



IN THE SUPREME COURT OF OHIO

DOUGLAS GROCH et al.,  
Petitioners,  
v.  
GENERAL MOTORS  
CORPORATION, et al.,  
Respondents.

: Case No. 2006-1914  
:  
:  
: On Questions Certified by the  
: United States District Court for  
: Northern District of Ohio,  
: Western Division  
:  
: U.S. District Court Case No.  
:  
: 3:06-CV-1604  
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MERIT BRIEF OF *AMICUS CURIAE* OHIO ALLIANCE FOR CIVIL JUSTICE,  
IN SUPPORT OF THE RESPONDENTS

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## STATEMENT OF INTEREST OF *AMICUS CURIAE*

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.<sup>1</sup> 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 this state. It is for these reasons that the OACJ was actively involved in the legislative process that resulted in S.B. 80.

In the General Assembly, OACJ strongly supported many provisions of S.B. 80, including the ten-year statute of repose for products liability claims, codified in R.C. 2305.10(C). This provision, designed to strike a rational balance between the rights of prospective claimants and the rights of product manufacturers, is a desirable and necessary component of Ohio tort law. In adopting the statute of repose, the General Assembly sought to prevent the problems inherent in stale litigation and to recognize that it is more appropriate for the party who has control over the product after it has been put into the marketplace to be responsible for the product after ten years have passed.

OACJ files this Brief to urge the Court (1) to reject Petitioner's effort to invalidate S.B. 80 in its entirety, pursuant to the single-subject rule and (2) to hold that R.C. 2305.10(C) is a constitutionally-valid exercise of legislative authority.

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<sup>1</sup> The following organizations are actively involved in the OACJ's efforts: the Ohio Chamber of Commerce, the Ohio Manufacturers' Association, the National Federation of Independent Business/Ohio, the Ohio Society of Certified Public Accountants, the Ohio State Medical Association, the Ohio Business Roundtable, and the American Insurance Association.

## STATEMENT OF FACTS

The relevant facts are set forth in the Merit Brief of Respondents. Additionally, OACJ submits the information set forth below regarding the background and history of S.B. 80.

S.B. 80, which became effective on April 7, 2005, was enacted by the General Assembly as legislation designed to reform Ohio's tort laws and to strike a balance between tort claimants and defendants. Legislative hearings on S.B. 80 began in May 2003. More than 30 persons, representing opinions and interests for and against S.B. 80's passage, testified before legislative committees prior to S.B. 80 being adopted by the General Assembly in December 2004. Based on the testimony and studies presented<sup>2</sup> to the General Assembly, it issued a number of important findings that illustrate the public policy behind S.B. 80. Among these findings, which the General Assembly specifically enacted in the uncodified law, were:

- Ohio's economic well-being depends upon "business providing essential jobs and creative innovation." S.B. 80, § 3(A)(1). The pre-S.B. 80 civil litigation system presented a "challenge" to that economic well-being. *Id.*
- While understanding the need for our tort system to provide compensation to individuals who have suffered injury, Ohio law was in need of a "fair system of civil justice" that balanced the rights of tort claimants with "the rights of those who have been unfairly sued." S.B. 80, § 3(A)(2).
- Ohio has a "rational and legitimate state interest" in providing a "fair, predictable system of civil justice" that preserves the rights of those who have been harmed while at the same time "curbing the number of frivolous lawsuits" that inevitably result in unneeded costs to consumers. S.B. 80, § 3(A)(3).

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<sup>2</sup> Some of the studies considered by the General Assembly included: (1) a 2002 study from the White House Council of Economic Advisors, (2) a 2003 Harris Poll conducted by the United States Chamber of Commerce's Institute for Legal Reform and (3) a Tillinghast-Towers Perrin study of trends and findings on the costs of the U.S. tort system. See S.B. 80, § 3(A)(3).

At the time the General Assembly was considering S.B. 80, at least eighteen other states had a statute of repose applicable to product liability claims.<sup>3</sup>

It is against this backdrop that the General Assembly enacted S.B. 80, which includes a ten-year statute of repose for product liability claims. By enacting the statute of repose for product liability claims, the General Assembly sought to strike a balance between the rights of prospective tort claimants and the rights of product manufacturers and suppliers while at the same time enhancing the competitiveness of Ohio manufacturers and recognizing a manufacturer's limited control over a product once it enters the marketplace. See generally, S.B. 80, § 3(C)(3)-(8).

OACJ believes that S.B. 80 is constitutional in its entirety and that this Court should therefore answer each of the certified questions accordingly.

### ARGUMENT

#### **I. THE STATUTE OF REPOSE IS CONSTITUTIONAL.**

Petitioner has asserted several constitutional challenges to Ohio's ten-year statute of repose for product liability actions (R.C. 2305.10(C)). All of these challenges are facial challenges – "the most difficult to bring successfully because a challenger must establish that there exists no set of circumstances under which the statute would be valid." *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, at ¶ 37. Of course, Petitioner must overcome the strong presumption of constitutionality enjoyed by every statute. This Court has recently reaffirmed the well-established rule that, "legislative enactments are entitled to a strong presumption of

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<sup>3</sup> The states with statutes of repose for product liability claims in 2003 included: Alaska, Arizona, California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Nebraska, North Carolina, Oregon, Tennessee, Texas, and Washington. Additionally, at the time the General Assembly was considering S.B. 80, forty-seven other states has statutes of repose to protect architects, engineers, and contractors of improvements to real property from lawsuits arising after a specific number of years after completion of an improvement to real property. See S.B. 80, § 3(A)(5)(b).

constitutionality." *State ex rel. Ohio Congress of Parents and Teachers v. State Board of Ed.*, 111 Ohio St. 3d 568, 2006-Ohio-5512, at ¶ 20 ("*Board of Ed.*"). This fundamental rule operates so that, "[a] statute should not be declared unconstitutional 'unless it appears beyond a reasonable doubt that the legislation and constitutional provision are clearly incompatible.'" *Id.* See also *State v. Lowe*, 112 Ohio St. 3d 507, 2007-Ohio-606, at ¶ 17. In fact, not only does a finding of unconstitutionality require a showing in accordance with "the highest standard of proof," but also the burden of meeting that high standard rests with "the challenger." *Board of Ed.*, at ¶ 21; *Klein v. Leis*, 99 Ohio St. 3d 537, 2003-Ohio-4779, at ¶ 4. Here, Petitioner has not and cannot "prove beyond a reasonable doubt" that the challenged statute of repose is unconstitutional under any set of circumstances. See *Beatty v. Akron City Hospital* (1981), 67 Ohio St.2d 483, 593, 424 N.E.2d 586, citing *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 128 N.E.2d 59.

Specifically, the statute of repose set forth in R.C. 2305.10(C) provides as follows:

Except as otherwise provided . . . no cause of action based on a product liability claim shall accrue against the manufacturer or supplier of a product later than ten years from the date that the product was delivered to its first purchaser or first lessee who was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

R.C. 2305.10(C)(1).

Petitioner contends that a "statute of repose cannot prevent a cause of action from accruing." Petitioner's Merit Brief, p. 8. But, as this Court has acknowledged, that is precisely what a statute of repose does. See *Hardy v. VerMeulen* (1987), 32 Ohio St.3d 45, 46 n.2, 512 N.E.2d 626 ("[s]tatutes which have the effect of denying a remedy to one before it accrues have sometimes been described as statutes of repose and they differ from traditional statutes of limitation which impose a period of time for bringing suit after one's cause of action accrues").

While a statute of limitations requires that a plaintiff who has a cause of action commence suit to litigate that cause within a certain period of time after an injury has been sustained, a statute of repose provides that once a certain period of time passes no cause of action accrues. The statute of repose in R.C. 2305.10 provides that once ten years have passed after a product is delivered to its first purchaser, no cause of action accrues against the manufacturer of the product. Thus, the statute of repose completely bars a cause of action from accruing against certain manufacturers after a legislatively-determined reasonable period of time.

Petitioner and his supporting *amici* argue that the statute of repose violates various provisions of the Ohio Constitution, namely the "open courts" and "right to remedy" provision (Article I, Section 16), the "takings" clause (Article I, Section 19), the equal protection provision (Article I, Section 2), the due process clause (Article I, Section 16), and the retroactivity clause (Article II, Section 28).<sup>4</sup>

As described more fully herein, Petitioner's constitutional challenges to R.C. 2305.10(C) must fail because:

- 1) the statute of repose does not violate a plaintiff's right to remedy since it does not deny a remedy to a claimant who has a vested cause of action but instead bars a cause of action before it accrues;
- 2) the statute of repose does not violate the takings clause since it does not take away a vested cause of action, but merely bars a plaintiff's cause of action before any rights accrue;
- 3) the statute of repose withstands equal protection review because it is reasonably related to legitimate and important governmental purposes;
- 4) the statute of repose does not violate due process guarantees since it is reasonably related to legitimate and important governmental purposes; and

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<sup>4</sup> This Brief addresses each constitutional challenge to the statute of repose in the order of the Court's certification, except that the due process discussion has been moved to follow the discussion of equal protection issues.

- 5) the statute of repose does not impair any vested, substantive rights and is remedial in nature such that it can be applied retroactively.

