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Clarifying and Amending Laws on Employee Housing and Penalties for Late-Payment of Agricultural Employees: A Win-Win Situation?

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Code Sections Affected

Labor Code §§ 203, 205 (amended).
SB 1071 (Polanco); 1997 STAT. Ch. 92
Health and Safety Code § 17039 (new).
AB 359 (House); 1997 STAT. Ch. 49

Dirt floors, a home water supply, including showers and toilet, that flows through a single garden hose, inadequate electrical systems, and rooms overrun with rats and cockroaches mark the migrant farmer settlement with the apt sobriquet "The Jungle."¹ The Ohio Department of Health in November of 1996 accused Decoster farms, one of the largest egg producers in the country, of unsanitary living conditions in worker housing.² The unappetizing press, contentious litigation, and allegations that employees vandalize the property provided the catalysts for farmers nationwide, but especially in California, to forego supplying housing for employees.³ In contrast, some farmers have constructed modern accommodations for farmworkers in order to induce the annual return of a knowledgeable and dependable workforce.⁴ Notwithstanding the noteworthy exceptions, the majority of farmers are predisposed to bulldozing existing employee housing.⁵ Consequently,

1. See Jim Steinberg, *Fed Up Growers Provide for Fewer Tenants Than Ever for Workers on Valley Farms*, FRESNO BEE, Aug. 18, 1996, at A1 (describing the deplorable living conditions endured by migrant farmworkers); see also OCCUPATIONAL SAFETY AND HEALTH ASSOCIATION (OSHA) NEWS RELEASE, *Labor Secretary Proposes \$3.6 Million In OSHA Penalties Against Maine Egg Producer, July 12, 1996* [hereinafter *OSHA Penalties*] (cataloging the housing violations suffered by migrant farmworkers).

2. See Mitch Weiss, *Changing Unpopular Opinion; Farm Chief Says He's A Good Egg*, THE PLAIN DEALER (Cleveland), Jan. 26, 1997, at B2 (revealing the unsanitary living conditions endured by numerous workers on the Decoster's ranches).

3. See Steinberg, *supra* note 1, at A1 (detailing that housing available to migrant farmworkers fell 60% in the last 20 years).

4. See *id.* (recounting that Bill Ciapessoni spent more than \$300,000 over six years to construct housing for up to 96 men on his grape and almond farm, and added that governmental regulations and maintenance costs associated with the structures total \$1,500 per month in peak season).

5. See *id.* (interviewing farmers and finding the popular solution for housing problems faced by farmers is to demolish existing buildings).

farmworkers have fewer places to stay, forcing more people to stay in exceedingly cramped conditions or to live outdoors.⁶

In addition to the obvious housing difficulties, other problems plague the farmer-employee relationship.⁷ Allegations that farmers withhold wages from farmworkers, in particular migrant farmworkers, have surfaced.⁸ Because of the transitory nature of their employment, the imperative to move quickly to other harvest locations, and the intimidating nature of the employee-employer relationship, many farmworkers have reluctantly relinquished their wages or received them belatedly.⁹

I. INTRODUCTION

California depends on its agriculture to feed and employ its populace and to add flavorful fruits, vegetables, nuts, and meats to tables all around the world. Traditionally, farmers have utilized migrant labor, including many undocumented aliens, to harvest the State's produce rapidly, skillfully, and inexpensively.¹⁰ However, problems engendered by migrant labor, including the recent documentation of abysmal living conditions and the failure of employers to pay wages owed to migrant farmworkers, have prompted strident scholastic criticism.¹¹ Inasmuch as these problems have prompted vitriolic press coverage and equally bitter litigation, many farmers no longer provide housing for their workers.¹² Moreover, interpretation of existing statutes categorizing migrant laborers differently than other state em-

6. See *id.* (reporting that disappearing housing has had the concomitant impact of creating increasingly crowded conditions in area towns and has compelled many to live outdoors including living in precariously constructed tree houses).

7. See, e.g., *United States v. Booker*, 655 F.2d 562, 566 (4th Cir. 1981) (utilizing the Thirteenth Amendment to enjoin egregious treatment suffered by migrant farmworkers); see also *United States v. Bibbs*, 564 F.2d 1165, 1169-70 (5th Cir. 1977) (holding that a farming operation that blatantly coerced laborers to work violated the Thirteenth Amendment).

