

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: _____

3 Filing Date: JUNE 22, 2015

4 Nos. 33,104 & 33,675 (Consolidated)

5 **NOE RODRIGUEZ,**

6 Worker-Appellant,

7 v.

8 **BRAND WEST DAIRY, uninsured**
9 **employer and UNINSURED EMPLOYER'S**
10 **FUND, statutory payor,**

11 Employer/Insurer-Appellees,

12 **Consolidated With**

13 **MARIA ANGELICA AGUIRRE,**

14 Worker-Appellant,

15 v.

16 **M.A. & SONS CHILI PRODUCTS and**
17 **FOOD INDUSTRY SELF INSURANCE**
18 **FUND OF NEW MEXICO,**

19 Employer/Insurer-Appellees.

20 **APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION**

21 **Victor S. Lopez and David L. Skinner, Workers' Compensation Judges**

COURT OF APPEALS OF NEW MEXICO
ALBUQUERQUE
FILED

JUN 22 2015

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1 **OPINION**

2 **ZAMORA, Judge.**

3 {1} In these consolidated appeals, Workers challenge the dismissals of their
4 workers' compensation claims, which were based on the portion of the Workers'
5 Compensation Act, NMSA 1978, §§ 52-1-1 to -70 (1929, as amended through 2013),
6 excluding farm and ranch laborers from its coverage. *See* § 52-1-6(A) ("The
7 provisions of the Workers' Compensation Act shall not apply to employers of . . .
8 farm and ranch laborers." (the exclusion)). The question presented is whether the
9 exclusion violates Workers' rights to equal protection under Article II, Section 18 of
10 the New Mexico Constitution. Holding that the exclusion does violate Workers'
11 rights to equal protection, we reverse and remand for further proceedings.

12 **BACKGROUND**

13 {2} Workers each suffered work-related injuries working as farm and ranch
14 laborers. Worker Aguirre was injured picking chile for M.A. & Sons Chili Products.
15 Worker Rodriguez was injured working for Brand West Dairy as a dairy worker and
16 a herdsman. Workers each sought workers' compensation benefits. Both claims were
17 dismissed pursuant to the exclusion. Workers filed separate appeals challenging the
18 constitutionality of the exclusion. The cases were consolidated on appeal.

1 **DISCUSSION**

2 {3} Workers challenge the constitutionality of the exclusion, claiming that it
3 violates equal protection guarantees. Workers also contend that dismissal of their
4 respective claims for compensation was precluded by a previous district court
5 decision that declared the exclusion to be unconstitutional, *Griego v. New Mexico*
6 *Workers' Compensation Administration*, Second Jud. Dist. No. CV 2009-10130, and
7 a subsequent memorandum opinion of this Court that did not reverse that decision.
8 *Griego v. New Mexico Workers' Compensation Administration*, No. 32,120, memo
9 op. (N.M. Ct. App. Nov. 25, 2013) (non-precedential). M.A. & Sons Chili Products
10 and Food Industry Self Insurance Fund of New Mexico (collectively, M.A. & Sons)
11 argue that the exclusion does not violate equal protection guarantees, while Brand
12 West Dairy and the State of New Mexico Uninsured Employer's Fund (collectively,
13 Brand West) take no position on the constitutionality of the exclusion. All
14 Employers/Insurers agree that the *Griego* decisions do not control in this case.

15 **I. The *Griego* Decisions**

16 {4} *Griego* involved a constitutional challenge to the exclusion. *Griego*, No.
17 32,120, memo op. ¶ 2. An injured worker was denied workers' compensation benefits
18 pursuant to the exclusion. The worker attempted to challenge the constitutionality of
19 the exclusion before a Workers' Compensation Judge (WCJ); however, WCJs do not

1 have authority to rule on the constitutionality of statutes. *Chevron Res. ex rel. Blatnik*
2 *v. N.M. Superintendent of Ins.*, 1992-NMCA-081, ¶ 19, 114 N.M. 371, 838 P.2d 988.

3 Nonetheless, the worker requested that he be allowed to make the argument in order
4 to make a record for the purposes of an appeal on the constitutional issue.

5 {5} Subsequently, the worker, joined by two individual plaintiffs and two
6 organizational plaintiffs, brought a declaratory action against the Workers'
7 Compensation Administration (the WCA) and its director, seeking a declaration that
8 the exclusion violated the workers' right to equal protection. *Griego*, No. 32,120,
9 memo op. ¶ 2. The plaintiffs also requested that the WCA be required to re-open the
10 individual plaintiffs' claims and to stop relying on the exclusion to deny claims. *Id.*
11 The district court concluded that the exclusion was unconstitutional and ordered the
12 WCA to re-open the individual plaintiffs' claims. *Id.* ¶ 3.

