

In the
Supreme Court of Ohio

DOUGLAS GROCH, <i>et al.</i> ,	:	Case No. 2006-1914
	:	
Plaintiffs-Petitioners,	:	On Review of Certified Question from the
	:	United States District Court, Northern
v.	:	District of Ohio, Western Division
	:	
GENERAL MOTORS	:	District Court Case
CORPORATION, <i>et al.</i> ,	:	No. 3:06-CV-1604
	:	
Defendants-Respondents.	:	

**RESPONDENT STATE OF OHIO'S
SUPPLEMENTAL PRELIMINARY-STAGE MEMORANDUM
URGING THE COURT TO ANSWER THE
ADDITIONAL CERTIFIED QUESTION**

KEVIN J. BOISSONEAULT*

**Counsel of Record*

BONNIE E. HAIMS

RUSSELL W. GERNEY

Gallon, Takacs, Boissoneault &
Schaffer Co. LPA

3516 Granite Circle

Toledo, Ohio 43617-1172

419-843-2001

419-841-2608 fax

kboisson@gallonlaw.com

Counsel for Petitioners

Douglas and Chloe Groch

JIM PETRO (0022096)

Attorney General of Ohio

STEPHEN P. CARNEY* (0063460)

State Solicitor

**Counsel of Record*

DIANE R. BREY (0040328)

Senior Deputy Solicitor

ELISE PORTER (0055548)

Assistant Solicitor

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

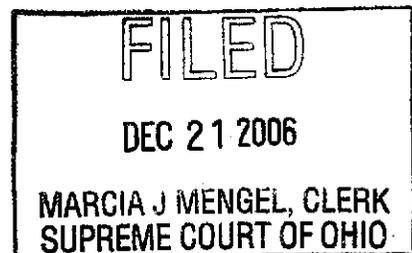
614-466-5807 fax

scarney@ag.state.oh.us

Counsel for Respondent

State of Ohio

(additional counsel listed on next page)



KIMBERLY CONKLIN*

**Counsel of Record*

Kerger & Associates

33 S. Michigan Street, Suite 100

Toledo, Ohio 43604

419-255-5990

419-255-5997 fax

Counsel for Respondent

General Motors Corporation

PATRICK N. FANNING

DAVID C. VOGEL

DAN E. CRANSHAW

Lathrop & Gage L.C.

2345 Grand Boulevard Suite 2800

Kansas City, Missouri 64108-2684

816-292-2000

816-292-2001 fax

pfanning@lathropgage.com

Counsel for Respondent

General Motors Corporation

ROBERT H. EDDY*

**Counsel of Record*

ANNA S. FISTER

Gallagher Sharp

420 Madison Avenue, Suite 1250

Toledo, Ohio 43604

419-241-4860

419-241-4866 fax

reddy@gallaghersharp.com

Counsel for Respondents

Kard Corporation and Racine Federated, Inc.

National/Kard Division

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INTRODUCTION

This brief supplements one filed earlier in this case, in which we urged the Court to accept and answer several questions certified from the federal district court for the Northern District of Ohio. The earlier questions involve the constitutionality of the new workers' compensation subrogation statute along with a part of a recent tort reform law. Specifically, the questions are constitutional challenges to the new workers' compensation subrogation statute, R.C. 4523.931, and to the new statute of repose for products liability, R.C. 2305.10. Groch, the State, and some of the private defendants have already filed preliminary briefs on these questions, and the parties that filed have all urged the Court to accept the federal court's certification and answer those questions.

The federal district court has now certified an additional question to this Court, so we file this supplemental brief to urge the Court to answer that question as well. Specifically, Plaintiff-Petitioner Groch now challenges the 2004 tort reform statute, S.B. 80 (the "2004 Tort Reform Law"), on the basis of the one-subject rule in Article 2, Section 15(D) of the Ohio Constitution, which states that "[n]o bill shall contain more than one subject, which shall be clearly stated in its title." Ohio Const. Art II, § 15(D). This question arose more recently because Groch amended his complaint in federal court to add this claim, after the federal court had already certified the other questions to this Court, so the federal court has just now (on December 1, 2006) certified the additional question.

Although we urge the Court to accept this additional question here—i.e., whether the 2004 Tort Reform Law violates the single-subject rule—we note that this same question may be resolved in another case that is already pending in the Court. In *Arbino v. Johnson and Johnson*, No. 2006-1212, the plaintiff there has raised, in merits-stage briefing, a single-subject rule argument against the 2004 Tort Reform Law. However, for reasons explained below, it is

debatable whether the single-subject issue is properly before the Court in *Arbino*. Thus, because the issue might not be resolved in *Arbino*, and because the question should eventually be answered by this Court and not by a federal court without this Court's guidance, we urge the Court to accept this question for review here. And if the Court does resolve the question in *Arbino* before resolving this case, then the Court can simply follow the *Arbino* ruling, however it turns out, in this case.

