STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

vma

JOE GRIEGO, ELOY VIGIL, RAMON MOLINA,
SIN FRONTERAS ORGANIZING PROJECT,
And HELP-NEW MEXICO, INC.,
Plaintiffs,
v. **No. CV-2009-10130**

THE NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION, and NED FULLER,
in his official Capacity as Director of the Workers' Compensation Administration,
Defendants.

AMENDED OPINION AND ORDER

Plaintiffs request declaratory and injunctive relief with regard to the exclusion of farm and ranch laborers from workers' compensation benefits. They argue that the statutory exclusion is in violation of the Equal Protection Clause set out in Article II, § 18 of the New Mexico Constitution. The Court agrees.

Stipulated Facts and Background

The parties stipulated to almost four hundred facts. The Court determined that the following stipulated facts are relevant to the issues presented by this matter.

The Court has jurisdiction over this action and over the parties. Venue is proper with this Court.

Plaintiffs Joe Griego, Eloy Vigil, and Ramon Molina worked as farm and ranch laborers for dairies in New Mexico. All three suffered work-related injuries, filed workers' compensation claims, and were denied their claims under the statutory farm and ranch laborer exclusion.

"It is the intent of the legislature in creating the workers' compensation administration that the laws administered by it to provide a workers' benefit system be interpreted to assure the quick

and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to the employers who are subject to the provisions of the Workers' Compensation Act . . . ." NMSA 1978, § 52-5-1 (1990). The objective of the Act is to ensure that the industry carries the burden of compensating workers' injuries and to prevent injured workers from becoming public charges. Workers' compensation is a no-fault insurance program in which workers who are injured on the job are compensated for their lost wages and medical costs related to the injuries. It is intended to get workers back to work quickly and efficiently while protecting the employers from personal injury lawsuits.

Under the Act, employers must provide workers' compensation if they have three or more employees. NMSA 1978, § 52-1-6(A) (1990). However, "[t]he provisions of the Workers' Compensation Act shall not apply to employers of private domestic servants and farm and ranch laborers."

Farm and ranch laborers are those that work directly with crops or animals. The Act has never covered farm and ranch laborers. Employees that work on a farm or ranch but do not work directly with crops or animals are required to be covered by the Act. While all industries have differences in terms of their working conditions and requirements of the job, nothing about farm and ranch laborers makes them unique in terms of workers' compensation insurance.

The Act addresses contract labor, NMSA 1978, § 52-1-22 (1989), "casual" labor, NMSA 1978, § 52-1-23 (1989), and those that work for multiple employers. The Act also provides guidance on the calculation of wages for part-time, temporary, and seasonal employees. NMSA 1978, § 52-1-20 (1990).

According to the State of New Mexico, the more workers included in workers' compensation

coverage, the better, because coverage is generally positive. Also according to the State, there are negative impacts on society at large by not having all workers covered by workers' compensation. These include a negative impact on the health system since there are more uninsured patients, a negative impact on tax payers who ultimately must cover the costs, and a negative impact on society since uncovered injured workers cannot return to work as quickly as those with coverage. There is a negative impact on injured workers and their families since those without coverage do not have the same access to health care as those with coverage, and those without coverage rely on public benefits more than those with coverage.

New Mexico's farm and ranch laborers include those who work in the fields, milk cows, and tend livestock. New Mexico's farm and ranch laborers are very low income. Crop workers earn an average of between $6,000 and $7,000 annually, while dairy workers earn an average of $18,000 annually. According to the United States Department of Agriculture, farm workers are the poorest of the working poor. They are largely without health insurance or access to health care; only one percent of farm workers in New Mexico have private health insurance. They have very low education levels, typically completing school only through the sixth grade. Many are homeless.

The vast majority of New Mexico's farm and ranch laborers are not citizens. They are comprised principally of racial and national origin minorities; currently, they are comprised principally of people born in Mexico. The vast majority of New Mexican farm and ranch laborers are monolingual Spanish speakers. Most are recent immigrants.

In the past, many children of farm workers were denied access to public schools. Today, children as young as twelve are permitted by law to work in the fields, younger than in any other industry. Children frequently accompany their parents into the fields to help supplement the

extremely low wages of the family.