Accordingly, the OACJ urges this Court to uphold the ten-year statute of repose for products liability actions set forth in R.C. 2305.10(C) as a reasonable and valid exercise of legislative power.

**A. The Statute of Repose For Products Liability Actions, Set Forth in R.C. 2305.10(C), Does Not Violate the "Right to Remedy" and "Open Courts" Provision of the Ohio Constitution.**

Petitioner argues that the ten-year statute of repose for products liability actions violates the open courts provision of the Ohio Constitution by denying a legal remedy to certain persons who have suffered bodily injury. See Petitioner's Merit Brief, p. 8. From this argument, Petitioner suggests that there is a constitutionally-protected right to remedy provided by the common law for product liability injuries.<sup>5</sup> Essentially, this argument amounts to a claim that common law remedies and causes of action cannot be abolished without violating the open courts and right to remedy provision of the Ohio Constitution.

Contrary to Petitioner's assertions however, this Court has long-recognized the General Assembly's power to abolish or modify the common law without offending Article I, Section 16 of the Ohio Constitution. Moreover, the statute of repose set forth in R.C. 2305.10(C) does not take away a vested cause of action but instead prevents a cause of action from ever arising.

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<sup>5</sup> Although codified today, Ohio's product liability law initially arose from judicial decisions. Ohio's statutory scheme for products liability claims (set forth in Revised Code Chapter 2307) was included in Am. Sub. H.B. 1 and became effective in 1988. The Legislative Service Commission's analysis of proposed Am. Sub. H.B. 1 stated that the bill was enacted to "adopt a general statutory scheme \* \* \* that would govern all product liability claims against manufacturers and suppliers in Ohio courts." See Baldwin's Ohio Legislative Service 1987 Laws of Ohio, 5-846.

**1. The General Assembly Defines the Scope of Rights and Remedies Available Under Ohio Law.**

Petitioner argues that the statute of repose violates the open courts provision of the Ohio Constitution by denying certain tort plaintiffs the ability to seek redress for their injuries. See Petitioner's Merit Brief, p. 8. This Court has expressly indicated that "there is no property or vested right in any of the rules of common law, as guides of conduct, and they may be added to or repealed by legislative authority." *Strock v. Pressnell* (1988), 38 Ohio St.3d 207, 214, 527 N.E.2d 1235. Accordingly, the General Assembly clearly has the power to abrogate or modify common law rights and remedies.

It is well-established that the legislature must have the authority to enact, repeal, and otherwise modify laws as society's changing needs require. In fact, this Court has specifically upheld the constitutionality of legislative enactments abolishing causes of action that previously existed at common law. See, e.g. *Strock*, 38 Ohio St.3d at 214 (upholding statute abolishing amatory actions). This Court has long-recognized that "state law determines when rights exist. Section 16 guarantees a 'remedy by due course of law' for 'an injury done,' but state law determines *what injuries are recognized and what remedies are available.*" *Hardy*, 32 Ohio St.3d at 54 (emphasis added); see also *Hartford Fire Ins. Co. v. Lawrence, Dykes, Goodenberger, Bower & Clancy* (C.A.6, 1984), 740 F. 2d 1362, 1370 (applying Ohio law). For instance, recently, the General Assembly adopted laws to make clear that Ohio does not recognize a claim for and provides no remedy for "wrongful birth." See R.C. 2305.116 (effective August 17, 2006).<sup>6</sup>

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<sup>6</sup> In fact, the Ohio Supreme Court recently recognized the General Assembly as having the authority to establish the public policy of Ohio with respect to wrongful birth and other tort claims. See *Schirmer v. Mt. Auburn Obstetrics & Gynecological Associates, Inc.*, 108 Ohio Sup. Ct.3d 494, 2006-Ohio-942, ¶ 46.

The General Assembly, whose members are duly elected arbiters of public policy, has the authority to shape "state law" by modifying the common law. See *Strock*, 38 Ohio St.3d at 214. Thus, the General Assembly may make any change in substantive law it deems reasonable, so long as it does not contravene any vested rights. See *Fassig v. State ex rel. Turner* (1917), 95 Ohio St. 232, 248, 116 N.E. 104.

Specifically, this Court has endorsed the General Assembly's ability to modify the common law, so long as it: 1) "does not interfere with vested property rights;" and 2) "has a permissible legislative objective." *Strock*, 38 Ohio St.3d at 214. Applying this two-part test to the statute of repose set forth in R.C. 2305.10(C), it is clear that Petitioner's open courts challenge must fail because: 1) the ten-year statute of repose bars a cause of action before it ever accrues and, thus, does not interfere with a vested property right; and 2) the General Assembly was motivated by permissible legislative objectives which are clearly set forth in the uncodified law accompanying S.B. 80.

**(a) The statute of repose does not interfere with vested property rights.**

Petitioner claims that the statute of repose set forth in R.C. 2305.10(C) violates the Ohio Constitution's open courts provision because it prevents injured plaintiffs from pursuing what Petitioner characterizes as accrued, vested causes of action. See Petitioner's Merit Brief, p. 17. Contrary to Petitioner's assertions, there is no vested or property right in any rule of the common law and the right to bring a common law cause of action is not a fundamental right. See *Strock*, 38 Ohio St.3d at 213.

A "vested right" is one that "so completely and definitely belongs to a person that it cannot be impaired or taken away without that person's consent." *Harden v. Ohio Atty. Gen.*, 101 Ohio St.3d 137, 2004-Ohio-382, at ¶ 9. A right is not vested "unless it amounts to

something more than a mere expectation or interest based upon an anticipated continuance of existing law." *Smith v. Smith*, 109 Ohio St.3d 285, 2006-Ohio-2419 at ¶ 20 (Lundberg Stratton, J. dissenting). As previously indicated, this Court has specifically held that there "is no property or vested right in any of the rules of the common law" and the General Assembly "may modify or entirely abolish common-law actions." *Strock*, 38 Ohio St.3d at 214. Thus it is clear that there is no vested right to assert a particular cause of action that is not cognizable.

More specifically, this Court has indicated that, a "statute of repose does not deny a remedy for a vested cause of action but, rather, bars the action before it ever arises." *Brennaman v. R.M.I. Co.* (1994), 70 Ohio St.3d 460, 468, 639 N.E.2d 425, 431 (Moyer, C.J., concurring in part, dissenting in part) (citing *Sedar v. Knowlton Construction Co.* (1990), 49 Ohio St.3d 193, 551 N.E.2d 938, *overruled by Brennaman*). Accordingly, under the Court's analysis in *Sedar*, "[t]he injured party literally has no cause of action. The harm that has been done is *damnum absque injuria* - a wrong for which the law affords no redress." *Cincinnati Ins. Co. v. Wylie* (1988), 48 Ohio App.3d 289, 291-92, 549 N.E.2d 1198.

Four years after *Sedar* upheld the statute of repose, this Court rejected the holding and rationale of *Sedar* in *Brennaman*. In *Brennaman*, the Court found that the statute of repose deprived plaintiffs of the right to sue before they knew of their injuries. *Brennaman*, 70 Ohio St.3d at 466. However, *Brennaman* failed to address the bedrock principle discussed above that neither state nor federal law "forbid[s] the abolition of common-law rights so long as it is to attain a permissible legislative objective." *Strock*, 38 Ohio St.3d at 214. In holding that the legislature could, consistent with the right to remedy provision of the Ohio Constitution, completely abolish the centuries-old amatory offenses, the Court stated: "Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the

changes of time and circumstances." *Id.* (quoting *Munn v. Illinois* (1876), 94 U.S. 113, 134). Thus, the legislature has considerable latitude in defining the scope of a cause of action, such as a products liability claim, and in establishing the available remedies.

Contrary to Petitioner's assertions, the statute of repose set forth in R.C. 2305.10(C) does not interfere with a vested property right. In light of this Court's recognition that the legislature can modify or abolish common law rights and remedies to achieve legitimate government purposes, it is clear that there is no vested right to assert a particular cause of action to remedy an asserted wrong. See *Strock*, 38 Ohio St.3d at 214.

At most, Petitioner had a mere expectation that he could pursue a products liability cause of action based on existing law. A "mere expectation or interest based upon an anticipated continuance of existing law" is insufficient to give rise to a vested property right. *Smith* at ¶ 20 (Lundberg Stratton, J. dissenting). Moreover, the statute of repose prevents a cause of action from ever accruing and there can be no vested right in an unaccrued cause of action. Accordingly, the statute of repose contained in R.C. 2305.10(C) does not interfere with a vested property right.

**(b) There is a permissible legislative purpose behind R.C. 2305.10(C).**

As previously indicated, the General Assembly has the authority to modify common law as long as: 1) there is no interference with a vested property right; and 2) there is a "permissible legislative objective." *Strock*, 38 Ohio St.3d at 214. As demonstrated in the preceding section, the first prong of this test is satisfied because there is no vested right to bring a cause of action. With respect to the second prong of the *Strock* inquiry, the presence of a permissible legislative purpose is evident from the uncodified law accompanying S.B. 80.

