UNREASONABLE EXEMPTIONS: ANALYZING THE AGRICULTURAL WORKER EXEMPTIONS TO WORKERS' COMPENSATION LAWS IN LIGHT OF *RODRIGUEZ V. BRAND WEST DAIRY*

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I. INTRODUCTION

Farming and agricultural-related work is one of the most hazardous industries in the world.[1] According to the Occupational, Safety, and Health Administration (OSHA)—a sub-department of the United States Department of Labor charged with "assur[ing] safe and healthful working conditions"[2]—found that agricultural employment welcomes frequent exposure to "numerous safety, health, environmental, biological, and respiratory hazards."[3] These hazards include

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1. Ian Kullgren, *Your Farm is Trying to Kill You*, POLITICO (April 12, 2017), http://perma.cc/6xlu-bquv (noting that "[f]arming is one of the most dangerous occupations in America, with 22 of every 100,000 farmers dying in a work-related accident").

2. *About OSHA*, OCCUPATIONAL SAFETY & HEALTH ADMIN., https://perma.cc/xs24-7279 (archived Feb. 26, 2019).

3. *Agricultural Operations*, OCCUPATIONAL SAFETY & HEALTH ADMIN., https://perma.cc/46YC-V6E9 (archived Feb. 26, 2019).

"vehicle rollovers, heat exposure, falls, musculoskeletal injuries, hazardous equipment, grain bins, unsanitary conditions, pesticide [exposure], and many others."[4] As one of the most hazardous and injury-ridden industries, to be a participant-laborer poses a serious threat to a person's health and well-being.[5]

As the farming industry becomes more commercialized, injuries have become more frequent. To support this claim, the United States Bureau of Labor and Statistics (BLS) reported that since 2013, the number of fatalities due to agricultural labor has increased annually.[6] The uptick in fatalities is not singularly traceable to one common source. However, as time progresses the agricultural industry has seen an increase in mortality rates and as fatalities in farming and agribusiness have increased, the average workplace in the United States has become safer.[7]

According to the United States Center for Disease Control (CDC), the average American workplace has placed a priority on the health and safety of its employees. For the first time in history the American workplace has seen a decrease in injuries and fatalities, creating a safer and healthier workplace.[8] When the agricultural industry is compared with other modern businesses there is a stark contrast in the safety and well-being of employees, including the factors contributing to workplace safety which incorporates avenues of compensation if a worker becomes injured.

A common and often legally mandated protection for employers and the businesses' employees is workers' compensation insurance—a statutory construct created to pay benefits to properly compensate the injuries of the worker, regardless of fault.[9] Workers' compensation insurance provides third-party protections, for a premium, to companies in order to compensate injured employees, except for agricultural workers in sixteen states.[10] This agricultural exemption, or exception as it is sometimes called, creates potentially harmful side effects for the farm, farmer-employer, and their agricultural employees. With a rise

4. *Id.*

5. *Id.*

6. *Agriculture, Forestry, Fishing & Hunting NAICS II*, BUREAU OF LAB. STATS., https://perma.cc/2BZD-J3FT (archived Feb. 26, 2019).

7. Anne Vandermey, *Construction Worker Deaths Hit Highest Level Since Recession*, FORTUNE (Jan. 25, 2017), https://perma.cc/5EZR-TL3R.

8. U.S. DEP'T OF LABOR, *Mines, Factories, and Other Workplaces Have Become Safer*, in FUTUREWORK: TRENDS AND CHALLENGES FOR WORK IN THE 21ST CENTURY 48, 48-59 (1999), https://www.dol.gov/dol/aboutdol/history/herman/reports/futurework/report/pdf/ch5.pdf.

9. *Welcome to the Iowa Division of Workers' Compensation*, IOWA WORKFORCE DEV., https://perma.cc/KNF8-W9FV (archived Feb. 26, 2019).

10. Roger A. McEowen, *Workers' Compensation and the Exemption for Agricultural Labor*, IOWA ST. U. CTR. AGRIC. L. & TAX'N (July 24, 2015), https://perma.cc/BYX6-X6UL.

in injuries and an increase in the new, commercialized private farms, the industry is an established hybrid, which neither fits into the modern agricultural corporation—such as Monsanto—nor the small farm which the workers' compensation exemption was created for.[11]

The agricultural labor exemption for workers' compensation poses a significant threat for not only the farmer and their farm, but also for the workers who face potential injury within the course of their employment. If farms do not secure workers' compensation insurance and protection against potential private rights of action against them, they may face a real threat of losing substantial business assets, including the potential loss of their farm. Similarly situated, the farm-laborer faces the threat of having no real guaranteed safeguards to provide for themselves and their family in the instance of injury. Thus, the agricultural labor exemption creates a gap in providing for the farmer and the laborer alike, in turn manifesting potentially disastrous consequences if the worker becomes injured. When agricultural employment is one of the most hazardous career fields in existence,[12] the possibility becomes a reality.

The commercialization and modernization of the small family farm creates what Professor Roger A. McEowen of Iowa State University calls a "tough legal issue,"[13] mainly because commercialization further exacerbates the threat of injury to the farm and agricultural laborers. When no legal remedy exists, it leaves room for a small family farm to lose everything if an injured employee were to sue. The workers' compensation system and its interaction with agriculture, as noted in *Rodriguez, et al. v. Brand West Dairy, et al.*, must be examined from a statutory, constitutional, and policy perspective to identify possible solutions that benefit both the farm and the laborer.[14] The decision of the New Mexico Supreme Court could provide an avenue to better examine the need for change to the present workers' compensation laws.

This Note focuses on the role of the farm labor exemptions with a specific emphasis on the now-reformed New Mexico system. However, in each state mentioned, farm labor is exempt from the requirements to incorporate themselves under the workers' compensation code; a farmer may elect to retain workers'

11. *Workers' Compensation*, FARMWORKER JUST., https://perma.cc/D468-TZNW (archived Feb. 26, 2019).

12. Samuel Stebbins et al., *Workplace Fatalities: 25 Most Dangerous Jobs in America*, USA TODAY (Jan. 9, 2018), https://www.usatoday.com/story/money/careers/2018/01/09/workplace-fatalities-25-most-dangerous-jobs-america/1002500001/.

13. McEowen, *supra* note 10.

14. Rodriguez v. Brand West Dairy, 378 P.3d 13, 22 (N.M. 2016), *aff'g* 356 P.3d 546, 555-56 (N.M. Ct. App. 2015).

compensation insurance if they so choose.[15] Though the option for election may exist, the focus of this discussion is on the exemption itself, both in practice and in theory, and not necessarily on those farms that exist at the margin that elect to provide such protective coverage.

