Beyond the Coogan Fund: The Failure of Financial Solutions to Address the Legal and Ethical Dilemmas Raised by Child Entertainers

Thania Rios

I. INTRODUCTION

When they first created their Instagram account, the young woman and her mother planned on doing nothing more than documenting the girl's life as a preteen dancer in a small town.[1] The account, however, quickly began to attract sponsors and followers.[2] The mother was disturbed to notice that most of their followers were adult men, some of whom sent her daughter pictures of male genitals and links to pornography websites.[3] But the amount of the money they stood to make, which "could help pay for college," made her conclude that keeping the account active was in her daughter's best interests.[4]

If she was a child actor performing in a Hollywood production, the daughter would be legally entitled to a portion of those earnings. But as a minor laboring in a new and largely unregulated industry, she has no defined rights in most American states and no guarantee that she will receive her riches once she comes an adult. Her mother may intend to use the money for her daughter's benefit; but in most states, she is under no legal obligation to do so, and there is nothing to stop her from spending the money as she sees fit. A recent Illinois law, based on existing protections for child actors and other entertainers, strives to change this state of affairs.[5] But while the attempt to protect the financial interests of child influencers is admirable, many concerns regarding child labor and safety make it questionable whether it is advisable for children to work as influencers at all.

First, Part II of this Note will discuss the historical development of legal protections for child entertainers in the United States. This section will begin by looking at the successful efforts of entertainment industry stakeholders in the 1910s to distinguish child actors from other child laborers, and the impact such efforts had on early child labor laws. Next, this section will discuss the evolution of child labor laws during the early film era, focusing on the creation of the Coogan Act in response to public discontent with the status quo under then-current law (which entitled parents to the income generated by their working children). Finally, this section will examine the ascension of family influencers in the age of social media—and the creation of an Illinois law based on the Coogan Act meant to protect the financial interests of the children that appear in social media content produced by their parents.

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[1] Katherine Blunt, *The Influencer is a Young Teenage Girl. The Audience is 92% Adult Men*, WALL ST. J. (June 15, 2024), https://www.wsj.com/tech/young-influencers-instagram-meta-safety-risks-6d27497e (on file with author).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *See infra*, Section III.D, III.E.

Next, Part III of this Note will discuss the shortcomings of the Coogan Act, and the inability of legislation based on the Coogan Act to adequately protect the interests of the children of social media influencers. First, this section will argue that American labor laws should be drafted to promote the healthy development of children—and that such healthy development should not be subordinate to preserving parental rights or protecting industry interests. While the law of the United States has traditionally deferred to the authority of parents to raise their children as they see fit, lawmakers must balance this deference with the obligation to ensure that future generations of citizens are healthy, self-actualized, and able to participate in society. Permitting children to labor in lightly regulated workplaces, or completely unregulated workplaces, runs counter to this interest.

Second, this section will argue that labor laws pertaining to child entertainers have always favored industry interests. This trend has its roots in the 1910s, when industry stakeholders vied against child labor activists for the favor of the general public and lawmakers. As part of their efforts to ensure that child actors were exempt from laws limiting the hours that children could work, the stakeholders characterized acting as light, enjoyable labor from which minors did not need to be protected. This characterization not only influenced how legislation was drafted; it also influenced how child actors were perceived throughout the twentieth and twenty-first centuries, and popular ideas regarding what protections they required. While the Coogan Act sprang from a public interest in protecting the financial interests of working children, markedly less public attention was devoted to protecting child actors from the oftentimes harsh conditions in which they worked. This is attributed partially to the aforementioned perception of acting as easy and pleasant, a perception that continues to shape conditions faced by child actors into the modern day.

Finally, this section will argue that any legislation modeled on the Coogan Act will inherit its shortcomings, and that such legislation will ultimately fail to protect the interests of the children of influencers. This Note will analyze the State of Illinois' recent amendment to its child labor law, focusing on the new provisions that require influencers to pay their children for their labor. While the new law is an improvement upon the Coogan Act in some ways, it places no restrictions upon the conditions in which minors can work. As such, it overlooks the most pressing danger faced by the children of influencers: exploitative treatment at the hands of their parents.

While many children appear in their parents' monetized content without being abused in the process, American law cannot distinguish between content generated by abusers and content generated by responsible parents. As a result, abusers have been able to profit from content featuring their abused children for years. Moreover, American law is unable to regulate the family home in the same way it can regulate movie sets, leaving the children of influencers with less protections than child actors. American law should not incentivize parents to profit from their children or permit children to

labor in unregulated workplaces. Only a law prohibiting the monetization of content featuring children can adequately ensure that the children of influencers are adequately protected from the hazards of working in unregulated entertainment spaces.

II. BACKGROUND

In Section II.A of this section, this Note will review the history of laws regarding child entertainers in the United States, and the process by which child entertainers were excluded from the many of the protections available to child laborers in other industries. In Section II.B, this Note will summarize the Jackie Coogan case and the passing of The Coogan Act, which was intended to protect the financial interests of child entertainers. In Section II.C, this Note will review the status of contemporary protections (or lack thereof) for child entertainers, before turning its attention to the status of kid influencers in Sections II.D and II.E.

A. Child Actors Before the Coogan Act

In the years preceding the passage of the Coogan Act, the extent to which newly-minted child labor laws applied to actors was a cause of considerable debate. By the 1910s, many Americans regarded the prospect of employing a child to work in a "factory or department store" as immoral, but there was no consensus regarding the ethics of hiring children as actors, given that theatrical work was considered less strenuous than physical labor and many believed that children enjoyed the experience.[6] In comparison to minors laboring in mines and on assembly lines, child actors constituted an "insignificant sideline" of the larger body of child laborers.[7] Nonetheless, they "triggered one of the most highly publicized and controversial definitional battles in the child labor controversy."[8]

In 1910, the Supreme Judicial Court of Massachusetts attempted to resolve this controversy with its ruling in *Commonwealth v. Griffith*.[9] The defendant, a theatre manager, was convicted of unlawfully employing children by hiring a nine-year-old boy and a thirteen-year-old girl as actors and then scheduling them to work "between the hours of 8 and 10 o'clock in the evening."[10] The court found that the defendant was in violation of a child labor statute which provided that no child could be employed "after seven o'

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[6] VIVIANA A. ROTMAN ZELIZER, PRICING THE PRICELESS CHILD: THE CHANGING SOCIAL VALUE OF CHILDREN 90–92 (1985).

[7] *Id.* at 89.

[8] *Id.* at 85.

[9] Commonwealth v. Griffith, 90 N.E. 394, 395 (Mass. 1910).

[10] *Id.*

clock in the evening."[11] The defendant brought exceptions on the grounds that the statute was meant to "relate[] only to employment in some factory, workshop or mercantile establishment" and that it was "not applicable to work in a theatrical [establishment]."[12] The court, however, felt that interpreting the statute so narrowly would undermine its intended effect.[13] In his opinion, Justice Knowlton responds to the contention that acting should not be considered "work" for purposes of the statute by noting that "[t]he statute was intended to protect children from employment calling for constant attention, regular effort and physical or mental strain, to accomplish the [intended] result"—a category that undoubtedly includes acting.[14]

Had Justice Knowlton's reasoning achieved widespread popularity, child labor laws might have played a greater role in shaping the course of American film and television. However, 1910 also saw the beginning of "a national and highly visible campaign to exempt child acting from child labor legislation."[15] Spearheaded by the National Alliance for the Protection of Stage Children—an organization comprised of playwrights, painters, clergymen, professors, novelists, actors, and child welfare workers, among others—the campaign "[urged] the public to recognize the legitimacy of acting for young children" and warned against the dangers of basing child labor legislation upon "the radical theories of the uninformed."[16] The efforts of the National Alliance for the Protection of Stage Children were countered by the National Child Labor Committee, a leading anti-child-labor advocacy group that had achieved some victories in several U.S. states and was wary of the "dangerous challenge to child labor legislation" posed by demands for child actor exemptions.[17]

As the debate wore on, it veered in unexpected directions, with "prominent child labor reformers" acting as "the leading advocates of child labor on the stage."[18] Their advocacy achieved results in Louisiana, as the state legislature approved an amendment to the child labor law that authorized children of all ages work in theaters.[19] Activists in favor of child acting continued their efforts to "modify child labor laws," and by 1932, "only seventeen out of forty-eight states, and the District of Columbia required a minimum age limit of fourteen or sixteen for the appearance of

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[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] ZELIZER, *supra* note 6, at 87.

