IN THE SUPREME COURT OF OHIO

LINDA ACKISON,	:	**07 - 0219**
Plaintiff-Appellee,	:	On Appeal from the Lawrence County Court of Appeals, Fourth Appellate District
v.	:	
ANCHOR PACKING CO., *et al.*,	:	Court of Appeals Case No: 05CA46
Defendants-Appellants.	:	

MEMORANDUM OF *AMICI CURIAE*, OHIO MANUFACTURERS' ASSOCIATION, NATIONAL FEDERATION OF INDEPENDENT BUSINESS/OHIO, OHIO CHAMBER OF COMMERCE, OHIO ALLIANCE FOR CIVIL JUSTICE, AND OHIO CHEMISTRY TECHNOLOGY COUNCIL IN SUPPORT OF JURISDICTION

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The General Assembly enacted Amended Substitute House Bill 292 ("H.B. 292") in order to address the exploding asbestos litigation crisis in Ohio in a manner that serves the interests of asbestos personal injury litigants, as well as Ohioans more broadly by

> deferring of claims of exposed individuals who are not sick in order to preserve, now and in the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries and to safeguard the jobs, benefits and savings of the state's employees and the well being of the Ohio economy.

That is, H.B. 292 emerged out of the legislature's recognition of the magnitude of the asbestos litigation problem and an acknowledgement of the importance of discerning a solution that serves all of Ohio's citizens.

A hallmark of H.B. 292 is the early evaluation of claims, allowing plaintiffs with "actual physical harm or illness" caused by asbestos exposure to be compensated first, while those who have been exposed to asbestos but have no physical impairment are required to wait. The various definitions that H.B. 292 provides with respect to the "prima facie" requirements for asserting an asbestos claim, including that of a "competent medical authority" by whom a diagnosis must be provided, were clarified in order to accomplish this procedural cure to the asbestos litigation crisis. However, the Fourth District Court of Appeals declared the retroactive provisions of H.B. 292 unenforceable with respect to cases pending at the time of the law's passage and, as a result, barred enforcement of key provisions of the legislation. *Ackison v. Anchor Packing Co.*, 2006-Ohio-7099.

Amici curiae have a significant interest in the continued application of H.B. 292's provisions generally. With more than 39,000 cases pending in Cuyahoga County alone, the sheer magnitude of the asbestos litigation crisis in Ohio prompted the passage of H.B. 292. And with good reason. As the General Assembly recognized, applying the remedial provisions of

H.B. 292 to pending cases will have a positive impact on impaired plaintiffs and defendants alike, as well as on Ohio's business community, and the State's overall economic well being.

The Ohio Manufacturers' Association ("OMA") is a statewide association of nearly 2,000 manufacturing companies, which collectively employ the majority of the 800,000 men and women who work in the manufacturing sector in the State of Ohio. The OMA and its members have a substantial interest in H.B. 292 as dozens of manufacturers doing business in Ohio have been named as defendants in thousands of asbestos personal injury lawsuits. Several Ohio manufacturers have declared bankruptcy and/or have closed facilities as a direct result of asbestos litigation. The OMA has a strong interest in doing everything it can to create an environment where Ohio manufacturers, their employees, and the communities in which they are located can survive the onslaught of asbestos personal injury litigation. H.B. 292 is essential to this goal.

The National Federation of Independent Business/Ohio ("NFIB/Ohio") is an association with more than 36,000 members, making it the state's largest association dedicated exclusively to the interests of small and independent business owners. The NFIB/Ohio is committed to supporting a balanced civil justice system that treats individuals, businesses, corporations and other entities fairly, on a statewide basis. It supports H.B. 292 because the Bill is designed to do just that.

