: 65 percent as Mexican, nine percent as Mexican-American, and the remaining seven percent as Chicano, Puerto Rican, or other Hispanic. Among U.S.-born workers, 27 percent self-identified as Hispanic: 18 percent as Mexican-American, three percent as Mexican, and six percent as Puerto Rican, Chicano, or other Hispanic.

Farmworker respondents were also asked to indicate the race with which they identify. Respondents had the opportunity to choose one or more race categories from the standard list required by the U.S. Office of Management and Budget. Thirty-eight percent of all respondents in 2013-2014 self-identified as White, one percent as American Indian or Alaska Native, and two percent as Black or African American. More than half of respondents gave an answer not on the standard list (59%). Among them, 85 percent classified their race as Latino or Hispanic

[1] Humes, K. R., Jones, N. A., and Ramirez, R. R. (2011). *Overview of Race and Hispanic Origin: 2010 (http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf)*. 2010 Census Briefs (p. 2).

(including Latino/a, Hispanic, Hispano/a, Mexican, Mexicano/a, Mexican-American, and Chicano), 11 percent referenced their complexion (including moreno/a and café), one percent identified with their Central American origin (Guatemalan, Honduran, and Salvadoran), two percent identified with an indigenous group, and another two percent provided a variety of other responses[2] (examples include Haitian, Filipino, and Somalian).

The categories used in the NAWS questions on ethnicity and race might not be intuitively understood by indigenous individuals who identify themselves as members of a specific community or language group rather than a more generic racial group such as indigenous. Beginning in 2005, the NAWS began supplementing the question on primary language use with questions that ask about adult languages spoken as well as childhood language exposure.[3] The NAWS uses a combination of the responses to these questions and the question about race to identify farmworkers who are indigenous, and in 2013-2014, five percent of NAWS respondents were identified as indigenous.

Foreign-born Workers' First Arrival to the United States

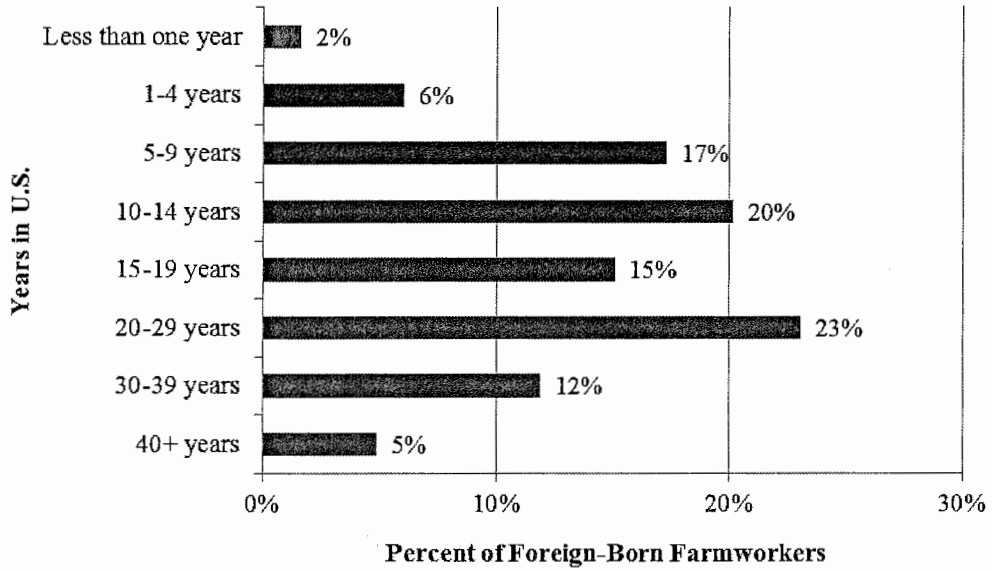
While not a measure of continued residence, data on the month and year each foreign-born farmworker first entered the U.S. provides important, albeit partial, information about the workers' migration history. Workers' time since first arrival to the U.S. can also serve as a measure of the stability of the farm labor market.

On average, foreign-born farmworkers interviewed in 2013-2014 first came to the U.S. 18 years before being interviewed. Most respondents had been in the U.S. at least five years, with 38 percent arriving five to 14 years prior to their NAWS interview and 55 percent arriving 15 years or more prior. Farmworkers who first arrived in the U.S. in the year predating their interview were "newcomers", and they comprised two percent of workers interviewed in 2013-2014 (figure 1.2).

[2] Estimates with relative standard errors (RSEs) higher than 30 percent are identified throughout this report. The RSE is calculated by dividing the standard error of the estimate (mean or percentage) by the estimate itself. Estimates with RSEs greater than 30 percent but no more than 50 percent are published but should be used with caution. Estimates with RSEs greater than 50 percent are considered statistically unreliable and are suppressed. The estimate of two percent of workers who provided a variety of other responses has a relative standard error between 31 and 50 percent and should be interpreted with caution.

[3] Gabbard, S., Kissam, E., Glasnapp, J., Nakamoto, J., Saltz, R., Carroll, D. J., & Georges, A. (November, 2012). *Identifying Indigenous Mexicans and Central Americans in Surveys (http://www.eventscribe.com/2012/ASAH2R/assets/pdf/49938.pdf)*. International Conference on Methods for Surveying and Enumerating Hard-to-Reach Populations (November, 2012) New Orleans, LA.

Figure 1.2: Years Since First Arrival to the U.S., 2013-2014



Workers interviewed for the NAWS were asked to report in what state/department/province they lived before coming to the U.S. Among Mexican-born workers interviewed in 2013-2014, the majority came from the states of Michoacán (21%), Guanajuato (15%), Oaxaca (9%), Jalisco (8%), and Guerrero (5%). The greatest proportion of Mexican-born farmworkers originated from the Western Central region (46%), 31 percent came from Northern Mexico, and another 22 percent came from Southern Mexico[4].

Work Authorization

A series of related questions in the survey provides a picture of whether foreign-born respondents have work authorization. These questions address the foreign-born worker's existing status (citizen, legal permanent resident, border crossing-card holder, applicant for residency, temporary visa holder, or unauthorized) and, when applicable, the date and program under which the individual applied for legal status. In addition, each foreign-born respondent is asked whether he or she has authorization to work in the U.S. To be classified as work authorized, a worker has to provide consistent answers, and answers that conform to visa regulations. For example, a worker who reports work authorization from a visa program that expired before he or she entered the country would be classified as unauthorized.

Fifty-three percent of the hired crop labor force had work authorization in 2013-2014. U.S. citizens comprised approximately one-third (31%) of the work-authorized population and among

[4] The Western Central region of Mexico includes the states of Colima, Guanajuato, Jalisco, and Michoacán. The Northern region includes the states of Aguascalientes, Baja California, Chihuahua, Coahuila, Mexico City, Durango, Estado de Mexico, Hidalgo, Nayarit, Nuevo Leon, Queretaro, San Luis Potosi, Sinaloa, Sonora, Tamaulipas, and Zacatecas. The Southern region of Mexico includes the states of Campeche, Chiapas, Guerrero, Morelos, Oaxaca, Puebla, Quintana Roo, Tabasco, Tlaxcala, Veracruz, and Yucatan.

them, 87 percent were born in the U.S. and 13 percent were naturalized citizens. The remainder of the work authorized population consisted mainly of legal permanent residents (21%) and one percent had work authorization through some other visa program.

Migrant Farmworkers

The definition of "migrant" has varied across Federal government agencies and programs that provide services to migrant and seasonal farmworkers. The NAWS has defined a migrant as a person who reported jobs that were at least 75 miles apart or who reported moving more than 75 miles to obtain a farm job during a 12-month period[5].

Interpreting migration patterns requires some caution. Since the analysis presented here covers only one year of farm employment data, these definitions describe movement during that particular year. The discussion below assumes that most of the workers making a move during the year were cyclical migrants. However, a portion of these workers may have been making a permanent move.

For the purpose of this report, migrant farmworkers were categorized according to their migrant travel patterns. Migration consisted of moving from a "home base", the location where the migrant spent the greatest amount of time during the year preceding his/her NAWS interview, to one or more destination locations where work was available. Shuttle migrants were workers who did not work on a U.S. farm at their home base, but who traveled 75 miles or more to do farm work in a single U.S. location, and worked only within a 75-mile radius of that location. Follow-the-crop migrants were workers who traveled to multiple U.S. farm locations for work. Follow-the-crop migrants might or might not have done U.S. farm work at their home base. This report further classifies migrants into domestic migrants (those who traveled solely within the U.S. in the 12 months preceding their interview to do farm work) or international migrants (those who crossed the U.S. border to do farm work).

Sixteen percent of farmworkers interviewed in 2013-2014 were migrants. Among them, 49 percent were domestic migrants (23% domestic follow-the-crop and 26% domestic shuttle migrants), 40 percent were international migrants (3% international follow-the-crop and 37% international shuttle migrants), and 11 percent were newcomers (see figures 1.3 and 1.4).

[5] Migrant programs often use a 24-month look-back period in their definitions of migrant. The NAWS collects data about travel to another city to do farm work during the 12 months preceding the NAWS interview, and also the 12 months prior to that. In 2013-2014, 20 percent of farmworkers reported that they traveled to another city to do farm work sometime during the previous 24 months.

Figure 1.3: Distribution of Migrant Types (As Percent of Migrants), 2013-2014

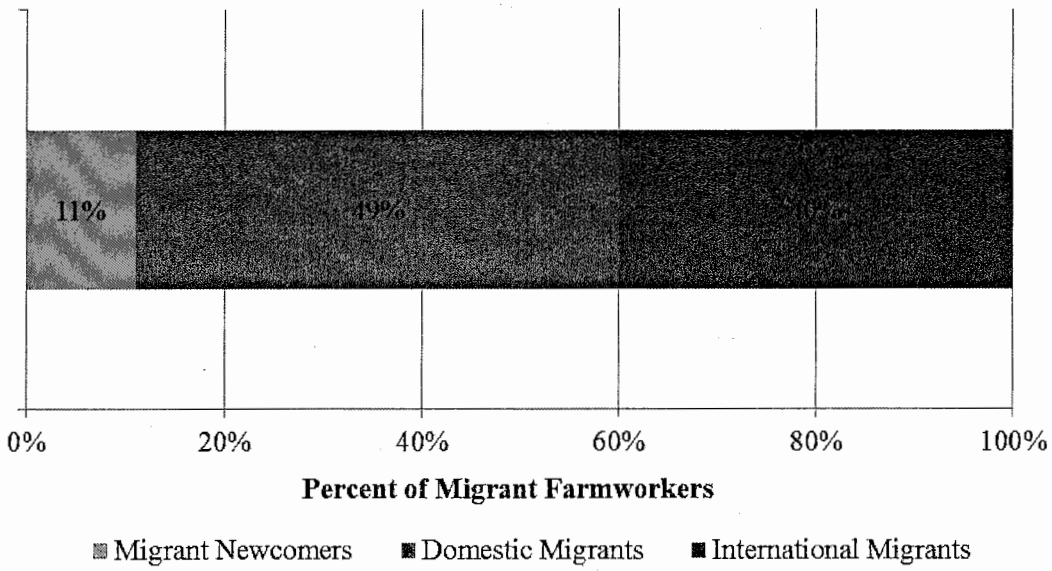
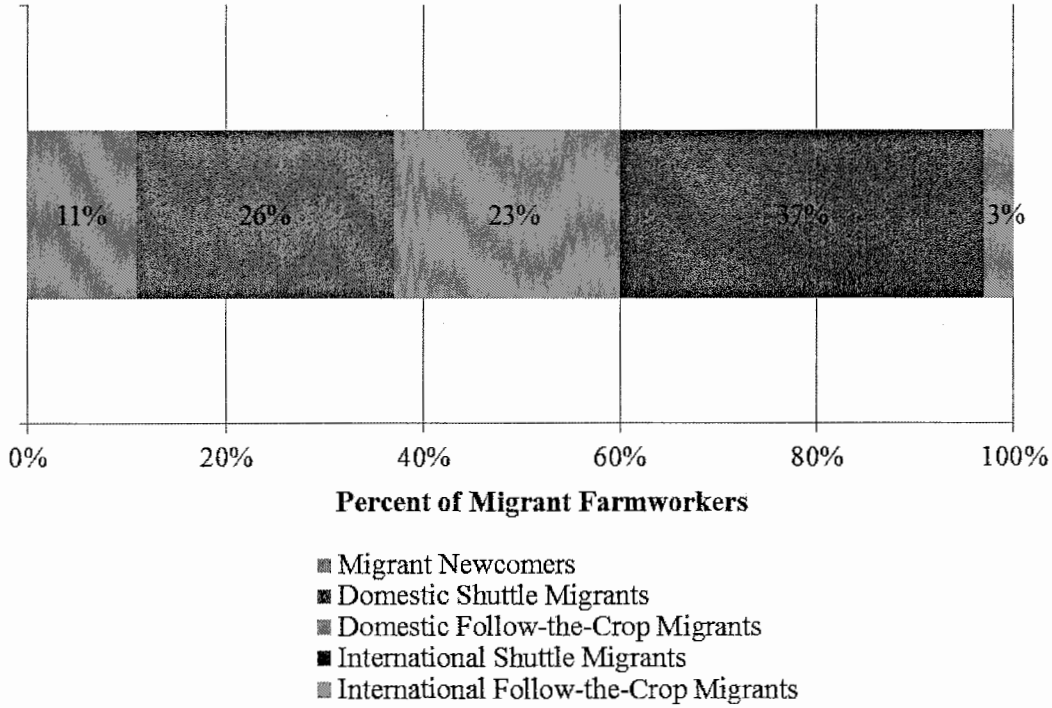


Figure 1.4: Distribution of Migrant Types According To Their Migrant Travel Patterns (As Percent of Migrants), 2013-2014



CHAPTER 2: Demographics, Family Size, and Children and Household Structure

DEMOGRAPHIC CHARACTERISTICS OF U.S. FARMWORKERS: GENDER, AGE AND MARITAL STATUS; FAMILY SIZE; HOUSEHOLD STRUCTURE

Summary of Findings:

- Seventy-two percent of farmworkers were men.
- Farmworkers were relatively young: their average age was 38.
- Nearly two-thirds of farmworkers were married (63%) and more than half had children (57%).
- Thirty-nine percent of farmworkers were living apart from all nuclear family members at the time of their interview. Sixty-seven percent of the unaccompanied were single workers without children, 25 percent were parents, and nine percent had a spouse but no children.

Gender and Age

In 2013-2014, approximately seven out of ten farmworkers were male (72%). Farmworkers were relatively young, being an average age of 38. Just under half of all workers were under the age of 35 (44%), one percent was younger than 18. Fourteen percent of farmworkers in 2013-2014 were age 55 or older (figure 2.1).

Figure 2.1: Age Distribution of Farmworkers, 2013-2014

Age Group	Percent of Farmworkers
14-17	1%
18-21	9%
22-24	8%
25-34	27%
35-44	24%
45-50	11%
51-54	7%
55-64	14%

In 2013-2014, unauthorized workers were younger than authorized workers (an average of 35 and 41 years of age respectively) and newcomers to U.S. farm work (i.e., those arriving in the U.S. within the year prior to interview) were younger than experienced workers (an average of 29 and 38 years of age respectively). The average age of males and females was the same – 38 years for each group.

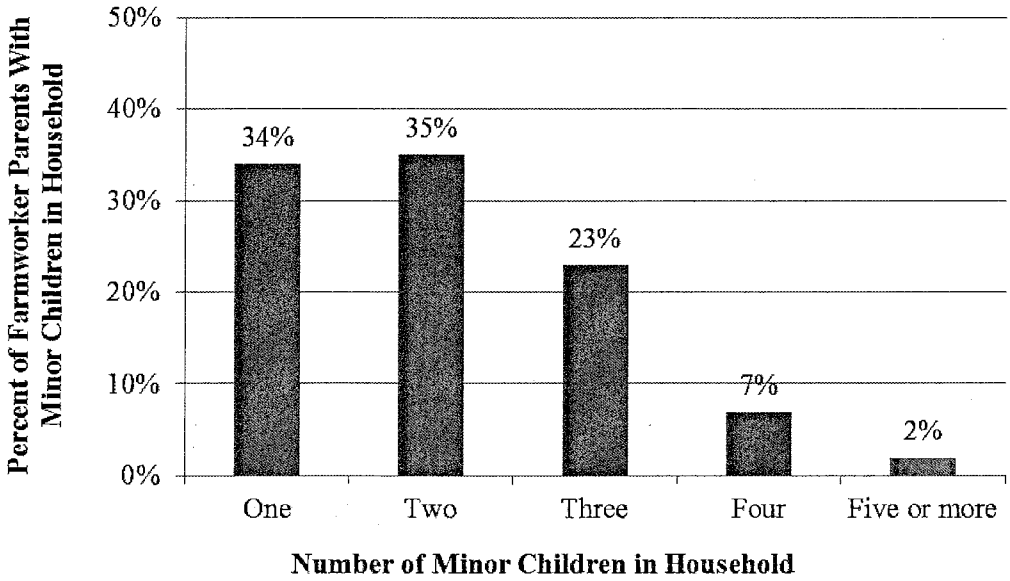
Marital Status and Family Type

Nearly two-thirds of farmworkers interviewed in 2013-2014 were married (63%), 29 percent were single, and eight percent were separated, divorced, or widowed. More than half of the workers had children (57%) and 15 percent were married with no children. Among parents, 84 percent were married, seven percent were single, and nine percent were separated, divorced, or widowed.

Children and Household Structure

In 2013-2014, farmworker parents had an average of two minor children living in their households at the time they were interviewed. Sixty-none percent of parents had one or two children (34% and 35% respectively), 23 percent had three children, seven percent had four children, and two percent had five or more children (figure 2.2).

Figure 2.2: Number of Minor Children of Farmworkers, 2013-2014



Farmworker parents had mostly young children in their households. Forty percent had children under the age of six, 50 percent had children ages 6-13, and 26 percent had children ages 14-17. Twenty-one percent of parents resided with only some of their minor children and 25 percent of parents were living apart from all of their minor children.

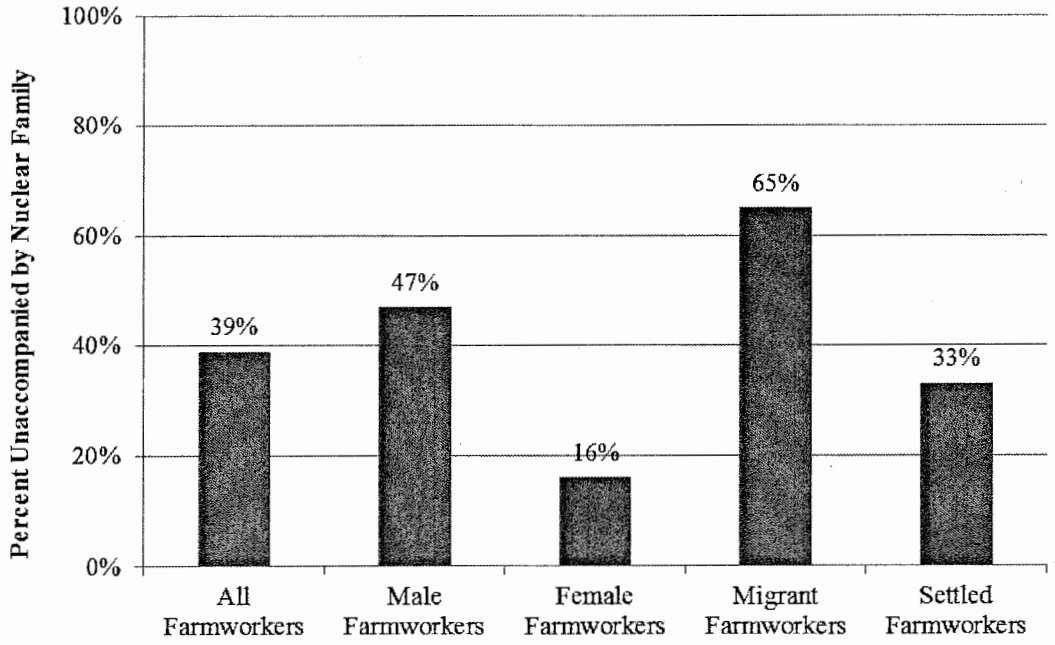
Migrant parents were much more likely to be living away from all their minor children than were settled parents. Nearly six in ten migrant parents reported living apart from all their children at the time they were interviewed (59%), compared to about two in ten settled parents who reported the same (19%).

Farmworkers who were living apart from all nuclear family members (parents, spouse, and children) at the time of their interview were defined as "unaccompanied". "Accompanied" workers were those who were living with at least one nuclear family member at the time they were interviewed.[6] As illustrated in figure 2.3, 39 percent of all farmworkers interviewed in 2013-2014 were unaccompanied by nuclear family. Men were nearly three times more likely than women to be unaccompanied (47% and 16% respectively) and migrant workers were nearly twice as likely as settled workers to be unaccompanied (65% and 33% respectively). The

[6] Farmworkers under the age of 18 who live with a sibling are "accompanied".

majority of the unaccompanied were single workers without children (67%), 25 percent were parents, and nine percent had a spouse but no children.

Figure 2.3: Percent of Farmworkers Unaccompanied by Nuclear Family, 2013-2014



Among farmworker parents in 2013-2014, nearly all mothers (98%) and approximately three-quarters of fathers (76%) were accompanied by at least some nuclear family members. Similarly, among married workers without children, 95 percent of women and 73 percent of the men lived with their spouse at the time of the interview.

CHAPTER 3: Language, Education, and English Skills

PRIMARY LANGUAGE; EDUCATION LEVEL; ENGLISH SPEAKING AND READING ABILITY

Summary of Findings:

- Seventy-four percent of farmworkers reported that Spanish is their primary language.
- The average level of formal education completed by farmworkers was eighth grade.
- Thirty-seven percent of workers reported having taken at least one adult education class in the U.S.
- Thirty-one percent of workers reported that they could speak English "well" and 27 percent said "not at all". Thirty percent reported that they could read English "well" while 38 percent said "not at all".

Primary Language

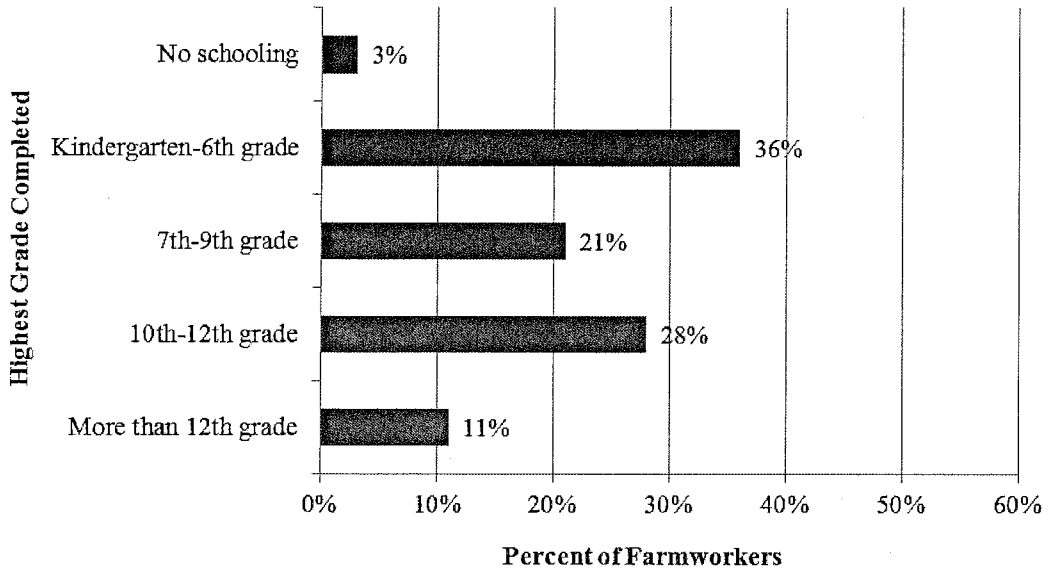
In 2013-2014, nearly three-quarters of farmworkers said that Spanish was the language in which they are most comfortable conversing (74%), 24 percent said English was, and two percent reported an indigenous language[7]. Among workers born in Mexico or Central America, nearly all reported that Spanish was their primary language (97%). Of the remainder, one percent said that English was their primary language and two percent reported an indigenous language as the one in which they are most comfortable conversing.

Education

In 2013-2014, farmworkers' average educational attainment was eighth grade. Three percent of workers reported that they had no formal schooling and 36 percent reported that they completed the sixth grade or lower. Twenty-one percent of workers said they completed grade 7, 8, or 9, and 28 percent said they completed grade 10, 11, or 12. Eleven percent of farmworkers reported completing some education beyond high school (figure 3.1).

[7] Indigenous languages reported by farmworkers interviewed in 2013-2014 include Amuzco, Kanjobal, Chuj, Kiche, Mam, Nahuatl, Otomi, Popti, Tlapaneco, and Tojolabal.

Figure 3.1: Distribution of Highest Grade Completed by Farmworkers, 2013-2014



The highest grade completed varied by place of birth. On average, the highest grade completed by workers born in the U.S. was twelfth, the highest grade completed by workers born in Mexico was seventh, and the highest grade completed by workers born in other countries was sixth. Nearly eight in ten U.S.-born farmworkers completed the twelfth grade or higher (78%), as did 15 percent of Mexican-born workers, and 24 percent of workers born in other countries.

Adult Education

In 2013-2014, 37 percent of farmworkers reported having taken at least one adult education class in the U.S. The most common classes were English (16%), job training (10%), college or university classes (8%), and high school equivalency (GED) classes (5%). Small shares of workers reported taking other types of classes (figure 3.2).

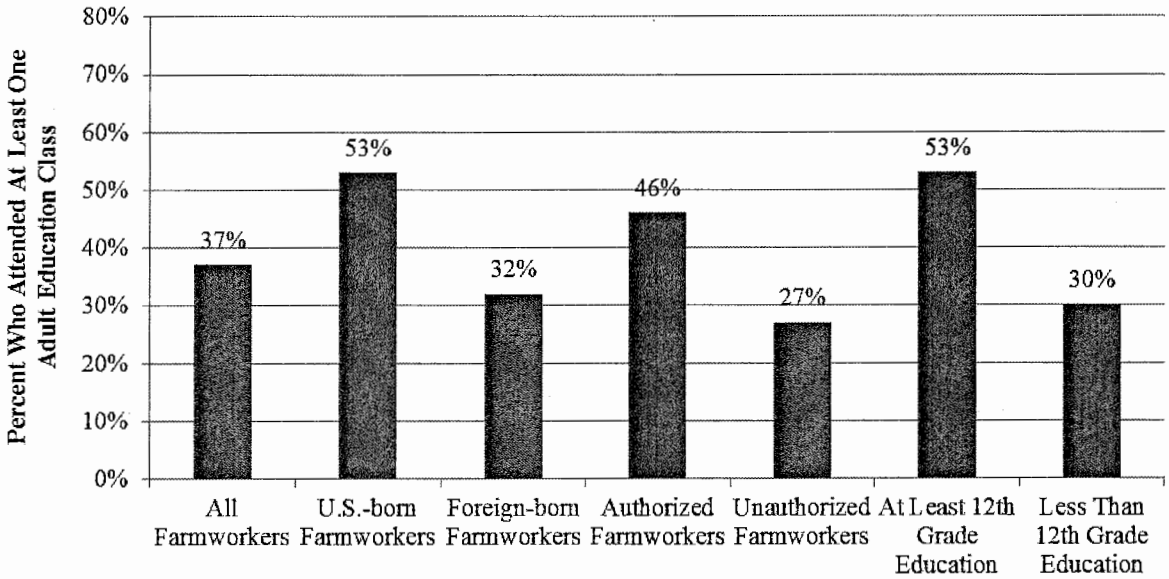
Figure 3.2: Percent of Farmworkers Who Attended Adult Education Classes, 2013-2014

Type of Class[a]	Percent of Farmworkers
Any adult education	37%
English/ESL	16%
Job training	10%
College/University	8%
GED, HS equivalency	5%
Citizenship	3%
Adult basic education	1%
Other	2%

[a] Farmworkers may have attended multiple types of classes.

Farmworkers with the most formal education were the most likely to attend U.S. adult education. The rate of attendance among those who had completed the twelfth grade was almost twice as high as those who had not (53% and 30% respectively). Similarly, workers born in the U.S. were much more likely than those born abroad to report having attended some type of adult education class (53% and 32% respectively), as were authorized workers when compared to unauthorized workers (46% and 27% respectively). See figure 3.3.

Figure 3.3: Percent of Farmworkers Who Attended At Least One Adult Education Class in the U.S., 2013-2014

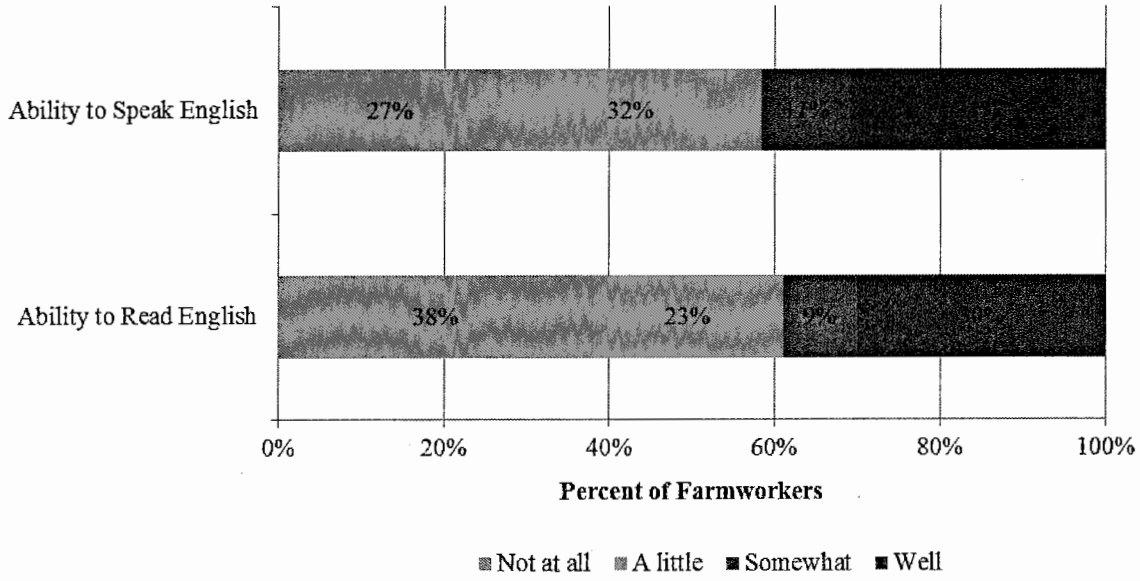


English Language Skills

Farmworkers were asked two questions about their English fluency, "How well do you speak English?" and "How well do you read English?" In 2013-2014, 27 percent of workers responded that they could not speak English "at all". The 73 percent of those who spoke some English included 32 percent who said they could speak English "a little", 11 percent who said they could speak English "somewhat", and 31 percent who said they could speak English "well". Responses regarding the ability to read English were similar: 38 percent of workers reported they could not read English "at all", 23 percent could read English "a little", nine percent could read English "somewhat", and 30 percent said that they could read English "well" (figure 3.4).[8]

[8] Respondents' self-reports of language proficiency could be higher or lower than their actual proficiency.

Figure 3.4: Farmworkers' Self-Reported English Speaking and Reading Ability, 2013-2014



Farmworkers who reported having a primary language other than English were asked to indicate how well they could speak and read in that language. Among workers whose primary language was Spanish, nearly all reported they could speak Spanish "well" (98%). In describing their Spanish reading ability, 80 percent responded with "well", 12 percent replied with "somewhat", six percent said "a little", and two percent said "not at all" (figure 3.5).

Figure 3.5: Among Farmworkers Whose Primary Language Is Spanish, Self-Reported Spanish Speaking and Reading Ability, 2013-2014

Self-Reported Spanish Speaking and Reading Ability	Percent of Farmworkers Whose Primary Language is Spanish
Speak Spanish "Well"	98%
Speak Spanish "Somewhat"	2%
Speak Spanish "A little"	0%
Read Spanish "Well"	80%
Read Spanish "Somewhat"	12%
Read Spanish "A little"	6%
Read Spanish "Not at all"	2%

CHAPTER 4: Housing Characteristics and Distance to Work

LOCATION OF AND PAYMENT FOR HOUSING; TYPE OF HOUSING; CROWDING; DISTANCE FROM HOME TO WORK

Summary of Findings:

- Eighteen percent of farmworkers lived in property owned or administered by their current employer: 14 percent on the farm of the grower for whom they were working and four percent off the farm.
- Sixty-two percent of workers lived in detached, single-family houses.
- Thirty-one percent of farmworkers lived in a dwelling defined as "crowded".
- Nearly three-quarters of workers lived fewer than 25 miles from their current farm job (74%), 11 percent lived between 25 and 49 miles from work, and two percent lived between 50 and 74 miles from work. Thirteen percent of workers lived where they worked.
- Fifty-nine percent of workers drove a car to work, 13 percent rode with a "raitero", and six percent took a labor bus.

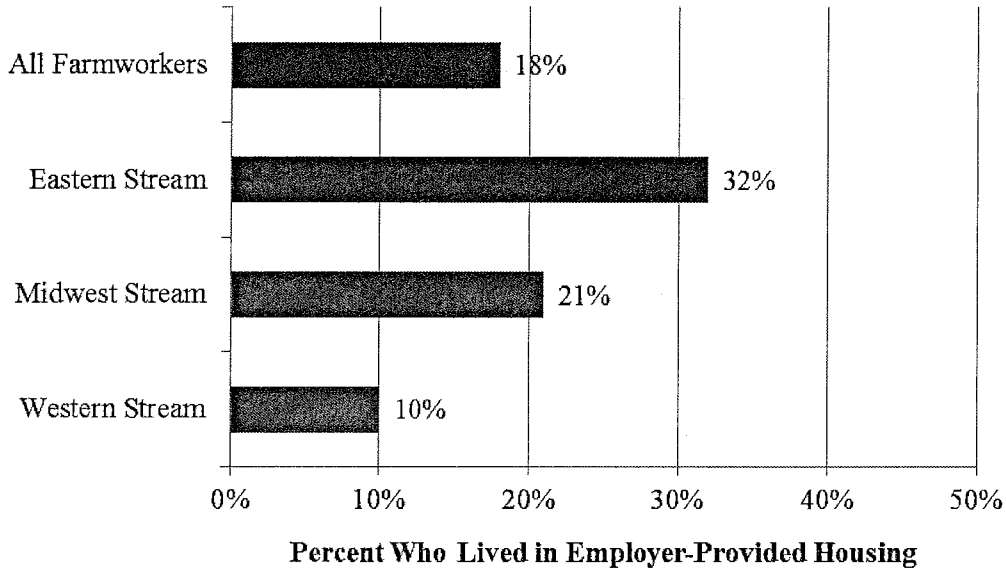
Location of Housing and Payment Arrangement

Farmworkers provided information about their housing situation (arrangement, location, type, and occupancy) while working at their current farm job. Eighteen percent of farmworkers lived in employer-provided housing (i.e., property owned or administered by their current employer); 14 percent on the farm of the grower for whom they were working and four percent off the farm. The remaining 82 percent of workers lived in property not owned or administered by their current employer.

Employer-provided housing (either on or off the employer's farm) was most common in the Eastern migrant stream[9], with 32 percent of farmworkers reporting they lived in employer-provided housing in 2013-2014, compared to 21 percent of workers in the Midwest migrant stream and 10 percent in the Western migrant stream (figure 4.1).

[9] Migrant streams are one way of showing usual patterns of migration and the linkages between downstream and upstream states that many migrants travel in search of farm work. While these patterns are typical, some migrants may cross streams in their search for work. A map of the NAWS migrant streams can be found in Appendix B.

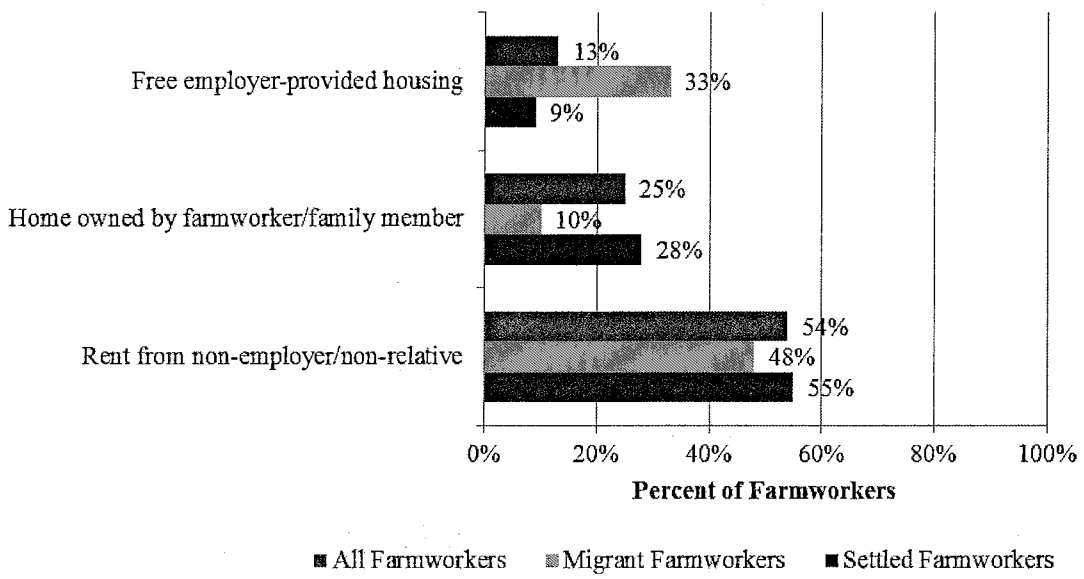
Figure 4.1: Percent of Farmworkers Who Lived in Employer-Provided Housing, 2013-2014



In addition to information about the location of their housing, farmworkers provided information about the payment arrangements they had for their housing. In 2013-2014, more than half of all farmworkers reported that they lived in housing that they rented from someone other than their employer (54%), 25 percent of workers said they lived in a home owned by themselves or a family member, and one percent said they paid rent for housing provided by the government, a charity, or other organization. Eighteen percent of workers lived in employer-provided housing: 13 percent received it free of charge, two percent paid rent either directly or via payroll deduction, and three percent had other arrangements with their employers that were not specified.

Migrant workers were nearly four times more likely than settled workers to live in employer-provided housing that they received free of charge (33% and 9% respectively) and far less likely than settled workers to live in a home that they or a family member owned (10% and 28% respectively) or to rent from a non-employer (48% and 55% respectively). See figure 4.2.

Figure 4.2: Housing Arrangement, 2013-2014



Farmworkers who reported that they paid for their housing were asked how much they paid at their current residence, including for their family if their family lived with them. Thirteen percent reported that they paid less than 200 dollars per month, just more than one-quarter said they paid 200-399 dollars per month (26%), 24 percent paid 400-599 dollars per month, and 36 percent paid 600 dollars or more per month.

Type of Housing

In 2013-2014, six in ten farmworkers reported living in detached, single-family houses (60%), 18 percent said they lived in a mobile home, and 17 percent lived in an apartment. The remaining four percent lived in various other types of housing.[10]

Migrant workers were slightly less likely than settled workers to report living in detached, single-family homes (57% and 61% respectively), slightly more likely to live in apartments (18% and 17% respectively), and equally as likely as settled workers to live in mobile homes (18% of each group). Unauthorized workers were less likely than authorized workers to reside in single-family homes (50% and 70% respectively) and more likely to live in mobile homes (23% and 15% respectively) and apartments (23% and 11% respectively). See figure 4.3.

[10] Other types of housing in which farmworkers reporting living included a duplex or triplex, dormitory or barracks, motel or hotel, or "other".

Figure 4.3: Type of Housing, 2013-2014

Type of Housing	All Farmworkers	Migrant	Settled	Authorized	Unauthorized
Single family home	62%	57%	61%	70%	50%
Mobile home	18%	18%	18%	15%	23%
Apartments	17%	18%	17%	11%	23%
Other	4%	7%	4%	4%	5%

Among immigrant farmworkers, the proportion living in single-family homes increased with the number of years living in the U.S. The majority of immigrant workers who had been in the U.S. at least 20 years resided in single-family homes: 57 percent of those in the U.S. for 20-29 years, 67 percent of those in the U.S. for 30-39 years, and 71 percent of those in the U.S. for 40 years or more (figure 4.4).

Figure 4.4: Type of Housing by Length of Time in the U.S., 2013-2014

Type of Housing	In U.S. 4 Years or Less	In U.S. 5-9 Years	In U.S. 10-14 Years	In U.S. 15-19 Years	In U.S. 20-29 Years	In U.S. 30-39 Years	In U.S. 40+ Years
Single family home	52%	51%	47%	52%	57%	67%	71%
Mobile home	17%	24%	26%	20%	20%	17%	15%
Apartments	23%	22%	24%	22%	19%	13%	10%
Other	7%	4%	3%	6%[a]	4%	3%	5%[a]

[a] Estimates with relative standard errors between 31 and 50 percent should be interpreted with caution.

In 2013-2014, farmworkers reported an average of six rooms in the dwellings in which they lived: an average of three bedrooms, two bathrooms, one kitchen, and one "other" room. Nearly all workers said there was at least one bathroom in their living unit (99%) and also at least one kitchen (99%).

Household Crowding

The measure of crowding used for this report is based on the one-person-per-room definition of the U.S. Census Bureau, Census of Housing[11]. Persons-per-room was calculated by summing the number of rooms (excluding bathrooms, but including kitchens) that respondents said they had in their current living quarters, then dividing the number of persons that respondents said slept in those rooms by the total number of rooms. Dwellings in which the number of persons per room was greater than 1.0 were considered crowded.

In 2013-2014, 31 percent of farmworkers lived in crowded dwellings. Migrant workers lived in crowded dwellings with greater frequency than settled workers (40% compared to 29%), and unauthorized workers were twice as likely as authorized workers to live in crowded dwellings (41% and 21% respectively).

[11] U.S. Census Bureau, Housing and Household Economic Statistics Division. (2011, October 31). *Crowding (http://www.census.gov/hhes/www/housing/census/historic/crowding.html)*.

Distance to Work and Transportation

When asked how far their current farm job was from their current residence, 13 percent of farmworkers in 2013-2014 reported that they lived where they worked, 37 percent said they lived within nine miles of their job location, 38 percent lived between 10 and 24 miles from work, 11 percent lived between 25 and 49 miles from work, two percent lived between 50 and 74 miles from work, and less than one percent[12] lived 75 or more miles from work.

Farmworkers used various modes of transportation to get to work. In 2013-2014, 59 percent of workers reported that they drove a car (59% of workers said they owned a car or truck, as discussed in chapter 8) and seven percent said they walked. Thirty-three percent of workers did not provide their own transportation but commuted via rides with others (14%), rides with a "raitero"[13] (13%), or rides on a labor bus, truck or van (6%).

Among workers who did not provide their own transportation, only three percent reported that their mode of transport was mandatory or obligatory. Twenty-nine percent of these workers reported having to pay a fee for these rides to work and 34 percent said they paid, but only for gas. Thirty-seven percent said they paid no fee for their rides with the "raitero", on the labor bus, or with others.

[12] Estimate has a relative standard error between 31 and 50 percent and should be interpreted with caution.
[13] "Raitero", derived from "ride", is the Spanish word for a person who charges a fee for providing a ride to work.

CHAPTER 5: Employment Patterns and Farm Job Characteristics

EMPLOYER TYPE; JOB RECRUITMENT; HOURS AND WAGES; BENEFITS

Summary of Findings:

- Eighty-five percent of farmworkers were employed directly by growers; 15 percent were employed by farm labor contractors.
- At the time of interview, 41 percent of farmworkers were working in fruit and nut crops, 21 percent in vegetable crops, and 22 percent in horticulture. Thirteen percent were working in field crops and three percent were working in mixed crops.
- At the time of interview, 26 percent of farmworkers were performing pre-harvest tasks, 23 percent were harvesting crops, 18 percent were performing post-harvest activities, and 33 percent were performing technical production tasks.
- The majority of farmworkers reported that their basis for pay was an hourly wage (83%). Workers reported earning an average of $10.19 per hour at their current farm job.
- Forty-six percent of farmworkers reported that they were covered by Unemployment Insurance if they were to lose their current job, 51 percent said they would receive workers' compensation if they were injured at work or became ill as a result of their work, and 14 percent reported that their employer offered health insurance for injury or illness suffered while not on the job.

Type of Employer and Job Recruitment

Most farmworkers in 2013-2014 were employed directly by growers[14] (85%); farm labor contractors employed the remaining 15 percent. Nearly two-thirds of workers reported that they found their current job via references from friends or relatives (64%) and approximately one-quarter got their job after applying for it on their own (26%). Five percent of workers were recruited by a grower, foreman, or labor contractor, and the remaining four percent were referred to their job by an employment service, or welfare office, were hired under union-employer agreements, or found their job via some "other" means.

Primary Crops and Farm Job Tasks

At the time they were interviewed in 2013-2014, 84 percent of farmworkers reported working in fruits, vegetables and horticultural crops (41% in fruits and nuts, 21% in vegetables, and 22% in horticulture). Thirteen percent held jobs in field crops and three percent worked in mixed crops or other crops. Workers employed by farm labor contractors were twice as likely as those employed directly by growers to work in fruit and nut crops (71% compared to 36%), but directly-hired workers were much more likely than contracted workers to work in field crops (14% compared to 3%[15]). Migrant farmworkers worked in fruit and nut crops with greater frequency than did settled workers (50% and 39% respectively), but were less likely than settled workers to have jobs in horticultural crops (23% and 14% respectively). See figure 5.1.

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[14] Growers include owners of establishments (i.e., farms, orchards, greenhouses, and nurseries) that engage primarily in growing crops, plants, or trees, but can also include other types of crop producers, such as packers, shippers, or distributors.

[15] Estimate has a relative standard error between 31 and 50 percent and should be interpreted with caution.

Figure 5.1: Primary Crop at Time of Interview, 2013-2014

Crop	All Farmworkers	Employed by Grower	Employed by Farm Labor Contractor	Migrant Farmworkers	Settled Farmworkers
Field Crops	13%	14%	3%[a]	9%	13%
Fruits and Nuts	41%	36%	71%	50%	39%
Horticulture	22%	26%	-[b]	14%	23%
Vegetables	21%	20%	26%	24%	21%
Miscellaneous	3%	4%	0%	3%[a]	3%

[a] Estimates with relative standard errors between 31 and 50 percent should be interpreted with caution.
[b] Estimates with relative standard errors greater than 50 percent are suppressed.

Field work encompasses a wide variety of tasks. One-quarter of the farmworkers interviewed in 2013-2014 performed pre-harvest tasks (26%) such as hoeing, thinning, and transplanting. Twenty-three percent harvested crops and 18 percent performed post-harvest activities such as field packing, sorting, and grading. Another 33 percent of workers performed technical production tasks such as pruning, irrigating, and operating machinery. Workers employed by farm labor contractors were more likely than directly-hired workers to perform harvest tasks (34% compared to 21%), as were migrant workers in comparison to settled workers (37% and 21% respectively). Settled workers, on the other hand, were more likely than migrant workers to perform technical production tasks (35% compared to 22%). See figure 5.2.

Figure 5.2: Primary Task At Time of Interview, 2013-2014

Task	All Farmworkers	Employed by Grower	Employed by Farm Labor Contractor	Migrant Farmworkers	Settled Farmworkers
Pre-harvest	26%	26%	23%	25%	25%
Harvest	23%	21%	34%	37%	21%
Post-harvest	18%	20%	-[a]	16%	19%
Technical Production	33%	33%	33%	22%	35%

[a] Estimates with relative standard errors greater than 50 percent are suppressed.

Hours Worked and Basis for Pay

In 2013-2014, respondents reported working an average of 44 hours in the previous week at their current farm job. Agricultural employers' labor needs vary by season, crop and task, and workers are sometimes needed for longer than normal hours over short periods of time. The data reflect the fluctuating nature of labor use. For example, workers who were performing post-harvest tasks (such as field packing and sorting) in field crops at the time they were interviewed in 2013-2014 reported working an average of 53 hours in the previous week. Workers who performed technical production tasks in horticulture, on the other hand, reported an average of 38 hours of work the previous week (figure 5.3).

Figure 5.3: Average Number of Hours Worked in Week Prior to Interview by Crop and Task at Time of Interview, 2013-2014

Crop and Task	Pre-Harvest Tasks	Harvest Tasks	Post-Harvest Tasks	Technical Production Tasks
Field Crops	55	40	53	51
Fruit and Nut Crops	46	39	40	47
Horticulture	41	42	40	38
Vegetable Crops	43	47	44	50
Miscellaneous Crops	37	44	39	42

The average number of hours worked in the previous week also varied by workers' age, gender, U.S. farm work experience, and basis for pay. Respondents aged 65 and over reported the fewest, at an average of 39 hours, and workers aged 22 to 24 reported the most, at an average of 46 hours. Males reported working an average of 46 hours in the previous week and females reported an average of 38 hours.

The vast majority of farmworkers in 2013-2014 reported that their basis for pay was an hourly wage (83%). Four percent of workers were paid a salary and 10 percent were paid exclusively by the piece.

In terms of number of years of U.S. farm work experience, workers with only two to four years reported the fewest hours of work the previous week, at an average of 40 hours, and those with more than 30 years of experience reported the most, at an average of 45 hours. Farmworkers paid a salary reported the greatest number of hours the previous week, at an average of 49. Workers paid by the piece averaged 41 hours, those paid by the hour averaged 44 hours, and those paid a combination of hourly wage and piece rate averaged 41 hours of work the previous week (figure 5.4).

Figure 5.4: Average Number of Hours Worked in Week Prior to Interview by Farmworker Characteristic, 2013-2014

Farmworker Characteristic	Average Number of Hours
14-17 years old	45
18-21 years old	42
22-24 years old	46
25-34 years old	45
35-44 years old	43
45-50 years old	45
51-54 years old	45
55-64 years old	42
65 or more years old	39
Male	46
Female	38
Less than 2 years of farm work experience	44
2 to 4 years farm work experience	40
5 to 10 years farm work experience	44
11 to 20 years farm work experience	44
21 to 30 years farm work experience	45
31 or more years farm work experience	45
Paid by the hour	44
Paid by the piece	41
Paid combination hourly wage and piece rate	41
Paid salary or other	49

Wages

When asked how much they were earning per hour at their current farm job, farmworkers in 2013-2014 reported an average of $10.19.[16] Workers who were being paid by the hour earned an average hourly wage of $9.71 and those being paid by the piece earned an average of $11.57 per hour.

Hourly wages increased with respondents' number of years working for their current employer. Workers who had been with their current employer one to two years earned an average of $9.67 per hour. The average hourly wage earned by those working for their current employer three to five years and six to 10 years was nearly the same - $10.13 and $10.19 per hour respectively. Workers who had worked for their current employer 11 years or more earned the highest hourly wage, averaging $11.20 per hour.

Among the tasks respondents reported performing at the time they were interviewed, those who worked in harvest tasks earned the highest average hourly wage, at $10.62. Pre-harvest workers earned an average of $9.78 per hour, post-harvest workers earned an average of $9.76 per hour,

[16] Piece rate and combination wages were converted to an hourly wage, then averaged with the wages of workers who were paid by the hour.

and those who worked in technical production tasks earned an average of $10.46 per hour (figure 5.5).

Figure 5.5: Average Hourly Wage by Farmworker Characteristic, 2013-2014

Farmworker Characteristic	Average Hourly Wage
All farmworkers	$10.19
Paid by the hour	$9.71
Paid by the piece	$11.57
Paid combination hourly wage and piece rate	$13.25
With current employer 1 to 2 years	$9.67
With current employer 3 to 5 years	$10.13
With current employer 6 to 10 years	$10.19
With current employer 11 or more years	$11.20
Performed pre-harvest tasks at time of interview	$9.78
Performed harvest tasks at time of interview	$10.62
Performed post-harvest tasks at time of interview	$9.76
Performed technical production tasks at time of interview	$10.46

Monetary Bonuses

In 2013-2014, 33 percent of farmworkers reported receiving a cash bonus from their current farm employer as part of their compensation package, 62 percent said they received no cash bonus, and six percent did not know. Workers who reported being paid a bonus were asked to identify all the types of bonuses they received. Fifty-one percent said they received a holiday bonus, 33 percent received an end-of-season bonus, 10 percent received an incentive award, and six percent received a bonus contingent upon employer profits (figure 5.6). Workers employed directly by growers reported nearly four times more frequently than those employed by farm labor contractors that they were paid a bonus (37% and 10% respectively).

Figure 5.6: Types of Cash Bonuses Farmworkers Received[a], 2013-2014

Type of Bonus Received	Percent of Farmworkers
Holiday bonus	51%
Incentive bonus	10%
Bonus dependent on grower profit	6%
End-of-season bonus	33%
Other type of bonus	2%[b]

[a] Among workers who reported being paid a bonus. Multiple responses were allowed.
[b] Estimates with relative standard errors between 31 and 50 percent should be interpreted with caution.

Worksite Availability of Water and Toilets

NAWS respondents were asked if their current farm employer provided the following items at the worksite every day: 1) drinking water and cups, 2) a toilet, and 3) water for washing hands. Eighty-five percent of farmworkers in 2013-2014 reported that they were provided with drinking

water and disposable cups every day, and 10 percent said they were provided water only. A notable share of workers said that their employer provided no water and no cups (5%). Nearly all workers affirmed that they were provided a toilet every day (96%) and with water for washing their hands (97%).

Pesticide Training

The NAWS asks all respondents whether, at any time in the last 12 months, their current employer provided them with training or instruction in the safe use of pesticides. In 2013-2014, 81 percent of farmworkers reported that they did receive this type of training.

Insurance Benefits

NAWS respondents were asked whether they were covered by Unemployment Insurance (UI) if they were to lose their current job. Forty-six percent of farmworkers interviewed in 2013-2014 said "yes", 50 percent said "no", and three percent did not know.[17] Workers with authorization to work in the U.S. were far more likely than unauthorized workers to report that they would be covered by UI (83% and 5% respectively). Of the 50 percent of respondents who reported that they would not be covered by UI, 86 percent were unauthorized and would not qualify for the benefit.

When asked if they would receive workers' compensation if they were injured at work or got sick as a result of their work, approximately half of farmworkers said "yes" (51%), 21 percent said "no", and 28 percent did not know.[18] Authorized workers were more likely than unauthorized workers to report that they were covered by workers' compensation insurance[19] (57% and 45% respectively).

When asked whether their employer provided health insurance or paid for medical treatment for injury or illness suffered while off the job (regardless of whether or not the worker accepted or used the insurance), 14 percent of farmworkers confirmed that their employer offered such a benefit, 78 percent said their employer did not, and nine percent were unsure. See figure 5.7. A

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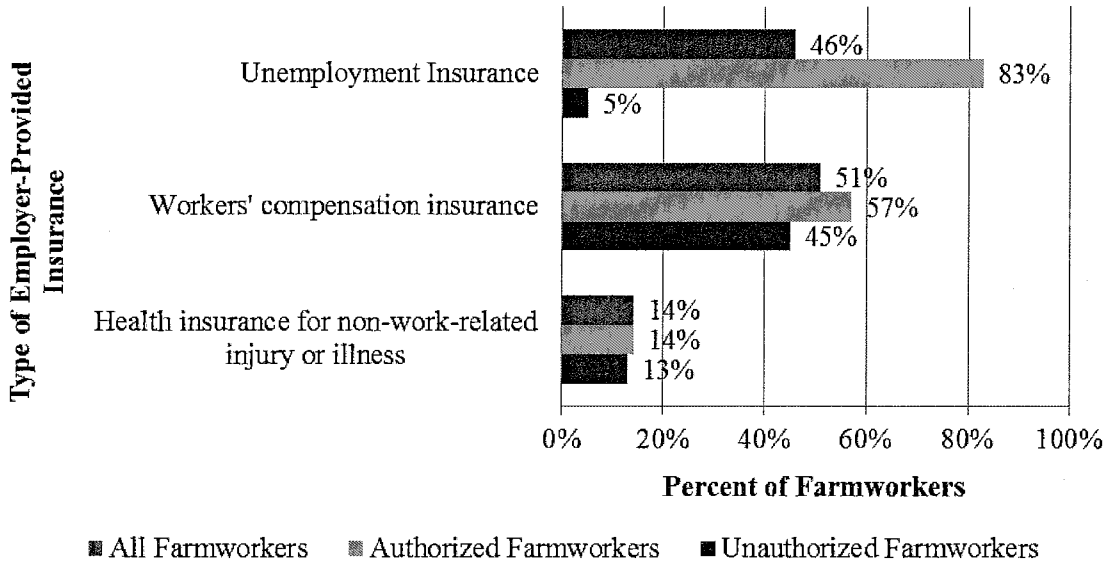
[17] UI coverage varies by state. For agricultural labor in the majority of states, employers are required to pay UI taxes if they paid wages in cash of $20,000 or more for agricultural labor in any calendar quarter in the current or preceding calendar year, or who employed 10 or more workers on at least 1 day in each of 20 different weeks in the current or immediately preceding calendar year. U.S. Department of Labor, Employment and Training Administration. (2002). *Comparison of State Unemployment Insurance Laws.* Accessed at http://www.workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2002/coverage.pdf (p. 1.4).

[18] The rules for workers' compensation coverage for agricultural workers vary among states. In 14 states, Puerto Rico and the Virgin Islands, rules require employers to cover seasonal agricultural workers to the same extent as all other workers. In an additional 21 states, employers provide workers' compensation but coverage is limited to certain classifications of agricultural employers or workers such as the number of full-time workers employed. Fifteen states have optional coverage, allowing employers to elect to provide workers' compensation coverage to their employees, though the coverage is not required by law. In many of these states, workers' compensation is required for employers in other industries but optional for agriculture. *A Guide to Workers' Compensation for Clinicians Serving Agricultural Workers.* Farmworker Justice and Migrant Clinicians Network (2015). Accessed at http://www.farmworkerjustice.org/sites/default/files/Workers%20Comp%20Guide%20FINAL%20%281%29.pdf.

[19] Three states – Alabama, Idaho, and Wyoming – explicitly exclude from coverage any worker without valid work authorization. *A Guide to Workers' Compensation for Clinicians Serving Agricultural Workers.* Farmworker Justice and Migrant Clinicians Network (2015). Accessed at http://www.farmworkerjustice.org/sites/default/files/Workers%20Comp%20Guide%20FINAL%20%281%29.pdf.

discussion of farmworkers' possession of health insurance coverage for themselves and their family members can be found in chapter 9.

Figure 5.7: Percent of Farmworkers Whose Employer Offers Health Insurance, 2013-2014



CHAPTER 6: Employment Experience

LABOR FORCE PARTICIPATION DURING THE PREVIOUS YEAR AND PLANS TO REMAIN IN FARM WORK

Summary of Findings:

- Seventy-nine percent of farmworkers worked for one farm employer in the previous 12 months.
- Twenty-five percent of workers held at least one non-farm job in the previous 12 months.
- During the previous year, farmworkers spent an average of 35 weeks employed in farm work, six weeks employed in non-farm work, two weeks abroad, and nine weeks living in the U.S. but not working.
- Farmworkers worked an average of five days per week for their current employer and an average of 192 days in farm work in the previous 12 months.
- Farmworkers had an average of 16 years of U.S. farm work experience. Workers with more years of experience worked more days in the previous 12 months.
- The majority of all workers interviewed (78%) expected to continue doing farm work for at least five years.

Number of U.S. Farm and Non-farm Employers in Previous 12 Months

Farmworkers in 2013-2014 worked for an average of one U.S. farm employer[20] in the 12 months prior to being interviewed. Seventy-nine percent of workers reported having worked for only one farm employer and 13 percent worked for two employers. Eight percent had three or more farm employers in the previous 12 months.

Migrant workers were more likely than settled workers to have worked for more than one farm employer in the previous 12 months (35% compared to 18%), and unauthorized workers were more than twice as likely as authorized workers to have had more than one farm employer in the previous 12 months (30% compared to 13%). See figure 6.1.

Figure 6.1: Percentage Distribution of Number of Farm Work Employers in Previous 12 Months by Farmworker Characteristic, 2013-2014

Number of Farm Employers	All Farmworkers	Migrant	Settled	Authorized	Unauthorized
One	79%	65%	82%	87%	70%
Two	13%	16%	13%	9%	18%
Three or more	8%	19%	5%	4%	12%

Twenty-five percent of farmworkers reported at least one non-farm job in the U.S. during the previous year. U.S.-born farmworkers held non-farm jobs with greater frequency than did foreign-born workers, with nearly half of U.S.-born workers reporting at least one non-farm job in the previous year (47%) and less than one in five foreign-born workers reporting the same

[20] An employer can be either a farm owner or a farm labor contractor. While a worker employed by a farm labor contractor may work on more than one farm in a year, a single labor contractor is counted as one employer.

(17%). Similarly, authorized workers were twice as likely as unauthorized workers to have had a non-farm job (33% compared to 17%).

Time Spent Employed and Not Employed in Previous 12 Months

During the previous year, farmworkers spent an average of 35 weeks (67% of the year) employed in farm work and six weeks employed in non-farm work (12% of the year). They lived in the U.S. but did not work for approximately nine weeks (17% of the year), and were abroad for an average of two weeks (4% of the year). For the 27 percent of farmworkers who held a non-farm job in the previous year, the average number of non-farm-work weeks was 26.

U.S. farm work participation varied depending on workers' legal status, migrant status, and place of birth. Authorized, migrant and U.S.-born farmworkers worked fewer weeks in farm work (averages of 33, 27, and 30 weeks respectively) than unauthorized, settled, and foreign-born workers did (averages of 37, 36, and 36 weeks respectively).

U.S.-born respondents spent the greatest number of weeks performing non-farm work. In fact, U.S.-born respondents worked twice the average number of weeks in non-farm work than did farmworkers on the whole (12 weeks compared to 4 weeks). Unauthorized and foreign-born respondents worked the fewest number of weeks in non-farm work (an average of 4 weeks for each group); on average, two fewer weeks than farmworkers as a whole.

Unauthorized and migrant farmworkers spent, on average, fewer weeks in the U.S. not working (8 and 6 weeks respectively) when compared to farmworkers as a whole (an average of 9 weeks). By contrast, authorized and U.S.-born farmworkers spent, on average, more weeks not working (10 and 11 weeks respectively) than farmworkers as a whole. Migrant workers spent six times as many weeks abroad during the previous year (an average of 13) as farmworkers on the whole (an average of 2).

Youth farmworkers, between the age of 14 and 17, were employed the fewest weeks in both farm and non-farm jobs, and also spent the greatest number of weeks not working while in the U.S. Fourteen-to-seventeen year-old respondents averaged 14 weeks of farm work and were not working for more than half the year (35 weeks). Farmworkers aged 18 to 24 worked an average of 28 weeks in farm jobs and nine weeks in non-farm jobs, and spent an average of 14 weeks in the U.S. but not working and an average of two weeks abroad. Workers aged 25 years and older averaged 35 to 37 weeks in farm work, five to seven weeks in non-farm work, eight weeks in the U.S. but not working, and two to three weeks abroad (figure 6.2).

Figure 6.2: Average Number of Weeks Employed, Not Employed, and Abroad in Previous 12 Months, by Farmworker Characteristic, 2013-2014

Farmworker Characteristic	Weeks of Farm Work	Weeks of Non-Farm Work	Weeks in U.S. Not Working	Weeks Abroad
All farmworkers	35	6	9	2
Migrant	27	6	6	13
Settled	36	6	10	<1
Authorized	33	8	10	2
Unauthorized	37	4	8	2
U.S.-born	30	12	11	1[a]
Foreign-born	36	4	9	3
14-17 years old	14	9[a]	35	-[b]
18-24 years old	28	9	13	3
25-50 years old	37	6	8	2
Over 50 years old	35	6	8	3

[a] Estimates with relative standard errors between 31 and 50 percent should be interpreted with caution.
[b] Estimates with relative standard errors greater than 50 percent are suppressed.

Days of Farm Work in Previous 12 Months

Farmworkers' approximate number of work days was calculated using employment dates and average weeks per employer as recorded in the 12-month retrospective work history. For the employer they were working for at the time of interview, farmworkers reported working an average of five days per week. Over the previous 12 months, they worked an average of 192 days in farm work, with averages varying depending upon workers' legal status, migrant status, and place of birth. Unauthorized workers, settled workers, and foreign-born workers averaged a greater number days than did their counterparts: Unauthorized workers worked an average of 207 days and authorized workers an average of 178 days; settled workers averaged 199 days while migrant workers averaged of 155 days; foreign-born workers worked an average of 204 days and U.S.-born workers and average of 158 days (figure 6.3).

Figure 6.3: Average Number of Days Worked Per Week and Average Number of Days of Farm Work in Previous 12 Months, by Farmworker Characteristic, 2013-2014

Farmworker Characteristic	Days Worked Per Week	Days of Farm Work in Previous 12 Months
All farmworkers	5	192
Migrant	6	155
Settled	5	199
Authorized	5	178
Unauthorized	5	207
U.S.-born	5	158
Foreign-born	5	204

Years of U.S. Farm Work Experience

Farmworkers interviewed in 2013-2014 had an average of 16 years of U.S. farm work experience. Forty percent of farmworkers had worked one to 10 years in farm jobs, 45 percent had worked 11 to 30 years in farm jobs, and 14 percent had worked more than 30 years in farm jobs (figure 6.4).

Figure 6.4: U.S. Farm Work Experience, 2013-2014

Years of Farm Work Experience[a]	Percent of Farmworkers
1 year	4%
2 to 4 years	12%
5 to 10 years	24%
11 to 20 years	29%
21 to 30 years	16%
31 or more years	14%

[a] Among workers with at least one year of U.S. farm work experience.

Farmworkers with greater numbers of years of experience were more likely to have authorization to work in the U.S.; 58 percent of workers with 10 years or more of farm work experience were work-authorized, while 45 percent of those with one to nine years of experience had work authorization.

Additionally, farmworkers with greater numbers of years of experience performed more days of farm work during the previous year. Respondents who had only one year of farm work experience worked an average of 149 days in farm work in the previous 12 months, while those with 31 years or more of experience averaged 209 days of farm work.

Other Work History

Farmworkers were asked to report the approximate number of years they had done non-farm work in the U.S. Just more than half of farmworkers in 2013-2014 reported at least one year of non-farm work (52%)[21], and they had an average of seven years of experience doing non-farm work in the U.S. (figure 6.5).

Figure 6.5: U.S. Non-Farm Work Experience, 2013-2014

Years of Non-Farm Work Experience	Percent of Farmworkers
None	48%
1 year	12%
2 to 10 years	32%
11 or more years	8%

Farmworkers were also asked to indicate the last time their parents did hired farm work in the U.S. Fifty-five percent of workers said "never", 11 percent reported that their parents were doing U.S. farm work "now" or within the last year, four percent said their parents last did U.S. farm work one to five years ago, five percent said their parents last did U.S. farm work six to ten years ago, and 24 percent reported that their parents last did U.S. farm work more than 11 years ago. U.S.-born farmworkers and foreign-born farmworkers reported with nearly equal frequency that their parents did hired farm work in the U.S. at some time (47% and 43% respectively). See figure 6.6.

[21] Any year in which 15 days of non-farm work were performed counts as one year of non-farm work.

Figure 6.6: Last Time Parents Did Hired Farm Work in U.S., 2013-2014

Last Time Parents Did U.S. Farm Work	All Farmworkers	U.S.-Born Farmworkers	Foreign-Born Farmworkers
Never	55%	52%	56%
Now/within last year	11%	16%	10%
1 to 5 years ago	4%	2%	4%
6 to 10 years ago	5%	4%	6%
Over 11 years ago	24%	25%	24%
Don't know	<1%	1%[a]	<1%

[a] Estimates with relative standard errors between 31 and 50 percent should be interpreted with caution.

Plans to Remain in Farm Work

When asked how long they expected to continue to do farm work, 78 percent of workers interviewed in 2013-2014 believed they would continue for more than five years, most of whom indicated further that they would continue as long as they are able to do the work. Three percent of respondents stated that they would continue working in agriculture for less than one year, 12 percent planned to remain in farm work for one to three years, four percent stated that they would continue in farm work for four to five years, and three percent were unsure.

CHAPTER 7: Full-Year Farm Employment

YEARS WITH CURRENT FARM EMPLOYER; FULL-YEAR FARM EMPLOYMENT THE PREVIOUS YEAR; REASONS FOR LEAVING EMPLOYERS

Summary of Findings:

- At the time of interview, farmworkers had been employed by their current farm employer for an average of seven years.
- Sixteen percent of farmworkers had full-year farm employment the previous year; they had no periods of non-farm work, no periods living in the U.S. but not working, and no time abroad in the 12 months prior to interview.
- Ninety-three percent of farmworkers with full-year farm employment were settled workers and 58 percent were accompanied.
- Seventy percent of farmworkers with full-year farm employment had only one farm employer during the year.
- Over the previous year, 70 percent of farmworkers with full-year farm employment worked in only the one crop category that they reported at the time of interview and 30 percent engaged in only the one task category that they reported at the time they were interviewed.

Number of Years With Current Farm Employer

In 2013-2014, farmworkers reported working for their current farm employer for an average of seven years.[22] Thirty-eight percent stated they had been with their current employer for one or two years and 21 percent said they had been with their current farm employer for eleven or more years (figure 7.1).

Figure 7.1: Number of Years with Current Farm Employer, 2013-2014

Number of Years With Current Farm Employer	Percent of Farmworkers
1 to 2 years	38%
3 to 5 years	24%
6 to 10 years	18%
11 or more years	21%

Full-Year Farm Employment

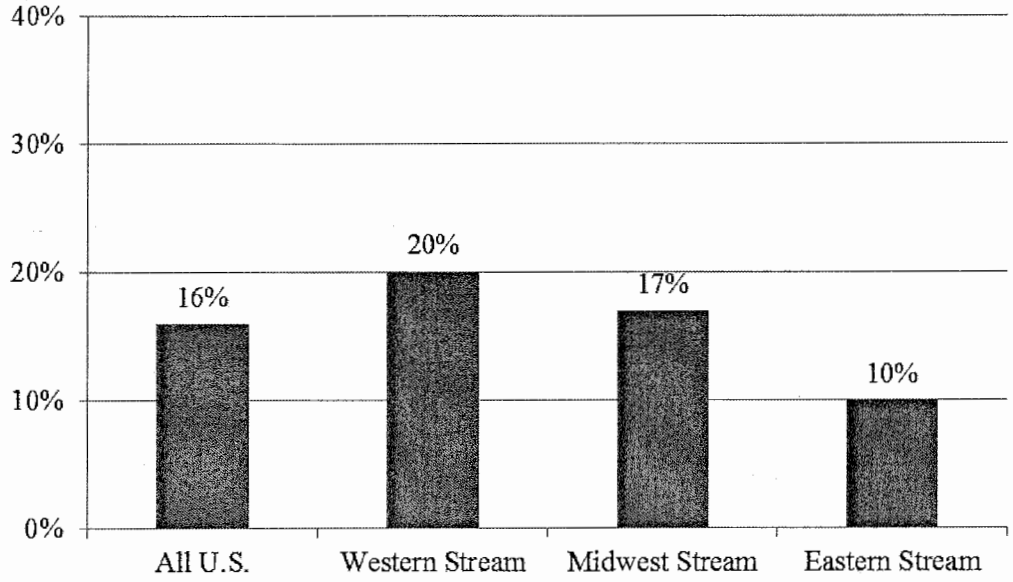
Analyses were conducted to examine the degree to which NAWS respondents sustained full-year farm employment in the year prior to their interview. For the purpose of this report, respondents were defined as having full-year farm employment if they had only farm work in their 12-month retrospective work histories (i.e., they had no periods of non-farm work, no periods living in the

[22] Any employment for at least one day in the year qualifies as one year.

U.S. but not working, and no time abroad during the previous year) and they worked 50 or more weeks the previous year[23].

Using this definition, 16 percent of farmworkers interviewed in 2013-2014 had full-year farm employment the previous year. Some had more than one job during that time period, but they remained in farm work for the duration of the year. Twenty percent of workers in the Eastern migrant stream, 17 percent of workers in the Western migrant stream, and 10 percent of workers in the Midwest migrant stream had full-year farm employment the previous year (figure 7.2).

Figure 7.2: Percent of Farmworkers Nationally and By Migrant Stream Who Had Full-Year Farm Employment[a] the Previous Year, 2013-2014



[a] Respondents had full-year farm employment the previous year if they worked 50 or more weeks and only in farm work (i.e., they had no periods of non-farm work, no periods living in the U.S. but not working, and no time abroad in their 12-month retrospective work histories).

Ninety-three percent of farmworkers with full-year farm employment the previous year were settled workers and more than half of workers with full-year farm employment were accompanied (58%), living with at least one nuclear family member at the time they were interviewed. Twenty-four percent of workers with full-year farm employment had children under the age of six residing in their households, 28 percent had children ages 6 to 13 living with them, and 14 percent had children ages 14 to 17 living in their households (figure 7.3).

[23] The frequency distribution of number of weeks of farm work the previous year was examined to determine the appropriate minimum number to consider for full-year employment. More than one-quarter of farmworkers interviewed in 2013-2014 performed at least 50 weeks of farm work the year prior to their interview (27%), and only an additional seven percent of workers performed between 48 and 50 weeks of farm work. For this reason, 50 weeks was deemed a more realistic minimum for defining full-year farm employment.

Figure 7.3: Characteristics of Farmworkers With Full-Year Farm Employment the Previous Year, 2013-2014

Farmworker Characteristic	Percent of Workers With Full-Year Farm Employment[a]
Settled	93%
Accompanied	58%
Child(ren) under age 6 in household	24%
Child(ren) age 6-13 in household	28%
Child(ren) age 14-17 in household	14%

[a] Respondents had full-year farm employment the previous year if they worked 50 or more weeks and only in farm work (i.e., they had no periods of non-farm work, no periods living in the U.S. but not working, and no time abroad in their 12-month retrospective work histories).

Among workers with full-year farm employment the previous year, 70 percent had only one farm employer during that time, 19 percent had two farm employers, and 12 percent had three or more farm employers. Eighty-four percent of workers with full-year farm employment were employed directly by growers; 16 percent were employed by farm labor contractors.

Over the previous year, the majority of farmworkers with full-year farm employment worked in only the one crop category that they reported at the time of interview (70%). Twenty-seven percent worked in two different crop categories and three percent worked in three crop categories. Forty-eight percent of workers with full-year farm employment who worked in more than one crop category during the previous 12 months worked for only one farm employer during that time. Among workers with full-year farm employment who worked in only a single crop category during the previous 12 months, 39 percent worked in fruit and nut crops, 33 percent worked in horticulture, 16 percent worked in vegetable crops, and 12 percent worked in field crops or miscellaneous crops[24].

In terms of the farm work tasks they performed over the previous 12 months, 30 percent of farmworkers with full-year farm employment engaged in only the one task category that they reported at the time they were interviewed. Twenty-njne percent engaged in two task categories and 41 percent worked in three or more task categories (figure 7.4).

[24] The estimates of the shares of workers with full-year farm employment who worked only in field crops (11%) or only in miscellaneous crops (1%) have relative standards between 31 and 50 percent should be interpreted with caution.

Figure 7.4: Employment Characteristics of Farmworkers With Full-Year Farm Employment the Previous Year, 2013-2014

Characteristics of Farm Employment Over the Previous 12 Months	Percent of Workers With Full-Year Farm Employment[a]
One farm employer	70%
Two farm employers	19%
Three or more farm employers	12%
Employed by grower	84%
Employed by farm labor contractor	16%
Worked in one crop category	70%
Worked in two crop categories	27%
Worked in three or more crop categories	3%
Engaged in one task category	30%
Engaged in two task categories	29%
Engaged in three task categories	41%

[a] Respondents had full-year farm employment the previous year if they worked 50 or more weeks and only in farm work (i.e., they had no periods of non-farm work, no periods living in the U.S. but not working, and no time abroad in their 12-month retrospective work histories).

Reasons for Leaving Farm Work in Previous Year

As a respondent's 12-month retrospective work history was recorded, each time the respondent stated that he/she separated from an employer, he/she was asked the reason why. For the 84 percent of farmworkers in 2013-2014 who did not have full-year farm employment the previous year, analyses were conducted to determine whether their reasons for leaving farm and/or non-farm employers were primarily involuntary or voluntary in nature. Involuntary leaves from farm employers included "lay off/end of season" and "fired". Voluntary leaves included "family responsibilities", "school", "moved", "health reason", "vacation", "retired", "quit", and "changed jobs".

Sixty-four percent of farmworkers who did not have full-year farm employment left at least one of their farm employers in the previous year. For 65 percent of these workers, all their leaves were involuntary (i.e., they were laid off or were fired) and for 30 percent, all their leaves were voluntary (e.g., they quit, changed jobs, left their employer to take care of family responsibilities, etc.). The remaining five percent had both involuntary and voluntary leaves from farm employers during the previous year.

Among workers who had non-farm employment during the previous year, 56 percent left at least one job with a non-farm employer. Given that the NAWS sample includes only farmworkers actively employed in crop agriculture at the time of interview, logic would have it that any respondents who had non-farm employment would have left that employment and at some point obtained the farm job they were working at the time they were interviewed. However, some workers hold non-farm jobs in addition to their farm jobs, and some perform non-farm work for their agricultural employers, thus changing jobs but not separating from the employer.

For 54 percent of workers who left a non-farm employer during the previous year, all their leaves were involuntary, and for another 44 percent, all their leaves were voluntary. The remaining two percent[25] had both involuntary and voluntary leaves from non-farm employers during the previous year.

[25] Estimate has a relative standard error between 31 and 50 percent and should be interpreted with caution.

CHAPTER 8: Income, Assets, and Use of Assistance Programs

INDIVIDUAL AND FAMILY INCOME; ASSETS IN THE U.S. AND ABROAD; PAYMENTS FROM CONTRIBUTION-BASED PROGRAMS; ASSISTANCE FROM NEEDS-BASED PROGRAMS

Summary of Findings:

- Farmworkers' mean and median incomes from agricultural employment the previous year were in the range of $15,000 to $17, 499. Sixteen percent of workers earned less than $10,000; eight percent earned $30,000 or more.
- Workers' mean and median total family incomes the previous year were in the range of $20,000 to $24,999. Thirty-three percent of farmworkers reported total family income of less than $20,000, 27 percent said their family income was $20,000 to $29,999, and 30 percent had a family income of $30,000 or more.
- Thirty percent of farmworkers had family incomes below poverty.
- Nearly two-thirds of farmworkers stated that they owned or were buying at least one asset in the U.S. (65%), usually a vehicle. Sixteen percent of farmworkers either owned or were in the process of buying a home in the U.S.
- Nineteen percent of farmworkers reported that they or someone in their household received some form of benefit from a contribution-based program in the previous two years; 48 percent said someone in their household received some form of benefit from a needs-based program in the previous two years.

Income

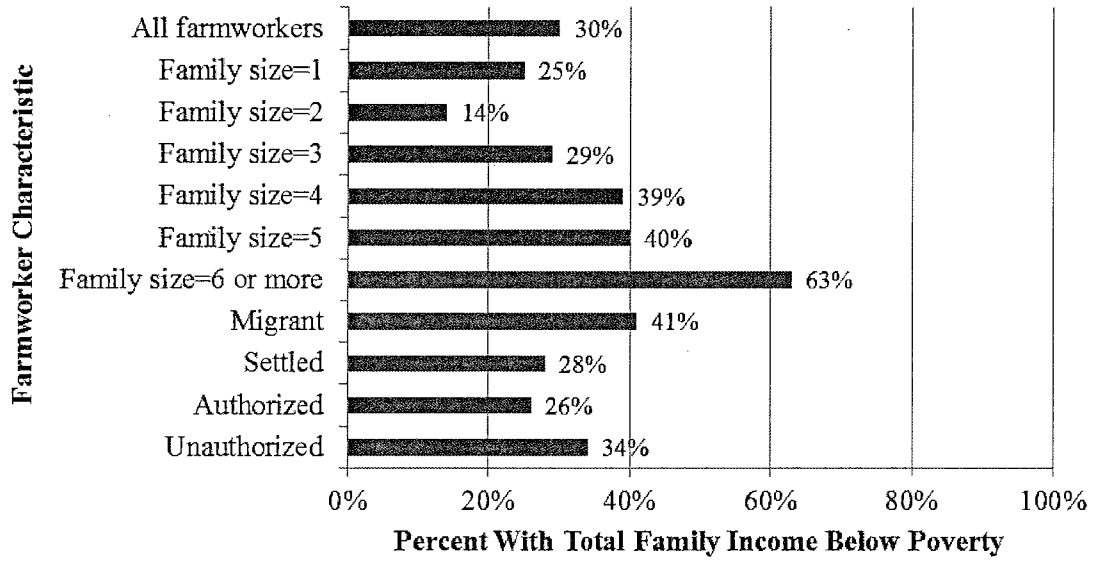
Farmworkers were asked to report their personal income from agricultural employment in the previous calendar year. Rather than providing a specific sum, respondents answered the question by indicating a range in which their income fell. Farmworkers' mean and median incomes from agricultural employment the previous year were in the range of $15,000 to $17,499. Sixteen percent of farmworkers reported that they did not work at all during the prior calendar year, another 16 percent earned less than $10,000 from agricultural employment, 33 percent had earnings of $10,000 to $19,999, 22 percent earned 20,000 to 29,999, and eight percent earned $30,000 or more. Five percent of farmworkers said they were unsure of how much of their personal income the previous year was earned from agricultural employment.

In addition to the question about personal income from agriculture, workers were asked to report their total family income in the calendar year prior to the year in which they were interviewed. For this question as well, respondents answered by indicating a range in which their income fell. Workers' mean and median total family incomes the previous year were in the range of $20,000 to $24,999. Five percent of farmworkers interviewed in 2013-2014 reported that they/their family had no earned income during the previous calendar year. Eight percent of workers said that their total family income the prior year was less than $10,000, 25 percent said their family income was $10,000 to $19,999, 27 percent had a family income of $20,000 to $29,999, and 30 percent had a family income of $30,000 or more. Five percent of farmworkers reported that they did not know their family's total income the previous year.

To determine farmworkers' poverty status, a poverty threshold was calculated for each worker based on the worker's family size[26] and the U.S. Department of Health and Human Services' poverty guidelines[27] for the calendar year that matches the year for which the worker answered the family income question. Workers' family incomes were then compared to the poverty thresholds calculated for their family size and poverty status was assigned. Using this method, 30 percent of farmworkers in 2013-2014 were found to have family incomes below poverty.

The likelihood of having below-poverty income increased with family size. Families of six or more were approximately twice as likely as families of three and more than four times more likely than families of two to have incomes below the poverty level (63%, 29%, and 14% respectively). Likewise, migrant workers' family incomes fell below poverty at a much greater rate than settled workers' family incomes (41% compared to 28%), and unauthorized workers were slightly more likely than authorized workers to have below-poverty household incomes (34% and 26% respectively). See figure 8.1.

Figure 8.1: Percent of Farmworkers With Total Family Income Below the Poverty Level, 2013-2014



Assets in the U.S. and Abroad

Respondents were asked about assets they own or are buying in the U.S. and, if foreign-born, in their home country. In 2013-2014, nearly two-thirds of all farmworkers stated that they owned or were buying at least one asset in the U.S. (65%). U.S.-born workers reported with greater frequency that they owned or were buying an asset in the U.S. (75%) than did foreign-born

[26] Family size is defined as the number of family members who are living in the United States and who depend on the farmworker's income.
[27] U.S. Department of Health and Human Services poverty guidelines (https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references).

workers (61%). Among all workers, the most commonly held asset in the U.S. was a car or truck (59%), followed by a home (16%), and a mobile home (6%). See figure 8.2. U.S.-born workers were more likely to own or be buying a home in the U.S. (27%) than were foreign-born workers (12%).

Figure 8.2: Assets in the U.S., 2013-2014

Type of Asset	Percent of Farmworkers
Any asset in the U.S.	65%
A car or truck	59%
A home	16%
A mobile home	6%
A plot of land	1%[a]

[a] Estimates with relative standard errors between 31 and 50 percent should be interpreted with caution.

Thirty-four percent of foreign-born workers reported that they owned or were buying at least one asset abroad. The most frequently reported was a home (27%), followed by land (10%), and a car or truck (3%).

Use of Contribution- and Needs-Based Programs

In 2013-2014, farmworkers were asked whether they or anyone in their household received assistance from either contribution- or needs-based programs in the two-year period preceding the interview. Nineteen percent of the farmworkers reported that someone in their household received a benefit from at least one contribution-based program, including disability insurance, UI, or Social Security. Sixteen percent of farmworkers reported that they or a family member received payments from UI, two percent said that someone in their household received payments from disability insurance, and another two percent reported that they or a family member received Social Security payments.

Needs-based benefits include financial assistance through programs such as Temporary Assistance for Needy Families (TANF), general assistance or welfare, and publicly provided housing or medical and nutritional assistance such as Medicaid, Women, Infants and Children (WIC), and food stamps. In 2013-2014, 50 percent of the farmworkers reported that they or someone in their household used at least one type of public assistance program in the previous two years. The programs most commonly utilized were Medicaid (37%), WIC (18%), food stamps (16%), and public health clinics (10%). See figure 8.3. Unauthorized workers more frequently reported utilization of these programs than did authorized workers: 27 percent of unauthorized workers compared to 11 percent of authorized workers said that someone in their household utilized WIC; 19 percent of unauthorized workers compared to 13 percent of authorized workers reported that a family member used food stamps[28]; and 12 percent of unauthorized workers compared to seven percent of authorized workers said that a member of their household utilized a public health clinic.

[28] Unauthorized farmworkers who reported utilizing WIC or food stamps had minor children who were born in the U.S. and thus are citizens who qualify for these programs.

Figure 8.3: Percent of Farmworkers Who Reported That a Member of the Household Received Benefits from Contribution- or Needs-Based Programs in the Last Two Years, 2013-2014

Contribution- and Needs-Based Programs Utilized	Percent of Farmworkers
Any contribution-based program	19%
Unemployment Insurance	16%
Social Security	2%
Disability	2%
Any needs-based program	50%
Medicaid	37%
WIC	18%
Food stamps	16%
Public health clinic	10%

CHAPTER 9: Health Care in the U.S.

HEALTH CARE UTILIZATION; BARRIERS TO HEALTH CARE; HEALTH INSURANCE

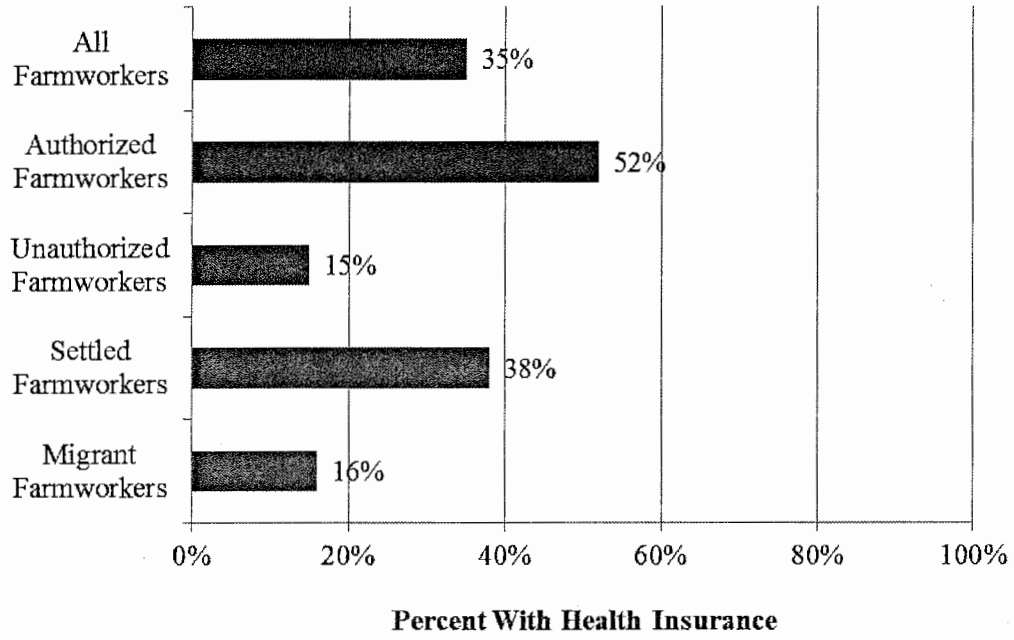
Summary of Findings:

- Thirty-five percent of farmworkers reported that they had health insurance, 45 percent said their spouse had health insurance, and 89 percent reported that all or at least some of their children had health insurance.
- Sixty-two percent of farmworkers used a health care provider in the U.S. sometime in the last two years.
- The last time they visited a health care provider, 35 percent went to a private medical doctor's office or private clinic, 32 percent said they visited a community health center or migrant health clinic, 19 percent saw a dentist, and 10 percent went to a hospital.
- Approximately four in ten farmworkers paid for their last health care visit out of their own pockets (43%): 34 percent had a visit and were uninsured so they had to pay the fee in whole out of pocket; eight percent had a visit and had insurance so their out-of-pocket expense was likely a co-payment.
- The most common difficulty farmworkers faced when they needed to access health care was that health care visits were too expensive (26%).

Health Insurance Coverage for Farmworkers and Family Members

There were several questions on the survey about health insurance. One question asked farmworkers about whether their employer offered a health insurance benefit, regardless of whether the insurance was accepted or used. As noted in chapter 5, 14 percent of respondents confirmed that their employer offered such a benefit. Workers were also asked to indicate who in their family had health insurance in the U.S. Thirty-five percent of workers responded that they, themselves, had health insurance. Authorized workers were more than three times more likely than unauthorized workers (52% and 15% respectively) and settled workers were more than twice as likely as migrant workers (38% and 16% respectively) to report having health insurance (figure 9.1).

Figure 9.1: Percent of Farmworkers With Health Insurance, 2013-2014



Farmworkers who reported having insurance were asked to identify the source(s) that provided it (multiple sources could be reported). More than a third reported that they had insurance provided by the government (37%), 31 percent said their employer provided them with health insurance, 19 percent said that they or their spouse paid for insurance themselves, seven percent reported that they had insurance under their spouse's employer's plan, and another six percent reported that they were covered by their parents' or family's plan (figure 9.2).

Figure 9.2: Sources of Farmworkers' Health Insurance, 2013-2014

Source of Farmworkers' Health Insurance[a,b]	Percent of Farmworkers
Farmworker's/Spouse's self-purchased plan	19%
Farmworker's employer	31%
Spouse's employer	7%
Government program	37%
Parents'/Family's plan	6%

[a] Among the 36 percent of farmworkers who reported that they had health insurance.
[b] Farmworkers may have health insurance through more than one source.

Of the 65 percent of farmworkers who had a spouse, 45 percent reported that their spouse had health insurance. Among spouses with health insurance, 49 percent received the insurance through a government program, 18 percent were covered by a self-purchased plan, 19 percent were insured through the spouse's own employer, 17 percent were covered by the farmworker's employer's plan, and five percent indicated some other source (figure 9.3).

Figure 9.3: Sources of Farmworkers' Spouses' Health Insurance, 2013-2014

Source of Spouses' Health Insurance[a,b]	Percent of Farmworkers
Farmworker's/Spouse's self-purchased plan	17%
Farmworker's employer	17%
Spouse's employer	19%
Government program	49%
Other	5%

[a] Among the 45 percent of farmworkers who reported that their spouse had health insurance.
[b] Spouse may have health insurance through more than one source.

Authorized workers reported with more than twice the frequency of unauthorized workers that their spouses had health insurance (60% and 27% respectively).

Among the 45 percent of farmworkers with minor children, the vast majority reported that all or some of their children had health insurance (89%), and the majority of these workers said their children's health insurance was provided by government programs (82%). Ten percent of the workers reported that their children were insured through their employer or their spouse's employer, eight percent said their children were covered by insurance the workers and/or their spouses purchased on their own, and two percent indicated some other source (figure 9.4).

Figure 9.4: Sources of Farmworkers' Children's Health Insurance, 2013-2014

Source of Children's Health Insurance[a,b]	Percent of Farmworkers
Farmworker's/Spouse's self-purchased plan	8%
Farmworker's employer	4%
Spouse's employer	6%
Government program	82%
Other	2%

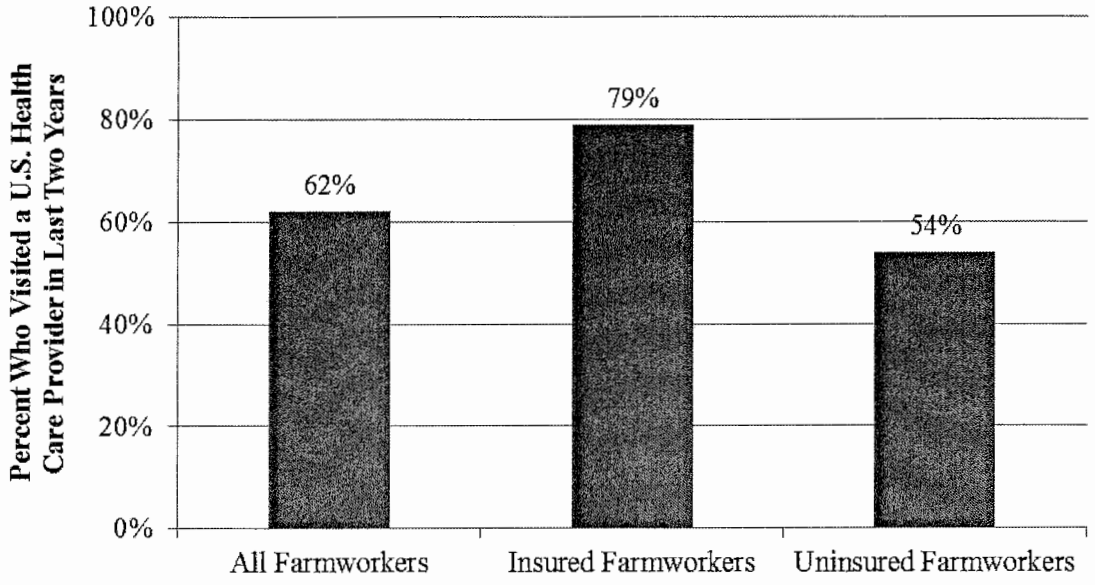
[a] Among the 95 percent of farmworkers who reported that all or some of their children had health insurance.
[b] Children may have health insurance through more than one source.

Authorized and unauthorized workers reported with nearly equal frequency that all or some of their children had health insurance (86% and 91% respectively).

Health Care Utilization and Barriers to Health Care

In 2013-2014 farmworkers were asked whether, at any time in the two years prior to being interviewed, they had used any type of health care services from doctors, nurses, dentists, clinics, or hospitals in the U.S. Sixty-two percent of farmworkers responded that they had. Workers who had health insurance reported more frequently that they utilized health care services (79%) than did workers who did not have health insurance (54%). See figure 9.5.

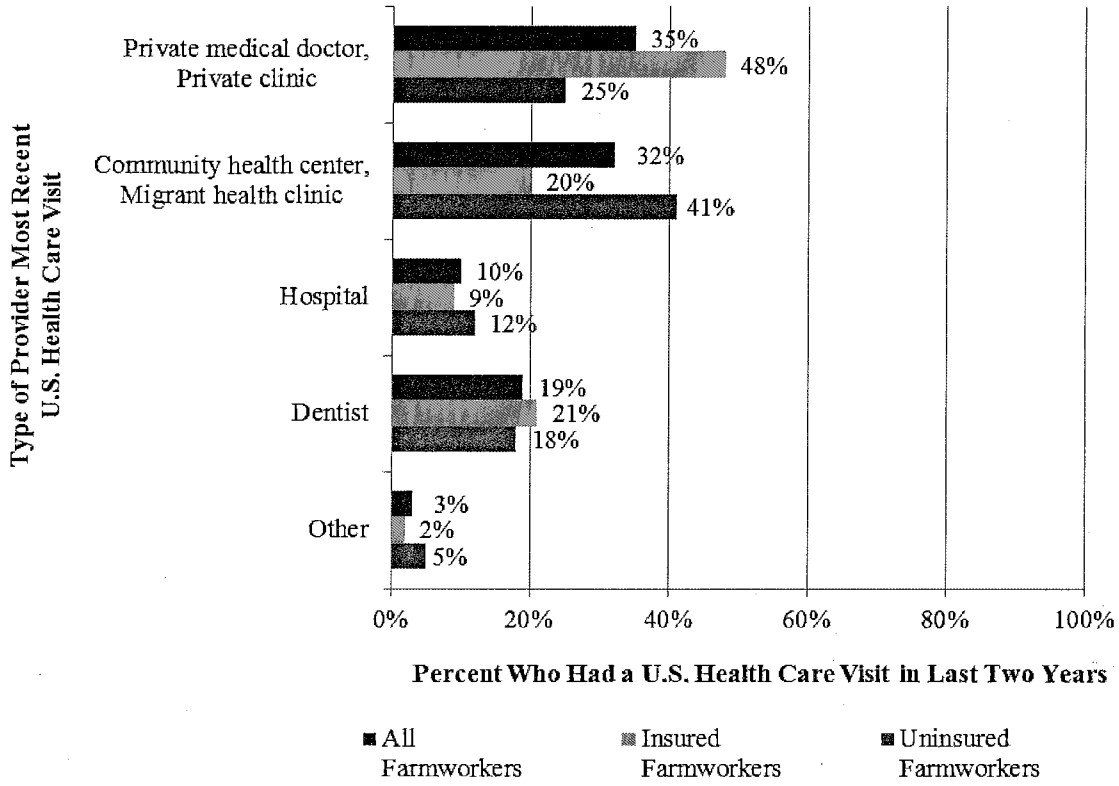
Figure 9.5: Visited a U.S. Health Care Provider in the Last Two Years by Health Insurance Status, 2013-2014



Farmworkers who reported seeking health care in the U.S. sometime in the last two years were asked what kind of health care provider they used the last time they saw one. Thirty-five percent of workers who had a health care visit said that the last time they used a provider they went to a private medical doctor's office or private clinic. Thirty-two percent said they visited a community health center or migrant health clinic, 19 percent saw a dentist, and 10 percent went to a hospital. The remaining three percent of workers reportedly used another type of provider, including a healer or "curandero", an emergency room, or a chiropractor or naturopath.

The type of health care provider used differed with farmworkers' health insurance status. Insured workers were more likely than uninsured workers to visit a private provider (48% compared to 25%) and less likely to visit a community health center or migrant health clinic (20% of insured workers compared to 41% of uninsured workers). See figure 9.6.

Figure 9.6: Type of U.S. Health Care Provider Visited by Health Insurance Status, 2013-2014



Farmworkers who reported seeking health care in the U.S. sometime in the last two years were also asked who paid the majority of the cost for their last health care visit. Approximately four in ten workers responded that they paid out of their own pockets (43%): 34 percent were uninsured so they had to pay the fee in whole out of pocket; eight percent had insurance so their out-of-pocket expense was likely a co-payment. Twelve percent said that they had Medicaid or Medicare, nine percent said the majority of the cost was covered by health insurance that they or their family had purchased themselves, and 11 percent of workers reported that the cost was covered by health insurance provided by their employer. Nine percent of the workers stated that they went to a pubic clinic that did not charge for the visit, four percent reported that they used some combination of sources to pay, they were covered by worker's compensation, or that they were billed for service but did not pay, and the remaining 11 percent provided a variety of other responses[29].

[29] Farmworkers who responded with "other" when asked who paid the majority of the cost for their last health care visit specified their response in the following ways: low income program; insurance through a former employer, other employer, or labor union; automobile insurance; they were billed and are paying in installments; their employer paid; coverage through their spouse's employer health plan; Indian health; the clinic or hospital they went to paid most of the cost; coverage through the ACA; medical coupon; military insurance or the VA; coverage

Regardless of whether they reported having used a U.S. health care provider sometime in the last two years, farmworkers were asked to name the types of difficulties they faced when they needed to access health care in the U.S. The most common response, provided by 26 percent of all farmworkers interviewed in 2013-2014, was that health care visits were too expensive and they had no insurance to cover the costs. Two percent of respondents reported that language incompatibility between themselves and health care providers was the main difficulty they faced when they needed health care in the U.S., one percent indicated it was distance or lack of transportation to health care providers, and another one percent said that they are undocumented and thus have not been treated well when they have sought health care. Fifteen percent of the workers were unable to name any specific barriers because they reported not needing health care in the U.S.

through their parent's health plan; and medical insurance with no specification about whether it was self-purchased or employer provided.

APPENDIX A: Methodology

Overview

The NAWS is a nationally representative, random sample of farmworkers. During 2013-2014, the NAWS used stratified multi-stage sampling to account for seasonal and regional fluctuations in the level of farm employment. The stratification included three interviewing cycles per year and 12 geographic regions, resulting in 36 time-by-space strata. For each interviewing cycle, NAWS staff drew a random sample of locations within all 12 regions from the universe of 497 Farm Labor Areas (FLAs). FLAs were single- or multi-county sampling units which form the primary sampling units (PSUs). Counties were the secondary level sampling units, ZIP Code regions were the third, agricultural employers were the fourth, and workers were the fifth.

The number of interviews allocated to each region was based on regional farmworker employment data (number of agricultural hired and contract workers) from the U.S. Department of Agriculture's (USDA) Farm Labor Survey (FLS). Similarly, the number of interviews allocated to each FLA was proportional to the number of hired and contract crop workers employed at that time of the year. The FLA size measure (farm labor) was obtained by multiplying a seasonality estimate, derived primarily from the Bureau of Labor Statistics' (BLS) Quarterly Census of Employment and Wages (QCEW), by local farm labor expenditure data, from USDA's Census of Agriculture (CoA). Interview allocation was thus proportional to stratum size.

In each FLA, county, and ZIP Code region, a simple random sample of agricultural employers was drawn from a universe list compiled mainly from public agency records. NAWS interviewers then contacted the sampled growers or farm labor contractors, arranged access to the work site, and drew a random sample of workers at the work site. Thus, the sample included only farmworkers actively employed in crop agriculture at the time of the interview.

Stratification

Interviewing Cycles

To account for the seasonality of the industry, interviews were conducted three times each year, in cycles lasting ten to twelve weeks. The cycles started in February, June and October. The number of interviews conducted in each cycle was proportional to the number of agricultural field workers hired at that time of the year. The USDA's National Agricultural Statistics Service (NASS) provided the Employment and Training Administration (ETA) with the agricultural employment figures, which came from the USDA's FLS. In each fiscal year (2013 and 2014) the NAWS visited a total of 121 interviewing locations. The locations were similarly apportioned among the cycles using NASS data.

Regions

Regional stratification entailed defining 12 distinct agricultural regions based on the USDA's 17 agricultural regions. At the start of the survey in 1988, the 17 regions were collapsed into 12 by combining those regions that were most similar based on statistical analysis of cropping patterns (e.g., Mountain I and Mountain II). In each cycle, all 12 agricultural regions were included in the sample. The number of interviews per region was proportional to the size of the

seasonal farm labor force in that region at that time of the year, as determined by the NASS using information obtained from the FLS.

Sampling within Strata

Farm Labor Areas

Each region was composed of several single- or multi-county sampling units called FLAs. Originally, the NAWS used USDA Crop Reporting Districts; however, these units were not homogeneous with respect to farm labor. As a result, using CoA data and ETA mappings of seasonal farm labor concentrations, aggregates of counties that had similar farm labor usage patterns and roughly similar in size were identified. The resulting FLAs also accounted for varying county size across the U.S. For example, in the Northeast, a FLA may have included several counties; in Florida and in the West, a FLA may have been composed of a single agriculture-intensive county. FLA size was more homogeneous within region than it was across regions. There were 497 FLAs in the country and 90 were chosen in each of the fiscal years (2013 and 2014) using probabilities proportional to size.