8. See *OSHA Penalties*, *supra* note 1, at 1 (invoking statutory penalties against A.J. Decoster for not providing back wages owed to workers for regular and overtime work).

9. See SENATE COMMITTEE ON INDUSTRIAL RELATIONS, COMMITTEE ANALYSIS OF SB 1071, at 1 (Feb. 27, 1997) (declaring that without penalties for late-payment of wages, migrant farmworkers are especially susceptible to coercion and mistreatment).

10. See *Usery v. Paramount Citrus Ass'n Inc.*, 475 F.Supp. 700, 707 (C.D. Cal. 1979) (recognizing the integral role migrant farmworkers play in harvesting produce).

11. See Joey Asher, *How the United States Is Violating Its International Agreements To Combat Slavery*, 8 EMORY INT'L L. REV. 215, 216 (1994) (discussing the horrid living conditions of migrant workers in numerous states); see also Elizabeth J. duFresne & John McDonnell, *The Migrant Labor Camps: Enclaves of Isolation In Our Midst*, 40 FORDHAM L. REV. 279, 280-84 (1971) (finding the majority of labor camps lacking sufficient electricity or plumbing and discussing the likelihood that migrants are taken advantage of by being intimidated into not complaining about unreceived wages).

12. See Steinberg, *supra* note 1, at A4 (commenting on the growers' desire to remove existing worker housing).

ployees precludes farmworkers from utilizing legal remedies for non-payment of wages.¹³

Health, safety, moral, and economic reasons support the preservation of employee housing.¹⁴ Other solutions, including the use of tents, other non-permanent housing or constructing low-cost public housing, have not received ample support.¹⁵ To address the Hobson's choice between employers providing no housing for migrant farmworkers on one extreme or holding the grower-landlord liable for all unsanitary conditions, even those created by the tenant, on the other, the California Legislature has taken the middle ground requiring migrant farmworkers residing in employer supplied housing to maintain all living spaces in a sanitary and healthful condition.¹⁶ Requiring tenants to maintain the living areas only clarifies a pre-existing responsibility of all parties participating in a landlord-tenant relationship.¹⁷ However, the specific emphasis on requiring farmworkers to maintain sanitary living conditions could preclude migrant farmworkers from initiating litigation to ameliorate housing obviously in violation of housing codes.¹⁸

Moreover, the Legislature clarified existing law in order to protect agricultural workers by requiring employers to pay a fine for overdue wages.¹⁹ The Legislature has provided migrant farmworkers remedies similar to those enjoyed by other employees to ensure that they receive their wages owed and to subject their employers to fines for late or non-payment of wages.²⁰

13. See ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 1071 at 1 (June 25, 1997) (advocating that migrant farmworkers must be added to the existing list of workers that can utilize a penalty provision to obtain unpaid or late wages).

14. See Steinberg, *supra* note 1, at A1 (noting that disease and inadequate room for children of migrant farmworkers militate for drastic alterations of the housing situation).

15. See Ricardo Sanchez, *Locke Should Veto Insult to Farmworkers*, SEATTLE TIMES, May 9, 1997, at B5 (commenting that Washington state's housing bill could allow the herding of workers into inadequate structures without plumbing, electricity, or running water); see also Steinberg, *supra* note 1, at A1 (noting that proposals to provide tents on wood floors did not receive approval from state authorities). But see Deborah VanPelt, *Affordable Housing To Meet Needs of Low-Income Families*, TAMPA TRIB., Apr. 17, 1996, at 9 (reporting on the changes made for migrant farmworkers in the form of small apartment complexes with affordable rents).

16. See CAL. HEALTH & SAFETY CODE § 17039 (enacted by Chapter 46) (specifying that "every occupant of employee housing shall properly use the facilities furnished and comply with the relevant maintenance and sanitation provisions").

17. See CAL. CIV. CODE § 1941.2 (West 1985) (requiring that tenants keep the premises clean and sanitary, dispose of rubbish, garbage and other waste and that tenants may not destroy or deface, or permit another to damage the residence).