[16] *Id.*

[17] *Id.* at 88.

[18] *Id. at* 85–86.

[19] *Id.* at 88.

children in theatrical performances."[20] Throughout this process, the activists were careful to distinguish child acting from other forms of child labor, framing the work was lucrative and fulfilling.[21] Ironically, the fact that Americans were increasingly likely to regard children and childhood with sentimentality only increased the demand for child actors: "at a time when most other children lost their jobs, the economic value of child actors rose precisely because they symbolized . . . the . . . emotionally priceless child."[22]

B. The Jackie Coogan Case and the Advent of the Coogan Act

As one of the first child stars of the silent film era, Jackie Coogan would have the dubious honor of serving as living proof of the need for stricter laws regarding child actors.[23] After co-starring in *The Kid* with Charlie Chaplin at the age of six, Coogan proceeded to spend the rest of his childhood acting in Hollywood movies, earning between $3,000,000 and $4,000,000 due to his efforts.[24] Coogan's father served as a responsible steward of his son's wages until his untimely death in 1935 even though he was under no legal obligation to do so.[25] At the time, the earnings of minor children were considered the lawful property of their parents.[26] As such, Coogan's mother and stepfather—who assumed control over Coogan's earnings after his father's passing—believed they were entitled to spend his earnings as they saw fit.[27] Infamously declaring that "[n]o promises were ever made to give Jackie anything" and "[e]very dollar a kid earns before he is twenty-one belongs to his parents," Coogan's mother and stepfather became reviled by the public as the case resulted in national outrage.[28]

In response to the actor's plight, the State of California passed the California Child Actor's Bill—which is also referred to as the Coogan Act or the Coogan Bill—in 1939.[29] The law required anyone employing a minor to provide "artistic or creative services" to place 15% of the minor's wages into

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[20] *Id.*

[21] ZELIZER, *supra* note 6, at 92–93.

[22] *Id.* at 95–96.

[23] *See The Strange Case of Jackie Coogan's $4,000,000*, LIFE MAG., Apr. 25, 1938, at 50.

[24] *See* Harry Hibschman, *The Jackie Coogan Case*, 72 U.S. L. Rev. 214, 214 (1938); *see also* Rosalind Schaffer, *Jackie Coogan 21 Tomorrow; Gets Fortune*, CHI. TRIBUNE, Oct. 25, 1935, at A16.

[25] Hibschman, *supra* note 24, at 216.

[26] *Id.*

[27] *Id.* at 215.

[28] *The Strange Case of Jackie Coogan's $4,000,000*, *supra* note 23.

[29] Jennifer Gonzáles, *More Than Pocket Money: A History of Child Actor Laws*, IN CUSTODIA LEGIS (June 1, 2022), https://blogs.loc.gov/law/2022/06/more-than-pocket-money-a-history-of-child-actor-laws [https://perma.cc/2NAP-V6TQ].

a trust that cannot be accessed until the minor attains the age of majority.[30] "Artistic and creative services" is defined broadly, and includes any minor who works as an "actor, actress, dancer, musician, comedian, singer, stuntperson, voice-over artist, content creator, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer."[31] In this regard, the law succeeded in protecting a broad range of child entertainers from financial exploitation at the hands of their parents and guardians. However, the law's overall efficacy would be the source of controversy in later years.

C. Financial and Environmental Protection for Child Actors Today

The protections offered by the Coogan Act have been criticized over the years for being imperfect, with such flaws being particularly noticeable today. As currently drafted, nothing in the laws commonly referred to as the Coogan Act—California Family Code § 6750, § 6751, § 6752, and § 6753—prevents the caretakers of a child actor from wasting the 85% of her earnings that are not placed in trust.[32] Furthermore, the caretakers of child actors frequently forego work opportunities in order to manage the careers of their children, which means that child actors are pressured to regard their income as wages due to the entire family.[33] This makes it likely that a substantial portion of that 85% will be spent by the time the child reaches the age of maturity.

Finally, entertainment companies will sometimes contract directly with the minor's parents for "related services" instead of contracting the minor herself for acting services.[34] The fact that the parent, and not the child, who is the contracting party is significant. In the event that the minor decides she does not want to perform the services delineated in the contract, it is her parents who will be in breach of contract and potentially owe damages to the entertainment company. This threat of damages incentivizes parents to ensure that their child abides by the terms of the contract, no matter how strenuous her objections are. This has the potential to place the child at odds with her parent in the event that she no longer wishes to work and additionally by-passes the system by which a Coogan Fund will be established for the child.[35]

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[30] CAL. FAM. CODE §§ 6750, 6753 (West. 2025).

[31] CAL. FAM. CODE § 6750 (West. 2025).

[32] Danielle Ayalon, *Minor Changes: Altering Current Coogan Law to Better Protect Children Working in Entertainment*, 35 HASTINGS COMM. & ENT. L.J. 353, 362 (2013).

[33] *Id.*; *Dear Hollywood: How Hollywood Culture Leads to Narcissism*, ALYSON STONER (Sept. 1, 2023) (downloaded using Google Podcasts).

[34] Ayalon, *supra* note 32, at 358–59.

[35] *Id.* at 361.

It is also worth noting that the Coogan Act says nothing about the circumstances in which a child actor is permitted to work.[36] Admittedly, matters like the scheduling and schooling of child actors are dealt with elsewhere in the labor code, but in the decades since the Coogan Act was passed, the hazards that child actors experience on film sets has emerged as a source of grave concern. In the decades since the Coogan Act's creation, one child star after another has made headlines due to the troubles they encountered later in life. Notable examples include Michael Jackson, Britney Spears, Amanda Bynes, Shia LeBoeuf, Lindsey Lohan, Corey Feldman, and many more: at this rate, it may be easier for the average person to name a troubled child star than one who walked away from Hollywood unaffected.

As such, the archetypal image of the child actor has evolved into a traumatized figure who was exploited by unscrupulous adults for financial gain. There are strains of truth to this archetype, as many child actors will attest to. In their recently published memoirs, former actresses Sarah Polley and Jennette McCurdy both detail facing brutal working conditions, unsympathetic directors and producers, countless union violations, and a general disregard for their wellbeing when they worked as child actresses.[37] Based on these experiences, both women believe that such hazards were not merely the result of bad-faith actors, but rather endemic to a system that profits from child labor.[38] This is a point worth remembering when considering the prospect of using the Coogan Fund model to protect the interests of child influencers.

D. The Rise of Family Influencers

With the spread of the Internet and social media, the line between child entertainers and unemployed children has become blurrier. Many parents now generate content based on their family's domestic lives and post it to platforms like Instagram, TikTok, and YouTube, where it can potentially be seen by millions of people and generate millions of dollars in revenue.[39] The phenomenon of "sharenting" (a portmanteau of "share" and "parenting") and "momfluencers" (a portmanteau of "mom" and "influencer") has its

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[36] *See* CAL. FAM. CODE § 6750–6753 (West. 2025).

[37] *See generally* JENNETTE MCCURDY, I'M GLAD MY MOM DIED (2022) (describing dysfunctional working environments on several Nickelodeon projects); *see generally* SARAH POLLEY, RUN TOWARDS THE DANGER: CONFRONTATIONS WITH A BODY OF MEMORY (2022) (describing a lack of sensitivity and safety considerations on film and television sets).