First, I will address the purpose of workers' compensation and the initial reasons cited justifying the agricultural exemptions to the workers' compensation acts. Second, I will address and survey the states that continue to subscribe to the rationale of the agricultural exemption. Third, and centrally, I will address the discourse surrounding the constitutionality of the agricultural exemption regarding equal protection, especially in the wake of *Rodriguez*,[16] decided in 2015 by the New Mexico Court of Appeals and affirmed by the New Mexico Supreme Court in 2016. This point is the central focus of this Note, as it is one of the first successful, modern challenges finding the agricultural exemption to be unconstitutional in nearly a century.[17] Fourth and finally, the Note will address the policy reasons for-and-against the exemption, and its impact on American farmers, farming businesses and, in the inverse, the farm's employees.

II. FINDING PURPOSE IN WORKERS' COMPENSATION

Workers' compensation acts vary state-to-state, existing as a statutory construct of the state legislatures.[18] Because the workers' compensation schema is entirely created by state law and contains no clear federal counterpart, the law's applicability changes based on which state governs the employer-employee relationship. Thus, the agricultural exemption exists in only sixteen states.[19] Foremost, is what constitutes a valid claim under the state workers' compensation

15. JOSEPH LITTLE, ET AL., WORKERS' COMPENSATION: CASES AND MATERIALS 124-25 (7th Ed. 2014).

16. *See* Rodriguez v. Brand West Dairy, 356 P. 546 (N.M. Ct. App. 2015).

17. *See* Rodriguez, 378 P.3d at 22 (finding the exclusion violated equal protection); *contra* Middleton v. Texas Power & Light Co., 249 U.S. 152, 162 (1919) (finding the Texas exclusion did not deny equal protection because the state's reasoning was sufficient under rational basis review); N.Y. Cent. R.R. Co. v. White, 243 U.S. 188, 208 (1917) (finding the New York's exclusion did not violate equal protection); Anaya v. Indus. Comm'n, 512 P.2d 625, 626 (Colo. 1973) (finding a potato sorting farm laborer was not denied equal protection); Becerril v. Call, 900 P.2d 1376 (Idaho 1995); Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d 44 (Ky. Ct. App. 1978); Zorn v. Carl R. Smith Potatoes, 704 A.2d 864 (Me. 1997); Mackin v. Detroit-Timkin Axle Co., 153 N.W. 49 (Mich. 1915); Mathison v. Minneapolis St. Ry. Co., 148 N.W. 71 (Minn. 1914); Otto v. Hahn, 306 N.W.2d 587, 591 (Neb. 1981); Haney v. N.D. Workers Comp. Bureau, 518 N.W.2d 195 (N.D. 1994); Sayles v. Foley, 96 A. 340 (R.I. 1916).

18. *See generally* LITTLE, ET AL., *supra* note 15.

19. McEowen, *supra* note 10.

acts, as it helps determine what would be a valid covered claim if the agricultural exemption no longer existed.

Workers' compensation and workers' compensation insurance, "[s]erves two purposes: It assures that injured workers get medical care and compensation for a portion of the income they lose while they are unable to return to work[,] and it usually protects employers from lawsuits by workers injured while working."[20] The dual-capacity of workers' compensation seeks to quickly remedy the injury of the employee while soothing the injured party's concerns who may not be able to pay for their medical or incidental expenses, or their everyday expenses that accumulate while injured. Commonly, workers' compensation is broken into two basic compensable elements—it must have been the result of an accident [1] "arising out of and in the [2] course of [the worker's] employment."[21]

The first required element of workers' compensation is the accidental injury "arose out of the employment of the injured."[22] To help understand this element, the Iowa Supreme Court explains that "'arising out of' implies some causal relation between the employment and the injury."[23] The common understanding of the "arising out of" condition precedent in workers' compensation law is the accidental injury was caused by the conditions and responsibilities of the employee's job.[24] This causal connection paves the way to the second, closely-connected element in workers' compensation law that lays the foundation for compensability under the Act, allowing the employee to recover benefits under workers' compensation law.[25]

The second element of workers' compensation requires the work-related injury happen within the course of the injured worker's employment.[26] The term, "course of employment" generally refers to the actions taken by the employee in order to fulfill the duties which they were hired to accomplish during the contractual workday at the contractual location. It also includes the statement of risk, where the risk belongs, or is connected with what the employee must do to

20. *Insuring Your Business: Small Business Owners' Guide to Insurance*, INS. INFO. INST., https://perma.cc/9TDS-9EZM (archived Feb. 26, 2019).

21. *See* LEX K. LARSON & THOMAS A. ROBINSON, LARSON'S WORKERS' COMPENSATION LAW § 1.01 (2018). *See also* WORKERS' COMP. BD. OF MANITOBA, § 40 Policy 44.05 (Oct. 1, 2006), https://perma.cc/HE2E-6GMR *(*referencing the California Workers' Compensation Act).

22. *See generally* Jim Pocius, *Workers Compensation and Course of Employment*, INT'L RISK MGMT. INST., INC. (Feb. 2001), https://perma.cc/6GHM-4LFV.

23. *See* Otto v. Indep. Sch. Dist., 23 N.W.2d 915 (Iowa 1946) (referencing Iowa Law).

24. Michael B. Stack, *Understand "Arising Out of AND In the Course Of" Concepts*, WORKERS COMPENSATION RESOURCE CTR. (Jan. 6, 2015), https://perma.cc/6QLD-WRVU.

25. *See Otto*, 23 N.W.2d 915 (referencing Iowa Law).

26. WORKERS' COMP. BD. OF MANITOBA, *supra* note 21.

fulfill their contract of service for their employer.[27] As the Iowa Supreme Court explains in *Bailey v. Batchelder*, "the course of employment commences after the employee reaches the premises when his actual work begins and is carried on and ceases when he leaves."[28] To be compensable, the employee must be executing the functions of her job, but even at a more basic level they must simply arrive at the place of employment, or be operating under the guidelines for travel of their employment.[29]

Combining these two foundational elements of workers' compensation, the compensability of an injury as it relates to agricultural injuries becomes clearer. For an agricultural injury to be compensable—excluding an exemption written into the law—the farm employee must be operating within the course of their job (i.e. in the field, barn, etc.), and the employee must be injured by a facet of their work, satisfying the preliminary "arising out of" and "in the course of employment" elements of workers' compensation law.[30]

III. FINDING THE RATIONALE AND REASONING IN EXCLUDING AGRICULTURAL LABOR FROM THE STATE WORKERS' COMPENSATION ACTS

Understanding the differences, as described on a legal basis, between agricultural production work and other enterprises, is essential to discovering the rationale for the agricultural workers' compensation exemption. Agricultural labor differs from other industries (i.e. mining, fishing, or hunting) as it lacks the organization that other larger business industries require.[31] State legislatures exclude agricultural labor from the workers' compensation system because it lacks the organizational foundation.