13 {6} The WCA appealed to this Court, arguing that the district court lacked both
14 jurisdiction over the individual plaintiffs' claims and the authority to order the WCA
15 to re-open the claims. *Id.* ¶ 6. The WCA did not explicitly challenge the district
16 court's determination regarding the constitutionality of the exclusion. *Id.* ¶ 7. We
17 concluded that the issues on appeal were moot because the individual plaintiffs had
18 settled their claims with the WCA. *Id.* ¶¶ 8-9. Since the WCA failed to appeal the
19 district court's ruling as to the constitutional issue, that issue was not properly before

1 us and, as a result, we held that the district court's declaration was final and binding
2 on the WCA. *Id.* ¶¶ 9-10. The appeal was dismissed. *Id.* ¶ 12.

3 {7} Here, Workers argue that the district court's declaration in *Griego* that the
4 exclusion is unconstitutional, coupled with the holding of our subsequent
5 memorandum opinion, is binding on WCJs, as part of the WCA, and precludes
6 disposition of any workers' compensation claims pursuant to the exclusion. We need
7 not determine whether the district court's determination in *Griego* was binding in the
8 present cases. Any attempt at such an analysis is not necessary to our decision and
9 would only result in an advisory opinion, which we decline to give. *See City of Las*
10 *Cruces v. El Paso Elec. Co.*, 1998-NMSC-006, ¶ 18, 124 N.M. 640, 954 P.2d 72
11 (stating that appellate courts avoid rendering advisory opinions). The WCJs in the
12 present cases refused to recognize the district court's determination in *Griego* in light
13 of a 1980 decision by this Court that appeared to hold that the exclusion was
14 constitutional. *Cueto v. Stahmann Farms, Inc.*, 1980-NMCA-036, ¶ 8, 94 N.M. 223,
15 608 P.2d 535 (stating, without explanation, that the exclusion did not deny the worker
16 equal protection). We therefore take this opportunity to clarify that *Cueto* has no
17 precedential effect and to determine conclusively that the exclusion is
18 unconstitutional.

1 **II. Cueto’s Equal Protection Holding is Dictum**

2 {8} To the extent the WCJs concluded that the constitutionality of the exclusion
3 was resolved by this Court in *Cueto*, we disagree. In *Cueto*, the dispositive issue on
4 appeal was whether the worker was a farm laborer as defined by the exclusion. *Id.*
5 ¶ 5. It is not clear from our decision that the statute’s constitutionality was squarely
6 before us in that case. *See id.* ¶ 8 (“[The worker] *seems to argue* that the exemption
7 is unconstitutionally vague [and] *seems to argue* that the exemption denies him equal
8 protection.” (Emphasis added.)). We summarily rejected what we surmised may have
9 been a constitutional challenge by the worker. *See id.* (“[The exclusion] does not
10 [violate equal protection]; the exemption is not arbitrary, but has a reasonable
11 basis.”). We note that to the extent that the statute’s constitutionality was not squarely
12 before us in *Cueto*, its determination is dictum. *Fernandez v. Farmers Ins. Co.*, 1993-
13 NMSC-035, ¶ 15, 115 N.M. 622, 857 P.2d 22 (“[C]ases are not authority for
14 propositions not considered.” (internal quotation marks and citation omitted)).

15 {9} We also note that *Cueto* was decided prior to our Supreme Court’s “modern
16 articulation” of the rational basis level of scrutiny, and it did not employ the same
17 standard of review to the constitutionality of the statute as is required by our courts
18 today. *See Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶ 14, 125 N.M. 721,
19 965 P.2d 305 (“To successfully challenge a statute under the rational basis test, a

1 plaintiff is required to show that the statute’s classification is not rationally related
2 to the legislative goal.).

3 **III. Constitutionality of the Exclusion**

4 {10} Workers contend that the exclusion is unconstitutional because it violates their
5 right to equal protection. We review the constitutionality of legislation de novo.
6 *Rodriguez v. Scotts Landscaping*, 2008-NMCA-046, ¶ 8, 143 N.M. 726, 181 P.3d
7 718. We presume that the challenged legislation is constitutional and “will not
8 question the wisdom, policy, or justness of legislation enacted by our Legislature.”
9 *Id.* (internal quotation marks and citation omitted).

10 {11} The New Mexico Constitution provides that no person shall be denied equal
11 protection of the laws. N.M. Const. art. II, § 18. Equal protection guarantees that
12 similarly situated individuals will be treated in an equal manner, “absent a sufficient
13 reason to justify the disparate treatment.” *Wagner v. AGW Consultants*, 2005-NMSC-
14 016, ¶ 21, 137 N.M. 734, 114 P.3d 1050. Thus, “statutory classifications that are
15 unreasonable, unrelated to a legitimate statutory purpose, or are not based on real
16 differences” do not comport with equal protection guarantees. *Breen v. Carlsbad*
17 *Mun. Schs.*, 2005-NMSC-028, ¶ 7, 138 N.M. 331, 120 P.3d 413 (internal quotation
18 marks and citation omitted). “The threshold question in analyzing all equal protection
19 challenges is whether the legislation creates a class of similarly situated individuals

1 who are treated dissimilarly.” *Id.* ¶ 10. If Workers establish that, as a result of a
2 legislative classification, they have suffered dissimilar treatment from those who are
3 similarly situated, we then determine what level of scrutiny to apply to the challenged
4 legislation. *Id.* ¶ 8.

