

**REMARKS PREPARED FOR DELIVERY BY  
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EXECUTIVE DIRECTOR, NATIONAL COMSUMERS LEAGUE,  
BEFORE THE  
SUBCOMMITTEE ON WORKFORCE PROTECTIONS OF THE  
U. S. HOUSE COMMITTEE ON EDUCATION AND LABOR**

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Thank you for inviting me to testify today. My name is Sally Greenberg, and I serve as Executive Director of the National Consumers League. We very much appreciate the Subcommittee on Workforce Protections holding a hearing that asks, "Child Labor Enforcement: Are We Adequately Protecting our Children?" The National Consumers League believes that that answer to the question this Subcommittee hearing poses is "No," and that much more can and must be done to better protect our young people from hazards and dangers they confront in the workplace.<sup>1</sup>

Every 10 days in America, a young person is killed at work. Every day, more than 100 young workers under the age of 19 are seriously injured or become ill from their jobs.

My testimony today focuses on the U.S. Department of Labor, or DOL's poor enforcement of the federal child labor laws and I will make recommendations about reforms I would like to see at DOL to strengthen protections for working children. I will also make recommendations for legislative reforms that we believe Congress should consider to help to protect our young people from hazardous work conditions.

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The National Consumers League, or “NCL,” is a private, non-profit advocacy group representing consumers on marketplace and workplace issues. Our mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. We are the nation's oldest consumer organization. The NCL is the co-chair, along with the American Federation of Teachers, of the Child Labor Coalition, or “CLC.” The CLC, established in 1989, is a group of more than 30 organizations, representing consumers, labor unions, educators, human rights and labor rights groups, child advocacy groups, and religious and women’s groups. The CLC’s mission is to protect working youth and to promote legislation, programs, and initiatives to end child labor exploitation in the United States and abroad.

Let me start by saying that the NCL very much supports the notion young people can learn and grow by working, as long as they are placed in a jobs that are appropriate and safe. We wish to focus, however, on workplace settings and jobs that are risky or dangerous for young people and what can be done to correct the loopholes in the law that expose youngsters to these workplace hazards.

Much of my testimony is based on the findings of two reports on DOL’s child labor enforcement released by the Child Labor Coalition and published by the National Consumers League, one in June 2005 and the other in September 2006, as well as more recent data on the same topic. I have provided copies of the two reports to the Subcommittee, and I ask that they be included in the record.

What these reports make clear is that enforcement of the child labor law is no longer a high priority for DOL.

Here is a quick overview that shows why this is so.

- First, *the number of child labor investigations by DOL has declined drastically*. For example, there was a 48 percent decline from 2004 to 2006 — 2,606 child labor investigations in 2004, but only 1,344 in 2006.<sup>2</sup> If we look back more than two years, the story is even worse. The number of child labor investigations conducted in 2006 — 1,344 — was the lowest in the last ten years for which we have data, and may be the lowest in many decades.
- Second, the time spent investigating child labor also declined: 58,220 hours in 2004, but only 48,005 hours in 2006. If we look back more than two years, the story is even worse. For example, from 2001, when the Wage-Hour division spent 73,736 hours doing child labor investigations, to 2006, the time devoted to child labor investigations plummeted by 35 percent. The 48,005 hours spent by DOL in 2006 investigating child labor violations may sound like a lot of time, but based on our calculations, this is roughly the equivalent of 28 full-time employees doing child labor investigations exclusively.<sup>3</sup> There are an estimated 3.2 million working children in the United States, according to the federal government.<sup>4</sup> In

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<sup>2</sup> The data we have are based on the federal fiscal year, not the calendar year. Also, our data go only through 2006, because information on DOL’s child labor enforcement is not on the DOL Web site; the data are available through a Freedom of Information Act request only – we have filed a FOIA request but have yet to receive the information.

<sup>3</sup> A full-time DOL employee with a 40-hour workweek for 52 weeks is paid for 2,080 hours per year, but with time off for vacations, holidays, and sick leave for medical appointments and illnesses, actual working hours in a year are probably closer to 1,700 hours. Thus, the 48,005 child labor investigative hours in 2006 would require the equivalent of about 28 full-time employees.

<sup>4</sup> The National Institute for Occupational Safety and Health (NIOSH), relying on reports by DOL’s Bureau of Labor Statistics and the Current Population Survey, estimates that 2.78 million 16- and 17-year-old children were employed in 2000, as well as over 450,000 15-year-olds, for a total of 3,230,000 youth workers. *National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders* (May 2002), p. 3 (“NIOSH Report”) (available at [www.cdc.gov/niosh/docs/NIOSHRecsDOLHaz/DOL-recomm.pdf](http://www.cdc.gov/niosh/docs/NIOSHRecsDOLHaz/DOL-recomm.pdf)). The NIOSH Report has no estimate for

other words, each of these 28 DOL child labor investigators is in effect responsible for assuring a safe and healthy work environment for about 115,000 youth workers.

