IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOSE MARTINEZ-CUEVAS and PATRICIA AGUILAR, individually and on behalf of all others similarly situated, Petitioners, v. DERUYTER BROTHERS DAIRY, INC., GENEVA S. DERUYTER, and JACOBUS N. DERUYTER, Respondents, and WASHINGTON STATE DAIRY FEDERATION and WASHINGTON FARM BUREAU, Intervenor-Respondents.	)	No. 96267-7 En Banc Filed: November 5, 2020

MADSEN, J.—This case concerns the constitutionality of RCW 49.46.130(2)(g), the provision exempting agricultural workers from the overtime pay requirement set out in the Washington Minimum Wage Act, ch. 49.46 RCW. At issue here is whether the

trial court properly granted partial summary judgment to an affected class of agricultural workers who argued that the exemption violates article I, section 12 of our state constitution and the equal protection clause. For the following reasons, we affirm as to article I, section 12.

BACKGROUND

Jose Martinez-Cuevas and Patricia Aguilar worked for DeRuyter Brothers Dairy as milkers. DeRuyter milkers used mechanized equipment to milk close to 3,000 cows per shift, 24 hours a day, three shifts a day, 7 days a week.

In 2016, Martinez-Cuevas and Aguilar filed the present class action suit along with about 300 fellow DeRuyter dairy workers. The amended complaint claimed that DeRuyter failed to pay minimum wage to dairy workers, did not provide adequate rest and meal breaks, failed to compensate pre- and post-shift duties, and failed to pay overtime. The complaint also sought a judgment declaring RCW 49.46.130(2)(g)[1] unconstitutional.

The parties eventually reached a class settlement resolving all but the overtime pay claims. The trial court approved the settlement. The parties stipulated to class certification of the remaining claims. In February 2018, the trial court permitted the Washington State Dairy Federation and Washington Farm Bureau to intervene as defendants.

[1] RCW 49.46.130(1) requires employers to compensate employees for work in excess of 40 hours. Subsection (2)(g) exempts certain employees, such as individuals employed on farms, from receiving this compensation.

Martinez-Cuevas and Aguilar moved for summary judgment. They alleged that class members generally worked over 40 hours per week without receiving overtime pay and labored in dangerous conditions. The workers claimed that the agricultural industry was powerful while the agricultural workers were poor, and the exemption was racially motivated to impact the Latinx population, which constitutes nearly 100 percent of Washington dairy workers. Consequently, the workers argued, the agricultural exemption for overtime pay violates article I, section 12 of the Washington State Constitution because it grants a privilege or immunity to the agricultural industry pursuant to a law implicating a fundamental right of state citizenship—the right of all workers in dangerous industries to receive workplace health and safety protections.

The workers further argued that RCW 49.46.130(2)(g) violates the equal protection guaranty of the Washington Constitution. Because the Minimum Wage Act was based on the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219, which allegedly used race as the basis for exempting farmworkers from overtime compensation, the workers claim that the Minimum Wage Act incorporated the racist motivations underlying the federal statute. Clerk's Papers (CP) at 114, 105 & n.5 (citing *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 867-70, 281 P.3d 289 (2012) (recognizing the Minimum Wage Act definition of "employee" was based on the Fair Labor Standards Act)). These motivations are unrelated to protecting the health and safety of workers; because health and safety protections are a fundamental right under article II, section 35, the workers argue that strict scrutiny applies and that RCW 49.46.130(2)(g) fails this and any other level of scrutiny.

DeRuyter and the intervenors filed cross motions for summary judgment. They argued that RCW 49.46.130(2)(g) implicates no fundamental right and does not benefit one class over another or violate equal protection. DeRuyter and intervenors disputed the dairy workers' evidence regarding racial bias against Latinx, arguing the agricultural exemption could not be motivated by racial bias because when it was originally passed in 1959, most agricultural workers were white.

After oral argument, the trial court issued a letter order granting in part and denying in part the workers' motion for summary judgment. Eschewing the contention that article II, section 35 creates a fundamental right of state citizenship to employee protection laws, the court instead found in favor of the workers based on a different fundamental right—the right to work and earn a wage. The trial court noted that the right to work "treats a class of workers in a significantly different fashion than other wage earners engaged in the business of selling their labor." CP at 1213-14.