5 **A. Disparate Treatment of Similarly Situated Individuals**

6 {12} Workers contend that farm and ranch laborers are similarly situated to other
7 workers within the state. More specifically, Workers contend that farm and ranch
8 laborers, who primarily harvest crops or work with animals and are excluded from
9 workers’ compensation coverage, are similarly situated with other agricultural
10 workers who are not excluded. M.A. & Sons claim that this Court has already
11 determined that workers who primarily harvest crops or work with animals are not
12 similarly situated, relying on our decisions in *Tanner v. Bosque Honey Farm, Inc.*,
13 1995-NMCA-053, 119 N.M. 760, 895 P.2d 282 and *Holguin v. Billy the Kid Produce,*
14 *Inc.*, 1990-NMCA-073, 110 N.M. 287, 795 P.2d 92. M.A. & Sons’ reliance on these
15 decisions is misplaced.

16 {13} Both *Tanner* and *Holguin* involved the same sole issue of whether specific
17 agricultural duties fall within the statutory definition of farm or ranch labor such that
18 the farm and ranch laborers exclusion would apply. *See Tanner*, 1995-NMCA-053,
19 ¶¶ 1, 11-12 (holding that a worker assisting in the harvesting of honey was a farm

1 laborer under the exclusion); *Holguin*, 1990-NMCA-073, ¶¶ 1, 20-21 (holding that
2 a worker whose primary duties were filling and stacking sacks of onions prior to
3 shipment was not a farm laborer under the exclusion and ordering that the worker’s
4 claim be reinstated). The distinction drawn in each of these cases between farm
5 laborers and other agricultural workers serves only to define farm labor under Section
6 52-1-6(A). It does not inform our analysis of whether the two groups of workers are
7 similarly situated for equal protection purposes. *Fernandez*, 1993-NMSC-035, ¶ 15
8 (“[C]ases are not authority for propositions not considered.” (internal quotation marks
9 and citation omitted)).

10 {14} In determining whether the two classes of workers are similarly situated, “we
11 must look beyond the classification to the purpose of the law.” *Griego v. Oliver*,
12 2014-NMSC-003, ¶ 30, 316 P.3d 865 (internal quotation marks and citation omitted);
13 see *Corn v. N.M. Educators Fed. Credit Union*, 1994-NMCA-161, ¶ 16, 119 N.M.
14 199, 889 P.2d 234, *overruled on other grounds by Trujillo*, 1998-NMSC-031.

15 {15} In 1929, our workers’ compensation law did not expressly exclude agricultural
16 laborers from workers’ compensation coverage; however, agricultural laborers were
17 deemed excluded because agricultural pursuits were not included in the enumerated
18 list of extra-hazardous occupations covered by the statute. Compare NMSA 1929,
19 § 156-110 (1929), with § 52-1-6(A). See *Koger v. A. T. Woods, Inc.*, 1934-NMSC-

1 020, ¶¶ 7-9, 38 N.M. 241, 31 P.2d 255. In 1937, the Legislature added a provision
2 explicitly excluding farm and ranch laborers from workers' compensation coverage.
3 1937 N.M. Laws, ch. 92, § 2. From 1937 until 1975, farm and ranch laborers were
4 "excluded from compensation benefits both by the explicit exclusion and by the
5 failure to include agricultural labor as an extra[-]hazardous occupation." *Varela v.*
6 *Mounho*, 1978-NMCA-086, ¶ 6, 92 N.M. 147, 584 P.2d 194. In 1975, the extra-
7 hazardous occupation requirement was repealed. 1975 N.M. Laws, ch. 284, § 14.
8 However, the explicit exclusion of farm and ranch laborers from workers'
9 compensation coverage has remained substantively unchanged. *See* 1989 N.M. Laws,
10 ch. 263, § 5; 1987 N.M. Laws, ch. 260, § 1; 1979 N.M. Laws, ch. 368, § 4; 1975 N.M.
11 Laws, ch. 284, § 3; 1973 N.M. Laws, ch. 240, § 2; 1971 N.M. Laws, ch. 253, § 1;
12 1971 N.M. Laws, ch. 261, § 2; 1959 N.M. Laws, ch. 67, § 2; 1953 N.M. Laws, ch. 87,
13 § 1; 1937 N.M. Laws, ch. 92, § 2; NMSA 1941, § 57-904 (1937).

14 {16} Our review of the history of the workers' compensation statutes back to 1929
15 has not revealed an articulable purpose for the exclusion. The purpose of the
16 Workers' Compensation Act (the Act) as a whole is to provide "quick and efficient
17 delivery of indemnity and medical benefits to injured and disabled workers at a
18 reasonable cost to the employers who are subject to [its] provisions." NMSA 1978,
19 § 52-5-1 (1990). "One policy factor of great concern is that *any* judicial analysis

1 under the Act must balance equally the interests of the worker and the employer
2 without showing bias or favoritism toward either.” *Salazar v. Torres*, 2007-NMSC-
3 019, ¶ 10, 141 N.M. 559, 158 P.3d 449 (emphasis added); *see* § 52-5-1 (stating that
4 the Act is not to be interpreted “in favor of the claimant or employee on the one hand,
5 nor are the rights and interests of the employer to be favored over those of the
6 employee on the other hand”). Workers who are unable to perform work duties due
7 to an accident arising out of and in the course of employment are eligible to receive
8 compensation. *Breen*, 2005-NMSC-028, ¶ 10. The stated purpose of the Act is not
9 served by creating classifications among the state’s workers.