- Third, *the penalties that DOL imposes are too low to provide sufficient deterrent to companies hiring underage workers.* While the law imposes a maximum penalty of \$11,000 for each violation,<sup>5</sup> the average penalty in 2004 was only \$718, less than 7 percent of the maximum penalty permitted. Two years later, in 2006, the average penalty was only \$939, less than 9 percent of the maximum penalty. Here's a concrete example of low child labor penalties. In 2006 DOL found 29 children in six Target Corporation retail stores in New York's Hudson River Valley who had been working in jobs prohibited for children under age 18 because the work is so hazardous—operating power-driver scrap paper balers and operating power-driven hoisting equipment, like forklifts.<sup>6</sup> DOL imposed a penalty of \$92,400, or an average of \$3,166 per child, not a lot for a multibillion dollar corporation. Another example dates from 2005. Walmart committed child labor violations affecting 85 children in 24 stores, many involving youth who did jobs that DOL has determined to be

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the number of youth workers under age 15. However, many children under this age do in fact work, as evidenced by DOL's Bureau of Labor Statistics estimate that 134 children under age 15 were killed on the job during the period 1992-1998 (see report on the Youth Work Force, revised November 2000, Chapter 6, p. 60 (Table 6.1), available at [www.bls.gov/opub/rylf/pdf](http://www.bls.gov/opub/rylf/pdf)).

<sup>5</sup> This \$11,000 maximum penalty was increased by FLSA child labor amendments included in the Genetic Information Nondiscrimination Act, or "GINA" (which took effect on May 21, 2008), with regard to particularly serious child labor violations. Any child labor violation that causes death or serious injury now has a maximum penalty of \$50,000, which can be doubled where the violation is a repeated or willful violation. We don't know whether DOL has begun to impose these higher penalties, though they took effect over four months ago.

<sup>6</sup> The information about the Target Corporation child labor investigation comes from the *Daily Labor Report* of April 19, 2006, published by the Bureau of National Affairs in Washington, D.C.

particularly dangerous, such as operating chain saws, cardboard balers, and forklifts.<sup>7</sup> DOL imposed \$135,540 in penalties, or an average of \$1,595 per child. Given that Wal-Mart had \$285 billion in annual sales, the \$135,540 total penalty is a negligible amount—the equivalent of fining someone with an average salary a tiny fraction of a penny. The law says that the size of any child labor penalty that DOL imposes must take account of “the size of the business of the person charged and the gravity of the violation,”<sup>8</sup> but it is hard to see how DOL has done that in its investigations, given the very low amount of the average penalty imposed.

- Fourth, *DOL has almost no child labor enforcement in agriculture.*

Hundreds of thousands of children work in agriculture, yet, in 2006, just 28 of DOL’s 1,344 child labor investigations—2 percent—were in agriculture. In 2005 the number of child labor investigations in agriculture was even lower—just 25. These numbers contrast sharply with earlier years. In 1999, for example, DOL conducted more than five times as many investigations in agriculture—142. What is particularly troubling about this poor enforcement record is that the risks of injury, illness, and death are greater for children working in agriculture than in any other jobs. For example, children age 15 to 17 working in agriculture have over four times the risk of fatal injury of children working in other industries.<sup>9</sup>

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<sup>7</sup> The information about the Wal-Mart child labor investigation is based largely on articles in *The New York Times* on February 12 and 21, 2005.

<sup>8</sup> FLSA section 16(e), 29 U.S.C. 216(e).

<sup>9</sup> *National Institute for Occupational Safety and Health (NIOSH Recommendations to the U.S. Department of Labor for Changes in Hazardous Orders* (U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, May 2002), p.12, available at <http://www.cdc.gov/niosh/docs/NIOSHRecsDOLHaz/default.html>.

Children under age 15 working on farms account for about three-fourths of all work-related deaths for that age group.<sup>10</sup> As for nonfatal injuries, hospital emergency room and workers' compensation data have suggested that youth injuries in agriculture tend to be more severe than injuries in other employments.<sup>11</sup>

What can DOL do to assure greater protections to working children? There are several key steps DOL should take.

- First, *DOL needs to devote more time and effort to investigating potential child labor violations.* The equivalent of 28 full-time child labor investigators for the entire United States is simply indefensible. The child labor provisions of the FLSA are unique in that only DOL can enforce them, whereas the FLSA's minimum wage and overtime pay provisions can be enforced not only by DOL, but also by aggrieved employees represented by lawyers in court. In other words, if DOL places less emphasis on enforcing the minimum wage and overtime pay provisions, employees have another route to address the problem—a private right of action.. In 2006, for example, DOL filed only 3 percent—143 of 4,207—FLSA lawsuits in federal court. But if DOL does not enforce the FLSA's child labor provisions, then no one else can.
- Second, *DOL needs to impose much higher penalties than in the past.* Average penalties of less than \$1,000 do not provide sufficient deterrent effect. There is no deterrent effect when a large company faces a nominal

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<sup>10</sup> *Ibid.*

<sup>11</sup> *Id.* at p. 7.

penalty after permitting underage youth to perform work forbidden under DOL regulations. DOL could easily change its regulations, or even just revise its internal procedures for calculating penalties, to achieve this result. Moreover, DOL should take employers who commit repeat child labor violations to court to get an injunction barring future violations, as the FLSA authorizes DOL to do. Any employer that violates such an injunction can be held in contempt of court and be required to pay DOL's costs of investigating and prosecuting to prove to the court that the employer has violated the injunction.

