No.

IN THE

Supreme Court of the United States

JOHN DEVOS,
Petitioner,
v.
RHINO CONTRACTING, INC.,
AND
SPECIAL COMPENSATION FUND,
Respondents,
AND
RIVERVIEW HEALTH, BLUE CROSS BLUE SHIELD MN/BLUE PLUS, AND ALTRU HEALTH SYSTEM,
Intervenors,

On Petition for a Writ of Certiorari to the Supreme Court of Minnesota

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does a State's workers compensation statute violate Equal Protection when it treats Minnesota residents injured on the job in Minnesota differently based on whether the employer is located in North Dakota rather than any other State?

Where a Minnesota resident, whose payroll taxes are paid to Minnesota, is injured on the job in Minnesota, can the State of Minnesota deprive him of a common law cause of action, as well as deny him workers compensation benefits, by mandating that his exclusive remedy is in the workers compensation system of North Dakota because that is the home of the worker's employer?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner John Devos respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Minnesota in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Minnesota is reported at 940 N.W.2d 821 and included in the Appendix ("App.") at 3a–5a. The decision of the Minnesota Workers' Compensation Court of Appeals is unreported (App. 6a-20a). The Order and Findings on Remand of the Office of Administrative Hearings, Workers' Compensation Division, is unreported (App.

21a-28a). The earlier decision of the Minnesota Workers' Compensation Court of Appeals is unreported (App. 29a-41a). The original decision of the workers compensation administrative judge is unreported (App. 42a-50a).

JURISDICTION

The Supreme Court of Minnesota entered judgment on February 7, 2020. App. 3a. It denied rehearing on March 12, 2020. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The Fourteen Amendment to the U.S. Constitution provides in pertinent part:

> No state shall … deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

The U.S. Constitution's Commerce Clause provides in pertinent part:

> The Congress shall have power …
>
> To regulate commerce with foreign nations, and among the several states.

U.S. Const. art I, § 8, cl. 3.

The statutory provision involved provides:

> **Subd. 4. Out-of-state employment.** If an employee who regularly performs the primary duties of employment outside of this state or is hired to perform the primary duties of employment outside of this state receives an injury within this state in the employ of the same employer, such injury shall be covered within the provisions of this chapter if the employee chooses to forgo any workers' compensation claim resulting from the injury that the employee may have a right to pursue in some other state, provided that the special compensation fund is not liable for payment of benefits pursuant to section 176.183 if the employer is not insured against workers' compensation liability pursuant to this chapter and the employee is a nonresident of Minnesota on the date of the personal injury. …
>
> **Subd. 5b. North Dakota employers.** Notwithstanding the provisions of subdivision 4, workers' compensation benefits for an employee hired in North Dakota by a North Dakota employer, arising out of that employee's temporary work in Minnesota, shall not be payable under this chapter. North Dakota workers' compensation law provides the exclusive remedy available to the injured worker. For purposes of this subdivision, temporary work means work in Minnesota for a period of time not to

> exceed 15 consecutive calendar days or a maximum of 240 total hours worked by that employee in a calendar year.

Minn. Stat. § 176.041.

INTRODUCTION

John Devos was denied workers compensation benefits after being injured in the courts of his employment under a Minnesota statute that treats North Dakota employers differently than employees from every other state in the Union. Instead, Minnesota law makes North Dakota the exclusive source of a remedy for employees, like Devos, of a North Dakota company. No reciprocal arrangement that specially treats Minnesota employees working in North Dakota exists.

To be clear, if the company Devos worked for was located in any state other than North Dakota, Minnesota law makes clear that he is eligible for Minnesota benefits even if he received some benefits from another state. Minn. Stat. § 176.041(4). It is solely because his employer is located in North Dakota that he is treated differently. *See* Minn. Stat. § 176.041(5b).

