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Supreme Court No. 96267-7

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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JOSE MARTINEZ-CUEVAS, et al.,

Petitioners,

v.

DERUYTER BROTHERS DAIRY, INC., et al.,

Respondents,

and

WASHINGTON STATE DAIRY FEDERATION  
and WASHINGTON FARM BUREAU,

Intervenor-Respondents.

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**INTERVENOR-RESPONDENTS' REPLY IN SUPPORT OF  
CROSS-APPEAL**

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## I. INTRODUCTION

Petitioners' brief attempts to sidestep well-established Washington constitutional law, relies on controverted and inapposite law review articles and studies, and cites nonbinding concurring, dissenting, or archaic legal opinions. This is because Petitioners know that they are asking the Court to create their desired "privilege or immunity" completely from thin air, where no court in Washington or out has ever held that Petitioners' alleged rights to health and safety protections and right to work and earn a wage are protected privileges or immunities.

But even more troubling, Petitioners would have this Court do violence to the plain language of Article II, Section 35 of the Washington State Constitution, which in no uncertain terms assigns *to the Legislature* the determinations as to how to best protect the health and safety of Washington's workers. The Legislature has done so, directly, by enacting the Washington Industrial Safety and Health Act, ch. 49.17 RCW—legislation Petitioners chose to completely ignore. Moreover, to the degree that the Court examines the body of law regulating wages and hours of work within our state, it is plain that multiple interests are at stake. One of the Legislature's stated goals in passing the Minimum Wage Act ("MWA") was to encourage employment opportunities within the state. It advanced this goal by passing the farmworker exemption to

overtime, because—as is wholly undisputed in the record in this proceeding—extending overtime premiums to farmworkers would cost Washington farms many millions of dollars a year.

Finally, Petitioners beseech the Court to rule that the agricultural exemption violates the equal protection clause due to an alleged racist history of the exemption. This argument ignores the undisputed fact that when the exemption was enacted in Washington, the majority of farm workers in Washington were *white*. Moreover, the exemption has no discriminatory purpose and implicates no important right, farmworkers are not a semi-suspect class, and the Legislature’s passing of the exemption more than surpasses rational basis review.

## II. ARGUMENT

### A. Standard of Review

Petitioners mischaracterize the Court’s standard of review of the constitutionality of the farmworker exemption. Response at 3 n.2. Petitioners do so by attempting to conflate the standards applicable to this Court’s review of the trial court’s action, with the standards applicable to the review of the constitutionality of a statute. The Court reviews the trial court’s determination of the constitutional challenge *de novo*, meaning that the Court gives no deference to the trial court’s determination from which the parties appealed. *See, e.g., Hale v. Wellpinit Sch. Dist. No. 49*, 165

Wn.2d 494, 503, 198 P.3d 1021 (2009). The Court’s substantive review of the constitutionality of the challenged statute is entirely different. The Court presumes statutes are constitutional, and long-standing, consistent Washington law mandates that the party challenging a statute’s constitutionality has the burden of proving otherwise beyond a reasonable doubt. *In re McNeil*, 181 Wn.2d 582, 590, 334 P.3d 548 (2014). While not an evidentiary standard, the Court will not strike a duly enacted statute unless it is “‘fully convinced, after a searching legal analysis, that the statute violates the constitution.’” *Sch. Dists.’ All. for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 606, 244 P.3d 1 (2010) (quoting *Island Cty. v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998)). The challenger must prove “by argument and research” that the statute does in fact violate the constitution. *Island Cty.*, 135 Wn.2d at 147. Further,

[a] statute can be declared unconstitutional only where specific restrictions upon the power of the legislature can be pointed out, and the case shown to come within them, and not upon any general theory that the statute conflicts with a spirit supposed to pervade the constitution, but not expressed in words.

*State v. Vance*, 29 Wash. 435, 459, 70 P. 34 (1902).

In this case, the Court must presume that the farmworker exemption does not violate the privileges and immunities clause or the equal protection clause of the Washington Constitution, and may only

strike the statute if it is fully convinced that the farmworker exemption is unconstitutional based on specific restrictions upon the power of the Legislature. Petitioners utterly fail to carry this burden.