The court reserved for trial the question of whether the legislature had a reasonable ground for providing a privilege or immunity to the agricultural industry in the form of the overtime exemption and did not rule on the constitutionality of RCW 49.46.130(2). As a result, the court denied summary judgment for DeRuyter and the intervenors, denied motions to strike portions of the workers' briefing, and certified the summary judgment order for discretionary review. Martinez-Cuevas and Aguilar moved for discretionary review here, which we granted.

ANALYSIS

At issue is whether RCW 49.46.130(2)(g) violates the privileges or immunities clause or equal protection, article I, section 12 of the Washington State Constitution. We review the constitutionality of a statute de novo. *Schroeder v. Weighall*, 179 Wn.2d 566, 571, 316 P.3d 482 (2014). As with a court's construction of statutes, interpreting the meaning of constitutional provisions begins with the plain language of the text. *Malyon v. Pierce County*, 131 Wn.2d 779, 799, 935 P.2d 1272 (1997); *Wash. Water Jet Workers Ass'n v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004). Similarly, we review "a trial court's order on cross motions for summary judgment and related evidentiary rulings de novo." *Wilkinson v. Chiwawa Cmtys. Ass'n*, 180 Wn.2d 241, 249, 327 P.3d 614 (2014). An order granting summary judgment may be affirmed on any legal basis supported by the record. *Coppernoll v. Reed*, 155 Wn.2d 290, 296, 119 P.3d 318 (2005) (citing *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027 (1989)).

Article I, section 12

"No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." WASH. CONST. art. I, § 12. Passed during a period of distrust toward laws that served special interests, the purpose of article I, section 12 is to limit the sort of favoritism that ran rampant during the territorial period. *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 775, 317 P.3d 1009 (2014) (plurality opinion) (citing ROBERT F. UTTER & HUGH D. SPITZER, THE WASHINGTON STATE CONSTITUTION: A REFERENCE GUIDE 26-27 (G. Alan Tarr ed., 2002)).

Washington courts have at times interpreted article I, section 12 consistent with the federal equal protection clause, but we have also recognized that the text and aims of article I, section 12 are different. *Id.* at 775-76. Historically, this court has read the antifavoritism framework of article I, section 12 as limited to fundamental rights of state citizenship. *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902) (interpreting the state privileges and immunities clause consistent with article IV, section 2 of the federal constitution)). These fundamental rights, according to the dissent, were recognized in *Corfield v. Coryell* as Lockean "natural rights." 6 F. Cas. 546, 551-52 (C.C.E.D. Pa. 1823) (No. 3,230). Dissent at 5; *but see* Richard L. Aynes, *Constricting the Law of Freedom: Justice Miller, The Fourteenth Amendment, and the* Slaughter-House Cases, 70 CHI.-KENT L. REV. 627, 651 (1994) (arguing that the "most logical reading of . . . *Corfield* is that 'fundamental' was not being used in a natural law sense, but rather as a synonym for 'constitutional'"). The dissent also asserts that *Corfield*'s natural rights interpretation evolved after the Civil War to favor an antidiscrimination construction, as evidenced by the *Slaughter-House Cases*,[2] among others. Dissent at 6 n.2. The *Slaughter-House* decision did adopt an antidiscrimination principle, but it did so at the expense of the language and purpose of the Fourteenth Amendment to the United States Constitution.

While the history of the federal privileges or immunities clause does not alter our holding in the present case, we take the opportunity to review it here in order to clarify

[2] 83 U.S. (16 Wall.) 36, 21 L. Ed. 394 (1873).

why we diverge from the federal antidiscrimination principle and, perhaps more importantly, to correct the many misstatements about the history of the Fourteenth Amendment.