STATEMENT OF THE CASE

A. Factual Background.

Petitioner John Devos, a resident and taxpayer of Minnesota, was injured on September 24, 2012, while at work for Defendant Rhino Contracting, Inc. in East Grand Forks, Minnesota. The injury to his femoral artery was serious, requiring him to be transported to a hospital for immediate surgery. App. 7a-9a.

While recovering, Devos received workers' compensation benefits through North Dakota's Workforce Safety and Insurance (ND WSI), the state's workers compensation program. App. 9a. Devos did not return to work for Rhino, and ND WSI ended Devos's disability and rehabilitation benefits on April 17, 2014, concluding that Devos had completed rehabilitation, even though Devos had continuing health issues that required further benefits. App. 9a.

Devos then sought continuing benefits under the Minnesota Workers' Compensation Act. When his application was denied because he was determined to be ineligible, this action commenced. App.9a.

Devos was originally hired by Rhino as a seasonal worker, applying for his original position across the border at Rhino's office in Grand Forks, North Dakota, 26 miles from Devos's home in Crookston, Minnesota. Rhino is an underground utilities contractor that constructs and digs lines for fiber optics, cable, telephone, gas, water, and sewer lines. It also has a separate business located in Minnesota. During the winter months, when the ground is frozen, Rhino lays off all but about five permanent employees. App. 8a.

In addition to hours spent working for Rhino in North Dakota, Devos put in more than 240 hours for Rhino in Minnesota during 2011, his first year of employment by the company. App. 8a. Under Minnesota law, that amount of time working in the state renders him a Minnesota employee eligible for benefits from that State's workers compensation benefits. Minn. Stat. § 176.041.

In December 2011, Devos was laid off by Rhino. Devos applied for North Dakota unemployment benefits and indicated that his unemployment in North Dakota was temporary in nature. Although he hoped that Rhino would call him back to work for the 2012 season, he had no assurances that his re-hiring would occur. App. 8a.

In March 2012, Devos received a call while at home in Crookston, Minnesota, from Steve Abbey, a co-owner of Rhino. Rhino offered to rehire him and asked him to report immediately to a job site. Until he was injured, Devos worked more often in North Dakota than Minnesota during 2012.

B. Statutory Scheme.

Minnesota adopted workers compensation in 1913 and "subjects almost all employers and employees to an essentially nonfault recovery system for accidents arising out of and in the course of employment." *Lambertson v. Cincinnati Welding Corp*., 257 N.W.2d 679, 684 (Minn. 1977).

The worker receives "guaranteed compensation for injury regardless of his own fault or the solvency of at-fault fellow employees, [but] the employee is limited to a fixed schedule of recovery and gives up any right to a common-law action against the employer." *Id*. at 684. The statute "is broadly remedial and … workers' compensation laws are to be construed to favor employee recovery of benefits." *Id*.

The statute recognizes a variety of instances in which the Minnesota workers compensation laws apply to injuries that occur out of state. These include instances where the employee usually works in

Minnesota but received the injury "while outside of this state in the employ of the same employer" and where a Minnesota resident is transferred outside the territorial limits of the United States as an employee of a Minnesota employer." Minn. Stat. § 176.041(2). An employee is also eligible for Minnesota benefits when "hired in this state by a Minnesota employer" but having received "an injury while temporarily employed outside of this state." *Id.* at § 176.041(3). Otherwise, out-of-state injuries are not within the ambit of the statute. *Id.* at § 176.041(5b).

A 2005 amendment creates special treatment for North Dakota employers. When an employee of a North Dakota employer, hired in that state, receives an injury while working temporarily in Minnesota, the Minnesota statute declares that "North Dakota workers' compensation law provides the exclusive remedy available to the injured worker." *Id.* at § 176.041(5b). Temporary work in Minnesota is defined as fewer than "15 consecutive calendar days or a maximum of 240 total hours worked by that employee in a calendar year." *Id.*

C. Proceedings Below.

1. Office of Administrative Hearings, Workers' Compensation Division.

When Devos filed his original request for workers compensation benefits in Minnesota, the Special Compensation Fund, as a government-operated insurer for employers uninsured in Minnesota, successfully moved to dismiss the matter, asserting that Devos was ineligible for benefits under Minn. Stat. § 176.041(5b), because he was hired in North Dakota by a North Dakota employer and his alleged

injury arose out of temporary work in Minnesota. The workers compensation administrative judge considered the motion without an evidentiary hearing at a special term conference and dismissed the case. App. 47a.

