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Jurado v. Popejoy Construction Co.: Determining the Constitutionality of Disparate Awards of Workers' Compensation Death Benefits to Nonresident Alien Dependents

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JURADO V. POPEJO CONSTRUCTION CO.: DETERMINING THE CONSTITUTIONALITY OF DISPARATE AWARDS OF WORKERS’ COMPENSATION DEATH BENEFITS TO NONRESIDENT ALIEN DEPENDENTS

I. INTRODUCTION

The Fourteenth Amendment guarantees all "persons" residing within the territorial boundaries of the United States the right to the equal protection of all state laws and proceedings. Since 1886, the United States


The Supreme Court has increasingly relied on equal protection principles to guarantee individuals protection in the exercise of their fundamental rights or in the elimination of classifications based on "suspect" criteria. See United States v. Carolene Prods. Co., 304 U.S. 144, 152 n.4 (1938) (identifying judicial role in protecting individual fundamental rights and “discrete and insular minorities” using Equal Protection Clause); see also Joseph Tussman & Jacobus ten Broek, The Equal Protection of the Laws, 37 CAL. L. REV. 341, 344 (1949) (defining and analyzing equal protection concepts and standards of review).

The equal protection guarantee is only implicated when the government classifies individuals for the purpose of differing governmental benefits or burdens. See NOWAK, supra, at 569. When a government action is not based on a classification of persons, due process applies rather than equal protection. Id. at 570. Equal protection ensures that legislative classifications are proper and that legislative line-drawing is not arbitrary. Id. Procedural due process determines whether an individual is properly placed within a specific classification; it is the means for adjudicating individual claims. Id. Under the Equal Protection Clause, states are not prohibited from creating and applying legislative classifications; however, the classifications must be related to a proper government purpose. See F. S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920) (stating classification must be “reasonable, not arbitrary, and must rest upon some ground of difference having

(705)
Supreme Court has recognized resident aliens as "persons" under the Fourteenth Amendment thereby protecting them from discrimination, regardless of race, color or nationality.2 Throughout the early and mid-

fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike"); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911) (giving states wide discretion in classifying individuals under police laws); see also Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 313 (1976) (requiring that government classifications further legitimate government interest). See generally BARRON, supra, at 553-56; NOWAK, supra, at 569-73. Governmental classifications that are based on impermissible criteria or that place an arbitrary burden on a specific group of persons violate the Equal Protection Clause. See Carolene Prods., 304 U.S. at 152 n.4. A law containing legislative classifications is impermissible if discriminatory on its face, by the means of classification it employs, or in its application and effects. See BARRON, supra, at 563-67, 570, 577-94; NOWAK, supra, at 570-73. A law may appear to be fair and impartial on its face; however, if unfairly applied it will be held unjust and a violation of the Equal Protection Clause. See Yick Wo v. Hopkins, 118 U.S. 356 (1896) (finding unconstitutional California zoning law which discriminated against aliens in effect, although not discriminatory on its face); Neal v. Delaware, 103 U.S. 370 (1880) (finding exclusion of black citizens from juries violated Equal Protection Clause case even though jury selection statute not discriminatory on face). For a further discussion of equal protection principles and the specific standards of review that courts employ under the Fourteenth Amendment, see infra notes 26-40 and accompanying text. For a further discussion of the equal protection of aliens under the Fourteenth Amendment, see infra notes 41-70 and accompanying text.

Many commentators argue that equality has no real substantive meaning and should be eliminated from legal analysis. See Peter Westen, The Empty Idea of Equality, 95 HARv. L. REV. 537, 542, 547 (1982). Westen argues that when one invokes the principles of equality, one is merely invoking a claim to a specific substantive right. Id. at 542, 552. Westen believes that reliance on equal protection principles serves only to confuse the nature of an individual's claim. Id. at 579.


2. See Yick Wo, 118 U.S. at 369 (extending guarantees of Equal Protection Clause to anyone, citizen or alien, subject to laws of United States and residing within its territorial boundaries). In Yick Wo, the Supreme Court found unconstitutional a California statute that discriminated against Chinese citizens. Id. at 374. The Court based its decision on the principle that the Fourteenth Amendment protects all persons within the United States, regardless of citizenship or alienage. Id. at 369.

The Yick Wo decision was the first time the Supreme Court explicitly extended the protection of the Constitution to aliens, regardless of citizenship. See id. at 369. Rather, the Equal Protection Clause had been viewed as a means for prohibiting state discrimination based on race and religion, rather than citizenship. See Strauder v. West Va., 100 U.S. 303 (1879) (invalidating state statute excluding blacks from juries under Equal Protection Clause).

For the purpose of this Note, the term "resident alien," also known as "immigrant alien," will refer to those aliens that have been granted the right to work and permanently reside in the United States pursuant to 8 U.S.C. § 1427 (Supp. 1993). The Immigration and Nationality (McCarren-Walter) Act of 1952, 8 U.S.C. § 1101(a)(15) (1970 & Supp. 1993), defines "documented aliens" as incorporating
1900s state legislative classifications based on alienage faced only sporadic judicial scrutiny. However, in the 1970s, the Supreme Court began reviewing state laws that discriminated against aliens and eliminating disparate statutory classifications.

Both immigrant and non-immigrant aliens. Temporary or non-immigrant aliens are admitted to the United States for a short duration and include such categories as students, diplomats and tourists. See id. Nonresident aliens are those persons who are neither citizen nor resident of the United States. BLACK'S LAW DICTIONARY 731 (6th ed. 1990). The primary focus of this Note will be resident aliens and nonresident aliens. This Note will not discuss the rights of temporary or illegal aliens. For a case discussing the rights of illegal aliens, see Plyler v. Doe, 457 U.S. 202 (1982) (finding Texas statute denying enrollment of undocumented alien children into local school districts in violation of Equal Protection Clause of Fourteenth Amendment).

Apart from the cases mentioned above, few state statutes were struck down based on alienage. See, e.g., Frick v. Webb, 263 U.S. 326, 334 (1923) (finding constitutional state statute prohibiting aliens from owning land); Webb v. O'Brien, 263 U.S. 313, 324 (1923) (same); Porterfield v. Webb, 263 U.S. 225, 232-33 (1923) (same); Terrace v. Thompson, 263 U.S. 197, 222, 224 (1923) (same); Heim v. McCall, 299 U.S. 175, 194 (1915) (upholding New York statute prohibiting aliens from working on public work projects); Patsone v. Pennsylvania, 292 U.S. 138, 143-46 (1914) (upholding Pennsylvania statute prohibiting aliens from owning firearms used in game hunting); Blythe v. Hinckley, 180 U.S. 333, 340, 342 (1901) (upholding California statute denying alien's right to devolution of property).

Use of the Equal Protection Clause against statutory classifications based on alienage was limited in the 1900s due to the “public interest” doctrine. See Truax, 299 U.S. at 39-40. In Truax, the Supreme Court introduced this doctrine with the holding that "[t]he discrimination defined by the . . . [Fourteenth Amendment] does not pertain to the regulation or distribution of the public domain, or of the common property or resources of the people of the State, the enjoyment of which may be limited to its citizens as against both aliens and citizens of other States.” Id. For a further discussion of the development of the “public interest” doctrine, see infra notes 45-50 and accompanying text.

Equal protection became a primary means for overturning state legislation during the Warren Court years and has since played a large part in framing state
Presently, resident aliens are classified by state and federal courts as “discrete and insular” minorities. State statutes come before the Court with a presumption of validity. However, when a state statute contains legislative classifications based on alienage, it is inherently suspect and subject to close judicial scrutiny. Consequently, a state bears a heavy burden when it classifies individuals based on their alienage.

5. See Graham, 403 U.S. at 374. In Graham, Justice Blackmun described aliens as a “discrete and insular” minority for whom close judicial scrutiny is appropriate. Id. (citing United States v. Carolene Products Co., 304 U.S. 144, 152-53 n.4 (1938)). The Supreme Court first utilized the term “discrete and insular” minority in extending equal protection to blacks. See Carolene Prods., 304 U.S. at 152-53 n.4. A “discrete and insular” minority is a class that lacks political representation and is, therefore, subject to discrimination by the majority. Id.

6. See Plyler, 457 U.S. at 216 (noting that “[a] legislature must have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived”).

Traditionally, in the areas of economics and social welfare, states have been permitted to apply broad legislative classifications if such classifications serve a legitimate and rational purpose. Graham, 403 U.S. at 371; see also Dandridge v. Williams, 397 U.S. 471, 485 (1970) (noting that in area of economics and social welfare, states do not violate Equal Protection Clause merely because classifications made by its laws are imperfect); McGowan v. Maryland, 366 U.S. 420, 425-28 (1961) (applying rational relationship test and upholding a Maryland statute regulating commodities that may be sold on Sundays); Williamson v. Lee Optical, Inc., 348 U.S. 483, 489-91 (1955) (applying rational relationship test and upholding an Oklahoma statute regulating advertising).

7. Griffiths, 413 U.S. at 721. Under close judicial scrutiny, courts independently determine whether particular classifications are supported by a compelling state interest, rather than defer to the decisions of other branches of government. See Sugarman, 413 U.S. at 639 (subjecting to strict scrutiny New York statute requiring citizenship for civil service position); Graham, 403 U.S. at 376.

State classifications that are based on alienage or citizenship, like those based on race and nationality, face a heightened judicial solicitude and must be supported by a compelling and vital state interest. See Graham, 403 U.S. at 372. The classifications must be narrowly tailored to further this compelling state interest. Id. However, the Supreme Court has not applied a strict scrutiny standard when reviewing state classifications within the political and governmental area; rather, a rational basis standard is applied. See Ambach v. Norwich, 441 U.S. 68 (1979); Foley v. Connellie, 435 U.S. 291 (1978). For a further discussion on the “political function” exception, see infra note 70.

