OIA 11-6-87

IN THE SUPREME COURT OF FLORIDA

BERTHA PULIDO DE AYALA, Individually and as Personal Representative of the ESTATE of MAXIMIANO AYALA, Deceased, and the children of MAXIMIANO AYALA, Deceased by their next friend, BERTHA PULIDO DE AYALA,

Petitioners,

vs.

FLORIDA FARM BUREAU CASUALTY INSURANCE CO. and STEVE's HARVESTING, INC.,

Respondents.

_____/

CASE NO: 70,308

APPELLATE NO: 85-1588

AMICUS CURIAE
BRIEF OF UNITED FARM WORKERS OF AMERICA, AFL-CIO, IN SUPPORT OF PETITIONERS

ON APPEAL FROM THE ORDER OF THE

FOURTH DISTRICT COURT OF APPEAL

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Ye shall have one manner of law, as well
for the stranger as one of your own country
Leviticus 24:22

INTRODUCTION

This appeal presents issues of profound importance to farmworkers in this state, so many of whom are aliens from non-Canadian countries, and so many of whom have nonresident dependents. Agricultural work is one of the most dangerous of occupations, 1/ and of course, one of the most basic to societal well-being and prosperity. The arbitrary denial to substantial numbers of Florida farmworkers and their dependents of any adequate right of recovery for the most serious of work-related accidents cannot be countenanced under the constitution of this state, or that of the United States. In the interest of securing this elementary protection for farm workers in this state, amicus curiae United Farm Workers of America, AFL-CIO ("UFW" or "UNION") urges this honorable Court to affirm the judgment of the trial Court below, which held Section 440.16 (7), Fla. stat. to be unconstituional, and reverse the District Court of Appeal, which upheld the statute. 501 So. 2d 1346 (1987).

This brief will focus on two constitutional infirmities present in the statute: 1) its effective bar to access to the judiciary for redressing a recognized cause of action, violative of Article I, section 21 of the Florida Constitution; 2) its discrimination against certain non resident aliens

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1/ Report of the National Council on Safety and Health, 1971.

a) without a rational basis for doing so, and b) without authority for doing so.

The Court of Appeal's cursory analysis of these issues is fatally flawed, for several reasons.

First, the Court on the one hand recognized that the issue of the constitutionality of Section 440.16 (7) had never been directly addressed, yet on the other hand, found some support for its holding in Burton v. Villwork, 477 So. 2d. 596, 597 (Fla. 4th DCA 1985), which merely recited the existence of the $1,000 limitation, without placing it under any critical scrutiny, let alone that of constitutional magnitude.

Next, it declared that the right to compensation is not fundamental, and concluded a fortiori that the statute does not violate the equal protection or due process clauses. Yet the Court did not even subject the provision to a rationality test, which as explained infra, the statute cannot pass. 501 So. 2d at 1348.

Finally, and most profoundly, the Court erroneously declared, without citation to authority, that the pure legal issue of the constitutionality of the statute under Article 1, section 21 of the state Constitution was not before it because it was not addressed below. 501 So. 2d at 1348. The issue was raised in the pleadings submitted to the trial court (appendix to Petitioners' Initial Brief, p. A. 3, Para. 12). Thus, the Court of Appeals' failure to analyze this issue, which is a distinct and significant basis for invalidating the statute not considered by the state courts upon which the court below relied (Pedrazza v. Sid Fleming Contractor, Inc. 94 N. M. 59,

607 P. 2d 597 (1980); Jalifi v. Industrial Comm'n of Arizona, 132 Ariz. 233, 644 P. 2d 1319 (Ariz. Ct. App.) appeal dismissed 459 U.S. 899 (1982)), squarely conflicts with the established appellate principle that "(a) judgment must be affirmed . . . if it is legally justified for any reason, even one which was not adopted "by the court appealed from. Henriquez v. Publix Super Markets, Inc. 434 So. 2d 53 (Fla. App. 3 Dist. 1983); Eagle Family Discount Stores v. Board of County Commissioners, 403 So. 2d 558, 560 (Fla. App. 3 Dist. 1981); City of Coral Gables v. Puiggros, 376 So. 2d 281, 284, and n.3 (Fla. App. 3 Dist. 1979). There is therefore no valid ground to evade a decision on this issue.