2. Workers' Compensation Court of Appeals.

Devos appealed the dismissal of his application to the Minnesota Workers' Compensation Court of Appeals, which held that the complex legal issue of jurisdiction in this case required an evidentiary hearing as the parties had not agreed to a stipulated set of facts. App. 34a-35a. It remanded the case for factfinding on the issues of when and where the employee was hired in 2012 and whether Rhino is a North Dakota employer, while declining to take up the constitutional challenge that Devos raised to the Minnesota statutes' exclusive assignment of responsibility for workers' injuries to North Dakota. App. 35a.

3. Workers' Compensation Administrative Hearing on Remand.

In a November 16, 2018 order, the workers' compensation judge held that Devos was hired in 2011 in North Dakota by a North Dakota employer. He further found that the 2012 work injury occurred at a jobsite in East Grand Forks, Minnesota, while the employee was a Minnesota resident. App. 25a-26a.

In addition, the judge held that when Devos was rehired in 2012, the employment was a recall to seasonal work, rather than a new hiring event. Although Devos worked more than 240 hours in Minnesota in 2011, which would have rendered him eligible for Minnesota workers compensation that

year, the judge held that the clock started anew in 2012, and that Devos did not meet the 240-hour threshold for benefits in Minnesota for 2012. App. 24a.

The judge then dismissed Devos's claim petition, finding that his exclusive remedy was under the workers' compensation system in North Dakota by virtue of Minn. Stat. § 176.041(5b), which exclusively assigns these claims to North Dakota. App. 27a.

4. Return to Workers' Compensation Court of Appeals.

The Workers' Compensation Court of Appeals affirmed. First, it held that "the judge reasonably concluded that the employment relationship did not end during the employee's layoff, but was temporarily on hold for the winter months until the employer was ready to resume operations in the spring." App. 16a.

Second, the court held that the requirement that a 240-hour threshold for working in Minnesota, in order to be considered a Minnesota employee, had to be met anew each calendar year. For that reason, it could not consider Devos's satisfaction of that standard in 2011, or during the 52-week period prior to the injury. App. 17a.

Finally, the court recognized that Devos had raised challenges to the statutory scheme under the Equal Protection Clause, both procedural and substantive due process, and the Commerce Clause of the United States Constitution, but held that, under state precedent, these issues were beyond the authority for that court to address and were properly "preserved for the Minnesota Supreme Court." App. 18a.

2. Minnesota Supreme Court.

On February 7, 2020, the Minnesota Supreme Court affirmed in a summary disposition, considering the issues of Minnesota law, but only specifically addressing the equal-protection aspect of the constitutional challenge. On the latter issue, it held simply that Devos did not carry his burden to demonstrate that the statute lodging the exclusive remedy in North Dakota was not rationally related to a legitimate government interest without further elaboration. App. 4a.

It also held that there was no error in concluding that Devos was hired in North Dakota and that his injury did not arise out of temporary work in Minnesota. App. 4a. Finally, it held "all other claims and requests for relief are denied." App. 5a.

REASONS FOR GRANTING THE PETITION

I. WHETHER MINNESOTA MAY TREAT ITS RESIDENTS INJURED ON THE JOB IN-STATE LESS FAVORABLY SOLELY BECAUSE THEY WORK FOR A NORTH DAKOTA EMPLOYER IS A RECURRING ISSUE OF GREAT NATIONAL IMPORTANCE.