**B. Petitioners Fail to Demonstrate That the Farmworker Exemption Violates Article I, Section 12 of the Washington State Constitution**

**1. The Farmworker Exemption Does Not Implicate a Fundamental Right of State Citizenship**

It is undisputed that the first step of the Court’s Article I, Section 12 analysis is to determine whether the farmworker exemption implicates a “‘fundamental right[] of state citizenship.’” *Schroeder v. Weighall*, 179 Wn.2d 566, 573, 316 P.3d 482 (2014) (ellipses omitted) (quoting *Vance*, 29 Wash. at 458). Such a finding is necessary to “trigger” any further privileges or immunities analysis, because “[n]ot every benefit constitutes a ‘privilege’ or ‘immunity’ for purposes of the independent article I, section 12 analysis.” *Id.* “[T]he terms ‘privileges and immunities’ ‘pertain alone to those fundamental rights which belong to the citizens of the state by reason of such citizenship.’” *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 812-13, 83 P.3d 419 (2004) (emphasis added) (quoting *Vance*, 29 Wash. at 458) (*Grant Cty. II*). The “fundamental rights of state citizenship” that Petitioner argues are implicated by the farmworker exemption are the right of “workers in dangerous jobs to protection by the government as guaranteed by article II,

section 35,” and “the right to work and earn a wage.” Response at 4.

However, Washington law has never recognized Petitioners’ alleged rights as fundamental rights of state citizenship.

In fact, the Court previously determined that, as became “quite clear early in this State’s history . . . ‘privileges and immunities’”

pertain alone to those fundamental rights which belong to the citizens of the state by reason of such citizenship. These terms, as they are used in the constitution of the United States, secure in each state to the citizens of all states the right to remove to and carry on business therein; the right, by usual modes, to acquire and hold property, and to protect and defend the same in the law; the rights to the usual remedies to collect debts, and to enforce other personal rights; and the right to be exempt, in property or persons, from taxes or burdens which the property or persons of citizens of some other state are exempt from. Cooley, *Constitutional Limitations* (6th ed.) 597. By analogy these words as used in the state constitution should receive a like definition and interpretation as that applied to them when interpreting the federal constitution.

*Grant Cty. II*, 150 Wn.2d at 812-13 (quoting *Vance*, 29 Wash. at 458).

This definition, in no uncertain terms, fails to mention Petitioners’ alleged rights. Thus, Petitioners’ rights are not fundamental rights of state citizenship as defined by *this Court*.

Petitioners do not even attempt to assert that their so-called “right of workers in dangerous jobs to protection by the government” and “the right to work and earn a wage” can be found in the Court’s articulation of privileges and immunities. *See* Response at 4. Instead, they assert that

their alleged rights can be found in the “more complete enumeration” of fundamental rights of state citizenship contained in *Corfield v. Coryell*, 6 F. Cas. 546 (C.C.E.D. Pa 1823).

However, *Corfield*'s discussion of privileges and immunities finds utterly no support in recent opinions of the Court: since 1982, only dissenting and concurring opinions by the Court have discuss *Corfield*'s description of privileges and immunities.<sup>1</sup> See *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 794, 317 P.3d 1009 (2014) (Stephens, J., dissenting); *Schroeder*, 179 Wn.2d at 582 (Johnson, J., dissenting); *Ventenbergs v. City of Seattle*, 163 Wn.2d 92, 126, 178 P.3d 960 (2008) (Chambers, J., dissenting); *Madison v. State*, 161 Wn.2d 85, 119, 163 P.3d 757 (2007) (Johnson, J., concurring); *Andersen v. King Cty.*, 158 Wn.2d 1, 60, 138 P.3d 963 (2006), *abrogated by Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015) (Alexander, C.J. and Johnson, J., concurring); *Grant Cty. II*, 150 Wn.2d at 820 (Sanders, J., concurring);

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<sup>1</sup> Further, this Court's references to *Corfield* in pre-1982 cases solely concerned *Corfield*'s references to equality in treatment of citizens of *other states*. See *Union No. 374 v. Felton Constr. Co.*, 98 Wn.2d 121, 126, 654 P.2d 67 (1982) (“right to pursue a livelihood in a State other than his own” (citation omitted)); *Eggert v. City of Seattle*, 81 Wn.2d 840, 842, 505 P.2d 801 (1973) (right to travel to or reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise); *Reynolds v. Day*, 79 Wash. 499, 508, 140 P. 681 (1914) (right to sue and defend in courts of another state). Thus, these cases do not support finding Petitioners' alleged rights to be fundamental rights of state citizenship.

*Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 145 Wn.2d 702, 747, 42 P.3d 394 (2002) (Sanders, J., dissenting) (*Grant County I*).<sup>2</sup>

Petitioners attempt to gloss over the fact that their privileges and immunities argument fails as a matter of law. Instead, they assert that Article II, Section 35 of the Washington Constitution can somehow be the basis for their alleged rights. Response at 9. This argument is empty: Petitioners themselves concede that Washington law has never found that a fundamental right of state citizenship arises out of Article II of the Washington Constitution. *Id.* at 8-11. Their only support for their argument is Justice Utter's concurrence in *State v. Smith*, which discusses an Oregon case that concerns a non-Article I clause in the Oregon Constitution. *State v. Smith*, 117 Wn.2d 263, 282, 287, 814 P.2d 652 (1991) (J. Utter, concurring) (citing *State v. Clark*, 630 P.2d 810 (Or. 1981)). But as Petitioners concede, the privilege at issue in *Smith* was the right to a speedy trial, which arises out of Article I, Section 22 of the Washington Constitution. *See generally id.* Further, the *Clark* court

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<sup>2</sup> Petitioners cite to dissenting and concurring opinions on pages 3, 7, 9, 16, 29, and 37-38 of their brief. Even more than dicta, statements in dissenting and concurring opinions are neither necessary to nor even supportive of the judgment. *See Pedersen v. Klinkert*, 56 Wn.2d 313, 317, 352 P.2d 1025 (1960). By definition, these statements are nonbinding. *Id.* Treating them as more would change the nature of dissents, whereby dissenters now “enjoy something of the liberty of a gadfly, as the outcome does not in fact depend on what they say.” *United States v. Duvall*, 740 F.3d 604, 623 (D.C. Cir. 2013) (Williams, J., concurring in denial of en banc review); *see also* Ruth Bader Ginsburg, *The Role of Dissenting Opinions*, 95 Minn. L. Rev. 1, 6 (2010) (acknowledging that the purpose of a dissent may be to “attract immediate public attention and, thereby, to propel legislative change”).

deemed a preliminary hearing a “privilege” within the meaning of the constitution not because it arose out of a specific article of the state constitution, but because it implicated the right “against adverse discrimination as well as against favoritism,” which Oregon caselaw had established was a protected privilege or immunity. *Clark*, 630 P.2d at 814.

The Court should take concern with Petitioners’ argument that Article II, Section 35 allows the Court to strike down the farmworker exemption as violative of the privileges and immunities clause. Response at 10. Petitioners have never even addressed that Article II, Section 35 directs *the Legislature* to “fix pains and penalties” for enforcement of its legislation pertaining to workplace safety. Petitioners cannot ignore a clause that they dislike; to do so would do violence to the Washington Constitution. *See Chlopeck Fish Co. v. City of Seattle*, 64 Wash. 315, 322-23, 117 P. 232 (1911) (“It is a fundamental principle . . . especially in construing a document of the gravity of the Constitution, that, if possible, an effect must be given and a meaning accorded to *all* of the words used therein.” (emphasis added)); *State v. Pannell*, 173 Wn.2d 222, 230, 267 P.3d 349 (2011). Giving full effect to all of the words in Article II, Section 35 demonstrates that it authorizes legislative action, and “[r]ights left to the discretion of the legislature have not been considered fundamental.” *See Ockletree*, 179 Wn.2d at 778. The fact that the

Legislature has chosen to not apply the “pain or penalty” of an overtime premium as an indirect method of enforcing workplace safety on the farm is a decision specifically charged to the Legislature.

Petitioners’ failure to demonstrate that the farmworker exemption implicates a fundamental right of state citizenship is absolutely fatal to their entire privileges and immunities argument: the Court can, and should, deny their constitutional challenge on this ground alone. *See Schroeder*, 179 Wn.2d at 572-73 (only if “the answer is yes” in the first part of the privilege or immunity test does the Court then ask whether there is a “reasonable ground” for granting that privilege or immunity).

### **C. Reasonable Ground**

Even if the Court proceeds to the second step of the privileges or immunities analysis, Petitioners’ argument still fails. Article I, Section 12’s reasonable ground test “is more exacting than rational basis review,” but this merely means that the Court will “scrutinize the legislative distinction to determine whether it *in fact* serves the legislature’s stated goal,” and will not “hypothesize facts to justify a legislative distinction.” *Id.* at 574; *see also Andersen v. King Cty.*, 158 Wn.2d 1 ¶ 326, 138 P.3d 963 (2006) (Fairhurst, J., concurring in dissent) (where the relationship between a statute and its stated goals is “simply too attenuated,” it violates Article I, Section 12 of the Washington Constitution). As discussed

below, the Legislature had a reasonable ground to pass the farmworker exemption because it furthered the Legislature's stated goal for the MWA, as demonstrated by actual facts.

