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Constitutional Law - Workers Compensation: Equal Protection Challenge to the Agricultural Exemption and Use of Rational Basis Scrutiny

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CONSTITUTIONAL LAW—WORKERS COMPENSATION: EQUAL PROTECTION CHALLENGE TO THE AGRICULTURAL EXEMPTION AND USE OF RATIONAL BASIS SCRUTINY IN *Haney v. North Dakota Workers Compensation Bureau*, 518 N.W.2d 195 (N.D. 1994)

I. FACTS

Robert C. Haney injured his back cleaning a grain storage bin while employed by Grindberg Farms.[1] Haney filed a claim with the North Dakota Workers Compensation Bureau [hereinafter the Bureau] to receive benefits for his injury.[2] The Bureau found that Haney was injured while engaged in an agricultural employment activity, which is exempt from mandatory coverage of the North Dakota Workers Compensation Act.[3] Accordingly, the Bureau concluded that it lacked jurisdiction over the matter and dismissed Haney's claim.[4]

Haney appealed the Bureau's final determination to the district court, challenging the constitutionality of the agricultural exemption from the Workers Compensation Act.[5] Haney argued that the statute violated the equal protection clause of the North Dakota Constitution.[6]

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1. Haney v. North Dakota Workers Compensation Bureau, 518 N.W.2d 195, 196 (N.D. 1994).

2. *Id.*

3. *Id.* at 197. N.D. CENT. CODE § 65-01-02(22)(a) (Supp. 1993). The workers compensation statute provides coverage for all employees injured in the course of "hazardous employment." § 65-01-02. Hazardous employment is defined as "any employment in which one or more employees are employed regularly in the same business or in or about the establishment except: [a]gricultural . . . service." § 65-01-02(22)(a). The Bureau also found that Grindberg Farms did not voluntarily bring itself within the Act's coverage through elective workers compensation coverage. Appellant's Brief at A-4, Haney v. North Dakota Workers Compensation Bureau, 518 N.W.2d 195 (N.D. 1994) (No. 930324). Employers who are exempt from mandatory coverage for their employees may elect to provide coverage by complying with the Workers Compensation Act provisions and making premium payments to the fund, thus making workers compensation the exclusive remedy. N.D. CENT. CODE § 65-04-29 (Supp. 1993).

4. *Haney*, 518 N.W.2d at 196. Haney then sought an administrative appeal which consisted of a formal hearing. Appellant's Brief at 5. At the formal hearing, the Bureau similarly found that Haney's injury occurred while performing agricultural-related work and thus affirmed its earlier conclusion that it lacked jurisdiction because such activity is exempt from workers compensation coverage. Appellant's Brief at A-6. *See generally* N.D. CENT. CODE §§ 28-32-14 to -15 (Supp. 1993) (explaining the process of administrative agency appeals). A party wanting to appeal a final order of the workers compensation bureau may file a petition for rehearing within 30 days after the final order. § 28-32-14(2). It is within the agency's discretion to grant or deny the rehearing. § 28-32-14(3). If a rehearing is granted, the agency may issue a new final order. § 28-32-14(4). If the agency does not act upon the petition within 30 days, the petition is deemed denied. *Id.* Following either the first final order or the final order upon rehearing, the injured party has 30 days to appeal to the district court. § 28-32-15(1). The party is not required to exhaust administrative remedies prior to seeking judicial review. § 28-32-14(1). Appeals to the district court must specify the grounds and parties of the appeal. § 28-32-15(4).

5. Appellant's Brief at 5.

6. Appellant's Brief at A-35. N.D. CONST. art. I, § 21. The North Dakota equal protection clause provides that "[n]o special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens." *Id.*

The district court, however, rejected Haney's claim and affirmed the Bureau's lack of jurisdiction and denial of benefits.[7]

On appeal to the North Dakota Supreme Court, Haney again argued that the agricultural exclusion to the Workers Compensation Act violated the equal protection clause of the North Dakota Constitution.[8] Haney urged the court to apply an intermediate scrutiny to the exemption because it concerned an important substantive right.[9] The agricultural exemption, Haney claimed, could not satisfy an intermediate level because the exemption does not closely correspond to legislative goals.[10] Haney relied upon the court's previous decision in *Benson v. North Dakota Workmen's Compensation Bureau*.[11] In *Benson*, a three-Justice majority used an intermediate level of review to conclude that the agricultural exemption violated the equal protection clause of the North Dakota Constitution.[12] The *Benson* court stated that there was "no correspondence" between the expressed purpose of the Workers Compensation Act of providing reliable relief to injured workers[13] and the statutory classification of agricultural employees and nonagricultural employees.[14] However, because North Dakota law requires a concurrence of four justices to nullify an existing statute when it is held to be

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7. *Haney*, 518 N.W.2d at 196.

8. N.D. CONST. art. I, § 21. *See supra* note 6.

9. *Haney*, 518 N.W.2d at 200.

10. *Id.* When dealing with equal protection challenges to legislation, courts typically choose from three levels of review, rational basis, strict scrutiny, or intermediate scrutiny, depending upon the right allegedly infringed. *See* Kavadas v. Lorenzen, 448 N.W.2d 219, 221-22 (N.D. 1989) (describing the three levels of review used to examine equal protection challenges). The rational basis standard requires that the legislation be upheld unless it is patently arbitrary or is not reasonably related to a legitimate state goal. *Id.* at 222. The court noted that if the classification is not inherently suspect, does not implicate a fundamental right, or does not infringe an important substantive right, the rational basis test is used. *Id.* This level is quite deferential to the legislature and is considered the easiest level to satisfy. Rational basis is usually used when dealing with economic and social legislation. Kadrmas v. Dickinson Pub. Sch., 402 N.W.2d 897, 902 (N.D. 1987). The second level of review is strict scrutiny and is used when suspect classes or fundamental rights are involved. *Id.* Strict scrutiny is considered the most difficult level of review to satisfy because the legislation is presumed invalid unless a compelling governmental interest is promoted by the statute and differential classifications drawn by the statute are necessary to achieve the statute's purpose. *Id.* The third level of review is called the "close correspondence" test or intermediate scrutiny. Hanson v. Williams County, 389 N.W.2d 319, 323 (N.D. 1986). This level of review is regarded as more difficult to satisfy than the rational basis standard because there must be "a close correspondence between the statutory classification and legislative goals the statute was designed to achieve." *Kadrmas*, 402 N.W.2d at 902 (citing Patch v. Sebelius, 320 N.W.2d 511 (N.D. 1982)). There is no clear rule for applying intermediate scrutiny, but it is generally applied in North Dakota when important substantive rights are involved. *Hanson*, 389 N.W.2d at 325.