For each cycle, within each region, a sample of FLAs was drawn using probabilities proportional to size. The size measure used was an estimate of the amount of farm labor in the FLA during a particular cycle. In this case, the measure was based on the hired and contract labor expenses from the most recent CoA available at the time the sample was drawn. The CoA labor expenses were adjusted using seasonality estimates which identified the percentage of labor expenses that fell into each of the NAWS cycles: fall, spring and summer.

The seasonality estimates were constructed from QCEW data. The estimates were made by aggregating the reported monthly employment for each month included in the corresponding NAWS cycle (e.g., June, July, August, and September for the summer cycle). The percentage of employment corresponding to each cycle became a FLA's seasonality estimate.

Counties

To select counties, an iterative sampling procedure was used to ensure that an adequate number of counties was selected for each region. In most cases, interviews were completed in the first county and no additional counties were needed. However, because there was tremendous uncertainty about the number of workers in a county, additional counties were occasionally needed to complete the county allocation. Counties were selected one at a time, without replacement, using probabilities proportional to the size of the farm labor expenditures in the counties at a given time of year. Interviews began in the first selected county. If the work force within the county was depleted before all the allocated interviews in the FLA were completed, interviewing moved to the second randomly selected county on the list, and so forth, until all the allocated interviews were completed. In FLAs where farm work was sparse, interviewers may have had to travel to several counties to encounter sufficient workers to complete the FLA allocation.

ZIP Code Regions

Prior to generating lists of employers, sampled counties were divided into ZIP Code regions, which were smaller areas based on geographic proximity and the number of employers in the area. Some counties were comprised of a single ZIP Code region (for example, in the case of a

small county) or multiple ZIP Code regions (for example, when a county is large). In a county with multiple ZIP Code regions, the regions were designed to be roughly equal in size.

When there were multiple ZIP Code regions in a county, the regions were randomly sorted to produce a list that determined the order in which the areas would be visited. Field staff contacted agricultural employers in the first ZIP Code region on the list and moved down the list, following the random order, until the interview allocation for the FLA was filled or the county's workforce was exhausted.

In counties with multiple ZIP Code regions, field staff allocated 10 employers per ZIP Code region. This process served two purposes; it increased the diversity of employers sampled in a county, and it decreased the possibility of expending large amounts of field work time in inactive areas of the county. Field staff made contact with the first 10 employers in the sorted list of ZIP Code region employers, determined eligibility for the survey, and conducted interviews where employers were eligible. They then moved to the next ZIP Code region on the list.

Employers
Within each selected county, employers were selected at random from a list of agricultural employers. The list was compiled from marketing and administrative lists of employers in crop agriculture. An important component of the list was employer names in selected North American Industrial Classification Codes that the BLS provided directly to the contractor per the terms of an interagency agreement between the ETA and the BLS.

Workers
Once the randomly selected employer was located, the NAWS interviewer explained the purpose of the survey and obtained access to the work site in order to schedule interviews. If the employer was not familiar with his/her work force , the interviewer sought the name of the packinghouse manager, personnel manager, farm labor contractor, or crew leader who could help construct a sampling frame of the workers in the operation. Interviewers documented the number of workers employed on the day of worker selection in order to construct worker selection probabilities.

When the number of workers available for interview was greater than the number of interviews allocated, the selection of workers for interview followed specific sampling instructions that were designed by a sampling statistician to ensure selection of a random sample of workers at each selected employer. For example, if n is the number of interviews allocated for an employer and N is the total number of workers available in the sampling frame, interviewers placed n marked tags and N-n unmarked tags in a pouch and shuffled them. Workers then drew a tag and those with marked tags were included in the sample. This selection approach ensures that only workers who were employed in agriculture at the time of the interview were included in the sample. Selected workers were usually interviewed at the worksite, either before or after work or during breaks. Respondents may have also been interviewed at another location if that was more convenient.

Respondents received a $20 honorarium for participating in the survey.

Weighting
The NAWS used a variety of weighting factors to construct weights for calculating unbiased

population estimates:

- Sampling weights were calculated based on each sample member's probability of selection at the FLA, county, ZIP Code region, employer and worker level.
- Non-response factors were used to correct sampling weights for deviations from the sampling plan, such as discrepancies in the number of interviews planned and collected in specific locations.
- Post-sampling adjustment factors were used to adjust the weights given to each interview in order to compute unbiased population estimates from the sample data.

A full explanation of how the weights were calculated can be found in the *Statistical Methods of the National Agricultural Workers Survey* available at the U.S. Department of Labor, Employment and Training Administration's National Agricultural Workers Survey website (https://www.doleta.gov/agworker/naws.cfm).

Reliability of Estimates

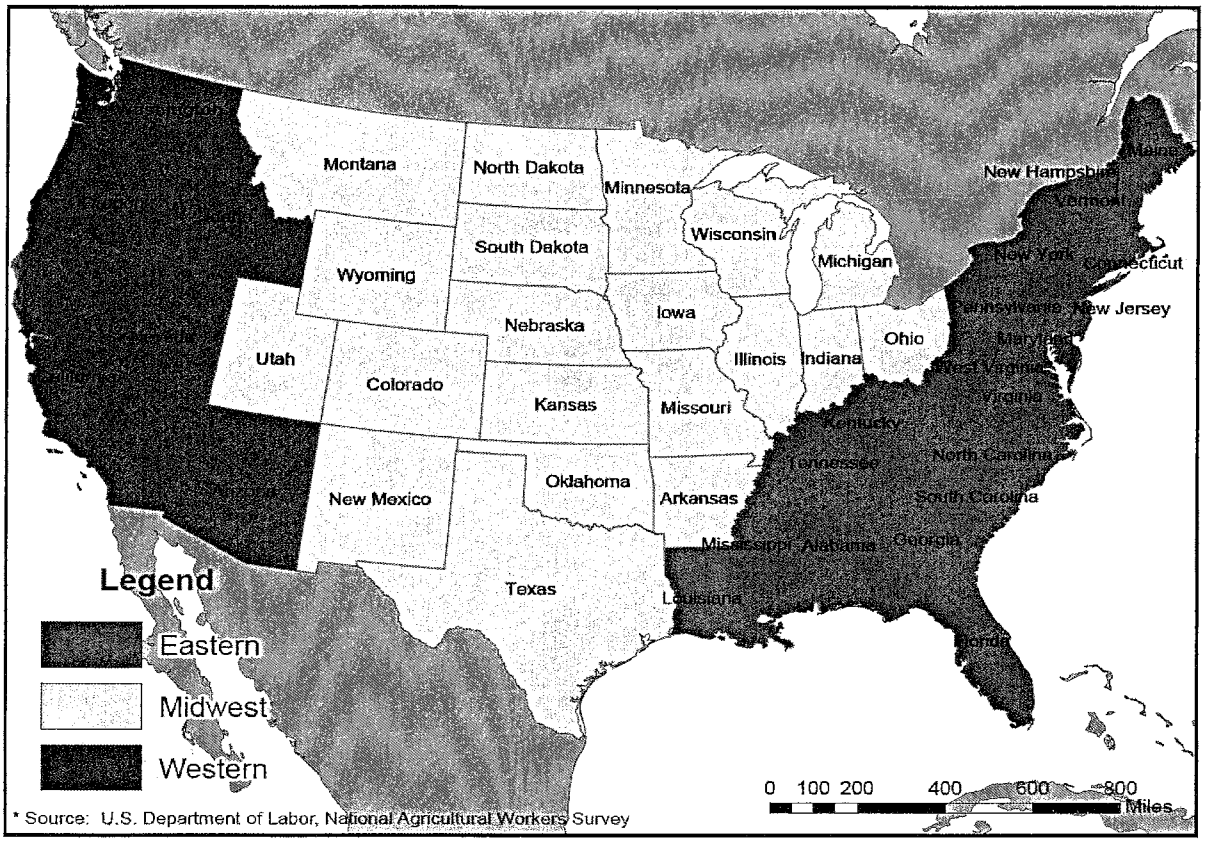
One measure of sampling error is the relative standard error (RSE), a measure of relative dispersion of the data. The RSE, also called the coefficient of variation (CV), is calculated by dividing the standard error of the estimate by the estimate itself and reporting the result as a percentage. The higher the RSE, the less well the estimate represents individual items in the sample.[30]

For the purpose of reporting data, the NAWS has adopted the following data suppression rules:

- Estimates with RSEs greater than 30 percent but no more than 50 percent are published but should be used with caution.
- Estimates with fewer than four responses or RSEs greater than 50 percent are considered statistically unreliable and are suppressed.

[30] Sommer, J. E., Green, R, and Korb, P (1998). *Structural and Financial Characteristics of U.S. Farms, 1995: 20th Annual Family Farm Report to Congress*. Agriculture Information Bulletin No. (AIB-746), 118 pp, December 1998. Accessed at https://www.ers.usda.gov/webdocs/publications/aib746/32556_aib746_002.pdf?v=42487(p. 62).

APPENDIX B: Map of the NAWS Migrant Streams



APPENDIX C: Index of Percentages and Means for Key Variables

The following tables list the names, descriptions, and categories of the key variables analyzed for this report, as well as the estimates (percentages or means) reported and the 95% confidence limits, standard errors, and relative standard errors (RSEs) of the estimates. Estimates with RSEs higher than 30 percent are identified throughout the tables. The RSE is calculated by dividing the standard error of the estimate by the estimate itself. Estimates with RSEs greater than 30 percent but no more than 50 percent are published but should be used with caution; these are identified with a superscript 'a'. Estimates based on fewer than four observations or with RSEs greater than 50 percent are considered statistically unreliable and are suppressed from the tables. Suppressed statistics are indicated with a superscript 'b'.

Chapter 1

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
A07	Country of birth	US or Puerto Rico	933	27%	2.2%	22%	31%	8%
A07	Country of birth	Mexico	3043	68%	2.2%	64%	73%	3%
A07	Country of birth	Central America	211	4%	0.4%	3%	5%	11%
A07	Country of birth	Other (South America, Caribbean, South East Asia, Pacific Islands, Asia)	48	1%	0.2%	1%	1%	22%
HISP	Hispanic	Hispanic	3578	80%	2.2%	76%	85%	3%
B01	Hispanic category	Mexican-American	349	9%	0.9%	7%	10%	10%
B01	Hispanic category	Mexican	2858	65%	2.2%	60%	69%	3%
B01	Hispanic category	Chicano, Puerto Rican, or other Hispanic	371	7%	0.7%	5%	8%	10%
B02	Race	White	1484	38%	2.3%	34%	43%	6%
B02	Race	Black/African American	89	2%	0.5%	1%	3%	27%
B02	Race	American Indian/Alaska Native	86	1%	0.2%	1%	2%	18%
B02	Race	Other	2545	59%	2.3%	54%	63%	4%
INDIGENOUS	Farmworker is indigenous	Farmworker is indigenous	311	5%	0.6%	4%	7%	11%
USSTAY	Years in US	Average	3291	18	0.4	17	19	2%
USSTAY	Years in US	Less than 1 year	27	2%	0.4%	1%	2%	26%
USSTAY	Years in US	1-4 years	198	6%	1.0%	4%	8%	16%
USSTAY	Years in US	5-9 years	546	17%	0.9%	16%	19%	5%
USSTAY	Years in US	10-14 years	656	20%	1.0%	18%	22%	5%

Appendix C: Index of Percentages and Means for Key Variables

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
USSTAY	Years in US	15-19 years	509	15%	0.9%	13%	17%	6%
USSTAY	Years in US	20-29 years	752	23%	1.2%	21%	25%	5%
USSTAY	Years in US	30-39 years	447	12%	1.1%	10%	14%	9%
USSTAY	Years in US	40+ years	156	5%	0.6%	4%	6%	12%
B18 (by A07)	State of birth (by country of birth)	Guanajuato (among country of birth is Mexico)	493	15%	1.7%	11%	18%	12%
B18 (by A07)	State of birth (by country of birth)	Guerrero (among country of birth is Mexico)	179	5%	0.7%	4%	7%	14%
B18 (by A07)	State of birth (by country of birth)	Jalisco (among country of birth is Mexico)	282	8%	1.0%	6%	10%	12%
B18 (by A07)	State of birth (by country of birth)	Michoacan (among country of birth is Mexico)	632	21%	2.1%	17%	25%	10%
B18 (by A07)	State of birth (by country of birth)	Oaxaca (among country of birth is Mexico)	307	9%	1.2%	7%	11%	14%
CURRSTAT	Current status	Citizen	1154	31%	2.2%	26%	35%	7%
CURRSTAT	Current status	Legal permanent resident	922	21%	1.4%	18%	24%	7%
CURRSTAT	Current status	Other work authorized	52	1%	0.2%	1%	2%	19%
CURRSTAT	Current status	Unauthorized	2074	47%	2.1%	43%	51%	4%
MIGRANT	Migrant	Migrant	624	16%	1.2%	14%	19%	8%

Chapter 2

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
GENDER	Gender	Male	3190	72%	2.0%	68%	76%	3%
GENDER	Gender	Female	1045	28%	2.0	24%	32%	7%
AGE	Age	Average	4235	38	0.5	37	39	1%
AGE	Age	14-17	34	1%	0.3%	<1%	2%	26%
AGE	Age	18-21	259	9%	0.9%	7%	10%	10%
AGE	Age	22-24	310	8%	0.8%	6%	9%	10%
AGE	Age	25-34	1096	27%	1.4%	24%	30%	5%
AGE	Age	35-44	1091	24%	1.2%	22%	26%	5%
AGE	Age	45-50	508	11%	0.6%	10%	12%	6%
AGE	Age	51-54	313	7%	0.7%	6%	9%	10%
AGE	Age	55 and over	624	14%	1.0%	12%	16%	8%
A05	Marital status	Single	1221	29%	1.3%	26%	32%	5%
A05	Marital status	Married/Living together	2669	63%	1.2%	61%	66%	2%
A05	Marital status	Separated/Divorced/Widowed	336	8%	0.7%	6%	9%	9%
FAMCOMP	Family composition	Parent	2416	57%	1.4%	54%	60%	2%
FAMCOMP	Family composition	Married, no children	673	15%	1.0%	13%	17%	6%
FAMCOMP	Family composition	Lives with parents	24	1%	0.3%	1%	2%	27%
FAMCOMP	Family composition	Other	1122	26%	1.2%	24%	29%	5%
HKIDLT18 (by FWPARENT)	Number of children under age 18 in the household (by farmworker is a parent)	Average (among farmworker parents)	1828	2	0.04	2	2	2%
HKIDLT18 (by FWPARENT)	Number of children under age 18 in the household (by farmworker is a parent)	1 child (among farmworker parents)	570	34%	2.1%	29%	38%	6%
HKIDLT18 (by FWPARENT)	Number of children under age 18 in the household (by farmworker is a parent)	2 children (among farmworker parents)	629	35%	2.0%	31%	39%	6%
HKIDLT18 (by FWPARENT)	Number of children under age 18 in the household (by farmworker is a parent)	3 children (among farmworker parents)	436	23%	1.9%	19%	26%	8%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
HKIDLT18 (by FWPARENT)	Number of children under age 18 in the household (by farmworker is a parent)	4 children (among farmworker parents)	151	7%	0.7%	5%	8%	10%
HKIDLT18 (by FWPARENT)	Number of children under age 18 in the household (by farmworker is a parent)	5 or more children (among farmworker parents)	42	2%	0.5%	1%	3%	25%
ACCOMP	Nuclear family lives in household	Unaccompanied	1629	39%	1.6%	35%	42%	4%
ACCOMP	Nuclear family lives in household	Accompanied	2606	61%	1.6%	58%	65%	3%

Chapter 3

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
PRIMLANG	Adult primary language	English	798	24%	2.3%	20%	29%	9%
PRIMLANG	Adult primary language	Spanish	3321	74%	2.2%	70%	78%	3%
PRIMLANG	Adult primary language	Indigenous	82	2%	0.3%	1%	2%	21%
HIGHGRDE	Highest grade completed	Average	4235	8	0.2	8	9	2%
HIGHGRDE	Highest grade completed	No schooling	168	3%	0.4%	2%	4%	13%
HIGHGRDE	Highest grade completed	K-6th grade	1789	36%	1.6%	33%	40%	4%
HIGHGRDE	Highest grade completed	7th-9th grade	884	21%	1.2%	19%	24%	6%
HIGHGRDE	Highest grade completed	10th-12th grade	1067	28%	1.8%	25%	32%	6%
HIGHGRDE	Highest grade completed	13 grades or more	327	11%	1.6%	8%	14%	14%
ADULTED	Attended any adult education	No	2766	63%	1.8%	59%	66%	3%
ADULTED	Attended any adult education	Yes	1469	37%	1.8%	34%	41%	5%
B03a	Attended English/ESL	Yes	709	16%	1.1%	13%	18%	7%
B03b	Attended citizenship classes	Yes	132	3%	0.3%	2%	3%	13%
B03d	Attended job training	Yes	392	10%	1.2%	8%	12%	12%
B03e	Attended GED, high school equivalency	Yes	181	5%	0.8%	4%	7%	14%
B03f	Attended college/university	Yes	220	8%	1.3%	5%	11%	17%
B03g	Attended adult basic education	Yes	47	1%	0.2%	1%	1%	17%
B03j	Attended 'other'	Yes	65	2%	0.3%	1%	2%	17%
B07	Ability to speak English	Not at all	1229	27%	1.6%	24%	30%	6%
B07	Ability to speak English	A little	1418	32%	1.5%	29%	35%	5%
B07	Ability to speak English	Somewhat	520	11%	0.9%	9%	13%	8%
B07	Ability to speak English	Well	1058	31%	2.1%	26%	35%	7%
B08	Ability to read English	Not at all	1760	38%	2.0%	34%	42%	5%
B08	Ability to read English	A little	1070	23%	1.4%	21%	26%	6%
B08	Ability to read English	Somewhat	365	9%	1.0%	7%	11%	11%
B08	Ability to read English	Well	1027	30%	2.1%	26%	34%	7%

Chapter 4

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
D35	Location of housing while at current farm job	Off farm, in property not owned by current employer	3417	82%	1.8%	78%	85%	2%
D35	Location of housing while at current farm job	Off farm, in property owned by current employer	134	4%	0.8%	2%	5%	23%
D35	Location of housing while at current farm job	On farm of employer I currently work for	648	14%	1.5%	11%	17%	10%
D33a	Payment arrangement for living quarters	I pay for housing provided by my employer	145	2%	0.4%	2%	3%	18%
D33a	Payment arrangement for living quarters	I pay for housing provided by the government, charity, or other organization	32	1%	0.2%	1%	1%	18%
D33a	Payment arrangement for living quarters	I receive free housing from my employer	515	13%	1.7%	9%	16%	13%
D33a	Payment arrangement for living quarters	I (or family member) own the house	1012	25%	1.8%	22%	29%	7%
D33a	Payment arrangement for living quarters	I rent from non-employer/non-relative	2322	54%	2.2%	50%	59%	4%
D33a	Payment arrangement for living quarters	Other	43	1%	0.3%	1%	2%	25%
D50MTCOD	How much paid for housing per month (coded)	Under $100	54	2%	0.5%	1%	3%	24%
D50MTCOD	How much paid for housing per month (coded)	$100-199	288	11%	1.4%	8%	14%	13%
D50MTCOD	How much paid for housing per month (coded)	$200-299	354	15%	1.5%	12%	18%	10%
D50MTCOD	How much paid for housing per month (coded)	$300-399	329	11%	1.0%	9%	13%	9%
D50MTCOD	How much paid for housing per month (coded)	$400-499	330	12%	0.9%	10%	14%	8%
D50MTCOD	How much paid for housing per month (coded)	$500-599	322	12%	0.9%	10%	13%	8%
D50MTCOD	How much paid for housing per month (coded)	$600 or more	861	36%	2.1%	32%	41%	6%
D34a	Type of housing	Single-family home	2423	60%	1.8%	57%	64%	3%
D34a	Type of housing	Mobile home	809	18%	1.3%	16%	21%	7%
D34a	Type of housing	Apartment	785	17%	1.0%	15%	19%	6%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
D34a	Type of housing	Other (includes duplex or triplex, dormitory or barracks, motel or hotel, and 'other')	212	4%	0.6%	3%	5%	13%
D54a	Number of bedrooms in current living quarters	Average	4233	3	0.04	3	3	1%
D54b	Number of bathrooms in current living quarters	Average	4233	2	0.02	1	2	2%
D54c	Number of kitchens in current living quarters	Average	4233	1	0.01	1	1	1%
D54f	Number of other rooms in current living quarters	Average	4230	1	0.03	1	1	3%
CROWDED1	Household is crowded, based on US Census Bureau definition of a crowded household as one in which the number of persons per room exceeds one	Not crowded	2881	69%	1.7%	66%	73%	2%
CROWDED1	Household is crowded, based on US Census Bureau definition of a crowded household as one in which the number of persons per room exceeds one	Crowded	1354	31%	1.7%	27%	34%	5%
D37a	Distance of current farm job from current residence	I'm located at the job	580	13%	1.4%	10%	15%	11%
D37a	Distance of current farm job from current residence	Within 9 miles	1587	37%	1.6%	33%	40%	4%
D37a	Distance of current farm job from current residence	10-24 miles	1542	38%	1.7%	34%	41%	5%
D37a	Distance of current farm job from current residence	25-49 miles	438	11%	1.0%	9%	13%	9%
D37a	Distance of current farm job from current residence	50-74 miles	66	2%	0.7%	1%	4%	29%
D37a	Distance of current farm job from current residence	75+ miles	10	<1%[a]	0.1%	<1%	<1%	36%
D37	Mode of transportation to work	Drive car	2522	59%	1.7%	55%	62%	3%
D37	Mode of transportation to work	Walk	350	7%	0.9%	5%	9%	13%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
D37	Mode of transportation to work	Ride with others	527	14%	1.4%	11%	17%	10%
D37	Mode of transportation to work	Labor bus, truck, van	229	6%	1.2%	4%	9%	19%
D37	Mode of transportation to work	Raitero	553	13%	1.2%	11%	16%	9%
D37	Mode of transportation to work	Public transportation, other	47	1%	0.3%	1%	2%	29%
D38a	Transport is mandatory	Yes	47	3%	0.8%	2%	5%	25%
D38	Pay a fee for rides to work	No	469	37%	3.2%	31%	43%	9%
D38	Pay a fee for rides to work	Yes, a fee	404	29%	3.1%	23%	35%	10%
D38	Pay a fee for rides to work	Yes, just for gas	432	34%	2.9%	28%	40%	9%

Chapter 5

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
FLC	Employer is a farm labor contractor	Employer: Grower, nursery, packing house	3786	85%	2.5%	80%	90%	3%
FLC	Employer is a farm labor contractor	Employer: Farm labor contractor	449	15%	2.5%	10%	20%	17%
D30	How current job was obtained	Applied for the job on my own	1189	26%	1.6%	23%	30%	6%
D30	How current job was obtained	Recruited by a grower/his foreman	194	4%	0.7%	3%	6%	16%
D30	How current job was obtained	Recruited by farm labor contractor/his foreman	56	1%	0.2%	1%	2%	17%
D30	How current job was obtained	Referred by the employment service, welfare office, labor union, other means	96	4%	0.9%	2%	6%	22%
D30	How current job was obtained	Referred by relative/friend/workmate	2691	64%	1.8%	60%	67%	3%
CROP	Primary crop at time of interview	Field crops	461	13%	1.9%	9%	16%	15%
CROP	Primary crop at time of interview	Fruits and nuts	1685	41%	3.9%	33%	49%	9%
CROP	Primary crop at time of interview	Horticulture	1019	22%	2.5%	17%	27%	11%
CROP	Primary crop at time of interview	Vegetables	964	21%	2.4%	16%	26%	11%
CROP	Primary crop at time of interview	Miscellaneous crops	106	3%	0.6%	2%	5%	19%
TASK	Primary task at time of interview	Pre-harvest	1179	26%	2.0%	22%	29%	8%
TASK	Primary task at time of interview	Harvest	920	23%	2.8%	18%	29%	12%
TASK	Primary task at time of interview	Post-harvest	794	18%	1.6%	15%	21%	9%
TASK	Primary task at time of interview	Semi-skilled	1341	33%	2.7%	28%	38%	8%
D04	Number of hours worked the previous week at current farm job	Average	4149	44	0.7	42	45	2%
D11	Basis of pay	By the hour	3569	83%	2.3%	79%	88%	3%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
D11	Basis of pay	By the piece	410	10%	2.0%	6%	14%	20%
D11	Basis of pay	Combination hourly wage and piece rate	b	b	b	b	b	b
D11	Basis of pay	Salary or other	168	4%	0.7%	3%	5%	16%
WAGET1	Hourly wage for primary task	Average	4154	$10.19	0.1	$9.97	$10.42	1%
D20	In last 12 months, received money bonus from current employer	No	2372	62%	2.2%	57%	66%	4%
D20	In last 12 months, received money bonus from current employer	Yes	1661	33%	2.2%	28%	37%	7%
D20	In last 12 months, received money bonus from current employer	Don't know	195	6%	0.8%	4%	7%	15%
D21a	Holiday bonus	Yes	890	51%	2.9%	46%	57%	6%
D21b	Incentive bonus	Yes	153	10%	1.5%	7%	13%	15%
D21c	Dependent on grower profit	Yes	103	6%	1.2%	4%	9%	20%
D21d	End of season bonus	Yes	469	33%	2.9%	27%	39%	9%
D21f	Other	Yes	21	2%	0.7%	1%	4%	32%
NS01	Employer provides clean drinking water and disposable cups every day	No water, no cups	234	5%	0.8%	3%	6%	16%
NS01	Employer provides clean drinking water and disposable cups every day	Yes, water only	445	10%	1.2%	8%	13%	12%
NS01	Employer provides clean drinking water and disposable cups every day	Yes, water and disposable cups	3544	85%	1.5%	82%	88%	2%
NS01	Employer provides clean drinking water and disposable cups every day	Don't know	b	b	b	b	b	b
NS04	Employer provides a toilet every day	No	124	4%	1.0%	2%	6%	28%
NS04	Employer provides a toilet every day	Yes	4102	96%	1.0%	94%	98%	1%
NS09	Employer provides water to wash hands every day	No	106	3%[a]	1.0%	1%	5%	32%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
NS09	Employer provides water to wash hands every day	Yes	4116	97%	1.0%	95%	99%	1%
NT02a	Current employer provided training in safe use of pesticides in last 12 months	No	780	19%	1.4%	16%	22%	7%
NT02a	Current employer provided training in safe use of pesticides in last 12 months	Yes	3448	81%	1.4%	78%	84%	2%
D26	Covered by Unemployment Insurance	No	2193	50%	2.0%	46%	54%	4%
D26	Covered by Unemployment Insurance	Yes	1901	46%	2.0%	42%	50%	4%
D26	Covered by Unemployment Insurance	Don't know	131	3%	0.5%	2%	4%	14%
D23	Receive workers' compensation if injured at work or get sick as a result of work	No	845	21%	1.9%	17%	24%	9%
D23	Receive workers' compensation if injured at work or get sick as a result of work	Yes	2309	51%	2.1%	47%	55%	4%
D23	Receive workers' compensation if injured at work or get sick as a result of work	Don't know	1072	28%	1.8%	25%	32%	6%
D24	Employer provides health insurance or pays for health care for injuries or illness while off the job	No	3252	78%	1.7%	74%	81%	2%
D24	Employer provides health insurance or pays for health care for injuries or illness while off the job	Yes	587	14%	1.7%	11%	17%	12%
D24	Employer provides health insurance or pays for health care for injuries or illness while off the job	Don't know	388	9%	1.0%	7%	11%	12%

Chapter 6

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
NUMFEMPL	Number of farm employers in previous 12 months	Average	4235	1	0.03	1	1	2%
NUMFEMPL	Number of farm employers in previous 12 months	1 employer	3276	79%	1.4%	76%	82%	2%
NUMFEMPL	Number of farm employers in previous 12 months	2 employers	605	13%	1.0%	11%	15%	8%
NUMFEMPL	Number of farm employers in previous 12 months	3 or more employers	354	8%	0.9%	6%	9%	11%
NFWEEKS	Number of weeks of non-farm work the previous year	NFWEEKS>0	838	25%	2.0%	21%	29%	8%
NFWEEKS	Number of weeks of non-farm work the previous year	Average, among those with NFWEEKS>0	838	25	1.1	23	27	5%
FWWEEKS	Number of weeks of farm work the previous year	Average	4235	35	0.8	33	36	2%
NFWEEKS	Number of weeks of non-farm work the previous year	Average	4235	6	0.6	5	7	9%
NWWEEKS	Number of weeks living in the US but not working the previous year	Average	4235	9	0.7	8	11	7%
ABWEEKS	Number of weeks abroad the previous year	Average	4235	2	0.3	2	3	12%
C10	Number of work days per week	Average	4229	5	0.1	5	5	1%
FWRDAYS	Number of farm work days the previous year	Average	4234	192	4.5	183	200	2%
NUMYRSFW (by NEWFWKR)	Number of years since first did farm work (by new farmworker: less than 1 year, 1 year, more than 1 year)	Average (among one or more years of farm work)	4076	16	0.5	15	17	3%
NUMYRSFW (by NEWFWKR)	Number of years since first did farm work (by new farmworker: less than 1 year, 1 year, more than 1 year)	Less than 2 years (among one or more years of farm work)	140	4%	0.5%	3%	5%	12%
NUMYRSFW (by NEWFWKR)	Number of years since first did farm work (by new farmworker: less than 1 year, 1 year, more than 1 year)	2-4 years (among one or more years of farm work)	413	12%	1.3%	10%	15%	11%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
NUMYRSFW (by NEWFWKR)	Number of years since first did farm work (by new farmworker: less than 1 year, 1 year, more than 1 year)	5-10 years (among one or more years of farm work)	933	24%	1.2%	21%	26%	5%
NUMYRSFW (by NEWFWKR)	Number of years since first did farm work (by new farmworker: less than 1 year, 1 year, more than 1 year)	11-20 years (among one or more years of farm work)	1223	29%	1.2%	27%	31%	4%
NUMYRSFW (by NEWFWKR)	Number of years since first did farm work (by new farmworker: less than 1 year, 1 year, more than 1 year)	21-30 years (among one or more years of farm work)	705	16%	0.9%	15%	18%	6%
NUMYRSFW (by NEWFWKR)	Number of years since first did farm work (by new farmworker: less than 1 year, 1 year, more than 1 year)	31 or more years (among one or more years of farm work)	662	14%	1.2%	12%	17%	8%
B12	Number of years of non-farm work in the US	None	2142	48%	1.8%	45%	52%	4%
B12	Number of years of non-farm work in the US	1 year	468	12%	0.8%	10%	14%	7%
B12	Number of years of non-farm work in the US	2-10 years	1155	32%	1.7%	29%	35%	5%
B12	Number of years of non-farm work in the US	11 or more years	289	8%	1.0%	6%	10%	13%
B12	Number of years of non-farm work in the US	Average, among those with at least 1 year on non-farm work in the US	1912	7	0.5	6	7	8%
B13	Last time parents did hired farm work in the US	Never	2282	55%	1.7%	52%	59%	3%
B13	Last time parents did hired farm work in the US	Now/within the last year	444	11%	0.8%	10%	13%	7%
B13	Last time parents did hired farm work in the US	1-5 years ago	175	4%	0.4%	3%	4%	10%
B13	Last time parents did hired farm work in the US	6-10 years ago	214	5%	0.5%	4%	6%	10%
B13	Last time parents did hired farm work in the US	11 or more years ago	1035	24%	1.3%	22%	27%	5%
B13	Last time parents did hired farm work in the US	Don't know	23	<1%	0.1%	0%	1%	26%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
E02	How long expect to continue doing farm work	Less than one year	85	3%	0.4%	2%	4%	16%
E02	How long expect to continue doing farm work	1-3 years	427	12%	0.8%	10%	14%	7%
E02	How long expect to continue doing farm work	4-5 years	144	4%	0.7%	3%	5%	16%
E02	How long expect to continue doing farm work	Over 5 years	73	2%	0.3%	1%	2%	16%
E02	How long expect to continue doing farm work	Over 5 years/as long as I am able	3382	76%	1.2%	74%	79%	2%
E02	How long expect to continue doing farm work	Other	111	3%	0.7%	2%	5%	22%

Chapter 7

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
D27	Number of years with current employer	Average	4218	7	0.3	6	7	4%
D27	Number of years with current employer	1-2 years	1261	38%	1.6%	34%	41%	4%
D27	Number of years with current employer	3-5 years	1082	24%	1.2%	21%	26%	5%
D27	Number of years with current employer	6-10 years	866	18%	0.8%	16%	20%	4%
D27	Number of years with current employer	11 or more years	1009	21%	1.3%	18%	23%	6%
FullYearFW	Full year of farm employment the previous year	Did not have full-year farm employment	3270	84%	1.3%	81%	86%	2%
FullYearFW	Full year of farm employment the previous year	Had full-year farm employment	965	16%	1.3%	14%	19%	8%
NUMFEMPL (by FullYearFW)	Number of farm employers the previous year (by full year of farm employment the previous year)	1 farm employer (among had full-year farm employment)	720	70%	3.8%	62%	77%	6%
NUMFEMPL (by FullYearFW)	Number of farm employers the previous year (by full year of farm employment the previous year)	2 farm employers (among had full-year farm employment)	144	19%	3.6%	12%	26%	19%
NUMFEMPL (by FullYearFW)	Number of farm employers the previous year (by full year of farm employment the previous year)	3 or more farm employers (among had full-year farm employment)	101	12%	2.0%	8%	16%	17%
FLC (by FullYearFW)	Employer is a farm labor contractor (by full year of farm employment the previous year)	Employer: Grower, nursery, packing house (among had full-year farm employment)	847	84%	3.4%	77%	90%	4%
FLC (by FullYearFW)	Employer is a farm labor contractor (by full year of farm employment the previous year)	Employer: Farm labor contractor (among had full-year farm employment)	118	16%	3.4%	10%	23%	21%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
NumCropCats (by FullYearFW)	Number of crop categories worked in (by full year of farm employment the previous year)	1 category (among had full-year farm employment)	702	70%	3.4%	64%	77%	5%
NumCropCats (by FullYearFW)	Number of crop categories worked in (by full year of farm employment the previous year)	2 categories (among had full-year farm employment)	233	27%	3.3%	20%	34%	12%
NumCropCats (by FullYearFW)	Number of crop categories worked in (by full year of farm employment the previous year)	3 or more categories (among had full-year farm employment)	30	3%	0.6%	2%	4%	21%
NumTaskCats (by FullYearFW)	Number of task categories performed (by full year of farm employment the previous year)	1 category (among had full-year farm employment)	311	30%	3.5%	23%	37%	12%
NumTaskCats (by FullYearFW)	Number of task categories performed (by full year of farm employment the previous year)	2 categories (among had full-year farm employment)	287	29%	3.0%	23%	35%	10%
NumTaskCats (by FullYearFW)	Number of task categories performed (by full year of farm employment the previous year)	3 categories (among had full-year farm employment)	367	41%	4.0%	33%	49%	10%
HasFWLeave (by FullYearFW)	Left at least one farm employer in the previous year (by full year of farm employment the previous year)	Left at least one farm employer in the previous year (among did not have full-year farm employment)	2446	64%	1.8%	60%	68%	3%
FWleaves (by HasFWLeave)	Type of leave from farm work (by left at least one farm employer in the previous year)	All leaves from farm work were involuntary (among left at least one farm employer in the previous year)	1564	65%	2.8%	59%	70%	4%
FWleaves (by HasFWLeave)	Type of leave from farm work (by left at least one farm employer in the previous year)	All leaves from farm work were voluntary (among left at least one farm employer in the previous year)	755	30%	2.8%	25%	36%	9%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
FWleaves (by HasFWLeave)	Type of leave from farm work (by left at least one farm employer in the previous year)	Both voluntary and involuntary leaves from farm work (among left at least one farm employer in the previous year)	127	5%	0.8%	3%	7%	16%
HasNFLeave (by NFWEEKS)	Left at least one non-farm employer in the previous year (by number of weeks of non-farm work the previous year)	Left at least one farm employer in the previous year (among NFWEEKS>0)	398	56%	3.5%	49%	63%	6%
NFleaves (by HasNFLeave)	Type of leave from non-farm work (by left at least one non-farm employer in the previous year)	All leaves from non-farm work were involuntary (among left at least one non-farm employer in the previous year)	203	53%	4.0%	45%	61%	8%
NFleaves (by HasNFLeave)	Type of leave from non-farm work (by left at least one non-farm employer in the previous year)	All leaves from non-farm work were voluntary (among left at least one non-farm employer in the previous year)	180	46%	4.0%	38%	53%	9%
NFleaves (by HasNFLeave)	Type of leave from non-farm work (by left at least one non-farm employer in the previous year)	Both voluntary and involuntary leaves from non-farm work (among left at least one non-farm employer in the previous year)	15	2%[a]	0.6%	<1%	3%	36%

Chapter 8

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
G02	Amount of personal income the previous year that was from agricultural employment	Average	3711	9 ($15,000 to $17,499)	0.1	9 ($15,000 to $17,499)	9 ($15,000 to $17,499)	2%
G02	Amount of personal income the previous year that was from agricultural employment	Median	3711	9 ($15,000 to $17,499)	0.2	9 ($15,000 to $17,499)	9 ($15,000 to $17,499)	2%
G02	Amount of personal income the previous year that was from agricultural employment	Did not work at all the previous year	303	16%	1.5%	13%	19%	9%
G02	Amount of personal income the previous year that was from agricultural employment	Less than $10,000	538	16%	1.3%	14%	19%	8%
G02	Amount of personal income the previous year that was from agricultural employment	$10,000-$19,999	1638	33%	1.4%	30%	36%	4%
G02	Amount of personal income the previous year that was from agricultural employment	$20,000-$29,999	1135	22%	1.3%	19%	24%	6%
G02	Amount of personal income the previous year that was from agricultural employment	$30,000 or more	400	8%	0.9%	6%	10%	12%
G02	Amount of personal income the previous year that was from agricultural employment	Don't remember (don't know)	192	5%	0.6%	4%	6%	12%
G03	Family's total income the previous year	Average	3861	11 ($20,000 to $24,999)	0.1	11 ($20,000 to $24,999)	11 ($20,000 to $24,999)	1%
G03	Family's total income the previous year	Median	3861	11 ($20,000 to $24,999)	0.2	10 ($17,500 to $19,999)	11 ($20,000 to $24,999)	2%

Appendix C: Index of Percentages and Means for Key Variables

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
G03	Family's total income the previous year	Did not work at all the previous year	106	5%	0.8%	4%	7%	15%
G03	Family's total income the previous year	Less than $10,000	254	8%	0.9%	6%	10%	12%
G03	Family's total income the previous year	$10,000-$19,999	1079	25%	1.6%	22%	28%	6%
G03	Family's total income the previous year	$20,000-$29,999	1206	27%	1.2%	24%	29%	4%
G03	Family's total income the previous year	$30,000 or more	1322	30%	1.6%	27%	33%	5%
G03	Family's total income the previous year	Don't remember (don't know)	243	5%	0.6%	4%	7%	12%
FAMPOV	Family income below the poverty level	Above poverty level	3090	70%	1.8%	67%	74%	3%
FAMPOV	Family income below the poverty level	Below poverty level	1115	30%	1.8%	26%	33%	6%
ASSETUS	Assets in US	No US assets	1414	35%	1.7%	32%	39%	5%
ASSETUS	Assets in US	Any US asset	2821	65%	1.7%	61%	68%	3%
G06a	Type of US asset	Plot of land	47	1%[a]	0.5%	<1%	2%	35%
G06b	Type of US asset	House	759	16%	1.4%	14%	19%	8%
G06c	Type of US asset	Mobile home	267	6%	0.7%	5%	8%	11%
G06d	Type of US asset	Car or truck	2568	59%	1.7%	56%	63%	3%
G04c	Type of contribution-based program household member utilized in the last 2 years	Disability insurance	69	2%	0.4%	1%	2%	25%
G04d	Type of contribution-based program household member utilized in the last 2 years	Unemployment Insurance	676	16%	1.5%	13%	19%	9%
G04e	Type of contribution-based program household member utilized in the last 2 years	Social Security	86	2%	0.2%	1%	2%	14%
G04b	Type of need-based program household member utilized in the last 2 years	Food stamps	694	16%	1.1%	13%	18%	7%
G04i	Type of need-based program household member utilized in the last 2 years	Public health clinics	414	10%	1.3%	7%	12%	13%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
G04j	Type of need-based program household member utilized in the last 2 years	Medicaid	1546	37%	1.8%	34%	41%	5%
G04k	Type of need-based program household member utilized in the last 2 years	WIC	776	18%	1.3%	16%	21%	7%

Chapter 9

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
A21a	Farmworker has health insurance	No	2830	65%	1.8%	61%	68%	3%
A21a	Farmworker has health insurance	Yes	1390	35%	1.9%	31%	38%	5%
A21a	Farmworker has health insurance	Don't know	14	<1%[a]	0.2%	<1%	1%	48%
A23a1	Who pays for farmworker's health insurance	Farmworker	182	15%	2.4%	11%	20%	16%
A23a2	Who pays for farmworker's health insurance	Farmworker's spouse	31	3%[a]	1.1%	1%	6%	32%
A23a3	Who pays for farmworker's health insurance	Farmworker's employer	521	31%	2.7%	26%	37%	9%
A23a4	Who pays for farmworker's health insurance	Farmworker's spouse's employer	102	7%	1.2%	4%	9%	18%
A23a5	Who pays for farmworker's health insurance	Government	513	37%	3.0%	31%	43%	8%
A23a6	Who pays for farmworker's health insurance	Other	96	9%	2.2%	5%	14%	24%
A23a7	Who pays for farmworker's health insurance	Farmworker's parents'/family's plan	57	6%	1.2%	3%	8%	21%
A21b	Spouse has health insurance	No	1327	55%	2.5%	50%	60%	5%
A21b	Spouse has health insurance	Yes	1024	45%	2.5%	40%	50%	6%
A21b	Spouse has health insurance	Don't know	14	<1%	0.3%	<1%	<1%	26%
A23b1	Who pays for spouse's insurance	Farmworker	85	8%	1.7%	5%	11%	21%
A23b2	Who pays for spouse's insurance	Farmworker's spouse	68	9%	2.5%	4%	14%	27%
A23b3	Who pays for spouse's insurance	Farmworker's employer	167	17%	2.7%	11%	22%	16%
A23b4	Who pays for spouse's insurance	Farmworker's spouse's employer	225	19%	2.2%	15%	24%	12%
A23b5	Who pays for spouse's insurance	Government	496	49%	3.4%	42%	55%	7%
A23b6	Who pays for spouse's insurance	Other	44	5%	1.0%	2%	7%	23%
A21c2	Children have health insurance	No	216	11%	1.4%	8%	14%	12%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
A21c2	Children have health insurance	Yes, all have it	1571	84%	1.7%	80%	87%	2%
A21c2	Children have health insurance	Yes, only some have it	92	5%	0.8%	3%	7%	17%
A21c2	Children have health insurance	Don't know	6	<1%[a]	0.1%	<1%	1%	41%
A23c1	Who pays for children's insurance	Farmworker	63	5%	1.2%	2%	7%	24%
A23c2	Who pays for children's insurance	Farmworker's spouse	32	3%[a]	1.0%	1%	5%	32%
A23c3	Who pays for children's insurance	Farmworker's employer	74	4%	0.8%	3%	6%	18%
A23c4	Who pays for children's insurance	Farmworker's spouse's employer	87	6%	1.0%	4%	8%	17%
A23c5	Who pays for children's insurance	Government	1384	82%	2.0%	78%	86%	2%
A23c6	Who pays for children's insurance	Other	52	2%	0.5%	1%	3%	24%
NQ01	Utilized health care service in last 2 years	No	1668	38%	1.7%	34%	41%	5%
NQ01	Utilized health care service in last 2 years	Yes	2557	62%	1.7%	59%	66%	3%
NQ03b	Type of health care provider at last visit	Community health center	826	30%	1.8%	27%	34%	6%
NQ03b	Type of health care provider at last visit	Private doctor's office/private clinic	894	35%	2.2%	30%	39%	6%
NQ03b	Type of health care provider at last visit	Healer/curandero, ER, chiropractor/naturopath, other	99	3%	0.5%	2%	4%	15%
NQ03b	Type of health care provider at last visit	Hospital	257	10%	0.9%	9%	12%	9%
NQ03b	Type of health care provider at last visit	Migrant health clinic	53	2%	0.4%	1%	2%	23%
NQ03b	Type of health care provider at last visit	Dentist	416	19%	2.0%	15%	23%	10%
NQ03b	Type of health care provider at last visit	Don't know	5	b	b	b	b	b
NQ05	Who paid majority of cost of last health care visit	Paid the bill out of own pocket	1120	43%	2.4%	38%	48%	6%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
NQ05	Who paid majority of cost of last health care visit	Medicaid/Medicare	289	12%	1.3%	10%	15%	11%
NQ05	Who paid majority of cost of last health care visit	Public clinic/did not charge	254	9%	1.2%	6%	11%	14%
NQ05	Who paid majority of cost of last health care visit	Employer provided health plan	338	11%	1.5%	8%	14%	13%
NQ05	Who paid majority of cost of last health care visit	Self or family bought individual health plan	179	9%	1.5%	6%	12%	17%
NQ05	Who paid majority of cost of last health care visit	Other	269	11%	1.2%	9%	13%	11%
NQ05	Who paid majority of cost of last health care visit	Billed but did not pay, workers' compensation, or combination of sources	107	4%	0.6%	3%	6%	15%
NQ10a	Main difficulties faced when needing to access health care in the US	No transportation, too far away	41	1%	0.3%	<1%	1%	28%
NQ10b	Main difficulties faced when needing to access health care in the US	Don't know where services are available	27	<1%	0.1%	<1%	1%	24%
NQ10c	Main difficulties faced when needing to access health care in the US	Health center not open when needed	17	<1%[a]	0.1%	<1%	<1%	44%
NQ10d	Main difficulties faced when needing to access health care in the US	They don't provide the services I need	18	<1%	0.1%	<1%	1%	25%
NQ10e	Main difficulties faced when needing to access health care in the US	They don't speak my language	99	2%	0.3%	1%	3%	14%
NQ10f	Main difficulties faced when needing to access health care in the US	They don't treat me with respect	12	<1%	0.04%	<1%	<1%	29%
NQ10g	Main difficulties faced when needing to access health care in the US	They don't understand my problems	16	<1%[a]	0.1%	<1%	1%	36%
NQ10h	Main difficulties faced when needing to access health care in the US	I'll lose my job	17	<1%	0.1%	<1%	<1%	26%

Variable	Variable Description	Variable Level(s)	Number of Observations	Estimate (Percentage or Mean)	Standard Error	95% Lower Confidence Limit	95% Upper Confidence Limit	Relative Standard Error
NQ10i	Main difficulties faced when needing to access health care in the US	Too expensive/no insurance	1161	26%	1.7%	23%	30%	6%
MQ10j	Main difficulties faced when needing to access health care in the US	Other	68	1%	0.2%	1%	2%	19%
NQ10l	Main difficulties faced when needing to access health care in the US	I'm undocumented/no papers (that's why they don't treat me well)	57	1%	0.3%	1%	2%	22%
NQ10m	Main difficulties faced when needing to access health care in the US	I don't know, I've never needed it	610	15%	1.4%	12%	18%	10%

EXHIBIT

29

October 24, 2017

Lori Isely
600 Larson Building, 6 South Second Street
Yakima, WA 98901

Dear Ms. Isely,

I am a concerned citizen who works on air and water quality issues. I attend the monthly meetings of the Yakima Regional Clean Air Agency where the Friends of Toppenish Creek recently submitted a petition to ban the spreading and spraying of manures during burn bans.

During the public comment period prior to voting on the petition, Steve George from the Yakima Dairy Federation spoke against the petition. For me his words were paternalistic and implied that dairy owners can speak for their workers on policy issues. Mr. George said:

> *They talked about who might be affected in the lower valley. Well the dairy industry is second only to apples in the Yakima Valley . . . We employ nearly 5,000 people. Over 90%, probably closer to 99% Hispanic . . . So those people I feel I represent along with the 60 or 70 farm owners and families. Those people like their full time jobs. They like to be able to go down and buy their homes and their cars.*
>
> *So there's all this stuff against the dairies but the dairies are the biggest employers of minorities and I think those minorities like their jobs. I've been on dairies and I've never had one of those guys tell me they don't like their job. There probably is a person out there but for the most part they like their jobs.*

If this information is helpful in your litigation regarding workers' rights I will be happy to provide you with a tape of the meeting.

Sincerely,

Jean Mendoza

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EXHIBIT 19

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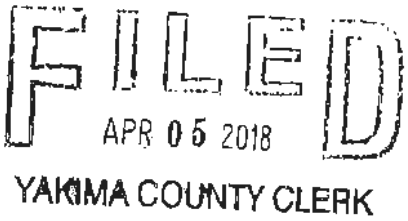

SUPERIOR COURT OF WASHINGTON
IN AND FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER FARM PROPERTIES, INC., f/k/a DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants, and WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU,	No. 16-2-034173-9 **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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Anderson v. Whatcom County,
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Campos v. Department of Labor & Industries,
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Cascade Security Bank v. Butler,
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Cerrillo v. Esparza,
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Cerrillo v. Esparza,
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City of Tacoma v. Mary Kay, Inc.,
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DeYoung v. Providence Medical Center,
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Digital Equip. Corp. v. Dept. of Revenue,
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Doe v. Hodgson,
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Elliott v. Custom Apple Packers, Inc.,
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Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake (Grant II),
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Harper v. Virginia Dept. of Trans.,
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Harris v. Department of Labor & Industries,
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Hisle v. Todd Pac. Shipyards Corp.,
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Hunter v. North Mason High School,
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In re Interest of M.G.,
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In re Parentage of K.R.P.,
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In re Pers. Restraint of Hegney,
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Petstel, Inc. v. County of King,
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Romero v. Hodgson,
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Schroeder v. Weighall,
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Seeley v. State,
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Shea v. Olson,
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Smith v. Seattle,
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Sofie v. Fibreboard,
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State ex Rel. Sigler v. Sigler,
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State ex rel. Stiner v. Yelle,
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State ex rel. Washington State Finance Committee v. Martin,
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State v. Clark,
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State v. Coria,
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State v. Hirschfelder,
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State v. McNeair,
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State v. Mills,
85 Wn. App. 285, 932 P.2d 192 (1997) 26

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State v. Mountain Timber,
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State v. Phelan,
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State v. Schaff,
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State v. Smith,
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State v. Somerville,
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State v. Vance,
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State v. Wallace,
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Taskett v. King Broadcasting Co.,
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Westerman v. Cary,
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Yount v. Calvert,
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29 U.S.C. § 207(a)(1) 28

29 U.S.C. § 213(b)(12) 28

Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA) (July 2018), https://www.dol.gov/whd/regs/compliance/whdfs12.pdf 29

Fair Labor Standards Act of 1938 (FLSA) ..... passim

Minimum Wage Fairness Act 7, 17, 20

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RCW 49.46.130 ..... passim

RCW 49.46.130(1) ..... passim

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RCW 49.46.130(2)(g) ..... passim

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RCW 51.32.225 23

Washington Industrial Safety and Health Act ..... passim

Washington Minimum Wage Act 5, 6, 7, 28

OTHER AUTHORITIES

Const. art. I, § 3 13

Const. art. II, § 1(e) 14

Const. art. II, § 26 14

Const. art. II, § 29 14

Const. art. II, § 39 14

Const. art. II, § 43(4) 14

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Const. art. IV, § 21 15

Dorothy O. Johansen & Charles M. Gates, *Empire of the Columbia: A History of the Pacific Northwest* 470-71 (2d ed. 1957) 16

https://www.idealist.org/en/nonprofit/9bba7ae8b8604b0b96836a0baaa0eae1-raise-up-washington-seattle 20

Labor & Industries, *Jobs Not Paid Overtime*, http://www.lni.wa.gov/WorkplaceRights/Wages/Overtime/Exemptions/default.asp 29

Labor and Industries, *Overtime* (July 2014), *available at* http://www.lni.wa.gov/WorkplaceRights/files/policies/esa81.pdf 29

Traynor, Roger J., *Quo Vadis, Prospective Overruling: A Question of Judicial Responsibility*, 28 Hastings L.J. 533, 543 (1977) 33

United States Census Bureau, QuickFacts, https://www.census.gov/quickfacts/WA 27

Washington Constitution Article I, Section 12 ..... passim

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Defendants DeRuyter Brothers Dairy, Inc., and Jacobus and Geneva DeRuyter, by and through their undersigned counsel, respectfully submit this memorandum in opposition to plaintiffs' motion for summary judgment.

RCW 49.46.130(2)(g), which exempts agriculture from the overtime pay requirements of RCW 49.46.130(1), is not unconstitutional. The exemption is a valid exercise of the legislature's broad police power over economic matters, and it easily passes muster under the deferential "rational basis" review appropriate to such legislation. Furthermore, the exemption does not create an unlawful privilege or immunity—the statutory entitlement to overtime pay is not a fundamental right of citizenship, and the exemption does not benefit one group of employers to the detriment of others. That is why the exemption has been applied and respected nationally for 90 years, and in the state of Washington for over 60 years.

Because the legislature can lawfully exempt agriculture from the overtime pay entitlement it created by statute, plaintiffs attempt to dress their constitutional claim in the garb of another purported "right," which they characterize as "worker health and safety," or "safety in dangerous occupations." That argument will not sustain plaintiffs' attack on the agricultural exemption. Article II, section 35 of the Washington Constitution does not create any private "rights"—it leaves that to the legislature, and it certainly does not create a "fundamental right of state citizenship" within the scope of the privileges and immunities clause, or an "important right" under Washington's equal protection jurisprudence. Additionally, farm workers are not a protected or semi-protected class as those terms have been defined and limited by Washington's Supreme Court.

The truth of the matter is that this case is not about "worker health and safety" at all—it is about overtime pay and money. If worker health and safety were really the issue, plaintiffs would be suing the legislature to enforce the directive of article II, section 35, or they would be challenging the legislature's treatment of agriculture in RCW 49.17, the Washington Industrial

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Safety and Health Act, which might directly address health and safety issues in agricultural employment. Instead, plaintiffs seek overtime pay – which will not impact health and safety in any possible way other than through the indirect effect of reducing the number of hours an employee might work. In other words, receipt of overtime pay does not change the conditions of employment for workers who receive it--it simply changes the rate of pay. The Court should see and address plaintiffs' claim for what it is: A challenge to economic legislation. When stripped of its disingenuous dress, plaintiffs' claim must be denied.

II. MATERIAL FACTS AND EVIDENCE

As "evidence" to support their allegation that "the farm worker exemption from overtime protection is rooted in racial bias," plaintiffs paraphrase two hearsay sources: a book and an article. Neither of these sources would be admissible in evidence. Therefore, they cannot be considered in support of plaintiffs' motion for summary judgment.[1] More importantly, plaintiffs' allegation is demonstrably false. Indeed, it is spurious and borders on frivolous.

As explained in the Declaration of Claire Strom, Ph.D., the exemption of farm labor from overtime requirements of federal and state law was **not** "rooted in racial bias." Instead, that exemption reflects the unique role and importance of agriculture in U.S. history, the historic view of farming as a special occupation unlike "labor," the fact that Congress was addressing agriculture through other programs, and the legislature's reasonable recognition that farmers faced (and still face) unique production and economic challenges that often make a 40-hour workweek impracticable. While the full text of Dr. Strom's testimony in explanation of this fact is too lengthy to include here, the following points warrant emphasis:

- First, contrary to plaintiffs' allegation, most farm workers were *not* southern blacks who "had no political power" at the time the Fair Labor Standards Act (FLSA) was enacted.[2] Instead, the majority of farmworkers in the 1930s were white. Declaration of Claire Strom, Material Fact 1 ("Strom Dec."). In fact, in 1940 over 80 percent of the people who made their living from agriculture were white. *Id.* ¶ 6. Accordingly, agricultural

[1] CR 56 (c); *Albright v. State*, 65 Wn. App. 763, 769, 829 P.2d 1114 (1992).
[2] Plaintiff's Motion, p. 7:12-13.

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work was **not** "performed predominantly by Black workers" at the time the FLSA was enacted. *Id.*

- Second, the exemption of farm workers from the FLSA was not the result of racial or discriminatory animus against black farm workers, and was not the result of a "compromise" to obtain the votes of Southern Democrats intent on excluding black farm workers from the FLSA's provisions to perpetuate racial discrimination.[3] *Id.* at Material Fact 2, ¶¶ 7-10. In 1940, whites made up about 73 percent of the agricultural wage labor force who could have benefited from the FLSA. *Id.* ¶ 11. Thus, "it would have made little sense to exclude all farm labor from the FLSA simply to avoid paying minimum wage to the small percentage of that group that was wage-earning black farmers." *Id.* Indeed, of all the people who made a living from agriculture in 1940, less than 5 percent were black wage laborers. If agriculture had been included as a category covered by the FLSA, that would have overwhelmingly benefited white workers. *Id.* ¶ 12.

- Third, the exclusion of farm labor from the FLSA is readily explained by America's historical view of agricultural work as unique and perception of famers as essential but particularly vulnerable, by the way agricultural workers were compensated, and by political precedent. *Id.* ¶¶ 13-21.

    - The different treatment of agricultural labor by wage and overtime laws was affected and justified by the nature of agricultural work. Unlike other professions, much agricultural work could not be accomplished in a regular 8-hour day, in 5 days or in a week and it still cannot. Fruit and vegetables rot, cows need to be milked, rain ruins harvests. The rhythm of farming is seasonal, and not hourly, daily, or weekly. When work has to be done, it must be finished, or the crop will be ruined. If this happens repeatedly, the farmer can be ruined. The legislators writing the FLSA understood these facts. Agriculture was generally exempted in the first iteration of the bill. However, later revisions narrowed the exemption, and specified "dairying, horticulture, forestry, truck gardening, the raising of livestock, bees and poultry" as being excluded. Indeed, a later amendment added "[c]anning, packing, or packaging of fish, seafood, fruits, vegetables, and the processing of beets, cane and maple into sugar and syrup" because of the same underlying timeliness issue. These exclusions were carried forward by the Washington statute, for the same reasons. *Id.* ¶ 22.

    - Political precedent, not racial bias, prevented the inclusion of agriculture in the FLSA. The precursor to the FLSA was the National Industrial Recovery Act (NIRA). This had created industrial boards that established wages and hours on a

[3] Plaintiffs allege that "[t]o pass the FLSA in 1938, Congress needed the votes of Southern Democrats who often voted as a bloc to maintain the economic and social subordination of Black farm workers and Southern [sic] inequality. This compromise directly resulted in the exemption of famer workers from both the minimum wage and overtime protections of the FLSA. Thus, and by design, most Black workers in the South were excluded from the protective reach of the original FLSA." FAC ¶¶ 58-59.

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voluntary basis for each industry. Agriculture had not been included in this statute because it was not seen as an industry, as well as for the reasons listed above. Indeed, the federal government considered the problems confronting agriculture as more vital than those facing industry and addressed them earlier, second only to taking drastic action to stop the failing banks. Thus, federal officials had not included agriculture in the NIRA—the precursor to the FLSA—because in their minds, agriculture was different, and they had and were addressing it through other legislation. *Id.* ¶ 23.

- Along with being politically vital, Congress also considered farmers to be economically essential to the nation. The federal government has therefore consistently intervened to protect farmers by acquiring land, controlling costs, or paying subsidies to ensure that farmers survive and can produce goods relatively cheaply for the American consumer. *Id.* ¶ 24.

- Farmers, unlike other producers, are extremely vulnerable to natural disasters. Too much or too little rain, or a freeze before the harvest, can drastically cut into a farmer's crop and, therefore, their profits and ability to stay operational. In 1987, the Washington State Commerce and Labor Committee held hearings on a proposal to extend the minimum wage, overtime, and unemployment insurance to agricultural workers. Duane Kaiser, a tree farmer, asserted that farmers could not afford any additional expenses, as their existence was tenuous enough. He testified, "A year ago that killer freeze came along, and I lost two years' crop. Where do I get my unemployment insurance?" *Id.* ¶ 25.

- Farmers are also more economically vulnerable than other industries because their product is highly perishable.

- Farmers are also faced with the economic challenge of being unable to pass on increased costs to consumers because they have no control over the market. As Frank DeLong of the Washington State Horticultural Association explained in testimony in 1987, "Any increase in operating costs jeopardizes the viability of the farm." *Id.* ¶ 26-28.

- Fourth, given the importance of agriculture to the nation, it is unsurprising that from the beginning it has received different treatment as well as federal support. In the twentieth century, aid has largely been based on the concept of parity. The federal government would subsidize farm incomes to reach "parity" with historical prices. In addition to parity, farmers receive set-aside payments for not planting crops when surpluses are too big, disaster payments to mitigate crop loss due to weather or other catastrophes, and export subsidies whereby farmers receive a higher price for exported crops than they actually receive on the global market. *Id.* ¶ 29.

  - Consistently, the government has believed that a stable food supply that is low cost for consumers greatly benefits the nation as a whole. The legislative

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exemption of agricultural labor from overtime pay requirements is simply another reflection of this concern. *Id.* ¶¶ 30-31.

- The final bill of the FLSA incorporated a sliding scale to enable industries to reach the 40-cent minimum wage over a period of up to seven years. It excluded many other industries besides agriculture: those covered completely by collective bargaining; government work; professional work; industries where workers could not physically leave work every eight hours, such as transportation, fishing, and aviation; other industries where time was essential, such as canning and food processing; "cutting or planting of timber on the farm itself"; local employment; and the retail trades. None of these other excluded industries, with the exception of lumber in the South, employed significant numbers of black workers. Like agriculture, the exemption of these industries was based on the nature of the work, not the race of the workers. Additionally, the FLSA brought significant benefits in industries that had sizeable numbers of black workers in the South, such as the steel and iron industry. Overall, the FLSA in 1938 only reached 20 percent of the American workforce, and most of the excluded workers were white. *Id.* ¶ 37.

- Ultimately, the exclusion of agriculture from the minimum wage and overtime provisions of the FLSA of 1938 reflected the understanding of most congressmen and New Deal administrative officials that farming was a vital occupation that was subject to unique economic challenges and merited federal aid. The racism of southern congressmen played no part in this exclusion as most southern agricultural labor did not receive wages. *Id.* ¶ 38.

- Fifth, plaintiffs' unsupported allegation that the Washington Minimum Wage Act excluded agricultural workers from the definition of "employee" was "[b]ased on the same racially-motivated exclusion in the FLSA"[4] is also demonstrably false. Washington Minimum Wage Act's overtime provision, RCW 49.46.130, did not "incorporate" any "racially discriminatory motivation" from the FLSA and does not "perpetuate the vestiges of Jim Crow laws" purportedly "grafted onto the FLSA."[5] *Id.* at Material Fact 3. As discussed above, the FLSA's exclusion of farm labor was not racially motivated or infected by a racist compromise with Southern Democrats. Thus, Washington Minimum Wage Act could not "perpetuate" any such racist policy. *Id.* ¶ 39.

  - Washington State's government, like the federal government, viewed agriculture as a unique and vital occupation that needed protection. In 1933, the Washington State Supreme Court recognized that farming is special, explaining, "Farming is not a commercial pursuit. It is not a business. . . . By general knowledge and common consent, farming is classed as a way of life . . . ."[6] The court also addressed the problems faced by the farmer in terms of controlling costs, asserting

[4] Plaintiff's Motion, p. 8:12-14.
[5] First Amended Complaint ("FAC"), ¶ 6, p. 3 lines 7-9.
[6] *State ex rel. Stiner v. Yelle*, 174 Wash. 402, 410, 25 P.2d 91, 93 (1933).

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that, "the farmer cannot pass the tax on to the ultimate consumer, while all those later dealing with his products, . . . may and probably will very largely do so."[7] The attitudes toward farming reflected in this case mirror the sentiments explained above—that agriculture is not an industry but an occupation vital to the wellbeing of the entire nation. *Id.* ¶ 40.

- The State's exemption of agricultural labor from the overtime requirement of RCW 49.46.130(1) was not racially motivated to disadvantage Latino farm workers or anyone else. Contrary to plaintiffs' allegation, agricultural work was **not** "performed predominantly . . . by Latino workers at the time the Washington Legislature enacted RCW 49.46.130."[8] *Id.* ¶ 41. The statutory provisions at issue were enacted in 1957.[9] In 1960, **97 percent** of people who made their living from agriculture in Washington State were white. *Id.* ¶ 44. Similarly, in 1960, over 85 percent of the people who made their living from agriculture were white. So, in Washington and nationally, agricultural work was **not** "performed . . . predominantly by Latino workers" at the time RCW 49.46.130 was enacted. *Id.* ¶ 42.

- Indeed, according to Maria Quintana and Oscar Rosales Castañeda, "Until the late twentieth century, the majority of agricultural workers in Washington State were white, native-born, mostly single men under the age of 40." *Id.* ¶ 45. So, in 1989 when minimum wage requirements were applied to agriculture, the decision to leave the overtime exemption for agricultural employees in the statute was clearly not based upon any intent to discriminate against Latino farm employees. *Id.* ¶ 48.

- Finally, ongoing application of the overtime exemption is not racially motivated. In 2016 the Census Bureau conducted community surveys across the country. The results show that the majority of farmworkers in Washington State and in Yakima County are Latino. In the state, Latinos represent 73 percent of the people working in "Farming, Fishing, and Forestry Occupations." In Yakima County, Latinos represent 92 percent of people working in "Farming, Fishing, and Forestry Occupations." However, **both in the state and in the county, agriculture does not employ the majority of Latinos.** In Washington State, only 12 percent of Latinos are employed in "Farming, Fishing, and Forestry Occupations." Although the number is larger in Yakima County (26 percent) it is still far less than a majority. The majority of Latinos in Washington are, therefore, working in professions that are covered by overtime regulations, once again suggesting that the exclusion of agriculture from the revision to Washington State Minimum Wage Act in 1989 was not motivated by racism or racial animus. *Id.*

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[7] *Id.*
[8] FAC ¶ 102.
[9] Plaintiffs' allegations of "racially discriminatory animus" ignore the fact that the MWA was enacted in the same year that the Washington Law Against Discrimination was amended and substantially expanded by the legislature.

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In summation, the assertion that Washington's Minimum Wage Act perpetuated a racial animus that was embedded in the FLSA is false. If agricultural workers had been included in the FLSA, the beneficiaries would have overwhelmingly been white workers, even in the South. Southern opposition to the bill was not universal and was based on concerns about increased industrial, not agricultural, costs. Similarly, white workers would have been the majority of beneficiaries if agricultural workers had been included in Washington's Minimum Wage Act in 1959. *Id.* ¶ 49.

It is also clear that agricultural workers were exempted from the hours and overtime provisions of the FLSA because of the complex nature of agricultural work, the agrarian myth, and because the problems facing agriculture had already been addressed by previous New Deal legislation. Throughout American history, agriculture has been seen as a vocation not an industry. The twin ideals that farming is good for the farmer and vital for the nation have underpinned most federal and state agricultural legislation. The Fair Labor Standards Act and the Minimum Wage Law are perfect examples of this. *Id.* ¶ 50.

III. DISCUSSION

A. <u>The Agricultural Exemption From Overtime Pay, RCW 49.46.130(2)(g), Does Not Violate Article I, Section 12 of the Washington Constitution.</u>

This is not a difficult case. Plaintiffs ask the Court to invalidate RCW 49.46.130(2)(g), which exempts farmers from the obligation to pay overtime imposed by RCW 49.46.130(1). Plaintiffs contend that the exemption is unconstitutional under article I, section 12 of the Washington Constitution. The Washington Supreme Court has long approached the review of legislative enactments with great care, emphasizing that the wisdom of legislation is not justiciable and that the Court should not second-guess the legislature. *Petstel, Inc. v. County of King*, 77 Wn.2d 144, 151, 459 P.2d 937 (1969). Furthermore, in matters of economic legislation such as minimum wage and overtime laws, the Washington Supreme Court has consistently followed "the rule giving every reasonable presumption in favor of the constitutionality of the

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law or ordinance . . . to avoid substituting our judgment for the judgment of the Legislature." *Shea v. Olson*, 185 Wash. 143, 152, 53 P.2d 615 (1936); *Sofie v. Fibreboard*, 112 Wn.2d 636, 642-43, 771 P.2d 711 (1989). Finally, because the statute is presumed to be valid, plaintiffs bear the burden of proving that it is unconstitutional beyond a reasonable doubt.[10] While plaintiffs' efforts to distort the questions before the Court are creative, they do not satisfy that burden.

1. RCW 49.46.130(2)(g) does not violate article I section 12 because the obligation to pay overtime imposed by RCW 49.46.130(1) does not involve a fundamental right, and because the exemption from that obligation for agricultural employers does not benefit one class of farmers to the detriment of another.

Article I, section 12 of the Washington Constitution provides:

> SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

There is a two-step process governing the Court's analysis of plaintiffs' "privileges and immunities" claim. First, the Court must determine whether RCW 49.46.130(2)(g) involves a "privilege or immunity" within the scope of the constitutional prohibition by granting benefits to one group, to the disadvantage of another, with respect to a "fundamental right of citizenship." If not, the Court's analysis is concluded, and the plaintiffs' challenge fails. Second, and only if the statute **does** advantage one group to the detriment of another regarding a fundamental right, the Court must then determine whether the legislature had a reasonable ground for granting the privilege. *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 776, 317 P.3d 1009 (2014); *Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 359-60, 340 P.3d 849 (2015). If there is a reasonable ground for the distinction, the statute is valid.

Applying these rules, the Court should conclude that plaintiffs' claim fails both because the statute does not involve a fundamental right, and because it does not grant an advantage to

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[10] *Madison v. State*, 161 Wn.2d 85, 92, 163 P.3d 757 (2007) ("In general, '"[a] statute is presumed to be constitutional, and the party challenging its constitutionality bears the burden of proving its unconstitutionality beyond a reasonable doubt."'" (quoting *State v. Hughes*, 154 Wn.2d 118, 132, 110 P.3d 192 (2005)); *In re Parentage of K.R.P.*, 160 Wn. App. 215, 230, 247 P.3d 491 (2011) (same).

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one group to the disadvantage of another. Even assuming, *arguendo*, that the statute grants farmers a "privilege," the legislature had a reasonable ground for providing the exemption, and the statute must be upheld.

a. The right to overtime pay is a creature of statute and does not implicate a fundamental right.

RCW 49.46.130(2)(g) simply does not involve a "fundamental right." It exempts farmers from a statutory obligation to pay overtime. However, the obligation to pay overtime is merely a creature of statutory entitlement, and one that did not even exist until 85 years after the drafting of Washington's Constitution. Washington law is crystal clear that "not every statute authorizing a particular class to do or obtain something involves a 'privilege' subject to article I, section 12." *Ockletree*, 179 Wn.2d at 778(quoting *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake (Grant II)*, 150 Wn.2d 791, 812, 83 P.3d 419 (2004)); *Am. Legion Post #149 v. Wash. State Dep't of Health*, 164 Wn.2d 570, 607, 192 P.3d 306 (2008) ("[a] privilege is not necessarily created every time a statute allows a particular group to do or obtain something"). Instead, the constitutional prohibition of article I, section 12 "applies only where a law implicates a 'privilege' or 'immunity' **as defined in our early cases distinguishing the '"fundamental rights"' of state citizenship.**" *Schroeder v. Weighall*, 179 Wn.2d 566, 572, 316 P.3d 482, 485-86 (2014) (emphasis added) (quoting *Grant II*, 150 Wn.2d at 812-13)). Washington jurisprudence defines those fundamental rights narrowly, as

> "'the right to remove to and carry on business therein; the right, by usual modes, to acquire and hold property, and to protect and defend the same in the law; the rights to the usual remedies to collect debts, and to enforce other personal rights; and the right to be exempt, in property or persons, from taxes or burdens which the property or persons of citizens of some other state are exempt from.'"

Am. Legion, 164 Wn.2d at 607 (quoting *Grant II*, 150 Wn.2d at 812-13).

Applying this limited list of "fundamental rights," the Washington Supreme Court has repeatedly held that mere statutory rights are not "fundamental rights" within the ambit of article I, section 12. For example, in *Association of Washington Spirits and Wine Distributors*, the

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Court observed that "[t]his court has explicitly recognized the distinction between **privileges** and **rights granted only at the discretion of the legislature**." 182 Wn.2d at 362 (emphasis added). The Court rejected the plaintiff's privileges and immunities claim, because "the only right asserted here is the right to sell liquor under the authority of a license issued pursuant to the State's police power," which is not a "constitutional privilege." *Id.*[11] Similarly, in *Ockletree*, a plurality of the Court rejected the plaintiff's challenge to the exemption of nonprofit religious organizations from the definition of "employer" under the Washington Law Against Discrimination. The Court held that the right to be free from discrimination in employment is not a fundamental right, because it "is a creature of statutory enactment." *Ockletree*, 179 Wn.2d at 780. Justice Stephens's dissent in *Ockletree* underscores this point: "in contrast [to a fundamental right], a right granted only at the discretion of the legislature is not a 'privilege' any citizen can assert." *Id.* at 794 (Stephens, J., dissenting).

Such is the case in this action: An employee's potential entitlement to overtime pay is purely a creature of statutory enactment, not a fundamental right under the privileges and immunities clause. It does not involve the right to carry on business, or to hold property, or to seek legal redress, or to equal taxation. Consequently, the exemption of agriculture from the statute's overtime pay requirement does not create a privilege or immunity for farm employers within the scope of article I, section 12. Because the exemption does not implicate a fundamental right, the Court should end its inquiry at this step.

b. RCW 49.46.130(2)(g) does not benefit one class to the detriment of another.

Plaintiffs' article I, section 12 challenge also fails because RCW 49.46.130(2)(g) does not grant an advantage to one group to the detriment of another. This required showing is important because, as Justice Utter explained, the purpose of article I, section 12 is "to prevent people from seeking certain privileges or benefits to the disadvantage of others." *State v. Smith*, 117 Wn.2d

[11] Wiggins, J., joined by Madsen, C.J., Johnson, Owens, Fairhurst, Stephens, Gonzalez, Gordon McCloud and Yu, JJ.

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263, 283, 814 P.2d 652 (1991) (Utter, J., concurring); *see also Ass'n of Wash. Spirits*, 182 Wn.2d at 360 ("[a] 'privilege' is an exception from a regulatory law that benefits certain business at the expense of others").

Thus, the Washington Supreme Court has held that the fundamental "right to carry on business" is unconstitutionally implicated "by a municipal ordinance that attempted to insulate resident photographers from out-of-state competition by imposing prohibitive licensing fees and solicitation restrictions on itinerant photographers." *Ass'n of Wash. Spirits*, 182 Wn.2d at 360.. As Justice Wiggins explained, the Wenatchee ordinance at issue in *Ralph v. City of Wenatchee*, "purposefully distinguished between resident and itinerant photographers," and "placed substantial licensing fees on itinerant photographers; resident photographers were not required to have a license." *Id.* at 360-61. By contrast, the fee at issue in *Association of Washington Spirits* "[did] not unfairly discriminate against a class of businesses to the benefit of another class of the same businesses; it merely assigns a uniform fee to the class of individual in Washington who sell spirits with all the rights and responsibilities assigned to a 'spirits distribution license.'" *Id.* at 362. In this case, the statute exempts **all** agricultural employers from the overtime requirement—it does not exempt some to the detriment of others, or to the detriment of anyone else. Consequently, even if it **did** implicate a fundamental right (which it does not), it would not violate article I, section 12.[12]

2. RCW 49.46.130(2)(g) does not violate art. I section 12 with respect to any alleged "fundamental right" to "worker health and safety."

Because overtime pay required by RCW 49.46.130(1) clearly does not implicate a fundamental right, plaintiffs employ two different arguments to divert the Court's attention from the straightforward analysis that requires denial of their claim. First, plaintiffs pretend that the right or obligation at issue is "worker health or safety," rather than the straightforward

[12] Plaintiffs do not even suggest, let alone provide any proof, that the exemption for farm labor unfairly burdens other employers generally. Moreover, the benefit/burden analysis has been applied to different classes within the same business, like photographers or spirits distributors, and not to business in a general sense.

entitlement to overtime granted by the statute. Second, plaintiffs posit an unsupported allegation that the agricultural exemption from overtime pay was somehow "motivated by bias against racial minorities." Neither of these arguments has merit, and neither satisfies plaintiffs' burden of proof in this action.

a. The agricultural exemption from RCW 49.46.130(1) does not violate article I, section 12 because there is no fundamental right to worker safety.

As discussed above, the statutory entitlement to overtime does not involve a fundamental right. Consequently, the agricultural exemption from the overtime requirement does not implicate a "privilege." In recognition of this fact, plaintiffs take a different approach and attempt to manufacture a fundamental right to "worker health and safety" from article II, section 35 of the State Constitution. Article II, section 35 provides:

> PROTECTION OF EMPLOYEES. The legislature shall pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life or deleterious to health; and fix pains and penalties for the enforcement of the same.

Plaintiffs' creative but unsupported argument fails for six reasons.

i. No authority has recognized worker health and safety as a fundamental right.

First, there is no support for the proposition that this general directive to the legislature reflects a "'privilege' or 'immunity' as defined in [Washington's] early cases distinguishing the '"fundamental rights"' of state citizenship," as required by Washington law. *Schroeder*, 179 Wn.2d at 572 (quoting *Grant II*, 150 Wn.2d at 812-13. Notably, the Supreme Court decided *Vance* only 11 years after the Constitution was ratified, but made no mention of any fundamental right to "protection of workers in dangerous employments," or "worker health and safety," or anything of the sort. Nor has any case that has been decided in over 110 years since *Vance*. The implied assertion that the framers of the Constitution would have contemplated worker health and safety as a fundamental right of state citizenship ignores 120 years of history and jurisprudence.

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ii. Article II, section 35 does not reflect a fundamental right as defined by the test of *State v. Vance* and its progeny.

Second, *State v. Vance*, 29 Wash. 435, 70 P. 34 (1902), rebuts plaintiffs' argument, directly and explicitly. *Vance* involved a challenge to a criminal conviction. The defendant argued that the jury panel had been unconstitutionally comprised in violation of the privileges and immunities clause, because it was selected pursuant to a statute that provided for the selection of jurors by nonelected jury commissioners. *Id.* at 452. Rejecting that argument, the Court held:

Under the constitution of the state, the defendant was entitled to a trial by jury of the county in which the offense was committed. The mode of the selection of jurors, and their qualification to sit as triers, limited only by the qualification that they shall be impartial, is left to the legislature. . . . The right simply of recommendation, which it might be said has been conferred by the act under consideration, and by the order of the court made in accordance with the provisions of that act, is not, in its very nature, such a fundamental right of a citizen that it may be said to come within the prohibition of the constitution, or to have been had in mind by the framers of that organic law. **A statute can be declared unconstitutional only where specific restrictions upon the power of the legislature can be pointed out, and the case shown to come within them, and not upon any general theory that the statute conflicts with a spirit supposed to pervade the constitution, but not expressed in words**. *Smith v. Seattle*, 25 Wash. 300 (65 Pac. 612). We think the act, in the respect complained of, is constitutional. *Id.* at 458-59 (emphasis added). As an example of the "specific restrictions" that reflect fundamental rights of citizenship, the Constitution specifically prohibits the deprivation of personal rights in "life, liberty, or property, without due process of law." Const. art. I, § 3. Here, by contrast, article II, section 35 merely instructs the legislature to pass laws for the protection of persons working in dangerous jobs. The means to achieve that general responsibility are left entirely to the legislature. Thus, legislative protection of "worker health and safety" remains

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purely a creature of legislative discretion. Article II, section 35 does not impose any "specific restrictions upon the power of the legislature," or create any specific individual right that shall not be abridged, like the right to trial by jury. Consequently, article II, section 35 does not reflect any "fundamental right of citizenship" that would have "been had in mind by the framers" of the constitution.[13] Plaintiffs' argument is based upon the premise that RCW 49.46.130(2)(g) "conflicts with a spirit supposed to pervade the constitution, but not expressed in words." By the Supreme Court's express instruction, that argument does not implicate the privileges and immunities clause.

iii. Plaintiffs' argument that article II, section 35 creates a fundamental right would lead to absurd results.

Third, aside from the fact that article II, section 35 does not implicate any fundamental right under *Vance* and its progeny, plaintiffs' argument would not pass muster in any event. Plaintiffs would have the Court hold that there is a "fundamental right" to "worker health and safety" for persons employed in dangerous occupations because article II, section 35 provides that "[t]he legislature shall pass necessary laws" to protect those persons. By this false rationale, however, the Court would also be forced to recognize "fundamental rights of citizenship" in such matters as, *inter alia,* voter information pamphlets,[14] the manner in which suits may be brought against the state,[15] convict labor,[16] laws prohibiting the free transportation of public officers,[17] legislative redistricting,[18] and the speedy publication of supreme court opinions.[19] The

[13] Notably, the legislature first passed S.B. 143 "providing for the health and safety of persons employed for work in compressed air," in 1937. It first addressed the "Safety of Persons Employed in Tunnels, Quarries, Caissons or Subways" in 1941. H.B. 401, Ch. 194, Session Laws 1941.
[14] Const. art. II, § 1(e) ("the legislature shall provide methods of publicity of all laws").
[15] Const. art. II, § 26 ("[t]he legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state").
[16] Const. art. II, § 29 ("the legislature shall by law provide for the working of inmates").
[17] Const. art. II, § 39 ("the legislature shall pass laws to enforce" the prohibition against free transportation of public officers).
[18] Const. art. II, § 43(4) ("the legislature shall enact laws providing for the implementation of this section").

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Washington Supreme Court has expressly warned against such expansive interpretations, because they would result in,

> recognizing a privilege anytime a statute grants a right to some but not others. In other words, many legislative decisions could be claimed as privileges. As a result, we could be called on to second-guess the distinctions drawn by the legislature for policy reasons nearly every time it enacts a statute.

Ockletree, 179 Wn.2d at 779. In other words, and consistent with *Vance*, the "fundamental rights of citizenship" that implicate a "privilege" are not established simply because a constitutional provision directs the legislature to pass laws to protect or promote the public interest in that subject. Article II, section 35 does no more than this. It directs the legislature to pass laws on a particular subject; it does not establish a fundamental right that implicates a privilege.

iv. Article II, section 35 is not self-executing, and creates no rights absent legislative action.

Fourth, it is important to note that article II, section 35 is not self-executing. Instead, both by its express terms and because of its location in article II pertaining to the legislature, it depends entirely on prior legislative action before **any** rights are created. Thus, as discussed above regarding the statutorily created right to overtime pay, it cannot implicate a fundamental right or privilege.

To be self-executing, "a constitutional provision must sufficiently detail a right to be protected and enjoyed or enforced and, absent such sufficiency, the provision is merely a principle." *City of Tacoma v. Mary Kay, Inc.*, 117 Wn. App. 111, 114, 70 P.3d 144 (2003). A constitutional provision is **not** self-executing if it "receives its vitality from legislative enactment." *Robison v. La Forge*, 170 Wash. 678, 679, 17 P.2d 843 (1932).

Anderson v. Whatcom County, 15 Wash. 47, 45 P.665 (1896), provides a good example of a self-executing constitutional provision. There, the Washington Supreme Court held that the

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[19] Const. art. IV, § 21 ("[t]he legislature shall provide for the speedy publication of opinions of the supreme court").

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provision on justices of the peace in cities of 5,000 contained sufficient detail to cause an automatic increase in those judges' salaries following new census data—in other words, additional legislative action was not required. *Id.* at 51.

But article II, section 35, by contrast, is not self-executing because its very words expressly **require** legislative action to create and implement any workplace protections. It is important to observe that the legislature chose not to enact worker safety statutes for the first two decades after the State Constitution was adopted in 1889. The first significant workplace protection statute was the eight-hour maximum shift for women in certain commercial and industrial jobs, passed in 1911 (Laws of 1911, ch. 37) and upheld in *State v. Somerville*, 67 Wash. 638, 122 P. 324 (1912). Next was workers' compensation, adopted the same year (Laws of 1911, ch. 74) and upheld in *State v. Mountain Timber*, 75 Wash. 581, 135 P. 645 (1913). *See also*, Dorothy O. Johansen & Charles M. Gates, *Empire of the Columbia: A History of the Pacific Northwest* 470-71 (2d ed. 1957). Notably, Washington's **most important** worker safety law, the Washington Industrial Safety and Health Act ("WISHA") was not passed until 1973, almost 90 years after statehood (Laws of 1973, ch. 80). Simply put, Article II, section 35 depends on legislative action. It is non-self-executing; creates no automatic, actionable rights; provides no basis for a legal action absent express statutory authorization. It does not implicate or reflect a fundamental right of state citizenship as defined and limited by Washington law.

v. This case is about overtime pay, not worker health and safety.

Fifth, the Court should not ignore the disingenuousness of plaintiffs' argument that their claim **for overtime pay** is really about "worker health and safety." If plaintiffs genuinely believed that the Washington legislature has failed to comply with article II, section 35, by failing to pass laws necessary for the protection of persons employed in dangerous jobs, they could have sued the legislature to seek enforcement of the constitutional mandate. *See McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012) (holding that children residing in Washington state may sue to enforce the legislature's constitutional duty to amply fund education). Alternatively,

if the legislature had **really** "ignored its constitutional mandate,"[20] plaintiffs could have challenged the adequacy of WISHA, RCW 49.17.010, *et seq.*, which is the statute that actually, directly, and expressly addresses article II, section 35. *See* RCW 49.17.010 ("and in keeping with the mandates of Article II, section 35 of the state Constitution").

Notably, plaintiffs do not complain about RCW 49.17.020(1), which specifically defines "agriculture" for the purposes of WISHA, or about RCW 49.17.041(b)(2), which specifically requires separate "rules for agricultural safety under this chapter," including an "agriculture safety standard" and "agriculture-specific rules" that "[e]xempt agricultural employers from the general industry safety standard adopted under chapter 49.17 RCW for all rules not specifically referenced in the agriculture safety standard." If this case were really about farm worker health and safety, plaintiffs would be addressing the farmworker health and safety standards.

But they have not. Instead, plaintiffs challenge the agricultural exemption to the overtime statute. Overtime pay has no direct connection to **any** aspect of worker safety (such as workplace conditions, safety equipment, training, etc.), and it is only indirectly related to worker health or safety to the extent it might lead to a reduction in the number of hours an employee might work.[21] Even still, if the employer simply pays overtime rather than reduce hours, as permitted under the Minimum Wage Act, there would be no effect on worker health or safety at all. Plaintiff's reliance on the Minimum Wage Act's traditional invocation of legislative police power as promoting public "health, safety and welfare" is a red herring.

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[20] Plaintiffs' Motion, p. 1:11.

[21] In this regard, the Court should note that plaintiffs' Motion misrepresents *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 861, 864, 93 P.3d 108 (2004) as supporting their assertion that "overtime compensation is so central to the state's comprehensive worker health, safety, and welfare scheme that the requirements cannot be waived." In fact, *Hisle* says nothing of the sort – it merely notes that overtime cannot be waived. No case or authority suggests that overtime compensation is "central" to the state's health, safety *or* welfare scheme.

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vi. Plaintiffs' failure to produce evidence supporting their supposition that requiring overtime pay would promote worker health and safety requires denial of their motion.

This last point highlights another critical inadequacy in plaintiffs' motion for summary judgment. Plaintiffs proffer evidence that agricultural work has a higher injury rate than other industries.[22] They proffer evidence that dairy work has a high injury rate.[23] Finally, they suggest that studies have "associated" overtime work with increased injury rates.[24] However, plaintiffs' offer **no evidence** to prove any causal link between the agricultural exemption from overtime and injury rates in agriculture; they simply invite the Court to infer such a causal relationship. Similarly, they offer no evidence to prove that requiring overtime pay would **reduce** the rate of workplace injuries or accidents. To the contrary, they submit evidence that "working a job with overtime is associated with a 61% higher injury hazard rate."[25] Thus, plaintiff's own data suggests that overtime pay does **not** reduce workplace injuries or accidents.

The Court cannot draw the speculative causal inference that plaintiffs claim depends upon, at trial or on summary judgment. Because plaintiffs' implied assertion that requiring overtime pay would protect their supposed "right" to worker safety is unsupported by any evidence in the record, the very premise of plaintiffs' challenge to RCW 49.46.130(2)(g) fails. For this and all of the other reasons discussed above, plaintiffs' claim must be denied.

3. The legislature's exemption of farm work from the overtime requirement of RCW 49.46.130(1) is valid under any standard of review.

Plaintiffs claim that the legislature has granted agricultural employers a "privilege" or "immunity" prohibited under article I, section 12, which states:

> No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

[22] Plaintiff's Motion, pp. 3-4.
[23] Plaintiffs' Motion, p. 5.
[24] Plaintiff's Motion, p. 5.
[25] Plaintiff's Motion, p. 14:20-21.

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As discussed above, this claim fails at the "first step" of review under the privileges and immunities clause, because RCW 49.46.130 does not implicate a "privilege"—there is no fundamental right to overtime or "worker health and safety." Even assuming, *arguendo*, that the statute **did** implicate a privilege, however, plaintiffs' challenge fails at the second step of the required analysis.

Plaintiffs claim that the exemption from overtime pay gives farm employers a special benefit. Consequently, the second step requires the Court to determine whether there is a "reasonable ground" for granting the privilege. *Ockletree*, 179 Wn.2d at 776.[26] As plaintiffs' motion notes, "[t]he article I, section 12 reasonable grounds test is more exacting than rational basis review." *Schroeder*, 179 Wn.2d at 574. Under the reasonable ground test, "a court will not hypothesize facts to justify a legislative distinction." *Id.* "Rather, the court will scrutinize the legislative distinction to determine whether it *in fact* serves the legislature's stated goal." *Id.*

In this case, aside from the fact that there is no "privilege" at issue, the record clearly establishes "reasonable grounds" for the legislature's exemption of agriculture from the statute's overtime pay requirement. These reasons are set forth in detail in the statement of facts above, but are fairly summarized in paragraph 50 of Professor Strom's Declaration:

> It is clear that agricultural workers were exempted from the hours and overtime provisions of the FLSA because of the complex nature of agricultural work, the agrarian myth, and because the problems facing agriculture had already been addressed by previous New Deal legislation. Throughout American history, agriculture has been seen as a vocation not an industry. The twin ideals that farming is good for the farmer and vital for the nation have underpinned most

[26] To the extent plaintiffs' argument is based instead upon the assertion that RCW 49.46.130(2)(g) is invalid because it "deprives farm workers" of a right to overtime "protection," the statute would be subject to extremely deferential "rational basis" test of federal equal protection jurisprudence. A majority of the State Supreme Court in *Grant II* and a plurality in *Andersen v. State*, 158 Wn.2d 1, 138 P.3d 963 (2006), held that independent Washington State article I, section 12 doctrine (as distinct from federal equal protection doctrine) focuses on laws that discriminate against the **majority** of people in the state, giving a special benefit to a minority. *Grant II*, 150 Wn.2d at 807; *Anderson*, 83 P.3d at 426. The *Andersen* lead opinion held that when discrimination against a minority group is claimed (as in this alternative argument), the Court will follow federal Equal Protection doctrine, applying a "highly deferential rational basis standard of review." 158 Wn.2d at 9-10. Because the exemption passes "reasonable grounds" analysis, it plainly passes "rational basis" review.

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federal and state agricultural legislation. The Fair Labor Standards Act and the Minimum Wage Law are perfect examples of this.

Excerpts from the legislative history and the statements of farmer-legislators emphasizing the precarious nature of agriculture as an occupation merely underscore this point. One does not need to hypothesize **facts** to justify the exemption—the facts are apparent from eighty years of legislative history,[27] and are well supported by record evidence. To meet the reasonable ground requirement, "distinctions must rest on 'real and substantial differences bearing a natural, reasonable, and just relation to the subject matter of the act.'" *Ockletree*, 179 Wn.2d at 783 (quoting *State ex rel. Bacich v. Huse*, 187 Wash. 75, 84, 59 P.2d 1101 (1936)).

Here, the facts readily establish that the exemption from overtime pay reflects legislative recognition that the seasonal nature of farming and its susceptibility to the uncertain and potentially devastating demands of weather, crop growth, and husbandry make it an employment that does not fit into a "nine to five" schedule. The facts also establish the legislative recognition of agriculture's importance to the state. This evidence clearly passes the "reasonable grounds" test, because the agricultural exemption from overtime advances the legislative goal to promote the public welfare. The record evidence also debunks plaintiffs' unsupported "racist motivation" theory.[28]

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[27] Legislation treating agricultural employment differently from manufacturing, resource-extraction, and commerce has a long and logical history in our state. For example, in 1995 and 1997, the legislature amended WISHA to add several special provisions regarding agriculture work, noting the difference between agriculture and other industries and differences within the agricultural industry itself. Laws of 1995, ch. 371, Laws of 1997, ch. 362, Laws of 1997 (RCW 49.17.020, 49.17.022, and 49.17.041). No one has challenged the special job safety provisions for agricultural workers on the grounds that the statute provided them, or their employers, a "privilege" or "immunity." Those provisions are simply thoughtful legislative choices made after investigation, testimony, and debate. Similarly, just because the Legislature in 1975 made a conscious decision to exempt certain classes of workers from overtime provisions (including some agricultural workers) does not mean that a fundamental right was denied or a privilege or immunity unconstitutionally granted.

[28] Plaintiffs' Motion, p. 17:11-20. The Court might also note that the agricultural exemption from overtime has been left in the Minimum Wage Act by two different initiative measures that addressed different provisions of the Act, in 1988 and 2017, including the initiative sponsored by Jennifer Belcher, one of plaintiffs' Declarants. Of course, plaintiffs do not explain this apparent "racism" by Ms. Belcher and the voters of Washington State. *See, e.g.*,

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Agricultural work may be more dangerous than many other occupations.[29] However, if farm workers want to challenge the legislature's alleged "failure" to protect them, they must do so directly, by suing the legislature or challenging the provisions of WISHA. This suit for **overtime pay** does not and cannot address that concern. While the Court may scrutinize the facts to determine whether they establish reasonable grounds for the overtime exemption, it cannot second guess the legislature's policy decisions. *Petstel Inc.*, 77 Wn.2d at 151 (courts do not second guess legislature regarding the "wisdom" of legislation). Moreover, in matters of economic legislation such as minimum wage and overtime laws, the Washington Supreme Court follows "the rule giving every reasonable presumption in favor of the constitutionality of the law or ordinance. . . . to avoid substituting our judgment for the judgment of the Legislature." *Sofie*, 112 Wn.2d at 642-43. There is no "fundamental right" to "health and safety," this suit for overtime pay would not advance any such "right," fundamental or otherwise, and the legislature had a reasonable ground for exempting agriculture from the overtime pay provisions of RCW 49.46.130(1). Plaintiffs' privileges and immunities challenge must fail.

B. RCW 49.46.130(2)(g) Does Not Violate the Equal Protection Guarantee of the Washington Constitution.

Washington case law characterizes the courts' "equal protection" analysis under article I, section 12 as "substantially similar" to federal equal protection analysis. *Seeley v. State*, 132 Wn.2d 776, 787 n.7, 940 P.2d 604 (1997); *Andersen v. King County*, 158 Wn.2d 1, 9, 138 P. 3d 963 (2006). Consequently, the level of scrutiny the Court must apply to RCW 49.46.130(2)(g) depends upon whether that statute burdens a "suspect class, a fundamental right, an important right or semisuspect class, or none of the above." *State v. Hirschfelder*, 170 Wn.2d 536, 550,

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https://www.idealist.org/en/nonprofit/9bba7ac8b8604b0b96836a0baaa0cae1-raise-up-washington-seattle.

[29] Membership in the class of agricultural farm workers is not compelled, and is not an "immutable" trait of the Latino/a race. In fact, statistics demonstrate that the vast majority of Latino/a workers in Washington state are **not** employed in agriculture. Strom Dec. ¶ 48 (2016 Census Bureau surveys show that statewide, only 12percent of Latino/as are employed in "Farming, Fishing and Forestry Occupations").

242 P.3d 876 (2010). Statutes that burden a suspect class or a fundamental right receive strict scrutiny; those that burden an important right **and** a semisuspect class receive intermediate scrutiny; those that do none of the above receive highly deferential rational basis review. *American Legion Post # 149*, 164 Wn.2d at 608-09. Here, the "highly deferential rational basis" standard of review is appropriate, and it is clearly satisfied. *Anderson,* 158 Wn.2d at 9.

1. RCW 49.46.130(2)(g) does not burden a fundamental right or a suspect class, so strict scrutiny is not appropriate.

Plaintiffs first argue that strict scrutiny is appropriate because the agricultural exemption from overtime pay requirements burdens a "fundamental right for those employed in dangerous occupations to work and safety enactments by the legislature."[30] As discussed above, there is no "fundamental right" in worker health and safety. *See supra* § III.A.2. That point should end the need for further discussion of this argument, but the Court may wish to focus on the case plaintiffs emphasize most heavily, *Macias v. Department of Labor & Industries*, 100 Wn.2d 263, 274-75,668 P.2d 1278 (1983), which actually serves to underscore this point. In *Macias*, farmworkers challenged a statute that required seasonal workers to earn $150 from each employer to be eligible for workers' compensation coverage. In other words, the statute excluded the plaintiffs in *Macias* from coverage under the state's insurance program for workplace injuries—a statutory entitlement that is more directly related to ensuring and protecting "worker health and safety" than overtime pay. The Supreme Court found the exclusion unconstitutional because it burdened the long established and traditionally recognized fundamental right to travel, **not** because it burdened any supposed "right" to laws protecting worker health and safety. Thus, *Macias* actually weighs against plaintiffs' argument. Finally, and again, plaintiffs' repeated assertion that the MWA "adopted the FLSA's racist origins" is both unsupported by any admissible evidence and false as a matter of fact.[31]

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[30] Plaintiffs' Motion, p. 20:4-5.

[31] Nor does the fact that the majority of farm workers in Washington are now Latino/a implicate heightened scrutiny. As *Macias* also makes clear, statistical evidence of disparate impact,

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The Court should also note that the Supreme Court expressly rejected the argument plaintiffs make here in *Harris v. Department of Labor & Industries*, 120 Wn.2d 461, 843 P.2d 1056 (1993). *Harris* challenged RCW 51.32.225, a statute that offset a worker's disability benefits by amounts the worker received from Social Security. Ms. Harris relied on *Macias* to argue that strict or intermediate scrutiny should apply. The Supreme Court rejected that argument because the fundamental right to travel at issue in *Macias* "is easily distinguishable from this case," which involved "economic legislation," requiring deferential rational basis review. *Harris*, 120 Wn.2d at 477. Again, the rights and benefits at issue in *Harris*, involving compensation for workplace injuries, were more closely related to "worker health and safety" than the right to overtime pay at issue in this case. As discussed above, overtime pay could only impact worker health and safety indirectly, and then only if it causes a reduction in the number of hours worked.

2. RCW 49.46.130(2)(g) does not burden an "important right" or a semisuspect class.

The intermediate scrutiny test is rarely used in Washington, and only applies "to laws that burden **both** 'an importaut right and a semi-suspect class not accouutable for its status.'" *Schroeder*, 179 Wu.2d at 578 (emphasis added). If intermediate scrutiny applies, the law "must fairly be viewed as furthering a substantial interest of the state." *State v. Clinkenbeard*, 130 Wn. App. 552, 556, 123 P.3d 872 (2005). Intermediate scrutiny does not apply to RCW 49.46.130(2)(g), because the statute does not burden an "important right" as defined by Washington case law, **and** it does not implicate a semisuspect class.

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without direct evidence of purposeful discrimination or intent, does not trigger strict scrutiny. 100 Wn.2d at 270; *see also State v. Clark*, 76 Wn. App. 150, 156, 883 P.2d 333 (1994) ("a statistical showing of disparate impact on minorities, without more, fails to establish an equal protection violation."). "It is well established that a showing of discriminatory intent or purpose is required to establish a valid equal protection claim." *State v. Coria*, 120 Wn.2d 156, 175, 839 P.2d 890 (1992) (quoting *United States v. Crew*, 916 F.2d 980, 984 (5th Cir. 1990)).

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i. RCW 49.46.130(2)(g) does not burden an "important right."

Washington Courts have rarely recognized any "important right," other than physical liberty, to justify intermediate scrutiny under an equal protection analysis.[32] *See State v. Phelan,* 100 Wn.2d 508, 513, 671 P.2d 1212 (1983); *State ex Rel. Sigler v. Sigler*, 85 Wn. App 329, 336, 932 P.2d 710 (1997) (observing that "Washington often uses intermediate scrutiny when physical liberty is at issue"). The Court has also applied intermediate scrutiny to a legislative classification based on illegitimacy, following federal law. *Pitzer v. Union Bank*, 93 Wn. App. 421, 429, 969 P.2d 113 (1998) (citing *Trimble v. Gordon*, 430 U.S. 762, 767, 97 S. Ct. 1459, 52 L. Ed. 2d 31 (1977)), *rev'd on other grounds*, 141 Wn.2d 539 (2000).

Two additional cases round-out a review of the relevant caselaw: *In Griffin v. Eller*, 130 Wn.2d 58, 65, 922 P.2d 788 (1996), the Court held that the protections of the Washington Law Against Discrimination involved an "important" interest, but it rejected intermediate scrutiny because the class of small employers was not semisuspect. Finally, 42 years ago in *Hunter v. North Mason High School*, 85 Wn.2d 810, 814, 539 P.2d 845 (1975), the Court stated that "the right to be indemnified for personal injuries is a substantial individual property right." However, as the Supreme Court subsequently noted in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136, 141, 960 P.2d 919 (1998), "in *Hunter*, it is unclear what level of scrutiny the court applied, as noted later in *Daggs v. City of Seattle*, 110 Wn.2d 49, 56, 750 P.2d 626 (1988). *Hunter* involved a claims-filing statute, and, as also indicated in *Daggs*, more recent decisions suggest a minimum scrutiny analysis applies in assessing such statutes. *Id.*"[33]

That exhausts the cases on point, none of which support plaintiffs' argument for intermediate scrutiny in this case. Indeed, in *Campos v. Department of Labor & Industries*, a

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[32] *Schroeder* also stated that the "right to pursue common law causes of action in court" as an "important right," 179 Wn.2d at 578, but that statement is *dicta*, because the Court had already recognized the right to sue as a "**fundamental** right of citizenship" for purposes of the privileges and immunities analysis. *Id.* at 573 (emphasis added). As discussed above, the statutory right to overtime pay does not implicate any fundamental right.

[33] *Hunter* could also be reconciled as involving the fundamental right to seek redress in courts, like *Schroeder*.

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more analogous case, the Court **rejected** an argument for application of intermediate scrutiny to a statute that burdened a claim for workers' compensation (*i.e.*, money for a workplace injury), and instead applied "minimal scrutiny, or the rational basis test." 75 Wn. App. 379, 387, 880 P.2d 543 (1994).

ii. RCW 49.46.130(2)(g) does not burden a "semisuspect" class.

In deciding whether RCW 49.46.130(2)(g) burdens a semisuspect class, the Court should consider whether the legislative distinction between agricultural employees and other employees implicate a "semisuspect class" for purposes of constitutional equal protection analysis. It does not. The Court should not be misled in this regard—the statutory classification at issue in RCW 49.46.130(2)(g) is not "the poor," Latino/as, or any other semisuspect status, as plaintiffs suggest. The classification at issue is people employed in agricultural work. That classification is not semisuspect, and it is not subject to heightened scrutiny.