10 {17} Excluding farm and ranch laborers from workers’ compensation coverage
11 denies them the benefits, including but not limited to the monetary benefits, that the
12 Act was intended to provide. It also circumvents the policy and philosophy of the
13 Act—to balance the interests and rights of the worker and the employer. *See Salazar*,
14 2007-NMSC-019, ¶ 10. The exclusion tips the scale in favor of employers. Employers
15 of farm and ranch laborers have the option to elect to be subject to the Act while that
16 option is not available to farm and ranch laborers. Section 52-1-6(B). Employers of
17 farm and ranch laborers avoid the cost of providing workers’ compensation insurance,
18 which results in expensive drawn out litigation being the only available option to the
19 worker. While the exclusion exposes the employers to tort liability, the injured

1 workers are less likely to pursue a tort claim. *See Salazar*, 2007-NMSC-019, ¶ 16
2 (recognizing that many injured workers “are not in a financial position to wait out a
3 lengthy, expensive, and risky court proceeding to be compensated for the injury, due
4 to the problems of pressing medical bills, and often the inability to work” and would
5 benefit from workers’ compensation (internal quotation marks and citation omitted)).
6 Employers, on the other hand, may be in a better position to plan for and manage the
7 additional cost of providing coverage.

8 {18} We conclude that farm and ranch laborers seeking compensation are similarly
9 situated to other workers in the state who are likewise seeking compensation; both
10 groups consist of workers suffering work-related injuries or disabilities who are in
11 need of indemnity and medical benefits.

12 {19} The farm and ranch laborers exclusion creates classifications of workers that
13 are not based on real differences. In the general context of farm labor, workers who
14 perform tasks essential to the cultivation of crops are excluded from coverage,
15 whereas workers performing tasks incidental to farming, such as processing crops,
16 are included. *See Holguin*, 1990-NMCA-073, ¶ 13 (holding that farm labor excluded
17 from workers compensation coverage does not include “all things incident to
18 farming” (internal quotation marks and citation omitted)); *Cueto*, 1980-NMCA-036,
19 ¶ 9 (holding that farm labor includes duties essential to the cultivation of crops).

1 {20} The statute similarly distinguishes between workers who care for and train
2 animals as an intrinsic part of a farm and ranch operation and other workers
3 performing similar duties. *See* § 52-1-6.1 (stating that “ ‘farm and ranch laborers’
4 shall include those persons providing care for animals in training for the purpose of
5 competition or competitive exhibition. Employees of a veterinarian and laborers at
6 a treating facility or a facility used solely for the boarding of animals, which is not an
7 intrinsic part of a farm or ranch operation, are not covered by this provision”). Not
8 only do these distinctions created by the exclusion fail to serve the stated purpose,
9 policy, and philosophy of the Act, but these distinctions also result in dissimilar
10 treatment of similarly situated workers. Accordingly, we must determine whether the
11 “disparate treatment . . . is sufficiently justified such that it does not violate equal
12 protection.” *Rodriguez*, 2008-NMCA-046, ¶ 13.

13 **B. Constitutional Standard of Review**

14 {21} “There are three levels of equal protection review based on the New Mexico
15 Constitution: rational basis, intermediate scrutiny[,] and strict scrutiny.” *Breen*, 2005-
16 NMSC-028, ¶ 11. The level of scrutiny applied depends on “the nature and
17 importance of the individual interests asserted and the relationship between the
18 statutorily created classification and the importance of the governmental interest

1 involved.” *Rodriguez*, 2008-NMCA-046, ¶ 14 (alteration, internal quotation marks,
2 and citation omitted).

3 {22} Rational basis review is the “most deferential to the constitutionality of the
4 legislation.” *Breen*, 2005-NMSC-028, ¶ 11. The party challenging the legislation
5 bears the burden of proving that it “is not rationally related to a legitimate
6 governmental purpose.” *Id.* (alteration, internal quotation marks, and citation
7 omitted). This level of scrutiny is applied to “general social and economic legislation
8 that does not affect a fundamental or important constitutional right or a suspect or
9 sensitive class.” *Id.* Where the challenged legislation impacts “important but not
10 fundamental rights, or sensitive but not suspect classifications, intermediate scrutiny
11 is warranted.” *Wagner*, 2005-NMSC-016, ¶ 12. Applying intermediate scrutiny, the
12 State must demonstrate that the statute is substantially related to an important
13 governmental purpose. *Id.* Strict scrutiny review is applied where laws draw suspect
14 classifications or impact fundamental rights. *Id.* Under a strict scrutiny standard, the
15 state must show “that the provision at issue is closely tailored to a compelling
16 government purpose.” *Id.*

17 {23} The parties in this case do not dispute that strict scrutiny is inapplicable in this
18 case. Workers and M.A. & Sons seem to agree that rational basis review is
19 appropriate in this case. However, to the extent that Workers argue that intermediate

1 scrutiny would also be applicable, we disagree. Intermediate scrutiny review is
2 appropriate where “the challenged legislation (1) restrict[s] the ability to exercise an
3 important right[,] or (2) treat[s] the person challenging the constitutionality of the
4 legislation differently because they belong to a sensitive class.” *Rodriguez*, 2008-
5 NMCA-046, ¶ 15 (alteration, internal quotation marks, and citation omitted).