8. See Griffiths, 413 U.S. at 721 (citing McLaughlin v. Florida, 379 U.S. 184, 196 (1964)). In Griffiths, the Supreme Court found that aliens as a class were in need of protection because the class was unable to safeguard its own interests within the political process. Id. Therefore, the Court applied close judicial scrutiny when reviewing the particular state classification based on alienage. Id.
While the power of a state to enforce laws that discriminate based on alienage is very narrow, a majority of state courts have interpreted the equal protection clause to permit alienage classifications within workers' compensation statutes. States disagree as to whether workers' compensation classifications that substantially limit the amount of death benefits awarded to nonresident alien dependents are in violation of the Equal Protection Clause. Some that find the classifications constitutional believe that nonresident alien dependents are not protected persons under the Constitution, and therefore, the Fourteenth Amendment does not serve as a guarantee of equal death benefits. Those few states that find

9. See Vietti v. George K. Mackie Fuel Co., 197 P. 881, 883 (Kan. 1921) (finding state provision distinguishing between resident citizen and resident alien repugnant to Fourteenth Amendment and denial of equal protection). Presently, the distinction between alien and citizen does not affect an individual employee's rights under state workmen's compensation statutes. However, the majority of state workmen's compensation statutes contain classifications based on the alienage of an employee's dependents. See 2 Arthur Larson, Workmen's Compensation Law § 63.50 (1992). States limit or deny workers' compensation death benefit awards on the basis of these alienage classifications. Id. For a further discussion of the constitutionality of state workmen's compensation statutes containing alienage classifications, see infra note 10.

Those states precluding nonresident alien dependents from receiving benefits are: (1) New Mexico—see Pedrazza v. Sid Fleming Contractor, Inc., 607 P.2d 597, 599-600 (N.M. 1980) (holding that New Mexico's workmen's compensation statute bars benefits to dependents who are nonresident aliens at time of employee's death); (2) West Virginia—see Micaz v. Compensation Comm'r, 15 S.E.2d 161 (W. Va. 1941) (same); (3) Hawaii—see Peregrina Lumang Gambalan v. Kekaha Sugar Co., 39 Haw. 258, 262 (1952) (same); and (4) Pennsylvania—see Liberato v. Royer & Herr, 28 Pa. Dist. 268 (E.D. Pa. 1926) (same).


For a discussion of the disagreement among states on the constitutionality of disparate death benefits awards, see infra notes 80-84 and accompanying text.

The United States Supreme Court has upheld the constitutionality of a state workers' compensation statute that expressly provided for equal benefits for citizens and nonresident alien dependents alike. Madera Sugar Pine Co. v. Industrial Accident Comm'n, 262 U.S. 499 (1923). For a further discussion of the Supreme Court's rationale in Madera, see infra notes 85-94 and accompanying text.

11. See Johnson v. Eisentrager, 339 U.S. 763, 771 (1950) (espousing principle that "in extending constitutional protections beyond the citizenry, the Court has been at pains to point out that it was the alien's presence within the territorial jurisdiction that gave the Judiciary power to act"). States that uphold the constitutionality of disparate workmen's compensation statutes rely on principles first introduced by the Supreme Court in Johnson. See Jalifi v. Industrial Comm'n, 644 P.2d 1319 (Ariz. Ct. App.) (upholding Arizona statute denying nonresident alien dependents death benefits), appeal dismissed, 459 U.S. 899 (1982); Pedrazza v. Sid
the statutory classifications unconstitutional characterize the laws as alien-age classifications that discriminate against the resident worker. In striking down the statutes, these states utilize the strict scrutiny standard. In Jurado v. Popejoy Construction Co., the Kansas Supreme Court held that the Kansas Workmen's Compensation Act, providing disparate death benefits to nonresident alien dependents, violated the equal protection clauses of the state and federal constitutions. The Jurado court determined that the right to workers' compensation death benefits involved a consideration of the constitutional rights of the worker, rather than those of his or her dependents. Based on this premise, the Jurado court found that the statute's disparate treatment of employees with nonresident dependents was based on alienage and, therefore, subject to strict scrutiny. The court in Jurado found that the reason advanced by Fleming Contractor, Inc., 607 P.2d 597 (N.M. 1980) (upholding New Mexico statute denying nonresident alien dependents death benefits); Alvarez Martinez v. Industrial Comm'n, 720 P.2d 416 (Utah 1988) (upholding statute reducing death benefits to nonresident alien dependents by one-half). For a further discussion of Johnson, see infra note 77.


13. See, e.g., De Ayala, 543 So. 2d at 204; Jurado, 853 P.2d at 676. Both the Jurado and De Ayala, courts applied a strict scrutiny standard because the respective statutory classifications were based on alienage. For a general discussion of equal protection standards, see infra notes 30-40 and accompanying text.


15. KAN. STAT. ANN. § 44-510b(i) (Supp. 1993). This provision limits the death benefits awarded to nonresident alien dependents to $750, while permitting all other dependents to recover up to $200,000. Id.

16. Jurado, 853 P.2d at 677 (citing U.S. CONST. amend. XIV; KAN. STAT. ANN. CONST. BILL OF RIGHTS, § 1.)

17. Id. at 678. For a discussion of the analysis utilized by the Jurado court in reaching this determination, see infra notes 133-64, 177-89. The court recognized that the Kansas Workmen's Compensation Act, KAN. STAT. ANN. § 44-510b(i) (Supp. 1993), created a separate right of action in the dependents when the worker dies. Jurado, 853 P.2d at 674. However, the employment relationship was the source of workers' compensation liability and any right of action of the dependents arose out of the contract between them. Id. at 674-75. For a further discussion of the court's review of workmen's compensation and a workers' right to death benefits, see infra notes 141-43. For a discussion of the Florida Supreme Court's determination in De Ayala, see infra notes 97-104. For a discussion of contrary state conclusions on right to death benefits, see infra note 81.

18. Jurado, 853 P.2d at 675-77. The Jurado court introduced the three basic standards the Supreme Court has used in determining whether a legislative classification violates the Fourteenth Amendment's Equal Protection Clause and discussed the requirements necessary for proving constitutionality under each standard. Id. at 675-76.
State for maintaining the classification based on alienage did not justify the statute's disparate treatment, as the State did not establish that the classifications served a compelling state interest. Accordingly, the Kansas Supreme Court held that the statute's disparate treatment of employees with nonresident dependents was unconstitutional. This recent decision provides a compelling analysis of the constitutionality of workers' compensation statutes and establishes a framework for analyzing the alienage classifications within the context of the Equal Protection Clause.

This Note will examine the rationale behind the Jurado decision and its impact on the elimination of disparate legislative classifications based on alienage. Part II of this Note will trace the development of the equal protection of aliens from the early Supreme Court decisions recognizing aliens as "persons," until the present use of the strict scrutiny standard for statutory classifications based on alienage. Further, Part II will evaluate the historical precedent and legal support that led the Kansas Supreme Court to conclude that receipt of workers' compensation death benefits is a right that belongs to the worker and to his or her dependents. Part III

19. Id. at 677.
20. Id. at 678. Before concluding, the Jurado court identified four other jurisdictions that have addressed the constitutionality of statutes limiting death benefits of nonresident alien dependents, and the different legal conclusions drawn by those jurisdictions determining that the statutes were constitutional. Id. For a further discussion of the Jurado court's rationale, see infra notes 151-76 and accompanying text.
21. Id. The Kansas Supreme Court recognized the invidious discrimination resulting from workmen's compensation statutes that preclude or substantially limit the death benefits awarded to nonresident dependents. See id.
22. In Jurado, the Kansas Supreme Court conducted an in-depth analysis of the purpose of workmen's compensation benefits and the specific rights created under those statutes. Id. at 672-74. After concluding that the state statute did discriminate based on alienage, the Jurado court applied equal protection principles to determine the constitutionality of the classifications. Id. at 675-77. For a discussion of the rationale applied by the Jurado court, see infra notes 151-76 and accompanying text. For a critical analysis of the Jurado rationale, see infra notes 177-89 and accompanying text.
23. F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920). To fully understand the legal framework that supported the Kansas Supreme Court's decision in Jurado, there must be a basic understanding of equal protection principles and the Supreme Court's use of these principles as a weapon against state discrimination. Thus, this section will trace the historical development of equal protection of aliens through the judicial elimination of statutory classifications based on alienage. See, e.g., Graham v. Richardson, 403 U.S. 365, 372 (1971) (finding that strict scrutiny is proper standard for classification based on alienage); Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) (extending equal protection to aliens). For a discussion of these cases, see infra notes 37-42, 56-70 and accompanying text.
24. The Jurado court reached its unprecedented decision by building upon principles established by the Supreme Court in Madera Sugar Pine Co. v. Industrial Accident Commission, 262 U.S. 499 (1923), and several prior Kansas Supreme Court decisions. Jurado, 853 P.2d at 674-78. This section will review the principal cases that influenced the Jurado court in its decision to strike down the Kansas Workmen's Compensation Statute. Additionally, this section will summarize Kansas precedent defining the employee's rights under the Kansas Workmen's Com-
will provide a case discussion of *Jurado*. Part IV of this Note will then critically analyze the *Jurado* decision. Finally, Part V will examine the impact that the *Jurado* decision has on the ever-increasing alien population and the distinct need for the Supreme Court to decide whether these statutes are constitutional in light of the Federal Constitution's Equal Protection Clause.25

II. BACKGROUND

A. Equal Protection Review

The Fourteenth Amendment guarantees that "all persons similarly circumstanced shall be treated alike," and any unjust denial of equal treatment is cause for judicial review.26 The United States Supreme Court has recognized that the operation of government requires the use of some legislative classifications.27 Neither the federal nor state Equal Protection Clauses prohibit the use of legislatively-created classifications.28 However, these clauses do require that such classifications are not based on impermissible criteria or arbitrarily used to discriminate against a particular group of individuals.29

To determine whether a legislative classification violates the right to equal protection of the law, the Supreme Court has established three classifications: (1) the traditional rational basis test; (2) the substantial relationship (or heightened scrutiny) test; and (3) the strict scrutiny (or compelling interest) test.30 The Supreme Court applies the rational basis

25. The *Jurado* decision plays an important role in recognizing the rights of individuals who leave their families behind and come to the United States hoping to provide a better life for themselves and their dependents. For a further discussion of the impact of *Jurado* and the need for a consistent approach to determining the constitutionality of disparate workmen's compensation statutes, see infra notes 190-98 and accompanying text.

26. See Ross v. Moffitt, 417 U.S. 600, 609 (1974) (finding that concept of equal protection "emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable").

27. *Graham*, 403 U.S. at 371 (noting that "a state retains broad discretion to classify").

