IN THE SUPREME COURT OF OHIO

DOUGLAS GROCH et al,	*	
Petitioners,	*	On Questions Certified by the United States District Court for the Northern District of Ohio, Western Division
v.		
GENERAL MOTORS CORPORATION, et al	*	Case No. 2006-1914
Respondents	*	U.S. District Court Case No. 3:06-CV-1604

PRELIMINARY MEMORANDUM OF PETITIONER, DOUGLAS GROCH, IN SUPPORT OF ACCEPTANCE OF CERTIFIED QUESTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... p. iii.

STATEMENT OF THE CASE ..... p. 1.

THE ONE-SUBJECT RULE QUESTION ..... p. 2.
- I. Background Facts ..... p. 2.
- II. Senate Bill 80 ..... p. 3.
- III. Consideration of the Constitutionality of Senate Bill 80 is a matter of great public concern ..... p. 4.

CONCLUSION ..... p. 5.

CERTIFICATE OF SERVICE ..... p. 6.

APPENDIX

Amended Order of the United States District Court for the Northern District of Ohio, Western Division

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TABLE OF AUTHORITIES

CASES

In re Nowak, (2004) 104 Ohio St. 3d 466.....p. 3.

Marbury v. Madison, (1803) 5 U.S. 137.....p. 4.

OHIO CONSTITUTION

OH CONST. art. II, § 15.....p. 4.

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STATEMENT OF THE CASE

This action originated in the Court of Common Pleas, Lucas County Ohio. The Petitioner Douglas Groch (hereinafter "Petitioner") brought a claim asserting an employer intentional tort against Defendant/Respondent General Motors Corporation (hereinafter "GM"). Petitioner also brought a claim asserting product liability against Defendants/Respondents Kard Corporation and Racine Federated, Inc (hereinafter "Kard" and "Racine Federated"). An action for loss of consortium was brought by Plaintiff Chloe Groch.

The matter was removed to the United States District Court for the Northern District Western Division of Ohio by GM by virtue of diversity of citizenship jurisdiction. In his Complaint the Petitioner, Douglas Groch, had asserted that several statutes germane to the outcome of the present action were in violation of the constitution of the State of Ohio. In response to the Petitioners' pleadings the federal court issued an order directing the parties to file joint or separate motions seeking leave to certify questions to the Supreme Court of Ohio. Petitioner, Respondent Attorney General and Racine Federated filed a joint motion pursuant to that order. The federal court then issued an order certifying seven questions to the Supreme Court of Ohio, but declining to certify an eighth question which questioned whether Senate Bill 80 (hereinafter "SB 80") offended the Ohio Constitution by violating the "one subject rule" found in Article II, Section 15 of the Ohio Constitution.

Petitioner moved for reconsideration and permission to amend his complaint to correct a defect which the federal court cited as being the reason for not certifying the question regarding Article II, Section 15. The district court found Petitioners

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motion to be well taken and an eighth question was certified to the Supreme Court of Ohio.

THE ONE-SUBJECT RULE QUESTION

I. Background Facts

The Petitioner was injured on March 3, 2005 when the trim press he was operating came down on his right arm and wrist. The trim press had been manufactured by Kard Corporation. Racine Federated, Inc. is the successor to Kard Corporation.

On April 7, 2005 SB 80 became effective--almost a month after Plaintiff's injury. SB 80 provided, *inter alia*, for the statute of repose currently found in R.C. 2305.10. Plaintiff filed his complaint on June 2, 2006.

It is alleged by Defendants Kard Corporation and Racine Federated, Inc. that the trim press involved in the injury giving rise to the present suit has been in the possession of GM for more than ten years and that the statute of repose found in R.C. § 2305.10, as amended by SB 80, immunizes them from liability. Clearly, a decision on the constitutionality of SB 80 will be determinative for Defendants Kard Corporation and Racine Federated, Inc. If SB 80 is found to be unconstitutional, then the statute of repose upon which Defendants Kard Corporation and Racine Federated rely to immunize them from liability, will no longer be operative.

There is no controlling precedent specific to SB 80. There have been previous bills which this Court had found to be unconstitutional based on a violation of the one-subject rule and such cases provide guidance in this matter.

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II. Senate Bill 80

Senate Bill 80 is a voluminous bill which addresses a variety of separate and distinct subjects. These subjects range from creating the statute of repose at issue in this case to the issuance of "volunteer's certificates" to retired dentists to defining which nurses may call themselves "advanced practice nurses" and thus use the initials A.P.N. after their names.

Another significant aspect of SB 80 is the timing of passage of the act. SB 80 was passed by the legislature on December 8, 2004. The case of In re Nowak, (2004) 104 Ohio St. 3d 466 was decided on December 22, 2004. Governor Taft signed SB 80 on January 6, 2005.

The importance of the timing of these events is that it illustrates the apparent disregard by the executive of this Court's decision in *Nowak*. In that case this Court specifically held, "A manifestly gross and fraudulent violation of the one-subject provision contained in *Section 15(D), Article II of the Ohio Constitution* will cause an enactment to be invalidated." *Nowak*, 104 Ohio St. 3d at SYLLABUS, ¶ 1. Nevertheless, Governor Taft signed SB 80 despite the Court's clear decision that any enactment found to be in violation of the one-subject rule would be invalidated. SB 80, as noted above, clearly contains multiple separate and distinct subjects. The General Assembly, on the other hand, cannot be accused of disregarding the law and the Ohio Constitution because SB 80 was passed prior to *Nowak*. Prior to *Nowak* the state of the law regarding Article II, Section 15 was in a state of flux and it was not truly clarified until the decision in *Nowak*.