SUMMARY OF ARGUMENT

This brief focuses on two constitutional infirmities present in the statute: 1) its effective bar to access to the judiciary for redressing a recognized cause of action, violative of Article I, section 21 of the Florida Constitution; 2) its discrimination against certain nonresident aliens a) without a rational basis for doing so, and b) without authority for doing so.

The Florida Constitution specifically mandates that the courts shall be open to every person for redress of any injury; in keeping with this mandate, the Legislature cannot close such access to the courts without providing a reasonable alternative. In the instant case, the Legislature took away Petitioners' right to sue in tort on a wrongful death cause of action without providing a reasonable alternative through the workers' compensation system. The $1,000 death benefit offered

to petitioners is totally inadequate, thus depriving them of any meaningful remedy. This denial of Petitioners' right is not justified by any valid reason, and is constitutionally inadequate, arbitrary and unreasonable.

The statute also violates the Equal Protection clause of the state and federal constitutions, as it discriminates against certain nonresident aliens without a rational basis for doing so. The state may not classify aliens. Once the state decides to provide a benefit to aliens, it must distribute that benefit in accordance with the equal protection clause. There is no rational basis for the state to deprive nonresident dependents from Mexico of benefits, while granting them to such dependents from Canada.

I. THE $1000 LIMIT ON DEATH BENEFITS RECOVERABLE BY NON-CANADIAN NON-RESIDENT ALIEN DEPENDENTS UNFAIRLY DEPRIVES SUCH DEPENDENTS OF THEIR RIGHT TO OBTAIN REDRESS FOR PERSONAL INJURIES.

A. THE FLORIDA CONSTITUTION REQUIRES THAT PETITIONERS BE GRANTED A RIGHT TO AN ADEQUATE RECOVERY.

Article I, section 21 of the Florida Constitution provides:

> The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

"This constitutional mandate has no counterpart in the federal constitution and derives its scope and meaning solely from Florida case law." Overland Construction Company, Inc. v. Sirmens, 369 So. 2d 572, 573 (Fla. 1979).

While the United States Supreme Court, [Duke Power Co.

v. Carolina Environmental Study Group, 438 U.S. 59,88 n. 32, 98 S. Ct. 2620, 2638 (1978)], and other state courts, [Johnson v. Star Machinery, 270 Or. 694, 530 P. 2d 53 (1974)] have indicated that they find no right in their respective constitutions to bring an action for damages, this state has taken a contrary view based upon Article I, section 21, referred to as an "open court" provision. 2/ The Florida Supreme Court has articulated stringent requirements that must be met by a legislature intent on abolishing extant causes of action:

> Where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. Section 2.01., F.S.A. the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an over-powering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.

Kluger v. White, 281 So. 2d 1, 4 (Fla. 1973). The commonlaw rights constitutionalized under Kluger are not only those in place as of July 4, 1776, as F.S.A. Section 2.01 literally provides, but have been held to be "designed for application to new conditions and circumstances." Overland, supra, 369 So. 2d at 573 n. 4.

2/ See discussion and comparison of the views of the states in Kenyon v. Hammer, 142 Ariz. 69, 688 P. 2d 961, 965-66 (Ariz. 1984).

Thus, contrary to respondents' contention (answer brief, pp. 35-37), the courts of this state have not taken the restrictive, time-bound view of the reach of Article 1, section 21 they advocate. As noted by petitioners (initial brief, p. 14), in Overland, this Court applied the "open court" provision to a cause of action that did not gain statutory recognition until 1975. The cause of action for wrongful death must also be afforded the protection of the "access to the courts" doctrine.

