
EL COMITÉ DE APOYO A LOS
TRABAJADORES AGRÍCOLAS (THE
FARMWORKER SUPPORT
COMMITTEE),

Plaintiff,

v.

MATTHEW J. PLATKIN; in his official
capacity as Attorney General of the State
of New Jersey; ROBERT ASARO-
ANGELO, in his official capacity as
Commissioner of New Jersey Department
Labor and Workforce Development,
EDWARD D. WENGRYN, in his official
capacity as Secretary of the Department
of Agriculture,

Defendants.

SUPERIOR COURT OF
NEW JERSEY
CHANCERY DIVISION:
MERCER COUNTY
DOCKET NO:

Civil Action

COMPLAINT

Plaintiff El Comité de Apoyo a los Trabajadores Agrícolas (the Farmworker Support Committee, hereinafter “CATA” or “Plaintiff”), a non-profit membership-based organization¹ that advocates for farmworkers’ health, safety, and workplace rights, brings this suit under the New Jersey Constitution to vindicate its members’ rights and remedy their injuries. CATA brings this suit against Defendants Matthew J. Platkin, Attorney General of the State of New Jersey, Robert Asaro-Angelo, Commissioner of the New Jersey Department of

¹ CATA’s membership includes both farmworkers and people who do not currently work as farmworkers but who support their interests. For purposes of this Complaint, the term “CATA members” refers exclusively to CATA members working as farmworkers in New Jersey.

Labor and Workforce Development, and Edward D. Wengryn, Secretary of the Department of Agriculture (collectively, “Defendants”), all in their official capacities. Plaintiff alleges as follows:

INTRODUCTION

1. Farmworkers in New Jersey work long, hard hours picking and tending crops by hand, ensuring fresh produce for families in the Garden State and beyond. Many farmworkers work ten-hour shifts, six or seven days a week, often stooped over for hours at a time, no matter the conditions or weather. They work in extreme heat, rain, and cold, enduring physical injuries, sunburn, heat exhaustion, dehydration, and illness from pesticide exposure. Despite their hard, dangerous work and long hours, farmworkers continue to live in poverty. Many lack health insurance and struggle to support themselves and their families.

2. New Jersey (“the State”) touts Jersey Fresh² produce made possible by farmworkers’ labor but fails to protect these workers from “wage levels detrimental to their health, efficiency and well-being.” N.J.S.A. 34:11-56a. New Jersey’s Wage and Hour Law (“WHL” or “the Act”) denies farmworkers the same wage protections guaranteed to other New Jersey workers. Since 1966, the State has denied farmworkers the right to overtime pay that it mandates for other similarly situated workers. N.J.S.A. 34:11-56a4(b)(1) (exempting employees

² <https://findjerseyfresh.com/JerseyFresh/facts>.

“engaged to labor on a farm”). And in 2019, the State amended the WHL to increase the minimum wage for New Jersey workers to \$15 beginning in 2024, but withheld this protection from farmworkers. N.J.S.A. 34:11-56a4(d) (excluding from the \$15 minimum wage increase workers “engaged . . . to labor on a farm”). Although the 2019 law provides for incremental wage increases for farmworkers, it denies this class of workers the equal protection of the new minimum wage law, mandating a lower minimum wage than other workers until 2030. N.J.S.A. 34:11-56a4(d)(2).

3. The New Jersey Supreme Court has recognized that farmworkers warrant special judicial solicitude because they are among New Jersey’s most marginalized residents. Farmworkers in New Jersey are economically disadvantaged. They often lack union representation and most cannot vote in New Jersey elections. Most farmworkers in New Jersey are Hispanic/Latiné³—a minority group that has long faced discrimination. Language and geographic barriers further marginalize these workers. The vast majority of CATA’s members are monolingual Spanish speakers, and many live in rural communities far from legal resources and community organizations that might advocate for

³ Latiné is a gender-neutral alternative to Latino and Latina, which refers to people from Latin America. Hispanic refers to people from Spanish-speaking countries. For ease of reading, the Complaint uses Latiné hereinafter to refer to Hispanic/Latiné.

their rights and interests. For all these reasons, farmworkers are vulnerable to unfair workplace treatment and less able than most workers to protect their interests through the legislative process.

4. New Jersey's farmworker exclusions perpetuate policies that originated because of intentional racial discrimination. New Jersey lawmakers modeled the WHL's farmworker overtime exclusion on a similar exclusion from the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201-219. The FLSA exclusion, along with similar ones in other New Deal labor laws, was passed specifically to exclude Black and other minority workers from the benefits of the New Deal. Southern legislators who were key to passage of FLSA in 1938 unambiguously expressed racist views in the legislative record, asserting that Black workers who toiled on farmland in the South were unworthy of the same pay and labor protections provided to white workers. Despite this history, New Jersey incorporated FLSA's overtime exclusion for farmworkers only a few decades later in 1966, baking FLSA's discrimination into state law.

5. For many years, New Jersey did *not* extend FLSA's farmworker exclusions to the state's minimum wage protections. But this changed in 2019. Despite hearing testimony citing the racist history of federal farmworker exclusions and warning that excluding farmworkers from equivalent minimum wage protections in New Jersey would disproportionately harm racial and ethnic

minorities, the Legislature ignored these effects. It again targeted farmworkers for unequal treatment, denying them access to full and equal minimum wage protection.

6. Both policies disproportionately harm racial and ethnic minorities. Because most farmworkers in New Jersey are Latiné, the racially discriminatory impact is stark.

7. In contrast, multiple states have now eliminated similar farmworker wage exclusions – by legislative repeal and court ruling – repudiating their racist origins and ending their devastating impact on farmworkers and their families. As legislatures and courts in these states have recognized, no valid purpose or sufficient public need justifies exclusions that deny farmworkers equal treatment and undermine their health and safety.