6 {24} Workers do not argue that the benefits conferred under the Act are important
7 rights in the constitutional sense. Instead, they suggest that farm and ranch laborers
8 are members of a sensitive class as a result of being historically mistreated by
9 employers and having a lack of political power “which also has a racial and ethnic
10 overtone.” This generalized argument does not provide any basis to conclude that
11 Workers belong to a sensitive class with respect to the exception, and it is insufficient
12 to trigger intermediate scrutiny review. *See Headley v. Morgan Mgmt. Corp.*, 2005-
13 NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (stating that this Court will not
14 consider unclear or undeveloped arguments). Having no basis to conclude that
15 Workers belong to a sensitive class, we review the constitutionality of the exclusion
16 applying the rational basis test.

17 **C. The Exclusion is Not Rationally Related to a Legitimate State Interest**

18 {25} We presume that legislative acts are valid and are typically subject to rational
19 basis review. *See Valdez v. Wal-Mart Stores, Inc.*, 1998-NMCA-030, ¶ 13, 124 N.M.

1 655, 954 P.2d 87. Though deferential to the constitutionality of the statute, this level
2 of scrutiny is not a “rubber stamp for challenged legislation.” *Wagner*, 2005-NMSC-
3 016, ¶ 24 (internal quotation marks omitted). Under the rational basis test, Workers
4 must demonstrate that the legislative classification is not rationally related to a
5 legitimate state goal. *See id.*; *Valdez*, 1998-NMCA-030, ¶ 10.

6 {26} The Legislature’s principal objectives in enacting the Act were: “(1)
7 maximizing the limited recovery available to injured workers, in order to keep them
8 and their families at least minimally financially secure; (2) minimizing costs to
9 employers; and (3) ensuring a quick and efficient system.” *Wagner*, 2005-NMSC-
10 016, ¶ 25. M.A. & Sons argues that the exclusion serves these objectives by: (1)
11 simplifying the administration of the workers’ compensation system and (2)
12 protecting the state’s agricultural industry from additional overhead costs. Workers
13 contend that the exclusion is arbitrary and irrational and that the relationship between
14 the purported state interests and the statutory classification created by the exclusion
15 does not survive rational basis scrutiny.

16 {27} To successfully challenge the statute under rational basis scrutiny, a worker
17 must demonstrate that the classification created by the legislation is not supported by
18 evidence in the record or a firm legal rationale. *Id.* ¶ 24. In these consolidated
19 appeals, Worker did not have the opportunity to create a factual record to support

1 their constitutional challenge of the exclusion because the WCJ “does not have the
2 authority to determine the constitutionality of a statutory enactment.” *Montez v. J &
3 B Radiator, Inc.*, 1989-NMCA-060, ¶ 7, 108 N.M. 752, 779 P.2d 129; *see Chevron*,
4 1992-NMCA-081, ¶ 19 (same). Accordingly, the lack of a factual record is not fatal
5 to Workers’ constitutional argument if Workers can demonstrate that the exclusion
6 is not supported by a firm legal rationale. *See Montez*, 1989-NMCA-060, ¶ 7
7 (addressing the worker’s claim that a statute was facially unconstitutional despite the
8 lack of preservation and, implicitly a factual record); *see also Chevron*, 1992-NMCA-
9 081, ¶¶ 19, 21-24 (analyzing the worker’s constitutional challenge based solely on
10 legal rationale in the absence of a factual record).

11 {28} As Workers point out, the exclusion is arbitrary on its face and as applied.
12 Legislative classifications must be based on “real differences of situation or
13 condition” that are related to the statutory purpose. *Burch v. Foy*, 1957-NMSC-017,
14 ¶ 10, 62 N.M. 219, 308 P.2d 199. Under the exclusion, workers whose primary duties
15 are essential to the cultivation of crops are considered farm laborers, while workers
16 involved primarily in the processing of the same crops are not. *See Cueto*, 1980-
17 NMCA-036, ¶¶ 9, 10. This distinction is seemingly without purpose or reason and
18 leads to absurd results. In some instances, employees working for the same
19 agricultural employer may not all be covered under the Act. For example, workers

1 involved in irrigation, fertilization, and harvesting crops are not covered under the
2 Act, while workers who sort, pack, and ship the very same crops are. *See Holguin*,
3 1990-NMCA-073, ¶ 20. We fail to see any real differences between workers who fall
4 under the statutory definition of a farm and ranch laborer and workers who do not.
5 We also fail to see any real differences between farm and ranch laborers and all other
6 workers in New Mexico that would justify the exclusion.