Drafted in 1866 by Congressman John Bingham of Ohio, the Fourteenth Amendment was intended to give Congress the power to "secure to the citizen of each State all the privileges and immunities of citizens of the United States in the several States," and provide the power to "enforce the bill of rights as it stands in the Constitution today." CONG. GLOBE, 39th Cong., 1st Sess. 1095, 1088 (1866); *see also* Aynes, *supra*, at 629-32 (listing statements from Congressional lawmakers that the intent of the Fourteenth Amendment was to enforce the Bill of Rights against the states); Michael Anthony Lawrence, *Rescuing the Fourteenth Amendment Privileges or Immunities Clause: How "Attrition of Parliamentary Process" Begat Accidental Ambiguity; How Ambiguity Begat* Slaughter-House, 18 WM. & MARY BILL RTS. J. 445, 449-50 (stating that the members of Congress in 1866 understood "perfectly well that Section 1 [of the Fourteenth Amendment] was intended to repudiate *Barron* [*v. Baltimore*, 32 U.S. (7 Pet.) 243, 8 L. Ed. 672 (1833)]," which held that the Bill of Rights applies only to Congress).

Five years after ratification, the Supreme Court addressed the privileges or immunities clause for the first and, effectively, last time. *Slaughter-House* arose from a Louisiana law giving a private corporation the exclusive right to run a slaughterhouse in New Orleans but permitting all butchers to use it. 83 U.S. at 39. Butchers who were not part of the corporation challenged the action. *Id*. at 43. Writing for the majority, Justice

Samuel Miller rejected the challenge and upheld the statute. *Id.* at 60-61. Justice Miller then addressed the privileges or immunities clause in dicta, concluding that national rights were protected under the privileges or immunities clause of the Fourteenth Amendment, while state rights were covered by the privileges and immunities clause of article IV. *Id.* at 74-76. Justice Miller based this new distinction on citizenship largely on the different language in the Fourteenth Amendment and article IV. *Id.* at 75-76. Yet, as the dissenting justices pointed out, the majority misquoted article IV and made it appear to protect only state's rights. *Id*. at 75-76 (changing the phrase "citizens in the several states" to read "citizens of the several states"), 117 (Bradley, J., dissenting) (noting the misquotation). Justice Miller held that states already protected the rights claimed by the butchers in *Slaughter-House* and to hold them to be privileges or immunities would make the states subject to congressional control. *Id*. at 78.

Most scholars agree that *Slaughter-House* was wrongly decided. *E.g.*, Aynes, *supra*, at 627 (noting "'everyone' agrees the Court incorrectly interpreted the Privileges or Immunities Clause"). Tying national rights to the privileges or immunities clause prioritized a distinction that Congress did not intend. The decision ignores the plain language and purpose of the Fourteenth Amendment to substantially change the relationship between the states and federal government—specifically, to provide a means of enforcing the Bill of Rights against the states. *Slaughter-House*, 83 U.S. at 129 (Swayne, J., dissenting) (stating that the restrictions imposed on states by the privileges or immunities clause was "novel and large . . . [but] the novelty was known and the measure deliberately adopted"); Lawrence, *supra*, at 449; Aynes, *supra*, at 649-50.

Moreover, even though the *Slaughter-House* Court noted that the Reconstruction Amendments, including the Fourteenth, were intended to ensure freedom for emancipated slaves, the Court disavowed protection on the basis of race in favor of protection against discrimination based on state citizenship. *See Slaughter-House*, 83 U.S. at 71, 75-78. As history has shown us, states routinely failed to protect racial minorities and many enacted discriminatory Jim Crow laws. *E.g.*, *Civil Rights Cases*, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883) (holding that the Thirteenth and Fourteenth Amendments did not permit Congress to outlaw racial discrimination at the hands of private individuals); Lawrence, *supra*, at 449 (stating that without the constraints of the privileges or immunities clause, states were free to "perpetuate unjust discriminatory Jim Crow laws.").

In this case, the dissent is correct that the federal antidiscrimination construction is no longer a helpful analogy in construing our state's article I, section 12. Dissent at 7. But this is not because of the evolution in *Corfield*'s "natural rights" doctrine as evidenced by the *Slaughter-House Cases*. Rather, we depart from the federal construction because it grew from an incorrectly decided *Slaughter-House* decision that radically changed the intent of the Fourteenth Amendment away from that of the provision's congressional authors. *See Wash. Water Jet Workers*, 151 Wn.2d at 477 (interpreting the ordinary meaning of a constitutional provision at the time of drafting also includes examining the provision's historical context).