28. See *Plyler* v. *Doe*, 457 U.S. 202, 216 (1982). In *Plyler*, the Supreme Court emphasized the need for state legislatures to have substantial latitude to establish classifications that roughly approximate the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on the practical ability of the State to remedy every ill. In applying the Equal Protection Clause to most forms of state action, we thus seek only the assurance that the classification at issue bears some fair relationship to a legitimate public purpose.

29. *Id.* at 216-17.

test to those classifications that do not implicate fundamental rights or suspect classes of persons (such as race, national origin, gender or illegitimacy). Under the rational basis test, a legislative classification must be rationally related to serving any legitimate governmental interest. Generally, courts will apply a rational basis test when the equal protection challenge is directed against social or economic legislation. In these areas, judicial deference is the norm as courts generally defer to legislative judgment and require only that the state statutes are neither arbitrary nor irrational.

Heightened scrutiny requires that the legislative objective of a particular statutory classification be substantially related to the furthering of important governmental interests. The Supreme Court has applied heightened scrutiny to equal protection challenges that are directed at classifications based on gender or child legitimacy.

The third, and most strict, level of scrutiny protects persons from governmental action that employs a "suspect classification," intentionally discriminating against a protected class, or burdens the free exercise of a fundamental right. Under strict scrutiny, in order for the government to justify a classification aimed directly at a "suspect class" it must show that the classification was necessary to further a compelling governmental in-

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31. See Barron, supra note 1, at 551-63.
34. See Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911). In Lindsley, the Court states:

The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and is therefore purely arbitrary.

Id. The party challenging the governmental classification bears the burden of proving that the classification serves no rational or reasonable purpose. Id.

35. See Frontiero v. Richardson, 411 U.S. 677, 688-90 (1973) (applying heightened scrutiny to find federal statute requiring servicewomen to show greater proof of dependency than servicemen in violation of Equal Protection Clause).

36. See, e.g., Pickett, 462 U.S. at 8 (applying heightened scrutiny to classification based on legitimacy); Frontiero, 411 U.S. at 688-90 (applying heightened scrutiny to classification based on gender); see also Reed v. Reed, 404 U.S. 71 (1971) (subjecting state legislature's classification that preferred men over women in administration of estates to heightened scrutiny review).

37. See Graham v. Richardson, 403 U.S. 365, 371 (1971); see, e.g., Hernandez v. Texas, 347 U.S. 475, 478-79 (1954) (applying strict scrutiny to strike down state law which discriminated against Mexican-Americans with respect to jury service); Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886); Strauder v. West Va., 100 U.S. 303, 310 (1879) (holding law which forbid blacks from serving on grand juries violates equal protection guarantees).
The government has the burden of proving: (1) the classification serves a compelling government interest; and (2) the legislative classification is narrowly tailored to further that compelling interest.

Although state legislation enacted to serve a legitimate government interest is normally reviewed with a presumption of constitutionality, a statutory classification aimed at a "discrete and insular minority" is inherently suspect, and the burden of proving its constitutionality shifts to the "proponent of the statute." 

B. Aliens as a Suspect Class

In 1886, the Supreme Court, in Yick Wo v. Hopkins, recognized that "all persons" residing within the United States, regardless of alienage, were guaranteed equal protection of state laws and, thus, protected from state discrimination under the Fourteenth Amendment. After deciding Yick Wo, the Supreme Court utilized the Equal Protection Clause to invalidate state legislation that discriminated against aliens.

During the early 1900s, however, the Supreme Court engaged in a less stringent review of state legislation that favored citizens over aliens in the regulation and distribution of state property and economic re-

38. See Graham, 403 U.S. at 376; see also Shapiro v. Thompson, 394 U.S. 618, 694 (1969) (finding use of strict scrutiny appropriate standard for reviewing state classification based on residency).

39. See In re Griffiths, 413 U.S. 717, 721 (1973) (holding classification based on alienage must be narrowly tailored and not over or under inclusive). See generally Nowak, supra note 1, at 571 (discussing narrowly tailored prong of strict scrutiny standard). The state law can be under-inclusive in that it classifies too small a number of persons and excludes others who possess characteristics that would further the purpose of the statute. Id. Over-inclusiveness results when the classification includes individuals that do not possess the characteristics that are necessary to further the purpose of the statute. Id.

40. See Graham, 403 U.S. at 372 (citing United States v. Carolene Products Co., 304 U.S. 144, 152-53 n.4 (1938) (emphasis added)).

41. 118 U.S. 356 (1886).

42. Id. at 369. In Yick Wo, the Supreme Court recognized that aliens lawfully admitted to the United States were protected under the Fourteenth Amendment. Id. Accordingly, the Court invalidated a municipal ordinance regulating the operation of laundries from wood buildings because the ordinance had a discriminatory impact on Chinese owners of laundromats. Id. at 373. At the time the municipal ordinance was adopted, the majority of laundromats having wooded buildings were owned and operated by Chinese immigrants. Id.

Ten years after the Supreme Court extended Fourteenth Amendment protection to aliens, the Court held that the Due Process Clause of the Fifth Amendment protected aliens within the federal context. See Wong Wing v. United States, 163 U.S. 228, 238 (1896).

The Court justified this deferential review of state alienage classifications on the "public interest" doctrine. This doctrine stagnated the progress of alien rights throughout the 1900s. In fact, *Truax v. Raich* was the only early case where the Supreme Court struck down a state statute that discriminated against aliens. In *Truax*, an Arizona statute required that eighty percent of the workforces of both public and private employers be comprised of citizens, rather than aliens. Arizona failed to establish that the statute served a "special public interest." Therefore, the Supreme Court found that the statute violated the equal protection rights of the alien population within the state.

It was not until thirty years after *Truax* that the Supreme Court once again utilized the Equal Protection Clause to protect aliens from state discrimination. In *Takahashi v. Fish & Game Commission*, the Supreme Court rejected the state's argument that the preservation and conservation of fish was a compelling state interest. The state's interest in prohibiting aliens from fishing off its shores did not justify the statute's discriminatory treatment of nonresidents. Accordingly, the Court held that the statute impermissibly discriminated against aliens and, therefore, was unconstitutional.

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44. See *Truax*, 239 U.S. at 39-40 (noting that regulation of public domain limited to citizens not aliens).

45. The "public interest" doctrine applied to state statutes that prohibited aliens from owning land, acquiring firearms for hunting purposes and working on public projects. See *Frick v. Webb*, 263 U.S. 326, 334 (1923) (upholding constitutionality of state legislation that restricted aliens from owning or acquiring land); *Crane v. New York*, 239 U.S. 195, 198 (1915) (holding state regulations that prohibited aliens from working on state public work project constitutional); *Patsone v. Pennsylvania*, 232 U.S. 138, 143-46 (1914) (finding state measures that prohibit aliens from owning fire arms did not violate Equal Protection Clause). See Developments in the Law, supra note 4, at 1401-03.

46. See Developments in the Law, supra note 4, at 1401-03.

47. 239 U.S. 33 (1915).

48. *Id.* at 39-43.

49. *Id.* at 35.

50. *Id.* at 41-43. In *Truax*, the Supreme Court recognized that the state had an interest in saving its public resources but found that the state could not deny, on the basis of citizenship, the right to work in community occupations. *Id.* at 41. Although legitimate, the Court found that the state's interest in protecting citizens from competition for employment was not sufficient to sustain the disparate statutory treatment. *Id.*

51. See *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 418-22 (1948) (using Equal Protection Clause to strike down statutory classification based on alienage).

52. 334 U.S. 410 (1948).

53. *Id.* at 418-20. In *Takahashi*, the Supreme Court did not specifically reject the public interest doctrine; rather, the Court found that California's interest in protecting its ownership of fish three miles off its coast was not sufficient to justify barring aliens from becoming fishermen. *Id.* at 422.

54. *Id.* at 418-20.

55. *Id.* at 420-22. The concurrence in *Takahashi* argued that the statute should be held unconstitutional because it directly targeted Japanese aliens be-
Although the Supreme Court had previously struck down state legislation in the context of the Equal Protection Clause, it was not until 1971 that it extended full protection to aliens and applied the strict scrutiny test to determine the constitutionality of statutes which discriminate against nonresidents.\textsuperscript{56} In \textit{Graham v. Richardson},\textsuperscript{57} the Supreme Court recognized aliens as a "discrete and insular minority."\textsuperscript{58} Under review in \textit{Graham} were Arizona and Pennsylvania statutes conditioning welfare benefits on citizen status or residency within the United States for a specified period of time.\textsuperscript{59} These disparate state statutes were challenged on the basis that they violated the equal protection rights of nonresident aliens.\textsuperscript{60} Juxtaposing, the states argued that the statutory classifications were consistent with the Equal Protection Clause because the state had a right to favor United States citizens over aliens in distributing limited state resources such as welfare benefits.\textsuperscript{61} Thus, the states sought to employ the "special public interest" doctrine that had been a successful defense in prior equal protection challenges.\textsuperscript{62} The Supreme Court rejected the special public

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57. 403 U.S. 365 (1971).

58. \textit{Id.} at 371-72.

59. \textit{Id.} at 366-68. The Arizona statute restricted welfare benefits to citizens or aliens residing within the United States for fifteen years. \textit{Id.} at 367. The Pennsylvania statute excluded aliens from receiving welfare benefits altogether. \textit{Id.} at 368.

60. \textit{Id.} at 366.

61. \textit{Id.} at 370. The states claimed that the statutory "distinction involve[d] no 'invidious discrimination' . . . for the State is not discriminating with respect to race or nationality." \textit{Id.} at 370-71.

62. \textit{Id.} at 372. The states' attempt to utilize the "special public interest" doctrine forced the Supreme Court to evaluate its prior decisions that had accepted this doctrine as a limitation on alien rights. \textit{Id.} at 372-76. See \textit{Truax v. Raich}, 239 U.S. 33 (1915) (establishing "public interest" doctrine); \textit{Crane v. New York}, 239 U.S. 195, \textit{aff'g} People v. Crane, 108 N.E. 427 (1915). For a further discussion of the "public interest" doctrine, see \textit{supra} notes 44-50. In \textit{Crane}, the United States Supreme Court affirmed the decision by the New York Court of Appeals upholding a New York statute that prohibited employers from hiring aliens on public work projects. \textit{Crane}, 108 N.E. at 427, 430. In the New York court's decision, Justice Cardoza espoused the well-known observation:

To disqualified aliens is discrimination, indeed, but not arbitrary discrimination; for the principle of exclusion is the restriction of the resources of the state to the advancement and profit of the members of the state. Ungenerous and unwise such discrimination may be. It is not for that reason unlawful . . . . Whatever is a privilege, rather than a right, may be made dependent upon citizenship. In its war against poverty, the state is not required to dedicate its own resources to citizens and aliens alike.