Founded in 1893, the Ohio Chamber of Commerce ("Chamber") is Ohio's largest and most diverse statewide business advocacy organization. The Chamber works to promote and protect the interests of its 4,000 business members while building a more favorable Ohio business climate. As an independent and informed point of contact for government and business leaders, the Chamber is a respected participant in the public policy arena. The Chamber

dedicates its advocacy efforts to the creation of a strong pro-jobs environment and, in turn, an Ohio business climate responsive to expansion and growth. The Chamber believes strongly that H.B. 292 is critical to meeting these goals.

The Ohio Alliance for Civil Justice ("OACJ") is a group of over 200 small and large businesses, trade and professional associations, professionals, non-profit organizations, local government associations, and others. OACJ members, large and small, support a balanced civil justice system that will not only award fair compensation to injured persons, but also impose sufficient safeguards so that defendants are not unjustly penalized and plaintiffs are not unjustly enriched. OACJ also supports stability and predictability in the civil justice system in order that Ohio's businesses and professions may know what risks they assume as they carry on commerce in Ohio.

The Ohio Chemistry Technology Council ("OCTC") is a trade association representing over 80 chemical industry and related companies that do business in Ohio. OCTC members' interests are aligned with those of the OMA with respect to H.B. 292.

STATEMENT OF THE CASE AND FACTS

Amici curiae defer to the Statement of the Case and Facts as presented by Appellants.

EXPLANATION OF WHY THIS CASE RAISES SUBSTANTIAL CONSTITUTIONAL QUESTIONS AND IS OF PUBLIC OR GREAT GENERAL INTEREST

Proposition of law: The requirements in R.C. 2307.91, 2307.92, and 2307.93 are remedial and procedural, and therefore may be applied to cases pending on September 2, 2004, without offending the Retroactivity Clause of the Ohio Constitution.

I. INTRODUCTION AND SHORT ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

It is no secret that the American court system has faced an asbestos litigation crisis of enormous proportions.[1] While the myriad complexities of asbestos litigation have been a national problem, so too have they been of particular concern in Ohio. In Cuyahoga County alone, the number of asbestos cases pending in the Common Pleas Court tripled from approximately 12,800 in December 1999 to more than 39,000 by October 2003, with an estimated 200 new cases being filed every month. In fact, since 1998, Ohio has become one of the top five states—along with Mississippi, Texas, New York and West Virginia—in which litigants have chosen to file asbestos personal injury cases.[2]

Against this backdrop, and in response to the magnitude and growth of the number of asbestos lawsuits in Ohio and the effects such lawsuits have upon potential claimants and potential defendants subject to liability, the General Assembly enacted H.B. 292, effective September 2, 2004. In H.B. 292, the General Assembly struck a balance between the competing interests with a stake in the Ohio asbestos litigation quagmire. Specifically, H.B. 292 was designed to allow claimants who have shown actual injury from asbestos exposure to pursue their claims while those who have not must wait, thereby preserving available resources for those who are actually sick from exposure to asbestos.

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[1] See, generally, *Amchem Products, Inc. v. Windsor* (1997), 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689 (providing historical backdrop to asbestos litigation in the federal court system).
[2] Amended Substitute House Bill 292 ("H.B. 292"), Section 3(A)(3)(b).

The decision of the Fourth District Court of Appeals threatens to destroy what the General Assembly intended to be a viable solution to the asbestos litigation morass that envelops Ohio. By improperly deciding that key features of H.B. 292 violate Ohio's prohibition against retroactive laws, the court of appeals has jeopardized the validity of the very provisions of H.B. 292 that are vital to the interests of impaired asbestos claimants and defendants alike. The continued application of H.B. 292's "prima facie" criteria according to the legislatively defined procedures set forth therein is crucial to effectuate the legislature's goal of solving the asbestos-litigation problem in Ohio's courts.