Jurists and scholars have long recognized the true and unfortunate history of the privileges or immunities clause. *E.g.*, Aynes, *supra*, at 682-83 (noting the legal community initially viewed *Slaughter-House* as changing the meaning of the Fourteenth

Amendment away from the intent of the framers). Even scholars who agreed with the *Slaughter-House* majority acknowledged that it moderated the literal language of the Amendment. *Id.* at 684-85. Thus, scholars have overwhelmingly agreed that *Slaughter-House* was decided contrary to the intent of the Fourteenth Amendment. *Id*. at 685-86.

Where the Fourteenth Amendment to the United States Constitution was generally intended to prevent discrimination against disfavored individuals or groups, article I, section 12 was intended to prevent favoritism and special treatment for a few to the disadvantage of others. *Ockletree*, 179 Wn.2d at 776 (citing *State v. Smith*, 117 Wn.2d 263, 283, 814 P.2d 652 (1991) (Utter, J., concurring)). In *Grant County Fire Protection District No. 5 v. City of Moses Lake*, we recognized that article I, section 12 is more protective than the federal equal protection clause and in certain situations, requires an independent analysis. 150 Wn.2d 791, 805-12, 83 P.3d 419 (2004).

The independent analysis applies only where a law implicates a "privilege or immunity" as defined in our early cases distinguishing the fundamental rights of state citizenship. *Schroeder*, 179 Wn.2d at 572 (citing *Grant*, 150 Wn.2d at 812-13). In such situations, we have applied a two-step analysis. First, we ask whether a challenged law grants a "privilege" or "immunity" for purposes of our state constitution. *Id.* at 573 (citing *Grant*, 150 Wn.2d at 812). If the answer is yes, then we ask whether there is a "reasonable ground" for granting that privilege or immunity. *Id.* (citing *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 145 Wn.2d 702, 731, 42 P.3d 394 (2002), *vacated in part on reh'g*, 150 Wn.2d 791).

Benefits triggering this analysis are only those implicating fundamental rights of state citizenship. *Id*. (quoting *Vance*, 29 Wash. at 458). Generally, rights left to the discretion of the legislature have not been considered fundamental. *Grant*, 150 Wn.2d at 814.

1. RCW 49.46.130(2)(g) grants agricultural employers a privilege or immunity from providing overtime protections guaranteed to dairy workers under article II, section 35

The Washington Constitution protects employees working in certain especially dangerous industries. Article II, section 35 states:

> The legislature *shall* pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life or deleterious to health; and fix pains and penalties for the enforcement of the same.

(Emphasis added.) Martinez-Cuevas and Aguilar argue that article II, section 35 establishes the fundamental right to statutory protection for citizens working in extremely dangerous conditions. DeRuyter counters that the provision provides legislative discretion to set penalties for worker protection and, thus, creates no fundamental right. Yet article II, section 35 states that the legislature "shall" pass necessary laws, and the word "shall" is "presumptively imperative and operates to create a duty, rather than to confer discretion." *In re Parental Rights to K.J.B.*, 187 Wn.2d 592, 601, 387 P.3d 1072 (2017) (citing *State v. Bartholomew*, 104 Wn.2d 844, 848, 710 P.2d 196 (1985)). No contrary intent appears in the provision, thus article II, section 35 *requires* the legislature to pass appropriate laws for the protection of workers. The discretion to fix penalties concerns the way in which a law is made to operate; it has no bearing on the requirement

to enact the law in the first instance. *See Afoa v. Port of Seattle*, 176 Wn.2d 460, 470, 296 P.3d 800 (2013) (stating that article II, section 35 "requires the legislature" to enact laws protecting employees working in dangerous conditions). Article II, section 35 mandates legislative action and constitutes a fundamental right of Washington workers to health and safety protection.