As Division III made clear in *Clinkenbeard*, "[p]rior [Washington appellate] decisions indicate that a particular employment status does not create a semi-suspect class." 130 Wn. App. at 567 (rejecting intermediate scrutiny because the class at issue in RCW 9A.44.093(1)(b) was public school employees) (citing, *e.g.*, *Griffin v. Eller*, 130 Wn.2d 58, 65, 922 P.2d 788 (1996) (statute exempting "class of small employers" from Washington Law Against Discrimination did not create a semisuspect class)).

Similarly, although the Supreme Court has recognized that "classifications based *solely* on wealth may form a semisuspect class," that rule does not apply to a statute (like RCW 49.46.130) that does not classify persons according to their financial resources. *See In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 439, 853 P.2d 424 (1993) (rejecting intermediate analysis because RCW 10.73.090 applies equally to convicted persons and does not classify persons according to financial resources, even if indigent inmates might be more burdeued in filing habeas petitions; explaining, "[t]he equal protection clause does not require a state to eliminate all inequalities between the rich and the poor"); *see also*, *State v. McNeair*, 88 Wn. App 331,

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339, 944 P.2d 1099 (1997) (noting in *dicta* that intermediate scrutiny may apply to "a classification based on poverty in a statute involving the right to liberty"); *State v. Mills*, 85 Wn. App. 285, 291, 932 P.2d 192 (1997) (noting that classifications based on wealth may form a semisuspect class, but rejecting intermediate scrutiny because statutory classification was not based on financial status).

These decisions are in accord with numerous others that narrowly define the "semisuspect class" that might trigger intermediate scrutiny. *See State v. Schaff*, 109 Wn.2d 1, 17, 743 P.2d 240 (1987) (noting that the U.S. Supreme Court generally applies heightened scrutiny "when gender based classifications are at issue"); *State ex rel. Sigler v. Sigler*, 85 Wn. App. 329, 336, 932 P.2d 710 (1997) (rejecting intermediate scrutiny analysis because noncustodial parents whose children receive aid to families with dependent children are not a semisuspect class); *In re Pers. Restraint of Hegney*, 138 Wn. App. 511, 530, 158 P.3d 1193 (2007) (rejecting intermediate scrutiny because juveniles are not members of a semisuspect class); *In re Interest of M.G.*, 103 Wn. App. 111, 123, 11 P.3d 335 (2000) (rejecting intermediate scrutiny because the legislative classification of children who have been adjudicated at-risk youth is not a semisuspect class); *In re Parentage of K.R.P.*, 160 Wn. App. 215, 229, 247 P.3d 491 (2011) (holdiug that statute distinguishing between children of married and unmarried couples does not implicate a semisuspect class); *State v. Wallace*, 86 Wn. App. 546, 937 P.2d 200 (1997) (persons convicted of drug offenses were not a semisuspect class); *Seely v. State*, 132 Wn.2d 776, 795, 940 P.2d 604 (1997) (cancer patients are not a semisuspect class); *Westerman v. Cary*, 125 Wn.2d 277, 295, 892 P.2d 1067 (1994) (persons held in custody pending initial court appearance are not semisuspect class).[34]

[34] In fact, it appears that the only cases in which Washington appellate courts **have** applied intermediate scrutiny are *State v. Phelan*, 100 Wn.2d 508, 513-14, 671 P.2d 1212 (1983), where the statute affected a deprivation of liberty **and** a classification based solely on wealth, and *Schroeder*, where the Court stated that the classification "raises concerns" because the statute burdened the right to seek legal redress (a fundamental right), **and** burdened children whose parents lacked knowledge or incentive to seek redress on their behalf, 179 Wn.2d at 578.

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RCW 49.46.130(2) classifies people on one basis, and one basis only—whether they are employed in agriculture. That classification is not a semisuspect class. Plaintiffs' argument for intermediate scrutiny must be rejected.[35]

3. RCW 49.46.130(2)(g) clearly passes the minimum scrutiny, rational basis test.

> If a suspect classification or fundamental right is not involved, rational basis review applies. A classification passes rational basis review so long as it bears a rational relation to some legitimate end. Social and economic legislation that does not implicate a suspect class or fundamental right is presumed to be rational; this presumption may be overcome by a clear showing that the law is arbitrary and irrational. A legislative distinction will withstand a minimum scrutiny analysis if, first, all members of the class are treated alike; second, there is a rational basis for treating differently those within and without the class; and third, the classification is rationally related to the purpose of the legislation. In reviewing the statute, the court may assume the existence of any conceivable state of facts that could provide a rational basis for the classification. The classification need not be made with mathematical nicety, and its application may result in some inequality. It is no requirement of equal protection that all evils of the same genus be eradicated or none at all.

Am. Legion Post No. 149, 164 Wn.2d at 609-10 (internal citations, alterations, and quotation marks omitted). "Under the rational basis test the court must determine: (1) whether the legislation applies alike to all members within the designated class; (2) whether there are reasonable grounds to distinguish between those within and those without the class; and (3) whether the classification has a rational relationship to the proper purpose of the legislation." *Griffin*, 130 Wn.2d at 65.

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[35] As noted above, the equal protection test is not a "disparate impact" analysis. Consequently, even if a classification **has** a disparate impact, it does not establish an equal protection violation **absent direct proof of discriminatory intent**. *Supra,* n.32. Plaintiffs have no such evidence. Nor does plaintiffs' insinuation that identification as Latino/a is a "discrete and insular minority" in Washington. To the contrary, the U.S. Census Bureau reports that people who identify as Hispanic or Latino comprised 12.4 percent of Washington's population in 2016, exceeding Black or African American (4.1 percent), American Indian or Alaska Native (1.9percent), Asian (8.6percent), Native Hawaiian or other Pacific Islander (0.8 percent), and Two or more Races (4.6percent). *See* United States Census Bureau, QuickFacts, https://www.census.gov/quickfacts/WA. Finally, plaintiffs' attempt to posture the Latino/a population in Washington as "discrete and insular" lacks any admissible evidentiary support—the Apostolidis declaration is inadmissible in its entirety. *See* Motion to Strike Apostolidis, filed herewith. However, because RCW 49.46.130(2)(g) burdens neither an important right nor a semisuspect class as required, the Court need not consider these issues. The DeRuyters raise them here simply so the Court is not misled by plaintiffs' diversionary tactics.

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For the reasons addressed above, the exemption of agricultural employment from the overtime pay entitlement of RCW 49.46.130(1) satisfies this test. The exemption applies alike to all members within the class—agricultural employees. There are reasonable grounds to distinguish between agricultural employees and non-agricultural employees with respect to overtime pay: the seasonal nature of agriculture and the unique role of agriculture to the state's and nation's well-being make it different from other occupations with respect to overtime pay. The classification has a rational relationship to the legislature's desire to address that difference. The statute is valid.

C. Any Adverse Holding Against The Validity of RCW 49.46.130(2)(g) Should Be Applied Only Prospectively.

As discussed above, the federal Fair Labor Standards Act has exempted agricultural labor from the overtime requirement of 29 U.S.C. § 207(a)(1) for the past 90 years. *See* 29 U.S.C. § 213(b)(12). That exemption has been upheld by the U.S. Supreme Court against constitutional challenges. *See Romero v. Hodgson*, 319 F. Supp. 1202 (N.D. Cal. 1970), *aff'd*, 401 U.S. 901, 91 S. Ct. 2215, 29 L. Ed. 2d 678 (1971); *Doe v. Hodgson*, 344 F. Supp. 964 (S.D.N.Y. 1972), *aff'd* 478 F.2d 537 (2d.Cir. 1973), *cert. denied* 414 U.S. 1096 (1973).

Similarly, the Washington Minimum Wage Act has been the law in this State for almost 60 years. *See* Session Laws 1959, Ch. 294, Sub. S.B. 424. The Act's exemption of agricultural labor from its overtime requirements has never before been attacked as violating Washington's Constitution, and the agricultural exemption from overtime has been preserved by both the legislature and the public initiative process through a number of statutory modifications. Nor has the agricultural exemption of RCW 49.46.130(2)(g) languished in obscurity—the section has been applied and/or interpreted by the courts of this state on numerous occasions. *See Cerrillo v. Esparza*, 126 Wn. App. 723, 725, 109 P.3d 475, 476 (2005) (carrier transporting farm commodities to discharge its content with the processors was not a person employed by the farmer or the farmer's agent within scope of RCW 49.46.130(2)(g)(ii), *reversed Cerrillo v.*

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Esparza, 158 Wn.2d 194, 199, 142 P.3d 155, 15 (2006) (holding the plain language of RCW 49.46.130(2)(g)(ii) exempts truckers of agricultural products from the overtime wage requirement); *Elliott v. Custom Apple Packers, Inc.*, 153 Wn. App. 296, 301, 228 P.3d 20, 22 (2009) (affirming judgment denying worker's overtime claim because RCW 49.46.130(2)(g)(ii) exempts from overtime pay any person employed "in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity").

The Washington Department of Labor and Industries' ("L&I") website publishes Employment Standard ES.A.8.1, first issued January 2, 2002, which expressly advises the pubic that "RCW 49.46.130 includes the following exemptions from overtime law": . . . (g) Agricultural workers. Department of Labor and Industries, *Overtime* (July 2014), *available at* http://www.lni.wa.gov/WorkplaceRights/files/policies/esa81.pdf. L&I's website also publishes a page titled "Jobs Not Paid Overtime" that identifies "several categories of workers who are not required to receive overtime pay," including, as its first bullet point:

> **Workers employed on farms or ranches,** or in any agricultural or horticultural business that packs, packages, grades, stores, or delivers to market such products, or any commercial business in canning, freezing, processing or transporting these products, or in cultivating, raising, harvesting or processing oysters. This is true regardless whether the business produces their own products or mixes them with products from other businesses.

Washington State Department of Labor & Industries, *Jobs Not Paid Overtime*, http://www.lni.wa.gov/WorkplaceRights/Wages/Overtime/Exemptions/default.asp (last visited April 3, 2018).[36]

[36] The U.S. Department of Labor provides similar information regarding the exemption of agricultural labor from the overtime requirements of the Fair Labor Standards Act. *See* U.S. Department of Labor, Wage and Hour Division, *Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA)* (July 2018), https://www.dol.gov/whd/regs/compliance/whdfs12.pdf. The Court can take judicial notice of these governmental publications, which are exceptions to the hearsay rule. ER 201; RCW 5.44.040.

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The DeRuyters have done nothing to incur any potential liability for overtime pay in this action other than rely upon this well-established law. Thousands of other agricultural employers have undoubtedly done the same. The DeRuyters even volunteered their dairy in May 2015 for an audit of their employment practices by an independent analyst, Gardner-Arche Advisers. The audit "included interviews with employees from both barns, payroll records from both locations, and a health and safety walkthrough of both locations to see the working conditions of the employee." Nelson Dec., Ex. 1, p. 3. Regarding payment of an "Overtime premium," the audit stated "N/A in agriculture." The narrative on "Wage Analysis" stated: "Employees are paid a flat day rate that is above the minimum wage. Most employees reported earning $95 per day for the 8.75 hour shift, which is $10.85 per hour, well above the MW of $9.47 in WA. Overtime compensation is not required in this industry. Some of the employees interviewed reported earning $115 per day, others $12 per hour, and one stated $25 per hour." The DeRuyters had no reason to imagine that they might somehow face potential liability for overtime pay notwithstanding the statute's well established exemption. Indeed, plaintiffs voluntarily dismissed their claim for any "willful" failure to pay wages owed in this case.

Had the DeRuyters known that they might someday be subject to the overtime pay requirement of RCW 49.46.130(1), they could have modified their employment practices to avoid that additional expense. Conversely, given the law, the plaintiff class had no reason to expect overtime pay. Thus, retroactive application of any decision striking down RCW 49.46.130(2)(g) would subject the DeRuyters (and thousands of other farmers) to significant liability, despite the fact that they did nothing wrong, relied on the plain language of a long-standing statute, could have modified their conduct to avoid the liability, and entered into contractual relationships in reliance on existing law. Furthermore, retroactive application of an adverse decision is not needed to remedy any injury. Instead, it would provide a windfall to a plaintiff class that entered into contractual agreements with no expectation of overtime pay. For obvious reasons, the law does not require that result, and ample precedent weighs against it.

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The well-established principle of law sometimes called "prospective overruling" has been authorized by Washington courts for over 50 years. In *State ex rel. Washington State Finance Committee v. Martin*, 62 Wn.2d 645, 384 P.2d 833 (1963), Justice Hale characterized the doctrine as follows:

> If rights have vested under a faulty rule, or a constitution misinterpreted, or a statute misconstrued, or where, as here, subsequent events demonstrate a ruling to be in error, prospective overruling becomes a logical and integral part of stare decisis by enabling the courts to right a wrong without doing more injustice than is sought to be corrected.

Id. at 666. The *Martin* court noted that "[t]he idea of a prospective overruling of precedent is not recent, but has been applied in effect without a label for more than a century," and reviewed United States Supreme Court precedent tracing to the 1840s. *Id.* at 667-69. After next reviewing application of the doctrine in a number of different areas of the law, the Court concluded:

> So it is that the doctrine of prospective overruling has attached in many areas: in constitutional law, contracts, torts, criminal law, taxation, and in the field of procedure, giving the doctrine both sanction and acceptance throughout our jurisprudence. Prospective overruling imparts that final degree of resilience, to the otherwise rigid concepts of stare decisis, so necessary to prevent the system from becoming brittle. It enables the law under stare decisis to grow and change to meet the ever-changing needs of an ever-changing society and yet, at once, to preserve the very society which gives it shape.

Id. at 673.

Washington Courts have adopted the Supreme Court's *Chevron Oil* test for nonretroactive application of a decision that reverses a well-established rule or statute, as follows:

> First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed . . . Second, it has been stressed that "we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." . . . Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial

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inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity."[37]

See also McDevitt v. Harborview Med. Ctr., 179 Wn.2d 59, 75, 316 P.3d 469, 477 (2013) ("this court has adopted the United States Supreme Court's three-part test in [*Chevron*] for determining whether a new decision should receive prospective-only application"). Thus, while retroactive application remains the "norm," this court has equitable discretion to give any decision invalidating RCW 49.46.130(2)(g) purely prospective application. *See McDevitt*, 179 Wn.2d at 75; *Allis-Chalmers Corp. v. N. Bonneville*, 113 Wn.2d 108, 115-120, 775 P.2d 953 (1989) (affirming trial court's application of *Chevron* factors to determine retroactive or prospective application); *Yount v. Calvert*, 826 S.W.2d 833, 835-36 (Ky. Ct. App. 1991) (reviewing trial court's application of *Chevron* for abuse of discretion). Application of the *Chevron* criteria to the facts of this case demonstrates that it would be an abuse of discretion **not** to apply any such decision prospectively.

The first *Chevron* factor is unquestionably met: A decision invalidating RCW 49.46.130(2)(g) to require overtime pay for farm labor would establish a new principle of law, in

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[37] *Taskett v. King Broadcasting Co.*, 86 Wn.2d 439, 448, 546 P.2d 81 (1976). The United States Supreme Court applied and developed the doctrine of prospective—or "nonretroactive"—application in cases such as *Linkletter v. Walker*, 381 U.S. 618, 85 S. Ct. 1731, 14 L. Ed. 2d 601 (1965) (rejecting retroactive application of the *Mapp v. Ohio* exclusionary rule), and *Chevron Oil Co. v. Huson*, 404 U.S. 97, 92 S. Ct. 349, 30 L. Ed. 2d 296 (1971) (rejecting retroactive application of its decision applying state law to Lands Act claims where retroactive application would bar claims that were timely filed under the previous rule). The Washington Supreme Court cited *Linkletter* with approval in *Cascade Security Bank v. Butler*, 88 Wn.2d 777, 785, 567 P.2d 631 (1977), and adopted the *Chevron* in *Taskett*.

More recent U.S. Supreme decisions have refined and limited application of *Chevron* in cases involving federal law, but *Chevron* continues to provide the controlling analysis for prospective application in this case. *See Digital Equip. Corp. v. Dept. of Revenue*, 129 Wn.2d 177, 186-89, 916 P.2d 937 (1996) (discussing the U.S. Supreme Court's clarification *Chevron* in *Harper v. Virginia Dept. of Trans.*, 509 U.S. 86, 97-98 (1993) (an opinion announcing a rule of federal law should be applied retroactively by lower courts in other cases unless the issue of prospective application is expressly reserved). However, that rule is not implicated in this case, which involves neither a rule of federal law nor a U.S. Supreme Court decision. A similarly inapposite issue was decided in *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 208 P.3d 1092 (2009), in which the Washington Supreme Court rejected the doctrine of "selectively prospective application" by which a decision is applied to the litigants before the court but not to those whose causes of action arose before the announcement of the new rule. *Id.*, 166 Wn.2d at 270-71. *Lundsford* is inapposite because this case only involves purely prospective application.

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two ways. First, it would overrule a long-standing and well established statutory rule on which the DeRuyters undoubtedly relied. Second, it would decide a novel issue of first impression whose resolution was not clearly foreshadowed. As Justice Traynor pointed out, "[r]eliance plays its heaviest role in such areas as property, contracts, and taxation, where lawyers advise clients extensively in their planning on the basis of existing precedents." Traynor, *Quo Vadis, Prospective Overruling: A Question of Judicial Responsibility*, 28 Hastings L.J. 533, 543 (1977). The doctrine of prospective application has been regularly applied by courts throughout the country to avoid unfair prejudice to those who governed their commercial and contractual affairs in reliance upon existing statutory law or decisional precedent. *See, e.g.*, *Lemon v. Kurtzman*, 411 U.S. 192, 93 S. Ct. 1463, 36 L. Ed. 2d 151 (1973) (rejecting retroactive application of Supreme Court decision invalidating statute that authorized the contractual payment of state funds to nonpublic sectarian schools, because retroactive application would impose a significant hardship on schools that acted in reasonable reliance on the statute); *Liddell v. Heavner*, 180 P.3d 1191, 1203–04 (Okla. 2008) (rejecting retroactive application of decision holding statutory valuation formula unconstitutional because both property owners and assessors were entitled to rely upon it); *Interlachen Lakes Estates, Inc. v. Snyder*, 304 So. 2d 433 (Fla. 1973) (state supreme court decision relating to unconstitutionality of statute respecting methods for valuation of unsold plotted land would operate prospectively from the date opinion became final, since persons relying on statute did so assuming it to be valid). Thus, this factor weighs heavily in favor of prospective application.

The second *Chevron* factor also weighs in favor of prospective application, because the alleged "purpose and effect" of the overtime pay requirement will not be furthered or advanced by retrospective operation of the new rule. If (as plaintiffs contend) the purpose of the overtime requirement is to "promote worker health and safety" by discouraging employment for more than 40 hours a week, that purpose will not be served by retroactive application of an overtime pay requirement. The work at issue is done and in the past, and requiring overtime pay will not

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reverse that circumstance. *Accord Linkletter v. Walker*, 381 U.S. 618, 85 S. Ct. 1731, 14 L. Ed. 2d 601 (1965) (purpose of the exclusionary rule in criminal cases would not be served by retroaction application of *Mapp v. Ohio* to prior convictions because "[t]he misconduct of the police prior to *Mapp* has already occurred and will not be corrected by releasing the prisoners involved"). The Washington Supreme Court also emphasized this aspect of the "purpose" factor in *National Can Corp. v. State Department of Revenue*, 109 Wn.2d 878, 749 P.2d 1286 (1988).[38] In deciding that its decision invalidating a B&O tax under the federal commerce clause would be applied only prospectively, the Court reasoned: "It is difficult to understand how retroactive application would encourage free trade among the states since whatever chill was imposed on interstate trade is in the past . . ." *Id.* at at 888. Thus, the alleged purpose of the overtime pay requirement will not be served by retroactive application of a decision invalidating the agricultural exemption from that requirement.

Finally, and most importantly, prospective application is necessary to avoid substantial injustice and inequity. The DeRuyters did nothing wrong to incur liability for overtime pay to the plaintiff class. They committed no tort. They took no risk by employing a shady interpretation of vague statutory language. Had the law been different, they easily could have modified their employment practices and shift scheduling to avoid overtime pay. Conversely, the plaintiff class could not have had **any** legal expectation to receive overtime pay while working for the DeRuyters. They were under no legal compulsion to accept such employment under terms compliant with the law. Retroactive application of a decision invalidating RCW 49.46.130(2)(g) would unfairly penalize the DeRuyters for more than $250,000 when they did nothing wrong, and present the plaintiff class with a windfall recovery for which they did not contract. Neither result is just. As the Court stated in *Cascade Security Bank*, "[t]o apply our

[38] The Court subsequently overruled *National Can* in *Digital Equip. Corp. v. Dep't of Revenue*, 129 Wn.2d 177, 186-89, 916 P.2d 937 (1996), in light of the U.S. Supreme Court's holding in *Harper v. Va. Dep't of Transp.*, 509 U.S. 86, 113 S. Ct. 2510, 125 L. Ed. 2d 74 (1993). However, that decision did not reject of modify the underlying analysis applicable in this case.

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decision to the parties would defeat respondents' reliance interest and cause them considerable financial loss. We refuse to allow our decision to operate on the parties in this appeal." 88 Wn.2d at 785.

IV. CONCLUSION

The exemption of agricultural labor from overtime pay set forth in RCW 49.46.130(2)(g) does not violate the privileges and immunities prohibition or the equal protection guarantee of Washington State Constitution article II, section 12. The statutory entitlement to overtime pay created by RCW 49.46.130(1) is not a fundamental right of state citizenship, so the exemption does not implicate a privilege as defined by Washington law. Nor does the exemption establish a "privilege" regarding worker health and safety, for numerous reasons: worker health and safety has never been recognized as a fundamental right; article II, section 35 does not create any such right; and construction of article II, section 35 to find a fundamental right would contravene established precedent and lead to absurd results. Perhaps more importantly, this case is not about worker health and safety—it is about money, plain and simple.

RCW 49.46.130(2)(g) does not burden a suspect or semisuspect class, and does not burden an important right as defined by Washington's case law. The extremely deferential rational basis review is appropriate, and is clearly satisfied. Plaintiffs' motion must be denied, and the Court should enter summary judgment against plaintiffs' claims for declaratory judgment. Even if the statute were assumed to be invalid, *arguendo*, that decision should be applied purely prospectively, and plaintiffs' claim for overtime wages and attorneys' fees should be denied.

Finally, because plaintiffs' claim depends entirely upon their *legal* arguments (that RCW 49.46.130(2)(g) involves a "fundamental" or "important" right, or that is lacks a rational basis) there are no material issues of fact, and the Court should enter summary judgment dismissing plaintiffs' complaint and all remaining claims therein.

DATED this 4th day of April, 2018.

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CERTIFICATE OF SERVICE

I certify that I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of eighteen, and I am competent to be a witness herein.

On this 5th day of April, 2018, I caused the foregoing document to be served on the parties as indicated below.

Lori Jordan Isley Joachim Morrison Columbia Legal Services 6 South Second Street, Suite 600 Yakima, WA 98901 *Counsel for Plaintiff*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail [ ] Via U.S. Mail, postage prepaid
Marc Cote Frank Freed Subit & Thomas LLP 705 Second Avenue, Suite 1200 Seattle, WA 98104-1798 *Counsel for Plaintiff*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail [ ] Via U.S. Mail, postage prepaid
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Pam McCain

Pam McCain

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EXHIBIT 20

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FILED
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YAKIMA COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
IN AND FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER FARM PROPERTIES, INC., f/k/a DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants, and WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Defendants.	No. 16-2-034173-9 **DECLARATION OF CLAIRE STROM**

Claire Strom does hereby declare and avow under penalty of perjury according to the laws of the State of Washington that I am over the age of 18 years, a resident of Orlando, Florida, and am competent to testify upon personal knowledge to the facts, research and opinions set forth herein:

Introduction

1. I am a Professor and holder of the Rapetti-Trunzo Chair of History at Rollins College in Florida. I have taught United States history at an undergraduate and graduate level for nearly twenty-five years. Based on my years of research, I have extensive familiarity with the

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history of discrimination in our nation toward ethnic and racial minorities, as well as toward labor. Additionally, I have detailed knowledge of federal legislation from the eighteenth century on. One of my courses looks at the history of immigration to the United States. This is a civic engagement class, and my students and I spend considerable time working with the Hope Community Center in Apopka, Florida, which is dedicated to assisting the migrant/agricultural laborers in our area.

2. My main research specialty is United States agricultural history. I have written two academic books on this topic and numerous articles in highly rated, peer-reviewed journals. One book, *Profiting from the Plains: The Great Northern Railway and Corporate Development of the American West,* published by the University of Washington Press, deals extensively with agricultural development in the Pacific Northwest, including the Yakima Valley. My other book, *Making Catfish Bait out of Government Boys: The Fight Against Cattle Ticks and the Transformation of the Yeoman South,* also considered issues of agricultural labor. That book focused on southern cattle farming—both ranch and dairy. I am currently working on a book manuscript, tentatively entitled, "The Global History of Cattle," in which Yale University Press has expressed interest.

3. In addition to my personal research, from 2003 to 2016, I was the editor of *Agricultural History.* This is the leading journal of note in the field, globally. The journal covers all types of agricultural history and is not limited by geography or chronology. As editor, part of my job was to check source materials, to verify that the scholarly work met the highest academic standards and relied upon unimpeachable sources, such as the U.S. Census data and the many scholarly works, cited herein. After thirteen years of editing the journal, my knowledge of agricultural history is exceptional. The Agricultural History Society recognized me for my work in 2016.

4. My expertise has been recognized nationally and internationally. I have given talks on various aspects of agricultural history around the world and have served on dissertation committees in the United States, as well as in South Africa, Australia, and Greece. In fall 2017, I was invited to teach at the Universidad de los Andes, the most prestigious university in Colombia. Most recently, I have been appointed a Fulbright Specialist by the federal government and will be teaching and lecturing at the University of Ljubljana in Slovenia in spring 2018.

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5. All of the materials I have used in forming the opinions expressed herein are the kinds of source materials every college professor relies upon for his or her work in researching and teaching the history of the United States, and especially the agricultural gistory of the United States. This is not reliance for the purposes of litigation. It is reliance for the purposes of pursuing our respective callings to learn, and teach, about the country we live in. Based upon my experience, training, education, and research as detailed below, I offer the following testimony to provide the Court with facts and my opinions relevant to plaintiffs' claims and allegations in this action.

Material Fact No. 1. Contrary to plaintiffs' allegation, most farm workers were *not* southern blacks at the time the Fair Labor Standards Act (FLSA) was enacted.[1] Instead, the majority of farmworkers in the 1930s were white.

Supporting Evidence and Information:

6. The Census of 1940, which generally reflects the situation in the United States at the passage of the FLSA in 1938, records 10,152,064 people who made their living in some way from agriculture. This includes owners, tenants, wage labor, and unpaid family labor. Over 80 percent of these people were white. Accordingly, "Agricultural work was" **not** "performed predominantly by Black workers" at the time the FLSA was enacted.[2]

Material Fact No. 2: The exemption of farm workers from the FLSA was not the result of racial or discriminatory animus against Black farm workers and was not the result of a "compromise" to obtain the votes of Southern Democrats intent on excluding black farm workers from the FLSA's provisions to perpetuate racial discrimination.[3] This is clear for several reasons.

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[1] Plaintiffs allege that the FLSA's agricultural exemption was "crafted during the Jim Crow era, when most farm workers were Black, Southern, and had no political power." First Amended Complaint ("FAC"), ¶ 56; and that "[a]gricultural work was performed predominantly by Black workers when Congress enacted the FLSA." FAC ¶ 102.

[2]. Bureau of the Census, *Sixteenth Census of the United States: 1940. Population, Vol. III, The Labor Force: Occupation, Industry, Employment, and Income* (Washington, DC: GPO, 1943), Table 63, pps. 92-96.

[3]. Plaintiffs allege that "[t]o pass the FLSA in 1938, Congress needed the votes of Southern Democrats who often voted as a bloc to maintain the economic and social subordination of Black farm workers and Southern (sic) inequality. This compromise directly resulted in the exemption of famer workers from both the minimum wage and overtime protections of the FLSA. Thus, and

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Supporting Evidence and Information:

7. First, inclusion of agricultural labor in the FLSA minimum wage and overtime requirements would not have benefitted most black farm workers in any event, and its exclusion largely impacted white farm workers.

8. In the 1930s, the majority of the black rural population lived in the South and were sharecroppers or some form of tenant farmers. Croppers and tenants were not paid a wage. Instead, they made their living from the crops they raised or a percentage of those crops. Most sharecroppers and tenants in the South were actually white, but a greater percentage of the black southern population were sharecroppers and tenants than of the white southern population. Thus, in the 1940 census, nearly one million whites in the South were in some form of tenant relationship, while the number for blacks was a little over half a million.[4]

9. Ironically, sharecropping had emerged in the South after the Civil War as a labor system that pleased both white plantation owners and black freedpeople. The plantation owners were cash poor after the conflict and well into the twentieth century, did not have the money to pay wage labor. Meanwhile, the freedpeople wanted their own homes and land away from the daily supervision of their former masters. Quickly, however, the system deteriorated for the African Americans and the poor white southerners engaged in agriculture. Needing farming supplies and other necessities, croppers went into debt with either the plantation owner or a local furnishing merchant. Rampant corruption and low cotton prices meant that the debts were rarely paid off. Thus, sharecroppers and tenants, both white and black, lived in what historians have termed "debt peonage," bound to the land.[5] These debts, invariably in a cash poor system, were in the form of crop liens—usually cotton. Thus, the tenants and croppers spent their lives working for a bumper cotton crop that would allow them to pay off their debt and had no time to invest in making money through agricultural wage labor. Therefore, one result of the indebtedness of these people was that they could not choose to leave tenancy for wage labor if

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by design, most Black workers in the South were excluded from the protective reach of the original FLSA." FAC ¶¶ 58, 59.

[4]. Bureau of the Census, *Sixteenth Census of the United States: 1940. Agriculture, Vol. III, General Report, Statistics by Subjects* (Washington, DC: GPO, 1943), Table 3, p. 143.

[5]. R. Douglas Hurt, *American Agriculture: A Brief History* (Ames: Iowa State University Press, 1994), 166-70; David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 121-127.

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the FLSA had, indeed, included agricultural workers. Thus, sharecroppers and tenants—the majority of southern agricultural workers in the 1930s—could not have benefited from an agricultural minimum wage or overtime.

10. In 1930, half the farmers in the South were tenants and in some areas as many as 80 to 90 percent of black farmers were tenants. This changed somewhat during the decade as a result of the New Deal and the Great Migration. Under the Agricultural Adjustment Act of 1933, farmers were paid to reduce production of crops. They were generally paid by the acreage that they did not plant. One side effect of this was that southern landowners evicted their tenants (both white and black), did not plant their land, and collected payments from the federal government. They did, however, need labor for the few crops they still planted, so, in the second half of the decade, the number of farm wage laborers did increase somewhat. However, most of the tenants that were evicted from the land either found jobs through one of the New Deal emergency programs, migrated to urban areas in the South, or migrated North to work in the manufacturing plants that actively recruited southern blacks.[6]

11. In 1940 the census recorded 3,090,010 farm laborers in the United States. Of these, 1,924,890 would have benefited from being included in the FLSA because they were paid a wage for their work. The others (over one third) were unpaid familial laborers. Of the almost 2 million wage earning farm workers, 1,410,288 were white, 483,785 were black, and 30,817 were "other races" (probably Hispanic and Asian as they were situated mainly in the West). Therefore, whites made up about 73 percent of the agricultural wage labor force who could have benefited from the FLSA.[7] Thus, it would have made little sense to exclude all farm labor from the FLSA simply to avoid paying minimum wage to the small percentage of that group that was wage-earning black farmers.

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[6]. Gilbert Fite, "Southern Agriculture Since the Civil War: An Overview," *Agricultural History* 53:1 (Jan. 1979): 3-21; Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986), 232-33; Jack Temple Kirby, "Black and White in the Rural South, 1915-1954," *Agricultural History* 58:3 (July 1984): 411-22.

[7]. Bureau of the Census, *Sixteenth Census of the United States: 1940. Population, Vol. III, The Labor Force: Occupation, Industry, Employment, and Income* (Washington, DC: GPO, 1943), Table 63, pps. 92-96.

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12. Consequently, the majority of black agricultural workers would not have benefited from being included in the FLSA at the time of its enactment, because they worked for themselves and paid rent in the form of cash or crops. Indeed, of the 10,152,064 people who made a living from agriculture in 1940, less than 5 percent were black wage laborers (See Chart 1). Additionally, blacks made up only 25 percent of all of the people who did agricultural wage work (See Chart 2). Finally, when considering wage workers **and** the unpaid family labor that might have benefited from an increase in the wages of the head of household, blacks still only comprised 25 percent of the total. Thus, if agriculture had been included as a category in the FLSA it would have overwhelmingly benefited white workers.

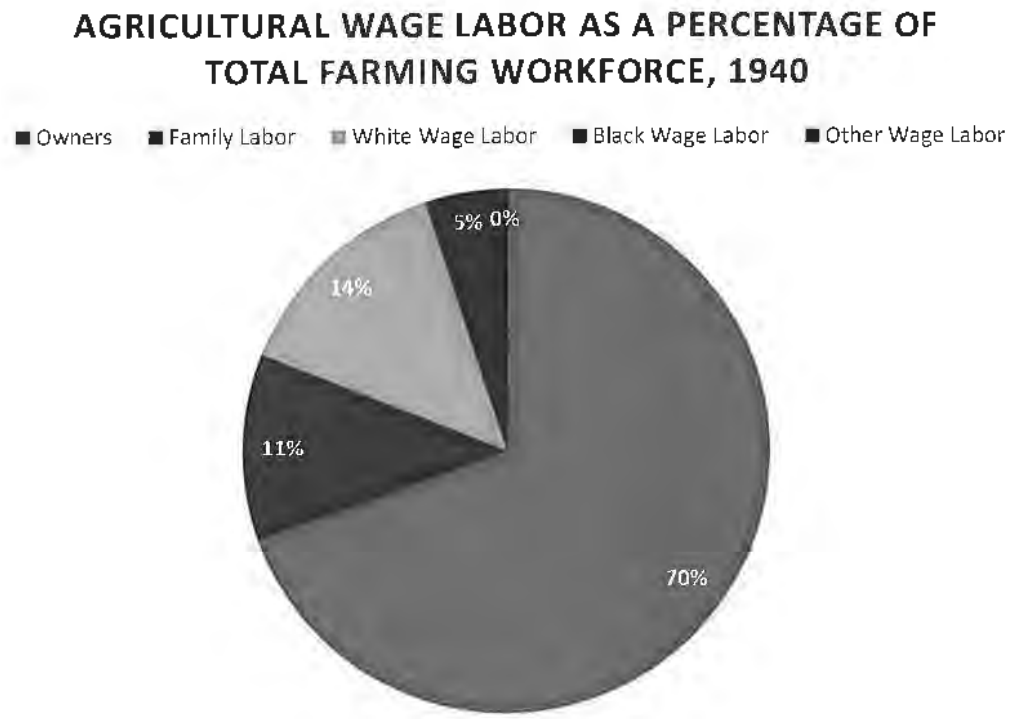

Chart 1—data from the 1940 census

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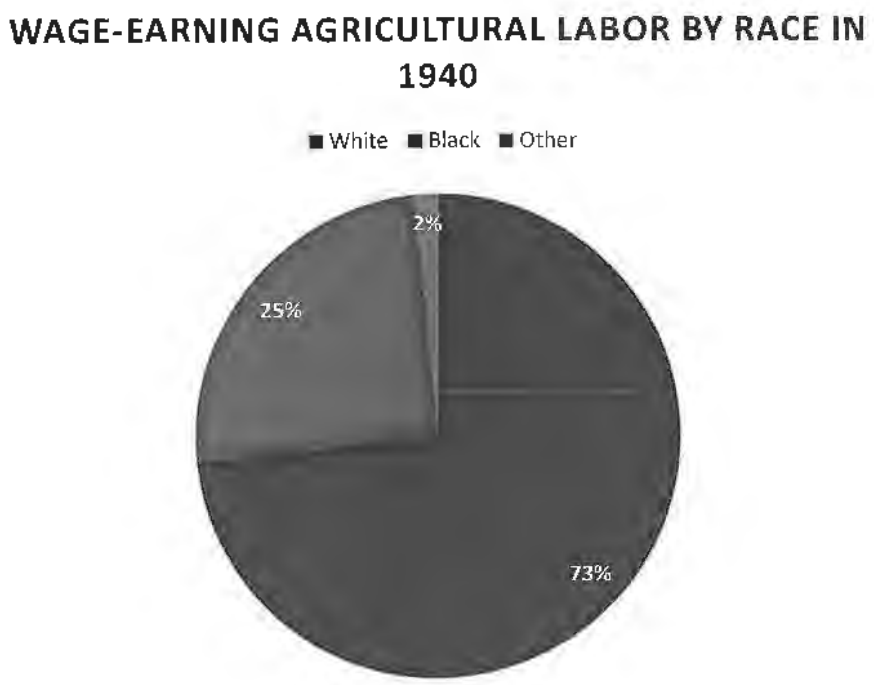

Chart 2—data from the 1940 census

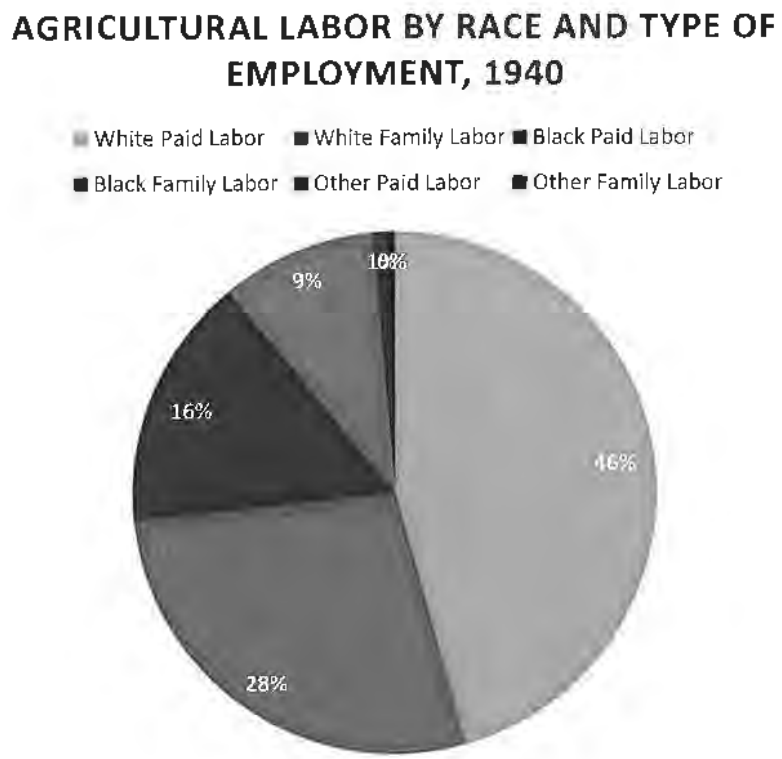

Chart 3—Data from the 1940 census

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13. Second, the exclusion of farm labor from the FLSA is readily explained by America's historical view of agricultural work as unique and special, the way agricultural workers were compensated, and political precedent.

14. The original FLSA never included agriculture as an occupation for consideration. This was based on a number of factors including the "agrarian myth," the way agricultural workers were compensated, the nature of agricultural work, and political precedent.

15. From the time of the Revolution and the founding of the United States, agriculture was considered a unique occupation that was vital to the wellbeing of the nation. Additionally, those who work the soil gained "moral, emotional, and spiritual benefits."[8] This "agrarian myth" continues to have powerful resonance in the United States and has impacted social attitudes and public policy for centuries. Part of its impact was the enduring belief that doing farm work built character and independence from healthy toil in nature. This meant that farmworkers were believed to gain vital intangible benefits from their employment.[9]

16. In August 1785, Thomas Jefferson wrote from Paris to John Jay about the importance of farmers to the new republic. He said, "cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independant [*sic*], the most virtuous, & they are tied to their country & wedded to it's [*sic*] liberty & interests by the most lasting bands."[10] Jefferson was not the only thinker to see farmers as essential to the political health of the nation. The political thinkers of the new nation explicitly contrasted themselves with Europe where most people owed their livelihood to a landlord or boss. This dependency made them corruptible and their political system fragile. In the United States, by contrast, 80 percent of male citizens at the end of the American Revolution owned and worked their own land.[11] This made

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[8]. David B. Danbom, "Romantic Agrarianism in Twentieth-Century America," *Agricultural History* 65:4 (Fall 1991): 1.

[9]. For more on the "agrarian myth" see, for example, Frederick Buttel and William L. Flinn, "Sources and Consequences of Agrarian Values in American Society," *Rural Sociology* 40 (Summer 1975): 134-51; Wayne C. Rohrer, "Agrarianism and the Social Organization of US Agriculture: The Concomitance of Stability and Change," *Rural Sociology* 35 (March 1970): 5-14.

[10]. Jefferson to Jay, August 23, 1785, in Julian Boyd, ed., *Papers of Thomas Jefferson: Vol. 8* (Princeton: Princeton University Press,1953), 426-28.

[11]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 68.

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them immune to outside influence, while their regular contact with nature increased their patriotism.[12]

17. The belief in the necessity of independent farmers played out in federal policy. From the beginning of the nation, the government acquired land to create more citizen-farmers -- from the Louisiana Purchase in 1803 to the Mexican-American War in 1848. Additional land was taken from Native Americans who were not, according to the understandings of the time, using the land appropriately—i.e. for farming.[13] The distribution of federal land was driven by two contradictory impulses: to fund the federal government and to create independent farmers. The latter impulse finally triumphed in 1862 with the Homestead Act that gave settlers 160 acres of land for free, provided they made agricultural improvements.[14]

18. Farmers were also understood to be morally superior to others. This belief, which dates back at least to ancient Rome, was founded in two main ideas.[15] First, that agriculture produces the most essential necessity for humans: food. Therefore, "agriculture is productive, manufacturing is sterile."[16] Second, that farmers worked in nature, which made them spiritually richer and morally superior. This faith in nature has underpinned much of American thought from the deism of Jefferson to the Humboldt school of art, from Henry David Thoreau and the transcendentalists to Gifford Pinchot and the founding of the National Park Service.[17] In the twentieth century, the belief in the power of contact with nature continued with the Southern Agrarians professing in 1931 that "the culture of the soil is the best and most sensitive of

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[12]. Anne B. W. Effland, "Agrarianism and Child Labor Policy for Agriculture," *Agricultural History* 79:3 (Summer 2005): 285.

[13]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 70. For attempts to make Native Americans farmers, see, for example, Angela Firkus, "Agricultural Extension and the Campaign to Assimilate the Native Americans of Wisconsin, 1914-1932," *Journal of the Gilded Age and Progressive Era* 9:4 (October 2010): 473-502.

[14]. For more detail on land policy, see, Benjamin Horace Hibbard, *A History of the Public Land Policies* (New York: MacMillan, 1924). David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 70-71.

[15]. Gordon S. Wood, *The Idea of America: Reflections on the Birth of the United States* (New York: Penguin Press, 2011), 71-72.

[16]. Charles A. Miller, *Jefferson and Nature: An Interpretation* (Baltimore: Johns Hopkins University Press, 1988), 205.

[17]. Charles A. Miller, *Jefferson and Nature: An Interpretation* (Baltimore: Johns Hopkins University Press, 1988), 92-93, 266-67; David B. Danbom, "Romantic Agrarianism in Twentieth-Century America," *Agricultural History* 65:4 (Fall 1991): 1-12.

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vocations," while President Franklin D. Roosevelt supported the creation of the Subsistence Homestead Program in 1933 that relocated the poor to rural planned communities.[18]

19. This attitude toward farm work has affected farm employment in other ways, as well. Many people working on farms are unpaid family members. Indeed, as late as 1950, 80 percent of labor on farms was provided by unpaid family members.[19] These workers gained experience and character from their work and, presumably, would eventually inherit the farm and move up the agricultural ladder. Actually, the concept of the agricultural ladder extended beyond the family. From the early days of the Republic, rural workers expected to climb the ladder from wage hand to tenant to owner and then reap the rewards of their industry. Consequently, the standard image of hired labor was of "the hired man who lives in the farmer's home and is treated as an equal."[20] While this image was incorrect in most of the country by the 1930s, it was still relatively true in the Midwest, where many of the agrarian liberals who shaped New Deal policies grew up.[21]

20. This belief in the moral benefits of farming had practical implications that were reflected in the FLSA and related legislation, and it still exists today. Child labor on farms has been viewed as beneficial to creating moral citizens. Indeed, during the late nineteenth and early twentieth century, urban orphans were indentured to farmers because "farmers, by virtue of their work, represented the best purveyors of American values and a good work ethic."[22] Thus, little attempt was made to regulate child labor in agriculture. When debates did surface, they focused on two concerns: that agricultural labor removed children from schools and that it could be dangerous. Thereafter, the main efforts of legislators focused on combining the benefits of agricultural work with education and safety, rather than restricting work on the farm. Indeed, the FLSA, while it set minimum ages—between 14 and 18--for children in other occupations, only

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[18]. David B. Danbom, "Romantic Agrarianism in Twentieth-Century America," *Agricultural History* 65:4 (Fall 1991): 5-6; "The Farm Security Administration and Subsistence Homesteads," http://xroads.virginia.edu/~ug99/lane/fsa.html.
[19]. Wilson Gee, *The Social Economics of Agriculture* (New York: Macmillan, 1954), 204.
[20]. Wilson Gee, *The Social Economics of Agriculture* (New York: Macmillan, 1954), 212.
[21]. Jess Gilbert, "Eastern Urban Liberals and Midwestern Agrarian Intellectuals: Two Group Portraits of Progressives in the New Deal Department of Agriculture," *Agricultural History* 74:2 (Spring 2000): 162-80.
[22]. Megan Birk, "Supply and Demand: The Mutual Dependency of Children's Institutions and the American Farmer," *Agricultural History* 86:1 (Winter 2012): 78-103.

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concerned itself with ensuring that child agricultural workers also attend school. In 1966 the FLSA was amended to prohibit children from "hazardous agricultural operations," but no age limit for child labor was introduced until 1974, when children under twelve were prohibited from farm work, except on their family farms where they could work at any age.[23]

21. In the United States in the 1930s, agricultural workers were compensated differently because of this ideology and because of the nature of their work. Studies in 1931 and 1945 showed that both casual and non-casual farm labor received many perquisites including lodging; food; use of tools and machinery; and garden space. The study of 1931 estimated that the wages for non-casual workers who received board were actually 179 percent higher than what they received in cash. The real wages for casual workers who received board were 141 percent higher.[24] Compensation for agriculture, therefore, was infinitely more convoluted than for factory work.

22. The different treatment of agricultural labor by wage and overtime laws was also affected and justified by the nature of agricultural work. Unlike other professions, the needed agricultural work could not be accomplished in a regular 8-hour day, 5 days a week, and it still can't. Fruit and vegetables rot, cows need to be milked, rain ruins harvests. The rhythm of farming is seasonal and not daily or weekly and, when work has to be done, it must be finished, or the crop will be ruined, the farmer forced off the land, and the nation starved. It is clear that the legislators writing the FLSA understood this well. Agriculture was exempt in the first iteration of the bill, however, later revisions specified "dairying, horticulture, forestry, truck gardening, the raising of livestock, bees and poultry" as excluded. Indeed, a later amendment added "Canning, packing, or packaging of fish, seafood, fruits, vegetables, and the processing of beets, cane and maple into sugar and syrup" for the same reason of timeliness.[25] These exclusions were carried forward by the Washington statute, for good reason.

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[23]. Anne B. W. Effland, "Agrarianism and Child Labor Policy for Agriculture," *Agricultural History* 79:3 (Summer 2005): 293-294; Gerald Mayer, "Child Labor in America: History, Policy, and Legislative Issues," CRS Report RL31501, November 2013; Gerald Mayer, et al., "The Fair Labor Standards Act (FLSA): An Overview," CRS Report R42713, June 2013.

[24]. J. C. Folsom, "Perquisites and Wages of Hired Farm Laborers," *Technical Bulletin # 213* (Washington, DC: USDA, 1931), pp. 1, 52-55; Barbara Reagan, *Perquisites Furnished Hired Farm Workers, United States and Major Regions, 1945* (Washington, DC: USDA, 1946), 62.

[25]. Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly,* 53:4 (Dec. 1938): 499, 504, 505.

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23 Finally, political precedent prevented the inclusion of agriculture in the FLSA. The precursor to the act was the National Industrial Recovery Act. This had created industrial boards that established wages and hours on a voluntary basis for each industry. Agriculture had not been included in this statute because it was not seen as an industry—as well as for the reasons listed above. Indeed, the federal government considered the problems confronting agriculture as more vital than those facing industry and addressed them earlier, second only to taking drastic action to stop the failing banks.[26] The main pillar of the federal agricultural program was the Agricultural Adjustment Act, passed on May 12, 1933. This bill aimed to stop overproduction, which was depressing prices, and help farmers simultaneously, by paying them to produce less. It was fairly successful in the first, but less so in the latter. Overproduction declined, but the vast majority of the payments went to large-scale farmers. Little federal money made it to the subsistence farmers of the Northeast or Appalachia.[27] However, the bill was designed to help sharecroppers and tenants as it instructed southern farmers to share the payments with their tenants. However, most southern farmers kept all the money they received and evicted their tenants, and the federal government was unable to stop this. Consequently, it instituted other policies that focused specifically on the rural poor: the Resettlement Administration and the Farm Security Administration. Thus, federal officials had not included agriculture in the NIRA—the precursor to the FLSA—because in their minds, agriculture was different, and they had and were addressing it through other legislation.[28]

24. Along with being politically vital and morally superior, farmers were and are rightly considered economically essential to the nation. Farmers produce food, and the cost of food determines most other costs. As Leonard Schoff wrote, "The relative cost of food production is the basic factor in the advance of civilization."[29] Therefore the federal government has consistently intervened: by acquiring land, controlling costs, or paying subsidies to ensure that farmers survive and can produce goods relatively cheaply for the American consumer.

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[26]. William Leuchtenburg, *Franklin D. Roosevelt and the New Deal* (New York: HarperCollins, 1963), 42-51.
[27]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 213.
[28]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 217-223.
[29]. Leonard Schoff, *A National Agricultural Policy for All the People of the United States* (New York: Harper and Brothers, 1950), 1.

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25. Farmers, unlike other producers, are extremely vulnerable to natural disasters. During the early twentieth century, the boll weevil moved across the American South destroying cotton crops and considerably reducing land values in the localities that it hit.[30] In the 1930s, the Dust Bowl decreased land values and forced people off the land in many Plains states.[31] Outside these major catastrophes, smaller natural disasters like too much rain or too little or a freeze before the harvest can drastically cut into a farmer's crop and, therefore, their profits and ability to stay operational. In 1987, the Washington State Commerce and Labor Committee held hearings on a proposal to extend the minimum wage, overtime, and unemployment insurance to agricultural workers. Duane Kaiser, a tree farmer, asserted that farmers could not afford any additional expenses, as their existence was tenuous enough. He testified that "A year ago that killer freeze came along, and I lost two years' crop. Where do I get my unemployment insurance?" Disasters such as these are often enough to force a farmer out of business.[32]

26. Farmers are also more economically vulnerable because their product is perishable. In the second half of the nineteenth century, farmers tried to organize to counter the middlemen who bought their produce. These middlemen set the prices, and, because the product needed to make it to market, the farmers had to accept the price offered. From the Grange to the Farmers' Alliance, farmers created a variety of cooperative ventures to try to remove the control of middlemen. They all failed from lack of capital and because if a crop did not make it to market, the farmer made no money at all. Ultimately, the farmers looked to the government for a solution.[33] The economic challenges faced by farmers continues. In 1987, Frank DeLong of the Washington State Horticultural Association testified that farmers had no way to pass on increased costs as they had no control over the market. He said, "Any increase in operating costs

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[30]. Fabian Lange, et al., "The Impact of the Boll Weevil, 1892-1932," *Journal of Economic History* 69:3 (September 2009): 685-718.

[31]. Richard Hornbeck, "The Enduring Impact of the American Dust Bowl: Short- and Long-Run Adjustments to Environmental Catastrophe: *American Economic Review* 102:4 (June 2012): 1477-1507.

[32]. Duane Kaiser, Testimony to Commerce and Labor Committee, Jan. 19, 1987, found in Washington State Digital Archives.

[33]. Wilson Gee, *The Social Economics of Agriculture* (New York: Macmillan, 1954), 86; David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 154-58.

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jeopardizes the viability of the farm." And farmers still look to the government for help in protecting their livelihood.[34]

27. Farmers, like other producers, have been vulnerable to world events. However, unlike most manufacturers, farm production is less flexible. So, during World War I and World War II the farm output expanded drastically to meet the needs of the conflicts. Equally, manufacturing output increased. After the war, factories retooled to make cars, washing machines, refrigerators, and other in demand consumer goods.[35] Farmers did not have this option. Their crop options were limited by geography. And they could not lower prices and expect more consumption. As David Danbom wrote, "Few people eat more sandwiches when the price of bread falls."[36]

28. Finally, farmers are susceptible to consumer preference. Starting in the 1950s, Americans started consuming less milk because of warnings about eating too much fat. This decline has continued, with competition first from soft drinks and then from plant-based milks.[37] As a result of such competition, which resulted in low prices for milk, thousands of dairy farms were forced to close. In 2012, *Hoard's Dairyman* reported that between 1992 and 2002, the United States lost 61 percent of its dairies.[38]

29. Given the importance of agriculture to the nation, it is unsurprising that it has received federal support from the beginning. Initially, the support was in the form of cheap or free land, which reduced the farmer's start-up costs considerably. As farming became more complicated and needed more inputs, federal aid changed. In the twentieth century, aid has largely been based on the concept of parity. The details of parity changed over the century, but the basic concept remained the same. Each farmer should receive from the sale of his crop the same purchasing power as she would have had during a pre-determined period of history when agriculture was doing well. The federal government would subsidize farm incomes to reach

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[34]. Frank DeLong, Testimony to Commerce and Labor Committee, Jan. 15, 1987, found in Washington State Digital Archives.
[35]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 188-89, 240-43.
[36]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 188.
[37]. Scheherazade Daneshkhu, "Dairy Shows Intolerance to Plant-Based Competitors," *Financial Times,* July 14, 2017.
[38]. "Fewer Dairy Farms Left the Business," *Hoard's Dairyman,* March 10, 2012.

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parity.[39] In addition to parity, farmers receive set-aside payments for not planting crops when surpluses are too big, disaster payments to mitigate crop loss due to weather or other catastrophes, and export subsidies whereby farmers receive a higher price for exported crops than they actually receive on the global market.[40]

30. Over time, these payments have been significant. Between 1934 and 1975, subsidies ranged from 1 percent of farm income to 37 percent in 1967.[41] Despite these subsidies, farmers were still vulnerable. In the late 1970s and early 1980s interest rate increases made US agricultural products expensive on the export market. The closing of the global market was exacerbated by President Carter's embargo on grain sales to the Russians in response to their invasion of Afghanistan, and then President Reagan cut taxes in 1981, which pushed up interest rates to the detriment of borrowers like farmers. The resulting farm crisis was the worst since the Great Depression with farm prices in 1986 reaching 51 percent of parity. Farmers mobilized with a 1979 tractorcade to Washington, D.C. And, in 1985, Reagan signed into law the biggest farm subsidy bill ever, that put 3 percent of the federal budget into farmers' pockets.[42]

31. Of course, the federal government could have ended subsidies to farmers at any point, forcing some farmers out of business and others to raise their prices considerably to cover their costs. However, consistently, the government has believed that a stable food supply that is of low cost to the consumer is of great benefit to the nation as a whole.[43] The legislative exemption of agricultural labor from overtime pay requirements is simply another reflection of this concern.

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[39]. Wilson Gee, *The Social Economics of Agriculture* (New York: Macmillan, 1954), 77-80.
[40]. Luther G. Tweeten, "Agricultural Policy: A Review of Legislation, Programs, and Policy," in *Food and Agricultural Policy* (Washington, DC: American Enterprise Institute for Public Policy Research, 1977), 29-42.
[41]. Luther G. Tweeten, "Agricultural Policy: A Review of Legislation, Programs, and Policy," in *Food and Agricultural Policy* (Washington, DC: American Enterprise Institute for Public Policy Research, 1977), 51.
[42]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 266-68; Eleanor Clift, "Reagan Signs History's Most Costly Farm Bill," *Los Angeles Times*, December 24, 1985.
[43]. Luther G. Tweeten, "Agricultural Policy: A Review of Legislation, Programs, and Policy," in *Food and Agricultural Policy* (Washington, DC: American Enterprise Institute for Public Policy Research, 1977), 56.

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32. Third, the exclusion of agriculture from the FLSA was not the result of a compromise with Southern Democrats intent on perpetuating discrimination against black farmworkers.

33. The FLSA was introduced after the Supreme Court ruled the National Industrial Recovery Act, which had created the National Recovery Administration or NRA, unconstitutional in 1935. President Roosevelt wanted another piece of legislation that set minimum wages and maximum hours and protected children from labor. The Black-Connery bill was submitted to Congress in May 1937 but was not passed until June 1938. The bill included a provision for overtime. This was mainly "to make it possible for more workers to be added to the pay roll."[44] The delay in its passage was the result of opposition from rural states, organized labor, Republicans, and Southern Democrats. As an example, in early 1938, twenty-eight representatives who had agreed to bring the bill to the floor, voted to recommit. Of these twenty-eight, "fifteen were Democrats from rural districts in the North and West, six were from the South, . . . and four were from New Jersey."[45] Rural congressmen generally were wary of the bill because they believed that higher wages in industry would tempt agricultural labor to the cities and thus worsen the situation in the countryside.[46] Organized labor objected to the bill because it contended that it would remove its power to bargain for higher wages, with maximum wages being established by the government as well as minimums. The bill was re-written to disallow maximums being established and, more importantly, to exclude all industries that were largely covered by collective bargaining, which effectively meant industries with highly skilled workers. The Republicans opposed the bill as another example of federal overreach, and, once other problems were solved, they were easily defeated.[47] Thus, opposition to the FLSA came from

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[44]. Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly,* 53:4 (Dec. 1938): 491.
[45]. Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly,* 53:4 (Dec. 1938): 511.
[46]. Joseph G. Rayback, *A History of American Labor* New York: Free Press, 1959), 359.
[47]. For a history of the FLSA, see, for example, Howard D. Samuel, "Troubled Passage: The Labor Movement and the Fair Labor Standards Act," *Monthly Labor Review* (Dec. 2000): 32-37; Jonathan Grossman, "Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage," Office of the Assistant Secretary for Administration and Management, US Department of Labor, at https://www.dol.gov/general/aboutdol/history/flsa1938; Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly,* 53:4 (Dec. 1938): 491-515.

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many quarters and for many reasons. There is no evidence to support that agricultural workers were excluded from the initial draft of the FLSA just to counter expected southern opposition.

34. Indeed, Southern Democrats opposed the bill as it was written, complete with the agricultural exemption, because it undermined their economic interests. Wages in the South were much lower than in the North. Over time this became more of a problem for northerners as organized labor pushed wages up in the North, making northern businessmen fear that the South would rob them of their business.[48] Southerners countered the North's argument for a standard wage by saying that they paid less because southern living costs were less, their workforce was less experienced, and they had to pay much higher freight rates to get their goods to market.[49] Indeed, southerners saw the bill as "an attempt to destroy the cost advantage of southern manufacturers over northeastern factories."[50] They wanted a continuation of the regional differentials that had existed under the NRA.[51] Undoubtedly, some of the arguments that southern congressmen made were blatantly racist. For example, Martin Dies of Texas asserted that, "you cannot prescribe the same wages for the black man as for the white man."[52] Juan Perea uses this quotatiou and others as evidence that agricultural labor was excluded from the act to ensure the support of these racist congressmen.[53] However, the congressmen, many of whom finally voted for the bill, were referring to black workers in industry. The majority of these black workers finally received benefits under the law, equal to their white co-workers, so the southern strategy to preserve racially distinct wages failed. These racist congressmen were not concerned about the status of agricultural labor because the system of debt peonage in the South ensured that the majority of black agricultural workers would remain subordinate and oppressed regardless of the introduction of a minimum wage because they did not receive wages.

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[48]. Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986), 219-22.
[49]. Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly,* 53:4 (Dec. 1938): 502.
[50] Michael Hiltzik, *The New Deal: A Modern History* (New York: Free Press, 2011), 395.
[51] Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986), 217-18.
[52]. John Braeman et al., eds., *The New Deal: The National Level* (Columbus: Ohio State University Press, 1975), 253.
[53]. Juan F. Perea, "The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act," *Ohio State Law Journal* 72:1 (2011): 114-115.

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35. However, southern opposition was neither solely racist nor universal. All southern manufacturers were opposed to the change but not all southern industries employed blacks. The workers in southern textile factories, for example, who were clearly exploited and underpaid, were largely white.[54] As Gavin Wright said, "segregation followed industry lines rather than geography."[55] Thus, some industries, like lumber and iron and steel manufacture, employed largely black workers, while others, like textiles, employed whites almost exclusively. However, nearly all southern industrialists opposed the bill.

36. Not all southerners, however, were against the legislation. A slim majority of southern voters supported a minimum wage. Just before the passage of the act, two progressive southern congressmen were victorious in primaries—Claude Pepper in Florida and Lister Hill of Alabama. The clear indication of southern support encouraged Congress to try and resolve its differences, and the bill was passed into law.[56]

37. The final bill incorporated a sliding scale for several years to enable industries to reach the 40-cent minimum wage over a period of up to seven years.[57] It excluded many other industries in addition to agriculture: those covered completely by collective bargaining; government work; professional work; industries where workers could not physically leave work every eight hours, such as transportation, fishing, and aviation; other industries where time was essential, such as canning and food processing; "cutting or planting of timber on the farm itself"—presumably because oversight for that was in the US Department of Agriculture; local employment; and the retail trades, as well as agriculture.[58] None of these other excluded industries, with the exception of lumber in the South, employed significant numbers of black workers. Therefore, like agriculture, the exemption of these industries was based on the nature of

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[54]. Jaqueline Dowd Hall et al., *Like A Family: The Making of a Southern Cotton Mill World* (Chapel Hill: University of North Carolina Press, 1987), 66-67, 366;
[55]. Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986), 178.
[56]. William Leuchtenburg, *Franklin D. Roosevelt and the New Deal* (New York: HarperCollins, 2009), 262; Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986), 223.
[57]. James T. Patterson, *Congressional Conservatism and the New Deal: The Growth of the Conservative Coalition in Congress, 1933-1939* (Lexington: University of Kentucky Press, 1967), 242-46.
[58]. Paul Douglas and Joseph Hackman, "the Fair Labor Standards Act of 1938 II," *Political Science Quarterly* 54:1 (March 1939): 29-30.

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the work, not the race of the workers. Additionally, the FLSA brought significant benefits in industries that had sizeable numbers of black workers in the South, such as the steel and iron industry. Overall, the FLSA in 1938 only reached 20 percent of the American workforce, and most of the excluded workers were white.[59]

38. Ultimately, the exclusion of agriculture from the minimum wage and overtime provisions of the FLSA of 1938 reflected the understanding of most congressmen and New Deal bureaucrats that farming was a vital occupation, subject to unique economic challenges, that merited federal aid. The racism of southern congressmen played no part in this exclusion as most southern agricultural labor did not receive wages.

Material Fact No. 3: The Washington Minimum Wage Act's overtime provision, RCW 49.46.130, did not "incorporate" any "racially discriminatory motivation" from the FLSA and does not "perpetuate the vestiges of Jim Crow laws" allegedly "grafted onto the FLSA." [60]

Supporting Evidence and Information:

39. As discussed above, the FLSA's exclusion of farm labor was not racially motivated or infected by a racist compromise with Southern Democrats. Thus, the Washington Minimum Wage Act could not "perpetuate" any such racist policy.

40. The government of Washington State, like the federal government, viewed agriculture as a unique and vital occupation, and one in need of protection. In 1933, the Washington State Supreme Court, in State ex rel Stiner v. Yelle, stated that "Farming is not a commercial pursuit. It is not a business. . . . By common consent, farming is classed as a way of life."[61] The court also addressed the problems faced by the farmer in terms of controlling costs, asserting that, "the farmer cannot pass the tax on to the ultimate consumer, while all those later dealing with his products, . . . may and probably will very largely do so."[62] The attitudes toward

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[59]. Jonathan Grossman, "Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage," Office of the Assistant Secretary for Administration and Management, US Department of Labor, at https://www.dol.gov/general/aboutdol/history/flsa1938; Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly,* 53:4 (Dec. 1938): 491-515.

[60] First Amended Complaint ("FAC"), ¶ 6, p. 3 lines 7-9.

[61]. 174 Wash. 402, *408; 25 P.2d 91, **93; 1933 Wash. LEXIS 857, ***11.

[62]. 174 Wash. 402, *408; 25 P.2d 91, **93; 1933 Wash. LEXIS 857, ***11.

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farming reflected in this case mirror the sentiments explained above—that agriculture is not an industry but an occupation vital to the wellbeing of the entire nation.

41. The facts also belie any suggestion that the State's exemption of agricultural labor from the overtime requirement of RCW 49.46.130(1) was racially motivated against Latino farm workers. Contrary to plaintiffs' allegation, agricultural work was **not** "performed predominantly . . . by Latino workers at the time the Washington Legislature enacted RCW 49.46.130."[63]

42. The Census of 1960, which reflected the situation in the United States at the passage of RCW 49.46.130, records 4,083,698 people who made their living from agriculture. This includes owners, tenants, wage labor, and unpaid family labor. Over 85 percent of these people were white. So, nationally, agricultural work was **not** "performed . . . predominantly by Latino workers" at the time the statute was enacted.[64]

43. The 1960 census recorded 1,555,873 farm laborers in the United States. Of these, 1,240,510 people would have benefited from a law such as RCW 49.46.130 as they were paid a wage for their work. The others were unpaid familial laborers and foremen who usually received a salary and who were almost exclusively white. Of the wage earners, 320,753 (26 percent of the total) were black, 33,834 were "other races", and 885,923 were white.[65] Therefore, of the 4,083,698 people who made a living from agriculture in 1960, less than 9 percent were non-white wage laborers (See Chart 4). Additionally, non-white labor made up only 29 percent of all of the people who did agricultural wage work (See Chart 5). Finally, when considering wage workers **and** the unpaid family labor that might have benefited from an increase in the wages of the head of household, non-whites still only comprised less than 26 percent of the total (See Chart 6). Thus, if agriculture had been included as a category by amendment in the FLSA in 1960 it would have still overwhelmingly benefited white workers.

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[63]. FAC ¶ 102.

[64]. Bureau of the Census, *Eighteenth Census of the United States: 1960. Population, Occupational Characteristics: Data on Age, Race, Education, Work Experience, Income, Etc., for the Workers in Each Occupation* (Washington, DC: GPO, 1963), Table 3, pps. 21-30.

[65]. Bureau of the Census, *Eighteenth Census of the United States: 1960. Population, Occupational Characteristics: Data on Age, Race, Education, Work Experience, Income, Etc., for the Workers in Each Occupation* (Washington, DC: GPO, 1963), Table 3, pps. 21-30.

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Chart 4—Data from the 1960 Census

Chart 5--Data from the 1960 Census

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Chart 6—Data from 1960 Census

44. In Washington State, according to the 1960 census there were 56,467 people who made their living from agriculture. Of these, 54,553, or 97 percent, were white. The census records 26,697 farm laborers, of whom 96 percent were white. It should also be noted that the categories on the census were "white" and "nonwhite." Nonwhite in Washington State would have included a significant number of Asian farmers as well as Native Americans. Therefore, the small percentage of nonwhite agriculturalists would not have been uniformly Latinos.[66]

45. The 1970 census, which is further removed from 1959, did count Latinos. According to it, Washington State had 41,229 people earning a living from agriculture in 1970, of whom 32,451 (or 79 percent) were white, 211 (or 0.005 percent) were black, and 8,567 (21 percent) were Latino.[67] According to James N. Gregory, Hispanics did not predominate in the

[66]. Bureau of the Census, *Eighteenth Census of the United States: 1960. Census of Population: 1960-VI-Part 49 Characteristics of Population: Washington* (Washington, DC: GPO, 1963), Table 58, p. 109.

[67]. Bureau of the Census, *Nineteenth Census of the United States: 1970. Census of Population: 1970-VI-Part 49 Characteristics of Population: Washington* (Washington, DC: GPO, 1973), Table 171, p. 494-95.

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agricultural workforce of Washington State until 2000, when they represented 59 percent.[68] And according to Maria Quintana and Oscar Rosales Casatñeda, "Until the late twentieth century, the majority of agricultural workers in Washington State were white, native-born, mostly single men under the age of 40."[69]

46. Therefore, of the 41,229 people who made a living from agriculture in Washington State in 1970, less than 22 percent were non-white wage laborers (See Chart 7). Additionally, non-white labor made up less than 22 percent of all of the people who did agricultural wage work (See Chart 8). These charts both indicate a whiter agricultural labor force than that seen nationally a decade before. Finally, when considering wage workers **and** the unpaid family labor that might have benefited from an increase in wages of the head of household, non-whites still only comprised less than 26 percent of the total (See Chart 9), which is similar to the numbers nationally a decade before. However, the conclusion remains constant: if agriculture had been included as a category in the RCW 49.46.130 it would have overwhelmingly benefited white workers even more than a decade after its passage.

[68]. James N. Gregory, "Toward a History of Farm Workers in Washington State," Seattle Civil Rights and Labor History Project, http://depts.washington.edu/civilr/farmwk_ch1.htm.
[69]. Maria Quintana and Oscar Rosales Castañeda, "Asians and Latinos Enter the Fields," Seattle Civil Rights and Labor History Project, http://depts.washington.edu/civilr/farmwk_ch4.htm.

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Chart 7—Data from the 1970 Census

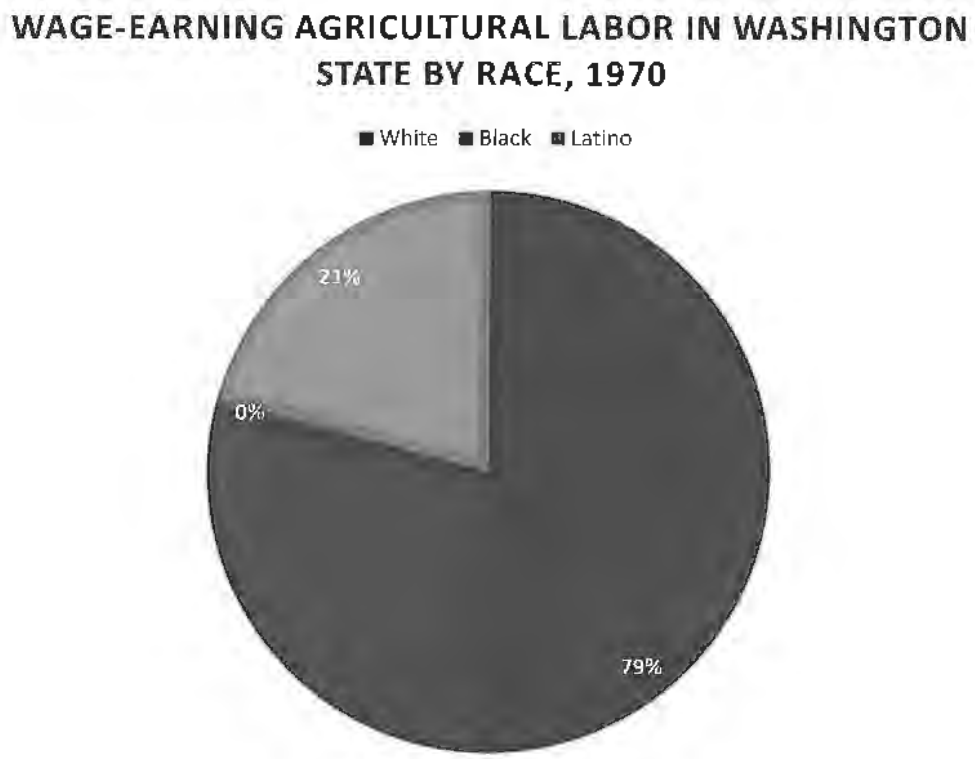

Chart 8--Data from the 1970 Census

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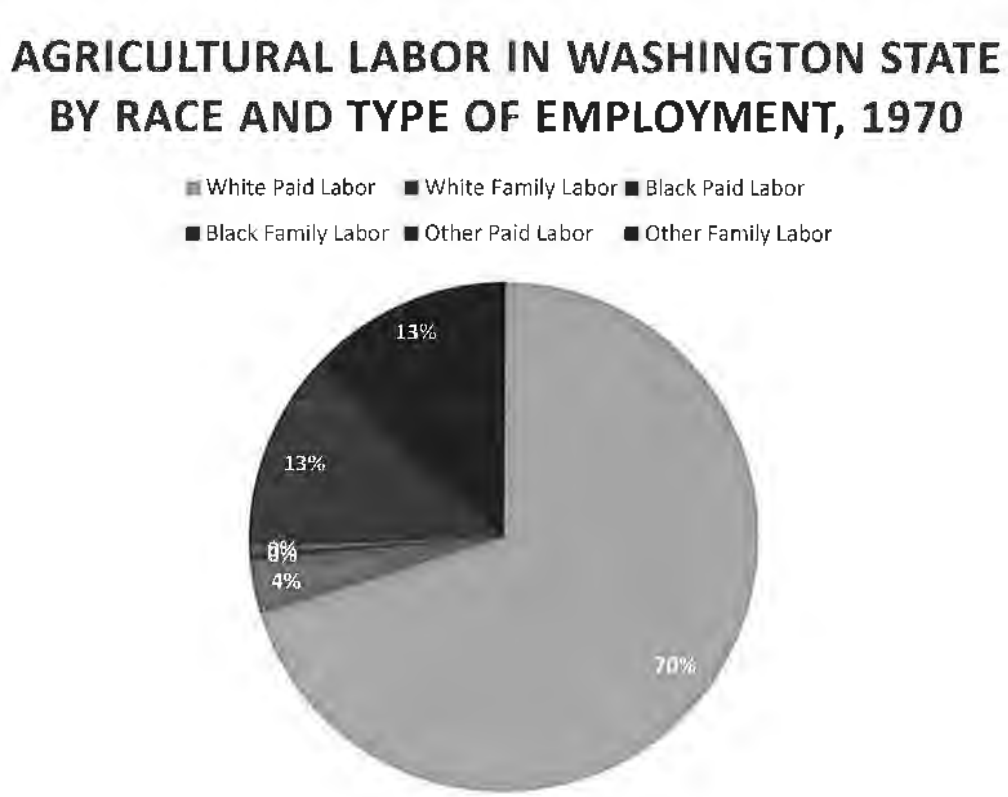

Chart 9—Data from the 1970 Census

47. Of course, it is clear that the census undercounts various groups. Migrant workers are rarely represented fully in the census. Trying to estimate the number of Hispanic migrants that might have been working at some point during the year in the fields of Washington State is hard. In 1952, the state contracted for 1,961 Braceros—or legal, temporary workers from Mexico.[70] Some of these would have worked in the forests or on the railways. Additionally, this number would have been augmented by non-legal migrant workers and that number is hard to estimate. But, even if the number of migrant worker Latinos in the state was tripled, which is suggested by Richard Craig, to 5,883 and then added to the extant statistics for 1960, Latinos would only have represented 36 percent of the agricultural wage labor force and 31 percent of people earning their living from agriculture.[71]

[70]. Ronald Mize and Alicia Swords, *Consuming Mexican Labor: From the Bracero Program to NAFTA* (Toronto: University of Toronto Press, 2011), 5.
[71]. Richard B. Craig, *The Bracero Program: Interest Groups and Foreign Policy* (Austin: University of Texas Press, 1971), 63.

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48. In 2016 the Census Bureau conducted community surveys across the country. The results show that the overwhelming number of farmworkers in Washington State and in Yakima County are Latino. In the state, Latinos represent 73 percent of the people working in "Farming, Fishing, and Forestry Occupations." In Yakima County Latinos represent 92 percent of people working in "Farming, Fishing, and Forestry Occupations." However, both in the state and in the county, agriculture does not employ the majority of Latinos. So, in Washington State, only 12 percent of Latinos are employed in "Farming, Fishing, and Forestry Occupations." The number is larger in Yakima County at 26 percent. Therefore, the majority of Latinos are working in professions that are covered by overtime regulations, once again, suggesting that the exclusion of agriculture from the revision to Washington State Act in 1989 was not motivated by racism or racial animus.[72] Indeed, according Gregory, Hispanics did not predominate in the agricultural workforce of Washington State until 2000, when they represented 59 percent.[73] So, in 1989 when minimum wage requirements were applied to agriculture, the decision to leave the overtime exemption for agricultural employees in the statute was clearly not based upon any intent to discriminate against Latino farm employees.

49. In summation, the assertion that Washington's Minimum Wage Act perpetuated a racial animus that was embedded in the FLSA is false. If agricultural workers had been included in the FLSA, the beneficiaries would have overwhelmingly been white workers, even in the South. Southern opposition to the bill was not universal and was based in concerns about increased industrial, not agricultural, costs. Similarly, white workers would have been the majority of beneficiaries if agricultural workers had been included in Washington's Minimum Wage Act in 1959.

50. It is clear that agricultural workers were exempted from the hours and overtime provisions of the FLSA because of the complex nature of agricultural work, the agrarian myth,

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[72]. See, Bureau of the Census, "Occupation by Sex for the Civilian Employed Population 16 Years and Over," #S2401, 2016 American Community Survey, 1-Year Estimate; Bureau of the Census, "Occupation by Sex for the Civilian Employed Population 16 Years and Over (White Alone, Not Hispanic or Latino)," #B24010H, 2016 American Community Survey, 1-Year Estimate; Bureau of the Census, "Occupation by Sex for the Civilian Employed Population 16 Years and Over (Hispanic or Latino)," #B24010I, 2016 American Community Survey, 1-Year Estimate. All at https://www.factfinder.census.gov/faces/nav/jsf/pages/index.xhtml.

[73]. James N. Gregory, "Toward a History of Farm Workers in Washington State," Seattle Civil Rights and Labor History Project, http://depts.washington.edu/civilr/farmwk_ch1.htm.

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and because the problems facing agriculture had already been addressed by previous New Deal legislation. Throughout American history, agriculture has been seen as a vocation not an industry. The twin ideals that farming is good for the farmer and vital for the nation have underpinned most federal and state agricultural legislation. The Fair Labor Standards Act and the Minimum Wage Law are perfect examples of this.

Further your Declarant sayeth naught.

Dated this 2 day of April, 2018

Claire Strom

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CERTIFICATE OF SERVICE

I certify that I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of eighteen, and I am competent to be a witness herein.

On this 5th day of April, 2018, I caused the foregoing document to be served on the parties as indicated below.

Lori Jordan Isley Joachim Morrison Columbia Legal Services 6 South Second Street, Suite 600 Yakima, WA 98901 *Counsel for Plaintiff*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail [ ] Via U.S. Mail, postage prepaid
Marc Cote Frank Freed Subit & Thomas LLP 705 Second Avenue, Suite 1200 Seattle, WA 98104-1798 *Counsel for Plaintiff*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail [ ] Via U.S. Mail, postage prepaid

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Pam McCain

Pam McCain

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EXHIBIT 21

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER BROTHERS DAIRY, INC., Defendant. WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenor-Defendant-Applicants	No. 16-2-03417-39 DECLARATION OF TIMOTHY J. O'CONNELL

I, Timothy J. O'Connell declare and state as follows:

1. I am one of the attorneys of record for Washington State Dairy Federation ("WSDF") and Washington Farm Bureau ("WFB," collectively "Intervenors") in this case. I am over the age of 18 and make this declaration based on my own personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of a publication of the Washington State Department of Agriculture entitled "Washington Agriculture Snapshot." In relevant part, it states that "95% of Washington farms are family farms."

STOEL RIVES LLP
ATTORNEYS
201 S Main Street, Suite 1100, Salt Lake City, UT 84111
Telephone 801.328.3131

3. Attached hereto as Exhibit B is a true and correct copy of another publication from the Washington State Department of Agriculture. In relevant part, it states that "94% of Washington's farms are small farms -- selling less than $250,000 per year."

4. Attached hereto as Exhibit C is an article written by Professor James Gregory of the History Department of the University of Washington as part of the Seattle Civil Rights and Labor History Project entitled "Toward a History of Farm Workers in Washington State," available at http://depts.washington.edu/civilr/farmwk_ch1.htm (last visited April 5, 2018). In relevant part, it indicates at Page 2, Table 2, that the racial composition of Washington farmworkers was:

Year	White	Hispanic
1950	87%	6%
1960	85%	10%
1970	88%	8%
1980	71%	24%
1990	51%	43%

Signed at Seattle, Washington this 5th day of April, 2018

Timothy J. O'Connell, WSBA No. 15372

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Telephone 801.328.3131

CERTIFICATE OF SERVICE

I certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of 18 years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, Washington 98101.

On April 5, 2018, I caused a true and correct copy of the foregoing document to be served upon the following parties in the manner indicated below:

Lori Jordan Isley Jerri K. Katzerman Diana Lopez Batista Joachim Morrison Columbia Legal Services 6 South Second Street, Suite 600 Yakima, WA 98901 Tel: (509) 575-5593 Fax: (509) 575-4404 Email: lori.isley@columbialegal.org Email: jerri.katzerman@columbialegal.org Email: diana.lopez@columbialegal.org Email: joe.morrison@columbialegal.org *Attorney for Plaintiffs*	☐ hand delivery ☐ facsimile transmission ☐ overnight delivery ☐ regular US Mail ☒ e-mail delivery - by agreement of parties
Marc Cote Frank Freed Subit & Thomas LLP 705 2nd Avenue, Suite 1200 Seattle, WA 98104-1798 Tel: (206) 682-6711 Fax: (206) 682-0401 Email: mcote@frankfreed.com *Attorney for Plaintiffs*	☐ hand delivery ☐ facsimile transmission ☐ overnight delivery ☐ regular US Mail ☒ e-mail delivery - by agreement of parties

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☐ hand delivery
☐ facsimile transmission
☐ overnight delivery
☐ regular US Mail
☒ e-mail delivery - by agreement of parties

DATED at Seattle, Washington, this 5th day of April, 2018.

Debbie Dern, Legal Practice Assistant

Washington State Department of Agriculture

WASHINGTON AGRICULTURE SNAPSHOT

Agriculture and food processing provide over **164,000** jobs in Washington

35,500+ farms (2016)

800 organic farms (2016)

63% of farms are less than 50 acres

OVER 7,500 female farmers

Food processing generated more than **$20.1 billion** in revenues (2016 WA Dept. of Revenue)

94% of Washington's farms are small farms – selling less than $250,000 per year...

and small farms are **65%** of Washington's total farmland, far higher than the national average of **45%**. (2016)

Washington farmers produce over 300 different commodities.

Apples are not only Washington's top crop, they represent **20%** of the total value of ag production in the state.

There are farmers markets in towns.

King County alone has over 40.

In 2016, Washington agriculture production alone topped

$10.6 billion

95% of Washington farms are family farms

More than of Washington's farmers farm part time in addition to another job.

Top 10 Commodities in Washington*

1 APPLES $2.389 billion	2 MILK $1.097 billion	3 POTATOES $913 million	4 CATTLE $704 million	5 WHEAT $656 million
6 CHERRIES $502 million	7 HAY $476 million	8 HOPS $382 million	9 GRAPES $359 million	10 PEARS $233 million

94% of Washington's farms are small farms – selling less than $250,000 per year...

... and small farms are **65%** of Washington's total farmland, far higher than the national average of **45%**

In 2016, Washington agriculture production alone topped

$10.6 billion

Ship loading wheat on the Columbia River

Apples are not only Washington's top crop, they represent

20%

of the total value of ag production in the state.

#1

producer of AQUACULTURE in the country

Food processing generated more than

$20.1 billion

in revenues

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Exhibit B, Page 1 of 2

Washington State Department of Agriculture

WASHINGTON AGRICULTURE A GLOBAL IMPACT

Top Trading Partners

	TOP IMPORTS:
CANADA - $1.3B	Apples, Seafood, Vegetables,
JAPAN - $1.2B	Wheat, French Fries, Hay
CHINA - $611M	French Fries, Seafood, Hay
PHILIPPINES - $564M	Wheat, French Fries, Dairy
SOUTH KOREA - $432M	Wheat, Hay, French Fries

10.6 billion
Market value of crops and livestock

300+
Number of crops grown in Washington

2.4 billion
Dollar value of apples - state's top crop

6.8 billion
Value of food and ag products exported overseas

Top 10 Commodities in Washington

1 APPLES $2.389 billion	2 MILK $1.097 billion	3 POTATOES $813 million	4 CATTLE $704 million	5 WHEAT $656 million
6 CHERRIES $502 million	7 HAY $478 million	8 HOPS $382 million	9 GRAPES $359 million	10 PEARS $233 million

35,900
Farms
95% family owned

160,000
People employed in ag and food industry

Top Export Products

	TOP MARKETS:
FISH & SEAFOOD - $1.1B	Canada, Japan, China
FROZEN FRENCH FRIES - $782M	Japan, China, South Korea
FRESH APPLES - $718M	Canada, Mexico, Taiwan
WHEAT - $673M	Japan, Philippines, South Korea
HAY - $454M	Japan, South Korea, China

Source: USDA National Agricultural Statistics Service, USDA

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Exhibit B, Page 2 of 2

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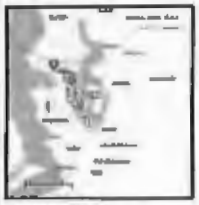

Segregation Maps

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Farm Workers in Washington State History Project

Chapter 1

Toward a History of Farm Workers in Washington State

[Home] [History] [Timeline] [Oral Histories] [Photos] [News Coverage] [Maps]

by James N. Gregory

Commercial agriculture has been one of the engines of Washington's economy since white Americans conquered the region and seized most of the land from the original residents in the 1850s. Along with logging and fishing, farming produced most of the wealth and jobs that drew people to the Pacific Northwest during its first century as part of the United States. Since World War II, rapid industrial growth has changed the focus of economic growth, but agriculture remains critically important today, contributing more than $6 billion dollars each year to the state economy.

The work of agriculture—plowing, planting, tending, harvesting, processing, and shipping—has always depended upon two types of workers: operators and their families and farm workers who work for wages. Today some 30,000 farm operators depend upon more than 120,000 farm workers, some of whom work year round, but at least half move from employer to employer, and find work mostly in the peak season from June through October. Washington ranks sixth in the nation in the size of its farm labor force.[1]

Hired farm workers have faced special challenges throughout the state's history. The work is often uniquely hard and the employment conditions often uniquely exploitative. Low wages, short terms of employment that dictate a migratory life style, inadequate housing and poor sanitation—these have been common conditions since the mid 19th century. Resistance to these conditions has also been common. Long before the United Farm Workers established the first permanent farm labor union in Washington State, farm workers had been organizing, protesting, and sometimes striking to improve their circumstances.

This ten part essay represents the first attempt to write an historical overview of farm workers and their activism in Washington State. There are many books on the subject of California farm workers and some important studies in other states. For Washington there are a couple of books and hopefully there will soon be more. See bibliographic essay

Farms push east

White men and Native families were the first farm workers to earn wages in Washington territory. In the 1850s and 1860s, members of many of the Puget Sound tribes worked seasonally for white employers on farms as well as in sawmills, joining single white men in the backbreaking work of clearing land or harvesting crops. Hops became the region's first major cash crop in the 1870s and 1880s, and native peoples provided an important part of the harvest labor force. "Farmers recruited Indians by the hundreds for the brief fall harvest," writes historian Alexandra Harmon. "Puyallup Valley hop ranchers expected fifteen hundred Indians to answer their call for help in 1876." [2] While European-Americans were the most common farm laborers, Chinese men sometimes joined this early labor force, working both in hops and on farms that grew fruits and vegetables in Western Washington.

(Click images to enlarge)

The Logars at their farm ranch in Landsburg, Washington, near Maple Valley ca. 1925. Maple Valley Historical Society Museum.

Puget Sound Area Hop Pickers Pose with Baskets, Washington, ca. 1893. University of Washington, Special Collections.

In ten chapters this report examines the history of farm workers in Washington State:

1. Towards a History of Farm Workers in Washington State
2. The IWW in the Fields,1905-1925
3. The 1933 Battle at Congdon Orchards
4. Asians and Latinos Enter the Fields
5. Mexican-American Struggles to Organize, Post-WWII
6. *El Movimiento* and Farm Labor Organizing in the 1960s
7. UFW's Yakima Hop Strikes, 1971
8. Radio KDNA: The Voice of the Farm Worker
9. Resurgence of the UFW of WA State in the 1980s
10. The Struggle Continues, 1997-2006
11. Bibliography

Large scale agriculture crossed the Cascades after the Northern Pacific Railroad connected Washington to rest of the United States in 1886. The railroad promoted Washington as a farmer's paradise and sold off massive tracts of land in central and eastern Washington that had been granted by the federal government. The Columbia Plateau proved perfect for winter wheat, and starting in the 1890s big farming operations spread across eastern Washington and eastern Oregon. These farms required a large labor force to handle the teams of horses and the heavy equipment for plowing and harrowing the fields. More men were required at harvest time, to follow the horse-drawn reaping machines and bag and haul the grain. Every fall from the 1890s through the 1930s when some of the work became mechanized, tens of thousands of men would tramp the migratory wheat circuit of Washington, Oregon, and Idaho.[3]

Farmers and investors developed central Washington's Yakima, Wenatchee, and Okanogan Valleys with the help of the irrigation projects built by the US Reclamation Service after 1902. Within a decade central Washington had become one of the most productive fruit and vegetable regions and the apple capital of the United States. Historian Erasmo Gamboa describes the region as a "cornucopia" and notes that by 1929, Yakima County ranked sixth in the nation in the value of its farm crops.[4] A seasonal farm labor force made this possible, consisting of some year-round workers and an army of workers during harvest seasons. "Yakima Valley agriculture needed 33,000 hired workers at the peak of the 1935 harvest," writes Gamboa, but during the winter months, "500 workers were sufficient."[5] Initially, local whites and indigenous Yakima natives made up the agricultural workforce, but seasonal workers were drawn from across the Cascades and from many other states. Ever since the 1920s, the Yakima Valley has proved to be an important gateway for newcomers to Washington State, many of whom have found their first jobs in that valley's fields.

Since the 1940s, farming and farm work have become less important to the economy of western Washington, while remaining critical to eastern and especially central Washington. These days more than half of the state's farm labor jobs are concentrated in Yakima and other central Washington counties, both in winter slack season and the summer harvest season when employment doubles.[6]

Changing composition of farm labor force

Some famous people have worked in Washington's fields, along with many more that did not become famous. As a young man in the 1910s, later-to-be Supreme Court Justice William O. Douglas joined the harvest tramps working the wheat fields of eastern Washington. Before she became the "Queen of Nashville," Loretta Lynn and her husband made a living throughout the 1950s working on farms near Lynden, Washington. Carlos Bulosan, the Filipino writer; Bernie Whitebear, who led United Indians of All Tribes and launched the Daybreak Star Cultural Center; Federal District Justice Ricardo Martinez and many other prominent Latinos in Washington started in the fields of Yakima and other rural counties.[7]

These names suggest the varied origins of Washington's farm workers. Over the generations, many different peoples have contributed to this work. Poorly paid, backbreaking, and low in status, farm work has usually drawn those with few options, including some of Washington's oldest residents (tribal people) and its newest. Immigrants from Europe, Asia, and Latin America have been at various times disproportionately represented, as have been white Americans from rural and disadvantaged parts of the country. The mix is in some ways surprising. Unlike California, where workers of color and especially Mexican-origin farm workers have been a continuous and growing farm presence, until late in the 20th Century nonHispanic whites dominated the labor force in Washington.

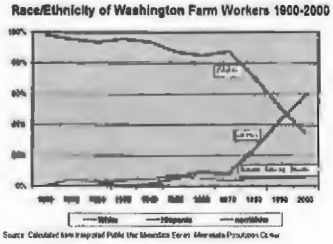
Using newly available data from the federal census, we can get a clearer sense of the changing profile of farm workers in Washington State. To the right are several charts and tables. Here is some of what we learn from them:

- Farm workers have been mostly men. Women early in the century worked short stretches in the fields. Since 1960 more women identify themselves as farm workers but it is still a more masculine occupation than

Sunnyside Canal. U.S. Reclamation Service, Yakima Project, irrigating 120,000 acres in the Lower Yakima Valley ca. 1927. University of Washington Libraries. Special Collections.

Group of farm workers preparing goods for market, 1896. University of Washington Libraries. Special Collections.

Changing Profile of Farm Workers



	Total farm workers	% male	% married spouse present
1900	16,760	99%	13%
1910	27,990	97%	21%
1920	27,454	98%	28%
1930	35,451	97%	30%
1940	28,821	100%	34%
1950	27,386	90%	46%
1960	53,904	68%	45%
1970	55,300	67%	37%
1980	42,700	64%	47%
1990	44,766	65%	46%
2000	58,115	63%	51%

	White	Hispanic	Native	Asian
1900	99%	1%	1%	0%
1910	96%		1%	3%
1920	94%	3%	0%	3%
1930	96%	0%	0%	3%
1940	94%	1%	2%	3%
1950	87%	6%	4%	3%
1960	85%	10%	3%	2%
1970	88%	8%	2%	1%
1980	71%	24%	2%	2%
1990	51%	43%	3%	3%
2000	35%	59%	3%	2%

most. 63% of those tallied in the last census were men.

- Farm workers have been younger and more likely to be single or not living with a spouse than other occupations. 44% of workers in 1960 were under the age of 25; 29% in the year 2000. That is one of the reasons that marriage rates were low, but the uncertain lifestyle is a bigger factor. In 1920 only 28% of farm workers were married, about half the rate of other occupations. In 1970, it was still only 37%, but has come up since then as the labor force has become more Hispanic. 51% said they were married in 2000.

- Most farm workers were nonHispanic whites until the 1980s. As late as 1970, whites accounted for 87 percent of those identified as farm workers in the census tally. Workers of color were undercounted in this and other years, because the tallies were taken in the spring, not the peak summer season, and thus missed large numbers of temporary and migratory workers.

- Workers of color have at all points been disproportionately represented in the fields even if their numbers were small and overshadowed by white workers. For example, in 1940, 45% of Filipino men living in Washington listed their occupations as farm workers, and another 20% as "laborers", but they numbered only 1300 according to the census tally. In 1960, most Latinos earned their livings as farm workers or laborers, but again the population was small compared the numbers of European Americans working in agriculture. Native Americans were consistently over-represented until the 1970s. On the other hand, African Americans have rarely engaged in farm work in this state.

- Foreign-born whites, especially from northern Europe, often worked in the fields in the early decades of the 20th century, accounting for 23% of all workers in 1910, 17% as late as 1930.

- Southern-born whites and migrants from the Great Plains joined the farm labor force in large numbers in the 1930s and 1940s. Southerners accounted for 12% of the work force as of 1950.

- Incomes have consistently been at the very low end of the occupational scale. In 1960 the average farm labor income was $1,216, about 34% of the average income for all occupations. In 2000, the average farm labor income was $13,246, about 39% of the average occupational income.

	Avg farm worker income	% of average all occupations
1950	$1,319	51%
1960	$1,217	34%
1970	$1,950	34%
1980	$5,185	42%
1990	$9,027	41%
2000	$13,247	39%

These calculations are from the U.S. census. Farm workers tend to be undercounted in the census because it is taken during the spring, missing those who work only in the peak summer season. Highly mobile workers are also often missed. In addition those who work part of the year in agriculture and part in other jobs may call themselves "laborers" instead of farm workers.

Data source: Steven Ruggles, Matthew Sobek, Trent Alexander, Catherine A. Fitch, Ronald Goeken, Patricia Kelly Hall, Miriam King, and Chad Ronnander. *Integrated Public Use Microdata Series: Version 4.0* [Machine-readable database]. Minneapolis, MN: Minnesota Population Center [producer and distributor], 2009.

Daniel DeSiga, "Explosion of Chicano Creativity," Mural at El Centro de la Raza (1972).

A History of Struggle

Resistance to the harsh conditions of farm labor is as old as the work itself. The Native workers who were persuaded to, or, with some frequency, compelled to help clear land and harvest crops for white settlers in the early years of American rule, showed their displeasure in many ways, from running away to theft and violence. In 1878, whites in the Puyallup area organized a "military company of 64 men to be known as the Sumner Guards...for the purpose of maintaining order during the hop-picking season."[8] Surviving sources also suggest that conflict between workers of different origins was not uncommon. An 1875 headline from the *Washington Standard* shows the tension: "Chinese receive 90 cents a day and Indians $2.50 a day for picking hops in the Puyallup Valley." [9] But our understanding of this early history of farm work is limited to occasional glimpses in territorial newspapers.

We also have an imperfect understanding of farm labor activism in the 1880s and 1890s, the transitional era that brought statehood, the railroad, the Alaska gold rush, several hundred thousand new people, and organized labor. The labor movement that took root in Tacoma, Seattle, Spokane, and the railroad and mining towns across the state, apparently made no serious gestures towards farm workers. Most of

the unions founded in those decades affiliated with the American Federation of Labor (AFL) and typically concentrated on skilled workers in urban trades and transportation.

It is not until the early 20th century and the arrival of the Industrial Workers of the World that organized labor made its first concerted effort to reach out to farm workers. That is where this report on the history of farm worker activism in Washington State begins. In the nine chapters that follow we examine several generations of farm worker activism in Washington State beginning with the IWW, moving to the 1930s campaigns and Filipino led farm labor unionism, then developing in detail the story of the Chicano-led movement since the 1960s.

Next: Ch. 2 --The IWW in the Fields, 1905-1925

"A History of Farm Labor Organizing, 1890-2009" includes the following chapters. Most were written by Oscar Rosales Castaneda with substantial contributions by Maria Quintana who designed the pages and their illustrations.

1. Toward a History of Farm Workers in Washington State
2. The IWW in the Fields,1905-1925
3. The 1933 Battle at Congdon Orchards
4. Asians and Latinos Enter the Fields
5. Mexican-American Struggles to Organize, Post-WWII
6. *El Movimiento* and Farm Labor Organizing in the 1960s
7. UFW's Yakima Hop Strikes, 1971
8. Radio KDNA: The Voice of the Farm Worker
9. Resurgence of the UFW of WA State in the 1980s
10. The Struggle Continues, 1997-2006
11. Bibliography

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[1] Washington State Employment Security, *Agricultural Workforce in Washington State in 2003* (n.p, June 2004), esp. Appendix 1, 50; Washington State Farmworker Housing Trust, A Sustainable Bounty: Investing in Our Agricultural Future (July 2008) www.farmworkerhousingtrust.org accessed August 26, 2009

[2] Alexandra Harmon, *Indians in the Making: Ethnic Relations and Indian Identities Around the Puget Sound* (Berkeley, 1998), 106.

[3] Carlos Schwantes, *The Pacific Northwest: An Interpretative History* (Lincoln Neb., 1989), 166-71;

[4] Erasmo Gamboa, *Mexican Labor and World War II: Braceros in the Pacific Northwest, 1942-1947* (Austin, 1990), 2-3

[5] Ibid., 4.

[6] Washington State Employment Security, *Agricultural Workforce in Washington State in 2003*, Appendix 1, 50.

[7] Douglas: Carlos Arnaldo Schwantes, *Hard Traveling: A Portrait of Work Life in the New Northwest* (Lincoln Neb, 1994), 28; Lynn: James N. Gregory, *The Southern Diaspora: How the Great Migration of Black and White Southerners Transformed America* (Chapel Hill, 2005), 175-78. See the interviews in this section.

[8] *Washington Standard*, August 17, 1878 as listed in Pacific Northwest Regional Newspaper and Periodical Index, UW Special Collections Library

[9] "Chinese receive 90 cents a day and Indians $2.50 a day for picking hops in the Puyallup Valley," *Washington Standard*, September 11, 1875 as listed in listed in Pacific Northwest Regional Newspaper and Periodical Index, UW Special Collections Library

EXHIBIT 22

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FILED
APR 05 2018
YAKIMA COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
IN AND FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER FARM PROPERTIES, INC., f/k/a DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants, and WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU,	No. 16-2-034173-9 **DECLARATION OF DR. ROBERT C. DONNELLY**

Robert C. Donnelly, under penalty of perjury, declares as follows:

1. I am an Associate Professor and Chair of History at Gonzaga University. I am competent to testify in court. All statements herein are based upon personal knowledge.

2. I received a Ph.D. in American History from Marquette University in 2004. Attached hereto as Exhibit 1 is a true and correct copy of my CV. I have written peer-reviewed publications on American history, and have conducted research for many years into the subjects of my scholarly and academic interest. I am familiar with the work of American history scholars, the kinds of works on which they rely, and why they do so.

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3. I was asked to review the Declaration of Dr. Claire Strom, copy attached as Exhibit 2, to determine whether the sources on which she relies in that declaration are the kinds of sources on which scholars in the field of American history rely in their work, other than for purposes related to litigation. I can testify without hesitation that the sources cited in the Strom Declaration are precisely the kinds of resources on which scholars in the field of American history rely.

4. The sources that Dr. Strom uses in the Declaration are exactly what we expect of professional and academic historians. She uses primary source documents, that is, the contemporary raw materials and data that historians need to understand our past and write objective history. Her sources, which include census data, U.S. Department of Labor documents, and even Thomas Jefferson's papers, are impressive. Dr. Strom also relies on the scholarship of other experts, which we also expect from established academic and professional historians. For example, she uses scholarly journal articles and monographs published by academic presses, which means that Dr. Strom uses excellent sources that were written by experts who themselves used excellent sources.

5. Publication in an academic press by an historian is a form of peer review. The publisher subjects the written materials, and the sources used, to a rigorous check to determine whether the research undertaken is of the highest quality.

Further your Declarant sayeth naught.

Dated this 2 day of April, 2018.

Dr. Robert C. Donnelly

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CERTIFICATE OF SERVICE

I certify that I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of eighteen, and I am competent to be a witness herein.

On this 5th day of April, 2018, I caused the foregoing document to be served on the parties as indicated below.

Lori Jordan Isley Joachim Morrison Columbia Legal Services 6 South Second Street, Suite 600 Yakima, WA 98901 *Counsel for Plaintiff*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail [ ] Via U.S. Mail, postage prepaid
Marc Cote Frank Freed Subit & Thomas LLP 705 Second Avenue, Suite 1200 Seattle, WA 98104-1798 *Counsel for Plaintiff*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail [ ] Via U.S. Mail, postage prepaid

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Pam McCain

Pam McCain

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EXHIBIT 1

Robert C. Donnelly
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EDUCATION

- Marquette University—Milwaukee, Wisconsin — Ph.D., May 2004
  Major: United States History
- Portland State University—Portland, Oregon — M.A., March 1997
  Major: United States History
- Western Oregon University—Monmouth, Oregon — B.S., December 1992
  Major: Social Sciences

EMPLOYMENT HISTORY

- Chair, History Department, Gonzaga University, June 2013-present
- Associate Professor, American History, Gonzaga University, Fall 2010-present (tenure effective Fall 2011)
- Assistant Professor, American History, Gonzaga University, Fall 2004-Spring 2010
- Adjunct Professor, Portland History, Portland State University, Summer 2004
- Instructor, Immigration History, Washington State University Vancouver, Fall 2003
- Instructor, Portland History, Portland State University, Summer 2003
- Instructor, Growth of the American Nation 1, Marquette University, Spring 2001
- Teaching Fellow, Growth of the American Nation 1 & 2, Marquette University, 2000-2001
- Teaching Assistant, History of Western Civilization, Marquette University, Spring 1999, Fall 1999, Spring 2000
- Instructional Assistant, History of Western Civilization, Marquette University, College of Professional Studies, Fall 1998

PUBLICATIONS & REVIEWS

- **Book**
  - *Dark Rose: Organized Crime and Corruption in Portland, Oregon.* Seattle: University of Washington Press, 2011 (peer reviewed).