8. As a class, farmworkers suffer from high rates of chronic illness, infectious diseases, and injury because of their vulnerable economic status and dangerous working conditions. Denying farmworkers equal minimum wage and overtime protections provided to other similarly situated workers means farmworkers work longer hours to provide for their families' basic needs. This burdens their health and safety, and many cannot afford health care or health insurance because of their low wages. The harm imposed by the WHL's discriminatory treatment of farmworkers is flatly inconsistent with, and directly

undermines, the statute's remedial purpose to "safeguard [workers'] health, efficiency, and general well-being[.]" N.J.S.A. 34:11-56a.

9. For all these reasons, the WHL's discrimination against farmworkers violates CATA members' rights under the New Jersey Constitution. First, Defendants, in enforcing the WHL's farmworker exclusions, violate the equal protection guarantees of Article 1, Paragraph 1 of the New Jersey Constitution by discriminating against and harming a vulnerable group of racial and ethnic minorities, depriving them of important constitutional interests in equality, dignity, safety, and health. These violations are not justified by any valid, non-discriminatory public need or state interest. Second, denying farmworkers equal wages and overtime pay violates CATA members' fundamental right to safety under Article 1, Paragraph 1 of the New Jersey Constitution. Third, the WHL extends favoritism and immunity from fair labor obligations to the farm industry at the expense of vulnerable workers, in violation of the prohibition on special legislation in Article IV, Section 7, Paragraph 8. Each of these constitutional violations also runs afoul of the New Jersey Civil Rights Act., N.J.S.A. 10:6-1 to -2, which protects against the deprivation of rights secured by the Constitution of this State and provides a cause of action to vindicate violations of those civil rights. N.J.S.A. 10:6-2(c).

10. Accordingly, Plaintiff CATA seeks a judgment declaring that N.J.S.A. 34:11-56a4(b)(1) and N.J.S.A. 34:11-56a4(d) violate the New Jersey Civil Rights Act and the New Jersey Constitution. It seeks a permanent injunction enjoining Defendants' enforcement of the discriminatory farmworker exclusions and all other equitable relief that the Court deems just and proper to secure farmworkers' constitutional rights.

JURISDICTION AND VENUE

11. This Court has personal jurisdiction over Defendants because they are public officials of the State of New Jersey.

12. Venue is proper in Mercer County pursuant to *R. 4:3-2(a)* because the cause of action arose there.

PARTIES

13. Plaintiff CATA is a non-profit organization founded by migrant farmworkers in New Jersey in 1979. As a grassroots, membership-based organization, CATA works to improve the working and living conditions of farmworkers by addressing wage theft, workplace discrimination, unfair firings, and unsafe/unsanitary conditions. CATA advocates for improved working conditions for farmworkers in New Jersey through efforts to raise the minimum wage, establish paid time off and sick leave, and promote collective bargaining protections. Bringing this suit to vindicate its members' constitutional rights and

remedy their injuries also furthers CATA's organizational mission to ensure fair, humane, and just treatment of farmworkers.

14. Although CATA's members work at different farms and cultivate a variety of produce in New Jersey, they are all subject to unequal treatment by the State because the WHL classifies them as farmworkers (specifically as employees who "labor on a farm"). This legislative classification denies farmworkers the same wage and hour protections provided to other similarly situated workers. Many CATA members work overtime but do not receive overtime pay, and many are paid a wage below the minimum wage New Jersey requires for most workers.

15. Defendant Matthew J. Platkin, as the Attorney General of the State of New Jersey, is the chief law enforcement officer of the State. In this constitutional role, *see N.J. Const.* art. V, § IV, ¶ 3, he is responsible for enforcing the laws that exclude farmworkers from the WHL's wage and hour protections. He is sued in his official capacity.

16. Defendant Robert Asaro-Angelo is the Commissioner ("the DOL Commissioner") of the New Jersey Department of Labor and Workforce Development ("DOL"), which implements and enforces the WHL. *See* N.J.S.A. 34:11-16; N.J.S.A. 34:11-56a2. The Legislature delegated to Defendant Asaro-Angelo, as Commissioner, the power to "[a]dopt, issue and promulgate, in the

name of the department, such rules and regulations as may be authorized by law.” N.J.S.A. 34:1A-3(e). Defendant Asaro-Angelo administers N.J.A.C. 12:56-1.1 to -20.3, which implements the WHL’s minimum wage and overtime exclusions for farmworkers. *See* N.J.A.C. 12:56-3.3; N.J.A.C. 12:56-6.1. Defendant Asaro-Angelo is sued in his official capacity.

17. Defendant Edward D. Wengryn is the Secretary of the Department of Agriculture (“the Secretary”). The 2019 amendments to the WHL delegated a role to the Secretary with respect to implementation of N.J.S.A. 34:11-56a4’s minimum wage increases for farmworkers. The law required the Secretary to consult with the DOL Commissioner regarding increases in farmworker minimum wages rates and to “consider any information provided by the secretary regarding the impact on farm employers and the viability of the State’s agricultural industry of the increases of the minimum wage.” N.J.S.A. 34:11-56a4(d)(3). Defendant Wengryn is sued in his official capacity.

FACTUAL ALLEGATIONS

I. NEW JERSEY’S FARMWORKERS ARE A VULNERABLE CLASS.

18. Though farmworkers are skilled and work hard to provide for themselves and their families, many intersecting factors diminish farmworkers’ political and economic power as a class, render them vulnerable to workplace harm and exploitation, and leave them less able than other groups to protect their

interests in the political process. As the New Jersey Supreme Court has recognized: the “seasonal nature of the employment, the residence of many workers in Puerto Rico . . . language barriers, lack of legal advocacy, and isolated living and working conditions all combine to make it especially difficult for farmworkers to recognize their constitutional rights,” thus rendering them “particularly vulnerable” as a class. *Comité Organizador de Trabajadores Agrícolas (COTA) v. Molinelli*, 114 N.J. 87, 107 (1989) (citation omitted); see also *State v. Shack*, 58 N.J. 297, 303 (1971) (citing farmworkers’ lack of “economic or political power” in recognizing that farmworkers are “a highly disadvantaged segment of our society”).