If Petitioner and Minnesota resident John Devos worked for a Wisconsin company and was injured on the job in Minnesota, he could collect Minnesota workers compensation benefits. If Devos worked for an Iowa company, he could collect Minnesota workers compensation benefits. If Devos worked for a South Dakota company, he could collect Minnesota workers compensation benefits. If Devos worked for a Florida company, he could collect Minnesota workers

compensation benefits. Only because he worked for a North Dakota company, Devos is ineligible to collect Minnesota workers compensation benefits.

The Covid-19 pandemic has resulted in enormous economic displacement. Unemployment above ten percent plagues the Nation.[1] Corporate bankruptcies are trending upward beyond what was experienced in the 2008 financial crisis.[2] As of May, more than 100,000 small businesses had permanently closed.[3]

The pandemic will also generate new workers compensation costs. According to a study by the National Council on Compensation Insurance, even if only ten percent of health-care workers contract Covid-19, states could be looking at a doubling or possibly tripling of workers compensation costs.[4]

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[1] U.S. Bureau of Labor Statistics, Employment Situation Summary (Aug. 7, 2020), available at https://www.bls.gov/news.release/empsit.nr0.htm.

[2] Mary Williams Walsh, "A Tidal Wave of Bankruptcies Is Coming," N.Y. Times (Jun. 18, 2020; updated Aug. 3, 2020), available at https://www.nytimes.com/2020/06/18/business/corporate-bankruptcy-coronavirus.html.

[3] Heather Long, "Small business used to define America's economy; The pandemic could change that forever," Wash. Post (May 12, 2020), available at https://www.washingtonpost.com/business/2020/05/12/small-business-used-define-americas-economy-pandemic-could-end-that-forever/.

[4] Nat'l Council on Compensation Ins., NCCI Research Brief: COVID-19 and Workers Compensation: Modeling Potential Impacts, at 26 (Apr. 2020), available at https://www.ncci.com/Articles/Pages/Insights-COVID-19-WorkersComp-Modeling-Potential-Impacts.pdf.

When workers compensation costs increase, premiums go up. Emily A. Spieler, *Perpetuating Risk? Workers' Compensation and the Persistence of Occupational Injuries,* 31 Hous. L. Rev. 119, 136-37 (1994). Even before the current crisis, one reliable estimate of total employer costs nationwide put the 2015 figure at $94.8 billion, an increase of 2.3 percent over the year before.[5] Decreases in costs are associated with changes in workers compensation laws designed to ameliorate employer costs,[6] which suggests that amendments to workers compensation laws are likely in the offing and changes made by other states will be considered models.

The statute at issue, enacted as a 2005 amendment to the Minnesota's workers compensation laws, is unique, but, provides an unwelcome and unconstitutional model for other states seeking to cut their own costs and benefit employers. North Dakota's workers compensation agency went to Minnesota seeking the amendment. It argued that small North Dakota businesses who used workers in North Dakota with some small overlap in Minnesota could not afford insurance coverage that would include Minnesota.[7] It pointed out that North Dakota is one of five states that established a state monopoly for workers

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[5] Nat'l Acad. of Soc. Sci., Workers' Compensation: Benefits, Coverage, and Costs, at 38 (2017), available at https://www.nasi.org/sites/default/files/research/NASI_Workers%20Comp%20Report%202017_web.pdf.

[6] *Id*.