18. See *generally Green v. Superior Court* (Sumski), 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974) (holding that California recognizes the implied warranty of habitability allowing tenants to initiate a lawsuit to regain rent paid for, or the reasonable cost to improve, uninhabitable conditions).

19. See ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT, COMMITTEE ANALYSIS OF SB 1071, at 1 (June 25, 1997) (providing that an employer must timely pay an agricultural employee that quit or was fired, or pay the employee waiting time penalties).

20. See *id.* (reducing all employees to a similar standard makes the law more equitable).

II. LEGAL BACKGROUND

State and federal law mandates that employers provide sanitary housing.²¹ Typically, these laws provide the remedies of injunctive relief or affirmative defenses against unlawful detainer actions, for the withholding or abating the rent, to make necessary repairs to sub-standard property.²²

In a similar vein, the failure to provide timely payment of wages to employees subjects the employer to stiff penalties.²³ While many states do not provide a similar protection for migrant farmworkers, some states categorize migrant farmworkers as employees and accord them equal protection in relation to other employees.²⁴

A. *Unsanitary Employee Housing and Chapter 49*

Prior to enacting Chapter 49, California law required tenants, not explicitly mentioning employee tenants, to maintain the leased premises in a sanitary and healthful condition.²⁵ California law compels all landlords to provide lessees with housing that complies with the requirements for a tenantable dwelling.²⁶ Agencies

21. See CAL. CIV. CODE § 1941 (West 1985) (creating an affirmative responsibility for landlords to maintain the rented premises and repair subsequent dilapidations); see also Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C.A. §§ 1801-1872 (West 1983) (outlining that landlords must maintain housing for employees at acceptable levels and providing for a private cause of action for housing that does not comply with established OSHA standards); 29 C.F.R. § 500.132 (1996) (determining that OSHA standards apply to migrant housing).

22. See generally *Green*, 10 Cal. App. 3d 616, 517 P.2d 1163, 111 Cal. Rptr. 704 (establishing that a tenant can sue a landlord to obtain habitable conditions).

23. See CAL. LAB. CODE § 202 (West Supp.1985) (providing that if an employee who does not have a written contract quits his employment or is terminated, his wages shall become payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours notice of his intention to quit, in which case his wages are due at the time of quitting); see also *id.* § 203 (amended by Chapter 92) (stating that "the wages of such employee shall continue as a penalty from the due date thereof at the same rate until paid or until action therefor is commenced; but such wages shall not continue for more than thirty days").

24. See, e.g., IDAHO CODE § 45-606 (1997) (elucidating that upon termination by the employer or by quitting the employment, the employee must receive wages earned within ten days or within forty-eight hours upon written request, with no exceptions for agricultural workers); KY. REV. STAT. ANN. § 337.990 (Michie 1996) (codifying penalties for employers not providing prompt payment of wages, with no exception provided for agricultural employees); MINN. STAT. §§ 181.87, 181.89 (West 1993) (detailing that the employer shall pay wages due to the migrant worker at least every two weeks, except on termination, when the employer shall pay within three days; applying a fine of \$250.00 for failing to timely pay the migrant worker); WIS. STAT. ANN. § 103.93 (West 1997) (mandating that every employer shall pay in full all wages earned by any migrant worker within three days of the termination of employment).

25. See CAL. CIV. CODE § 1941.2 (West 1985) (mandating that tenants maintain the premises in a healthful and sanitary manner).

26. See *id.* § 1941.1 (West 1985) (requiring landlords to provide housing with effective weatherproofing, plumbing facilities, a water supply with sewage disposal, electrical lighting, clean premises free from all garbage, rodents and vermin, and adequate receptacles for garbage and rubbish).

overseeing employee housing can initiate lawsuits for violations of the housing code.²⁷

B. Penalties for Non-Payment of Agricultural Employees and Chapter 92

Chapter 92 transforms California law by allowing agricultural employees to seek fines against employers for withholding wages.²⁸ Due to their conspicuous absence from the list of protected employees able to litigate for late payment, agricultural workers did not enjoy similar protections as other employees.²⁹ Previously, agricultural workers, due to their absence from the workers listed, could not invoke penalty provisions against employers for withholding wages.³⁰

