IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

NOE RODRIGUEZ,

Worker,

vs.

WCA No. 13-00562
COA Nos. 33,104

BRAND WEST DAIRY,
Uninsured Employer, and
UNINSURED EMPLOYERS'
FUND, STATUTORY PAYER,

Employer/Insurer.

AMICUS BRIEF OF AMICUS CURIAE NEW MEXICO CATTLE GROWERS' ASSOCIATION, NEW MEXICO FARM AND LIVESTOCK BUREAU, DAIRY PRODUCERS OF NEW MEXICO AND DAIRY FARMERS OF NEW MEXICO

Paul Maestas, Esq.
Maestas & Suggett, P.C.
Sun Valley Commercial Center
316 Osuna Road, NE, Suite 103
Albuquerque, New Mexico 87107-5950
Telephone: (505) 247-8100
Facsimile: (505) 247-8125
E-Mail: paul@maestasandsuggett.com
Attorneys for Amicus Curiae New Mexico Cattle Growers' Association, New Mexico Farm and Livestock Bureau, Dairy Producers of New Mexico and Dairy Farmers of New Mexico

TABLE OF CONTENTS

TABLE OF AUTHORITIES

New Mexico Statutes

New Mexico cases

United States Supreme Court Cases

Court Rules

I. ARGUMENT

A. Proceedings before the WCA and Undeveloped Record.

Amicus Curiae New Mexico Cattle Growers' Association, New Mexico Farm and Livestock Bureau, Dairy Producers of New Mexico and Dairy Farmers of New Mexico ("Amicus") would initially note that the factual record before the New Mexico Workers' Compensation Administration ("WCA") was largely undeveloped presumably because of the Workers' Compensation Judge's recognition that he had no authority to address Worker Noe Rodriguez' constitutional challenge to the farm and ranch worker exception to the New Mexico Workers' Compensation Act ("the Act") – NMSA 1978, § 52-1-6(A) (1990). Moreover, in opposing the Uninsured Employers' Fund's Motion to Dismiss, Worker Noe Rodriquez ("Worker") attached as exhibits numerous pleadings from the *Joe Griego, Eloy Vigil, Ramon Molina, Sin Fronteras Organizing Project and Help-New Mexico, Inc. v. The New Mexico Workers' Compensation Administration and Ned Fuller*, CV 2009-10130 (Second Judicial District Court) litigation ("Griego Litigation") wherein District Court Judge Valerie Huling declared the farm and ranch worker exception to be unconstitutional. Workers' Compensation Judge Victor S. Lopez ("WCJ") did not

make any independent finding relative to the constitutionality question other than to make findings based upon the prior Griego Litigation and its impact on his determination in regard to the issue presented by the Uninsured Employers' Fund's Motion to Dismiss.

The Record Proper does not indicate that the Uninsured Employers' Fund ("UEF") objected to any of the pleadings attached to the Worker's Response to the UEF's Motion to Dismiss. More importantly for purposes of the present appeal, Amicus would note that Judge Huling's Amended Opinion and Order (Record Proper ("RP"), 44-62) in the Griego Litigation was based upon the 370 stipulated facts contained in the Final Pre-Trial Order entered on October 17, 2011 RP, 65-116 in connection with the Griego Litigation. The stipulated facts were agreed upon by the Plaintiffs and WCA in the Griego Litigation. In other words, it does not appear as if Judge Huling made any independent findings upon which her decision to declare the farm and ranch worker exception to be unconstitutional were based. Thus, Worker's factual underpinnings for meeting his burden of proving that the farm and ranch worker exception to the Act is unconstitutional is based upon a set of stipulated facts that do not appear to have been truly litigated by the WCA and Plaintiffs in the Griego Litigation and that were certainly not

litigated before the WCA below in this case.

This is particularly important because the Employer Brand West Dairy ("Employer") and the UEF were not parties to the Griego Litigation. As such, they cannot be bound by a set of stipulated facts entered into in the Griego Litigation particularly since the WCJ lacked jurisdiction to address the question about whether the farm and ranch worker exception is unconstitutional. Thus, Amicus initially states that, absent a set of developed facts (record) with findings made by an independent fact finder that are binding on the parties named in this Workers' Compensation Complaint ("WCC") and who are parties to this appeal, the Worker cannot meet his burden of proving that the farm and ranch worker exception is unconstitutional.