\textit{Id.} at 429-30.
\end{footnotesize}
The majority opinion, written by Justice Blackmun, held that the special public interest doctrine was inadequate to justify discrimination. Accordingly, rather than applying traditional equal protection principles, the Supreme Court applied close judicial scrutiny. The Court found that statutory classifications based on alienage were subject to a strict scrutiny standard. Because the states were unable to establish the requisite compelling interest that would satisfy the first prong of the strict scrutiny standard, the Court struck down both the Pennsylvania and Arizona statutes as unconstitutional under the Equal Protection Clause.

After Graham, the strict scrutiny test became the accepted standard applied in judicial review of state statutory classifications based on alienage. Under this standard, the Court furthered the protection of alien
rights in social and economic areas by strictly scrutinizing discriminatory state statutes.69 Viewing legal aliens as a "suspect" class under the Equal Protection Clause protected them from the inherent prejudice existing within discriminatory state legislation.70

C. Workers' Compensation Death Benefits

The development of state workers' compensation jurisprudence paralleled the evolution of the Supreme Court's equal protection jurisprudence that excluded aliens from the state police force. Foley, 435 U.S. at 296, 300. Subsequently, the Ambach Court embraced the use of this lower standard and applied it to another New York statute which excluded resident aliens from teaching in public school if they did not declare the intent to become citizens. Ambach, 441 U.S. at 80; see also Sugarman, 413 U.S. at 647-49 (stating, in dictum, that statutory classifications concerning voting and public office are not subject to strict scrutiny).

69. See Developments in the Law, supra note 4, at 1407.
70. See id. Constitutional commentators believe that when a class is viewed as "suspect," the propriety of applying "strict scrutiny" to legislative classifications aimed at that class involves the consideration of three factors: (1) whether the statute prohibits the suspect class from participating in the political process; (2) whether the particular class affected has traditionally been faced with societal hostility and has thus been prevented from forming political groups; and (3) whether even for those groups that do not face direct severe prejudice, strict scrutiny is appropriate when the class has been subjected to societal misconceptions and stereotyping which result in unfair legislative treatment. Id.; see also, JOHN HART ELY, DEMOCRACY AND DISTRUSt 76-77, 86-87, 151-53 (1980) (arguing aliens are "discrete and insular" minority in need of close judicial scrutiny). See generally LAWRENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW §§ 16-22, at 1053 (1978) (same); Elizabeth Hull, Resident Aliens and the Equal Protection Clause: The Burger Court's Retreat from Graham v. Richardson, 47 BROOK. L. REV. 1516, 1528 (1979) (discussing lower standard of review in political and governmental areas). Although the Supreme Court retreated from the use of "strict scrutiny" on legislation linked to the governmental process, it has not done so for other state legislation that pertains to economic and social participation. See Plyler v. Doe, 457 U.S. 202, 224, 230 (1982) (utilizing strict scrutiny in reviewing Texas statutory classification that prohibited illegal aliens from receiving public education and finding that classification violated Equal Protection Clause of Fourteenth Amendment). Several commentators have noted that the exclusion of aliens from participation in governmental and legislative processes increases the need for strict scrutiny of other state statutory classifications based on alienage. See, e.g., Ely, supra, at 150-51; TRIBE, supra, at 1053-54.

Federal equal protection of aliens has undergone a different history than state equal protection of aliens. The Fifth Amendment is used to regulate federal action that discriminates against aliens. See Wong Wing v. United States, 165 U.S. 228, 238 (1896); see also Buckley v. Valeo, 424 U.S. 1, 93 (1976) (per curiam) (holding limits within Fifth Amendment are consistent with limits imposed on state action under Fourteenth Amendment); Bolling v. Sharpe, 347 U.S. 497, 499 (1954) (same). However, federal action discriminating against aliens is reviewed less strictly. See Mathews v. Diaz, 426 U.S. 67 (1976) (upholding constitutionality of federal statute excluding aliens from receiving Medicare benefits by applying "rational basis" test, instead of strict scrutiny standard). For a general discussion of the dual standard applied to federal and state actions, see Note, A Dual Standard for State Discrimination Against Aliens, 92 HARV. L. REV. 1516 (1979).
In the early 1900s, state workers' compensation statutes were adopted in order to limit the liability of employers within hazardous occupations. Under these statutes, employees relinquish their right to seek recovery against the employer in exchange for the employer's full acceptance of liability for all work-related injuries. All benefits awarded to employees, however, are subject to the special rules specified within state workers' compensation statutes.

One such rule that many states include within their workers' compensation statutes is a substantial limitation or denial of death benefits for those employees having dependents residing outside of the territorial limits of the United States. A majority of these statutes have survived equal protection challenges on the basis that the reviewing courts view workers' compensation death benefits as a right of the dependents, not the deceased employee. The rationale behind this limitation of death benefits is that the constitutional guarantee of equal protection under the Fourteenth Amendment does not extend to persons outside of the territorial boundaries of the United States. Therefore, nonresidents are not entitled to the protections afforded to citizens of the United States.


72. Madera, 262 U.S. at 500-01. The Court upheld the constitutionality of these workers' compensation acts, which established rules governing the liabilities of an employer to the employee with respect to compensation for the employee's work-related injuries. Id. at 501.

73. Id.

74. Larson, supra note 9, § 63.40-50.


The United States has entered into a number of treaties with foreign countries in order to guarantee that nonresident alien workers and their dependents are afforded the same rights and privileges as citizens: Germany (1923); Hungary (1925); Austria (1946); China (1946); and Italy (1949). Larson, supra note 9, § 63.52. See generally Mizugami v. Sharin West Overseas Inc., 615 N.E.2d 964 (N.Y. 1993) (finding treaty with Japan preempted state limitation of benefits for nonresident Japanese dependents).


77. See Johnson v. Eisentrager, 339 U.S. 763, 775 (1950). In Johnson, the Supreme Court expounded the principle that the rights of individuals outside of the territorial bounds of the United States are not protected by the Constitution.
tied to receive the same treatment and benefits as those received by citizens. Even though the statutes are found to be discriminatory, a majority of state courts have upheld them on the basis that death benefits are the right of dependents, and therefore, as nonresidents of the United States, these dependents are not entitled to constitutional protection.

While few states have struck down disparate workers' compensation statutes, these states reason that death benefits were, in fact, the constitutional right of the employee, not the dependents. The critical conflict among the states stems from their varying interpretations of the rights created under state workers' compensation statutes. Specifically, this disa-

See Johnson, 339 U.S. at 771. Justice Jackson, writing for the Johnson majority, emphasized that "the Court has been at pains to point out that it was the alien's presence within its territorial jurisdiction that gave the Judiciary power to act." Id. Relying on this principle, the Court then considered the right of enemy aliens to command access to the courts of the United States when captured and imprisoned abroad. Id. For a further discussion of nonresident, enemy aliens, see cases collected in Annotations, 137 A.L.R. 1355, 1355 (1942). See also George G. Battle, Enemy Litigants in Our Courts, 28 Va. L. Rev. 429 (1942); Edwin M. Borchard, The Right of Alien Enemies to Sue in Our Courts, 27 Yale L.J. 104 (1917); Jacob J. Gordon, The Right of Alien Enemies to Sue in Our American Courts, 36 Ill. L. Rev. 809, 810 (1942); Willie Yates, Enemy Aliens as Litigants, 12 Geo. Wash. L. Rev. 55, 65 (1943).

78. Johnson, 339 U.S. at 775.


In Pena, the Arizona Court of Appeals summarily ruled that the state statute, which reduced the death benefits of nonresident alien dependents was constitutional. Pena, 683 P.2d at 314-15. The decision was based on a consideration of the rights of the dependents, who as aliens, were found to be unprotected by the equal protection guarantee of the Fourteenth Amendment. Id.

Similarly, in Pedrazza, the Supreme Court of New Mexico also upheld the constitutionality of a statute which excluded aliens from receiving death benefits. Pedrazza, 607 P.2d at 601. The Pedrazza, court also concluded that the right of equal protection extended only to people within the geographic boundaries of the state. Id. at 678; see also Larson, supra note 9, §§ 65.50-53.

In Alvarez, the Utah Supreme Court upheld a statute that limited the death benefits awarded to nonresident aliens' dependents to one-half that awarded to citizens. Alvarez, 720 P.2d at 419. The Alvarez court based its decision on the premise that workmen's compensation benefits are the right of the dependents. Id. at 417. Therefore, because the alien dependents have no constitutional rights, they are not protected by the Fourteenth Amendment and not entitled to equal benefits. Id. at 418-19.


81. Most states agree that dependents' rights to death benefits stem from their respective workmen's compensation statutes. Moeser v. Shunk, 226 P. 784 (Kan. 1924). Generally, most states find their statutes create a separate right to death benefits for dependents, a right which is distinct from an employee's right to
agreement centers around whether a dependent's right to death benefits is
derived from the rights of the employee, or whether it is solely independ-
ent from the rights of the employee. Those states which have held that
death benefits are an independent right of dependents find that these
benefits are created directly by statute and are not derived from the em-
ployee. Alternatively, the few states that recognize the employee's right
to death benefits conclude that death benefits are derivative from the em-
ployee's rights under the employment contract and the applicable state
workers' compensation statute.