Determining whether H.B. 292's definition of "competent medical authority" and other clarifying provisions may be retrospectively applied to pending cases is, therefore, of great public interest and significance. If the decision of the Fourth District is permitted to stand, the law concerning Ohio's constitutional prohibition on retroactivity will be left in a state of flux, numerous plaintiffs and defendants in Ohio's asbestos cases will be forced to return to the pre-H.B. 292 procedures for litigating claims, Ohio's business community will continue to bear the cost of compensating uninjured plaintiffs, and Ohio's courts will be faced with a legal regime incapable of handling the asbestos litigation crisis that, one way or another, must be confronted.

In addition, the decision of the Fourth District raises constitutional questions that are at the heart of this Court's retroactivity jurisprudence that should be resolved once and for all by the highest Court in the State. This Court has properly recognized that not all retroactive laws are unconstitutional. Remedial laws, which substitute a new or more appropriate remedy for an existing right (such as the statutory provisions at issue herein), are not unconstitutionally retroactive, even if they have an occasional substantive effect. See *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 522 N.E.2d 489. However, the Fourth District, in

conducting its constitutional analysis, incorrectly classified H.B. 292's prima facie provisions as substantive rather than remedial. But, just days before the Fourth District's decision, Ohio's Court of Appeals for the Twelfth District reached the opposite conclusion, recognizing that the clarifying definitions in H.B. 292 are procedural changes of a remedial nature. *See Wilson v. AC&S, Inc.* (12th App. Dist.), 2006-Ohio-6704. Only this Court can affect a resolution of the constitutional questions raised by this appeal in a manner that will produce the certainty and finality that is called for.

II. THIS CASE IS OF GREAT PUBLIC INTEREST AND IMPORTANCE

House Bill 292 was passed to address issues of tremendous importance to the public. Whether this legislative solution to the asbestos litigation crisis in Ohio is constitutionally enforceable will have an impact on numerous Ohioans both directly – upon the tens of thousands of asbestos litigants and the hundreds of asbestos defendants – as well as indirectly – on Ohio's millions of concerned citizens. Specifically, the constitutionality of the application of H.B. 292 will have implications for the distribution of damage awards to legitimately injured plaintiffs, for the sustainability of hundreds of businesses throughout Ohio, for the efficient and fair management of court dockets, and potentially even for the viability of entire sectors of Ohio's economy. It is simply beyond dispute that the resolution of this case is of great public importance.

The degree to which this case involves issues of great concern to the public is perhaps most readily apparent from the legislative history that gave rise to H.B. 292's passage. The process began in May 2003, when the Senate Judiciary Committee began a series of six hearings on asbestos provisions that would later become H.B. 292.[3] Subsequently, the asbestos provisions

[3] Though H.B. 292 was formally introduced in October 2003 by Representative Scott Oelslager (R—Canton), its provisions were originally introduced in the General Assembly as part of a

of H.B. 292 received enormous scrutiny in the Ohio House of Representatives, where a myriad of interested parties—including the asbestos trial bar, manufacturers, premises owners, and others—began to participate in the legislative process relating to the Bill. The House Civil and Commercial Law Committee held ten hearings on H.B. 292 and took testimony from parties standing both in support and in opposition to the proposed legislation. The witnesses from whom the Committee heard included people with firsthand knowledge of the asbestos litigation problem, as well as former members of the Ohio judiciary who testified concerning the constitutional implications of some of H.B. 292's provisions. Following the House's passage of the bill, the Senate Committee on Judiciary began a series of seven additional hearings on the bill in March 2004. The Senate Committee heard testimony from fifteen witnesses (eight in support of H.B. 292, seven in opposition), before recommending its approval to the full Senate.