19. For these reasons, New Jersey courts have “manifested a continuing concern for the plight of the migrant farmworker” and affirmed the “fundamental right of the farmworker to live with dignity.” *Vasquez v. Glassboro Serv. Ass’n, Inc.*, 83 N.J. 86, 99, 101 (1980) (citing *Shack*, 58 N.J. at 308).

20. More than 50 years after the New Jersey Supreme Court first recognized farmworkers’ vulnerability as a class, these characteristics and conditions remain. Accordingly, they continue to warrant heightened judicial solicitude and protection.

A. New Jersey Farmworkers Are Economically Vulnerable and Lack the Protection of Collective Bargaining.

21. Farmworkers are economically vulnerable, and many live in poverty. In recent years, the median income for farmworker families nationwide was between \$25,000 to \$29,999.⁴ Nationally, one in five farmworkers with families live below the federal poverty level, and migrant farmworkers specifically experience even greater rates of poverty.

22. Farmworkers in New Jersey face these same economic challenges and disadvantages. Many of CATA's members are parents with dependent children, and most struggle economically. Some support children who live with them in New Jersey, while others visit the state for work to support children living elsewhere.

23. Many CATA members struggle to survive on their wages despite working long hours. One CATA member, for example, has often worked seven days a week for well over a decade. He is still barely able to pay his rent and remains deeply in debt. A few years ago, his son was seriously injured in a car accident and required medical treatment. Unable to afford the treatment on his

⁴ See Amanda Gold, Wenson Fung, Susan Gabbard, & Daniel Carroll, *Findings from the National Agricultural Workers Survey (NAWS) 2019-2020: A Demographic and Employment Profile of United States Farmworkers*, Dep't of Lab. 41 (2022), https://www.dol.gov/sites/dolgov/files/ETA/publications/ETAOP2022-16_NAWS_Research_Report_16_508c.pdf.

normal wages, this farmworker was forced to take out an expensive private loan to pay for his son's medical needs. Without overtime pay, he struggles to make ends meet despite working overtime and supplementing his income with other jobs wherever possible.

24. Another CATA member with five children works a farm job during the week and a second job on the weekend to support his family and make ends meet. Without a mandated fair minimum wage and overtime pay, he works seven days a week to make up for his low wages and lack of overtime pay.

25. The vast majority of farmworkers in New Jersey, including CATA members, are not unionized and therefore lack the benefit of collective bargaining to improve their wages and working conditions. This is typical, as farmworkers face unique challenges to joining or organizing a union given their language barriers, their migratory and seasonal work, and the fact that many live on the private property of farm owners who can exclude organizers from their premises. These factors, and the historic exclusion of farmworker from federal labor protections, distinguish farmworkers from other classes of workers who exercise greater power to advance their economic interests at the bargaining table.

B. New Jersey Farmworkers Are Primarily Racial and Ethnic Minorities.

26. The vast majority of farmworkers excluded from the equal protection of New Jersey's wage and hour laws are racial or ethnic minorities. Most farmworkers in New Jersey, including CATA's members, are Latiné. Some of the excluded farmworkers are from Haiti.

27. In a 2022 survey of 224 farmworkers in Atlantic and Cumberland counties, 87 percent of respondents identified as Hispanic/Latinx.⁵ In this same survey, 29% were identified as Indigenous.

28. Among 13,881 migrant and seasonal farmworkers seen at federally funded Migrant Health Centers in New Jersey in 2019, 78% were Hispanic.⁶

29. New Jersey's discrimination against farmworkers is part of the long, well-documented history of discrimination against racial and ethnic minorities in the United States.

⁵ Nat'l Ctr. for Farmworker Health, *Farmworker Covid-19 Community Assessments: Atlantic and Cumberland Counties, NJ* 7 (2022), https://www.ncfh.org/uploads/3/8/6/8/38685499/atlantic_cumberland_counties_nj_rapid_assessment_-_survey_report_2022.pdf.

⁶ Nat'l Ctr. for Farmworker Health, *Agricultural Worker and Dependent Population Estimates for the State of New Jersey* 25 (2021) (citing Bureau of Primary Health Care, Program Grantee 2019 UDS Reports).

30. The denial of the same protection and fair treatment that the State extends to other similarly situated workers perpetuates the discrimination and alienation that many CATA members already face as people of color.

C. New Jersey Farmworkers Face Language Barriers.

31. Most CATA members are monolingual Spanish speakers, while some speak Indigenous languages.

32. In the 2022 survey of farmworkers in Atlantic and Cumberland counties, 96% of respondents indicated that they speak Spanish.⁷ Other farmworkers indicated that they speak Indigenous Latin American languages, Haitian Creole, or other languages. *Id.*

33. Only 15% of the farmworkers surveyed spoke English. *Id.*

34. 72% of the 13,881 migrant and seasonal farmworkers seen at New Jersey Migrant Health Centers in 2019 were best served in a language other than English.⁸

35. Language barriers make it harder for farmworkers to access services, engage in the political process, and advocate for their rights. And those

⁷ Nat'l Ctr. for Farmworker Health, *Farmworker Covid-19 Community Assessments*, at 7.

⁸ Nat'l Ctr. for Farmworker Health, *Agricultural Worker and Dependent Population Estimates*, at 25.

workers who speak languages that are less common in New Jersey, such as Indigenous languages, face even higher barriers to such engagement.

D. New Jersey Farmworkers Work in Physically Isolated Locations.

36. Many farmworkers reside in areas of New Jersey that are geographically isolated. It is common for migrant farmworkers to live in employer-provided housing on or near the farm where they work. Migrant farmworkers are often separated from family members and social support for long periods.