A statutory right to bring a wrongful death action has long been recognized in the state of Florida, see e.g. Benoit v. Miami Beach Electric Co., 96 So. 158 (Fla 1923). In the wrongful death contexts now covered by Workers' Compensation, that right to a tort action has been replaced by a reasonable alternative for most potential plaintiffs, and thus passes the Kluger text, 281 So. 2d at 4.

Illegal aliens have a clear right of access to the courts, Montoya v. Gateway Ins. Co., 168 NJ Super 100, 401 A. 2d 1102 (1979); Gutierrez v. Kent Nowlin Construction Co., 99 N.M. 394, 658 P. 2d 1121, 1130 (1981); Torres v. Sierra, 89 N.M. 441, 553 P. 2d 721 (1976) (wrongful death action by plaintiff's decendent, a nonredsident illegal alien from Mexico); Commercial Standard Fire v. Galindo 484 S.W. 2d 635 (Tex. Civ. App. 1972) (workers' compensation); Arteaga v. Literski, 83 Wis. 2d 128, 265 NW2d 148 (1978); Gates v. Rivers Construction Co., 515 P. 2d 1020 (Alaska, 1975); Peterson v. Neme, 281 SE2d 869 (Va 1981); Janusis v. Long, 284. Mass. 403, 188 N.E. 228 (1933); Rodney v. Interborough Rapid Transit Co., 149 Misc. 271, 267

N.Y.S.86 (1932). 3/

The Supreme Court of Wisconsin relied on a Wisconsin Constitutional provision (Article I, section 9) similar to Florida's article I, section 21, for its conclusion in Arteaga:

> Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

265 N.W.2d at 150.

The Court found that the unqualified use of "person" in the Constituion required a definition including all persons, not only citizens, or those lawfully admitted. Id.. The same interpretation governs coverage under Article I, section 21 of the Florida Constitution.

The New Mexico Court in Torres utilized the same theory--that "person" was an all-inclusive term-- in interpreting its wrongful death statute to be unqualified in scope, including within its embrace nonresident illegal aliens, 553 P. 2d at 724.

Respondents' myopic argument (answer brief, p.37) that only residents of this state are entitled to the protection of the open courts provision overlooks tha basic premise underlying personal injury law: the compensation for civil wrongs committed, and injuries incurred, within the confines of

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3/ The only case holding to the contrary, Coules v. Pharris, 212 Wis. 558, 250 N.W. 404 (1933). was overruled by the Supreme Court of Wisconsin in Arteaga, supra.

this state. Only Maximiano Ayala's death prevents the workers' compensation or personal injury action from being prosecuted by him directly, which he could undoubtedly have done had he lived. Since the accident and injury occurred in Florida, justice thus demands that this court,

> treat him as a human being, who, if wronged while within (its) jurisdiction in any personal or property right, may be redressed in our courts according to the laws of this state, giving such measure of compensation as we deem a proper equivalent for the wrong done.

Gutierez, supra, 658 P. 2d at 1130.

In other words, "[a]n illegal alien in the United States is entitled to the same rights to damages that a citizen has under the tort laws of the state and federal government." Id. Mr. Ayala's death must not be permitted to extinquish the rights he would otherwise have enjoyed had he suffered less severe injury.4/

From the above analysis, it must be concluded that Fla. Stat. Section 440.16 (7) effectively abolished the rights of petitioners (and all those similarly situated) to bring a wrongful death action, without providing for a reasonable alternative. The workers' compensation system generally passes muster under Article I, section 21 because it provides a quid pro quo to those who are directly affected by it. Wright v.

4/ Respondents argue that petitioners' potential third-party cause of action against other alleged tortfeasors negates its "open courts" argument (answer brief, pp. 33-35). Because a single injury may give rise to multiple causes of action does not make the elimination of any one of those causes of action any less violative of the constitution. This Court recognized,

Central Du Page Hospital Association, 63 Ill. 2d 313, 347 N.E. 2d 736, 742 (1976):

> . . . the employer assumed a new liability without fault but was relieved of the prospect of large damage judgments, while the employee, whose monetary recovery was limited, was awarded compensation without regard to the employer's negligence.