1. Supreme Court's View of Workers' Compensation Death Benefits

As early as 1923, the United States Supreme Court upheld a Californi-
workers' compensation statute that specifically included nonresident
aliens in provisions for awarding death benefits. In Madera Sugar Pine
Co. v. Industrial Accident Commission, the statute was challenged on the
basis that it deprived employers of property without due process, in violation of
the Fourteenth Amendment. The challenger, Madera Sugar Pine Co.,
benefits for an injury. See Routh v. List & Weatherby Constr. Co., 257 P. 721, 722,
724 (Kan. 1927) (holding Kansas law controlling at time of employee's death gov-
erns dependents' rights to death benefits because rights are separate and in-
dependent from employee's); Schwartz v. Talmo, 205 N.W.2d 318, 321-22 (Minn.)
(holding claim of widow for death benefits was separate and distinct from claim of
deceased employee and, therefore, law in effect at time of employee's death bar-
ring benefits was applicable), appeal dismissed, 414 U.S. 803 (1973). But see Anton-
Ct. 1990) (implicitly rejecting principle that death benefits are separate from em-
ployee's rights), appeal denied, 593 A.2d 423 (Pa. 1991). The dependents' right to
death benefits vests at the death of the worker. See Baker v. List, 563 P.2d 431
(Kan. 1977); Lyon v. Wilson, 443 P.2d 314 (Kan. 1968). For a general discussion of
different interpretations of rights under various states' statutes, see Larson, supra
note 9, §§ 63.50-.53.

82. See Larson, supra note 9, § 64.00.

83. See International Mercantile Marine Co. v. Lowe, 93 F.2d 663, 664-65 (2d Cir.)
(finding dependent's right to death benefits not derived from rights of de-
ceased employee but rather created directly by statute), cert. denied, 304 U.S. 565
(1938); Freeman Decorating Co. v. Subsequent Injury Trust Fund, 333 S.E.2d 204,
206 (Ga. Ct. App. 1985) (same); Haco Drilling Co. v. Hammer, 426 P.2d 689, 693
(Okla. 1967) (same). For further case law supporting this principle, see Larson,
supra note 9, § 64.00.

84. See Sumner v. Workmen's Compensation Appeals Bd., 663 P.2d 534, 537-38
(Cal. 1983) (holding employee may release dependents' rights to death benefits,
thus implicitly establishing that dependents' rights are derived from employee's
rights); see also Larson, supra note 9, § 64.11.

85. Madera Sugar Pine Co. v. Industrial Accident Comm'n, 262 U.S. 499, 500
(1921).

86. Id. In Madera, the Madera Sugar Pine Company was required under the
statute to pay death benefits to the nonresident alien dependents of two employ-
ees, killed in the course of employment. Madera, 262 U.S. at 500. Subsequently,
the Company filed a petition for review of the awards, which was ultimately denied
by the Supreme Court of California. Id. Upon appeal by the Company, the
United States Supreme Court granted certiorai. Id.
contended that the statute was unconstitutional because it required employers to pay equal death benefits to nonresident alien dependents, as well as citizens.\textsuperscript{87} Although the Supreme Court did not uphold the statute on an equal protection basis, \textit{Madera} is an important decision because the Court specifically recognized that workers' compensation death benefits are just that, benefits for the workers.\textsuperscript{88} Death benefits accrue in order to provide for the workers' families in cases of work-related deaths.\textsuperscript{89} Moreover, the Court noted that workers' compensation benefits that arise out of the relationship between the employee and employer universally act to compensate both the injured employee and the employee's dependents.\textsuperscript{90} The \textit{Madera} Court stated that "[t]he object of such acts 'is single—to provide for the liability of an employer to make compensation for injuries received by an employee, whether to the employee himself or to those who suffer pecuniary loss by reason of his death.'"\textsuperscript{91}

In \textit{Madera}, the Supreme Court found that the purpose of the workers' compensation scheme that arises out of the employer-employee contract is to financially provide for the employee when work-related injury destroys the employee's earning power.\textsuperscript{92} Accordingly, the Court concluded that state workers' compensation acts "entail[ ] upon the employer certain responsibilities toward the persons performing the labor and those dependent on them, [and] there is no constitutional provision requiring that the benefits of such legislative scheme be limited to citizens or residents of the State."\textsuperscript{93} This rationale is consistent with the purpose of providing

\textsuperscript{87} Id. The Company argued that the statute was not a permissible exercise of police power of the State because it required the payment of death benefits to foreign dependents in absence of legal fault or wrong by the employer. \textit{Id.} The Company contended that, while an employer may be legally compelled to pay resident dependents upon the accidental death of an employee, on the grounds that the State is highly interested in preventing resident dependents from becoming public charges, this justification does not exist in the case of foreign dependents. \textit{Id.}

\textsuperscript{88} Id.

\textsuperscript{89} Id.

\textsuperscript{90} Id. (citing Western Metal Supply Co. v. Pillsbury, 156 P. 491 (Cal. 1916)); \textit{see also} Lyon v. Wilson, 443 P.2d 314 (Kan. 1968) (holding workmen's compensation benefits to be contractual in nature); Moeser v. Shunk, 226 P. 784 (Kan. 1924) (same).

\textsuperscript{91} \textit{Madera}, 262 U.S. at 501 (quoting Huyett v. Pennsylvania Railroad, 92 A. 58, 59 (1914)).

\textsuperscript{92} Id. at 502. To establish that compensation to dependents is merely one aspect of a compensation scheme, the Court cited several cases in which workers' compensation acts were upheld in their entirety. \textit{Id.}

\textsuperscript{93} Id. at 503 (citing Western Metal Supply Co. v. Pillsbury, 156 P. 495, 499 (Cal. 1916)). The Court went on to equate accident insurance to death benefits: Just as accident insurance goes to the beneficiary regardless of his residence, so the quasi-insurance of a workers' compensation act goes to those to whom the employee would naturally have made such insurance payable: to himself, although an alien, if he be disabled; and to those dependent upon his earnings for support, if he be killed. \textit{Id.} (citing \textit{In re Derinza Case}, 118 N.E. 942, 945 (Mass. 1918)).
adequate compensation for all employees and their dependents regardless of residency.\textsuperscript{94}

2. \textit{Disparate Death Benefits for Nonresident Aliens Are Unconstitutional}

In \textit{Madera}, the Supreme Court expressed its view that an employee has the right under the workers' compensation scheme to have his dependents provided for regardless of their residency.\textsuperscript{95} This view, however, was subsequently disregarded by many states that upheld the constitutionality of disparate state workers' compensation statutes.\textsuperscript{96} It was not until the 1989 Florida Supreme Court decision of \textit{De Ayala v. Florida Farm Bureau Casualty Insurance Co.}\textsuperscript{97} that an equal protection challenge of workers' compensation statutory classifications was successful.\textsuperscript{98}

In \textit{De Ayala}, the Florida Supreme Court held unconstitutional a Florida workmen's compensation statute that awarded substantially disparate death benefits to nonresident alien dependents.\textsuperscript{99} The \textit{De Ayala} court summarily rejected the state's argument that the nonresident dependent

\textsuperscript{94} Id. The Court also found that requiring the employer to provide for the dependents of the employee would indirectly provide for the safety and protection of the life of the employee. \textit{Id.} The Court analogized workers' compensation benefits to the benefits awarded under the Federal Employers' Liabilities Act ("FELA") and cited several decisions that supported extending benefits to alien dependents as well as citizens. \textit{Id.; see also} Federal Employers Liability Act, ch. 3073, 34 Stat. 292 (1906), ch. 149, 35 Stat. 65 (1908) (codified at 45 U.S.C. §§ 51-59 (1988)), ch. 143, 36 Stat. 291 (1910) (codified at 45 U.S.C. §§ 56, 59 (1988)), ch. 685, 53 Stat. 1404 (1999) (codified at 45 U.S.C. §§ 54, 56, 60 (1988)); \textit{see also} McGovern v. Philadelphia & Reading Ry., 235 U.S. 389, 400 (1914); Vetaloro v. Perkins, 101 F. 393, 397 (C.D.C. Mass. 1900). The Court emphasized that just as the Federal Employers' Liability Act, in order to protect the life of the employee gives compensation to those who had relation to it, it makes no difference where they may reside; it being "the fact of their relation to the life destroyed that is the circumstance to be considered, whether we consider the injury received by them or the influence of that relation upon the life destroyed."

\textit{Madera}, 262 U.S. at 503-04 (quoting McGovern v. Philadelphia & Reading Railway, 235 U.S. 389, 400 (1914)). Moreover, the Court noted: "[FELA and workmen's compensation statutes] have the interest of the employees in mind and are primarily for the protection of their lives; the action is given to the beneficiaries on their account and they are not intended to be less protected if their beneficiaries happen to live abroad." \textit{Id.}

\textsuperscript{95} \textit{Madera}, 262 U.S. at 500-03.

\textsuperscript{96} \textit{See} Liberato v. Royer, 270 U.S. 535 (1926) (involving Pennsylvania exclusionary statute); Micaz v. Compensation Comm'r, 13 S.E.2d 161 (W. Va. 1941) (involving West Virginia statutory exclusion of alien nonresident beneficiaries). The workmen's compensation statutes that were found constitutional contained special rules limiting the death benefits awarded to nonresident alien dependents. For a further discussion on several states that have upheld the constitutionality of disparate death benefit awards, see \textit{ supra} notes 82-84 and accompanying text.

\textsuperscript{97} 543 So. 2d 204 (Fla. 1989).

\textsuperscript{98} \textit{Id.}

\textsuperscript{99} \textit{Id} at 207.
could not raise constitutional principles. Instead, the court focused on "whether a worker who happens to have dependents residing out of the country is entitled to the same fruits of his or her labor as any other worker, including the same insurance benefits where the state has required those benefits to be provided." Accordingly, the court held that the constitutionality of the statute was based on the employee's constitutional rights and not the rights of the dependents.

The De Ayala dissenters, however, disagreed with the majority's conclusion that the issue centered around the constitutional rights of the worker. The dissent attacked the legal basis from which the majority drew this conclusion, finding that the law clearly supported the principle that the employee's constitutional rights terminate at death.