DeRuyter milkers constitute the type of workers protected by article II, section 35 because they worked long hours in conditions dangerous to life and deleterious to their health. DeRuyter milking facilities were operated around-the-clock in order to service 3,000 cows. DeRuyter's employment policy required milkers to stay until all cows were milked and to help clean the barn, unless excused early. Martinez-Cuevas, Aguilar, and the class as a whole worked over 40 hours per week over 80 percent of the time they were employed by DeRuyter.

Moreover, dairy work is some of the most hazardous in the United States. In 2015, the injury rate for Washington's dairy industry was 121 percent higher than all other state industries combined and 19 percent higher than the *entire* agricultural sector. Milkers are exposed to physical strains, respiratory hazards, toxic chemicals, and risk of contracting diseases and injuries from animals; this exposure has led to cancer, respiratory disease, and neurological conditions. Martinez-Cuevas and Aguilar both suffered injuries while working at DeRuyter's dairy farm. Overtime work is particularly injurious, resulting in increased injuries, illness, and mortality. CP at 314, 318 (overtime results in 61 percent higher injury hazard rate). DeRuyter does not dispute that the dairy industry is dangerous to the health of dairy workers. *See* CP at 750-55, 909 (only

material fact in dispute was allegedly racist history of agricultural exemption); Opening Br. of Resp'ts/Cross-Appellants at 7.

The extremely dangerous nature of dairy work entitles dairy workers to the statutory protection set out in article II, section 35. *See Macias v. Dep't of Labor & Indus.*, 100 Wn.2d 263, 274, 668 P.2d 1278 (1983) (noting that farmworkers engage in "an extremely dangerous occupation").

The legislature enacted this very protection in the form of the Minimum Wage Act. *See Anfinson*, 174 Wn.2d at 870 ("minimum wage laws have a remedial purpose of protecting against 'the evils and dangers resulting from wages too low . . . and from long hours of work injurious to health'" (internal quotation marks omitted) (quoting *United States v. Rosenwasser*, 323 U.S. 360, 361, 65 S. Ct. 295, 89 L. Ed. 301 (1945))). Necessary to safeguard the health, safety, and general welfare of Washington citizens, the act establishes a minimum wage and provides overtime protections. RCW 49.46.005(1); LAWS OF 1959, ch. 294, § 3. The act's general rule requires an employer to pay its employees for time worked in excess of 40 hours per week, subject to certain exemptions. *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 301, 996 P.2d 582 (2000). Though farmworkers were eventually included in the minimum wage provision, LAWS OF 1989, ch. 1, § 1, they continued to be exempt from RCW 49.46.130's overtime compensation requirement. *See* RCW 49.46.130(2)(g).

Article II, section 35 creates the fundamental right of state citizenship to laws such as the Minimum Wage Act that protect the health and safety of dairy workers.[3] Our article I, section 12 case law bolsters this conclusion. We have expressly identified fundamental rights of state citizenship, but we have never characterized this list as comprehensive or limited to only those enumerated rights. *See Vance*, 29 Wash. at 458. *Vance* recognizes the fundamental right to "enforce other personal rights," *id.*, and the phrase "privileges and immunities" has been historically understood to encompass a broad range of rights such as "protection by the government." *Corfield*, 6 F. Cas. at 551, *quoted in Madison v. State*, 161 Wn.2d 85, 119, 163 P.3d 757 (2007) (J.M. Johnson, J., concurring). The right to statutory protection for health and safety pursuant to article II, section 35 contemplates the fundamental "personal rights" of *Vance* and "[p]rotection by the government" in *Corfield*.

The Minimum Wage Act excludes agricultural workers from the definition of employee and results in an exemption from the act's overtime requirement. RCW

[3] The dissent concludes that dairy workers have no fundamental rights in this case because the statutory protection for employees in dangerous conditions is a discretionary exercise of the legislature's police power. Dissent at 11, 14. This conclusion, however, ignores the critical fact that our state constitution expressly protects workers in such conditions under article II, section 35. Had the authors of our constitution omitted this provision, the legislature would still have the authority to enact worker protections under its police power. Thus, to agree with the dissent renders article II, section 35 meaningless. Under the provision, the legislature is required to enact statutory protections for workers in dangerous and deleterious conditions. Far from granting broad discretion, article II, section 35 imposes a duty. The legislature acted to meet this duty by passing the Minimum Wage Act. Once the legislature elected to offer overtime pay to all Washington workers, the exclusion of dairy workers from overtime pay is a violation of article I, section 12 unless reasonable grounds exist.

