

IN THE SUPREME COURT OF OHIO

DANIEL STOLZ, : **Case No. 17-1245**
: :
Plaintiff-Respondent, : Judge Timothy Black
: :
vs. : On a Certified Question of State Law
J & B STEEL ERECTORS, INC., et al. : from the U.S. District Court, Southern
: District of Ohio, Western Division
: :
Defendants-Petitioners. : Case No. 1:14-cv-44
: :

**PRELIMINARY JOINT MEMORANDUM OF J & B STEEL
ERECTORS, INC., D.A.G. CONSTRUCTION CO., INC., AND
TRIVERSITY CONSTRUCTION CO., LLC IN SUPPORT OF
CERTIFIED QUESTION OF STATE LAW**

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STATEMENT OF THE CASE AND FACTS

Defendants-Petitioners, J & B Steel Erectors, Inc. (“J & B Steel”), D.A.G. Construction Co., Inc. (“D.A.G.”), and TriVersity Construction Co., LLC (“TriVersity”) were subcontractors on the Horseshoe Casino construction project in Cincinnati, Ohio (“Project”) for which Messer Construction Company (“Messer”) was the general contractor. In conjunction with the Project, Messer obtained authority from the Ohio Bureau of Workers Compensation to self-administer the workers’ compensation claims for the Project pursuant to R.C. 4123.35. As such, Messer implemented its Workers’ Compensation Wrap-Up Insurance Plan in which certain subcontractors, including J & B Steel, D.A.G., and TriVersity, enrolled. On January 27, 2012, Plaintiff-Respondent, Daniel Stolz, was working as a concrete finish supervisor for subcontractor Jostin Construction, Inc. when he was allegedly injured on the Project. Mr. Stolz brought negligence and punitive damages claims against J & B Steel, D.A.G., TriVersity, and others.

As enrolled subcontractors under Messer’s Wrap-Up Plan, J & B Steel, D.A.G., and TriVersity asserted immunity from Mr. Stolz’s claims pursuant to R.C. 4123.35 and 4123.74. They moved for summary judgment, which the District Court denied, in direct contrast to a summary judgment decision from the Hamilton County Court of Common Pleas concerning other workers on the Project who were injured in the same occurrence. Therefore, J&B Steel, D.A.G., and TriVersity moved to certify the question of whether the two statutes above provided a subcontractor enrolled in a wrap-up plan with immunity for tort claims made by an employee of another subcontractor enrolled in the same wrap-up plan. This Court accepted that certified question and ruled in the affirmative.

Pursuant to this Court’s affirmative ruling on the certified question, J & B Steel, D.A.G., and TriVersity moved the District Court for reconsideration of its summary judgment decision. However, before the District Court ruled on that motion, Mr. Stolz obtained leave to file a

Second Amended Complaint challenging the constitutionality of R.C. 4123.35(O) under the U.S. Constitution and the Ohio Constitution. J & B Steel, D.A.G., and TriVersity then moved the District Court to certify the constitutional issue to this Court. The District Court certified the following question:

Whether Ohio Rev. Code 4123.35(O) is unconstitutional as applied to the tort claims of an enrolled subcontractor's employee who is injured while working on a self-insured construction project and whose injury is compensable under Ohio workers' compensation laws.

Pursuant to S.Ct.Prac.R. 9.01(A), the Supreme Court may answer a question of law certified to it by a court of the United States if the certifying court issues a certification order finding there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court. As set forth in the District Court's Order granting the Motion to Certify the Question to this Court, the District Court found that "this is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court." Certification Order at 4, *Stolz v. J & B Steel*, No. 1:14-cv-44 (S.D. Ohio Aug. 23, 2017). Therefore, petitioners J & B Steel, D.A.G., and TriVersity respectfully request that this Court accept the certified question of law and answer it in the negative.