See New York Central v. White, 243 U.S. 188, 37 S. Ct. 247, 252-54 (1917).

In Kluger, the Florida Supreme Court found the above tradeoff acceptable since there were

> . . .adequate, sufficient, and even preferable safequards for an employee who is injured on the job, thus satisfying one of the exceptions to the rule against abolition of the right to redress for an injury.

281 So. 2d at 4.

As the subject statutory provision now stands, petitioners do not receive the benefit of that quid pro quo; $1000 does not even approach adequate compensation even under the workers' compensation system, let alone in a wrongful death action. Petitioners, and others like them, have not merely encountered a detour redirecting them from a wrongful death theory to a workers' compensation claim; they have been deprived of any meaningful remedy under any Florida law. This result is not

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Continued 4/ in Smith v. Department of Insurance, 507 So. 2d 1080, 1088-1089 (Fla. 1987), that paring down of certain elements of damages may not actually amount to abolition of causes of action, but nonetheless unconstitutionally limited redress of injuries. Certainly the effective elimination of a wrongful death action, and its substitue, workers' compensation, to the detriment of petitioners, qualifies as such an unconstitutional limitation. See text infra.

tolerable under Florida's "open court" constitutional provision.

The cases cited by repondents for the validity of this particularly restrictive and discriminatory provision are readily distinguishable.

In Sasso v. Ram Property Management, 452 So. 2d 932 (Fla.), appeal dismissed,. 469 U.S. 1030 (1984), Acton II v. Fort Lauderdale Hosp, 440 So. 2d 1282 (Fla. 1983) and Mahoney v. Sears, Roebuck & Co., 440 So. 2d 1285 (Fla. 1983), this Court was considering provisions that provided substantial medical and wage-loss benefits for injured (not deceased) workers that were in actuality claimed only to amount to less than full compensation. Whatever unfairness may have existed in terms of the amount of compensation was deemed to have been fairly traded for a rapid recovery that was certain.

In the case at bar, the legislature has declared what fair compensation will be for workers killed while on the job: $100,000. 5/ That is itself far less than a typical wrongful death recovery in a tort action. But people who find themselves in petitioners' circumstances have been denied even that value, since they were offered a mere $1,000 pittance along with the empty consolation of speed and certainty. For petitioners, unlike the workers in the cases cited above, there was no substantial value obtainable in exchange for the res-

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5/ As noted by petitioners (reply brief, p.5), the legislature has now provided at least an arguably adequate recovery for those who find themselves in similar circumstances in the future: $50,000.

triction on access to the courts.

B. RESPONDENTS HAVE NOT SHOWN THAT DEPRIVATION OF PETITIONERS' RIGHT TO AN ADEQUATE RECOVERY IS JUSTIFIED BY ANY VALID REASON, LET ALONE AN OVERWHELMING ONE.

The distinct nature of Article I, section 21 requires Florida courts to treat Petitioners' claims differently than New Mexicos's high court did in Pedrazza v. Sid Fleming Contractor, Inc., 94 N.M. 59, 607 P. 2d 597 (N.M. 1980), and the Connecticut Supreme Court of Errors did in Frasca v. City Coal Co. 116A. 189 (Conn. 1922), relied on by respondents (answer brief, pp. 16-17). The courts in those cases were not constrained by any constitutional provisions specifically directed toward preserving established causes of action. But this Court, along with other states with "open court" constitutional provisions (Alabama, Kentucky, Wyoming--see discussion in Kenyon, supra, 688 P. 2d at 965-66) must examine abolition of causes of action with a much higher degree of scrutiny, and skepticism. Respondents have offered no valid reason, let alone an "overpowering" one, for depriving petitioners of their right to recovery. 6/

Respondents argue that nonresident aliens may be discriminated against because 1) they are not subject to our laws, nor dependent upon our government, institutions and peoples; 2) the cost of living in foreign countries is less than in the United States; 3) they will not as likely become

6/Even if the reasons sufficed under equal protection analysis, (which, as will be seen infra, they do not), they cannot measure up to the standard enunciated in Kluger.

public wards as might residents who receive no benefits; and 4) awkward problems of proof and administration would be confronted by conferring benefits on nonresident aliens (respondents answer brief, pp. 43-44).