37. Living in rural areas, which often lack public transportation, farmworkers face challenges accessing healthcare, grocery stores, and other basic services. Farmworkers in isolated communities also live far from attorneys, labor organizers, and civic institutions that could help them assert their rights and advocate for government policies that protect their interests.

E. New Jersey Farmworkers Lack Political Power.

38. Many New Jersey farmworkers migrate to the state for seasonal work. The seasonal and migratory nature of the work complicates efforts to organize politically to obtain basic wage protections. As noted, farmworkers are generally not unionized and therefore lack not only the benefit of collective bargaining to improve their pay and working conditions, but also the advocacy and attention a union can provide to protect their interests before the State and

local legislatures. Further, farmworkers face significant barriers to organizing and advocating for policy change. For example, they work long hours and risk lost wages or retaliation if they take time off from work.

39. Farmworkers also lack powerful lobbying organizations to advocate for their interests. Very few organizations advocate on behalf of farmworkers in New Jersey. Grassroots organizations like Plaintiff CATA have modest operating budgets, in contrast to well-funded groups that lobby and advocate for farm owners.

40. Nor can farmworkers effectuate change at the ballot box. Most farmworkers are non-citizens or seasonal non-residents who lack the right to vote in New Jersey. In fact, in the years immediately prior to the 2019 minimum wage increases, the agricultural workforce in New Jersey had more undocumented workers than any other industry in the state.⁹ Farmworkers thus had little ability to influence the legislators who excluded them from equal labor protections.

41. Farmworkers' vulnerability to discrimination is well-documented in the United States. It is part of the long history of discrimination against non-

⁹ *U.S. Unauthorized Immigrant Population Estimates by State, 2016*, Pew Research Center (Feb. 5, 2019), <https://www.pewresearch.org/race-and-ethnicity/feature/u-s-unauthorized-immigrants-by-state/>.

citizens, who lack the right to vote in state elections. As courts have recognized, the inability to vote is a paradigmatic feature of a class with diminished political power and vulnerability. As a practical matter, CATA members have little ability to overturn the farmworker WHL exclusions that treat them unequally and keep many of them living in poverty.

F. New Jersey Farmworkers Have Experienced a Long History of Discrimination.

42. Farmworkers have experienced an extensive history of public and private discrimination, which intersects with the long history of discrimination against racial minorities and non-citizens in the United States.

43. Farmworkers have endured private discrimination and exploitation in the workplace. They have also endured systematic and intentional exclusion from basic labor protections, as explained in paragraphs 63 to 74 below. Since the 1930s, federal labor laws have excluded farmworkers from protections for labor organizing, minimum wages, maximum hours, overtime pay, and workers' compensation. Farmworkers have also been excluded from many basic health and safety protections; for instance, the Occupational Safety and Health Administration ("OSHA") is prohibited from regulating agricultural pesticides, despite the grave danger they pose to farmworkers.

II. CATA MEMBERS WORK LONG, PUNISHING HOURS, OFTEN IN UNHEALTHY AND DANGEROUS CONDITIONS.

44. CATA farmworkers work long hours in difficult and especially dangerous conditions without the same overtime and minimum wage protections guaranteed to other similarly situated New Jersey workers. The State's denial of equal labor protection to farmworkers means they work longer hours to provide for their basic needs. This harms their health, well-being, and safety.

45. Most CATA members labor outside all day exposed to the elements, including rain and extreme heat. New Jersey currently places no limits on the weather-related conditions in which farmworkers are expected to toil. They face sunburn, heat exhaustion, and dehydration during dangerous summer heat. A small number of farmworkers are employed year-round, including workers who prune apple trees and blueberry bushes, and must labor outside even in cold and blustery conditions.

46. CATA members regularly work more than 40 hours per week. Many work 6 or 7 days a week. While hours fluctuate depending on the season, employer, and necessary fieldwork, most work more than 8 hours a day and some work 10 to 12 hours each day. It is common for seasonal farmworkers (those employed to work on a farm between 4 and 6 months in a year) to work 7 days a week for more than 10 hours each day.

47. Migrant farmworkers sometimes live in housing on or adjacent to the farms where they work. This employer-owned housing is often constructed of cinder block and typically contains large rooms filled with bunk beds or cots, shared cooking facilities, and shared bathrooms. This spartan housing is crowded and lacks privacy. Air conditioning units are rare, so CATA members who work in hot temperatures during the day have little reprieve from the heat at the end of their long shifts.

48. Long hours and physically taxing, dangerous work expose CATA members to heightened risks of injuries and illness from heat, overexertion, toxic chemical exposure, dangerous machinery, and infections. Many CATA members experience back, knee, and waist pain. For example, picking crops such as lettuce, cucumbers, and peppers that grow close to the ground is especially painful since farmworkers must stay hunched over to harvest each piece of produce for hours at a time.

49. Many CATA farmworkers are expected to work even as hazardous chemicals are sprayed on crops in nearby farms. Pesticide exposure has caused some CATA members to vomit for days, and one worker developed a severe chemical sensitivity which now limits their ability to work. Relatedly, farmworkers have high rates of certain cancers.

50. Farmwork has an exceptionally high fatality rate. Agricultural work is “among the most hazardous industries” with 18.6 deaths per 100,000 full-time equivalent (“FTE”) workers in 2022,¹⁰ whereas the aggregated fatality rate for all U.S. industries was 3.7 per 100,000 FTE workers.¹¹ The U.S. Centers for Disease Control and Prevention states that farmworkers’ injuries are known to be underreported.

51. Because of their economic vulnerability, CATA members often have no choice but to continue working through pain, injuries, and illness. Most farmworkers perform this dangerous and unhealthy work without medical insurance. Very few CATA members can afford health insurance on the private market, and their residency or immigration status often disqualifies them from accessing federal or state marketplaces and from enrolling in New Jersey FamilyCare, the Medicaid-funded insurance program covering individuals and families earning below a certain percentage of the Federal Poverty Level. Most

¹⁰ FTE is a metric comprised of the number of full-time workers combined with the number of employees on part-time schedules converted to a full-time basis. *See What Are Full-Time Equivalent Employees?*, U.S. Dep’t of Commerce, Bureau of Economic Analysis, <https://www.bea.gov/help/faq/368#:~:text=Full%2Dtime%20equivalent%20employees%20equal,to%20a%20full%2Dtime%20basis> (last modified Apr. 24, 2018).