Agricultural employment, as noted by the well-recognized senior staff writers and authors for *Larson's Workers' Compensation Law*, Lex Larson and Thomas A. Robinson, found that the small American family farm poses staunch administrative difficulties "that would be encountered by hundreds of thousands of small farmers [when] handling the necessary records, insurance, and

27. *See* Livingstone v. Abraham & Straus, Inc., 543 A.2d 45 (N.J. 1988). *See also* LARSON & ROBINSON, *supra* note 21, § 12.01 (2018).

28. Bailey v. Batchelde, 576 N.W.2d 334 (Iowa 1998) (*citing* Otto, 23 N.W.2d at 916 (Iowa 1946)).

29. *Id.* (citing Otto, 23 N.W.2d at 916 (Iowa 1946)).

30. *See Livingstone*, 543 A.2d 45.

31. Legal NewsRoom, *Larson's on the Farm Labor Exemption in Workers' Compensation*, (Aug. 30, 2013), LexisNexis, https://perma.cc/HNU8-ACHP.

accounting."[32] The legislative and policy rationale does not end there, however, rather they are more historically entrenched.

Embodying this historical entrenchment is *Western Indemnity. Co. v. Pillsbury*, where the California Supreme Court found in 1915 that the agricultural exclusion to workers' compensation was valid because it was the will of the legislature, and the legislative branch had a logical reason to exclude farm-based employees.[33]

In *Pillsbury*, the California Supreme Court evaluated the relevant agricultural exemption through the lens of the "blameless employer."[34] There, the California court found that it would be improper to invoke liability against an employer who did not cause the injury of the farm employee.[35] The Court decided the case against the employees of the farm because the "law-making body might reasonably have found that the conditions of agricultural and of domestic employment were so far different from those surrounding other employments as to justify the limiting of the new compensation law to these other employments."[36] As *Pillsbury* traces the exemption back to the birth and infancy of workers' compensation law, it indicates the rationale of exclusion is not permitted and is still excluded in modernity simply because the legislature willed it to be—the foundational roots go even deeper.

Another dominant reason for excluding agricultural employees from the workers' compensation acts is because of the economic difference between the small family farm and larger, principle businesses and industries. This "economic uniqueness," as the Michigan Supreme Court calls it, relates to the simple economic necessity that the small farm could not afford to provide their employees with workers' compensation coverage, as farmer-employers might not be able to afford workers' compensation insurance.[37] The consistent cost of the workers' compensation premium could cripple the small family farm.[38] The importance lies in understanding the differences in economic conditions of agricultural employment in contrast to other industries. This differentiation manifested through the legislature's will to exclude farm-based employees from the confines of the

32. *Id.* (citing Haney v. N.D. Workers Comp. Bureau, 518 N.W.2d 195 (N.D. 1994) (referencing North Dakota workers' compensation law)).

33. W. Indem. Co. v. Pillsbury, 151 P. 398 (Cal. 1915).

34. *Id.* at 407.

35. *Id.* at 404.

36. *Id.* at 405.

37. Eastway v. Eisenga, 362 N.W.2d 684, 689 (Mich. 1985).

38. *Id.*

workers' compensation acts.[39] As McEowen notes in his article, an overview of the issues and perspectives of the small family farm, the initial reasoning for the exemption is "couched in administrative ease and economics - that it would be particularly difficult for a small farming operation to maintain the necessary records, insurance and accounting to properly comply with the workers' compensation system, and that a farming operation cannot pass the increased costs of coverage in the system on to the consumer."[40]

Of importance when examining the cases that provide reasons for excluding agricultural employment is the common judicial definition of which farming operations fall within the scope of the agricultural exemption. This begs the question, what constitutes a farming or agricultural endeavor? Based on the overview of the law, it is unclear.[41]

The agricultural exemption to workers' compensation law commonly references agricultural or farm-based employment simply as "agricultural pursuits."[42] To determine the meaning of this term, and the historic and modern applicability of the workers' compensation exemption, the court must employ an analysis and consider the "general nature of the employer's business, the traditional meaning of agriculture as it is commonly understood, and the fact that each business should be judged on its own unique characteristics."[43] In the more common general overviews of the agricultural exemptions, the court must examine "the character of the work [he or] she is required to perform" and "the whole character of the employment."[44] Recognize that this standard is very similar to the standard application of the workers' compensation acts in the "[a]rising out of" and "course of employment" discussions, but seems to vary solely based on the

39. *See generally* Ross v. Ross, 308 N.W.2d 50, 53 (Iowa 1981) (stating "work habits on the family farms differ greatly from those of the general labor market, . . . a farmer ordinarily has no power to raise [their] prices to absorb the additional overhead occasioned by premium costs of workers' compensation insurance, [t]he legislature might also have found it . . . impossible to find a ready gauge to value the services performed in a family farming operation[, and t]he legislature might have felt the option had to be accorded the employer out of simple economic necessity").

40. McEowen, *supra* note 10 (*citing* Haney v. N.D. Workers Comp. Bureau, 518 N.W.2d 195 (N.D. 1994). But, other courts have disagreed with this rationale. *See*, e.g., Macias v. Dep't of Labor & Indus., 668 P.2d 1278 (Wash. 1983).

41. *See* Manning v. Win Her Stables, Inc., 428 P.2d 55 (Idaho 1967); LITTLE, ET AL., *supra* note 15, 124-25.

42. 82 AM. JUR. 2d *Workers' Compensation* § 114 (1992).

43. 82 AM. JUR. 2d *Workers' Compensation* § 115 (1992).

