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THE MARYLAND HOUSE OF DELEGATES
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SPONSOR TESTIMONY IN SUPPORT OF HJ0007
(RATIFYING THE FEDERAL CHILD LABOR AMENDMENT)

Delegate Sheila Ruth
March 11, 2024

On June 2, 1924 - nearly one hundred years ago now - Congress proposed an amendment to the U.S. Constitution that would allow the federal government to regulate child labor. Before that, the widespread problem of children working difficult and dangerous factory jobs inspired Congress to pass the Keating–Owen Act of 1916, which regulated the interstate sale of goods produced by children, in an attempt to end the practice of child labor. Unfortunately, the Supreme Court ruled that law unconstitutional in Hammer v. Dagenhart (1918) for violating the Commerce Clause.

Congress' second attempt was to levy a tax on companies employing children, but the Supreme Court found that one unconstitutional as well. If Congress wanted to enact national reform, its only avenue left was a Constitutional amendment. As a result, Congress passed House Joint Resolution 184, which proposed a Constitutional amendment composed of the following text:

> *Section 1. The Congress shall have the power to limit, regulate, and prohibit the labor of persons under eighteen years of age.*
>
> *Section 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress*

After Congress proposes an amendment, it must be ratified by three-quarters of the states to be added to the Constitution. Very quickly, within just a few years, the Child Labor Amendment quoted above was ratified by 28 states, but fell 10 short of the three-quarters needed to ratify it. After this, progress on ratification stalled, in part due to a campaign of disinformation waged by states' rights advocates.

Ratification was further stalled when Congress passed the Fair Labor Standards Act in 1938, and the Supreme Court reversed its 1918 decision, ruling in United States v. Darby Lumber Co. (1941) that the federal government has the power to regulate employment under the Commerce Clause.

During the period when many states were still ratifying the amendment, Maryland didn't just fail to: the Maryland General Assembly voted on March 18, 1927, to explicitly reject and not ratify the Child Labor Amendment.

After Darby and the Fair Labor Standards Act, the matter of child labor seemed settled. States also passed strong protections for children.

Fast forward to 2024 and many states are rolling back child protections, allowing minors to be employed in dangerous workplaces like meatpacking plants or work long enough hours to detriment their education.

When issued a ruling in Sackett v. EPA last year, Clarence Thomas and Neil Gorsuch wrote a concurring opinion making the case that Congress' authority under the Commerce Clause is limited, similar to the 1918 decision. If this argument ever found its way into a future Supreme Court decision, it could gut the ability of the federal government to regulate child labor.

Other states have begun to recognize the need to finally get this protection into the Constitution. Since 2018, resolutions to ratify the Child Labor Amendment have been introduced in a number of states, including New York, Rhode Island, and Nebraska. In Hawaii it has passed the Senate twice.

It's time for the Maryland General Assembly to correct the mistakes of our predecessors a century after Congress first proposed this Constitutional amendment and finally ratify the Child Labor Amendment. I ask for a favorable report for HJ7.