¹¹ *Agricultural Safety*, Nat’l Inst. for Occupational Safety & Health (NIOSH) (May 16, 2024), https://www.cdc.gov/niosh/agriculture/about/?CDC_AAref_Val=https://www.cdc.gov/niosh/topics/aginjury/.

CATA members therefore must access whatever care is available at Federally Qualified Health Centers, which provide healthcare regardless of a farmworker's ability to pay.

52. Even workers who qualify for insurance rarely have time off to seek medical care. Many farmworkers cannot afford to forgo hourly wages to obtain medical care and some fear that alerting their bosses to medical issues will be perceived as unreliability and put their jobs at risk. Limited access to regular healthcare means that many farmworkers often do not receive treatment for their health needs until they land in an emergency room.

53. In addition to the physically demanding nature of the long hours, CATA members experience the emotional and psychological toll of working without adequate rest and far from their families. Many CATA members are hired for four to eight months of seasonal work and relocate to New Jersey for the duration of the working season, leaving their families in other states, territories, or countries. They also experience the stress of constant financial struggle that results from the State's denial of fair wages and overtime protection.

STATUTORY AND REGULATORY FRAMEWORK

54. The WHL mandates overtime pay at the hourly rate plus one half when employees work more than 40 hours in a week. N.J.S.A. 34:11-56a4(b)(1).

It also directs a method for increasing the minimum wage such that, as of 2024, New Jersey workers earn a minimum wage of more than \$15. N.J.S.A. 34:11-56a; *see also* N.J.A.C. 12:56-3.1(a) (implementing the WHL). The WHL expressly denies farmworkers the equal protection of both provisions. N.J.S.A. 34:11-56a4(b)(1) (“this overtime rate shall not apply . . . to employees engaged to labor on a farm”); N.J.S.A. 34:11-56a4(d) (directing a separate phase-in of minimum wage increases for “[e]mployees engaged on a piece-rate or regular hourly rate basis to labor on a farm” starting at “\$8.85 per hour as of January 1, 2019”).

55. The WHL’s farmworker exclusions were modeled on a similar exclusion in FLSA,¹² which privileged the special interests of the powerful farm industry at the expense of vulnerable workers based upon overtly racist justifications.

A. FLSA’s Farmworker Overtime Exclusion is Rooted in Racial Discrimination.

56. In 1938, the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, mandated a minimum wage and “time-and-a-half” overtime pay for workers employed by covered employers, but excluded farmworkers from both

¹² New Jersey’s overtime exemptions are “modeled upon and in many instances identical to” FLSA such that when construing the WHL, New Jersey courts “rely upon judicial decisions construing” FLSA. *Marx v. Friendly Ice Cream*, 380 N.J. Super. 302, 310 (App. Div. 2005).

protections, immunizing the farm industry from the labor standards applicable to other employers.

57. A 1966 amendment eventually mandated a minimum wage for farmworkers covered by FLSA,¹³ but the overtime exclusion has never been revisited. Today, it continues to grant farm employers the same preferential carve-out to pay their workers poverty wages as it did in 1938. *See* 29 U.S.C. § 213(b)(12).

58. The legislative and historical records preceding FLSA's enactment show that racial animus motivated the exclusion of farmworkers from FLSA's protections. In other legislation that preceded FLSA, including the Agricultural Adjustment Act, the National Labor Relations Act, the Social Security Act, and the National Industrial Recovery Act, the federal government enacted similar farmworker exclusions both by statute and through administrative implementation. Each of these laws immunized powerful farm owners from the basic labor standards mandated for other industries and employers. Southern lawmakers sought to exclude agricultural laborers from these labor protections to maintain a racial caste system in the southern farming economy. President Roosevelt and congressional legislators were aware of these motivations, but

¹³ The federal minimum wage has been \$7.25 per hour since 2009. *See* 29 U.S.C. § 206(a)(1).

ultimately appeased white southern farm owners by enacting the farmworker exclusions.

59. Representative J. Mark Wilcox of Florida, for example, expressed a white supremacist ideology in opposing equal wages for farmworkers under the FLSA. 82 Cong. Rec. 1404 (1937):

You cannot put the Negro and the white man on the same basis and get away with it. Not only would such a situation result in grave social and racial conflicts but it would also result in throwing the Negro out of employment and in making him a public charge. There just is not any sense in intensifying this racial problem in the South, and this bill cannot help but produce such a result. . . . This bill, like the antilynching bill, is another political gold brick for the Negro, but this time the white laborer is also included in the scheme.

[*Id.*]

60. This statement, reminiscent of the repudiated reasoning of *Plessy v. Ferguson*, 163 U.S. 537, 551 (1896), suggested that white supremacist resistance to racial equality should define the scope of vulnerable groups' rights. The courts eventually and justly disavowed these racist justifications for Jim Crow laws beginning in *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954). But although *Brown* rejected this rationale, vestiges of that reasoning have not been fully eradicated; it remains at the root of the discriminatory treatment of farmworkers that began with the New Deal exemptions.

61. Similarly, Congressman Edward Eugene Cox of Georgia assailed equal treatment for Black workers as federal destruction of a racial caste system and an affront to State rights:

The organized Negro groups of the country are supporting [the FLSA] because it will, in destroying State sovereignty and local self-determination, render easier the elimination and disappearance of racial and social distinctions, and by the concentration of this vast and despotic power in a political board or administrator in Washington throw into the political field the determination of the standards and customs which shall determine the relationship of our various groups of people in the South.

[82 Cong. Rec. App. 442 (1937).]