The General Assembly set forth its policy rationale for R.C. 2305.10(C) in the uncodified law accompanying S.B. 80, which provides that the ten-year statute of repose was enacted:

- To recognize that subsequent to the delivery of a product, the manufacturer or supplier lacks control over the product, over the uses made of the product, and over the conditions under which the product is used. (S.B. 80, § 3(C)(3)).
- To recognize that . . . it is more appropriate for the party or parties who have had control over the product during the intervening time period to be responsible for any harm caused by the product. (S.B. 80, § 3(C)(4)).
- To recognize that, more than ten years after a product has been delivered, it is very difficult for a manufacturer or supplier to locate reliable evidence and witnesses regarding the design, production, or marketing of the product, thus severely disadvantaging manufacturers or suppliers in their efforts to defend actions based on a product liability claim. (S.B. 80, § 3(C)(5)).
- To recognize the inappropriateness of applying current legal and technological standards to products manufactured many years prior to the commencement of an action based on a product liability claim. (S.B. 80, § 3(C)(6)).
- To recognize that a statute of repose for product liability claims would enhance the competitiveness of Ohio manufacturers by reducing their exposure to disruptive and protracted liability with respect to products long out of their control, by increasing finality in commercial transactions, and by allowing manufacturers to conduct their affairs with increased certainty. (S.B. 80, § 3(C)(7)).

In sum, the General Assembly adopted the ten-year statute of repose for products to:

strike a rational balance between the rights of prospective claimants and the rights of product manufacturers and suppliers and to declare that the ten-year statutes of repose prescribed in those sections are rational periods of repose intended to preclude the problems of stale litigation but not to affect civil actions against those in actual control and possession of a product at the time that the product causes an injury to real or personal property, bodily injury, or wrongful death.

S.B. 80, § 3(C)(8).

The General Assembly made a reasonable policy decision to require a product liability action to be commenced against the manufacturer, if at all, within ten years after the product is delivered to the initial user or consumer. As this Court has recognized, such legislative policy

decision should not be second-guessed by the courts. See *Austintown Twp. Bd. of Trustees* (1996), 76 Ohio St.3d 353, 356, 667 N.E.2d 1174 ("it is not the function of a reviewing court to assess the wisdom or policy of a statute"). The ten-year statute of repose set forth in R.C. 2305.10(C) is not designed to take away an existing cause of action, but rather modifies the common law pursuant to unquestionably reasonable government purposes. Accordingly, the OACJ respectfully urges this Court to defer to the legislature's reasonable and legitimate policy decision to enact a ten-year statute of repose for products liability claims.

**2. This Court's Decision in *Sheward* Does Not Require Invalidation of the Statute of Repose for Products Liability Actions Set Forth in R.C. 2305.10(C).**

Contrary to Petitioner's assertions, *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 715 N.E.2d 1062, does not require invalidation of the statute of repose for products liability claims. See Petitioner's Merit Brief, p. 6. In *Sheward*, this Court invalidated Am. Sub. H.B. 350 ("H.B. 350") in its entirety, finding that H.B. 350 violated the separation of powers doctrine and the single-subject rule of the Ohio Constitution. Among other things, H.B. 350 included a statute of repose for products liability actions.

The Court's decision in *Sheward* does not require that this Court conclude that the statute of repose in S.B. 80 is unconstitutional. For one thing, the OACJ respectfully asserts that the underlying premise of *Sheward* is erroneous: the General Assembly does not "violate" the separation of powers by enacting a statute similar to legislation previously deemed unconstitutional. Simply because the Court deemed a statute of repose unconstitutional in a specific context in the past does not inevitably mean that any future legislation on the same subject violates the "separation of powers."

While this Court undoubtedly has the power to declare *existing* statutes unconstitutional, it does not follow that it can control *future* legislation enacted by a different General Assembly

making different legislative findings. *Sheward*, 86 Ohio St.3d at 528 (Moyer, C.J., dissenting). "[T]his court does not have authority to order the General Assembly to refrain from enacting a similar statute." *Id.* The Court made this clear in *Holeton v. Crouse Cartage Co.* (2001), 92 Ohio St.3d 115, 135, 748 N.E.2d 1111. After declaring a workers compensation subrogation statute unconstitutional, the majority of the *Holeton* Court expressly recognized that the General Assembly was free to enact future legislation on this same subject: "[W]e do not accept the proposition that a workers' compensation subrogation statute is per se unconstitutional, and nothing in this opinion shall be construed to prevent the General Assembly from ever enacting such a statute." Accordingly, the statute of repose for products at issue here is not unconstitutional simply because a different statute of repose was previously considered and found unconstitutional in the past.

Additionally, *Sheward's* analysis of the merits of H.B. 350's statute of repose does not necessitate the same result with respect to S.B. 80's statute. As previously discussed, the uncodified law accompanying S.B. 80 specifically details the public policy behind the ten-year statute of repose. Furthermore, the Court's brief analysis regarding the statute of repose in *Sheward* was dicta and consisted almost exclusively of reliance on *Brennaman*, which did not address a statute of repose for products, which is at issue here.

The ten-year statute of repose in R.C. 2305.10(C) must not be discarded simply because this Court invalidated a different statute of repose enacted in a different bill at a different time. See *Sheward*, 86 Ohio St.3d at 528-529 (Moyer, C.J. dissenting) ("Adoption of a statute similar to one already struck down does not contradict a prior judgment of this Court invalidating the first statute. The fact remains that two separate statutes are involved passed in different sessions of the General Assembly, by different legislatures and having different effective dates.")

Accordingly, rather than simply pointing to this Court's prior decisions in *Sheward* and *Brennaman*, the Court must consider and evaluate the constitutionality of R.C. 2305.10(C)'s statute of repose anew.

**3. Other States Have Held that Statutes of Repose For Products Liability Actions Do Not Violate the "Open Courts" Provisions of State Constitutions.**

Petitioner contends that the ten-year statute of repose provided in R.C. 2305.10(C) violates the open courts and right to remedy provisions of the Ohio Constitution. Courts in several other jurisdictions have addressed whether statutes of repose for products liability actions infringe on the open courts provision. As this Court has recognized, the "vast majority of cases have concluded that statutes of repose do not violate 'open court' provisions of state constitutions." *Hardy*, 32 Ohio St.3d at 54-55 (Wright, J., concurring in judgment only and dissenting in part).

Specifically, several well-reasoned decisions from other jurisdictions have utilized the same reasoning discussed in the preceding sections to uphold statutes of repose for products liability actions against constitutional challenges based on the right to remedy and open courts provisions. For example, the Idaho Supreme Court has upheld a ten-year statute of repose for products liability actions against an "open courts" challenge. *Olsen v. Freeman Co.* (Idaho 1990), 791 P.2d 1285, 1298. In *Olsen*, an employee suffered an eye injury while attempting to repair his employer's hay baler. *Id.* at 1287. Although the accident occurred nearly eighteen years after the hay baler left the manufacturer's hands, the employee brought suit against both his employer and the manufacturers. *Id.* at 1288. On appeal, the employee argued that the product liability statute of repose violated due process, equal protection, and the "open court" provision of the Idaho Constitution. *Id.*

In addressing the "open court" challenge, the *Olsen* court first observed that "the legislature clearly has the power to abolish or modify common law rights and remedies." *Id.* at 1296. The court expressed its concern "that a strict interpretation of the open court clause would restrict the legislature's ability to enact new laws and repeal old laws and that such restrictions upon the legislature could freeze common law rights in perpetuity." *Id.* at 1297. As a result, the court held that the ten-year statute of repose did not violate the "open court" provision and reaffirmed the principle that "it is the province of the legislature to modify the rules of the common law." *Id.* at 1298.

Utilizing similar reasoning, courts in other jurisdictions have held that statutes of repose for product liability actions do not violate the "open courts" provision of their respective state constitutions. See *McIntosh v. Melroe Co.* (Indiana 2000), 729 N.E.2d 972, 978 (finding that Indiana's ten-year products liability statute of repose does not violate the right to remedy because "the General Assembly must have the authority to determine what injuries are legally cognizable, i.e. which injuries are wrongs for which there is a legal remedy"); *Tetterton v. Long Manufacturing Co.* (N.C. 1985), 332 S.E.2d 67, 72-73 (upholding North Carolina's six-year statute of repose for products against an open courts challenge on the basis that there is no "cognizable claim" unless the injury occurs within the statutory period and recognizing that the six-year period was not so short that it would effectively abolish all potential claims); *Burlington Northern & Santa Fe Railway Co. v. Skinner Tank Co.* (C.A.5, 2005), 419 F.3d 355, 361 (finding that Texas' fifteen year statute of repose for products liability cases does not violate the open courts provision because there is no vested right to a cause of action); *Daily v. New Britain Machine Co.* (Conn. 1986), 512 A.2d 893, 905 (upholding Connecticut's ten-year products liability statute of repose against a challenge based on the open courts provision); *Love v.*

*Whirlpool Corp.* (Georgia 1994), 449 S.E.2d 602, 606-607 (upholding Georgia's ten-year statute of repose for products liability actions on the basis that "abolishing a cause of action before it has accrued, deprives the plaintiff of no vested right"); *Radke v. H.C. Davis Sons' Manufacturing Co., Inc.* (Nebraska 1992), 486 N.W.2d 204, 206 (holding that Nebraska's ten-year statute of repose for products liability actions does not violate the open courts provision because "the Legislature is free to create and abolish rights so long as no vested right is disturbed").