44. Rieheman v. Cornerstone Seeds, Inc., 671 N.E.2d 489, 492 (Ind. Ct. App. 1996). *See also* Davis v. McKinney, 303 S.W.2d 189 (Mont. Ct. App. 1957); Huebner v. Farmers Coop. Ass'n., 167 N.W.2d 369 (Minn. 1969); Bob White Packing Co. v. Hardy, 340 S.W.2d 245 (Ky. 1960).

common definition and understanding of agriculture to distinguish the conditional test from other industrious business fields.[45]

The common legal definition of agriculture can be found in Black's Law Dictionary and associated case law. As Black's Law notes, agriculture is understood as "[t]he science or art of cultivating the ground, especially in fields or large areas, including the tillage of the soil, the planting of seeds, the raising and harvesting of crops, and the rearing of livestock.."[46] Agriculture can therefore be understood as standard farming practices that occur on the land by those who execute such tasks.[47] Black's Law provides greater clarity to the actor—or farmer—who engages in this legal categorization of agriculture. The Dictionary states:

> A person actually engaged in the 'science of agriculture' (within the meaning of a statute giving him special exemptions) is one who derives the support of himself and his family, in whole or in part, from the tillage and cultivation of fields. He must cultivate something more than a garden, although it may be much less than a farm. If the area cultivated can be called a held, it is agriculture, as well in contemplation of law as in the etymology of the word. And if this condition be fulfilled, the uniting of any other business, not inconsistent with the pursuit of agriculture, does not take away the protection of the statute.[48]

The colloquial use of "farmer" and "farm" is not required in understanding the legal definition of agriculture, as the greater policy implications will show later the expansion of such a term poses a potential reduction in coverage for those engaged in the agricultural industry.

Now that a foundational understanding of workers' compensation law and agriculture as an industry and practice, beyond simply farming, has been established, the discussion of the statutory expressions of the exemption to the relevant workers' compensation acts may be better understood. Each state exemption appears slightly different in their respective workers' compensation acts complicating the discussion of the agricultural exemption even further.

IV. THE AGRICULTURAL EXEMPTION IS STILL IN EFFECT TODAY

Many states have enacted a more fundamental and foundational agricultural exemption, not including the state of Iowa, which has a low threshold of voluntary

45. *Huebner*, 167 N.W.2d at 371.
46. *Agriculture*, BLACK'S LAW DICTIONARY (10th ed. 2014).
47. *Id.*
48. *Id.*

election. Sixteen of the states have explicit statutory exclusions for farm employees, as recognized by the Iowa State Center for Agricultural Law and Taxation.[49] These states include: Alabama, Arkansas, Delaware, Georgia, Indiana, Kansas, Kentucky, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Dakota, South Carolina, Tennessee, and Texas.[50] As you can see, Iowa is not usually included in the discussion, even though the Iowa Legislature provides for an agricultural exclusion, or what commonly manifests as a voluntary election.[51] To clarify the similarities and differences in the agricultural exemptions, I will address the varying exemptions in order of the number of farms affected, starting with the lowest threshold, found in Iowa.[52]

Iowa does not traditionally understand an "agricultural exclusion," because it applies to so few farms within the state. The Iowa Code provision applies to "persons engaged in agriculture, insofar as injuries incurred by employees while engaged in agricultural pursuits or any operations immediately connected therewith whether on or off the premises of the employer . . . ," so long as the injured worker makes $2,500 or more per year.[53] Based on the construction of the statute, any farm-employee who makes under the $2,500 threshold would be ineligible for workers' compensation coverage, creating the seventeenth state with an agricultural exemption, though very limited.[54] This is also clarified in Iowa case law.

In *Danker v. Wilimek*, the Iowa Court of Appeals was asked to rule on an appeal granting workers' compensation to farmhand Willimek for what Danker, doing business as Danker Farms, stated violates the workers' compensation exclusion.[55] The Court of Appeals' notes, for the agricultural exclusion to apply, "two circumstances must exist: (1) the person is generally engaged in agriculture and (2) at the time of injury, the person is engaged in an agricultural pursuit or a closely connected operation."[56] However, though Willimek was engaged in agriculture, the Iowa court concluded that the agricultural pursuit was nothing more than an incidental connection to agriculture.[57] Thus, the nature of the work

49. *See* McEowen, *supra* note 10*; compared to State Workers' Compensation Coverage for Agricultural Workers*, FARMWORKER JUST. (2009), https://perma.cc/44GL-2C99 (recognizing more than 16 exemptions, though not meeting the criteria to be a true exemption").

50. McEowen, *supra* note 10.. *See also* Legal NewsRoom, *supra* note 31.

51. *See* IOWA CODE § 85.1(3) (2017).

52. *See generally* IOWA CODE § 85.1(3).

53. IOWA CODE § 85.1(3).

54. *See* IOWA CODE § 85.1(3).

55. Danker v. Wilimek, 2000 Iowa App. LEXIS 94, *5-6 (Iowa Ct. App. 2000).

56. *Id*. at *9-10 (*citing* Sheahan v. Plagge, 121 N.W.2d 120, 121 (1963); Crouse v. Lloyd's Turkey Ranch, 100 N.W.2d 115, 117 (Iowa 1959)).

57. *Danker*, 2000 Iowa App. LEXIS at *26.

not being agriculturally dominant invoked the restrained interpretation of the agricultural exemption in favor of the injured party, and against the farm.

Iowa has also limited the possible exemption based on the value of the employee's wages. More specifically, if the employee's pay exceeds $2,500, then the employee is no longer exempt and the employer-farm must provide workers' compensation coverage.[58] This distinguishes Iowa from most other states' agricultural exemptions where, though the exemptions vary in form and extent, Iowa is no longer considered an exempt state by the standard.[59]

The agricultural exemption manifests in the other less laborer-generous states, commonly based on the value of the wages (like Iowa), the permanency of the labor on small farms,[60] or even the potential familial relationship between the worker and the farmer-employer.[61] Because states vary widely regarding the manifestations of the exemption, this Note discusses only the general manifestations of the agricultural exemptions utilizing case-study examples, as almost no agricultural exemption is identical to another.

For instance, in Kansas, farm-employers who are engaged in a general "agricultural pursuit" are exempt from the requirement to provide coverage for their agricultural employees.[62] The relevant Kansas statute, however, does not include all agricultural pursuits, such as feedlots, sale barns, grain elevators, and feed mills.[63] The statutory void for agricultural workers is expansive in its application and standard farms, family or otherwise, are not covered under the statute.[64]

58. IOWA CODE § 85.1(3)(a) (emphasis added).

59. Legal NewsRoom, *supra* note 31.

60. *State Workers' Compensation Coverage for Agricultural Workers*, *supra* note 49 (recognizing the that the District of Columba excludes undocumented workers from being eligible for coverage). *See also* D.L. Uchtmann, *Minimum Wage & Employment Taxes*, FARMDOC (March 2001), https://perma.cc/D5XJ-8XAL (stating Illinois excludes employees who work less than a fixed number of working days per quarter, with specific focus on required wage minimums, as dictated by 29 CFR § 780 (2019)).

