Supreme Court of Ohio Clerk of Court - Filed April 04, 2016 - Case No. 2014-1241

**IN THE SUPREME COURT OF OHIO**

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| JOHN HAIGHT, et al., | ) | **Supreme Court Case No.: 2014-1241** |
| | ) | |
| Plaintiffs/Appellees, | ) | **On appeal from the Montgomery** |
| | ) | **County Court of Appeals, Second** |
| vs. | ) | **Appellate District** |
| | ) | |
| ROBERT MINCHAK, et al., | ) | **Court of Appeals Case No. 25983** |
| | ) | |
| Defendants/Appellants. | ) | **Trial Court Case No. 2012 CV 00946** |
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**DEFENDANTS-APPELLANTS, ROBERT MINCHAK'S AND JOAN MINCHAK'S BRIEF IN OPPOSITION TO APPELLEES' MOTION FOR RECONSIDERATION**

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| Plaintiffs/Appellees, | ) | On appeal from the Montgomery County |
| | ) | Court of Appeals, Second Appellate |
| vs. | ) | District |
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| ROBERT MINCHAK, et al., | ) | Court of Appeals Case No. 25983 |
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**BRIEF IN OPPOSITION TO PLAINTIFFS/APPELLEES' MOTION FOR RECONSIDERATION**

This Court held that Article II Section 34a of the Ohio Constitution[1] is easily harmonized with R.C. 4111.14(B)(1), and, therefore R.C. 4111.14 is constitutional. Now, Plaintiff/Appellee Haight[2] asks this Court to reconsider its decision. Conspicuously absent from Haight's Motion, however, is any reason why the two provisions irreconcilably conflict. The decision concludes that the term "employee" in the Amendment includes both the exclusions and exemptions in the FLSA – which is exactly what R.C. 4111.14 requires. Thus, there is no conflict between Ohio's Fair Minimum Wage Amendment and R.C. 4111.14. Despite Haight's argument to the contrary, nothing in the decision creates a conflict between federal and Ohio law.

This Court should deny Haight's Motion for several reasons. First, Haight seeks to reargue the case, which is prohibited by the Supreme Court Rules of Practice. Second, this Court's decision comports with federal law. In fact, by expressly adopting the FLSA's exceptions and

[1] Article II, Section 34a of the Ohio Constitution will be referred to as the "Fair Minimum Wage Amendment" or the "Amendment" for the purposes of this brief.

[2] Although there are multiple Plaintiffs/Appellees in this matter, their interests are aligned and their Motion was filed collectively. For ease in reading, the Plaintiffs/Appellees will be referred to collectively in this brief as "Haight."

exemptions, Ohio law is **synonymous** with federal law with respect to the categories of individuals entitled to minimum wage compensation. Finally, this Court's decision complies with both the spirit and language of the Amendment. For, despite Haight's best efforts to convince this Court that its decision is contrary to federal law and intent, the truth is that this Court's decision puts Ohio squarely in accord with federal minimum wage law on the seminal issue in this case – whether or not outside salespeople are entitled to minimum wage. Federal law, as embodied in the FLSA, says "no", and Ohio law, as put forth in Article II, Section 34(a) and R.C. § 4111.14, also says "no."

## I. LAW AND ARGUMENT

### A. Haight's Motion is not permitted by the Rules of Practice.

Haight's Motion is nothing more than an attempt to reargue the case and should not be considered. S. Ct. Prac. R. 18.02(B) specifically bars motions for reconsideration that seek to reargue the case. Haight's motion does not raise new arguments, nor does it address any inherent flaws with the Court's decision. Even if it did present new arguments (and it does not), the arguments should have been raised previously. Nothing has changed since the briefing phase (or since oral argument) that would change the outcome, and Haight does not argue otherwise. Simply put, there is no reason to ask this Court to reconsider the same argument it already rejected.

### B. This Court's decision shows R.C. 4111.14 is constitutional because it is easily harmonized with the Fair Minimum Wage Act. Because Appellees are outside salespeople and are exempt from minimum wage requirements under state and federal law, this Court's decision fully resolved this case and should stand.

Even if this Court were to allow Haight to reargue the case, Haight's Motion would still fail because the Court's decision both properly applied Ohio law and fully resolved the dispute. Haight's Motion claims the Court did not resolve the entire issue, but that is not true. The decision is clear:

> To be entitled to minimum wage, an individual must be an "employee." Article II, Section 34a of the Ohio Constitution provides that an "employee" shall have the same "meanings" as in the FLSA. This provision is without further limitation. Therefore, both the FLSA exclusions and exemptions are to be considered when determining whether an individual is an employee. Because R.C. 4111.14(B)(1)'s provisions are consistent with this interpretation, the statute is constitutional.

Decision, ¶ 19. The ultimate issue is whether outside salespeople are entitled to minimum wage under the FLSA.

Following this Court's decision, the answer is simple: "No." *See* R.C. 4111.14(B)(1) and 29 U.S.C. §213. Haight's confusion in the motion for reconsideration is especially baffling considering Haight's counsel readily admitted "this issue is dispositive of every claim" and that he "would go back to the trial court to, presumably, dismiss the case" if the Court found in the Minchaks' favor. Oral Argument at approx. min. 20. That is exactly how the Court ruled, yet Haight switched direction and suddenly claims the ultimate issue is unresolved. There is no question that this Court addressed the ultimate issue, and adopted the meanings of exempt employees from the FLSA. Because outside salespeople, like Haight, are not entitled to receive minimum wage under the FLSA, they are similarly not entitled to receive it under the Amendment and R.C. 4111.14(B)(1).