III. CHAPTER 49 AND PREEMPTION

A. Federal Preemption of Chapter 49

The Federal Constitution does not require safe and decent housing for any individual.³¹ However, federal law, through a provision in the Agriculture Worker Protection Act (AWPA),³² does require that facilities provided for migrant farmworkers comply with federal and state safety and health standards applicable to that housing.³³ The AWPA allows states to supplement federal law, but it preempts state law that supplants, rather than supplements, the statute's remedial scheme.³⁴ In other words, a state may give more rights than the AWPA, but it may not discount any rights available under the AWPA. Therefore, federal law requires employee housing to comply with federal standards of cleanliness. Chapter 49 will not violate the preemption doctrine if: (1) California maintains that migrant farmworkers are required to have sanitary and safe housing; and (2) farmworkers possess a private

27. See Lori Nessel & Kevin Ryan, *Migrant Farmworkers, Homeless and Runaway Youth: Challenging the Barriers to Inclusion*, 13 LAW & INEQUALITY J. 99, 105 n.21 (1994) (commenting that Farmworker's Legal Services has involved itself in litigation to have the county held in contempt for failing to enforce sanitary codes in the migrant labor camps).

28. See CAL. LAB. CODE § 203 (amended by Chapter 92) (providing penalties for employers who do not pay employees on time).

29. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 1071, at 2 (June 25, 1997) (lamenting that the absence of farmworkers from the list prevented them from enjoying similar benefits as other workers).

30. Compare CAL. LAB. CODE § 205.5 (West Supp. 1997) (excluding agricultural workers from the list of employees able to utilize a penalty for late payment), with *id.* § 205.5 (amended by Chapter 92) (stating that agricultural workers can utilize late payment penalties).

31. See *Lindsey v. Norman*, 405 U.S. 56, 74 (1972) (holding that the United States Constitution does not provide judicial remedies for all social-ills including sub-standard housing).

32. 29 U.S.C.A. §§ 1801-1872 (West 1985).

33. See *id.* § 1823 (West 1985) (requiring state or local health authorities to certify that the property meets applicable safety and health standards).

34. See *Adams Fruit Co. Inc., v. Barrett*, 494 U.S. 638, 643 (1990) (determining that Florida's state workers compensation law does not foreclose using AWPA as the basis for a private cause of action).

cause of action for injunctive relief for housing violations.³⁵ These allowances will prevent the supplantation of any rights available under the AWP. ³⁶ By compelling employee-tenants to maintain the premises, state law does not supplant federal law because, "it is [not] impossible to comply with both state and federal law."³⁷ Furthermore, Chapter 49 does not circumscribe employee tenants' ability to sue for relief from uninhabitable conditions. For good measure, Chapter 49 even has similar wording to the AWP, making it unlikely that it violates federal law.

IV. CAN FARMWORKERS ADEQUATELY MAINTAIN EMPLOYER HOUSING?

Migrant farmworkers receive brutally low wages.³⁸ The average wages in 1996 for farmworkers varied between \$4,700 and \$6,900.³⁹ Frequently, cheap housing supplied by the employer serves as the only means of affordable housing close to the fields.⁴⁰ Because of these forces, employer housing units and other proximate housing, become overcrowded as workers sleep twice the appropriate number in the residence to further lower the rent.⁴¹ The increased number of tenants aids in the rapid deterioration of farmworker housing and adds extra stresses on particular amenities such as sanitation and electricity.⁴² Landlord-employers cannot enter the premises of their workers without giving notice to tenants or without an invitation of the worker-tenant because of privacy concerns.⁴³ Thus, instead of possessing firsthand knowledge of problems, the employer relies on the messages relayed by employee-tenants regarding existing housing inadequacies.⁴⁴ Moreover, because

35. See *Lucas, v. George T.R. Murai Farms, Inc.*, 15 Cal. App. 4th 1578, 1587-88, 19 Cal. Rptr. 2d 436, 441 (1993) (deciding that migrant farmworkers can bring suit for housing violations, but, for a successful suit, the farmworkers must establish that the land where the housing was located is within the landowner's control).