During the committee hearing process, both the House and Senate heard repeated testimony concerning the tremendous toll asbestos litigation had taken on the dockets of Ohio's courts. In addition, the General Assembly heard about the devastating effects on many Ohio businesses occasioned by the growth in asbestos-litigation filings in Ohio. For example, at least five Ohio-based companies—including Owens Corning Fiberglas, Babcock & Wilcox, North American Refractories, and A-Best Co.—filed for bankruptcy protection due to the "unending flood" of asbestos litigation. H.B. 292, Section 3(A)(4)(c)-(e). Ohio's experience is typical of what has occurred throughout the country, where more than 70 companies have filed for bankruptcy as a result of the flood of asbestos litigation. *Id.*, Section 3(A)(4). During the first

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larger Senate bill in May 2003, sponsored by Senator Steve Stivers (R—Columbus). Representative Oelslager introduced H.B. 292 after the Speaker of the House removed the asbestos provisions from Senator Stivers' proposed legislation, deeming such provisions necessary for the General Assembly to consider as a separate bill. For simplicity of reference, *amici curiae* refer herein to the legislative proceedings relating to the asbestos litigation bill in the House and Senate as being connected with H.B. 292 .

ten months of 2002 alone, the General Assembly found that nationwide fifteen companies filed for bankruptcy because of costs associated with asbestos litigation, resulting in a loss of more than 60,000 jobs. *Id.*, Section 3(A)(4)(a). Further illustrating the crisis, a RAND study considered by the General Assembly estimated a potential loss of 423,000 jobs throughout the country due to asbestos litigation. *Id.*

Not surprisingly, the plight of Ohio businesses has affected the communities in which those businesses have operated. For example, Owens Corning's declaration of bankruptcy had a tremendous negative impact not only in the Toledo area, but also in other parts of the state. Owens Corning was forced to close its Granville facility, resulting in a loss of 275 jobs in Licking County. H.B. 292, Section 3(A)(4)(d). According to a study conducted by NERA Economic Consulting in 2000, the ripple effect of those losses is predicted to result in a loss of hundreds of other jobs and millions of dollars in regional income. *Id.* Whether H.B. 292's retroactive provisions may constitutionally be applied to pending cases will influence the degree to which Ohio's economy will be forced to continue to absorb these escalating costs.

As more asbestos manufacturers filed for bankruptcy, the list of named defendants in asbestos personal injury cases expanded. The General Assembly recognized this in enacting H.B. 292. "The typical claimant in an asbestos lawsuit now names sixty to seventy defendants, compared with an average of twenty named defendants two decades ago." H.B. 292, Section 3(A)(2). A multitude of companies are now subject to liability despite having never manufactured asbestos products: the companies' acquisition of other companies that long ago made asbestos has been enough to tangle many in the web of asbestos litigation. See Stephen Hudak and John F. Hagan, Asbestos Litigation Overwhelms Courts, Cleveland *Plain Dealer*, Nov. 5, 2002, at A1 (available at 2002 WLNR 269888). Due in no small part to these increases

in the number of asbestos defendants, the costs of asbestos litigation nationwide continue to mount, exceeding the estimated $54 billion already spent on such cases. *Id.*; see, also, H.B. 292, Section 3(A)(2). The RAND Institute for Civil Justice has estimated that future costs to fight and settle asbestos-related claims will exceed $250 billion. See Stephen Hudak, Proposals Aim To Limit Rising Asbestos Claims, Cleveland *Plain Dealer*, May 28, 2003, at A1 (available at 2003 WLNR 416996).[4]

In enacting H.B. 292, the General Assembly also recognized and responded to another trend – the filing of suits by claimants who have been exposed to asbestos, but are not impaired from such exposure: "[T]he vast majority of Ohio asbestos claims are filed by individuals who allege they have been exposed to asbestos and who have some physical sign of exposure to asbestos, but *who do not suffer from an asbestos-related impairment*." (Emphasis added.) *Id.*, Section 3(A)(5). Specifically, the General Assembly found, "[t]he cost of compensating exposed individuals who are not sick jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases, now and in the future." *Id.*, Section 3(A)(6). Accordingly, one of the legislature's primary objectives in enacting H.B. 292 was to defer claims of exposed individuals who cannot demonstrate asbestos-related injury "in order to preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries and to safeguard the jobs, benefits, and savings of the state's employees and the well being of the Ohio economy." *Id.*, Section 3(A)(7). Thus, the question of whether the provisions of H.B. 292, which were designed as a remedy to the varying dimensions

[4] The staggering cost does not even ensure full compensation to claimants. RAND estimates that "65 cents of every asbestos dollar" goes to lawyers on both sides of the asbestos litigation. *Id.* See, also, H.B. 292, Section 3(A)(2).

of this growing problem, may be applied retrospectively as the General Assembly intended is of great public importance, and will affect plaintiffs and defendants alike.