[38] *See* MCCURDY, *supra* note 37, at 224 (describing child star's penchants for "alcohol abuse and bulimia"); *see generally* POLLEY, *supra* note 37 (relaying the author's struggles as a child star).

[39] *Research Brief: "Sharenting" and Child Influencers*, BOS. CHILDREN'S DIGIT. WELLNESS LAB, https://digitalwellnesslab.org/research/research-brief-sharenting-and-child-influencers [https://perma.cc/HF5J-KBZK].

roots in the "mommyblog" culture of the 1990s and 2000s.[40] Hosted largely upon text-based content management systems like Blogspot and Blogger, mommyblogs read more like personal essays than advertisements.[41] They provided highly confessional accounts of modern motherhood, and—in the eyes of their defenders—were "truly revolutionary in terms of expanding conversations about motherhood."[42]

Instead of presenting a glamorized view of parenting, "mommy bloggers bitched, they snarked, they talked about postpartum depression. They made a huge impact on normalizing the harder, bloodier, more taboo sides of motherhood."[43] In the process of normalizing these taboo topics, mommy bloggers divulged information about their children that critics believed were better kept private: for example, blogger Dawn Meehan wrote about her sons' struggles with clinical depression, and blogger Katie Allison Granju wrote about her son's addiction and eventual death.[44] Nonetheless, mommyblogging proved to be a profitable enterprise, with blogger Heather Armstrong grossing $30,000 to $50,000 per month at the height of her popularity.[45]

Much of this income was made through banner ads, "which initially generated enough income for some women to make good money from their blogs."[46] As the value of banner ads diminished in the 2010s, however, mothers found themselves relying on brand endorsements and sponsored content to generate revenue.[47] This fundamentally changed the way that motherhood was consumed on the Internet: "[m]ommy bloggers, who initially drew audiences in with their voicey, intimate writing, morphed into momfluencers, with a focus on curated images and products."[48]As the content generated by momfluencers became audiovisual, creators transitioned to platforms like Instagram and YouTube, and the tone of the content changed to reflect audience and advertiser demands.[49] Content targeted to adults became more polished, and content targeted to children

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[40] *See* SARA PETERSEN, MOMFLUENCED: INSIDE THE MADDENING, PICTURE-PERFECT WORLD OF MOMMY INFLUENCER CULTURE 5 (2023).

[41] *Id.* at 4.

[42] *Id.* at 5.

[43] *Id.*

[44] Lisa Belkin, *Queen of the Mommy Bloggers,* N.Y. TIMES MAG. (Feb. 23, 2011), https://www.nytimes.com/2011/02/27/magazine/27armstrong-t.html (on file with author).

[45] *Id.*

[46] PETERSEN, *supra* note 40, at 5.

[47] *Id.*

[48] *Id.*

[49] *Id.*; Some Place Under Neith, *Episode 86: Parasocial Exploitation Revisited: 6 Prisoners*, THE LAST PODCAST NETWORK (Sept. 1, 2023) [hereinafter *Parasocial Exploitation*] (downloaded using Google Podcasts).

(an increasingly popular genre that did not exist in the heyday of mommyblogs) became more and more cartoonish.[50]

Due to the increasingly performative nature of family influencing, concerns about child safety and child labor increased.[51] While some defended momfluencers as savvy entrepreneurs who were building their own media brands, even those defenders remained uncomfortable with the idea of using children to generate a profit.[52] The visual nature of the medium only served to aggravate that discomfort, as it attracted a new and unsavory audience to family-based web content.[53] In one instance that quickly became infamous, YouTube was forced to remove the ability to comment on videos targeted to children after pedophiles flooded the comments of a video featuring influencer Ruby Franke's preteen daughter buying underwear.[54] However, momfluencing remained a lucrative field, with Ruby Franke herself earning millions of dollars due to her family YouTube channel.[55]

Despite the business triumphs of momfluencers, the content they generate remains controversial. Furthermore, recent instances of influencers abusing their children in the pursuit of content—such as the Fantastic Adventures abuse scandal in 2019, the DaddyOFive abuse scandal in 2017, and the Ruby Franke abuse scandal in 2023—have increasingly called the ethics of the practice into question.[56] Some of these concerns, such as a worry that avaricious content-producers may force children to labor in unsafe conditions, are equally applicable to child actors. Indeed, it is worth noting that many aspects of the DaddyOFive scandal (which revolved around a father, Mike Martin, who subjected his children to emotional and physical abuse in his attempts to provoke the desired reaction to his pranks) mirrors a concern that Polley and McCurdy raise about the safety of child actors on

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[50] *Parasocial Exploitation*, *supra* note 49.

[51] Morgan Sung, *Their Children Went Viral. Now They Wish They Could Wipe Them from the Internet*, NBC NEWS (Nov. 3, 2022), https://www.nbcnews.com/pop-culture/influencers-parents-posting-kids-online-privacy-security-concerns-rcna55318 (on file with author).

[52] PETERSEN, *supra* note 40, at 15; Under the Influence with Jo Piazza, *The Sharenthood,* JO PIAZZA (Mar. 11, 2021) (downloaded using Google Podcasts).

[53] *Parasocial Exploitation*, *supra* note 49.

[54] *Id.*

[55] Mataeo Smith, *How Much Did Ruby Franke Make from YouTube? Abusive Mommy Vlogger Kept Money from Kids,* MIRROR (Dec. 22, 2023), https://www.mirror.co.uk/news/us-news/how-much-ruby-franke-make-31737667 [https://perma.cc/6MWP-Z7VE].

[56] Elizabeth Chuck, *Child Abuse Charges Against YouTube Channel's Mom Underscore Lack of Oversight for Kids*, NBC NEWS (March 21, 2019), https://www.nbcnews.com/news/us-news/child-abuse-charges-against-youtube-channel-s-mom-underscore-lack-n985526 (on file with author); *DaddyOFive Parents Lose Custody 'over YouTube pranks'*, B.B.C. NEWS (May 2, 2017), https://www.bbc.com/news/technology-39783670 (on file with author); Madeline Halpert, *Ruby Franke: '8 Passengers' Parenting Mum Arrested on Child Abuse Suspicion*, B.B.C. NEWS (Sept. 1, 2023), https://www.bbc.com/news/world-us-canada-66651506 (on file with author).

film and television sets: namely, that the well-being of children will always be subordinated to the profit-generating activity.[57]

E. Coogan Funds for Child Influencers?

As the debate regarding momfluencing wears on, the belief that the children of momfluencers are entitled to a portion of their income is becoming increasingly common.[58] Many legal scholars and activists would like to see this belief become law.[59] In her article upon the subject, Ana Saragoza notes that no law currently prevents momfluencers from squandering the money generated by content featuring their children, and predicts that the current wave of momfluencers will produce a generation of modern-day Jackie Coogans who will be forced to sue their parents before they see any income from their labor.[60]

It is true that, in many respects, child actors work under a degree of security that is enviable to child influencers. Not only does the Coogan Act ensure that actors will eventually receive some income for their work, but they are also protected by labor laws and contract laws that dictate the conditions under which their work must transpire. The labor of child influencers, on the other hand, transpires in the family home—an environment that cannot be easily monitored or regulated by the government.[61] They have no legal right to the money that their parents make using their image, or the ability to negotiate their working conditions and enter into contractual agreements with their parents. As such, advocates believe that placing child influencers under the laws similar to those that govern child actors will improve their situation.[62]

Recently, the State of Illinois made headlines by becoming the first state in the nation to pass a law requiring family influencers to place a portion of the income generated by content featuring their children in trust for such

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[57] *See, e.g.*, POLLEY, *supra* note 34, at 190 ("When I was thirteen, the producers didn't renew my contract by the deadline, in effect freeing me from my multi-year contract. I was elated beyond measure, sobbing with happiness, free as a bird."); MCCURDY, *supra* note 34, at 217–18 (saying of her time on TV "[t]his place is toxic and bad for my already poor mental health. I want out.").