- **Articles**
  - Introduction to "Enforcing Oregon's State Alcohol Monopoly: Reflections from the 1950s," by Warren Niete. *Oregon Historical Quarterly* vol. 115, no. 1 (Spring 2014): 90-105.
  - "Organizing Portland: Organized Crime, Municipal Corruption, and the Teamsters Union." *Oregon Historical Quarterly* vol. 104, no. 3 (Fall 2003): 334-365 (peer reviewed).

- **Entries in Scholarly Reference Works**
  - "Fred Peterson (1896-1985)." *The Oregon Encyclopedia.* Available online at http://www.oregonencyclopedia.org/, June 8, 2011.
  - "McClellan Committee." *The Oregon Encyclopedia.* Available online at http://www.oregonencyclopedia.org/, February 10, 2009.
  - "Coin Machine Men of Oregon." *The Oregon Encyclopedia.* Available online at http://www.oregonencyclopedia.org/, October 14, 2008.
  - "John William Coltrane." *Encyclopedia of the Great Black Migration.* Stephen Reich, ed. Westport, Connecticut: Greenwood Press, 2006 (peer reviewed).

- **Academic Reviews**
  - Review of *Seattle Justice: The Rise and Fall of the Police Payoff System in Seattle*, by Christopher T. Bayley. *Pacific Northwest Quarterly*, vol. 107, no. 1 (Winter 2015/16), 44-45.
  - Review of *Bootleggers and Borders: The Paradox of Prohibition on a Canada-U.S. Borderland*, by Stephen T. Moore. *Oregon Historical Quarterly*, vol. 116, no. 4 (Winter 2015), 540-541.
  - Review of *Organized Crime in Chicago: Beyond the Mafia*, by Robert M. Lombardo. *American Historical Review*, vol. 119, no. 1 (February 2014), 195.
  - Review of *Multnomah: The Tumultuous Story of Oregon's Most Populous County*, by Jewell Lansing and Fred Leeson. *Oregon Historical Quarterly*, vol. 114, no. 1 (Spring 2013), 124-126.
  - Review of *Before Seattle Rocked: A City and Its Music*, by Kurt E. Armbruster. *Columbia*, vol. 26, no. 2 (Summer 2012), 28.
  - Review of *"They Are All Red Out There": Socialist Politics in the Pacific Northwest, 1895-1925*, by Jeffrey A. Johnson. *Pacific Historical Review*, vol. 79, no. 2 (May 2010), 294-295.
  - Review of *How Cities Won the West: Four Centuries of Urban Change in Western North America*, by Carl Abbott. *Annals of Wyoming*, Spring 2009.
  - Review of *Reading Portland: The City in Prose*, by John Trombold and Peter Donahue. *Columbia*, Fall 2007.
  - Review of *Jumptown: The Golden Years of Portland Jazz, 1942-1957*, by Robert Dietsche. *Columbia*, Spring 2006.
  - Referee of manuscript "Guild's Lake Industrial District: The Process of Change over Time." *Oregon Historical Quarterly*, Spring 2006.
  - Review of *America in the Seventies*, by Beth Bailey and David Farber, ed. *Pacific Historical Review*, November 2005.
  - Referee of manuscript "Policing Borders of Race and Class in Portland, Oregon." *Pacific Historical Review*, December 2004.
  - Referee of manuscript "Whispering Wires: A Bootlegger's Chronicle." Oregon Historical Society Press, May 2004.
  - Referee of manuscript "Commerce, Climate, and Community: A History of Portland and Its People." *Oregon History Project*, Oregon Historical Society, January 2003.

RESEARCH PRESENTED & ACTIVITIES AT SCHOLARLY CONFERENCES

- "Teamster Boss: Dave Beck, "Mr. Seattle," Labor and Working Class History Association Conference, University of Washington, Seattle, June 2017.
- "Teamster Boss: Dave Beck," North American Labor History Conference, Wayne State University, Detroit, Michigan, October 2014.
- "Dave Beck, 'Mr. Seattle': Missteps, Pacific Northwest History Conference, Tacoma, Washington, October 2012.
- Chair and commentator, Phi Alpha Theta Conference, Central Washington University, Ellensburg, April 2009.
- "Organized Crime in the West: Hells Angels," Organization of American Historians Annual Meeting, Seattle, March 2009.

- Program Committee and session chair, Pacific Northwest History Conference, Corvallis, Oregon, April 2008.
- Chair and commentator, Phi Alpha Theta Conference, Gonzaga University, April 2008.
- Chair and commentator, Phi Alpha Theta Conference, Lincoln City, Oregon, April 2007.
- Chair and commentator, "Work Communities," Pacific Northwest History Conference, Portland, Oregon, April 2006.
- "Creating and Redefining the Vice Zone: Law Enforcement Policies in Portland, 1890s-1950s," Social Science History Association Annual Meeting, Portland, Oregon, November 2005.
- "Labor Racketeering: A Case Study of the Western Conference of Teamsters," North American Labor History Conference, Wayne State University, Detroit, Michigan, October 2005.
- "Walking Tour: Portland's Riverfront History," Currents of History: The Columbia River & the Making of the American West, National Endowment for the Humanities Grant, Portland State University, Portland, Oregon, Summer 2005.
- "'Who do you think's running this thing?' Municipal Graft and Organized Crime in Mid-Twentieth Century Portland," Pacific Northwest History Conference, Bellingham, Washington, April 2003.
- "Vice Crime and Municipal Corruption in Post-World War II Portland, Oregon," Western Social Science Association Conference, Las Vegas, Nevada, April 2003.
- "Exposing Corruption: The Federal and Congressional Investigation into a Local Urban Scandal," Society for History in the Federal Government Annual Meeting, Shepherdstown, West Virginia, March 2003.
- "Organizing Portland: The Teamsters Union and Organized Crime in a Post-World War II City," Pacific Northwest History Conference, Seattle, Washington, April 2002.
- "Profiles in Tragedy: Murder and Suicide in Late Nineteenth-Century Milwaukee," Missouri Valley History Conference, University of Nebraska, Omaha, Nebraska, March 2001.

SCHOLARLY LECTURES & PRESENTATIONS OUTSIDE CONFERENCES

- "Teamster Boss: Dave Beck and Labor Racketeering in Oregon," Oregon Encyclopedia History Night, McMenamins Mission Theater, October 7, 2013.
- *Portland Expose*, film, introduction and roundtable discussion, McMenamins Mission Theater, Portland, Oregon, June 12, 2013
- "Freedom from Oppression: The Rise and Fall of the American Union Movement," Freedom Project, Marquette University, Milwaukee, Wisconsin, March 2012.
- "Dark Rose: Organized Crime and Corruption in Portland," Auntie's Bookstore, Spokane, Washington, September 7, 2011.
- "Dark Rose: Organized Crime and Corruption in Portland," KBOO, Portland, Oregon, August 24, 2011.
- "Dark Rose: Organized Crime and Corruption in Portland," KEXP, Seattle, Washington, August 20, 2011.
- "Dark Rose: Organized Crime and Corruption in Portland," Elliott Bay Book Company, Seattle, Washington, August 19, 2011.
- "Dark Rose: Organized Crime and Corruption in Portland," Powell's Books, Portland, Oregon, July 8, 2011.
- "Dark Rose: Organized Crime and Corruption in Portland," History Pub Monday, Oregon Historical Society and Holy Names Heritage Center, McMenamins Kennedy School, Portland, Oregon, July 26, 2010.
- College of Arts & Sciences Core Lecture Series, "The Portland Vice Scandal of 1956," Portland, Oregon, April 17, 2008.

- "The 1950s and Consensus America," introduction to Gonzaga University Theater's "Fahrenheit 451," October 26, 2007.
- "Introduction to Antitrust: The Sherman Act of 1890," Antitrust, Gonzaga University Law School, August 2007.
- "The Portland Vice Scandal of 1956," Retirement Association of Portland State University, Portland, Oregon, November 2006.
- "U.S. Immigration Policy," Politics 101.07, Gonzaga University, September 2006.
- "John F. Kennedy Assassination," GEL Weekend, Gonzaga University, April 2006.
- "Corrupting Portland: Crooked Politicians, Vice Racketeers, and Teamster Thugs in a Post-WWII City," PSU Weekend, Portland State University, Portland, Oregon, November 2004.
- Portland State University, International Special Programs, School of Extended Studies, Portland & Oregon history lecture, Portland, Oregon, July 2003.
- Elderhostel International, Portland history lecture, Portland, Oregon, July 2003.
- Guest Lecturer, Modern Latin America, Marquette University, Spring Semester 2001.
- "World War II and the Portland City Club Report on Vice Crime," Phi Alpha Theta, Portland State University, Portland, Oregon, April 1994.

COURSES TAUGHT AT GONZAGA UNIVERSITY

- First Year Seminar, HIST 193, "The 1960s."
- The City in American History
- The Cold War (with Dr. Kevin O'Connor)
- U.S. Since 1945 (Social Justice designation, 2005-2013)
- The Post-World War II Presidency
- Coming to America: Immigration and Ethnicity in American History (Service Learning, Fall 2006; Social Justice, 2004-2008)
- Why People Hate (with colleagues in Sociology, Psychology, Business, and the Institute for Action Against Hate)
- History of Organized Crime
- Survey of American History (U.S. 1 & 2)
- Historical Methods
- Senior Seminar

UNIVERSITY & DEPARTMENT SERVICE

- Search Committee, Museum Registrar/Program Coordinator, Jundt Museum, Fall 2017.
- Ad Hoc Committee on Team Teaching, College of Arts and Sciences, Spring 2017.
- University Conduct Board, Office of Community Standards, Student Development, Fall 2015 to Fall 2016.
- RPT Criteria Subcommittee, Faculty Handbook Committee, Fall 2015 to Spring 2016.
- Speaker, "Academic Expectations," Student Athlete Advisory Council, September 9 & 10, 2015; October 3 & 4, 2016.
- Gonzaga Experience Live (GEL), Humanities Advising Session, April 2015, 2016.
- Search Committee, Director of Campus Safety and Security, Office of Student Development, Spring 2015.
- Freshman Orientation, "Academic Expectations" Q&A, August 2014.
- Organizer, Annual William L. Davis, S.J. Lecture Series, Spring 2015 to present.
- History Department Chair, June 2013 to present.
- Faculty Advisor, *Charter*, Student Publications, Fall 2013 to Spring 2017.

- Campus Safety and Security Task Force, Office of Student Development, Fall 2013 to Spring 2014.
- Academic Vice President Advisory Council, Fall 2013, Spring 2014, Fall 2015, Fall 2016.
- History Department Curriculum Committee, Spring 2006 to Spring 2013 (and ongoing, ad hoc).
- History Department Outcomes Assessment Committee, Fall 2005 to Spring 2013.
- Professional Education Council, School of Education, History Department Representative, Fall 2004 to Fall 2016.
- History Department Website editor, Spring 2012 to present.
- History Department Newsletter editor, Spring 2012 to Spring 2013; Fall 2014 to present.
- History Department Faculty Search Committee, 2004-05, 2008-09, 2011-12, (chair) 2017-18.
- History Department Rank, Promotion, and Tenure Committee, 2011 to 2018
- Pathways Instructor, Office of Academic Services, Fall 2008, 2009, 2010, 2012, 2013, 2014, 2015.
- Comprehensive Leadership Program, Student Leadership Seminar, Gonzaga University, "My Story," November 10, 2007.
- Freshman Orientation, "Academic Expectations," August 25, 2007.
- Service Learning Advisory Board, Center for Community Action and Service Learning, Fall 2007.
- Faculty Advisor, History Club, Fall 2006-2011.
- Strategic Planning Committee, College of Arts and Sciences, Fall 2005 to Spring 2006.

HONORS & AWARDS

- Senior Class Golden Apple Award, Gonzaga University, 2008
- Gonzaga University Researeh Council Grant, 2007
- Gonzaga University Research Council Grant, 2005
- Arthur J. Schmitt Research Fellowship, Marquette University, 2002
- Cyril E. Smith Research Fellowship, Marquette University, 2001
- Graduate Teaching Fellowship in American History, Marquette University, 2000
- Phi Alpha Theta Honor Society, Portland State University, 1994

EXHIBIT 2

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SUPERIOR COURT OF WASHINGTON
IN AND FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER FARM PROPERTIES, INC., f/k/a DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants, and WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Defendants.	No. 16-2-034173-9 **DECLARATION OF CLAIRE STROM**

Claire Strom does hereby declare and avow under penalty of perjury according to the laws of the State of Washington that I am over the age of 18 years, a resident of Orlando, Florida, and am competent to testify upon personal knowledge to the facts, research and opinions set forth herein:

Introduction

1. I am a Professor and holder of the Rapetti-Trunzo Chair of History at Rollins College in Florida. I have taught United States history at an undergraduate and graduate level for nearly twenty-five years. Based on my years of research, I have extensive familiarity with the

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history of discrimination in our nation toward ethnic and racial minorities, as well as toward labor. Additionally, I have detailed knowledge of federal legislation from the eighteenth century on. One of my courses looks at the history of immigration to the United States. This is a civic engagement class, and my students and I spend considerable time working with the Hope Community Center in Apopka, Florida, which is dedicated to assisting the migrant/agricultural laborers in our area.

2. My main research specialty is United States agricultural history. I have written two academic books on this topic and numerous articles in highly rated, peer-reviewed journals. One book, *Profiting from the Plains: The Great Northern Railway and Corporate Development of the American West,* published by the University of Washington Press, deals extensively with agricultural development in the Pacific Northwest, including the Yakima Valley. My other book, *Making Catfish Bait out of Government Boys: The Fight Against Cattle Ticks and the Transformation of the Yeoman South,* also considered issues of agricultural labor. That book focused on southern cattle farming—both ranch and dairy. I am currently working on a book manuscript, tentatively entitled, "The Global History of Cattle," in which Yale University Press has expressed interest.

3. In addition to my personal research, from 2003 to 2016, I was the editor of *Agricultural History.* This is the leading journal of note in the field, globally. The journal covers all types of agricultural history and is not limited by geography or chronology. As editor, part of my job was to check source materials, to verify that the scholarly work met the highest academic standards and relied upon unimpeachable sources, such as the U.S. Census data and the many scholarly works, cited herein. After thirteen years of editing the journal, my knowledge of agricultural history is exceptional. The Agricultural History Society recognized me for my work in 2016.

4. My expertise has been recognized nationally and internationally. I have given talks on various aspects of agricultural history around the world and have served on dissertation committees in the United States, as well as in South Africa, Australia, and Greece. In fall 2017, I was invited to teach at the Universidad de los Andes, the most prestigious university in Colombia. Most recently, I have been appointed a Fulbright Specialist by the federal government and will be teaching and lecturing at the University of Ljubljaua in Slovenia in spring 2018.

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5. All of the materials I have used in forming the opinions expressed herein are the kinds of source materials every college professor relies upon for his or her work in researching and teaching the history of the United States, and especially the agricultural gistory of the United States. This is not reliance for the purposes of litigation. It is reliance for the purposes of pursuing our respective callings to learn, and teach, about the country we live in. Based upon my experience, training, education, and research as detailed below, I offer the following testimony to provide the Court with facts and my opinions relevant to plaintiffs' claims and allegations in this action.

Material Fact No. 1. Contrary to plaintiffs' allegation, most farm workers were *not* southern blacks at the time the Fair Labor Standards Act (FLSA) was enacted.[1] Instead, the majority of farmworkers in the 1930s were white.

Supporting Evidence and Information:

6. The Census of 1940, which generally reflects the situation in the United States at the passage of the FLSA in 1938, records 10,152,064 people who made their living in some way from agriculture. This includes owners, tenants, wage labor, and unpaid family labor. Over 80 percent of these people were white. Accordingly, "Agricultural work was" **not** "performed predominantly by Black workers" at the time the FLSA was enacted.[2]

Material Fact No. 2: The exemption of farm workers from the FLSA was not the result of racial or discriminatory animus against Black farm workers and was not the result of a "compromise" to obtain the votes of Southern Democrats intent on excluding black farm workers from the FLSA's provisions to perpetuate racial discrimination.[3] This is clear for several reasous.

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[1] Plaintiffs allege that the FLSA's agricultural exemption was "crafted during the Jim Crow era, when most farm workers were Black, Southern, and had no political power." First Amended Complaint ("FAC"), ¶ 56; and that "[a]gricultural work was performed predominantly by Black workers when Congress enacted the FLSA." FAC ¶ 102.

[2]. Bureau of the Census, *Sixteenth Census of the United States: 1940. Population, Vol. III, The Labor Force: Occupation, Industry, Employment, and Income* (Washington, DC: GPO, 1943), Table 63, pps. 92-96.

[3]. Plaintiffs allege that "[t]o pass the FLSA in 1938, Congress needed the votes of Southern Democrats who often voted as a bloc to maintain the economic and social subordination of Black farm workers and Southern (sic) inequality. This compromise directly resulted in the exemption of famer workers from both the minimum wage and overtime protections of the FLSA. Thus, and

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Supporting Evidence and Information:

7. First, inclusion of agricultural labor in the FLSA minimum wage and overtime requirements would not have benefitted most black farm workers in any event, and its exclusion largely impacted white farm workers.

8. In the 1930s, the majority of the black rural population lived in the South and were sharecroppers or some form of tenant farmers. Croppers and tenants were not paid a wage. Instead, they made their living from the crops they raised or a percentage of those crops. Most sharecroppers and tenants in the South were actually white, but a greater percentage of the black southern population were sharecroppers and tenants than of the white southern population. Thus, in the 1940 census, nearly one million whites in the South were in some form of tenant relationship, while the number for blacks was a little over half a million.[4]

9. Ironically, sharecropping had emerged in the South after the Civil War as a labor system that pleased both white plantation owners and black freedpeople. The plantation owners were cash poor after the conflict and well into the twentieth century, did not have the money to pay wage labor. Meanwhile, the freedpeople wanted their own homes and land away from the daily supervision of their former masters. Quickly, however, the system deteriorated for the African Americans and the poor white southerners engaged in agriculture. Needing farming supplies and other necessities, croppers went into debt with either the plantation owner or a local furnishing merchant. Rampant corruption and low cotton prices meant that the debts were rarely paid off. Thus, sharecroppers and tenants, both white and black, lived in what historians have termed "debt peonage," bound to the land.[5] These debts, invariably in a cash poor system, were in the form of crop liens—usually cotton. Thus, the tenants and croppers spent their lives working for a bumper cotton crop that would allow them to pay off their debt and had no time to invest in making money through agricultural wage labor. Therefore, one result of the indebtedness of these people was that they could not choose to leave tenancy for wage labor if

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by design, most Black workers in the South were excluded from the protective reach of the original FLSA." FAC ¶¶ 58, 59.

[4]. Bureau of the Census, *Sixteenth Census of the United States: 1940. Agriculture, Vol. III, General Report, Statistics by Subjects* (Washington, DC: GPO, 1943), Table 3, p. 143.

[5]. R. Douglas Hurt, *American Agriculture: A Brief History* (Ames: Iowa State University Press, 1994), 166-70; David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 121-127.

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the FLSA had, indeed, included agricultural workers. Thus, sharecroppers and tenants—the majority of southern agricultural workers in the 1930s—could not have benefited from an agricultural minimum wage or overtime.

10. In 1930, half the farmers in the South were tenants and in some areas as many as 80 to 90 percent of black farmers were tenants. This changed somewhat during the decade as a result of the New Deal and the Great Migration. Under the Agricultural Adjustment Act of 1933, farmers were paid to reduce production of crops. They were generally paid by the acreage that they did not plant. One side effect of this was that southern landowners evicted their tenants (both white and black), did not plant their land, and collected payments from the federal government. They did, however, need labor for the few crops they still planted, so, in the second half of the decade, the number of farm wage laborers did increase somewhat. However, most of the tenants that were evicted from the land either found jobs through one of the New Deal emergency programs, migrated to urban areas in the South, or migrated North to work in the manufacturing plants that actively recruited southern blacks.[6]

11. In 1940 the census recorded 3,090,010 farm laborers in the United States. Of these, 1,924,890 would have benefited from being included in the FLSA because they were paid a wage for their work. The others (over one third) were unpaid familial laborers. Of the almost 2 million wage earning farm workers, 1,410,288 were white, 483,785 were black, and 30,817 were "other races" (probably Hispanic and Asian as they were situated mainly in the West). Therefore, whites made up about 73 percent of the agricultural wage labor force who could have benefited from the FLSA.[7] Thus, it would have made little sense to exclude all farm labor from the FLSA simply to avoid paying minimum wage to the small percentage of that group that was wage-earning black farmers.

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[6]. Gilbert Fite, "Southern Agriculture Since the Civil War: An Overview," *Agricultural History* 53:1 (Jan. 1979): 3-21; Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986), 232-33; Jack Temple Kirby, "Black and White in the Rural South, 1915-1954," *Agricultural History* 58:3 (July 1984): 411-22.

[7]. Bureau of the Census, *Sixteenth Census of the United States: 1940. Population, Vol. III, The Labor Force: Occupation, Industry, Employment, and Income* (Washington, DC: GPO, 1943), Table 63, pps. 92-96.

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12. Consequently, the majority of black agricultural workers would not have benefited from being included in the FLSA at the time of its enactment, because they worked for themselves and paid rent in the form of cash or crops. Indeed, of the 10,152,064 people who made a living from agriculture in 1940, less than 5 percent were black wage laborers (See Chart 1). Additionally, blacks made up only 25 percent of all of the people who did agricultural wage work (See Chart 2). Finally, when considering wage workers **and** the unpaid family labor that might have benefited from an increase in the wages of the head of household, blacks still only comprised 25 percent of the total. Thus, if agriculture had been included as a category in the FLSA it would have overwhelmingly benefited white workers.

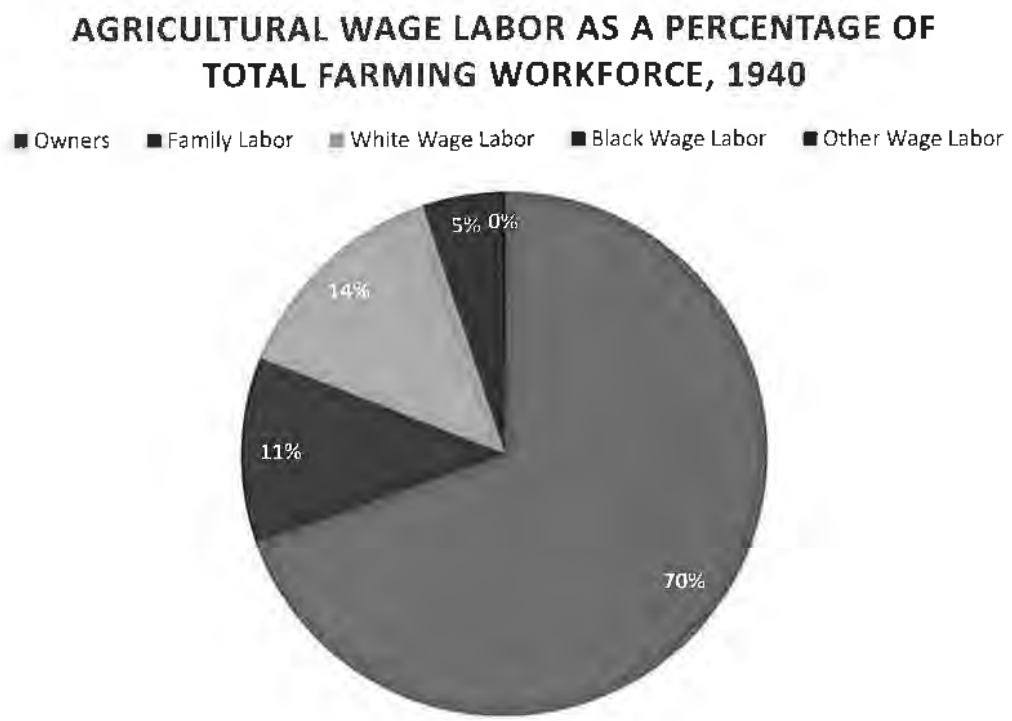

Chart 1—data from the 1940 census

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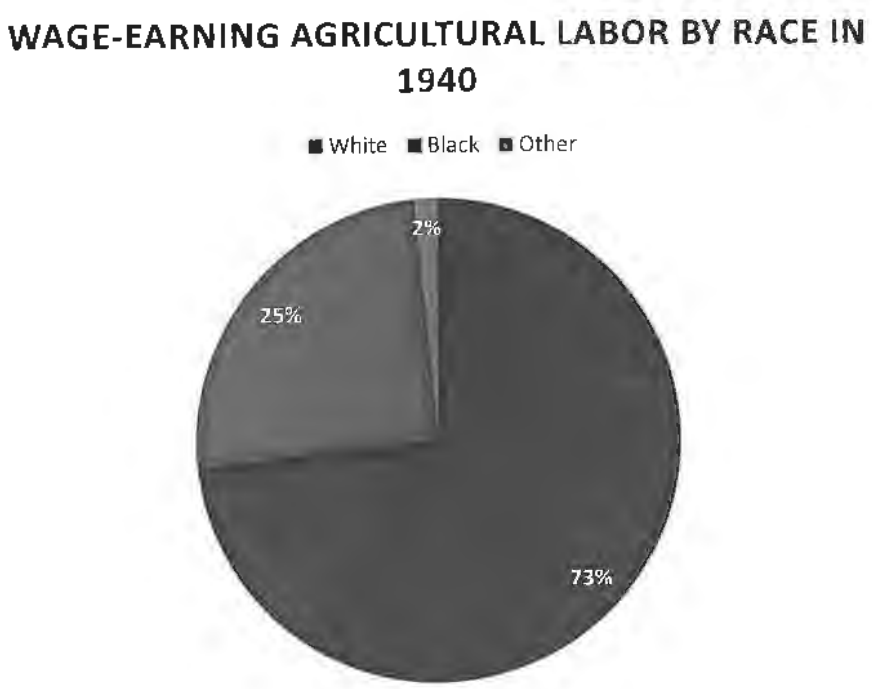

Chart 2—data from the 1940 census

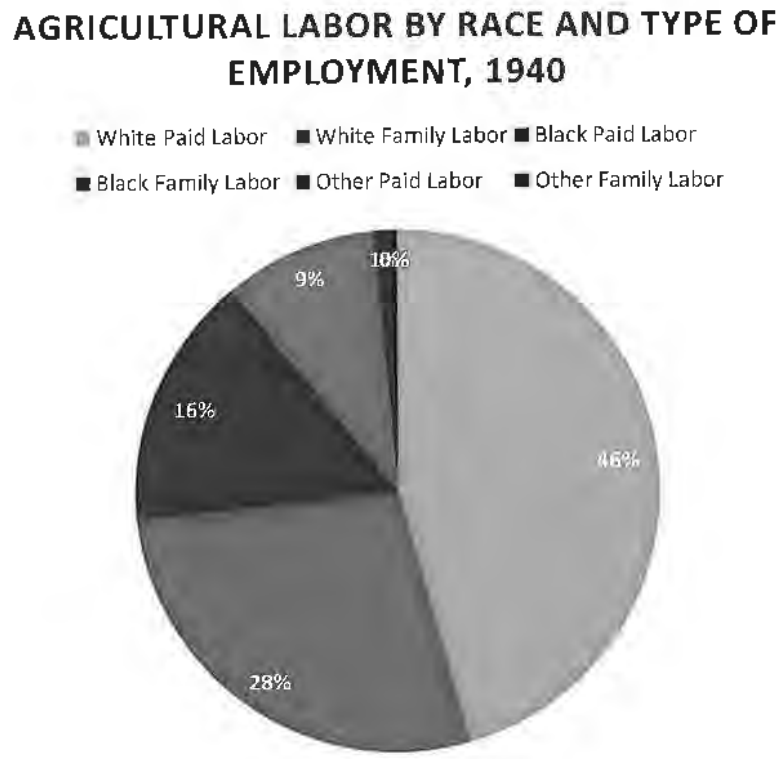

Chart 3—Data from the 1940 census

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13. Second, the exclusion of farm labor from the FLSA is readily explained by America's historical view of agricultural work as unique and special, the way agricultural workers were compensated, and political precedent.

14. The original FLSA never included agriculture as an occupation for consideration. This was based on a number of factors including the "agrarian myth," the way agricultural workers were compensated, the nature of agricultural work, and political precedent.

15. From the time of the Revolution and the founding of the United States, agriculture was considered a unique occupation that was vital to the wellbeing of the nation. Additionally, those who work the soil gained "moral, emotional, and spiritual benefits."[8] This "agrarian myth" continues to have powerful resonance in the United States and has impacted social attitudes and public policy for centuries. Part of its impact was the enduring belief that doing farm work built character and independence from healthy toil in nature. This meant that farmworkers were believed to gain vital intangible benefits from their employment.[9]

16. In August 1785, Thomas Jefferson wrote from Paris to John Jay about the importance of farmers to the new republic. He said, "cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independant [*sic*], the most virtuous, & they are tied to their country & wedded to it's [*sic*] liberty & interests by the most lasting bands."[10] Jefferson was not the only thinker to see farmers as essential to the political health of the nation. The political thinkers of the new nation explicitly contrasted themselves with Europe where most people owed their livelihood to a landlord or boss. This dependency made them corruptible and their political system fragile. In the United States, by contrast, 80 percent of male citizens at the end of the American Revolution owned and worked their own land.[11] This made

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[8]. David B. Danbom, "Romantic Agrarianism in Twentieth-Century America," *Agricultural History* 65:4 (Fall 1991): 1.

[9]. For more on the "agrarian myth" see, for example, Frederick Buttel and William L. Flinn, "Sources and Consequences of Agrarian Values in American Society," *Rural Sociology* 40 (Summer 1975): 134-51; Wayne C. Rohrer, "Agrarianism and the Social Organization of US Agriculture: The Concomitance of Stability and Change," *Rural Sociology* 35 (March 1970): 5-14.

[10]. Jefferson to Jay, August 23, 1785, in Julian Boyd, ed., *Papers of Thomas Jefferson: Vol. 8* (Princeton: Princeton University Press,1953), 426-28.

[11]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 68.

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them immune to outside influence, while their regular contact with nature increased their patriotism.[12]

17. The belief in the necessity of independent farmers played out in federal policy. From the beginning of the nation, the government acquired land to create more citizen-farmers -- from the Louisiana Purchase in 1803 to the Mexican-American War in 1848. Additional land was taken from Native Americans who were not, according to the understandings of the time, using the land appropriately—i.e. for farming.[13] The distribution of federal land was driven by two contradictory impulses: to fund the federal government and to create independent farmers. The latter impulse finally triumphed in 1862 with the Homestead Act that gave settlers 160 acres of land for free, provided they made agricultural improvements.[14]

18. Farmers were also understood to be morally superior to others. This belief, which dates back at least to ancient Rome, was founded in two main ideas.[15] First, that agriculture produces the most essential necessity for humans: food. Therefore, "agriculture is productive, manufacturing is sterile."[16] Second, that farmers worked in nature, which made them spiritually richer and morally superior. This faith in nature has underpinned much of American thought from the deism of Jefferson to the Humboldt school of art, from Henry David Thoreau and the transcendentalists to Gifford Pinchot and the founding of the National Park Service.[17] In the twentieth century, the belief in the power of contact with nature continued with the Southern Agrarians professing in 1931 that "the culture of the soil is the best and most sensitive of

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[12]. Anne B. W. Effland, "Agrarianism and Child Labor Policy for Agriculture," *Agricultural History* 79:3 (Summer 2005): 285.

[13]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 70. For attempts to make Native Americans farmers, see, for example, Angela Firkus, "Agricultural Extension and the Campaign to Assimilate the Native Americans of Wisconsin, 1914-1932," *Journal of the Gilded Age and Progressive Era* 9:4 (October 2010): 473-502.

[14]. For more detail on land policy, see, Benjamin Horace Hibbard, *A History of the Public Land Policies* (New York: MacMillan, 1924). David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 70-71.

[15]. Gordon S. Wood, *The Idea of America: Reflections on the Birth of the United States* (New York: Penguin Press, 2011), 71-72.

[16]. Charles A. Miller, *Jefferson and Nature: An Interpretation* (Baltimore: Johns Hopkins University Press, 1988), 205.

[17]. Charles A. Miller, *Jefferson and Nature: An Interpretation* (Baltimore: Johns Hopkins University Press, 1988), 92-93, 266-67; David B. Danbom, "Romantic Agrarianism in Twentieth-Century America," *Agricultural History* 65:4 (Fall 1991): 1-12.

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vocations," while President Franklin D. Roosevelt supported the creation of the Subsistence Homestead Program in 1933 that relocated the poor to rural planned communities.[18]

19. This attitude toward farm work has affected farm employment in other ways, as well. Many people working on farms are unpaid family members. Indeed, as late as 1950, 80 percent of labor on farms was provided by unpaid family members.[19] These workers gained experience and character from their work and, presumably, would eventually inherit the farm and move up the agricultural ladder. Actually, the concept of the agricultural ladder extended beyond the family. From the early days of the Republic, rural workers expected to climb the ladder from wage hand to tenant to owner and then reap the rewards of their industry. Consequently, the standard image of hired labor was of "the hired man who lives in the farmer's home and is treated as an equal."[20] While this image was incorrect in most of the country by the 1930s, it was still relatively true in the Midwest, where many of the agrarian liberals who shaped New Deal policies grew up.[21]

20. This belief in the moral benefits of farming had practical implications that were reflected in the FLSA and related legislation, and it still exists today. Child labor on farms has been viewed as beneficial to creating moral citizens. Indeed, during the late nineteenth and early twentieth century, urban orphans were indentured to farmers because "farmers, by virtue of their work, represented the best purveyors of American values and a good work ethic."[22] Thus, little attempt was made to regulate child labor in agriculture. When debates did surface, they focused on two concerns: that agricultural labor removed children from schools and that it could be dangerous. Thereafter, the main efforts of legislators focused on combining the benefits of agricultural work with education and safety, rather than restricting work on the farm. Indeed, the FLSA, while it set minimum ages—between 14 and 18--for children in other occupations, only

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[18]. David B. Danbom, "Romantic Agrarianism in Twentieth-Century America," *Agricultural History* 65:4 (Fall 1991): 5-6; "The Farm Security Administration and Subsistence Homesteads," http://xroads.virginia.edu/~ug99/lane/fsa.html.
[19]. Wilson Gee, *The Social Economics of Agriculture* (New York: Macmillan, 1954), 204.
[20]. Wilson Gee, *The Social Economics of Agriculture* (New York: Macmillan, 1954), 212.
[21]. Jess Gilbert, "Eastern Urban Liberals and Midwestern Agrarian Intellectuals: Two Group Portraits of Progressives in the New Deal Department of Agriculture," *Agricultural History* 74:2 (Spring 2000): 162-80.
[22]. Megan Birk, "Supply and Demand: The Mutual Dependency of Children's Institutions and the American Farmer," *Agricultural History* 86:1 (Winter 2012): 78-103.

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concerned itself with ensuring that child agricultural workers also attend school. In 1966 the FLSA was amended to prohibit children from "hazardous agricultural operations," but no age limit for child labor was introduced until 1974, when children under twelve were prohibited from farm work, except on their family farms where they could work at any age.[23]

21. In the United States in the 1930s, agricultural workers were compensated differently because of this ideology and because of the nature of their work. Studies in 1931 and 1945 showed that both casual and non-casual farm labor received many perquisites including lodging; food; use of tools and machinery; and garden space. The study of 1931 estimated that the wages for non-casual workers who received board were actually 179 percent higher than what they received in cash. The real wages for casual workers who received board were 141 percent higher.[24] Compensation for agriculture, therefore, was infinitely more convoluted than for factory work.

22. The different treatment of agricultural labor by wage and overtime laws was also affected and justified by the nature of agricultural work. Unlike other professions, the needed agricultural work could not be accomplished in a regular 8-hour day, 5 days a week, and it still can't. Fruit and vegetables rot, cows need to be milked, rain ruins harvests. The rhythm of farming is seasonal and not daily or weekly and, when work has to be done, it must be finished, or the crop will be ruined, the farmer forced off the land, and the nation starved. It is clear that the legislators writing the FLSA understood this well. Agriculture was exempt in the first iteration of the bill, however, later revisions specified "dairying, horticulture, forestry, truck gardening, the raising of livestock, bees and poultry" as excluded. Indeed, a later amendment added "Canning, packing, or packaging of fish, seafood, fruits, vegetables, and the processing of beets, cane and maple into sugar and syrup" for the same reason of timeliness.[25] These exclusions were carried forward by the Washington statute, for good reason.

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[23]. Anne B. W. Effland, "Agrarianism and Child Labor Policy for Agriculture," *Agricultural History* 79:3 (Summer 2005): 293-294; Gerald Mayer, "Child Labor in America: History, Policy, and Legislative Issues," CRS Report RL31501, November 2013; Gerald Mayer, et al., "The Fair Labor Standards Act (FLSA): An Overview," CRS Report R42713, June 2013.
[24]. J. C. Folsom, "Perquisites and Wages of Hired Farm Laborers," *Technical Bulletin # 213* (Washington, DC: USDA, 1931), pp. 1, 52-55; Barbara Reagan, *Perquisites Furnished Hired Farm Workers, United States and Major Regions, 1945* (Washington, DC: USDA, 1946), 62.
[25]. Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly,* 53:4 (Dec. 1938): 499, 504, 505.

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23 Finally, political precedent prevented the inclusion of agriculture in the FLSA. The precursor to the act was the National Industrial Recovery Act. This had created industrial boards that established wages and hours on a voluntary basis for each industry. Agriculture had not been included in this statute because it was not seen as an industry—as well as for the reasons listed above. Indeed, the federal government considered the problems confronting agriculture as more vital than those facing industry and addressed them earlier, second only to taking drastic action to stop the failing banks.[26] The main pillar of the federal agricultural program was the Agricultural Adjustment Act, passed on May 12, 1933. This bill aimed to stop overproduction, which was depressing prices, and help farmers simultaneously, by paying them to produce less. It was fairly successful in the first, but less so in the latter. Overproduction declined, but the vast majority of the payments went to large-scale farmers. Little federal money made it to the subsistence farmers of the Northeast or Appalachia.[27] However, the bill was designed to help sharecroppers and tenants as it instructed southern farmers to share the payments with their tenants. However, most southern farmers kept all the money they received and evicted their tenants, and the federal government was unable to stop this. Consequently, it instituted other policies that focused specifically on the rural poor: the Resettlement Administration and the Farm Security Administration. Thus, federal officials had not included agriculture in the NIRA—the precursor to the FLSA—because in their minds, agriculture was different, and they had and were addressing it through other legislation.[28]

24. Along with being politically vital and morally superior, farmers were and are rightly considered economically essential to the nation. Farmers produce food, and the cost of food determines most other costs. As Leonard Schoff wrote, "The relative cost of food production is the basic factor in the advance of civilization."[29] Therefore the federal government has consistently intervened: by acquiring land, controlling costs, or paying subsidies to ensure that farmers survive and can produce goods relatively cheaply for the American consumer.

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[26]. William Leuchtenburg, *Franklin D. Roosevelt and the New Deal* (New York: HarperCollins, 1963), 42-51.
[27]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 213.
[28]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 217-223.
[29]. Leonard Schoff, *A National Agricultural Policy for All the People of the United States* (New York: Harper and Brothers, 1950), 1.

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25. Farmers, unlike other producers, are extremely vulnerable to natural disasters. During the early twentieth century, the boll weevil moved across the American South destroying cotton crops and considerably reducing land values in the localities that it hit.[30] In the 1930s, the Dust Bowl decreased land values and forced people off the land in many Plains states.[31] Outside these major catastrophes, smaller natural disasters like too much rain or too little or a freeze before the harvest can drastically cut into a farmer's crop and, therefore, their profits and ability to stay operational. In 1987, the Washington State Commerce and Labor Committee held hearings on a proposal to extend the minimum wage, overtime, and unemployment insurance to agricultural workers. Duane Kaiser, a tree farmer, asserted that farmers could not afford any additional expenses, as their existence was tenuous enough. He testified that "A year ago that killer freeze came along, and I lost two years' crop. Where do I get my unemployment insurance?" Disasters such as these are often enough to force a farmer out of business.[32]

26. Farmers are also more economically vulnerable because their product is perishable. In the second half of the nineteenth century, farmers tried to organize to counter the middlemen who bought their produce. These middlemen set the prices, and, because the product needed to make it to market, the farmers had to accept the price offered. From the Grange to the Farmers' Alliance, farmers created a variety of cooperative ventures to try to remove the control of middlemen. They all failed from lack of capital and because if a crop did not make it to market, the farmer made no money at all. Ultimately, the farmers looked to the government for a solution.[33] The economic challenges faced by farmers continues. In 1987, Frank DeLong of the Washington State Horticultural Association testified that farmers had no way to pass on increased costs as they had no control over the market. He said, "Any increase in operating costs

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[30]. Fabian Lange, et al., "The Impact of the Boll Weevil, 1892-1932," *Journal of Economic History* 69:3 (September 2009): 685-718.

[31]. Richard Hornbeck, "The Enduring Impact of the American Dust Bowl: Short- and Long-Run Adjustments to Environmental Catastrophe: *American Economic Review* 102:4 (June 2012): 1477-1507.

[32]. Duane Kaiser, Testimony to Commerce and Labor Committee, Jan. 19, 1987, found in Washington State Digital Archives.

[33]. Wilson Gee, *The Social Economics of Agriculture* (New York: Macmillan, 1954), 86; David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 154-58.

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jeopardizes the viability of the farm." And farmers still look to the government for help in protecting their livelihood.[34]

27. Farmers, like other producers, have been vulnerable to world events. However, unlike most manufacturers, farm production is less flexible. So, during World War I and World War II the farm output expanded drastically to meet the needs of the conflicts. Equally, manufacturing output increased. After the war, factories retooled to make cars, washing machines, refrigerators, and other in demand consumer goods.[35] Farmers did not have this option. Their crop options were limited by geography. And they could not lower prices and expect more consumption. As David Danbom wrote, "Few people eat more sandwiches when the price of bread falls."[36]

28. Finally, farmers are susceptible to consumer preference. Starting in the 1950s, Americans started consuming less milk because of warnings about eating too much fat. This decline has continued, with competition first from soft drinks and then from plant-based milks.[37] As a result of such competition, which resulted in low prices for milk, thousands of dairy farms were forced to close. In 2012, *Hoard's Dairyman* reported that between 1992 and 2002, the United States lost 61 percent of its dairies.[38]

29. Given the importance of agriculture to the nation, it is unsurprising that it has received federal support from the beginning. Initially, the support was in the form of cheap or free land, which reduced the farmer's start-up costs considerably. As farming became more complicated and needed more inputs, federal aid changed. In the twentieth century, aid has largely been based on the concept of parity. The details of parity changed over the century, but the basic concept remained the same. Each farmer should receive from the sale of his crop the same purchasing power as she would have had during a pre-determined period of history when agriculture was doing well. The federal government would subsidize farm incomes to reach

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[34]. Frank DeLong, Testimony to Commerce and Labor Committee, Jan. 15, 1987, found in Washington State Digital Archives.
[35]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 188-89, 240-43.
[36]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 188.
[37]. Scheherazade Daneshkhu, "Dairy Shows Intolerance to Plant-Based Competitors," *Financial Times,* July 14, 2017.
[38]. "Fewer Dairy Farms Left the Business," *Hoard's Dairyman,* March 10, 2012.

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parity.[39] In addition to parity, farmers receive set-aside payments for not planting crops when surpluses are too big, disaster payments to mitigate crop loss due to weather or other catastrophes, and export subsidies whereby farmers receive a higher price for exported crops than they actually receive on the global market.[40]

30. Over time, these payments have been significant. Between 1934 and 1975, subsidies ranged from 1 percent of farm income to 37 percent in 1967.[41] Despite these subsidies, farmers were still vulnerable. In the late 1970s and early 1980s interest rate increases made US agricultural products expensive on the export market. The closing of the global market was exacerbated by President Carter's embargo on grain sales to the Russians in response to their invasion of Afghanistan, and then President Reagan cut taxes in 1981, which pushed up interest rates to the detriment of borrowers like farmers. The resulting farm crisis was the worst since the Great Depression with farm prices in 1986 reaching 51 percent of parity. Farmers mobilized with a 1979 tractorcade to Washington, D.C. And, in 1985, Reagan signed into law the biggest farm subsidy bill ever, that put 3 percent of the federal budget into farmers' pockets.[42]

31. Of course, the federal government could have ended subsidies to farmers at any point, forcing some farmers out of business and others to raise their prices considerably to cover their costs. However, consistently, the government has believed that a stable food supply that is of low cost to the consumer is of great benefit to the nation as a whole.[43] The legislative exemption of agricultural labor from overtime pay requirements is simply another reflection of this concern.

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[39]. Wilson Gee, *The Social Economics of Agriculture* (New York: Macmillan, 1954), 77-80.
[40]. Luther G. Tweeten, "Agricultural Policy: A Review of Legislation, Programs, and Policy," in *Food and Agricultural Policy* (Washington, DC: American Enterprise Institute for Public Policy Research, 1977), 29-42.
[41]. Luther G. Tweeten, "Agricultural Policy: A Review of Legislation, Programs, and Policy," in *Food and Agricultural Policy* (Washington, DC: American Enterprise Institute for Public Policy Research, 1977), 51.
[42]. David B. Danbom, *Born in the Country: A History of Rural America* (Baltimore: Johns Hopkins University Press, 1995), 266-68; Eleanor Clift, "Reagan Signs History's Most Costly Farm Bill," *Los Angeles Times*, December 24, 1985.
[43]. Luther G. Tweeten, "Agricultural Policy: A Review of Legislation, Programs, and Policy," in *Food and Agricultural Policy* (Washington, DC: American Enterprise Institute for Public Policy Research, 1977), 56.

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32. Third, the exclusion of agriculture from the FLSA was not the result of a compromise with Southern Democrats intent on perpetuating discrimination against black farmworkers.

33. The FLSA was introduced after the Supreme Court ruled the National Industrial Recovery Act, which had created the National Recovery Administration or NRA, unconstitutional in 1935. President Roosevelt wanted another piece of legislation that set minimum wages and maximum hours and protected children from labor. The Black-Connery bill was submitted to Congress in May 1937 but was not passed until June 1938. The bill included a provision for overtime. This was mainly "to make it possible for more workers to be added to the pay roll."[44] The delay in its passage was the result of opposition from rural states, organized labor, Republicans, and Southern Democrats. As an example, in early 1938, twenty-eight representatives who had agreed to bring the bill to the floor, voted to recommit. Of these twenty-eight, "fifteen were Democrats from rural districts in the North and West, six were from the South, . . . and four were from New Jersey."[45] Rural congressmen generally were wary of the bill because they believed that higher wages in industry would tempt agricultural labor to the cities and thus worsen the situation in the countryside.[46] Organized labor objected to the bill because it contended that it would remove its power to bargain for higher wages, with maximum wages being established by the government as well as minimums. The bill was re-written to disallow maximums being established and, more importantly, to exclude all industries that were largely covered by collective bargaining, which effectively meant industries with highly skilled workers. The Republicans opposed the bill as another example of federal overreach, and, once other problems were solved, they were easily defeated.[47] Thus, opposition to the FLSA came from

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[44]. Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly,* 53:4 (Dec. 1938): 491.
[45]. Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly,* 53:4 (Dec. 1938): 511.
[46]. Joseph G. Rayback, *A History of American Labor* New York: Free Press, 1959), 359.
[47]. For a history of the FLSA, see, for example, Howard D. Samuel, "Troubled Passage: The Labor Movement and the Fair Labor Standards Act," *Monthly Labor Review* (Dec. 2000): 32-37; Jonathan Grossman, "Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage," Office of the Assistant Secretary for Administration and Management, US Department of Labor, at https://www.dol.gov/general/aboutdol/history/flsa1938; Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly,* 53:4 (Dec. 1938): 491-515.

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many quarters and for many reasons. There is no evidence to support that agricultural workers were excluded from the initial draft of the FLSA just to counter expected southern opposition.

34. Indeed, Southern Democrats opposed the bill as it was written, complete with the agricultural exemption, because it undermined their economic interests. Wages in the South were much lower than in the North. Over time this became more of a problem for northerners as organized labor pushed wages up in the North, making northern businessmen fear that the South would rob them of their business.[48] Southerners countered the North's argument for a standard wage by saying that they paid less because southern living costs were less, their workforce was less experienced, and they had to pay much higher freight rates to get their goods to market.[49] Indeed, southerners saw the bill as "an attempt to destroy the cost advantage of southern manufacturers over northeastern factories."[50] They wanted a continuation of the regional differentials that had existed under the NRA.[51] Undoubtedly, some of the arguments that southern congressmen made were blatantly racist. For example, Martin Dies of Texas asserted that, "you cannot prescribe the same wages for the black man as for the white man."[52] Juan Perea uses this quotation and others as evidence that agricultural labor was excluded from the act to ensure the support of these racist congressmen.[53] However, the congressmen, many of whom finally voted for the bill, were referring to black workers in industry. The majority of these black workers finally received benefits under the law, equal to their white co-workers, so the southern strategy to preserve racially distinct wages failed. These racist congressmen were not concerned about the status of agricultural labor because the system of debt peonage in the South ensured that the majority of black agricultural workers would remain subordinate and oppressed regardless of the introduction of a minimum wage because they did not receive wages.

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[48]. Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986), 219-22.
[49]. Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly*, 53:4 (Dec. 1938): 502.
[50] Michael Hiltzik, *The New Deal: A Modern History* (New York: Free Press, 2011), 395.
[51] Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986), 217-18.
[52]. John Braeman et al., eds., *The New Deal: The National Level* (Columbus: Ohio State University Press, 1975), 253.
[53]. Juan F. Perea, "The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act," *Ohio State Law Journal* 72:1 (2011): 114-115.

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35. However, southern opposition was neither solely racist nor universal. All southern manufacturers were opposed to the change but not all southern industries employed blacks. The workers in southern textile factories, for example, who were clearly exploited and underpaid, were largely white.[54] As Gavin Wright said, "segregation followed industry lines rather than geography."[55] Thus, some industries, like lumber and iron and steel manufacture, employed largely black workers, while others, like textiles, employed whites almost exclusively. However, nearly all southern industrialists opposed the bill.

36. Not all southerners, however, were against the legislation. A slim majority of southern voters supported a minimum wage. Just before the passage of the act, two progressive southern congressmen were victorious in primaries—Claude Pepper in Florida and Lister Hill of Alabama. The clear indication of southern support encouraged Congress to try and resolve its differences, and the bill was passed into law.[56]

37. The final bill incorporated a sliding scale for several years to enable industries to reach the 40-cent minimum wage over a period of up to seven years.[57] It excluded many other industries in addition to agriculture: those covered completely by collective bargaining; government work; professional work; industries where workers could not physically leave work every eight hours, such as transportation, fishing, and aviation; other industries where time was essential, such as canning and food processing; "cutting or planting of timber on the farm itself"—presumably because oversight for that was in the US Department of Agriculture; local employment; and the retail trades, as well as agriculture.[58] None of these other excluded industries, with the exception of lumber in the South, employed significant numbers of black workers. Therefore, like agriculture, the exemption of these industries was based on the nature of

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[54]. Jaqueline Dowd Hall et al., *Like A Family: The Making of a Southern Cotton Mill World* (Chapel Hill: University of North Carolina Press, 1987), 66-67, 366;

[55]. Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986), 178.

[56]. William Leuchtenburg, *Franklin D. Roosevelt and the New Deal* (New York: HarperCollins, 2009), 262; Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986), 223.

[57]. James T. Patterson, *Congressional Conservatism and the New Deal: The Growth of the Conservative Coalition in Congress, 1933-1939* (Lexington: University of Kentucky Press, 1967), 242-46.

[58]. Paul Douglas and Joseph Hackman, "the Fair Labor Standards Act of 1938 II," *Political Science Quarterly* 54:1 (March 1939): 29-30.

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the work, not the race of the workers. Additionally, the FLSA brought significant benefits in industries that had sizeable numbers of black workers in the South, such as the steel and iron industry. Overall, the FLSA in 1938 only reached 20 percent of the American workforce, and most of the excluded workers were white.[59]

38. Ultimately, the exclusion of agriculture from the minimum wage and overtime provisions of the FLSA of 1938 reflected the understanding of most congressmen and New Deal bureaucrats that farming was a vital occupation, subject to unique economic challenges, that merited federal aid. The racism of southern congressmen played no part in this exclusion as most southern agricultural labor did not receive wages.

Material Fact No. 3: The Washington Minimum Wage Act's overtime provision, RCW 49.46.130, did not "incorporate" any "racially discriminatory motivation" from the FLSA and does not "perpetuate the vestiges of Jim Crow laws" allegedly "grafted onto the FLSA."[60]

Supporting Evidence and Information:

39. As discussed above, the FLSA's exclusion of farm labor was not racially motivated or infected by a racist compromise with Southern Democrats. Thus, the Washington Minimum Wage Act could not "perpetuate" any such racist policy.

40. The government of Washington State, like the federal government, viewed agriculture as a unique and vital occupation, and one in need of protection. In 1933, the Washington State Supreme Court, in State ex rel Stiner v. Yelle, stated that "Farming is not a commercial pursuit. It is not a business. . . . By common consent, farming is classed as a way of life."[61] The court also addressed the problems faced by the farmer in terms of controlling costs, asserting that, "the farmer cannot pass the tax on to the ultimate consumer, while all those later dealing with his products, . . . may and probably will very largely do so."[62] The attitudes toward

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[59]. Jonathan Grossman, "Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage," Office of the Assistant Secretary for Administration and Management, US Department of Labor, at https://www.dol.gov/general/aboutdol/history/flsa1938; Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly,* 53:4 (Dec. 1938): 491-515.

[60] First Amended Complaint ("FAC"), ¶ 6, p. 3 lines 7-9.

[61]. 174 Wash. 402, *408; 25 P.2d 91, **93; 1933 Wash. LEXIS 857, ***11.

[62]. 174 Wash. 402, *408; 25 P.2d 91, **93; 1933 Wash. LEXIS 857, ***11.

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farming reflected in this case mirror the sentiments explained above—that agriculture is not an industry but an occupation vital to the wellbeing of the entire nation.

41. The facts also belie any suggestion that the State's exemption of agricultural labor from the overtime requirement of RCW 49.46.130(1) was racially motivated against Latino farm workers. Contrary to plaintiffs' allegation, agricultural work was **not** "performed predominantly . . . by Latino workers at the time the Washington Legislature enacted RCW 49.46.130."[63]

42. The Census of 1960, which reflected the situation in the United States at the passage of RCW 49.46.130, records 4,083,698 people who made their living from agriculture. This includes owners, tenants, wage labor, and unpaid family labor. Over 85 percent of these people were white. So, nationally, agricultural work was **not** "performed . . . predominantly by Latino workers" at the time the statute was enacted.[64]

43. The 1960 census recorded 1,555,873 farm laborers in the United States. Of these, 1,240,510 people would have benefited from a law such as RCW 49.46.130 as they were paid a wage for their work. The others were unpaid familial laborers and foremen who usually received a salary and who were almost exclusively white. Of the wage earners, 320,753 (26 percent of the total) were black, 33,834 were "other races", and 885,923 were white.[65] Therefore, of the 4,083,698 people who made a living from agriculture in 1960, less than 9 percent were non-white wage laborers (See Chart 4). Additionally, non-white labor made up only 29 percent of all of the people who did agricultural wage work (See Chart 5). Finally, when considering wage workers **and** the unpaid family labor that might have benefited from an increase in the wages of the head of household, non-whites still only comprised less than 26 percent of the total (See Chart 6). Thus, if agriculture had been included as a category by amendment in the FLSA in 1960 it would have still overwhelmingly benefited white workers.

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[63]. FAC ¶ 102.

[64]. Bureau of the Census, *Eighteenth Census of the United States: 1960. Population, Occupational Characteristics: Data on Age, Race, Education, Work Experience, Income, Etc., for the Workers in Each Occupation* (Washington, DC: GPO, 1963), Table 3, pps. 21-30.

[65]. Bureau of the Census, *Eighteenth Census of the United States: 1960. Population, Occupational Characteristics: Data on Age, Race, Education, Work Experience, Income, Etc., for the Workers in Each Occupation* (Washington, DC: GPO, 1963), Table 3, pps. 21-30.

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Chart 4—Data from the 1960 Census

Chart 5--Data from the 1960 Census

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Chart 6—Data from 1960 Census

44. In Washington State, according to the 1960 census there were 56,467 people who made their living from agriculture. Of these, 54,553, or 97 percent, were white. The census records 26,697 farm laborers, of whom 96 percent were white. It should also be noted that the categories on the census were "white" and "nonwhite." Nonwhite in Washington State would have included a significant number of Asian farmers as well as Native Americans. Therefore, the small percentage of nonwhite agriculturalists would not have been uniformly Latinos.[66]

45. The 1970 census, which is further removed from 1959, did count Latinos. According to it, Washington State had 41,229 people earning a living from agriculture in 1970, of whom 32,451 (or 79 percent) were white, 211 (or 0.005 percent) were black, and 8,567 (21 percent) were Latino.[67] According to James N. Gregory, Hispanics did not predominate in the

[66]. Bureau of the Census, *Eighteenth Census of the United States: 1960. Census of Population: 1960-VI-Part 49 Characteristics of Population: Washington* (Washington, DC: GPO, 1963), Table 58, p. 109.

[67]. Bureau of the Census, *Nineteenth Census of the United States: 1970. Census of Population: 1970-VI-Part 49 Characteristics of Population: Washington* (Washington, DC: GPO, 1973), Table 171, p. 494-95.

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agricultural workforce of Washington State until 2000, when they represented 59 percent.[68] And according to Maria Quintana and Oscar Rosales Casatñeda, "Until the late twentieth century, the majority of agricultural workers in Washington State were white, native-born, mostly single men under the age of 40."[69]

46. Therefore, of the 41,229 people who made a living from agriculture in Washington State in 1970, less than 22 percent were non-white wage laborers (See Chart 7). Additionally, non-white labor made up less than 22 percent of all of the people who did agricultural wage work (See Chart 8). These charts both indicate a whiter agricultural labor force than that seen nationally a decade before. Finally, when considering wage workers **and** the unpaid family labor that might have benefited from an increase in wages of the head of household, non-whites still only comprised less than 26 percent of the total (See Chart 9), which is similar to the numbers nationally a decade before. However, the conclusion remains constant: if agriculture had been included as a category in the RCW 49.46.130 it would have overwhelmingly benefited white workers even more than a decade after its passage.

[68]. James N. Gregory, "Toward a History of Farm Workers in Washington State," Seattle Civil Rights and Labor History Project, http://depts.washington.edu/civilr/farmwk_ch1.htm.
[69]. Maria Quintana and Oscar Rosales Castañeda, "Asians and Latinos Enter the Fields," Seattle Civil Rights and Labor History Project, http://depts.washington.edu/civilr/farmwk_ch4.htm.

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Chart 7—Data from the 1970 Census

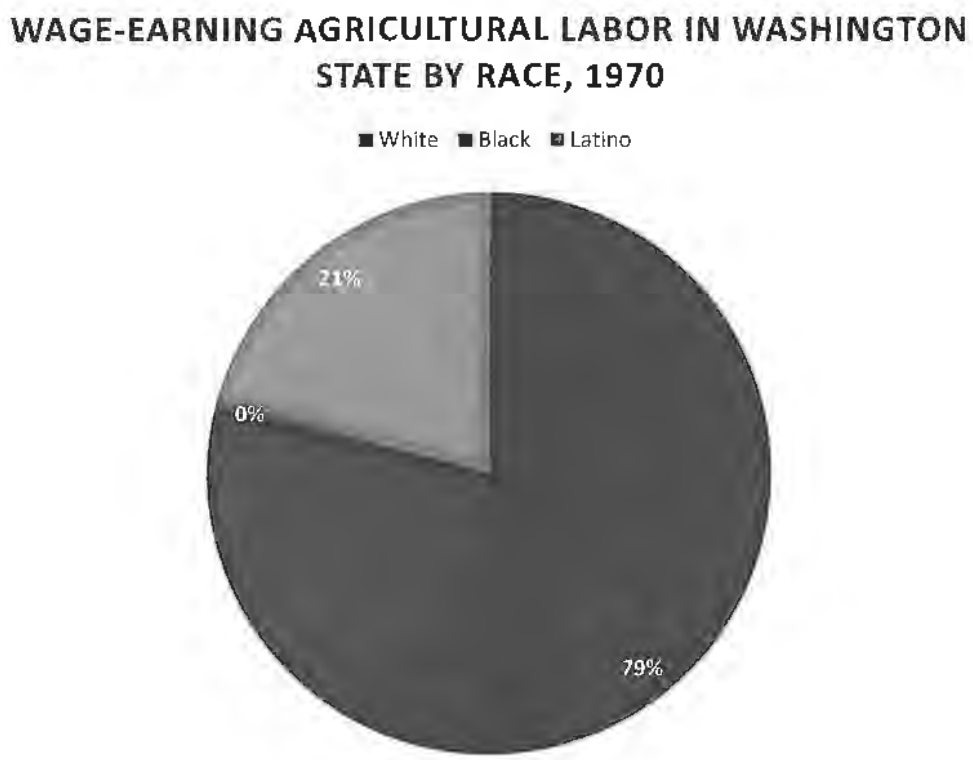

Chart 8--Data from the 1970 Census

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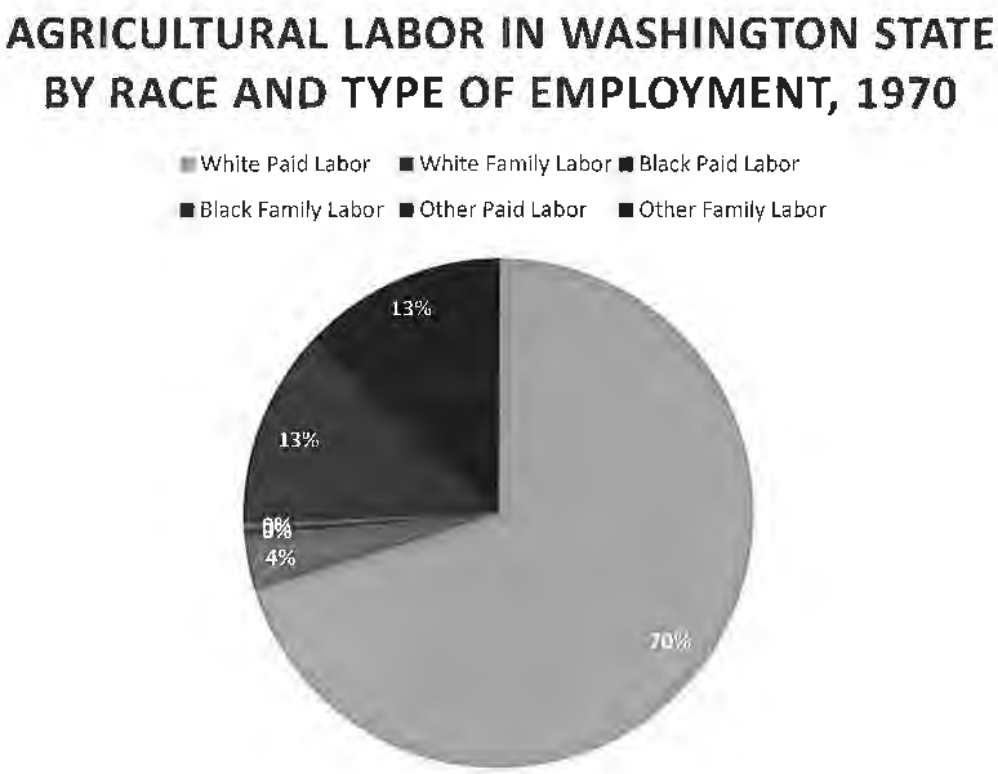

Chart 9—Data from the 1970 Census

47. Of course, it is clear that the census undercounts various groups. Migrant workers are rarely represented fully in the census. Trying to estimate the number of Hispanic migrants that might have been working at some point during the year in the fields of Washington State is hard. In 1952, the state contracted for 1,961 Braceros—or legal, temporary workers from Mexico.[70] Some of these would have worked in the forests or on the railways. Additionally, this number would have been augmented by non-legal migrant workers and that number is hard to estimate. But, even if the number of migrant worker Latinos in the state was tripled, which is suggested by Richard Craig, to 5,883 and then added to the extant statistics for 1960, Latinos would only have represented 36 percent of the agricultural wage labor force and 31 percent of people earning their living from agriculture.[71]

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[70]. Ronald Mize and Alicia Swords, *Consuming Mexican Labor: From the Bracero Program to NAFTA* (Toronto: University of Toronto Press, 2011), 5.
[71]. Richard B. Craig, *The Bracero Program: Interest Groups and Foreign Policy* (Austin: University of Texas Press, 1971), 63.

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48. In 2016 the Census Bureau conducted community surveys across the country. The results show that the overwhelming number of farmworkers in Washington State and in Yakima County are Latino. In the state, Latinos represent 73 percent of the people working in "Farming, Fishing, and Forestry Occupations." In Yakima County Latinos represent 92 percent of people working in "Farming, Fishing, and Forestry Occupations." However, both in the state and in the county, agriculture does not employ the majority of Latinos. So, in Washington State, only 12 percent of Latinos are employed in "Farming, Fishing, and Forestry Occupations." The number is larger in Yakima County at 26 percent. Therefore, the majority of Latinos are working in professions that are covered by overtime regulations, once again, suggesting that the exclusion of agriculture from the revision to Washington State Act in 1989 was not motivated by racism or racial animus.[72] Indeed, according Gregory, Hispanics did not predominate in the agricultural workforce of Washington State until 2000, when they represented 59 percent.[73] So, in 1989 when minimum wage requirements were applied to agriculture, the decision to leave the overtime exemption for agricultural employees in the statute was clearly not based upon any intent to discriminate against Latino farm employees.

49. In summation, the assertion that Washington's Minimum Wage Act perpetuated a racial animus that was embedded in the FLSA is false. If agricultural workers had been included in the FLSA, the beneficiaries would have overwhelmingly been white workers, even in the South. Southern opposition to the bill was not universal and was based in concerns about increased industrial, not agricultural, costs. Similarly, white workers would have been the majority of beneficiaries if agricultural workers had been included in Washington's Minimum Wage Act in 1959.

50. It is clear that agricultural workers were exempted from the hours and overtime provisions of the FLSA because of the complex nature of agricultural work, the agrarian myth,

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[72]. See, Bureau of the Census, "Occupation by Sex for the Civilian Employed Population 16 Years and Over," #S2401, 2016 American Community Survey, 1-Year Estimate; Bureau of the Census, "Occupation by Sex for the Civilian Employed Population 16 Years and Over (White Alone, Not Hispanic or Latino)," #B24010H, 2016 American Community Survey, 1-Year Estimate; Bureau of the Census, "Occupation by Sex for the Civilian Employed Population 16 Years and Over (Hispanic or Latino)," #B24010I, 2016 American Community Survey, 1-Year Estimate. All at https://www.factfinder.census.gov/faces/nav/jsf/pages/index.xhtml.

[73]. James N. Gregory, "Toward a History of Farm Workers in Washington State," Seattle Civil Rights and Labor History Project, http://depts.washington.edu/civilr/farmwk_ch1.htm.

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and because the problems facing agriculture had already been addressed by previous New Deal legislation. Throughout American history, agriculture has been seen as a vocation not an industry. The twin ideals that farming is good for the farmer and vital for the nation have underpinned most federal and state agricultural legislation. The Fair Labor Standards Act and the Minimum Wage Law are perfect examples of this.

Further your Declarant sayeth naught.

Dated this 2 day of April, 2018

Claire Strom

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EXHIBIT 23

John Ray Nelson, WSBA No. 16393
Milton G. Rowland, WSBA No. 15625
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Attorneys for Defendants

The Honorable Michael G. McCarthy

SUPERIOR COURT OF WASHINGTON
IN AND FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER FARM PROPERTIES, INC., f/k/a DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants, and WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU,	No. 16-2-034173-9 **DECLARATION OF JOHN RAY NELSON**

John Ray Nelson does hereby declare under penalty of perjury according to the laws of Washington State:

1. I am a member of Foster Pepper PLLC, and one of the attorneys of record for one of the attorneys for Defendants in the above-entitled case. I am a resident of Spokane,

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Washington, over the age of eighteen years, and am competent to make this declaration on personal knowledge.

2. Attached hereto as Exhibit 1 to this Declaration is a true and correct copy of the May 2015 audit results for DeRuyter Brothers Dairy as prepared by Gardner-Arche Advisors. This document was provided to the DeRuyters by Gardner-Arche Advisors and maintained by the DeRuyters in the ordinary course of business. It was produced in discovery in this action in response to plaintiffs' discovery requests.

Further your declarant sayeth naught.

DATED this 4th day of April, 2018.

John Ray Nelson

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CERTIFICATE OF SERVICE

I certify that I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of eighteen, and I am competent to be a witness herein.

On this 5th day of April, 2018, I caused the foregoing document to be served on the parties as indicated below.

Lori Jordan Isley Joachim Morrison Columbia Legal Services 6 South Second Street, Suite 600 Yakima, WA 98901 *Counsel for Plaintiff*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail [ ] Via U.S. Mail, postage prepaid
Marc Cote Frank Freed Subit & Thomas LLP 705 Second Avenue, Suite 1200 Seattle, WA 98104-1798 *Counsel for Plaintiff*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail [ ] Via U.S. Mail, postage prepaid
Timothy J. O'Connell Stoel Rives LLP 600 University Street, Ste. 3600 Seattle, WA 98101 *Counsel for Intervenors*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail [ ] Via U.S. Mail, postage prepaid

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Pam McCain

Pam McCain

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EXHIBIT 1

Prepared for:	Northwest Dairy Association				
Audit Type:					
	Initial Audit:	X	Re-Audit:	☐	Annual Audit: ☐

Name of business:	DeRuyter Brothers		
Address:	5111 Van Belle Road		
City:	Outlook		
State/Province:	WA		
Postal Code:	98938		
Country:	US		
Contact Person	Kelly Reed, DVM	Title:	Farm Manager
Phone:	509 837-2678		
Cell Phone	509 731-0793		
Email:	Ker27@cornell.edu		
Auditors:	Gardner- Arche Advisors	Audit Date:	5-19-15
Time In:	10am	Time Out:	1pm

Summary of Audit Results

Areas of Concern		
	Yes	No
Child Labor	☐	X
Forced Labor	☐	X
Discrimination	☐	X
Harassment and Abuse	☐	X
Freedom of Association	☐	X
Wages and Benefits	☐	X
Working Hours	☐	X
Health and Safety	☐	X
Environmental	☐	X
Demonstration of Compliance	☐	X

Privileged and Confidential
Client – NAME 2013

Dairy Farm Profile

PRODUCTION CAPACITY
How many pounds of milk do you process per month on average? 12,000,000

FACILITIES		
How many milking cows? 5,000	Dry cows? 500	Herd bulls? 0
How many parlors/barns? 2	How many milking stations/stalls/units? 144	

Does the farm have all required operating licenses and permits? For example, business license, grade A permit, etc	Yes: X	No: ☐	Unable to Determine: ☐
Has the farm been audited before for CSR or labor compliance?	Yes: ☐	No: X	Unable to Determine ☐
Have government labor inspectors visited?	Yes: X	No: ☐	Unable to Determine ☐
Have government EHS inspectors visited?	Yes: X	No: ☐	Unable to Determine ☐
Has your farm been through an animal care evaluation?	Yes: X	No: ☐	Unable to Determine ☐
Does the farm have any current certifications, routine inspections, other evaluations or assessments?	Yes: X	No: ☐	Unable to Determine ☐
If yes, please list what kind of certification, the date of issuance and the date of expiry:	WA L&I for EHS and Validus for animal welfare		

FARM WORKFORCE
Total # of employees present on the day of the audit: about 40
Total # of employees which are female (of the total workforce): 7
Total percentage of the total workforce which is female (of the total workforce): 10%
Total # of employees which are male (of the total workforce): 68
Total percentage of the total workforce which is male (of the total workforce): 90%
Total # of employees that work for the farm (total workforce): 75
Contracted Employees:

Does the farm employ workers hired through an agency or a third party?	Yes: ☐	No: X
If "yes", please provide below information:		

Imported Workers: Could be migrant, seasonal, and temporary workers- No migrant workers currently

Nationality:					
Deposit upon hire:	Yes: ☐	No: ☐	If so, how much is the deposit?		
Monthly recruitment fee:	Yes: ☐	No: ☐	Deducted from EE's pay:	Yes: ☐	No: ☐
Does it fall below MW?	Yes: ☐	No: ☐	Original documents retained:	Yes: ☐	No: ☐

Notes: There are 2 seasonal workers. They work between November and April as truck drivers for the last 3 years.

SECURITY			
Is there a check-in/check-out process?:	Yes: X No☐		
Are drug tests used in hiring?	Yes: X No☐	Do employees need permission to leave?	Yes: X No: ☐
After hiring?	Yes: X No☐		

Privileged and Confidential
Client – NAME 2013

Audit Results

BACKGROUND INFORMATION *(Include OPENING and CLOSING meeting notes, names and titles of factory management that participated in audit and any special situations.)*

Facility overview: Kelly Reed, Farm Manager, provided access to employee documents (including payroll and time records), give a tour of the milking barns and farm buildings, allowed interviews with employees, and answered all questions about how DeRuyter Brothers Dairy operates as a business.

There are 2 milking barns operating with 2 Grade A permits. This labor assessment included interviews with employees from both barns, payroll records from both locations, and a health and safety walkthrough of both locations to see the working conditions of the employees.

Interviews conducted on site: 10 employees were interviewed, plus interviews with management. Five employees were interviewed from each barn.

CHILD LABOR AND JUVENILE WORKERS		
Legal minimum age (with restrictions): 18		
Average age of work force: 30		
Youngest age of employees: 18		
Historic child labor detected: No	Yes: ☐	No: X
Are employees' documents available?	Yes: X	No: ☐
Are there age documents missing?	Yes: ☐	No: X
If yes, which percentages of documents are missing?		
Are I-9s complete and available for all employees?	Yes: X	No: ☐
Were the employees' personnel files available for review?	Yes: X	No: ☐
If there are employees younger than 18, does the farm have a minor work permit? No employees under 18 employed DeRuyter Brothers at this time.	Yes: ☐	No: ☐
Average tenure of employees?	4 years	
Longest tenured employee?	27 years	
Shortest tenured employee?	2 weeks	

Narrative: There were no reports of underage workers. The youngest employee was 18. Age documentation and legal employment status records were provided for review. All I-9s were complete. Most new hires are walk-ins or responding to ads posted. Most employee turnover is in the parlors.

FORCED LABOR		
Do employees pay a deposit upon hire?	Yes: ☐	No: X
Are original documents held by the dairy owner?	Yes: ☐	No: X
Are employees allowed to leave during their shift for non work emergencies?	Yes: X	No: ☐
Are there compulsory production quota?	Yes: X	No: ☐
Is overtime mandatory?	Yes: ☐	No: X
Do employees have restrictions on their water and toilet breaks?	Yes: ☐	No: X

Narrative: All employees interviewed stated they could leave their shift if needed. There were no reports of forced labor. The employees are told when they are hired that all the cows must be milked each shift. It is a standard production quota in the dairy industry. Employees said they can take breaks as needed.

DISCRIMINATION, HARASSMENT AND ABUSE		
Is there any kind of discrimination observed in hiring practices or career development opportunities?	Yes: ☐	No: X
Are workers treated equally?	Yes: X	No: ☐
Are workers treated with dignity and respect?	Yes: X	No: ☐
Are there any signs of verbal abuse?	Yes: ☐	No: X
Are there any signs of physical abuse?	Yes: ☐	No: X

Were there any reports of sexual harassment or abuse?	Yes: ☐	No: X

Narrative: There were no reports of harassment, abuse, or discrimination. When ask why they choose to work at this farm for 3 years or 5 years, employees stated, "This place is the best.", "They treat us like family.", "Todo bien".

FREEDOM OF ASSOCIATION		
Is there a grievance mechanism/process in place? e.g. open-door policy, suggestion-box, hot-line number to call or email for complaints/ideas/problems?	Yes: X	No: ☐
Are employees free to join unions or other work organizations?	Yes: X	No: ☐
Is the farm associated with a union?	Yes: ☐	No: X
Is the farm a member of a trade association (Co-op, member organization, etc)?	Yes: X	No: ☐
Does the farm have any other means of collective bargaining or organizing (like a workers participation committee)?	Yes: ☐	No: X

Narrative: Employees were asked about the grievance process at DeRuyter Brothers Dairy by asking them to explain who they talk to if they have a problem, complaint, or question. All employees stated they talk to their supervisor, then Kelly or the comment box.

DeRuyter is part of several co-ops or other member groups like the NDA, WAFLA, Farm Bureau, Bleyhls, and Land O' Lakes.

WAGES AND BENEFITS

Do all workers have an employment contract?	Yes: ☐	No: X	Unable to Determine: ☐
Is the business "at will employment"?	Yes: X	No: ☐	
If no, which percentage of employees does not have a contract?	No contracts. 0%		
Are employment contracts adequate and signed? N/A	Yes: ☐	No: ☐	Unable to Determine: ☐

Regional minimum wage:	9.47
Overtime premium:	N/A in agriculture

WAGE ANALYSIS				
	By reviewing documents		By conducting EE interviews	
Minimum wage guaranteed:	Yes X	No: ☐	Yes: X	No: ☐
Overtime paid correctly, if required:	Yes X	No: ☐	Yes: X	No: ☐
Social insurance / legal benefits provided:	Yes X	No: ☐	Yes: X	No: ☐

Method of payment:	Check, direct deposit
Are payments made on time?	Yes: X No: ☐
How often are employees paid?	Semi-monthly
Does the farm provide pay stubs to employees?	Yes: X No: ☐ Yes: X No: ☐
Are there strong hints suggesting that payrolls records could be manipulated?	Yes: ☐ No: X
Reviewed payroll dates:	May 15, 2015

Does the farm have piece-rate workers?	Yes: ☐ No: X
How big is the percentage of piece-rate workers out of the total work-force?	N/A
What is the average piece rate earned?	
How many workers are paid hourly?	Paid by shift
How many are paid a flat day-rate?	37
How many are salaried?	1
Do all salaried employees qualify for salaried exempt status?	Yes: X No: ☐
Do workers sign their timecards to verify hours worked?	Yes: X No: ☐
Does the farm give loans to the employees and then deduct regular payments from their paychecks?	Yes: X No: ☐

Narrative: Employees are paid a flat day rate that is above the minimum wage. Most employees reported earning $95 per day for the 8.75 hour shift, which is $10.85 per hour, well above the MW of $9.47 in WA. Overtime compensation is not required in this industry. Some of the employees interviewed reported earning $115 per day, others $12 per hour, and one stated $25 per hour. Employees punch a timecard to track hours worked. Employees receive 1/2 day per month (or 6 days per year) up to 3 years. After 3 years, they receive 12 days of vacation. There is matching 401K benefit and Christmas bonus.

WORKING HOURS AND OVERTIME

Does the farm have a time record system?	Yes: X	No: ☐	Unable to Determine: ☐
Do employees verify these records?	Yes: X	No: ☐	Unable to Determine: ☐
Are there strong hints suggesting that payrolls records could be manipulated?	Yes: ☐	No: X	Unable to Determine: ☐

ANALYSIS OF WORKING HOURS				
	By reviewing documents		By conducting EE interviews	
Are the weekly working hours within legal limits or any limit required by client's code of conduct?	Yes: X	No: ☐	Yes:X	No: ☐
Do employees work more than 8 hours per day?	Yes: X	No: ☐	Yes:X	No: ☐
Are the overtime hours within legal limits?	Yes: X	No: ☐	Yes:X	No: ☐
Do employees have at least one day of rest every 7 days?	Yes: ☐	No:X	Yes:X	No: ☐
Standard working hours per day:	8.75			
Number of breaks during workday (as stated by employees):	2			
Length of breaks in minutes (as stated by employees):	30 minute lunch, 10 minutes			
Average daily working hours (as stated by employees):	9			
Average working hours per month in reviewed period (stated by employees):	216			
Average overtime per day in the reviewed period (as stated by employees):	0			

Average overtime per month in the reviewed period(as stated by employees):	0
Average number of rest days per month in the reviewed period (stated by employees):	4

Narrative: The shifts vary by job, but there are 3 shifts for milkers, 7:30am-4pm, 3:30pm-12am, 11:30pm-8:15am. Hours worked are within the limits set by most major brands and retailers. Milkers are working less than 60 hours per week. Hours worked and wages paid appear to meet local and federal labor requirements and industry standards.

HEALTH & SAFETY*(include dormitory, if applicable)*					
Fire-fighting equipment is adequate:	Yes: X	No: ☐	Control panels labeled:	Yes:X	No: ☐
Fire or emergency alarm available	Yes: X	No: ☐	Aisles are clear and marked:	Yes:X	No: ☐
Moving parts guarded:	Yes: X	No: ☐	Adequate ventilation:	Yes:X	No: ☐
Exits marked:	Yes: X	No: ☐	Material Safety Data Sheets maintained:	Yes:X	No: ☐
Adequate first aid supplies:	Yes: X	No: ☐	Secondary containment for chemicals:	Yes:X	No: ☐
Sanitary restrooms:	Yes: X	No: ☐	Emergency lights installed:	Yes:X	No: ☐
Electrical hazards: Is there a safety plan? Is drinking water available?	Yes: ☐ Yes: X Yes: X	No: X No: ☐ No: ☐	Safety training provided:	Yes:X	No: ☐

Evacuation plot plan posted:	Yes: X	No: ☐	Dormitory or housing available:	Yes X No: ☐
Canteen or breakroom available:	Yes: X	No: ☐	Other Health & Safety concerns	Yes: ☐ No: X
PPE provided at no cost to workers:	Yes: X			No: ☐
Emergency generator?	Yes: X			No: ☐

Building Condition	
Are there buildings with more than one story?:	Yes: ☐ No: X
Is the building owned or rented?	owned
Are flammable goods stored at any place?	Yes: ☐ No: X

Narrative: The working conditions appeared safe. There were fire exits, fire extinguishers, signs noting safety requirements. A best practice that DeRuyter's does is to post photos of near-miss events and accidents in the breakroom so that employees can be reminded of safety procedures. The safety meetings were documented.

ENVIRONMENTAL		
Does the farm discharge hazardous waste directly to the environment?	Yes: ☐	No: X
Are outlawed chemicals used by the farm?	Yes: ☐	No: X
Is the waste management documentation inadequate?	Yes: ☐	No: X

Narrative: The nutrient management plan covers the environmental impacts of the farm, as required by law.

DEMONSTRATION OF COMPLIANCE		
Were there any inconsistencies found during the audit?	Yes: ☐	No: X

Narrative: Kelly was very helpful and supportive of the audit process. Through management interviews, employee interviews, document review, and observations is appears that DeRuyter is in compliance with the required standards.

REMARKS

(PLEASE ONLY FILL-IN IF EXCEPTIONS WERE DETECTED DURING THE AUDIT WHICH HAVE TO BE CLARIFIED)

Audit findings: There were no findings.

Good Practices Observed:

1. Posting photos/recaps of near-miss events and accidents in the breakroom as s reminder to the employees of safety practices and company procedures is a great idea that others could benefit from following.

PHOTOGRAPHS

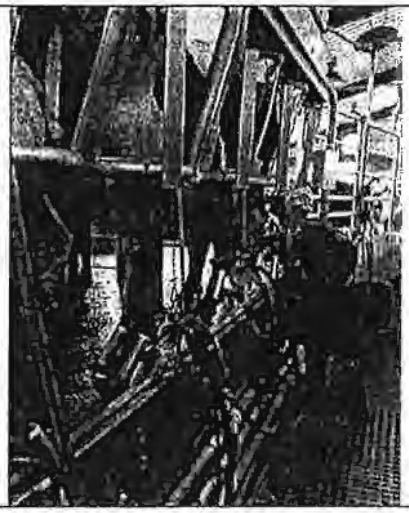

EXHIBIT 24

The Honorable Michael G. McCarthy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER BROTHERS DAIRY, INC., Defendant. WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenor-Defendants.	No. 1620341739 **INTERVENOR-DEFENDANTS' OPPOSITION MEMORANDUM TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND STATEMENT OF POINTS AND AUTHORITIES AND CROSS MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Washington State Dairy Federation ("WSDF") and Washington Farm Bureau ("WFB," together, "Intervenors") oppose the pending motion for summary judgment (the "Motion") filed by plaintiffs Jose Martinez-Cuevas and Patricia Aguilar ("Plaintiffs"). Plaintiffs have burdened the Court with a massive record to support their claim that the overtime exemption for agricultural workers, RCW 49.46.130(2)(g) (the "farm worker exemption"), is unconstitutional. Notwithstanding their unduly excessive filings, Plaintiffs have not come forward with actual evidence that the farm worker exemption violates article I, section 12 of the Washington

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Constitution (hereinafter "Art. I, § 12") under either a privileges and immunities and/or an equal protection claim.

When the Court looks behind the extensive but nonetheless attenuated statistics offered by Plaintiffs, it is plain that Plaintiffs have not proven any of the requirements for their claim of unconstitutionality: Plaintiffs prove neither that the right to be paid an overtime premium is a fundamental right, nor that the legislature (and the people) did not have a reasonable ground for the farm worker exemption, nor that agricultural workers are a suspect or even semi-suspect class. How can a claim for an overtime premium be a fundamental right, when from the initial enactment of the statute creating such a claim, numerous groups of employees comprising a large portion of the work force, have been exempt from *any* entitlement to overtime? How can the legislature and the people be proceeding on an unreasonable ground when they decline to subject farmers to the expense of overtime, when workplace safety on farms is otherwise extensively regulated? How can farm workers be treated as a suspect class when, notwithstanding Plaintiffs' glib assertion that 'agricultural worker' is an euphemism for 'Latina/o[1],' at the time of the passage of the farm worker exemption, most agricultural workers were Caucasian?

Plaintiffs ask the Court to strip the legislature of its power to regulate economic relationships, and create law that is contrary to the routine treatment of farming across the entire nation. Moreover, if decided in Plaintiffs' favor, the impact of such a sweeping change will have catastrophic consequences on the Washington farmers. Plaintiffs fail to present evidence sufficient to meet their burden under the applicable standards. Accordingly, Intervenors respectfully request Plaintiffs' motion for summary judgment be denied.

For all the same reasons, summary judgment should be granted in favor of Intervenors and the Defendant DeRuyter Brothers Dairy, Inc. ("DeRuyter").

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[1] Intervenors use this term as used by Plaintiffs. Various materials may also refer to 'Hispanic.' Similarly, some case law or materials may refer to 'black' persons rather than 'African-Americans.' Intervenors will generally use the terms used in the referenced materials. No disrespect is intended.

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II. ISSUES PRESENTED

1. Does RCW 49.46.130(2)(g) violate the privileges and immunities provision of the Washington Constitution?

2. Is RCW 49.46.130(2)(g) a violation of the equal protection clause under the Washington Constitution?

III. EVIDENCE RELIED UPON

In support of this motion, Defendants rely upon the pleadings on file in this case, the Second Declaration of John Stuhlmiller ("2d Stuhlmiller Decl.") and the Declaration of Timothy J. O'Connell ("O'Connell Decl.") and the exhibits therein.

IV. RELEVANT FACTS

Plaintiffs Jose Martinez-Cuevas and Patricia Aguilar are former employees of DeRuyter, each of whom spent a little more than one year working as milkers. Plaintiffs filed this action on December 8, 2016. As remains at issue, Plaintiffs seek a declaratory judgment invalidating the farm worker exemption as a violation of Washington State's Constitution. Specifically, Plaintiffs assert the exemption violates the Art. I, § 12 by violating their right to a safe workplace and discriminating against Latina/o agricultural workers on the basis of race and/or national origin. Plaintiffs also have a correlating claim for overtime pay that DeRuyter purportedly wrongfully withheld under the allegedly unconstitutional exemption. Plaintiffs further assert that invalidation of the exclusion should be applied retroactively to require payment of overtime they would have earned but for the exemption.

V. ARGUMENT

Under Art. I, § 12, "no law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." In a broader sense, Art. I, § 12 was intended to "prevent favoritism and special treatment for a few, to the disadvantage of others." *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 776, 317 P.3d 1009 (2014). Pursuant to this section,

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Washington State citizens may allege constitutional claims on the basis of a privileges or immunities violation as well as an equal protection violation. *Schroeder v. Weighall*, 179 Wn.2d 566, 577-78, 316 P.3d 482 (2014).

Plaintiffs present two different -- but overlapping -- theories arising from Art. I, § 12 to argue that RCW 49.46.130(2)(g) is unconstitutional. They first allege that the exemption denies agricultural workers the same privileges or immunities available to other workers. Motion, at 12-18. Plaintiffs next claim that exempting agricultural workers from overtime violates the equal protection guarantee contained in Art. I, § 12. Motion, at 18-24. Both theories are wrong.

A. Legal Standard

At summary judgment, the moving party must "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). All facts and reasonable inferences from the facts are viewed in the light most favorable to the nonmoving party. *Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas Cty.*, 189 Wn.2d 516, 526, 404 P.3d 464 (2017) (citing *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989)).

All enacted statutes are presumed constitutional and the party challenging a statute must demonstrate its invalidity beyond a reasonable doubt. *City of Bellevue v. State*, 92 Wn.2d 717, 720, 600 P.2d 1268 (1979). The 'beyond a reasonable doubt' standard requires that the party "challenging a statute must, by argument and research, convince the court that there is no reasonable doubt that the statute violates the constitution." *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998). The reason underlying this standard is based on "respect for the legislative branch of government as a co-equal branch of government, which, like the court is sworn to uphold the constitution." *Id.* "[T]he Legislature speaks for the people and [a court should be] hesitant to strike a duly enacted statute unless fully convinced, after a searching legal analysis, that the statute violates the constitution." *Id.* As such, the burden is on the Plaintiffs in this case to prove beyond a reasonable doubt that the overtime exemption is unconstitutional in

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order to successfully challenge its validity.

Finally, a "statute can be declared unconstitutional only where specific restrictions upon the power of the legislature can be pointed out, and the case shown to come within them, and not upon *any general theory that the statute conflicts with a spirit supposed to pervade the constitution, but not expressed in words*." *State v. Vance*, 29 Wash. 435, 459, 70 P. 34 (1902) (emphasis added).

B. The Agricultural Overtime Exemption Is Not an Impermissible Denial of a Privilege or Immunity.

In order to prove that a statute violates Art. I, § 12 under a privileges or immunities analysis, Plaintiffs must satisfy a two-prong test. First, Plaintiffs must show the "challenged law grants a privilege or immunity under [the Washington] constitution." *Schroeder*, 179 Wn.2d at 581 (quoting *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 812, 83 P.3d 419 (2004) ("*Grant County II*")). If Plaintiffs can show the challenged law grants a privilege or immunity, they must further show no "reasonable ground" exists for granting that privilege or immunity. *Id.* (citing *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 145 Wn.2d 702, 731, 42 P.3d 394 (2002), *vacated in part by Grant County II*, 150 Wn.2d 791). Plaintiffs fail to establish the exemption meets either prong.

1. The agricultural overtime exemption does not impair a fundamental right of state citizenship.

Statutes "triggering [a privileges or immunities] analysis are only those implicating 'the fundamental rights … of … state … citizenship.'" *Schroeder*, 179 Wn.2d at 573 (ellipses in original) (quoting *Vance*, 29 Wash. at 458). Under the Washington Constitution, fundamental rights "pertain alone … to the citizens of the state by reason of such citizenship." *Vance*, 29 Wash. at 458. Washington has been clear that "not every legislative classification constitutes a 'privilege' within the meaning of article I, section 12 but only those where it '… may be said to come within the prohibition of the constitution, or to have been had in mind by the framers of

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that organic law.'" *Ockletree*, 179 Wn.2d at 778[2] (quoting *Vance*, 29 Wash. at 458-59). Additionally, "rights left to the discretion of the legislature have not been considered fundamental." *Id.* (citing *Grant County II*, 150 Wn.2d at 814). Indeed, on this issue, the *Ockltree* court was unanimous:

> [A] right granted at the discretion of the legislature is not a "privilege" any citizen can assert. … Likewise, the legislature has authority to create or repeal causes of action unrelated to common law claims, and it does not grant or withhold a privilege when it does so.

179 Wn.2d at 794-95 (dissenting, Stephens J.).

Those considerations, in and of themselves, completely dispose of Plaintiffs' claim that they have a fundamental right to the payment of an overtime premium, on three different bases. First, Plaintiffs admit that it was not until 1959 -- fully *seventy years* after statehood -- that Washington enacted statutory law that granted anyone the right to overtime. Motion, at 8. Plaintiffs offer not one word of analysis as to how a right can be 'fundamental' when it did not exist, for anyone, for more than half of Washington's history.

Second, the ability to claim a legal entitlement to a specific premium -- time and a half for hours worked beyond forty in a work week -- is entirely a legislative creation. RCW 49.46.130. Each component of that formula was enacted through legislative decision-making; who was to say that a 25% premium was inadequate, but double-time was too much? The question answers itself: in our system of government, only the legislature is able to make that determination. Indeed, the adoption of a forty hour work week was itself a change from long-standing patterns of business operations in our state: at the time of statehood, "the usual workweek was 6 days long. Saturday was a day of commerce — banks, attorney offices, state offices, and courts were open for business." *Stikes Woods Neighborhood Ass'n v. City of Lacey,* 124 Wn.2d 459, 462 (1994). The 'right' to an overtime premium for working some specific

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[2] *Ockletree* was decided by the Washington Supreme Court in a 4-1-4 decision. Justice Wiggins concurred in the lead opinion's analysis of the facial constitutionality of the statutory provision at issue. 179 Wn.2d at 805.

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amount of hours is quintessentially a legislatively created and defined standard, and is thus not a 'fundamental' right. *Ockletree*, 179 Wn.2d at 778, 794-95.

Third, the structure of the legislature's creation of an entitlement to overtime compensation belies any possible belief that it is a 'fundamental' right. From its first enactment to today, vast swathes of the work force are exempt from a 'right' to overtime, including:

- Casual labor at a private home, RCW 49.46.010(3) and RCW 49.46.130(2)(a);
- Executive employees, *id.*;
- Administrative employees, *id.*;
- Professional employees, *id.*;
- Outside sales persons, *id.*;
- Newspaper delivery personnel or freelance correspondents, *id.*;
- Forest and fire protection personnel, *id.*;
- Employees who sleep at the place of employment, *id.*;
- Inmates, *id.*;
- Crews of Washington state ferries, *id.*;
- Other seamen, *id.*, RCW 49.46.130(2)(c);
- Minors playing junior hockey, RCW 49.46.010(3);
- Seasonal fair employees, RCW 49.46.130(2);
- Unionized motion picture projectionists; *id.*;
- Employees in industries where federal law prescribes workweeks other than forty hours, *id.*;
- Some air carrier employees, *id.*;
- Some real estate brokers, *id.*;
- Commission paid retail employees, *id.*;
- Commission paid automobile salespersons, *id.*

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The legislature has made myriad decisions about what employees are or are not entitled to overtime. It is thus not surprising that no Washington court[3] has declared overtime to be a fundamental right. To do so would "embrace a broader meaning" that would not only be "inconsistent" with Art. I, § 12 "but could also produce harmful consequences." *Ockletree,* 179 Wn.2d at 778-79. Declaring overtime a fundamental right would mean "recognizing a privilege anytime a statute grants a right to some but not others. In other words, many legislative decisions could be claimed as privileges." *Id.* at 779. The courts would then be "called on to second-guess the distinctions drawn by the legislature for policy reasons nearly every time it enacts a statute." *Id.* The federal courts have reached the same conclusion; none "has deemed wage-and-hour protections fundamental under the Constitution .... A State does not violate the Privileges or Immunities Clause by denying the minimum-wage or overtime-pay requirement established by Congress in the FLSA." *Mich. Corr. Org. v. Mich. Dep't of Corr.*, 774 F.3d 895, 902 (6th Cir. 2014); *see also, Young v. Ferrellgas, L.P.*, 106 Wn. App. 524, 531, 21 P.3d 334, 337 (2001) (calling overtime pay under RCW 49.46.130(1) a statutory right). Overtime pay is decidedly left in the legislature's hands and thus cannot be considered a fundamental right subject to judicial action as Plaintiffs argue here.

Plaintiffs' efforts to derive an "employee right" to a safe workplace under article II, section 35 ("Art. II, § 35") is thus fatally defective. Our constitution mandates that:

> The legislature shall pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life or deleterious to health; and fix pains and penalties for the enforcement of the same.

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[3] Washington courts have regularly reviewed the exemptions set forth in RCW 49.46.130, and never once suggested that any exemption violates a fundamental right. *Cerrillo v. Esparza*, 158 Wn.2d 194, 142 P.3d 155 (2006); *Stahl v. Delicor of Puget Sound, Inc.*, 148 Wn.2d 876, 64 P.3d 10 (2003). As is relevant to the instant matter, *Cerrillo* is particularly noteworthy. Our state Supreme Court construed the plain language of RCW 49.46.130(2)(g) -- the farm worker exception -- to reverse the Court of Appeals and conclude that a group of agricultural workers were not entitled to overtime. Not one word in *Cerrillo* intimates the slightest constitutional infirmity in the farm worker exception.

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Initially, the Court should note that Art. II, § 35 is not contained in the Declaration of Rights contained in article I of the Washington Constitution. Rather, it is a portion of article II, fixing the powers and authority of the legislature. Thus, Art. II, § 35 does not "pertain alone … to the citizens of the state." *Vance*, 29 Wash. at 458. Rather, it authorizes legislative action. Rights left to the discretion of the legislature are not fundamental. *Ockletree*, 179 Wn.2d at 778. Moreover, Art. II, § 35 directs *the legislature* to "fix the pains and penalties" for enforcement of its legislation pertaining to workplace safety. "It is a fundamental principle, applicable in the construing of all written laws, and especially in construing a document of the gravity of the Constitution, that, if possible, an effect must be given and a meaning accorded to *all* of the words used therein." *Chlopeck Fish Co. v. City of Seattle*, 64 Wash. 315, 322–23, 117 P. 232 (1911) (emphasis added); *State v. Pannell*, 173 Wn.2d 222, 230, 267 P.3d 349 (2011) ("[A] statute or constitutional provision should, if possible, be so construed that no clause, sentence or word shall be superfluous, void, or insignificant.") (citation and internal quotations omitted). Protecting workplace safety is thus directly charged to the legislature -- a task which the legislature has, as will be seen below, taken up directly and extensively. The fact that the legislature has chosen to not apply the 'pain or penalty' of an overtime premium as an indirect method of enforcing work place safety on the farm is a decision specifically charged to the legislature. Art. II, § 35 does not support a claim that overtime is a fundamental right; to the contrary, it undercuts Plaintiffs' claims.

2. There are reasonable grounds for the farm worker exemption.

There are two prongs to the privileges and immunities attack on RCW 49.46.130(2)(g). The Court need not reach this issue for the reasons identified above, but nonetheless it is Plaintiffs' burden to prove that the agricultural overtime exemption is based on unreasonable grounds. Plaintiffs' attack fails on two bases.

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First, Plaintiffs' primary argument appears to be that farm work is dangerous, and granting overtime to farm workers would somehow[4] indirectly improve safety. Motion, Section II.B.2. The legislature, however, had reasonable grounds to forego doing indirectly what it did directly: mandate that Washington farms, like other workplaces, be safe places to work.

The Motion is notable for what it does not even attempt to address: that the Washington legislature has enacted the Washington Industrial Safety and Health Act, Ch. 49.17 RCW. This legislation is directly authorized by Art. II, § 35. *Rios v. Dept. of Labor and Indus.*, 145 Wn.2d. 483, 493-94, 39 P.3d 961 (2002). Pursuant to WISHA, the Department of Labor and Industries has been delegated the authority to prescribe safety regulations for farmworkers. It has done so, extensively. Ch. 296-307 WAC regulates, in extraordinary detail, safety practices on farms. Indeed, in the bound version of the Washington Administrative Code, Ch. 296-307 *exceeds 300 pages* of regulations addressing every aspect of safety on the farm. In light of Art. II, § 35's express delegation to the legislature to "fix pains and penalties for enforcement" of the workplace safety laws it has prescribed, the legislature cannot be said to be acting on unreasonable grounds to decline to do indirectly what it has done directly.

This is all the more true than the court considers the second reason why the legislature has reasonable grounds for declining to extend overtime coverage to farm workers: the massive economic dislocation that would result. Farming is inherently a seasonal business, and overtime at busy times is a natural consequence. 2d Stuhlmiller Decl., at ¶ 2, 5. The farm worker exemption recognizes the various time restraints and the seasonality of the agriculture industry, because farming relies upon workers to work long hours in a short period of time in order to meet demand in the harvest season. *Id.* This is the norm and standard operating procedure for farms across the nation. *Id.*, at ¶ 6.

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[4] Plaintiffs offer the Court a number of otherwise uncorroborated academic articles drawing a correlation between increased hours of work and a risk of accident. Plaintiffs offer no expert testimony drawing a causal connection between these two factors, in the agricultural sector or otherwise.

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Farmers estimate that extending an overtime premium to farm workers would cost Washington farmers tens if not hundreds of millions of dollars a year in new costs. *Id.* at ¶ 7. Washington farms are not some impersonal economic monolith; 95% of Washington farms are family farms. *Id.* at ¶ 8; O'Connell Decl., Ex. A. Moreover, fully 94% of Washington farms are small operations with total sales of less than $250,000 a year. 2d Stuhlmiller Decl. at ¶ 8; O'Connell Decl., Ex. B. Because Washington farmers compete in national and international markets, the price they can charge for their products is set by the market, not driven by their costs. 2d Stuhlmiller Decl., ¶ 8. Indeed, for dairies such as DeRuyter, the price they can charge for their milk is established by a federally administered regulatory regime and does not reflect Washington state-specific costs. *Id.*, at ¶ 9. Not only was the legislature right to be concerned about the economic impact itself, but that impact is all the more dangerous when compared to the costs borne by the competitors to Washington farmers: other farmers in the United States do not face such a cost, and the competitive disadvantage would be harmful to the entire agricultural community. 2d Stuhlmiller Decl., ¶ 10.

Avoiding inflicting such a cost on a vital portion of Washington's economy is entirely reasonable. The legislature's judgment should not be disturbed just because Plaintiffs would prefer greater monetary rewards for their work.

C. The Exemption Does Not Violate Equal Protection.

Where a statute is alleged to affect a particular group or minority, a court may engage in an equal protection analysis under article I, section 12. *Schroeder*, 179 Wn.2d at 577. "Equal protection provides equal application of law but does not provide complete equality among individuals or classes of individuals." *Harris v. Charles*, 171 Wn.2d 455, 462, 256 P.3d 328 (2011).

> In order to determine whether the equal protection clause has been violated, one of three tests is employed. First, strict scrutiny is applied when a classification affects a fundamental right or a suspect class. Second, intermediate scrutiny is applied when a classification affects both a liberty right and a semi-suspect class

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> not accountable for its status. The third test is rational basis. Under this inquiry, the legislative classification is upheld unless the classification rests on grounds wholly irrelevant to the achievement of legitimate state objectives.

Id. (quoting *State v. Harner*, 153 Wn.2d 228, 235-36, 103 P.3d 738 (2004)).

The farm worker exemption survives Plaintiffs' equal protection challenges.

1. Strict scrutiny does not apply because overtime pay is not a fundamental right and agricultural workers are not a suspect class.