The OACJ urges this Court to follow the well-reasoned decisions on this issue from other states, including Idaho, Indiana, North Carolina, Texas, Connecticut, Georgia, and Nebraska, and hold that the ten-year statute of repose set forth in R.C. 2305.10(C) does not, on its face, violate the right to remedy and open courts provision of the Ohio Constitution.

**B. The Statute of Repose in R.C. 2305.10(C) Does Not Violate the "Takings" Clause.**

Petitioner argues that he had a vested property right to bring suit, which was improperly "taken" by the statute of repose. See Petitioner's Merit Brief, at 17-18. Petitioner's constitutional challenge based on the "takings" clause must fail because a potential tort plaintiff has no "property interest" in bringing a particular product liability cause of action. Because no property interest is implicated, there can be no "takings" challenge.

Section 19, Article I of the Ohio Constitution provides:

Private property shall ever be held inviolate, but subservient to the public welfare . . . and . . . where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

Ohio Const. art. I, § 19 (1912).

The first issue in addressing a takings claim is to ascertain what was taken. *Branch v. United States* (Fed. Cir. 1996), 69 F.3d 1571, 1575. Petitioner claims that "an accrued right to

bring suit" was taken by the statute of repose. See Petitioner's Merit Brief, p. 17. Essentially Petitioner is claiming that the right to bring a products liability action is a vested property right and that the statute of repose deprives certain injured persons from asserting a cause of action. As previously indicated, however, this Court has specifically stated that there is no *vested* interest in common law causes of action. *Strock*, 38 Ohio St.3d at 214 (finding that "there is no property or vested right in any of the rules of the common law, as guides of conduct, and they may be added to or repealed by legislative authority"). Contrary to Petitioner's claims, there is no protected interest in asserting a cause of action and thus the statute of repose does not deprive parties of any vested property right. In the absence of a vested property interest there can be no taking. See *State ex rel. Taylor v. Whitehead* (1982), 70 Ohio St.2d 37, 39, 434 N.E.2d 732 ("To establish that a taking exists, Ohio courts have required a substantial or material interference with property rights, as well as substantial or special injury.").

Furthermore, Petitioner's assertion that the statute of repose deprives persons of an *accrued* cause of action is an inaccurate assessment. This Court has indicated that, "[u]nlike a true statute of limitations, which limits the time in which a plaintiff may bring suit after the cause of action accrues, a statute of repose . . . potentially bars a plaintiff's suit before a cause of action arises." *Sedar*, 49 Ohio St.3d at 195. Accordingly, R.C. 2305.10(C)'s statute of repose modifies the common law to provide that no cause of action accrues ten years after the product is delivered to the first purchaser. Unaccrued claims affected by the statute of repose fail to constitute the type of property interest required to support a takings challenge.

Because there is no vested right in a common law cause of action, and the statute of repose prevents a cause of action before it accrues, no "property interest" is implicated and thus Petitioner's constitutional challenge based on the "takings" clause must fail.

**C. The Ten-Year Statute of Repose in R.C. 2305.10(C) Does Not Violate the Equal Protection Clause.**

Article I, Section 2 of the Ohio Constitution provides in pertinent part that: "[a]ll political power is inherent in the people. Government is instituted for their equal protection and benefit." Ohio Const. art. I, § 2 (1851).

Petitioner claims that the statute of repose violates equal protection guarantees by dividing tort plaintiffs into two separate categories: 1) those who are injured by a product that "left the manufacturer's hands over ten years prior to the injury;" and 2) those who are injured by the same product less than ten years after the product left the manufacturer's hands. See Petitioner's Merit Brief, p. 21. Petitioner argues that this differential treatment warrants the application of strict scrutiny. Petitioner and his supporting *amici* have neither identified the correct standard of review nor reached the correct conclusion with respect to the constitutional validity of the ten-year statute of repose.

**1. The Statute of Repose Should Be Evaluated Under A "Rational Basis" Standard Of Review.**

This Court has recognized that the Equal Protection Clause of the Ohio Constitution is functionally equivalent to the Equal Protection Clause contained in the Fourteenth Amendment to the United States Constitution. *Am. Assn. of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ.* (1999), 87 Ohio St.3d 55, 59, 717 N.E.2d 286. Accordingly, the mode of analysis is the same: when statutory classifications affect a fundamental constitutional right, the court applies "strict scrutiny" review to determine whether the classification is narrowly tailored to serve a compelling state interest. *United States v. Playboy Ent. Group, Inc.* (2000), 529 U.S. 803, 813; *State v. Thompson*, 95 Ohio St.3d 264, 2002-Ohio-2124, at ¶ 13.

Absent a classification that affects a "fundamental right" or is based upon a protected classification (*e.g.*, race, sex, national origin), the statute at issue is accorded rational basis

review. *Id.* Applying rational basis review, the court will uphold the statutory classification against an equal protection challenge so long as the statutory classification is "rationally related to a legitimate government purpose." *Id.* (citing *Clark v. Jeter* (1988), 486 U.S. 456, 461, and *State v. Williams* (2000), 88 Ohio St.3d 513, 530, 728 N.E.2d 342).

Petitioner and his supporting *amici* argue for the application of "strict scrutiny" because the statute of repose supposedly interferes with what they characterize as the fundamental right "to be heard." See Petitioner's Merit Brief, p. 16. This argument fails because there is no fundamental right to bring a particular cause of action to remedy a particular injury. See *Strock*, 38 Ohio St.3d at 214.

Additionally, when faced with an equal protection challenge to a statute of repose (applicable to medical malpractice claims), this Court has applied rational basis review. See *Gaines v. Preterm-Cleveland, Inc.* (1987), 33 Ohio St.3d 54, 58, 514 N.E.2d 709 ("Our analysis of the question of whether R.C. 2305.11(B) violates the right of medical malpractice litigants to equal protection of the law must be conducted according to the 'rational basis' test, since this case involves neither a fundamental right nor a suspect class.").

Moreover, a statute of repose is an economic regulation – "a legislative effort to structure and accommodate 'the burdens and benefits of economic life.'" See *Love v. Whirlpool* (Ga. 1994), 449 S.E.2d 602, 606 (finding that rational basis review applies to statute of repose because it is a "classic" economic regulation). It is well-established that statutes that regulate economic interests are subject to rational basis review. See *State v. Burke* (Dec. 19, 1979), Hamilton App. No. C-790028, 1979 Ohio App. LEXIS 9632, \*9-10 (if "there is no suspect class or fundamental right involved and the statute merely classifies incidentally in order to promote a

legitimate economic or other regulatory purpose, the courts will accord greater deference to the legislative judgment by invoking a 'rational basis' standard of review").

Because R.C. 2305.10(C) neither discriminates against a suspect class nor implicates a fundamental right, rational basis review is applicable. See *Thompson* at ¶ 13.

## 2. The Statute of Repose Is Rationally Related To A Legitimate Government Purpose.

Under the rational basis standard of review, courts are required to uphold a statute against a constitutional challenge if the statute is "rationally related to furthering a legitimate state interest." *Vance v. Bradley* (1979), 440 U.S. 93, 97. Applying this highly deferential standard of review, courts will *not* overturn a statute "unless the varying treatment of different groups is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." *State ex rel. Keefe v. Eyrich* (1986), 22 Ohio St.3d 164, 165, 489 N.E.2d 259 (quoting *Vance*, 440 U.S. at 97).

Rational basis review under equal protection principles "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Federal Communications Commission v. Beach Communications, Inc.* (1993), 508 U.S. 307, 313. Challengers to a statute must therefore overcome the strong presumption of constitutionality enjoyed by each statute and prove "beyond a reasonable doubt" that a challenged statute is unconstitutional. *Beatty v. Akron City Hospital* (1981), 67 Ohio St.2d 483, 593, 424 N.E.2d 586 (citing *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 128 N.E.2d 59).

As a general rule, courts do not question the wisdom or policy of the legislature nor require the legislature to provide empirical data to support its rationale for enacting a statute:

[B]ecause we never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. . . . In other words, a legislative choice is not subject to courtroom factfinding and may

be based on rational speculation unsupported by evidence of empirical data. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function.

*Beach Communications*, 508 U.S. at 315 (citations and internal quotations omitted). Accordingly, scientific evidence supporting the legislative measure need not be made part of the legislative record, nor must a purpose or reason for modifying the law be stated in order to satisfy the rational basis test.

Far from being speculative, the legislative history, as documented previously herein, reveals the rational and legitimate bases upon which the General Assembly enacted S.B. 80. In enacting the ten-year statute of repose, the General Assembly expressed important and legitimate legislative purposes, including:

- to recognize that manufacturers have little or no control over a product and how it is used after it is delivered into the marketplace;
- to recognize that it is more appropriate for the party who had control over a product after it was put into the marketplace to be responsible for any harm caused by the product;
- to recognize that, more than ten years after a product was placed into the marketplace, it is difficult for a manufacturer or supplier to locate reliable evidence and witnesses to defend actions based on product liability claims;
- to recognize that it is inappropriate to apply current legal and technical standards to products manufactured many years prior to the commencement of a product liability action; and
- to recognize that a statute of repose for product liability claims would enhance the competitiveness of Ohio manufacturers, increase finality in commercial transactions, and allow manufacturers to conduct their affairs with increased certainty.

See generally, S.B. 80, § 3(C)(3)-(6).