[58] Joan Reardon, *New Kidfluencers on the Block: The Need to Update California's Coogan Law to Ensure Adequate Protection for Child Influencers*, 73 CASE W. RSRV. L. REV. 165, 165–67 (2022) (describing the benefits of updating the Coogan Law); Ana Saragoza, *The Kids Are Alright? The Need for Kidfluencer Protections*, 28 AM. U. J. GENDER SOC. POL'Y & L. 575 (2020) ("Kidfluencers are [currently] at risk of having their earnings squandered like child actors of the 1900s, such as Macaulay Culkin, Shirley Temple, and Gary Coleman.").

[59] *See generally* Reardon, *supra* note 58; Saragoza, *supra* note 58.

[60] Saragoza, *supra* note 58, at 586.

[61] *See* Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (describing the high bar required to regulate "the private realm of family life which the state cannot enter").

[62] Saragoza, *supra* note 58.

children.[63] Unlike the Coogan Act, which requires that a flat 15% of a child actor's income be placed into trust, the law passed by the Illinois legislature determines the amount required to be set aside based on the frequency with which the child appears in their parents' content.[64] Moreover, the law also provides that any influencer who "knowingly or recklessly" violates the law can be sued by their child.[65] Advocates hailed the law as a victory, and registered hopes that more states would follow the path blazed by Illinois.[66] However, it is worth noting that such a feat is unlikely to be replicated outside of another blue state with a progressive governor. At the same time that Illinois was making its child labor law more restrictive, neighboring Iowa made its child labor law more permissive.[67]

III. ANALYSIS

As stated above, the labor performed by kidfluencers transpires in a sphere that is beyond the reach of the laws traditionally used to regulate the working conditions of child entertainers. In light of this, a blanket ban upon monetizing content featuring minors is the only viable means of ensuring that kidfluencers are not exploited and mistreated in pursuit of profit. To ensure that as many children as possible are protected, and that particular states do not become "safe havens" for parents hoping to profit from their children's social media presence, the ban should take place at a federal level.

It is true that any attempt to impose a large-scale regulation of child labor at the federal level is inherently a difficult prospect, given that so many different stakeholders—child actors, their parents, employers, state economies, and American society at large—will be impacted. However, American law provides a precedent for regulating child labor, in addition to a moral framework for doing so. Over the years, the entertainment industry has managed to portray itself as a sector that requires less regulation in regard to child labor than other industries, but a brief glance at the history of the American entertainment industry proves that this is not true. Child actors are knowingly and systemically subjected to abusive working conditions, and this pattern is already beginning to reassert itself regarding the working conditions

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[63] Angela Yang, *Illinois Passed a Law to Protect Child Influencers. Advocates are Cautiously Optimistic More States Will Follow*, NBC NEWS (Aug. 15, 2023, 4:48 PM) https://www.nbcnews.com/news/child-influencers-law-illinois-reaction-rcna99831 [https://perma.cc/JHQ4-GYAT].

[64] S.B. 1782, 103d Gen. Assemb., Reg. Sess. (Ill. 2023).

[65] *Id.*

[66] Yang, *supra* note 63.

[67] Kaanita Iyer, *Iowa Lawmakers Pass Legislation to Roll Back Child Labor Protections*, CNN (May 3, 2023, 11:13 PM), https://www.cnn.com/2023/05/03/politics/iowa-child-labor-bill-passes/index.html [https://perma.cc/V2ZK-ZSUW].

experienced by kidfluencers.[68] Even though defenders of momfluencers attempt to portray the work of an influencer as a feminist practice that is unfairly maligned by misogynist critics, that does not mitigate the danger inherent in permitting children to work in completely unregulated spaces.[69] Since the standard legal protections afforded to children working in regulated workplaces cannot extend into the family home, a federal law prohibiting parents from monetizing content featuring their children is the only plausible way to protect the safety of children online.

A. Child Labor Laws Should Prioritize The 'Healthy, Well-Rounded Growth' Of Children

Virtually any examination of American child labor law will be forced to answer two questions before reaching its conclusion: why regulate child labor, and who is meant to benefit from its regulation? At first blush, the answers to these questions may seem evident. The proverbial reasonable person would say that child labor is regulated because history has proven that the employment of children can (and frequently will) devolve into an exploitative arrangement, which would make children themselves the chief beneficiaries of such regulations. However, there are other stakeholders whose interests must be considered when proposing legislation. It might be tempting to position oneself as an uncompromising crusader for children's rights and refuse to consider the perspective of anyone who stands to benefit from child labor, but as entertainment industry stakeholders proved when they campaigned for laxer child labor laws in the 1910s, groups who feel that they are being ignored will organize and force the issue themselves. Thus, when evaluating the laws that shape the conditions in which child entertainers work, we must consider how those laws can (or should) affect everyone impacted by child labor—a category that includes the parents of such entertainers.

The interests of parents have frequently been a flashpoint when it comes to child labor laws and any law that seeks to place restraints on how parents can raise their children. This stems from the reluctance of American courts to undermine parental authority and interfere in the lives of American families. As Justice Routledge notes in the majority opinion to *Prince v. Commonwealth of Massachusetts*,

> [i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. . . . And it is in recognition

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[68] *See supra* Section II.D.

[69] *See infra* Section III.F.

> of this that [prior] decisions have respected the private realm of family life which the state cannot enter.[70]

However, within the span of the same opinion, Justice Rutledge also observes that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare."[71] These two facts can find themselves in opposition with one another, and lead to situations in which parents find themselves in "conflict with the state over control of the child."[72]

Despite the court's stated desire to respect the family sphere, there are instances in which the state must act to protect the interests of children without deference to parental authority, particularly when it comes to "public activities and in matters of employment."[73] This is because "[a] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers, within a broad range of selection."[74] Justice Rutledge proceeds to identify child labor as a specific danger that requires state intervention, stating that "[a]mong evils most appropriate for such action are the crippling effects of child employment, more especially in public places. . . . It is too late now to doubt that legislation appropriately designed to reach such evils is within the state's police power, whether against the parents claim to control of the child or one that religious scruples dictate contrary action."[75]

In his opinion, not only does Justice Rutledge explain why the state must occasionally act against parents to protect the interests of children: he also provides a standard by which to evaluate whether a particular job is suitable for a child worker. If it is incumbent upon the state to ensure that its youth mature into "healthy, well-rounded" citizens, then child labor policies should reflect this. When it permits children to work, American law should make policy with an eye for the impact that such experiences will have upon children's long-term development, not the short-term benefit that will bring to the children's employer or parents. It is not difficult to imagine a scenario in which paid employment proves to be a beneficial experience in a young person's life; many parents encourage their teenagers to obtain part-time employment for this specific reason. Similarly, it is not difficult to imagine a

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[70] Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (holding that the rights of parenthood did not empower parents to permit their children to work contrary to law).

[71] *Id.*

[72] *Id.* at 165.

[73] *Id.* at 168.

[74] *Id.*

[75] *Id.* at 168–69 (citations omitted).

scenario in which paid employment proves to be a highly negative experience for a young person. As Justice Rutledge pointed out, employment that is performed in the public can prove particularly hazardous for children. When that public work is performed in hazardous conditions and blurs the lines between home and workplace, the hazards only multiply. For this reason, child entertainers of all stripes—both child actors and kidfluencers—should be treated with particular care by American law.