Strict scrutiny review under equal protection applies if the "allegedly discriminatory statutory classification affects a suspect class or a fundamental right." *State v. Schaaf*, 109 Wn.2d 1, 17, 743 P.2d 240 (1987). Here, however, agricultural workers are not a suspect class and overtime pay is not a fundamental right.

First, for all the reasons identified above in Section V.B.1., pp. 5-9, overtime pay is not a fundamental right. An entitlement to overtime is purely statutory, did not exist until seventy years after statehood, and is subject to numerous exemptions that are unchallenged as a routine part of American life. Any of those undeniable facts would be inconsistent with labeling the right to overtime as fundamental in any way.

Furthermore, agricultural workers are not a suspect class. Suspect classifications are limited and include classifications based on "race, alienage, and national origin" in the context of an equal protection challenge. *In re K.R.P.*, 160 Wn. App. 215, 229, 247 P.3d 491 (2011) (quoting *State v. Hirschfelder*, 170 Wn.2d 536, 550, 242 P.3d 876 (2010)). "[S]tatistics alone will not trigger strict scrutiny, unless there is some evidence of purposeful discrimination or intent." *Macias v. Dep't of Labor & Indus.*, 100 Wn.2d 263, 270, 668 P.2d 1278 (1983). In *Macias*, the court decided that strict scrutiny would *not* apply to farm workers of largely Hispanic descent because the reliance on statistics was insufficient to show discriminatory purpose, much like Plaintiffs here. *Id.* Without proof of discriminatory intent, a generally applicable law with disparate impact is not unconstitutional. *State v. Johnson*, 194 Wn. App. 304, 308, 374 P.3d 1206 (2016) (citing *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181,

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207, 128 S. Ct. 1610, 170 L. Ed. 2d 574 (2008)); *see also, State v. Clark*, 76 Wn. App. 150, 156, 883 P.2d 333, 336 (1994), *aff'd and remanded*, 129 Wn.2d 211, 916 P.2d 384 (1996) (no equal protection violation where statute excluding cocaine dealers from first-time offender waiver provision had disparate impact on blacks).

Plaintiffs argue that strict scrutiny should apply to agricultural workers, because most are Latina/o. Motion, at 20, n.10. Moreover, Plaintiffs argue that because the Washington legislature based the MWA off the FLSA, the theoretical racial bias of the agricultural exemption is imputed onto RCW 49.46.130(2)(g). Motion, at 20, n.10. However, Plaintiffs' argument fails for a simple reason: at the time of the relevant actions by the legislature 1959, when the farm worker exemption was first enacted, white workers made up approximately of 85% of all farm workers, and Latinos made approximately 10%. O'Connell Decl., at Ex. C. In 1989, when the people enacted Initiative 588 (which extended minimum wage protections to farm workers but maintained the overtime exemption) white people made up in excess of 50% of the farm worker population, and Latinos comprised about 40%. *Id.* Plaintiffs simply cannot make out any discriminatory intent on the part of Washington legislators[5] against Washington agricultural workers in enacting RCW 49.46.130(2)(g).

2. Intermediate scrutiny is not appropriate because overtime is not an important right and agricultural workers do not qualify as a semi-suspect class.

Plaintiffs' challenge against the agricultural overtime exemption fails intermediate scrutiny as well. Intermediate scrutiny requires an important right *and* at least a semi-suspect class. *Schaaf*, 109 Wn.2d at 17-18. However, intermediate or heightened scrutiny has only been applied in "limited circumstances" where strict scrutiny is not mandated. *State v. Shawn P.*, 122

[5] Plaintiffs submit improper 'legislative history' to support the Motion. *See* Intervenors' Motion to Strike, filed herewith. However, even that improper evidence supports only that Washington's farmers, wholly appropriately concerned about the devastating economic impact of the kind of change demanded by Plaintiffs, resisted.

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Wn.2d 553, 560, 859 P.2d 1220 (1993). Under intermediate scrutiny, the challenged law must further a substantial state interest. *State v. Clinkenbeard*, 130 Wn. App. 552, 564, 123 P.3d 872 (2005). It is critical to note that in order to successfully find a statute invalid under intermediate scrutiny, it most involve **both** an important right as well as a semi-suspect class.

As demonstrated above, overtime pay is not a fundamental right, nor is it an important right as defined for purposes of equal protection analysis. Under Washington law, important rights are those that generally affect the liberties of Washington citizens, particularly physical liberties. *Schaaf*, 109 Wn.2d at 21 (denying juveniles jury trials did not implicate a physical liberty, nor were children a semi-suspect class to trigger heightened scrutiny); *In re Runyan*, 121 Wn.2d 432, 448, 853 P.2d 424 (1993). While an overtime premium for work beyond forty hours in a day may be a desirable term of employment, it is not an important right affecting the liberties of Plaintiffs -- it simply cannot be, since the statute creating the supposed right exempts large portions of the work force. Indeed, consideration of the other exempt classifications belies Plaintiffs' contention that overtime is an important right. Employees in an "executive" capacity are exempt. RCW 49.46.010(5)(c); RCW 49.46.130(2). An executive employee is one 'whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof." WAC 296-128-510(1). A right cannot be considered important if it is denied to the very personnel running the business. But if overtime were considered an important right, all the categorically exempt employees under RCW 49.46.130(2) would have significant claims based upon nothing but their occupation. Courts would then be "called on to second-guess the distinctions drawn by the legislature for policy reasons nearly every time it enacts a statute." *Ockletree*, 179 Wn.2d at 779.

Moreover, farm workers are not a semi-suspect class. Washington law has indicated that "a particular employment status does not create a semi-suspect class." *Clinkenbeard*, 130 Wn. App. at 567 (citing *Griffin*, 120 Wn.2d at 65). If the classification applies equally to a group of individuals, "it does not create a suspect or a semi-suspect class." *State v. Whitfield*, 132 Wn.

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App. 878, 891, 134 P.3d 1203 (2006) (statute did not create semi-suspect class where it applied to HIV-infected and non-HIV-infected persons); *see also, State v. Clark*, 76 Wn. App. 150, 156, 883 P.2d 333, 336 (1994), *aff'd and remanded*, 129 Wn.2d 211, 916 P.2d 384 (1996) (no equal protection violation where statute excluding cocaine dealers from first-time offender waiver provision had disparate impact on blacks).

For purposes of determining the standard for an equal protection challenge, "inclusion of some exceptions" to the statute, "but not others, does not operate to create any semi-suspect class." *In re Runyan*, 121 Wn.2d at 449 (citation omitted). "'[T]he equal protection clause does not require a state to eliminate all inequalities between the rich and poor.'" *Id.* (quoting *Riggins v. Rhay*, 75 Wn.2d 271, 283, 450 P.2d 806 (1969)). "'[C]lassifications bearing on nonconstitutional interests—even those involving the most basic economic needs of impoverished human beings,' usually will not be subject to heightened treatment [under equal protection analysis] 'because they are not distinguishable in any relevant way from other regulations in area of economics and social welfare.'" *Sanchez v. Dep't of Labor & Indus.*, 39 Wn. App. 80, 89, 692 P.2d 192 (1984) (internal quotation marks and citation omitted).

Without proof of discriminatory intent, a generally applicable law with disparate impact is not unconstitutional. *Johnson*, 194 Wn. App. at 308 (citing *Crawford*, 553 U.S. at 207). In *Macias*, a case Plaintiffs rely heavily upon, the court opted to not even address whether agricultural workers are a semi-suspect class after ruling they were not a suspect class based on the plaintiffs disparate impact evidence. *Macias*, 100 Wn.2d at 271. Plaintiffs note the changing racial demographics of agricultural workers from the decision in *Macias* to the present. Motion, at 21:17-22. Once again, however, "'impact alone is not determinative.'" *Macias*, 100 Wn.2d at 270 (citation omitted).

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Accordingly, Plaintiffs' challenge to the validity of RCW 49.46.130(2)(g) fails on both requirements to trigger intermediate[6] scrutiny.

3. Under the rational basis review, the exemption is reasonably related and constitutional.

If a suspect classification or fundamental right is not involved, rational basis review applies. *Am. Legion Post #149 v. Wash. State Dep't of Health*, 164 Wn.2d 570, 609, 192 P.3d 306 (2008) (citation omitted). "Social and economic legislation that does not implicate a suspect class or fundamental right is presumed to be rational [when challenged on equal protection grounds]; this presumption may be overcome by a clear showing that the law is arbitrary and irrational." *In re K.R.P.*, 160 Wn. App. at 230 (citation and internal quotation marks omitted). "A legislative distinction will survive the rational basis test if (1) all members of the class are treated alike; (2) there is a rational basis for treating differently those within and outside of the class; and (3) the classification is rationally related to the purpose of the legislation." *Clinkenbeard*, 130 Wn. App. at 567 (citing *O'Hartigan v. Dep't of Personnel,* 118 Wn.2d, 111, 122, 821 P.2d 44 (1991)). With regard to the third prong, Plaintiffs must show the classification is "purely arbitrary" to overcome the strong presumption of constitutionality. *Thurston Cty. Rental Owners Ass'n*, 85 Wn. App. at 186 (citing *State v. Smith,* 117 Wn.2d 263, 279, 814 P.2d 652 (1991)).

Under the rational basis test, a "classification will be upheld against an equal protection challenge if there is any conceivable set of facts that could provide a rational basis for the classification." *Gossett v. Farmers Ins. Co. of Wash.*, 133 Wn.2d 954, 979, 948 P.2d 1264 (1997) (citation omitted). "The rationality of a classification does not require production of evidence to sustain the classification [and] it is not subject to courtroom fact-finding." *Id.*

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[6] If the court were to determine that intermediate scrutiny applies, a substantial state interest applies for all the reasons explained above that the farm worker overtime exemption rests on sound grounds. *Infra,* p. 8-10. The state has a significant interest in maintaining a healthy and productive farming sector, which is critical to the state's economy. *Id.*

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Further, "[a] classification does not fail rational-basis review because it is not made with mathematical nicety or because in practice it results in some inequality." *Id.* at 979-80 (citation and internal quotation marks omitted). Under rational basis review, it is "rare" for legislation to be found unconstitutional. *DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 144, 960 P.2d 919 (1998).

The overtime exemption readily meets the requirements of rational basis review. First, all members are treated identically. For all the reasons identified above, a rational basis exists for agricultural workers to be treated differently than other workers. Plaintiffs draw comparisons to construction and factory workers as employees who receive overtime but also work in "dangerous occupations." Motion, at 23. It important to note that the class under review is not all employees "employed in dangerous occupations" but agricultural workers in Washington State who are exempt from overtime under RCW 49.46.130(2)(g). The underlying rationale for agricultural worker exemption is uniquely related to the nature of the agricultural industry and its dependence on the seasons for harvest. 2d Stuhlmiller Decl., *passim*. The proper inquiry is whether a rational basis exists for agriculture workers to be exempt from overtime; plainly it does.

Finally, given the nature of farming, a rational relationship exists between the classification and its legislative purpose. Much like the other exemptions under RCW 49.46.130(2), a 40-hour work week is incompatible with the needs of farming. All the court must do is determine any "conceivable facts" for which this exemption may exist. *Gossett*, 133 Wn.2d at 979. Upon finding such a fact, the agricultural exemption survives rational basis review as it does here.

VI. INTERVENORS' CROSS MOTION FOR SUMMARY JUDGMENT

For all the reasons identified above, Plaintiffs' claims are substantively without basis. The materials submitted by Plaintiffs and by Intervenors demonstrate that as a matter of

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undisputed fact Plaintiffs cannot establish any of the elements essential to their claims, and Intervenors (and Defendant) are entitled to judgment as a matter of law. CR 56 (c).

VII. CONCLUSION

Plaintiffs have failed to show beyond a reasonable doubt that the agricultural exemption in RCW 49.46.130(2)(g) is unconstitutional. Moreover, Plaintiffs have failed to meet their burden and show no genuine issue of material fact to earn judgment as a matter of law in their favor. Overtime pay is not a fundamental right central to state citizenship under the Washington Constitution and reasonable ground exists for farm worker overtime exemption. As such, the agricultural exemption does not violate the privileges or immunities clause of the Washington Constitution. Furthermore, strict scrutiny and intermediate scrutiny are inappropriate levels of review for this issue under an equal protection analysis because overtime is not a fundamental or even, as the term is used for equal protection analysis, an important right, and farm workers are neither a suspect or semi-suspect class. Lastly, the agricultural exemption has an eminently rational basis to survive rational basis review. For the foregoing reasons, Intervenors respectfully request that Plaintiffs Motion be denied, and that instead judgment be entered in their favor, and the Defendant's.

DATED: April 5, 2018.

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CERTIFICATE OF SERVICE

I certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of 18 years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, Washington 98101.

On April 5, 2018, I caused a true and correct copy of the foregoing document to be served upon the following parties in the manner indicated below:

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DATED at Seattle, Washington, this 5th day of April, 2018.

Debbie Dern, Legal Practice Assistant

EXHIBIT 25

The Honorable Michael G. McCarthy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER BROTHERS DAIRY, INC., Defendant. WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenor-Defendants.	No. 16-2-03417-39 **INTERVENOR-DEFENDANTS' MOTION TO STRIKE**

I. INTRODUCTION

Intervenor-Defendants, Washington State Dairy Federation and Washington Farm Bureau ("Intervenors"), bring forth this motion to strike inadmissible portions of Plaintiffs' declarations in support of their Motion for Summary Judgment ("Motion"). In support of the Motion, Plaintiffs filed numerous declarations, including the declarations of one of Plaintiffs' counsel, Joachim Morrison ("Morrison Decl."), and former state representative Jennifer Belcher ("Belcher Decl."). Plaintiffs put forth inadmissible evidence under CR 56(e) in the form of unofficial legislative history. Plaintiffs use this improper evidence to impugn legislative intent in

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their attempt to challenge the validity of the exemption from overtime coverage for farm workers contained in RCW 49.46.130(2)(g) (the "farm worker exemption"). Legislative history, in the form of reports, digests, or other *official* documents, may be admissible evidence for purposes of interpreting an ambiguous statute's legislative intent. However, Plaintiffs put forth unofficial legislative testimony regarding conversations and internal workings of the legislative process that is inadmissible. For those reasons, portions of the declarations of Joachim Morrison and Jennifer Belcher should be struck from the record.

II. ISSUES PRESENTED

1. Whether testimony or documentary evidence, other than official legislative history, addressing the history or meaning of the legislation culminating in the 1975 amendment to the Minimum Wage Act ("MWA"), RCW 49.46, *et seq.*, in Joachim Morrison's declaration should be excluded at summary judgment.

2. Whether testimony or documentary evidence, other than official legislative history, detailing a proposed 1988 amendment to the MWA and a subsequent initiative from the people in Jennifer Belcher's declaration should be excluded at summary judgment.

III. EVIDENCE RELIED UPON

Defendants rely upon the pleadings on file in this case, the declarations of Jennifer Belcher and Joachim Morrison, and the exhibits attached therein.

IV. RELEVANT FACTS

On March 1, 2018, Plaintiffs filed their Motion and Statement of Points and Authorities. In support of the Motion, Plaintiffs filed the declarations of Joachim Morrison and Jennifer Belcher.

A. The Declaration of Joachim Morrison

Joachim Morrison is counsel for Plaintiffs and "obtained the legislative history from the Washington State Archives in regard to the 1975 legislation to amend the [MWA]." Morrison Decl., at ¶¶ 1-2. Attached to Morrison's declaration is a transcription of a portion of the debate

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of HB 32, reflecting the comments of a single representative prior to the passage of the bill (Ex. 2); various pages that allegedly relate to HB 32 (Ex. 6); and a letter submitted by the Farm Workers Family Health Center in support of HB 32 (Ex. 8).

B. The Declaration of Jennifer Belcher

Jennifer Belcher served as a member of the House of Representatives for the State of Washington for Legislative District 22, which comprises most of Thurston County, from 1988-1992. Belcher Decl., at ¶¶ 1-2. In her declaration, Belcher details how she was the "prime sponsor of House Bill 1544" to amend the MWA in 1988. *Id.* at ¶ 4. According to Belcher, this bill intended to raise the minimum wage in Washington and to remove the minimum wage exemption for agricultural workers. *Id.* at ¶ 5. Belcher further details her perception of the political make-up of the House and how that impacted her bill. *Id.* at ¶¶ 6-8.

Upon describing what happened to her proposed bill, Belcher details her interactions with other legislators and offers her opinions as to their motivations. *Id.* at ¶¶ 9-11. Belcher makes assertions about the "the political power of agricultural interests in Olympia," and the impact of that purported power on the legislative process. *Id.* at ¶ 12-17.

V. ARGUMENT

Plaintiffs' supporting declarations contain inadmissible evidence in the form of unofficial legislative history. Plaintiffs utilize these declarations in an attempt to impugn the legislature's intent in enacting the farm worker exemption. Such evidence is prejudicial and not relevant under ER 401 and 403. Pursuant to CR 56(e), "[s]upporting and opposing affidavits shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence*, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." CR 56(e) (emphasis added). "The court cannot consider inadmissible evidence when ruling on a motion for summary judgment." *Davis v. Fred's Appliance, Inc.*, 171 Wn. App. 348, 357, 287 P.3d 51 (2012). Under CR 56(e), documents submitted for consideration on a motion for summary judgment must also meet evidentiary requirements including proper authentication.

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Milligan v. Thompson, 110 Wn. App. 628, 635, 42 P.3d 418 (2002). The proper way to object to an affidavit or declaration that fails to meet the requirements of CR 56(e) is to bring it to "the trial court's attention through a motion to strike." *Mithoug v. Apollo Radio of Spokane*, 128 Wn.2d 460, 463, 909 P.2d 291 (1996).

A. Portions of Joachim Morrison's Declaration Should Be Struck as Inadmissible Evidence.

Morrison attaches and relies upon unauthenticated documents to support arguments regarding the Legislature's intent. In Washington however, it is well settled that legislative history can only be shown through official legislative documents.

Legislative history is made up of such items as "legislative bill reports and analyses." *State v. Hirschfelder*, 148 Wn. App. 328, 344 n.12, 199 P.3d 1017 (2009), *reversed on other grounds by State v. Hirschfelder*, 170 Wn.2d 536, 242 P.3d 876 (2010). Legislative intent cannot be shown by affidavits or testimony from lobbyists or legislators. *See W. Telepage, Inc. v. City of Tacoma*, 95 Wn. App. 140, 145-46, 974 P.2d 1270 (1999) ("The intent of the Legislature should be derived from the context and subject matter of the legislation itself. The Legislature's intent in passing a particular bill cannot be shown by the affidavit of a legislator." (footnote and citation omitted)), *affirmed in part by W. Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 611, 998 P.2d 884 (2000). Given the fact courts are reluctant to "discern legislative intent from the testimony of a single legislator … the view of a lobbyist [is] of even less utility in discerning the Legislature's intent in enacting a bill." *W. Telepage*, 140 Wn.2d at 611 (emphasis omitted).

Several portions of Morrison's declaration, and its exhibits, qualify as inadmissible evidence in support of Plaintiffs' Motion.

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1. **Paragraph 4, and Exhibit 2, of Morrison's declaration should be struck from the record.**

As part of his declaration, Morrison attaches a transcribed "portion of the House Floor Debate related to HB 32 from February 19, 1975." Morrison Decl., at ¶ 4. It appears Plaintiffs typed up a recording of some portion of a floor debate. Intervenors do not challenge counsel's statement that the portion submitted is an accurate transcription—of the portion Plaintiffs selected from the debate. However, the source of the recording is not detailed in Morrison's declaration, thereby making it completely unauthenticated. More critically, our courts have been clear that intent may not be shown by the statement of a "single legislator." *W. Telepage*, 140 Wn.2d at 611. A few sentences from a single legislator in the course of debate is no evidence of the intent of the entire legislature. Paragraph 4 and Exhibit 2 should be struck from the record.

2. **Paragraph 8, and Exhibit 6, of Morrison's declaration should be struck from the record.**

Paragraph 8 of Morrison's declaration describes Exhibit 6 as an "additional attachment made by Senator Sid Morrison to Engrossed Substitute Bill No. 32 on May 13, 1975." Morrison Decl., ¶ 8. However, when actually reviewed, Exhibit 6 appears to contain two unrelated and uncorroborated pages: the first page is entitled "Report of Free Conference Committee" with entirely unattributed handwriting, and the second page is apparently a proposed amendment with no description of where in the legislative process it was proposed, again with entirely unattributed handwriting. This is inadmissible evidence under ER 403 and 901(a) and does not comply with CR 56(e). Morrison lacks the personal knowledge to credibly testify regarding this exhibit and its contents because it is not an official legislative document. In fact, the exhibit contains notes and internal thoughts of a legislator. Plaintiffs use this evidence as the legislative intent and history underlying the MWA in order to support its arguments. Motion, Section III.B.-C. However, it is only bill digests, reports, and analyses that make up proper evidence of legislative intent, *Hirschfelder*, 148 Wn. App. at 344 n.12, and the uncorroborated evidence

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contained in Exhibit 6 entirely fails this standard. Paragraph 8 and Exhibit 6 should be struck from the record.

3. Paragraph 10, and Exhibit 8, of Morrison's declaration should be struck from the record.

Paragraph 10 attaches an unauthenticated letter from the "Farm Workers Family Health Center" as Exhibit 8. Morrison Decl., ¶ 10. Morrison lacks any personal knowledge related to the drafting of this letter, and it is not an official legislative document. Testimony from lobbyists is inadmissible. *W. Telepage*, 140 Wn.2d at 611. The author engaged in lobbying on behalf of the Farm Workers Family Health Center when he sent this letter to the Labor Committee. Not only is the evidence substantively improper, it is not sworn and the Court cannot rely on the statements therein for their truth. Accordingly, paragraph 10 and Exhibit 8 should be struck from the record.

B. Jennifer Belcher's Declaration Should Be Struck as Inadmissible Evidence.

Washington has been clear that testimony from legislators, like Belcher's, is inadmissible. In Washington, the testimony of "unofficial" sources of legislative history is not relevant to the meaning of a statute. *W. Telepage*, 140 Wn. App. at 611. Legislative intent cannot be shown by affidavits or testimony from legislators. A party cannot "introduce an affidavit of a former state legislator into evidence to prove legislative history and legislative intent.... The affiant's statements regarding the legislative intent are inadmissible, it being well settled that the legislature's intent in passing a particular bill cannot be shown by the affidavit of a legislator." *City of Yakima v. Int'l Ass'n of Fire Fighters, AFL-CIO, Local 469*, 117 Wn.2d 655, 676-77, 818 P.2d 1076 (1991) (rejecting the testimony of a former legislator as not relevant and concluding that only the official legislative history, such as that contained in the House and Senate Journals, is relevant). Legislative history is made up of such items as "legislative bill reports and analyses." *Hirschfelder*, 148 Wn. App. at 344 n.12.

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Moreover, Washington law has been clear that "[a] noncontemporaneous understanding of legislative intent is not reflective of the Legislature's rationale for enacting a … statute." *W. Telepage*, 140 Wn.2d at 611. Courts "will not turn to the comments of a single legislator to establish legislative history." *State v. Ramirez*, 140 Wn. App. 278, 288 n.7, 165 P.3d 61 (2007), *review denied*, 163 Wn.2d 1036 (2008); *see also Pannell v. Thompson*, 91 Wn.2d 591, 598, 589 P.2d 1235 (1979) (rejecting the testimony of a former legislator as not relevant and stating that what one legislator believed does not establish legislative intent); *La.-Pac. Corp. v. Asarco Inc.*, 131 Wn.2d 587, 599, 934 P.2d 685 (1997) (testimony by house staff member does not inform legislative intent); *Eugster v. City of Spokane*, 118 Wn. App. 383, 411 n.6, 76 P.3d 741 (2003) (rejecting post hoc affidavits of individual involved in drafting legislation as "not admissible evidence of legislative intent").

In her declaration, Belcher essentially provides her own version of legislative history—one that is entirely based on her beliefs and personal interactions in the Legislature. As a single legislator, Belcher testifies to events that are not contained in any official legislative document that is admissible for purposes of legislative intent. Plaintiffs use Belcher's declaration to argue the MWA was rooted in racial bias and therefore had discriminatory intent when challenging the constitutionality of agricultural overtime exemption. Motion, Section III.B.-C. Additionally, Plaintiffs use Belcher's declaration to demonstrate the internal conflict and alleged industry-bias that occurred during her time in the Legislature. Belcher Decl., at ¶¶ 6-17. Belcher's testimony is noncontemporaneous and only portrays what she believed to have occurred during her time in the Legislature. This is particularly evident when one looks at the language Belcher uses throughout her declaration:

- "The bill ultimately *died*…." *Id.* at ¶ 8 (emphasis added).
- "Senator Irv Newhouse, who had *deep ties* to the agricultural industry…." *Id.* at ¶ 9 (emphasis added).

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- "I discussed the bill with Senator Newhouse and *recall* him stating that the Senate would be willing to discuss a minimum wage increase, but only if minimum wage coverage for farm workers was removed from the bill." *Id.* at ¶ 10 (emphasis added).
- "Given the political power of agricultural interests in Olympia, *I saw no way to overcome their opposition* to minimum wage coverage for agricultural workers within the legislative process." *Id.* at ¶ 17 (emphasis added).

These statements along with the rest of Belcher's declaration are inadmissible legislator testimony. Belcher's testimony misleads and cannot constitute official legislative history to support Plaintiffs' Motion because they are only from her perspective. The only portions of Belcher's declaration that should be admitted are the exhibits attached to the declaration because the bill digest and copy of Engrossed House Bill 1544 are official legislative documents. Because Belcher was one of many legislators working during that time, allowing her testimony to support Plaintiffs' Motion would inaccurately portray the internal workings of the Legislature. Accordingly, Belcher's declaration should be struck from the record.

VI. CONCLUSION

For foregoing reasons, Defendants respectfully request that portions of Morrison's declaration and the entirety of Belcher's declaration be struck from the record in favor of this Motion.

DATED: April 5, 2018.

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CERTIFICATE OF SERVICE

I certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of 18 years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, Washington 98101.

On April 5, 2018, I caused a true and correct copy of the foregoing document to be served upon the following parties in the manner indicated below:

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DATED at Seattle, Washington, this 5th day of April, 2018.

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EXHIBIT 26

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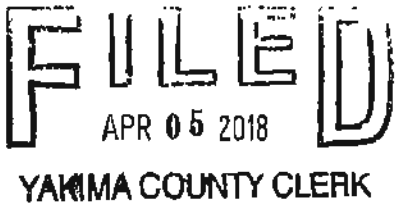

SUPERIOR COURT OF WASHINGTON
IN AND FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER FARM PROPERTIES, INC., f/k/a DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants.	No. 16-2-034173-9 **MOTION TO STRIKE DECLARATION OF PAUL APOSTOLIDIS**

I. Motion to Strike Apostolidis Declaration

Defendants move to strike the Apostolidis Declaration under CR 56(e), because the conclusory and unsupported, partisan statements made throughout are not "admissible in evidence," as that Rule requires. Ultimately, the Declaration is not even relevant, and should be excluded under ER 402-403.

Furthermore, the Apostolidis Declaration is based upon double and triple hearsay, which is not admissible under ER 805 unless all parts of the hearsay are admissible under some other rule. Plaintiffs have made no showing that any of the hearsay statements made by Apostolidis satisfy *any* exception to the hearsay rule.

Finally, the Apostolidis Declaration is not proper expert testimony, not helpful to a trier of fact on any issue properly before this Court, is missing critical foundation in that the undergraduate study Apostolidis relies upon in virtually every sentence (though without disclosing any part of it, or any other "study" mentioned in the declaration) is not the kind of hearsay experts reasonably rely upon, as they would rely, for example, on data found in a U.S. Census.

Statements made throughout the Declaration are unreliable, as where Apostolidis parrots conclusions made by someone from "interview-based" research," using undisclosed interviews using undisclosed techniques and with wholly unknown margins of error and statistical reliability factors. Indeed, Apostolidis states that this "study" uses "new" Community Based Research (CRB) techniques, without disclosing any information against which the reliability of the techniques or the reliability of the undergraduates purporting to use the techniques can me measured.

This motion is based upon CR 56(e) and ER 402-403, 702-705, and 801-805.

II. Basis For Motion; Statement of the Case

The Declaration of Paul Apostolidis is cited in plaintiffs' summary judgment brief only once, for the proposition that people of Hispanic descent in Washington are under-represented in the legislature. Plaintiffs' Motion for Summary Judgment, at p. 22, citing Apostolidis Declaration, at ¶¶ 6-8. This is not relevant to any issue before this Court.

The only "opinion" Mr. Apostolidis renders in the Declaration is found in ¶ 5, which is not even cited by plaintiffs. In that paragraph, Apostolidis states that "better public policy could help make a difference in developing solutions" to a general issue that he perceives related to the "fact" that, even where Latino/a people make up a majority of the population, they do not, according to him, make up a majority of the local legislative body. *Id.* at ¶ 7, p. 4, Ll. 10-12 (in Sunnyside, Washington, in 2006, 75% of the local population was Latino/a, but only one city council person was Latino/a, Apostolidis claims). This Court, of course, does not sit in judgment on the wisdom of legislative actions.[1] This statement should therefore be stricken as well.

[1] "The wisdom, necessity or expediency of a legislative enactment is not subject to judicial review." *Petstel, Inc. v. County of King*, 77 Wn.2d 144, 459 P.2d 937 (1969); *Treffry v. Taylor*, 67 Wn.2d 487, 408 P.2d 269 (1965); *Wash. State Sch. Dirs. Assn. v. Dep't of Labor & Indus.*, 82 Wn.2d 367, 374-375, 510 P.2d 818, 823 (1973).

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Mr. Apostolidis makes no effort to rule out the many potential causes of this alleged phenomenon, assuming that it is true, or even to cite to available public records to show that his reporting is accurate. For all we know, every registered voter in Sunnyside, including a distinct Latino/a majority, voted for a non-Latino/a candidate on religious grounds. We are asked to make a logical leap on the basis of advocacy—the advocacy dressed up and presented by a so-called "expert" to give more weight to his irrelevant conclusions, who does not render testable opinions but merely reports on highly edited "findings" from an undergraduate study as if the undergraduates' conclusions (as reported to us by Mr. Apostolidis) were themselves admissible evidence. They are not.

Defendants assert that there are multiple admissibility issues with the Apostolidis Declaration, making it wholly inadmissible; it should be stricken in its entirety. One such problem is that his opinion regarding Latino/a under-representation in local city councils is not relevant to any issue properly before this Court. But there is a more fundamental problem with his declaration.

Mr. Apostolidis spends most of the ten pages of his declaration reporting on what others "found" in undisclosed "research" or "studies."[2] According to him, these "others" were undergraduates who apparently[3] performed unidentified tasks, took undisclosed surveys, read uncited newspaper and other works, made telephone calls, etc., and reached the conclusions Apostolidis "reports" on and "summarizes."

In other words, the Apostolidis Declaration is not presented as a series of expert opinions bearing on the case. Instead, Mr. Apostolidis gives us a highly stylized summary, polished and edited, to advocate a point of view. We are never enlightened with any details, such as study methodology, interpretive formulae, margin for error, or any other detail that would even

[2] In ¶ 5, p. 3 of the Declaration, Apostolidis admits that the "study was not entirely "adopted," suggesting that other areas of the study were not: "The paragraphs below summarize major research findings regarding each of the main areas we adopted for study from 2005 through 2014." Ll. 6-7.

[3] We know next to nothing about the methods utilized in the study, the qualifications of those who undertook the study, or even their truthfulness in reporting. At one place, p. 4, ¶ 8, we are told that "interview-based research and content analysis" was performed, and we are also told (p.4 ¶ 7) that the Oregon Public Broadcasting System conducted a study similar in certain undisclosed respects in 2012, but again, we know nothing that Mr. Apostolidis did not choose to "summarize." No foundation is laid for any part of this Declaration.

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suggest, much less establish, reliability and foundation. We have no way to know, for example, whether other experts would rely upon this work, and reasonably rely on such work, for serious conclusions other than Mr. Apostolidis' main point, which is that better public policies would lead to better results. This Court hardly needs an expert to tell us that.

Further, this Court is not a super-legislature that can disregard separation of powers and oversee the legislature, allowing the Court to decide that some "better policy" regarding political participation would have led the legislature, or the voting public on the initiative that maintained the farm worker exemption, to repeal that exemption. The Apostolidis declaration invites this Court to engage in guesswork, conjecture, and make advisory decisions outside the proper realm of the judicial branch of government. In turn, plaintiffs suggest that this Court must "get involved" in matters that are truly legislative in character, because we cannot trust the legislative branch, from which Latino/a persons are somehow "excluded" for a myriad of possible reasons,[4] to represent all of its citizens.

Defendants reject this point, and the gist of this motion is to show the Court that the data on which plaintiffs rely to "prove" it on a motion for summary judgment is not an expert "opinion" but a recitation of conclusory statements that cannot be tested, proved or disproved, assembled by unknown undergraduate students under unknown circumstances. The Apostolidis Declaration is also replete with hearsay, which is only admissible as the basis for an expert opinion when a proper foundation has been laid. Not only has there been no foundation laid, *see* ER 703, but, ultimately, the "expert" declaration is not admissible as such because it is not helpful to the finder of fact.

This Court would not allow Mr. Apostolidis to tell the jury about some undergraduate students' conclusions from a study on which no one has ever relied, as if the those conclusions were "facts." Even offering this "study" at trial would sidetrack the fact finder because it would of necessity lead to a mini-trial in which the data aud the methods of acquiring it were contested.

[4] Mr. Apostolidis suggests a number of reasons why he believes that Latino/a voters do not participate in the system. Indeed, the entire declaration is a polemic in which Apostolidis, on limited but uudisclosed "interview-based research" and "studies," suggests that this Court should disregard the legislature and invent public policies judicially in order to encourage greater political participation by the State's Latino/a population, and, while doing so, simply *assume* that a better legislature would have repealed the farm worker exemption at some point in the past. But this is not how our system of government works. And the Apostolidis Declaration should be stricken in any event, for the multiple reasons presented in this Brief.

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At trial, the statements made by Mr. Apostolidis in this declaration would necessarily be excluded from jury consideration under ER 402, 403, 702, 703, 802 and 805. Accordingly, under CR 56(e), the declaration should not be considered on a motion for summary judgment.

III. Standards on Admissibility of Expert Testimony Under CR 56(e)

CR 56(e) requires "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."[5] Therefore, any declaration supporting such a motion must be limited to matters that would be admissible in evidence. *Southwick v. Seattle Police Officer John Doe #s 1-5*, 145 Wn. App. 292, 301, 186 P.3d 1089 (2008). The explicit, but plain standards of CR 56(e) must be complied with in summary judgment proceedings. *Grimwood v. University of Puget Sound, Inc.*, 110 Wn.2d 355, 753 P.2d 517 (1988).

In the same vein, conclusory or speculative expert opinions lacking an adequate foundation are inadmissible. *Stedman v. Cooper*, 172 Wn. App. 9, 16, 292 P.3d 764 (2012). An opinion must be supported by sufficient foundational facts. *Queen City Farms, Inc. v. Cent. Nat'l Ins. Co.*, 126 Wn.2d 50, 104, 882 P.2d 703 (1994). The material in an affidavit on summary judgment purports to be the opinion of an expert that would only be admissible under ER 702, it requires proper foundation; the opinion of an expert which is only a conclusion or which is based on assumptions is *not* evidence which satisfies summary judgment standards because it is not evidence which could take a case to the jury. *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 819 P.2d 370 (1991).

The "burden of laying the proper foundation for the admission of expert testimony rests with its proponent." *See Cook ex rel. Estate of Tessier v. Sheriff of Monroe County, Fla.*, 402 F.3d 1092, 1113 (11th Cir. 2005). It is an abuse of discretion for a court to admit expert testimony that lacks an adequate foundation. *Walker v. State*, 121 Wn.2d 214, 218, 848 P.2d 721

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[5] CR 56(e) states, in pertinent part:

> **(e)** ***Form of affidavits; further testimony; defense required.*** Supporting and opposing affidavits shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence*, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.

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(1993); *see also Safeco Ins. Co. v. McGrath*, 63 Wn.App. 170, 179, 817 P.2d 861 (1991), *review denied*, 118 Wn.2d 1010 (1992) (it is an abuse of discretion to admit such testimony if it lacks an adequate foundation).

Under ER 703, an expert can render an opinion based upon hearsay or information that would not itself be admissible in evidence if (but only if) the hearsay is "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences." This is a key foundation point. If the inadmissible information on which the expert relies is **not** of a type reasonably relied upon by other experts, then the expert's opinion is inadmissible. *State v. Ecklund*, 30 Wn. App. 313, 317, 633 P.2d 933, 936 (1981).

In *Ecklund,* the court set out the framework for admitting expert testimony under ER 703. First, the judge should determine that the underlying information is of a kind reasonably relied upon by experts in the particular field in reaching conclusions. And second, since the rule is concerned with trustworthiness of the resulting opinion, the judge should not allow the opinion if (1) the expert can show only that *he* customarily relies upon such material, and (2) the data are relied upon only in preparing for litigation. *Ecklund*, 30 Wn. App. at 317-18.

Thus, as stated in the Comment to ER 703, "The expert must establish that he as well as others would act upon the information for purposes other than testifying in a lawsuit." *See Ecklund*, 30 Wn. App. at 318. Plaintiffs do not even attempt to lay this foundation. Therefore, the Declaration of Paul Apostolidis must be stricken. *See also State v. Nation*, 110 Wn.App. 651, 662, 41 P.3d 1204, 1210 (2002) (holding it reversible error to admit expert testimony absent showing that other experts relied upon the same data, and not just for litigation purposes).

The Apostolidis declaration is also inadmissible and must be disregarded because, absent an exception to the hearsay rule, hearsay statements of the opinions of third parties are inadmissible. ER 703 was **not** designed to enable a witness to summarize and reiterate all manner of inadmissible evidence. *State v. Martinez*, 78 Wn.App. 870, 880, 899 P.2d 1302, 1309 (1995); *Campos*, 32 Cal.App. 4th 304, 38 Cal. Rptr. 2d 113 (expert may not reveal on direct examination the content of reports prepared or opinions expressed by nontestifying experts); *State v. Towne*, 142 Vt. 241, 453 A.2d 1133 (one expert may not put in evidence of the opinion of a nontestifying expert without running afoul of the hearsay rule).

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Defendants object to Mr. Apostolidis re-stating the purported "conclusions" of his undergraduate researchers. The information which Mr. Apostolidis attempts to reiterate and place into evidence is simply hearsay – the out-of-court statements of others, offered to prove the truth of the matter asserted. ER 801-802. When hearsay is of a type reasonably relied upon by other experts in the field it may be relied upon *to support an expert's opinion*, but that does not make the hearsay itself admissible. ER 703. Plaintiffs make no effort to satisfy the foundational requirements of ER 703 such that Mr. Apostolidis can rely on hearsay information, and do not address and satisfy any other exception to the hearsay rule. Therefore, the Declaration of Paul Apostolidis is inadmissible, and may not be considered on a motion for summary judgment..

As one court stated: "while Rule 703 was intended to liberalize the rules relating to expert testimony, it was not intended to abolish the hearsay rule and to allow a witness, under the guise of giving expert testimony, to in effect become the mouthpiece of the witnesses on whose statements or opinions the expert purports to base his opinion." *Loeffel Steel Prods. v. Delta Brands, Inc.*, 387 F. Supp. 2d 794, 808 (N.D. Ill. 2005). That is exactly the role for which plaintiffs designated Mr. Apostolidis. This is improper; his declaration must be stricken.

Finally, the Apostolidis declaration is irrelevant. ER 401-402. This Court is not being asked to decide (and, in fact, cannot decide consistent with constitutional separation of powers) whether "better public policies" might have led to a repeal of the overtime exemption. That is a nonjusticiable, non-judicial issue in any event.

IV. Paragraph By Paragraph Review of Bases for Motion to Strike

A. Paragraphs 1-5 (not generally accepted, unreliable, no foundation, hearsay):

While Mr. Apostolidis states very carefully that "accounts" of the research he summarizes in the declaration have been published in a peer-reviewed journal, he does *not* say that the research itself has been peer reviewed. See p.2, ¶ 3, Ll. 14-16. In the same paragraph, Mr. Apostolidis candidly points out that the work summarized was part of an effort to "develop new approaches to CBR [community based research]." *Id.* at L. 11. In other words, Apostolidis proposes a new kind of social sciences research called "community based research." But he does not disclose what that research consists of, why it should be considered reliable, and what facts support the point—on which plaintiffs have the burden of proof—that the actual research was conducted in a reliable manner, consistent with this new type of research.

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Washington has adopted the standard for determining if evidence based on novel scientific procedures is admissible set forth in *Frye v. United States*, 293 F. 1013, 1014, 34 (D.C. Cir. 1923). The rule is settled:

> [E]vidence deriving from a scientific theory or principle is admissible only if that theory or principle has achieved general acceptance in the relevant scientific community.

State v. Cauthron, 120 Wn.2d 879, 886, 846 P.2d 502, 505 (1993).

In *Cauthron*, the court held that a certain kind of testing was "generally accepted," but that there was no showing that the test was applied in a reliable way. The court reversed the trial court's decision admitting the evidence.

In this case, there is no evidentiary basis—plaintiffs offer literally none—which could support a conclusion that the "new CBR" techniques on which Apostolidis reports have in fact been generally accepted in the relevant scientific community. We have no way of knowing whether Mr. Apostolidis interpreted the results correctly and reliably, whether the undergraduate students applied the novel techniques correctly, whether the summaries provided to Mr. Apostolidis were accurate and reliable, or any other indicia of admissibility.

This declaration must be stricken from the record.

B. Paragraph 6 (not helpful, irrelevant, unreliable, lacks foundation, multiple hearsay):

This paragraph is mere advocacy, and is irrelevant. Whether Latino/a voters are adequately represented on school boards and city councils has nothing at all to do with the constitutionality of the overtime exemption. This paragraph must be excluded under ER 402-403.

But even if ¶ 6 was relevant, its conclusions are wrong and misleading. Mr. Apostolidis states that at-large voting tends to dilute the Latino/a vote (which assumes, stereotypically and without any support that Latino/a and Caucasian voters would vote as a bloc in any given jurisdiction and have discrete positions in conflict with one another). Apostolidis then applies that principle (bloc voting and diluted votes) to local governments *in which the Latino/a population constitutes a majority*. These points cannot coexist. Latino/a voters, voting as a bloc, voting in elections held "at-large" instead of by district, would hold a majority of seats in any community in which Latino/a voters constituted a majority.

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District voting allows *minorities* the opportunity to elect *some* council or board members; at-large voting allows the overall majority (assuming bloc voting) to elect *all* board or council members. *See, eg.,* Harvell v. Blytheville Sch. Dist. #5, 71 F.3d 1382, 1385 (8th Cir. 1995), citing *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986); *see also Patina v. City of Pasadena*, 230 F.Supp.3d 267 (S.D. Tex. 2017), discussing the difference between at-large and district voting under the Voting Rights Act, 42 U.S.C. § 1973.

Apostolidis reports that voter registration in the ten counties in Washington with the highest concentration of Latino/a voters is very low. Defendants have no idea how this statistic, assuming that it is true, can have any bearing on the case. If Latino/a voters do not vote, it is difficult to tell how district voting would lead to a different result. It is even more difficult to tell how this paragraph relates to the question whether the farmworker exemption from overtime would have been repealed had "better public policies" been in place.

Apparently plaintiffs are requesting this Court to based its decision on and then correct real or perceived social injustices. Plaintiffs apparently suggest that these alleged injustices have led to low voter registration and low voter turnout, in turn, apparently, has led to underrepresentation on local government legislative bodies, which, in turn, plaintiffs apparently claim or suggest, is somehow responsible for the legislature's failure to repeal the overtime exemption for farm workers. This staggering chain of hypothetical causation is supported only by a declaration that does not even present the Court with data supporting any claim to admissibility.

The Apostolidis declaration, at ¶ 6, is conclusory, based on hearsay, at times double and even triple hearsay (*see* ER 805) when describing a PBS study, for example, and provides the most vague and conclusory representations regarding alleged "patterns of voting behavior." This paragraph lacks foundation, lacks any effort to demonstrate "general acceptance" of the type of study undertaken or reliability of the methodologies used. This paragraph must be stricken from the record.

C. Paragraph 7 (not helpful, unreliable, lacks foundation, irrelevant):

Mr. Apostolidis makes reference to supposed "case studies" which are undisclosed but which are central to a number of his representations. There is no foundation for his discussion

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of "case studies." The Court is left to guess about a number of matters critical to reliability: What studies? By whom? When? Who relies on them? For what purpose?

Again, Mr. Apostolidis appears to be unaware of the logical inconsistency of his conclusory statements. He claims, for example, that Sunnyside has a 75% Latino/a population, but only one council member (as of 2006), which he blames on "at large voting." However, at-large voting allows the *majority* (like Apostolitis claims Latino/a voters have in Sunnyside) to obtain all seats on the local council; district voting is generally requested only by a minority, to enable that minority to obtain at least one seat. *Cf Abrams v. Johnson*, 521 U.S. 74 (1997) (redistricting allowed to consider impact on minority voting, so long as racial issues did not predominate). In other words, Mr. Apostolidis asserts a cause and effect conclusion that contradicts the implications of his unsupported premise.

Mr. Apostolidis makes the same fundamental error in discussing undisclosed "studies" involving Wapato and Toppenish, which towns Apostolidis claims had majority Latino/a populations and racially polarized voting about ten years ago, yet involved under-representation on school boards and town councils. There must be other explanations Mr. Apostolidis' research (or the undisclosed research on which he relies) did not reach, or which he does not disclose to us.

As with the prior paragraphs, this testimony is speculative, conclusory, more advocacy than detached "scientific" study, and lacking foundation to support the use of multiple levels of hearsay. As with prior paragraphs, this ¶ 7 is irrelevant to any issue properly before this Court, and should be stricken. Plaintiffs have the burden of showing reliability and general acceptance of any scientific or technical evidence propounded, see *Cauthron*, *supra*, but have not even attempted to do so.

Paragraph 7 is not admissible in evidence, and therefore, under CR 56(e), should not be considered by this Court on plaintiffs' motion.

D. Paragraph 8: (Unreliable, lacks foundation, conclusory, irrelevant):

Paragraph 8 is entitled "political participation and civic engagement." It is difficult to see how "civic engagement" is relevant to any issue raised by plaintiffs' complaint. Like the entire declaration, this paragraph should be stricken as irrelevant under ER 402.

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The first sentence of ¶ 8 starts with the following: "Interview-based research and content-based analysis of Spanish language newspapers suggest…" We are not provided with any interview based research. We do not know what was asked, whether the interviews had any indicia of reliability, whether there was any margin for error, whether any other expert would rely upon it,. Similarly, we have no access to the "content analysis." Analysis of what? By whom? What "expert" would rely on a statement like that? What is the margin for error? Where is the peer review? It is up to the proponent to show that CR 56(e) is satisfied, and that the proper foundations have been laid. *See Cook ex rel. Estate of Tessier v. Sheriff of Monroe County, Fla., supra*, 402 F.3d 1092, 1113 (11th Cir. 2005).

And, as importantly, why should this Court care what undisclosed interviews and analysis of newspapers "suggests"? Defendants believe ¶ 8 is irrelevant and should be stricken.

In addition, plaintiffs thus have not, and cannot, show that the research, undisclosed but summarized, to which Apostolidis refers, has gained "general acceptance" in the scientific community or that other experts would rely on the interviews or analysis. Thus there are multiple grounds for exclusion of this paragraph. It is unreliable, not relevant, there is no foundation laid for the hearsay statements made throughout the paragraph, and the paragraph is more of a polemic than a true and independent work of a scholar. Thus the entirety of ¶ 8 is not admissible and must be stricken. See ER 402-403, 703, 801-802, 805. This paragraph cannot be helpful to a finder of fact. ER 701-702; *see Hall v. CIA*, 538 F. Supp. 2d 64, 72-73 (D.D.C. 2008) (offends sense of fair play to allow a partisan to "dress up as" an expert, whose reliability depends upon his or her neutrality). .

E. Paragraphs 9-10 (unreliable, unhelpful, conclusory, multiple hearsay, no foundation, irrelevant):

These paragraphs, entitled "Education: General" and "Education: Higher Education" speak to Mr. Apostolidis' views about the relationship between higher education and political empowerment. Mr. Apostolidis speaks about "a vast array of social scientific research" that "confirms" this relationship. Yet Apostolidis does not cite a single study. He does not make a single effort to establish a foundation for his hearsay reporting on what others have said—apparently, for he does not quote anyone, but instead claims support from a "vast array" of umnmentioned sources—and plaintiffs make no effort to show relevancy, how this paragraph

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(not cited in the motion it accompanies) is relevant to any issue before the Court, or complies with any rule of evidence.

As noted above, it is the responsibility of the proponent to lay a foundation for expert testimony. *Cook, supra*; CR 56(e). Plaintiffs do not even try.

In ¶ 8, for example, Apostolidis states: "Deficits in financial, cultural, and social capital inhibit Latino parents from understanding mainstream pathways to higher education and a brighter economic future for their children…" Declaration, p. 6, Ll. 12-14. Part of this deficit is blamed, by Apostolidis, on "the failure of Congress to provide a path to legalization for undocumented youth." *Id.* at Ll. 20-21.

This is mere conclusion, speculative at best, not relevant to any issue before this Court, and seems to be nothing more than a blatant attempt to sway the Court's evaluation of the issues to be decided by a general lament regarding the struggles of the Latino/a population. This Court can hardly comment upon – let alone consider or base its decision upon -- immigration policies over the past 20 years, at least, not on this briefing and not on the issues presented by plaintiffs' Complaint.

Plaintiffs apparently seek an advisory opinion that begins with this Court's response to perceived or real social injustices, their origins and possible fixes. Defendants believe that, in addition to its objections on purely evidentiary grounds, plaintiffs seek an advisory opinion in the Apostolidis declaration. This Court may not, of course, render such opinions. *See To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 27 P.3d 403 (2001).

Paragraphs 9 and 10 should be stricken under ER 402-403, 701-703, 705, 801-802, 805.

E. Paragraphs 11-13 (unreliable, irrelevant, lacks foundation, improper advocacy by expert):

The foregoing problems with reliability, relevance, and foundation continue unabated through these paragraphs. When an expert relies on undisclosed methodology, or undisclosed research, the expert must at minimum offer sufficient evidence to allow the Court to determine reliability as a baseline, and to determine whether the hearsay research on which the testimony is based is reasonably relied upon by the expert's peers. *Cf. In re Detention of McGary*, 175 Wn.App. 328, 338-342, 306 P.3d 1005 (2013) (discussing reliability, foundational and helpfulness requirements under ER 702-703).

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In ¶ 11, Apostolidis makes reference to research conducted by someone (he uses the word "our") in 2008 and 2009, criticizes Washington's "regressive" tax policies, which are supposedly partially responsible for lack of civic engagement, makes passing mention of Latino/a tenants moving rather than resolving disputes with landlords, and claims that, ten years ago, Latino/a families did not participate in earned income tax credits because they did not know about it. Where Apostolidis got this information from, and why a 2008 undisclosed study of the EITC should be relevant at all to this case, is not disclosed.

In ¶ 12, Apostolidis concludes that "Latinos have been concentrated in the lower rungs of the occupational ladder." Page 8, L. 7. Whether true or not, he does not disclose the basis for this statement or how it affects the legislature's maintenance of the farm worker exemption for overtime. This paragraph suffers from the same fatal defects as every other paragraph. It is general and conclusory, it is inflammatory and rhetorical, his sources are withheld or obscured, no foundation has been laid, it is based upon multiple levels of undisclosed hearsay, and it is irrelevant to any issue before this Court.

In ¶ 13, the one paragraph Apostolidis claims for his own "scholarly research," we see multiple hearsay statements strung together with no attribution, separated by vicious jabs at employers generally ("inadequate responses" to on the job injuries by "supervisors and company medical staff"), but without a single citation. The crux of this paragraph appears to be that Apostolidis has a political agenda that he presents in conclusory form as if his statements were unvarnished truth. For example, the "inadequate response by company medical staff" allegation implies that health care professionals would rather get a paycheck than actually fulfill their oaths to the injured, and of course there is no documentation, no citation to any study a reasonable expert in the field might rely upon, and, again, no attempt to connect Apostolidis' conclusions to any issue before this Court.

This paragraph leads to a themed concluding sentence in which Apostolidis states that Latino/a workers have a "marked powerlessness in the work environment." Again, this is inflammatory, irrelevant, not helpful to a finder of fact, based upon hearsay submitted with no foundation, and multiple hearsay. Defendants move to strike this paragraph under ER 402-403, 701-703, and 801-805.

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F. Paragraph 14 (multiple hearsay, no foundation, irrelevant, conclusory, unhelpful):

The only paragraph in the declaration in which *some* relevant information might be provided, ¶ 14 is entitled, "Farm Worker Issues." This paragraph is obviously based on statements made outside of court by someone, but Apostolidis generally does not disclose the sources. In one instance, an undisclosed "pathbreaking statewide survey" by the Washington State Farmworker Housing Trust, apparently conducted ten years ago,[6] Apostolidis does disclose his source, but gives us no indicia of reliability, sets no foundation, makes no attempt to render an observable opinion, but only speaks in the most conclusory terms about the plight of the American Latino/a immigrant in Washington state.

Whether defendants or the Court sympathize with Apostolidis' point of view is not, of course, relevant in any way to its admissibility into evidence, as required by CR 56. Defendants object on relevancy, hearsay, reliability, and foundation grounds. See ER 402-403, 701-703, and 801-805.

Perhaps the most enlightening point to ¶ 14 is its last. Apostolidis states:

> Uninformed local residents often respond [to housing efforts] with "not in my backyard" sentiment because they assume incorrectly that additional housing for farm workers will increase social problems such as crime and decrease home values.

Id. at p. 9, Ll. 21-23. This is objectionable on multiple grounds. Mr. Apostolidis cannot have testimonial knowledge about what some unidentified neighbors "assume" about having Latino/a neighbors. This is inflammatory as well as hearsay, not the proper subject of expert testimony, unhelpful, without foundation, and involves multiple levels of hearsay, in addition to being irrelevant to any issue before this Court.

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[6] As usual, Mr. Apostolidis does not tell us anything about the underlying study he is drawing conclusions from, but the only year for which he cites any specific point is 2008, in which Latino/a farm-working families averaged lower pay than non-Latino/a farmworker families, according to Mr. Apostolidis' report of the findings of the pathbreaking survey.

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G. Paragraph 15 (irrelevant, conclusory, unhelpful, unreliable, speculative, lacks foundation):

Apostolidis does not disclose his sources or reveal any information to support any statement in this paragraph. Again, all statements are conclusory and none is admissible in evidence. Apostolidis concludes that there are "many barriers" to effective health care for the Washington Latino/a population, and "among them" are "the problems with employment, income, and poverty discussed above." *Id.* at p. 10, Ll. 10-12.

This paragraph suffers from the same fatal flaws as all of its predecessors. It is not proper expert testimony, it does not meet the requirements of CR 56(e) and ER 703, 801-805, is not relevant and is inflammatory (ER 402-403).

V. Conclusion

This lawsuit is primarily about two questions. First, did the legislature and the people of the State of Washington violate the privileges and immunities clause of the State Constitution when originally adopting, and later not repealing, the farmworker exemption from the State's overtime laws? Second, should the defendants, which admittedly maintained their business in full conformity with existing legal requirements, pay substantial damages for following the law?

This case is not about any of the societal injustice allegations on which Mr. Apostolidis waxes poetic, in a statement of advocacy dressed up as an expert declaration submitted in support of a motion for summary judgment. This motion to strike is not about the rhetoric advanced by Mr. Apostolidis: it is about the admissibility of evidence submitted in support of a motion.

The entire Apostolidis declaration must be stricken from the record, because it is conclusory, unreliable, general to the point of unhelpfulness, based upon hearsay, not supported by necessary foundation, and is inadmissible as multiple hearsay. In addition, it is more an exercise in rhetoric, intended to advance a specific social agenda. Mr. Apostolidis makes no pretense of neutrality. *See, e.g., Hall v. CIA, supra*, 538 F. Supp. 2d 64, 72-73 (D.D.C. 2008) (offends sense of fair play to allow a partisan to "dress up as" an expert, whose reliability depends upon his or her neutrality).

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Defendants therefore move to strike to Apostolidis Declaration, in whole and in each part, as set forth above. This motion is based upon CR 56(e) and ER 402-403, 702-705, and 801-805.

Dated this 4th day of April, 2018.

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of eighteen, and I am competent to be a witness herein.

On this 5th day of April, 2018, I caused the foregoing document to be served on the parties as indicated below.

Lori Jordan Isley Joachim Morrison Columbia Legal Services 6 South Second Street, Suite 600 Yakima, WA 98901 *Counsel for Plaintiff*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail [ ] Via U.S. Mail, postage prepaid
Marc Cote Frank Freed Subit & Thomas LLP 705 Second Avenue, Suite 1200 Seattle, WA 98104-1798 *Counsel for Plaintiff*	[ ] Via Facsimile [ ] Via Legal Messenger [X] Via E-mail [ ] Via U.S. Mail, postage prepaid

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Pam McCain

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EXHIBIT 27

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER BROTHERS DAIRY, INC., Defendant. WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenor-Defendant-Applicants	No. 16-2-03417-39 SECOND DECLARATION OF JOHN STUHLMILLER _____

I, John Stuhlmiller, declare and state as follows:

1. I am Chief Executive Officer of the Washington Farm Bureau. I am over the age of 18 and make this declaration based on my own personal knowledge. I previously filed another declaration in this case, in support of our motion to intervene in this matter.

2. I have been a farmer for my entire life; I grew up in a wheat farming family, and my family still farms that land. In the course of my work, the Washington Farm Bureau represents farmers who produce all of the 300 agricultural commodities grown in Washington,

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1 and I have become knowledgeable about all of them. I am thus familiar with the ways in which
2 Washington farmers work to ensure the safe and efficient harvesting of the agricultural products
3 produced in our state. While there are many differences between the methods used to harvest
4 different fruits, grains, vegetables, livestock and their products, certain characteristics are
5 common.

6 3. The most important of these is that all farm work is, in one way or another,
7 dependent on the weather and the seasons. Different crops must be planted at different times and
8 harvested at different intervals. Even with careful planning of planting and anticipated harvest,
9 specific weather conditions can throw a harvest off by days or weeks. Livestock have their own
10 seasons of more or less farmer activity, tied to when they produce their off-spring and other
11 factors; for farms like a dairy, weather conditions will impact a milking schedule. All farm work
12 is impacted by the vagaries of the weather, whether for good or bad.

13 4. Moreover, Washington's farmers must react to market conditions in the entire
14 country -- and even the global economy for our agricultural products. Farmers must react, with
15 very little advance notice, to periods of increased or reduced demand. Without the ability to
16 manage the workforce needed to produce this food, Washington's farmers would be unable to
17 operate their farms, and our people would be more dependent on foreign sources of food.

18 5. As a consequence, all farms have periods of time when work is very busy and
19 intense, and time periods when the work pace is reduced. At busy times, farmers and their
20 employees must necessarily work long hours. To my observation, that is an invariable pattern
21 across all sectors of agriculture.

22 6. Thus, neither the federal government, nor any of our surrounding states, require
23 that farm workers be paid any sort of overtime premium for working more than forty hours in a
24 week.

25 7. Because no farmers have ever had to pay their employees overtime, it is difficult
26 to quantify the cost of adding such a premium onto employees' pay. However, I have seen

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estimates that such a requirement would add a minimum of $20,000,000 per year onto the costs of Washington farmers. I believe this estimate is low. It could readily be ten times as high.

8. Washington farmers would be unable to absorb these expenses. The large majority of Washington farms are relatively small operations, with total sales below $250,000 a year. Moreover, the majority of Washington farms are family farms, not large corporate affiliates. All Washington farms (especially dairy operations) operate on small profit margins; the United States Department of Agriculture ("USDA") has, just this year, calculated that farm income has retreated to 2006 levels. Moreover, as competitors in a global marketplace, Washington farmers are "price takers." Farmers may try to do so, but they would be largely unable to pass onto consumers the increased costs resulting from paying overtime.

9. Dairy is a variety of farming in which it is particularly difficult to add locally occurring costs of production onto the price of our products. For the most part, milk prices are established by complex regulatory programs administered by the USDA, and reflect national prices, not Washington-state specific costs.

10. Washington farmers compete with farmers from across the United States to sell our products. Most of our production is exported, either to other states within the United States, or to foreign consumers. Virtually all agricultural products are commodities; and all other things being equal, these commodities compete on price. If Washington farmers are the only producers forced to pay their workers an overtime premium, our products will be at a distinct competitive disadvantage. While it is difficult to precisely quantify the effect of such a cost increase on our products, and ours alone, it is much more likely than not to have a substantial -- if not devastating -- adverse effect.

Signed at Lacey, Washington this 5th day of April, 2018

John Stuhlmiller

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER BROTHERS DAIRY, INC., Defendant. WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenor-Defendant-Applicants.	No. 16-2-03417-39 GR 17

Pursuant to the provision of GR 17, I declare as follows:

1. I have received the foregoing **Second Declaration of John Stuhlmiller** in PDF via email transmission for filing at the email address of: tim.oconnell@stoel.com.

2. I have examined the foregoing document, determined that it consists of (5) pages, including this Declaration page, and that it is complete and legible.

3. My address is: Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, WA 98101.

4. My phone number is (206) 624-0900.

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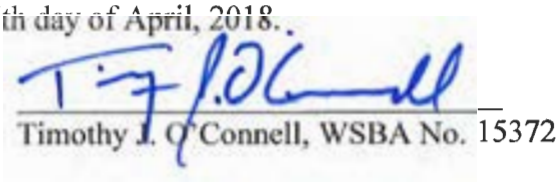
I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Seattle, Washington this 5th day of April, 2018.



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CERTIFICATE OF SERVICE

I certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of 18 years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, Washington 98101.

On April 5, 2018, I caused a true and correct copy of the foregoing document to be served upon the following parties in the manner indicated below:

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DATED at Seattle, Washington, this 5th day of April, 2018.

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SUPERIOR COURT OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants, and WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenors.	No. 16-2-03417-39 PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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Unemployment, Old Age, and Social Insurance: Hearings before the H. Comm. On Labor, 74th Cong, 1st Sess. 147 (1935) 11

Katznelson, Ira, Kim Geiger & Daniel Kryder, *Limiting Liberalism: The Southern Veto in Congress, 1933-1950*, 108 Pol. Sci. Q. 283, 291-93, 297 (1993) 10

Lieberman, Robert C., *Shifting the Color Line: Race and the American Welfare State* 36 (1998) 10

Linder, Marc, *Migrant Workers and Minimum Wages: Regulating the Exploitation of Agricultural Labor in the United States* 154 (1992) 10, 11, 12

Perea, Juan F., *The Echoes of Slavery: Recognizing the Racist Origin of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 Ohio State L.J. 95, 102-03 (2011) 10, 11, 12

Potter, David, *The South and the Concurrent Majority* 70 (1972) 10

Sitkoff, Harvard, *A New Deal for Blacks: The Emergence of Civil Rights as a National Issue: The Depression Decade* 34-35 (30th Anniversary ed. 2009) 10

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I. INTRODUCTION

The DeRuyter and Industry Defendants do not dispute the material facts in this case. Hundreds of farm workers were required to work over forty hours a week nearly 85% of the time at DeRuyter's facility. The injury rate for those workers is consistent with Washington State dairy industry rates which are 121% higher than the rate for all state industries combined. The existing health and safety laws have failed to protect the dairy workers in this case.

Plaintiffs' constitutional challenge is based on the fundamental right to the protection of health and safety for workers in dangerous jobs found in article II, section 35 of the Washington State Constitution. The agricultural exemption from overtime protections found in RCW 49.46.130 violates the privileges or immunities clause because it implicates this fundamental right and because there is no reasonable ground consistent with the health and safety goals expressed in the Declaration of necessity of the Minimum Wage Act ("MWA"), RCW 49.46.005, for the distinction. In fact, the legislative history of the MWA shows the only consideration given to health and safety was a letter from a farm worker clinic doctor urging *against* the exclusion of farm workers because of the negative effect on their health. In addition, the exemption violates the equal protection clause of the Washington State Constitution under any level of scrutiny. Indeed, Defendants have failed to argue, and therefore waive, that the State had any compelling or substantial interest in depriving farm workers of overtime protection.

While Defendants seek to interject doubt about the racial underpinnings of the Fair Labor Standards Act ("FLSA") agricultural exemption on which our own MWA exemption is based, this Court should give judicial notice to the weight of historical scholarship that documents the racial politics of New Deal era legislation, including the FLSA. Finally, the issue of retroactivity

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is not before the Court and should only be addressed following this Court's determination of the constitutional issues. This Court should grant Plaintiffs' Motion for Summary Judgment and find that RCW 49.46.130(2)(g) is unconstitutional.

II. ARGUMENT

There are no genuine issues of material fact related to whether the agricultural exemption from overtime protection is unconstitutional. The facts related to the overtime hours worked and the injury rate at the DeRuyter facility, which operated continuously, twenty-four hours a day, are not disputed. The social, economic and historical facts, in addition to the legislative history materials provided by the Plaintiffs are "legislative facts" of which this Court should take judicial notice. The exemption is unconstitutional because it benefits the industry and deprives farm workers of the fundamental right to be protected by health and safety laws while working in dangerous jobs. It is undisputed that agriculture is dangerous work and overtime has long been recognized as a health and safety protection. There is no reasonable ground for granting this immunity to the industry and the Court may not hypothesize one. In addition, the exemption violates farm workers' right to equal protection to overtime which is provided to other workers in dangerous occupations.

A. Defendants' Attempt to Manufacture a Factual Dispute Is Misguided Because There Are No Genuine Issues of Material Fact Relating to Whether RCW 49.46.130(2)(g) Is Unconstitutional.

Throughout their briefs, Defendants seek to sow doubt regarding the undisputed facts underlying Plaintiffs' constitutional challenge and the legislative history underpinning the farm worker exemption from overtime protection in the MWA and FLSA. There are no disputes of material fact related to the hours worked and the injury rate at the DeRuyter facility. The class

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worked overtime hours nearly 85% of the time. The audit submitted by the DeRuyter Defendants confirms that the three shifts which keep the DeRuyter facility working continuously, twenty-four hours a day, and the hours worked are consistent with industry standards. Declaration of John Ray Nelson, Ex. 1 at 5-6. Similarly, there is no dispute that the injury rate at the DeRuyter facility is consistent with state data for the dairy industry, in which injuries occur at a rate that is 121% higher than the rate for all state industries combined. Finally, there is no dispute that both Mr. Martinez and Ms. Aguilar almost always worked in excess of forty hours per week, both were injured on the job, and both attributed their injuries to working long hours.

Furthermore, the social, economic and historical facts, in addition to the legislative history materials provided by Plaintiffs, are "legislative facts" of which this Court should take judicial notice. *Wyman v. Wallace*, 94 Wn.2d 99, 102, 615 P.2d 452 (1980) (noting that legislative facts of which courts may take judicial notice include scholarly works, scientific studies, and social facts); *Tobin v. Dep't of Labor & Indus.*, 145 Wn. App. 607, 616 n.7, 187 P.3d 780 (2008) (stating courts "may take judicial notice of the legislative history of a statute"). Courts regularly take judicial notice of documents, memoranda, and letters relating to the passage of a law even when the records are not in the official legislative file because such documents have "value in the search for 'legislative intent.'" *Seattle Times Co. v. Benton Cty.*, 99 Wn.2d 251, 255 n.1, 661 P.2d 964 (1983); *see also Knack v. Dep't of Ret. Sys.*, 54 Wn. App. 654, 665, 776 P.2d 687 (1989) (same). The procedure for taking judicial notice of legislative facts is not regulated by court rules or statute; rather, it is discretionary with the court. *See Wyman,* 94 Wn.2d at 102-103 (recognizing that evidentiary rules do not restrict notice of legislative facts).

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It is well established that trial courts may take judicial notice of legislative facts at summary judgment, particularly when determining the constitutionality of a statute. *Cameron v. Murray*, 151 Wn. App. 646, 658-60, 214 P.3d 150 (2009). Furthermore, "[h]istorical facts, commercial practices and social standards are frequently noticed in the form of legislative facts." *State v. Grayson*, 154 Wn.2d 333, 340, 111 P.3d 1183 (2005) (quoting *Korematsu v. United States*, 584 F. Supp. 1406, 1414 (N.D. Cal. 1984)). Here, such facts include those in the declarations of Paul Apostolidis, Jennifer Belcher and Maggie Leland, and the sources relating to the danger of agricultural work generally, the size of the agricultural industry in Washington, and the demographics of Washington's poor and Latina/o farm workers. They also include the studies which link working hours in excess of forty a week with increased injury rates. *See Cameron,* 151 Wn.App. at 658 (studies linking drinking and violence were appropriate for judicial notice of legislative facts at summary judgment on the issue of host liability).

Finally, the Court may and should consider the weight of the historical scholarship, relying on primary sources from the New Deal legislative process, that document the racist origins in federal laws excluding farm workers, which were incorporated without discussion into Washington law. *See State v. Saintcalle,* 178 Wn.2d 34, 75, 309 P.3d 326 (2013) (Gonzalez, J., concurring) (considering the historical context and work of scholars related to the peremptory challenge which was adopted from English jurisprudence at a time when racial minorities and women were not eligible for jury service and perpetuates discrimination today). As discussed below, *infra* III.B.2, Defendants' attempt to manufacture a dispute of material fact through the Declaration of Claire Strom is misplaced because the historical analysis of sociopolitical and legislative history are legislative facts that the Court may determine through judicial notice.

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B. Granting the Agricultural Industry the Immunity from Providing Overtime Protection to Its Workers Violates Article I, Section 12 of the Washington State Constitution.

The exemption of the agricultural industry from complying with the health and safety protection of our state's overtime law violates the privileges or immunities clause because (1) it grants favoritism to the industry and deprives farm workers of the fundamental right to be protected by necessary laws for persons engaged in dangerous work guaranteed by article II, section 35 of the State Constitution; and (2) there is no reasonable ground for granting this exemption to a dangerous industry.

1. The overtime exemption for the agricultural industry implicates a fundamental right of state citizenship: the explicit guarantee of protection for workers in dangerous jobs in article II, section 35.

Washington's constitutional framers created a fundamental right of state citizenship when they placed specific restrictions on the power of the legislature and enshrined in the text of the constitution the protection of workers in dangerous jobs:

> **§ 35 Protection of employees.**
>
> **The legislature shall pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life or deleterious to health**; and fix pains and penalties for the enforcement of the same.

Const. art. II, § 35 (emphasis added). Thus, the workers' challenge to the legislature's exemption of the agricultural industry from complying with overtime protection is not an argument based on the "spirit" of the Constitution, as the Defendants suggest, but rather on a specific, textual guarantee expressed in the first twenty-five words of article II, section 35. *Cf. State v. Vance*, 29 Wash. 435, 459 (1902) (citing *Smith v. Seattle*, 25 Wash. 300, 65 P. 612 (1901)) (distinguishing an infirm constitutional challenge based on "a spirit supposed to pervade the

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constitution" versus one solidly grounded on a provision "expressed in words"); *see also* Robert F. Utter & Hugh D. Spitzer, *The Washington State Constitution: A Reference Guide* 7-9 (2d. ed. 2013) (explicitly recognizing the connection between the privileges and immunities clause and article II, section 35 as populist concerns that were incorporated into the *text* of the Constitution to "harness the power of the state to promote opportunity for the 'common man' and to reduce the opportunity for special interests to manipulate government for their own ends").[1]

Contrary to Defendants' false characterization of Plaintiffs' argument, Plaintiffs' challenge is not based on a mere statutory right; rather it is rooted in the constitutional requirement to protect workers in dangerous jobs. In adopting the overtime protection of the MWA, the legislature acted to protect the health and safety of the vast majority of Washington workers, including essentially all other workers in dangerous industries,[2] but excluded agricultural workers wholesale without any analysis of the health and safety implications of that decision. *See infra* II.B.2. Once the legislature acted, it was required to do so within the confines of the constitution.[3] Because the farm workers' challenge implicates a "fundamental right of state

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[1] Relevant excerpts of this treatise are filed as an attachment to Plaintiffs' Motion for Summary Judgment. *See* Ex. A at 9-11.

[2] While some other groups of workers in arguably dangerous jobs are also not covered, most of those workers are covered by specific federal laws, for example: fire protection, 29 C.F.R. § 553.230, seamen, 46 U.S.C. § 8104(e); *see* 29 C.F.R. § 783.29 (detailing the history of FLSA exemption; seamen "already under special governmental regulation"), and truck and bus drivers, RCW 49.46.130 (exempting workers covered by the Federal Motor Carrier act who have overtime pay "reasonably equivalent" to MWA requirements).

[3] DeRuyter Defendants argue that article II, section 35 "creates no rights absent legislative action," but the legislature *did* act. *See* DeRuyter Defendants' Opposition at 15-16. They also provide no authority for the assertion that rights which are not self-executing cannot be fundamental. *See id.* (citing *Anderson v. Whatcom Co.*, 15 Wash. 47, 45 P. 665 (1896)

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citizenship" it triggers a privileges or immunities analysis. *See Schroeder v. Weighall,* 179 Wn.2d 556, 573, 316 P.3d 482 (2014) (quoting *Vance*, 29 Wash. at 458).[4]

The Defendants also ignore that courts have long recognized overtime laws as a fundamental protection for workers' health and safety. *See Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 870, 281 P.3d 289 (2012) (recognizing overtime pay serves as a disincentive to "long hours of work injurious to health" (quoting *U.S. v. Rosenwasser*, 323 U.S. 360, 361 (1945))). Defendants do not contest that agriculture is dangerous work, that the industry routinely requires work in excess of forty hours per week, and that studies document an increase in injury rates when working over forty hours a week.[5] Here, it is undisputed that class members worked over forty hours a week nearly 85% of the time; the injury rate at the facility (like that for the dairy industry statewide) was 121% higher than the injury rate for all industries; and that both class representatives were injured while working for the DeRuyter Defendants, which they attribute to working long hours.

DeRuyter Defendants' assertion that the overtime exclusion doesn't "benefit one class to the detriment of another" because "all agricultural employers" are exempt is based on a false

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(analyzing whether there is a private right of action under Art. 4, § 10 for a justice of the peace to enforce a salary increase)).

[4] "[T]he precise confines of what constitutes a privilege" continues to evolve under Washington's jurisprudence. *Madison v. State*, 161 Wn.2d 85, 95, 163 P.3d 757 (2007); *see also Andersen v. King Cnty.*, 158 Wn.2d 1, 121-28, 138 P.3d 963 (2006) (Chambers, J., dissenting) (stating the interpretation of Washington's privileges or immunities clause is in its infancy).

[5] DeRuyter Defendants provide no authority for their assertion that Plaintiffs must establish a causal link between the agricultural exemption and increased injury rates. DeRuyter Defendants' Opposition at 18. The two-step inquiry under the privileges or immunities clause

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characterization of Plaintiffs' claim. Plaintiffs assert that the overtime law does not treat all workers in dangerous industries the same way. Instead, it provides the right of overtime compensation to such workers who work outside of agriculture, but it withholds that right from farm workers. Consistent with the analysis in *Schroeder,* the benefit the agricultural exemption confers is that the industry does not have to comply with overtime protection, which burdens certain workers in dangerous jobs – farm workers – by not affording them with those rights.

2. The legislature had no reasonable grounds for excluding agriculture from the health and safety mandates of article II, section 35 by virtue of the exemption in RCW 49.46.130(2)(g).

In determining whether a "reasonable ground" exists for a privilege or immunity, a court must "scrutinize the legislative distinction to determine *whether the distinction in fact serves the legislature's stated goal*" and cannot "hypothesize facts to justify a legislative distinction." *Schroeder*, 179 Wn.2d at 574 (emphasis added) (citations omitted). In enacting the MWA, the legislature had an express goal of protecting health and safety, RCW 49.46.005(1), and it determined that minimum wage and overtime protections were a means for achieving that goal for the vast majority of Washington workers. *See Anfinson*, 174 Wn.2d at 870.

The distinction in question – the exclusion of agriculture from overtime protection – does not serve the legislature's stated goal. It is undisputed that agriculture is a dangerous industry. Nonetheless, in the context of MWA overtime protection, the legislature has never so much as considered what the health and safety ramifications of excluding farm workers from overtime protection would be. Courts are not allowed to hypothesize that the legislature found agriculture

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does not require causation. *See* Plaintiffs' Motion for Summary Judgment at 12-13 (citing *Schroeder*, 179 Wn.2d at 572-73).

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to be safe. *See* Plaintiffs' Motion for Partial Summary Judgment at 16-17 (noting no evidence that the legislature considered health and safety in the three sessions in which it considered the MWA, except to place in a file a farmworker-clinic doctor's plea that exclusions from the MWA negatively affected farmworkers' health).

Likewise, courts may not hypothesize that the legislature had some other purpose in mind entirely, when that purpose, and the facts supporting it, are absent from the legislative record. While Defendants/Intervenors allege in a contemporary declaration that overtime would cost farms a lot of money, *see* Declaration of John Stuhlmiller, ¶ 7, they fail to cite a single example from the legislative history of the MWA where the legislature actually expressed concern about these issues. While Defendants purport to rely on "80 years of legislative history," they cite only the legislative history of an entirely different statute (WISHA). Defendants' Opposition at 20 n.27. Furthermore, the Declaration of Claire Strom consistently "hypothesizes facts to justify" the "legislative distinction" in RCW 49.46.130(2)(g) without any factual support in Washington's legislative record. *Contra Schroeder*, 179 Wn.2d at 574. Thus, her declaration should be disregarded.

Because it is clear that the legislature failed to determine whether the exclusion of farm workers served the stated health and safety goal, the court may end its inquiry here and hold that no reasonable grounds existed for the distinction between agricultural workers and other workers in dangerous industries for the purposes of protecting health and safety. As historical background, however, it may be useful for the Court to understand the genesis of the framework adopted by the Washington legislature – the exclusion of agricultural workers from FLSA.

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Reliable historical sources demonstrate that the exemption from FLSA's "maximum hours" provision was not based on legitimate grounds (i.e. worker health and safety) but was instead embedded in our laws through racial politics.[6] It is widely accepted that Southern Democrats dominated the leadership positions in Congress in the New-Deal era, and they had the power and will to block any measure that threatened the stratified racial structure of the South.[7] This specifically meant resisting wage-and-hour laws, as they might signal the end of wage differentials between blacks and whites.[8]

It was clear by 1937, when the FLSA legislation was introduced, that the recipe for getting New-Deal social legislation past the Southern voting bloc was to exclude large numbers

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[6] As shown below, the Declaration of Claire Strom is contrary to the primary historical sources (which she conspicuously fails to cite) and against the weight of the specific scholarship on these issues. Furthermore, Strom's assertions about what constitute material facts in the case, along with other assertions about what is covered by FLSA, are improper legal conclusions. Strom Decl. at 3, 19 ("material facts"); ¶¶ 11-12 (scope of FLSA coverage); *see* ER 704; *State v. Olmedo*, 112 Wn.App. 525, 532, 49 P.3d 960, 964 (2002) (witnesses, including "experts," may not offer opinions of law).

[7] Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origin of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 Ohio State L.J. 95, 102-03 (2011); Harvard Sitkoff, *A New Deal for Blacks: The Emergence of Civil Rights as a National Issue: The Depression Decade* 34-35 (30th Anniversary ed. 2009); Robert C. Lieberman, *Shifting the Color Line: Race and the American Welfare State* 36 (1998); Ira Katznelson, Kim Geiger & Daniel Kryder, *Limiting Liberalism: The Southern Veto in Congress, 1933-1950*, 108 Pol. Sci. Q. 283, 291-93, 297 (1993) (attached as Exhibit 34 to the Decl. of Elvia Bueno).

[8] Marc Linder, *Migrant Workers and Minimum Wages: Regulating the Exploitation of Agricultural Labor in the United States* 154 (1992) (attached as Exhibit 30 to the Decl. of Elvia Bueno); David Potter, *The South and the Concurrent Majority* 70 (1972); *see* Lieberman, *supra*, 28.

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of Southern blacks in a facially race-neutral way.[9] The exclusion of agricultural and domestic workers served as an openly-recognized proxy for racial exclusions in both the National Industrial Recovery Act (the precursor to FLSA)[10] and the Social Security Act.[11] By the time FLSA was introduced in Congress, its proponents knew enough to exclude agricultural workers from the start.[12]

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[9] Linder, *supra*, at 132-152.

[10] Linder, *supra*, at 133.

[11] *Economic Security Act: Hearings before the S. Comm. on Finance*, 74th Cong., 1st Sess. 640-44 (1935) (attached as Exhibit 31 to the Decl. of Elvia Bueno); *Unemployment, Old Age, and Social Insurance: Hearings before the H. Comm. On Labor*, 74th Cong, 1st Sess. 147 (1935) (attached as Exhibit 32 to the Decl. of Elvia Bueno); Perea, *supra*, at 109-13 (three-fifths of black southern workers were excluded by the agricultural and domestic labor exemptions). The hearings on the Social Security Act included a cynical colloquy between a Northern and a Southern congressman that laid bare the southern desire to exclude blacks in a "not unconstitutional" way. *Economic Security Act; Hearings before the H. Comm. on Ways & Means*, 74th Cong., 1st Sess. 976-77 (1935) (attached as Exhibit 33 to the Decl. of Elvia Bueno).

[12] Linder, *supra*, at 153; *see* Perea, *supra*, at 114 & n.106 (Chairman of the National Committee on Rural and Social Planning stating in FLSA hearing: "No purpose will be served by beating around the bush. You, Mr. Chairman, and all your associates on this Committee know as well as I do that agricultural laborers have been explicitly excluded from participation in any of the benefits of New Deal legislation, from the late (but not greatly lamented) N.R.A. [NIRA], down through the A.A.A., the Wagner-Connery Labor Relations Act [NLRA] and the Social Security Act, for the simple and effective reason that it has been deemed politically certain that their inclusion would have spelled death of the legislation in Congress. And now, in this proposed Black-Connery wages and hours bill, agricultural laborers are again explicitly excluded."). Southern lawmakers expressed clearly that they believed blacks should remain excluded for the sake of the southern "social structure." 82 Cong. Rec. 1404 (1937) (Rep. Wilcox of Florida: "You cannot put the Negro and the white man on the same basis and get away with it. Not only would such a situation result in *grave social and racial conflicts* but it would result in throwing the Negro out of employment.") (emphasis added); 82 Cong. Rec. 442 (1937) (Rep. Cox of Georgia expressing fear that federal interference in the form of FLSA would "in destroying State sovereignty and local self-determination, render easier the elimination and disappearance of racial and social distinctions, and by the concentration of this vast and despotic power in a political board or administration or Washington throw into the political field the

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Southern lawmakers had good reason for their fear that the Southern socioeconomic system would be greatly disturbed by coverage of agricultural workers. Farms (plantations) that were too large for a family operation, and thus had employees, were overwhelmingly concentrated in the South.[13] Farm workers in the South were paid far less than they were in the North at the time.[14] There was a trend toward the displacement of sharecroppers by wage laborers in the South in the 1930's.[15] And Southern farmers had a well-founded fear that their sharecroppers would be deemed employees under FLSA (which in fact happened when agricultural workers were included in some parts of FLSA in 1966).[16]

The fact that statutes that eradicated the effects of slavery and Jim Crow had potential economic impacts does not mean that the South's objections can be fairly characterized as "economic." Racism was a central and inextricable component of the Southern socioeconomic system. Rather than fearing in some neutral way that they would lose money, southerners had identified a threat to the racial/social order and the quasi-captive labor force left to them by the vestiges of slavery.[17] This historical background confirms that the statutory structure emulated by the Washington legislature had its roots in continued racial subjugation.

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determination of the *standards and customs which shall determine the relationships of our various groups of people in the South.*") (emphasis added).

[13] Linder, *supra*, at 169.

[14] *Id.* at 171-75.

[15] *Id.* at 164 n.141.

[16] *Id.* at 164 n.142; 175 n.167.

[17] Linder, *supra*, at 131-32, 145, 147-49, 151, 174; Perea, *supra*, at 115-16.

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C. Excluding Farm Workers from Overtime Protection Also Violates the Equal Protection Guarantee of the Washington State Constitution

The right to equal protection guarantees that persons similarly situated with respect to a legitimate purpose of the law receive like treatment. *State v. Harner*, 153 Wn.2d 228, 235, 103 P.3d 738 (2004). Excluding farm workers from overtime protection, while extending that protection to other workers in dangerous occupations does not withstand any level of scrutiny.

1. Strict scrutiny applies because farm workers, like all workers in dangerous occupations, have a fundamental right to protection by workplace health and safety laws.

The exclusion of farm workers from MWA's overtime protection burdens a fundamental right, and there is no compelling state interest to sustain the exclusion. Although Defendants argue no fundamental right is at stake, they fail to identify any alleged compelling state interest for the exclusion. DeRuyter Defendants' Opposition at 22; Industry Intervenors' Opposition at 12. Because there is a fundamental right for workers employed in dangerous jobs to be protected by health and safety laws, excluding farm workers, who are engaged in dangerous work, from overtime protection deprives them of equal protection of the law. Because the Defendants fail to identify any compelling state interest, this Court should grant summary judgment on that ground alone.[18]

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[18] Strict scrutiny also applies for a second reason: the legislative history and historical context demonstrate that the FLSA was rooted in racial bias. Plaintiffs' Motion for Summary Judgment at 20 n.20; *see supra* II.B.2. Defendants do not dispute that farm workers in Washington today are nearly all Latina/o. The fact that the demographics of the farm worker population were different when the exemption was first adopted in 1959 or at subsequent times does not change the fact that excluding farm workers from overtime protection now impacts almost an entirely Latina/o workforce.

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DeRuyter Defendants assert there is no fundamental right at issue here and seek to distinguish *Macias v. Dep't of Labor & Indus*, 100 Wn.2d 263, 668 P.2d 1278 (1983), on that basis. But Plaintiffs relied on *Macias* as an example in which the Washington Supreme Court applied strict scrutiny and struck down a statute because there was no compelling state interest to justify the law's infringement on workers' fundamental right to travel. Plaintiffs' Motion for Summary Judgment at 19. The fact that the *Macias* court relied on the right to travel to reach its conclusion rather than article II, section 35, which was never argued in that case, has no bearing on Plaintiffs' argument here. In both cases, a challenged law burdened a fundamental right held by farm workers, though the fundamental rights—travel and health and safety—are different.

2. RCW 49.46.130(2)(g) also fails the intermediate scrutiny test.

Washington courts have repeatedly stated *without limitation* that intermediate scrutiny applies to statutes that both implicate an "important right" and a "semi-suspect class not accountable for its status." *Schroeder*, 179 Wn.2d at 577-78; *see also Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 609, 192 P.3d 306 (2008); *Griffin v. Eller*, 130 Wn.2d 58, 65, 922 P.2d 788 (1996); *State v. Schaaf*, 109 Wn.2d 1, 17–19, 743 P.2d 240 (1987). Washington courts have not suggested any kind of categorical limitation on the types of statutes that could be subject to intermediate scrutiny. Indeed, the relevant case law establishes that intermediate scrutiny extends far beyond the subject of physical liberty.

Schroeder is squarely on point. Although Defendants seek to minimize its significance, the Washington Supreme Court stated without reservation that a statute excluding medical malpractice claims from the normal tolling rules for minors implicated an interest "*undeniably* 'important' for purposes of our state equal protection analysis." *Schroeder*, 179 Wn.2d at 578

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(emphasis added). *Schroeder* further concluded that although the statute applied to a class that was not categorically vulnerable (children), it had the potential to disproportionately burden a subgroup of children (children of less knowledgeable and indifferent parents). *Id.* at 579. The Supreme Court explained that this subgroup "may well constitute" a semi-suspect class warranting heightened scrutiny as they were likely to be adversely affected by the statute. *Id.*

The exemption of farmworkers from overtime fits squarely within *Schroeder*'s intermediate scrutiny framework. As explained in Plaintiffs' opening brief, the right of agricultural workers to legislative protections for their health and safety at work is a fundamental right. Such protections therefore certainly qualify as "important" rights, like other employment protections recognized by the Washington Supreme Court. *See, e.g.*, *Griffin*, 130 Wn.2d at 65 (holding that WLAD implicated an "important" interest for equal protection purposes); *cf. Schroeder*, 179 Wn.2d at 577-79 (recognizing statute protecting minors' ability to bring medical malpractice claims is "undeniably" important). And the exemption burdens vulnerable groups—low-income and Latino/a workers—even if it applies broadly to all agricultural workers. *See, e.g.*, *State v. Phelan*, 100 Wn.2d 508, 514, 671 P.2d 1212, 1215 (1983) (recognizing poverty is a semi-suspect classification); *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982) (recognizing children of undocumented immigrants are semi-suspect class). The disproportionately adverse effect on a vulnerable subgroup is sufficient to warrant intermediate scrutiny under *Schroeder*. 179 Wn.2d at 579. Because the overtime exemption implicates both an important right and a semi suspect class, intermediate scrutiny is appropriate if this Court finds strict scrutiny does not apply.

Macias is not to the contrary. In *Macias*, the Supreme Court determined that strict scrutiny was not warranted because the statute at issue was not passed with discriminatory

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animus against Mexican-Americans. *Id.* at 270-71. The Court, however, explicitly left open the possibility that a statute that had a "substantial disparate impact upon a racial minority" *could* be subject to intermediate scrutiny on that basis. *Id.* at 271 (declining to reach the issue of intermediate scrutiny because strict scrutiny was independently warranted). Here, it is undisputed that most Washington farm workers are low-income and Latino/a. RCW 49.46.130(2)(g) has a disparate impact on these workers by excluding them from the basic right to overtime held by other similarly situated workers in non-agricultural industries.

Under intermediate scrutiny, the defendant must show that the challenged law can "'fairly be viewed as furthering a substantial interest of the State.'" *Phelan,* 100 Wn.2d at 512 (quoting *Plyler,* 457 U.S. at 217-18). Defendants do not allege any substantial interest and therefore have waived any argument on this issue.

3. Defendants fail to address Plaintiffs' argument that not all members of the class – workers in dangerous industries – are treated equally.

All parties agree that if rational basis review is required, this Court will need to engage in a three-part test to determine if the legislation violates equal protection. That test involves whether the legislative distinction: (1) treats all members of the class alike; (2) has a rational basis for treating differently those within and outside the class; and (3) is rationally related to the purpose of the legislation. *DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 144, 960 P.2d 919 (1998). The major difference between the parties is the scope of the membership of the class.

Defendants mischaracterize the issue. The relevant class is not limited to agricultural workers. The overall class is workers in dangerous industries. The overtime law does not treat all members of *that class* alike. Instead, it excludes farm workers from the overtime protection that other workers in dangerous industries receive. *See Pub. Emp. Assn v. Personnel Resources Bd.*,

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127 Wn. App. 254, 266, 110 P.3d 1154 (2005) (court accepted plaintiffs' broader overall class as "all state employees who perform the same job as other state employees" despite fact some worked in higher education while others were general state employees because "these are similarly situated employees entitled to like treatment").

There is no rational basis for this classification that is related to the purpose of the legislation, worker health and safety. *See U.S. Dep't of Agric. v. Moreno,* 413 U.S. 528, 533-34 (1973) (no rational basis to deny food stamps to households with unrelated members while providing them to households whose members were all related because classification irrelevant to stated purpose - providing nutrition to low-income households). Indeed, Defendants' assertions related to the seasonality of agricultural work do not apply to dairies (like DeRuyter) which undisputedly operate continuously on a round-the-clock schedule. *See Rodriguez v. Brand West Dairy,* 378 P.3d 13, 27-30 (N.M. 2016) (rejecting alleged basis of excluding farm workers from workers' compensation coverage based on seasonality when some farm workers work year-round like the Plaintiffs here; as well as rejecting the alleged basis of additional costs to the industry, concluding any cost savings from the exclusion were only achieved through arbitrary discrimination against farm workers). And as noted in Plaintiffs' opening brief, "[a] discriminatory classification that is based on prejudice or bias is not rational as a matter of law." *Miguel v. Guess*, 112 Wn. App. 536, 553, 51 P.3d 89 (2002) (citing *Romer v. Evans,* 517 U.S. 620, 633-34 (1996); *City of Cleburne v. Cleburne Living Ctr.,* 473 U.S. 432, 448 (1985); *Palmore v. Sidoti,* 466 U.S. 429, 432-33 (1984)); *see also Moreno,* 413 U.S. at 534 (preventing "hippies" from participating in food stamps was not rational and violated equal protection). Thus, RCW 49.46.130(2)(g) would fail even rational basis review.

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D. The Issue of Retroactive Application Is Not Before the Court

The only issue before this Court at this time is whether RCW 49.46.130(2)(g) violates article I, section 12 of the Washington State Constitution as a matter of law, not the remedy for that violation. All parties should have the opportunity to fully brief how the Court's decision on that issue will apply to the workers in this case and future cases after this Court rules on the constitutional issue.

Should the Court analyze the retroactivity issue now, the parties agree on the standard: "retroactive application, by which a decision is applied both to the litigants before the court and all cases arising prior to and subsequent to the announcing of the new rule, is overwhelmingly the norm." *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 270-271, 208 P.3d 1092 (2009) (internal quotations omitted). It is only "in rare instances" that a decision applies only prospectively. *McDevitt v. Harborview Med. Ctr.*, 179 Wn.2d 59, 75, 316 F.3d 469 (2013). Washington Courts apply the United States Supreme Court's *Chevron Oil* test to determine when they may depart from the presumption of retroactivity. Under that test, the following three conditions must *all* be met: "(1) the decision established a new rule of law that either overruled clear precedent upon which the parties relied or was not clearly foreshadowed, (2) retroactive application would tend to impede the policy objectives of the new rule, and (3) retroactive application would produce a substantially inequitable result." *See Lunsford*, 166 Wn.2d at 272 (citing *Chevron Oil Co. v. Huson,* 404 U.S. 97, 106–07 (1971)).

Plaintiffs acknowledge that a decision overturning an exemption from overtime pay for farm workers would establish a new rule of law. But Defendants do not meet the remaining two requirements. First, retroactive application would not impede the policy objectives of a new rule

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eliminating the agricultural exemption from overtime protection. Plaintiffs' challenge is rooted in the fundamental right for health and safety protection for workers in dangerous jobs, and courts have long recognized overtime as such a protection. *Supra* II.B.1. It is undisputed that class members worked over forty hours a week nearly 85% of the time and that the injury rate at DeRuyter, consistent with the dairy industry statewide, is 121% higher than the rate for all state industries. It is also undisputed that both Plaintiffs were injured while working at DeRuyter, which they attribute to working long hours. Requiring farm workers to be paid for labor that detrimentally affected their health and safety does not impede the health and safety policy objectives of overtime protection. Retroactive application would also not produce a substantially inequitable result. Here, Defendants allege financial harm, but it is the farm workers who were forced to risk their health and safety for low wages that did not include an overtime premium, and Defendants greatly benefited from their labor. It would not be an inequitable result to require just compensation for the benefit of work already performed.

III. CONCLUSION

Plaintiffs' respectfully request that this Court grant summary judgment and declare that RCW 49.46.130(2)(g) is unconstitutional.

RESPECTFULLY SUBMITTED AND DATED this 26th day of April, 2018

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EXHIBIT 29

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SUPERIOR COURT OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants, and WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenors.	No. 16-2-03417-39 DECLARATION OF ELVIA F. BUENO IN SUPPORT OF PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I, Elvia Bueno, declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct:

1. I am over the age of 18 and am competent to testify as to the contents of this declaration.

2. The exhibits attached hereto are in addition to and numbered consecutively with exhibits filed with this Court on March 1, 2018, with the Declaration of Rachael Pashkowski in Support of Plaintiffs' Motion for Summary Judgment.

3. Attached as Exhibit 30 is a true and correct copy of an excerpt of Marc Linder, *Migrant Workers and Minimum Wages: Regulating the Exploitation of Agricultural Labor in the United States* (1992).

4. Attached as Exhibit 31 is a true and correct copy of an excerpt of *Economic Security Act: Hearings before the Senate Committee on Finance*, 74th Cong., 1st Sess. (1935).

5. Attached as Exhibit 32 is a true and correct copy of an excerpt of *Unemployment, Old Age, and Social Insurance: Hearings before the House Comm. On Labor*, 74th Cong., 1st Sess. (1935).

6. Attached as Exhibit 33 is a true and correct copy of an excerpt of *Economic Security Act; Hearings before the House Comm. on Ways & Means*, 74th Cong., 1st Sess. (1935).

7. Attached as Exhibit 34 is a true and correct copy of an excerpt of Ira Katznelson, Kim Geiger & Daniel Kryder, *Limiting Liberalism: The Southern Veto in Congress, 1933-1950,* 108 Pol. Sci. Q. 283 (1993).

RESPECTFULLY SUBMITTED AND DATED this 26th day of April, 2018.

Elvia F. Bueno

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EXHIBIT 30

Migrant Workers and Minimum Wages

Regulating the Exploitation of Agricultural Labor in the United States

Marc Linder

Westview Press
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4

The Statutory Origins of Agricultural Exceptionalism: The New Deal Racist Ratification of Sweatshops

> [C]heap labor has been the life-blood of the plantation system and an attack on low labor incomes in the South would be interpreted...as a mortal blow.[1]

> [I]t is...probable that the New Deal's rejection of agricultural labor is at the root of the farm workers' *Rechtlosigkeit*.[2]

Only thirty-eight per cent of farm workers today are entitled to the federal minimum wage.[3] Even of these, one-fifth nationally and one-third in the South are, according to their employers' own statements, unlawfully paid wages below that level.[4] Moreover,

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[1]E. Lewis, *Black Cotton Farmers and the AAA*, 13 OPPORTUNITY 72, 72 (1935).

[2]Richard Lyon, The Legal Status of American and Migratory Farm Labor 118 (Ph.D. diss., Cornell U. 1954). *See also* Bonita Harrison, Racial Factors Attending the Functioning of the New Deal in the South (M.A. thesis, Atlanta U. 1936).

[3]Calculated according to S. REP. NO. 101: FAIR LABOR STANDARDS AMENDMENTS OF 1989, 101st Cong., 1st Sess. tab. 1 at 22 (1989). *See also* James Holt, Joachim Elterich & Lawrence Burton, *Coverage and Exemptions of Agricultural Employment under the Fair Labor Standards Act*, in 4 REPORT OF THE MINIMUM WAGE STUDY COMM'N tab. 5.5 at 422 (1981).

[4]JOACHIM ELTERICH & JAMES HOLT, COVERAGE OF AGRICULTURAL EMPLOYMENT UNDER THE FAIR LABOR STANDARDS ACT: A STATISTICAL PROFILE, PART II OF A REPORT TO THE MINIMUM WAGE STUDY COMMISSION tab. 3 and 30 (Nat'l Tech. Infor. Serv. #PB81-235962, 1981) (data for 1980). On tobacco farms the non-compliance rate reached 76.4 per cent. *Id.* tab. 5. Since these data were collected from employers, they presumably understate the actual extent of non-compliance. *See* Holt, Elterich & Burton, *Coverage* at 424-31.

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employers in the thirty-one states without a minimum wage law applicable to agriculture can lawfully pay those who are excluded from FLSA a dollar or even ten cents an hour.[5]

That it is precisely those workers most urgently in need of state intervention for the subsistence wages that the labor market withholds from them who are denied its protection has characterized FLSA from its inception. At the time the law went into effect in 1938, with the bulk of low-wage workers employed in industries exempt from coverage, only 300,000 of the initially 11,000,000 covered employees were earning less than, and hence stood to benefit from, the statutorily mandated minimum wage of twenty-five cents per hour.[6]

Farm workers are also the only numerically significant group of adult minimum-wage workers wholly excluded from the premium overtime provision of FLSA on the basis of a criterion unrelated to firm-size.[7] Almost half of all farm workers subject to the minimum wage provision of FLSA work more than forty hours per week; these overtime hours, in turn, account for between one-sixth and one-seventh of all subject work hours.[8] In some instances, migrants work in excess of 100 hours weekly at the minimum wage.[9] This exclusion from the statutory entitlement to time and one-half for overtime hours thus deprives an already very low-paid stratum of much needed income.

Many agricultural employers, particularly in the South and Southwest, face a perfectly elastic labor supply: "it appears to them that they can secure all the workers they need at any given wage rate. They do not feel any necessity to raise wages to attract additional workers."[10] This unique labor market, marked by a permanent surplus of workers with no alternative to working more than forty hours per week at (or even below) the minimum wage, is

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[5]FEDERAL AND STATE EMPLOYMENT STANDARDS AND U.S. FARM LABOR 840-43 (Brian Craddock ed. 1988).

[6]Carroll Daugherty, *The Economic Coverage of the Fair Labor Standards Act: A Statistical Study*, 6 LAW & CONTEMP. PROBS. 406 (1939).

[7]29 U.S.C. § 213.

[8]Holt, Elterich, & Burton, *Coverage*, tab. 8.6 at 459, tab. 8.8 at 461, tab. 8.10 at 463; in 1981 mandatory overtime compensation could have increased farm workers' weekly earnings by 13.7 per cent.

[9]Irrigators on citrus farms in the Rio Grande Valley fit this description.

[10]Vernon Briggs, Jr., *Comments* in 4 REPORT OF THE MINIMUM WAGE STUDY COMM'N at 475, 478-79.

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the product of a long history of policies formulated and implemented by governments at all levels.[11] Hispanic and black workers perform most of the agricultural labor done by employees who are subject to the minimum wage provision of FLSA but are excluded from its maximum hours provision.[12] This concentration of Blacks and Hispanics in such a vulnerable position within the division of labor is rooted in the still virulent vestiges of institutional racism.

This chapter traces the origins of this aspect of agricultural exceptionalism to the New Deal.

I. The Racist Underpinning of the New Deal Coalition

The exclusion of farm workers from coverage under FLSA (and other New Deal economic legislation) has traditionally been analyzed as having arisen "as a necessary political compromise without which it would have been impossible to inaugurate a most important reform in American institutions."[13] But this specification of political compromise with the interests of agricultural employers in general conceals more than it reveals about the dynamics of the New Deal.[14] For racial prejudice against southern Blacks, which

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[11] *See supra* ch. 1.

[12] 29 U.S.C. §§ 207(a), 213(b)(12), 206(a)(1) and (5); Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1383-87 (1987).

[13] Romero v. Hodgson, 319 F. Supp. 1201, 1203 (N.D. Cal. 1970), *aff'd*, 403 U.S. 901 (1971) (referring to unemployment compensation). *See also Fair Labor Standards Act of 1937: Joint Hearings before the Senate Comm. on Education and Labor and the House Comm. on Labor*, 75th Cong., 1st Sess. 1197 (1937) (*FLSA Hearings*) (statement of Gardner Jackson, chairman, Nat'l Comm. on Rural & Soc. Planning).

[14] The only relevant New Deal statute that cannot unambiguously be traced back to a racially discriminatory intent is the NLRA. It, too, excluded the two occupational groups encompassing the bulk of black workers in the South—agricultural and domestic employees; apart from the children of employer-parents, they were also the only groups excluded from coverage. Ch. 372, § 2(3), 49 Stat. 449, 450 (1935). *See generally*, Austin Morris, *Agricultural Labor and National Labor Legislation*, 54 CALIF. L. REV. 1939, 1951-56 (1966); Note, *The Constitutionality of the NLRA Farm Labor Exemption*, 19 HASTINGS L.J. 384, 384-86 (1968). Race may not have been the predominant motive because:

> Farmers as a class [we]re opposed to any form of labor organization. Attempts by the I.W.W. in the past to organize the migratory harvest hands have helped to give farmers a distaste for unionization of farm labor, a sentiment which deepened into hostility because of the tactics of

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resulted in their virtually complete and unconstitutional expulsion from participation in the political life of the South and, hence, congressional and presidential political processes, went hand in hand with the overwhelmingly agricultural orientation of the political and economic power of the South and the overrepresentation of Southern Democrats in Congress.[15] Inevitably, the interests and goals of especially rural southern white supremacy shaped the policies of the Democratic Party, President, and Congress.