36. See *Adams Fruit Co.*, 494 U.S. at 643 (discussing the AWP's language allowing a private cause of action for "[a]ny person aggrieved by a violation" and determining that Florida's workers compensation law does not prevent the initiation of a private cause of action for injuries incurred on the job).

37. *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984).

38. See Jeanne E. Varner, *Picking Produce and Employees: Recent Developments In Farmworker Injustice*, 38 ARIZ. L. REV. 433, 433-34 (1996) (noting that the AWP requires that migrant farmworkers must be paid minimum wage, but that frequently migrants are not given the equivalent of minimum wages).

39. *Id.* at 434 n.7.

40. See Lucie White, *Law and the Homeless: Essay and Article: Representing "The Real Deal,"* 45 U. MIAMI L. REV. 271, 299-301 (1991) (recounting the growing numbers of ill-housed migrant farmworkers and the strains placed on housing located near harvesting locations).

41. See Steinberg, *supra* note 1, at A1 (revealing that housing outside of Sanger, California quickly becomes overcrowded to accommodate the influx of migrants for the summer harvesting).

42. See *id.* (reporting that migrant farmworkers have two to three times the appropriate number of people in each room making the few low-cost residences unable to accommodate the massive numbers); see also Asher, *supra* note 11, at 215 (discussing the deplorable housing available to workers where upwards of twelve people shared a room in which the electricity and sanitation did not meet acceptable standards).

43. See ASSEMBLY COMMITTEE ON HOUSING, COMMITTEE ANALYSIS OF AB 359, at 1 (Apr. 16, 1997) (considering the invasion of tenant privacy as thwarting employer-landlords from assessing possible housing problems).

44. *Id.* But see *Green*, 10 Cal. App. at 627, 517 P.2d at 1175, 111 Cal. Rptr. at 711 (finding that landlords are more capable of making repairs because they can easily access the housing).

employer-landlords do not specialize in renting homes, the time and money constraints to make necessary repairs and to comply with complex and voluminous housing requirements make it extremely difficult to maintain housing and harvest a crop.⁴⁵

However, because of the dual relationship of landlord-employer and the fear of reprisals such as the loss of a job, migrant farm workers do not report housing code violations until they become unlivable, if they report them at all.⁴⁶ This silence tends to exacerbate the conditions and cause severe damage to the residence. Essentially, the migrant farmworker lacks the ability, due to lack of transportation, fear of deportation, loss of employment, and limited resources, to live in other areas or to complain of inadequate employer supplied housing.⁴⁷

The unique problems of migrant farmworker housing make the availability of low-cost, employer-supplied housing an attractive option. These difficulties can be more effectively solved by increasing the accountability of migrant farmworkers to maintain the premises.⁴⁸ However, the employer must remain liable for injunctive relief due to unsanitary conditions.⁴⁹ Without imposing legal responsibility, the employee-tenant would not have any legal recourse which contradicts California law.⁵⁰ Therefore, absent funding to construct new low-cost housing for workers, alternatives such as employer housing deserve support.⁵¹

V. PENALIZING EMPLOYERS FOR FAILURE TO PAY AGRICULTURAL EMPLOYEES

Agricultural employees often times do not enjoy protections afforded to other workers including unemployment insurance and workers compensation.⁵² This unwillingness to protect agricultural workers to the same degree as other workers

45. See Larry Fischer, Note, *Tenant as Consumer*, 3 U.C. DAVIS L. REV. 59, 62 (1971) (discussing that landlords specializing in renting property are required to have the knowledge and/or the finances to repair and maintain the premises).

46. See *S.P. Growers Assoc. v. Rodriguez*, 17 Cal. 3d 719, 724, 552 P.2d 721, 725, 131 Cal. Rptr. 761, 764 (1976) (finding that migrant workers are frequently reluctant to sue because they fear losing possession of their temporary home).

47. Compare *Hinson v. Delis*, 26 Cal. App. 3d 62, 70, 102 Cal. Rptr. 661, 665 (1972) (holding that tenants should pay only the rent that the residence is worth), with *Steinberg*, *supra* note 1, at A7 (reporting that rents are as low as \$25 which does not afford the tenant much ability to deduct rent despite accommodations that violate housing codes).