49.46.130(1), (2)(g). RCW 49.46.130(2)(g)'s exemption grants dairy farmers a privilege or immunity from paying otherwise mandatory overtime pay. RCW 49.46.130(1).

We may affirm the trial court on any grounds supported by the record. *Coppernoll*, 155 Wn.2d at 296. While the court below granted partial summary judgment to the workers based on the fundamental right to work and earn a wage, we conclude that article II, section 35 provides the dairy workers the fundamental right to health and safety protections of the Minimum Wage Act. We therefore agree with the trial court that RCW 49.46.130(2)(g) implicates a fundamental right and grants a privilege or immunity, satisfying the first prong of the privileges analysis. *See Schroeder*, 179 Wn.2d at 573.

2. The legislature lacked reasonable grounds for granting the overtime exemption to agricultural employers

The article I, section 12 reasonable ground test is more exacting than rational basis review. *Id*. at 574; *see also Ockletree*, 179 Wn.2d at 797 (Stephens, J., dissenting). Under the reasonable ground test, a court will not hypothesize facts to justify a legislative distinction. *Schroeder*, 179 Wn.2d at 574 (citing *City of Seattle v. Rogers*, 6 Wn.2d 31, 37-38, 106 P.2d 598 (1940)). Rather, the court will scrutinize the legislative distinction to determine whether it in fact serves the legislature's stated goal. *Id*. (citing *State ex rel. Bacich v. Huse*, 187 Wash. 75, 82, 59 P.2d 1101 (1936), *overruled on other grounds by Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979)). Speculation may suffice under rational basis review, but article I, section 12's reasonable ground analysis does not allow it. *Id*. at 575. If we are to uphold RCW 49.46.130(2)(g)'s overtime exemption, the provision must be justified in fact and theory. *See id.*

As noted, the trial court reserved the question of "reasonable basis" for granting the privilege or immunity for trial. CP at 1214. The court indicated that the issue is "simply not amen[]able to decision in the context of a CR 56 [summary judgment] motion." *Id.* The court also noted that "[t]he level of scrutiny must be determined by reference to issues of legislative intent and legislative history." *Id*. Such questions are questions of law, which courts review de novo. *See Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002) (courts will look to the legislative history behind ambiguous statutes in order to ascertain and carry out legislative intent); *see also Schroeder*, 179 Wn.2d at 574 (stating that when conducting the reasonable ground analysis, courts will scrutinize the legislative distinction to determine whether it serves the legislature's stated goal). Moreover, the judiciary has the ultimate power and the duty to interpret, construe, and give meaning to words, sections, and articles of the constitution. *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 503, 585 P.2d 71 (1978). We therefore reach the second step of the privileges or immunities analysis. *See Schroeder*, 179 Wn.2d at 572-73.

DeRuyter asserts that lawmakers found the seasonal nature of farming and changes in weather, crop growth, commodity market prices, and husbandry rendered agricultural work ill suited to the 40-hour workweek and overtime pay under the Minimum Wage Act. Opening Br. of Resp'ts/Cross-Appellants at 24-25. The record, however, does not support these assertions.

First, while milking may slow in summer months, it occurs year-round. Br. of Amici Curiae Nat'l Emp't Law Project et al., at 14 n.28. Indeed DeRuyter dairy workers