Sadly, the havoc being wreaked upon Ohio by asbestos litigation is at least in part the product of misdiagnoses and attorney fraud—phenomena that are being repeated in the context of silicosis litigation around the country. Judge Janis Jack, presiding over federal multidistrict litigation of silicosis claims in Texas, found that the medical evidence in support of thousands of silicosis claims was the product of a small cadre of doctors and screening companies, originally set up for asbestos claims and used largely by the same handful of law firms substantially responsible for the exploding asbestos dockets throughout the country, making "diagnoses [that] were about litigation rather than health care." *See In re: Silica Prod. Liab. Litig.* (S.D. Tex. 2005), 398 F. Supp. 2d 563, 633-35. And just weeks ago in Ohio, Judge Hanna of the Cuyahoga County Court of Common Pleas revoked *pro hoc vice* privileges of a plaintiffs' law firm for perpetrating fraud on the Court with respect to medical testing, trust claim forms, and the discovery process, forcing their client "who did nothing improper" to procure new counsel. *See Kananian v. Lorillard Tobacco Co.* (Cuyahoga C.P., 2007), Case No. CV 442750. The early evaluation of legitimate claims set forth in H.B. 292, and the constitutionality of its application to pending lawsuits, is essential to any response to the volume of cases and to the sometimes nefarious tactics employed in pursuit of asbestos claims.

Even more, the uncertainty as to the constitutional status of H.B. 292's retroactive provisions has rendered the need for this Court's resolution of the matter even more immediate and substantial. The decision below was issued in this case just two days after Ohio's Court of Appeals for Butler County, Twelfth Appellate District rendered a decision upholding the constitutionality of the retrospective application of H.B. 292's "prima facie" provisions. *See*

Wilson v. AC&S, Inc., 2006-Ohio-6704 (12th App. Dist.) (holding in part that "defining the term 'competent medical authority' is clearly a procedural, rather than substantive, act." (citation omitted)). The decision of the Fourth District states that, "because these requirements [R.C. Chapter 2307] represent a substantive change in the law, they are not mere remedial requirements. Instead, they are substantive changes and may not be constitutionally applied retroactively." *Ackison* at ¶26. Yet the Twelfth District concluded that, "the provisions in H.B. 292 at issue in this case, i.e., R.C. 2307.91 through 2307.93, constitute remedial provisions that merely affect 'the methods and procedure by which rights are recognized, protected and enforced, not the rights themselves' (citation omitted)." *Wilson*, 2006-Ohio-6704 at ¶122.

Such a divergence in the decisions of Ohio's appellate courts not only creates confusion as to the law in Ohio, but it also has the potential to generate jurisdictional disparities in procedure that will have potentially inequitable results for plaintiffs and defendants alike throughout the State. And, as the decisions of both courts make clear, although the judgments apply only to the individual cases, the conclusions drawn by the Fourth and Twelfth Districts are legal conclusions about the retrospective applicability of entire sections of H.B. 292. Curing this confusion and bringing clarity to the constitutionality of this important legislation is reason enough for this Court to exercise its jurisdiction and to take this case. In light of the economic, social, and judicial concerns that prompted H.B. 292's passage and in light of the current state of the law as to its constitutional application, there can be little doubt that this case is of great public significance.