**1. The Farmworker Exemption Advances the Legislature's Stated Goal of the MWA**

Petitioners contend that the MWA's purpose is to protect the health and safety of Washington workers. Response at 11. However, the MWA, when read as a whole, also promotes the "general welfare" of the state's citizens, by "encourag[ing] employment opportunities within the state." RCW 49.46.005(1). This is an express recognition that the MWA affects the general welfare by its regulation of the employment relationship. Exempting farmworkers from overtime premiums, thereby allowing the farms to operate in an economic manner, is a way through which the Legislature encourages employment opportunities within the state.

**2. The Farmworker Exemption in Fact Serves the Legislature's Stated Goal**

The farmworker exemption passes scrutiny because it *in fact* serves the Legislature's stated goal. *Schroeder*, 179 Wn.2d at 574. In *Schroeder*, medical defendants argued that the Legislature's reasonable ground for excluding nondisabled minors from the general statute of limitations might have been because the Legislature believed that medical malpractice claims brought by the minors may have been numerous

enough to materially affect medical malpractice insurance rates. *Id.* The Court rejected this rationale because “[n]either the respondents nor the legislative record provides any factual support for the theory . . . .” *Id.* Similarly, in *Andersen*, Justice Fairhurst determined that the Defense of Marriage Act (“DOMA”) was too attenuated from its stated goal of protecting children because “denial of the right to marry will certainly harm children of same-sex couples,” thus DOMA “degrades the interests asserted by the State rather than furthers them.” *Andersen*, 158 Wn.2d 1 at ¶ 326.

Our case is different from cases like *Schroeder* and *Andersen* because the Legislature has a reasonable ground for declining to extend overtime coverage to farmworkers: the enormous cost it would impose on farmers, as demonstrated by actual facts put forth by Intervenors and Respondents. Farmers estimate that extending an overtime premium to farmworkers would cost Washington farmers tens if not hundreds of millions of dollars a year in new costs. CP 889-90 at ¶ 7. It is undisputed that the vast majority of Washington farms are family farms, with sales of less than \$250,000 per year. CP 896-906. Because Washington farmers compete in national and international markets, the price they can charge for their products is set by the market, not driven by their costs. CP 890. Indeed, for dairies such as DeRuyter, the price they can charge for their

milk is established by a federally administered regulatory regime and does not reflect Washington state-specific costs. *Id.* at ¶ 9.

Avoiding inflicting such a cost on a vital portion of Washington's economy is entirely reasonable and furthers the Legislature's stated goal of "encourag[ing] employment opportunities within the state." RCW 49.46.005. This Court should hold that the Legislature had a reasonable ground for exempting farm workers from eligibility for overtime pay.

**D. The Farmworker Exemption Does Not Violate the Equal Protection Clause**

Petitioners assert that the farmworker exemption violates the equal protection clause because it has a "racist" history. They support this argument with a lengthy discussion of various scholarship that they assert shows that the Fair Labor Standards Act has racist origins. Response at 22-30. Even if the Court accepted their arguments to be true, which it should not, Petitioners admit that their eight-page "racist history" argument appears to be without regard for the actual "racial makeup of the Washington agricultural workforce when the MWA was adopted in 1959." Response at 28 n.26.<sup>3</sup> If the "racist history" argument does not involve the MWA, then it simply does not matter for this case and is totally irrelevant.

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<sup>3</sup> Petitioners improperly cite scholarly works and census bureau data to contradict the fact of the racial makeup of the Washington agricultural workforce when the MWA was adopted in 1959. Response at 28-29 n.26. Because this appeal arises from a trial court order granting summary judgment, this Court must engage in the same

Moreover, it does not in any way contradict the undisputed fact in the record before the trial court that when the MWA's farmworker exemption was passed in 1959, *the majority of farmworkers were white*: white workers made up approximately 85% of all farm workers, and Latinos made approximately 10%. CP 903-06. Further, in 1989 when the people enacted Initiative 518 (which extended minimum wage protections to farmworkers but maintained the overtime exemption) white people made up in excess of 50% of the farmworker population, and Latinos comprised about 40%. CP 903-06. Petitioners have never offered any evidence whatsoever to dispute these facts; indeed, even if the Court was to consider Petitioners' new academic criticisms of earlier census information (which it should not, see footnote 3), demographic data from 1989 is long after the corrections as noted by Petitioners. Response at 28 n.26. Petitioners simply cannot make out any discriminatory intent on the part of Washington legislators or voters against Washington agricultural workers in enacting RCW 49.46.130(2)(g).