[7] Workers' Compensation Advisory Council, Minn. Dep't of Labor & Indus., Council Minutes, at 2 (Nov. 16, 2004) [introduced at administrative hearing as Exh. D).

compensation coverage, meaning that coverage may only be purchased through the State, and that 17.5 percent of its employers opt for the $125 per year minimum coverage. Meanwhile, private insurance that would cover work in Minnesota ran $600 per year, which the North Dakota representatives said was prohibitive.[8] The North Dakota proposal, which was largely adopted by the Minnesota legislature, sought to make North Dakota's workers compensation system the exclusive remedy for North Dakota employees injured in Minnesota, carving out an exception if an employee worked 15 consecutive days in Minnesota.[9]

However, even this explanation for treating North Dakota employers' workers differently dissolved in 2010. Since then, ND WSI automatically provides workers compensation coverage to all North Dakota employers who have workers traveling outside of North Dakota on a temporary and incidental basis through an arrangement with a private insurer, The Accident Fund of America. North Dakota Workers Safety & Insurance, All States Coverage, available at https://www.workforcesafety.com/employers/across-state-lines/all-states-coverage. Thus, the sole and wholly inadequate rationale behind Minnesota's law simply no longer exists.

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[8] *Id*. at 2-3.

[9] *Id*. at 3-4. The statute added a second, alternative threshold of 240 hours of work in Minnesota during a calendar year. Minn. Stat. § 176.041(5b).

And, although Minnesota's statute is unique, many states face extraterritorial issues in administering workers compensation. Some, for example, permit concurrent jurisdiction between state and Longshore coverage. These states include Alabama, Alaska, California, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee and Wisconsin. Others, such as Florida, Louisiana, Maryland, Mississippi, New Jersey, Texas, Virginia, and Washington, do not, making Longshore becomes the sole remedy.[10] Yet, none, like Minnesota, limit coverage by place of employment in a single state.

A. Minnesota's North Dakota Exemption Conflicts with this Court's Equal Protection Teachings.

Workers who are injured in Minnesota but employed by an out-of-state company are usually covered by Minnesota's workers compensation system. Minn. Stat. § 176.041(4). However, the statute makes an explicit exemption for employees of North Dakota employers. It renders North Dakota workers' compensation law "the exclusive remedy available to the injured worker." Minn. Stat. § 176.041(5b). As a result, two workers living as next door neighbors and performing the exact same work, one for a South Dakota employer and one for a North

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[10] *See* Maureen Gallagher, "States of Confusion: Workers Comp Extraterritorial Issues" (Apr. 2, 2014), available at https://www.insurancethoughtleadership.com/states-of-confusion-workers-comp/.

Dakota employer, are treated differently because of where each worker's employer is located.

The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). Where no fundamental right or suspect class is burdened, "the classification drawn by the statute [must be] rationally related to a legitimate state interest." *Id.* at 440 (citations omitted). A statute "may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *Id.* at 446.

Hence, the Minnesota Supreme Court had little difficulty finding that a Wisconsin resident, who had accepted benefits from his home state still qualified for Minnesota benefits when he was involved in a collision in Minnesota in the course of his job as a truckdriver. *Stolpa v. Swanson Heavy Moving Co.*, 315 N.W.2d 615, 618 (1982). Yet, the explicit prohibition on employees of a North Dakota employer is obviously treated differently. That Devos is a Minnesota resident and was injured in his home state only makes the discriminatory treatment more severe. That he qualified as a "Minnesota employee" under the statute's 240-hour threshold in 2011, the first year of his employment, increases the discriminatory act, as Minnesota held that his original hiring – and not his rehiring in 2012 – counts for determining the situs of his employment. App. 4a.

As salutary as Minnesota's solicitude toward North Dakota employers might seem, Equal Protection assures that "the foreign corporation stands equal, and is to be classified, with domestic

corporations of the same kind." *Hanover Fire Ins. Co. v. Carr*, 272 U.S. 494, 511 (1926). In case after case, this Court has recognized that taxes unconstitutionally discriminate when "imposed by the State on foreign corporations doing business within the State solely because of their residence, presumably to promote domestic industry within the State." *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 879 (1985). *See also Williams v. Vermont*, 472 U.S. 14, 23 (1985) ("A State may not treat those within its borders unequally solely on the basis of their different residences or States of incorporation."). The Equal Protection principle at stake is that, regardless of residence, corporations must be treated alike – and their employees must be treated alike, absent a valid rationale.