11. 283 N.W.2d 96 (N.D. 1979).

12. Benson v. North Dakota Workmen's Compensation Bureau, 283 N.W.2d 96, 107 (N.D. 1979).

13. N.D. CENT. CODE § 65-01-01 (1985 & Supp. 1993). The Workers Compensation Act states that "the prosperity of the state depends in a large measure upon the well-being of its wage workers" thus, definite relief is provided regardless of questions of fault. *Id.*

14. *Benson*, 283 N.W.2d at 107.

unconstitutional, the *Benson* majority of three did not eradicate the agricultural exemption.[15] Since the statute was not changed legislatively, the agricultural exemption to workers compensation remained intact.[16]

Disagreeing with Haney's reliance on *Benson*, the North Dakota Supreme Court rejected the level of scrutiny used in *Benson* and overruled that decision.[17] Instead, the *Haney* court found workers compensation to be social and economic legislation requiring application of the lower rational basis level of scrutiny.[18] Using this standard, the *Haney* court *held* that the agricultural exemption to the Workers Compensation Act does not violate the equal protection clause of the North Dakota Constitution.[19]

II. LEGAL HISTORY

A. WORKERS COMPENSATION GENERALLY AND THE AGRICULTURAL EXEMPTION DEFINED

The North Dakota State Legislature enacted the Workers Compensation Act in 1919 to provide predictable relief for injured employees and to limit liability of employers.[20] The coverage of the Workers Compensation Act extends to all workers injured in the course of "hazardous employment."[21] Hazardous employment includes any employment where one or more persons are regularly employed, unless excepted from the statute.[22] If the employer is required by law to pay into workers compensation for his employees, or has done so voluntarily,[23] the

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15. N.D. CONST. art. VI, § 4. The relevant North Dakota constitutional provision requires that "the supreme court shall not declare a legislative enactment unconstitutional unless at least four of the members of the court so decide." *Id.*

16. *See infra* note 56 (discussing proposed legislation to eliminate or change the agricultural exemption in North Dakota).

17. *Haney*, 518 N.W.2d at 199.

18. *Id.* at 200. Specifically, the supreme court concluded that "the rational basis test is the appropriate standard of review to apply in assessing the validity of the agricultural exclusion from mandatory workers compensation coverage in light of the equal protection guarantee of Art. I, § 21, N.D. Const." *Id.*

19. *Id.* at 202.

20. 1919 N.D. Laws 162, at 258. The court has recently stated that "[a]lthough North Dakota Workmen's Compensation Act has been often amended, the stated purpose of the Act has remained essentially as enacted in 1919." *Benson*, 283 N.W.2d 96, 97 (N.D. 1979). The statute provides that "for workers injured in hazardous employments, and for their families and dependents, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation." N.D. CENT. CODE § 65-01-01 (Supp. 1993).

21. N.D. CENT. CODE § 65-01-01 (Supp. 1993).

22. N.D. CENT. CODE § 65-01-02(22) (Supp. 1993). The statutory definition of hazardous employment includes "any employment in which one or more employees are employed regularly in the same business or in or about the establishment except: [a]gricultural . . . service." *Id.*

23. N.D. CENT. CODE § 65-04-29 (Supp. 1993). Exempt employers under section 65-01-01 can limit their liability by voluntarily paying fund premiums and complying with the Workers Compensation Act making it the exclusive remedy for injured employees. *Id.* *See supra* note 3 (discussing elective

employer is immune from suit by injured employees or their families.[24] If the employer is exempted from the workers compensation provisions, the employee must use an alternative method to recover for injuries sustained on the job.[25]

Agriculture remains, as it has been from the date of the original enactment of the Act, specifically excluded from the definition of hazardous employment and consequently, exempt from the relief provided by workers compensation provisions.[26]

As in North Dakota, many states cover agricultural labor differently from other types of employment in their workers compensation statutes.[27] Those states throughout the nation which treat agricultural labor differently can be grouped into two main categories.[28] The first category includes those states, like North Dakota, which broadly exclude all agricultural labor from its workers compensation provisions.[29] These

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workers compensation coverage).

24. N.D. CENT. CODE §§ 65-01-01, -08; 65-04-29 (1985 & Supp. 1993). *See* Barsness v. General Diesel & Equip., 422 N.W.2d 819, 822 (N.D. 1988) (explaining that when an employer complies with workers compensation requirements, those benefits are the employee's exclusive remedy).

25. Note, *Workmen's Compensation Laws and Equal Protection: Does Gallegos Portend the Demise of the Agricultural Exclusion?*, 1973 DUKE L.J. 705, 706-07 (1973) (hereinafter *Gallegos*). Alternative remedies for agricultural employees not covered under workers compensation include expensive tort actions or social security disability benefits. *Id.*

26. N.D. CENT. CODE § 65-01-02(22)(a) (Supp. 1993). Other occupations that continue to be exempted from workers compensation coverage from the time of original enactment are domestic service and employees of railroad carriers. N.D. CENT. CODE §§ 65-01-02(22)(b), (22)(c). *See* 1919 N.D. Laws 162, at 258 (creating the workers compensation act in North Dakota). Domestic services are often regarded as being performed by independent contractors, thus making workers compensation coverage inapplicable. Morin v. Department of Social Services, 436 N.W.2d 729, 732 (Mich. Ct. App. 1989). Injured railroad employees receive compensation under the Federal Employers' Liability Act. 45 U.S.C. § 51 (1986). *See* Middleton v. Texas Power & Light Co., 249 U.S. 152, 158 (1918) (noting that injured railroad employees are compensated under federal statute, thus determining their exclusion from the state workers compensation statute did not violate equal protection guarantees).

27. 3 NEIL E. HARL, AGRICULTURAL LAW, § 20.03[3] (1993).