ARGUMENTS IN SUPPORT OF THIS COURT'S ACCEPTANCE OF THE CERTIFIED QUESTION

A. Answering the Question May Be Determinative of the Proceeding in the District Court

When Mr. Stolz's claim was filed in the District Court, it was agreed that the issue of workers' compensation immunity as it applied to Messer, J & B Steel, D.A.G., and TriVersity and the other subcontractor defendants should be addressed prior to the merits of the underlying claims because its resolution was determinative of the case. In the event this Court finds that

R.C. 4123.35 is constitutional, Mr. Stoltz's claims against J & B Steel, D.A.G., and TriVersity may no longer be viable. Without a definitive ruling from this Court on the constitutionality of R.C. 4123.35, the parties could incur the potentially unnecessary costs of discovery and trial. Consequently, based on the foregoing, and the District Court's finding that the certified question of Ohio law may be determinative of the proceeding, the first condition for acceptance of a certified question under S.Ct.Prac.R. 9.01(A) has been met.

B. There Is No Controlling Ohio Supreme Court Precedent Resolving the Question

Neither this Court nor any lower court in Ohio has addressed the question certified herein. In fact, the only courts to have rendered an opinion even referencing the statute at issue, R.C. 4123.35(O), have been this Court in *Stoltz v. J & B Steel Erectors, Inc.*, 146 Ohio St.3d 281, 2016-Ohio-1567, 55 N.E.3d 1082, and the Hamilton County Court of Common Pleas in *Lancaster v. Pendleton Constr. Group, LLC*, 2013 Ohio Misc. LEXIS 112 (Mar. 25, 2013). However, as this Court is aware, the discussion in those cases was limited to whether R.C. 4123.35(O) extended tort immunity to all subcontractors enrolled in a wrap-up policy under Ohio's Workers' Compensation Act. The question, whether R.C. 4123.35(O) is constitutional, has never been addressed by any Ohio court. Because there is no controlling precedent relating to the question certified to this Court, the second condition for acceptance of a certified question under S.Ct.Prac.R. 9.01(A) has been met.

C. Principles of Federalism Support Acceptance of the Certified Question

Because the District Court's jurisdiction in this case is based upon diversity of citizenship, the substantive law of the forum state must be applied. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). There is no disagreement between the parties that Ohio law governs the issue of subcontractor immunity in this case, and specifically

the constitutionality of R.C. 4123.35 with regard to enrolled subcontractor immunity from tort claims. However, as set forth above, this Court has not addressed this issue.

When federal courts apply state law that is not well settled, it has the potential to diminish the state's sovereignty. *Scott v. Bank One Trust Co., N.A.*, 62 Ohio St.3d 39, 43, 577 N.E.2d 1077 (1991). "From the state's viewpoint, losing part of its sovereignty is no small matter, especially since a federal court's error may perpetuate itself in state courts until the state's highest court corrects it." *Id.* The Court's acceptance of this certified question will ensure that this Court determines whether R.C. 4123.35(O) is valid under the Ohio constitution.

ARGUMENTS IN SUPPORT OF THIS COURT'S ANSWERING THE CERTIFIED QUESTION IN THE NEGATIVE

A. The Court Should Answer the Certified Question in the Negative

Mr. Stoltz asserts that R.C. 4123.35(O) is unconstitutional on various grounds. However, R.C. 4123.35(O) is rooted in both the United States Constitution and the Ohio Constitution, and is firmly supported by this Court's longstanding precedent.

R.C. 4123.35(O) provides, in pertinent part:

A self-insuring employer who complies with this division is entitled to the protections provided under this chapter and Chapter 4121. of the Revised Code with respect to the employees of the contractors and subcontractors covered under a certificate issued under this division for death or injuries that arise out of, or death, injuries, or occupational diseases that arise in the course of, those employees' employment on that construction project, as if the employees were employees of the self-insuring employer, provided that the self-insuring employer also complies with this section.