B. The Griego Decision is not Dispositive.

Amicus agrees with the UEF's position regarding this issue. Simply stated, the Employer and UEF were not parties to the Griego Litigation and, therefore, are not bound by that decision. Employer and the UEF were not parties to the Griego Litigation and did not have the opportunity to be heard by Judge Huling in regard to the issues resolved by Judge Huling's Opinion and in regard to the issues presented by this WCC. Further, the Worker was also not a party to the Griego

Litigation. As such, it cannot be credibly argued that Judge Huling's Griego decision somehow adjudicates Employer's and UEF's rights and arguments regarding the applicability of the farm and ranch worker exception for purposes of this WCC. It is also worth noting that the Worker does not cite to any authorities in his Brief-in-Chief that support an argument that the decision in the Griego Litigation is binding upon non-parties, or, in this case, the UEF and Employer.

Moreover, because jurisdiction to adjudicate workers' compensation claims is exclusive to the WCA, Judge Huling, would not have jurisdiction to adjudicate Worker's claim for workers' compensation benefits in this WCC.

> "It is the intent of the legislature in creating the workers' compensation administration that the laws administered by it to provide a workers' benefits 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 provision of the Workers' Compensation Act [52-1-1 NMSA 1978] and the New Mexico Occupational Disease Disablement law [52-3-1 NMSA 1978].

NMSA 1978, § 52-5-1 (1990).

Worker also appears to contend that Judge Huling's Opinion and Order and the subsequent Court of Appeals' Memorandum reverse/overrule the prior Court of Appeals' Opinion in *Cueto v. Stahmann Farms, Inc.*, 1080-NMCA-036, 94 N.M. 223, 608 P.2d 535. Simply stated, it does not. First, with all due respect to Judge

Huling, a District Court Judge cannot overrule a Court of Appeals' Opinion. Next, this Honorable Court in the Griego Litigation made it clear that the question regarding the constitutionality of the farm and ranch worker exception was not before it. "If Appellants believed that the district court ruled contrary to established binding precedent, their remedy was to seek review of the decision in this Court. They did not. **As this issue is not before us, we neither examine nor draw any conclusions about it.**" Griego, COA No. 32,120, Memorandum Opinion, p. 6. (Emphasis added.).

In short, because the Griego Court of Appeals' Memorandum Opinion did not address the constitutionality question and because Judge Huling, as a District Court Judge, cannot overrule the *Cueto* case, *Cueto* is still good law and binding on the parties. The Griego decision is not dispositive of the issues presented by this appeal.

C. The Farm and Ranch Worker Exception is Constitutional.

Following the analytical frame work articulated by the New Mexico Supreme Court in *Breen v. Carlsbad Municipal Schools*, 2005-NMSC-028, 138 N.M. 331, 120 P.3d 413 "[p]etitioners must first prove that they are similarly situated to another group but are treated dissimilarly." *Breen*, 2005-NMSC at ¶

8, 138 N.M. at 335, 120 P.3d at 417. "If Petitioners are successful in proving this, then a court must determine what level of scrutiny should be applied to the legislation they are challenging. In equal protection challenges, a court will apply different levels of scrutiny depending on either the rights that the legislation affects or the status of the group of people it affects." *Id.* "Different levels of scrutiny also dictate which party has the burden of proof. Either the person challenging the legislation must prove that the statute is unconstitutional, or the party defending the legislation must prove that the statute is constitutional or comports with equal protection." *Id.*

"The threshold question in analyzing all equal protection challenges is whether the legislation creates a class of similarly situated individuals who are treated dissimilarly." *Breen*, 2005-NMSC at ¶ 10, 138 N.M. at 335, 120 P.3d at 417. In this case, Worker initially argues that farm and ranch workers are treated differently than all other workers in this state who work for employers that employ more than three employees. Thereafter, based on the distinction drawn in the *Holguin v. Billy the Kid Produce, Inc.*, 1990-NMCA-073, 110 N.M. 287, 795 P.2d 92 case, Worker then asserts that farm and ranch workers who work in the field or with crops (like the Worker) are treated differently from

employees who package and process the crops.

Initially, Amicus would note that NMSA 1978, § 52-1-6(A) states that "[t]he provisions of the Workers' Compensation Act shall not apply to employers of private domestic servants and farm and ranch workers." Thus, unlike the situation in *Breen* where the challenged distinction came directly from the challenged legislation, the distinction relied upon by the Worker in seeking to prove that farm and ranch workers who work with crops are treated dissimilarly from farm and ranch workers who package and process the crops does not come directly from the challenged legislation, but, instead, comes from an appellate court's interpretation and application of this exception.