Because it is the role of the legislature to formulate policy, this Court should defer to the Ohio General Assembly's attempt to "strike a rational balance between the rights of prospective

claimants and the rights of product manufacturers and suppliers." See S.B. 80, § 3(C)(8). The General Assembly made a reasonable policy decision to strike an appropriate balance between preventing stale litigation against manufacturers while at the same time allowing civil actions against those in actual control and possession of a product at the time the product causes injury. *Id.*

Because the ten-year statute of repose at issue bears a rational relationship to legitimate legislative purposes, it does not violate equal protection guarantees. Accordingly, the OACJ respectfully urges this Court to reject Petitioner's equal protection challenge and uphold the constitutionality of R.C. 2305.10(C)'s ten-year statute of repose.

### **3. Courts in Other Jurisdictions Have Upheld Product Liability Statutes of Repose Against Equal Protection Challenges.**

Most courts that have considered equal protection challenges to statutes of repose for products liability actions have applied rational basis review and have found that the statute does not violate equal protection guarantees. For example, the Connecticut Supreme Court, applying rational basis review, has held that a ten-year statute of repose for product liability claims does not violate equal protection guarantees. *Daily v. New Britain Mach. Co.* (Conn. 1986), 512 A.2d 893, 902-903.

In *Daily*, the plaintiffs challenged the statute of repose on the basis that it discriminated between individuals who were injured by products more than ten years old and those individuals who were able to establish that their injury occurred during the "useful safe life" of the product. See *id.* at 901. The court's analysis in *Daily* is particularly useful because the argument made by the plaintiffs in *Daily* is substantially similar to that advanced by the Petitioner in the present case. Specifically, Petitioner has challenged the statute of response set forth in S.B. 80 on the basis that it discriminates between individuals who are injured by a product that "left the

manufacturer's hands over ten years prior to the injury" and those whose are injured by the same product less than ten years after the product left the manufacturer's hands. See Petitioner's Merit Brief, p. 21.

The *Daily* court, using a rational basis analysis, noted that classifications "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Daily*, 512 A.2d at 902 (internal citations omitted). Recognizing that the Connecticut legislature enacted the statute of repose in an attempt to provide stability for manufacturers, the court in *Daily* found that the statute was "reasonable, not arbitrary, and rest[ed] upon a difference having a fair and substantial relation to the object of the legislation." *Id.* at 903. As a result, the court held that the ten-year statute of repose did not violate equal protection guarantees. See *id.* at 902-903.

Similarly, courts in other jurisdictions have applied rational basis review and held that statutes of repose for products liability actions do not violate the equal protection clause. See *Evans v. State* (Alaska 2002), 56 P.3d 1046, 1068 (finding that Alaska's ten-year statute of repose for personal injury, death, or property damage does not violate equal protection guarantees on the basis that it does not differentiate between plaintiffs); *Anderson v. M.W. Kellogg Co.* (Colo. 1988), 766 P.2d 637, 645 (applying rational basis review and holding that Colorado's ten-year statute of repose for "new manufacturing equipment" is reasonable and "does not arbitrarily distinguish between classes of plaintiffs"); *Bowman v. Niagara Mach. & Tool Works, Inc.* (C.A.7, 1987), 832 F.2d 1052, 1054 (applying the rational basis test and finding that Indiana's ten-year statute of repose for products does not violate equal protection guarantees); *Love v. Whirlpool Corp.* (Georgia 1994), 449 S.E.2d 602, 606 (finding that Georgia's ten-year

statute of repose for products liability actions withstands rational basis review); *Radke v. H.C. Davis Sons' Manufacturing Co., Inc.* (Nebraska 1992), 486 N.W.2d 204, 206 (holding that Nebraska's ten-year statute of repose for products liability actions is neither unreasonable nor arbitrary); *Tetterton v. Tetterton* (N.C. 1985), 332 S.E.2d 67, 72 (upholding North Carolina's six-year statute of repose for products liability actions against an equal protection challenge); *Zaragosa v. Chemetron Investments, Inc.* (Ct. App. Tex. 2003), 122 S.W.3d 341, 346 (rational basis test satisfied because "the statute is reasonably related to the legitimate state purpose of protecting manufacturers and sellers from stale claims").

The OACJ urges this Court to join the majority of jurisdictions that have applied rational basis review to uphold products liability statutes of repose against equal protection challenges and to find that R.C. 2305.10(C) does not violate the equal protection clause.

**D. The Statute of Repose in R.C. 2305.10(C) Does Not Violate the Due Process Clause.**

Petitioner and his supporting *amici* challenge the product liability statute of repose on the ground that it violates due process guarantees. According to Petitioner, R.C. 2305.10(C)'s statute of repose violates what he characterizes as the "fundamental right to be heard." Petitioner's Merit Brief, p. 11. Again, Petitioner's assertions are premised on his inaccurate and unsupported presumption that there is a fundamental right to assert a particular cause of action. Nonetheless, Petitioner argues that this "fundamental right" to bring a products liability cause of action warrants the application of strict scrutiny.

Article I, Section 16 of the Ohio Constitution provides that every person who sustains an injury shall "have remedy by due course of law." Again, "state law determines when rights exist. Section 16 guarantees a 'remedy by due course of law' for 'an injury done,' but state law determines *what injuries are recognized and what remedies are available.*" *Hardy*, 32 Ohio

St.3d at 54 (emphasis added). Furthermore, Ohio courts have construed "due course of law" as equivalent to the "due process of law" protections provided in the Fourteenth Amendment of the United States Constitution. *Direct Plumbing Supply Co. v. Dayton* (1941), 138 Ohio St. 540, 544, 38 N.E.2d 70.

Under Ohio law, due process and equal protection analyses are, "generally speaking, . . . identical, and the only substantial difference between substantive due process and equal protection is that the legislation reviewed under equal protection involves a classification." *Van Der Veer v. Ohio Dept. of Transp.* (1996), 113 Ohio App.3d 60, 64, 680 N.E.2d 230. Therefore, the same analysis applied within the context of Petitioner's equal protection challenge applies with respect to his challenge based on due process guarantees.

**1. The Statute of Repose is Rationally Related to a Legitimate Government Purpose.**

This Court should reject Petitioner's assertion that a fundamental right is involved because it is well-settled law in Ohio that the General Assembly has the power to abolish or modify common law causes of action. *Strock*, 38 Ohio St.3d at 214. By extension, there is no fundamental right to bring a particular cause of action to remedy an asserted wrong. Moreover, Petitioner was not deprived of a vested right, because there can be no vested right in any rule of common law. See *id.* Because no fundamental right is implicated, rational basis review applies. See *Thompson*, at ¶ 13.

The legislative history for the ten-year statute of repose explicitly states that it was enacted to address the difficulties of holding a manufacturer liable more than ten years after a product has been out of the manufacturer's possession and control. S.B. 80, § 3(C)(3)-(5). The General Assembly further sought to prevent the problems inherent in stale litigation while at the same time "not affect[ing] civil actions against those in actual control and possession of a

product at the time the product causes an injury to real or personal property, bodily injury, or wrongful death." S.B. 80, § 3(C)(8). For the same reasons discussed above in the context of equal protection analysis, this Court should apply rational basis review and uphold the statute of repose contained in R.C. 2305.10(C) against Petitioner's due process challenge.

**2. Courts in Other Jurisdictions Have Upheld Product Liability Statutes of Repose Against Due Process Challenges.**

This Court has noted that a "substantial majority of states have found no due process violations" in statutes of repose. *Sedar v. Knowlton Constr. Co.* (1990), 49 Ohio St.3d 193, 201, 551 N.E.2d 938 (overruled in *Brennaman v. R.M.I. Co.* (1994), 70 Ohio St.3d 460, 639 N.E.2d 425). For example, the Georgia Supreme Court has upheld a ten-year statute of repose for products liability actions against a due process challenge. *Love v. Whirlpool* (Ga. 1994), 449 S.E.2d 602, 606-607.

In *Love*, the plaintiff challenged the statute of repose on the grounds that it violated due process by depriving products liability plaintiffs of "vested rights in causes of action." *Id.* at 606. The court recognized that liability limitation is a "classic example of an economic regulation – a legislative effort to structure and accommodate 'the burdens and benefits of economic life.'" *Id.* It then applied rational basis review and concluded that the General Assembly acted reasonably in enacting the statute of repose. *Id.* The court rejected the plaintiff's argument that the statute deprived him of a vested right in a cause of action on the basis that the "power of the legislature to create, modify or abolish rights to sue has been clearly and repeatedly recognized." *Id.* Accordingly, the court held that Georgia's ten-year statute of repose did not contravene any due process guarantees. *Id.*

Similarly, courts in other jurisdictions have applied rational basis review to find that statutes of repose for products liability actions do not violate due process guarantees. See *Evans*

*v. State* (Alaska 2002), 56 P.3d 1046, 1068-69 (upholding Alaska's ten-year statute of repose for personal injury, death, or property damage against due process challenges); *Radke v. H.C. Davis Sons' Manufacturing Co., Inc.* (Nebraska 1992), 486 N.W.2d 204, 206 (holding that Nebraska's ten-year statute of repose for products liability actions does not violate the due process clause because it is neither unreasonable nor arbitrary); *Olsen v. J.A. Freeman Co.* (Idaho 1990), 791 P.2d 1285, 1294 (upholding Idaho's ten-year statute of repose against due process challenges); *McIntosh v. Melroe Co.* (Indiana 2000), 729 N.E.2d 972, 978 (finding that because "no citizen has a protectable interest in the state of product liability law as it existed before the Product Liability Act, the General Assembly's abrogation of the common law of product liability through the statute of repose" does not violate due process guarantees).