28. *Id.*

29. There are nine states which use the broad exception to exclude all agricultural labor. *See, e.g.*, ARK. CODE ANN. § 11-9-102(12)(iii) (Michie 1987 & Supp. 1993) (providing that "'[e]mployment' means: [e]very employment . . . except [a]gricultural farm labor"); KAN. STAT. ANN. § 44-505(1) (1993) (providing an exception for "agricultural pursuits and employments incident thereto"); KY. REV. STAT. ANN. § 342.630(1) (Michie 1993) (providing that "[t]he following shall constitute employers mandatorily subject to . . . the provisions of this chapter: [a]ny person, other than one engaged solely in agriculture"); LA. REV. STAT. ANN. § 23:1045 (West 1988) (exempting from its workers compensation provisions "employees of any person, firm or corporation engaged in the principal business of agriculture or farming operations"); MO. ANN. STAT. § 287.090 (Vernon 1993) (excluding "[e]mployment of farm labor" from mandatory coverage of its workers compensation statutes); NEB. REV. STAT. § 48-106(2) (1993) (excluding from its definition of covered hazardous occupations "employers of farm or ranch laborers"); N.D. CENT. CODE § 65-01-02(22)(a) (Supp. 1993) (exempting agricultural service from mandatory workers compensation coverage); R.I. GEN. LAWS § 28-29-5 (1986) (providing that "this title shall not apply to employers of employees engaged in . . . agriculture"); TENN. CODE ANN. § 50-6-106(3) (1991) (providing that the workers compensation does not apply to "farm or agricultural laborers and employers thereof").

states specifically exempt agricultural employers or exclude agricultural labor from the statutory definition of employment.[30] The second category includes those states which have a narrower, more detailed agricultural exclusion.[31] These states exempt agricultural labor from their workers compensation statutes by a variety of methods, such as excluding agricultural employers with fewer than five employees,[32] or excluding those employers who have paid under $100,000 in employee

30. *See supra* note 29.

31. There are twenty-one states which have a narrower, more detailed exception for agricultural labor. *See, e.g.*, DEL. CODE ANN., tit. 19, § 2301(9) (1985) (excluding from its workers compensation statutes the "wife and minor children of a farm employer"); FLA. STAT. ANN. § 440.02(15)(c)(2) (West 1991) (excluding "agricultural labor performed on a farm . . . [by one] who employs 5 or fewer regular employees and who employs fewer than 12 other employees at one time"); IDAHO CODE § 72-212(8) (1989 & Supp. 1994) (excluding those listed agricultural pursuits from its workers compensation scheme such as "the raising or harvesting of any agricultural or horticultural commodity including the raising . . . and management of livestock, bees, poultry" and several others); IOWA CODE ANN. § 85.1(3)(a) (West 1984) (providing exceptions for children and spouses of agricultural employers, but those employers "whose total cash payroll to one or more persons other than those exempted . . . amounted to two thousand five hundred dollars or more during the preceding year" are not exempt); ME. REV. STAT. ANN. tit. 39, § 2(1-A) (West 1989 & Supp. 1994) (excluding agricultural employers "when harvesting 150 cords of wood or less each year from farm wood lots"); MD. CODE ANN. 9-210210 (1991) (providing coverage for farm employees if the "farmer has at least [three] full-time employees"); MICH. COMP. LAWS ANN. § 418.115(d)-(e) (West 1985) (providing coverage for "[a]ll agricultural employers of [three] or more employees paid hourly wages . . . who are employed 35 or more hours per week"); MINN. STAT. ANN. § 176.041(1)(b) (West 1993) (providing an exception for those employed on a family farm which is defined as one which pays less than eight thousand dollars annually); MISS. CODE ANN. § 71-3-5 (1989 & Supp. 1994) (providing an exception for agricultural labor "but this exemption does not apply to the processing of agricultural products when carried on commercially"); N.Y. WORKERS COMPENSATION LAW § 3 (McKinney 1992) (providing the same workers compensation coverage for farm workers "employed during any part of the twelve consecutive months . . . in which cash remuneration paid to all farm laborers aggregated twelve hundred dollars or more"); N.C. GEN. STAT. § 97-13 (1991) (exempting agricultural laborer "when fewer than 10 full-time nonseasonal farm laborers are regularly employed"); OHIO REV. CODE ANN. § 4121.01(A) (Anderson 1991) (exempting "agricultural pursuits which do not involve the use of mechanical power" from its workers compensation scheme); OKLA. STAT. ANN. tit. 85, §§ 2.1, 2.2 (West 1992) (excluding farm employees "not engaged in operation of motorized machines" and those whose employer "had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars cash wages"); S.D. CODIFIED LAWS ANN. §§ 62-3-15 to -17 (1993) (providing workers compensation coverage for "the business of operating threshing machines, grain combines, corn shellers, cornhuskers, shredders" and others specifically listed, otherwise agricultural labor is exempt); TEX. LABOR CODE ANN. § 406.161(1)-(6) (West 1994 & Supp. 1995) (providing coverage for farm labor if "employed by a person with a gross annual payroll for the preceding year in an amount not less than . . . $25,000"); UTAH CODE ANN. §§ 35-1-42(4) to (5) (1994) (providing an exception for agricultural employers if "his employees are all members of his immediate family" or "he employed five or fewer persons"); VT. STAT. ANN. tit. 21, § 601(14)(C) (1987) (providing an exception from workers compensation for employers "whose aggregate payroll is less than $2,000 in a calendar year"); VA. CODE ANN. § 65.2-101(B)(7) (Michie 1991) (providing coverage for agricultural workers if the "employer regularly has in service more than two full-time employees"); W.VA. CODE § 23-2-1(b)(2) (1985) (providing an exemption for "employers of five or fewer full-time employees in agricultural service"); WIS. STAT. ANN. § 102.04 (West 1988 & Supp. 1994) (providing coverage for those "engaged in farming who on any 20 consecutive days during a calendar year employs 6 or more employees (sic)"); WYO. STAT. § 27-14-108 (Supp. 1994) (providing an exemption for agricultural labor that is within its statutory groupings).

32. W.VA. CODE § 23-2-1(b)(2) (1985). *See supra* note 31 for additional examples of exclusions.

wages in the past year.[33] The narrower detailed exclusion functions to exclude primarily small family-operated farms from workers compensation provisions, while requiring the remainder of agricultural employers to comply with the workers compensation statute.