61. MINN. DEP'T OF LABOR & INDUS., WORKERS' COMPENSATION INSURANCE COVERAGE AND LIABILITY: FARMER-EMPLOYER EXCEPTION (Nov. 2017), https://perma.cc/6D86-5LF5 (stating "[a] farmer-employer is not required to carry workers' compensation insurance [for]: a person employed by a "family farm" as defined by the law [or] . . . any spouse, parent or child, regardless of age, of a farmer-employer who is working for the farmer-employer") (citing Minn. Stat. § 176.041(1)(2-6) (2017)).

62. KAN. STAT. ANN. § 44-505 (2017).

63. *See id.* (stating the Kansas workers' compensation statute covers all Kansas employers except for those in "certain agricultural pursuits"); *Workers Compensation Coverage Frequently Asked Questions*, KAN. DEP'T OF LABOR, https://perma.cc/M7NW-FNEJ (archived Feb. 26, 2019).

64. *See* KAN. STAT. ANN. § 44-505(a)(1).

Similarly, under the more restrictive Nebraska workers' compensation exception, the courts have had difficulty distinguishing between an agricultural activity and a covered commercial activity.[65] In *Larsen*, a farm ranch hand was injured while attempting to rope a steer.[66] The injured employee then sought to recover for his injuries under the existing Nebraska workers' compensation schema, but the employer resisted providing benefits because of the agricultural exemption.[67] The Court found that the actions of the employee constituted a non-agricultural activity and, therefore, fell outside the language and interpretation of the exemption.[68] The court rationalized that the actions of the employee constituted a separate, mutually-exclusive commercial action that was not intended to be excluded under the agricultural exemption.[69] Although the statute was intended to be broadly construed, *Larsen* showcases the underlying tensions between the strict statutory exclusion and the presumed desire of the courts to provide coverage for the injured employee.

Absent from 20th century case law is recognition of potential equal protection claims, where the rights of employees were violated. In fact, many jurisdictions have decided in the opposite, finding that equal protection was not a viable basis to overturn the state legislature's intent to exclude such workers from the benefit of workers' compensation coverage.[70] This was true until the New Mexico Supreme Court overturned the exemption on equal protection grounds for the first time in 2016.[71]

V. THE NEW MEXICO COURTS PIONEERED THE ARGUMENT AGAINST THE EXEMPTION ON EQUAL PROTECTION GROUNDS

In the 2016 case *Rodriguez v. Brand West Dairy*, the New Mexico Supreme Court affirmed the Court of Appeals invalidation of the state statute containing the agricultural exemption on equal protection grounds.[72] By expanding the discussion

65. Larsen v. D.B. Feedyards, Inc., 648 N.W.2d 306, 311 (Neb. 2002).

66. *Id.* at 307.

67. *Id.*

68. *Id.* at 312.

69. *Id.* at 311-12.

70. *See* Collins v. Day, 604 N.E.2d 647, 649 (Ind. Ct. App. 1992); Ross v. Ross, 308 N.W.2d 50, 53 (Iowa 1981); Fitzpatrick v. Crestfield Farms, Inc., 582 S.W.2d 44, 45 (Ky. Ct. App. 1978); Eastway v. Eisenga, 362 N.W.2d 684, 688 (Mich. 1985); State *ex rel.* Hammond v. Hagar, 503 P.2d 52, 54-55 (Mont. 1972); Otto v. Hahn, 306 N.W.2d 587, 591 (Neb. 1981); Haney v. N.D. Workers Comp. Bureau, 518 N.W.2d 195, 201 (N.D. 1994); Baskin v. State *ex rel.* Workers' Comp. Div., 722 P.2d 151, 157 (Wyo. 1986).

71. *See* Rodriguez, et al. v. Brand W. Dairy, et al., 378 P.3d 13, 29 (N.M. 2016).

72. *Id.*

and understanding of *Rodriguez*, a projection of where the agricultural exemption for workers' compensation is heading is revealed. As the decision sparks a positive and potential basis to overturn the exception on state equal protection grounds, using slight implications to the state Amendment's parent, the 14th Amendment's Equal Protection Clause of the United States' Constitution.

Before *Rodriguez*, the 1939 New Mexico legislature and each legislature thereafter permitted the agricultural exemption for nearly eighty years. More specifically, the legislature has "never required employers to provide workers' compensation coverage to farm and ranch laborers."[73] The courts did not examine the activities of the worker to qualify them as farmers or ranch hands. Instead they sought to examine the "general character of the workers' work."[74] In an early-nod to the future *Rodriguez* decision, the court found a limitation to the existing statutory exemption—the definition of "farmer" and "ranch hand laborer" within the meaning of the statute did not include "all things incident[al] to farming in the widest sense of that term."[75] Even with the early limitation decided in *Holguin* v. *Billy the Kid Produce, Inc.*, by the New Mexico Court of Appeals, it would take nearly thirty years for the entire provision to be struck down as inconsistent with the New Mexico and United States' Constitutions.[76]

Rodriguez was not the first case in New Mexico to invoke equal protection as a potential means to invalidate the agricultural exception, but, it was the first that the New Mexico Supreme Court upheld the invalidity of the exemption. Prior to the 2016 case, the New Mexico Second Judicial District Court found agricultural and ranch laborers were improperly denied workers' compensation benefits on equal protection grounds.[77] The Workers' Compensation Administration appealed the decision of the district court, and the New Mexico Court of Appeals declared the issue moot as they did not request review on the constitutional issue.[78] The Court of Appeals of New Mexico found that the Administration "cannot now escape the effect of unchallenged parts of the district court's decision."[79] However,

73. *Id.* at 17.

74. Holguin v. Billy the Kid Produce, Inc., 795 P.2d 92, 94 (N.M. Ct. App. 1990).

75. *Id.* (declining to apply the defenses' broad application found in Anaya v. Indus. Comm'n, 512 P.2d 625 (Colo. 1973) (en banc) ("We decline to adopt such a broad definition of farm labor. It is inconsistent with . . . the common meaning of 'farm labor.' We are reluctant to adopt a definition that would provide such an expansive exception to workers' compensation coverage when the overall purpose of the Act is to provide coverage for workers").

76. *See* U.S. Const. amend. XIV, § 1.

77. Amended Opinion and Order at 18, Greigo v. N.M. Workers' Comp. Admin., No. CV 2009-10130 (D. N.M. Dec. 27, 2011).

78. *See* Rodriguez v. Brand West Dairy, 378 P.3d 13, 18 (N.M. 2016).

79. Greigo v. N.M. Workers' Comp. Admin., 2013 N.M. App. LEXIS 365, at *7 (N.M. Ct. App. 2013).

this decision held no precedential value, per the ruling of the Court of Appeals, and the workers' would again wait for relief following *Greigo v. New Mexico Workers' Compensation Administration*. That relief finally came in 2016 at the conclusion of *Rodriguez*, a published constitutional challenge.