62. FDR, wary of losing Southern votes for his New Deal programs, accommodated the special interests of the farm industry and agreed to the racially motivated exclusion of farmworkers, citing the need for “due regard to local and geographic diversities.” S. Rep. No. 75-884, at I, 3, 4 (1937); H.R. Rep. No. 75-1452, at 8 (1937).

63. Black employment in the 1930s South was disproportionately concentrated in agricultural and domestic labor. Thus, the exemptions of agricultural and domestic workers from labor protections provided a facially race-neutral cover for the intentional exclusion of Black farmworkers from the labor protections afforded to white workers, while privileging the special interests of the farm industry at the expense of vulnerable workers.

B. New Jersey’s Adoption of the WHL Mirrors FLSA’s Farmworker Overtime Exclusion.

64. On January 11, 1966, Governor Richard J. Hughes called for “a comprehensive Minimum Wage Law for all workingmen and women, with the fewest exceptions possible.” Minutes of Votes and Proceedings of the General Assembly of the State of New Jersey 1966, 190th Session of the Legislature, at 36. Governor Hughes specifically called for the law to “cover every concentration of low-wage marginal employment such as agricultural workers . . . and others.” He declared that to these workers “left behind in great measure by the upward march of the affluent Great Society . . . we owe economic justice.” *Id.*

65. When the Legislature proposed the WHL later that year, it explained the law’s purpose to “safeguard [workers’] health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency and well-being.” *S. 391* (1966). Similarly, the final version of the law declares that goal “to be the public policy of this State.” N.J.S.A. 34:11-56a.

66. Ultimately, however, the Legislature excluded farmworkers from the WHL’s overtime provisions.¹⁴ And it did so even as it acknowledged that wage protections were necessary to protect employees’ health. *See* N.J.S.A. 34:11-56a1(k) (“‘Fair wage’ means a wage fairly and reasonably commensurate with the value of the service or class of service rendered and sufficient *to meet the minimum cost of living necessary for health.*”) (emphasis added); N.J.S.A. 34:11-56a1(i) (“‘Oppressive and unreasonable wage’ means a wage which is both less than the fair and reasonable value of the service rendered and *less than sufficient to meet the minimum cost of living necessary for health.*”) (emphasis added).

67. The Legislature offered no explanation for how denying the protections to farmworkers was consistent with the Legislature’s goal of securing workers’ health and well-being. *L. 1966, c. 113, § 5.*

¹⁴ The other non-professional workers who remain excluded from the WHL’s overtime protections include bus/limo drivers, hotel workers, and “employees engaged in labor relative to the raising or care of livestock.” N.J.S.A. 34:11-56a4(b)(1). Domestic workers were also originally excluded from overtime protection, but comprehensive legislation that went into effect on July 1, 2024, eliminated that exclusion, extending antidiscrimination law and full wage and hour protections to domestic workers. *See L. 2023, c. 262* (“Domestic Worker Bill of Rights”). Some categories of workers that remain excluded from overtime are unionized and, unlike farmworkers, have been able to protect their right to fair pay at the bargaining table.

C. The Legislative Consideration of the 2019 Minimum Wage Increase Showed Special Treatment for the Agricultural Industry at the Expense of Racial Equality.

68. The exclusion of farmworkers from the full benefits of New Jersey’s 2019 minimum wage increase again reflected special favoritism for the agricultural industry. The Legislature showed little interest in the racist origins and flimsy rationales of policies excluding farmworkers from full and equal labor protections. It discriminated against farmworkers on the face of the law despite the law’s racially disparate impact and the harm to farmworkers’ health and safety.

69. Prior to the 2019 legislative changes, in 2013, New Jersey voters approved an amendment to the State Constitution that increased the minimum wage to \$8.25 and provided for yearly increases tied to inflation. The voters made clear that the increases would apply to “[e]very employer” and “each employee subject to the” WHL. *N.J. Const.* art. I, ¶ 23.

70. Despite this mandate for uniform minimum wage increases, the 2019 legislative increases to the minimum wage carved out farmworkers from equivalent protection for the very first time. During an Assembly Appropriations Committee hearing on January 28, 2019, Assemblyman John J. Burzichelli declared the “unanimous voice of the legislature of how important this farm

industry is to us.” Legislators made no mention of the health, well-being, or needs of the agricultural workers who form the foundation of that industry.

71. Representative Burzichelli sought reassurance from a testifying member of the State Board of Agriculture that amendments to the definition of seasonal worker to exclude farmworkers “were acceptable to the industry.” He noted: “Your voice is being heard so we want to get that testimony about how you feel about the amendment.”

72. No similar concern or seeking of approval was directed to those who opposed excluding New Jersey farmworkers.

73. Representatives of CATA, Make the Road New Jersey, Wind of the Spirit Immigrant Resource Center, the Service Employees International Union, Local 32BJ, and other members of the community voiced concern in both legislative hearings and in public statements about the exclusion of farmworkers from the legislation. They described how farmworkers need fair wages just as much as other workers and emphasized the racially discriminatory impact of denying farmworkers a minimum wage equivalent to that of other workers.

74. For example, at an Assembly Labor Committee hearing on Thursday, January 24, 2019, CATA General Coordinator Jessica Culley testified about the racist legacy of FLSA and the racially discriminatory impact of the

proposed exclusion. Ms. Culley explained that “[t]o perpetuate this legacy of racism in the labor laws is a choice that the elected representatives can reject.”

75. No legislators commented on this testimony or asked Ms. Culley any questions.

76. Similarly, at a Senate Budget and Appropriations Committee hearing on January 28, 2019, Madeline Montez-Raiz, a representative of Plaintiff CATA, read written testimony from Ms. Culley that reiterated these same concerns. No member of this committee commented on this testimony or asked any questions.

77. Juan Garcia, a member of Make the Road NJ’s Youth Community, also testified at this hearing regarding the discriminatory nature of the bill. He explained that these “exclusions will hurt communities of color” and urged the Legislature to “expand the rights of traditionally marginalized workers and not set them apart.”