New Mexico's farm and ranch laborers have been historically subjected to abusive treatment by employers, including, but not limited to, labor law violations, denied access to minimum wage, denied access to water in fields, retaliation for complaining, not being paid, and having their social security stolen. Historically, many New Mexico growers preferred to use undocumented workers because they knew that that they were less likely to complain about working conditions and violations of labor laws and because they were unable to negotiate for improved conditions of employment. Historically, many southwestern farmers have employed Mexican workers because they cost less and lacked political or social power, resulting in the farmers being able to pay them less and compel them to demand less than other workers.

New Mexican farm and ranch laborers have historically been subjected to retaliation for asserting their rights or speaking out against the employment, health, and safety practices of their employers. Historically, New Mexico farm and ranch laborers who have complained about working conditions have faced retaliation by employers in the form of termination of their employment, failure to be rehired, or threatening them with immigration consequences.

Farm and ranch laborers continue to be very vulnerable to retribution—more so than other workers—and they face losing their job or not being rehired if they complain. The parties have stipulated that employers of agricultural workers regularly do not pay the federal minimum wage of $7.25 per hour and that they regularly deduct social security taxes from workers' paychecks, but illegally fail to report them to the Social Security Administration, which results in workers not receiving accurate W-2s at the end of the year or social security retirement benefits at the end of their working lives.

Under the National Labor Relations Act, agricultural workers are excluded from the right to participate in collective bargaining. Because of this, farm and ranch laborers in New Mexico can be terminated for trying to organize and thus cannot organize like other workers.

Historically, New Mexico farm and ranch laborers have been without the power of the vote. The vast majority of them continue to be unable to vote because they are non-citizens. Because they cannot vote, it is extremely difficult for them to have meaningful input with elected officials. They do not have personal access to political channels. Also because they are largely non-citizens, farm and ranch laborers cannot be elected or appointed to policy-making positions. It is extraordinarily difficult for farm and ranch laborers to personally participate in the legislative process—not just because of language barriers—but because they are extremely poor, often paid on a daily basis, live in rural areas far from Santa Fe, risk losing their jobs if they miss a day or work, and, if they do manage to make it to the Roundhouse, do not know the political process. Conversely, the agricultural industry in New Mexico has historically had a strong lobbying force; it is currently one of the strongest lobbies in the State.

The New Mexico Center on Law and Poverty (the Center) advocates on behalf of agricultural workers in the State. HELP-New Mexico endorsed the bill to include farm and ranch laborers in workers' compensation and its director spoke to two legislators about supporting the bill. Between 2005 and 2009, the Center, with grants, began work on issues involving these workers, including presentations and bills to repeal the exclusion. When the Center worked to amend the law regarding the exclusion, they faced retaliation. Several members of the agricultural industry lobby publically called them liars. The parties stipulated that the agricultural industry presented incorrect information to legislators, that members of both chambers began raising questions about the Center's funding

sources, and that, a few weeks later, an amendment was added to the Legislature's budget bill specifically eliminating all of the Center's state funding. The Center now receives no state funding because of retaliation due to the Center's work on behalf of farm and ranch laborers.

As of 2009, 687,239 individuals were covered by workers' compensation in New Mexico. The inclusion of farm and ranch laborers would result in approximately 10,000 additional people, or 1.4% more workers, being eligible for coverage. If farm and ranch employers were required to provide coverage for these employees, the number of claims to the Workers' Compensation Administration would likely increase by less than one percent. It would be administratively feasible to administer the workers' compensation system with the addition of farm and ranch laborers, including those who work for multiple employers, those who work seasonally, and those who are employed by farm labor contractors.

Approximately twenty-nine percent of New Mexico farm and ranch employers voluntarily provide coverage for their workers. These agricultural laborers that are already covered do not pose any special difficulties for the Workers' Compensation Administration. Other states, including Colorado, California, Arizona, and Idaho require workers' compensation coverage of farm and ranch laborers.