Next, Amicus submits that there is an internal inconsistency in the Worker's position. If farm and ranch workers who work with crops are, indeed, similarly situated to workers who process and package the crops, wouldn't this Court have reached a different result in the *Tanner v. Bosque Honey Farm, Inc.*, 1995-NMCA-053, 119 N.M. 760, 895 P.2d 281 where the court upheld the WCA's determination that the worker was excluded from coverage by the provisions of Section 52-1-6(A)? In other words, the *Tanner* Court determined that the worker in that case was a "farm and ranch worker"

within the meaning of Section 52-1-6(A) and was, therefore, excluded from coverage by Section 52-1-6(A). Put differently, this Court has already determined that workers who work harvesting crops or directly in farming activities (like the Worker in this case) are not similarly situated to employees who work processing and packaging the crops i.e. who are not directly engaged in farming activities. Therefore, because the Worker cannot prove that he is similarly situated to the worker in the *Holguin* case, or a worker who works packaging or processing crops, the Worker's constitutional challenge to Section 52-1-6(A) fails.

Assuming that this Court determines that the Worker is similarly situated to employees who work processing and packaging crops, the next inquiry is what level of scrutiny to apply to the challenged legislation. *Breen*, 2005-NMSC at ¶ 11, 138 N.M. at 336, 120 P.3d at 418. "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. This standard of review is the most deferential to the constitutionality of the legislation and the burden is on the party challenging the legislation to prove that it 'is not rationally related to a legitimate governmental purpose.'" *Breen*,

2005-NMSC at ¶ 11, 138 N.M. at 336, 120 P.3d at 418.

Intermediate scrutiny is triggered when "[t]he Legislation 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 the belong to a sensitive class." *Breen*, 2005-NMSC at ¶ 17, 138 N.M. at 337, 120 P.3d at 419. In *Breen*, the Court quickly disposed of the notion that benefits conferred by general social and economic legislation (like the Act) rise to the level of important rights in the constitutional sense. *Id.* It should also be noted that Judge Huling reached a similar conclusion in the Griego Litigation. RP, 55. Judge Huling further concluded that the plaintiffs in the Griego Litigation do not belong to a sensitive class, RP, 55-58, especially compared to the treatment of women and the disabled as analyzed in the *Breen* case.

Worker does not present a compelling argument that he belongs to a sensitive class and also appears to concede in his Brief-in-Chief that general social and economic legislation, like the Act, does not rise to the level of an important right in the constitutional sense. Thus, the applicable standard for purposes of addressing Worker's constitutional challenge to Section 52-1-6(A) is a rational basis analysis. "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." *Breen*, 2005-NMSC at ¶ 11, 138 N.M. at 336, 120 P.3d at 418, q*uoting*, *Wagner v. AGW Consultants*, 2005-NMSC-016, ¶ 12, 137 N.M. 734, 739, 114 P.3d 1055. Therefore, the Worker has the burden of proving that Section 52-1-6(A) is unconstitutional. *Breen*, 2005-NMSC at ¶ 8, 138 N.M. at 335, 120 P.3d at 417.

"While our rational basis test is neither 'toothless' nor a 'rubber stamp' for the challenged legislation, it nonetheless requires us to defer to the validity of the statute, with the challenger carrying the burden of persuasion.... To successfully challenge the statute under this standard of review, Worker 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 at ¶ 24, 137 N.M. 734, 743, 114 P.3d 1059.

Other than the stipulations entered into by the WCA and the plaintiffs in the Griego Litigation (gleaned from Worker's attachments to his response to the UEF's Motion to Dismiss), the record below is devoid of a factual basis for this Court to conclude that Section 52-1-6(A) and its exclusion of farm and ranch workers from coverage under the Act is not rationally related to a

legitimate governmental purpose. Importantly, as noted above, Judge Huling did not make any factual findings to support her decision in *Griego*, she merely adopted the stipulations of the WCA and plaintiffs that were not truly litigated. Moreover, the WCJ below did not make any factual findings to support his decision because he lacked the authority to address Worker's constitutional challenge to Section 52-1-6(A). Thus, as an initial proposition, Amicus submits that the Worker cannot meet his burden of proving that Section 52-1-6(A) is unconstitutional because of the lack of a developed factual record that contains findings there were truly litigated between the parties and made by an independent fact finder.