Both categories of excluding employees engaged in agricultural activity lead to definitional problems.[34] Courts must determine whether the activity which gave rise to the injury was "agricultural activity" as defined by the statute.[35] This can be especially difficult when the activity falls between agriculture and commercial enterprise, as in large agribusiness.[36] Determining the scope of the exemption can also be troublesome when the employee's duties are both agricultural and nonagricultural in nature.[37]

B. THEORIES FOR THE INITIAL AGRICULTURAL EXEMPTION AND ITS PRESERVATION

Several theories for excluding agriculture from workers compensation laws have been identified.[38] One identified theory is that farm labor is not hazardous.[39] A second theory is that the exclusion of agriculture was necessary to overcome political opposition to the passage of the first workers compensation acts.[40] A third theory is that agricultural employers would be unable to administer the details associated with workers compensation laws.[41] The difficulty for the agricultural employer to pass on the cost of workers compensation coverage to consumers is a fourth theory for excluding agriculture.[42] However, using these theories

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33. OKLA. STAT. ANN. tit. 85, §§ 2.1, 2.2 (West 1992). *See supra* note 31 for further examples of the narrower category of exclusion.

34. HARL, *supra* note 27, § 20.03[4].

35. *E.g.*, Sellmer v. Ruen, 769 P.2d 577, 578 (Idaho 1989) (determining that worker was involved in an agricultural pursuit when injured lifting a bag of potatoes at a warehouse).

36. HARL, *supra* note 27, § 20.03[4]. *See* Cueto v. Stahmann Farms, Inc., 608 P.2d 535, 536 (N.M. 1980) (determining that an employee whose primary responsibility was to manufacture fertilizer for a commercial pecan farmer was an "agricultural worker" and thus covered under the exemption and not entitled to workers compensation benefits).

37. HARL, *supra* note 27, § 20.03[4]. *See* Frost v. Builders Service, Inc., 760 P.2d 43, 47 (Kan. Ct. App. 1988) (stating that the employee, whose duties included construction of farm buildings as well as tending to cattle, was not engaged in an agricultural pursuit and thus was covered by workers compensation).

38. HARL, *supra* note 27, § 20.03[1].

39. *Id. See* New York Central R.R. Co. v. White, 243 U.S. 188, 208 (1917) (defining excluded occupations as exceptionally simple and familiar).

40. Clifford Davis, *Death of a Hired Man – Agricultural Employees and Workmen's Compensation in the North Central States*, 13 S.D. L. REV. 1, 4 (1968). One commentator explained that "the exclusion of agricultural employees was a legislative compromise necessary to get the rural support necessary to enact the first compensation statutes." *Id.*

41. 1C ARTHUR LARSON, WORKMEN'S COMPENSATION LAW, § 53.20 (1993). *See also* Davis, *supra* note 40, at 4 (noting that necessary bookkeeping at the time initial workers compensation laws took effect may have caused difficulty for farmers).

42. LARSON, *supra* note 41, § 53.20. With other occupations, employers are able to adjust for the

to justify the current agricultural exemption from workers compensation has received sharp criticism.[43] Despite criticism of these theories, the agricultural exemption remains part of the statutory scheme in several states.[44]

C. EQUAL PROTECTION AND THE AGRICULTURAL EXEMPTION

Federal and state constitutional challenges to the validity of the agricultural exemption have been parallely framed and largely unsuccessful.[45] Agricultural employees claim they are not receiving equal protection[46] under the workers compensation statutes because of the differential classification of agricultural laborers from other laborers.[47] Courts have primarily used the permissive rational basis standard of review to examine the equal protection challenges and have upheld the

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cost of workers compensation coverage by raising the price of the product sold. *Id.*; *see also* Davis, *supra* note 40, at 7 (comparing agricultural pricing of product to manufacturers' ability to raise the cost of goods). In agriculture, the price is fixed by the market, not the cost of production of the farmer. *Id.* at 6. Workers compensation operates as an additional cost leaving the farmer with this extra cost of production at a competitive disadvantage. *Gallegos*, *supra* note 25, at 709.

43. LARSON, *supra* note 41, § 53.20. The theory that agriculture is not hazardous as a justification for initial exclusion of agricultural labor from workers compensation has since been rejected by courts and experts because of technical advancements and inherent dangerousness of agricultural employment. *Id.* The political compromise which may have been necessary for the initial enactment of workers compensation schemes has also been rejected as a justification for sustaining the agricultural exemption. Benson v. North Dakota Workmen's Compensation Bureau, 283 N.W.2d 96, 104 (N.D. 1979). As one court has stated, the "political expedience may have justified the exclusion . . . [b]ut, in the light of the passage of time, changed conditions . . . that cannot justify the exemption forever." *Id.* The theory concerning the inability of agricultural employers to administer the details of workers compensation provisions has also been rejected as a current justification for their exclusion. LARSON, *supra* note 41, § 53.20 (explaining that the difficulty in administration for small farmers cannot be used to justify the exclusion of employees of large agribusinesses which "have more in common with industry than with old-fashioned dirt farming"). Additionally, many statutory schemes exempt small employers and family farms. *See supra* note 31 (listing state statutory schemes with narrower exemptions). *See also Benson*, 283 N.W.2d at 106 (rejecting the size of the operation as a justification for exemption because many small, family owned businesses suffer the same burden and are not exempt from workers compensation as are agricultural employers). The inability of the farmer to pass on the additional cost of workers compensation coverage is rejected by experts as a justification for exclusion because the competitive disadvantage of cost absorption in the domestic market can be avoided by requiring that all agricultural employers provide workers compensation. LARSON, *supra* note 41, § 53.20. One commentator stated that "the increasing acceptance of voluntary [workers compensation] coverage by agricultural employers casts doubts on the argument . . . that these producers cannot bear the costs they have voluntarily assumed." Davis, *supra* note 40, at 8. The competitive disadvantage of cost absorption in the world market is expected to be slight because of the multitude of other factors which affect world agricultural prices. LARSON, *supra* note 41, § 53.20.

44. *See supra* notes 29-31 (listing states which exempt agricultural labor from workers compensation statutes).

45. *See infra* note 48 (examining federal and state equal protection challenges to the agricultural exemption from workers compensation schemes).

46. The United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. The parallel North Dakota constitutional provision provides: "[n]o . . . citizen or class of citizens [shall] be granted privileges or immunities which upon the same terms shall not be granted to all citizens." N.D. CONST. art. I, § 21.

