

Testimony of Kristi Boswell

Before the U.S. House of Representatives Committee on Education and Labor Subcommittee on Workforce Protections

Hearing on “Children at Risk: Examining Workplace Protections for Child Farmworkers”

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Chairwoman Adams, Ranking Member Keller, and members of the Subcommittee. I appreciate the invitation to testify about youth employment in agriculture.

My name is Kristi Boswell. I am an agricultural policy counsel at Alston & Bird Law Firm. In my role, I represent agricultural clients on various policy and regulatory issues, including agricultural labor. Let me begin by noting that I am testifying today in my personal capacity and not on behalf of any client.

I grew up on a multi-generational family farm in rural Nebraska. My family raised corn, soybeans, prairie hay and livestock near the town of Shickley – population around 300 people. As the youngest of 3 daughters, I worked on the farm from a young age. I worked side-by-side with my mom and dad and my sisters, driving tractors to cultivate the ground in the spring and to move grain during harvest. I fixed stuck irrigation pivots and changed irrigation pipe gates needed to water the crops. I regularly drove a large tractor hauling round bales of hay and moved equipment from field to field, including driving on country rounds. I was riding horses before the age of five, corralled cattle to move them from pasture to the farm lot and fixed fence around the pasture. I was in charge of filling the combine with diesel fuel and spent many hours ensuring there were no problems with the grain auger loading the semitruck that would haul grain to the elevator. Many of you may not even know what these tasks involve, but to me they are all second nature. A part of growing up on a farm. These weren't only family chores. This was my job. The job I had until I graduated high school. And most of the other young people I knew had jobs just like mine either on their family's farm or a neighbor's farm. People who live their entire life in a city probably think what I just described is strange, and scary and dangerous. But when you grow up on a farm, you know better, and I would not trade my experience for anything.

My experience instilled in me a work ethic and deep appreciation and respect for agriculture. I was involved in my local FFA Chapter and 4-H, showing cattle and pigs at the county and state fairs. I carried that passion into my studies earning a bachelor's degree in agricultural economics. In undergrad, I served as the Agricultural Youth Coordinator for the Nebraska Department of Agriculture and was a member of the Nebraska Agricultural Youth Council. I received my law degree with distinction, including 15 hours concentrated study in agricultural law coursework. For over a decade, I have worked directly in agricultural policy and law. Prior to joining private practice, I served as a Senior Advisor to Secretary of Agriculture Sonny Perdue and before that as Director of Congressional Relations at American Farm Bureau Federation. In both of these positions, my portfolio has included agricultural labor and farm safety issues. I like

to say that every day I go to work and advocate for people like my parents. I could not be prouder of that fact. I truly believe the skills I developed working on the farm have provided me the passion, work ethic, and leadership skills needed to be successful.

I was fortunate that I could learn life skills and earn money for college by working on my family farm. However, many are not fortunate enough to be born into a farming family, including my six nieces and nephews. Yet, agriculture drives many rural economies and for most young people in towns just like Shickley, Nebraska, working in agriculture is about the only way there is to earn money.

The old adage that farming is a way of life rings true. Farmers' and ranchers' conference rooms are their kitchen tables; their commute is from their front door to the barn. The foundation of American agriculture is the family farm that has been passed through generations. Still today, family farms (where the majority of the business is owned by the operator and individuals related to the operator) account for nearly 98 percent of U.S. farms.¹ Congress acknowledged this way of life and the unique business attributes of farming and ranching when it passed the Fair Labor Standards Act (FLSA). Under current law, minors 16 years or older may perform any job on farms or ranches whether or not the government deems it to be hazardous. Congress, through the FLSA, also permits 14- and 15-year-olds to perform nonhazardous farm jobs outside of school hours. Congress long ago recognized that parents know their own sons and daughters better than the government and so the FLSA also gives parents the freedom to allow their 12- and 13-year-olds to work in nonhazardous jobs outside of school hours.² When creating the FLSA, Congress also recognized the central role that agriculture has in the foundation of this country, and so youth may work on their family farm at any age.