Consequently, the Court should accept this additional question, and it should answer it along with the other questions that the federal court has asked this Court to answer in this case.

STATEMENT OF THE CASE AND FACTS

The Amended Complaint alleges that Plaintiff-Petitioner Douglas Groch ("Groch") was injured on March 3, 2005 while operating a trim press in the course and scope of his employment with Defendant General Motors Corporation ("GM"). Defendants Kard Corporation and Racine Federated, Inc. ("Kard" and "Racine") made the trim press that he was using.

Groch sued GM in intentional tort and Kard and Racine for products liability in the Lucas County Court of Common Pleas. Plaintiff Chloe Groch sought damages for loss of consortium. GM removed the case to federal court on the basis of diversity.

GM has asserted a subrogation interest in Groch's tort recovery for its payment to him of workers' compensation benefits. Groch asserts that the Ohio statutes granting GM subrogation interests—R.C. 4123.93 and R.C. 4123.931—are unconstitutional. Kard and Racine assert that they are immune from liability based on R.C. 2305.10, the statute of repose for products liability claims. Groch asserts that R.C. 2305.10 is unconstitutional. The State of Ohio intervened to defend the constitutionality of the challenged statutes.

Groch, Kard and Racine, and the State of Ohio moved the federal court to certify questions about the constitutionality of R.C. 4123.93, 4123.931 and 2305.01 to the Court. The federal court certified the following questions to the Court:

1. Do the statutes allowing subrogation for workers' compensation benefits, R.C. 4123.93 and 4123.931, violate the takings clause, Article I, Section 19, of the Ohio Constitution?
2. Do R.C. 4123.93 and 4123.931 violate the due process and remedies clause, Article I, Section 16, of the Ohio Constitution?
3. Do R.C. 4123.93 and 4123.931 violate the equal protection clause, Article I, Section 2 of the Ohio Constitution?
4. Does the statute providing for a statute of repose for product liability, R.C. 2305.10(C) and (F), violate the open courts provision of the Ohio Constitution, Article I Section 16?
5. Do R.C. 2305.10(C) and (F) violate the takings clause, Article I, Section 19, of the Ohio Constitution?
6. Do R.C. 2305.10(C) and (F) violate the due process and remedies clause, Article I, Section 16, of the Ohio Constitution?
7. Do R.C. 2305.10(C) and (F) violate the equal protection clause, Article I, Section 2, of the Ohio Constitution?
8. Do R.C. 2305.10 (C) and (F) violate the ban on retroactive laws, Article II, Section 28 of the Ohio Constitution?

The State of Ohio agreed with Groch that the Court should answer these questions, and Kard and Racine acknowledged that the questions meet the Court's standard for accepting certified questions from a federal court. GM has not filed a preliminary memorandum in this Court, nor did they address in federal court whether certification to this Court is appropriate.

After the original certification, Groch moved to amend his federal complaint, and he added a constitutional challenge to the 2004 Tort Reform Law, Senate Bill 80, based on the one-subject rule in the Ohio Constitution, Article 2, Section 15. The federal court then certified the following additional question to the Court:

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

THE COURT SHOULD ANSWER THE CERTIFIED QUESTION

The Court should accept the additional certified question here, so that it may also address the single-subject challenge to the 2004 Tort Reform Law. The issue warrants the Court's review, and it is better that this Court resolve the issue rather than have a federal court address the issue without this Court's guidance. Because the *Arbino* case is already in merits briefing, the Court may end up resolving the issue in *Arbino* first. Nevertheless, the Court should accept the issue here, both because the issue might not be resolved in *Arbino*, and because the Court should accept this case anyway, for the other questions raised, so adding this question will not unduly expand the Court's docket.

First, all should agree that the issue warrants the Court's review, so the only question is when and in what case. Tort reform is an issue that affects thousands of Ohioans, whether plaintiffs or potential plaintiffs, defendants or potential defendants, or citizens who are never involved in a lawsuit on any side. On one hand, consumers pay the price of increased insurance premiums or more expensive products, and on the other hand, consumers may benefit if products are made safer because of the right incentives. Whoever is right or wrong on the issue, the issue has a broad effect. And the Court's cases over the years show that various tort reform issues are eventually decided here, and it should be so. Here, the issue is ripe for review, and it takes on particular urgency because it comes from a federal court. That means that the federal court will have to answer the question, and it is better as a matter of principle for the Court to resolve such critical issues of State law.