The wages of injured farm and ranch laborers, for purposes of workers' compensation benefits, can be calculated just as those for workers who are currently covered. It is no more difficult to administer workers' compensation to farm and ranch laborers than it is to administer the program to other covered workers, some of whom are migrant and seasonal, work for multiple employers, or are employed by farm labor contractors.

The term "farm and ranch laborer" has been defined by the New Mexico courts as laborers

who work primarily harvesting crops or with animals. Other agricultural workers--those who do not work primarily harvesting crops or with animals--are already required to be covered by workers' compensation. Thus, the Workers' Compensation Administration already deals with cases concerning these other agricultural employees that are covered by workers' compensation, and they do not pose any special difficulties for the Administration.

The agricultural industry in New Mexico consists primarily of three categories: farming and crops, beef cattle ranching, and dairy. Agriculture accounts for 1.45% of New Mexico's total state production, the state equivalent of the national measure, the gross national product.

The nature of agriculture in New Mexico has changed since 1990, becoming industrialized, with larger and larger farms dominating the production and sale of agricultural products in the state. While there are approximately 20,000 farms in New Mexico, ninety percent of them are very small and are not a primary source of income for the owners. Approximately ten percent of the farms in New Mexico generate ninety percent of the income from farming. Out of the 20,000 farms, only 1,973, or nine percent, have three or more workers. Thus, only those 1,973 farms would be impacted by the inclusion of farm and ranch laborers in workers' compensation. The 1,973 farms employ approximately eighty-three percent of New Mexico's farm and ranch laborers.

The average value of agricultural production in New Mexico for the past five years was approximately three billion dollars. The average amount of wages paid by the industry over the last eight years was $231,259,000. Between 2002 and 2009, the net profit for all of New Mexico's agricultural industry combined fluctuated from a low of $422,979,000 to a high of $900,887,000, averaging at $667,207,000. In 2010, the net profit for all of New Mexico's agricultural industry was $1,020,831,000.

Labor costs in New Mexico agriculture are lower than labor costs in most other New Mexico industries. Employers of food-sector workers who are required to be covered by workers' compensation, i.e. employers of food-processing workers, are subject to the same market forces as employers of farm and ranch laborers. However, the onion shed worker is required to be covered by workers' compensation but the onion field worker is not. Extending workers' compensation insurance to farm and ranch laborers would internalize the costs of injuries that are currently externalized by the firms that employ them to the employees themselves, the public sector, and taxpayers.

Out of the 272 dairies in New Mexico, approximately 150 dairies account for over ninety-nine percent of New Mexico's dairy sales. The dairy industry in this state generates approximately one billion dollars in gross producer income annually, employs about 3,500 people, and produces the raw material for the state's cheese manufacturing sector. Dairy jobs are permanent, year-round jobs. The average sales of agricultural products per commercial, specialized dairy farm was $6.7 million in 2007. In 2008, New Mexico's diaries brought in $1.4 billion in total cash receipts, while in 2009, it accounted for $950,000,000 in total cash receipts. The dairy industry is New Mexico's number one agricultural commodity, ranked ninth in the nation for milk production. Since 1990, the industry has changed, becoming industrialized, with New Mexico now having the largest dairies in the country.

The beef cattle industry is New Mexico's number two agricultural commodity, and ranks tenth in the country. In 2008, the gross income from this industry totaled $1.3 billion, while in 2009 it totaled $1.0 billion. Beef cattle jobs are often permanent, year-round jobs.

New Mexico is ranked number one for chile production nationally, but is a relatively small specialty crop. The 2009 value of chile production in New Mexico was $57.4 million. New Mexico

has the highest value in the nation, $119 million in 2009, of pecan production. Onion production in the state has increased from $8.5 million in 1990 to $53.9 million in 2009, becoming a major supplier for the nation. Hay production, third after milk and cattle, was valued at $208 million in 2009.

The range of total costs to the New Mexico agricultural industry for mandatory workers' compensation for farm and ranch laborers would be between five and seven million dollars. One method of evaluating whether an industry can absorb the overhead of a new cost, such as workers' compensation premiums, is to calculate the current profitability based on the sales minus costs. Because the agricultural industry has averaged a profit of $667 million over the past eight years, the total cost to the industry would be less than one percent of its annual profit. The cost of workers' compensation insurance for the agricultural industry is reasonable and comparable to that of other industries.