48. See ASSEMBLY COMMITTEE ON HOUSING, COMMITTEE ANALYSIS OF AB 359, at 1 (April 16, 1997) (positing that making migrant farmworkers accountable for damage done to the property and to maintain it in a sanitary state is vital to sustaining existing migrant housing).

49. See CAL. CIV. CODE § 1941 (West 1985) (requiring the landlord to provide and maintain safe and habitable housing).

50. *Id.*

51. See *White*, *supra* note 40, at 301 n.107 (outlining the main details of the Rural Housing Revitalization Act of 1989 which attempts to alleviate inadequate housing conditions in North Carolina by building low-cost housing).

52. See *Nessel & Ryan*, *supra* note 27, at 107-09 (lamenting that farmworkers are exempt from unemployment compensation coverage unless they work for an exceptionally large farm).

most likely occurred because of a lack of political pressure from these workers in conjunction with a powerful growers' lobby.⁵³

However, the prompt payment of wages to migrant farmworkers is a statutorily protected right.⁵⁴ This statutory right, however, requires clarification because a recent superior court decision held that, due to faulty construction of the statute, waiting time penalties could not be assessed against the wages of agricultural farmworkers.⁵⁵ Chapter 92 clarifies existing law by specifically including agricultural farmworkers within the group that receives protection thru waiting time penalties.⁵⁶

VI. CONCLUSION

Current problems with unsanitary employee housing for migrant farmworkers and concern over farmworkers' inability to obtain timely payment of wages has led to clarification of existing law concerning employee housing and penalties for late payment of wages to agricultural workers.⁵⁷ Accordingly, the California legislature, along with other state legislatures, has reacted by requiring employee housing to meet acceptable sanitary standards and to include agricultural workers within the group of workers able to utilize penalties for failure to pay wages owed.⁵⁸ Chapter 49 specifies that tenants of employee housing must affirmatively maintain the premises in a sanitary condition.⁵⁹ Although Chapter 49 may be challenged on the basis of the preemption doctrine, Chapter 49 will survive scrutiny because the law neither contradicts nor undermines existing federal law.⁶⁰

However, Chapter 49 could pose insurmountable practical difficulties by requiring agricultural laborers to maintain the premises as that potentially creates adverse constraints on farmworkers' rights to live in sanitary housing.⁶¹ The few housing options available to migrant farmworkers and the necessary dependence on the employer for a job make it less likely that a migrant farmer will complain to the grower of dilapidated conditions. Further, the employee generally lacks the financial wherewithal, time, and building sophistication to maintain the premises

53. *Id.*; see Gail Coleman, *Overcoming Mootness in the H-2A Temporary Foreign Farmworker Program*, 78 GEO. L.J. 197, 200 n.20 (1989) (discussing the reduced level of protection accorded to farmworkers as symptoms of political weakness and the powerful growers' lobby in Congress).

54. See CAL. LAB. CODE § 203 (amended by Chapter 92) (providing for penalties against employers for late payments to workers).

55. See ASSEMBLY FLOOR, ANALYSIS of SB 1071, at 1 (June 25, 1997) (commenting that in case #982938, *Five Plaintiffs v. Roberta Mendonca*, the court held that the penalties for late payment of wages could not be applied due to incorrect construction of the law).

56. See CAL LAB. CODE § 205.5 (amended by Chapter 92) (including agricultural farmworkers within the employees protected by late-payment penalties).

57. See *supra* notes 1-7 and accompanying text.

58. See *supra* notes 8-14 and accompanying text.

59. See *supra* notes 8-14 and accompanying text.

60. See *supra* notes 30-34 and accompanying text.

61. See *supra* notes 35-40 and accompanying text.

in need of repair. These issues require consideration before mandating tenants to maintain employer-supplied housing.

Chapter 92 clarifies existing law to explicitly include agricultural laborers within the group of workers able to utilize penalties against employers for late or non-payment of wages.⁶² This clarification serves to explicitly protect farmworkers from financial exploitation because of their need for quick departures to harvest other farmers' crops.⁶³ Undeniably, these clarifications of employment laws concerning agricultural employees protect important financial interests of agricultural workers who are most vulnerable to exploitation.

62. *See supra* notes 40-42 and accompanying text.

63. *See supra* notes 43-56 and accompanying text.