In her decision, Judge Huling noted that the defendants in *Griego* put forth two arguments in support of their assertion that the farm and ranch worker exclusion served a legitimate governmental purpose. First, that the exclusion simplifies the administration of the workers' compensation system. The second argument advanced is that the exclusion protects one of the most important industries in New Mexico from the additional overhead costs. RP, 59. Amicus submits that both of these arguments support a conclusion that Section 52-1-6(A) is rationally related to a legitimate governmental purpose.

First, as noted above, Judge Huling's decision was based upon a set of stipulations that the UEF and Employer, and certainly not Amicus, have not had an opportunity to litigate and they are not the product of a determination of an independent fact finder. That said, Amicus submit that farm and ranch workers are often seasonal and, as such, inherently transient. Moreover, some farm and ranch workers, as noted by Worker, are undocumented. Undocumented workers are often difficult to locate and, because they are undocumented, they often avoid contact with governmental authorities. Thus, administering their workers' compensation claims presents a challenge.

The difficulty with Worker's analysis of the challenge presented by administering workers' compensation claims of farm and ranch workers is that it focuses almost exclusive on the general and overall costs to the industry but ignores the practical realities of administering a workers' compensation claim. It also looks at the challenge of administering such claims only from the perspective of the WCA, and not employers who employ farm and ranch workers. For example, if a worker is transient, were should his/her workers' compensation disability check be sent? If the worker is moving around regularly, where should the injured worker be provided medical care and

treatment i.e. at or near the town/city where the accident happened or at different location(s) where the injured worker may be living throughout the life of the claim? In other words, the accident may occur by Hatch, but the following week or month the worker may be working and living in Clovis. These practical realities of administering a workers' compensation claim cannot be ignored and present a real challenge.

This also illustrated the problem with the record below and in the Griego Litigation. The Griego Litigation was litigated between the plaintiff and the WCA – a governmental entity created by statute. The stipulations in *Griego* focused on the WCA's ability to efficiently administer workers' compensation claims asserted by excluded farm and ranch workers. It did not focus on the practical realities of administering workers' compensation claims from the perspective of an employer or its workers' compensation carrier and/or third-party administrator. The challenges presented are real and significantly different as noted above. This, in and of itself, serves a legitimate governmental purpose and provides a rational basis to support any distinction created by Section 52-1-6(A). The distinction is not arbitrary.

The next justification for the farm and ranch worker exception discussed

by Judge Huling is the additional overhead costs to one of New Mexico's most important industries. Simply stated, if employers who employ farm and ranch workers are required to provide workers' compensation coverage to their employees, their overhead costs will unquestionably go up. This cost increase will have a significant impact on employers of farm and ranch worker, particularly the most vulnerable -- the smaller employers, farms and ranches. In short, Amicus submits that the farm and ranch labor exception is founded on the Legislature's determination that lowering the costs of producing farm, agricultural and ranch products translates into decreased costs to the public for the products, fruits, vegetables, meat, etc. produced by New Mexico's farms, ranches and dairies. Increasing the cost of producing farm and ranch products will also result in an increase in costs to consumers who buy and consume these products. This is another legitimate and important governmental purpose.

The decision made by the Legislature to exclude farm and ranch workers from coverage under the Act is not arbitrary. It is rationally related to a legitimate and important governmental purpose especially when considering the inherent difficulties in administering workers' compensation claims in a

transient and mobile labor force. Worker's constitutional challenge should be rejected. Section 52-1-6(A) serves a legitimate and important governmental purpose that is rationally related to the purpose of this piece of legislation.

D. If the Farm and Ranch Worker Exception is Declared to be Unconstitutional, it Should be Applied Only Prospectively.[1]

Amicus agrees with the UEF's position in regard to this issue. Should this Court declare Section 52-1-6(A) to be unconstitutional, Amicus submits that the decision should only be applied prospectively and not retrospectively. "Absent an express statement that limits a decision to prospective application, our Supreme Court has established the 'presumption that a new rule adopted by a judicial decision in an civil case will operate retroactively.'" *Padilla v. Wall Colmonoy Corp.*, 2006-NMCA-137, ¶ 12, 140 N.M. 630, 633, 145 P.3d 110, 113, *quoting, Beavers v. Johnson Controls World Servs., Inc.*, 118 N.M. 391, 398, 881 P.2d 1376, 1383 (1994). "However, this presumption can be overcome in the guidelines articulated in *Chevron Oil Co., v. Huson*, 404 U.S. 97,