III. THIS APPEAL RAISES SUBSTANTIAL CONSTITUTIONAL QUESTIONS IN NEED OF RESOLUTION BY THIS COURT

In addition to the public interest in the resolution of the questions presented by this case, the legal issues raised regarding H.B. 292's retrospective application have implications for

Ohio's constitutional jurisprudence that justify the invocation of this Court's jurisdiction. The Fourth District rested its decision upon the notion that subjecting Appellee to the requirement of H.B. 292's "prima facie" showing, and in particular of the requirement that evidence of asbestos-related injury be presented by a "competent medical authority," would be unconstitutionally retroactive. The court found these criteria unconstitutionally retroactive because (1) the General Assembly intended that the criteria apply retrospectively *and* (2) the criteria were substantive and not merely remedial in nature. *See Ackison,* 2006-Ohio-7099 at ¶¶13, 26. Yet, as noted above, the Twelfth District has come to the opposite conclusion in response to the same constitutional question. Whether the retroactive provisions of H.B. 292 are remedial or substantive is a significant question of constitutional law, and clarification by this Court of the proper distinction between remedial and substantive laws in the context of retroactivity warrants the exercise of this Court's jurisdiction.

As this Court has observed, remedial laws affect only the remedy provided and "include laws which merely substitute a new or more appropriate remedy for the enforcement of an existing right." *Van Fosse v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 106, 522 N.E.2d 489. Remedial laws may also provide rules of practice, courses of procedure, or methods of review applicable to any proceedings conducted after the adoption of such laws. See *State ex rel. Holdridge v. Indus. Commn.* (1967), 11 Ohio St.2d 175, 179, 228 N.E.2d 621, 624; *State ex rel. Slaughter v. Indus. Comm.* (1937), 132 Ohio St. 537, 9 N.E.2d 505, paragraph three of the syllabus. Such retroactive laws are constitutional under the Ohio Supreme Court's retroactivity analysis even though such laws may have "an occasional substantive effect." *Van Fossen,* 36 Ohio St.3d at 107-108.

Amici curiae do not dispute that the General Assembly intended the medical criteria provisions of H.B. 292 to apply to pending cases, provided that it is constitutional to do so. See R.C. 2307.93(A)(2) and (A)(3)(a).[5] The Fourth District's resolution of the second prong of Ohio's constitutional retroactivity analysis, however, does not give due consideration to the General Assembly's public-policy concerns and unnecessarily deems unconstitutional the valid means by which H.B. 292 controls the litigation of asbestos claims pending in the Ohio court system. Indeed, one of the General Assembly's principal public-policy considerations in the enactment of H.B. 292 was to "give priority to those asbestos claimants who can demonstrate actual physical harm or illness caused by exposure to asbestos" *while at the same time* "fully preserv[ing] the rights of claimants who were exposed to asbestos to pursue compensation should those claimants become impaired in the future." H.B. 292, Section 3(B). Toward that end, R.C. 2307.92 sets forth specific medical criteria that asbestos plaintiffs must show, on a prima facie basis, before their tort actions may proceed any further toward trial and judgment.[6]

The principal reason for the Fourth District's decision not to apply H.B. 292 to the Appellees' claims has to do with the supposed effect of the "prima facie" showing, and the requirement of presenting a diagnosis from a "competent medical authority" in particular, to their case. Underlying the court's decision is the apparent notion that the legal requirements for

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[5] R.C. 2307.92(B), (C), and (D) expressly apply to "any asbestos claim that is pending on the effective date of this section" and to any cause of action arising "before the effective date of this section." See R.C. 2307.93(A)(2) and (A)(3)(a), as enacted by H.B. 292. More specifically, plaintiffs who have asbestos claims pending in a court of competent jurisdiction are to file "a written report and supporting test results" within 120 days of the effective date of Am. Sub. H.B. 292, thereby indicating that the General Assembly indicated to apply the standards enacted in R.C. 2307.92 to cases already pending. See R.C. 2307.93(A)(2).