7 {29} We are not persuaded by M.A. & Sons' contention, that simplifying the
8 administration of the workers' compensation system and protecting the State's
9 agricultural industry from additional overhead costs justify the arbitrary classification
10 created by the exclusion. *See Plyler v. Doe*, 457 U.S. 202, 227 (1982) (“[A] concern
11 for the preservation of resources standing alone can hardly justify the classification
12 used in allocating those resources.”); *see also Schirmer v. Homestake Min. Co.*, 1994-
13 NMSC-095, ¶¶ 8-9, 118 N.M. 420, 882 P.2d 11 (holding that the challenged statute
14 was “unconstitutional notwithstanding its rational relationship to the valid legislative
15 goal of lowering employer costs” because the resulting legislative classification was
16 arbitrary and was not “based upon some substantial or real distinction” instead of
17 “artificial or irrelevant differences”); *Halliburton Co. v. Prop. Appraisal Dep't*, 1975-
18 NMCA-123, ¶ 25, 88 N.M. 476, 542 P.2d 56 (holding that a tax statute based on

1 administrative convenience alone did not survive rational basis scrutiny and violated
2 equal protection guarantees).

3 {30} The classification created by the exclusion is also under-inclusive.
4 “Discriminatory legislation is under-inclusive if the classification does not include
5 all of those who are similarly situated with respect to the purpose of the law.” *Griego*,
6 2014-NMSC-003, ¶ 60. As to the purported state interest in efficient administration
7 of workers’ compensation cases, the legislation is under-inclusive because the statutes
8 do not exclude all transient or mobile workers from coverage. And as to the purported
9 state interest in protecting the agricultural industry from the cost of providing
10 workers’ compensation coverage, the legislation is under-inclusive because it does
11 not exclude all agricultural workers.

12 {31} We conclude that there is no substantial relationship between the exclusion and
13 the purported government interests of increased workers’ compensation efficiency
14 and lower costs for the agricultural industry. There is nothing rational about a law that
15 excludes from worker’s compensation benefits employees who harvest crops from the
16 field while providing benefits for the employees who sort and bag the very same crop.
17 *See Madrid v. St. Joseph Hosp.*, 1996-NMSC-064, ¶ 34, 122 N.M. 524, 928 P.2d 250
18 (stating that equal protection guarantees “prohibit the government from creating
19 statutory classifications that are unreasonable, unrelated to a legitimate statutory

1 purpose, or are not based on real differences”). Moreover, excluding farm and ranch
2 laborers from workers’ compensation coverage directly controverts the purpose and
3 evenhanded philosophy of the Act by placing farm and ranch employers at an
4 advantage and denying workers the benefits the Act was intended to provide.
5 Legislative classifications that are arbitrary and oppressive without any rational basis
6 are the most objectionable. *Burch*, 1957-NMSC-017, ¶ 12.

7 **IV. Modified Prospective Application of This Opinion**

8 {32} Because we have declared the exclusion to be unconstitutional, we address
9 M.A. & Sons’ argument that we apply our holding prospectively. Our courts have
10 adopted a presumption that new rules imposed by judicial decisions in civil cases will
11 apply retroactively. *Beavers v. Johnson Controls World Servs., Inc.*, 1994-NMSC-
12 094, ¶ 22, 118 N.M. 391, 881 P.2d 1376. However, this presumption can be overcome
13 where sufficient justification exists for avoiding retroactive application. *Padilla v.*
14 *Wall Colmonoy Corp.*, 2006-NMCA-137, ¶ 12, 140 N.M. 630, 145 P.3d 110. To
15 determine whether retroactive application is justified we consider: “(1) whether the
16 case creates a new principle of law that has been relied upon[,] (2) the prior history
17 of the rule[,] and (3) the inequity of retroactive application.” *Id.* (internal quotation
18 marks and citation omitted).

1 {33} “Under the first factor, the decision to be applied nonretroactively must
2 establish a new principle of law, either by overruling clear past precedent on which
3 litigants may have relied, or by deciding an issue of first impression whose resolution
4 was not clearly foreshadowed.” *Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, ¶ 27,
5 149 N.M. 162, 245 P.3d 1214 (internal quotation marks and citation omitted). “The
6 extent to which the parties in a lawsuit, or others, may have relied on the state of the
7 law before a law-changing decision has been issued can hardly be overemphasized.”
8 *Beavers*, 1994-NMSC-094, ¶ 27. “The reliance interest to be protected by a holding
9 of nonretroactivity is strongest in commercial settings, in which rules of contract and
10 property law may underlie the negotiations between or among parties to a
11 transaction.” *Id.* ¶ 28.