milk thousands of cows per shift, 24 hours a day, 7 days a week. CP at 845, 849 (audit noting that DeRuyter employed only two seasonal workers). This constant, factory-like work is unlike that of piece-rate seasonal workers. *See, e.g.*, *Lopez Demetrio v. Sakuma Bros. Farms*, 183 Wn.2d 649, 653, 355 P.3d 258 (2015) (describing seasonal workers harvesting fruit crops each year). Further, other industries employing seasonal workers, such as retail, are not exempt from the overtime protections. *See* Br. of Amici Curiae Nat'l Emp't Law Project et al., at 14 n.29. Next, the legislative history offered by DeRuyter does not reference seasonality or the variations of agricultural work as considered during the passage of the Minimum Wage Act. The history instead references unemployment insurance for agricultural workers, the consequences of increased operating costs, and legislative changes to the Washington Industrial Safety and Health Act of 1973 (WISHA), ch. 49.17 RCW. Opening Br. of Resp'ts/Cross-Appellants at 9, 24. DeRuyter provides no link between WISHA and the Minimum Wage Act exemption. The history of unrelated issues and statutes offers little in the way of legislative intent.

DeRuyter does not offer, and we have not found, any convincing legislative history that illustrates a reasonable ground for granting the challenged overtime pay exemption. The stated purpose of the Minimum Wage Act is to protect the health and safety of Washington workers, as required by article II, section 35. *See* RCW 49.46.005(1). This purpose underlies the entirety of the act, including the overtime pay protections and exemptions. In the face of this clear purpose and constitutionally mandated protection, the exemption in RCW 49.46.130(2)(g) is an impermissible grant of a privilege or immunity under article I, section 12 of Washington's constitution.

The trial court found that Martinez-Cuevas and Aguilar met the first step of the privileges and immunities analysis based on a facial challenge to RCW 49.46.130(2)(g). We affirm the court's ruling on this issue, based not on the fundamental right to work as the trial court found, but on the health and safety protections enshrined in article II, section 35. We are affirming the trial court's order and because an order granting summary judgment may be affirmed on any legal basis supported by the record, *Coppernoll*, 155 Wn.2d at 296, we hold that RCW 49.46.130(2)(g) violates article I, section 12 as applied to dairy workers, which is clearly supported by the arguments presented and the factual record before us.[4]

3. Martinez-Cuevas and Aguilar are entitled to attorney fees

Martinez-Cuevas and Aguilar seek attorney fees under RCW 49.48.030 and RAP 18.1(a). RCW 49.48.030 allows the award of fees where a person is "successful in recovering judgment for wages or salary owed." It is a remedial statute and must be construed liberally in favor of the employee. *Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 34, 42 P.3 1265 (2002).

[4] Because we resolve the constitutionality of RCW 49.46.130(2)(g) under article I, section 12, we decline to address the workers' other constitutional claim of equal protection. *Hayden v. Mut. of Enumclaw Ins. Co.*, 141 Wn.2d 55, 68, 1 P.3d 1167 (2000) (stating that if resolution of an issue effectively disposes of a case, a court is not required to reach additional issues presented). Additionally, retroactivity is not properly before this court. *See* concurrence at 10 n.1; *see also* dissent (Johnson, J.) at 1 (arguing for a prospective-only application of the majority's holding). Neither party raised this issue in its statement of grounds for review, consequently we did not grant review of it. *See* RAP 2.4(c). Nor is it necessary to resolve the case. RAP 12.1(b); *Alverado v. Wash. Pub. Power Supply Sys.*, 111 Wn.2d 424, 429, 759 P.2d 427 (1988) (stating that an appellate court has inherent authority to consider an issue not raised by either party if necessary to resolve the case). We therefore decline to address it.

The only issue remaining before the trial court here was that of overtime pay. The trial court concluded that RCW 49.46.130(2)(g) granted a privilege or immunity and reserved the other aspects of the workers' claims for trial. While the trial court did not address the reasonable ground for granting the privilege or immunity, we have addressed it above and conclude that no reasonable ground exists. Therefore, we hold the exemption violates article I, section 12. It appears no further issues remain for the trial court to resolve, and therefore we remand the case to the trial court for entry of summary judgment in favor of Martinez-Cuevas, Aguilar, and their fellow class members. We also award their request for attorney fees.

CONCLUSION

RCW 49.46.130(2)(g) violates article I, section 12 of the Washington State Constitution as applied to dairy workers. We affirm and remand to the trial court for further proceedings consistent with this opinion.

Madsen, J.

WE CONCUR:

González, J.

Gordon McCloud, J.

Yu, J.

Wiggins, J.P.T.