78. This testimony echoed public calls by these and other groups to treat New Jersey farmworkers equally under the law and not perpetuate the racial discrimination underlying the exclusion of farmworkers from federal labor protections.

79. The Legislature was thus aware of the racism that fueled the historic exclusion of farmworkers from labor protections since the 1930s and the racially

disparate harm of excluding farmworkers from minimum wage protection. But the Legislature ignored that evidence and enacted a new farmworker labor exclusion in 2019 anyway—nearly a century after the New Deal exclusions.

80. The Legislature also ignored how the exclusion undermined the WHL’s stated purpose of protecting workers’ health and safety. Instead, it enacted the law with full knowledge that a specifically vulnerable class of workers would be excluded from a bill that explicitly sought to ensure the health and well-being of workers through a livable wage for most low-wage earners.

81. Ultimately, Governor Murphy signed into law the increase in the minimum wage to \$15 beginning in 2024, N.J.S.A. 34:11-56a4(a), and the express exclusion of farmworkers from this same protection, N.J.S.A. 34:11-56a4(d). In celebrating the law, the Governor stated that “[n]o one working a full-time job should ever live in poverty.”¹⁵

82. The law phases in slower and lower increases in farmworkers’ wages starting at “\$8.85 per hour as of January 1, 2019” with the possibility of reaching a \$15 minimum wage rate in 2027, and the same guaranteed minimum wage as other workers only by 2030. N.J.S.A. 34:11-56a4(d)(2). For people

¹⁵ Dustin Racioppi, *Deal Reached to Raise NJ's Minimum Wage to \$15 an Hour*, Bergen Record (Jan. 17, 2019), <https://www.northjersey.com/story/news/new-jersey/2019/01/17/deal-reached-raise-njs-minimum-wage-15-hour/2607027002/>.

living paycheck-to-paycheck, especially those below the federal poverty level, these lower and slower increases cause significant harm and perpetuate “wage levels detrimental to their health, efficiency and well-being.”

83. Moreover, even the lower and slower increases to reach an equivalent minimum wage were not guaranteed. The Legislature empowered Defendants Wengryn and Asaro-Angelo in consultation with each other, and, if necessary, a tie-breaking public member, to decline to raise farmworker wages after considering “any information provided by the secretary regarding the impact on farm employers and the viability of the State's agricultural industry.” N.J.S.A. 34:11-56a4(d)(3).¹⁶ The statute imposed no obligation upon Defendants to consider the impact upon farmworkers of deviating from the planned increases or whether doing so was compatible with the State’s express public policy in adopting the WHL of “safeguard[ing workers’] health, efficiency, and general well-being.” N.J.S.A. 34:11-56a.

84. In the end, the slower increases in the minimum wage rate for farmworkers are unequal to the minimum wages guaranteed to other similarly situated workers in New Jersey and will remain unequal for the next six years.

¹⁶ The multi-step process for how this deviation would occur, which only applied to farmworkers, is set forth in N.J.S.A. 34:11-56a4(d)(3). That provision has not been triggered since Defendants “approved” the planned increases before March 27, 2024.

D. No Valid Justification Exists for the Farmworker Exclusions.

85. Several states across the country have eliminated discriminatory farmworker wage exclusions, extirpating the taint of racism that produced these discriminatory laws and ending the devastating impacts on farmworkers and their families. The farm industry continues to thrive in states of all sizes and in all regions of the country that have provided their farmworkers with the wage and hour protections that are afforded to other workers. Farm owners' protestations—that newly enacted wage protections will interfere with farms' ability to operate—have simply not borne out.

86. For nearly every other industry, New Jersey law mandates that businesses pay their workers overtime pay and a higher minimum wage. Indeed, when the Legislature was considering the 2019 minimum wage increases, many private and public employers in other industries who opposed the bill argued—just like the farm industry—that there would be dire economic impacts of raising their workers' wages. The Legislature did not credit the claims of these other employers or give them a special carve-out. Only the farm industry received special treatment.

87. In the end, no sufficient public need justifies New Jersey's discriminatory policies. The claimed economic impacts on a single industry cannot justify harming a distinctly vulnerable group of workers predominantly

comprised of members of a racial and ethnic identity that has long experienced discrimination at the hands of the State. If it could, equal protection of the law would be an empty promise.

CLAIMS FOR RELIEF

COUNT I

DENIAL OF EQUAL PROTECTION IN VIOLATION OF ARTICLE I, PARAGRAPH 1 OF THE NEW JERSEY CONSTITUTION

88. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

89. Article I, paragraph 1 of the New Jersey Constitution of 1947 guarantees all persons the equal protection of the law.

90. Defendants, through N.J.S.A. 34:11-56a4(b)(1) and N.J.S.A. 34:11-56a4(d) of the WHL, deny farmworkers the equal minimum wage and overtime protections that the State provides to other similarly situated workers. This facially discriminatory classification deprives CATA members of equal protection of the law based on their status and membership within the vulnerable group of farmworkers, who are less able than others to protect their interests through the legislative process.

91. The unequal treatment of farmworkers under the WHL denies CATA members' important constitutional rights and interests in equality, dignity, safety, and health.

92. The denial of these rights and interests is not justified by a sufficient public need or governmental interest.

93. Defendants' discrimination against farmworkers in enforcing N.J.S.A. 34:11-56a4(b)(1) and N.J.S.A. 34:11-56a4(d) of the WHL further violates the equal protection guarantees of the New Jersey Constitution by discriminating against racial and ethnic minorities. This unconstitutional discrimination is evidenced by:

(a) the stark discriminatory impact of the WHL's farmworker exclusions upon racial and ethnic minorities;

(b) the intentional racism that motivated the exclusion of farmworkers from multiple New Deal labor laws, including FLSA, 29 U.S.C. §§ 201-219, which New Jersey lawmakers chose as a model for the WHL's overtime exclusions despite its racist history; and which motivated the New Jersey Legislature's 2019 decision to expand upon that discriminatory legacy despite evidence presented to it of the discriminatory impact of excluding farmworkers from equivalent minimum wage protection; and

(c) that the WHL’s exclusion of farmworkers from the wage and hour protections that similarly situated workers enjoy is inconsistent with the WHL’s purpose to protect workers’ health and well-being, a consideration the Legislature wholly ignored.