B. Legal Protections for Child Entertainers Have Historically Favored the Interests of Industry Stakeholders at the Expense of the Interests of Child Entertainers

Coogan Funds, and the extent to which they either succeed or fail to ensure the healthy development of child actors, have been the subject of scholarly scrutiny for years.[76] Many writers have criticized certain aspects of the Act as outdated, in addition to proposing amendments that they believe would better reflect the working conditions on modern-day film and television -sets.[77] While it has been revised over the years, the Coogan Act still reflects the ambivalent attitude towards child actors that existed at the time of its first formulation. On one hand, it is rooted in a desire to protect the "priceless child" from untrustworthy caretakers. On the other, it shies away from questioning whether preventing children from acting professionally (and thereby earning enough income to lavishly support their caretakers) is the most effective mode of protection.[78] Moreover, it stands as a marked exception to the infancy law doctrine that permits minors to "disaffirm their contracts."[79] The Coogan Act seeks to protect child actors, but simultaneously formalizes the process by which the entertainment industry can enter into contracts with them that cannot be disaffirmed.[80] As such, it forces child actors to assume a level of legal duty that their non-employed peers are unlikely to ever encounter before they turn eighteen.[81]

In light of this, it is unsurprising that the Coogan Act has been criticized for not doing enough to protect the interests of child actors. It is also unsurprising that the larger body of American law does not offer more protections for child actors. Thanks to the efforts of entertainment industry stakeholders in the 1910s, acting has long been seen as untaxing and enjoyable work. While anti-child labor activists proposed compromise laws that would permit children to act to the extent that the acting was educational

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[76] *See* Ayalon, *supra* note 32.

[77] *See id.*

[78] ZELIZER, *supra* note 6, at 96.

[79] Thom Hardin, Note, *The Regulation of Minors' Entertainment Contracts: Effective California Law or Hollywood Grandeur?*, 19 J. JUV. L. 376, 376 (1998).

[80] *Id.* at 378.

[81] *See id.* at 376.

or edifying, industry stakeholders dismissed these proposals as fundamentally unnecessary.[82] In so doing, they pushed back against the notion that children needed to be protected from the entertainment industry and set the stage for the formulation of legislation that would favor industry interests above the interests of child laborers.

While this debate may seem to be a problem of the past, the resulting assumption—that children can and should work as entertainers—plays a role in shaping the ongoing conversation surrounding the children of momfluencers. While proposed Coogan Acts for the children of momfluencers seek to protect them from financial exploitation, they do not question why the children have been put to work in the first place, or if such work serves their best interests. Demonetizing content featuring children would be a more effective way to keep them safe from exploitation; but because the efforts of industry stakeholders in the 1910s has normalized the notion of keeping children in the public eye as entertainers, activists proceed under the assumption that the work itself is no great harm.

C. The Financial Security Promised by the Coogan Act Fails to Secure the "Healthy, Well-Rounded Growth" of Child Actors.

This Note does not propose any specific changes to the Coogan Act itself. As such, it will not examine problems with the Coogan Act and possible solutions at great length. It is nevertheless worth examining some of the Coogan Act's shortcomings, as they play a role in making the Act an imperfect model for protecting the interests of the children of momfluencers.

As noted above, the Coogan Act only requires that 15% of a child actor's income be set aside for their use in adulthood.[83] The remaining 85% can be accessed by the actor's parents at any time.[84] Unsurprisingly, this arrangement has led to many instances of child actors becoming the primary breadwinners in their families. Unlike other occupations available to children, acting can be lucrative enough to support not only the children themselves, but also their parents, siblings, extended families, and an ecosystem of agents and handlers who are paid to further the children's careers.[85] Christy Carlson Romano, a former actress who starred in the Disney Channel shows *Even Stevens* and *Kim Possible*, made mortgage payments on behalf of her indigent parents as a minor.[86] She also describes much of her income being immediately spent on

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[82] *See* ZELIZER, *supra* note 6, at 57, 97, 112 (describing the tension between industry interests and the emerging idea that educational should be a primary objective in childrens' work).

[83] CAL. FAM. CODE §§ 6752-6753 (West. 2025).

[84] *Id.*

[85] Stoner, *supra* note 33.

[86] Christy Carlson Romano (@christycarlsonromano), *How I Lost All My Money*, YOUTUBE, https://www.youtube.com/watch?v=Krbkqa90LnY (on file with author).

agents' fees and other expenses that were framed as a necessary part of being a child entertainer.[87] Similarly, Nickelodeon actress Jennette McCurdy and Disney Channel actress Alyson Stoner paid their parents salaries from their earnings.[88] While McCurdy was told that a Coogan Fund would be established in her name when she became an actress at the age of six, the paperwork was improperly filed and her fund was ultimately never established, leaving her with less of her income than she was entitled to as an adult.[89] Nothing in the Coogan Act discourages parents from living on their child's salary; the realities of working in Hollywood encourage such behavior.[90]

Both McCurdy and Stoner described their childhood employment negatively, stating that the experience of financially supporting their families led to mental health problems and familial dysfunction. However, the Coogan Act is not designed to ensure that child actors have an experience at work that contributes to "healthy, well-rounded growth."[91] It is designed to ensure that child actors receive some compensation for their labor, as the prevailing assumption at the time of its creation was that acting professionally was enriching for children.[92] This central premise has not been revisited since then, even though more and more child actors are coming forward with accounts of financial exploitation and harsh working conditions.

D. Poor Working Conditions are Normalized on Film and Television Sets, a State of Affairs that Fails to Secure the "Healthy, Well-Rounded Growth" of Child Actors.

As noted above, the archetypal child actor is a troubled adolescent who grows into a stunted adult. But the archetype is banded about so often that it verges on being a stereotype, and there are some child actors who feel that it fails to accurately portray their experience in Hollywood. In 2023, Cole Sprouse—an actor who rose to prominence after co-starring in the Disney Channel show *The Suite Life of Zack and Cody* with his twin brother, Dylan Sprouse—defended his parents' decision to push him into acting, observing that,

[I]t started, really, as a means to put bread on the table . . . [m]y parents did not come from too much, and I have now been granted a life of primarily

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[87] *Id.*

[88] MCCURDY, *supra* note 37, at 14.

[89] *Id.*; The Iced Coffee Hour (@TheIcedCoffeeHour), *Jennette McCurdy NEVER Got Paid from iCarly,* YOUTUBE, https://www.youtube.com/watch?v=hkr4RvW5zHU (last visited Oct. 18, 2023).

[90] Stoner, *supra* note 33.

[91] *See, e.g.*, Stoner, *supra* note 33 (describing negative experience with child acting).

[92] *See* ZELIZER, *supra* note 6, at 93 (described by one proponent of child acting, "acting was 'as valuable for a child as a scholarship for Oxford is for a young man'").

financial stability . . . that is the product of working for 30 years and trading my childhood . . . . I don't regret it at all.[93]

However, the archetypal image exists for a reason. Childhood acting can be a grueling profession, especially for children acting in high-budget Hollywood productions with millions of dollars at stake. Even actors who claim to be grateful for their experience in the entertainment industry encounter pressures that are far more strenuous than those experienced by teenagers working retail jobs. Though he claims to have no regrets about exchanging his childhood for a career, Cole Sprouse admits that "my brother and I went through a lengthy court battle at about 10" due to his mother's mismanagement of their income from appearing in the NBC sitcom *Friends* and the Adam Sandler movie *Big Daddy*, describing his mother as "an incredibly wonderful and artistic woman, but . . . financially the most irresponsible woman ever . . . and it's probably the greatest wound of my life."[94]

It can be tempting to dismiss the negative experiences of child actors as isolated incidents. However, the number of performers who report experiencing traumatic events on film and television sets suggests that these incidents are part of a larger pattern. What's more, the same studios and producers continually reappear in these stories. Cole Sprouse, Christy Carlson Romano, and Alyson Stoner all starred in multiple Disney Channel productions; Jennette McCurdy starred in multiple Nickelodeon productions. This indicates that the problem is systemic in nature, and part of an industry-wide tendency to disregard the well-being of child entertainers.