47. *E.g.*, Otto v. Hahn, 306 N.W.2d 587, 589 (Neb. 1981).

legislation under both the federal and state constitutions[48] Using this lowest level of scrutiny, the court must determine if the legislature had a rational reason for enacting the statute which is reasonably furthered by the classification.[49] The courts' continuing use of low-level rational basis scrutiny to analyze equal protection challenges to the agricultural exemption has rendered such challenges ineffective.[50]

D. NORTH DAKOTA'S TREATMENT OF THE AGRICULTURAL EXEMPTION AND *BENSON V. NORTH DAKOTA WORKMEN'S COMPENSATION BUREAU*

The North Dakota Supreme Court heard its first challenge to the agricultural exemption from the workers compensation statute in 1919, in *State v. Hagan*.[51] In *Hagan*, the court rejected the argument that the workers compensation statute was unconstitutional under either the state or federal constitution because it covered certain occupations which were not hazardous, while exempting other more dangerous occupations, namely agriculture.[52] Using a rational basis scrutiny,[53] the court stated that "[t]he fact that the act excludes from its operation . . . agricultural employees (sic), . . . does not give rise to the constitutional objection of

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48. To illustrate, the United States Supreme Court, in *New York Central R.R. Co. v. White*, used a rational basis level of review to uphold the agricultural exemption to workers compensation against an equal protection challenge. 243 U.S. 188, 208 (1917). In *White*, the Court determined that the legislation, which only provided coverage for hazardous employment, did not create an arbitrary classification by excluding farm labor from the hazardous employment definition since farm labor may reasonably be considered "patent, simple, and familiar." *Id.* More recently, an Indiana court also upheld the agricultural exemption using rational basis review in *Collins v. Day*. 604 N.E.2d 647, 652 (Ind. Ct. App. 1992). In *Collins*, the court noted the legislation was presumptively valid and conceivable goals of the legislature were rationally related to the exclusion of agricultural employees. *Id.* The court speculated that the bases for the agricultural exclusion were administrative inconvenience, the inability of farmers to pass additional costs on to consumers, and opposition to the original passage of workers' compensation. *Id.* at 651.

Several recent decisions which have used a rational basis analysis to reject federal and state equal protection challenges to agricultural exemptions from workers compensation are: Sellmer v. Ruen, 769 P.2d 577, 579 (Idaho 1989); Eastway v. Eisenga, 362 N.W.2d 684, 689 (Mich. 1984); Hammond v. Hager, 503 P.2d 52, 57 (Mont. 1972); Otto v. Hahn, 306 N.W.2d 587, 592 (Neb. 1981); Cueto v. Stahmann Farms, Inc., 608 P.2d 535, 536 (N.M. Ct. App. 1980); Baskin v. Worker's Comp., 722 P.2d 151, 157 (Wyo. 1986). *See also supra* note 10 (explaining the three levels of scrutiny used to review legislation in equal protection challenges).

49. *See* Benson v. North Dakota Workmen's Compensation Bureau, 283 N.W.2d 96, 99 (N.D. 1979) (explaining that legislative classifications are upheld if they bear some reasonable relationship to a legitimate purpose). Under a rational basis scrutiny, there is also a presumption that the legislation is constitutional and will only be invalidated if it creates a patently arbitrary classification. *Id.* at 98-99.

50. Other decisions which have rejected state constitutional equal protection claims against the agricultural exemption from workers compensation schemes using rational basis scrutiny are: Anaya v. Industrial Comm'n, 512 P.2d 625, 626 (Colo. 1973); Ross v. Ross, 308 N.W.2d 50, 53 (Iowa 1981).

51. 175 N.W. 372 (N.D. 1919).

52. State v. Hagan, 175 N.W. 372, 379 (N.D. 1919).

53. While the court did not specify a particular level of constitutional review, its use of terms such as "arbitrary" and "unreasonable" are consistent with rational basis scrutiny. *See supra* note 10 (explaining the application of rational basis scrutiny)

unreasonable and arbitrary discrimination as a matter of law."[54] Subsequent North Dakota cases did not raise equal protection issues, but concerned the scope of the agricultural exemption and coverage under the workers compensation act.[55] In the 1970s, four attempts in the North Dakota legislature failed to eliminate the agricultural exemption from workers compensation or change it to a narrower, more detailed exclusion.[56]

However, after years of immutability, a majority of the North Dakota Supreme Court expressed a marked change in analysis used by courts examining equal protection challenges to the agricultural exemption to workers compensation.[57] In *Benson v. North Dakota Workmen's Compensation Bureau*,[58] a majority of the court used an intermediate level of review, not rational basis, to scrutinize a federal and state equal protection challenge to the agricultural exclusion.[59] The three-Justice *Benson* majority determined that excluding agricultural laborers from workers compensation denied them a benefit given to other workers similarly situated—sure and certain relief for injuries sustained on the job.[60] Under the intermediate level of review, the differential classification of employees under the Workers Compensation Act must closely correspond with the purpose of the legislation.[61]

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54. *Hagan*, 175 N.W. at 379.

55. *E.g.*, Lowe v. North Dakota Workmen's Compensation Bureau, 264 N.W. 837, 839-40 (N.D. 1936) (defining agriculture in general, ordinary language, thus workers injured while engaged in threshing were covered by the exemption); *see also* Burkhardt v. State, 53 N.W.2d 394, 400 (N.D. 1952) (noting that a worker killed while constructing a farm building was not engaged in an agricultural pursuit, but rather was an independent contractor); Kipp v. Jalbert, 110 N.W.2d 825, 827, 829 (N.D. 1961) (stating that an employee hired to dismantle a barn was not performing an agricultural service, but was not covered by workers compensation because he was a casual employee); Morel v. Thompson, 225 N.W.2d 584, 588 (N.D. 1975) (concluding that a beekeeping operation and honey manufacturer was not engaged in agriculture, and thus was subject to the workers compensation law).

56. H.B. 1153, 42d Cong. (N.D. 1971) (proposing to eliminate "agriculture" from the exceptions to the definition of "hazardous employment"). Three Senate bills also proposed to change the agricultural exemption from a total exclusion to exceptions for farmers and employees engaged in exchange labor and immediate family members; otherwise, agricultural employees were to be covered on the same terms as other hazardous employment. S. 2149, 43d Cong. (N.D. 1973); S. 2034, 44th Cong. (N.D. 1975); S. 2547, 45th Cong. (N.D. 1977).

57. 283 N.W.2d 96 (N.D. 1979).