The Democratic Party that promoted Franklin Roosevelt was a "classical alliance of city bosses of the North and barons of the South" that believed in little beyond states' rights and federal patronage...." This "classical partnership between northern bosses and southern and western agrarians" began to be undermined in the 1920s when the new racial, ethnic and sexual composition of the northern urban electorate triggered demands by metropolitan Democratic organizations for a greater role within the Party. After becoming President, "Roosevelt's first step was to heal the split within the alliance. He was admirably qualified to reunite the classical party" insofar as "he was also (and he never let the South forget it) a Georgian by adoption...perhaps more at ease with farmers than precinct committee-men or trade unionists."[16] Roosevelt "more than any other northern Democratic leader...understood and empathized with the Southerners and their problems. ... As for blacks, it never occurred to him to question

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the I.W.W. group in pulling strikes at critical times during the harvest season.

Robert Woodbury, *Limits of Coverage of Labor in Industries Closely Allied to Agriculture under Codes of Fair Competition under NIRA*, in NAT'L RECOVERY ADM'N, WORK MATERIALS NO. 45A: INTRODUCTION 4 (1936) (Woodbury, *Limits of Coverage*). I.W.W. organizational efforts, which by the time of the New Deal were more a bad memory than a current threat, were largely directed at white farm workers outside the South. STUART JAMIESON, LABOR UNIONISM IN AMERICAN AGRICULTURE 59-69, 212, 236, 396-405 (BLS Bull. No. 836, 1945); MELVYN DUBOFSKY, WE SHALL BE ALL: A HISTORY OF THE INDUSTRIAL WORKERS OF THE WORLD (1969); CLETUS DANIEL, BITTER HARVEST: A HISTORY OF CALIFORNIA FARMWORKERS, 1870-1941, at 76-99 (1981).

[15]RALPH BUNCHE, THE POLITICAL STATUS OF THE NEGRO IN THE AGE OF FDR (1973 [1940]); CHARLES MANGUM, JR., THE LEGAL STATUS OF THE NEGRO (1940); GUNNAR MYRDAL, AN AMERICAN DILEMMA ch. 20-27 (1962 [1944]); 1 HARVARD SITKOFF, A NEW DEAL FOR BLACKS: THE DEPRESSION DECADE 111 (1978).

[16]ARTHUR SCHLESINGER, JR., THE AGE OF ROOSEVELT: THE POLITICS OF UPHEAVAL 409-10 (1966 [1960]).

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white supremacy."[17]

The blatantly racist electoral procedures of the southern states insured the long seniority of, and hence stranglehold on Congress by, southern congressmen, "who fervently believed in the necessity of maintaining the traditional caste and class structure." This configuration of power led Roosevelt to "believe[] that he would lose the support of these Southerners if his administration made any direct attempt to reform traditional racial and class patterns...."[18] Because he was "[u]nwilling to risk schism with Southerners ruling committees, Roosevelt capitulated to the forces of racism," agreeing "to modify or water down the New Deal in its practical operation in the South...."[19]

Consequently, the executive and legislative branches, by acquiescing in the presevation of political white supremacy, insured that intrusions into the socioeconomic sphere were as minimal and peripheral as possible. If even "[a]id to Southern Negroes would disturb existing social and economic relationships," the application of constitutional standards to their civil and political rights was out of the question.[20] Thus not only did the New Deal fail to enact any civil rights legislation, but Roosevelt, ignoring a sharp increase in lynchings, also refused to oppose a Southern filibuster of an anti-lynching bill for fear that it would trigger Southern retaliation against the administration's pending economic legislation.[21]

This unremitting accommodation of southern racism represented more than the ordinary dynamics of pluralist political compromise because the deliberate denial of socioeconomic and political rights to a disenfranchised minority was made possible by

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[17]Frank Freidel, *The South and the New Deal*, in THE NEW DEAL AND THE SOUTH 17, 23, 24 (J. Cobb & M. Namorato ed. 1984).

[18]RAYMOND WOLTERS, NEGROES AND THE GREAT DEPRESSION 15 (1970).

[19]Barton Bernstein, *The New Deal: The Conservative Achievements of Liberal Reform* in TOWARDS A NEW PAST 263, 279 (B. Bernstein ed. 1968); FRANK FREIDEL, F.D.R. AND THE SOUTH 36 (1965).

[20]*Id.* at 72. Even Harold Ickes, the Secretary of Interior and perhaps the most outspoken high-ranking New Deal advocate of equal rights for Blacks, assured racist Southern senators that he had no intention of attacking segregation. JOHN KIRBY, BLACK AMERICANS IN THE ROOSEVELT ERA 33-34 (1980).

[21]SCHLESINGER, POLITICS OF UPHEAVAL at 436-38; FRIEDEL, F.D.R. AND THE SOUTH at 88; NANCY WEISS, FAREWELL TO THE PARTY OF LINCOLN: BLACK POLITICS IN THE AGE OF FDR 96-119, 241-49 (1983). For express linkage of FLSA to the anti-lynching bill from the Southern racist perspective, see 82 CONG. REC. 1388 (1937) (statement of Rep. Martin Dies of Texas).

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southern domination of leadership positions in Congress during the New Deal:

> Throughout the thirties, the representatives of Dixie...controlled over half the committee chairmanships and a majority of leadership positions in every New Deal Congress. The combination of a seniority rule determining access to congressional influence, a one-party political tradition below the Mason-Dixon line, and a Democratic weakness outside the South prior to 1930 resulted in legislative hegemony for the advocates of white supremacy.[22]

Southern domination of the New Deal legislative process was exemplified by the leadership of the Seventy-Fifth Congress, which enacted FLSA. In 1938, Southerners chaired the Senate Agriculture, Appropriations, and Finance Committees and the House Agriculture and Ways and Means Committees, while five of ten Democrats on the all-powerful Rules Committee were Southerners. The House Speaker and Majority Leader were also Southerners. The same committee chairmen presided during the Seventy-Fourth Congress, which passed the Social Security Act and the National Labor Relations Act. "So long as the New Deal did not disturb Southern...racial patterns, these leaders would support it...."[23]

Southern political leadership was not merely one sectional force among many engaged in the routine competition of regional interests: "Except on race legislation, the South was not 'solid' in Congress."[24]

> We ought to be both specific and candid about the regional interest that the Democratic party of the South has represented in national affairs. [T]here is one, and only one, real

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[22] 1 SITKOFF, A NEW DEAL FOR BLACKS at 45.

[23] CONGRESSIONAL DIRECTORY, 75th Cong., 3rd Sess. 175, 177, 193, 204, 205, 259 (1937); *id.*, 74th Cong., 1st Sess. 175, 177, 192, 204 (1935); JAMES PATTERSON, CONGRESSIONAL CONSERVATISM AND THE NEW DEAL 132 (1967). *Cf. id.* at 42-44, 179, 186, 193-98; DONALD GRUBBS, CRY FROM THE COTTON: THE SOUTHERN TENANT FARMERS' UNION AND THE NEW DEAL 57 (1971). The power of the southern racist delegation was so great that even Sen. LaFollette, whose Comm. on Education & Labor held scores of hearings on Violations of Free Speech and Rights of Labor, never dared investigate the peonage of black sharecroppers because southern senators opposed such hearings too strenuously. DAVID CONRAD, THE FORGOTTEN FARMERS: THE STORY OF SHARECROPPERS IN THE NEW DEAL 173-74 (1965). *See also* Edward Schapsmeier & Frederick Schapsmeier, *Farm Policy from FDR to Eisenhower: Southern Democrats and the Politics of Agriculture*, 53 AGRIC. HIST. 352, 353-60 (1979).

[24] PATTERSON, CONGRESSIONAL CONSERVATISM at 330.

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> basis for southern unity: the Negro. ... We need to be even more exact. [I]t is not the Negro in general that provides the base for white Democratic unity in national affairs: it is fundamentally the rural Negro in areas of high concentrations of colored population. It is here that whites are relatively fewest, that the plantation system of agriculture is most highly developed, that the economic system is most dependent upon black workers, and that the white-black socio-economic system, commonly thought to be characteristic of the entire South, is most highly developed. Here we find the persistent strain of southern unity.
>
> The maintenance of southern Democratic solidarity has depended fundamentally on a willingness to subordinate to the race question all great social and economic issues that tend to divide people into opposing parties.[25]

More specifically still, the generator of the South's racist politics was the so-called Black Belt--an area encompassing some 200 counties the majority of whose populations was black, stretching from Virginia to Texas, with the densest core extending from South Carolina to eastern Arkansas and Louisiana. It "sketches the section of the nation where the smallest proportion of the adults exercise the franchise and it defines the most solid part of the Solid South. White supremacy and its instrument, the white primary, are more sacred than any other political tenets." It was here that "terroristic methods [were] used to disenfranchise the Negro": "With the financial, educational and religious institutions maintaining the status quo and keeping the Negro 'in his place,' the threat of violence always hangs over his head and violence frequently is used upon slight provocation."[26]

The institutionalized racist ideology of the Black Belt plantation society not only dominated the South politically, but also formed the linchpin of the whole southern economy. It was the nodal point at which all the southern racist political-economic forces opposing the application of a federal minimum wage to southern black farm workers converged. Perhaps the most blatant example of this interwovenness of the political and economic was to be found in the person of Senator Byrd of Virginia. As reported by the then head of the Resettlement Administration:

> "I know what's the matter with Harry Byrd," Franklin [Roosevelt] said to me one time when Byrd was objecting to a resettlement project in Virginia. "He's afraid you'll force him to pay more than

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[25] V. KEY, JR., SOUTHERN POLITICS IN STATE AND NATION 315-16 (1949).

[26] ARTHUR RAPER, PREFACE TO PEASANTRY 5 (1936).

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> 10 cents an hour for his apple pickers." Harry Byrd was the apple king of the Shenandoah and so his interest was direct.[27]

With "literally millions of farm laborers in the Black Belt...eagerly awaiting an opportunity to work for wages even smaller than are now being paid to textile and steel workers in southern cities," nothing less than the preservation of a virtually inexhaustible supply of the nation's cheapest labor was at stake: "The South can hope to be nothing but the Orient of this nation so long as its wages and working conditions are determined by the competition of plantation workers accustomed to practically no money and a minimum diet."[28]

From this overarching macropolitical-economic complex flowed the panoply of extralegal and unconstitutional measures that planters and their agents undertook to preserve their quasi-captive labor force.[29]

II. New Deal Racial Discrimination Against Farm Workers Before FLSA

> The basis for exemption of agricultural labor from the Fair Labor Standards Act was laid during the operation of the National Industrial Recovery Act.[30]

To understand the historical-institutional context of the exclusion of farm workers from FLSA, it is necessary to sketch the treatment accorded racial minorities (chiefly Blacks) under earlier New Deal social-economic legislation. This retrospective is necessary because, by the time FLSA was drafted, the exclusion of farm workers from related legislation had become such a fixed

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[27]REXFORD TUGWELL, THE DEMOCRATIC ROOSEVELT 447 n.7 (1957).

[28]RAPER, PREFACE TO PEASANTRY at 6.

[29]W. CASH, THE MIND OF THE SOUTH 417-22 (1941). Lee Alston & Joseph Ferrie, *Social Control and Labor Relations in the South Before Mechanization of the Cotton Harvest in the 1950s*, 145 INSTITUTIONAL & THEORETICAL ECON. 133 (1989), arrive at many of the same conclusions using the framework of paternalism.

[30]*Hearings Before the Senate Comm. on Education and Labor to Investigate Violations of Free Speech and Rights of Labor, Supplementary Hearings: National Farm Labor Problem*, 76th Cong., 3rd Sess. 1011 (1941) (*The Fair Labor Standards Act in Relation to Agricultural Labor*, [statement prepared by DOL, Wage & Hour Div.]).

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component of New Deal politics that the drafters no longer consciously took the issue into consideration.[31]

A. *The National Industrial Recovery Act (NIRA)*

The NIRA exerted a potent two-fold influence on subsequent New Deal treatment of Blacks and farm workers insofar as its administration by the National Recovery Administration (NRA) entailed both discrimination against black industrial workers in the South and exclusion of farm workers. A major purpose of the NIRA[32] was to stimulate the economy by insuring that depression-induced competitive wage-cutting would not feed under-consumptionist tendencies standing in the way of a cyclical recovery. By establishing codes of fair competition on an industry-by-industry basis, the NIRA sought to increase purchasing power by fixing minimum wages and maximum hours.[33]

1. ***Discrimination Against Black Industrial Workers in the South.*** Black workers were largely excluded from the wage and hour benefits of the NIRA by virtue of their concentration in two sectors of employment for which no codes of fair competition were established--agriculture and domestic service.[34] But even in industries where codes did exist, intentional anti-black discrimination prevailed:

> [S]everal provisions...enabled employers to pay white workers more than blacks. Some codes provided that certain jobs in an industry would be covered by NRA while other jobs would not, and these "occupational classifications" frequently were arranged so that

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[31]Judge Gerard Reilly, Solicitor, DOL, 1937-1941, chief drafter of FLSA, telephone interview (May 5, 1985). *See also* THE MAKING OF THE NEW DEAL 172-75 (Katie Louchheim ed. 1983).

[32]Act of June 16, 1933, ch. 90, 48 Stat. 195 (1933) (held unconstitutional in Schechter Poultry v. United States, 295 U.S. 495 [1935]).

[33]ARTHUR SCHLESINGER, JR., THE AGE OF ROOSEVELT: THE COMING OF THE NEW DEAL 87-102 (1958); GRANT FARR, THE ORIGINS OF RECENT LABOR POLICY 59-76 (1959); ELLIS HAWLEY, MONOPOLY AND THE NEW DEAL (1966); PETER IRONS, THE NEW DEAL LAWYERS 17-34 (1982); STANLEY VITTOZ, NEW DEAL LABOR POLICY AND THE AMERICAN INDUSTRIAL ECONOMY 73-96 (1987).

[34]Morris, *Agricultural Labor and National Labor Legislation* at 1945-51; WOLTERS, NEGROES AND THE GREAT DEPRESSION at 150.

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> minimum wage scales covered only that work which was generally performed by whites.[35]

This strategy was pursued, for example, in the cotton textile industry in the South. More than a hundred codes with geographical classifications permitting the payment of lower minimum wages in the South camouflaged racial differentials. Where an industry (such as fertilizers) was largely composed of black workers, it was classified as "southern"; where, on the other hand, a southern industry (such as cotton textiles) employed few blacks, the code provided for only marginal differences between southern and non-southern wages.[36]

President Roosevelt, who was required to approve each code, publicly expressed his support for such provisions: "'It is not the purpose of the Administration, by sudden or explosive change, to impair Southern industry by refusing to recognize traditional differentials.'"[37] And with few Blacks represented at code hearings--in contravention of the statutorily imposed obligation of representativeness--and "local control of compliance machinery mak[ing] it almost impossible for the Negro to seek effective redress," Congress and the Administration insured the continued subordination of southern Blacks.[38]

2. *The Exclusion of Farm Workers from NIRA Codes*

> It is my opinion that very early in any study of the agricultural labor problem in Florida, a division should be made between White labor and Black labor, so that proper attention may be given to certain racial conditions and habits.[39]

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[35] *Id.* at 124-25.

[36] Id. at 126, 128-30; John Davis, *What Price National Recovery?* 40 CRISIS 271 (1933); *idem*, *Blue Eagles and Black Workers*, NEW REPUBLIC, Nov. 14, 1934, at 7.

[37] LEVERETT LYON ET AL., THE NATIONAL RECOVERY ADMINISTRATION 328 n.9 (1935); NIRA § 3(b), 48 Stat. at 196.

[38] JOHN FRANKLIN, FROM SLAVERY TO FREEDOM 535 (3rd ed. 1971 [1947]); NIRA § 3(a); SCHLESINGER, POLITICS OF UPHEAVAL at 431-33. *See generally*, William Pickens, *NRA-"Negro Removal Act"?* 16 WORLD TOMORROW 539 (1933); John Davis, *NRA Codifies Wage Slavery*, 41 CRISIS 98 (1934); John Van Deusen, *The Negro in Politics*, 21 J. NEGRO HIST. 256, 273 (1936); BERNARD BELLUSH, THE FAILURE OF THE NRA 78-80 (1975).

[39] Philip Murphy, Chief, Commodities Purchase Sect., Memorandum to AAA Adm'r (Feb. 20, 1935), National Archives (NA), Record Group (RG) 145: Dep't of Agric.: Subject Correspondence 1933-35, Folder: Citrus Fruit.

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At the administrative agency level, the issue of the inclusion of farm workers appeared at first as a dispute between the NRA on the one hand and the Department of Agriculture (USDA) and its subordinate Agricultural Adjustment Administration (AAA) on the other. The NIRA and the Agricultural Adjustment Act (AAAct),[40] cornerstones of the so-called first New Deal, were coordinated efforts to overcome the depression. Although the AAAct did not deal with labor issues, under the NIRA neither the provision establishing procedures for promulgating codes of fair competition nor that creating employees' right to organize under these codes[41] expressly excluded agriculture.

Codes were voluntary: no industry was required to present one. Since the quid pro quo for complying with a code was exemption from the anti-trust laws, which did not pose a problem for agriculture, agricultural industries had little incentive to present a code, especially since the AAA attended to their interests by means of marketing agreements.[42] Whether Congress intended the NIRA to cover agricultural labor is not at issue here.[43] For even had Congress intended to cover agricultural labor, a number of institutional and organizational factors militated against effective coverage. While the NRA interpreted "industry" to mean employers, "[t]he AAA...took the position that the interests of agricultural workers would be amply safeguarded as a consequence of the benefits to be enjoyed by the farmers who enjoyed them." Since

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[40]Ch. 25, 48 Stat. 31 (1933).

[41]NIRA, §§ 3, 7(a), 48 Stat. at 196, 198.

[42]*Id.* § 5, 48 Stat. at 198. Although §§ 3(d) and 7(c) of the NIRA provided for the possibility of imposing a code on an industry, "no codes were imposed on industry." Woodbury, *Limits of Coverage* at 2 n.*.

[43]A nearly contemporaneous study concluded that "[n]o such Code was submitted by any group of farmers to place their labor under code provisions." *Id.* at 3 n.**, 21. Yet the files of the Secretary of Agriculture contain a Code of Fair Competition submitted by Agricultural Industry (file stamped Nov. 20, 1933), which included very liberal labor and maximum hours provisions. NA, RG 16: Gen'l Correspondence of the Office of the Sec'y of Agric., 1933, Tray 194, Folder: Agl. Labor. Moreover, "the legal division of the AAA held that a code covering farm labor was authorized under the Recovery Act"; and even the Bureau of Agricultural Economics of the USDA "drafted a code to be applicable to agriculture and agricultural labor," although it ultimately recommended that it not be adopted. Woodbury, *Limits of Coverage* at 3 n.**. Finally, the authors of the *Report of the Interdepartmental Committee Appointed to Investigate Labor Conditions in the Florida Citrus Industry* stated in 1934 that the NIRA was arguably intended to include farm labor within its scope. *Id.* 35, 37 (reprinting *Report*).

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farm workers were little organized and "[a]ttempts by the I.W.W. in the past to organize the migratory harvest hands ha[d] helped to give farmers a distaste for unionization of farm laborers...the specific problems of agricultural laborers received little consideration in Congress in the framing of the NIRA and the AAA."[44]

It is unclear whether racist considerations motivated this neglect of farm workers during the first one hundred days of the New Deal. At that particular juncture a more generalized solicitude for the interests of farmers may have played the dominant part. However, the subsequent exclusions of farm workers from the NRA codes for the "allied" citrus packing, cotton ginning, and tobacco warehousing industries, and their clear import for the largely non-white workers on the plantations of the South and (secondarily) of the industrialized farms of California and Arizona, did embody the racist motivation that underlay all the later exclusions from New Deal legislation.

The conflict over the coverage under the NIRA of agriculture-related industries--which as an extension of primary agricultural production employed many of the same workers otherwise classified as agricultural[45]--was not easily resolved. The joint administration by the NRA and AAA of industries bordering on agriculture underwent a complicated series of changes. Using his authority under the NIRA, President Roosevelt in mid-1933 delegated his functions and powers to the Secretary of Agriculture "with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof" except those relating to the labor provisions of the NIRA.[46] A subsequent executive order enlarged the number of industries to include those "engaged principally in the handling of...[a]gricultural commodities...up to the point of first processing off the farm, including all distribution, cleaning, or sorting, ginning, threshing or other separation, or grading, or canning, preserving, or packing, of such commodities occuring prior to such first processing." The order also provided that any question arising as to whether a specific industry was included among those delegated to the Secretary of Agriculture "was to be finally and conclusively determined by

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[44] *Id.* at 3, 4.

[45] *Id.* at 16, 20.

[46] Exec. Order No. 6182, § 8(b) (June 26, 1933). This executive order defined the industries involved as those "engaged principally in the handling of milk and its products, tobacco and its products, and all food and foodstuffs."

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agreement between the Secretary of Agriculture and the Administrator" of the NRA, or, failing that, by the President.[47]

By the beginning of 1934 only six codes had been approved for industries falling within the jurisdiction of the AAA, which

> had a mandate to promote and protect the interests of farmers; among other policies the Agricultural Adjustment Administration sought...elimination of groups of workers who might be termed agricultural, from the scope of codes; [and] elimination of industries from NRA codes which might be deemed to fall within the scope of agricultural production.[48]

As a result of pressure exerted by industries that sought codification but whose codification was being frustrated by these policies, a new executive order re-delegated to the NRA codification of all industries in question subsequent to the first processing except that all price, marketing, and production control questions were subject to approval by the Secretary of Agriculture. Virtually none of the seventeen enumerated industries employed agricultural-type labor.[49]

The citrus growing and packing industry, which claimed to be outside the jurisdiction of the NRA on the ground that it was engaged solely in agricultural production or employed only agricultural workers, assumed the leadership in aggressively resisting subjection to the NRA.[50] In order to understand this dispute it is necessary to sketch the structure of the Florida citrus industry, which deviated from the southern cotton plantation system: "The pattern of land ownership and control, and the corresponding labor-employer relations in Florida, resemble[d] in many ways those in California."[51]

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[47]No. 6345 (Oct. 20, 1933).

[48]Woodbury, *Limits of Coverage* at 8.

[49]Exec. Order No. 6551 (Jan. 8, 1934) (pecan shelling being the exception). A second group of industries remained within the jurisdiction of the Secretary of Agriculture pursuant to the restriction of the previous orders that "the determination and administration of provisions relating to hours of labor, rates of pay, and other conditions of employment" fell within the authority of the NRA. In this group were included industries engaged in the handling, processing or storing of milk, oleomargarine, cotton and cotton seed and their products, including ginning, and fresh fruits and vegetables "up to and including handling in wholesale markets." *Id.* § II.

[50]Woodbury, *Limits of Coverage* at 12, 15.

[51]JAMIESON, LABOR UNIONISM IN AMERICAN AGRICULTURE at 327. In the prewar political campaigns to shape or amend legislation so as to exclude industries "allied with agriculture," it was the fruit and vegetable, in particular, citrus, companies of California in collaboration with their own and southern racist congressmen that played

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Under the control of large integrated grower-shippers, intensive agriculture in Florida became

> one of the most highly industrialized fields of agriculture. Structurally the industry is highly centralized, and it uses quasi-factory methods of growing, packing, and shipping produce. ... The majority of growers are rather passive absentee owners, dominated financially and commercially by a few large companies which pack and ship the fruit for market. These establishments usually buy the fruit "on the tree," and hire the labor as well as provide the equipment required for harvesting operations. Many of them specialize also in "caretaking" the groves of individual owners for stipulated fees; they hire the maintenance labor required for plowing, planting, fertilizing, spraying, pruning and thinning.[52]

Labor in Florida was inherited largely from among displaced plantation sharecroppers. During the 1930s the share of non-whites (almost exclusively Blacks) among hired farm laborers in Florida reached almost two-thirds.[53] These black workers "faced the traditional 'Jim Crow' laws in many fields of social and occupational activity. They tend[ed] to lack recourse to legal action to protect themselves from exploitation by whites, and consequently...suffered violence and intimidation from extralegal groups such as the Ku Klux Klan."[54] As a result of centralized production, the grove workers, pickers, and packers were all employees of the packing houses, lived in towns, and were recruited from the same general industrial labor market. Nevertheless:

> The citrus packing houses wished to have all the labor,

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the most prominent part. *See* Arthur Ross, Agricultural Labor and Social Legislation 133-264 (Ph.D. diss. U. Cal. Berkeley, 1941); Morris, *Agricultural Labor*; DANIEL, BITTER HARVEST.

[52]JAMIESON, LABOR UNIONISM IN AMERICAN AGRICULTURE at 328. Based on such operations, Florida and California ranked first and second respectively according to the number of farms reporting 100 or more hired laborers in March 1940. Of 304 such farms (employing 58,256 workers), 76 (employing 14,808 workers) were located in Florida and 63 (employing 11,876 workers) in California. BOC, ANALYSIS OF SPECIFIED FARM CHARACTERISTICS FOR FARMS CLASSIFIED BY TOTAL VALUE OF PRODUCTS 135, 148, 154 (1943).

[53]Calculated according to BOC, FIFTEENTH CENSUS OF THE UNITED STATES: 1930, 4 POPULATION: OCCUPATIONS, BY STATES, tab. 11 at 353, 355 (1933) (60.9 per cent); *idem*, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, 3 POPULATION: THE LABOR FORCE, pt. 2, tab. 13 (65.8 per cent).

[54]JAMIESON, LABOR UNIONISM IN AMERICAN AGRICULTURE at 328.

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> including packing house labor, declared "agricultural" and exempted from the scope of the National Recovery Administration labor codes.... The NRA tended to cover all wage earners in all codified industries...save only those specially exempted. Accordingly, if the Citrus Packing Industry was subject to a code, all employees of this industry were subject to the labor provisions unless they were exempted by the terms of the code. But the Citrus Packing Industry...was not required, except from the pressure of public opinion, to apply for a code, and in that event, the labor employed in that industry would not enjoy the benefits of coverage. So far as concerned the type of labor involved, the work appeared to partake of the character of industrial rather than of agricultural labor.[55]

In 1933 the NRA promulgated a definition of agricultural labor that had been approved by the AAA: "When workers are employed in processing farm products or preparing them for market, beyond the stage customarily performed within the area of production, such workers are not to be deemed agricultural workers."[56] Issuance of this definition with its ambiguous term, "area of production,"[57] led the citrus growers to conclude "that they were not expected to present an NRA code." The AAA, in turn, "interpreted this definition as authorizing exemption...of workers engaged in handling and processing operations...if employed within the 'area of production.'"[58] The upshot of the ensuing correspondence between citrus workers and unions in Florida and the NRA was the issuance of a new definition substituting "on the farm" for the vague "within the area of production."[59] The AAA, however, refused to agree to this change and began negotiating a marketing agreement without reference to an NRA labor code. By December

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[55]Woodbury, *Limits of Coverage* at 16, 36-37.

[56]Release No. 401 (Aug. 19, 1933).

[57]The NRA later stated that "no Executive or Administrative Order appears to have been issued granting exemption to agricultural labor. Though the definition was thus drawn up and approved, the purpose seems never to have been carried out by formal action." Woodbury, *Limits of Coverage* at 17.

[58]*Id.* at 18. "The NRA...regarded the existence of the definition as an obstacle to the coverage of workers who might under it be termed agricultural. On the other hand, when it came to incorporating the definition of agricultural worker in the codes as a class exempt by the statute, the NRA Legal Division objected." *Id.*

[59]NRA Release No. 692 (Sept. 8, 1933); Fed. Doc. Center, Suitland, MD, Consolidated Unapproved Codes, RG 9, Box 6153. *Cf.* letter from W. Woolston (NRA, Lab. Advisory Bd.) to Wayne Raylor (AAA) (Sept. 7, 1933) (stating Bd.'s position that, contrary to view of AAA, packing done in places other than farms is industrial in character); *id.*

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1933, marketing agreements without labor code provisions were in effect for the citrus industry in Florida, Texas, Arizona, and California. In January 1934, the NRA, despite the urging of the Foods Division of its own Labor Advisory Board, acquiesced in the accomplished fact created by the AAA and reinstated the earlier definition.[60]

These disputes were not mere interagency jurisdictional squabbles. In late 1933 and early 1934 members of the bi-racial United Citrus Workers of Florida were conducting a number of important organizational strikes against which the employers used "the usual forms of terrorism." It was in this context that the AAA steadfastly opposed inclusion of labor provisions in Florida citrus marketing agreements, thus helping large-scale employers of non-white labor maintain their dominance.[61] As a result of these joint efforts by the federal government and the citrus industry, which established the precedent of excluding farm workers from federal labor legislation, approximately 200,000 largely non-white citrus workers were deprived of the protective benefits of labor codes.[62]

The policy of the AAA with regard to promulgating a code with labor provisions for the cotton ginning industry, which employed upwards of 100,000 workers, was even more blatantly racist. Here, again, employers claimed exemption on the ground that their employees were agricultural workers. Yet:

> In many cases the same Negro farm hands who picked the cotton in the fields were also employed in the cotton ginning operation.

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[60]Woodbury, *Limits of Coverage* at 19-20; Release No. 2781.

[61]*Report of the Interdepartmental Committee* at 35-36. The AAA claimed that inclusion of labor provisions "would require some supervision of the increased income resulting from the agreement [which raised the prices of Florida oranges "appreciably"] among those whom we class as producers and those who work for these producers as laborers" at a time when the AAA was receiving complaints from farmers about high wages. Memorandum from J. Tapp, Ass't Dir. of the Commodities Div. of the AAA, to the Sec'y [of Agriculture] (April 10, 1934); NA, RG 145: Dep't of Agric., Subject Correspondence 1933-35, Folder: Agric. Workers. In fact, the wages in the Florida citrus industry were so low that the district director of the Civil Works Adm'n, who initially threatened that workers who quit their jobs would be ineligible for work relief, later announced that "packing houses and groves must assure a 'living wage' before clients would be cut off relief rolls." JAMIESON, LABOR UNIONISM IN AMERICAN AGRICULTURE at 331; *Report of the Interdepartmental Committee* at 35.

[62]Ross, Agricultural Labor and Social Legislation at at 97-102, 112-19, 133-71, 219-64; Woodbury, *Limits of Coverage* at 30. *See generally*, Donald Grubbs, *The Story of Florida's Migrant Farm Workers*, 40 FLA. HIST. Q. 103 (1961-62).

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> Where the identical individuals were not hired, others with the same general agricultural background were employed. The operators urged that higher wages paid to labor in cotton ginning would affect labor costs in the cotton fields, since the workers would demand the same pay. The Agricultural Adjustment Administration supported the industry in this contention.
>
> The National Recovery Administration, on the other hand, was faced with similar but opposite problems in the possible tendency of lower paid cotton ginning labor to pull down industrial wage rates for somewhat similar tasks or to present problems of unfavorable competition through lower labor costs to industrial employers. The National Recovery Administration consequently insisted that labor in the cotton ginning industry was industrial and subject to a labor code.[63]

Although the Advisory Council of the NRA issued a recommendation that an "agricultural worker becomes...an industrial worker whenever he leaves the land and enters any plant, factory, or other establishment in which agricultural products are processed or prepared for the market," neither the NRA nor the AAA officially supported it. Ultimately the cotton ginning industry successfully avoided codification.[64]

The cotton ginning industry exemplified the way in which the AAA and the NRA dealt with so-called industries allied with agriculture such as raw peanut milling, pecan shelling, and loose leaf tobacco, all of which employed "unskilled labor of the same type as found employment in agriculture."[65] In these industries the NRA approved codes providing for lower minimum wages on grounds that its own Division of Review deemed racist:

> The justification adduced--the relatively low living costs in agricultural communities--was not the sole or even the principal ground for lower rates.
>
> The relative inefficiency of the type of labor employed was often alleged as a ground for lower rates for these industries. In certain of these industries, a large proportion of the unskilled labor was Negro. Though no open racial differential or discrimination

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[63]Woodbury, *Limits of Coverage* at 20; *cf. id.* at 30. The cotton ginning industry, like citrus, was not expressly listed as under the jurisdiction of the NRA or AAA. *Id.* at 12.

[64]1 NRA, ADVISORY COUNCIL DECISIONS No. 2 (June 26, 1934); Woodbury, *Limits of Coverage* at 20-21; THEODORE SALOUTOS, THE AMERICAN FARMER AND THE NEW DEAL 182 (1982).

[65]Robert Woodbury, *Policy in the Control of Wages under NRA: Introduction and Minimum Wage Policy*, in WORK MATERIALS 45C: CONTROL OF WAGES 57 (1936).

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> was admitted in any NRA code, a low rate might be demanded by industry employing largely Negro labor as requisite to its continuing innoperation [sic]. In some cases the fact that labor was light repetitive work and was carried on largely by female workers, in some cases Negro and Mexican female labor, was advanced by industry as a reason why it could afford only a low rate.[66]

This racial accommodation was of a piece with the NRA's entire codification policy towards black industrial labor in the South. In tandem with the undisguised partisan policy of the AAA on behalf of large employers of non-white laborers, the NRA not only was party to the exclusion of hundreds of thousands of industrial workers from codes on the ground that they were agricultural employees, but also created the basis on which such workers later would be excluded from the protection of FLSA, and extruded, through amendment, from coverage under the Social Security Act.[67]

B. *The Agricultural Adjustment Act (AAAct)*

Under the AAAct, the centerpiece of New Deal farm legislation, "Negro tenant farmers and sharecroppers were the first to be thrown off farms as a consequence of the crop-reduction policy." This rural Black removal program was implemented most effectively on cotton plantations, "the South's basic social and economic institution...until the 1940s."[68]

> The New Deal with its cotton restriction program, its relief expenditures, and its loan services, has temporarily rejuvenated the decaying plantation economy. ... The various federal resources which come into this region tend to be spent in conformity with the plantation, the philosophy and practices of which root back into slavery. New techniques of exploitation have been evolved.[69]

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[66]*Id.* at 57-58. *See generally*, SELDEN MENEFEE & ORIN CASSMORE, THE PECAN SHELLERS OF SAN ANTONIO (1940).

[67]FLSA §§ 3(f), 7(c), & 13(a)(1), 52 Stat. at 1060, 1063, 1067; Social Security Act Amendments of 1939, ch. 666, § 209(l)(4), 53 Stat. 1360, 1377-78 (1939).

[68]SCHLESINGER, POLITICS OF UPHEAVAL at 431; Numan Bartley, *The Era of the New Deal as a Turning Point in Southern History*, in THE NEW DEAL AND THE SOUTH at 135, 138.

[69]RAPER, PREFACE TO PEASANTRY at 67. *See generally*, CHARLES JOHNSON, E. EMBREE, AND W. ALEXANDER, THE COLLAPSE OF COTTON TENANCY (1935); T. WOOFTER, JR., LANDLORD AND TENANT ON THE PLANTATION (1936); CHARLES

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When, in 1935, a group of liberal officials within the USDA and the AAA sought to guarantee the right of tenants to remain on the land during the life of the AAA contract,

> and in the process seemingly threatened the existence of the southern caste and class system, they ran afoul not only of the influential southern congressmen, but also of such New Deal stalwarts as Henry Wallace...and the AAA Administrator Chester Davis, who believed that...the conditions of all farmers could be improved substantially without launching a frontal assault on traditional southern practices.[70]

Secretary of Agriculture Wallace was "very much aware of the adverse effect the Triple-A was having upon the lives of the lowly sharecroppers. He was not insensitive to the plight of these poor people, but he was trapped in a moral paradox." This "moral paradox," characteristic of the entire New Deal, was resolved in the customary fashion--through accommodation of rural southern racist interests.[71] Wallace's "fear of repercussions among the Southerners in Congress was overriding," he confided years later, in his decision to purge the AAA of the pro-tenant officials. Had he not carried out the purge, he would have had to resign to "'make way for someone else who could get along with the men from the South in Congress.'"[72]

JOHNSON, SHADOW OF THE PLANTATION (1934); Fred Frey & T. Lynn Smith, *The Influence of the AAA Cotton Program upon Tenants, Growers and Laborers*, 1 RURAL SOCIOLOGY 483 (1936); FARM TENANCY, REPORT OF THE PRESIDENT'S COMMITTEE (1937); SALOUTOS, THE AMERICAN FARMER AND THE NEW DEAL at 179-91.

[70]WOLTERS, NEGROES AND THE GREAT DEPRESSION at 56-57.

[71]EDWARD SCHAPSMEIER & FREDERICK SCHAPSMEIER, HENRY A. WALLACE OF IOWA: THE AGRARIAN YEARS, 1910-1940 at 202 (1968).

[72]CONRAD, FORGOTTEN FARMERS at 147 (citing letter from Wallace to Conrad [June 13, 1959]). *See generally*, Allan Kifer, The Negro under the New Deal 1933-1941, at 142-56 (Ph.D. diss. U. Wisconsin, 1961); Gladys Baker, *"And to Act for the Secretary": Paul H. Appleby and the Department of Agriculture, 1933-1940*, 45 AGRIC. HIST. 235 (1971); DONALD HOLLEY, UNCLE SAM'S FARMERS: THE NEW DEAL COMMUNITIES IN THE LOWER MISSISSIPPI VALLEY 82-105 (1975); KIRBY, BLACK AMERICANS IN THE ROOSEVELT ERA at 25. On Wallace's and the USDA's relationship with Edward O'Neal, the racist Alabama planter who presided over the Farm Bureau during the entire New Deal, see RUSSELL LORD, THE WALLACES OF IOWA 411-12 (1947); John Davis, *A Survey of the Problems of the New Deal*, 5 J. NEGRO EDUC. 3, 6 (1936); Theodore Saloutos, *Edward O'Neal: The Farm Bureau and the New Deal*, 28 CURRENT HIST. 356 (1955).

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In the event, Bill Camp, one of the nation's largest cotton growers, and Cully Cobb, who as head of the AAA Cotton Section "implanted into AAA policies all the prejudices acquired from a lifetime of work with the white southern agricultural establishment" and "unabashedly represented the planter class,"[73] arranged for the chairman of the Senate Agriculture Committee, "Cotton" Ed Smith of South Carolina, the chairman of the House Agriculture Committee, Fulmer of South Carolina, the majority leader of the Senate, Robinson of Arkansas, and the Chairman of the Senate Finance Committee, Harrison of Mississippi, to call on President Roosevelt. They issued him an "ultimatum" that unless the aforementioned USDA officials "were fired, no major farm legislation Roosevelt might want would be passed." Soon thereafter Wallace issued an executive order cancelling the telegrams that the officials had sent advising cotton farmers that they were obligated to retain the same tenants on their plantations when they signed AAA contracts; the officials were then purged.[74]

Related to the issue of the creation by the AAA of an "enclosure movement," which led to the expulsion of largely black sharecroppers from the plantations, was that of the skewed division of benefit payments as between landlords and croppers for taking land out of cotton production pursuant to AAA contracts in 1934 and 1935.[75] In order to gain the cooperation of as many landowners as possible, those "operating with sharecroppers...were offered nearly 90 per cent of the total payment." In the end, the AAA "found no way of writing a contract that would guarantee the cropper his share of the benefit payments."[76] Even the minimal benefits formally

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[73]Harvard Sitkoff, *The Impact of the New Deal on Black Southerners*, in THE NEW DEAL AND THE SOUTH at 117, 123; Pete Daniel, *The New Deal, Southern Agriculture, and Economic Change*," in THE NEW DEAL AND THE SOUTH at 37, 50. The power of such persons as Oscar Johnston, the chief financial officer of the AAA and president of the largest cotton plantation in the United States, made the purge almost inevitable. *See* Lawrence Nelson, *The Art of the Possible: Another Look at the "Purge" of the AAA Liberals in 1935*, 57 AGRIC. HIST. 416-18 (1983); *idem, Oscar Johnston, the New Deal, and the Cotton Subsidy Payments Controversy, 1936-1937*, 40 J. SOUTH. HIST. 399 (1974).

[74]WILLIAM BRIGGS & HENRY CAUTHEN, THE COTTON MAN: NOTES ON THE LIFE AND TIMES OF WOFFORD B. (BILL) CAMP 133-34 (1983).

[75]Pete Daniel, *The Transformation of the Rural South: 1930 to the Present* 55 AGRIC. HIST. 231, 236 (1981). *See also* Warren Whatley, *Labor for the Picking: The New Deal in the South*, 43 J. ECON. HIST. 905 (1983).

[76]HENRY RICHARD, COTTON AND THE AAA 140 (1936); EDWIN NOURSE ET AL.,

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accruing to sharecroppers were frequently appropriated by landlords. If a cropper did not sign the contract, he received no benefit checks. Often the landlord did not obtain the written consent of the cropper; for although the latter was legally a lien-holder, "it was not likely that...he would be regarded as being on an equal footing with other persons interested in the crop, such as mortgagees or the landlord. This was particularly true in the black belt where most of the croppers were Negroes."[77]

This accommodation of racist imperatives at the highest levels of the USDA mirrored the attitudes and practices of the state and county extension officials upon whom devolved the implementation of AAA policies.[78] While many AAA administrators were themselves southern landlords, "[m]ost officials hesitated to take any step that might alienate Southern landlords."[79] By contrast, "[n]ot a single Negro served on an AAA county committee throughout the South"; with

> the day-to-day management of the New Deal in the South...in the hands of the hierarchy that had traditionally oppressed Afro-Americans and still stood to profit by discriminating against blacks...[and] [b]ecause the most powerful whites in the South kept the records and wrote the reports that determined the activities of the AAA, the Resettlement Administration, and the Farm Credit Administration, blacks never shared equitably in the benefits from these programs.[80]

The AAA Administrator believed that the aborted plan to ameliorate conditions for sharecroppers and tenants would have "put AAA into the reform business...under conditions which might lead to

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THREE YEARS OF THE AGRICULTURAL ADJUSTMENT ADMINISTRATION 342 (1937). *See also* Raymond Daniell, *AAA Aims at an End to Share Cropper*, N.Y. Times, April 22, 1935, at 7, col. 2. Landlords traditionally took half of the product of the cropper's labor. Rupert Vance, *Human Factors in the South's Agricultural Readjustment*, 1 LAW & CONTEMP. PROBS. 257, 262 (1934).

[77]Paul Bruton, *Cotton Acreage Reduction and the Tenant Farmer*, 1 LAW & CONTEMP. PROBS. 275, 285 (1934).

[78]NOURSE, THREE YEARS OF THE AGRICULTURAL ADJUSTMENT ADMINISTRATION at 77.

[79]RICHARD KIRKENDALL, SOCIAL SCIENTISTS AND FARM POLITICS IN THE AGE OF ROOSEVELT 98 (1982 [1966]); *see also* RUPERT VANCE, THE NEGRO AGRICULTURAL WORKER UNDER THE FEDERAL REHABILITATION PROGRAM 201, 211 (n.d. [1934]).

[80]1 SITKOFF, A NEW DEAL FOR BLACKS at 53, 48.

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revolutionary outbreaks in the South."[81] Although this "revolutionary" specter was not communist but merely that of equal civil and political rights for rural Blacks, "[a] concession to the sharecropper class [wa]s not only one to labor but one to the Negro as well."[82] White supremacists were particularly alarmed by the biracial membership of the Southern Tenant Farmers' Union (STFU)--the chief vehicle of these putative "revolutionary outbreaks"--which had been founded in 1934. They deployed the full range of legal and illegal powers to crush the movement. Official and vigilante "terror and violence" reinforced the message.[83] President Roosevelt, for fear of embarrassing the re-election campaign of Senator Robinson of Arkansas (the majority leader) and undermining southern congressional support for his legislative program, refused even to mediate between the STFU and the planters.[84]

C. *Social Security*

> Southerners worried about its [Social Security's] implications for race relations. "The average Mississippian," wrote the Jackson *Daily News*, "can't imagine himself chipping in to pay pensions for able-bodied Negroes to sit around in idleness on front galleries, supporting all their kinfolks on pensions, while cotton and corn crops are crying for workers to get them out of the grass."[85]

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[81] SCHLESINGER, THE COMING OF THE NEW DEAL at 78-79.

[82] Lewis, *Black Cotton Farmers and the AAA* at 72.

[83] Ward Rodgers, *Sharecroppers Drop Color Line*, 42 CRISIS 168 (1935); HOWARD KESTER, REVOLT AMONG THE SHARECROPPERS (1936); GRUBBS, CRY FROM THE COTTON; HARRY MITCHELL, MEAN THINGS HAPPENING IN THIS LAND (1979); GEORGE TINDALL, THE EMERGENCE OF THE NEW SOUTH 1913-1945, at 418-19 (1967); SCHLESINGER, COMING OF THE NEW DEAL at 377-78; M. Venkataramani, *Norman Thomas, Arkansas Sharecroppers, and the Roosevelt Agricultural Policies, 1933-1937*, 47 MISS. VALLEY HIST. REV. 225 (1960).

[84] CONRAD, FORGOTTEN FARMERS at 173-74; SCHLESINGER, COMING OF THE NEW DEAL at 378-79; WILLIAM DOUGLAS, GO EAST, YOUNG MAN 361 (1974); Allan Morrison, *The Secret Papers of FDR*, NEGRO DIG., Jan. 1951, at 3. The USDA continued to privilege planters during the war through its domestic and foreign labor supply programs. Nan Woodruff, *Pick or Fight: The Emergency Farm Labor Program in the Arkansas and Mississippi Deltas During World War II*, AGRIC. HIST., Spring 1990, at 74.

[85] WILLIAM LEUCHTENBURG, FRANKLIN D. ROOSEVELT AND THE NEW DEAL, 1932-1940 at 131 (1963).

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Plantation owners resisted extension of social security programs to their laborers because even a modest level of income security and supplements would have tended to raise workers' reservation wage, thus weakening their confinement to a quasi-captive labor market.[86] At the congressional hearings in 1935, the NAACP put Congress on notice that the Social Security bill would exclude 3.5 million of 5.5 million black workers because they were employed as farm workers or domestics: "The more it [the NAACP] studied the bill, the more holes appeared, until from a Negro's point of view it looks like a sieve with the holes just big enough for the majority of Negroes to fall through."[87]

Congress promptly dispelled southern racist concerns by excluding agricultural and domestic employees altogether--and hence the vast majority of southern black workers--from coverage.[88] The

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[86]*See* Lee Alston & Joseph Ferrie, *Labor Costs, Paternalism, and Loyalty in Southern Agriculture: A Constraint on the Growth of the Welfare State*, 45 J. ECON. HIST. 95 (1985); Jill Quadagno, *From Old-Age Assistance to Supplemental Security Income: The Political Economy of Relief in the South, 1935-1972*, in THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES 235 (Margaret Weir et al. ed. 1988).

[87]*Economic Security Act: Hearings Before the Senate Comm. on Finance*, 74th Cong., 1st Sess. 644, 640-41 (1935) (statement of Charles Houston). *Cf. Unemployment, Old Age and Social Insurance: Hearings Before the House Comm. on Labor*, 74th Cong., 1st Sess. 147 (1935) (statement of Manning Johnson, Nat'l Exec. Council, League of Struggle for Negro Rights) ("Practically 85 percent of the Negroes in the South are agricultural workers"). *See generally*, George Haynes, *Lily-White Social Security*, 42 CRISIS 85 (March 1935); RICHARD STERNER, THE NEGRO'S SHARE 214-15 (1971 [1943]); FRANKLIN, FROM SLAVERY TO FREEDOM at 538.

[88]Social Security Act, ch. 531, §§ 210(b)(1) and (2), 49 Stat. 620, 625 (1935). Census data indicate that in 1930 Blacks in the eleven states of the Confederacy accounted for 61.7 per cent of all farm wage laborers and domestic servants; these two occupations accounted for 25.4 per cent of all gainful black workers in those states. Calculated according to BOC, FIFTEENTH CENSUS OF THE UNITED STATES: 1930, 4 POPULATION: OCCUPATIONS, BY STATES, table 11 (1933). By 1940 the figures had risen to 68.9 per cent and 24.5 per cent respectively. Calculated according to *idem*, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, 3 POPULATION: THE LABOR FORCE, pt. 2-5, table 13 (1943). These data, however, vastly understate the occupational concentration of southern Blacks. The category of farm wage laborers excluded unpaid family workers, sharecroppers and tenants. The magnitude of this omission can be gauged by the fact that "the bulk of Negro gainful workers in the South are engaged in raising cotton which involved some 698,839 tenant families or slightly over three million Negroes." Frank Davis, The Effects of the Social Security Act upon the Status of the Negro 30-31 (Ph.D. diss. State U. Iowa, 1939). The figures also deliberately understate the extent of black domestic employment because the most restrictive definition of domestic employment was used in order to avoid inaccuracies caused by defective enumeration procedures. *See* BOC, FIFTEENTH CENSUS OF THE UNITED

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actual discriminatory impact of the Social Security Act (SSA) on Blacks corresponded closely to the NAACP's predictions. By 1940, 78.1 per cent of employed white workers were receiving wage credits under the old-age and survivors insurance program compared to only 53.0 per cent of Blacks.[89] That even half of black workers received wage credits is explained by the fact that some excluded workers also worked in other, covered employment. Substantially similar occupational exclusions from the unemployment compensation provisions of the SSA also produced a disproportionately exclusionary impact on Blacks.[90]

This indirect exclusion of Blacks from the old-age pension provisions of the bill did not satisfy southern congressmen, who bitterly attacked the old-age assistance provision because it gave the federal government the power to dictate to the states how much should be paid to whom.[91]

> In this position, Senator Byrd [of Virginia] was supported by nearly all of the southern members of both committees, it being very evident that at least some southern senators feared that this measure might serve as an entering wedge for federal interference with the handling of the Negro question in the South. The southern members did not want to give authority to anyone in Washington to deny aid to any state because it discriminated against

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STATES: 1930, 5 POPULATION: GENERAL REPORT ON OCCUPATIONS 8-9 (1933); *idem*, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, 3 POPULATION: THE LABOR FORCE, pt. 1 at 11 (1943). The data also fail to reflect the sizable population of Mexican origin in Texas, which was classified as white in 1940 and was omitted for 1930. *But see* BOC, FIFTEEN CENSUS OF THE UNITED STATES: 1930, 5 POPULATION: GENERAL REPORT ON OCCUPATIONS at 86-91. If black sharecroppers and tenant farmers in the eleven southern states are included (together with the narrowest definition of domestic employment), exactly half of the southern blacks employed in 1940 were excluded from employee status.

[89]Calculated according to U.S. BD. OF OLD-AGE & SURVIVORS INSURANCE, HANDBOOK OF OLD-AGE AND SURVIVORS INSURANCE STATISTICS: EMPLOYMENT AND WAGES OF COVERED WORKERS: 1940, table 5 at 8 (1943); BOC, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, POPULATION: COMPARATIVE OCCUPATIONAL STATISTICS FOR THE UNITED STATES 1870-1940 at 196-97, 200-201 (1943). *See also* W. WOYTINSKY, LABOR IN THE UNITED STATES 43 (1938); Davis, The Effects of the Social Security Act upon the Status of the Negro, tab. XXI at 99, tab. XXIII at 102.

[90]Telephone interview with Wilbur Cohen, one of the drafters of the Social Security Act and a former Sec'y of HEW (May 1985); §§ 907(c)(1) and (2), 49 Stat. at 643; Davis, Effects of the Social Security Act at 97.

[91]*Economic Security Act* at 71-78.

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Negroes in the administration of old age assistance.[92]

This racist opposition made it "apparent that the bill could not be passed as it stood and that it would be necessary to tone down all clauses relating to supervisory control by the federal government."[93]

This statutory accommodation of southern racism, masked as states' rights,[94] was part and parcel of "the reluctance of the dominant race to provide for aged Negroes, Mexicans and Indians [which] accounted for a part at least of the slowness of the Southern States, and for the failure of Oklahoma and New Mexico to take action during the old-age pension movement in Congress." Since "Southern mores" included "the assumption that the standard of living of the Negro and his cost of living do not rise above the barest subsistence...of the Negro share-croppers and cotton tenants," "there was a tendency to grant lower sums, especially in the South, to aged Negroes than to aged Whites." The circle of discrimination was completed by "[t]he lack of federal administrative authority to fix the standards for personnel selection [which]...made it possible for the Southern States to consistently exclude the negro from any appointments."[95]

D. *Discrimination by Other New Deal Agencies*

Because "Federal agencies dared not challenge entrenched habits," "[i]nexorably discrimination stalked Negroes in every Federal program." Only the most prominent examples are highlighted here.[96]

Civilian Conservation Corps (CCC). Despite the express congressional prohibition of the use of racially discriminatory criteria

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[92]EDWIN WITTE, THE DEVELOPMENT OF THE SOCIAL SECURITY ACT: A MEMORANDUM ON THE HISTORY OF THE COMMITTEE ON ECONOMIC SECURITY AND DRAFTING AND LEGISLATIVE HISTORY OF THE SOCIAL SECURITY ACT 143-44 (1962) (author was Exec. Dir. of Cabinet Comm. on Econ. Security). *Cf.* 79 CONG. REC. 9294 (1935) (speech by Sen. Long).

[93]WITTE, DEVELOPMENT OF THE SOCIAL SECURITY ACT at 144.

[94]SSA, § 2, 49 Stat. at 620.

[95]Davis, Effects of the Social Security Act at 198, 157, 149; FRANKLIN, FROM SLAVERY TO FREEDOM at 538.

[96]TINDALL, EMERGENCE OF THE NEW SOUTH at 545. *See generally*, John Davis, *A Black Inventory of the New Deal* 42 CRISIS 141 (1935); Sitkoff, *The Impact of the New Deal on Black Southerners*.

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in enrolling young men in the CCC, directors in a number of southern states either refused to enroll any Blacks or permitted only token representation. When Southerners objected to the inclusion of Blacks in the CCC, President Roosevelt, characterizing the issue as "'political dynamite,'" "asked that his name 'be not drawn into the discussion' and acquiesced completely in the restrictions on Negro enrollment." Secretary of Labor Frances Perkins, an interdepartmental supervisor of the CCC, did, to be sure, permit the director of the U.S. Employment Service, who selected young men for the CCC on behalf of the DOL, to express his disapproval of discrimination. "But as soon as he reached a point where she thought he might cause the President embarrassment, she silenced him." Consequently, under the director of the CCC, Robert Fechner, a Southerner, exclusion of Blacks from the program in the South at the outset gave way to underrepresentation and segregated camps together with discrimination against black supervisors.[97]

Farm Security Administration (FSA). At the FSA, which was administratively subordinate to the Secretary of Agriculture, "[m]ost of the leaders...were southerners [who] adhered fairly consistently to southern attitudes and practices regarding race in matters pertaining to allocation of loan and grant funds, personnel and appointments, cooperative and group enterprises, resettlement projects and public information activities." Where, on the other hand, a more independently minded agency head sought to resist racist patterns, the political power of the alliance of Southern Democrats and the Roosevelt Administration sufficed to thwart innovations. Thus when Will Alexander, the first administrator of the FSA, appointed Blacks to state advistory committees, Senator Byrnes of South Carolina told him to back off. When Alexander refused to comply, Byrnes went directly to Secretary of Agriculture Wallace, who "retreated."[98]

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[97]Act of June 28, 1937, ch. 383, § 8, 50 Stat. 319, 320 (1937); JOHN SALMOND, THE CIVILIAN CONSERVATION CORPS, 1933-1942, at 88-101 (1967); GEORGE MARTIN, MADAM SECRETARY: FRANCES PERKINS 297 (1976); Kifer, The Negro under the New Deal at 1-76; John Salmond, *The Civilian Conservation Corps and the Negro*, in THE NEGRO IN DEPRESSION AND WAR 78 (B. Sternsher ed. 1969); Henry Guzda, *Frances Perkins' Interest in a New Deal for Blacks*, MONTHLY LAB. REV., April 1980, at 31, 34-35; WEISS, FAREWELL TO THE PARTY OF LINCOLN at 53-55.

[98]SIDNEY BALDWIN, POVERTY AND POLITICS: THE RISE AND DECLINE OF THE FARM SECURITY ADMINISTRATION 279, 307 (1968); *see also* PAUL MERTZ, NEW DEAL POLICY AND SOUTHERN RURAL POVERTY 193-95 (1978) (discrimination by loan committees against black applicants); Donald Holley, *The Negro in the New Deal Resettlement Program*, 45 AGRIC. HIST. 179 (1971).

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Tennessee Valley Authority (TVA). At the TVA "local officials denied blacks their proportionate share of jobs and relegated them to the least skilled, lowest paying tasks" within an overall pattern of segregation. The TVA also constructed "lily-white" homesteads, totally excluding Blacks, even in model towns such as Norris, Tennessee, which was owned and controlled by the federal government.[99]

Relief Programs. Since the federal relief programs initiated during the depression years channeled their funds to the States, which administered them, relief had to accommodate the specificially agrarian racism of the South: "Because Negroes were usually among the people most in need of welfare, many southerners also had racial objections to heavy relief payments. [I]n the South, they complained, it [relief spending] raised the Negro to the white man's economic level and created a shortage of cheap farm labor."[100]

Southern landlords left no doubt that even the elimination of the threat of starvation, which relief payments to rural Blacks barely achieved, sufficed to endanger their power: "'Ever since federal relief...came in you can't hire a nigger to do anything for you.'" "'I don't like this welfare business. I can't do a thing with my niggers. They aren't beholden to me any more. They know you all won't let them perish.'"[101]

Payments by the Federal Emergency Relief Administration (FERA), the chief New Deal relief agency from 1933 to 1935, to rural black families "ran considerably lower" than those to Whites.[102]

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[99]1 SITKOFF A NEW DEAL FOR BLACKS at 50-51; Raymond Wolters, *The Negro and the New Deal*, in 1 THE NEW DEAL: THE NATIONAL LEVEL 170, 197-200 (1975); Charles Houston & John Davis, *TVA: Lily White Reconstruction*, 41 CRISIS 290 (1934); John Davis, *The Plight of the Negro in the Tennessee Valley*, 42 CRISIS 294 (1935); *idem, A Survey of the Problems of the Negro under the New Deal*, 5 J. NEGRO EDUC. 3, 11 (1936); Leslie Fishel, Jr., *The Negro in the New Deal*, 48 WIS. MAG. HIST., 111, 114 (1964-65).

[100]PATTERSON, CONGRESSIONAL CONSERVATISM at 145. *See also* VANCE, NEGRO AGRICULTURAL WORKER UNDER THE FEDERAL REHABILITATION PROGRAM at 226 ("discrimination against Negroes...in some areas of the South in the administration of public relief...was exercised in an effort to keep relief expenditures for Negroes in line with low wages prevailing in agriculture").

[101]Esther Douty, *FERA and the Rural Negro*, 70 SURVEY 215, 215-16 (1934).

[102]TINDALL, EMERGENCE OF THE NEW SOUTH at 480, 547. *See also* ARTHUR RAPER & IRA DE A. REID, SHARECROPPERS ALL! 233 (1941) (showing differentials ranging from 33 to 191 per cent in favor of Whites); Kifer, The Negro under the New Deal at 211-18; WEISS, FAREWELL TO THE PARTY OF LINCOLN at 57-59.

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"Similar differentials appeared in the work-relief programs." The advent of the Works Progress Administration (WPA) in 1935 was accompanied by a drastic reduction in wages below the thirty cents per hour established by the short-lived Civil Works Administration in the South in 1933-34, a cut described at the time as "a concession by the federal government to Southern opposition to the payment of Negroes of wages of thirty cents an hour."[103] Racially discriminatory work-relief in the form of geographic wage differentials and classification into unskilled occupations was virtually preordained by the fact that even as late as May 1940 the WPA employed only eleven Blacks among its more than ten thousand supervisors in the South.[104]

The WPA performed two functions on behalf of southern planters. On the one hand it created a racially bifurcated wage structure that deterred workers from remaining on the relief rolls:

> Negro workers accustomed to relatively low standards of living...may be denied WPA employment on the ground that they are not in need whereas workers accustomed to relatively higher standards of living may be declared eligible for such employment even though they have as large and possibly larger resources than the former. Similarly, since workers are denied WPA employment if they refuse private employment at pay prevailing in the community for the type of work offered, Negro workers refusing jobs at prevailing rates of $3.00 or $4.00 a week may be denied WPA employment whereas white workers might not be required to accept jobs at such rates if these were lower than those customarily paid white workers.[105]

On the other hand the WPA forced (chiefly non-white) workers off the rolls outright when planters demanded an immediate supply of the cheapest possible labor:

> In 1936 [WPA Administrator] Harry Hopkins began a practice of closing WPA projects and releasing workers during the cotton-picking season. ... The purpose was not to create an oversupply of labor...but soon it became apparent that officials in the mid-South had joined in a drive to undermine the Southern Tenant Farmers Union. Several state relief agencies developed elaborate procedures to prevent the diversion of surplus farm workers to relief. In Louisiana regulations stipulated that relief

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[103]TINDALL, EMERGENCE OF THE NEW SOUTH at 480, 481; Davis, *Survey of the Problems of the Negro under the New Deal* at 10.

[104]TINDALL, EMERGENCE OF THE NEW SOUTH at 548.

[105]DONALD HOWARD, THE WPA AND FEDERAL RELIEF POLICY 291 (1943)

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> offices should consider sharecroppers for WPA referral only after consultation with the plantation management or the usual source of credit.[106]

This pattern repeated itself in the Rio Grande Valley, where fruit and vegetable farmers were able to induce FERA officials "to displace all Mexican casuals who had got on their relief rolls in the city [San Antonio] during the winter so the area might have its accustomed supply of cheap...labor."[107]

III. The Intent and Impact of the Original Exclusion of Farm Workers from FLSA

A. *Legislative History*

The legislative history of the exclusion of farm workers from FLSA is meager because the bill as drafted by the Roosevelt Administration and introduced by Representative Connery and Senator Black already contained this exclusion.[108] Indeed, agricultural laborers constituted the sole industrial group--apart from executive, administrative, supervisory and professional employees--wholly excluded from the bill.

The precursor of FLSA originated in the office of Secretary of Labor Perkins in the mid-1930s as a long-term substitute for the wage and hour standards that would (and did) become void when the Supreme Court eventually held the NRA codes unconstitutional. Of crucial importance was the fact that "[t]he President decided upon a comprehensive minimum wage and maximum hour bill, partly as a measure for reuniting the party." Any legislative measure

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[106]TINDALL, EMERGENCE OF THE NEW SOUTH at 479-80.

[107]VANCE, NEGRO AGRICULTURAL WORKER UNDER THE FEDERAL REHABILITATION PROGRAM at 228-29.

[108]S. 2475/H. 7200, 75th Cong., 1st Sess. sect. 2(7) (1937). *Cf.* 76 CONG. REC. 820 (1932) (implied exclusion of farm workers from S. 5267 [Black-Connery hours bill]). *See generally*, George Paulsen, The Legislative History of the Fair Labor Standards Act (Ph.D. diss. Ohio State U., 1959); *idem*, A Living Wage for the Forgotten Man: The Origins of the Fair Labor Standards Act (n.d.) (unpub. ms.); Paul Douglas & Joseph Hackman, *The Fair Labor Standards Act of 1938 [pt. I]*, 53 POL. SCI. Q. 491 (1938); ORME PHELPS, THE LEGISLATIVE BACKGROUND OF THE FAIR LABOR STANDARDS ACT 3-4 (1939); JAMES BURNS, CONGRESS ON TRIAL 68-82 (1949); Jonathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*," MONTHLY LAB. REV., June 1978, at 22.

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calculated to reunite the Democratic party in the spring of 1937 had to accommodate the plantation interests of the southern wing of the party.[109] This political constellation of forces specifically precluded minimum wages for black farm laborers: "the South's misgivings about social change derived in considerable measure from the fact that almost any kind of change might challenge the bi-racial system. Wage and hour laws were resisted because they might mean equal wages for Negroes and whites."[110]

This acquiescence in the racially motivated sectional demands of the largest solid bloc of Democratic voting strength was reflected in Roosevelt's message to Congress of May 24, 1937 in which he urged support of the minimum wage bills introduced that day. He alluded, albeit in the code language adapted to the modern forms which the 'peculiar institution' had assumed, to the needs of the South: "Even in the treatment of national problems there are geographic and industrial diversities which practical statesmanship cannot wholly ignore." The committee reports in both houses of Congress echoed the President's call for "having due regard to local and geographic diversities."[111]

Testimony before the congressional committees was replete with references to the patterns and practices of de facto exclusion of Blacks under earlier New Deal legislation. Thus John Davis, representing the National Negro Congress, testified that:

> In the period of the N.R.A. code hearings Negro workers were helpless to defend themselves against demands, especially by representatives of southern industry, for longer hours and lower wages for those occupations, industries and geographic divisions of industries in which the predominant labor supply was Negro. Unorganized and without perceptible collective bargaining power, the Negro worker was soon singled out by pressure groups of employers as the legitimate victim for all manner of various differentials.

Davis stressed that "the bill now under consideration makes possible even worse differential treatment of Negro workers." The chief vehicle of discrimination remained: "Negro domestic and agricultural

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[109]FRANCES PERKINS, THE ROOSEVELT I KNEW 246-56 (1946). *See generally*, LEUCHTENBURG, ROOSEVELT AND THE NEW DEAL at 238-39.

[110]DAVID POTTER, THE SOUTH AND THE CONCURRENT MAJORITY 70 (1972).

[111]S. REP. NO. 884: FAIR LABOR STANDARDS ACT, 75th Cong., 1st Sess. 1, 3, 4 (1937); H.R. REP. NO. 1452: FAIR LABOR STANDARDS ACT, 75th Cong., 1st Sess. 8 (1937).

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laborers--representing the bulk of Negro labor--have had no benefits from the Social Security Act or other protective legislation."[112]

In the congressional debates themselves southern representatives openly articulated the racially discriminatory purpose behind the de facto exclusion of Blacks from FLSA. As Representative Wilcox of Florida observed:

> Then there is another problem of great importance in the South, and that is the problem of our Negro labor. There has always been a difference in the wage scale of white and colored labor. So long as Florida people are permitted to handle the matter, this delicate and perplexing problem can be adjusted.... You cannot put the Negro and the white man on the same basis and get away with it. Not only would such a situation result in grave social and racial conflicts but it would also result in throwing the Negro out of employment and in making him a public charge. There just is not any sense in intensifying this racial problem in the South, and this bill cannot help but produce such a result.
>
> [T]hose who know the facts know that when employers are forced to pay the same wage to the Negro that is paid to the white man the Negro will not be employed. This in turn will mean that he will be thrown onto the relief roll to be fed in idleness. ... This bill, like the antilynching bill, is another political goldbrick for the Negro....[113]

His colleague, Edward Cox of Georgia, stated for the record that:

> The organized Negroes of the country are supporting it [the FLSA] because it will, in destroying state sovereignty and local self-determination, render easier the elimination of racial and social distinctions.... I say to you that these local problems cannot be so administered. It is...dangerous beyond conception to try to so adjust all of these intimate questions of daily life.[114]

"The organized Negroes of the country" must have gotten this message, for the National Urban League urged its locals not to push too strongly for passage of FLSA lest they rally southern opposition.[115]

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[112] *FLSA Hearings* at 571, 573, 574.

[113] 82 CONG. REC. 1404.

[114] 82 CONG. REC. App. 442.

[115] NANCY WEISS, THE NATIONAL URBAN LEAGUE 1910-1940, at 306 (1974). FLSA provided for the establishment of industry committees, which were authorized to recommend to the Wage and Hour Administrator intra-industry classifications for the purpose of reaching a universal minimum wage of forty cents per hour during the

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B. *Why the Minimum Wage was Irreconcilable with the Southern Plantation System*

On the exclusion of farm workers from FLSA hinged not the profitability of the farm sector in general, but rather the continued viability of the southern plantation system, which rested on unconstitutional forms of exploitation and oppression. Unlike any other type of farming in the United States in the 1930s, the plantation system was absolutely dependent for its survival on the unimpeded exploitation of large numbers of (chiefly) black farm workers at wages far below the national average. The rural oligarchy could maintain itself only if it preserved its unchallenged pseudo-feudal control over its quondam slave labor force. Given the central role of the plantation in the political economy of the South, federal imposition of an agricultural minimum wage even remotely approaching the level prevailing on northern farms would have undermined the specific racist underpinnings of the plantation system. It was this peculiar chain of vital interests that formed the basis of southern opposition to the exclusion of farm workers from FLSA (as well as other socioeconomic legislation).

The vast majority of farm workers who would have been covered under FLSA would have been non-white employees of southern and southwestern farmers. The wages of these workers were so far below any proposed national minimum wage, whereas those of white employees of northern farmers were already so close to or in excess of the proposed minimum, that even on a purely economic level southern black farm workers would have been the only clear winners and southern planters the only clear losers had FLSA covered agricultural employment.

1. *The Unconstitutional Structure of the Plantation Labor*

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period between the second and seventh year after the Act took effect. In spite of the extensive protests against the racist industrial and occupational classifications under the NIRA, Congress saw fit to prohibit classifications on the basis of age, but not of race. § 8(a). In order to redress persistent administrative racial discrimination under the FLSA, the NAACP later unsuccessfully urged Congress to amend sect 8(c) to include an express prohibition of classifications based on race. *Proposed Amendments to the Fair Labor Standards Act: Hearings Before the House Comm. on Labor*, 79th Cong., 1st Sess. 441 (1945) (statement of Lester Perry, Adm. asst., NAACP). § 208, which deals with wage orders in Puerto Rico and the Virgin Islands, still lacks such a ban.

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System. Ever since the abolition of slave labor, southern agricultural employers, supported by the state governments they controlled, had been seeking a regime of quasi-free labor that ensured a stable labor force at the lowest possible cost. Modernized versions of post-Civil War legislation designed to suppress market-induced labor mobility still flourished in the South at the time FLSA was being debated. These statutory schemes to evade the Thirteenth Amendment's prohibition of involuntary servitude demonstrate that the unique quality of plantation labor relations underlay the South's distinct sectional-racist position with respect to FLSA.

So-called false pretense laws were "one of the most important of all the statutes...framed to keep agricultural laborers on the plantation for the duration of their contracts...." North Carolina, Florida, Georgia, South Carolina, and Alabama, for example, used the threat of imprisonment "to force plantation croppers, tenants and workers to carry out their contracts faithfully and completely" by criminalizing the act of obtaining advances with an intent to defraud and wilfully to fail to begin or to complete contractually agreed upon work.[116] The Georgia statute, which the U.S. Supreme Court held repugnant to the Thirteenth Amendment in 1942, contained "no material distinction" from the Alabama statute that the Supreme Court had held contrary to the Thirteenth Amendment three decades earlier.[117] The Florida statute, which the state legislature had re-enacted several times--most recently as late as 1943--was "substantially the same" as the Alabama statute. Since the provision of the Florida act that made mere refusal to perform labor, once an advance had been made, prima facie evidence of intent to defraud "was known to be unconstitutional and of no use in a contested case, the only explanation we can find for its persistent appearance in the statute is its extra-legal coercive effect in suppressing defenses." From the availability of a general and comprehensive Florida statute outlawing the obtaining of money by false pretenses as well as from the repeated re-enactment of the statute in the face of Supreme Court decisions holding such statutes unconstitutional, the Court concluded that "[w]here peonage has existed...it has done so chiefly

[116]Oscar Zeichner, *The Legal Status of the Agricultural Laborer in the South*, 55 POL. SCI. Q. 412, 424-25 (1940); N.C. Code § 4281 (1935); Fl. Stat. §§ 817.09 and 817.10 (1941); Ga. Code §§ 26-7408 and 26-7409 (1933); S.C. Code of Laws § 1312 (1932); Ala. Code § 4152 (1928).

[117]Taylor v. Georgia, 315 U.S. 25, 28, 31 (1942); Bailey v. Alabama, 219 U.S. 219, 245 (1911).

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by virtue of laws like the statute in question." The resulting unfreedom, which survived World War II in Florida, was rooted in the fact that "[w]hen the master can compel and the laborer cannot escape the obligation to go on, there is no power to redress and no incentive above to relieve a harsh overlordship or unwholesome conditions of work."[118]

Not satisfied with controlling this aspect of the labor relationship, planters also caused their state legislatures to enact complementary legislation

> prohibiting the "enticing" of croppers, tenants and laborers from their employers. Farm hands might be kept on the plantation by threat of economic loss and legal punishment, but planters still had to eliminate the danger of outside interference.... The chief competitors for the cheap and tractable labor supply...were, first, the industrial enterprises of the North and to a lesser extent those of the South, and secondly, farm operators, who because of labor shortages or other crises had to secure immediate extra help. In order to eliminate the danger from the first source, some states, notably Alabama, Georgia, Mississippi and South Carolina, have placed prohibitory restrictions upon employment agents who solicit and send labor out of the state.[119]

In addition, Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina all enforced criminal provisions punishing enticement of agricultural laborers under contract to other farm employers.[120]

This complex of legislation, which permitted "whites to use Negro labor when and as they chose," and restored "to the landlord legal control of the crops and laborers on the post-Civil War

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[118]Pollock v. Williams, 322 U.S. 4, 9, 15, 16, 18 (1944). *See generally,* Jerrell Shofner, *The Legacy of Racial Slavery: Free Enterprise and Forced Labor in Florida in the 1940s*, in 47 J. SOUTH. HIST. 411 (1981); *idem, Forced Labor in the Florida Forests 1880-1950*, in J. FOREST HIST., Jan. 1981, at 14.

[119]Zeichner, *Legal Status* at 426. The pertinent statutes are: Ala. Code §§ 696, 697, 3980 (1928) ($5,000 annual agent fee plus up to $2,500 per county); Ga. Code § 92-506 (1933) ($1,000 per county); Miss. Code, Supp. App., Privilege Tax Code No. 116 at 442 (1930) ($500 per county); S.C. Code §§ 1377, 1378 (1932) ($500 annually per county).

[120]Ala. Code §§ 3986, 3987 (1928); Digest of Stats. of Ark. § 8600 (1937); Ga. Code §§ 66-9904 and 66-9905 (1933); Gen. Stats. of La., II, Sect. 4384, III, § 6606 (1932); Miss. Code § 900 (1930); N.C. Code § 4481 (1935); S.C. Code § 1314 (1932). *See generally*, PETE DANIEL, THE SHADOW OF SLAVERY (1972); DANIEL NOVAK, THE WHEEL OF SERVITUDE 44-74 (1978); Jonathan Wiener, *Class Structure and Economic Development in the American South, 1865-1955*, 84 AM. HIST. REV. 970, 981 (1979).

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plantation after 1865," was a state-sponsored effort to insure that the emancipation of the slaves assumed optimally beneficial forms to their erstwhile owners and then-employers.[121] The overpopulation of the rural South with sharecroppers, tenants, and wage laborers created an oversupply of labor that depressed wages to a fraction of the level prevailing on northern farms. Where laborers sought to extricate themselves from this vicious circle by offering their labor to higher-paying employers, enforcement of these state laws suppressed the normal workings of supply and demand on the labor market. If a labor shortage arose nevertheless, cotton farmers could still rely on the WPA to help out by requisitioning laborers on its payrolls to pick cotton at the prevailing rate. Those who refused were permanently released from the relief rolls "in accordance with WPA policy" in the southern states.[122]

When and where even these weapons did not suffice to override the forces of supply and demand, plantation owners had recourse to more effective self-help measures. Thus a front-page headline in *The New York Times* in 1937 read: *Armed Farmers Hold Cotton Pickers on Job; Refuse to Let Negroes Take Higher Pay Offer.*[123] This incident is especially illuminating because the vigilantes in Warren County, Georgia, where Blacks accounted for two-thirds of the population, were planters, whereas the enticers lived in Glasscock County, where the proportion of small white farmers was relatively large. The planters' action underscored the fact that economic-racist animus was specific to the plantation--"a feeling, on the part of the planters, of a sort of collective ownership of the workers in the community."[124]

2. ***The Unique Dependence of the Plantation System on Low-Wage Black Labor.*** The urgency of excluding farm workers from

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[121]William Cohen, *Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, J. SOUTH. HIST. 31, 60 (1976); Zeichner, *Legal Status* at 428. *See also* CHARLES MANGUM, JR., THE LEGAL STATUS OF THE TENANT FARMER IN THE SOUTHEAST 241-45 and passim (1952).

[122]*Armed Farmers Hold Cotton Pickers on Job; Refuse to Let Negroes Take Higher Pay Offer*, N.Y. Times, Sept. 16, 1937, at 1, col. 6-7. *Cf.* CASH, THE MIND OF THE SOUTH at 312, 420; CONRAD, FORGOTTEN FARMERS at 8-11. On a similar incident in 1941, see Ross, Agricultural Labor at 6 n.3.

[123]Sept. 16, 1937, at 1, col. 6.

[124]MYRDAL, AMERICAN DILEMMA at 1243 n.78. *See also* AM. CIVIL LIBERTIES UNION, PEONAGE IN GEORGIA (March 1938) (*reproduced in* SOUTHERN TENANT FARMERS UNION [STFU], PAPERS, 1934-1970 [microfilm reel no. 7]); *supra* ch. 1.

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FLSA as a peculiarly southern, race-oriented issue can be traced through a chain of interconnected relations. First, agriculture was predominantly a southern industry and the South was the only predominantly agricultural region of the country. In 1930, fifty-three per cent of all persons engaged in agriculture, but only nineteen per cent of those engaged in manufacturing, worked in the South. During the 1930s, half or more of the country's farms and farm population were located in the South. Whereas 21.5 per cent of the gainfully employed in the United States were employed in agriculture in 1930, the corresponding shares in Mississippi, Arkansas, South Carolina, Alabama, North Carolina and Georgia were 66.0, 57.6, 50.1, 48.0, 43.8 and 42.8 per cent respectively.[125]

Second, southern agriculture was overwhelmingly dominated by cotton. From two-thirds to five-sixths of all farms in the Cotton Belt States were classified as cotton farms. Fifty-five to sixty per cent of the world's annual supply of cotton was grown on the forty-two per cent of the South's cropland that was dedicated to cotton.[126] With southern farmers depending on cotton and tobacco for two-thirds of their cash income, "[n]o other similar area in the world gambles its welfare and the destinies of so many people on a single crop market year after year."[127] Including working members of sharecropper families, the 2,348,000 sharecroppers and farm laborers in the cotton states accounted for one-fifth of all persons engaged in agriculture in the United States in 1935.[128]

Third, cotton as well as the region's other major

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[125]J. FOLSOM & O. BAKER, A GRAPHIC SUMMARY OF FARM LABOR AND POPULATION 3-4 (USDA Pub. No. 265, 1937); BOC, HISTORICAL STATISTICS OF THE UNITED STATES, COLONIAL TIMES TO 1970, pt. 1 at 458, 465 (1975) (including Del., Md., W. Va., Ky., and Okla.). Only the Dakotas exhibited a similar dependence on agriculture.

[126]O. BAKER & A. GENUNG, A GRAPHIC SUMMARY OF FARM CROPS figs. 4 and 5 at 5 (USDA Misc. Pub. No. 267, 1938) (S.C., Ga., Ala., Miss., Ark., La., and Tex.); VANCE, NEGRO AGRICULTURAL WORKER UNDER THE FEDERAL REHABILITATION PROGRAM table II at 77, supp. tab. xiii (unpaginated) (cotton farm defined as one at least forty per cent of the value of whose output attributed to cotton); Vance, *Human Factors in the South's Agricultural Readjustment* at 262.

[127]U.S. NAT'L EMERGENCY COUNCIL, REPORT ON ECONOMIC CONDITIONS OF THE SOUTH 45 (1938). *See generally*, BOC, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, AGRICULTURE, SPECIAL COTTON REPORT (1943).

[128]*National Farm Labor Problem* at 473. *Cf.* O. BAKER, A GRAPHIC SUMMARY OF THE NUMBER, SIZE, AND TYPE OF FARM, AND VALUE OF PRODUCT table 2 at 4 (USDA Misc. Pub. No. 266, 1937) (more than one-quarter of all U.S. farms classified as cotton-producing).

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crops--tobacco, rice, and sugar--were all large-scale, labor-intensive operations. In the mid-1930s, 88 worker-hours were required on the average to produce one acre of cotton compared to 6.1 hours for wheat and 22.5 hours for corn.[129] Fourth, Blacks in the South were more dependent than Whites on agriculture. In 1940 about one-third of white males, but more than one-half of black males in the South were farmers or farm laborers. Blacks, moreover, were "almost wholly confined to the Cotton Belt."[130]

Fifth, between 1930 and 1940 the number of sharecroppers in the eleven states of the Confederacy decreased dramatically--from 721,268 to 509,814, while the share of black sharecroppers rose from 53.1 per cent to 58.1 per cent. Sixth, the vast majority of tenants and sharecroppers worked on cotton plantations. The extraordinary size of the (largely Mississippi Delta cotton) plantation was captured by a special census study in 1939 which enumerated 12,160 plantations employing 169,208 families that included upwards of a million workers. With the average plantation employing fourteen "wage hand" and cropper families, fifty-one plantations (fifty of which were located in Mississippi and Arkansas) employed one hundred or more families. Seventh, Blacks predominated on the plantations, "operating" almost four-fifths of all tenant (including cropper) farms on them. In the Mississippi Delta cotton plantation area almost all sharecroppers were black.[131]

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[129]RUPERT VANCE, HUMAN GEOGRAPHY OF THE SOUTH 177-225 (2d ed. 1935 [1932]); WILLIAM HOLLEY ET AL., THE PLANTATION SOUTH 1934-1937, at 115-18 (1940); FOLSOM & BAKER, GRAPHIC SUMMARY at 4; RUPERT VANCE, ALL THESE PEOPLE: THE NATION'S RESOURCES IN THE SOUTH 218 (1945); JOHN HOPKINS, CHANGING TECHNOLOGY AND EMPLOYMENT IN AGRICULTURE table 40 at 118, table 41 at 123, table 43 at 131 (differential between the Mississippi Delta cotton region and the prime Northern corn and small grain areas even greater); ELDON SHAW & JOHN HOPKINS, TRENDS IN EMPLOYMENT IN AGRICULTURE, 1909-36 at 130-39 (1938).

[130]Calculated according to BOC, COMPARATIVE OCCUPATION STATISTICS FOR THE UNITED STATES 1870-1940 at 196, 200; FOLSOM & BAKER, GRAPHIC SUMMARY at 25.

[131]BOC, SIXTEENTH CENSUS OF THE UNIETD STATES: 1940, 3 AGRICULTURE: GENERAL REPORT table 22 at 178-88 (1943); MYRDAL, AMERICAN DILEMMA at 233; BOC, SPECIAL STUDY, PLANTATIONS, BASED UPON TABULATIONS FROM THE SIXTEENTH CENSUS OF THE UNITED STATES, 1940, tab. 16 at 86, tab. 17 at 88-90, tab. 25 at 113 (n.d. [ca. 1943]). The study defined a plantation as a "continuous tract or closely adjacent tracts of land in which five or more families (including one cropper or tenant family) are regularly employed, and which tracts are operated as a single working unit in respect to central farm headquarters and to the control of labor, cropping systems, and farming operations." *Id.* at v. On plantations in Mississippi, where almost half of all those enumerated were located, Blacks "operated" almost nine-

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Eighth, Blacks worked on the plantation proper where they could be closely controlled and supervised, whereas white tenants predominated on small holdings in outlying areas where they worked more independently.[132] Consequently, "[t]he cropper has practically no voice in deciding what crops to grow, or what methods to follow in cultivation," while "[a]lways the planter has been accustomed to complete political rule over the cropper."[133] This transparent fusion of political and economic domination led some contemporary observers to conclude that "[t]he plantation community is essentially feudalistic" and "the Negro...in the position of a tenant peasantry with semi-feudal attachment to the land."[134]

Ninth, Blacks received lower wages than white workers. Statistically this differential was insured by the fact that wages were generally lower on plantations and the per capita incomes of sharecropper families were even lower than the wages of formally employed wage laborers. Moreover, the success of the cotton plantation also hinged on the massive use of unpaid labor of black women and children.[135]

Tenth, Blacks tended to remain in a permanently dependent position, "many seek[ing] work as croppers in their old age, whereas white farmers by that time commonly achieve ownership, if they

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tenths of the tenant/cropper farms. HOLLEY ET AL., THE PLANTATION SOUTH 1934-1937 at 15.

[132]MYRDAL, AMERICAN DILEMMA at 243-44. "One of the leading objections to plantation labor other than negro is the difficulty of supervision, although one class may be as efficient as the other in farming ability." C. BRANNEN, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION 23 (1928).

[133]DONALD ALEXANDER, THE ARKANSAS PLANTATION, 1920-1942, at 58, 66 (1943).

[134]RAPER & REID, SHARECROPPERS ALL! at 26; VANCE, NEGRO AGRICULTURAL WORKER at 126. For similar observations, see V. Lenin, *Novye dannye o zakonakh razvitiia kapitalizma v zemledelii*, pt. 1: *Kapitalizma i zemledelie v soedinennykh shtatakh ameriki*, in 27 V. LENIN, POLNOE SOBRANIE SOCHINENII 129, 142 (5th ed. 1962 [1915]); DAVIS ET AL., DEEP SOUTH at 255-538; GRUBBS, CRY FROM THE COTTON at 15; ERSKINE CALDWELL, TENANT FARMER 21 (1935).

[135]MYRDAL, AMERICAN DILEMMA at 240; RAPER, PREFACE TO PEASANTRY tab. X at 55. Brannen, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION at 29; Karl Brandt, *Fallacious Census Terminology and its Consequences in Agriculture*, 5 SOC. RESEARCH 19, 33 (1938); Vance, *Human Factors in the South's Agricultural Readjustment* at 272. The vast majority of sharecroppers with working wives and daughters were black. FOLSOM & BAKER, GRAPHIC SUMMARY at 5, 7. The total labor of the working family members was the equivalent of that of two adults; Brandt, *Fallacious Census Terminology and its Consequences in Agriculture* at 31-32.

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farm at all."[136] This huge reservoir of inter-generationally recruited black workers trapped in lifelong subordinate status contradicted one of the most cherished ideological fictions underlying the farm policy of the USDA:

> In the general farming territory the agricultural laborer is one of the steps in the agricultural ladder and, if farming conditions are corrected, is an important stage in the progress through tenancy to ownership. There has not been established a definite group of agricultural laborers in great farming sections. Hence, any approach which proceeds from the assumption of the usual employee-employer relationship found in industry, is likely to be wrong.[137]

The not-so-hidden agenda of the New Deal USDA was to combat that approach, which appeared to be gaining momentum with "[t]he rapidly developing close affiliation of agricultural workers and industrial workers." When a 1937 USDA memorandum stated that "for the first time in the history of American agriculture...large groups of agricultural workers...are being swept along by the same powerful forces as are the workers in industry,"[138] its authors had in view workers on the plantation in the broader sense of a socio-economic complex extending geographically along the coasts and southern border from California to Virginia:

> Plantation workers belong to an economically and socially submerged racial group. Thus, agricultural labor has not been thought of as an occupation which should give adequate support to its members. ... The modern variant of the plantation may well employ white Americans of pioneer ancestry. But the agricultural industry has been organized, and the mentality of the agricultural employer has congealed, on the basis of apprentice "hired men" and colored wage hands.[139]

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[136]H. TURNER, A GRAPHIC SUMMARY OF FARM TENURE fig. 48 at 31 (USDA Misc. Pub. No. 261, 1936).

[137]Memorandum from A. Black, Chief of Bureau of Agric. Econ., to Paul Appleby, Office of Sec'y of Agric. (June 4, 1937) (copy furnished by Wayne Rasmussen, Chief, Agric. Hist. Branch, USDA). *But see* William Ham, *Farm Labor in an Era of Change*, in USDA, YEARBOOK OF AGRICULTURE 1940 at 907, 909-10 (1940) (belated, wartime-related recognition of the existence of a stratum of farm laborers who would never advance up the "agricultural labor").

[138]Memorandum for Secretary of Agriculture Wallace from Comm. on Agricultural Labor [USDA], Section II: The Interest of the Department of Agriculture in Agricultural Labor at 2 (Sept. 4, 1937) (copy furnished by Wayne Rasmussen).

[139]Ross, Agricultural Labor at 84. *See also* Paul Taylor & Tom Vasey,

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But even if agricultural employment relations were becoming assimilated to the industrial model, "[t]he aristocracy of the South [wa]s not going to put up with any nonsense about sharecroppers unions and the like."[140]

Eleventh and last, plantations witnessed a trend toward the displacement of sharecroppers (and other tenants) by wage laborers during the 1930s. Planters were impelled to convert sharecroppers into wage laborers not only by the attendant elimination of burdensome capital advances, but also and especially by the financial incentive of no longer having to share AAA cotton benefits with them.[141]

As planters faced the necessity of conducting their operations with an increasingly black and waged labor force, the need to retain their traditional controls free from federal regulation increased as well. The peculiar urgency inhering in the intense opposition of plantation owners to the inclusion of farm workers in FLSA owed as much to their fear of the Act's application to their sharecroppers as to their wage workers. These fears were well founded since workers frequently shifted between sharecropper and wage laborer status and only one-tenth of black tenants (including sharecroppers) in the South were cash tenants--the highest tenure rank and the only one that could plausibly be regarded as non-employees.[142] Moreover, the

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Contemporary Background of California Farm Labor, 1 RURAL SOC. 401 (1936).

[140]Lewis, *Black Cotton Farmers and the AAA* at 72.

[141]ALEXANDER, ARKANSAS PLANTATION at 57, 59; BRANNEN, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION at 22-23; JAMIESON, LABOR UNIONISM IN AMERICAN AGRICULTURE at 287; GRUBBS, CRY FROM THE COTTON at 22-23; MYRDAL, AMERICAN DILEMMA at 254, 257; RUPERT VANCE, FARMERS WITHOUT LAND 7 (1937); DAVIS ET AL., DEEP SOUTH at 283-84; *Rain, Snow Defied by Sharecroppers*, N.Y. Times, Jan. 12, 1939, at 5, cols. 4-6. The higher the price and yield of cotton, the more advantageous it was to the planter to employ wage laborers; but once daily wage rates rose beyond the range of $1.00-$1.25, no plausible combination of price and yield would induce a planter to prefer wage workers to sharecroppers. *National Farm Labor Problem* at 506-507; ALEXANDER, ARKANSAS PLANTATION at 59-60.

[142]MYRDAL, AMERICAN DILEMMA at 245. Contemporary agrarian sociologists severely criticized the BOC for classifying sharecroppers as farm operators rather than as farm laborers. Ross, Agricultural Labor at 18; Brandt, *Fallacious Census Terminology and its Consequences in Agriculture*; STERNER, THE NEGRO'S SHARE at 12-13; FOLSOM & BAKER, GRAPHIC SUMMARY at 8. Planters tended to employ workers as wage laborers at seasonal peaks. RAPER, PREFACE TO PEASANTRY at 152-54, 252. *Cf.* LOUIS DUCOFF, WAGES OF AGRICULTURAL LABOR IN THE UNITED STATES 22

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prevailing statute and case law in a number of southern states already treated sharecroppers as employees for various purposes.[143]

3. ***The Racial-Sectional Distribution of Farm Workers.*** Although more than one-quarter of all farm laborers in the United States were black or "Other Races" than white in 1930, fifty-five per cent of farm laborers in the eleven states of the Confederacy were non-white; they in turn accounted for eighty-seven per cent of all black farm workers.[144] The largest concentrations of "Other Races"

(USDA Technical Bull. No. 895, 1945) ("The status of the Negro farm laborer...is still affected by the vestiges of peonage not always left behind with a shift one rung up the ladder to sharecropper status").

[143]*See* Barnhardt v. State, 169 Ark. 567, 275 S.W. 909 (1925); Ga. Code § 61-501 (1933); Jones v. Dowling, 125 So. 478 (La. Ct. App. 1929); Powers v. Wheless, 193 S.C. 364, 9 S.E.2d 129 (1940); Loveless v. Gilliam, 70 S.C. 391, 50 S.E. 9 (1905); McCutchin v. Taylor, 79 Tenn. 259, 261 (1883); Cry v. J.W. Bass Hardware, 273 S.W. 347 (Tex. Civ. App. 1925); Clark v. Henry, 182 Va. 410, 29 S.E.2d 231 (1944); Parrish v. Commonwealth, 81 Va. 1 (1884). *But see* Barron v. Collins, 49 Ga. 581 (1873) (no enticement action lay where enticee was sharecropper, who was contractor and not servant of landowner); *accord*, Burgess v. Carpenter, 2 S.C. 7 (1870). This holding did not generally accord with the economic realities of southern sharecropping and was later repudiated by statute and state supreme court rulings in a number of southern states. *E.g.*, Salter v. Howard, 43 Ga. 601 (1871); Haskins v. Royster, 70 N.C. 601 (1874). In Alabama sharecroppers were generally recognized as tenants. *See* Ala. Code, tit. 31, § 23 (1940). The decisions in Mississippi were in conflict. *Compare* Schlicht v. Callicott, 76 Miss. 487 (1898) *with* Jackson v. Jefferson, 171 Miss. 774 (1935). The courts in many northern states also assimilated the status of sharecroppers to that of employees. *See, e.g.*, Kelly v. Rummersfield, 117 Wis. 620, 623 (1903). *See generally*, H. WOOD, A TREATISE ON THE LAW OF MASTER AND SERVANT 450-77 (1877); 98 Am. St. Rep. 954; 15 Am. Jur. *Crops* § 45 at 237 (1938); Book, *A Note on the Legal Status of Share-Tenants and Share-Croppers in the South*, 4 *Law & Contemp. Probs.* 539 (1937); BOC, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, AGRICULTURE: CROP SHARING CONTRACTS (1943); CHARLES MANGUM, JR., THE LEGAL STATUS OF THE TENANT FARMER IN THE SOUTHEAST (1952); Harold Woodman, *Post-Civil War Southern Agriculture and the Law*, 53 AGRIC. HIST. 319, 324-27 (1979). In conformity with case law, the Ark. Bureau of Labor & Statistics accepted Statements of Claims for Wages from cotton sharecroppers in the 1930s; *see, e.g.*, Claim (Dec. 23, 1937), *reproduced in* STFU, PAPERS, 1934-1970 (microfilm reel no. 5). *See also Social Security Amendments of 1955: Hearings on H.R. 7225 before the Senate Committee on Finance*, 84th Cong., 2d Sess. 144 (1956) (statement of Sen. George): "[I]n Georgia it has always been held that the relation of landowner and sharecropper was one of employer and employee."

[144]26.5 per cent (724,933) of (2,732,972) gainful farm laborers-wage workers ten years and older were black. Calculated according to BOC, FIFTEENTH CENSUS OF THE UNITED STATES: 1930, 5 POPULATION: GENERAL REPORT ON OCCUPATIONS tab. 3 at 76 (1933); *id.*, 4 POPULATION: OCCUPATIONS, BY STATES, tab. 11 (1933) (61,811 of "other races" almost all of whom lived in Texas and were presumably "Mexicans"). Of

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(presumably largely Hispanic and possibly Japanese or Chinese) were located in Arizona, New Mexico and California, where they accounted for forty-one per cent of all farm workers. Non-whites in these fourteen states constituted fifty-three per cent of all farm laborers there, who in turn formed forty-four per cent of all farm laborers in the United States.[145] Conversely, only a minuscule number of non-white farm workers lived in the remaining states. In the eighteen states comprising the Small Grain, Western Dairy, Corn, and Eastern Dairy Areas and accounting for three-eighths of all farm laborers and the vast majority of non-southern family farms, only two per cent of farm workers were non-white.[146]

By 1940, non-whites accounted for more than one-third of farm laborers nationally.[147] The racial-regional distribution of farm

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the remaining 67,899 black farm workers, more than three-fifths were returned for the "border" States of Maryland, Kentucky, Oklahoma and Missouri.

[145]BOC, FIFTEENTH CENSUS OF THE UNITED STATES: 1930, 4 POPULATION: OCCUPATIONS, BY STATES, tab. 11. On the situation of (chiefly non-white) farm workers in California in the 1930s, see generally *Violations of Free Speech and Rights of Labor*, pt. 54: *Agricultural Labor in California: Hearings before a Subcomm. of the Senate Comm. on Education and Labor*, 76th Cong., 3d Sess. (1940); CAREY MCWILLIAMS, FACTORIES IN THE FIELDS (1939); Donald Fearis, The California Farm Worker, 1930-1942, at 45-84 (Ph.D. diss. U. Cal. Davis, 1971); DANIEL, BITTER HARVEST at 145-285.

[146]Montana, North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Wisconsin, Michigan, Iowa, Illinois, Indiana, Ohio, Pennsylvania, New York, Vermont, New Hampshire, Massachusetts and Connecticut accounted for 37.8 per cent (1,032,126) of all farm laborers. BOC, FIFTEENTH CENSUS OF THE UNITED STATES: 1930, 4 POPULATION: OCCUPATIONS BY STATES tab. 11; Witt Bowden, *Farm Employment, 1909 to 1938*, 48 MONTHLY LAB. REV., 1241, 1244 (1939).

[147]In 1940, 26.7 per cent (514,602) of all (1,924,890) persons returned as employed farm laborers were non-white. Calculated according to BOC, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, 3 POPULATION: THE LABOR FORCE, pt. 1: U.S. SUMMARY tab, 62 at 89-90 (1943) [BOC, 1940, LABOR FORCE]. The apparently unchanged share of non-white farm laborers during the 1930s was a significant understatement caused by the fact that the census classified "Mexicans" as White in 1940. *Id.*, pt. 2: ALABAMA-INDIANA 2 (1943). This re-classification particularly distorted the composition of the work force in Texas and California. Another definitional change may have produced a further understatement of the number of non-whites. Whereas in 1930 data were collected for "gainful" workers (regardless of whether they were currently employed) above the age of ten, in 1940 persons who were "employed" and above the age of fourteen were recorded. *Id.* at 3. Because a disproportionately large share of minority farm workers was unemployed and/or between the ages of eleven and fourteen, their numbers were artificially depressed. As an indicator of the undercount of non-white workers: Blacks alone in 1930 accounted for 19.7 per cent of all farm workers, whereas by 1940 they accounted for 25.1 per cent of the total.

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workers was even more skewed in 1940 than in 1930. In the South, Blacks alone accounted for fifty-three per cent of farm workers as against forty-eight per cent in 1930. Black farm workers in the South as a share of all black farm workers rose to ninety-two per cent, while southern agriculture increased its share of all farm workers from 35.5 to 43.4 per cent. The relative (and absolute) size of the black farm work force in the aforementioned eighteen northern states shrank: while the aggregate agricultural wage-labor force in those states decreased to 32.2 per cent of the national total, the share of Blacks declined to a negligible 0.9 per cent.[148] If the huge southern sharecropping force, including unpaid family members, had been added to those returned as wage laborers by the census, the share of non-whites in the national and southern farm work force would have been even higher.

4. ***The Racial-Sectional Impact of a Farm-Size-Based Exemption from FLSA.*** The original bill as introduced in Congress excluded the employees of employers who employed fewer than a fixed number of employees (whereby this number was left blank). This size exclusion was ultimately deleted from the bill. Instead, the requirement that the employee be "engaged in commerce or in the production of goods for commerce" served as a surrogate for the small employer exclusion.[149]

Although there is no determinate equivalence between firm-size and coverage in terms of interstate commerce, the DOL used six employees as the surrogate definition of local (intrastate) business.[150] Given the more seasonal nature of farming, a higher threshold might

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Between 1930 and 1940 the total number of farm workers declined by 29.6 per cent, whereas that of black farm workers decreased by only 10.3 per cent. If "Mexicans" had been classified as "other" in 1940 and if the total number of "other" farm workers had diminished at the same rate as that of black farm workers, the total minority share would have amounted to slightly more than one-third. BOC, 1940, LABOR FORCE, pt. 1, tab. 62 at 89-90.

[148]446,532 of 834,721 farm laborers were black. *Id.*, pt. 2-5, table 13 (1943). Had "Mexicans" been classified as "other" and had the "other" group decreased in numbers at the same rate (5.3 per cent) as did black farm workers in the South between 1930 and 1940, then non-whites in the South would have accounted for more than three-fifths of all farm workers there. 5,594 of 619,792 black farm workers lived in the eighteen states.

[149]§ 6(a) of bill and Act; John Forsythe, *Legislative History of the Fair Labor Standards Act*, 6 LAW & CONTEMP. PROBS. 464, 483-85 (1939).

[150]Daugherty, *The Economic Coverage of the Fair Labor Standards Act* at 407.

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be more appropriate (although many farmers with no employees produce for interstate commerce). The following calculations are based on a cut-off point of ten or more hired laborers.

It is not possible to determine precisely what proportion of farm workers who would have been excluded from FLSA--had agricultural coverage been subject to the same intrastate commerce/small employer exemption as other industries--was non-white at the time the Act was debated and enacted. It is possible, however, to determine the geographical location of farm workers by race, and derivatively and indirectly, by farm-size.[151]

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[151]The use of census data for this purpose presupposes that the states in which farm workers were returned as living were also the states in which they were employed. Since there was relatively little relevant non-white South to North seasonal migration, the data from the census of population for 1930 and 1940 in combination with those from the census of agriculture employment for 1930, 1935 and 1940 may plausibly serve as a surrogate for the state of employment. In "the complete absence of broad and authoritative material" on the number of migrant farm workers in the 1930s, the most appropriate approach is to review the estimates made for various crops or geographic areas that took the racial/ethnic composition of the migratory work force into account. *National Farm Labor Problem* at 149-50 (testimony of William Ham, USDA). For the late 1930s, three broad "dominant racial types" of migrant farm workers were distinguished: (1) "Mexicans" in the Southwest and in sugar beets in the North Central States; (2) Blacks in the cotton states of the Southeast; and (3) Whites in Kentucky, southern Missouri, northern Arkansas, eastern Oklahoma and New Jersey. H.R. REP. NO. 369: REPORT OF THE SELECT COMMITTEE TO INVESTIGATE INTERSTATE MIGRATION, 77th Cong., 1st Sess. 353 (1941). For the most part, migration north of the Mason-Dixon line and west of the Mississippi was restricted to Whites (including the Pacific Northwest and the wheat belt). *Id.* at 338, 354, 357; *National Farm Labor Problem* at 148, 385; Paul Taylor, *Migratory Labor in the United States*, 44 MONTHLY LAB. REV. 537, 538-39 (1937); Bowden, *Farm Employment* at 1252-57. The vast majority of black migrants migrated within the South to Florida (citrus and sugar cane) and Louisiana (sugar cane), and along the Eastern seaboard (various crops). A smaller number migrated as far north as New Jersey, New York and Connecticut, harvesting potatoes and truck crops. Taylor, *Migratory Farm Labor* at 538-39; *National Farm Labor Problem* at 145-46, 319-54, 458, 461; N. Tolles, *A Survey of Labor Migration between States*, 45 MONTHLY LAB. REV. 3, 13 (1937); MCWILLIAMS, ILL FARES THE LAND at 168-85.