12 {34} Since 1937, our statutes have expressly excluded farm and ranch laborers from
13 workers’ compensation coverage. Our holding in this case sets forth a new principle
14 of law, not clearly foreshadowed by our previous decisions. Until now, employers of
15 farm and ranch laborers have legitimately relied on the exclusion’s constitutionality.
16 Their reliance interest weighs in favor of prospective application because, in a general
17 sense, the workplace is a commercial setting and employment is of a contractual
18 nature. *Padilla*, 2006-NMCA-137, ¶ 15.

1 {35} The second factor considers the new rule’s history, purpose, and effect to
2 determine whether retroactive application will further its operation. *Id.* ¶ 20. As we
3 discussed earlier, the purpose of the Act is to provide quick and efficient benefits to
4 injured and disabled workers at a reasonable cost to employers. Section 52-5-1. The
5 application of the Act’s provisions should balance the interests and rights of workers
6 and employers. *Salazar*, 2007-NMSC-019, ¶ 10. Our decision in this case seeks to
7 further both the purpose of the Act as well as its underlying philosophy of
8 evenhandedness, which retroactive application may achieve to some degree.

9 {36} However, we must also consider the third factor, “the inequity imposed by
10 retroactive application, for where a decision of [an appellate court] could produce
11 substantial inequitable results if applied retroactively, there is ample basis in our
12 cases for avoiding the injustice or hardship by a holding of nonretroactivity.” *Jordan*,
13 2010-NMSC-051, ¶ 29 (internal quotation marks and citation omitted). In this
14 circumstance, retroactive application of our decision would be analogous to the
15 enactment of a retroactive statute, which is generally disfavored in New Mexico. *See*
16 NMSA 1978, § 12-2A-8 (1997) (“A statute or rule operates prospectively only unless
17 the statute or rule expressly provides otherwise[,] or its context requires that it operate
18 retrospectively.”); *see also Hill v. Vanderbilt Capital Advisors, LLC*, 834 F. Supp. 2d
19 1228, 1262 (D.N.M. 2011) (“A retrospective law affects acts, transactions, or

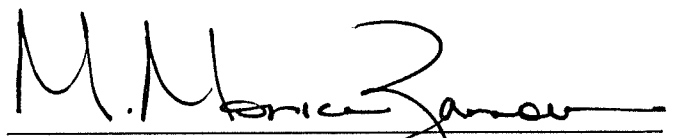
1 occurrences that happened before the law came into effect and impairs vested rights,
2 requires new obligations, imposes new duties, or affixes new disabilities to past
3 transactions.”). Here, retroactive application would impose new obligations and
4 duties on employers of farm and ranch laborers and their insurers, and it would also
5 impact the interests of the Uninsured Employers’ Fund as well as the Food Industry
6 Self Insurance Fund of New Mexico.

7 {37} Nevertheless, the WCA was on notice that the district court in *Griego* had
8 declared the exclusion to be unconstitutional on March 30, 2012, and did not appeal
9 that ruling. Therefore, acknowledging the inequity of denying benefits to workers
10 whose claims were asserted after the date of the district court decision in *Griego*, we
11 conclude that this Opinion’s holding shall apply to workers’ claims that were pending
12 as of March 30, 2012, and that were filed thereafter.


13 **CONCLUSION**

14 {38} For the foregoing reasons, we reverse the dismissals of the Workers’
15 compensation claims and remand for proceedings consistent with this Opinion.

16 {39} **IT IS SO ORDERED.**

17 
18 M. MONICA ZAMORA, Judge

1 I CONCUR:

2 
3 _____
4 CYNTHIA A. FRY, Judge

5 MICHAEL E. VIGIL, Chief Judge (dissenting in part, specially concurring in part).

1 **VIGIL, Chief J., dissenting in part, specially concurring in part.**

2 {40} Workers’ first argument on appeal is that dismissal of their claims was
3 precluded by the declaratory judgment in *Griego*. The majority fails to address this
4 argument. Without providing a sufficient reason for doing so, the majority simply
5 declares, “We need not determine whether the district court’s determination in *Griego*
6 was binding in the present cases.” Majority Opinion ¶ 7. I dissent from this
7 proposition. Further, I respectfully submit that by answering Workers’ fully preserved
8 argument, we are not issuing an advisory opinion.

9 {41} In *Griego*, three individual plaintiffs and two organizational plaintiffs brought
10 a declaratory judgment action against the WCA and its director (WCA) contending
11 that the farm and ranch laborers exclusion in the Workers’ Compensation Act
12 violated their right to equal protection of the law under Article II, Section 18 of the
13 New Mexico Constitution. *Griego*, No. 32,120, memo op. ¶ 2. (I do not cite to *Griego*
14 for any precedential purposes, but only for the facts it discloses). The district court
15 held that the exclusion was unconstitutional, and the WCA appealed. *Id.* ¶ 3. The
16 WCA’s appeal only challenged the district court’s jurisdiction over the individual
17 plaintiffs’ claims on two grounds: (1) that they should have pursued an appeal from
18 the WCA instead of filing a separate declaratory judgment action; and (2) that the
19 district court did not have authority to order the WCA to re-open the individual

1 plaintiffs' claims for consideration on their merits. *Id.* ¶¶ 6-7. The WCA did not
2 challenge the district court's jurisdiction over the claims of the organizational
3 plaintiffs, nor did the WCA attack the district court's determination of
4 unconstitutionality. *Id.* ¶ 7.