An employer with a known safety track record receives access to a lower "voluntary market" rate, while an employer without a known safety track record may have to purchase insurance at higher rates in the "assigned risk pool." The assigned risk rates are the highest on the market. These rates are for companies that cannot obtain coverage in the voluntary market. The premium rate for most farm and ranch employers who are buying insurance for the first time is likely to be the rate from the assigned risk pool. On average, it takes about two years for a first-time purchaser of workers' compensation insurance to be insured at the lower voluntary market rate.

When an agricultural laborer is injured while working and not covered by workers' compensation, it is likely that he or she will need to participate in taxpayer-funded public benefit programs. The agricultural industry is the only industry allowed to shift the burden of caring for its

injured workers from the industry itself to taxpayers, through taxpayer-funded medical assistance programs and public benefit programs.

Discussion

As an initial matter, Defendants argue that Plaintiffs lack standing. With regard to the individual Plaintiffs, Defendants contend that the record does not show that they have demonstrated that they would have otherwise qualified for workers' compensation benefits but for the exemption, asserting that the record does not show that they provided adequate notice of their claims or that the claims were otherwise compensable.

The Court rejects this argument. Defendants stipulated that the three individual Plaintiffs suffered work-related injuries, filed workers' compensation claims, and were denied their claims under the statutory farm and ranch laborer exclusion. Defendants do not direct the Court's attention to evidence in the record that these additional eligibility issues were raised during the workers' compensation proceedings. Plaintiff Joe Griego, in his appeal from the Workers' Compensation Administration to the Court of Appeals, raised the issue of whether the Administration properly dismissed his claim based on the exclusion; the Court of Appeals affirmed the Administration, observing that the Administration did not have jurisdiction to consider a constitutional challenge to the exclusion, that the Administration refused to allow Griego to develop a factual record on the issue, and that Griego had an action pending in this Court challenging the statute. To accept Defendants' argument would foreclose Griego the opportunity for judicial review of his constitutional claim.

"Equal protection, both federal and state, guarantees that the government will treat individuals similarly situated in an equal manner." Breen v. Carlsbad Municpal Sch., 2005-NMSC-

028, ¶ 7, 138 N.M. 331, 120 P.3d 413. "Equal protection guarantees 'prohibit the government from creating statutory classifications that are unreasonable, unrelated to a legitimate statutory purpose, or are not based on real differences.'" Id. (quoting Madrid v. St. Joseph Hosp., 1996-NMSC-064, ¶ 34, 122 N.M. 524, 928 P.2d 250).

Plaintiffs "must first prove that they are similarly situated to another group but are treated dissimilarly." Breen, 2005-NMSC-028, ¶ 8. The parties agree that the statutory exclusion treats farm and ranch laborers who work primarily harvesting crops or with animals differently from those that process the crops or products. Thus, "the legislation creates a class of similarly situated individuals who are treated dissimilarly." Id. ¶ 10.

Next, the Court must determine the appropriate level of scrutiny to apply to the challenged legislation. See id. ¶ 11. "There are three levels of equal protection review based on the New Mexico Constitution: rational basis, intermediate scrutiny and strict scrutiny." Id. Only the first two levels are at issue in the present matter.

For review under intermediate scrutiny, the burden is on Defendants to prove the constitutionality of the legislation. See id. ¶ 13. Defendants must show "that the classification or discrimination caused by the legislation is 'substantially related to an important governmental interest.'" Id.

"Rational basis review applies to general social and economic legislation that does not affect a fundamental or important constitutional right or a suspect or sensitive class." Id. ¶ 11. Plaintiffs, as the party challenging the legislation, must "prove that it 'is not rationally related to a legitimate governmental purpose.'" Id. (quoted authority omitted).

Plaintiffs argue that, under either the rational basis or intermediate scrutiny standard, the

exclusion is unconstitutional. They contend that farm and ranch laborers form a sensitive class, so intermediate scrutiny is warranted. Defendants, on the other hand, argue that the Court should apply the rational basis test, and that, under that test, the exclusion is constitutional. At the hearing, Defendants conceded that the exclusion would be unconstitutional if the Court applies intermediate scrutiny.