Second, although the issue is arguably pending in *Arbino*, the issue might not be resolved there. The plaintiffs in *Arbino* have raised a single-subject rule argument, but defendants have

questioned whether the issue is truly raised in that case. That is so because the *Arbino* plaintiffs challenge particular subsections of S.B. 80, but have not challenged S.B. 80 as a whole. And more specifically, the Court’s certified question in *Arbino* is whether R.C. 2315.18, 2315.20, and 2315.21, as amended by S.B. 80, are unconstitutional “on the grounds as stated by the Plaintiffs.” Since the challenge was initially stated as a challenge to just those provisions, the single-subject issue might not be before the Court in *Arbino*, even as to those three provisions. More important, even if *Arbino* resolves the single-subject issue, it might do so only as to those provisions, as the Court’s approach has been to strike down only offending provisions, even when the Court finds a violation. *In re Nowak*, 104 Ohio St. 3d 466, 481-482, 2004-Ohio-6777, ¶ 75 (holding that “the inclusion of former R.C. 5301.234 in Am.Sub.H.B. No. 163 violates the one-subject rule of the Ohio Constitution” and therefore severing former R.C. 5301.234 while saving “the nonoffending provisions in the Act”); *State ex rel. Ohio Civil Serv. Employees Assn, Local 11 v. State Empl. Rels. Bd.*, 104 Ohio St. 3d 122, 132, 2004-Ohio-6363, ¶ 36 (holding that “Am.Sub.H.B. No. 405 violates the one-subject rule of the Ohio Constitution with regard to the amendment to R.C. 3318.31” and affirming judgment “severing the amendment to R.C. 3318.31 from Am.Sub.H.B. No. 405 and saving the nonoffending provisions in the Act”).

But, if the Court in *Arbino* finds no violation—and the State urges the Court to find no violation, if it reaches the issue there—then that answers the question as to all provisions.

Thus, the bottom line is that *Arbino* may or may not answer the question at all, or not answer it fully, so the Court should accept the question here. If the question gets answered in *Arbino* before the Court reaches decision in this case, then the Court may simply follow the *Arbino* result here. And if *Arbino* does not answer the question, then this case provides a back-up vehicle to do so.

Finally, accepting the additional question in this particular case makes sense, as the case will, we hope, be before the Court anyway, as we have urged the Court to accept the other questions that the federal court has sent over. Those other issues deserve the Court's attention, for the reasons in our earlier Preliminary Memorandum. Thus, if the Court agrees to address those issues, it makes sense to add this one issue here. Otherwise, if the Court hears the case without this issue, and if *Arbino* does not resolve the issue, then the Court would need to take a third case to finally resolve the single-subject challenge to the 2004 Tort Reform Law.

For all these reasons, the Court should accept the federal court's request to answer this additional question. And for the reasons summarized below, the Court should hold that the 2004 Tort Reform Law does not violate the single-subject clause.

ARGUMENT

The State urges the Court to affirm the 2004 Tort Reform's constitutionality under the one-subject rule.

Respondent State of Ohio's Proposition of Law:

The 2004 tort reform law, Senate Bill 80, does not violate the single-subject rule in Article 2, Section 15(D) of the Ohio Constitution.

The 2004 Tort Reform Law, which was enacted in Senate Bill 80, does not offend the single-subject clause of the Ohio Constitution. That rule appears at Article II, Section 15(D), and it provides: "No bill shall contain more than one subject, which shall be clearly expressed in its title." As this Court has explained, "[t]he one-subject provision is not directed at plurality but at disunity in subject matter." *State ex rel. Dix v. Celeste* (1984), 11 Ohio St. 3d 141, 146. Thus, "[t]he mere fact that a bill embraces more than one topic is not fatal, as long as a common purpose or relationship exists between the topics." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St. 3d 451, 496 (citing *Hoover v. Bd. of Cty. Comm'rs* (1985), 19

Ohio St.3d 1, 6 and *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St. 3d 225, 229, 1994-Ohio-1). A bill violates the law only where there is a disunity of subject matter such that there is “no discernible practical, rational, or legitimate reasons for combining the provisions in one act.” *Beagle v. Walden*, 78 Ohio St. 3d 59, 62, 1997-Ohio-234; *Simmons-Harris v. Goff* (1999), 86 Ohio St. 3d 1, 14. Or stated differently, only a “manifestly gross and fraudulent violation” of the single-subject provision authorizes a court to pronounce a law unconstitutional. *In re Nowak*, 104 Ohio St. 3d 466, paragraph 1 of the syllabus.