One man who appears in stories about mistreated child actors with a disturbing amount of frequency is disgraced Nickelodeon producer and screenwriter Dan Schneider. Schneider was a prolific figure in children's television, serving as the executive producer for the successful Nickelodeon shows *All That, The Amanda Show, Kenan & Kel, Drake & Josh, Zoey 101, iCarly, Victorious, Sam & Cat, Henry Danger,* and *Game Shakers.*[95] These shows were among the most popular programs to ever air on Nickelodeon, and launched the careers of celebrities like Amanda Bynes, Miranda Cosgrove, and Ariana Grande. The influence that Schneider wielded in the world of children's television cannot be overstated: he was a proven hitmaker with an intuitive understanding of what children wanted to see, prompting *The New York Times* to describe him as "the Norman Lear of children's television" and *Forbes* to

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[93] Jade Biggs, *Cole Sprouse Opens Up About the Heartbreaking Impact of Being Pushed into Child Acting for Money*, COSMOPOLITAN (Mar. 10, 2023), https://www.cosmopolitan.com/uk/reports/a43271192/cole-sprouse-child-actor-impact [https://perma.cc/4KUL-V897].

[94] *Id.*

[95] Dessi Gomez, *A Guide to All the Shows Dan Schneider Made for Nickelodeon*, THEWRAP (April 2, 2024, 1:28 PM), https://www.thewrap.com/dan-schneider-shows-nickelodeon [https://perma.cc/XML5-L3MJ].

call him "the Willy Wonka of television."[96] At the height of his power, he was indispensable to Nickelodeon, and his shows quickly became a foundational part of Nickelodeon's identity as a television network. He was also a tyrannical showrunner who was infamous for his "relentless emotional abuse," but Nickelodeon was willing to overlook that until the ratings of his shows began decreasing.[97]

Providing an exhaustive account of every allegation against Dan Schneider is beyond the scope of this Note. Moreover, any attempt to document the scandals surrounding Schneider will inevitably be complicated by the fact that Nickelodeon and its parent company ViacomCBS are notoriously tight-lipped about the producer's misdeeds, with "[n]o one at Viacom [being] willing to discuss the matter publicly."[98]

Regardless, it is worth listing some of the accounts that have been reported to the press. As mentioned above, Schneider was a highly influential figure in the world of children's entertainment who operated with the sanction of a respected network like Nickelodeon. As such, the way that child entertainers were treated on his sets serves as a useful example of the ways in which industry professionals (who, it is worth noting, are theoretically restrained from the most egregious forms of misconduct by government oversight) habitually disregard the well-being of children in pursuit of profit—a habit that will almost certainly be repeated by amateur content creators (who are subject to relatively no oversight) in their pursuit of profit on social media.

Some of the most detailed allegations against Dan Schneider come from Jennette McCurdy, who recounts several disturbing encounters with him in her memoir. Referring to him as "The Creator," McCurdy describes instances in which Schneider pressured her to drink alcohol while underage, gave her an unsolicited shoulder massage, and forced her to be photographed in a bikini.[99] In addition to acting inappropriately towards McCurdy in these specific instances, Schneider generally behaved in a "mean-spirited, controlling, and terrifying" manner while working on set.[100] Observing that Schneider "knows how to make someone feel worthless," McCurdy describes him making "grown men and women cry with his insults and degradation"

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[96] Jacques Steinberg, *I, Little Sister, Becomes 'iCarly,'* NEW YORK TIMES (Sept. 7, 2007), https://www.nytimes.com/2007/09/07/arts/television/07icar.html (on file with author); Lacey Rose, *From 'iCarly' to 'Victorious,' the Willy Wonka of Television*, FORBES (Sep. 7, 2010), https://www.forbes.com/sites/laceyrose/2010/09/07/from-icarly-to-victorious-the-willy-wonka-of-television [https://perma.cc/VWD3-TKUA].

[97] Rick Ellis, *The iCarly Reboot and the Ticking Time Bomb that is Dan Schneider*, ALLYOURSCREENS (May 23, 2021), https://allyourscreens.com/latest-news/u-s/1039-the-icarly-reboot-and-the-ticking-time-bomb-that-is-dan-schneider [https://perma.cc/BKK9-M56M].

[98] *Id.*

[99] MCCURDY, *supra* note 37, at 108, 140–42.

[100] *Id.* at 115.

and "[firing] a six-year-old for messing up a few lines on a rehearsal day."[101] Eventually, the repeated accusations of emotional abuse forced Nickelodeon to take action against Schneider, which McCurdy notes:

> Wasn't just a slap-on-the-wrist sort of thing. It's to the point where he's no longer allowed to be on set with any actors, which makes communication in between takes complicated. The Creator sits in a small cave-like room off to the side of the soundstage, surrounded by piles of cold cuts, his favorite snack, and Kids' Choice Awards blimps, his most cherished life accomplishment. He watches our takes on four separate monitors, one for each camera, that are set up in his lair. Whenever he wants to give us a note, he tells it to an assistant director, who then has to run across the entire soundstage to give it to us. So our shoot days went from about thirteen hours to about seventeen. The general vibe on-set these days can best be described as malaise . . . .[102]

While McCurdy notes that the punishment was severe, it is nevertheless telling that Schneider was not fired altogether at this point. His banishment to the "cave-like room" took place on the set of *Sam & Cat*, which ran from June 2013 until July 2014; but his professional relationship with Nickelodeon continued until 2018, when the network finally decided not to extend its deal with his production company, Schneider's Bakery.[103] Some have theorized that the only reason Nickelodeon was willing to part ways with Schneider in 2018 was because his two remaining shows, *Game Shakers* and *Henry Danger*, never attained the cultural ubiquity of programs like *iCarly* or *Victorious*.[104]

There is nothing that the Coogan Act could have done to protect children like McCurdy from Schneider's violent temper, as nothing in the Coogan Act addresses the conditions in which child actors perform their labor.[105] While working conditions are addressed elsewhere in state and federal labor laws, child actors claim that these laws are not enforced with the thoroughness that they should be.[106] This may be the reason why proposed laws to protect kidfluencers focus more on financial protections than workplace protections, despite the fact that workplace protections are just as necessary: the laws that currently exist to protect child actors at work

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[101] *Id.* at 115–116.

[102] *Id.* at 214.

[103] Nellie Andreeva, *Nickelodeon Parts Ways with TV Series Producer Dan Schneider*, DEADLINE (Mar. 26, 2018, 3:29 PM), https://deadline.com/2018/03/nickelodeon-tv-series-producer-dan-schneider-part-ways-1202353698 [https://perma.cc/KKQ2-BKQK].

[104] Ellis, *supra* note 96.

[105] CAL. FAM. CODE § 6753 (West 2025).

[106] *See generally* POLLEY, *supra* note 37.

are diffuse, infrequency enforced, and incapable of being applied to private households.

Dan Schneider is neither a parent nor a social media influencer, which some might argue means that his misdeeds cannot be used to infer anything about how momfluencers might treat their children. He is, however, an adult who became rich by directing child entertainers—and, in this regard, highly similar to momfluencers. As such, his conduct may serve as a template for what to expect if the practice of profiting from the labor of child entertainers becomes common in American households. In fact, defenses of Schneider make him sound less like an abusive boss and more like a stern parent. In her memoir, Jamie Lynn Spears—the star of *Zoey 101*—describes Schneider in admiring tones, stating that "[he] was exacting and insisted on professionalism" and "knew how to get just what he needed from a rambunctious group of teens who thought that they were all that."[107] It is easy to imagine describing Ruby Franke or Mike Martin in the same way.