58. Benson v. North Dakota Workmen's Compensation Bureau, 283 N.W.2d 96 (N.D. 1979).

59. *Id.* at 99. The court also noted that in equal protection challenges the court has the duty to ensure that legislative classifications have a basis for the differential treatment and that those persons similarly situated are treated similarly. *Id.* at 103.

60. *Id.* at 99. The court relied on Herman v. Magnuson, 277 N.W.2d 445, 454 (N.D. 1978), where an intermediate level of scrutiny to examine an equal protection challenge to statutory notice provisions was used. *Herman*, 277 N.W.2d at 454. The *Benson* court drew a parallel between the notice provisions and the agricultural exemption because both functioned as a limitation of remedies. *Benson*, 283 N.W.2d at 99. The court stated "[t]he complete exclusion of agricultural employees from workmen's compensation not only deprives the farm worker of a convenient remedy, it also limits his remedy to a common-law tort action." *Id.*

61. *Benson*, 283 N.W.2d at 99. There has been no "bright line test for determining when the

After noting that the Workers Compensation Act gives a purpose for the entire statutory scheme, but no particular purpose for the agricultural exemption itself,[62] the *Benson* court examined common theories for excluding agricultural laborers from workers compensation.[63] The majority also relied upon *Gutierrez v. Glaser Crandell Co.*,[64] a Michigan case which found an exemption for agricultural employees from its workers compensation law to be violative of its equal protection clause using what it called intermediate scrutiny.[65] Finding the Michigan case persuasive, under intermediate scrutiny the *Benson* majority found no correspondence between the stated purpose of the law—which is to provide definite relief to injured workers—and classifying agricultural employees differently.[66] To emphasize, the court stated that no distinctions exist "between agricultural employees and nonagricultural employees in relation to the risk of injury from employment."[67] Nor did the court find a close correspondence between legislative goals under common purpose theories and the agricultural exemption.[68] Thus, the three-Justice *Benson* majority declared the agricultural exemption to workers compensation violative of North Dakota equal protection guarantees.[69] However, because the North Dakota constitution requires four justices to concur in a judgment of unconstitutionality to strike down the statute, the agricultural exemption remained.[70]

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rational basis test or the intermediate standard should apply." Hanson v. Williams County, 389 N.W.2d 319, 325 (N.D. 1986). *See supra* note 10 (explaining the three levels of constitutional review).

62. *Benson*, 283 N.W.2d at 103.

63. *Id.* at 104-05. When the legislature does not give an expressed purpose for a law, courts will consider purposes consistent with its provisions and those purposes most probable. *Id.* at 103.

64. 202 N.W.2d 786 (Mich. 1972), *overruled by* Eastway v. Eisenga, 362 N.W.2d 684 (Mich. 1984).

65. Gutierrez v. Glaser Crandell Co., 202 N.W.2d 786, 794 (Mich. 1972) (Kavanagh, J., concurring). Interestingly, the court used two different levels of review in the challenge to the agricultural exemption; rational basis to uphold the workers compensation scheme, and strict scrutiny to strike down the exemption of agricultural employees. *Id.* The *Benson* court referred to this dual review as intermediate scrutiny. *Benson*, 283 N.W.2d at 102-03.

66. *Benson*, 283 N.W.2d at 107.

67. *Id.*

68. *Id. at 105.* The court rejected the theory that farm work is not hazardous, noting that to describe "modern day farming . . . nonhazardous defies reality." *Id.* The court also rejected the theory that the political compromise necessary for the initial passage of workers compensation serves as a justification for current exclusion of farm laborers. *Id.* at 104. A third theory rejected by the court was that the "closely knit community of relatives and friends" would care for each other's injuries. *Id.* at 105. The court noted that it would be unwise and unlikely for migrant workers to count on such care. *Id.* The court also rejected the fourth theory that an increased cost to agricultural employers could justify exemption of their employees. *Id.* at 106. *See supra* notes 38-43 and accompanying text (scrutinizing possible theories for the agricultural exemption from workers compensation).

69. *Benson*, 283 N.W.2d at 107. The court based its decision solely on North Dakota constitutional provisions. *Id.*

70. N.D. CONST. art. IV, § 4.

III. LEGAL ANALYSIS

In *Haney v. North Dakota Workers Compensation Bureau*,[71] the court returned to the rational basis level of review to scrutinize a state-based equal protection challenge to the agricultural exclusion to workers compensation.[72] However, the court noted that it is not clearly defined when to use rational basis or an intermediate level of review in equal protection challenges to legislation.[73] Therefore, to make its determination of the appropriate level of review, the court examined the essence of the challenged statute.[74]

The *Haney* court found that workers compensation benefits were economic in nature.[75] To support this conclusion, the court underscored aspects of the legislative scheme that were economic, such as collecting a tax from employers and authorizing distribution of funds to injured employees.[76] Because most past decisions involving economics used rational basis scrutiny, the majority's characterization of the agricultural exemption as economic triggered the use of the lowest level of scrutiny.[77] The court's use of rational basis to examine the agricultural exemption aligned it with jurisdictions nationwide, but marked a dramatic shift from the *Benson* analysis.[78]

The dissent disagreed with the majority's characterization of the agricultural exemption as economic legislation.[79] Arguing that safety is not just a matter of economics, the dissent stressed that workers compensation concerns an important substantive right.[80] The dissent stated that denying recovery for agricultural employees' work-related injuries on the same basis as other employees "clearly affects an important substantive right, triggering application of the close correspondence test," thus making the intermediate level of review proper.[81]

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71. 518 N.W.2d 195 (N.D. 1994).

72. Haney v. North Dakota Workers Compensation Bureau, 518 N.W.2d 195, 200 (N.D. 1994).

73. *Id.* at 197-98. *See also* Hanson v. Williams County, 389 N.W.2d at 323-25 (N.D. 1986) (discussing the three levels of review used in equal protection challenges to legislation and stating the court "has not been able to establish a bright line test for determining when the rational basis test or the intermediate standard should apply").

74. *Haney*, 518 N.W.2d at 199.

75. *Id.* The Haney majority explained that in North Dakota, the court has applied the rational basis test to "statutory classifications which involve economic or social matters." *Id.* at 198.

76. *Id.* at 199.

77. *Id.* at 200. Rational basis scrutiny is also generally used to scrutinize equal protection challenges involving social welfare legislation. *Id.* at 199.