Here, all of the provisions of the 2004 Tort Reform Law share a common purpose and relationship, as they relate in specific ways to the topic of tort reform, standards for liability, and damages calculations. To be sure, it is hard to assess Groch’s particular challenge, as he does not identify which provisions he asks the Court to strike, as the general rule is to strike only those provisions that stray too far from the core subject. See *In re Nowak*, 104 Ohio St. 3d 466, 481-482, 2004-Ohio-6777, ¶ 75. He cites, as examples of purported disunity, provisions regarding dentists and nurses. See Groch Preliminary Memorandum (supporting additional question) at 3. But such statutes, such as one governing dentists that do volunteer work after retirement, do involve standards of liability in tort. Moreover, the provisions Groch cites do not affect him, and the provisions that perhaps do, such as the statute of repose, are surely part of the core of tort reform.

The common theme of tort reform, and the unity among provisions, is further shown by examining the three statutes challenged in *Arbino*, and by looking to other provisions as well. The three statutes challenged in *Arbino*—R.C. 2315.18, 2315.20, and 2315.21—undoubtedly relate generally to the topic of tort reform, and more specifically to each other on the topic of the calculation of damages in a tort suit. And other provisions that have been sometimes attacked as

unrelated are, in fact, related to the topic of tort reform. Immunity for volunteers, the scope of responsibility of property owners for premises liability, and limits on damages in certain cases are all related to the topic of addressing the spiraling societal costs of runaway tort litigation.

Finally, a comparison of the 2004 Tort Reform Bill to the law struck down in *Sheward* shows that the new effort does not suffer the flaws that the *Sheward* Court identified. The 2004 Tort Reform Law is distinguishable from the law at issue in *Sheward*, HB 350, in at least two key ways: the relationship between the provisions at issue and the General Assembly's express intent in the new law that the statutes are severable. First, the statutes in the new law are all rooted in issues of liability and damages, and the statutes do not cover as broad a landscape as the Court identified in *Sheward*. Second, Senate Bill 80 included, as Section 5, a severability clause, which provides that "[t]he items of law of which the sections of this act are composed, and their applications, are independent and severable." This distinction alone is critical, since in *Sheward*, the Court invalidated the entire bill because, as the Court said, it was unable to determine the General Assembly's intent regarding severability. See *Sheward*, 86 Ohio St.3d at 500-501.

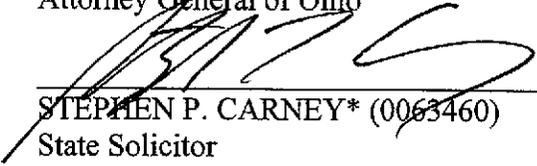
For these reasons and more, the Court should hold that the 2004 Tort Reform Law did not, in whole or in part, violate the single-subject clause.

CONCLUSION

For the above reasons, the Court should answer the questions certified by the district court, and should uphold the constitutionality of the challenged statutes.

Respectfully submitted,

JIM PETRO (0022096)
Attorney General of Ohio



STEPHEN P. CARNEY* (0063460)
State Solicitor

**Counsel of Record*

DIANE R. BREY (0040328)

Senior Deputy Solicitor

ELISE PORTER (0055548)

Assistant Solicitor

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5807 fax

scarney@ag.state.oh.us

Counsel for Respondent

State of Ohio

CERTIFICATE OF SERVICE

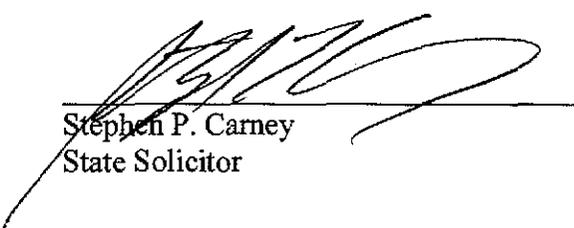
I certify that a copy of the foregoing Respondent State of Ohio's Supplemental Preliminary-stage Memorandum Urging the Court to Answer the Additional Certified Question was served by U.S. mail this 21st day of December, 2006, upon the following counsel:

Kevin J. Boissoneault
Bonnie E. Haims
Russell W. Gerney
Gallon, Takacs, Boissoneault &
Schaffer Co. LPA
3516 Granite Circle
Toledo, Ohio 43617-1172

Kimberly Conklin
Kerger & Associates
33 S. Michigan Street, Suite 100
Toledo, Ohio 43604

Patrick N. Fanning
David C. Vogel
Dan E. Cranshaw
Lathrop & Gage L.C.
2345 Grand Boulevard Suite 2800
Kansas City, Missouri 64108-2684

Robert H. Eddy
Anna S. Fister
Gallagher Sharp
420 Madison Avenue, Suite 1250
Toledo, Ohio 43604



Stephen P. Carney
State Solicitor