With respect to all the above rationalizations it remains a mystery why such objections would apply to nonresident Mexican aliens, and not their Canadian counterparts.

As we have seen, the fact that nonresident aliens are not generally subject to our laws does not bar them from access to remedies under American law in American courts. Of course, the decedent in this case certainly was subject to Florida and federal laws, and dependant on its institutions, since he had lived, paid taxes, and worked in the United States for approximately twenty-five years prior to his death. A similar statement could be made about petitioner Bertha Pulido de Ayala, who possesses a "green card", and has thereby made herself subject to American laws and institutions.

An illuminating way to address this issue is to reverse it: respondents, and many other agricultural employers are themselves dependent on labor from foreign countries. The importation of foreign labor into rural Florida, and other labor intensive agricultural communitites in the United States, has become thoroughly institutionalized. 7/ Thus, if the goal of discrimination under statutes like Section 440.16 (7) is to

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7/ See e.g., Bernstein, "Growers Still Addicted to Foreign Workers", Los Angeles Times, October 2, 1985, Business Section.

preserve benefits for residents and resident dependents, precisely the opposite will occur in Florida agriculture, where growers are provided a further incentive to seek out aliens who have left their families in their country of origin. And if the fundamental goal of workers' compensation is to enhance safety in the workplace, precisely the opposite would be tolerated in Florida agriculture, where it may be less expensive to pay minimal death benefits than to alleviate hazardous conditions. In short, this Court should not only ask if petitioners are dependent on our laws and institutions; this Court must also ask if respondents, who benefit from our laws, are attempting to free themselves from their obligations under applicable law. If it may be said that alien resident farmworkers are dependant on American institutions, then it must also be observed that their employers are dependent on such workers. When they are injured on the job, these workers and their dependents are entitled to the full measure of recovery the growers would be duty bound to provide American citizens. Otherwise, the employers stand to unjustly gain from their hiring policy, and they will redouble their efforts to maintain it. Since the growers, too, receive the protections of federal and Florida law, they must fully bear the burdens without regard to the alienage or residential status of their employees and their dependents.

The cost of living argument might arguably justify a substantial percentage recovery, such as that found in Jalifi v. Industrial Commission of Arizona, 132 Ariz. 233, 644 P. 2d 1319 (Ariz. Ct. App.) appeal dismissed 459 U.S. 899 (1982), and

that subsequently adopted by the Florida legislature, but it cannot explain the token recovery begrudgingly authorized by Section 44.16 (7). As petitioners note, the $1000 would not even cover the costs of a decent Christian Burial in Mexico (petitioners' answer brief, p. 12).

Respondents cite no facts or legislative findings to support their argument that resident aliens are more likely to become public charges than non-residents, and they can cite no facts relating to the case at bar. Of course, petitioners themselves receive no solace from this hardly "overpowering" contention. As noted in Wright, supra, 347 N.E. 2d at 742, it is the person being deprived of a right who must receive some benefit in return, as in the workers' compensation--tort trade-off. Here, where petitioners' basic state constitutional right have been eviscerated, it is no consolation to them that they are not likely to appear on American relief rolls.

Respondents do not elaborate on their makeweight argument relating to "awkward problems of proof and administration." They cite no such problems as possible hindrances to petitioners' full recovery in this case. Since the statute permits a $1000 recovery, the problems of proof (if by that phrase it is meant adduction of evidence at a workers' compensation proceeding) remain; only the just reward has been eliminated.