78. *See supra* notes 48, 50 and accompanying text (discussing other jurisdictions which have used rational basis to uphold the agricultural exemption from workers compensation statutes).

79. *Haney*, 518 N.W.2d at 205 (Erickstad, Surrogate J, dissenting).

80. *Id. See Hanson*, 389 N.W.2d at 325 (stating that the "right to recover for personal injuries is an important substantive right" which normally warrants the close correspondence test).

81. *Haney*, 518 N.W.2d at 205 (Erickstad, Surrogate J, dissenting).

The disagreement between the *Haney* majority and dissent regarding the proper level of review is evidenced in the two varying interpretations of *Lee v. Job Service North Dakota*,[82] which was used by both to support their conclusions regarding the appropriate review standard.[83] In *Lee*, the court used rational basis scrutiny to review and deny an equal protection challenge to a statute which disqualifies full-time students from receiving unemployment benefits.[84] In determining that the rational basis test, not an intermediate level of review, was appropriate, the *Lee* court distinguished unemployment benefits, which were a "matter of legislative grace," from workers compensation benefits, which involved surrendering the right to sue in order to have certain relief from the fund.[85] The *Haney* majority argued that in *Lee*, workers compensation was distinguished because the important substantive right at issue was the right to sue, not the right to certain relief.[86] Thus, because the agricultural exemption actually preserves the right of the injured farm employee to sue for injuries, the exclusion did not deny a substantive right.[87]

The *Haney* dissent strongly rejected the majority's interpretation of *Lee*.[88] The dissent argued that *Lee* expressly distinguished unemployment benefits from workers compensation benefits because recovery for personal injuries warrants the use of an intermediate level of review.[89] Thus, the *Haney* dissent concluded that *Lee* dictates use of the close correspondence test and not the rational basis test.[90]

After determining the rational basis standard of constitutional review the proper application, the *Haney* court found that the agricultural exemption was not an arbitrary classification and was reasonably designed to achieve the stated purposes of the legislation.[91] Because

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82. 440 N.W.2d 518 (N.D. 1989).

83. Lee v. Job Service North Dakota, 440 N.W.2d 518 (N.D. 1989). *Compare Haney*, 518 N.W.2d at 200 (using *Lee* as an example of rational basis scrutiny by the majority) *with Haney*, 518 N.W.2d at 205 (Erickstad, Surrogate J., dissenting) (using *Lee* to explain that unemployment benefits are distinguishable from workers compensation benefits by the dissent).

84. *Lee*, 440 N.W.2d at 520.

85. *Id.* at 519.

86. *Haney*, 518 N.W.2d at 200.

87. *Id.* Employees that are covered under workers compensation are barred from bringing civil actions, subject to narrow exceptions, because workers compensation is to be an exclusive remedy. N.D. CENT CODE § 65-01-01 (1985 & Supp. 1993).

88. *Haney*, 518 N.W.2d at 205 (Erickstad, Surrogate J., dissenting).

89. *Lee*, 440 N.W.2d at 519. The *Lee* court stated that "[t]he success of Lee's argument depends on whether unemployment benefits are an important substantive right on par with the right to recover for personal injuries . . . and thus subject to the intermediate standard of review." *Id.*

90. *Haney*, 518 N.W.2d at 205 (Erickstad, Surrogate J., dissenting).

91. *Id.* at 201, 202. The court noted that there is no stated purpose in the workers compensation scheme for the exclusion of agricultural employees, and that it is proper to consider unarticulated purposes. *Id.* at 202.

workers compensation was legislatively created, the court stated that it is within the legislature's power to place reasonable limits upon its coverage by exempting agriculture.[92] The court set forth several possible purposes, which it deemed reasonable, that could have been offered by the legislature for excluding agricultural workers.[93] For example, the court speculated that the legislature may have wanted to avoid any negative impacts upon the financial situation of the farming industry.[94] The legislature may also have intended to shield the agricultural employer from the administrative hassles associated with compliance of workers compensation.[95] The court found these possible purposes reasonably related to the exclusion of agricultural employees and sufficient to justify the rational basis standard of review.[96] Thus, the court determined the exemption of agricultural employees was consistent with constitutional equal protection guarantees.[97]

The dissent, however, argued that under the close correspondence test the exemption of agricultural employees violated equal protection guarantees.[98] The dissent specifically disagreed with the argument that the high cost of workers compensation premiums dictated the exemption of agricultural employees,[99] asserting instead that a goal of cost savings did not closely correspond with an exemption applied only to agricultural employers and not to other employers similarly situated.[100] To uphold the exemption, the dissent would have required a showing that the burdens imposed on agricultural employers by requiring them to pay workers compensation premiums affect them more harshly than other employers in a similar position.[101] The dissent further argued that

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92. *Id.* at 202. *See* Kavadas v. Lorenzen, 448 N.W.2d 219, 223 (N.D. 1989) (stating that in rational basis analysis, the legislation is to be upheld unless it is "patently" arbitrary or has no reasonable relationship to the governmental purpose).

93. *Haney*, 518 N.W.2d at 202. The court noted that there is no stated purpose in the workers compensation scheme for the exclusion of agricultural employees, and that it is proper to consider unarticulated purposes. *Id.*

94. *Id.* The court noted that in addition to the purpose of the entire workers compensation law, which is to provide sure and certain relief, there may be an unarticulated purpose for the exclusion of agricultural employees. *Id.*

95. *Id.*

96. *Id.* In a concurrence, Chief Justice VandeWalle stated that the legislature is only required to be reasonable, not logical, in reference to the hazardousness of agriculture. *Id.* at 204 (VandeWalle, C.J., concurring). The Chief Justice further stated that it would be wise to eliminate the agricultural exemption, but that it was "essentially a legislative matter, not a judicial matter." *Id.* at 203.

97. *Id.* at 202.

98. *Haney*, 518 N.W.2d at 209 (Erickstad, Surrogate J., dissenting).

99. *Id.* at 206.

100. *Id.* The North Dakota Constitution prohibits the granting of privileges to one particular class of citizens. N.D. CONST. art. I, § 21. The dissent noted that other small business, such as small grocery stores and garages, were also adversely affected by the high cost of workers compensation but were not given the privilege of exemption. *Haney*, 518 N.W.2d at 206 (Erickstad, Surrogate J., dissenting).