---

1 Amicus is submitting this argument without the benefit of having reviewed Worker's Reply Brief. Amicus' counsel attempted to get obtain a copy of the Worker's Reply Brief from the Court of Appeals' Clerk on Friday, May 23, 2014 but was informed that the Court of Appeals' file pertinent to this matter was with a staff attorney and that, therefore, a copy could not be made at that time. Efforts to obtain a copy of the Worker's Reply Brief from Worker's counsel and UEF's counsel were not successful as of the time this Amicus Brief was sent off for filing.

92 S. Ct. 349, 30 L. Ed. 2d 296 (1971).... Provide sufficient justification for avoiding retroactive application. *Padilla v. Wall Colmonoy Corp.*, 2006-NMCA at ¶ 12, 140 N.M. at 633-34, 145 P.3d at 113-14. These guidelines or factors are summarized as: '(1) whether the case creates a new principle of law that has been relied upon; (2) the prior history of the rule; and (3) the inequity of retroactive application." *Id.*

Declaring Section 52-1-6(A) to be unconstitutional would certainly create a new principle of law in that it would render Section 52-1-6(A) to be null and void. Next, the farm and ranch worker exception to the Act has been consistently applied by this Court since this exemption was created by the legislature. Moreover, in *Cueto v. Stahmann Farms, Inc.*, 1080-NMCA-036, 94 N.M. 223, 608 P.2d 535, this Court determined that the farm and ranch worker exception is constitutional. Finally, employers of farm and ranch workers have consistently relied upon the exemption from workers' compensation coverage provided by Section 52-1-6(A) and, at present, are most likely uninsured for workers' compensation purposes. Thus, applying any decision that declares Section 52-1-6(A) to be unconstitutional would have an immediate and significant adverse economic impact of numerous employers of ranch and farm workers who

have for years relied on this exemption by subject them to providing workers' compensation benefits to workers without the benefits of workers' compensation insurance coverage. The fair and equitable thing to do would be to apply any decision that declares Section 52-1-6(A) to be unconstitutional only prospectively.

Pursuant to Rule 12-215 (B) NMRA 2014, Amicus would note that the Order granting Amicus leave to file an Amicus Brief was entered on May 21, 2014. This Order specified that the Amicus Brief should be filed by May 23, 2014. Amicus subsequently requested an extension of time until May 27, 2014 by which to file their Amicus Brief. In light of this timing, Amicus could not provide fourteen days (14) notice of the intent to file this Amicus Brief but would note that the other parties involved in this appeal because aware of Amicus' request and intent to file an Amicus Brief by receiving a copy of Amicus' Motion for Leave to file Amicus Brief and this Court's May 21, 2014 Order.

II. PRAYER FOR RELIEF

FOR THE FOREGOING REASONS, Amicus Curiae New Mexico Cattle Growers' Association, New Mexico Farm and Livestock Bureau, Dairy Producers of New Mexico and Dairy Farmers of New Mexico hereby request an

order from this Honorable Court affirming the decision of the WCJ below and determining that Section 52-1-6(A) is not unconstitutional for the reasons articulated above.

MAESTAS & SUGGETT, P.C.

By: _____

PAUL MAESTAS
Attorneys for Amicus Curiae, New Mexico Cattle Growers' Association, New Mexico Farm and Livestock Bureau, Dairy Producers of New Mexico and Dairy Farmers of New Mexico
Sun Valley Commercial Center
316 Osuna Road, NE, Suite 103
Albuquerque, New Mexico 87107-5950
(505) 247-8100
E-Mail: paul@maestasandsuggett.com

WE HEREBY CERTIFY that a true and correct copy of the foregoing pleading was mailed via U.S. Mail to:

Gail Evans, Esq.
María Martínez Sánchez, Esq.
New Mexico Center on Law and Poverty
924 Park Avenue SW, Suite C
Albuquerque, New Mexico 87102

Richard J. Crollett, Esq.
P.O. Box 27198
Albuquerque, New Mexico 87125-7198

this 27th day of May, 2014.

MAESTAS & SUGGETT, P.C.

By: _____
Paul Maestas
Rodriguez.AmicusBrief