- Third, *DOL needs to update and strengthen its regulations* that list jobs that are so hazardous that no child under age 18 (or in agriculture, under age 16) can do them. The government's premier job safety agency—the National Institute for Occupational Safety and Health, or “NIOSH”—issued a lengthy report over six years ago recommending that more than half of these existing regulations be revised and that 17 new regulations be added, but DOL has acted on a paltry number of these recommendations, and adopted no changes whatsoever for agriculture, the most dangerous work environment for children. Six years of inaction, while children are maimed and injured on the job, are six years too many. DOL's refusal to protect working children by appropriately revising the hazardous orders is inexcusable.
- Fourth, DOL needs to conduct targeted investigations of two industries in which child laborers may be most vulnerable to death or injury:

agriculture and meatpacking. It has been nearly a decade since the Department of Labor's targeted Salad Bowl investigation found dozens of children, including many under the age of 10, helping harvest the nation's fruits and vegetables. And in the area of slaughterhouses, the recent investigation by the State of Iowa of the Agriprocessors plant in Postville, Iowa found dozens of minors working illegally in what is often considered to be one of the worst and most dangerous jobs in America. In August, NCL spoke to an Agriprocessors child laborer who had stabbed himself in the arm while on the cutting line and had been bandaged up and told to go back to work. The young worker said he was routinely cheated out of hours of wages each week. He also said that he believed his plant supervisors knew he was too young to work in the plant but looked the other way. Given that meat processing plants tend to attract an impoverished, mostly immigrant work force, the possibility that child laborers may be employed in slaughterhouse around the nation should be investigated by U.S. DOL with vigor.

- Fifth, *DOL needs to publicize its child labor enforcement activities much more aggressively.* The most that DOL does typically is to issue an innocuous press release, and in many instances no publicity at all is given to child labor penalty cases. This approach needs to be changed drastically to make both employers and employees much more aware of the child labor laws, and the penalties that can result for violating those laws.

- Sixth, DOL needs to revive the Child Labor Task Force that coordinated child labor enforcement efforts between state and federal inspectors. Increased coordination and communication between state and federal inspectors should increase the efficacy of enforcement efforts.

What can this Committee and Congress do to strengthen the child labor law? We have several recommendations:

- First, Congress must increase funding for DOL Wage and Hour inspectors. One of the primary reasons for the lack of child labor enforcement: Wage and Hour is grossly understaffed. Less than 750 investigators are available to go out into the field and investigate labor violations. That translates to one investigator for every 10,000 businesses. Kim Bobo, the executive director of Interfaith Worker Justice testified in Congress earlier this summer, that if the ratio of investigators to businesses that existed in 1941 held today, we would have 34,000 investigators—not less than 1,000. As a first step, NCL believes the number of inspectors should be doubled and Congress should mandate that child labor inspections become a greater priority of enforcement efforts. Congress should require DOL to report on its enhanced child labor enforcement efforts not less than 18 months after funding for the additional inspectors is provided.
- Second, *Congress should eliminate many of the special exclusions in agriculture* that permit children as young as young as 12 years old, and in some cases even younger, to work in the fields. It is unconscionable to allow 12 year olds to toil in over 100 degree heat and be exposed to toxic

chemicals and pesticides; this gaping loophole in the law should be changed. By doing so, Congress would ensure that children working in agriculture would be subject to the same protections as children working in all other jobs. We are not talking here about children who work on their own parent's farms (who are not subject to the child labor law at all), but children who work for hire on farms, such as migrant and seasonal farmworkers. Rep. Lucille Roybal-Allard's "Childrens Act for Responsible Employment," also known as the CARE Act, would close these shameful loopholes, leveling the playing field for hundreds of thousands of farmworker youth who are dropping out of high school in high numbers.

- Third, because of the great hazards to children working in agriculture, *Congress should strengthen the protections for children working on farms.* Under existing law, the Secretary of Labor has the authority to declare which jobs are particularly hazardous for children, and the law provides a minimum age of 18 for such jobs—except in agriculture, where the minimum age is 16. For example, a young worker must be 18 to drive a forklift at a Wal-Mart warehouse, but that young worker could drive a forklift at a fruit and vegetable packing house at age 16—even though the dangers are very similar.
- Congress should amend the law to raise the minimum age for doing particularly hazardous work in agriculture to 18, especially in view of the

high incidence of deaths and injuries to children working in agriculture (as noted above). The CARE Act would remedy this problem as well.

- Fourth, *Congress should impose minimum penalties for child labor violations* —say at \$500—to make employers more likely to comply with the child labor requirements.

Thank you again, Madam Chair, for calling this hearing on whether young workers are being properly protected in America's workplace. The National Consumers League remains ready to work with you and your staff to see that children in this country are kept safe and are protected against the many dangers and hazards they may face in the workplace.