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III. Consideration of the constitutionality of Senate Bill 80 is a matter of great public concern.

Senate Bill 80 contains many provisions that may be generally labeled as being in the category of "tort reform." Regardless of whether one is an opponent or a proponent of such measures, the one thing that both sides can agree on is the need for this Court to make a definitive ruling on the constitutionality of SB 80.

Article II, Section 15(D) of the Ohio Constitution is known as the "one-subject" rule provision. That section provides:

> No bill shall contain more than one subject, which shall be clearly expressed in its title. No law shall be revived or amended unless the new act contains the entire act revived or the section or sections amended, and the section or sections amended shall be repealed.

Oh. Const. Art. II, § 15(D)

It has long been understood that it is the role of the courts to "say what the law is." Marbury v. Madison, (1803) 5 U.S. 137, 177. Furthermore, "if a law be in opposition to the constitution; if the law and constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty." *Marbury*, 5 U.S. at 178. Finally, "[i]f then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution and not such ordinary act, must govern the case to which they both apply." *Id.*

In the present matter SB 80 is simply ordinary legislation and it is in conflict with the Ohio Constitution. The words of Chief Justice Marshall provide guidance. For the past two centuries it has been the special role and responsibility of the courts,

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especially the highest courts in the states, to say what the law is and to ensure that neither the legislature nor the executive offend the constitutions of the states. Here, there is an extraordinary amount of evidence that SB 80 offends the Ohio Constitution by violating the one-subject rule found in Section II, Article 15. A decision invalidating SB 80 is not only proper pursuant to the Ohio Constitution, it is in conformity with two hundred years of legal tradition in both Ohio and the United States.

CONCLUSION

Petitioner has been especially brief in this Preliminary Memorandum due to the fact that many of the facts of this case have been presented to the Court in the Preliminary Memoranda filed earlier. Petitioner respectfully asks the Court not to find that his brevity is indicative of a lack of seriousness about this certified question. To the contrary, Petitioner has been brief so not to detract from the serious nature of the question.

WHEREFORE, Petitioner respectfully prays the Court accept Certified Question 15, "Does Senate Bill 80 violate the one-subject rule, Article II, Section 15, of the Ohio Constitution?" for consideration.

Respectfully submitted

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CERTIFICATION

This is to certify that a copy of the foregoing **Preliminary Memorandum of Petitioner, Douglas Groch, in Support of Acceptance of Certified Question** was sent this 19th day of December, 2006, via ordinary U.S. mail, postage pre-paid, to:

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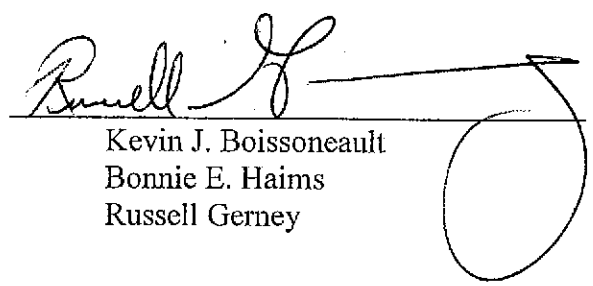

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

GROCH et al.	*	Case No. 3:06-CV-1604
Plaintiffs	*	Judge JAMES G. CARR
v.	*	**AMENDED ORDER**
GENERAL MOTORS CORPORATION, et al.,	*	
Defendants.	*	

There are issues of Ohio law that may be determinative of the present case and for which there is no controlling precedent in the decisions of the Supreme Court of Ohio. Therefore, this Court finds it appropriate to certify questions of Ohio law to the Supreme Court of Ohio.

A. NAME OF THE CASE AND NAMES OF ALL PARTIES

The name of this case is *Douglas Groch, et al. v. General Motors Corporation, et al.* case number 3:06-CV-1604. The parties in this case are: Plaintiffs Douglas Groch and Chloe Groch versus Defendants General Motors Corporation, Kard Corporation and Racine Federated, Inc. The Attorney General of Ohio is a party for purposes of defending the constitutionality of the Ohio statutes at issue.

B. BRIEF STATEMENT OF FACTS

The Amended Complaint alleges the following: Plaintiff Douglas Groch ("Groch") was injured on March 3, 2005 when the trim press he was operating came down on his right arm and wrist. At the time of his injury Plaintiff Douglas Groch was acting in the course and scope of his employment with Defendant General Motors Corporation. The trim press that he was using was manufactured by Defendants Kard Corporation and Racine Federated, Inc.

Groch bought an action in the Court of Common Pleas, Lucas County, Ohio seeking damages from Defendant General Motors Corporation ("GM") based on a theory of employer intentional tort and from Defendants Kard Corporation and Racine Federated, Inc. (respectively, "Kard" and "Racine") based on a theory of product liability. Plaintiff Chloe Groch ("Chloe") sought damages for loss of consortium.

The action was removed to federal court by GM. Federal jurisdiction is based on 28 U.S.C. 1332 because there is diversity between the Plaintiffs and the Defendants, and the amount in controversy exceeds $75,000.00.

This Court has previously certified several questions to the Supreme Court of Ohio which need not be repeated here. Plaintiffs have remedied the defect in their pleading which prevented certification of Proposed Question number 15. Said defect has been corrected.

C. THE CERTIFIED QUESTION

The Court now finds that in order to fully adjudicate the matter before it, it must certify one additional question to the Supreme Court of Ohio:

15. Does Senate Bill 80 violate the one-subject rule, Article II, Section 15, of the Ohio Constitution?

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E. MOVING PARTY

The Plaintiff Douglas Groch is designated as the moving party.

s/ James G. Carr

Hon. James G. Carr