The OACJ urges this Court to follow the well-reasoned decisions on this issue from other states, including Alaska, Nebraska, Idaho, Georgia, and Indiana, and find that the ten-year statute of repose for product liability actions does not violate due process guarantees.

**E. The Statute of Repose in R.C. 2305.10(C) is Remedial and Therefore May be Applied Without Offending the Retroactivity Clause of the Ohio Constitution.**

Section 28, Article II of the Ohio Constitution prohibits the General Assembly from "passing retroactive laws and protects vested rights from new legislative encroachments." *Bielat v. Bielat* (2000), 87 Ohio St.3d 350, 352, 721 N.E.2d 28. Although the text of this section provides that the "general assembly shall have no power to pass retroactive laws," this Court has long-recognized that "there is a crucial distinction between statutes that merely apply retroactively (or 'retrospectively') and those that do so in a manner that offends our Constitution." *Id.* at 353.

This Court has set forth a two-part test to determine whether a statute is unconstitutionally retroactive. *Bielat*, 87 Ohio St.3d at 353 (citing *Van Fossen v. Babcock &*

*Wilcox Co.* (1988), 36 Ohio St.3d 100, 522 N.E.2d 489, paragraph one of the syllabus). First, the court must determine whether the General Assembly specifically intended the statute to apply retroactively. *Id.* If this threshold requirement is met, the court must then determine whether the statute is "substantive, rendering it *unconstitutionally* retroactive, as opposed to merely remedial." *Id.* (emphasis in original).

Applying the two-part test initially established by this Court in *Van Fossen*, the products liability statute of repose contained in R.C. 2305.10(C) plainly passes constitutional muster because: 1) the General Assembly expressed its clear intent that the statute apply retroactively; and 2) the statute does not impair any vested, substantive rights and is remedial in nature.

**1. The General Assembly Intended the Statute of Repose to Apply Retroactively.**

To satisfy the first prong of the *Van Fossen* test, a court must ascertain whether the General Assembly explicitly intended the statute to apply retroactively. See *Bielat*, 87 Ohio St.3d at 353 (citing *Van Fossen*, 36 Ohio St.3d at paragraph one of the syllabus).

By its express terms, the statute of repose set forth in R.C. 2305.10(C) applies retroactively. The General Assembly made clear that,

[t]his section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action commenced on or after April 7, 2005, in which this section is relevant, *regardless of when the cause of action accrued* . . . but shall not be construed to apply to any civil action pending prior to April 7, 2005.

R.C. 2305.10(G) (emphasis added). Thus, the statute was intended to be retroactive and remedial for cases in which the injury occurred before, but the case was filed after, April 7, 2005, the effective date.

Although the alleged injury in the present case occurred on March 3, 2005, which is before the statute's effective date, the suit was not commenced until June 6, 2006. Therefore,

Petitioner's case falls within the category of cases in which the injury occurred before, but the case was filed after, April 7, 2005. By its express terms, R.C. 2305.10 applies to the instant case in a remedial fashion. Because the General Assembly intended for the statute of repose to reach back in time and apply "regardless of when the cause of action accrued," the first prong of the retroactivity test is satisfied.

**2. The Statute of Repose is Remedial, Not Substantive, and Thus May Be Constitutionally Applied Retroactively.**

The second prong of the *Van Fossen* test requires a determination as to whether the statute is substantive or merely remedial. *State v. Cook* (1998), 83 Ohio St.3d 404, 410-11, 700 N.E.2d 570. A purely remedial statute does not violate Section 28, Article II, even when applied retroactively. *Bielat*, 87 Ohio St.3d at 354. Remedial laws are those that affect "only the remedy provided, and include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right." *Cook*, 83 Ohio St.3d at 411. Remedial laws may be applied retroactively even though they may have "an occasional substantive effect." *Van Fossen*, 36 Ohio St.3d at 107-108. Conversely, a statute is substantive – and thus unconstitutionally retroactive – "if it impairs vested rights, affects an accrued substantive right, or imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction, or creates a new right." *Id.*

Petitioner claims that the statute of repose in R.C. 2305.10(C) is substantive because it "extinguishes the right to be heard in a meaningful way." Petitioner's Merit Brief, p. 27. Petitioner, relying on *Gregory v. Flowers* (1972), 32 Ohio St.2d 48, 290 N.E.2d 181, seeks to characterize the statute of repose as substantive on the basis that it destroys an accrued substantive right. *Id.* at 26-27. Again, the fundamental flaw with Petitioner's argument is that a statute of repose operates to prevent a cause of action from ever accruing. Furthermore, as

Petitioner accurately recognizes, *Gregory* was concerned with a statute of limitation, not a statute of repose. *Id.* at paragraph three of the syllabus. As previously indicated, a statute of limitations requires that a plaintiff with an accrued cause of action litigate that cause within a certain timeframe after the injury has been sustained. A statute of repose, on the other hand, bars a cause of action from ever accruing. Accordingly, Petitioner's reliance on *Gregory* is misplaced.

This Court has established that a statute is not unconstitutionally retroactive in operation unless it impairs a vested, substantive right. *Cook*, 83 Ohio St.3d at 411. As previously discussed, a "vested right" is one that "so completely and definitely belongs to a person that it cannot be impaired or taken away without that person's consent." *Harden v. Ohio Atty. Gen.*, 101 Ohio St.3d 137, 2004-Ohio-382, at ¶ 9. A right is not vested "unless it amounts to something more than a mere expectation or interest based upon an anticipated continuance of existing law." *Smith v. Smith*, 109 Ohio St.3d 285, 2006-Ohio-2419 at ¶ 20 (Lundberg Stratton, J. dissenting); see also *State v. Sheets*, Clermont App. No. CA2006-04-032, 2007-Ohio-1799, at ¶ 42.

Contrary to Petitioner's assertions, sustaining an injury does not automatically create a vested right as of the date of the injury. See Petitioner's Merit Brief, p. 18. First, an injury that is not cognizable under Ohio law does not give rise to any rights. Second, as a general rule, a right becomes vested when there has been a judgment. See *Sheaffer v. Westfield Insurance Co.*, 110 Ohio St.3d 265, 2006-Ohio-4476, at ¶ 21 (Lundberg Stratton, J. dissenting) ("A party may claim a vested right when there is a final judgment.").

The Ohio Supreme Court has specifically indicated that "It is not within the power of a legislature to take away rights which have been once vested by a judgment. Legislation may act on subsequent proceedings, may abate actions pending, but when those actions have passed into

judgment the power of the legislature to disturb the rights created thereby ceases." *Cowen v. State ex rel. Donovan* (1920), 101 Ohio St. 387, 398, 129 N.E. 719. Accordingly, contrary to Petitioner's assertion, a vested right is not created once an injury is sustained. See *Sheaffer*, at ¶ 21.

Furthermore, and as previously stated above, there is no vested right to assert a common law cause of action. *Strock*, 38 Ohio St.3d at 214. At most, Petitioner expected to be able to assert a common law products liability claim. Mere expectation is insufficient to give rise to a vested, substantive right. See *Smith*, at ¶ 20 (a right is not vested "unless it amounts to something more than a mere expectation or interest based upon an anticipated continuance of existing law").

The statute of repose for products liability claims modifies the remedy available by providing that there is no cognizable claim against manufacturers after a certain period of time has expired. This statute does not deprive an injured plaintiff of a meaningful remedy because the plaintiff can still seek full compensation from the person or entity actually in possession and control of the product and/or those that serviced the product at the time the injury occurred. See S.B. 80, § 3(C)(8).

The ten-year statute of repose set forth in R.C. 2305.10(C) neither impairs vested rights, nor affects an accrued substantive right. The statute of repose is remedial in nature and thus can be applied retroactively. Accordingly, the OACJ urges this Court to uphold the statute of repose against Petitioner's constitutional challenge.

### **3. Courts in Other Jurisdictions Have Found that Statutes of Repose Are Not Unconstitutionally Retroactive.**

Courts in other jurisdictions have found that statutes of repose for products liability actions do not violate retroactivity provisions. See *Burlington Northern & Santa Fe Railway Co.*

*v. Skinner Tank Co.* (C.A.5, 2005), 419 F.3d 355, 359-60 (finding that Texas' fifteen-year statute of repose for product liability cases does not violate Texas' prohibition against retroactive laws); *Carter v. R.J. Reynolds Tobacco Co.* (Tenn. Ct. App. Jan. 11, 2000), No. W1999-02233-COA-R3-CV, 2000 Tenn. App. LEXIS 15, at \*10-12 (finding that Tennessee's six-year statute of repose for product liability cases does not violate the prohibition against retroactive laws because there is no vested right to bring an expected cause of action).

The OACJ urges this Court to hold, consistent with other jurisdictions, that statutes of repose for product liability actions do not violate the constitutional prohibition against retroactive laws.