As Petitioners themselves admit, the history of the farmworker exclusion is a key consideration under any level of scrutiny. Because

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inquiry as the trial court, which is to consider only the facts submitted in the record and reasonable inferences in a light most favorable to the nonmoving party. *See Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 253, 59 P.3d 655 (2002). Petitioners' evidence in footnote 26 of their brief is not in the trial court record. As a result, the Court should disregard it.

farmworkers were largely white both when the Legislature passed the farmworker exemption and Initiative 518 reaffirmed it, Petitioners cannot show a “racial purpose” or “purposeful discrimination or intent” under strict scrutiny, *see Hunt v. Cromartie*, 526 U.S. 541, 546, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999); *Macias v. Dep’t of Labor & Indus. of State of Wash.*, 100 Wn.2d 263, 270, 668 P.2d 1278 (1983), nor can they demonstrate at least a semi-suspect class, *see State v. Schaaf*, 109 Wn.2d 1, 17–18, 743 P.2d 240 (1987), nor can they overcome rational basis review, *see Miguel v. Guess*, 112 Wn. App. 536, 553, 51 P.3d 89 (2002).

**1. The Farmworker Exemption Passes Strict Scrutiny**

Strict scrutiny review under equal protection applies if the “allegedly discriminatory statutory classification affects a suspect class or a fundamental right.” *Schaaf*, 109 Wn.2d at 17. Petitioners no longer appear to contend that the farmworker exemption affects a fundamental right. Response at 30-31; *see, e.g., Fields v. Dep’t of Early Learning*, 193 Wn.2d 36, 46, 434 P.3d 999 (2019) (the right to pursue a trade or profession is not a fundamental right for purposes of equal protection analysis).

Petitioners also appear to concede that statistics alone will not trigger strict scrutiny without some “purposeful discrimination or intent.” *Macias*, 100 Wn.2d at 270. Yet, they concede that in 1959, when the

Legislature enacted the farmworker exemption, white workers made up approximately 85% of all farmworkers, and Latinos made approximately 10%. CP 903-06. Because Plaintiffs simply cannot make out any discriminatory intent on the part of Washington legislators in enacting RCW 49.46.130(2)(g), the exemption does not affect a suspect class, and passes strict scrutiny.

## **2. The Farmworker Exemption Passes Intermediate Scrutiny**

Intermediate scrutiny requires an important right *and* at least a semi-suspect class. *Schaff*, 109 Wn.2d at 17-18. Petitioners cannot demonstrate an important right implicated by the farmworker exemption. Under Washington law, important rights are those that generally affect the liberties of Washington citizens, particularly physical liberties. *Id.* at 21 (denying juveniles jury trials did not implicate a physical liberty, nor were children a semi-suspect class to trigger heightened scrutiny); *In re Runyan*, 121 Wn.2d 432, 448, 853 P.2d 424 (1993). Petitioners concede that no case has previously found an important right in workplace protections for workers in dangerous industries.

Further, Petitioners cannot demonstrate a semi-suspect class. As discussed above, because Petitioners do not deny that the majority of farmworkers were white when the exemption was passed, they cannot

prove that farmworkers are a semi-suspect class. Setting aside the racial makeup of the farmworkers, Petitioners contend that farmworkers consist of a semi-suspect class because of a combination of “race, poverty, educational and linguistic barriers, and demonstrable lack of political power.” Response at 32-33. However, Petitioners cannot use these characteristics to create a semi-suspect class. ““The equal protection clause does not require a state to eliminate all inequalities between the rich and the poor.”” *Runyan*, 121 Wn.2d at 449 (quoting *Riggins v. Rhay*, 75 Wn.2d 271 , 283, 450 P.2d 806 (1969)). “[C]lassifications bearing on nonconstitutional interests—even those involving the most basic economic needs of impoverished human beings, usually will not be subject to heightened treatment [under equal protection analysis] because they are not distinguishable in any relevant way from other regulations in the area of economics and social welfare.” *Sanchez v. Dep’t of Labor & Indus.*, 39 Wn. App. 80, 89, 692 P.2d 192 (1984) (internal quotation marks and citation omitted).