If recent accounts of abuses that occurred in the XOMG Pop! content house are to be believed, Schneider's style of management is already shaping how kidfluencer content is created.[108] The creation and cultivation of the XOMG Pop! brand is both unique and disturbing, having roots in traditional television production, traditional music production, and social media content creation. Both industry professionals and the mothers of aspiring celebrities were involved in the creation of XOMG Pop! content; this makes it difficult to establish whether the dysfunction is more reflective of Hollywood's toxic work culture or social media's propensity for motivating parents to disregard the well-being of their children. However, the fact that the two are so intertwined in this case is indicative of the ways in which Hollywood's attitude towards child entertainers is already shaping the ways in which social media content featuring children is produced, making the case worth discussing.

XOMG Pop! is a pop band created by dancer and singer JoJo Siwa and her mother Jessalyn Siwa. The band originally consisted of seven young girls, "all of whom were between the ages of eight and 14," and who earned their spots in the group by competing in the Siwas' reality TV competition show, *Siwas Dance Pop Revolution*.[109] Peacock, the streaming platform that aired the show, marketed it as a gentler alternative to *Dance Moms*, the infamous reality show that launched JoJo Siwa into stardom and garnered multiple controversies due to abrasive instructor Abby Lee Miller and the fame-hungry stage moms who worked with her. However, accounts from the set

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[107] JAMIE LYNN SPEARS, THINGS I SHOULD HAVE SAID 34 (2022).

[108] EJ Dickson, *JoJo Siwa Promised Them Pop Stardom. They Say They Were 'Thrown in the Trash,'* ROLLING STONE (Feb. 13, 2024), https://www.rollingstone.com/culture/culture-features/jojo-siwa-xomg-pop-dancers-physical-mental-torment-1234967431 [https://perma.cc/V36B-URC4].

[109] *Id.*

indicate that the atmosphere was anything but gentle. Jessalyn Siwa was alleged to be "overtly cruel to their young charges, calling them names" while JoJo Siwa "could be nasty and domineering . . . scream[ing] insults at the girls during a performance . . . [and] play[ing] a role in helping to build a cutthroat environment long after the cameras were gone, playing favorites and pitting members against each other."[110] After the reality show ended, the winners remained in the house along with their mothers, producing music and content for social media there.[111] Throughout this part of the process, it is alleged that the Siwas "subjected the children to grueling rehearsals, sometimes forgoing school breaks, with meager compensation."[112]

In some regards, XOMG Pop! was operated as a standard Hollywood production "subject to traditional regulation," with an on-set teacher and a portion of their earnings being set aside in a Coogan trust.[113] But since "much of their work, such as . . . shooting content for social media" did not fall into this category, the Siwas were not obligated to "provide . . . the standard on-set protections afforded to minor talent."[114] Allegedly, the families of XOMG Pop! members had to cover their own expenses related to food, lodging, and transportation.[115] This put them in a position similar to traditional momfluencers, in that they were fronting production expenses in hopes that their children would gather a large-enough audience to ensure a future profit. However, unlike traditional momfluencers, the XOMG Pop! families received no compensation for the social media content they created.[116] While a Coogan Act that applied to social media content would have ensured that the members received some compensation from their content, it would not have protected them from the Siwas' emotional abuse or the grueling workdays.

By framing entertainment as a form of labor that requires less regulation than other types of employment, the law is enabling the mistreatment of children on film and television sets. While some protections do exist, they are enforced through mechanisms that are rooted in labor and contract law—such as breach of contract or an inspection of a reported unfair labor practice—and do not have an equivalent in the domestic sphere. Regulating the family home under contract law is something for which there is no precedent in American law, and which stands in stark contradiction to laws

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[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] Dickinson, *supra* note 107.

[115] *Id.*

[116] *Id.*

that permit parents to raise their children as they see fit.[117] That leaves advocates for the children of momfluencers with no option more practical than taking an imperfect law rooted in 20th-century assumptions and adapting to a purpose for which it is not well-suited.

E. Due to its Singular Focus on Financial Compensation, the Coogan Act Cannot Serve as a Model to Ensure the "Healthy, Well-Rounded Growth" of the Children of Momfluencers.

Illinois Public Act 103-0556, which was passed in 2023 and took effect in July 2024, is the first law in the nation that requires momfluencers to compensate their children for their labor.[118] Its chief provision—Section 12.6, which states that kidfluencers must be compensated for their appearances in their parents' content and that their gross earnings must be set aside in a trust that cannot be accessed by their parents—is clearly inspired by the Coogan Act.[119] Section 12.6(c) of the Illinois act also provides that "[i]f a vlogger knowingly or recklessly violates this Section, a minor satisfying the criteria . . . may commence an action to enforce the provisions of this Section regarding the trust account."[120] If the minor prevails in such action, the court may award them both actual and punitive damages in addition to the costs of the action.[121]

At first blush, this seems to give children much leeway in asserting their right to compensation, in addition to discouraging parents from pocketing their children's wages by permitting wronged children to seek punitive damages in addition to their unpaid income. Moreover, the method that the Illinois act utilizes to determine the amount that must be set aside in trust has the potential to be more generous than the Coogan Act. Instead of setting the amount at a flat 15%, the Illinois act states that "the percentage of total gross earnings on any video segment including the likeness, name, or photograph of the minor that is equal to or greater than half of the content percentage that includes the minor" must be placed into a trust for the minor.[122] Under this framework, a minor child appearing in 30% of their parents' monetized content would be entitled to 15% of the gross income from that content and a minor child who appears in 80% of their parents' monetized content would be entitled to 40% of the gross income. This method addresses a longstanding complaint about the original Coogan Act: 15% of their gross earnings is not nearly enough to compensate children for

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[117] Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

[118] Yang, *supra* note 63.

[119] S.B. 1782, 103d Gen. Assemb., (Ill. 2023).

[120] *Id.*

[121] *Id.*

[122] *Id.*

the long hours they spend generating valuable content with their labor.[123] When viewed in this light, Illinois Public Act 103-0556 appears to be a marked improvement on the Coogan Act.

However, it is worth noting who Illinois Public Act 103-0556 applies to. Per Section 2.6, it only applies to children who appear in at least 30% of their parents' monetized content within a 30-day period that generated more than $.10 per view.[124] To qualify as an appearance, "the likeness, name, or photograph of the minor" must "visually appear[]," or the minor must be "the subject of an oral narrative in a video segment."[125] Parents who are careful to keep their children just below this threshold, and only feature them in 29% of their monetized content, are under no obligation pay their children anything. This leaves open the possibility that a vast class of children could be engaged in significant amounts of labor and receive no compensation for it. Additionally, Section 2.6(b) states that "[w]ith the exception of Section 12.6, the provisions of this Act do not apply to a minor engaged in the work of vlogging."[126] Section 12.6 deals solely with the trust that momfluencers must establish for children. It does not address the hours or conditions in which the children of momfluencers are permitted to work, which is dealt with elsewhere in Illinois' Child Labor Act in provisions that explicitly do not apply to kidfluencers.

To permit children to work in a completely unregulated environment—and possibly become the primary breadwinners of their families in the course of that work—is unconscionably dangerous. Moreover, it fails to secure their "healthy, well-rounded growth." This is the type of scenario that resulted in the abuse suffered by the Morris and Franke children.[127] If we cannot ensure that children are performing their work in a safe environment (a task that, given the fact that labor laws do not apply to the family home, is much easier said than done), we should not permit the work to be done at all.

F. A Federal Law Requiring Social Media Platforms to Demonetize Content Featuring Children is the Only Feasible Way to Ensure That Child Influencers Will Not Labor in Harsh Conditions.

Given that the family home cannot be regulated in the same way as a film set, demonetizing content featuring children seems to be most feasible way to ensure the safety of the children of momfluencers; but this is easier said than done, as any such law must also take the parents themselves into

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[123] Ayalon, *supra* note 32, at 358–59.

[124] S.B. 1782, 103d Gen. Assemb., (Ill. 2023).