"There are two different ways that legislation can trigger intermediate scrutiny review. The [l]egislation must either (1) restrict the ability to exercise an important right or (2) treat the person or persons challenging the constitutionality of the legislation differently because they belong to a sensitive class." Id. ¶ 17.

The Workers' Compensation "Act is general social and economic legislation and the benefits conferred under the Act do not rise to the level of important rights in the constitutional sense." Id. Plaintiffs must therefore belong to a sensitive class to warrant intermediate scrutiny.

"Systematic denial from the political process is a particularly persuasive reason to apply intermediate scrutiny, because a politically powerless group has no independent means to protect its constitutional rights." Id. ¶ 19 (discussing application of this standard to sex discrimination, observing the historical denial of political rights as well as the pervasive, subtle discrimination that continues in education, employment, and the political arena). In Breen, the Supreme Court discussed Plyer v. Doe, 457 U.S. 202 (1982), in which "the United States Supreme Court employed what can be described as an intermediate scrutiny analysis or a middle level standard of review" to the children of undocumented immigrants that had been denied a public education. 2005-NMSC-028, ¶ 21. Our Court explained that Plyer applied an intermediate standard because the children "were being discriminated against 'by virtue of circumstances beyond their control.'" Breen, 2005-NMSC-028, ¶

8 (quoting Plyer, 457 U.S. at 217 n.14).

> These cases suggest that intermediate scrutiny is justified if a discrete group has been subjected to a history of discrimination and political powerlessness based on a characteristic or characteristics that are relatively beyond the individuals' control such that the discrimination warrants a degree of protection from the majoritarian political process.

Breen, 2005-NMSC-028, ¶ 21.

The Court, in Breen, determined that intermediate scrutiny applied with regard to persons with mental disabilities, observing that this group had "a history replete with societal discrimination and political exclusion based on a characteristic beyond their control." Id. ¶ 22. It recounted that "[m]any state laws" disallowed citizenship based on mental disability, and that "[g]overnmental policies mandating segregation and institutionalization helped create and justify societal prejudice against persons with [mental] disabilities," creating "deep rooted" societal discrimination. Id. "The historical discriminatory treatment of persons with mental disabilities shows that the courts should be sensitive to possible discrimination against persons with mental disabilities contained in legislation that purports to treat them differently based solely on the fact that they have a mental disability." Id. ¶ 28.

With regard to a history of discrimination, Plaintiffs argue that New Mexican farm and ranch laborers have been subjected to abusive treatment by employers, including labor law violations, failure to receive minimum wage, retaliation for complaining, and having poor working conditions, as set out above. They recount that employers historically sought Mexican workers based on the belief that they could be paid less and lacked political and social power.

Plaintiffs contend that New Mexican farm and ranch laborers have extremely limited political power. They note that the vast majority are not citizens and thus cannot vote, hold office, or be

appointed to policy-making positions. Plaintiffs further observe the difficulties these laborers face with regard to political participation, including poverty, language barriers, and their rural locations. They argue that they cannot organize because they are excluded from the National Labor Relations Act, and that they and their advocates face retaliation, also as described above in the stipulated facts section. Plaintiffs argue that farm and ranch laborers are an exceptionally vulnerable group because they live in extreme poverty, lack health care, are uneducated, and are in some cases homeless.

The Court agrees that the stipulated facts demonstrate that farm and ranch laborers in New Mexico have been subjected to a regretful history of mistreatment by employers and lack political power. However, the Court concludes that they do not meet the definition of a sensitive class as described in Breen. The discrimination and difficulties faced in terms of political power are not based on characteristics "relatively beyond the individuals' control such that the discrimination warrants a degree of protection from the majoritarian political process," Breen, 2005-NMSC-028, ¶ 21, unlike gender and mental disability. The historical political barriers faced by women and those with mental disabilities were of a different order as compared to the practical difficulties of citizenship, language, and poverty relied upon by Plaintiffs. Women were, by law, denied the right to vote based on their gender. Somewhat similarly, Breen relied upon the fact that "[m]any state laws declared that a person with disabilities was 'unfit for citizenship' based on his or her 'defect,'" as well as the fact of "[g]overnment policies mandating segregation and institutionalization." Id. ¶ 22. In contrast, farm and ranch laborers have not been denied access to the political process based on their classification as such workers. Although Plaintiffs observe that most farm and ranch laborers are of Mexican descent and argue that this fact is appropriate for consideration, they also recognize that classifications based on race or ancestry would be subject to strict scrutiny, and concede that the