The Minnesota statute suffers the same flaw identified by this Court in "fixed, permanent distinctions between ... classes of concededly bona fide residents." *Zobel v. Williams*, 457 U.S. 55, 59 (1982). There, this Court held that giving long-term residents larger cash dividends than newer residents as a reward for "contributions of various kinds, both tangible and intangible, which residents have made during their years of residency," was not a legitimate state justification for the disparate treatment the law created. *Id.* at 61, 63.

In *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1972), this Court also struck down a Louisiana workers compensation statute that relegated illegitimate children to a lesser status for claiming benefits than a worker's legitimate children. In doing so, the Court noted that there were no legitimate distinctions between the children – all lived in the same home and were affected in maintenance and

support the same way by their father's death. *Id*. at 169-70. Equal protection "entitled [them] to rights granted other dependent children." *Id*. at 170.

The same is true here: no legitimate rationale permits the discrimination Minnesota assays against its own residents. Devos is dependent on workers compensation benefits in the same way that other workers for out-of-state employers are. Minnesota cannot claim a legitimate rationale for treating him differently, merely because his employer is based in North Dakota. *Cf. Hooper v. Bernalillo Cty. Assessor*, 472 U.S. 612, 623 (1985) (State may not favor some residents over others on the basis that the State may take care of "its own").

Like a neighbor in the same situation from a state other than North Dakota, Devos was injured in the state, resides in the state, pays taxes in the state, and warrants workers compensation benefits from the state. No rationale imaginable can justify Minnesota's disparate treatment of him and those like him, who work for a North Dakota employer. *Cf. Williams*, 472 U.S. at 23 ("We perceive no legitimate purpose, however, that is furthered by this discriminatory exemption.").

B. Minnesota's Disparate Treatment of Workers Conflicts with Decisions of the Courts of Appeals.

Normally, this Court has examined equal protection claims when a State has discriminated in favor of its residents over residents of other States.[11]

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[11] In many of those instances, the equal-protection principle is stated in terms of the Privileges and Immunities Clause. *See, e.g., United Bldg. & Const. Trades Council of Camden Cty. &*

This case provides a rare instance in which a State has discriminated against some of its own residents in favor of persons in a single other State. Still, similar legal principles apply. Minnesota's Supreme Court simply gave short shrift to these principles, finding no constitutional violation and engaging in no analysis.

Uniformly, when no legitimate distinction rationalizes the disparate treatment brought about by a state law, the circuits find an equal-protection violation. For example, in *Doe v. Pennsylvania Bd. of Prob. & Parole*, 513 F.3d 95 (3d Cir. 2008), the Third Circuit held that Pennsylvania violated Equal Protection when it subjected persons convicted out-of-state of sex offenses to community notification requirements but not sex offenders convicted in-state. The court found that the public safety rationale offered in support of the law had no different application to in-state and out-of-state individuals. It concluded "Pennsylvania's interest in protecting its citizens from sexually violent predators is certainly compelling[, h]owever, subjecting out-of state sex offenders to community notification without providing equivalent procedural safeguards as given to in-state sex offenders is not rationally related to that goal." *Id.* at 112.

Similarly, the First Circuit struck a veterans' welfare benefits scheme that restricted benefits to Massachusetts residents of at least three years preceding their application, and not newer residents, in *Strong v. Collatos*, 593 F.2d 420 (1st Cir. 1979). The First Circuit found that the "only serious justification appellants offer in support of the legislative

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Vicinity v. Mayor & Council of City of Camden, 465 U.S. 208, 218 (1984).

classification concerned limiting costs, which it found to be patently "insufficient." *Id*. at 423.

In *Bunyan v. Camacho*, 770 F.2d 773 (9th Cir. 1985), the Ninth Circuit employed the identical equal-protection principle to invalidate a retroactive retirement credit to local government employees who were Guam residents before they started college. *Bunyan* applied the *Zobel* principle that "fixed, permanent distinctions between ... classes of concededly bona fide residents" is illegitimate. *Id*. at 776 (quoting *Zobel,* 457 U.S. at 59).