Further, Petitioners cannot pick and choose the “inclusion of some exceptions” to overtime “but not others” to create their semi-suspect class. *See Runyan*, 121 Wn.2d at 449. Their so-called class of farmworkers completely ignores the *many* other categories of workers excluded from

overtime protections in Washington. *See generally* RCW 49.46.010, 49.46.130.

### **3. The Farmworker Exemption Readily Passes Rational Basis Review**

Under the rational basis test, a “classification will be upheld against an equal protection challenge if there is any conceivable set of facts that could provide a rational basis for the classification.” *Gossett v. Farmers Ins. Co. of Wash.*, 133 Wn.2d 954, 979, 948 P.2d 1264 (1997).

As discussed *supra*, Petitioners cannot demonstrate a discriminatory purpose for the farmworker exemption. Thus, they cannot overcome rational basis review on that basis. *See Miguel v. Guess*, 112 Wn. App. 536, 553, 51 P.3d 89 (2002). In addition, the overtime exemption readily meets the requirements of rational basis review. Petitioners summarily conclude that it “makes no sense” to exempt agricultural workers from overtime under RCW 49.46.130(2)(g) without a “rational health and safety justification” because other exempted workers “are protected by other similar legal frameworks.” Response at 35-36. This ignores the WAC Title 296, chapter 307’s over 300 pages of regulations addressing every aspect of safety on a farm. Besides, this is not the standard: all the Court must do is determine any “conceivable . . .

facts” for which this exemption may exist. *Gossett*, 133 Wn.2d at 979.<sup>4</sup>

Upon finding such facts, the agricultural exemption survives rational basis review as it does here.

Petitioner’s reliance on *Rodriguez v. Brand West Dairy* is inapposite. In *Rodriguez*, farm and ranch laborers, who primarily harvest crops or work with animals, were excluded from workers’ compensation coverage, whereas other similarly situated agricultural workers were **not** excluded. *Rodriguez v. Brand W. Dairy*, 356 P.3d 546, 551 (N.M 2015). The distinction led to exempt and non-exempt workers who shared the same characteristics: for example, a worker who primarily filled and stacked sacks of onions in an onion shed was not a farm laborer whereas a beekeeper’s assistant who primarily harvested honey from bee hives was a farm laborer. *Rodriguez v. Brand W. Dairy*, 2016-NMSC-029, ¶ 16, 378 P.3d 13, 22 (citations omitted). The court conclude that where there were no unique characteristic that distinguishes injured farm and ranch laborers from other employees of agricultural employers, such a distinction could not further the workers’ compensation act’s purposes. *Id.* Because the

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<sup>4</sup> Indeed, as recent as the date of filing of this Reply, the Court of Appeals, Division I noted that under Washington law, “statutes based on economic distinctions generally satisfy the rational basis test.” *Kunath v. City of Seattle*, No. 79447-4-I, slip op. at 27 n.139 (filed July 15, 2019) (citing *Am. Legion Post # 149 v. Wash. State Dep’t of Health*, 164 Wn.2d 570, 609, 192 P.3d 306 (2008)) (“Social and economic legislation that does not implicate a suspect class or fundamental right is presumed to be rational; this presumption may be overcome by a clear showing that the law is arbitrary and irrational.”). The agricultural exemption is an economic distinction that does not implicate a suspect class or fundamental right.

exempt workers and non-exempt workers shared the same characteristics, any type of cost-saving justifications for the legislation could not justify the exclusion. *Id.* at 27 (“This Court has previously recognized that while ‘lowering employer costs’ is a ‘valid legislative goal’ of the Act, rational basis review, at a minimum, still requires that a cost-saving classification ‘be based upon some substantial or real distinction, and not artificial or irrelevant differences.’”).

The underlying rationale for the agricultural worker exemption is uniquely related to the nature of the agricultural industry. CP 889-95. It will cost the farm industry tens or hundreds of millions of dollars to pay overtime premiums to farmworkers. CP 889-90. Distinguishing farmworkers from other types of laborers in Washington State, for overtime purposes, is based on these real distinctions. There is plainly a rational basis for agriculture workers to be exempt from overtime.

### **III. CONCLUSION**

For all of the foregoing reasons, Intervenors respectfully ask this Court to declare the agricultural exemption, RCW 49.46.130(2)(g), constitutional and remand for entry of judgment in favor of the Intervenors and Respondents.

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