statutory exclusion is not based on race or ancestry. See Hernandez v. Stuyvesant, No. 93-887-HB, at 4 (D.N.M. 1996) (Ex. 1 to Defendants' brief) (rejecting the argument that the farm laborer exclusion should be strictly scrutinized because they are largely of Mexican descent, observing that the United States Supreme Court has "held that a neutral law does not violate the Equal Protection Clause solely because it results in a racially disproportionate impact," and they could not demonstrate intent to discriminate based on race or ancestry). Finally, it appears that the appellate court has applied the rational basis standard to farm and ranch laborers. See Cueto v. Stahmann Farms, Inc., 94 N.M. 223, 608 P.2d 535 (Ct. App. 1980) (rejecting, without discussion or analysis, a farm or ranch worker's argument concerning the exclusion, concluding that the exemption did not deny him equal protection because it is not arbitrary and has a reasonable basis).

"Generally, when social and economic legislation is challenged on equal protection grounds, the legislation is considered presumptively valid and is subjected to the rational basis test." Trujillo v. City of Albuquerque, 1998-NMSC-031, ¶ 14, 125 N.M. 721, 965 P.2d 305. "To successfully challenge a statute under the rational basis test, a plaintiff is required to show that the statute's classification is not rationally related to the legislative goal." Id.

Our Supreme Court, in Trujillo, adopted a modified, modern rational basis test. Id. ¶ 30. "[W]e are not adopting the test characterized as a 'virtual rubber-stamp[,]' . . . as 'toothless[,]' . . . and as 'preordain[ing]' the result by applying no real scrutiny." Id. (quoted authorities omitted) (fourth alteration in original). Under the "modern articulation of the rational basis standard," id., Plaintiffs "must demonstrate that the classification created by the legislation is not supported by a 'firm legal rationale' or evidence in the record." Wagner v. AGW Consultants, 2005-NMSC-016, 137 N.M. 734, 114 P.3d 1050 (quoted authority omitted). "Rational basis review requires that the

challenged legislative classification be based upon some substantial or real distinction, and not artificial or irrelevant differences." Schirmer v. Homestake Mining Co., 118 N.M. 420, 423, 882 P.2d 11, 14 (1994). The Court concludes that Plaintiffs have met their burden.

Defendants rely on the Court of Appeals' opinion in Cueto for the determination that the exclusion did not violate equal protection because it had a reasonable basis. However, among other distinctions, including the apparent lack of a developed factual record, that case was decided prior to the adoption of our modern rational basis test. Defendants further rely on cases from other jurisdictions that have upheld farm labor exclusions under the rational basis standard. Again, however, these cases did not apply a standard comparable to New Mexico's modern rational basis test.

Defendants argue that the farm and ranch laborer exclusion serves two legitimate governmental purposes. First, they assert that the exclusion simplifies the administration of the workers' compensation system. Second, they contend that the exclusion protects one of the most economically important industries in New Mexico from the additional overhead costs that would result from mandating coverage for these workers.

With regard to the administrative purpose, Defendants observe that many agricultural workers are seasonal, work for multiple employers, and earn different wages with different employers. They speculate that it may sometimes be difficult to trace an injury to work performed for a particular employer. Defendants argue that, while these facts do not make it impossible to administer coverage for farm and ranch laborers, it demonstrates that agricultural workers present challenges to the efficient administration of the system.