The only significant group of non-whites migrating from the South or Southwest to work in the North in the 1930s was a contingent of largely Mexican-Americans from Texas who cultivated sugar beets in Colorado, Michigan, Ohio, Nebraska, Minnesota, North Dakota, and Wisconsin. In 1939 it was estimated that of 93,100 contract sugar beet workers fifty-seven per cent were "Mexicans." *National Farm Labor Problem* at 442; *see also* REPORT OF THE SELECT COMMITTEE TO INVESTIGATE INTERSTATE MIGRATION at 147-48, 338. But even this sole example of significant South to North non-white migration is irrelevant to the present purpose of showing that, since northern farmers by and large employed white workers at the level of the minimum wage set by FLSA in 1938, they had no economic motivation to

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Relatively few farms employed any hired labor at all and still fewer employed large numbers of workers. In 1935, only one in seven (967,594 of 6,812,350) farms employed any hired labor, while fewer than one per cent employed four or more workers, and not even one-quarter of one per cent employed eight or more workers. In short: "Only the plantations of the South and a comparatively few farms elsewhere [we]re too large for family operation."[152]

Farms in the South with the greatest concentration of black farm laborers accounted for forty per cent (2,770,671) of all farms, twenty-five per cent (242,625) of all farms using any hired laborers, and fifty-five per cent (6,277) of all (11,410) farms reporting ten or more hired laborers. If the states in which other non-white farm laborers were concentrated (California, Arizona, and New Mexico) are included, these fourteen states accounted for seventy-eight per cent (8,856) of all farms using ten or more hired laborers. In turn, these 8,856 farms accounted for eighty per cent (196,617) of all (244,132) farm laborers employed on farms with ten or more hired laborers.[153] The twelve North Central States, the locus of the family farm, accounted for one-third of all farms in 1935 but only six per cent of hired farm laborers on farms with ten or more such

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oppose coverage of their employees. Sugar beet workers stood outside this framework altogether because their wages--alone among farm workers'--were set by the USDA pursuant to the Sugar Act. On their wages, see *National Farm Labor Problem* at 450; *see also id.* at 1018-19, 458-64 (lower wage rates set for southern sugar cane workers); DUCOFF, WAGES OF AGRICULTURAL LABOR tab. 43 at 85; *id.* at 32-33; Elizabeth Johnson, *Wages, Employment Conditions and Welfare of Sugar Beet Laborers*, 46 MONTHLY LAB. REV., 322 (1938); SELDEN MENEFEE, MEXICAN MIGRATORY WORKERS OF SOUTH TEXAS 19-26 (1941). Even if the sugar-beet industry had had an economic motivation to oppose coverage, the racial dynamic in the use of Mexican labor was, by the time of the Depression, sufficiently analogous to that in the South that this industry, too, would not have been viable without a racially oppressed low-paid labor force. *See supra* ch. 1 § IV. A significant number of Hispanic farm laborers also migrated within Texas and California as well as to Arizona, but such migration does not affect the present discussion of the geographic-racial composition of the farm work force. *National Farm Labor Problem* at 149.

[152]TURNER, A GRAPHIC SURVEY OF FARM TENURE at 1; calculated according to Julius Wendzel, *Distribution of Hired Farm Laborers in the United States*, 45 MONTHLY LAB. REV. 561, 568 (1937).

[153]Calculated according to Wendzel, *Distribution of Hired Farm Laborers* tab. 1 at 564, tab. 2 at 565; BOC, CENSUS OF AGRICULTURE, 3 GENERAL REPORT tab. 11 at 166-67 (1935). Since the census of agriculture was conducted in January, the data "may understate the proportion of Negroes," who were concentrated in cotton production. DUCOFF, WAGES OF AGRICULTURAL LABOR at 21. *See generally*, BENJAMIN FREE, SEASONAL EMPLOYMENT IN AGRICULTURE (1938).

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laborers.[154]

Wage labor was heavily concentrated on the relatively few larger plantations and industrialized farms in certain discrete geographic areas specializing in cotton, citrus, sugar, and fruits and vegetables. These were the Mississippi Valley of Arkansas and Mississippi, the Black Belt of Alabama, Georgia, and South Carolina, southeastern Louisiana, Florida, the Rio Grande Valley, Corpus Christi, and Black Prairie districts of Texas, the Salt River Valley of Arizona, and California--all areas in which non-white farm workers predominated, on whose extraordinarily cheap labor the owners were crucially dependent.[155]

In summary, then, only a minuscule number of agricultural employers would have been affected by FLSA coverage.[156] But they would have been almost exclusively southern planters and California

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[154]Wendzel, *Distribution of Hired Farm Laborers* tab. 1 and 2 at 564-65. Nationally 14.8 per cent of all farm laborers worked on farms with ten or more hired laborers. The greatest centralization of farm employment was found in Arizona (65.0 per cent), Louisiana (44.9 per cent), Florida (42.2 per cent), and California (37.3 per cent). Calculated according to *id.* table 2 at 565. These data are for January 1935. Estimates for July of that year indicate that the major relative shift was in favor of California. *Id.* at 568. Inclusion of sharecroppers among hired laborers would have increased the figures for the South. *Id.*; Bowden, *Farm Employment* at 1248-49; *National Farm Labor Problem* at 122-23.

[155]BOC, FIFTEENTH CENSUS OF THE UNITED STATES: CENSUS OF AGRICULTURE: 1930: LARGE-SCALE FARMING IN THE UNITED STATES 1929 tab. 6 at 27 (1933). *See also* BOC, CENSUS OF AGRICULTURE: 1940: ANALYSIS OF SPECIFIED FARM CHARACTERISTICS FOR FARMS CLASSIFIED BY TOTAL VALUE OF PRODUCTS tab. 6 at 103-54 (1943) (farmers with 100 or more employees concentrated in South and Southwest); CARL TAYLOR ET AL., DISADVANTAGED CLASSES IN AMERICAN AGRICULTURE 32-36 (FSA, Soc. Research Rep. No. 8, 1938); *National Farm Labor Problem* at 123, 135; Ross, Agricultural Labor at 274, 321; ALEXANDER MORIN, THE ORGANIZABILITY OF FARM LABOR IN THE UNITED STATES 97-98 (1952) (in the Mississippi Delta cotton areas, where the vast majority of wage laborers were hired in gangs of ten or more, "[v]irtually all of the...wage laborers [we]re Negroes"); BRANNEN, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION at 22 ("practically all common laborers working for wages in the plantation are negroes, except in Texas and southern Louisiana where the Mexican has recently come to play an important secondary roll [sic]. Indians...are also used as plantation labor in the coastal plain section of the Carolinas").

[156]*Cf. Hearings before the House Select Comm. to Investigate the Interstate Migration of Destitute Citizens*, 76th Cong., 3rd Sess. Part 8 at 3365, 3369 (1941) (statement of Frances Perkins, Sec'y of Labor, and Philip Fleming, Wage and Hour Adm'r, defining industrialized agriculture as the approximately 63,000 farms employing four or more employees at least six to eight months--or "regularly"--annually and accounting for 1.5 per cent of all farms and one-third of all farm wage earners).

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factory-farmers, who were "able to subject their workers to unusual legal disabilities. They...preferred to use racial groups with subordinate social status.... Although slavery and serfdom [we]re forbidden in the United States, second-class citizenship [wa]s still the badge of agricultural labor."[157]

5. ***The Enormous Agricultural Wage Gap Between North and South***. The significance of the sectionally dichotomous distribution of the (hypothetically) covered non-white agricultural labor force becomes clear in juxtaposition with the sectional wage gap prevailing in the 1930s. Northern farmers who were already paying their employees at or near what was to become the lawful minimum wage had little or no economic incentive to oppose inclusion of farm workers. Indeed, many industrial employers who were already paying wages in excess of the minimum wage supported FLSA precisely as a tool of inter-sectional competition in order to deprive southern industry of its considerably lower wage level. As Senator "Cotton" Ed Smith put it: "Any man on this floor who has sense enough to read the English language knows that the main object of this bill is...to overcome the splendid gifts of God to the South."[158]

Consequently, it is historically more convincing that opposition to inclusion of farm workers was not a general demand of 'the farm lobby,' but rather a specific component of the peculiar sectional struggle conducted by plantation interests to maintain their power at the expense of rural Blacks. The plausibility of this reasoning is enhanced by the fact that after FLSA became law, the National Farmers Union, the members of which were smaller farmers who employed few if any workers, advocated application of FLSA to farm workers on the ground that it would restore fair competition between small and larger farmers.[159]

The wage gap between the South and the other states was

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[157]Ross, Agricultural Labor at 5. *See generally*, DANIEL, BITTER HARVEST; JAMIESON, LABOR UNIONISM IN AMERICAN AGRICULTURE at 284; NOURSE ET AL., THREE YEARS OF THE AGRICULTURAL ADJUSTMENT ADMINISTRATION at 350.

[158]81 CONG. REC. 7882. *Cf.* Irving Richter, *Four Years of the Fair Labor Standards Act of 1938: Some Problems of Enforcement*, 51 J. POL. ECON. 91, 99 (1943). *See generally*, John Moloney, *Some Effects of the Fair Labor Standards Act upon Southern Industry*, S. ECON. J., July 1942, at 15. *See also supra* ch. 2 & 3.

[159]*Proposed Amendments to the Fair Labor Standards Act* at 722 (statement of Russ Smith, Leg. Sec'y, NFU, reiterating position adopted by organization at its convention in 1944).

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enormous. For example, on July 1, 1937, daily farm wage rates (without board) ranged from eighty cents in South Carolina to $3.15 in Connecticut--a ratio of almost four to one.[160] On Oct. 1, 1937, the regional averages amounted to:

Pacific	$3.08
New England	2.73
Middle Atlantic	2.54
Mountain	2.42
East North Central	2.37
West North Central	2.24
West South Central	1.34
South Atlantic	1.25
East South Central	1.11[161]

The only regions with averages below the national average

[160] 14 CROPS AND MARKETS 145 (1937). *See generally*, John Black, *Agricultural Wage Relationships: Geographical Differences*, REV. ECON. STATISTICS, May, 1936, at 67. These regional wage rates underestimate the gap. During this period the only national time-series was compiled by the USDA on the basis of quarterly responses of voluntary farmer-correspondents who provided information on monthly and daily rates with and without board. The rates generated by these compilations suffered from a number of significant defects. First, farmers were not asked what they paid their workers, but rather about the "Average rates being paid to hired farm labor at the present time in your locality." R. Hale, RELIABILITY AND ADEQUACY OF FARM WAGE RATE DATA Exh. F (1940) (*reproducing* USDA, Agric. Marketing Serv., Oct. [1939] Gen'l Schedule). Since "[a] preponderance of the returns is from operators of general crop and livestock farms," while "schedules sent to other lists of fruit, truck, dairy, and similar special reporters do not carry questions concerning wage rates," "[i]t is doubtful if wage rates paid on such farms are adequately represented in the regular quarterly sample." *Id.* at 4. Second, since the coverage of piece-rates as well as of the earnings of employees hired through labor contractors was spotty, *id.*, and since these workers along with hourly employees "constitute[d] the bulk of the hired workers on the large farms," broad inter-regional comparisons of wage rates are the most meaningful. *National Farm Labor Problem* at 1029 n.52. Third, before 1939 only the wages of male farm workers were used as weights for computing regional and national averages. U.S. BUREAU OF AGRIC. ECON., FARM WAGE RATES, FARM EMPLOYMENT AND RELATED DATA 2 (1943). The significance of this weighting procedure derives from the fact that "the hired workers on American farms, outside the South, were predominantly native born white men. Only among Negroes was there a large proportion of female workers." William Ham, *The Status of Agricultural Labor*, 4 LAW & CONTEMP. PROBS. 559, 563 (1937). Moreover, children formed an appreciable part of the labor supply only in the South (and in special crop areas). *Id. Cf.* BRANNEN, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION tab. 8 at 25, 26 (29 per cent of plantation acreage cultivated by women and children in 1920, virtually all of whom were black).

[161] HALE, RELIABILITY AND ADEQUACY OF FARM WAGE RATE DATA Exh. B at 10, 4.

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were the three covered by the South, where the regional daily average approached one dollar. On April 1, 1937, for example, the daily wage rates (without board) ranged from eighty cents in South Carolina to $1.35 in Virginia. Since black farm workers were paid less than Whites, they were doubtless being paid significantly less than one dollar per day in the late 1930s.[162] In the northern and western regions of the country, on the other hand, wages were near or in excess of $2.50 per day.[163]

If an average workday of ten hours is applied to these regional daily wage rates, farmers outside the South were, on the eve of FLSA's enactment, already paying the twenty-five cent per hour minimum wage required by the Act when it went into effect in 1938.[164] Farm workers in the Cotton Belt, on the other hand, were

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[162]Texas, Florida, and North Carolina were the only other southern states with averages in excess of $1.00 daily. 14 CROPS AND MARKETS 73 (1937). In 1938 President Roosevelt was paying his three black farm workers in Warm Springs, Georgia twenty dollars per month--slightly more than the state average. The governor, Gene Talmadge, had written to Roosevelt in 1935 denouncing the size of federal stipends issued by the WPA as a danger to the supply of hired farm labor. In reply, Roosevelt sarcastically alluded to Talmadge's approval of daily wage rates of forty to fifty cents for ten to twelve hours of work. FREIDEL, F.D.R. AND THE SOUTH at 68-69.

[163]Although a few North Central States--e.g., Wisconsin, Kansas and Nebraska--exhibited average daily rates closer to two dollars, this relatively low level was meaningless since very few farm workers there worked for daily wages without board (7.9 per cent compared with 20.6 per cent nationally). HALE, RELIABILITY AND ADEQUACY OF FARM WAGE RATE DATA tab. 3 (data for Oct. 1, 1939); *cf.* USDA, INCOME PARITY FOR AGRICULTURE pt II.--EXPENSES OF AGRICULTURAL PRODUCTION: Sect. 1.--THE COST OF HIRED FARM LABOR, 1909-38 (Preliminary) 12 n. 8 (1939) (with data for 1927 showing similar distribution). These were the states of "[t]he traditional hired man" par excellence, who was an "apprentice...enjoy[ing] the same simple standard of living as a farm family." Ross, Agricultural Labor at 8-9. A special collection of data from volunteer crop reporters in 1938 relating to the daily rates paid for harvesting grain revealed that farmers in these three states were paying near or above $2.50 daily in addition to providing two or three meals, whereas their counterparts in the South offered little more than one dollar and one meal per day. HALE, RELIABILITY AND ADEQUACY OF FARM WAGE RATE DATA, tab. 4. *Cf.* FOLSOM & BAKER, GEOGRAPHIC SUMMARY at 12-13 (map of regional wage differentials derived from 1930 census).

[164]A study of farm workers' hours conducted by the USDA in 1939-40 was methodologically flawed and severely limited as a basis for calculating minimum wage rates because the respondents were, once again, by and large general crop and livestock farmers whose workers were hired typically by the month or day. "It is doubtful whether these working hours reflect the conditions characteristic of piece workers...[who] generally work longer hours than other farm workers in order to maximize their earnings through the performance, within the limited season, of as much work as possible." *National Farm Labor Problem* at 1030. The hours reported

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being paid about ten cents per hour--about forty per cent of the federal minimum wage; and black farm workers in the South were being paid even less.[165]

Consequently it was southern planters employing largely black farm workers who had by far the greatest incentive to oppose coverage of farm workers under FLSA. This incentive was not merely economic, but went to the root of preserving their domination of the entire racist system of political-economic relations in the rural South.[166] This opposition was so inclusive that it

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for the South were underestimated because the major crop, cotton, which required the greatest amount of labor, was typically paid by the piece. DUCOFF, WAGES OF AGRICULTURAL LABOR at 28. If, on the other hand, the relatively long hours reported in the northern livestock and dairy regions for "the traditional hired man," who as a permanent year-round employee was paid by the month, are mismatched with the daily wage rates (without board) paid to an entirely different group of workers whose wages served as surrogates for the rates of all farm workers in those states, significant underestimates of hourly rates can result. HOPKINS, CHANGING TECHNOLOGY AND EMPLOYMENT IN AGRICULTURE at 23-25. In spite of these methodological problems, the regional average deviated but little from the estimated national average of 10.0 hours per day. They ranged from a low of 9.1 hours in the Pacific region to a high of 10.4 in the West North Central States. In all three regions encompassing the South the average was 9.7 hours. *National Farm Labor Problem* tab. 7 at 1030. Since California fruit and vegetable pickers were largely paid by the piece, it may be assumed that the hours for the Pacific region were underestimated. *Id.* at 1026; DUCOFF, WAGES OF AGRICULTURAL LABOR at 28-29. Because it is no longer possible to go behind these data, the overestimates and underestimates are compromised here by assuming a ten-hour day in all regions. *Cf. id.* table 36 at 77. *But see* BRANNEN, RELATION OF LAND TENURE TO PLANTATION ORGANIZATION at 29, 42 ("The workday on the plantation is from 'sun to sun,' except where the plantations are near a factory. Such plantations usually have a 10-hour workday...").

[165]That black farm laborers in the South were earning even less than the aforementioned day rates is confirmed by the crucial fact that in the late 1930s, "the average daily earnings of cotton pickers were lower than the prevailing day rates (without board) in nine of the 13 States and were equal to the day rates in 2 other States." DUCOFF, WAGES OF AGRICULTURAL LABOR at 86. Anecdotal information confirms these extraordinarily low wages: (1) the largely black day laborers of eastern Arkansas were reported earning only seventy-five cents for a sunup to sundown workday on cotton plantations in 1936; letter from H. Mitchell (founder of the STFU) to Gardner Jackson (May 6, 1936) (*reproduced in* STFU PAPERS, 1934-1970 [microfilm reel 3]); (2) their counterparts across the Missouri border were still earning the same rate three years later; *Rain, Snow Defied by Sharecroppers*, N.Y. Times, Jan. 12, 1939, at 5, cols. 4-6; and (3) in Alabama daily farm wages were as low as sixty cents in 1937; Farm Laborers and Cotton Field Workers Union, No. 20471, A.F. OF L., A CALL TO ALABAMA'S FIRST AGRICULTURAL WORKERS WAGE CONFERENCE (April 18, 1937) (*reproduced in* STFU PAPERS, 1934-1970 [microfilm reel no. 4]).

[166]A further indicator of the crucial sensitivity of Cotton Belt planters to wage increases was the fact that expenditures for labor bulked proportionally larger on

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extended to the adoption of any federal minimum wage at all for fear that a rise in southern industrial wages would deplete the supply of farm labor and thus undermine an important source of their power--the total dependence of a huge overpopulation of black laborers and sharecroppers. Had Congress included farm workers under FLSA and had sharecroppers been deemed planters' employees,[167] imposition of a minimum wage of even fifteen to twenty cents an hour would have shaken the foundations of the plantation as a system of regional subjugation of Blacks. In the event, the socioeconomic policies of the New Deal--and not least the agricultural exclusions--further depressed farm wages in the South vis-à-vis industry and other regions.[168]

The legacy of these racially motivated exclusions of the New Deal is the current exemption for so-called small farm employers from the minimum wage and for all agricultural employers from mandatory premium overtime. Whether this vestige is still racially motivated or merely the result of legislative inertia, non-white farm workers remain disproportionately affected by their isolation in a subminimum wage sector. As the next chapter will show, migrant farm workers are also still subject to vestiges of pre-modern authority relations.

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cotton plantations than in other branches of agriculture. HOLLEY ET AL., PLANTATION SOUTH at 34-35 (wages accounting for thirty-six per cent of current expenses in 1936). *Cf.* Ross, Agricultural Labor tab. 4 (unpaginated) and 313; *National Farm Labor Problem* at 1032-33 (showing wages as a share of farm output and expenditures for various branches of agriculture); SCHWARTZ, SEASONAL FARM LABOR IN THE UNITED STATES at 67-101 (cost of labor in fruit and vegetable farming substantial in relation to total costs and more subject to grower decisions than any other costs).

[167]As they were when farm workers were finally included in 1966. *See infra* ch. 6.

[168]*See* Lee Alston & T. Hatton, *The Earnings Gap Between Agricultural and Manufacturing Laborers, 1925-1941*, 51 J. ECON. HIST. 83, 93-97 (1991).

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EXHIBIT 31

ECONOMIC SECURITY ACT

HEARINGS

BEFORE

THE COMMITTEE ON FINANCE
UNITED STATES SENATE
SEVENTY-FOURTH CONGRESS
FIRST SESSION

ON

S. 1130

A BILL TO ALLEVIATE THE HAZARDS OF OLD AGE, UNEMPLOYMENT, ILLNESS, AND DEPENDENCY, TO ESTABLISH A SOCIAL INSURANCE BOARD IN THE DEPARTMENT OF LABOR, TO RAISE REVENUE, AND FOR OTHER PURPOSES

JANUARY 22 TO FEBRUARY 20, 1935
REVISED

Printed for the use of the Committee on Finance

UNITED STATES
GOVERNMENT PRINTING OFFICE
114807 WASHINGTON : 1935

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represent the (local old-age-assistance agency) in respect to any matters arising under sections 21, 22, and 23 of this act.

NOTE.—Since it is recommended that the State laws should not contain property limits, these provisions for recovery in cases where there is property are very important. Substantial amounts are recovered in States following this procedure. The provisions for recovery will cause many applicants with substantial property to withdraw their applications, and since the assistance is recoverable, will avoid criticism of the assistance to persons with small amounts of property. The Federal bill requires that so much of the assistance as represents the Federal aid shall be made a lien upon the estate of the recipient. The State may, if it wishes to do so, charge interest upon the amounts advanced as assistance, but this is not recommended.

SEC. 23. *Recovery of assistance payments.*—If at any time during the continuance of old-age-assistance allowance the (local old-age-assistance agency) has reason to believe that a spouse, son, or daughter liable for the support of the recipient of assistance is reasonably able to assist him, it shall, after notifying such person of the amount of the assistance granted, be empowered to bring suit against such spouse, son, or daughter to recover the amount of the assistance provided under this act subsequent to such notice, or such part thereof as such spouse, son, or daughter was reasonably able to have paid.

NOTE.—Interest may also be charged if desired.

SEC. 24. *Expenses of act.*—All necessary expenses incurred by a (county or district) in carrying out the provisions of this act shall be paid by such (county or district) in the same manner as other expenses of such (county or district) are paid, subject to reimbursement by the State from appropriations made by the legislature for this purpose. (New York Laws, ibid., sec. 124-n.)

SEC. 25. *Fraudulent acts.*—Any person who by means of a willfully false statement or representation, or by impersonation, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain—

(1) Assistance to which he is not entitled;
(2) Greater assistance than that to which he is justly entitled;
(3) Payment of any forfeited installment grant;
(4) Or aids or abets in buying or in any way disposing of the property of the recipient of assistance without the consent of the (local old-age-assistance agency) shall be guilty of a misdemeanor. (Minnesota Acts of 1929, sec. 15, and other State laws.)

SEC. 26. *Limitations of act.*—All assistance granted under this act shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by such amending or repealing act. (Maine Laws, ibid., sec. 22, and other State laws.)

SEC. 27. *Saving clause.*—A person 65 years of age or more not receiving old-age assistance under this act is not by reason of his age debarred from receiving other public relief and care. (New York Laws, ibid., sec. 124-p.)

SEC. 28. *Effective date.*—

The CHAIRMAN. The first witness this morning will be Charles H. Houston, of Washington, D. C., representing the National Association for the Advancement of Colored People.

STATEMENT OF CHARLES H. HOUSTON, REPRESENTING THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. HOUSTON. Mr. Chairman, the National Association for the Advancement of Colored People regrets that it cannot support the Wagner economic security bill (S. 1130). It approached the bill with every inclination, if for no other reason than the fact that Senator Wagner introduced it, to support it, but the more it studied the bill

the more holes appeared, until from a Negro's point of view it looks like a sieve with the holes just big enough for the majority of Negroes to fall through.

As to title I, the noncontributory old-age assistance, the very limits of the appropriations ($50,000,000 the first year and $125,000,000 thereafter) show that it is not intended to cover all old people 65 years of age or over. The President's own Committee on Economic Security reported that there are now approximately 7,500,000 people 65 years of age and over, and that a conservative estimate is that half of them are dependent. Figuring out an old-age-assistance grant averaging only $10 per month to these 3,750,000 dependents, and we have the figure of $37,500,000 per month, or $450,000,000 per year. Since the Federal Government splits the expense 50-50 with the States, the cost to the Federal Government figures out as $225,000,000 per year. But the maximum appropriation, including cost of administration, is only $125,000,000, so the bill on its face flatly leaves four-ninths of the old people unprovided for, or 1,277,776 dependent persons 65 years of age or over without the prospects of old-age assistance. The question which most directly concern us is how many of these 1,277,776 unassisted persons are Negroes.

In the first place, the old-age-assistance program does not become operative in any State until the State has first accepted the act and established a State old-age authority and a State old-age plan satisfactory to the Federal administrator. When we look at the States which now have old-age pension laws according to the supplemental report of the President's committee, we note that there is not a single Southern State with such a program. And as practical statesmen you know the difficulties there will be in getting any substantial old-age-assistance plan through the legislature of any Southern State if Negroes are to benefit from it in any large measure. If the Southern States do pass old-age-assistance laws under such circumstances, it will be more than they have done for Negro education or Negro public health or any of the other public services which benefit the Negro masses.

Therefore the national association favors a strictly Federal old-age-assistance program either with direct benefits or with Federal grants in aid to the States, and such guaranties against discrimination which will insure that every American citizen shall receive his fair and equal share of the benefits according to his individual need.

Such a program is entirely feasible and eliminates certain bad features now present in the bill. As it now stands, the bill makes the old-age-assistance program the football of national politics. The power in a Federal administrator to approve or reject State plans is a tremendous weapon for political favor or political punishment. Further, the citizens of the States which have not accepted the old-age-assistance plans are taxed for the benefit of the States which have accepted.

From the point of view of the Negro it would be much easier to get fair enforcement of a Federal law than to get a really effective old-age assistance law passed by southern legislatures. There are lots of decent, fair-minded people in the South; but in many States

it would be political suicide for them to advocate a State old-age assistance law giving Negroes substantial benefits in large numbers.

The CHAIRMAN. How much would you say the amount should be if the Federal Government itself contributed and none of the States had to contribute?

Mr. HOUSTON. There would be two things that I would say. In the first place, we advocate that the old-age system and the old-age annuity be merged. I will explain why later. Under that merged plan we would say that if you had Federal grants-in-aid to the States, so that the States administered it, we would then say that the workers should not get any less than what he has actually paid in—that that should be the minimum. On the other hand, if you have benefits paid directly by the Federal Government to the individual, we would then say cut down the Federal minimum to such a point that it would not disturb conditions in any State, with the idea that the States could add increments that they wanted according o their resources and according to the social needs in the particular States.

The CHAIRMAN. How much would you say that that amount would be that the Federal Government was going to give?

Mr. HOUSTON. Senator, to be perfectly frank with you, I am not an actuary, and I would not set up an arbitrary standard in terms of dollars and cents under those circumstances; but I say this, that it is perfectly practical to establish a minimum, and that there are no more difficulties in establishing a minimum for old-age assistance than there were difficulties in establishing a minimum wage under the N. R. A. The N. R. A. worked out differentials for different sections of the country, and I think, again, even if you did have a system of Federal differentials, that that might be satisfactory. We recognize, just as anybody else does, that the standards of living, perhaps, in the agricultural States, may not cost altogether the same as in the more industrialized States, so that you might have a differential in your minimum level just the same as you had differentials in your N. R. A. codes, but I would not attempt to give you the figures in dollars and cents.

The CHAIRMAN. Would you think that $15 would be too much or too little?

Mr. HOUSTON. As a minimum?

The CHAIRMAN. Well, to start in on. Suppose the Federal Government were not going to ask for any contribution by the States, would you think that $15 would be fair?

Mr. HOUSTON. My impression is that $15 would be fair; but again I am giving it only as a general impression.

The CHAIRMAN. Because we have to take into consideration the amount of money it will cost, because we have to raise the revenue.

Mr. HOUSTON. I understand that; and I will give you our suggestion as to raising the revenues in just a second.

I was saying that at the present time so far as the attempt to get a State old-age assistance program through the Southern legislatures, and I called your attention to the fact that we know as well as anybody else that there are plenty of decent people down South, but we also know from experience, in the Scotsboro case and Judge Wharton, for example, that it is the same as political suicide to

take an advanced stand on racial issues in many cases, and that it would be political suicide for some of these people to advocate a State old-age-assistance plan in which Negroes would benefit in any large numbers, and therefore it is going to be for us to obtain a better enforcement under a Federal law than it would be to get the Southern law with the same protection so far as the Negro workers are concerned.

Next, we oppose the residence requirements of the bill, requiring a residence of 5 years out of the last 10 within the States. The President's own Committee on Economic Security has stated that residence requirements presuppose a degree of security and permanence of employment which has been conspicuously lacking in our skilled workers, whose labor is frequently of a highly migratory order. (Mimeographed release no. 3834, Old Age Pensions.) It is, of course, in the ranks of these unskilled workers that the need for old-age assistance is greatest, and it is the cruelest kind of an illusion to dangle in front of them an old-age-assistance provision, and then say they have to starve in one State 5 years out of 10 before they get it.

And lest the committees believe I am overdrawing the picture, let me refer to the report by our A. A. A. investigation of a survey of cotton regions west of Memphis, filed with the A. A. A. just 2 days ago. The investigator reported evicted tenant-farmer families straggling along highways, wandering hopelessly in search of shelter and employment; rough-boarded shacks in muck-mired fields, with gaping walls open to the winter winds; evicted Negroes standing in the road not knowing where to turn for succor. To say that these people must remain in a State for 5 years in order to qualify for old-age assistance is the height of injustice, and a virtual return to slavery.

Under a wholly Federal old-age assistance plan with direct benefits or with grants-in-aid to the tSate there would not be any necessity of a State residence requirement. If any residence requirement should be invoked, it should only be a national residential requirement.

If you have to have any residence requirement whatsoever, it would be sufficient to establish a national residence requirement.

As to title IV, the old-age annuity plan, this plan differs from the old-age assistance in being a substitute for earnings as distinguished from old-age assistance which is a supplement to earnings.

Earnings, as distinguished from old-age assistance which is a supplement to earnings. And I call your attention to this that in your old-age assistance plan, section 4-e (3), the statement is that it shall be paid when the person "has an income which when joined with the income of such person's spouse is inadequate to provide a reasonable subsistence compatible with decency and health"—in other words, the term "assistance" does not mean substitution for a work, but it is a supplement to the wages that the person is otherwise earning. On the other hand, your old-age annuity plan is a substitute for work, because the provisions of section 405-a (4) says that the person can only become eligible provided he is not gainfully employed by another.

The point is that this is financed largely by the workers and industry itself. Every employee is subject to the tax without any exemptions whatsoever, just so long as he is under 60 years of age on January 1, 1937, but he can only qualify for the annuity if he has had the tax paid for him at least 200 different weeks in not less than a 5-year period before he attains the age of 65 years. Whom does this provision eliminate? It eliminates all casual workers because in substance it provides that a worker must be employed an average of 40 weeks out of the year for 5 years. It eliminates all domestic and agricultural workers because it is almost impossible to standardize their wages sufficient for the tax to be collectible as they work indifferently by the hour, by the day, or by the week. And I call your attention to the fact that no person is eligible for old-age annuity unless a tax has been paid on his behalf.

Further, it eliminates the share cropper and the tenant farmer, because from the nature of their relationship to the landlord they do not draw wages. It eliminates the older portion of the present unemployed.

When you realize that out of the 5,500,000 Negro workers in this country, approximately 2,000,000 are in agriculture and another 1,500,000 in domestic service—3,500,000 Negroes dropped through the act right away when it comes to the question of old-age annuity; in other words, every 3 Negro workers out of 5, and then when you realize that of all of the elements in our population, the depression has thrown more Negroes out of work proportionately than any other element of the population, you being to appreciate my statement at the outset of my testimony that this bill looks like a sieve with holes just large enough for the majority of Negroes to fall through.

Our position is that the old-age assistance and the old-age annuity plans should be merged, and that there should be a Federal old-age assistance plan including all workers. In support of this, let me demonstrate why the old-age annuity system would not work for the casual, the domestic, and the agricultural workers. No argument is necessary to demonstrate that the overhead of administering and really enforcing a pay-roll tax on casual, domestic, and agricultural workers would practically consume the tax itself. But from the standpoint of annuity benefits what is the situation?

Since the "average monthly wage" is at the basis of computing the annuity, and the "average monthly wage" includes part-time as well as full-time wages it is safe to say that the average monthly wage would be less than $30 per month. Those workers ordinarily would qualify only for the smallest annuity, 15 percent, which would amount to $4.50 per month, or $54 per year. It is perfectly obvious that this can be no substitute for a working wage.

It may be argued that these casual, domestic, and agricultural workers are eligible for old-age assistance under the present bill; but the difference between this bill and our proposal is fundamental. Under the Wagner bill the old-age annuity is a direct Federal right with the worker receiving his old-age annuity direct from the Federal Social Insurance Board; but the old-age-assistance benefits are operative only after the States have acted. Under our proposal we would give the worker a direct Federal right under the old-age-

EXHIBIT 32

705

UNEMPLOYMENT
OLD AGE AND SOCIAL INSURANCE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON LABOR
HOUSE OF REPRESENTATIVES

SEVENTY-FOURTH CONGRESS
FIRST SESSION

ON

H. R. 2827

A BILL TO PROVIDE FOR THE ESTABLISHMENT OF UNEMPLOYMENT, OLD AGE AND SOCIAL INSURANCE AND FOR OTHER PURPOSES;

H. R. 2859

A BILL TO PROVIDE FOR THE ESTABLISHMENT OF UNEMPLOYMENT AND SOCIAL INSURANCE AND FOR OTHER PURPOSES;

H. R. 185

A BILL TO PROVIDE FOR THE ESTABLISHMENT OF A SYSTEM OF UNEMPLOYMENT INSURANCE AND FOR OTHER PURPOSES; AND

H. R. 10

A BILL TO PROVIDE FOR THE ESTABLISHMENT OF UNEMPLOYMENT AND SOCIAL INSURANCE AND FOR OTHER PURPOSES

FEBRUARY 4, 5, 6, 7, 8, 11, 12, 13, 14, and 15, 1935

INDEXED

UNITED STATES
GOVERNMENT PRINTING OFFICE
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COMMITTEE ON LABOR

HOUSE OF REPRESENTATIVES

SEVENTY-FOURTH CONGRESS, FIRST SESSION

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II

Mr. DUNN. May I ask, Mr. Johnson, about how many Negroes belong to the organization?

Mr. JOHNSON. Approximately 60 percent are Negroes.

Mr. DUNN. Thank you. Are there any more questions?

Mr. SCHNEIDER. That is all.

Mr. DUNN. Proceed, Mr. Johnson, with your statement.

Mr. JOHNSON. I wish to present to you the position of the League of Struggle for Negro Rights on the question of unemployment and social insurance, which is the main concern of this committee. In putting forth the position of the organization which I represent, I feel it is necessary to state that we have arrived at our conclusions on the basis of a careful and systematic and thorough study of the conditions of the Negro people throughout the United States over a period of years, and particularly in this period of extraordinary and distressing conditions, a situation of prolonged economic crisis. It is our aim to bring the startling facts that our survey has revealed as sharply as possible to the attention of this committee and to the Seventy-fourth Congress, because we feel that extraordinary measures must be taken by this Congress to remedy the awful and despairing situation in which the white workers in general and the Negro people in particular find themselves today.

The economic crisis which began in 1929 and which is now passing into a permanent depression, has robbed the working people in general, and the Negro workers in particular, of every vestige of any kind of security. The Negro people have been the hardest hit of any racial group. Of the 12,000,000 Negro people in the United States, 5,503,535 are workers. They have, as most of you know, been the last hired, have been the first fired, and compelled to do the meanest, hardest, and dirtiest work, at the lowest pay.

Because of conscious and systematic firing of Negro workers from the skilled trades, we have a situation where approximately 50 percent of the Negro workers are unskilled and semiskilled workers engaged permanently in farm and domestic work. When we consider the fact that these are the lowest paid jobs, then we can fully realize the plight of the Negro workers today. During the depression, the employers have very vigorously applied the weapon of mass lay-off, insofar as the Negro workers are concerned, until we have approximately 3,000,000 Negro workers unemployed, according to the most conservative estimate given in 1932. Since that time, this figure has steadily increased, because, when the employers were compelled to pay minimum wages in accordance with the N. R. A. codes, they began to lay off the Negro employees and replace them with white employees.

I wish to cite here that since the N. R. A., 90 percent of the Negro employees have been laid off by many big industrial firms. For example, in large industrial centers like Gary, Chicago, St. Louis, and Cleveland, 50 percent of the total unemployed are Negroes. For example, in Birmingham, 75 percent of the total unemployed are Negroes. In Pittsburgh, over 60 percent. In direct contrast to the low percentage of Negro population, the high unemployment percentage stands out, pointing to the urgent necessity of unemployment and social insurance, as provided by the Lundeen bill which is now being considered by this committee.

I want to give you just one typical example of the rank discrimination against Negroes in the administration of relief. I want to select Pittsburgh as an example. The total Negro population of Pittsburgh is 83,300. Of this number, 36,000 are on relief. The percentage of the Negro population is 6, the white population, 94. The percentage of unemployed among the Negroes is 60 percent. The percentage of unemployment among the whites is 40 percent. The percentage on relief given to the Negroes is only 13 percent, while the percentage on relief given to the white workers, who constitute only 40 percent of the unemployed, is 87 percent.

In Washington, D. C., the capital of the Nation, the seat of our Government, 78 percent of those on relief are Negroes, although they are only 25 percent of the population, which further substantiates the contention of our organization that the Negro people today are the hardest hit of any, insofar as unemployment is concerned.

There is uniform discrimination in the work relief wages that exist in the South. The Negro workers there receive 10 cents an hour less than white workers, for example in Jacksonville, Fla. In Atlanta, Ga., the Negroes receive 50 cents per day less than do the white workers. Jacksonville, Fla., is a typical example of the practice in the South of forcing the Negro population to contribute 50 percent to the meager relief funds, in order to receive relief.

Practically 85 percent of the Negroes in the South are agricultural workers. In Mississippi, 87 percent of the Negroes are agricultural workers, and in Alabama, 83 percent. In South Carolina, they comprise 80 percent, in Louisina 85 percent, and in Arkansas 85 percent.

The Farm Loan Banks, in the Southern States, make loans only to members. Of course, Negroes are refused membership, and consequently are not eligible for Federal loans. Therefore, these Negro farmers and agricultural workers are forced to make individual loans, and methods are used to force them to pay exorbitant interest rates. This accounts in large measure for the fact that 7,000,000 acres of land in Mississippi, in 1930, were sold for taxes and debts. There are other difficulties suffered by the tenants and share croppers, such as overcharging on the part of the commissary stores, raising interest rates, in many cases outright expropriation of their products. Seventy-five percent of the Negro farmers are dependent on cotton. The cotton crisis has drastically affected the livelihood of the Negro farmers. The Roosevelt agricultural program, the plowing under of acreage, has greatly affected the living standards of the Negro share croppers and tenant farmers in the South, leaving them in a predicament of almost starvation.

The large majority of the domestic and personal workers in the United States are Negro women. There are 1,576,205 Negroes employed in this field of work, the number of women, 1,152,560. It is very significant to note that the number of these women who are on relief at the present time is only 18.4 percent, despite the widespread unemployment among these workers as the result of the crisis. The Wagner-Lewis bill excludes entirely these categories of workers, which are mainly Negroes. The domestic and personal servants, agricultural and farm laborers, and also the professionals,

EXHIBIT 32

EXHIBIT 33

ECONOMIC SECURITY ACT

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

SEVENTY-FOURTH CONGRESS

FIRST SESSION

ON

H. R. 4120

H. R. 7260

A BILL TO ALLEVIATE THE HAZARDS OF OLD AGE, UNEMPLOYMENT, ILLNESS, AND DEPENDENCY, TO ESTABLISH A SOCIAL INSURANCE BOARD IN THE DEPARTMENT OF LABOR, TO RAISE REVENUE, AND FOR OTHER PURPOSES

JANUARY 21, 22, 23, 24, 25, 26, 28, 29, 30, 31
FEBRUARY 1, 2, 4, 5, 6, 7, 8, and 12, 1935

UNITED STATES
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II

Mr. VINSON. $15 here is the limit by the Federal Government. In other words, section 4 of which that subsection (c) is a part deals with the State plan for old-age assistance.

Mr. SMITH. Yes.

Mr. VINSON. That is the plan that they draft showing what they will do.

Mr. SMITH. Yes.

Mr. VINSON. The $15 is the maximum under this bill that the Federal Government will contribute.

Mr. SMITH. Yes.

Mr. VINSON. The State government could make it larger if they pleased, or they could make it smaller. For instance, the State government might say, "We cannot go to the $15-a-month limit. We will make it $7.50 or $10."

Mr. SMITH. That is exactly what I am getting at. But can they do that under the present language?

Mr. VINSON. Oh, yes; there is no doubt about that, if there is anything to be said for the advocates of it.

Now, might I say this:

We were told that in actual operation in Ohio there are 450,000 plus persons above the age of 65. They have an old-age-pension law which has been in operation 9 months. There were applicants for benefits thereunder to the amount of 110,000. In other words, only 25 percent were eligible for the benefits. We were told by the gentlemen in charge in Ohio that at the present time only 38,000 had qualified for the benefits, and that they were now investigating probably 7,000 or 8,000 a month. They have in their State certain residential qualifications and certain property qualifications, that the State legislature determined were fit for their condition. In other words, while your computation is correct as to the 50,000 in Virginia that might be eligible, yet I dare say that if it is put in operation you would have materially less than 50,000 if you had the Ohio qualifications.

Mr. SMITH. I might add, though, that of our 116,000 practically 25 percent are of one class that will probably qualify 100 percent.

I am interested in your statement that there is a provision in this law that permits the State to govern itself on that proposition. I, of course, do not know nearly as much about this as you gentlemen who have been sitting here, but I have searched in vain for that provision. I do not like to differ with the gentleman, but it seems to me that this language here that permits the administrator to approve of the State law or to veto the State law certainly does not give the State any latitude as to putting in any amount under $15 a month, if the Federal administrator says that that is the proper amount.

Mr. JENKINS. I was interested in the statement the gentleman made that practically 25 percent of the people over 65 in his State would be within one class. Would the gentleman state what class he means by that?

Mr. SMITH. Of course, in the South we have a great many colored people, and they are largely of the laboring class.

Mr. JENKINS. That is what I thought the gentleman had in mind. I should like to ask the gentleman, and also any member of this committee, whether in this law it is contemplated that there be any

loophole by which any State could discriminate against any class of people?

Mr. SMITH. No, sir; I do not think so, and you will not find in my remarks any suggestion to that effect. It just so happens that that race is in our State very much of the laboring class and farm laboring class. But you will find no suggestion in my remarks of any suggested amendment that would be unconstitutional, if I may use that expression.

Mr. JENKINS. I am glad that the gentleman did not intend that. I can see that there might be a possibility, if too much leverage is given to the States in their enacting a law to provide funds to match our $15 contribution, that they might specify that the old-age pension should be distributed according to groups.

Mr. VINSON. Do you think that that would be seriously considered constitutional?

Mr. SMITH. Of course not.

Mr. VINSON. They do not do that in Ohio, do they?

Mr. JENKINS. No, and we do not keep them from voting in Ohio, either.

Mr. SMITH. We do not keep them from voting in Virginia. There is an educational qualification, and a great many of them vote who are qualified.

Mr. VINSON. The point I was making about my inquiry with reference to Ohio was that under the State law they have found only 25 percent of those eligible have applied.

Mr. JENKINS. There is no discrimination in Ohio of any kind.

Mr. VINSON. I know; and with no discrimination only 25 percent of those eligible have applied. The point that I am trying to make is that a figure of 50 percent of those eligible to come under the benefits, I believe, is high. I doubt whether a third of those eligible in Virginia would come under the benefits if the Ohio law were picked up and enacted by the Virginia Legislature.

Mr. SMITH. You may be entirely right. But what I had in mind was some differentiation there based upon a person's previous earning capacity. For instance, one man may have been hard up all his life on $150 a month and another man may have gotten along all his life on $30 a month. I think as a practical matter you are going to have to come to something of that kind.

May I ask again that the gentlemen give very careful attention to that feature which I mentioned, as to whether or not the State has the right to go less than $15 a month? Because if it is in there, I cannot find it in this bill, and I have read the bill several times and studied it.

Mr. COOPER. That is certainly the view of those who drafted the bill.

Mr. SMITH. I may be entirely wrong about it. I may have overlooked it, but I cannot find it.

Mr. HILL. We were told that the duty in the first instance would be upon the State to determine what would be a sufficient amount to maintain them in decency and health. The State's contribution might be less than $15, in which case the Federal Government would, out of this grant-in-aid provision, match that amount.

Mr. SMITH. Yes.

EXHIBIT 34

Limiting Liberalism: The Southern Veto in Congress, 1933–1950

IRA KATZNELSON
KIM GEIGER
DANIEL KRYDER

Richard Hofstadter concluded his 1949 assessment of the previous year's Dixiecrat revolt with the claim that the Democratic party "finds itself in the anomalous position of being a party of 'liberalism,' whose achievements are subject to veto by a reactionary fraction."[1] The same year, V. O. Key published the landmark study, *Southern Politics*. His chapters on "Solidarity in the Senate" and "The South in the House" remain the best starting point for considering Hofstadter's claim. Key's questions were these: "Is the South actually united in Congress? If so, on what issues? We have the popular characterization of the South as 'reactionary' and as 'conservative.' Does the record support such epithets?"[2] Aside from controversies about race, he answered in the negative. Who was right, Hofstadter or Key?

Much is at stake in adjudicating these claims. Southern political elites con-

[1] Richard Hofstadter, "From Calhoun to the Dixiecrats," *Social Research* 16 (June 1949): 150.
[2] V. O. Key, Jr. with the assistance of Alexander Heard, *Southern Politics in State and Nation* (New York: Knopf, 1949), 346.

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trolled the national Democratic party from the debacle of 1896 to the start of the New Deal.[3] While Democrats managed to obtain only about 40 percent of the popular vote in congressional and presidential contests outside the South in this period, within the region votes for Democrats never fell below 86 percent.[4] As a result, some two in three Democratic members of Congress were southerners who stood on a common platform devoted to the preservation of the southern racial order and the adjustment of gross interregional inequalities.[5] The Democratic party's landslide victories in 1932, 1934, and 1936 converted it from a regional to a genuinely national force and remade it into an instrument of governance. For the first time since the demise of the Knights of Labor, an agrarian-industrial alliance that could effectively challenge the prerogatives of capital became a possibility, but not without immense risks for the South's segregated racial civilization. Now a minority faction in a majority party, the South no longer defined the party's policy agenda. The election of President Franklin D. Roosevelt and the emergence of a strong nonsouthern Democratic bloc of consequence in Congress forced southern representatives to embark on a great balancing act that sought at once to secure the party's new majority, enhance national state capacity to aid southern economic development, and protect white privilege. What was not clear was whether these goals could be advanced simultaneously.

Notwithstanding the altered situation of the South, the region remained well placed to defend the interests of its economic and political elites. During the Roosevelt and Truman administrations, southerners never composed less than 40 percent of the Democrats in Congress and they chaired approximately half

[3] Defining the South is not a straightforward matter. For obvious reasons, many historians and social scientists, including V. O. Key, treat the South as consisting of the eleven ex-Confederate states (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia). The Census Bureau defines the South as these eleven states plus five more—Delaware, Kentucky, Oklahoma, Maryland, and West Virginia, as well as the District of Columbia. We treat the South as the ex-Confederate states plus Kentucky and Oklahoma for two reasons. First, this usage was in vogue during the 1930s and 1940s, as, for example, in the most important New Deal study of the region (U.S. National Emergency Council, *Report on Economic Conditions of the South* [Washington, DC: U.S. Government Printing Office, 1938]). Second, *The Congressional Quarterly Almanac* uses this thirteen-state demarcation, and it has become the standard for most congressional studies. By adopting this definition, we slightly bias our material in the direction of softening regional differences in congressional voting.

[4] For data on election returns and discussion of the role of southern Democrats in Congress, see David Brady, *Critical Elections and Congressional Policy Making* (Stanford, CA: Stanford University Press, 1988); and Barbara Sinclair, *Congressional Realignment, 1925–1978* (Austin: University of Texas Press, 1983), especially the useful table on regional composition on p. 19.

[5] A thoughtful discussion can be found in Erik N. Olssen, "Southern Senators and Reform Issues in the 1920's: A Paradox Unraveled" in Bruce Clayton and John A. Salmond, eds., *The South is Another Land: Essays on the Twentieth Century South* (New York: Greenwood Press, 1987). Also see David Burner, *The Politics of Provincialism: The Democratic Party in Transition, 1918–1932* (Cambridge, MA: Harvard University Press, 1986), esp. chap. vi.

the committees.[6] Their most impressive resource was the rock solid stability of regional representation. Between 1933 and 1952 there never were fewer than 115 southern Democrats in the House, yet never more than 118; by contrast, the nonsouthern Democratic cohort ranged from 217 in 1937 to just 73 members in 1947. Thus, even at the height of the New Deal, the Democratic party required the acquiescence of southern representatives, who as potential coalition partners for Republicans could, if they chose, block the national program. After the electoral shifts to the Republicans in the 1942 and 1946 congressional elections, the South even more clearly commanded veto power over Democratic party initiatives. Moreover, the filibuster in the Senate and control of the Rules Committee in the House provided a set of institutional filters for determined southerners bent on obstructing the Democratic party's majority preferences.[7]

Liberal initiatives, in short, could not pass without southern congressional support. Which measures survived this test? Which did not? Did southern policy inclinations change during the course of the 1930s and 1940s? By reconsidering the southern veto in Congress, we can trace the implications of the hybrid regional qualities of the Democratic party for the policy content and limits of American liberalism at the pivotal moment in the making of the modern Democratic party.

The touchstone of our analysis is Key's *Southern Politics*. The section titled "Political Leadership: The One-Party System in the Nation," which probes the "legend" of southern solidarity, analyzes 873 congressional votes: 598 Senate and 275 House roll calls.[8] "Perhaps," he mused at the outset of his consideration, ". . . the legislative record would show that southern solidarity contains elements other than a dominant attitude toward the Negro?" But he concluded otherwise: "In an earlier day perhaps a common interest in the tariff cemented southern states together in national affairs; nowadays—apart from the indubitably potent habit of voting Democratic—about all that remains to promote southern solidarity is the Negro."[9]

We find otherwise. Southern Democrats, we show, did not split with their party only on civil rights votes. In spite of their willingness to support an assertive role for the national state in economic affairs with approximately the same degree of enthusiasm as nonsouthern Democrats, southern members also broke ranks on labor-centered questions—whether to facilitate the establishment of a genuinely

[6] Between 1933 and 1952, southern Democrats commanded 48 percent of the chairmanships and ranking minority positions in the Senate, and 51 percent in the House. See Brady, *Critical Elections*.

[7] An excellent summary discussion can be found in Austin Ranney and Willmoore Kendall, *Democracy and the American Party System* (New York: Harcourt, Brace, 1956), chap. 8.

[8] Key, *Southern Politics*, 315, 346. For the Senate, Key included virtually all the votes cast during the seven odd year sessions between 1933 and 1945 (that is, he skipped every other year); for the House, he analyzed almost all the roll calls in the four House sessions of 1933, 1937, 1941, and 1945. He excluded votes that were nearly unanimous, when those who dissented constituted no more than 10 percent of the majority, as well as votes for the election of the president pro tempore of the Senate.

[9] Key, *Southern Politics*, 345, 315.

national labor market and create a favorable climate for trade union organization. This policy schism became more pronounced during the course of the 1940s when union mobilization threatened to undermine the relationship between labor markets and race relations in the South. The division between southern and nonsouthern Democrats on labor questions occurred at the crucial time when the character of post-New Deal liberalism was being shaped in a complex negotiation between conflicting interests and ideologies within the Democratic party. The content and timing of the southern veto on labor issues, we argue, played a central role in establishing post-New Deal liberalism's qualities and limits.

Unfortunately, methodological decisions taken by Key and other students of congressional issue voting have obscured the complex association between race and labor in the Democratic party and its effects on the formation of congressional policy coalitions during the Roosevelt and Truman administrations. By taking a fresh look at this historical record, we demonstrate the emergence during the 1940s of three distinctive alliances: a bipartisan civil rights coalition linking nonsouthern Democrats and Republicans; a party-based liberal coalition joining nonsouthern and southern democrats on welfare state, fiscal, regulatory, and planning issues; and a cross-party conservative coalition coupling southern Democrats and Republicans in the single area of labor policy. Like Key, we locate race at the center of the distinctive regional interest of the South; but unlike Key, we discover a pattern in the legislative record that points to a vital, but underexposed imbrication of the issues of race and labor.

Studying the Southern Veto

To pursue this inquiry, we have analyzed eighty-nine Senate and sixty-one House roll calls between 1933 and 1950 concerned with civil rights, planning, regulation, fiscal policy, the welfare state, and labor. We focus on these areas to evaluate Key's assertion that the southern veto was limited to racial questions and Hofstadter's contention that southern obstruction vitiated the more social democratic aspects of the New Deal. Throughout, we compare the voting behavior of southern Democrats, nonsouthern Democrats, and Republicans. To discover patterns of change, we also subdivide this period into the three sets of New Deal, wartime, and postwar Congresses. Unlike most studies of Congress, we have combined our Senate and House roll calls into a single data set of 150 votes. Our focus is on sectional solidarity and the role of the southern Democratic party faction rather than on institutional differences between the legislative chambers, and our units of analysis are votes by members of the three blocs in specific policy domains.[10]

[10] Of course, Congress is not a single institutional location; members either are senators or representatives whose votes are shaped by the size and character of constituencies, party discipline, and each institution's norms and procedures. We have examined Senate and House votes to see whether we are justified in combining the roll calls from each chamber. On the various measures we report

Congressional policy studies depend on the identification of a universe of votes and their placement in issue categories. With respect to selection, we proceeded inductively by reviewing all the roll calls between the 73rd (1933–1935) and 81st (1949–1951) Congresses to choose the most significant bills and amendments. We did not set the threshold so high so as to include only landmark legislation; neither did we set it so low to include the trivial or merely procedural. Rather than adopt an inclusive strategy that makes no distinction between more and less important roll calls or apply a threshold test of significance,[11] we winnowed our universe by judging the content of proposed legislation. Our aim has been to discover the substantive bases for controversy, stress, and the appearance of coalitions by searching the relevant roll calls irrespective of their outcome.

Categorization matters. For the past two decades, the most influential classification for congressional policy voting has been that of Aage Clausen, who divided congressional roll calls into five categories, of which three are directly relevant to this paper: government management of the economy, social welfare, and civil liberties.[12] This classification has been widely adopted.[13] Unfortunately, its overaggregation obscures critical variations because it joins together policy areas about which there should be no a priori assumption of covariance.

We have partitioned Clausen's groupings into more specific and coherent components to reflect alternative policy tools more accurately. For his single government management category, we have substituted the policy areas of planning, regulation, and fiscal policy.[14] Likewise, we have separated welfare state and labor votes, which Clausen combined under the rubric of social welfare. Finally,

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below, the results are sufficiently similar that it would be redundant to report them separately. The most significant differences are a more left-liberal tilt to southern voting in the Senate on labor and civil rights questions and in the House on fiscal, planning, regulation, and welfare state issues.

[11] For examples, see William H. Riker, "A Method for Determining the Significance of Roll Calls in Voting Bodies" in John C. Wahlke and Heinz Eulau, eds., *Legislative Behavior: A Reader in Theory and Research* (Glencoe, IL: The Free Press, 1959), 377–384; Richard Franklin Bensel, *Sectionalism and American Political Development, 1880–1980* (Madison: University of Wisconsin Press, 1984), 31–38; and Key, *Southern Politics*, chaps. 16 and 17.

[12] Aage R. Clausen, *How Congressmen Decide: A Policy Focus* (New York: St. Martin's Press, 1973).

[13] Often, even in important studies, the usage of his categories has been remarkably unreflective. Examples include Sinclair, *Congressional Realignment*; Mack C. Shelly II, *The Permanent Majority: The Conservative Coalition in the United States Congress* (University: University of Alabama Press, 1983); Herbert B. Asher and Herbert F. Weisberg, "Voting Change in Congress: Some Dynamic Perspectives on an Evolutionary Process," *American Journal of Political Science* 22 (May 1978); and Mary Alice Nye, "The U.S. Senate and Civil Rights Roll-Call Votes," *Western Political Quarterly* 44 (December 1991).

[14] Politicians and state managers plan when they purposefully direct and combine capital, land, and labor with the view that self-interested decisions taken by private actors alone cannot benefit the collective interest. Regulations set standards and enforce conduct in industries and markets. Fiscal interventions "turn on the financial taps and regulate the flow while leaving the response contingent upon the autonomous and self-interested decisions of private actors." Ronald King, "Wartime and Postwar Economic Planning in the United States" (Unpublished manuscript, 1984).

we distinguish among votes on race relations, civil liberties, and internal security, which Clausen lumped together under the heading of civil liberties. Here, we focus exclusively on those votes from this domain that concern civil rights for blacks.

In sum, we probe the southern veto by inspecting congressional behavior in the policy areas of planning, regulation, fiscal policy, the welfare state, labor, and civil rights. In each, we trace the voting patterns for southern Democrats, nonsouthern Democrats, and Republicans to investigate the following puzzles:

How solid was the South? To assess the degree of bonding of southern representatives as a voting bloc, we score the roll calls by making use of the index of cohesion first proposed by Stuart Rice and adopted by V. O. Key in his discussion of southern solidarity.[15] We find that southern Democrats were characterized by high intragroup cohesion; so, however, were the other two blocs of nonsouthern Democrats and Republicans. The most cohesive bloc, in fact, was not the solid South, but the Democratic solid north. The relatively low cohesion score for southern Democrats is accounted for almost entirely by significant splits among southerners on labor issues.

How "reactionary" was the South? To probe this question we first trace the percentages of votes cast by members of the three blocs for the liberal position in each policy area (which we identify as the Roosevelt or Truman administration's stance). Apart from civil rights and labor questions, we find that southern and nonsouthern Democratic voting behavior was virtually indistinguishable. We also ascertain similarities and differences between the three voting blocs of nonsouthern Democrats and southern Democrats, southern Democrats and Republicans, and nonsouthern Democrats and Republicans in the discrete issue domains by applying Rice's index of likeness, a measure of the degree to which any two voting blocs behave similarly on a given vote.[16] On this basis, we are able to identify highly distinctive civil rights, liberal, and conservative coalitions, with the latter limited to the policy domain of labor.

How did the Democratic congressional coalition change over time, and why? To find out, we have organized our data not only by region and party, but by period. We have partitioned the roll calls from the 73rd Congress through the 81st into New Deal, wartime, and postwar spans of three Congresses each, cov-

[15] This index provides a measure of the cohesiveness of a given bloc by tallying the difference between the percentage of affirmative votes and the percentage of negative votes within the group. Unanimity is tallied as 100; an even split as zero. Rice's measure of cohesion was first proposed in Stuart A. Rice, "The Behavior of Legislative Groups: A Method of Measurement," *Political Science Quarterly* 40 (March 1925); and elaborated in his *Quantitative Methods in Politics* (New York: Knopf, 1928). They are usefully discussed in Duncan MacRae, Jr., *Issues and Parties in Legislative Voting: Methods of Statistical Analysis* (New York: Harper and Row, 1970), 179–82.

[16] A likeness score is arrived at by subtracting from 100 the difference between the percentages of positive votes that are cast by each bloc. This measure was also first developed by Stuart A. Rice, "The Behavior of Legislative Groups: A Method of Measurement"; and elaborated in his *Quantitative Methods in Politics*.

ering 1933-1939, 1939-1945, and 1945-1951. This analysis proves revealing. The civil rights and liberal alliances remained durable throughout, but an anti-labor conservative coalition appeared for the first time in the wartime congresses. We shall see that during the heyday of the New Deal, southern Democrats were inclined to support the administration's major labor-related initiatives, albeit with reservations and only after they secured protection for their regional interests. During the war and postwar Congresses, however, there was a decided southern tilt against trade unions and attempts to organize a national labor market. As a result, the liberal coalition was precluded from broadening into a social democratic alliance.

We have approached this analysis with caution; so should the reader. Each roll call is treated as an equivalent unit; this, of course, is an artificial imposition that flattens the vastly different significance of individual votes. Further, much of the substantive legislative work took place in committees, beyond this article's ken. This point cuts two ways. On the one hand, southern control over the agenda in key committees created a bias in favor of cross-region roll call consensus, for the bills that came to the floor often had been tailored to accommodate regional interests. As a result, our discussion risks exaggerating southern left-wing propensities. On the other hand, precisely because southerners possessed the capacity to shape a good deal of legislation at the committee stage, the issue areas where Democratic cohesion failed to hold are even more noteworthy.[17]

The Solid South

"Just how 'solid' is the 'Solid South'?" V. O. Key posed this question as the first step in a quest to discover the essentials of southern unity by identifying "those issues clothed with a compulsion toward solidarity." He discovered, by a small margin, that the average cohesiveness of southerners was higher than that of Republicans, nonsouthern Democrats, or all Democrats combined.[18] Applying Rice's index of cohesion, Key found southern Democratic senators to have had an average cohesion score of 60; nonsouthern Democrats, 52; and Republicans, 56.[19]

We utilize the same measure of cohesion. Recall that we focus on civil rights plus what might be called the core of the social democratic agenda: votes on

[17] The committee system, we further note, was a very porous filter. Substantial amending activity continually forced Democrats to confront potentially divisive issues on the floor and challenged southerners to defeat again measures that already had been eliminated at the committee stage. For a tightly reasoned discussion of how congressional committees shape and constrain the policy agenda, see James M. Snyder, Jr., "Committee Power, Structure-Induced Equilibria, and Roll Call Votes," *American Journal of Political Science* 36 (February 1992).

[18] Key, *Southern Politics*, 346-347, 348, 370.

[19] Key treats Senate and House votes in separate chapters. We have recalculated his data to combine his roll calls into a single data set in which we have given equal weight to each vote.

TABLE 1

Congressional Bloc Solidarity, 1933–1950: Index of Cohesion Scores of 70 and Above[a]

Votes (N)	*Southern Democrats*	*Nonsouthern Democrats*	*Republicans*
All (150)	45%	55%	45%
Non-civil rights (121)	40	58	41
V. O. Key's *Southern Politics* (873)[b]	45	30	39

[a] Index of cohesion measures the difference between the percentage of affirmative votes and the percentage of negative votes within the bloc.

[b] The period covered by this book is 1933–1945. For a discussion of Key's data set, see footnote 8.

alternative ways to structure the relationship between political authority and markets in capital and labor. On this set of issues so central to the qualities of Democratic party liberalism, our findings differ in a number of significant ways from Key's. We, too, detect three internally cohesive voting blocs, but their ordering is dissimilar. Southern Democrats recorded a cohesion score, 60, identical to the one reported by Key. Republicans scored 62. Our unforeseen result concerns nonsouthern Democrats, who proved the most cohesive group, with a score of 67.[20] At the core of the social democratic reform agenda, the standard representation of a solid South must be supplemented by an even more valid image of a united Democratic nonsouth.

Key was not content with overall cohesion scores; neither are we. With his summary findings in hand, he utilized his data to ask how often each of the blocs voted with cohesion above a threshold score of 70 (that is, one that reflected a positive or negative vote of 85 percent or more), and he sought to discover the properties of these highly solid votes. Applying this measure, he found the gap between southern and nonsouthern Democrats to be greater than that indicated by mean cohesion scores. Key's southern Democrats displayed very high togetherness 45 percent of the time, compared to just 30 percent for the nonsouthern Democrats, and 39 percent of the Republicans.[21]

Our findings differ. When we apply Key's approach to our six policy areas, we discover that each bloc voted with this level of high cohesion more of the time: 45 percent for southern Democrats, 45 percent for the Republicans, and a considerable 55 percent for the nonsouthern Democrats. Moreover, when we exclude the civil rights category to focus exclusively on the state-economy votes at the core of the social democratic agenda, the nonsouthern Democratic frequency

[20] These cohesion scores as well as the likeness scores reported give equal weight to each of our six issue areas rather than to each vote. When we exclude civil rights and only consider votes that directly concern government-market relationships, the nonsouthern Democratic score rises to 69 while that of the southern Democrats falls to 56 and the Republicans drop to 60.

[21] These figures represent the results we obtained when we combined Key's House and Senate votes into one data set, counting each vote equally. Key, *Southern Politics*, 370.

increases to 58 percent. In short, we have identified issues in which high cohesion voting was more common than usual; these policy votes united nonsouthern Democrats to an uncustomary extent. It seems reasonable to conclude that throughout the 1930s and 1940s, these Democrats constituted a steady core of support for social democratic policies. Thus, the fate of such initiatives depended on two factors: the relative size of this cohort and their capacity to find allies outside their ranks, especially in the southern wing of the party. Indeed, as the the nonsouthern Democratic bloc contracted in size as a result of significant electoral setbacks in the 1942 and especially in the 1946 congressional elections, the structural privileges of the South as a one-party unit within the Democratic party became increasingly significant.

Key examined more closely those Senate votes where southern Democratic cohesion was exceptionally high and in opposition both to their Democratic colleagues and to the Republicans.[22] He found only nine of 598 Senate roll calls that met this test to represent "southern solidarity in its most extreme form." Of these, seven were civil rights votes. The other two concerned whether the Works Progress Administration should pay locally prevailing wage rates. Key concluded that this quite small number of issues "on which the South stands solidly against both Republicans and nonsouthern Democrats . . . reflect[s] a common determination to oppose external intervention in matters of race relations."[23]

Unfortunately, Key did not examine votes characterized by unusually low southern cohesion, yet these departures from the norm are equally instructive: when was the Dixie bloc most divided? In order to see where the South was fragmented, we have applied the threshold test of a cohesion score of 70 to each issue area. Not surprisingly, we too find that high southern Democratic cohesion was most frequent on civil rights votes. In this policy domain, southern representatives achieved very high solidarity 69 percent of the time. However, in no other policy area did the southerners match the nonsouthern Democrats' high solidarity. Southern Democrats proved significantly less united than the nonsouthern Democrats in all areas but civil rights, and least united of all on labor questions, voting cohesively at the 70 plus level least often on questions that concerned unions and labor markets. This outlier status demands explanation just as much as the civil rights votes to which Key devotes so much attention.

Because Key searched exclusively for evidence of southern solidarity, the region's low cohesion on labor issues escaped his gaze. The relative lack of southern togetherness in this policy area indicates significant cross-pressures of party and constituency. Southern Democrats initially had no interest in supporting the pro-business, anti-labor impulse of most Republicans. They understood that labor issues were terribly important for the national party, and many southern

[22] Key, *Southern Politics*, 349–55.

[23] Ibid., 351–52. Key notes that "it is conceivable that in their opposition southern senators were moved by race considerations: Negroes on the WPA were thought to be receiving too much money."

TABLE 2

Policy Area Bloc Solidarity, 1933–1950: Index of Cohesion Scores of 70 and Above

Policy (N)	*Southern Democrats*	*Nonsouthern Democrats*	*Republicans*
Civil rights (29)	69%	41%	62%
Fiscal (11)	45	73	55
Planning (27)	59	70	44
Regulation (22)	36	41	45
Welfare state (24)	42	50	46
Labor (37)	24	59	30
All votes (150)	45	55	45

representatives, like other members of the party, resented business resistance to New Deal and Fair Deal initiatives. At the same time, the growth and extension of unions and ongoing efforts to nationalize labor markets posed very significant challenges to the South. If, as Gavin Wright argues, all the distinguishing differences between the South and the rest of the United States—racial segregation, low wage rates, farming methods, and the region's political economy—"have their roots in the separateness of the southern labor market,"[24] then southern representatives had to weigh their interest in a successful Democratic party coalition against threats to the integrity of that insular market.

Was the South a Reactionary Faction?

We first explore this question by examining the percentage of votes cast by southerners in favor of planning, regulation, expansive fiscal policies, welfare state programs, a national labor market and union prerogatives, and civil rights. In the first four of these policy domains the southern bloc proved nearly as supportive as nonsouthern Democrats. Not only was there no southern veto, the South voted by large margins to expand the role of the national state in economic affairs and to redress existing patterns of economic distribution in the direction of more equality. At the same time, southern congressional Democrats sought to restrict the political and economic capacities of two of the most important have-not groups in American life—African-Americans and the working class.

In light of the South's long history of asserting the rights of states against Washington, we had anticipated that southern Democrats would be much less inclined to favor planning proposals, because of the powers they confer on bureaucrats, and more inclined to favor business regulation, welfare state programs, or expansive macroeconomic policies. This expectation was not borne out. Southern Democrats backed planning as much or more than the other three types

[24] Gavin Wright, *Old South New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986), 8.

TABLE 3

Average Left Bloc Voting by Policy Area, 1933–1950

Policy (N)	*Southern Democrats*	*Nonsouthern Democrats*	*Republicans*
Civil rights (29)	10%	72%	77%
Fiscal (11)	81	87	22
Planning (27)	81	89	32
Regulation (22)	68	77	25
Welfare state (24)	73	84	30
Labor (37)	42	85	26
All votes (150)	54	82	37

of market interventions by the central state. Overall, they voted on the liberal side in these four categories by a mean percentage yes vote of 75 (a level of support close to the nonsouthern Democratic percentage of 84). By contrast, Republicans opposed these measures just about as strongly as southern Democrats endorsed them. Southern antipathy to national state authority focused very specifically on interventions into the region's race relations and labor markets. Otherwise, the region's representatives favored by significant margins virtually all the fiscal, regulatory, planning, and welfare state measures of the New Deal and Fair Deal. If it comes as no surprise that southern Democrats resisted civil rights legislation, it is their anti-labor voting that is most striking.

Bloc voting is coherent, Key rightly insisted, only when it is considered in relationship to the voting patterns of other blocs. To discover how alike the voting patterns were of the three possible bloc pairings in our six issue areas, we utilize Rice's measure of likeness. These scores help us not only to reevaluate the Republican-southern Democratic coalition, but to better identify those policies that united the regional wings of the Democratic party.

Treating each issue area equally, we find that southern Democrats and Republicans possessed a mean likeness score of 53, just four points higher than the likeness score of 49 for non-southern Democrats and Republicans. Southern Democratic and nonsouthern Democratic likeness was very much higher than either of these, with a score of 69. Overall, the wings of the Democratic party displayed relatively high similarity across the divide of region, notwithstanding the conventional claim of a Republican-southern Democratic, conservative coalition.

Our most striking findings result when we identify those policy areas where an overall likeness score of at least 70 appeared. With six policy areas and three voting blocs, there were eighteen such prospects, but only six instances of strong coalition voting. Four of these cases of high likeness joined southern and nonsouthern Democrats: roll calls concerned with planning, regulation, fiscal issues, and the welfare state.[25] The Democratic party voted virtually as a single unit on

[25] In fact, the likeness scores were remarkably high, in each case over 80.

TABLE 4

Congressional Coalitions by Policy Area, 1933–1950: Index of Likeness Scores[a]

Policy (N)	Southern Democrats and Republicans	Southern Democrats and Nonsouthern Democrats	Nonsouthern Democrats and Republicans
Civil rights (29)	32	38	73
Fiscal (11)	41	89	35
Planning (27)	49	89	42
Regulation (22)	52	87	47
Welfare state (24)	56	82	47
Labor (37)	73	56	39
All votes (150)	53	69	49

[a] Index of likeness subtracts from 100 the difference between the percentage of positive votes cast by each bloc.

these state-economy questions; its collective likeness score for these issues was an extraordinary 87. The legislative capacities of this liberal coalition depended on the balance of forces between the major parties.

By contrast, regional splits within the Democratic party took on strategic significance in the two other policy areas of civil rights and labor. Nonsouthern Democrats and Republicans achieved a 70 plus likeness score on race questions, the only issue arena to exhibit this kind of cross-party regional division. Because they could not muster majorities against this civil rights coalition, southerners dealt with their defensive quandary by controlling the legislative agenda and by utilizing the filibuster. Labor votes displayed their own distinctive coalition pattern, marked by high likeness for southern Democrats and Republicans. Over the entire period, the storied conservative coalition was confined to labor roll calls. Especially during the wartime and postwar congresses, this anti-labor coalition was able to make union organization more difficult and inhibit the development of a single national labor market.

In short, congressional voting was characterized by three coalitions—liberal, civil rights, and conservative—each of which was issue specific. In fact, in most of the contests that involved the three factional alignments, southern Democrats were the prevailing faction; their preferences were pivotal to the outcome; and in the single instance where they stood alone against northern Democrats and Republicans, their strategic positions within Congress gave them a series of procedural vetoes. Together, the liberal, conservative, and civil rights coalitions established the congressional foundations for postwar American politics and policy.

Unlike Key, who downplayed the existence of a conservative coalition, Hofstadter did not conduct a study of congressional voting to buttress his claim of a reactionary South. Thus, to provide an empirical surrogate for Hofstadter, we turn to the work of John Robert Moore, who arrived at conclusions similar to Hofstadter's on the basis of empirical research.

In fact, Key and Moore utilize an identical coalitional criterion. Both use a straightforward measure to identify conservative coalition votes as votes when more than half of the Republicans joined more than half of the southern Democrats to oppose the preferences of more than half of nonsouthern Democrats. Key found that just under 10 percent (54) of his Senate votes met the coalitional test. He also applied a more stringent guideline that required at least 70 percent of the southerners to join a majority of Republicans against a majority of nonsouthern Democrats; this measure further reduced the number of coalitional votes to 4 percent (26 roll calls). He utilized not only the low number of such votes but also their character to debunk the notion of a conservative alliance.[26]

Moore, in turn, argued that Key's inclusive universe of roll calls had the effect of underappreciating the extent and significance of the conservative coalition. Moore hypothesized that a focus on significant roll calls would reveal a higher incidence of coalitional, as opposed to party alignment, voting. To test this claim, he restricted his attention to 182 "significant" votes in the Senate from 1942 through 1945.[27] Of these, 24 percent displayed the coalition; and, of these, eight in ten secured Key's threshold of 70 percent southern voting cohesion.[28] "The [conservative] coalition," he concluded, "operated most frequently and most effectively on roll calls dealing with states' rights, agricultural interests, regulation of business, social welfare, labor, public works and resources development, taxation, education, and civil rights."[29]

This claim is very much at odds with our finding that a Republican-southern Democratic alliance appeared on labor questions exclusively.[30] We therefore replicated Key's and Moore's test of the stoutness of the coalition; that is, we examined the appearance of majority Republican and southern Democratic voting on the same side of an issue against the opposite voting pattern of the majority of nonsouthern Democrats, both for our universe of 150 roll calls and separately for each policy domain. Our aggregate findings are much closer to Moore's than to Key's: thirty-one roll calls, or 20 percent of our total, qualify as coalitional

[26] Key did not break his votes into policy categories. Rather, he claimed conservative coalition votes were a compound of diverse parts in which southern regional interests coincided with Republican preferences. By assimilating labor votes into the more inclusive and less focused category of agrarian interests in order to demonstrate the absence of a planter-big business basis for a conservative coalition, he marginalized the distinctive significance of roll calls on labor issues.

[27] John Robert Moore, "The Conservative Coalition in the U.S. Senate, 1942-1945," *The Journal of Southern History* 33 (August 1967). He defined these votes as those that achieved a midpoint score of at least .5 on William Riker's test for determining the significant value of congressional roll calls. Riker's measure identifies the significance of a roll call by a numerical coefficient arrived at from both the degree to which members of Congress participate in a given vote and by the degree to which the vote proves controversial. Riker, "A Method for Determining."

[28] When Moore included all the votes in his data set, as did Key, he found that coalition votes appeared 15 percent of the time.

[29] Moore, "Conservative Coalition," 375.

[30] Moore lists examples of coalition votes, but provides no systematic analysis of the content or frequency of the different issue categories.

TABLE 5

Southern Democratic-Republican Coalition, 1933–1950: Roll Calls with Majorities of Southern Democrats and Republicans in Agreement in Opposition to Nonsouthern Democratic Majority

Policy	*New Deal*	*Wartime*	*Postwar*	*All Roll Calls*
Civil rights (29)	29% (2)	8% (1)	11% (1)	14% (4)
Fiscal (11)	0	0	14 (1)	9 (1)
Planning (27)	0	0	11 (1)	4 (1)
Regulation (22)	0	0	14 (1)	5 (1)
Welfare state (24)	0	21 (3)	25 (1)	17 (4)
Labor (37)	11 (1)	60 (6)	67 (12)	51 (19)
All votes (150)	7 (3)	20 (10)	31 (17)	20 (30)

votes. Of these, however, nearly two in three (20) were labor votes. The next highest category was the welfare state, where just 16 percent of the votes qualified. Outside the domain of labor, the coalition appeared only 7 percent of the time, which is less frequently than Key found to be the case across his entire universe of roll calls.

The conservative coalition was issue specific. Aside from labor questions, southern representatives did more than reject conservative Republican positions; they joined their nonsouthern colleagues to support much of the party's social democratic agenda with a level of enthusiasm appropriate to a poor region with a heritage of opposition to big business and a history of support for regulation and redistribution. But with their resistance to civil rights, southerners perpetuated a "progressive" coalition that was inherently racist; and their negative tilt on labor questions precluded a social democratic breakthrough for the Democratic party.

From a Structural to a Behavioral Veto

In the 1930s and 1940s, southern representatives possessed a structural veto over Democratic party policy aims. Over the course of the New Deal, wartime, and postwar congresses, their utilization of this potential increased steadily. Just 10 percent of the cases of conservative coalition voting, focusing mainly on labor issues, occurred from the New Deal 73rd through 75th Congresses, 35 percent from the wartime 76th through 78th Congresses, and 55 percent in the postwar 79th through 81st Congresses.[31] In the first period, just 9 percent of the labor roll calls produced coalitional votes. The proportion of instances increased to 58 percent in the middle period, and jumped further to 67 percent in the postwar Congresses. How might we best describe and understand this dramatic shift?

[31] During the first span, there were only three instances of coalitional voting, or just 7 percent of all the period's roll calls. The number of such votes jumped to 19 percent (11) in the middle period, and to 31 percent (17) in the last.

With the exception of a small number of visible obstructionists, southern members supported the New Deal's programs to stimulate economic growth and development. In turn, President Roosevelt and congressional leaders tailored New Deal legislation to southern preferences. They reached an implicit modus vivendi: southern civil society would remain intact and southern representatives would support the key elements of the administration's program. There would be no attempt to build a mass biracial base in the South; nor would even the most heinous aspects of regional repression, such as lynching, be brought under the rule of law. Further, sponsors fashioned key bills to avoid disturbing the region's racial civilization by employing two main policy instruments: the exclusion of agricultural and domestic labor, the principal occupational categories of blacks, from legislation, including the National Recovery Act, the Wagner Act, Social Security, and the Fair Labor Standards Act; and decentralized administration.[32]

This formula collapsed during the wartime Congresses. Southern pro-labor voting stopped. Southern representatives now joined Republicans to limit the rights of unions and restrict the scope of federal control over labor markets. Two factors account for this shift. First, war mobilization devalued the economic significance of the South. The region had little to offer the war effort at a time when both capital and labor in the North, including black labor, were critically important to military production. Accordingly, southern political elites understood their bargaining position had eroded. Second, wartime labor shortages and military conscription facilitated labor organizing and civil rights agitation. In this more uncertain moment of rapid economic and central state expansion, the South redrew the line between those aspects of the New Deal it would tolerate and those it could not, and it rejected even those arrangements that had permitted the South to vote with the national party in pre-1938 labor votes.

World War II and the role of black soldiers within the American military radically transformed the possibilities for civil rights initiatives by linking them directly to the imperatives and demands of national citizenship. As the war raged in Europe, in August 1940, some seventeen months before Pearl Harbor, Senator Robert Wagner of New York proposed to amend the enlistment section of the Selective Compulsory Service Act by prohibiting discrimination based on race, creed, or color. Apart from the South, Wagner's amendment secured virtually unanimous support. Two years later in August 1942, Congress took up the question of voting by members of the armed forces. The Senate considered two

[32] In 1930, 26 percent of all American workers and 51 percent of black workers labored in agriculture or domestic employment. The respective figures for the South (limited, in this instance, to the eleven states of the Confederacy) were 48 percent and 62 percent. Thus, it is clear that there was an important class as well as racial bias signaled by these exclusions from the purview of the New Deal's key legislative enactments. Detailed state-by-state data based on the 1930 Census appears in Robert C. Lieberman, "Race and the Organization of Social Policy" (Paper prepared for the Annual Meeting of the American Political Science Association, Chicago, September 1992).

amendments to a bill that provided for armed forces absentee voting. Aiming at the southern white primary system, the first of these amendments, proposed by a Connecticut Republican, John Danaher, proposed to extend its provisions to primary elections. The second, sponsored by Illinois Republican C. Wayland Brooks, sought to eliminate the poll tax from absentee voting. As in the Selective Service debate, in both of these instances southern opposition (8 of the 11 present voted no on the primary and 9 of 11 on the poll tax) was overcome to produce majorities for passage (28-25 for the Danaher amendment and 33-20 for the Brooks amendment). Likewise in the House in October 1942, southern opposition (76-14) to a bill to outlaw the requirement of a poll tax as a prerequisite for voting or registering to vote in federal elections was overwhelmed by the rest of the House, as the southerners who voted negatively were joined by only four other Democrats and four Republicans. The bill's supporters treated it as wartime legislation intended to prevent the disunity of citizens at a time of crisis. By contrast, most southerners saw it as an indirect attempt to transform the character of southern representation and the racial civilization of the South itself. While the bill subsequently failed to overcome a filibuster in the Senate, its near passage shook the South.

The next time the poll tax was taken up in the House, in May 1943, southern members accused organized labor of being the nefarious behind-the-scenes actor stimulating support for the legislation. This meddling, Mississippi's Jamie Whitten cautioned, will "make it much more difficult for us who consider ourselves liberals in the South as we struggle to free the poor people in the South and admit them to the economic life of the region and to a participation in its political processes."[33] Such anti-labor demonology was stimulated by the multiracial character of many (especially CIO) unions, their support of civil rights bills, and by the wartime growth in southern labor union membership.

During the 1930s, trade unions began to make inroads in the South, with the establishment of significant labor strongholds in a number of industries, including meat packing, oil refining, the docks, and metal mining, as well as steel and coal. Nonetheless, compared to the rest of the country, the growth of the CIO in the South was relatively modest. Southern union membership remained concentrated mainly in AFL unions and railway brotherhoods. By decade's end, the AFL had fewer than 400,000 southern members, and the CIO had done poorly as well, with under 150,000 members, plus another 100,000 miners in West Virginia. In the newer industries of automobile, rubber, and oil production, where the federation had great success elsewhere, it managed to enroll fewer than 25,000 southerners.

Against this backdrop, World War II had a galvanizing impact. Southern manufacturing jobs grew from 1,657,000 at the outbreak of the war to 2,836,000 at the wartime peak in 1943. With a newly tight labor market and with the

[33] *Congressional Record*, House of Representatives, 25 May 1943, 4883.

protection and encouragement provided by the Fair Employment Practices Committee and the National War Labor Board, union organizing became easier and wage differentials between blacks and whites grew less stark. Signs of bracing and threatening change now could be found in the most unlikely places. The Textile Workers Union of America, a CIO affiliate, succeeded in organizing the immense Dan River, Virginia plant; this, the country's largest cotton mill, had been the site of many bitter defeats. By the end of the war, one in six members of the population of Gadsden, Alabama belonged to a CIO union.[34] To be sure, these various union gains should not be exaggerated. When World War II concluded, there were still considerable gaps between North and South; in 1946, only 20 percent of the South's workers in textile plants, the region's largest industry, were in unions compared with 70 percent in the North. But the direction of change and the potential for union gains in the future challenged the isolation of the southern labor market and provoked southerners in Congress to battle organized labor.[35]

Under these conditions, the anxieties of southern representatives heightened, and the tacit understandings that had governed southern-New Deal relations with respect to votes on labor during the New Deal Congresses could not be sustained. Southern members now adamantly refused to support pro-labor bills, and they began to vote to restrict the newly secured rights of unions. In this second period, the fault line between the South and the rest of the Democratic party widened as labor market and race relations trends and issues conjoined.

If conservative coalitional voting with the Republicans now became characteristic of southern behavior on labor roll calls, the extent and depth of Democratic party cohesion in the other policy areas should not be gainsaid. During the wartime and postwar Congresses there were no issues apart from civil rights and labor where the likeness scores of southern and nonsouthern Democrats dipped below the high threshold of 70. In votes on the welfare state, regulation, planning, and fiscal matters, cross-regional Democratic similarity remained remarkably high.

Postwar Liberalism

How should we judge V. O. Key's rejection, apart from race, of Richard Hofstadter's charge that the South composed a reactionary faction? Hofstadter was too expansive in his portrayal of what he called southern conservatism, but Key too narrowly limited the southern veto to civil rights by failing to recognize the special significance of labor questions.

[34] This discussion draws on F. Ray Marshall, *Labor in the South* (Cambridge, MA: Harvard University Press, 1967), 182–243.

[35] Union successes during the war motivated many southern states to pass constitutionally dubious legislation to restrict them. These initiatives were unenforceable in light of provisions of the Wagner Act, but they did set a precedent for right to work laws passed by the various states under the protective umbrella of the 1947 Taft-Hartley Act. During the war many southern states also passed laws requiring the registration of unions. See ibid., 241–243.

TABLE 6

Congressional Coalitions by Policy and Period, 1933–1950: Index of Likeness Scores

Congress	Policy	Southern Democrats and Republicans	Southern Democrats and Nonsouthern Democrats	Nonsouthern Democrats and Republicans
New Deal	Civil rights	35	40	65
	Fiscal	18	98	16
	Planning	31	92	26
	Regulation	47	94	47
	Welfare state	40	93	44
	Labor	69	70	40
	All votes	45	79	44
Wartime	Civil rights	32	41	79
	Fiscal	31	92	40
	Planning	51	89	48
	Regulation	77	90	78
	Welfare state	61	79	51
	Labor	77	48	51
	All votes	55	68	58
Postwar	Civil rights	29	32	70
	Fiscal	49	87	36
	Planning	60	87	46
	Regulation	46	73	28
	Welfare state	59	76	35
	Labor	74	54	33
	All votes	56	64	41

After the successive crises of the Great Depression and World War II, relationships between the state and the economy and between the state and its citizens were redesigned in most western countries within the framework of a new international political economy in the hope that formulas could be discovered to combine liberty and prosperity, democracy and capitalism. This burst of institutional creativity sought effective space between the classical liberal order that had collapsed and the anti-liberal formulas of fascism and communism. It drew on a finite repertoire of options for the organization of markets and the definition of citizenship under the rubrics of planning, regulation, the welfare state, fiscal and monetary policy, corporatism, and representation by different types of interest groups and political parties. So, too, in the United States. In this period, the complex and diverse legacies of the New Deal were sorted out in a context of massively enhanced state capacity. In the Untied States, the war had provoked a fiscal revolution and bureaucratic growth to create a potent central state apparatus; abroad, the United States was incontestably dominant in economic and geopolitical affairs. In this setting, the United States possessed a range of plausible alternatives for constructing ties between the state, economy, and society.

The period's European social democratic movements privileged the linkage between left-wing political parties and unions. They promoted policy formulas that permitted labor movements to trade the costs of austere wage gains for recognition by and within the state as a fundamental social class and for politically guaranteed social benefits. In the United States, the Democratic party in the 1940s proved incapable of brokering this kind of social democratic bargain. As a consequence, a labor movement that appeared to aspire to the status of such arrangements in the late 1930s and early 1940s reduced its ambitions to those of an interest group (albeit a very important one) in national politics. It pushed for expansive fiscal policies to underpin the collective bargaining goals of securing high wages and strong fringe benefit packages in lieu of a social wage, an integrated labor market, incentives to organize the unorganized, and an institutionalized corporatist role. In the near term, at a time of American economic hegemony and of robust growth in large manufacturing industries, labor prospered. In longer perspective, it is now clear that the place crafted for labor in the 1940s has produced a fateful, perhaps fatal contraction for the labor movement.

"The American Liberal today," D. W. Brogan observed in 1957 from the distance of Cambridge University, "is confronted first of all by the memory of something that did not happen": the development of coherent social democratic programs and organizations. Elsewhere in the West, he observed, the democratic Left had created parties committed to strong political control over capitalist development, labor movements insistent on being recognized on a par with business in corporatist bargaining structures, and coalitions of workers and farmers as bases of political mobilization. The American situation was different in each respect. "The American Liberal has not enough belief in the state to want it to run the economy or in the businessman to want him to run it uncontrolled." The labor movement had reduced the scope of its national political ambitions, and, instead, was giving priority to aggressive collective bargaining in large industries; "the powerful unions have largely contracted out of the state system." And a potential alliance between workers and farmers was distorted by sectionalism and race. "Here," Brogan noted, "the Liberal conscience is most deeply touched and his political behavior seems (to the unfriendly outsider) most schizophrenic. The representative Liberal is a Democrat, or an ally of the Democrats, but in the ranks of 'the Democracy' are most of the most violent enemies of the integration of the Negro into the American community. This is no doubt accidental; it arises from the localization of the most acute form of the colour problem in the region where the Democratic party is traditionally strongest. The necessity for holding the party together makes for strange bedfellows and strange deals."[36]

Focusing on these strange bedfellows and strange deals has proved helpful to understanding why in the late 1940s the American labor movement turned away from the public realm and why the Democratic party was able to coalesce in

[36] D. W. Brogan, "American Liberalism Today" in H. C. Allen and C. P. Hill, eds., *British Essays in American History* (New York: St. Martin's Press, 1957), 320, 323, 326.

support of a liberal but not a social democratic program. The key to both traits was the Democratic party's inability to find a politically acceptable role for the labor movement as a national policy actor. The disappearance of southern tolerance for policies to promote labor organization and develop a national framework for labor markets impelled the more social democratic American options to the political periphery. Instead, the excision of labor thrust the combination of relatively noninterventionist fiscal policies and interest group pluralism to the political center.

The contours of postwar American politics and the unrealized social democratic tendencies of the New Deal and Fair Deal have been accounted for by most scholars either by invoking durable features of American political development, such as the constraints of Lockean ideology and institutional fragmentation and the limits these have imposed on an activist state, or by short-term situational analyses of such matters as presidential tactics or the results of this or that congressional election. By elaborating on what Hofstadter called the southern veto, we have highlighted a critical factor accounting for the resolution of the period's options: the limited place for labor in the American postwar settlement. Our approach thus joins two quite different time lines by exploring how the division between North and South that has been so fundamental in American history became an integral part of the encounter between competing visions of how the state should be linked to the society and to the economy during and especially after the New Deal. In joining structural and contingent elements, our account treats purely situational and ad hoc approaches as inadequate and rejects the idea that all roads in American history necessarily led to the postwar reassertion of American exceptionalism.

The South's veto, we discovered, neither was an all-inclusive rejection of liberalism in favor of conservatism, nor was it limited to questions of civil rights. Rather, the choices made by southern Democrats in the issue area of labor account not only for why the Democratic party's social democratic impulses were thwarted and the importance of the labor movement in politics reduced in scope; but they also provide a basis for understanding why the party was able to find a coherent policy stance of the kind described by Brogan. The South's veto did more than divide the Democratic party from time to time. It also specified the basis on which a party alliance could be forged. If the South was prepared to block the national party on some issues, principally those that concerned race and labor, solidarity between the regions nonetheless could be achieved on terms more acceptable to the South. By discovering just such common ground, the Democratic party in the 1940s defined the landscape and moral geography of postwar American liberalism.*

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APPENDIX

Date	Bill No.		Category	Subject
4/21/33	H.R. 4606	H	Social welfare	Expand work-relief eligibility
4/25/33	H.R. 5081	H	Planning	TVA
5/17/33	H.R. 5081	H	Planning	TVA/Conference Report
5/26/33	H.R. 5755	H	Planning	NIRA
6/8/33	H.R. 5755	S	Labor	Limit implications of NIRA
6/9/33	H.R. 5755	S	Planning	NIRA
5/4/34	H.R. 9323	H	Regulation	Regulate securities market/S.E.C.
5/12/34	S. 3420	S	Regulation	Regulate securities market/S.E.C.
3/21/35	H.J.R. 117	S	Regulation	Restores antitrust laws under NIRA
4/19/35	H.R. 7260	H	Social welfare	Social Security Act
4/19/35	H.R. 7260	H	Social welfare	Social Security Act/increase appropriations
4/26/35	S. 24	S	Race	Anti-Lynching Bill
5/1/35	S. 24	S	Race	Anti-Lynching Bill/to adjourn
5/9/35	H.R. 7617	H	Regulation	Regulate banking
5/16/35	H.R. 1958	S	Labor	Wagner Act/add anti-intimidation clause
6/7/35	S.J.R. 113	H	Planning	Transfer NIRA powers to FTC
6/7/35	S.J.R. 113	H	Planning	Extend NIRA
6/11/35	S. 2796	S	Regulation	Public Utilities Holding Act/"death sentence"
6/11/35	S. 2796	S	Regulation	Public Utilities Holding Act/divestment procedure
6/11/35	S. 2796	S	Regulation	Public Utilities Holding Act/passage
6/19/35	H.R. 7260	S	Social welfare	Social Security Act
7/2/35	S. 2796	H	Regulation	Public Utilities Holding Act/enacting clause
7/2/35	S. 2796	H	Regulation	Public Utilities Holding Act/recommittal
7/2/35	S. 2796	H	Regulation	Public Utilities Holding Act/passage
8/24/35	S. 2796	H	Regulation	Public Utilities Holding Act/conference report
4/5/37	H.R. 4985	S	Labor	Disapprove of sit-down strikes
4/12/37	H.R. 125	H	Race	Anti-Lynching Bill/to discharge from Rules Committee
4/15/37	H.R. 1507	H	Race	Anti-Lynching Bill
5/12/37	H.R. 6551	H	Social welfare	Expand CCC eligibility
7/31/37	S. 2475	S	Labor	Fair Labor Standards Act/recommittal
7/31/37	S. 2475	S	Race	Amend Fair Labor Standards Act/Anti-Lynching
7/31/37	S. 2475	S	Labor	Fair Labor Standards Act/passage
8/13/37	H.R. 8202	H	Social welfare	Create Department of Welfare
12/17/37	S. 2475	H	Labor	Fair Labor Standards Act/recommittal
1/27/38	H.R. 1507	S	Race	Anti-Lynching Bill/to impose cloture
2/16/38	H.R. 1507	S	Race	Anti-Lynching Bill/to impose cloture
5/24/38	S. 2475	H	Labor	Fair Labor Standards Act/recommittal
5/24/38	S. 2475	H	Labor	Fair Labor Standards Act/passage
6/1/38	H.J.R. 679	S	Planning	National Resources Committee/increase appropriations
6/2/38	H.J. Res. 679	S	Fiscal	Increase work relief appropriations
6/14/38	S. 2475	H	Labor	Fair Labor Standards Act/conference report
3/31/39	H.J.R. 246	H	Social welfare	Reduce work relief appropriations
7/10/39	H.R. 6635	H	Social welfare	Liberalize SSI benefits
7/11/39	H.R. 6635	S	Social welfare	Increase welfare appropriations
7/11/39	H.R. 6635	S	Social welfare	Increase Social Security appropriations
7/12/39	H.R. 6635	S	Social welfare	Encourage states to provide old-age benefits
7/13/39	H.R. 6635	S	Social welfare	Mandate states to provide minimum old-age benefits
7/26/39	S. 2009	H	Regulation	Unify ICC regulations/recommittal

continue

APPENDIX, *continued*

Date	*Bill No.*		*Category*	*Subject*
7/26/39	S. 2864	S	Social welfare	Extend work-relief eligibility
1/10/40	H.R. 801	H	Race	Anti-Lynching Bill
2/6/40	H.R. 7922	S	Planning	National Resources Committee/decrease appropriations
2/6/40	H.R. 7922	S	Planning	National Resources Committee/appropriation
3/28/40	H.R. 9007	H	Social welfare	Increase appropriations for NYA
4/12/40	H.R. 7922	H	Planning	National Resources Committee/increase appropriations
5/9/40	S. 2009	H	Regulation	Unify ICC regulations/recommittal/reduce rates
5/27/40	S. 1970	S	Labor	Eliminate oppressive labor practices
6/7/40	H.R. 9195	H	Labor	Amend NLRA/weaken board and enforcement
6/19/40	H.R. 10039	S	Fiscal	Reduce government expenses
8/26/40	S. 4164	S	Race	Prohibit discrimination in draft
9/7/40	H.R. 10132	H	Planning	Require firms to produce war materiel
1/31/41	H.R. 2788	H	Fiscal	Reduce government appropriations
5/19/41	H.R. 2476	S	Regulation	Reduce antitrust enforcement appropriations
6/13/41	H.J.R. 193	H	Social welfare	Extend work-relief eligibility
6/19/41	H.J.R. 193	S	Labor	Prevent centralization of work relief administration
7/10/41	S. 1524	H	Labor	National defense labor disputes/strike arbitration
8/5/41	S. 1579	H	Planning	Presidential requisition of war materiel
11/28/41	H.R. 5990	H	Planning	Price controls
12/3/41	H.R. 4139	H	Labor	Amend Vinson Anti-Strike/restrict right to strike
1/27/42	H.R. 5990	S	Planning	Price controls
4/7/42	H.R. 6868	S	Regulation	Strike profit limit on Defense contracts
6/11/42	H.J.R. 324	H	Social welfare	Limit relief appropriations/share burden with states
6/26/42	H.R. 7181	S	Social welfare	Continue CCC appropriations
6/30/42	H.R. 7181	H	Social welfare	Continue CCC appropriations
8/25/42	H.R. 7416	S	Race	Armed Forces absentee voting in primaries
8/25/42	H.R. 7416	S	Race	Prohibit poll tax in Army absentee voting
9/30/42	S.J.R. 161	S	Planning	Wage and price controls
10/13/42	H.R. 1024	H	Race	Prohibit poll tax in presidential voting
11/23/42	H.R. 1024	S	Race	Anti-Poll Tax Bill/to impose cloture
5/4/43	S. 796	S	Labor	War labor disputes/restrict executive control over
5/5/43	S. 796	S	Labor	War labor disputes/strengthen WLB
5/25/43	H.R. 7	H	Race	Anti-Poll Tax Bill
5/27/43	H.R. 1762	S	Planning	Nat'l Resources Planning Board/increase appropriations
5/27/43	H.R. 1762	S	Planning	Nat'l Resources Planning Board/decrease appropriations
6/4/43	S. 796	H	Labor	War labor disputes/Labor Dept. certifies strike
6/4/43	S. 796	H	Labor	War labor disputes/Gov't operates plants
6/18/43	H.R. 2968	H	Planning	Only businessmen in OPA
6/25/43	S. 796	S	Labor	War labor disputes/override veto
6/28/43	H.R. 2935	H	Social welfare	Continue NYA appropriations
7/1/43	H.R. 2935	H	Social welfare	Expand NYA eligibility
10/20/43	S. 637	S	Race	Prohibit discrimination in spending of fed. education funds
1/18/44	H.R. 3667	S	Fiscal	Restrict mineral depletion allowances
3/24/44	H.R. 4070	S	Race	Retain FEPC funding
5/15/44	H.R. 7	S	Race	Anti-Poll Tax Bill/to impose cloture
6/20/44	H.R. 4879	S	Race	Strike FEPC funding
6/20/44	H.R. 4879	S	Race	Provide for FEPC appeals
6/20/44	H.R. 4879	S	Race	Limit black FEPC employment

continued

APPENDIX, *continued*

Date	Bill No.		Category	Subject
3/13/45	H.R. 1964	S	Planning	Public Works planning/increase appropriations
6/11/45	S.J.R. 30	S	Planning	Extend price control
6/12/45	H.R. 7	H	Race	Anti-Poll Tax Bill
6/26/45	H.R. 3199	S	Labor	USES/increase appropriations
6/28/45	S.J.R. 30	S	Planning	Extend price control
6/30/45	H.R. 3368	S	Race	Retain FEPC funding
6/30/45	S.J.R. 30	H	Planning	Extend price control
9/19/45	S. 1274	S	Labor	USES/return uses to states
9/26/45	S. 380	S	Fiscal	Full Employment Act
12/11/45	H.R. 407	H	Labor	Consider repeal of War Labor Disputes Act
1/29/46	H.R. 4437	H	Labor	USES/return uses to states
2/6/46	S. 380	H	Fiscal	Full Employment Act/conference report
2/7/46	H.R. 4908	H	Labor	Fact-finding boards in labor disputes
2/21/46	H.R. 3370	H	Race	Prohibit lunch funds to segregated schools
2/26/46	S. 962	S	Social welfare	Reduce school lunch program appropriations
3/6/46	H.R. 4761	H	Regulation	Regulate real estate speculation
6/25/46	H.R. 4437	S	Labor	USES/disallow fed. operation of state USES offices
6/25/46	H.R. 4437	S	Labor	USES/disallow fed. discretion over USES
7/1/46	H.J.R. 371	H	Planning	Extend price control
7/12/46	H.J.R. 371	S	Planning	Extend price control
8/1/46	H.J.R. 390	S	Social welfare	Reduce FSA maternal and child appropriations
3/21/47	H.R. 2157	S	Labor	Increase minimum wage
5/7/47	S. 1126	S	Labor	Taft-Hartley/restrict industry-wide bargaining
5/8/47	S. 1126	S	Labor	Taft-Hartley/oversight of union welfare funds
5/9/47	S. 1126	S	Labor	Taft-Hartley/strike closed shop provisions from NLRA
6/17/47	H.R. 1	H	Fiscal	Override veto on Tax Reduction Bill
6/20/47	H.R. 2030	H	Labor	Taft-Hartley/override veto
6/23/47	H.R. 2030	S	Labor	Taft-Hartley/override veto
6/30/47	H.C.R. 49	S	Labor	Reorganization Plan No. 2/transfer USES to Labor
7/12/47	H.R. 3950	S	Fiscal	Cyclic tax planning
7/21/47	H.R. 29	H	Race	Anti-Poll Tax Bill
12/18/47	S.J.R. 167	S	Regulation	Strike exemptions from antitrust laws
2/24/48	S. 2182	S	Regulation	Remove rent controls in certain areas
3/16/48	S. 2162	S	Regulation	Rent controls/strike enacting clause
3/16/48	H.C.R. 131	S	Labor	Reorganization Plan No. 1/transfer USES to Labor
6/7/48	S. 2655	S	Race	Exempt servicemen from poll tax
8/4/48	H.R. 29	S	Race	Anti-Poll Tax Bill/to adjourn
3/22/49	H.R. 1731	S	Regulation	Allow cities to decontrol rents
4/21/49	S. 1070	S	Planning	Public housing projects' referenda
4/21/49	S. 1070	S	Race	Prohibit discrimination in public housing
6/30/49	S. 249	S	Labor	Subordinate state labor law to federal
7/26/49	H.R. 3199	H	Race	Anti-Poll Tax Bill
7/27/49	H.R. 4177	S	Fiscal	Increase BoB appropriations
7/27/49	H.R. 4177	S	Fiscal	Increase CEA appropriations
8/16/49	S.R. 147	S	Social welfare	Reject creation of Dept. of Welfare
8/17/49	S.R. 151	S	Labor	Disapprove transfer of USES to Labor
8/30/49	S. 653	S	Labor	Minimum wage exemptions
9/29/49	H.R. 1689	S	Fiscal	Balance budget by 1950

continued

APPENDIX, *continued*

Date	*Bill No.*		*Category*	*Subject*
10/3/49	S. 2116	H	Planning	Public Works Planning
10/14/49	S. 1000	H	Regulation	FTC/recommittal
2/23/50	H.R. 4453	H	Race	Prohibit employment discrimination
6/12/50	S. 3181	S	Regulation	Extend rent controls
6/20/50	H.R. 6000	S	Social welfare	Include needy disabled under Social Security
8/21/50	S. 3936	S	Planning	Price and wage controls

EXHIBIT 30

Lori Jordan Isley, WSBA # 21724
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THE HONORABLE MICHAEL G. McCARTHY

7 pages

YAKIMA COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER Defendants, and WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenors.	No. 16-2-03417-39 SUPPLEMENTAL DECLARATION OF JOACHIM MORRISON IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Joachim Morrison, declare under penalty of perjury under the laws of the state of Washington and the United States that the foregoing is true and correct:

1. I am one of the attorneys for the Plaintiffs in this matter.

2. I obtained the legislative history from the Washington State Archives and the Washington State House of Representatives in regard to 1975 legislation to amend to the Minimum Wage Act.