[6] Plaintiffs instituting civil actions *after* the effective date of H.B. 292 must submit evidence of the requisite physical impairment within 30 days of filing their complaint; plaintiffs with actions pending as of the effective date of H.B. 292 must submit such evidence in their cases within 120 days of the effective date of H.B. 292. R.C. 2307.93(A)(1) and (A)(2).

Appellees' claims are substantively altered by the clarified definition of "competent medical authority," and that failure to satisfy this provision would result in the termination of an otherwise viable claim. *See Ackison*, ¶26 ("applying R.C. Chapter 2307 to appellants' cause of action would *remove* their potentially viable, common law cause of action by imposing a new, more difficult statutory standard..." (emphasis added)). But as a simple matter of statutory interpretation, no cause of action based on asbestos related injury is extinguished by operation of H.B. 292. Under R.C. 2307.93(C), cases are "administratively dismissed" and can be brought at any time in the future when claimant is able to offer evidence to satisfy the medical criteria. The Fourth District drew its conclusion without taking into account the legislative scheme as a whole.

In line with the legislative intent in Section 3(B) of H.B. 292, the claims of plaintiffs who are unable to show threshold indicia of asbestos-related injury are not extinguished but are kept on hold, preserving the resources of Ohio's courts—not to mention the resources of asbestos defendants—for the cases brought by plaintiffs with the most viable claims of asbestos-related injury. Once a claimant is subsequently able to demonstrate the requisite indicia of injury according to the procedures set out in the law, that claimant will proceed to the "front of the line" and have his or her claim heard. In the meantime, claimants who can produce evidence of asbestos-related injury supported by a "competent medical authority" will have priority in Ohio's courts, ensuring that the increasingly limited resources of asbestos defendants will be preserved for those whose disease is properly verified.

It would seem to follow, then, that H.B. 292's prioritizing of claims is remedial rather than substantive in nature when viewed under a proper retroactivity analysis, and is therefore constitutionally valid. Thus, whether the retroactive, prima facie requirements of H.B. 292 may constitutionally be applied to cases pending at the time of passage raises issues central to this

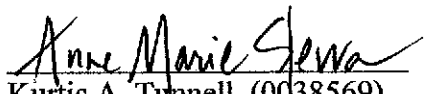
Court's retroactivity jurisprudence and to the substantive/procedural distinction under the Ohio Constitution generally. By exercising jurisdiction over this case, the Court will have the opportunity to clarify that distinction and to resolve the conflict among Ohio's courts concerning definitions that alter the timing and procedure by which certain claims may be adjudicated and whether such provisions may be applied retrospectively. This case presents substantial constitutional questions in need of resolution by this Court.

IV. CONCLUSION

The General Assembly established the "prima facie" criteria in H.B. 292, in part, as a way to control the heretofore uncontrollable asbestos dockets of trial courts in Ohio.[7] By designing a system for early evaluation of claims based upon a plaintiff's showing of minimum criteria associated with asbestos-related disease, the General Assembly has done nothing more than codify a method to allow Ohio courts to manage the growing asbestos dockets that have grown wildly during the last decade. Whether the considered judgment of the General Assembly will be effectuated, and whether the provisions of H.B. 292 may constitutionally be enforced, are questions of great importance and constitutional significance to all Ohioans. This Court should exercise its jurisdiction and accept this case for review.

[7] Illustrating the problem is the following statistic found by the General Assembly: based on the number of pending asbestos cases, each of Ohio's 233 general jurisdiction judges would preside over 150 trials before retiring the current asbestos docket. H.B. 292, Section 3(A)(3)(d).

Respectfully submitted,



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CERTIFICATE OF SERVICE

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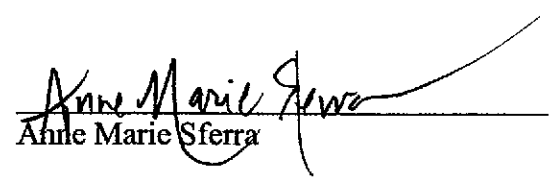

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