We all can agree that it is critically important to ensure that anyone working in agriculture – youth or adults – are safe. Certainly, working in agriculture involves more risk than sitting in a desk in an air-conditioned office. Farmers have repeatedly demonstrated they are interested in actively engaging with safety educators, researchers, the U.S. Department of Agriculture (USDA), and the U.S. Department of Labor (DOL) to develop safety programs and reasonable proposals that balance the goal of protecting youth working in agriculture while continuing to develop the next generation of farmers. I have been personally involved in these efforts with the “Safety in Agriculture for Youth” project funded by the USDA National Institute of Food and Agriculture, that is comprised of representatives of several major agricultural constituent groups, educators, and safety and health professionals.³ Together we developed guiding principles and a national clearinghouse for agricultural safety and health curriculum for youth. Additionally, before entering into the government, I served on the Agricultural Safety and Health Council (ASHCA) Board of Directors. I am honored to have served on that Board with my co-panelist, Dr. Lee. ASHCA’s mission is to pursue national strategies to create a less-hazardous work

¹ Source: USDA Economic Research Service. [https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income/#:~:text=Family%20farms%20\(where%20the%20majority,percent%20of%20all%20U.S.%20farms.](https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income/#:~:text=Family%20farms%20(where%20the%20majority,percent%20of%20all%20U.S.%20farms.) Accessed 9/2/2022.

² 29 USC §213(c).

³ Safety in Agriculture for Youth (SAY) <https://ag-safety.extension.org/safety-in-agriculture-for-youth/>

environment for American agriculture. ASHCA develops educational programs and seminars for farm employers and guides development of effective national safety strategies. In the Trump Administration, I helped draft the Presidential Proclamation of National Farm Safety and Health Week and participated with stakeholders in Farm Safety Week events. Outside of my personal experiences, the industry has developed grain bin safety education programs, held youth farm safety day events, and created many other programs to keep youth safe on the farm.

I hope we also can agree that giving youth the opportunity to learn life skills that come from having a job and the ability to earn money for their future is a shared goal. Moreover, these policy discussions must also acknowledge the economic realities of rural America, the shrinking societal interest in working in agriculture and the need for certainty in our domestic food production. We must ensure that the next generation of farmers want to enter the business. According to the Census of Agriculture the average farmer is 57.5 years old.⁴ Of 3.4 million producers, less than 10 percent are under the age of 35.⁵ American farmers and ranchers are the best in the world, but to meet the demand needed to feed two billion more people around the globe by 2050, our production must double.⁶ On top of global demand, one of the many lessons taught during the pandemic is that we need to do everything we can to protect domestic food production. To that end, there are numerous federal and state government programs that seek to assist beginning farmers with technical assistance, funding, and mentoring. Just last month, USDA announced \$250 million to create career development opportunities for next generation leaders. Farming is not for the faint of heart – it takes substantial capital investment, acceptance of risk, and grit. It is a dedication that can only be fostered by being engaged at a young age. So, while government programs can help, there is no better way to foster an interest in agriculture than to experience it during your formative years. In my experience, there is no substitute for actual hands-on involvement.

Unfortunately, the recently introduced “CARE Act of 2022” and past similar regulatory proposals fail to balance the goal of protecting youth working in agriculture while continuing to develop the next generation of farmers. There will undoubtedly be adverse consequences if the reality of farming and ranching are not carefully considered. The one-size-fits-all approach of this legislation fails to recognize the reality of rural America and would replace the good judgment of people who have lived and worked the land for generations with the judgment of those who may have never even stepped foot on a farm.

The CARE Act would fundamentally disrupt longstanding American traditions of responsible agricultural employment. The bill would eliminate parental discretion and restrict the ability for youth to work until the age of 14 and then further restricts their ability by allowing work in only certain jobs deemed nonhazardous by the federal government until the age of 18. I understand that the drafters of the bill may intend to preserve the ability for youth to work on their family’s farm, but in my view the legislation fails to recognize that the result will severely limit the ability

⁴ 2017 Census of Agriculture,

https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Producers.pdf.

⁵ 2017 Census of Agriculture, <https://www.nass.usda.gov/Publications/Highlights/2020/young-producers.pdf>.

⁶ United Nations Food and Agriculture Organization. How to Feed the World 2050 High Level Expert Forum, 2009 https://www.fao.org/fileadmin/templates/wsfs/docs/Issues_papers/HLEF2050_Global_Agriculture.pdf.

for youth living in small-towns and agricultural communities to obtain valuable work experience in the only jobs likely to be available.