In *Rodriguez*, the plaintiff-party was a consolidation of two independent, injured farmers.[80] In 2012, Maria Angelica Aguirre, a poor migrant worker who made approximately $300 a week, became injured at work.[81] She was picking chilies in the field when she slipped, fell, and injured her wrist.[82] Her injury required surgery and extensive rehabilitation therapy, and she never reached her full capacity for farm work again.[83] Her employer, M.A. and Sons, Inc., who had workers' compensation insurance coverage, sought to deny coverage based on the agricultural exemption, as Ms. Aguirre is a farm-laborer.[84] Ms. Aguirre was unaware at the time of her injury that she would become the first of two parties to represent all agricultural workers in the effort to gain workers' compensation protection.

Soon, Ms. Aguirre would be joined by the second party. Noe Rodriguez, a dairy worker earning just under $500 a week, claims he was pushed against a door and "head-butted," by a cow causing him to fall.[85] Mr. Rodriguez suffered a "traumatic brain injury, a neck injury, [*sic*] facial disfigurement, and he was in a coma for two days."[86] Around one year after his injuries, Mr. Rodriguez still had not been cleared by his physician to return to work at his employer, Brand West Dairy.[87] In February of 2013, Mr. Rodriguez filed a complaint with the New Mexico Workers' Compensation Administration to recover for benefits for "temporary total disability, permanent partial disability, disfigurement, medical benefits, and attorney fees."[88] Brand West Dairy resisted the payment and validity of the claim, citing the agricultural exemption.[89] Both Ms. Aguirre and Mr. Rodriguez heavily relied on the materials collected in *Greigo* and per New Mexico's procedural laws, their appeals were consolidated as they appealed directly to the New Mexico Court of Appeals [90]

80. Rodriguez, 378 P.3d at 19.
81. *Id.* at 18.
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.* at 18-19.
87. *Id.* at 19.
88. *Id.*
89. *Id.* (*citing* N.M. Stat. Ann. § 52-1-9.1 (2012)).
90. *See* N.M. Stat. Ann. 1978 § 52-5-B (A) (1989); Rodriguez v. Brand W. Dairy, 356 P.3d 546, 550 (N.M. Ct. App. 2015).

The New Mexico Supreme Court invalidated the farm and ranch laborer exclusion.[91] The Court found the statute violated the New Mexican Constitution stating "contrary to these assertions, the trade-off between common law negligence claims and no-fault remedies under the Act . . . does not create equality . . . or provide any reason for drawing a distinction between workplace injuries suffered by farm and ranch laborers and those suffered by any other employee of an agricultural employer."[92] The statute would soon change to protect farm-laborers in a way that did not previously exist under New Mexico law.[93]

VI. CREATING STATE PRECEDENT AND RESHAPING NEW MEXICO'S WORKERS COMPENSATION SYSTEM

The New Mexico Supreme Court agreed to hear the issue of whether the farm and ranch laborer exclusion violated the rights of the workers.[94] Justice Chavez, writing for the majority of the court, evaluated the question and ultimately struck down the nearly 100-year-old statute on equal protection grounds.[95]

When evaluating the issue of equal protection courts "look beyond the classification to the purpose of the law" and ask "whether the legislation at issue results in dissimilar treatment of similarly-situated individuals."[96] To find the purpose of the law, the court looks first to the plain text of the statute to discern meaning. Next, the court looks to the structure and operation of the law to identify implied or constructive purposes. Last, the court looks to the history of the New Mexico conglomerate of workers' compensation law. To prevail, the employee must be similarly-situated to other agricultural employees and thus constitute a violation of equal protection under the New Mexico Constitution.[97]

First and foremost, the New Mexico Workers' Compensation Act sought to "maximiz[e] the limited recovery available to injured workers, in order to keep

91. *See Rodriguez*, 378 P.3d 13 (citing N.M. STAT. ANN. § 52-1-6(A) (2016)). "The provisions of the Workers' Compensation Act [52-1-1 NMSA 1978] shall apply to employers of three or more workers; provided that act shall apply to all employers engaged in activities required to be licensed under the provisions of the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978] regardless of the number of employees. The provisions of the Workers' Compensation Act shall not apply to employers of private domestic servants and farm and ranch laborers." N.M. STAT. ANN. § 52-1-6(A) (2016).

92. *Rodriguez*, 378 P.3d at 32 (internal citations omitted).

93. *See generally* N.M. STAT, ANN. §§51-1-1 to -70 (2015).

94. *See Rodriguez*, 378 P.3d at 13.

95. *Id.*

96. *Id.*; Madrid v. St. Joseph Hospital, 928 P.2d 250, 261 (N.M. 1996).

97. *Rodriguez*, 378 P.3d at 20 (citing City of Albuquerque v. Sachs, 92 P.3d 24 (N.M. Ct. App. 2004)).

them and their families at least minimally financially secure."[98] Unlike the approach taken by states like Iowa, the New Mexico statute is not to be liberally construed in favor of the employees; instead, the employees' interests should be balanced against the interests of the employer in the spirit of equity.[99] Prevalent in this analysis are the relevant canons of construction. Specifically, the view by the United States Supreme Court that a statute should not be given its plain and ordinary meaning when it would render "absurd results."[100] If the literal meaning of the statute would produce absurd results, then it would be improper to construe the act in the literal, preposterous way.[101]

Here, in the case of Ms. Aguirre and Mr. Rodriguez, the New Mexico court found that the literal interpretation would be absurd.[102] To construe the relevant workers' compensation statute would be to find

> a worker who occasionally performs the tasks of a farm or ranch laborer is not necessarily classified as such if he or she is primarily employed for a different purpose, and likewise, a worker working as a farm or ranch laborer, is still classified as a farm or ranch laborer even when he or she is performing a work-related duty that would normally be performed by a non-excluded worker, such as driving a truck or packaging the product.[103]

Thus, if the court construed the meaning of the statute by its plain and ordinary terms, it would draw an arbitrary distinction based on the general classification of the employee, and not the function of work, in turn departing from the well-established course of employment law. The Court found this distinction "absurd,"

98. *Id*. (citing N.M. STAT. ANN. § 52-5-1 (1990); Wagner v. AGW Consultants, 114 P.3d 1050 (N.M. 2005)).

99. N.M. Stat. Ann. § 52-5-1; *contra* Bankers Standard Ins. Co. v. Stanley, 661 N.W.2d 178, 180 (Iowa 2003) ("It is . . . important to keep in mind that our workers' compensation laws are for the benefit of the worker. Consequently, they should be liberally construed with a view toward that purpose.") (citing Caterpillar Tractor Co. v. Shook, 313 N.W.2d 503, 506 (Iowa 1981)).