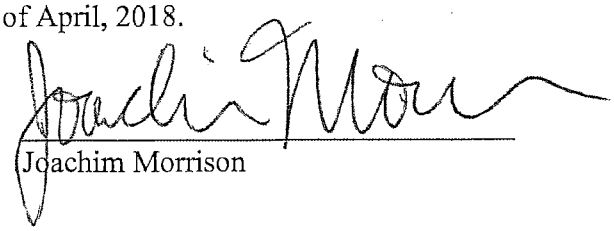
3. Attached as Exhibit 9 is a true and accurate copy of two emails I received from researchers at the Washington State Archives and the Washington State House of Representatives.

4. Page one of Exhibit 9 is an email from Maureen Mueller, a supervisor who is responsible for providing official recordings from the Washington State House of Representatives. Ms. Mueller sent an mp3 attachment of the February 19, 1975 House of Representatives Floor Debate.

5. Attached as Exhibit 10 is a true and accurate copy of an email dated March 2, 2018 demonstrating that all counsel were provided with a the same mp3 recording of the February 19, 1975 Floor Debate that I received from Ms. Mueller.

6. Page two of Exhibit 9 is an email from Emily Venemon a research assistant with the Washington State Archives who provided multiple pdf documents from the House and Senate "bill files" for HB 32 from 1975.

Executed and dated this 26th day of April, 2018.



Joachim Morrison

Columbia Legal Services
6 South Second Street, Suite 600
Yakima, WA 98901
(509) 575-5993

EXHIBIT 9

Joe Morrison

From: Mueller, Maureen <Maureen.Mueller@leg.wa.gov>
Sent: Tuesday, March 21, 2017 1:04 PM
To: Joe Morrison
Subject: RE: HB 32 - 1975 floor debates - Feb 19 & 20
Attachments: HB 32 1975 HOUSE JOURNAL PAGES 2-19-75 AND 2-20-75.pdf; HB 32 DEBATE FEB 19 1975.mp3

Hi Joe,

I have attached the audio for HB 32 for the February 19, as well as scanned journal pages that correspond to the audio for both the 19th and 20th. Due to the size of the audio files, I will send the audio for February 20 in a separate email.

Let me know if you have any trouble with the files.

Maureen Mueller
House Journal Clerk & Workroom Supervisor
Washington State House of Representatives
360-786-7781

From: Joe Morrison [mailto:joe.morrison@ColumbiaLegal.org]
Sent: Monday, March 20, 2017 1:49 PM
To: Mueller, Maureen <Maureen.Mueller@leg.wa.gov>
Subject: RE: HB 32 - 1975 floor debates - Feb 19 & 20

Joe Morrison

From: Diana López Batista
Sent: Tuesday, March 07, 2017 2:29 PM
To: Joe Morrison
Cc: Rachael Pashkowski
Subject: FW: Legislative history
Attachments: 1975 HB 32 (HOR) 1.PDF; 1975 HB 32 (HOR) 2.PDF; 1975 HB 32 (SEN).PDF

Attached are the audios.

From: Archives - Research [mailto:Research@sos.wa.gov]
Sent: Thursday, March 10, 2016 3:40 PM
To: Diana López Batista
Subject: RE: Legislative history

Dear Diana,

Thank you for contacting the Washington State archives. Here are copies of the bill files we have already scanned for this bill, and here are links to the House Labor Committee audio online:

- 1/17/75: http://www.digitalarchives.wa.gov/Record/View/BB8306C462EDC7F2A5BFB7E00546D594
- 1/24/75: http://www.digitalarchives.wa.gov/Record/View/E47BC7A7FC8E5511541FFCD4EAE4C39F

The Senate committee hearings haven't been digitized yet. If you are interested, I can provide you with a copy fee estimate.

Please let me know if you have any further questions,

Emily Venemon
Washington State Archives
Research Services
1129 Washington St. SE
PO Box 40238
Olympia, WA 98504
Phone: (360) 586-1492
Business Hours: Monday to Friday 8:30AM to 4:30PM

EXHIBIT 10

Joe Morrison

From:	Lori Isley
Sent:	Tuesday, April 10, 2018 3:08 PM
To:	Joe Morrison
Cc:	Cheli Bueno
Subject:	FW: RE: Martinez-Cuevas v. Deruyter Brothers Dairy, Inc. - Case No. 16-2-03417-39 - Additional Filing re Pls' Motion for Summary Judgment
Attachments:	18 0302 Decl of Translation of Decl of Jose Martinez-Cuevas ISO Pls' SJ.pdf; HB 32 DEBATE FEB 19 1975.mp3

From: Elvia Bueno
Sent: Friday, March 2, 2018 2:56 PM
To: John Nelson (john.nelson@foster.com) <john.nelson@foster.com>; milt.rowland@foster.com; tim.oconnell@stoel.com
Cc: Pam McCain <pam.mccain@foster.com>; debbie.dern@stoel.com; Marc Cote <mcote@frankfreed.com>; hohaus@frankfreed.com; Lori Isley <Lori.Isley@ColumbiaLegal.org>; Joe Morrison <joe.morrison@ColumbiaLegal.org>
Subject: RE: Martinez-Cuevas v. Deruyter Brothers Dairy, Inc. - Case No. 16-2-03417-39 - Additional Filing re Pls' Motion for Summary Judgment

Counsel,

Attached please find the following pleading filed today in the above referenced case:

- Declaration of Translation of Declaration of Jose Martinez-Cuevas in Support of Plaintiffs' Motion for Summary Judgment.

Also attached is the recording which was referenced in the Declaration of Joachim Morrison in Support of Plaintiffs' Motion for Summary Judgment, Exhibit 2:

- HB 32 Bill Feb 19, 1975

Please let me know if you have any issues with the attachments.

Regards,

Elvia Bueno, Legal Assistant
Columbia Legal Services
Working Families Project Group

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elvia.bueno@columbialegal.org | www.columbialegal.org

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EXHIBIT 31

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THE HONORABLE MICHAEL G. McCARTHY

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7 pages

SUPERIOR COURT OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, vs. DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants, and WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenors.	No. 16-2-03417-39 PLAINTIFFS' RESPONSE TO INTERVENORS' MOTION TO STRIKE

I. INTRODUCTION

Intervenors Washington State Dairy Federation and Washington Farm Bureau filed a motion to strike portions of two declarations. Defendant DeRuyter Brothers Dairy, Inc. did not join the motion. This Court should deny the motion for two main reasons. First, all materials in the Declaration of Joachim Morrison in Support of Plaintiffs' Motion for Summary Judgment came directly from the Washington State Archives and the Washington State House of

Representatives, trusted and reliable sources. Thus, authenticity is not an issue. Out of an abundance of caution, Mr. Morrison attaches a supplemental affidavit demonstrating he received the materials from researchers at the Washington State Archives and the Washington State House of Representatives via email.[1] *Supplemental Declaration of Joachim, Morrison in Support of Plaintiffs' Motion for Summary Judgment* ¶¶ 2-6, Exhibit 9. Second, neither the Belcher Declaration nor the exhibits in the Morrison Declaration are being offered to interpret a statute. Thus, all case law cited by the Intervenors holding that it is inappropriate to submit declarations from legislators to assist a court with statutory interpretation is inapposite. Plaintiffs submitted the Morrison and Belcher declarations to demonstrate the power of the agricultural industry and its ability to kill or significantly water down legislation related to the Washington Minimum Wage Act, which is highly relevant to this challenge under the Washington State Constitution.

II. ARGUMENT

A. The Legislative History Referenced in and Included with the Declaration of Joachim Morrison Is Admissible.

Prior to addressing Intervenors' specific objections, Plaintiffs address Intervenors' incorrect statement that "only bill digests, reports, and analyses . . . make up proper evidence of legislative intent." *Intervenor Brief* at 5 & 6 (citing *State v. Hirschfelder*, 148 Wn. App. 328, 344 n.12, 199 P.3d 1017 (2009)). Intervenors are wrong. Washington courts have recognized that legislative history can also include testimony offered to a committee, drafting history, remarks and debate on the House floor, and remarks and debate in committee hearings. *Cosmopolitan Eng'g Grp., Inc. v. Ondeo Degremont, Inc.*, 159 Wn.2d 292, 304-06, 149 P.3d 666 (2006) (providing that testimony offered to a committee and drafting history, including materials from the Washington State Archives, were probative of legislative intent); *State v. Turner*, 98 Wn.2d 731, 735-37, 658 P.2d 658 (1983) (noting that changes made in bill revisions and comments laid to rest all doubts about legislative intent). All of the exhibits offered by the Plaintiffs fall into categories of legislative history that have been accepted by courts.

Indeed, Washington courts "may take judicial notice of the legislative history of a statute." *Tobin v. Dep't of Labor & Indus.*, 145 Wn. App. 607, 616 n.7, 187 P.3d 780 (2008)

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[1] Rule 56(e) gives a court discretion to permit affidavits to be supplemented.

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(citing ER 201(b)). Washington courts can and regularly do take judicial notice of documents, memoranda, and letters relating to the passage of a law even when the records are not in the official legislative file if the documents are "drafted prior to, or contemporaneously with, the passage of an act" because such documents have "value in the search for 'legislative intent.'" *Seattle Times Co. v. Benton Cnty.*, 99 Wn.2d 251, 255 n.1, 661 P.2d 964 (1983); *see also Knack v. Dep't of Ret. Sys.*, 54 Wn. App. 654, 665, 776 P.2d 687 (1989) (same).

1) Paragraph 4, Exhibit 2 – February 19, 1975 Audio Recording of House Floor Debate

Intervenors first object to paragraph 4 of the Morrison Declaration and the underlying exhibit – a short transcript of an official audio recording of the February 19, 1975 House Floor Debate. Intervenors claim "the source of the recording is not detailed," and thus it is "unauthenticated." *Intervenor Brief* at 5. Intervenors are wrong. First, Mr. Morrison's declaration clearly states he obtained the audio recording, as well as every other exhibit listed in his declaration, from the official legislative files of the Washington State Archives. *Morrison Decl.* ¶ 2. Mr. Morrison's supplemental declaration demonstrates he received the materials directly from the Washington State Archives and the Washington State House of Representatives via email. *Supplemental Morrison Decl.* ¶¶ 2-6, Exhibit 9. Those statements and emails are sufficient proof to authenticate the source of the records. *Int'l Ultimate v. St. Paul Fire & Marine*, 122 Wn. App. 736, 745-46, 87 P.3d 774, 781 (2004) (holding authentication requirement is met if proponent shows proof sufficient for a reasonable fact finder to find in favor of a document's authenticity).

Next, Plaintiffs provided a copy of *the entire February 19, 1975 audio recording* to Defendant and Intervenors when they filed their motion for summary judgment. *Supplemental Morrison Decl.* ¶ 5, Exhibit 10. While Plaintiffs only *transcribed* a small portion of the recording and labeled it as Exhibit 2, Intervenors had access to the entire recording with which they could not only verify Plaintiffs' transcription but also listen to all other portions of the recording.

Finally, Intervenors rely on *Western Telepage v. City of Tacoma*, 140 Wn.2d 599, 998 P.2d 884 (2000), but that case is inapposite. It merely holds that a court cannot rely on the testimony *of a lobbyist* to interpret the meaning of a statute. *W. Telepage*, 140 Wn.2d at 611 (holding that telephone company lobbyist declaration not allowed to interpret meaning of "two-

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way transmissions" under RCW 82.04.065).[2] Exhibit 2, a transcript of the portion of the audio recording that includes a statement of the author of the legislation, is not offered to prove legislative intent – i.e. what does the Minimum Wage Act mean. Instead, Plaintiffs offered the statement to demonstrate that the original bill, once it reached the floor of the House, had been significantly watered down due to the influence of the agricultural industry. *Plaintiffs' Motion for Summary Judgment* at 9. Thus, *Western Telepage* offers no guidance and should be ignored.

In light of the trusted source of all exhibits attached to the Morrison Declarations and the fact the Defendants were provided a complete copy of the audio recording, Exhibit 2 should not be stricken.

2) Paragraph 8, Exhibit 6 – Senator Morrison Amendment

Intervenors next object to Exhibit 6, an amendment proposed by Senator Sid Morrison to ensure that existing overtime exemptions in federal law be extended to the Washington Minimum Wage Act. *Intervenor Brief* at 5-6; *Morrison Decl.* Ex. 6 at 27. Senator Morrison was an agricultural grower from Zillah who successfully added *two* grower-friendly amendments to HB 32. *Id.* Ex. 5 & 6. Notably, Intervenors pose no objection to Exhibit 5, the first Morrison amendment that came from the same legislative file provided by the Washington State Archives.

Intervenors' primary objection appears to be that the document contains "entirely unattributed handwriting" and that the pages do not seem to be consecutive. *Intervenor Brief* at 5. Plaintiffs do not rely on any of the handwriting on Exhibit 6. The other objection is that the two pages do not seem to be related. Both pages were copied consecutively from the legislative archives and a close read of both pages shows they are tied together.

The first page of Exhibit 6 states it is the "Report of Free Conference Committee." *Morrison Decl.* Ex. 6 at 26. The report relates to "Engrossed Substitute House Bill No. 32 as amended by the Senate, conforming state minimum wage laws to federal laws." *Id.* It then lists which amendments were been adopted and those that were not. *Id.* At the bottom of the page it states, "We further recommend that the following Senate amendments be adopted." *Id.* It then references two amendments on "page 4" of the bill. *Id.* Below that are signature lines for

[2] Ironically, Intervenors are lobbyist organizations for the agricultural industry, and with their motion to strike, they seek to have the Court adopt their interpretation of legislative intent and to strike actual evidence of legislative intent in the Washington State Archives.

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members of the House and Senate, including a signature line for "Morrison." *Id.* On the second page of the exhibit it continues with one final amendment on "page 6" of the bill and states, "Amendment to Engrossed Substitute House Bill No. 32 by Senator Morrison." *Id.* at 27. The language of the Morrison amendment follows. *Id.* The identical language ended up in the final text of the legislation. *Morrison Decl.* Ex. 7 at 32.

Again, in light of the trusted source of this exhibits and the fact that it is clearly labeled "Amendment to Engrossed Substitute House Bill No. 32 by Senator Morrison" leaves little doubt of its authenticity. Thus, Exhibit 6 should not be stricken.

3) Paragraph 10, Exhibit 8 – Letter from Dr. David Spencer

Intervenors' final objection is to a letter from the legislative file of HB 32 from Dr. David Spencer from the Farm Workers Family Health Center in Toppenish. Dr. Spencer urged the House Labor Committee to pass House Bill 32 and reject amendments that "exclude farm workers" from protections "afforded everyone else." *Morrison Decl.* Ex. 8 at 35. Dr. Spencer further stated that increased wages would "impact [a farm worker's] entire life, including his health." *Id.* Again, this document was part of the entire legislative file for House Bill 32 obtained from a researcher at the Washington State Archives. *Morrison Decl.* ¶ 2.

Intervenors, themselves lobbyists, try to label Dr. Spencer as a "lobbyist" and claim his heart-felt letter is inadmissible, repeating their citation to *Western Telepage*, a case which does not apply here. *Intervenor Brief* at 6. Plaintiffs do not submit the letter of Dr. Spencer to assist the court with statutory interpretation. Plaintiffs submit the letter to demonstrate there were no reasonable grounds to exclude farm workers from overtime coverage, and *the only document in the legislative history related to health and safety* was on behalf of a doctor who regularly treated farm workers. *Plaintiffs' Motion for Summary Judgment* at 16-17. Neither Defendant nor Intervenors have pointed to any legislative history that rebuts Plaintiffs' primary argument that there are no reasonable grounds for the overtime exemption for agriculture.

B. The Declaration of Jennifer Belcher Is Admissible as it Is Not Offered to Assist this Court to Interpret a Statute.

Intervenors next object to the declaration of Jennifer Belcher on the ground that courts routinely strike declarations from legislators to prove "the meaning of a statute." *Intervenor Brief* at 6. All of the cases cited by Intervenors involve attempts by a party to submit declarations from

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legislators (and others) to buttress their interpretation of a statute. *See City of Yakima v. Int'l Ass'n of Fire Fighters, Local 469*, 117 Wn.2d 655, 676-77, 818 P.2d 1076 (1991) (rejecting affidavit of former legislator that was presented "to show legislative history and intent in enacting the Public Employees' Collective Bargaining Act"); *Pannell v. Thompson*, 91 Wn.2d 591, 596-97, 589 P.2d 1235 (1979) (rejecting legislator's affidavit that was presented to interpret funding allocation in legislative provision governing DSHS); *Eugster v. City of Spokane*, 118 Wn. App. 383, 407-11, 76 P.3d 741 (2003) (rejecting affidavits of several city attorneys and staff that were presented to assist with interpreting legislative history of city ordinance); *W. Telepage*, 140 Wn.2d at 610-11 (rejecting declaration from lobbyist that was presented regarding the interpretation of RCW 82.04.065). None of the cited cases apply here.

This is not a statutory interpretation case; this is a constitutional challenge. Here, the parties both agree that RCW 49.46.130(2)(g) exempts agricultural employers from paying overtime. Plaintiffs submitted the declaration of Jennifer Belcher to educate the Court about the power of the agricultural industry to block legislation that favors farm workers and the extraordinary efforts Ms. Belcher undertook to obtain minimum wage coverage outside the legislative arena. *Belcher Declaration* ¶¶ 4-17. Every paragraph in Ms. Belcher's declaration falls within her personal knowledge regarding the facts behind her legislative proposal, and the reason she chose to pursue the initiative process to achieve her goal. Because (1) Ms. Belcher's declaration is based on her personal knowledge and is relevant to Plaintiffs' constitutional challenge, (2) Plaintiffs have not offered it to interpret a statute, and (3) Intervenors have failed to cite a single case that supports striking the declaration in these circumstances, the Court should deny the motion to strike the declaration.

III. CONCLUSION

Plaintiffs respectfully request that the Court deny Intervenors' motion to strike portions of the declarations of Joachim Morrison and Jennifer Belcher.

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RESPECTFULLY SUBMITTED AND DATED this 26th day of April, 2018

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EXHIBIT 32

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THE HONORABLE MICHAEL G. McCARTHY

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SUPERIOR COURT OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants, and WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenors.	No. 16-2-03417-39 PLAINTIFFS' RESPONSE TO DERUYTER DEFENDANTS' MOTION TO STRIKE DECLARATION OF PAUL APOSTOLIDIS

I. INTRODUCTION

This Court should deny the DeRuyter Defendants' Motion to Strike the Declaration of Paul Apostolidis. Intervenors have not objected or joined the motion. In its discretion, this Court may take judicial notice of the legislative facts included in the Declaration of Paul Apostolidis. Moreover, Professor Apostolidis's declaration and attached curriculum vitae demonstrate he is qualified as an expert witness and his opinion is helpful to the Court in determining the relative

political powerlessness of predominantly Latina/o farm workers in Washington to obtain protections through the legislative process, which is relevant to, among other things, Plaintiffs' equal protection argument relating to intermediate scrutiny. The same materials lay the appropriate foundation for his opinion. This Court should exercise its broad discretion to consider the legislative facts included or, in the alternative, to find the expert opinion of Professor Apostolidis is admissible evidence.

II. BACKGROUND

Plaintiffs' filed the Declaration of Paul Apostolidis in support of their Motion for Summary Judgment and attached his curriculum vitae as Exhibit A. Plaintiffs rely on the declaration in support of their argument that if this Court does not find that strict scrutiny applies for the equal protection challenge, intermediate scrutiny should apply because groups that are recognized as "discrete and insular" minorities who are relatively powerless to protect their interests in the political process constitute a semi-suspect class. Plaintiffs' Motion for Summary Judgment at 21-22.

Professor Apostolidis is a tenured professor at Whitman College. Declaration of Paul Apostolidis ¶ 4. He received his education at Princeton University and Cornell University. *Id.* Ex. 1 at 12. Professor Apostolidis has been teaching for over twenty years, including on community-based research, and is the author of multiple books and articles on immigrant workers, the labor movement and other political topics. *Id.* at 12 & 16. He has been called upon to speak around the United States and the world and been recognized with numerous awards for his academic and community work. *Id.* at 14-17.

Professor Apostolidis's declaration primarily summarizes the research his undergraduate students conducted in a program he founded and supervised. *Id.* ¶ 2. The project has received national recognition and major funding. *Id.* ¶ 3. Oregon Public Broadcasting led a study to investigate political representation of Latinos emulating the research methods applied by the program. *Id.* ¶ 6. Finally, Professor Apostolidis gave the keynote address at the Council on Undergraduate Research at their national meeting to present on his model in recognition of the program's record of innovation and academic rigor. *Id.* ¶ 3.

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III. ARGUMENT

The Court has discretion to take judicial notice of the sociopolitical information summarized in the Declaration of Paul Apostolidis or, in the alternative, to find his expert opinion is admissible pursuant to the Rules of Evidence. The information is relevant to this Court's consideration of whether farm workers are a semi-suspect class who are relatively powerless to protect their interests in the political process. *See* ER 401 & 402. The findings summarized, primarily of undergraduate student researchers, under the supervision and direction of Professor Apostolidis, are not outweighed by the danger of unfair prejudice or confusion, and there is no jury to mislead. *See* ER 403. The declaration is admissible under these evidentiary rules.

A. The Court Should Take Judicial Notice of the Information Summarized in the Declaration of Professor Apostolidis.

As set forth in the Plaintiffs' Reply on Summary Judgment, the Court has discretion to take judicial notice of the information summarized in the declaration.

There are two types of judicial notice: judicial notice of adjudicative facts, which are the subject of Evidentiary Rule 201; and the less common, judicial notice of legislative facts. 5 Wash. Prac., Evidence Law and Practice § 201.16 (6th ed.). Legislative facts include social, economic, and scientific facts. *Wyman v. Wallace*, 94 Wn.2d 99, 102, 615 P.2d 452 (1980). "Under this doctrine, a court can take notice of scholarly works, scientific studies, and social facts." *Id.* As distinct from adjudicative facts which relate to the facts of a particular case, legislative facts do not change from case to case, accordingly "[h]istorical facts, commercial practices and social standards are frequently noticed in the form of legislative facts." *State v. Grayson*, 154 Wn.2d 333, 340, 111 P.3d 1183 (2005) (quoting *Korematsu v. United States*, 584 F. Supp. 1406, 1414 (N.D. Cal. 1984)). Trial courts as well as appellate courts may take judicial notice of legislative facts. *Grayson*, 154 Wn.2d at 340; *Wyman,* 94 Wn.2d at 102. Trial courts may also take judicial notice of legislative facts at summary judgment. *Cameron v. Murray*, 151 Wn. App. 646, 658-659, 214 P.3d 150 (2009).[1]

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[1] In *Cameron*, the Court also found that materials submitted to the trial court in connection with a motion for summary judgment cannot actually be stricken as is true of

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It is well within this Court's discretion to take judicial notice of the legislative facts summarized in the Declaration of Professor Apostolidis, and the Plaintiffs request the Court do so and deny the motion to strike.

B. The Declaration of Professor Apostolidis Is Admissible.

If for some reason the Court concludes the Declaration of Professor Apostolidis does not contain legislative facts, the Court should find his declaration is admissible expert opinion. "[T]rial courts are given broad discretion to determine the circumstances under which expert testimony will be allowed." *Johnston-Forbes v. Matsunaga*, 181 Wn.2d 346, 354, 333 P.3d 388 (2014). Even where the basis for admission is "fairly debatable" the trial court's decision will not be disturbed. *Id.* at 352.

There are four main rules of evidence that govern the use of expert witnesses:

> ER 702 generally establishes when expert testimony may be utilized at trial: 'If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.'
>
> ER 703 allows an expert to base his or her opinion on evidence not admissible in evidence and to base his or her opinion on facts or data perceived by or made known to the expert at or before the hearing. ER 704 allows an expert to testify on an ultimate issue the trier of fact must resolve. Finally, ER 705 indicates that an expert need not disclose the facts on which his or her opinion is based, although the court may require their disclosure and the expert may be subject to cross-examination on them.

Id. at 352-353. ER 704 permits an expert to testify on an ultimate issue the Court must resolve; here, the challenged declaration is relevant under the equal protection analysis to whether Latina/o farm workers constitute a semi-suspect class because of their relative political powerlessness. The DeRuyters have not requested additional disclosure of facts under ER 705.[2] Accordingly, the focus of admissibility is ER 702 and 703.

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evidence removed from consideration by a jury. *Id.* at 658. Division III cited *Cameron* with approval. *Keck v. Collins,* 181 Wn. App. 67, 82, 325 P.3d 306 (2014).

[2] The DeRuyters also object claiming that Plaintiffs' counsel failed to disclose the "pathbreaking statewide survey" by the Washington State Farmworker Housing Trust in 2008

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1. Professor Apostolidis is qualified and his testimony is helpful.

The two-part test to be applied under ER 702 is whether: (1) the witness qualifies as an expert and (2) the expert testimony would be helpful to the trier of fact. *State v. Cauthron*, 120 Wn.2d 879, 890, 846 P.2d 502 (1993).

Professor Apostolidis is qualified. He is a tenured professor at Whitman who received his education at Princeton and Cornell. He has been teaching for over twenty years and is widely published on topics related to immigrant workers, the labor movement and political under-representation. His work with students on community-based research has generated major funding and multiple universities have sought him out to present on his work. His declaration, which primarily summarizes "The State of the State for Washington Latinos," a research program of his students under his direction over approximately ten years, includes a range of topics related to the relative political power of Latinos: voting rights and political representation; political participation and civic engagement; education; income, housing and taxation; employment;[3] farm worker issues; and health care. This information is helpful to the Court's determination of whether Washington's predominantly Latina/o farm workers are a semi-suspect class for the purpose of equal protection analysis. This Court has wide discretion to determine the helpfulness of the information. *See Johnston-Forbes,* 181 Wn.2d at 355.

This Court is not required to apply the *Frye* test. "Testimony which does not involve new methods of proof or new scientific principles from which conclusions are drawn need not be subjected to the *Frye* test." *State v. Russell*, 125 Wn.2d 24, 69, 882 P.2d 747 (1994). Here, Professor Apostolidis is an experienced professor who directed and supervised his students' research on various political topics. The fact that his students conducted academic research under his direction does not render it "junk" or "novel" science. In *Acord v. Petit,* 174 Wn. App. 95, 110-11 (2013), Division III found the trial court was not required to apply the *Frye* test, where the expert who testified was well-educated and experienced, and the characterization of his

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when in fact it was provided by Plaintiffs as Exhibit 25. Declaration of Rachael Pashkowski, ¶ 29.

[3] Paragraph 13 which covers "Employment: Occupational Safety and Health," is based on Professor Apostolidis's own research as a scholar of political science. Apostolidis Decl. ¶ 2.

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opinions as junk science or novel was incorrect. As in *Acord,* the DeRuyters have not shown that the factual basis for the opinions in the declaration of Professor Apostolidis are inaccurate or that the conclusions drawn are "illogical, unfounded, or scientifically novel." *See id.* at 111. As an example, the DeRuyter Defendants assert that the conclusions in paragraph 6 regarding at-large voting and racial bloc voting are wrong and misleading. DeRuyter Defendants' Motion to Strike at 8. To the contrary, recent examples from Yakima and Central Washington confirm the findings that at-large voting systems systemically reduce the influence of the Latino vote and that racially polarized bloc voting exists. *See Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1385 (2014) (holding City of Yakima at-large voting system deprived Latinos of the right to elect representatives); Jim Brunner, *UW analysis finds "racial voting bias" in Gonzalez-Danielson race*, Seattle Times, Sept. 27, 2012, http://blogs.seattletimes.com/politicsnorthwest/2012/09/27/uw-analysis-finds-racial-voting-bias-in-gonzalez-danielson-race/ (last visited Apr. 25, 2018) (documenting deep racial polarization in voting practices particularly in Eastern and Central Washington). There is no basis to conclude the opinions of Professor Apostolidis are illogical, unfounded or novel.

Even if the Court applies the *Frye* test, the methods used by Professor Apostolidis are generally accepted in the community. He has received major funding and been nationally recognized for the academic rigor of the program. In addition, Professor Apostolidis directed and supervised the work of his students. There is nothing novel about a professor of political science, with particular expertise in the issue involved—here low-wage, Latino/a immigrant workers in Washington State—providing an opinion on the ability of that group to influence the political process based on research he supervised.

2. Professor Apostolidis has the necessary foundation to testify.

An expert may base his or her opinion on information not admissible in evidence and to base his or her opinion on facts or data perceived by or made known to the expert at or before the hearing. ER 703; *see also Johnston-Forbes*, 181 Wn.2d at 352. An expert is not always required to personally perceive the subject of his or her analysis. *Id.* at 357. "[A]n expert's testimony not based on a personal evaluation of the subject goes to the testimony's weight, not its admissibility." *Id.* (internal quotations and citation omitted). Here, Professor Apostolidis has

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described research findings under a program he founded, directed and supervised. The fact that his students led the research effort goes to the weight, not the admissibility of his testimony.

Consistent with framework provided in *State v. Ecklund,* 30 Wn. App. 313, 318, 633 P.2d 933 (1981), this Court should only disregard the opinion if the following two-part test is met: "(1) the expert can show only that he customarily relies upon such material, and (2) the data are relied upon *only* in preparing for litigation." (Emphasis added.) Neither are true here. Professor Apostolidis has shown that the academic community is engaged in community-based research methods and his program has received national recognition and validation from academic institutions at the highest levels of higher education. Moreover, "The State of the State of Washington Latinos" was not prepared for litigation. As in *Ecklund,* where the court found the testimony of a lab supervisor, which was based on a summary report compiled from the work of his technician, which the expert was responsible for reviewing, was admissible, this Court should find the opinion of Professor Apostolidis is admissible. *See id.* at 318.

IV. CONLCUSION

Plaintiffs' respectfully request that this Court deny the DeRuyter Defendants' Motion to Strike.

RESPECTFULLY SUBMITTED AND DATED this 26th day of April, 2018

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EXHIBIT 33

The Honorable Michael G. McCarthy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER BROTHERS DAIRY, INC., Defendant. WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenor-Defendants.	No. 16-2-03417-39 **INTERVENOR-DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

In Plaintiffs' Reply Memorandum in Support of Motion for Summary Judgment ("Plaintiffs' Reply"), Plaintiffs make no express response to Intervenors' Cross Motion for Summary Judgment (the "Cross Motion")—but a fair consideration of Plaintiffs' Reply[1] leads inexorably to the conclusion for all the reasons that Plaintiffs' Motion for Summary Judgment

[1] By virtue of the agreed briefing schedule adhered to by the parties, Plaintiffs had far more time than required by CR 56 to respond to Intervenors' Cross Motion for Summary Judgment. This reply is filed within the time frame established by CR 56(c).

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should be denied, the Cross Motion should be granted. Based on undisputed facts, Plaintiffs continue to ask the court to strip the legislature of the authority expressly delegated to it in our state's Constitution to enact economic legislation and to decide *how* to ensure workplace safety. Instead, Plaintiffs ask the court to engage in naked judicial activism and impose an overtime pay requirement for agricultural workers, which would be contrary to wage and hour law across the nation.

Intervenors have put forth undisputed facts and authority that establish the farm worker exemption survives both Plaintiffs' privileges and immunities and equal protection challenges under Art. I, § 12. Overtime pay is not a fundamental right, and, at the time of its enactment, the farm worker exemption was neither based on racial discrimination nor applied exclusively to agricultural workers who were members of a suspect class. The exemption is part of an extensive statutory scheme enacted pursuant to the legislature's lawmaking power to establish minimum wage standards for Washington workers across all industries. In enacting overtime laws, the legislature's purpose was to set minimum pay standards across all types of work. The numerous exemptions to overtime pay, including the farm worker exemption, involve a myriad of economic considerations. The legislature's economic considerations in passing the farm worker exemption easily survive the rational basis level of scrutiny.

Plaintiffs fail to present any genuine issue of material fact under the applicable standards to avoid summary judgment. Accordingly, Intervenors respectfully request that the court grant their Cross Motion for Summary Judgment and, accordingly, deny Plaintiffs' motion for summary judgment.

II. EVIDENCE RELIED UPON

In support of this reply, Intervenors rely upon the pleadings on file in this case.

III. ARGUMENT

Plaintiffs do not contest the high burden they must meet: to overcome the presumption that the farm worker exemption is constitutional, they must do so beyond a reasonable doubt.

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See City of Bellevue v. State, 92 Wn.2d 717, 720, 600 P.2d 1268 (1979); *Island Cty. v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998) ("[T]he legislative branch of government as a co-equal branch of government, which, like the court, is sworn to uphold the constitution."). Plaintiffs have not overcome the presumption of constitutionality by any standard, much less beyond a reasonable doubt.

A. Plaintiffs Have Failed To Submit Relevant Evidence To Create A Genuine Issue Of Material Fact.

Plaintiffs have not disputed the critical fact that at the time the farm worker exemption was enacted, 85% of farm workers were Caucasian. Declaration of Timothy J. O'Connell ("O'Connell Decl."), ¶ 4, Ex. C. *Plaintiffs offer no response at all to this now undisputed evidence.* Instead, Plaintiffs burden the court with a voluminous record of academic theories as to the supposed racial bias involved in the enactment of a different statute more than 20 years before the Washington Minimum Wage Act. Plaintiffs' Reply, at 9-12. These materials are irrelevant and have no bearing on whether Washington's farm worker exemption is unconstitutional. Historical analyses related to the Fair Labor Standards Act and its origins cannot be imputed to the thoughts and minds of the duly elected Washington legislators acting in a different place and time. Such historical and academic sources send the court down a path of academic hypotheses where no fair decisions can be made. Therefore, Intervenors respectfully urge the court to disregard Plaintiffs' submissions.

B. The Farm Worker Exemption Does Not Deny Farm Workers A Privilege Or Immunity.

The farm worker exemption easily survives Plaintiffs' privileges and immunities challenge. Plaintiffs have failed to satisfy the two-prong test required to establish that the farm worker exemption violates Art. I, § 12. First and foremost, not every distinction drawn by the legislature grants "a privilege or immunity under [the Washington] constitution." *Schroeder v.*

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Weighall, 179 Wn.2d 566, 581, 316 P.3d 482 (citing *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 812, 83 P.3d 419 (2004) ("*Grant Cty. II*")). Rather, Art. I, § 12 applies only to "fundamental rights." *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 778, 794-95, 317 P.3d 1009 (2014) (citing *Grant Cty. II*, 150 Wn.2d at 814). Second, even if the challenged overtime laws granted a privilege or immunity, Plaintiffs have completely failed to show that the legislature acted without any "reasonable ground" for granting such privilege or immunity. *Id.* (citing *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 145 Wn.2d 702, 731, 42 P.3d 394 (2002), *vacated in part by Grant Cty. II*, 150 Wn.2d at 791).

1. The agricultural overtime exemption does not implicate a fundamental right of state citizenship.

The crux of Plaintiffs' constitutional challenge is that overtime pay is a fundamental right. But Plaintiffs attempt to do so in only the most derivative of ways, through the untenable claim that Article II, Section 35 ("Art. II, § 35") of the Washington Constitution creates a fundamental right to overtime pay. However, Plaintiffs have failed to present any authority that actually supports their argument. That is because controlling authority directly opposes Plaintiffs' position.

To begin with, Art. II § 35 specifically delegates *to the legislature* the authority to determine the appropriate enforcement of the Constitution's requirement to protect workplace safety ("The legislature shall … fix the pains and penalties for the enforcement of the same."). The creation of the appropriate remedies to protect workplace safety are statutory rights entrusted to the legislature's sole power, authority, and discretion, and any such legislatively created rights are not fundamental rights. *See Ockletree*, 179 Wn.2d at 794-95 (A "right granted only at the discretion of the legislature is not a 'privilege' any citizen can assert."); *see also Schroeder*, 179 Wn.2d at 573 n.5 (citing *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902)). Plaintiffs are transparent that they would have the court ignore the entirety of Art. II, § 35. Plaintiffs' Reply, at 5 (Plaintiffs' analysis depends on "the first twenty-five words of article II,

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section 35."). Fatal to Plaintiffs' arguments, the last 11 words of Art. II, § 35 exist as well. Plaintiffs' argument is thus precisely contrary to Washington law. "It is a fundamental principle, applicable in the construing of all written laws, and especially in construing a document of the gravity of the Constitution, that, if possible, an effect must be given and a meaning accorded to *all* of the words used therein." *Chlopeck Fish Co. v. City of Seattle*, 64 Wash. 315, 322–23, 117 P. 232 (1911) (emphasis added); *State v. Pannell*, 173 Wn.2d 222, 230, 267 P.3d 349 (2011) ("[A] statute or constitutional provision should, if possible, be so construed that no clause, sentence or word shall be superfluous, void, or insignificant.") (citation and internal quotations omitted). Dispositive of Plaintiffs' theory, the legislature has, expressly, "fix[ed] the pains and penalties" for violations of the statutes related to workplace safety. RCW 49.17.180 (establishing fines ranging from $5,000 to $70,000 per violation). That the legislature chose to protect farm worker safety by enacting a regulatory scheme with extensive penalties for violations, rather than by an indirect method that may be more personally lucrative to Plaintiffs, is precisely the task assigned by our Constitution to the legislature. Therefore, Art. II, § 35 does not create any right in Plaintiffs whatsoever, fundamental or otherwise.[2]

More specifically, as discussed in Intervenors' Cross Motion, overtime pay provided in the MWA is a statutory right that exists only by the legislature's power and discretion to enact economic minimum employment standards. *See* RCW 49.46.005(1) (the legislature's purpose in enacting the MWA was "to establish a minimum wage for employees of this state to encourage employment opportunities within the state"); *see also* Cross Motion, at Section V.B.1. Not surprisingly then, no Washington court has declared the statutory right to overtime to be a fundamental constitutional right for any category of employees, and Plaintiffs have not presented

[2] Plaintiffs cite a constitutional reference guide discussing the framers' intent when they drafted the Washington Constitution. Plaintiffs' Reply, at 4-5. The alleged populist origins underlying Art. I, § 12 and Art. II, § 35 do not make overtime pay a fundamental right under a privileges and immunities analysis. Without substantive case authority, the court should not allow Plaintiffs' continued use of academic texts to alter the insufficient constitutional basis for overtime pay being a fundamental right.

any authority that even suggests Washington's appellate courts would entertain declaring rights created under the MWA are fundamental rights. *See* Cross Motion, at Section V.B.1.[3]

Finally, Plaintiffs have failed to offer any argument or authority to support how overtime pay can be a fundamental constitutional right when it did not exist for 70 years after statehood—more than half of Washington's history as a state. Cross Motion, at 6:9-8:16. Nor do Plaintiffs address how overtime may exist as a fundamental right for farm workers but not the other exempt occupations under RCW 49.46.130. *Id.*

Plaintiffs have failed to establish that overtime pay is a fundamental right and, therefore, have not satisfied the most critical requirement for their privileges and immunities challenge.[4]

2. The farm worker exemption exists with reasonable grounds.

Although the court may end its analysis for the reasons above, even if the court were to find a fundamental right to overtime, Plaintiffs have still failed to establish the legislature acted without reasonable grounds.

Plaintiffs have not raised an actual dispute of fact as to Intervenors' evidence that the farm worker exemption was based on reasonable economic grounds. Cross Motion, at 10:16-11:14; O'Connell Decl., Exs. A & B; Second Declaration of John Stuhlmiller in support of Cross Motion ("2d Stuhlmiller Decl."). Rather, despite the undisputed fact that farm workers

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[3] It bears reiterating that declaring overtime a fundamental right would mean "recognizing a privilege anytime a statute grants a right to some but not others. In other words, many legislative decisions could be claimed as privileges." *Ockletree*, 179 Wn.2d at 779. The courts would then be "called on to second-guess the distinctions drawn by the legislature for policy reasons nearly every time it enacts a statute." *Id.*

[4] Plaintiffs have tried to re-frame the purpose of the overtime laws as being intended to mitigate dangerous work conditions. Thus, according to Plaintiffs, Ch. 49.46 RCW was enacted pursuant to the lawmaking power granted by Art. II, § 35. Plaintiffs are wrong and have presented no evidence to support any of this. The MWA's minimum wage and overtime laws are economic laws setting minimum employment standards and "encourag[ing] employment opportunities in the state." RCW 49.46.005(1). More critically for Plaintiffs' mistaken argument, the legislature was specific that in enacting the MWA, the legislature was "exercising its police power." *Id.*. If there were any doubt about the matter, the legislature knows how to make clear that it is acting pursuant to Art. II, § 35: it enacted Ch. 49.17 RCW, the Washington Industrial Safety and Health Act, "in keeping with the mandates of Article II, section 35 of the state Constitution." RCW 49.17.010. But, for the same reasons discussed above, even if the overtime exemption was enacted in an exercise of lawmaking power and discretion under Art. II, § 35, the right to overtime would not be a fundamental right.

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were predominantly Caucasian at the time Washington's legislature enacted the farm workers' exemption, Plaintiffs delve into academic hypotheses to imply that the legislature must have acted upon the same alleged racial bias against African-Americans that allegedly drove the U.S. Congress to enact the agricultural workers' exemption under the Fair Labor Standards Act. Even if the court were to accept the academic hypotheses about the federal exemption, a similar discriminatory motivation cannot be attributed to the Washington legislature when, at the time Washington's farm worker exemption was enacted, Washington farms were staffed by workers who were, by a large majority, white. O'Connell Decl., at Ex. C.

The court should also not be misled by Plaintiffs' continued attempt to shift the reasonable grounds analysis from the legislature's actual exercise of lawmaking power in enacting economic wage and hour standards for all workers to a purely theoretical exercise of lawmaking power in the area of health and safety standards for dangerous physical working conditions. Wage and hour standards, including overtime pay, may be enacted to provide economic stability, which relates generally to workers' health and welfare; however, Plaintiffs have failed to present any evidence showing that in creating the specific statutory scheme as to what is overtime and what is not, the legislature intended that law to mitigate dangerous physical working conditions. Moreover, the scheme for the overtime pay and exemptions clearly did not involve any special category of workers in dangerous jobs. In this regard, Plaintiffs' attempt to shift the focus from the premium pay they seek, to the protection of safety in the workplace, simply proves too much. At some level, all work, even the most mundane of office jobs, can be dangerous; but of the 11 workplace fatalities in Washington thus far in 2018, none are in agriculture.[5] The class of workers covered by the overtime laws is all Washington workers and, from that class, the legislature has exempted from overtime requirements numerous

[5] Washington State Department of Labor & Industries, Fatality Summaries, https://www.lni.wa.gov/Safety/TrainingPrevention/FatalitiesInjuries/fatalitysummaries.asp (last visited May 8, 2018).

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subcategories of workers, in various types of jobs, including many jobs involving dangerous physical working conditions. RCW 49.46.130(2)(a)-(j).[6] Therefore, the reasonable grounds analysis does not involve any question as to whether the legislature should have provided agricultural workers with additional hourly pay to ameliorate dangerous working conditions.

Moreover, the "reasonable grounds" analysis offered by Plaintiffs is simply not credible because of its deafening silence in failing to even address the legislature's *direct* efforts to ensure safety in agriculture—the Washington Industrial Safety and Health Act. Plaintiffs do not dispute, because they cannot, that pursuant to that express legislative delegation, the Department of Labor & Industries has promulgated more than 300 pages of regulations covering every aspect of safety on the farm. Ch. 296-307 WAC. It is entirely a reasonable ground for the legislature to decline to do indirectly what it has done directly, regardless of the degree to which Plaintiffs want the premium pay associated with overtime.

Plaintiffs have not satisfied the second prong of their privileges and immunities challenge and, therefore, that challenge must fail.

C. The Exemption Survives Equal Protection Analysis.

Plaintiffs have failed to established that the farm worker exemption is unconstitutional under an equal protection analysis. The exemption easily survives under the applicable level of review: rational basis. Before analyzing the appropriate level of review for equal protection purposes, the court should note two overarching issues indicating that Intervenors' Cross Motion should be granted.

First, Plaintiffs completely ignore that the MWA's overtime law is an economic regulation and, as such, is not subject to heightened scrutiny under either strict or intermediate

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[6] Plaintiffs ignore the numerous other exempt occupations under RCW 49.46.130 that work in dangerous industries and also work long hours such as casual labor at a private home, forest and fire protection personnel, inmates, crews of Washington state ferries, seamen, minors playing junior hockey, seasonal fair employees, employees in industries where federal law prescribe workweeks exceeding 40 hours, and some air carrier employees.

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review: "'[C]lassifications bearing on nonconstitutional interests—even those involving 'the most basic economic needs of impoverished human beings,' usually will not be subject to heightened treatment [under equal protection analysis] 'because they are not distinguishable in any relevant way from other regulations in 'the area of economics and social welfare.'" *Sanchez v. Dep't of Labor & Indus.*, 39 Wn. App. 80, 89, 692 P.2d 192 (1984) (citation omitted).

Second, recognizing the failings of their initial analysis, Plaintiffs have shifted entirely the identification of the alleged suspect or semi-suspect class required to justify heightened scrutiny. Plaintiffs stated in the opening brief supporting their Motion for Summary Judgment ("Plaintiffs' Motion") that the class at issue was "farmworkers": "[u]nder any level of scrutiny, by *excluding farm workers from overtime protection*, **the MWA** fails to provide equal protection of the law...." Plaintiffs' Motion, at 18:14-18 (emphases added). Now, without factual or legal basis, Plaintiffs contend the impacted class is much broader and contains all employees subject to dangerous working conditions (although Plaintiffs' Motion concerns only agricultural workers). As will be seen below, Plaintiffs' attempt to shift focus is unavailing.

1. The farm worker exemption is not subject to strict scrutiny.

Plaintiffs have failed to show strict scrutiny applies. The farm worker exemption does not "affect[] a suspect class or a fundamental right." *State v. Schaaf*, 109 Wn.2d 1, 17, 743 P.2d 240 (1987).

First, it has already been established in Intervenors' Cross Motion, and above, that overtime pay is not a fundamental right. Cross Motion, Section V.B.1. Overtime is a purely statutory economic right, created pursuant to the legislature's discretion.

Second, Plaintiffs have also failed to establish that agricultural workers—or even workers in dangerous industries, as Plaintiffs now contend—are a suspect class. Plaintiffs have not presented any relevant evidence to show that the legislature created the farm worker exemption as a classification based on "race, alienage, and[/or] national origin." *In re K.R.P.*, 160 Wn. App. 215, 229, 247 P.3d 491 (2011) (quoting *State v. Hirschfelder*, 170 Wn.2d 536, 550, 242

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P.3d 876 (2010)). Rather, it is undisputed that when the farm worker exemption was enacted, 85% of farm workers were white. *See* O'Connell Decl., at Ex. C. Plaintiffs concede, as they must, that our "Supreme Court determined that strict scrutiny was not warranted because the statute at issue was not passed with discriminatory animus against Mexican-Americans." Plaintiffs' Reply, at 15-16.[7] Given the undisputed evidence of the racial demographics of the farm worker community at the time of enactment of the MWA, Plaintiffs have failed to demonstrate the necessary discriminatory intent for strict scrutiny to apply. *See State v. Johnson*, 194 Wn. App. 304, 308, 374 P.3d 1206 (2016) (citing *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 207, 128 S. Ct. 1610, 170 L. Ed. 2d 574 (2008)); *see also State v. Clark*, 76 Wn. App. 150, 156, 883 P.2d 333 (1994), *aff'd and remanded*, 129 Wn.2d 211 (1996). Without the requisite proof of discriminatory intent **at the time of enactment**, the farm worker exemption remains constitutional regardless of the subsequent demographic shift in the farm worker population over the 50 years since its enactment.

2. The farm worker exemption is not subject to intermediate scrutiny review.

The farm worker exemption also readily survives intermediate scrutiny. As discussed in Intervenors' Cross Motion, intermediate scrutiny is only applied in "limited circumstances" where strict scrutiny is not mandated. *State v. Shawn P.*, 122 Wn.2d 553, 560, 859 P.2d 1220 (1993). Intermediate scrutiny requires an important right *and* at least a semi-suspect class, and Plaintiffs have failed to establish either of these two requirements. *See Schaaf*, 109 Wn.2d at 17-18.

For the important right requirement, Plaintiffs have not offered any authority, or even a plausible argument, to support that the MWA's overtime pay law has created an important right:

[7] Absent evidence that the "legislature had a discriminatory intent in enacting" the statute at issue, there is no violation of constitutional equal protection. *Johnson*, 194 Wn. App. at 308-09; *see also State v. Coria*, 120 Wn.2d 156, 174-75, 839 P.2d 890 (1992) (where amici argued statute had disparate impact on minorities and was therefore discriminatory, court denied equal protection claim because there was no showing statute was based on any discriminatory intent).

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for these purposes, a right that affects the physical liberties of Washington citizens, including agricultural workers. *See id.* at 21 (denying juveniles jury trials did not implicate a physical liberty, nor were children a semi-suspect class to trigger heightened scrutiny); *In re Runyan*, 121 Wn.2d 432, 448, 853 P.2d 424 (1993). Although Plaintiffs point to different occasions where a court has found an important right exists, none of the rights in question are comparable to the purely economic interests involved in seeking overtime pay. In fact, the cases Plaintiffs cite involve liberty interests with much stronger constitutional bases: individuals' interests in being protected from and compensated for unlawful conduct that causes personal harm, such as the right to bring discrimination or medical malpractice claims. Plaintiffs' Reply, at 15. Without an important right to overtime pay, intermediated scrutiny cannot be applied.

Even if overtime were an important right, Washington has clearly denied semi-suspect class status to employment status. *See State v. Clinkenbeard*, 130 Wn. App. 552, 567, 123 P.3d 872 (2005) ("[E]mployment status does not create a semi-suspect class." (citing *Griffin v. Eller*, 130 Wn.2d 58, 65, 922 P.2d 788 (1996))). Moreover, because the exemption classification applies equally to all agricultural workers, "it does not create a suspect or a semi-suspect class." *State v. Whitfield*, 132 Wn. App. 878, 891, 134 P.3d 1203 (2006) (statute did not create semi-suspect class where it applied to HIV-infected and non-HIV-infected persons); *see also Clark*, 76 Wn. App. at 156 (no equal protection violation where statute excluding cocaine dealers from first-time offender waiver provision had disparate impact on African-Americans).[8] Plaintiffs cannot evade this controlling authority and, thus, they have no basis to claim that agricultural workers subject to the farm worker exemption are a semi-suspect class.

[8] It bears reminding that "inclusion of some exceptions" to a statute, "but not others, does not operate to create any semi-suspect class." *In re Runyan*, 121 Wn.2d at 449. "'[T]he equal protection clause does not require a state to eliminate all inequalities between the rich and the poor.'" *Id.* (quoting *Riggins v. Rhay*, 75 Wn.2d 271, 283, 450 P.2d 806 (1969)).

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Plaintiffs continue to rely on *Macias* for the proposition that a disparate impact on racial minorities *may* create a semi-suspect class—a point the court did not reach. *Macias v. Dep't of Labor & Indus.*, 100 Wn.2d 263, 271, 668 P.2d 1278 (1983). Plaintiffs thus inappropriately apply the limited analysis in *Macias*. The *Macias* court chose not to engage in an intermediate scrutiny analysis and, accordingly, it had no occasion to determine what the outcome of such an analysis would be. *Id.* Rather, in considering a law that implicated the fundamental right to travel, the court applied a strict scrutiny analysis and found disparate impact evidence was insufficient to establish a suspect class required for strict scrutiny review. *Id.* In short, *Macias* cannot serve to support that intermediate scrutiny is appropriate in this case.[9]

Accordingly, RCW 49.46.130(2)(g) is not subject to intermediate scrutiny. Even if the court were to find that intermediate scrutiny applies, the undisputed facts related to the reasonable economic grounds underlying the farm worker exemption qualify as a substantial state interest. *See* Cross Motion, at 10:16-11:14.

3. The farm worker exemption survives rational basis review.

Plaintiffs have failed to establish that the farm worker exemption is unconstitutional under a rational basis review. Nor have they created a genuine issue of material fact as to constitutionality under the rational basis standards.

"A legislative distinction will survive the rational basis test if (1) all members of the class are treated alike; (2) there is a rational basis for treating differently those within and outside of the class; and (3) the classification is rationally related to the purpose of the legislation." *Clinkenbeard*, 130 Wn. App. at 567 (citing *O'Hartigan v. Dep't of Pers.*, 118 Wn.2d 111, 122, 821 P.2d 44 (1991)). It bears re-emphasizing that under rational basis review, it is "rare" for legislation to be found unconstitutional. *DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 144,

[9] In fact, by emphasizing that "'impact alone is not determinative,'" *Macias* actually cuts against Plaintiffs' position. *Macias*, 100 Wn.2d at 270 (citation omitted).

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960 P.2d 919 (1998). Any "conceivable set of facts" will allow the court to find the farm worker exemption survives rational basis review. *Gossett v. Farmers Ins. Co. of Wash.*, 133 Wn.2d 954, 979, 948 P.2d 1264 (1997). Plaintiffs have not shown that the agricultural classification is "'purely arbitrary'" to overcome the strong presumption of constitutionality. *Thurston Cty. Rental Owners Ass'n v. Thurston Cty.*, 85 Wn. App. 171, 186, 931 P.2d 208 (1997) (quoting *State v. Smith*, 117 Wn.2d 263, 279, 814 P.2d 652 (1991)).

First, Plaintiffs incorrectly identify the treated class members as all workers in dangerous industries rather than the **actual treated class** of all agricultural workers, which, as discussed above, is the classification subject to the farm worker exemption. After all, the statute that is the focus of Plaintiffs' claims, RCW 49.46.130(2)(g), impacts only one group: farm workers. The Minimum Wage Act simply does not draw the distinction that Plaintiffs try to manufacture, granting overtime protections to workers in dangerous work places. Indeed, the MWA excludes other dangerous occupations from overtime protection, such as fire protection personnel, seamen, and hockey players. Cross Motion, at 7. Plaintiffs argue that such other groups of employees can somehow be ignored because they are covered by other statutory or regulatory scheme, Plaintiffs' Reply, at 6, n.2, but such a response proves entirely too much: as to the dangerous nature of their work, farm workers *are* also covered by an entirely different pervasive regulatory regime: Ch. 296-307 WAC. "[A] statute [like the MWA] creates only one relevant class, whereby differential treatment creates subgroups within the general class." *Willoughby v. Dep't of Labor & Indus.*, 147 Wn.2d 725, 739-40, 57 P.3d 611 (2002) (citing *DeYoung*, 136 Wn.2d at 144-45). Here, the general class is Washington employees covered by the MWA under RCW 49.46.130 and, within that class, are the various exempt and non-exempt occupations, or subgroups. *Id.* ("The general class underlying the superior court's designation is the class of prisoners who are covered by the State's industrial insurance. Within that class the statute treats prisoners differently depending on whether they are likely either to be released or have beneficiaries during their lifetime.").

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Second, Plaintiffs have also failed to establish any question as to whether the legislature acted without rational basis. Intervenors have established that the legislature had a rational basis for exempting agricultural workers from the WMA's overtime pay requirements that apply to a broad class of non-exempt workers. *See* Cross Motion, at 16-17. Plaintiffs have not even attempted to refute the well-known seasonal nature of farm work, 2d Stuhlmiller Decl., ¶¶ 3-5, or shown that a question of fact exists. Instead, Plaintiffs again attempt to improperly shift the analysis from the legislature's actual exercise of power to enact wage and hour laws to a purely theoretical lawmaking exercise (allegedly) to address dangerous physical working conditions. For the same reasons discussed above, Plaintiffs cannot create a constitutional question based on a purely theoretical lawmaking exercise in which the legislature did not engage.

Plaintiffs chose an improper class that is improper for purposes of rational basis review and Plaintiffs' constitutional challenge at large. More importantly, Plaintiffs have left Intervenors' arguments related to reasonable basis for the farm worker exemption undisputed. Cross Motion, at 17. Therefore, Intervenors' Cross Motion should be granted in their favor because the farm worker exemption survives rational basis review.

IV. CONCLUSION

For the foregoing reasons, Intervenors respectfully request that Plaintiffs' Motion be denied, and judgment be entered in Intervenors' favor on their Cross Motion.

DATED: May 9, 2018.

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CERTIFICATE OF SERVICE

I certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of 18 years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, Washington 98101.

On May 9, 2018, I caused a true and correct copy of the foregoing document to be served upon the following parties in the manner indicated below:

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DATED at Seattle, Washington, this 9th day of May, 2018.

Debbie Dern, Legal Practice Assistant

EXHIBIT 34

The Honorable Michael G. McCarthy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER BROTHERS DAIRY, INC., Defendant. WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenor-Defendants.	No. 16-2-03417-39 **INTERVENOR-DEFENDANTS' REPLY MEMORANDUM IN SUPPORT MOTION TO STRIKE AS TO DECLARATIONS OF MORRISON AND BELCHER**

I. INTRODUCTION

Portions of the declarations of Joachim Morrison ("Morrison Decl.") and Jennifer Belcher ("Belcher Decl.") (collectively, the "Declarations") remain inadmissible, notwithstanding Plaintiffs' attempts to excuse their failures to comply with the principles dictating what is, and what is not, admissible evidence. In Plaintiffs' Response to Intervenors' Motion to Strike ("Plaintiffs' Response"), Plaintiffs fail to authenticate their submitted evidence as required under CR 56(e) and ignore Washington authority. As a result, Intervenors' Motion to Strike should be granted.

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II. EVIDENCE RELIED UPON

Intervenors rely upon the pleadings on file, and the Declarations and their exhibits.

III. ARGUMENT

Plaintiffs use the Declarations to support their argument that the Minimum Wage Act's ("MWA") farm worker exemption is rooted in racial bias and is intended to discriminate against agricultural workers.[1] Despite Plaintiffs' claims, the Declarations were submitted to show legislative intent and history of the MWA in Plaintiffs' constitutional challenge. However, Plaintiffs' improper evidence is unauthenticated and inadmissible at summary judgment. *Davis v. Fred's Appliance, Inc.*, 171 Wn. App. 348, 357, 287 P.3d 51 (2012); *see also Milligan v. Thompson*, 110 Wn. App. 628, 635, 42 P.3d 418 (2002).

A. Portions of Joachim Morrison's Declaration Remain Inadmissible.

The documents submitted by Plaintiffs in Joachim Morrison's declaration remain inadmissible. Plaintiffs acknowledged this when they filed a Supplemental Declaration of Joachim Morrison with their Response in a belated attempt to authenticate the evidence. However, the fact a document is stored in a legislative file in the Washington State Archives does not mean it is automatically authenticated as an official legislative document. Legislative history is made up of such items as "legislative bill reports and analyses." *State v. Hirschfelder*, 148 Wn. App. 328, 344 n.12, 199 P.3d 1017 (2009) (citation omitted), *reversed on other grounds by State v. Hirschfelder*, 170 Wn.2d 536, 242 P.3d 876 (2010); *W. Telepage, Inc. v. City of Tacoma*, 95 Wn. App. 140, 145, 974 P.2d 1270 (1999) ("The intent of the Legislature should be derived from the context and subject matter of the legislation itself."), *affirmed in part by W. Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 611, 998 P.2d 884 (2000).

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[1] While Plaintiffs claim the Declarations "demonstrate the power of the agricultural industry to kill or significantly water down legislation," the actual purpose is in service of Plaintiffs' argument that the farm worker exemption has a discriminatory intent. *See* Plaintiffs' Motion for Summary Judgment ("Plaintiffs' Motion"), Section II.B.5. ("5. The farm worker exemption from overtime protections is rooted in racial bias."). Plaintiffs submitted the Declarations in order to provide factual support for their argument and cited to them in their motion. *Id.*

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1. Paragraph 4, Exhibit 2, of Morrison's Declaration remains inadmissible and must be struck.

Plaintiffs mischaracterize Intervenors' argument and fail to authenticate Exhibit 2, a "portion of the House Floor Debate related to HB 32 from February 19, 1975," in order to make it admissible. Morrison Decl., at ¶ 4. Plaintiffs state the transcription is admissible because: (1) it was contained in the legislative file requested from the Washington State Archives; and (2) Plaintiffs provided the recording to all parties. This fails to refute Intervenors' argument, which is that the transcription is unauthenticated. Intervenors did not challenge the accuracy of the transcription. Rather, the source of the transcription is not detailed in Morrison's declaration.

More importantly as a matter of substantive law, the statement of a "single legislator" cannot show the intent of a statute. *W. Telepage*, 140 Wn.2d at 611.[2] Although Plaintiffs provided the audio recording, it is not the Intervenors' burden to authenticate Plaintiffs' evidence. The fact the transcription was found in the legislative file of the Washington State Archives does not mean it is an official legislative document. *See Hirschfelder*, 48 Wn. App. at 344 n.12. The statement of a single legislator, on the floor of his or her chamber or otherwise, is simply no proof of the goal of the legislature as a whole. Plaintiffs have failed to authenticate Exhibit 2 and it is inadmissible under ER 403 and 901(a). Accordingly, Paragraph 4, Exhibit 2, of Morrison's declaration is inadmissible and must be struck.

2. Paragraph 8, Exhibit 6, of Morrison's Declaration remains inadmissible and must be struck.

Plaintiffs also fail to authenticate the "additional attachment made by Senator Sid Morrison to Engrossed Substitute Bill No. 32 on May 13, 1975." Morrison Decl., at ¶ 8. This

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[2] Plaintiffs fail to distinguish *Western Telepage* when they argue it only holds a court cannot rely on a lobbyist's statements. Plaintiffs' Response, at 3:20-4:1. This is inaccurate. The court in *Western Telepage* states in full: "**Given our reluctance to discern legislative intent from the testimony of a single legislator** ... we find the view of a lobbyist to be of even less utility in discerning the Legislature's intent in enacting a bill." *W. Telepage*, 140 Wn.2d at 611 (emphasis added; original emphasis omitted). The transcribed recording of a single legislator that is submitted as testimony in a third party's declaration is inadmissible, especially given the court's reluctance overall.

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document is incapable of authentication on its face. Intervenors do not challenge the veracity of counsel's claims as to where the document was found. Plaintiffs provide a description of what they allege is contained in Exhibit 6, Response, 4:17-5:4, yet fail to address the primary reason Exhibit 6 cannot be authenticated: it is not an official legislative document. Morrison lacks the personal knowledge to testify regarding this document. Morrison cannot substantiate what Exhibit 6 actually is because it is impossible for him to do so given the incoherent organization of the Exhibit itself. An official legislative document should not require the parties to ignore unattributable handwriting as well as rely on Plaintiffs' interpretation in order to authenticate it. It should be capable of authentication by virtue of it being an official legislative document. *See Hirschfelder*, 48 Wn. App. at 344 n.12. Accordingly, Paragraph 8, Exhibit 6, remains inadmissible and should be struck from the record.

3. Paragraph 10, Exhibit 8, of Morrison's Declaration remains inadmissible and must be struck.

Plaintiffs fail to show that Exhibit 8, the unauthenticated letter from David Spencer, is admissible. Morrison Decl., at ¶ 10. Plaintiffs do not refute the fact that David Spencer was acting as a lobbyist. Washington courts are clear—testimony from lobbyists is inadmissible. *W. Telepage*, 140 Wn. App. at 611. As Plaintiffs change the underlying purpose for the Exhibit's admission,[3] they still fail to correct the letter's impropriety as an unsworn statement that cannot be relied upon for its truth. As a result, Paragraph 10, Exhibit 8, is inadmissible and must be struck from the record.

[3] Plaintiffs claim that Exhibit 8 is not being submitted to determine the legislative intent of the farm worker exemption. However, Plaintiffs point to the reasonable grounds section of their privileges and immunities analysis that directly relates to the legislature's intent in enacting the farm worker exemption. Plaintiffs' Motion, at 16-17. This is another attempt by Plaintiffs to change positions.

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B. Jennifer Belcher's Declaration Remains Inadmissible And Must Be Struck.

Belcher's declaration, detailing the inner workings of the legislature, remains inadmissible. Plaintiffs use Belcher's declaration to "buttress their interpretation" of the MWA—that it was enacted with discriminatory intent and rooted in racial bias. Plaintiffs' Response, at 6. Plaintiffs are incorrect to state that relevant Washington authority is inapplicable just because they are asserting a constitutional challenge. Plaintiffs ask the Court to conclude that the Washington legislature was somehow motivated by a derivative racial bias, somehow adopting the alleged racial animus of the U.S. Congress 20 years before. It is clear that the legislature's intent is relevant. As such, Plaintiffs must submit relevant and authenticated legislative documents pursuant to ER 403 and 901(a) in order to comply with CR 56(e).

Plaintiffs cannot distinguish away the authorities cited by Intervenors. In the case of Belcher's declaration, a party cannot "introduce an affidavit of a former state legislator into evidence to prove legislative history and legislative intent .... The affiant's statements regarding the legislative intent are inadmissible, it being well settled that the legislature's intent in passing a particular bill cannot be shown by the affidavit of a legislator." *City of Yakima v. Int'l Ass'n of Fire Fighters, AFL-CIO, Local 469*, 117 Wn.2d 655, 677, 818 P.2d 1076 (1991). Most importantly, "[a] noncontemporaneous understanding of legislative intent is not reflective of the Legislature's rationale for enacting a ... statute." *W. Telepage*, 140 Wn.2d at 611. Plaintiffs have not disputed this authority. Belcher's entire declaration is a personal account of her interactions in a decades-old legislative session in order to imply discriminatory intent on the part of the legislature. Belcher's declaration is a perfect example of why evidence related to legislative history and intent must be official legislative documents, because it violates ER 403 and 901(a). Without official legislative documents detailing what occurred, Belcher's declaration should be struck from the record as inadmissible evidence.

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IV. CONCLUSION

For the foregoing reasons, Intervenors respectfully request that their Motion to Strike be granted.

DATED: May 9, 2018.

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CERTIFICATE OF SERVICE

I certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of 18 years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, Washington 98101.

On May 9, 2018, I caused a true and correct copy of the foregoing document to be served upon the following parties in the manner indicated below:

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DATED at Seattle, Washington, this 9th day of May, 2018.

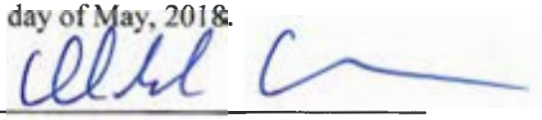

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EXHIBIT 35

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SUPERIOR COURT OF WASHINGTON
IN AND FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER FARM PROPERTIES, INC., f/k/a DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants.	No. 16-2-034173-9 **REPLY IN SUPPORT OF MOTION TO STRIKE DECLARATION OF PAUL APOSTOLIDIS**

A. Introduction

Plaintiffs have moved for summary judgment. By rule, plaintiffs are required to support that motion with admissible evidence. CR56(e).[1] They did not do so.

Instead, the entire factual basis for plaintiffs' claim that Latino/a workers form a semi-suspect class, such that defendant DeRuyter could be subject to penalties and enormous damages

[1] CR 56 provides, in part: "**(e)** ***Form of affidavits; further testimony; defense required.*** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

for following the law, is found in the Declaration of Paul Apostolidis. There is literally nothing admissible to the Apostolidis declaration, however, other than his statement of qualifications.

Plaintiffs supplement the Apostolidis declaration, in their brief opposing the motion to strike, by citation to a blog. Defendants object and move to strike this reference from p. 6, Ll. 8-9 of the Plaintiff's Response to DeRuyter Defendants' Motion to Strike, herein "Plaintiffs' Response."[2]

In turn, the Declaration of Paul Apostolidis is conclusory, unreliable, lacks foundation, is replete with multiple levels of hearsay, and is irrelevant. Because CR 56(c) requires this Court to consider only admissible evidence on the motion for summary judgment, the Apostolidis Declaration must be stricken in whole, and in every pertinent part.

Plaintiffs now further claim that they did not need the Apostolidis Declaration after all, because this Court may take judicial notice of the "legislative facts" presented in that Declaration. This is of course an improper use of judicial notice. The "facts" plaintiffs present in the Apostolidis Declaration are not "legislative" at all, but are hotly disputed "adjudicative" facts which may not be judicially noticed for purposes of plaintiffs' motion for summary judgment.

These points are addressed in turn.

B. MR. APOSTOLIDIS' *IPSE DIXIT* DOES NOT, OF COURSE, RENDER HIS CONCLUSIONS "ADMISSIBLE EVIDENCE."

I. In General

It is well known that an expert cannot provide the finder of fact with a "because I said so" set of conclusory "opinions," tenuously if at all related to the underlying facts. In one often-quoted passage, the Supreme Court stated that nothing in the Federal Rules of Evidence

[2] To the extent that this new blog presents evidence for the first time in reply, it is improper and should be stricken. *See White v. Kent Med. Ctr.*, 61 Wn.App. 163, 810 P.2d 4 (1991).

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"requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert." *General Electric v. Joiner*, 522 U.S. 136, 146 (1997).

In this case, one of the many flaws in Mr. Apostolidis' declaration is that, while he tells us that there is a new form of research called "community based research," he tells us nothing at all about this research other than the conclusions he chooses to share which were apparently drawn from this new form of research. We do not know what this research consists of, how it was conducted, who reached the conclusions that Apostolidis shares or why, whether it was reliably conducted or interpreted, or, truly, anything about it other than his conclusions. *See* § C. 2 below.

Admissibility of expert opinions in Washington requires much more than this. The trial court, in its gate keeping role, must decide whether proffered evidence is admissible. ER 102; ER 104(a). To satisfy the pursuit of truth, evidence must meet certain criteria. Evidence must be probative and relevant, and meet the appropriate standard of probability. ER 102; ER 401; ER 402; ER 403; *see, e.g.*, *State v. Riker*, 123 Wn.2d 351, 359, 869 P.2d 43 (1994). Expert testimony, in addition, must be helpful. ER 702. Evidentiary rules provide significant protection against unreliable, untested, or junk science. 5B TEGLAND, *supra*, § 702.18, at 81. The *Frye* test is an additional tool used by judges when proffered evidence is based upon novel theories and *novel techniques or methods*. ***Reese v. Stroh***, 128 Wn.2d 300, 306, 907 P.2d 282, 286 (1995) .

In our courts, scientific evidence must satisfy the *Frye* requirement that the theory <u>and technique or methodology</u> relied upon are generally accepted in the relevant scientific community. *State v. Martin*, 101 Wn.2d 713, 719, 684 P.2d 651 (1984). Once a party has satisfied *Frye, the evidence must still meet the other significant standards of admissibility*. For

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example, persons performing experiments and interpreting results must be qualified. ER 702 and ER 703 mandate the evidence must be relevant and helpful. *Anderson v. Akzo Nobel Coatings, Inc.*, 172 Wn.2d 593, 606, 260 P.3d 857, 863-864 (2011).[3]

Plaintiffs do not dispute that they have the burden of providing the necessary foundation to the Court. But plaintiffs do not do so. Instead, plaintiffs remind the Court that Paul Apostolidis is a tenured professor who has published—sometimes in peer-reviewed publications—and that he has won awards. Plaintiffs' Response, at pp. 6-7. Plaintiffs appear to claim that Mr. Apostolidis' qualifications alone render his conclusory summaries of research conducted by others admissible and useful on summary judgment under CR 56(e).

This is not the law. As set forth above, the courts maintain a significant gatekeeper function in determining whether expert opinions can go to the jury (and, under CR 56(e), support a summary judgment motion). Satisfying the Frye test is necessary, but it is not sufficient. Indeed, *Seattle v. Peterson*, 39 Wn.App. 524, 528-29, 693 P.2d 757 (1985), stands for the proposition that even where a scientific principle is readily accepted, judicial notice is not available to "establish" that the principle was properly and reliably applied. Plaintiffs make no effort to establish this essential foundation.

Rather, as DeRuyter pointed out on its motion, in order to meet the admissibility requirement of CR56(e), an expert's opinion must meet the helpfulness requirement of ER 703, and to the extent that the expert relies on hearsay, that reliance must be supported by the foundation requirements of ER 703. In this state, that "foundation" contains two parts. Other

[3] Because community-based research is a "new technique or method," one foundational requirement is that plaintiffs must demonstrate "general acceptance." Having done that—if they do—plaintiffs must also satisfy the ER 703 foundation requirement of showing that the hearsay on which Apostolidis relies is "of a type reasonably relied on" by other experts in his field.

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experts must reasonably rely on the hearsay, and that reliance must be for their actual work, not merely for litigation. *State v. Ecklund*, 30 Wn. App. 313, 317, 633 P. 2d933 (1981) (misapplied in Plaintiffs' Response, see below).

In the present motion to strike, DeRuyter provided a paragraph-by-paragraph analysis of the multiple bases for objection to the Apostolidis Declaration. Because plaintiffs make no effort to refute the points made, DeRuyter's arguments will not be restated here. (*But see* § C. 2 below, summarizing some of the bases for these objections.)

However, Plaintiffs' Response makes several critical errors, two of which must be addressed here.

2. Plaintiffs Do Not Satisfy *Ecklund's* Foundation Elements:

Plaintiffs cite *State v. Ecklund*, 30 Wn. App. 313, 317, 633 P. 2d933 (1981), but do not understand it. Ecklund stands for the proposition that, if an expert relies upon inadmissible evidence, the expert's opinion is inadmissible unless the expert meets *Ecklund's* two foundation requirements: (1) other experts must be shown to reasonably rely on the same inadmissible evidence, and (2) such reliance on for the experts' actual work, not merely for litigation purposes.[4]

Plaintiffs assert that the various "studies" on which Apostolidis relies meet the *Ecklund* requirements because he "has shown that the academic community is engaged in community-based research methods and his program has received national recognition and validation from academic institutions at the highest levels of higher education." Plaintiffs' Response, p. 7, Ll. 6-

[4] ER 703 states that "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. *If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence*" (emphasis supplied).

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8. This is simply inaccurate. We do not know, for example, *which* community-based research methods were used, *by whom*, and under what circumstances. We do not know whether *anyone* has relied on the same hearsay summarized by Apostolidis.

So far as we can tell, not one academic institution actually "engages in" community based research. Not one institute of higher education has "validated" community based research (whatever that is; Professor Apostolidis does not tell us), by emulating it, refining it, critiquing it, or even peer-reviewing it. Apostolidis recites that he received an award. We do not even know what went into the award, or why it was given.

Plaintiffs' argument does not come close to satisfying *Ecklund*. All of the references in the Apostolidis declaration to "other studies" are thus seen as inadmissible hearsay on which an expert may not rely, consistently with ER 703. Therefore, the Declaration and its ubiquitous reliance on "studies," in not admissible under CR 56(e) and should be stricken.

3. Plaintiffs Misapprehend the teachings of *Johnston-Forbes:*

Plaintiffs rely on *Johnston-Forbes v. Matsunaga*, 181 Wn.2d 346, 352, 333 P.3d 388, 391 (2014), throughout their Response. But *Johnston-Forbes* does not help them. In that case, a plaintiff was injured in a rear-end collision. Plaintiffs engaged an expert to testify that the forces involved in the accident, and to compare them to the activities of daily living. Dr. Tencer, the expert, was a biomechanical engineer, but was not a licensed professional engineer or a medical doctor.

The trial court admitted, but greatly limited, Dr. Tencer's testimony. He was not allowed to opine, for example, that the forces involved in the accident "would have caused injuries to anyone in general or [plaintiff] Johnston-Forbes in particular." 333 P.3d at 393. The trial court

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exercised its discretion to monitor Dr. Tencer's testimony very closely, and kept it within the strict boundaries imposed by the Rules.

The Tencer testimony was helpful to the jury because a biomechanical engineer could explain the forces involved to the jury. Here, by contrast, the witness relies on studies of unknown nature and scope, conducted by undergraduate students of unknown reliability. There is nothing in the *Johnston-Forbes* decision that remotely suggests that the ER 703 foundation requirements may be overlooked, or that the requirements of relevance, reliability and helpfulness imposed by the Rules are somehow inapplicable to Dr. Apostolidis.

C. THE APOSTOLIDIS DECLARATION DOES NOT CONSIST OF "LEGISLATIVE FACTS" ON WHICH THIS COURT CAN RELY.

"Judicial notice" of a "legislative fact" is a rarely-used pronouncement of the court's ability to go outside the record when necessary to decide a case. For example, it is not an "adjudicative fact" that terminating the spousal testimonial privilege would undermine the institution of marriage; the United States Supreme Court, however, relied on this "legislative fact" to decide to retain the privilege. *Hawkins v. United States*, 358 U.S. 74, 78 (1958).

It is not a "fact" subject to cross-examination that the tort of alienation of affections is outdated. The Washington Supreme Court simply concluded, based on its view of society, that it was. *Wyman v. Wallace*, 94 Wn.2d 99, 101-104, 615 P.2d 452 (1980). The *Wyman* court pointed out how and under what circumstances judicial notice of legislative facts may be available, in the sound discretion of the trial court:

> However, trial courts and appellate courts can take notice of "legislative facts" -- social, economic, and scientific facts that "simply supply premises in the process of legal reasoning." *Houser v. State*, 85 Wn.2d 803, 807, 540 P.2d 412 (1975); E. Cleary, *McCormick's Evidence* 759, 768-69 (2d ed. 1972). Under this doctrine, a court can take notice of scholarly works, scientific studies, and social facts.

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Wyman v. Wallace, supra, 94 Wn.2d at 102. The Apostolidis declaration itself is not, of course, a scholarly work; nor does it cite to any such scholarly works.

Plaintiffs did not present any "scholarly work, scientific study, or "social facts." Plaintiffs presented Apostolidis' summary of unknown research by unknown researchers (in most cases, undergraduate students), and the conclusions he (Apostolidis) drew from that research. An expert's summary and opinion is not a "scholarly work" for notice purposes.

It is interesting that plaintiffs only now, on showing of the inadmissibility of Apostolidis' sweeping generalizations as "expert opinions," seek to re-characterize these one-sided generalizations as "legislative facts." Plaintiffs are requesting this Court to take notice that Americans of Latino/a descent are, as a class, in a position that merits treatment as a "semisuspect class" at least in part due to actions taken by the Washington legislature.[5] This is wholly unprecedented.

1. The "legislative 'facts'" Apostolidis presents are not "facts" and are not relevant.

Apostolidis' points, when stripped of their advocate gloss, are not relevant to the case before this Court. As the Declaration of Dr. Strom points out, Caucasians comprised the majority of farm workers at all times relevant to this lawsuit. Dr. Strom also points out that the facts are not as represented by plaintiffs; plaintiffs' simplistic accusations (for example, the accusation that the farm laborer exemption from overtime laws was a form of national Jim Crow law, *see* First Amended Complaint Class Action, p. 3) are simply wrong.

Defendants DeRuyter submit that there are at least three reasons for this Court *not* to judicially notice the contents of the Apostolidis declarations. First, the "facts" asserted by Dr.

[5] Mr. Apostolidis takes issue with certain policy choices by the Washington legislature, and argues that, had the legislature made better choices, Washington's Latino population would be more politically engaged. See Apostolidis declaration at ¶ 5. Motion to Strike, at pp. 2-3.

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Apostolidis are not facts at all, and are themselves deeply suspect as a form of advocacy trussed up in expert garb.

Second, Dr. Apostolidis lays the blame for the "facts" he describes at the legislature's feet, citing "poor policy choices" by the legislature as having led to this point. This Court does not sit in judgment on the wisdom of legislative choices.

Third, the conclusions Apostolidis presents are not truly relevant. It is beyond doubt that the exemption from overtime laws in question did not constitute *intentional* discrimination.[6] The classification (farm work vs. other kinds of work) was not designed to harm Latino/a farm workers, and was rational. Indeed, Caucasian workers comprised a large majority of farm workers at all relevant times.

Thus even if all of the Apostolidis conclusions can be taken, without analysis of any kind, at face value, the outcome (no unconstitutionality; no retroactive application) would be unchanged.

2. The Apostolidis conclusions are not "facts" at all, but advocacy:

Now, in response to the facts properly before this Court, and in response to authorities holding that the advocacy presented in Dr. Apostolidis' declaration is inadmissible, plaintiffs ask this Court to take judicial notice of the "legislative facts" presented therein.

But "legislative facts" must, first and foremost, be "facts." See Federal Rule of Evidence 201, Comment. To name just a few of the "facts," here hotly contested, asserted by Dr. Apostolidis:

[6] *Washington v. Davis*, 426 U.S. 229 (1976) (proof of intentional discrimination required); *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006) (same).

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--Latino/a voter registration is exceptionally low (¶ 6), which "patterns of voting behavior interact with local electoral rules to prevent Latino representation and participation from increasing" (this is general to the point of meaninglessness, and rather suggests that a change in voting rules is all that is necessary);

--"the interaction of at-large electoral districts and racially polarized patterns of voting behavior have helped to produce severe deficits in Latino political representation";[7]

--Wapato and Toppenish are communities with overwhelming Latino/a majorities which for some reason have elected mostly Caucasian school board members in recent years. Mr. Apostolidis calls this a "distinctive pattern of racially polarized voting" in school board elections, but defendants dispute this.[8]

--"Latinos face numerous social barriers to effective participation in civic life" (¶ 7). This statement, for which judicial notice is requested, is based solely upon "interview-based research and content analysis of Spanish-language newspapers." Defendants' due process rights would be violated by this Court's accepting such advocacy on the bases stated, and calling this a :legislative fact" entitled to judicial notice;

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[7] Defendants cited a number of cases showing that at-large voting and racially polarized voting patterns, both facts that would have to be actually proved, instead of merely noticed, in Voting Rights Act cases, tend to *promote* minority representations in districts in which the minority held a population majority. This point, from ¶ 6 of the Apostolidis declaration, not only makes no sense but raises more questions than it answers. For example, what is meant by "helped to produce"? What are the other factors? What are the "severe deficits"? See Motion to Strike at p. 8, citing *Harvell v. Blytheville Sch. Dist. #5*, 71 F.3d 1382, 1385 (8th Cir. 1995), citing *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986); *see also Patina v. City of Pasadena*, 230 F.Supp.3d 267 (S.D. Tex. 2017).

[8] *See id.* Cases in which vote dilution and racially polarized voting are at issue can, as in one recent case, take eleven full trial days and are the subject of testimony and cross-examination, not simple "notice." *See, e.g., Luna v. County of Kern,* 2018 U.S. Dist. LEXIS 29662 (E.D.Cal. February 23, 2018).

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--At p. 3, ¶ 6, Ll. 10-12, Apostolidis claims that "a thorough investigation … revealed…" This is not a "fact" of which a court can take judicial notice. This is a claim by an advocate;

--At p. 3, ¶ 6, Ll. 12-14: "A 2012 study by a consortium of northwest public radio organizations found…" Again, this is mere advocacy. A "finding" is for the Court to make, on weighing evidence submitted by both sides.

--At p. 4, ¶ 7, Ll. 7-10: "case studies" are referenced in which Apostolidis *assumes* "racially polarized patterns of voting behavior." *Contrast Luna v. County of Kern,* 2018 U.S. Dist. LEXIS 29662 (E.D.Cal. February 23, 2018) (eleven trial days on subject).

--At p. 5, ¶ 8, Ll. 4-7: "neither high school curricula nor leading civic and political organizations effectively reach Latino youth." No Washington case has taken judicial notice of "facts" like these, e.g., that Washington high schools are "ineffective" at reaching their client populations.

Defendants agree that, under *Wyman* and *Houser*, both *supra*, judicial notice of legislative facts can be appropriate when citing to studies that are actually before the court, and when the case studies are properly presented, analyzed, and are themselves unimpeachable. *See* Donnelly Declaration; the references used by Dr. Strom are the kinds of works subject to judicial notice of legislative facts.

But the incorrect, one-sided, and controversial view of the history of the farm worker exemption, race relations in the Yakima Valley, and political engagement of the State's Latino/a population, even if truly relevant (they are not), should not be simply accepted in a case like this. The Apostolidis Declaration should be stricken, and not considered on the instant motion. CR 56(e).

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Dated this 7th day of May, 2018.

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CERTIFICATE OF SERVICE

I certify that I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of eighteen, and I am competent to be a witness herein.

On this 7th day of May, 2018, I caused the foregoing document to be served on the parties as indicated below.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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IN AND FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, v. DERUYTER FARM PROPERTIES, INC., f/k/a DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants.	No. 16-2-034173-9 **MOTION TO STRIKE DECLARATIONS OF ELVIA F. BUENO AND JOACHIM MORRISON**

On April 26, 2018, long after summary judgment materials were filed, plaintiffs stuffed the record with two new declarations. One, the Declaration of Elvia F. Bueno, is roughly 100 pages long, with attachments. The other, the declaration of Joachim Morrison, attaches multiple emails he received from multiple researchers, including researchers at the Washington State House of Representatives.

These are all new materials and were submitted for the first time with plaintiffs' reply papers on their motion for summary judgment. It is improper to submit new materials for the first time on reply. Defendants have no reasonable opportunity to prepare and respond; the arguments are already made.

As this court is well aware, it is improper to submit materials or issues for the first time in reply. *White v. Kent Med. Center, Inc.*, 61 Wn.App 163, 168, 810 P.2d 4 (1991). The *White* court added:

> Moreover, nothing in CR 56(c), which governs proceedings on a motion for summary judgment, permits the party seeking summary judgment to raise issues at any time other than in its motion and opening memorandum. The rule sets out the timetable for filing and serving the motion and supporting evidence and for the nonmoving party to file its opposing memoranda, affidavits, and other documentation. After the nonmoving party has filed its materials, the rule allows the moving party to "file and serve *any rebuttal documents* not later than 5 calendar days prior to the hearing." (Italics ours.) CR 56(c). *Rebuttal documents are limited to documents which explain, disprove, or contradict the adverse party's evidence*. *See* Black's Law Dictionary 1139 (5th ed. 1979); *Kremer v. Audette*, 35 Wn. App. 643, 647-48, 668 P.2d 1315 (1983).

White v. Kent Medical Ctr., supra, 61 Wn. App. At 168-169, 810 P.2d at 8 (1991) (emphasis supplied). The Bueno and Morrison declarations submitted April 26, 2018, with plaintiffs' rebuttal papers were not rebuttal materials; they do not disprove or contradict the DeRuyters' evidence.

Therefore, the Bueno and Morrison declarations should not be considered on the pending summary judgment motion and should be stricken under CR 56(c) and the *White* case. See also *R.S. Merrill Co. v. Pollution Control Hearings Board,* 137 Wn.2d 118, 147, 969 P.2d 458 (1999) (same).

Dated this 7th day of May, 2018.

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I certify that I am a citizen of the United States of America and a resident of the State of Washington. I am over the age of eighteen, and I am competent to be a witness herein.

On this ___ day of May, 2018, I caused the foregoing document to be served on the parties as indicated below.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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3 pages

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SUPERIOR COURT OF WASHINGTON
FOR YAKIMA COUNTY

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Plaintiffs, vs. DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Defendants.	No. 16-2-03417-39 PLAINTIFFS' RESPONSE TO MOTION TO STRIKE DECLARATIONS OF ELVIA BUENO AND JOACHIM MORRISON

Plaintiffs ask the Court to deny Defendants' motion to strike the declaration of Elvia Bueno and the supplemental declaration of Joachim Morrison.

In *White v. Kent Medical Center*, 61 Wn. App. 163, 168, 810 P.2d 4 (1991), the very case relied on by Defendants, the Court held that the party seeking summary judgment could not raise *new legal issues* in reply, and it explained that rebuttal materials are appropriate when they "explain, disprove, or contradict the adverse party's evidence." *Id.* at 168-69. The Bueno and Morrison declarations contain appropriate rebuttal documents under this standard.

The materials in the declaration of Joachim Morrison contradict Intervenors' unsupported assertion that Joachim Morrison improperly sourced documents from the Washington State Archives.

The materials in the declaration of Elvia Bueno contradict the assertions presented in the declaration of Claire Strom. Moreover, each of these materials was as an underlying source in the scholarly articles by Marc Linder and Juan Perea cited in Plaintiffs' original motion. *See* Plaintiffs' Motion for Summary Judgment at 7-8. Plaintiffs provide them for the convenience of the Court.

The Court should deny Defendants' motion to strike.

RESPECTFULLY SUBMITTED AND DATED this 8th day of May, 2018

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CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on May 8, 2018, I served a copy of the foregoing document on all counsel of record in the manner shown and at the addresses listed below:

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EXHIBIT 38

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State of Washington
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Court of Appeals No. _____
(Yakima County Superior Court Cause No. 16-2-03417-39)

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated,

Plaintiffs-Respondents

v.

DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER,

Defendants-Petitioners,

and

WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU,

Intervenors-Petitioners.

MOTION FOR DISCRETIONARY REVIEW

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A. IDENTITIES OF PETITIONERS

DeRuyter Brothers Dairy, Inc., Geneva S. DeRuyter, and Jacobus N. DeRuyter ("DeRuyter"), and the Washington Dairy Federation and Washington Farm Bureau ("Intervenors"), jointly ask this Court to accept review of the decision designated in Part B of this motion.

B. DECISIONS

Petitioners seek discretionary review of the trial court's Order granting partial summary judgment to plaintiffs, and denying summary judgment to DeRuyter and Intervenors, on plaintiffs' claims that RCW 49.46.130(2)(g) [1] violates article I, section 12[2] of the Washington State

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[1] RCW 49.46.130 provides, in relevant part:

> (1) Except as otherwise provided in this section, no employer shall employ any of his or her employees for a workweek longer than forty hours unless such employee receives compensation for his or her employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he or she is employed.
>
> (2) This section does not apply to:
>
> (g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any

Constitution. A copy of the Order, entered July 27, 2018, is attached hereto as Exhibit A. In the Order, the trial court certified that the Order involved a controlling question of law as to which there is a substantial ground for a difference of opinion and that immediate review of the order may materially advance the litigation.

RCW 49.46.130(2)(g) exempts agricultural employees from the overtime pay requirement of RCW 49.46.130(1). The trial court granted partial summary judgment that "RCW 49.46.130(2) grants a privilege or immunity in contravention of Article 1, Section 12." That decision is based on the trial court's conclusion of law that there is a "fundamental right of state citizenship" to work – to "sell your labor and earn a wage." The court concluded that RCW 49.46.130(2)(g) grants a "privilege or immunity" under article I, section 12, because the statute treats agricultural employees differently than other wage earners regarding the purported "fundamental right to work and earn a wage."

> agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

[2] Article I, section 12 of the Washington Constitution provides:

> SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

C. ISSUES PRESENTED FOR REVIEW

1. Does the statutory right to overtime pay created by RCW 49.46.130(1) involve a "fundamental right of state citizenship" within the ambit of the Washington State Constitution "privileges and immunities" clause, article I, section 12?

2. Does RCW 49.46.130(2)(g), which exempts agricultural labor from the overtime pay provisions of RCW 49.46.130(1), grant agricultural employers a "privilege or immunity" within the scope of legislation prohibited by article I, section 12 of the Washington State Constitution?

D. STATEMENT OF THE CASE

Plaintiffs' Claims and Initial Procedural History

Plaintiffs filed this action in December 2016 as a putative class action against the DeRuyter Brothers Dairy, Inc., on behalf of a class of persons previously employed as "milkers" at the DeRuyter Brothers Dairy.[3] Plaintiffs alleged that they worked more than 40 hours a week at the Dairy, but were not paid "time and a half" for overtime. Plaintiffs admit that they were agricultural employees, exempt from entitlement to overtime pay by RCW 49.46.130(2)(g).

[3] The DeRuyters sold the dairy in May 2017 and no longer employ "milkers" or other dairy workers, directly or indirectly.

An Amended Complaint was filed on October 10, 2017.[4] The Amended Complaint asserts that RCW 49.46.130(2)(g) grants agricultural employers an unconstitutional privilege or immunity from a requirement necessary for protection of workers' health and safety, in violation of the Washington State Constitution, article I, section 12. Amended Complaint, pp. 15, 17. RCW 49.46.130(2)(g) exempts agricultural employees from the statutory entitlement to overtime pay that was created in 1959 by RCW 49.46.130(1). The Amended Complaint's sixth claim for relief seeks declaratory relief that the statute is invalid. The fifth claim for relief seeks money damages against DeRuyter for failure to pay overtime compensation.[5]

On February 2, 2018, the court granted the Washington State Dairy Federation's and the Washington Farm Bureau's motion to intervene as Defendants in the action.

The Trial Court's Decision, Order and Certification for Interlocutory Review

Following discovery, plaintiffs moved for summary judgment on their claims for damages and declaratory relief. Plaintiffs were explicit as

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[4] The amendment was allowed by stipulation. The amendments corrected several factual errors in the initial pleading, and added Mr. and Mrs. DeRuyter as individual defendants.

[5] The Complaint's first through fourth claims for relief alleged other violations of Washington wage and hour laws. Those claims were resolved by agreement of the parties, and are not at issue.

to the nature of their claim; they alleged that RCW 49,46.130(2)(g) violated Article 1, Section 12

> Because it grants a privilege or immunity to the agriculture industry from a law that implicates a fundamental right of state citizenship--the right of all workers in dangerous industries to receive the protections of workplace health and safety laws.

Plaintiffs' Motion for Summary judgment and Statement of Points and Authorities, at 1. Plaintiffs did not argue that the statute involved a fundamental right "to work and earn a wage."

The DeRuyters and Intervenor-Defendants opposed the motion, moved to strike portions of the declarations plaintiffs filed in support of the motion, and submitted evidence in opposition to the motion. Intervenor-Defendants filed a cross-motion for summary judgment, and DeRuyter's Opposition Memorandum requested summary judgment dismissing the Amended Complaint and all remaining claims therein.

The Hon. Michael G. McCarthy heard oral argument of the cross motions for summary judgment on May 14, 2018. On May 31, 2018, the trial court issued a letter decision regarding the cross motions. The letter decision did not address the plaintiffs' summary judgment argument that RCW 49.46.130(2)(g) implicates a purported "fundamental right to worker health and safety in dangerous occupations." Instead, the court found that RCW 49.46.130(2)(g) burdens a "fundamental right" to "work and earn a wage," because it "treats a class of workers in a significantly different fashion than other wage earners engaged in the business of selling their labor." Consequently, the court found that RCW 49.46.130(2)(g) grants a

privilege or immunity within the ambit of Washington State Constitution article I, section 12. However, the court also held that disputed facts precluded summary judgment as to whether the legislature had reasonable grounds for exempting agricultural labor from the statutory entitlement to overtime pay. Therefore, the trial court denied summary judgment on plaintiffs' claims for declaratory relief and damages.

The trial court entered an Order on Plaintiffs' Motion for Summary Judgment and Intervenors' Cross Motion for Summary Judgment and Motion to Strike on July 27, 2018. The Order concludes that RCW 49.46.130(2)(g) grants a privilege or immunity in contravention of article I, section 12 of the Washington Constitution, denies all motions to strike portions of the declarations submitted in support of plaintiffs' motion, and reserves all other aspects of plaintiffs' claims for trial. Upon timely motion, the court also certified its Order as appropriate for interlocutory review under RAP 2.3(b)(4), recognizing that it involves a controlling question of law as to which there is substantial ground for difference of opinion, and immediate review may materially advance the ultimate determination of the action.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

RAP 2.3(b)(4) allows the Court of Appeals to accept discretionary review of a trial court's interlocutory order if (1) the order involves a controlling question of law; (2) there is a substantial ground for a difference of opinion regarding the order; and (3) an immediate appeal

from the order may materially advance the ultimate termination of the litigation. These requirements were derived from the parallel requirements of a federal statute, 28 U.S.C. § 1292(b). The Court may look to the analysis of federal rules similar to our state rules to the extent it finds federal reasoning persuasive.[6] The trial court's summary judgment Order satisfies these requirements.

1. Controlling Question of Law.

A "controlling question of law" is one that deeply affects the ongoing process of the litigation.[7] A legal question is considered "controlling" if an appellate court would be required to reverse a judgment if it determines the legal question was wrongly decided.[8]

As explained in *Schroeder v. Weighall*, 179 Wn.2d 566, 572-73, 316 P.3d 482 (2014), the application of article I, section 12 to challenged legislation requires a two-part test. First, the Court must determine whether the legislation grants a "privilege or immunity." If so, the Court must then determine whether the legislature had a reasonable basis for granting the privilege.[9]

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[6] See 2A Karl B. Tegland, Washington Practice: Rules Practice, at 161 (6th ed.2004); and *Am. Mobile Homes of Wash., Inc. v. Seattle–First Nat'l Bank*, 115 Wn.2d 307, 313, 796 P.2d 1296 (1990).
[7] *In re Cement Antitrust Litigation*, 673 F.2d 1020, 1026 (9th Cir.), *appeal dism'd*, 459 U.S. 961 (1982).
[8] *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 755 (3d Cir.) (en banc), *cert. denied*, 419 U.S. 885 (1974).
[9] The Court's Order cites *Schroeder* for this test at page 2, line 14-17.

The first part of the *Schroeder* two-part test is a controlling question of law, because "if there is no privilege or immunity involved, then article I, section 12 is not implicated." *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 776, 317 P.3d 1009 (2014) (citing *Grant County FPD No. 5 v. City of Moses* Lake, 150 Wn.2d 791, 812, 83 P.3d 419 (2004); *accord, Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 363, 340 P.3d 849 (2015) ("[b]ecause this case does not involve a constitutional privilege, we need not analyze the second prong of our article I, section 12 test"). Consequently, if this court were to determine that the statutory entitlement to overtime pay does not involve a "fundamental right of state citizenship," the Order granting plaintiffs' motion and denying defendant/ intervenors' motion for summary judgment on this claim would have to be reversed. [10]

[10] Plaintiffs also claimed that the agricultural exemption from overtime pay violates the equal protection guarantee of the privileges and immunities clause. Amended Complaint, ¶¶ 108-114. The trial court did not address that argument in its letter decision or its Order, effectively denying plaintiffs' motion on that claim. However, reversal of the trial court's conclusion that RCW 49.46.130(2) implicates a "fundamental right" will effectively compel judgment against the equal protection claim as well, because if the statue does not affect a fundamental right, the court employs the lowest level, "rational basis" review of the statute's purpose as an economic regulation. *See Sanchez v. Dep't of Labor & Indus.*, 39 Wn.App. 80, 89, 692 P.2d 192 (1984); *DeYoung v. Providence Med. Ctr.*, 136 Wn.2d 136, 144, 960 P.2d 919 (1998).

2. Substantial Ground for Disagreement

There is a substantial ground for difference of opinion regarding the Order's conclusion that the statutorily created entitlement to overtime pay involves a fundamental right of state citizenship. "[N]ot every statute authorizing a particular class to do or obtain something involves a 'privilege' subject to article I, section 12." *Ockletree*, 179 Wn.2d at 778 (quoting *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake (Grant II)*, 150 Wn.2d 791, 812, 83 P.3d 419 (2004)); *accord Am. Legion Post #149 v. Wash. State Dep't of Health*, 164 Wn.2d 570, 607, 192 P.3d 306 (2008) ("[a] privilege is not necessarily created every time a statute allows a particular group to do or obtain something"). Instead, article I, section 12 "applies only where a law implicates a 'privilege' or 'immunity' as defined in our early cases distinguishing the 'fundamental rights' of state citizenship." *Schroeder v. Weighall*, 179 Wn.2d 566, 572, 316 P.3d 482, 485-86 (2014) (quoting *Grant II*, 150 Wn.2d at 812-13). Washington's "early cases" defined the "fundamental rights of state citizenship" quite narrowly, as

> "'the right to remove to and carry on business therein; the right, by usual modes, to acquire and hold property, and to protect and defend the same in the law; the rights to the usual remedies to collect debts, and to enforce other personal rights; and the right to be exempt, in property or persons, from taxes or burdens which the property or persons of citizens of some other state are exempt from.'"

Am. Legion, 164 Wn.2d at 607 (quoting *Grant II*). If the challenged statute does not implicate a fundamental right of state citizenship, it does

not involve a privilege or immunity within the ambit of article I, section 12.

Motion briefing to the trial court revealed that the parties have widely disparate opinions about the issue. Notably, plaintiffs' Amended Complaint and their motion for summary judgment *did not even argue* that Washington law recognized a fundamental right "to work and earn a wage" – the trial court reached that result without the benefit of briefing or argument *by any party*. The Court's reasoning in reaching that result is also questionable – its letter opinion mis-cites *Hays v. Terr. of Wash.*, 2 Wash. Terr. 286, 5 P. 927 (1884), as holding that "a law barring hunting of deer with dogs in certain counties was found not to implicate a 'fundamental right.' " Ex. A to Order, p. 2.[11] The trial court also incorrectly identified *Schroeder, supra,* as "the most recent incarnation" of the Washington Supreme Court's "fundamental rights" analysis, omitting any discussion or analysis of the Supreme Court's subsequent decision in *Ockletree.* Notably, *Ockletree* involved a challenge to the Washington Law Against Discrimination in Employment and states, point blank, that "rights left to the discretion of the legislature have not been considered fundamental." 179 Wn.2d at 778 (citing *Grant* II, 150 Wn.2d at 814). Indeed, on this point all justices involved in the fractured *Ockletree* decision were in agreement: "a right granted only at the discretion of the legislature is not a "privilege" any citizen can assert." 179 Wn.2d at 795

[11] In fact, *Hays* held only that the law did not create a special privilege because it applied equally to all citizens of the Territory. 5 P. at 927.

(Sevens, J, dissenting). The statutorily created entitlement to overtime pay is clearly "a right granted at the discretion of the legislature," but the Order does not address this clear conflict with controlling precedent.

Finally, no Washington appellate court has ever identified a "fundamental right" to "work and earn a wage," and the trial court did not even address the requirement that a prohibited "privilege" favor one class of citizens to the disadvantage of another. Moreover, even if there is a fundamental right "to earn a wage," RCW 49.46.130(2) does not deprive employees of *that right*, it merely exempts some employees from the statutory entitlement to "time and a half" for work beyond forty hours in a week. Especially given that the Order involves several issues of first impression, petitioners respectfully submit that there is substantial ground for difference of opinion regarding the trial court's conclusion. Accordingly, this criterion of RAP 2.3(b) is satisfied.

3. Immediate Appeal May Materially Advance Disposition of the Litigation.

The third criterion of RAP 2.3(b)(4), "that an appeal may materially advance the ultimate termination of the litigation," is closely tied to the requirement that the order involve a controlling question of law."[12] Thus, if the controlling questions of law might avoid or simplify further proceedings before the trial court, this criterion is satisfied. Reversal of the trial court's conclusion that there is a fundamental right to

[12] Wright, Miller, & Cooper, 16 Federal Practice and Procedure, § 3930, at 432 (2d ed. 1996).

overtime pay, or that RCW 49.46.130(2)(g) otherwise grants agricultural employers a privilege or immunity within the ambit of article 1, section 12, readily meets this standard, because it will dispose of this case.

As the trial court noted in granting the Motion to Certify for Interlocutory Appeal, trial of the remaining issues in this action is expected to be complex, time consuming and costly (or "messy," as the trial court put it), both in terms of fees and imposition on the resources of the Court, parties, and witnesses. Interlocutory review at this juncture may well avoid a waste of those resources. This factor should be given particular weight for the DeRuyters, who are now embroiled in this costly litigation simply because they followed a decades old statute according to its unambiguous terms, in accordance with industry practice and more than 80 years of American tradition.

F. CONCLUSION

This Court should accept discretionary review of the trial court's summary judgment order, reverse the order, and remand with a mandate to grant summary judgment to DeRuyter and Intervenor-Defendants against the Amended Complaint and all remaining claims therein.

Respectfully submitted this 17th day of August, 2018.

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Dated this 17th day of August, 2018 at Spokane, Washington.

/s/ Pam McCain
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