Haight's motion also utterly fails to try to meet the burden of proof necessary to declare the statute unconstitutional. In order to find in Haight's favor, he had to prove **beyond a reasonable doubt** that R.C. 4111.14 and the Fair Minimum Wage Amendment are clearly incompatible and irreconcilable. *See State v. Carswell* (2007), 114 Ohio St.3d 210 (citations omitted); *see also* Decision ¶ 11. Haight failed to meet this burden, and the motion for reconsideration does not even attempt to provide any information or evidence to change that outcome. Instead, Haight continues to confuse the difference between a word's meaning and its definition.

This Court determined that the *meaning* of "employee" set forth by the Ohio Fair Minimum Wage Amendment includes both the FLSA exclusions and the exemptions. Decision ¶ 12. This not surprising considering both the Amendment and the applicable FLSA sections focus on minimum wage. The FLSA certainly has a broader *definition* of employee (i.e. any individual employed by an employer), but that definition develops different *meanings* depending on which topic is being addressed. This explains why the Amendment's drafters adopted the *meanings* of employee rather than the broad definition – they only wanted to adopt the meanings applicable to minimum wage. Regardless of whether an individual meets the general definition of an employee under the FLSA, it is undeniable that exempt individuals are not entitled to minimum wage. This is what the Amendment incorporated. R.C. 4111.14 merely provides clarity, incorporating the FLSA exceptions into the *meaning* of employee.[3] Accordingly, exempt individuals are not entitled to minimum wage compensation under the either the FLSA or Ohio law.

Haight recognizes that he can only prevail by rewriting the definition of "same meaning" to exclude all but one phrase of the FLSA. The red herring is that Haight wants to only claim that the definition of "employee" applies. If that were the case, there would be no need to reference the whole FSLA. The Amendment could have just defined "employee" itself. But the intent was to align the Amendment with the FSLA to simplify recordkeeping and to adopt all federal definitions to avoid further litigation. The FLSA necessarily has multiple *meanings* of "employee" because, unlike Ohio's Fair Minimum Wage Amendment, it encompasses more topics than just minimum wage. These were all matters previously before the Court. The Motion to Reconsider raises no new issues.

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[3] This clarity was necessary, especially considering the United States Supreme Court determined Haight's proposed definition of "employee" was ambiguous. *See Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997).

Haight's implication that this Court's decision will have negative and far-reaching implications is simply not true.[4] As Haight's motion notes, the FLSA protects "employees" from *many* potentially improper employment practices, including excessive overtime, child labor laws, equal pay issues, and nursing mother discrimination. Ohio's Amendment, on the other hand, is limited to one thing: minimum wage. Ohio has other laws – permitted by its Constitution at Article II Section 34 – that protect employees. *See, e.g.*, R.C. 4109.01 (child labor); R.C. 4111.17 (equal pay); and R.C. 4113.52 (protections against retaliation). The meaning of employee under the Amendment and R.C. 4111.14(B)(1) does not limit those other rights in any way. In short, under both Ohio law and the FLSA, an individual's minimum wage status has absolutely no impact on his or her entitlement to equal pay, child labor protections, or other potentially improper employer actions.

Haight is playing a game of semantics. Haight wants the Court to align Ohio with the federal definition of "employee," which is exactly what the Court has already done. But Haight's argument of that definition being only one section was clearly considered and specifically already rejected as too narrow and not intended. Haight simply wants to relitigate the same issue. However, to adopt Haight's position would place Ohio out of the mainstream of other states' interpretations.

### C. Employees are entitled to a greater minimum wage under Ohio law than the FLSA. This is what the voters intended, and it is accomplished under this Court's decision.

The Amendment intended to expand minimum wage laws by increasing Ohio's minimum wage beyond the federal minimum wage and by tying it to the consumer price index, and it

[4] In fact, the opposite is true. See Brief of Amici Ohio Council of Retail Merchants et al., at pp. 20-21.

succeeded. This Court's decision does not change the Amendment in any way. As stated above, the Amendment adopted the *meaning* of minimum wage employees from the FLSA. If it intended to extend minimum wage requirements to all "individuals employed by an employer" it easily could have done so in the express language. Alternatively, if it wanted to incorporate only a particular section of the FLSA, it could have done that. The Amendment did neither, and instead adopted the *meanings* – not the definition – of employee as set forth by the FLSA. Therefore, the exclusion and exemptions are reasonably included.

## II. CONCLUSION

Haight's central theme has been – and continues to be – that an "employee" is defined as "any individual employed by an employer." However, courts cannot determine a word's meaning in a vacuum – they must look at context. *See Yates v. United States*, 574 U.S. ____, 135 S. Ct. 1074, (2015); *see also State ex rel. Mack v. Guckenberger* (1942), 139 Ohio St. 273, 278. This Court did exactly that, and it found the *meaning* of employee extends beyond Haight's set definition.

Ohio law required this Court to begin its analysis with the presumption that R.C. 4111.14(B)(1) is constitutional. In fact, the only way a court can find a statute unconstitutional is if a party proves, beyond a reasonable doubt, that it cannot be harmonized with the constitution. This Court properly applied this standard, and found R.C. 4111.14(B)(1) was constitutional because it could be harmonized with the Fair Minimum Wage Amendment. Haight's Motion for Reconsideration does nothing to change this outcome. Instead, Haight continues to disregard the <u>plain text of the constitution</u> (that calls for the FLSA's meaning of employee with respect to minimum wage), and devise his own definition for "employee" that is completely contrary to the provision's language.

In short, because R.C. 4111.14(B)(1) and the Fair Minimum Wage Amendment both incorporate the FLSA's meanings and have been easily harmonized, this Court's decision is appropriate and Haight's motion should be denied.

Respectfully Submitted,

/s/ Kathleen A. Hahner

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The undersigned does hereby certify that on this 4th day of April, 2016, a copy of the foregoing was served upon the following by regular mail:

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