## **II. S.B. 80 DOES NOT VIOLATE THE SINGLE-SUBJECT RULE.**

Petitioner's efforts to construe the S.B. 80 as violating the single-subject rule of the Ohio Constitution (Art. II, Section 15) fail for at least three reasons. First, Petitioner fails to acknowledge that S.B. 80 enjoys a tremendous presumption of validity in the face of constitutional challenge, both as a matter of constitutional adjudication generally and with respect to the single-subject rule in particular. Second, Petitioner has failed to supply the Court with any substantive arguments for concluding that S.B. 80 embraces multiple subjects. And third, even in the event the Court finds that S.B. 80 contains an offending provision, Petitioner's arguments for invalidation *in toto* fly in the face of the decisions of this Court and the established law of Ohio.

### **A. S.B. 80 Enjoys an Overwhelming Presumption of Validity With Respect to The Single-Subject Rule.**

This Court has firmly established the rule that, " legislative enactments are entitled to a strong presumption of constitutionality." *Board of Ed.*, 111 Ohio St. 3d 568, 2006-Ohio-5512, at ¶ 20. This fundamental rule operates so that, "[a] statute should not be declared unconstitutional

'unless it appears beyond a reasonable doubt that the legislation and constitutional provision are clearly incompatible.'" *Id.* See also *State v. Lowe*, 112 Ohio St. 3d 507, 2007-Ohio-606, at ¶ 17. In fact, not only does a finding of unconstitutionality require a showing in accordance with "the highest standard of proof," but also the burden of meeting that high standard rests with "the challenger." *Board of Ed.*, 111 Ohio St. 3d at ¶ 41; *Klein v. Leis*, 99 Ohio St. 3d 537, 2003-Ohio-4779, at ¶ 4. Thus, in conducting its review, this Court should begin with the presumption that S.B. 80 is consistent with the Ohio Constitution, and entertain the possibility of invalidation only if Petitioner has shown "beyond a reasonable doubt" that the statute embraces more than one subject in "clear and irreconcilable conflict" with Article II, Section 15. *Board of Ed.* at ¶ 20.

The deference owed to the General Assembly in reviewing a statute is even greater in the specific context of the single-subject rule. Article II, Section 15(D) of the Ohio Constitution states, in relevant part, that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title." Consistent with the text and history of the single-subject rule, as well as the decisions of this Court, only a "manifestly gross and fraudulent" violation will result in the invalidation of a statute. *In re Nowak*, 104 Ohio St. 3d 466, 2004-Ohio-6777, at ¶ 54. Otherwise, the rule risks becoming "a loophole of escape from, or a means for the destruction of legitimate enactments." *State ex rel. Dix v. Celeste* (1984), 11 Ohio St. 3d 141, 143, 464 N.E.2d 153.

First, although a violation of the single-subject rule has been held to be grounds for invalidation of a statute, Article II, Section 15 was originally considered as merely directory in nature. See, e.g., *Pim v. Nicholson* (1856), 6 Ohio St. 176, 180. See also, *Dix* at 144; *Hoover v. Bd. of Cty. Cmmrs.* (1985), 19 Ohio St. 3d 1, 6, 482 N.E.2d 575. This Court recognized that the

purpose of the single-subject rule was specific to preventing the legislative tactic of "logrolling" and sought to preserve the procedural integrity of legislative enactments without hampering the legislative process. See *Dix*, 11 Ohio St.3d at 143. As a result, when the single-subject rule was finally acknowledged as a constitutional mandate, this Court nonetheless preserved the highly deferential posture toward the General Assembly by incorporating the historical analysis of Article II, Section 15 into the standard of review for statutes challenged under its terms. See *Nowak*, 104 Ohio St. 3d at 474-77.

Second, the text of the constitutional provision itself reveals a unique degree of deference granted to the legislature by stating that the subject of the legislation "shall be clearly expressed in its title." Ohio Const. Art. II, Sec. 15(D). That is, by ensuring that the authority to identify the subject of legislation is reposed in the legislative body, the single-subject rule operates less as a tool for invalidating the substantive provisions of enactments, and more as a mechanism for discouraging the employment of onerous legislative tactics. Although a blatantly unconstitutional provision may be rendered void, the text of the single-subject rule reveals that much of its effectiveness lies in guiding the legislative process prior to a bill's passage.

The resulting analysis in the context of constitutional litigation involving Article II, Section 15, is one where only the most egregious violations will be found to warrant invalidation. That is, only where "there is an absence of common purpose or relationship between specific topics in an act and when there are no discernible practical, rational or legitimate reasons for combining the provisions in one act," will a finding of unconstitutionality be proper. *Sheward*, 86 Ohio St. 3d at 497 (quoting *Dix*, 11 Ohio St.3d at 145). In short, only an irrational combination of unrelated provisions, explainable only as the result of tactical politics, will doom a statute. See *Dix*, 11 Ohio St.3d at 143. It is against this extraordinary presumption

of constitutionality that Petitioner has plainly failed to demonstrate a "clear and irreconcilable" conflict between S.B. 80 and the single-subject rule. *Board of Ed.* at ¶ 20.

**B. Petitioner Has Failed to Demonstrate That Senate Bill 80 Violates The Single-Subject Rule.**

According to Black's Law Dictionary, the term "subject" means "the matter of concern over which something is created <the subject of the statute>," and when used "within such constitutional provisions is to be given a broad and extensive meaning so as to allow [the] legislature full scope to include in one act all matters having a logical or natural connection." (8 Ed. 2004 and 6 Ed. 1999). See also *Sheward*, 86 Ohio St. 3d at 498. Senate Bill 80's purpose is to reform Ohio's tort laws by striking a balance between the rights of civil litigants in Ohio. See, e.g., S.B. 80, Section 3(A)(2). Petitioner's attempt to construe the subject of S.B. 80 with excessive breadth so as to portray the law as littered with widely varying topics is as futile as it is transparent. And although the Court is not obligated to accept that "any ingenious comprehensive form of expression" as to subject matter will save a statute, nor should such expression be imposed as a requirement for validation. See *Sheward*, 86 Ohio St. 3d at 498.

Specifically, review of a statute against the single-subject rule begins with the recognition that "disunity," rather than "plurality," of subject matter should be the focus of the constitutional inquiry. *Dix*, 11 Ohio St.3d at 146. See also, *State ex rel. Ohio AFL-CIO v. Voinovich* (1994), 69 Ohio St. 3d 225, 229, 631 N.E.2d 582. That is, a finding of a "common relationship" between and among multiple topics will preclude invalidation of a statute. *AFL-CIO*, 69 Ohio St. 3d at 229. Petitioner has failed to meet his burden of proving that no such "common relationship" exists among SB 80's provisions, as it is evident from the face of the statute that each provision contained therein relates to the others both as a matter of legislative purpose, as well as logical unity.

The entirety of Petitioner's argument rests on the presumption that SB 80's purported subject is "tort reform." See Petitioner's Merit Brief, p. 29. From this premise, Petitioner asserts that S.B. 80 is constitutionally dead on arrival for two reasons: (1) the provisions related to "advanced practical nurses," retired dentist "volunteer certificates," the formation of an "Ohio Subrogation Rights Commission" and a proposed "Legal Consumer Bill of Rights" are "completely unrelated to any aspect of tort law" and (2) *Sheward* precludes a finding that "tort reform" constitutes a single subject. *Id.* Neither proposition entitles Petitioner to prevail.

First, Petitioner presents the Court with a false choice—even if the various topics identified by Petitioner as outside the subject of "tort reform" can equally, or even more plausibly, be classified as falling within another descriptive category, that does not render their presence in S.B. 80 a constitutional anomaly. For instance, Petitioner asserts that the proposed Legal Consumer Bill of Rights relates to administration of the bar, while the creation of an Ohio Subrogation Rights Commission is concerned with contract law. *Id.* A determination as to the truth of these propositions, however, has no bearing on whether either or both also relates to the subject of "tort reform." In order for Petitioner's position to hold water, it must also be true that each statutory provision will have one and only one corresponding subject.

The consequences of this spurious contention are obvious. Petitioner would have the Court hold, for instance, that a hypothetical provision concerning state medical licensure requirements could not appear in both a bill addressing standards of professional licensure as well as a bill concerning medical education. In effect, Petitioner forces the legislature to guess how the Court will characterize the single "subject" of the various provisions in the bill. And if it guesses incorrectly, then the whole of the bill will be invalidated. But, as the decisions of this Court have concluded, the question is not which "subject" in the abstract each provision falls

under, but rather whether there is a commonality among the various provisions of a bill that is already enacted, so that it is clear that the provision in question was not enacted through mere tactical maneuvering. See, e.g., *Sheward*, 86 Ohio St.3d at 497; *AFL-CIO*, 69 Ohio St.3d at 229; *Dix*, 11 Ohio St.3d at 145. Petitioner has provided no basis to draw a contrary conclusion about S.B. 80.

Second, Petitioner's argument that "tort reform" is not a single subject, even if that were an accurate characterization of S.B. 80's subject matter, must fail. The essence of the *Sheward* analysis upon which Petitioner relies is that a bill cannot be said to embrace a single subject if accepting it would in effect obviate the possibility of enforcement of the single-subject rule in its entirety. *Sheward* rejected the subject "tort and other civil actions" not because the pithy phrasing of the subject was too broad in the abstract, but because the Court believed that the substance of H.B. 350 was too diverse and divergent to be held together by any notion of rational or purposive connection. *Sheward*, 86 Ohio St.3d at 499. Senate Bill 80, on the other hand, contains a plurality of topics that serve the common purpose of reforming Ohio's tort laws and striking a balance between the rights of civil litigants.