This case warrants this Court's review because Minnesota seeks to employ the same unconstitutional permanent distinctions between residents who are similarly situated and which no legitimate rationale can justify. Principles of due process and equal protection articulated by this Court do not allow Minnesota to cordon off some workers simply because they are employed by a North Dakota company. Consistent holdings of the courts of appeal make plain that principle.

II. THE DISPARATE TREATMENT OF WORKERS FOR NORTH DAKOTA EMPLOYEES VIOLATES SUBSTANTIVE DUE PROCESS.

The "grand bargain" that workers compensation represents[12] is supposed to provide injured workers

[12] *See* Emily A. Spieler, *(Re)assessing the Grand Bargain: Compensation for Work Injuries in the United States, 1900-2017*, 69 Rutgers U.L. Rev. 891, 900-09 (2017) (describing the increase in worker injuries brought about by the Industrial Revolution and the trade-off where employers received insurable predictability in place of tort liability, while workers were to

with the certainty of benefits unlike the insecurity of having to establish negligence liability through the common law. *Lauer v. Tri-Mont Co-op. Creamery*, 178 N.W.2d 248, 251 (Minn. 1970); *see also Matter of Collins*, 228 A.3d 760, 767-78 (Md. 2020). Workers compensation does not seek to make a worker whole, but provide an adequate form of compensation. *Colarusso v. Mills*, 208 A.2d 381 (R.I. 1965). Yet, to justify displacement of the right to a jury trial for injuries that sound in negligence in favor of an exclusive, quick, and guaranteed remedy for on-the-job injuries, subject to some narrow exceptions, States established certain minimum compensations that reflect the income and costs of that State. *See, e.g., Myers v. Yamato Kogyo Co., Ltd.*, 597 S.W.3d 613, 617 (Ark. 2020); *McNair v. Dorsey*, 291 So. 3d 607, 609 (Fla. Dist. Ct. App. 2020) (citing Fla. Stat. § 440.11(1)); *Estate of Moulton v. Puopolo*, 5 N.E.3d 908, 922 (Mass. 2014); *Torres v. Parkhouse Tire Serv., Inc.*, 30 P.3d 57, 60 (2001) (citing Cal. Lab. Code § 3600(a)).

Minnesota's workers compensation scheme also follows that common pattern. It, too, provides the exclusive remedy for workers' personal injuries without regard to proof of negligence. Minn. Stat. §§ 176.021; 176.031; *see also Stringer v. Minnesota Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005). And its benefits are meant to be sure and certain. *Id.* at 755. Plus, Minnesota benefits, reflecting that State's economy, are more generous than that of North Dakota. *See Cook v. Minneapolis Bridge Const. Co.*, 43 N.W.2d 792, 793 (Minn. 1950); *see also* Dean J. Haas, *Falling Down on the Job: Workers' Compensation Shifts from A No-Fault to A*

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receive guaranteed compensatory benefits through a simple administrative process.).

Worker-Fault Paradigm, 79 N.D. L. Rev. 203, 297 n.17 (2003) (discussing North Dakota's belief that lower benefits put it at a "'competitive advantage' over neighboring Minnesota.").

Unique among the States, however, Minnesota makes special provision for employers from one state, North Dakota. Thus, where a Minnesota resident "hired in North Dakota by a North Dakota employer" is injured on what is deemed "temporary work in Minnesota," no remedy is available in Minnesota. Instead, Minnesota law assigns the exclusive remedy to the North Dakota workers' compensation system. Minn. Stat. § 176.041(5b). No other Minnesota residents, working for an out-of-state employer, receives that unique and less favorable treatment.