Plaintiffs have demonstrated that the purported difficulty in administration of the additional

claims is not supported by the record. Defendants have stipulated that the inclusion of farm and ranch laborers would result in approximately 1.4% more eligible workers, and the number of claims to the Workers' Compensation Administration would likely increase by less than one percent. Defendants stipulated to the fact that it would be administratively feasible to administer the workers' compensation system with the addition of farm and ranch laborers, including those who work for multiple employers, seasonally, and are employed by farm labor contractors, evidenced by the fact that twenty-nine percent of New Mexico farm and ranch employers already voluntarily provide coverage for their workers. The wages of injured farm and ranch laborers, for purposes of workers' compensation benefits, can be calculated just as those for workers who are currently covered, some of whom are migrant and seasonal, work for multiple employers, or are employed by farm labor contractors. Further, other agricultural workers that do not work primarily harvesting crops or with animals are also already required to be covered by workers' compensation, again demonstrating that the Workers' Compensation Administration can deal with the types of situations presented by farm and ranch laborers.

Defendants point out that the agricultural industry brings money into New Mexico and provides jobs to state residents, and argue that workers' compensation for farm and ranch laborers represents an additional cost to the industry. They contend that the record does not show the relative profitability of large and small agricultural operations, and that the record does not show that smaller businesses can afford to bear the burden of providing insurance. Defendants assert that New Mexico has a legitimate interest in protecting one of its most important economic industries and has a legitimate interest in protecting smaller producers who may be less able to bear the costs, rationally related to the exclusion of agricultural workers.

Agriculture accounts for only 1.45% of New Mexico's total state production. The industry averages over $667 million in profit per year, generating a net profit in 2010 of over one billion dollars. Of the 20,000 farms in New Mexico, only nine percent have enough employees to require coverage. Eighty-three percent of farm and ranch laborers are employed by these farms. In the last twenty years, the dairy industry has changed by becoming more industrialized, and New Mexico currently has the largest dairies in the country. The estimated cost to the agricultural industry for providing workers compensation is between five and seven million dollars; these figures represent less than one percent of the industry's annual profit.

Most significantly for this matter, as Plaintiffs argue, is whether the classification is arbitrary. While the State has a legitimate interest in lowering employer costs, particularly for smaller farms, it must do so in a manner that is not arbitrary. See Schirmer, 118 N.M. at 423, 882 P.2d at 14 (concluding that the Worker's Compensation Act's statute of repose was "unconstitutional notwithstanding its rational relationship to the valid legislative goal of lowering employer costs," because "the statute arbitrarily discriminates against a group of claimants that . . . may well contract cancer ten to fifteen years after exposure to radiation"). The farm and ranch laborer exclusion distinguishes between workers who pick chile in the fields and those that pack it. Defendants have stipulated to the fact that, under the exclusion, the onion shed worker is required to be covered by workers' compensation but the onion field worker is not. This distinction is arbitrary. To be constitutional under the rational basis standard, the challenged legislative classification must be "based upon some substantial or real distinction, and not artificial or irrelevant differences." Id. The distinction made by Section 52-1-6(A) between agricultural workers in the field and those in the shed is artificial and irrelevant, unrelated to the goal of lowering employer costs.

The purpose of the Workers' Compensation Act is "'to provide a humanitarian and economical system of compensation for injured work[ers],'" Breen, 2005-NMSC-028, ¶ 36, at a reasonable cost to employers. It is "designed to provide quick and reliable recovery for injured workers while at the same time protecting society by shifting the burden of caring for injured workers away from society and toward industry." Id. Defendants stipulated to the fact that the agricultural industry is the only industry allowed to shift the burden of its injured workers from the industry to taxpayers. Determinatively, the exclusion does so in an arbitrary manner, creating an artificial distinction that lacks a reasonable basis in fact. Although the legislative intent of the farm and ranch exclusion, protection of the agricultural industry, is a legitimate goal, the exclusion is an arbitrary classification plainly at odds with the articulated purposes of the Act.

Conclusion

Because farm and ranch laborers do not constitute a sensitive class, they are not entitled to review under intermediate scrutiny. Under the rational basis standard, the Court concludes that the farm and ranch labor exclusion is unconstitutional.

IT IS SO ORDERED.

Valerie Huling
District Court Judge

This is to certify that a true and correct copy of the foregoing document was submitted for e-filing on this 27th day of December, 2011.