[125] *Id.*

[126] *Id.*

[127] Halpert, *supra* note 56.

account. Momfluencers have interests and rights of their own. Moreover, they have their own set of defenders. Not only do these defenders believe that influencing is a respectable career. They also believe that any attempts to criticize or place limitations upon the profession is inherently misogynist.

In her book *Momfluenced: Inside the Maddening, Picture-Perfect World of Mommy Influencer Culture*, writer Sara Petersen interviews novelist and podcaster Jo Piazza, who is "quick to point out the inherent misogyny in denigrating a multibillion dollar industry dominated by women."[128] Piazza proceeds to characterize parenting influencers as the editors-in-chief "of their own little media companies" who "work [hard] and also [benefit] off the unpaid labor of motherhood, which does feel like a coup."[129] Petersen also quotes from Lissette Calveiro, a career coach who specializes in "coaching influencers and helping them get paid for their work."[130] In the process of expressing her frustration that influencers are not given the "congratulations they deserve," Calveiro points to "the endless hours spent building community, mastering a rapidly changing social media space, and many times wearing 277,382 hats running a business" as proof that influencing is a profession worthy of respect.[131] She ends by inviting critics to "think about the multi-Billions of dollars involved" before dismissing influencing as a frivolous career.[132]

This characterization of influencers (and female parenting influencers in particular) as hardworking businesswomen is common among influencing's defenders. In her book *Extremely Online: The Untold Story of Fame, Influence, and Power on the Internet*, journalist Taylor Lorenz characterizes influencers as part of a vanguard of content creators whose revolutionary work "is often dismissed by traditionalists as a vacant fad, when in fact it is the greatest and most disruptive change in modern capitalism."[133] However, if we accept the characterization of influencers as titans of the social media industry, following this argument to its logical conclusion forces us to characterize the children of influencers as their laborers. This is discomforting for many reasons.

First, it recharacterizes the fundamental nature of the family home. Long conceived by the law as a nurturing sphere that is relatively removed from the pressures of the state and economy,[134] the home is instead transformed into a place of business and enterprise if permitting parents to monetize

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[128] PETERSEN, *supra* note 40, at 15.

[129] *Id.*

[130] *Id.*

[131] *Id.* at 16.

[132] *Id.*

[133] TAYLOR LORENZ, EXTREMELY ONLINE: THE UNTOLD STORY OF FAME, INFLUENCE, AND POWER ON THE INTERNET 1 (2023).

[134] *See* Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

content featuring their children. If parents become the employers of their children, and children become the laborers of their parents, their relationship ceases to be nurturing and becomes inherently adversarial. American law has long acknowledged the fact that the interests of employers and laborers frequently do not align: this is the very reason why the National Labor Relations Act was passed, and why the National Labor Relations Board exists.[135] This leads to the second point of criticism: if the law continues to allow parents to regard their children as labor in a talent pool, it will permit the creation of a class of laborers with no means to organize, advocate for their rights, or bring grievances against their employers. The relationship between a parent and child—and especially a minor child—is so fundamentally unlike the relationship between employers and laborers that none of the remedies available to laborers can be utilized by children.

While a law inspired by the Coogan Fund can ensure that these laborers profit from their work, it does not provide them with a means to object to their working conditions or restrict their employers from forcing them to work long hours in harsh conditions. This is hardly surprising. Given the deference that American law grants parents when it comes to decisions regarding their children, it is extremely difficult to envision a law that could successfully regulate conditions inside the home. This is the reason why the Franke and Morris families were able to profit from abusing their children for so long, and why the Morris family is still able to profit from content featuring their family: there is no mechanism in American law that permits family homes to be regulated in the same way that film sets are regulated.[136] As such, a law prohibiting the monetization of content featuring children would ensure the safety of children more than legislation inspired by the half-measures of the Coogan Fund.

IV. CONCLUSION

As noted by many, influencing is a multibillion-dollar industry and momfluencers are particularly powerful within that industry.[137] In addition to the influencer economy itself, the work performed by momfluencers has inspired so many books, podcasts, and articles that media about momfluencing practically constitutes an industry in its own right.[138] Neither

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[135] *See* 29 U.S.C. § 151 (outlining Congressional policy considerations for passing the National Labor Relations Act).

[136] As of 2023, the Martin family has returned to YouTube under the handle @TheMartinFamilyYT.

[137] PETERSEN, *supra* note 40, at 15; LORENZ, *supra* note 132, at 97 (listing Youtube, just one influencer platform, as making $28.8 billion in ad revenue in 2021).

[138] *See generally* PETERSEN, *supra* note 40 (analyzing momfluencing as a distinct type of online influencing); *see generally* LORENZ, *supra* note 132 (describing the momfluencer media ecosystem).

the discourse nor the controversy shows any signs of slowing down. Now that Illinois' amendment to its child labor law has taken effect, obliging momfluencers to set a portion of their proceeds aside for their children, the conversation has only increased in intensity.

At the same time, however, the broader conversation regarding social media has taken a critical turn. Activists and lawmakers are bringing more attention to the destructive role that social media plays in the lives of the American children and making the general public more skeptical about the value of these products. In early 2024, the CEOs of social media giants such as Meta, X (formerly known as Twitter), and TikTok testified before the Senate Judiciary Committee about the impact their products have upon children's lives.[139] The hearing was a grim affair, beginning with "recorded testimony from kids and parents who said they or their children were exploited on social media" that was punctuated by "parents who lost children to suicide silently [holding] up pictures of their dead kids."[140] In a rare display of bipartisan unity, both Republican and Democratic politicians excoriated the Silicon Valey CEOs for designing products that have exposed children to sexual predators, addictive features, and content that promotes social ills such as suicide, eating disorders, unrealistic beauty standards, and bullying.[141] Dick Durbin, a Democrat and Senate Majority Whip, blamed the CEOs for "many of the dangers our children face online," while Republican South Carolina Senator Lindsay Graham decried social media companies as "dangerous products."[142] A federal bill would create "legal liability for apps and social platforms that recommend harmful content to minors," which Snap, Inc. CEO Evan Spiegel is asking the rest of his industry to support.[143]

It is currently unclear to what extent this backlash against social media will influence the discourse regarding momfluencing. At the hearing, the focus remained solely on business decisions made by social media CEOs: namely, their decisions to incorporate addictive features into their products and to design algorithms that pushed dangerous content onto the feeds of underage users. The parents who were present at the hearing assumed the roles of harried guardians, struggling to keep their children safe from the machinations of thoughtless corporations who traumatize their children in pursuit of profit. If any of them ever found themselves in a position similar to Ruby Franke's, in which they felt compelled to financially support their families by continually posting videos of their children that attracted a large

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[139] Barbara Ortutay & Haleluya Hadero, *Meta, TikTok, and Other Social Media CEOs Testify in Heated Senate Hearing on Child Exploitation*, AP NEWS, https://apnews.com/article/meta-tiktok-snap-discord-zuckerberg-testify-senate-00754a6bea92aaad62585ed55f219932 [https://perma.cc/97BS-2E83].

[140] *Id.*

[141] *Id.*

[142] *Id.*

[143] *Id.*

audience of sexual predators, they did not express this to the Senate Judiciary Committee.

While the average momfluencer may not sink to the depths of Ruby Franke, we should not lose sight of the fact that the children of influencers are working as entertainers—and that child entertainers, no matter what the theater proprietors of the 1910s would have us believe, are child laborers. While it is possible for minors to hold employment that contributes positively to their growth and development, workplaces that employ children should be subject to strict child labor laws and government oversight to ensure that child workers are not being exploited. Since the family home cannot be subject to such strict oversight without interfering with the rights of parents to raise their children as they see fit, it is fundamentally irresponsible to permit children to work in the family home as entertainers. To protect the interests of these children, federal law should prohibit parents from monetizing content featuring minors.