100. *See e.g.*, United States v. Granderson, 511 U.S. 39, 47 (1994) (dismissing an interpretation said to lead to an absurd result); Dewsnup v. Timm, 502 U.S. 410, 427 (1992) (Scalia, J., dissenting) ("If possible, we should avoid construing the statute in a way that produces such absurd results."); Pub. Citizen v. Dep't of Justice, 491 U.S. 440, 454 (1989) ("Where the literal reading of a statutory term would 'compel an odd result,'. . . [we] must search for other evidence of congressional intent to lend the term its proper scope.").

101. *See Granderson*, 511 U.S. at 47 (dismissing an interpretation said to lead to an absurd result).

102. *Rodriguez*, 378 P.3d at 18.

103. *Id*. (citing Holguin v. Billy the Kid Produce, Inc., 795 P.2d 92, 94 (N.M. Ct. App. 1990)) ("[T]he general character of employment is controlling, even though the worker may in fact have been injured while performing a service that is not farm labor").

for the act has been long construed against employees working for a farm-employer who is not classified as a farm-laborer or ranch hand.[104]

Second, the primary function and operation of workers' compensation is to grant proper benefits to the injured employee while limiting liability exposure to the employer.[105] This limitation on liability is intended to be advantageous for the employer as it eliminates the cause of the injury, while remaining expedient for the employee.[106] Contrary to nearly a century of precedent, the Court found the exclusion of agricultural and farm-laborers would increase potential employer liability, as it would subject them to civil damages if the employee decides to seek relief elsewhere, specifically by suing in tort.[107] This increased exposure to liability rises as the antithesis of one of the dominant purposes of workers' compensation law, limiting employer liability, thus the exclusion seems to exist contrary to the operation of New Mexico workers' compensation law.

Third, and the last principle canon of construction examined, is the legislative history of the New Mexico workers' compensation act.[108] Consolidating the discussion of the legislative history, the court found that the exclusion was intended to exempt coverage for employees whose "primary responsibility is performed on the farming premises and is an essential part of the cultivation of a crop."[109] With this restrictive distinction enacted, the courts have ruled in the contrary to history in modernity and limited its application in ways that were inconsistent.[110] Thus, based on the inconsistency of the decisions in the intermediate state court, the New Mexico Supreme Court decided to rule on the matter with finality.

The state's high court ultimately held that farm-laborers and ranch hands are similarly-situated to other agricultural employees in a way that excluding them

104. *Id*. at 21 (citing Cueto v. Stahmann Farms, Inc., 608 P.2d 535, 536 (N.M. Ct. App. 1980).

105. *Id*. at 20-21 (N.M. 2016) (citing Hisel v. Los Angeles, 638 Cal. Rptr. 678, 682 (Cal. Ct. App. 1987) (stating "from the beginning, it was a principal purpose of workers' compensation law to eliminate . . . common law defenses that had prevented recovery for injuries received on the job . . .").

106. *See* Delgado v. Phelps Dodge Chino, Inc., 34 P.3d 1148, 1152 (N.M. 2001).

107. *Rodriguez*, 378 P.3d at 20.

108. *See* Sullivan v. Finkelstein, 496 U.S. 617, 631.

109. *See* N.M. STAT. ANN. § 52-1-6(A) (1990); *Rodriguez*, 378 P.3d at 19.

110. *Compare* Tanner v. Bosque Honey Farm, Inc., 895 P.2d 282, 285 (N.M. Ct. App. 1995) (finding that a beekeeper's assistant, whose primary duties involved harvesting honey by helping to extract it from bee hives, was a farm laborer under Sec. 51-1-6(A)) *and* Holguin v. Billy the Kid Produce, Inc., 795 P.2d 92, 95 (N.M. Ct. App. 1990) (finding a worker who primarily filled and stacked sacks of onions in an onion shed was not a farm laborer under Section 52-1-6(A)).

from coverage would be improper.[111] New Mexico's equal protection jurisprudence restricts the application of the law where "there is no unique characteristic that distinguishes injured farm and ranch laborers from other employees of agricultural employers, and such a distinction is not essential to accomplishing the Act's purposes."[112] To interpret the act to include coverage for some agricultural workers, such as livestock workers, versus those situated in the fields or the cultivation of crops "would be absurd to the extent that it would not be in accord with the Legislature's wishes."[113] To understand the court's decision requires delving slightly deeper, specifically into what it means to be similarly-situated within the context of equal protection.

The court found that the social function of workers' compensation does not constitute a fundamental right, and thus, a rational basis review is appropriate in evaluating the exclusion.[114] When evaluating a law under rational basis review, the court took a differing approach from the federal, "toothless" companion-standard of deference, and the court refused to abdicate their constitutional duty.[115] Even under the lowest standard of deference granted when evaluating equal protection issues, the court opted to strike down the exception, determining the rationale used to distinguish farm laborers was inadequate.[116] The court found that employer-farm's rationale of administrative convenience of saving money and the protection of traditions were insufficient to continue to justify the antiquated exclusion.[117]

The primary rationale to invalidate the exception is that it is simultaneously over-inclusive and under-inclusive. Relying on the United States Supreme Court for the basis of the inclusiveness rubric, the court found that the "some and not others" basis is insufficient to legitimize an unsupported government interest.[118] No evidence was ever introduced to justify the exclusion on the basis of cost-saving measures in administrating benefits, nor is saving money enough to justify

111. *Rodriguez*, 378 P.3d at 18.

112. *Id.* at 22 (citing City of Albuquerque v. Sachs, 92 P.3d 24 (N.M. Ct. App. 2004)).

113. *Id.* at 19 (N.M. 2016).

114. *Id.* at 24.

115. *Id.* at 26 (citing Steven M. Simpson, *Judicial Abdication and the Rise of Special Interests*, 6 Chap. L. Rev. 173, 174 (2003) ("arguing that discriminatory 'special interest legislation flourishes when courts refuse to play their proper role of policing the political branches of government'"); *see also* Austin Raynor, Note, *Economic Liberty and the Second-Order Rational Basis Test*, 99 Va. L. Rev. 1065, 1093-1101 (2013) ("arguing that federal rational basis review is insufficient to protect discrete groups with little chance to influence changes in the law from certain 'vested interests' that have 'powerful economic incentives to discriminate against those discrete groups in the pursuit of 'inflated profits'").

116. *Id.* at 27-28.

117. *Id.* at 31.