94. No non-discriminatory public need or purpose justifies these discriminatory exclusions, and they violate Article I, paragraph 1 of the New Jersey Constitution.

COUNT II

VIOLATION OF ARTICLE I, PARAGRAPH 1 OF THE NEW JERSEY CONSTITUTION’S RIGHT TO SAFETY

95. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

96. Article I, Paragraph 1 of the New Jersey Constitution states that “[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining *safety* and happiness” (emphasis added).

97. The stated purpose of the WHL is to “safeguard [workers’] health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency and well-being.” N.J.S.A. 34:11-56a.

98. The WHL recognizes that fair and reasonable wages correlate with employees' health. *See* N.J.S.A. 34:11-56a1(k) (“‘Fair wage’ means a wage fairly and reasonably commensurate with the value of the service or class of service rendered and sufficient to meet the *minimum cost of living necessary for health.*”) (emphasis added).

99. The WHL conversely recognizes that unfair, oppressive, and unreasonable wages may not meet the minimum needs for good health. *See* N.J.S.A. 34:11-56a1(l) (“‘Oppressive and unreasonable wage’ means a wage which is both less than the fair and reasonable value of the service rendered and less than sufficient to meet the *minimum cost of living necessary for health.*”). (emphasis added).

100. Farmwork is dangerous and difficult work that exposes workers to heightened risks of injuries and illness. Denying equal minimum wage and overtime pay to farmworkers in New Jersey contributes to CATA members working long hours, often far in excess of 40 hours a week. Work without adequate rest and fair compensation harms workers' health and safety, both physical and mental.

101. Even though CATA members often work well in excess of 40 hours a week, they struggle to support themselves and their families because they are

not entitled to fair and equivalent minimum wage and overtime pay. This causes stress and illness, and harms farmworkers' well-being.

102. By enforcing the WHL's denial of equal minimum wage and overtime pay to farmworkers, Defendants have violated CATA members' constitutional right to safety.

COUNT III

VIOLATION OF ARTICLE IV, SECTION 7, PARAGRAPH 9 OF THE NEW JERSEY CONSTITUTION'S PROHIBITION AGAINST SPECIAL LEGISLATION

103. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

104. Article IV, Section 7, paragraph 7 of the New Jersey Constitution states that "[n]o general law shall embrace any provision of a private, special or local character."

105. The Constitution also states that the "Legislature shall not pass any private, special or local laws: . . . [g]ranting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever." *N.J. Const.* art. 4, § 7, ¶ 9.

106. The prohibition against special legislation precludes the Legislature from granting special favors or treatment to particular groups or special interests.

107. Farmworkers are similarly situated to workers protected by the WHL, but the statute's terms exclude farmworkers from its protections. Likewise, employers similarly situated to farm employers are obligated to pay minimum wage and overtime to their workers under the WHL, but farm employers are irrationally exempted from these obligations. This grants to a "corporation, association or individual [an] exclusive privilege [and] immunity" in violation of the New Jersey Constitution. *N.J. Const.* art. 4, § 7, ¶ 9 (8). Granting an exclusive privilege to farm employers harms CATA members' health, economic stability, dignity, and well-being and is unreasonable, arbitrary, and unjustified by any rational distinction.

108. By arbitrarily exempting the farm industry from the WHL's minimum wage and overtime requirements while excluding farmworkers from needed protections extended to other similarly situated workers, the WHL constitutes an unconstitutional special law that violates Article IV, Section 7, paragraphs 7 and 9 of the New Jersey Constitution.

COUNT IV

VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT, N.J.S.A. 10:6-1 to -2

109. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

110. Each of the constitutional violations alleged in Counts I, II, and III also violates the New Jersey Civil Rights Act., N.J.S.A. 10:6-1 to -2, which protects against the deprivation of rights secured by the Constitution of this State and provides a cause of action to vindicate violations of those civil rights. N.J.S.A. 10:6-2(c).

PRAYER FOR RELIEF

WHEREFORE, cause having been shown, Plaintiff demands judgment against Defendants and requests that the Court order the following relief:

- (a) Issue a judgment declaring that the WHL's exclusion of farmworkers from equal minimum wage and overtime protections violates the New Jersey Constitution;
- (b) Issue an order permanently enjoining Defendants from enforcing the discriminatory exclusion of farmworkers in N.J.S.A. 34:11-56a4(b)(1) and N.J.S.A. 34:11-56a4(d) and voiding those unconstitutional exclusions;
- (c) Award attorneys' fees and costs pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(f), and other relevant authority; and
- (d) Grant such other relief as is just and proper.

Dated: August 7, 2024

CENTER FOR SOCIAL JUSTICE
SETON HALL LAW SCHOOL

BY: /s/Jennifer B. Condon

JENNIFER B. CONDON

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AMERICAN CIVIL LIBERTIES UNION
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Spencer Amdur*

Noelle Smith*

ACLU FOUNDATION, IMMIGRANTS'
RIGHTS PROJECT

[REDACTED]

Alejandro A. Ortiz*
ACLU FOUNDATION, RACIAL
JUSTICE PROGRAM

**Pro hac vice* motion pending

Attorneys for Plaintiffs

CERTIFICATION

Pursuant to *Rule* 4:5-1, it is hereby certified that, to the best of my knowledge, there are no other civil actions or arbitration proceedings with respect to this matter and no other parties need to be joined at this time.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: August 7, 2024

/s/Jennifer B. Condon
JENNIFER B. CONDON