Since the enactment of the Kansas Workmen's Compensation Statute, the Kansas Supreme Court has established that the terms of the statute are embodied within the employment contract, and the employer's liability to the employee is a result of the employment relationship. The first Kansas case establishing this principle was Moeser v. Shunk, in which the Kansas Supreme Court held that the Kansas Workmen's Compensation Statute was the means for establishing the liability of an employer to the employee. In Moeser, the court found that although the employer's liability originally derived from the employment contract between the em-

100. Id at 206.
101. Id.
102. Id. The De Ayala court utilized the Florida Constitution to support the conclusion that workers have the right to have their dependents provided for out of past earnings. Id. Article I, section 2 of the Florida Constitution expressly provides: "All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property ...." Id. (emphasis added). The court focused on the specific provision "to be rewarded for industry." Id.
103. Id. at 208 (Overton, J., dissenting).
106. Moeser, 226 P. at 784.
107. Id. at 786.
ployer and the employee, the state workmen’s compensation statute controlled the extent of such liability.108

A dependent’s right to death benefits is an independent right defined by the workers’ compensation statute; however, all rights arise from the employment relationship between an employer and an employee.109 As early as 1927, the Kansas Supreme Court in Routh v. List & Weatherby Construction Co.,110 held that the Kansas Workmen’s Compensation Statute creates two causes of action, one for an employee while he is alive and the other for his dependents when the employee dies.111 The Routh court determined that while a worker is alive the worker’s dependents have no right of action; however, upon the worker’s death, a right of action accrues to the worker’s dependents and everything relates back to the time of the accident.112

In two subsequent cases, Lyon v. Wilson113 and Baker v. List,114 the Kansas Supreme Court reiterated the proposition that the contract of employment initially creates an employer’s liability to the employee, and that the workers’ compensation statute determines the substantive rights of the parties.115 These principles lead to several conclusions that are important for determining whether the right to receive death benefits belongs to an employee or lies solely in his dependents.116 First, because the Kansas Workmen’s Compensation Statute is the means through which an employer is liable to the employee, and that liability arises from the employment contract between them, the statute should not deprive employees or their dependents reasonable payment for injuries received as a result of workplace accidents.117 Second, because the rights of an employee’s dependents are independently created by the statute, a deceased employee

108. Id.


110. 257 P. 721 (Kan. 1927).

111. Id. at 723.

112. Id.

113. 443 P.2d 314 (Kan. 1968).


115. Lyon, 443 P.2d at 319; see also Baker, 563 P.2d at 437 (relying specifically on its previous decision in Lyon to determine that “[t]he terms of the Workmen’s Compensation Statute are embodied in the contract of employment between the employer and the employee . . . and rights under the contract vest when the cause of action accrues”).

116. See Lyon, 443 P.2d at 319 (holding employer’s liability to employee stems from employment contract); Baker, 563 P.2d at 437 (noting that substantive rights of parties are determined by Workmen’s Compensation Statute, while initial employer’s liability is created from original employment contract between employer and employee).

117. See Moeser v. Shunk, 226 P. 784 (Kan. 1924) (allowing employee or dependents to recover from both employer and negligent third party).
cannot extinguish these rights by settlement or release prior to his death. However, a dependent's rights are vested rights from the employee, and do not accrue until the date of an employee's death. Finally, any rights of dependents originally result from the employer's liability to the employee. Accordingly, by 1993, it was well-established as a matter of law that, in Kansas, a dependent's separate right of action accrues at the time of the employee's death. This right is a result of the employment contract between the employer and employee.

III. Jurado v. Popejoy Construction Co.: Case Discussion

A. Facts and Procedural History

On August 21, 1990, Fermin Jurado, a resident alien from Mexico, was killed while working for Popejoy Construction Company ("Popejoy"), located in Syracuse, Kansas. Jurado was survived by his wife and three children, all of whom were residents and citizens of the Republic of Mexico.

Soon after Jurado's death, his nonresident alien dependents received $750 in death benefits pursuant to the Kansas Workmen's Compensation Statute, K.S.A. 44-510b(i). Significantly, under K.S.A. 44-510b(i), this amount was substantially less than the maximum $200,000 in compensation benefits that were provided to all resident aliens and citizens of the United States. Because of this gross disparity in death benefits, Jurado's dependents brought an equal protection challenge in the state District Court of Kansas, attacking the constitutionality of K.S.A. 44-510b(i). The state's district court upheld the constitutionality of the provision hold-

118. See Routh v. List & Weatherby Constr. Co., 257 P. 721 (Kan. 1927) (holding dependents' right to death benefits not barred by employee's prior release or settlement with employer); see also Larson, supra note 9, § 64.12 (same).
120. Id.
121. Baker, 563 P.2d at 436 (noting that "the liability of an employer to an injured or deceased employee arises out of the contract between them").
122. Jurado v. Popejoy Constr. Co., 853 P.2d 669, 671 (Kan. 1993). At the time of his death, Fermin A. Jurado was thirty-nine years old. Id. He had originally come to the United States hoping to use the engineering degree he had received in 1979 from the Technological Institute of the City of Juarez in Mexico. Id. He planned to learn English and eventually pursue an occupation in engineering. Id.
123. Id. Jurado allegedly planned to send for his wife and children, ages seven, four and two, when he learned English and saved enough money to obtain an engineering position. Id.
124. Id. Aetna Life and Casualty Company paid this amount on behalf of Popejoy. Id.
125. Id. The Kansas Workmen's Compensation Statute provides, in relevant part: "If the employee does not leave any dependents who are citizens of or residing at the time of the accident in the United States, the amount of compensation shall not exceed in any case the sum of $750." KAN. STAT. ANN. § 44-510b(i) (1992).
126. Jurado, 853 P.2d at 672.
ing that the Equal Protection Clause of the Fourteenth Amendment extends only to individuals residing in the United States.\textsuperscript{127}

Following the district court’s decision, Jurado’s dependents filed an appeal with the Kansas State Court of Appeals that subsequently, was transferred to the Kansas Supreme Court upon a motion. On appeal, the dependents urged the \textit{Jurado} court to determine the constitutionality of the statute based on the constitutional rights of the resident alien employee, rather than on the dependents’ rights as nonresident aliens.\textsuperscript{128} The Kansas Supreme Court held that the Kansas Workmen’s Compensation Statute violated the Equal Protection Clauses of both the Kansas and United States Constitutions.\textsuperscript{129} Accordingly, the \textit{Jurado} case was reversed and remanded for further proceedings.\textsuperscript{130}

\textbf{B. Narrative Analysis}

In considering the constitutionality of the Kansas Workmen’s Compensation Statute, the Kansas Supreme Court posed a threshold question: Did the determination of benefits involve the employee’s constitutional rights, or the rights of the dependents?\textsuperscript{131} In addressing this question, the \textit{Jurado} court summarily concluded that the constitutionality of the statute involved a consideration of the constitutional rights of the employee, rather than the rights of the employee’s dependents.\textsuperscript{132}

The \textit{Jurado} court relied on the Florida Supreme Court’s holding in \textit{De Ayala} to support the proposition that death benefits are a right of an employee.\textsuperscript{133} The Kansas Supreme Court attempted to refute the rationale offered in Justice Overton’s dissent in \textit{De Ayala}. The court addressed this dissent because the \textit{De Ayala} majority offered no rationale supporting its conclusion that death benefits are a right of the employee.\textsuperscript{134}

\begin{footnotesize}
\begin{enumerate}
\item[127.] Id. The district court found that the Equal Protection Clause of the United States Constitution and the Kansas State Constitution did not apply to nonresident alien dependents. \textit{Id.}
\item[128.] Id. Popejoy, however, argued that the dependents, as nonresident aliens, were not protected under the Equal Protection Clause of the Fourteenth Amendment. \textit{Id.} Rather, Popejoy claimed that the dependents, as nonresident aliens, had no constitutional rights to advance, and thus, the statutory amount awarded under the workers’ compensation statute must stand. \textit{Id.}
\item[129.] Id.
\item[130.] Id.
\item[131.] Id. This was the same threshold question that the Florida Supreme Court addressed in \textit{De Ayala}. For a further discussion of this question, see supra notes 95-104 and accompanying text.
\item[132.] \textit{Jurado}, 853 P.2d at 672.
\item[133.] Id. at 673. The court quoted the Florida Supreme Court’s conclusion in \textit{De Ayala}: “However, we do not perceive this case as hinging on the constitutional rights of the surviving dependents, but on the constitutional rights of the worker, now deceased.” \textit{Id.} (quoting \textit{De Ayala} v. Florida Farm Bureau Casualty Insurance Co., 543 So. 2d 204, 206 (Fla. 1989)).
\item[134.] Id.; see also \textit{De Ayala} v. Florida Farm Bureau Casualty Ins. Co., 543 So. 2d 204, 208 (Fla. 1989) (Overton, J., dissenting). For a discussion of Justice Overton’s dissent in \textit{De Ayala}, see infra note 136.
\end{enumerate}
\end{footnotesize}
Overton contended that the statute's constitutionality revolved around the rights of the employee's dependents, not the employee's. Therefore, the Equal Protection Clause is not implicated because the dependents, as non-resident aliens, have no constitutional rights.

The *Jurado* court specifically addressed Justice Overton's contention that persons' constitutional rights terminate upon death. While agreeing with this argument in limited circumstances, the *Jurado* court questioned its applicability to the present issue and facts in question. The *Jurado* court criticized the two primary cases cited for support in Justice Overton's dissent, *Roe v. Wade* and *Silkwood v. Kerr-McGee Corp.*, finding that they did not adequately sustain the conclusion that a worker's constitutional rights, which stemmed from the employment contract and preceded the worker's death, terminate upon his death. The *Jurado* court summarily dismissed the applicability of *Roe*, stating that the United States Supreme Court did not approach the issue of the termination of a person's rights upon death, rather the Court found, at most, that the Fourteenth Amendment did not protect a fetus that was not viable outside of the womb. Turning to the *Silkwood* decision, the *Jurado* court did not contest the finding that the civil rights of a person cannot be violated once a person has died. However, the *Jurado* court indicated that, unlike the Supreme Court in *Silkwood*, it was considering the accrual of disparate benefits to a class of Kansas workers and their dependents that resulted from an employment contract and compensation laws that existed prior to the worker's death.

Next, the *Jurado* court turned to Popejoy's argument that the Kansas Supreme Court's decision in *Routh v. List & Weatherby Construction Co.*, required the court to decide the constitutionality of the statute based on the dependents' rights. While conceding that *Routh* established the exist-
ence of two separate rights under the statute, the court nonetheless, found that the dependents' separate right of action was derived from the deceased employee, and therefore, all rights must relate back to the time of the injury. 145

In further response to Popejoy's argument, the court cited several Kansas Supreme Court decisions that recognized the employment relationship as the source of workers' compensation liability. 146 These decisions gave credence to the court's finding that "the dependent's right of action was derivative of and dependent upon the employee's contract of employment." 147 Accordingly, the court concluded that Popejoy's argument was inconsistent with Kansas law concerning the rights conferred by the Workmen's Compensation Statute. 148

The Jurado court posited that the dependents' right of action existed solely as a result of the original employee-employer relationship, the work-

earned before the employee's death. Id. at 674. The Jurado court pointed to the principles adopted by the Supreme Court in Madera, which established that the purpose of workmen's compensation death benefits was to protect the employee's interest by providing for the worker's family upon his death. Id.