118. *See* U.S. Dep't of Agric. v. Moreno, 312 U.S. 528, 536-38 (1973).

upholding a law that exists contrary to equal protection.[119] The workers met their burden to prove that the challenges alleged by the farm-employer are insufficient to exclude the injured workers any longer.[120]

Providing a framework to examine the agricultural exemption for modern workers' compensation schemas, the New Mexico Supreme Court altered the workers' compensation conversation as they were the first court to invalidate the exclusion as noted in the workers' compensation acts on the basis of equal protection under a state constitution in a published opinion.[121] Each state, mirroring Equal Protection under the 14th Amendment, has provisions like the one that the New Mexico courts used to invalidate the exclusion, the *Rodriguez* decision potentially opened a new entryway into examining the needed reform of the workers' compensation exemption.[122]

VII. CONTEXTUALIZING THE CONVERSATION IN OTHER JURISDICTIONS

Though the statutory schemas for workers' compensation vary, and many states in the 20th century upheld the constitutionality of the exemption, *Rodriguez* could push the states who permit the agricultural exemption to alter their workers' compensation codes. New Mexico, being the only state to invalidate the exemption in 2016, altered the way the exclusion can be examined by existing in opposition to the past precedent and application of the agricultural exemption and its permissibility under the Equal Protection Provision of the 14th Amendment of the United States Constitution.[123]

Too often the rationale referenced by the New Mexico court had been used to justify the exclusion, principally that the overhead cost of the coverage analysis constitutes a legitimate state interest.[124] Absent from such analysis is the positive impact technology has had in modernity to reduce overhead costs. Technology positively correlates to reducing the costs associated with business and government administration, and the advent of such technology in the 21st century remediates the ability for state agencies to use such costs as an excuse to change.[125]

119. *Rodriguez*, 378 P.3d at 34.

120. *Id.* at 29.

121. McEowen, *supra* note 10.

122. *See generally id.*

123. *See generally Rodriguez*, 378 P.3d 13.

124. *Id.* at 35.

125. *See* Wagner v. AGW Consultants, 114 P. 3d 1050, 1055 (N.M. 2005). *See also* Eastway v. Eisenga, 362 N.W.2d 684, 689 (Mich. 1985) ("[there are] legitimate state interests in protecting farmers from expense of workers' compensation and the administrative burden of maintaining records which drains time and resources, and recognizing farmers cannot absorb the cost of premiums like other business entities").

Further, the justification for the exclusion opens the farm-laborer up to additional liability in a way that could eventually cost more for the employer and the employee, creating a lose-lose situation. To return to the old, tort-based system would be to undermine the "historic compromise" that birthed workers' compensation as a viable and superior alternative to the tort-based system.[126] As Roger McEowen notes, it is in opposition of best business practices to not opt-in to workers' compensation insurance, as tort civil suits are far more expensive and detrimental to the family farm.[127] Thus, to protect the employer, just as the courts and states protect them, it is necessary to avoid the return to a private liability system, especially for small-to-medium sized farms.

Still, the burden of overcoming the legislature's will to keep and maintain the agricultural exemption is apathetically set in established United States Supreme Court precedent. Dominantly, the Supreme Court's ruling in *Middleton v. Texas Power & Light Co.* undermines any federal pathway to overturning the agricultural exemption.[128] There, the high Court found a strong presumption in favor of the legislature that its discriminations are based on "adequate grounds."[129] Finding that the agricultural exclusion was permissible because the legislature willed it to be is contrary to many equal protection cases today, but the precedent still undercuts the ability to utilize the federal courts as a means of overturning the exemption once and for all. Hence, the challenge in *Rodriguez* was properly predicated on the New Mexico State Constitution, however, not necessarily to its federal counterpart.[130]

VIII. THE FUTURE COULD BE HOPEFUL FOR UNPROTECTED FARM-LABORERS

Without the necessary changes to the workers' compensation system, the rise of potential civil suits endangers the small family farm, as well as their employees. Departing from nearly a century's worth of precedent, *Rodriguez* hopefully provides the impact necessary to ricochet the other sixteen recognized states with agricultural exemptions towards change on the grounds of equal protection. It showcased a new willingness to shift from past precedent and determine a modern meaning of equal protection of agricultural workers, specifically farm-laborers.

126. DAVID K. LAW, ISSUES IN WORKERS' COMPENSATION VERSUS TORT, ROYAL COMM'N ON WORKERS' COMP. IN B.C. 3 (July 1998), https://perma.cc/PKH2-A5DK; Martha T. McCluskey, *The Illusion of Efficiency in Workers' Compensation "Reform"*, 50 Rutgers L. Rev. 657, 672-75 (1998) (stating ". . . the general principles of workers' compensation represent a voluntary compromise which benefits all . . . [yet] the image of historic compromise belies the fact that many labor groups strongly opposed adoption of workers' compensation systems").

127. McEowen, *supra* note 10.

128. *See* Middleton v. Tex. Power & Light Co., 249 U.S. 152 (1919).

129. *Id.* at 157.

130. *See* N.M. CONST., art. II, § 18.

This state-based approach is not just a potential path for agricultural workers. It has proven to be viable in other, more controversial political questions. Recently, the United States Supreme Court gave a nod to those seeking to address political gerrymandering via the state court systems and under state constitutions.[131] There, Justice Samuel Alito declined on the Court's behalf to review the case, and found the question and ultimate ruling from the Pennsylvania Supreme Court was clearly a question for the states, as it was previously interpreted by the state supreme court.[132] Drawing such a parallel should not be construed to give false hope, rather to simply identify arguably more controversial questions that the high court has declined to review based on the order of appeals on a state-by-state basis. This is distinctly a state concern for a minority of the states. Therefore, as the New Mexico Supreme Court did, it should be tackled with utilizing the state constructed means of redress.

Rodriguez welcomes a much needed judicial shift in the policies of once restrictive states.[133] As Nebraska showcased, there is great difficulty discerning the difference between farming and commercial functions with the rise of agribusiness. The distinction has become antiquated and improper.[134] Farmers, farm-employers, and farm-laborers should be aware of a potential shift in the agricultural exemption as it hopefully wanes into history.

131. *See* Robert Barnes, *Supreme Court Refuses to Block Pa. Ruling Invalidating Congressional Map*, WASH. POST (Feb. 5, 2018), https://perma.cc/7EC3-UPUR.

132. *See id.*

133. *See* Rodriguez v. Brand W. Dairy, 378 P.3d 13 (N.M. 2016).

134. *See* Larsen v. D.B. Feedyards, Inc., 648 N.W.2d 306 (Neb. 2002).