House Bill 350 was invalidated because the Court found the commonality of purpose between various substantive reform provisions too attenuated. *Sheward*, 86 Ohio St.3d at 498. S.B. 80, however, does not include the breadth of substantive law that H.B. 350 did. For instance, the provisions throughout S.B. 80 relate not just to tort law and civil actions generally, but instead constitute an effort designed specifically to achieve a just and fair allocation of the rights and duties of civil litigants. S.B. 80 accomplishes this by creating or modifying specific components of the civil liability system through, e.g., establishment of statutes of repose, creation of qualified immunities, and enactment of conflicts of law provisions, all directed to that

common end. The subrogation commission and legal consumer bill of rights provisions—both of which were designed as essential administrative complements to the reform provisions of S.B. 80—fall squarely within the same subject matter and are aimed at achieving the same common purpose. Indeed, even the nursing and dental provisions cited by Petitioner relate to the regulation and classification of health care professionals and share both logical unity and a common subject and purpose with the bill generally, and in particular with the modifications to qualified immunity for health care professionals and health care workers.

Not only has Petitioner failed to fairly describe the subject of S.B. 80, but even under his unfavorable construction of the law, Petitioner plainly has not demonstrated that, "the provisions of this bill are so blatantly unrelated that, if allowed to stand as a single subject, this court would be forever left with no basis upon which to invalidate any bill, no matter how flawed." See *Sheward*, 86 Ohio St.3d at 498. On the contrary, finding S.B. 80 consistent with the single-subject rule is perfectly in line with this Court's decisions and with the clear purposes of Article II, Section 15. See, e.g., *AFL-CIO*, 69 Ohio St.3d at 229 (holding that worker's compensation is a single subject); *State ex rel. Hinkle v. Bd. of Elections* (1991), 62 Ohio St. 3d 145, 149, 580 N.E.2d 767 (holding that Am. Sub. H.B. No. 200's single subject was "matters pertaining to the state judicial system").

Such a finding would also be consistent with the decisions in other states that have construed a single-subject mandate under their own constitution. In fact, many states have upheld the constitutionality of bills that embrace far broader subject matter than S.B. 80 without experiencing the jurisprudential parade of horrors that concerned the majority in *Sheward*. See, e.g., *Evans v. Alaska* (Alaska 2002), 56 P. 3d 1046, 1069-70 (holding that legislation including provisions on damages caps, regulation of civil actions, statutes of limitations, payment of claims

after liquidation of banks, and eminent domain as "all within the single subject of 'civil actions'); *Fust v. Missouri* (Missouri 1997), 947 S.W. 2d 424, 428 (finding that a statute with provisions relating to regulation of insurance carriers, tort liability of manufacturers, pre-judgment interest, trial procedure involving punitive damages, and a tort victims' compensation fund complies with the single-subject rule because all provisions "purport to do the same thing -- promote compensation for certain tort victims"); *Smith v. Department of Insurance* (Florida 1987), 507 So. 2d 1080, 1087 (upholding a law that included long-term insurance reforms, tort reforms, short-term insurance reforms, creation of an insurance/tort task force, and modifications of financial responsibility requirements for doctors, because the legislature had the single goal of creating a stable liability insurance market). A decision voiding S.B. 80, which is singular in its purpose as well as unified in substance, would deviate wildly from the generally accepted understanding of single-subject rules in states throughout the country.

Particularly in light of the fact that none of the specific provisions cited by Petitioner as unconstitutional is even at issue in the underlying action, it seems particularly unwarranted to employ the single-subject rule to invalidate a legitimately enacted statute. Where, as here, "the combination of provisions on a large number of topics...[is] for the purposes of bringing greater order and cohesion to the law [and] of coordinating an improvement of the law's substance," the risk lies not in rendering the single-subject rule toothless, but in turning it into a magic wand of invalidation for obstructionists who merely seek to defeat enforcement of duly enacted laws. See *Dix*, 11 Ohio St.3d at 145. The Court should uphold S.B. 80.

**C. A Finding of Unconstitutionality Warrants Severing of The Offending Provisions Only, Not Wholesale Invalidation.**

Even if the Court were to find an offending provision in S.B. 80, the appropriate remedy is not invalidation of the statute *in toto* as Petitioner has argued, but rather severance of the

unconstitutional portion of the law. The Revised Code specifically provides that, "[I]f any provisions of a section of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of the section or related sections which can be given effect without the invalid provision or application, and to this end the provisions are severable." R.C. 1.50. This rule of interpretation is specifically reiterated in the text of S.B. 80:

[I]f any item of law that constitutes the whole or part of a section of law contained in this act...is held invalid, the invalidity does not affect the other items of law... that can be given effect without the invalid item of law...To this end, the items of law...contained in this act...are independent and severable.

S.B. 80, § 5. Thus, whatever conclusion is drawn by the Court as to the constitutionality of a given provision, any and all provisions of the law that can be salvaged should remain in effect.

These rules of interpretation are consistent with the practice of this Court. Indeed, what Petitioner has described as "erratic" severing by this Court of statutory provisions in conflict with the single-subject rule is in fact the consistent application of a well-established practice that is supported by the decisions of this Court and the law of Ohio generally. This Court has opted to sever, whenever feasible, those provisions of a statute that have been found in violation of the single-subject rule, while preserving the remainder of the law. In *AFL-CIO*, this Court severed from H.B. 107 provisions relating to intentional torts and child labor because they did not address the same subject as the majority of the bill, worker's compensation. *AFL-CIO*, 69 Ohio St.3d at 230. In *Simmons-Harris v. Goff* (1999), 86 Ohio St. 3d 1, 17, 711 N.E.2d 203, this Court severed from H.B. 117 a school voucher program that had been attached to a general appropriations bill. And in *Hinkle*, this Court severed from H.B. 200 liquor control laws concerning local option privileges from a statute otherwise concerned with judicial system reforms. 62 Ohio St. 3d at 149. Only in rare instances has the Court opted for wholesale

invalidation, and then only where "any possible identifiable core [of subject matter] would not be worthy of salvation." *Sheward*, 86 Ohio St.3d at 500. And even in *Sheward*, the Court had to come to the conclusion that, in the specific case before the Court, severance was unworkable. *Id.* at 501. Petitioner's contention that severing offending provisions has been somehow erratic or is otherwise unworkable does not hold up to scrutiny. Indeed, it is wholesale invalidation of an act of the General Assembly that lacks support in law or policy.

Further, Petitioner has provided no basis for either abandoning well-settled precedent or creating a new rule of wholesale invalidation with respect to Article II, Section 15, and the Court would be in error to do so here. The notion that invalidation *in toto* is constitutionally required by the single-subject rule is at odds with both the history of Article II, Section 15, as well as with the canons of constitutional jurisprudence. To make the leap from originally regarding the single-subject rule as a directory constitutional provision to Petitioner's radical position that even the slightest departure from singularity of subject renders the entirety of an enactment void would be more at odds with the text and spirit of the single-subject rule than would rendering it judicially unenforceable. However, the Court need not make that choice—the long-standing and constitutionally proper practice of severing offending portions of a law while permitting the remaining provisions to be enforced preserves the will of the people to the greatest degree while avoiding the risk of "interfering with the legislative process" about which this Court has warned. See *State ex rel. Ohio Civil Serv. Employees Ass'n. v. State Employment Relations Bd.*, 104 Ohio St. 3d 122, 2004-Ohio-6363, at ¶ 27.

In fact, cases involving challenges based on the single-subject rule provide perhaps the best example of where the doctrine of severability makes the most sense and has the most utility. If a litigant is in a position to isolate those provisions that he or she believes do not comport with

the overall subject of the bill, as Petitioner has in this case, then it seems clear that the appropriate remedial mechanism would be to strike only those portions, if any are found by the Court. Even more, the suggestion that the practice of severing is somehow an infringement on the legislative function is particularly ironic in the single-subject context, since the Court is charged with such analysis in the first place when deciding the merits.

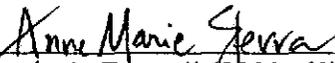
Thus, in the case *sub judice*, since Petitioner has alleged that four specific provisions address subjects not consistent with that of the overall subject matter of S.B. 80, severance is the appropriate remedy in the face of unconstitutionality. Although the OACJ has set forth above why the identified provisions fall within the constitutional bounds of the single-subject rule, there can be no doubt that, unlike the case-specific determination in *Sheward*, the core of S.B. 80 can be ascertained, and is indeed "worthy of salvation," even if the Court were to find portions of the statute unconstitutional. Petitioner has provided no basis to conclude otherwise.

## CONCLUSION

For all of the foregoing reasons, the Ohio Alliance for Civil Justice respectfully urges this Court to hold that:

- (1) S.B. 80 does not violate the single-subject rule; and
- (2) R.C. 2305.10(C)'s statute of repose for products liability actions is a constitutionally valid exercise of legislative power.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Alliance for Civil Justice in Support of the Respondents, was sent via regular U.S. mail, postage prepaid this 17<sup>th</sup> day of May 2007, to the following:

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