145. Id. Specifically, the court analyzed the finding in Routh that the right of action of dependents does accrue at the time of the accident, and everything must relate back to the situation at this time, but the dependents have no standing or independent right of action while the workman is living. After his death they have such a right of action, which in a sense does accrue after the death of the workman.

Id.

The Jurado court extrapolated on this analysis, to determine that dependents' rights were derived from all rights held by the employee. Id. The court referred to a dictionary definition of derivative: "coming from another; taken from something preceding secondary. That which has not its origin in itself, but owes its existence to something foregoing. Anything obtained or deduced from another." Id. (citing BLACK'S LAW DICTIONARY 399 (5th ed. 1979)). The court also cited the Supreme Court's finding in Madera that the component parts of workers' death benefits comprise a single system which arises out of the employment relationship. Id. at 674 (citing Madera Sugar Pine Co. v. Industrial Accident Commission, 262 U.S. 499, 500 (1921)).

In contrast, many state courts do not find that the rights of the dependents are derivative; rather, dependents' rights to benefits are created directly from the statute. See Garcia v. Industrial Comm'n, 685 P.2d 1336 (Ariz. Ct. App. 1984) (finding Notice of Claim Status denying deceased employee's claim does not affect widow's right to death benefits because employee's rights and survivors' rights are separate); Georgia Power & Light Co. v. Patterson, 166 S.E. 255 (Ga. Ct. App. 1932) (finding compromise by deceased of workers compensation rights does not bar statutory rights of dependents). But see Bennett Properties Co. v. Industrial Comm'n, 437 P.2d 548 (Colo. 1968) (upholding provision which reduced death benefits by 50% for willful violation of safety rule). For additional information on death benefits under workmen's compensation statutes and case discussions, see LARSON, supra note 9, § 64.10-11.


147. Jurado, 853 P.2d at 675.

148. Id.
ers' compensation statute and the employment contract, all three of which preexisted the worker's death.\textsuperscript{149} Thus, the \textit{Jurado} court held that it was entirely appropriate to focus on the rights and laws in effect prior to an employee's death.\textsuperscript{150} Therefore, the \textit{Jurado} court returned to its preliminary premise that the constitutionality of the Kansas Workmen's Compensation Statute centered on the rights of the then-deceased employee, Fermin Jurado.\textsuperscript{151}

1. \textit{Equal Protection and Constitutionality of K.S.A. 44-510b(i)}

The \textit{Jurado} court next considered the statute in light of the equal protection framework under the Fourteenth Amendment.\textsuperscript{152} Before specifically evaluating the statute, the \textit{Jurado} court discussed the three standards for determining the constitutionality of legislative classifications: the rational basis test, the substantial relationship test and the strict scrutiny test.\textsuperscript{153}

Following this discussion, the court considered the specific Kansas statutory classification that substantially limited workers' compensation death benefits available for nonresident alien dependents.\textsuperscript{154} The court concluded, that although this provision did not discriminate based on the employee's alienage, it did discriminate against a class of employees based on their dependents' alienage.\textsuperscript{155} The court found that this classification was "based on alienage" and, therefore, subject to strict scrutiny.\textsuperscript{156}

Once the \textit{Jurado} court determined that the strict scrutiny standard was appropriate, it addressed Popejoy's argument that K.S.A. 44-510b(i) was constitutional even under a strict scrutiny standard.\textsuperscript{157} Popejoy claimed that the classification served a compelling governmental interest, which justified the disparate treatment of aliens.\textsuperscript{158} The \textit{Jurado} court, however, refuted the claim that the administration of benefits overseas would entail a high risk of fraud and create extreme financial hardships on the citizens.

\textsuperscript{149} Id. \\
\textsuperscript{150} Id. \\
\textsuperscript{151} Id. at 674-75. \\
\textsuperscript{152} Id. For a discussion of equal protection, see supra notes 26-40. \\
\textsuperscript{153} Jurado, 853 P.2d at 674-75. The court pointed out that while legislative classifications were not prohibited as a matter of law, the Equal Protection Clause required such classifications to be based on reasonable and legitimate legislative objectives. Id. (citing Plyler v. Doe, 457 U.S. 202, 216 (1982); Stephenson v. Sugar Creek Packing Co., 830 P.2d 41 (Kan. 1992); Farley v. Engelken, 740 P.2d 1058 (Kan. 1987)). For each standard of judicial scrutiny (the rational basis test, the substantial relationship test and the strict scrutiny test), the \textit{Jurado} court identified the type of legislation to which each applied and the level of state justification needed to satisfy the burden of each respective standard. Id. at 675-76. \\
\textsuperscript{154} Id. at 676. \\
\textsuperscript{155} Id. \\
\textsuperscript{156} Id. \\
\textsuperscript{157} Id. at 677. \\
\textsuperscript{158} Id.
and insurance carriers of Kansas. The Jurado court found that the administration of benefits was not an "insurmountable task, due to the availability of a global economy." The Jurado court also discredited Popejoy's argument that the citizens of Kansas would undergo serious financial loss by noting that it was the employers' and insurers' responsibility to guarantee adequate funds for employee benefits.

Concluding, the Jurado court reviewed the reasoning of court decisions from four states that addressed the constitutionality of disparate workers' compensation statutes. Although courts from three of the four states had upheld the constitutionality of such statutory schemes, none of these courts considered the rights of the employee. The fourth state supreme court decision considered by the Jurado court was the Florida case that was in accordance with Jurado, as both decisions focused on the rights of the employee.

2. Justice McFarland's Dissent

Dissenting, Justice McFarland of the Kansas Supreme Court rejected the majority's conclusion that the constitutionality of the Kansas Workmen's Compensation Statute was based on a consideration of the constitutional rights of the deceased employee. Rather, Justice McFarland argued that the dependents' constitutional rights were the proper perspective from which to evaluate the statute's constitutionality. Thus, Justice McFarland concluded that an employee's dependents had no basis for invoking the protection of the Kansas Constitution or United States Constitution when the dependents were not residents of the United States.

Justice McFarland based his conclusion on three reasons. First, he found that the majority's transferal of the constitutional rights of the de-
ceased worker to the nonresident alien dependents had no legal basis.\textsuperscript{168} The dissent noted that the majority of states that incorporated special provisions for nonresident alien dependents in workers' compensation statutes reduced the death benefits awarded to nonresident aliens.\textsuperscript{169} The dissent further explained that, in three of the four cases cited by the majority, the respective state courts upheld the constitutionality of the statutes based on the fact that nonresident alien dependents were not protected.\textsuperscript{170}

Second, the dissent analogized death benefits under workers' compensation statutes to benefits acquired under the Social Security Act.\textsuperscript{171} Under Social Security provisions, nonresident beneficiaries are subjected to disparate treatment.\textsuperscript{172} Thus, Justice McFarland argued that the federal government's disparate treatment of nonresident aliens in the Social Security context further supports the state's disparate treatment of nonresident aliens under the Kansas Workmen's Compensation Statute.\textsuperscript{173}

Finally, Justice McFarland maintained that courts should not determine the constitutionality of the statute, rather, the legislature should address the statute's disparate treatment of nonresident aliens by amending K.S.A. 44-510b(i).\textsuperscript{174} Justice McFarland explained that, until the legislature acted, the Kansas statute must be presumed constitutional and all

\begin{thebibliography}{99}
\item Id.
\item Id. The majority in \textit{Jurado} specifically noted:
\begin{quote}
The workmen's compensation laws in all but nine states have special provisions for nonresident dependents. 'Five states expressly include nonresident aliens on equal terms with other dependents; five states exclude them from benefits altogether. Most of the rest provide for reduced benefits or commutation of benefits to a lump sum on a reduced basis, and many restrict the classes of beneficiaries.'\end{quote}
\item Id. (citing 2 \textit{ARTHUR LARSON, WORKMEN'S COMPENSATION LAW} § 63.50 (1992)). For a further discussion on state decisions, see supra notes 79-81 and accompanying text.
\item Id. \textit{Jurado}, 853 P.2d at 679 (McFarland, J., dissenting). Subsequently, the dissent criticized the majority's reliance on the Florida's Supreme Court's \textit{De Ayala} decision because the decision did not provide in-depth support or compelling legal reasoning. \textit{Id.} (McFarland, J., dissenting). The dissent pointed to the fact that the Florida Constitution contained the provision "to be rewarded for industry." \textit{Id.} (McFarland, J., dissenting). Thus, the dissent interpreted this provision as serving as the basis for the Florida Supreme Court's decision. \textit{Id.} (McFarland, J., dissenting).
\item Id. (McFarland, J., dissenting).
\item Id. (McFarland, J., dissenting). The dissent pointed out that "[u]ntil recent years, all nonresident aliens were precluded from receiving disability or survivor benefits under the Act." \textit{Id.} (McFarland, J., dissenting) (quoting \textit{Ganem v. Heckler}, 746 F.2d 844, 846 (D.C. Cir. 1984)) (discussing history of disparate treatment of nonresident aliens under Social Security Acts); \textit{see also} 42 U.S.C. § 402(t)(1) (Supp. V. 1993). In 1969, an amendment was enacted which permitted only those nonresident aliens that had lived in the United States for over ten years to retain benefits. \textit{See} 42 U.S.C. § 402(t)(4)(A)-(B) (Supp. V. 1993).
\item \textit{Jurado}, 853 P.2d at 680.
\item Id.
\end{thebibliography}
doubts resolved in its favor. Accordingly, he concluded that the district court opinion should be affirmed and the statute upheld.

IV. CRITICAL ANALYSIS

The Kansas Supreme Court's decision in Jurado provided a comprehensive analysis of United States Supreme Court and Kansas precedent. In Jurado, the court was in a difficult position. The Jurado court hoped to remedy the inherent discrimination within the Kansas Workmen's Compensation Act, but had little specific precedent on which to rely. Although the Florida Supreme Court, in De Ayala, had recently ruled on the same issue and had struck down its workers' compensation statute, the De Ayala court had offered little rationale for its conclusions. Accordingly, the Jurado court turned to the Supreme Court decision most akin to the facts and issues that were before it.