5 {42} The WCA and individual plaintiffs settled, rendering moot the issues raised on
6 appeal by the WCA. *Id.* ¶ 8. Nevertheless, the individual plaintiffs argued that the
7 appeal should not be dismissed as moot, because the WCA continued to urge that it
8 was not bound to enforce the district court judgment declaring the exclusion
9 unconstitutional. *Id.* The WCA maintained that the district court judgment invited
10 "chaos" because it appeared to conflict with *Cueto*, and WCJs would have to choose
11 whether to follow the district court judgment or *Cueto*. *Id.* ¶ 10. We rejected the
12 WCA's assertion. We pointed out that the district court had considered *Cueto* and
13 determined that it was inapposite and distinguishable. *Id.* Therefore, we said, "As a
14 party to the declaratory judgment action, the WCA is bound by the district court's
15 ruling." *Id.* We also added that if the WCA believed that the district court had ruled
16 contrary to precedent, its remedy was to seek appellate review of that decision.
17 *Id.* ¶ 11. Having chosen not to do so, we concluded, the WCA "cannot now escape
18 the effect of unchallenged parts of the district court's decision." *Id.* Because the
19 issues raised on appeal were moot, the WCA's appeal was dismissed. *Id.* ¶ 12.

1 {43} There can be no doubt that the district court judgment declaring the farm and
2 ranch laborers exclusion in the Workers' Compensation Act unconstitutional is
3 binding on the WCA. "The doctrine of issue preclusion prevents a party from re-
4 litigating ultimate facts or issues actually and necessarily decided in a prior suit."
5 *State ex rel. Peterson v. Aramark Corr. Servs., LLC*, 2014-NMCA-036, ¶ 34, 321
6 P.3d 128 (internal quotation marks and citation omitted). The four elements required
7 to apply issue preclusion are satisfied in this case. Those elements are:

8 (1) the party to be estopped was a party to the prior proceeding, (2) the
9 cause of action in the case presently before the court is different from
10 the cause of action in the prior adjudication, (3) the issue was actually
11 litigated in the prior adjudication, and (4) the issue was necessarily
12 determined in the prior litigation.


13 *Id.* The WCA fully litigated the constitutional issue in *Griego* and having lost,
14 deliberately chose not to appeal that issue. Thus, the WCA and WCJs were legally
15 obligated to follow and apply the declaratory judgment to these cases. The declaratory
16 judgment does not tell WCJs of the WCA how to decide any case on its merits; it only
17 precludes enforcement of the farm and ranch laborers exclusion. Moreover, the
18 refusal of the WCJs to follow and apply the declaratory judgment on the basis that
19 *Cueto* was conflicting authority was improper because the applicability of *Cueto* was
20 resolved in the very action in which the declaratory judgment was rendered, and no
21 appeal was taken on the constitutional question. *See State ex rel. Maloney v. Sierra,*

1 1970-NMSC-144, ¶¶ 8-11, 82 N.M. 125, 477 P.2d 301 (stating that the portion of a
2 declaratory judgment on a constitutional question that was not challenged on appeal
3 was final).

4 {44} The majority’s failure to specifically determine that the *Griego* declaratory
5 judgment is binding on the WCA in these cases is troubling. It encourages a litigant
6 not to comply with a final declaratory judgment rendered against it and to relitigate
7 the same issue in a new case. It also implies that a final judgment rendered against a
8 party in a prior case has no effect on appeal, even if the prior judgment was against
9 the same party and resolved the same issue. This dilutes settled principles of finality
10 and implies that a district court declaratory judgment does not merit recognition and
11 enforcement. I therefore dissent from the majority’s statement that “We need not
12 determine whether the district court’s determination in *Griego* was binding in the
13 present cases.” Majority Opinion ¶ 7.

14 {45} Whether *Griego* is binding on the employers and insurers in these cases
15 presents another question because they were not parties in the *Griego* litigation. Our
16 Declaratory Judgment Act specifically states, that “no declaration shall prejudice the
17 rights of persons not parties to the proceeding.” NMSA 1978, Section 44-6-12
18 (1975); see *Gallegos v. Nevada Gen. Ins. Co.*, 2011-NMCA-004, ¶ 21, 149 N.M. 364,
19 248 P.3d 912 (stating that the Declaratory Judgment Act “forbids a party from being

1 prejudiced by a declaratory action to which he was not a party”). Thus, if the WCA
2 and WCJs had properly complied with the *Griego* declaratory judgment in these
3 cases, and the WCJ’s determined that Workers were entitled to workers’
4 compensation benefits, the employers and insurers could have appealed from that
5 decision and argued that the farm and ranch laborers exclusion is not
6 unconstitutional. On this basis, I specially concur in the result, because I agree with
7 the majority’s analysis of the constitutional question and with modified prospective
8 application set forth in parts III and IV of the majority opinion.

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10 
MICHAEL E. VIGIL, Chief Judge