C. THE $1000 LIMIT ON RECOVERY IS CONSTITUTIONALLY INADEQUATE, ARBITRARY AND UNREASONABLE.

To this point, amicus has relied on common sense and

intuition for its contention that the $1000 limit on petitioners' recovery is inadequate. There is significant authority supportive of this argument.

Recently, a number of state legislatures, including Florida's have enacted various types of limitations on recovery in Medical malpractice and tort actions. The limitations most closely analogous to the facts in the case at bar are ceilings on total recovery, and ceilings on "non-economic" recovery (pain and suffering). This Court, in Smith v. Department of Insurance. supra., along with several others, have struck down such limitations:

Carson v. Maurer, 424 A. 2d 825 (N.H. 1980) (limitation of $250,000 on pain and suffering: violation of equal protection, since it unfairly places burden on most severely injured, while offering them no quid pro quo);

Wright v. Central Du Page Hospital Association, 63 Ill. 2d 313, 347 N.E. 736 ($500,000 limit on total recovery arbitrary; disavows reliance on quid pro quo, but distinguishes workers' compensation on that basis);

Arneson v. Olson, 270 N.W. 2d 125 (N.D. 1978) ($300,000 limit on total recovery violative of state and federal equal protection--no legislative factual basis for singling out medical profession for relief);

Baptist Hospital of Southeast Texas v. Barber, 672 S.W. 2d 296 (Tex. App. 1984) ($500,000 limit on non-medical damages--violative of equal protection, citing inter alia, Arneson; quid pro quo would strengthen statute's constitutionality);

Simon v. St. Elizabeth Medical Center, 355 N.E. 2d 903,

906-07 (dictum) ($200,000 limit on "general" damages, violative of state constitution and federal equal protection).

Those states that have upheld such limitations, 8/ and the United States Supreme Court's contribution to this issue, Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 98 S. Ct. 2620 (1978) 9/ all substantially rely on the "quid pro quo" elements to be found in the liability limitations schemes (even while disavowing their legal necessity), the considerable amounts that are recoverable thereunder, and the realistic ability to collect up to the limit, which might be lacking if recovery were unlimited.

In the case at bar, respondents have offered, and can offer, nothing approaching a quid pro quo to petitioners. They cannot seriously argue that they have offered petitioners a substantial sum in relation to the harm suffered; and here, there is already established a reasonable limit on recovery: $100,000. The Florida legislature had legitimately traded away petitioners' right to recover an unlimited sum by proceeding in

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8/ California--$250,000 limit on non-economic Damages, no limit on economic damages. Fein v. Permanente Medical Group, 38 Cal. 3d 137, 211 Cal. Rptr. 368, 695 P.2d 665 (1985). Indiana--$500,000 limit on total recovery--Johnson v. St. Vincent Hospital, 404 N.E. 2d 585, 1980. Indiana has an "open court" constitutional provision, but its supreme court has chosen to equate its language with that found in the federal due process clause, see 404 N.E.2d at 594, 598-99; Johnson therefore relies heavily on the Duke Power case, infra. As demonstarted in Smith, Kluger and Overland supra, this Court has interpreted the mandate of Article I, section 21 more expansively, vesting Florida litigants with rights of action.

9/ Duke Power involved a $560 million liability limit for nuclear power disasters, with an assumption that Congress would grant more assistance where the liabiltiy limit was exceeded, 438 U.S. at 90-93, 98 S. Ct. at 2639-40.

tort, in exchange for an easily provable (and ordinarily quickly collectible), but limited, workers' compensation claim. However, it has provided petitioners with nothing in exchange for discounting their award by 99% [see Chapman v. Dillon, 415 So. 2d 12, (Fla. 1982)]. Such a deprivation would not withstand constitutional scrutiny under any of the authority cited above, since it lacks any quid pro quo, invidiously and irrationally discriminates against nonresident aliens, and leaves them without any viable remedy.