The Jurado court extracted the principles espoused by the Supreme Court in Madera and used them to justify the conclusion that death bene-

175. Id.; see, e.g., Boatright v. Kansas Racing Comm'n, 834 P.2d 368 (Kan. 1992) (upholding constitutionality of state statute on basis that judicial deference must be shown to legislative goals and constitutionality of statute must be presumed).


177. See id., at 678. The Jurado court's desire to provide a fair and equitable solution is evidenced by the court's reasoning that:

One of the primary benefits that an employee works for is the satisfaction and well-being of providing for his or her family. The law did not afford ... [an employee] different treatment while he was alive and working. He shared the same 'burdens' as his fellow employees. He paid taxes and contributed to the growth of his company and the general economy. His labor ... helped pay for the employer's insurance premiums required under the workers' compensation law. Common sense dictates he should be entitled to the same 'benefits' regardless of the residence or status of his dependents.

178. De Ayala v. Florida Farm Bureau Casualty Ins., Co., 543 So. 2d 204, 207 (Fla. 1989)). Although the outcome of De Ayala was the same as desired by the Kansas Supreme Court, the decision did not provide enough specific support for its conclusions. Id. For a further discussion of the De Ayala decision, see supra notes 98-104 and accompanying text. But cf. Pena v. Industrial Comm'n, 644 P.2d 1319 (Ariz. Ct. App. 1982); Pedrazza v. Sid Fleming Contractor, Inc., 607 P.2d 597 (N.M. 1980); Martinez v. Industrial Comm'n, 720 P.2d 416 (Utah 1988). For a further discussion on state decisions holding contrary to Jurado and De Ayala, see supra notes 79-81 and accompanying text.

179. Jurado, 853 P.2d at 674. The Supreme Court had not ruled on the specific issue faced by the Jurado court; however, in Madera, the Supreme Court had upheld the constitutionality of a workmen's compensation statute which explicitly provided for equal benefits to both citizens and nonresident aliens alike. See Madera Sugar Pine Co. v. Industrial Comm'n, 262 U.S. 499, 499 (1921). For a further discussion of Madera, see supra notes 85-94 and accompanying text.
fits are the right of workers. The Jurado court's reliance on these principles was well-founded, even though Madera was concerned with a violation of the due process clause and not an equal protection challenge. The Jurado court appropriately focused on the Supreme Court's view of the purpose of death benefits and the rights created under the workers' compensation statutes.

Moreover, the Jurado court's conclusion that death benefits were a constitutional right of the employee was further supported by earlier Kansas Supreme Court jurisprudence. These decisions established the principle that the employment relationship is the original source of dependents' rights, and that state workmen's compensation statutes merely serve to define and limit these rights. Relying on these principles, the Jurado court logically concluded that dependents' rights are derived from rights once held by the employee.

Significantly, Supreme Court precedent supports the Jurado court's application of the strict scrutiny standard in reviewing the alienage classifications within the Kansas statute. Since Graham, the Supreme Court has consistently applied the strict scrutiny standard when reviewing a state statute that imposes alienage requirements for social and economical reasons. Under the strict scrutiny standard, states are generally unsuccess-

180. See Jurado, 853 P.2d at 673-74, 677. The Jurado court specifically relied on the principles espoused by the Supreme Court in Madera.

181. Id.; see also Madera, 262 U.S. at 505.

182. Jurado, 853 P.2d at 669. Although the Supreme Court in Madera did not specifically conclude that death benefits were the constitutional right of the worker, it established that death benefits were provided for the benefit of the worker in order to adequately provide for his dependents, regardless of his dependents' citizenship. Madera, 262 U.S. at 500-04.

183. See Baker v. List, 563 P.2d 431 (Kan. 1977); Lyon v. Wilson, 443 P.2d 314 (Kan. 1968); Routh v. List, 257 P. 721 (Kan. 1927). Although, the Jurado court was bound by an earlier Kansas Supreme Court decision establishing that dependents' rights are separate and independent from the employee's rights, it adequately justified its conclusions by looking to other Kansas Supreme Court decisions. For a further discussion on Kansas precedent concerning workmen's compensation rights, see supra notes 105-21 and accompanying text.

184. See Baker, 563 P.2d at 433; Lyon, 443 P.2d at 316; Moeser v. Shunk, 226 P. 784 (Kan. 1924).

185. See Jurado, 853 P.2d at 673-74. For a discussion on the derived rights of dependents, see supra notes 80-121 and accompanying text. For a general discussion of additional case law on this issue, see LARSON, supra note 9, § 64.10-.12.

186. See Toll v. Moreno, 458 U.S. 1 (1982) (Blackmun, J., concurring) (arguing for use of strict scrutiny for aliens because: (1) in many ways aliens are no different than citizens; (2) aliens are subjects of irrational discrimination; and (3) aliens possess little political power); Nyquist v. Maucler, 432 U.S. 1 (1977) (invalidating state law excluding aliens from receiving state financial assistance in higher education using strict scrutiny); In re Griffiths, 413 U.S. 717, 722 (1973).


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ful in legitimizing alienage discrimination by claiming financial and administrative hardship. Thus, the Jurado court’s rejection of the reasons advanced by Popejoy was consistent with Supreme Court precedent.

V. CONCLUSION

The Kansas Supreme Court took an important step in Jurado to ensure that all employees are afforded the right to death benefits regardless of the citizenship of their dependents. The Jurado court recognized the tragic story of Fermin Jurado, and the others like him, who have left their families in order to provide a better life for them.

The Kansas Workers’ Compensation Statute was enacted to replace workers’ rights of action against their employers for injuries arising in the workplace. Therefore, it was not rational for the Kansas statute to deny employees the assurance that their families will be provided for upon their death. This is particularly true because the employees are afforded this right under the employment contract and common law tort principles.

The Jurado court’s use of the strict scrutiny standard serves to ensure that individuals will no longer face discrimination under the Kansas Workers’ Compensation Statute based on their dependents’ alienage. The holding recognizes that workers who actively participate in society by paying taxes, contributing to labor and facilitating the economic growth of the state should be guaranteed the security of knowing their familial dependents will be provided for, regardless of alienage.

188. See Nyquist, 432 U.S. at 19 (concluding state’s objective of preserving financial resources for citizens does not alone constitute compelling state interest); see also Mendoza v. Miami, 483 F.2d 430 (5th Cir. 1973) (rejecting state’s claim that protection of employment rights of citizens supports statute that discriminates against aliens).

189. See Jurado, 853 P.2d at 676-77. For a discussion of the Jurado court’s rejection of Defendant Popejoy’s claims of “special public interest” considerations, see supra notes 157-61 and accompanying text.


191. See Madera Sugar Pine Co. v. Industrial Accident Comm’n, 262 U.S. 499, 502 (1921). In Madera, the Supreme Court espoused the principle that the purpose of workers’ compensation acts is “to provide for the liability of an employer to make compensation for injuries received by an employee,” whether to the employee himself or to those who suffer pecuniary loss by reason of his death.” Id. (quoting Huyett v. Pennsylvania R.R., 86 N.J.L. 683, 684 (1901)).

192. See Moeser v. Shunk, 226 P. 784, 785-87 (Kan. 1924); see also De Ayala v. Florida Farm Bureau Casualty Ins. Co., 543 So. 2d 204, 206 (Fla. 1989) (finding Florida workers’ compensation system replaced rights formerly afforded workers under common law).

193. See generally Developments in the Law, supra note 4, at 1286; Lanae Holbrook, Justice Barkett's Feminist Jurisprudence, 46 U. Miami L. Rev. 1161 (May 1992)

194. See In re Griffiths, 413 U.S. 717, 724 (1973) (finding “[r]esident aliens, like citizens, pay taxes, support the economy, and contribute to the economy in a myriad of other ways to our society”); Madera, 262 U.S. at 503.
Statutory classifications that limit or preclude workers' compensation death benefits for employees based on their dependents' alienage inflict inequality without a compelling justification. The Jurado court's decision guarantees that employers will not be encouraged to hire workers with nonresident dependents for hazardous jobs. The principles embodied in the Jurado decision may even promote the further introduction of proper safety procedures and precautions because it will no longer be cheaper for Kansas employers to pay death benefits to nonresident aliens, rather than to implement safety standards.

Those states that have not yet ruled on the constitutionality of disparate death benefit awards to nonresident aliens should look to Jurado for guidance. However, many states have already determined this issue contrary to the principles set forth in Jurado. Considering the disparity among the states and the gross inequality which results in those states possessing disparate workers' compensation statutes, it is apparent that the United States Supreme Court should be called upon to resolve this dispute. To allow this invidious discrimination to continue, offends all sense of equal justice under the law.

Mary K. Shannon


196. See De Ayala, 543 So. 2d at 206. The De Ayala court specifically noted the "adverse effects that could result if...[the court]...adopted the respondent's analysis [awarding disparate death benefits to nonresident alien dependents]. It conceivably might encourage some employers to selectively place aliens in the riskiest areas of their businesses. [L]iability to nonresident survivors would be minimal if such a worker died." Id. at 207 n.7.

197. Id.

198. See Barge-Wagener Constr. Co. v. Morales, 429 S.E.2d 671, 677 (Ga. 1993) (upholding Georgia workmen's compensation statute finding reduced award of death benefits to nonresident alien dependents did not violate federal and state equal protection clauses). As recently as four days prior to the Jurado decision, the Supreme Court of Georgia upheld the Georgia workmen's compensation statute which substantially limited death benefits to nonresident aliens. Id. Contrary to the Jurado decision, the Barge-Wagener court based its decision on the premise that death benefits were the right of the dependents and were not derived from the rights of the employee. Id. at 676. The Barge-Wagener and the Jurado decisions exemplify substantial disparity among the states regarding the constitutionality of disparate death benefit awards. See Pena v. Industrial Comm'n, 644 P.2d 1319 (Ariz. Ct. App. 1982) (upholding Arizona statute denying nonresident alien dependents death benefits); Pedraza v. Sid Fleming Contractor, Inc., 607 P.2d 597 (N.M. 1980) (upholding New Mexico statute denying nonresident alien dependents death benefits); Martinez v. Industrial Comm'n, 720 P.2d 416 (Utah 1988) (upholding statute providing substantially disparate death benefits to nonresident alien dependents).