101. *Haney*, 518 N.W.2d at 207 (Erickstad, Surrogate J., dissenting). The dissent relied upon

fewer states exempt agricultural employees than did fifteen years ago, indicating a trend towards mandatory coverage for agricultural employees under workers compensation laws.[102] The dissent concluded that none of the possible legislative purposes closely corresponded to the exemption of farm laborer and thus, the exclusion violated equal protection guarantees.[103]

IV. IMPACT

The *Haney* decision reflects settled law for many agriculture employers. Agricultural employers remain susceptible to tort actions from injured workers.[104] Although agricultural employers are free to purchase individual liability insurance policies or to elect workers compensation coverage,[105] the success of voluntary programs has been difficult

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Benson v. North Dakota Workmen's Compensation Bureau, where that court advocated the use of a balancing test to determine a fair distribution of burdens and benefits imposed upon the classes drawn by legislation. *Id.* (citing Benson v. North Dakota Workmen's Compensation Bureau, 283 N.W.2d 96, 106 (N.D. 1979)). The *Haney* dissent was especially concerned with an agricultural employee being unable to recover for a substantially similar injury simply because of the type of the employment. *Id.*

102. *Id.* at 208. The dissent explained that the number of states which have the agricultural exemption has fallen from 39 to 17 in the period since *Benson* was decided in 1979, and that "[b]y 1992, forty-five states had some form of compulsory coverage for agricultural workers." *Id.* Research indicates that as of 1994, only nine states exempt agricultural workers, which is fewer than the number exempting farm labor in 1979. *See supra* note 29 (listing the nine states which exclude farm labor from its workers compensation statutes).

103. *Haney*, 518 N.W.2d. at 209 (Erickstad, Surrogate J., dissenting). In a separate dissent, Justice Meschke argued that the close correspondence test should be used because the agricultural exemption involved an improper wealth-based classification. *Id.* at 213 (Meschke, J., dissenting). Justice Meschke argued that the exclusion leaves a politically powerless group without a remedy for their injuries and "benefits politically powerful special interests." *Id.*

104. *See* Eastway v. Eisenga, 362 N.W.2d 684, 691 (Mich. 1984) (Levin, J., dissenting) (noting that requiring workers compensation coverage operates to protect agricultural employers from personal injury actions). *See also Gallegos*, *supra* note 25, at 724 (discussing the disappearance of tort liability for agricultural employees by elimination of the agricultural exemption from workers compensation).

105. N.D. CENT. CODE § 65-04-29 (Supp. 1993). The relevant statute provides that any employer exempt from mandatory coverage under 65-01-02 may elect to obtain workers compensation by paying the premiums and "is not liable to respond in damages at common law." *Id.*

to assess.[106] However, as farming becomes more industrialized, jobs connected with the business end of the enterprise have increasingly been found to lie outside the scope of the exemption.[107] Thus, as the industry moves further toward commercialization, agribusiness employers may have difficulty relying on the agricultural exemption to workers compensation relieving them from providing coverage.[108]

For agricultural employees, the *Haney* decision reflects settled law–that a civil suit may be their only method of recovery for injuries received while on the job.[109] In a tort action where fault is an issue, comparative fault may make a full recovery for injuries difficult, if not impossible, for the agricultural employee.[110] Recovery will be particularly difficult for migrant agricultural laborers because many lack the resources to gain access to the court system.[111] Additionally, tort judgment collections can also be difficult because of the insolvency or limited resources of the employers thus leaving employees with no practical recourse for injuries.

However, the court's continuing use of rational basis scrutiny involving legislative classifications can have significant implications for other statutory groups as well. Using the deferential, rational basis scrutiny usually leads to the court upholding the statute, in what one commentator calls the judicial underenforcement of constitutional norms.[112] The practice of not applying heightened scrutiny in equal protection challenges allows for some constitutionally questionable

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106. *Haney*, 518 N.W.2d at 207 n.2 (Erickstad, Surrogate J., dissenting). Justice Erickstad's dissent discussed the difficulty in analyzing the viability of voluntary workers compensation coverage by agricultural employers because employers often dropped coverage after a claim was made to avoid a rate increase. *Id. See also* LARSON, *supra* note 41, § 53.20 (noting that insurance coverage may not always act as immunity from tort suits as elective workers compensation coverage does).

107. *See* Holguin v. Billy The Kid Produce, Inc., 795 P.2d 92, 95 (N.M. Ct. App. 1990) (determining that an employee's duties of sorting, sacking, and loading onions were not connected to cultivation, thus rendering the agricultural exemption to workers compensation inapplicable).

108. N.D. CENT. CODE § 65-04-12 (1985). The statute imposes penalties on employers for failing to pay workers compensation premiums when the employer is required to do so. *Id.*

109. *Gallegos, supra* note 25, at 706.

110. N.D. CENT. CODE § 32-03.2-02 (Supp. 1993). The North Dakota comparative fault statute provides that contributory fault of the party bringing the action bars recovery for injuries if "the fault was as great as the combined fault of all other persons who contribute to the injury." *Id.* Contributory fault reduces the amount of recovery the injured party is entitled to collect by the percentage the injured party is found to be at fault. *Id.*

111. *See Haney*, 518 N.W.2d at 212-13 (Meschke, J., dissenting) (arguing that the agricultural exemption is a "wealth-based classification that discriminates against a politically powerless and unorganized underclass of farm laborers"). While there is federal law that covers migrant workers in safety of health, housing, and motor vehicles, it does not provide specific protection for injuries received on the job. 29 U.S.C. §§ 1821-1841 (1987).

112. Stephen F. Ross, *Legislative Enforcement of Equal Protection*, 72 MINN. L. REV. 311, 321 (1987). Ross states that using rational basis scrutiny precludes a meaningful equal protection analysis of the statute. *Id.* at 319.

statutes to remain intact.[113] Using this practice of judicial underenforcement, the majority upheld the agricultural exemption to workers compensation in *Haney*.[114] The court's reluctance to use the intermediate level of scrutiny in the *Haney* decision demonstrates the difficulty facing those raising equal protection challenges to legislative classifications in the future.

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113. *Id.* at 321. Ross argues that by narrowly defining which types of interests are to be protected by heightened scrutiny, courts use rational basis scrutiny to avoid deciding cases it "feels institutionally incapable of addressing." *Id.* at 318.

114. *See supra* note 97 (quoting Chief Justice VandeWalle, who stated that change in the agricultural exemption should come from the legislature, not the court).