As a result, a Minnesota resident injured in Minnesota while working on assignment for a North Dakota employer is both denied a tort remedy in the Minnesota courts and a substitute administrative remedy in the Minnesota workers compensation system. Instead, he is directed to seek his remedy from another State that provides significantly lesser benefits.

No other state outsources its workers compensation benefits that way or considers it an adequate *quid pro quo* for being shut out of the tort system. Workers compensation was uniformly justified as providing an adequate alternative remedy. *See, e.g., New York Cent. R. Co. v. White,* 243 U.S. 188, 201 (1917) (suggesting that a State may not, "without violence to the constitutional guaranty of 'due process of law,' suddenly set aside all common-law rules respecting liability as between employer and employee, without providing a reasonably

just substitute.); *Breitwieser v. State*, 62 N.W.2d 900, 902 (N.D.1954) (The purpose of the North Dakota workmen's compensation program is to "provid[e] sure and prompt relief for the worker" and, in return, the employer and employee forfeit certain common-law rights to achieve the objective.); *Breimhorst v. Beckman*, 35 N.W.2d 719, 734 (Minn. 1949) (holding workers compensation constituted "a new, adequate, and fundamentally different remedy upon a cause of action for one for which there was originally at common law"); *Grand Trunk Western Ry. Co. v. Industrial Comm'n*, 125 N.E. 748, 751 (Ill. 1919) (upholding workers compensation as "set[ting] aside one body of rules to establish another system in its place" and replacing unlimited potential employer liability with guaranteed "moderate compensation in all cases of injury," which is "a certain and speedy remedy without the difficulty and expense of establishing negligence or proving the amount of the damages").

A serious and substantial question that warrants this Court's attention exists, consistent with the Due Process Clause, as to whether Minnesota has breached its bargain to provide a just substitute remedy for one in tort when it denies all means within the State of compensation to a resident injured in the State. In addition, Minnesota's outsourcing of its workers compensation responsibilities to another state for one of its residents cannot constitute a *quid pro quo* adequate to close access to the courts to an in-state injury and cannot be reconciled with basic constitutional principles that permit the substitution of workers compensation for tort or be deemed consistent with the Dormant Commerce Clause.

III. THE DECISION OF THE MINNESOTA SUPREME COURT IS WRONG.

The test is whether the statutory "purpose is legitimate and that [the legislature] rationally could have believed that the provisions would promote that objective." *Kelo v. City of New London,* 545 U.S. 469, 488 (2005). Minnesota's North Dakota exemption cannot satisfy either part of the test, but the analysis does not need to move beyond the first question, a legitimate purpose. Neither the legislature nor the Minnesota Supreme Court articulated a legitimate purpose for the exemption – and one cannot be imagined.

Instead, Minnesota has constructed impermissible "fixed, permanent distinctions between ... classes of concededly bona fide residents." *Zobel*, 457 U.S. at 59. The history behind the provision makes plain that it was designed for the sole purpose of benefitting North Dakota small businesses that claimed it to be prohibitively expensive to purchase insurance that covers its Minnesota activities. Yet, providing coverage as North Dakota now does for extraterritorial injuries removes even that inadequate rationale from consideration. The new system of providing that coverage, rather than impinging on Minnesotans rights, was the proper constitutional way to go about resolving this issue for North Dakota.

North Dakota businesses are not a special, distinct category from businesses located in other states that it justifies overriding residents' rights in Minnesota and treating them differently from Minnesota employees of other states' businesses. The Minnesota classification must be viewed from the

perspective of the employee, like John Devos. It plainly denies him equal treatment and violates his rights to seek vindication through Minnesota's judicial or administrative mechanisms.

To be sure, "[e]mployees whose work activity, by its very nature, is transient constitute a unique class." *Vaughn v. Nelson Bros. Const.*, 520 N.W.2d 395, 397 (Minn. 1994). Still, Equal Protection does not permit Minnesota to treat people within that class of transitory workers differently on the basis of which State their employer is located, without more.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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