II. FLA. STAT. 440.16 (7) VIOLATES THE EQUAL PROTECTION CLAUSE OF THE STATE AND FEDERAL CONSTITUTIONS.

A. FLORIDA'S EQUAL PROTECTION CLAUSE PERMITS NO DISCRIMINATION AGAINST ALIENS WITH RESPECT TO WORKERS' COMPENSATION.

Petitioners have already pointed out that Florida's constitutional equal protection clause (Article I, section 2) extends to all natural persons. While it specifically permits the ownership, inheritance, dispositon and possession of real property by "aliens ineligible for citizenship" to be regulated or prohibited by law, nothing in that clause, or any other language in the constitution, authorizes the legislature to single out aliens for disparate treatment with respect to workers' compensation awards. The main clause of Article I, section 2, must hold sway: petitioners may not be denied the protection of that provision.

B. THIS STATE IS NOT EMPOWERED TO DISCRIMINTE AGAINST ALIENS.

The statute in question also appears to tread upon territory which is the exclusive domain of the federal government. Section 440.16 (7) requires the state of Florida to discriminte against certain aliens in order to determine who is eligible for workers' compensation benefits. The United States Supreme Court admonished the states against adopting such a practice, observing that:

> the states enjoy no power with respect to the classification of aliens (citation). This power is "committed to the political branches of the federal Government."(citation). Although it is a routine and normally legitimate part of the business of the Federal Government to classify on the basis of alien status, . . . and to take into account the character of the relationship between the alien and the country . . ., only rarely are such matters relevant to legislation by a state (citations).

Phyler v. Doe, 457 U.S. 202, 225, 102 S.Ct. 2382, 2399, (1982)

See also cases collected in Local 512, etc v. NLRB, 795 F.2d 705, 718 n,12 (9th Cir. 1986). Respondents point to no valid reason for Florida to intrude upon the federal domain in applying its workers' compensation laws.

C. THIS STATE MAY NOT DISCRIMINATE IN FAVOR OF CANADIAN NONRESIDENT ALIENS TO THE DETRIMENT OF PETITIONERS.

As demonstrated above and in petitioners' briefs, respondents have cited no rational basis for discriminating against aliens generally. They have not even attempted to explain the legislative basis for permitting Canadian nonresident aliens a full workers' compensation recovery, while denying it to all others, including Mexicans. It is a

constitutional commonplace that while certain benefits are not required to be provided by the state, once they are, they must be distributed in accordance with the equal protection clause. Heckler v. Mathews, 104 S. Ct. 1387, 1394-95 (1984); Zobel v. Williams, 457 U.S. 55, 59-60, 102 S. Ct. 2309, 2312-13 (1982).

In the case at bar, full workers' compensation benefits are conferred upon Canadian nonresident alien dependents--and no other nonresident alien dependents. There simply is no rational basis for the state of Florida to deprive nonresident dependents from the United State' southern neighbor, Mexico, of benefits, while granting them to such dependents from its northern neighbor. Section 440.16 (7) must therefore be stricken as violative of the federal and state equal protection clauses.

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CONCLUSION

For all of the foregoing reasons, and for those stated in petitioners' briefs and their arguments below, amicus curiae UFW respectfully urges this Court to reverse the judgment of the court below.

Dated: September 23, 1987

Respectfully submitted,

LYONS, BEER, SCHNEIDER, CAMACHO
MACRI-ORTIZ & DUNPHY

By Ira L. Gottlieb
Ira L. Gottlieb

Dated: September 25, 1987

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CERTIFICATE OF SERVICE

I hereby certify that on this day of September, 1987, a true copy of the foregoing Amicus Curiae Brief was served on the other parties to this cause by first class mail addressed as follows:

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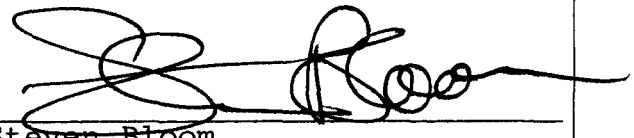

Steven Bloom