Also, the bill fails to acknowledge the reality of life in rural America. Youth who grow up around agriculture – even if not directly on a farm – likely have more awareness of the associated risks of farm work than do bureaucrats in some far away city. One good example of this is the failure of the CARE Act to recognize that in many states, including Nebraska where I grew up, young people can drive a vehicle, without a parent, beginning at the age of 14. It defies reason that the state government would determine a 14-year-old is qualified to safely operate a 5,000-pound (or more) vehicle on public roads up to 75 mph,⁷ but the federal government thinks the same person should be prohibited from operating a tractor at 5 mph in a cornfield. Congress many decades ago realized that the right approach was to leave these decisions to the people closest to the land: a young person's parent. There is no reason to change that now. Parents continue to be in the best position to evaluate their son or daughter's capability, risk awareness, and maturity level - not the federal government.

Prior attempts to change Congress's longstanding respect for the unique role of agricultural employment were misguided and failed in spectacular fashion. Over ten years ago during the Obama Administration, a regulatory proposal similar to the CARE Act was so misguided and overreaching that it would have gravely limited the ability for youth to do nearly any task on the farm – even a family farm and in educational programs.

Despite assertions to the contrary, the 2011 proposal extremely narrowed the longstanding parental exemption in the FLSA. As proposed, youth could not have worked for a grandparent or aunt or uncle unless they resided with the relative for more than one month.⁸ Also, that proposal narrowed the parental exemption so it would not have applied to farms organized as corporations or partnerships – failing to recognize a routine aspect of farming in the 21st century.⁹ The legal structure of a farming operation should have nothing to do with the farm's family heritage or their concern for employment of their family members.

The proposal also severely limited the student learner exemption causing many unintended consequences for agricultural education programs and restricting opportunities for experiential learning. At that time, the National FFA Organization opposed the proposal noting the negative impact it would have on the approximately 7500 agricultural programs and 800,000 students in agricultural educational programs across the country, including for two-thirds of those students that came from non-farm backgrounds. FFA and agricultural education programs encourage and educate young people for careers in agriculture, and these students would have been extremely restricted in their ability to participate in experiential learning programs where they apply classroom lessons in practice had those regulations been finalized.¹⁰

⁷ Nebraska Maximum Speed Limit.

⁸ Proposed 29 CFR 570.123(2), Federal Register page 54880.

⁹ Proposed 29 CFR 570.123 (1), Federal Register page 54880.

¹⁰ Testimony of Kent Scheske, National FFA Organization before the House of Representatives Small Business Committee, February 2, 2012.

Going further, the Obama Administration's proposal designated typical, everyday farm tasks as hazardous occupations (H.O.). For example, driving tractors was forbidden (proposed H.O. #1), corralling cattle was prohibited (proposed H.O. #4), building or repairing fencing (proposed H.O. #6), and working at height more than 6 feet (proposed H.O. #7). Fortunately, during my time at American Farm Bureau Federation, we spearheaded a grassroots effort including farmers, ranchers, FFA members, and agricultural educators opposing those regulations. In April 2012, DOL withdrew the proposal with the promise to not re-propose any new regulations on the issue.

Notably, all of the tasks I mentioned at the beginning of my testimony that I performed on the farm growing up would have been considered hazardous under the 2011 DOL youth labor proposal. Under those rules, I may have been covered by the parental exemption because I worked for my dad. But my nephews – who live less than 5 miles from the farm I grew up on – would not have been covered by the family farm exception and would not be able to work with my dad – their grandfather. The impact that would have had for them and their future is great. My oldest nephew worked from the age of 12 with his grandfather after school and during summers. This created a passion for farming that led him to major in diesel mechanics as he started college this fall. He plans to be a farmer one day. Separately, at the ages of 12 and 13, my nieces and nephews detasseled corn during the summer, earning nearly \$1000 each for a few weeks of work; a summer job they could not take advantage of once they entered high school because of their many extracurricular activities.

Farm safety is a priority for everyone. There is room for a thoughtful conversation that brings all stakeholders to the table so that policy decisions do not have unintended consequences. However, broad sweeping policies written by bureaucrats and lawmakers without engaging farmers, ranchers, and agricultural educators is not the answer. We also must acknowledge the reality that agriculture is the economic driver in much of rural America and in those communities there are very few job opportunities other than working on a farm. We need to protect those traditions and values, while having an honest and informed conversation about what jobs are age appropriate, the discretion of parents in making the best decisions for their sons and daughters, and ways the federal government can work with agriculture to develop safety programs that meet the shared objectives of keeping youth safe when working on farms.

I hope that today's hearing can be the start of an informed policy discussion that recognizes the great opportunity working in agriculture provides to our youth and the need to encourage participation in agriculture for the future of our global food production. I appreciate the opportunity to testify before the subcommittee.