* * *

The contractors and subcontractors included under a certificate issued under this division are entitled to the protections provided under this chapter and Chapter 4121. of the Revised Code with respect to the contractor's or subcontractor's employees who are employed on the construction project which is the subject of the certificate, for death or injuries that arise out of, or death, injuries, or occupational diseases that arise in the course of, those employees' employment on that construction project.

“When considering the constitutionality of a statute, this [C]ourt ‘presume[s] the constitutionality of the legislation . . .’” *City of Dayton v. State*, 2017-Ohio-6909, ¶ 12. Moreover, in determining whether a statute is unconstitutional, this Court “must give due deference to the General Assembly.” *State ex rel. Ohio Cong. of Parents & Teachers v. State Bd. of Educ.*, 111 Ohio St. 3d 568, 2006-Ohio-5512, 857 N.E.2d 1148, ¶ 20. “[W]here statutes are challenged on the ground that they are unconstitutional as applied to a particular set of facts, the party making the challenge bears the burden of presenting clear and convincing evidence of a presently existing set of facts that make the statutes unconstitutional and void when applied to those facts.” *Harrold v. Collier*, 107 Ohio St. 3d 44, 2005-Ohio-5334, 836 N.E.2d 1165, ¶ 38.

This Court’s review of R.C. 4123.35(O)’s constitutionality is one of first impression. However, a Florida Court of Appeals confronted a matter involving similar circumstances, which may provide this Court guidance. In *Amorin v. Gordon*, 996 So. 2d 913 (Fla. 4th DCA 2008), Florida’s Fourth District Court of Appeals considered the constitutionality of a statute establishing a self-insuring contractor scheme and protecting subcontractors thereunder from employee tort claims. An employee’s estate alleged that another employee’s negligence caused the decedent-employee’s death after their vehicles struck one another while operating within a shared construction project. *Id.* at 914. The estate’s administrator, Gordon, sued the driver of the vehicle and his employer, Amorin. *Id.* at 915. Although the two employees were employed by different employers, both of their employers were subcontractors of the same general contractor. *Id.* at 914. In response to Gordon’s suit, Amorin argued that he was entitled to horizontal immunity based on Florida’s workers’ compensation statutes. *Id.* at 915.

Fla. Stat. § 440.010(1)(e) (2004) provides that a subcontractor rendering services in conjunction with a contractor on the same project is not liable to employees of another

subcontractor or the contractor. The subcontractor is protected by “exclusiveness-of-liability” provisions, so long as the contractor or subcontractor obtained workers’ compensation for its employees and the major contributing cause of the employee’s injury was not the subcontractor’s own gross negligence. *Id.*

Gordon argued that § 440.010(1)(e) was unconstitutional because it “deprived injured workers of their common law right to sue other subcontractors and their employees in tort.” *Amorin* at 915. In upholding the statute’s constitutionality, the court noted: “It is one thing to abolish a remedy and leave a claimant with no alternative, but another to simply increase the class of fellow employees who are immune from suit where there is workers’ compensation coverage for the injured worker.” *Id.* at 918.

Amorin is strikingly similar to the instant matter. Ohio’s and Florida’s workers’ compensation statutes provide immunity to all subcontractors working under a general contractor within a wrap-up plan, so long as the subcontractors comply with existing workers’ compensation laws. If a subcontractor does not comply therewith, the employee retains his right to sue the subcontractor in tort. As such, the employee is never at a loss of compensation. This Court should find, as the Florida Court of Appeals did, that the equities in abrogating the common law right to sue in tort weigh in favor of constitutionality where the legislature provides an injured worker a reasonable substitute remedy, namely, workers’ compensation.

B. R.C. § 4123.35(O) Does Not Violate Section 5, Article I of the Ohio Constitution, which Guarantees the Right to a Jury Trial

Mr. Stolz argues R.C. 4123.35(O) violates certain provisions of the Ohio Constitution. As discussed herein, such claim is not supported by law.

With regard to Mr. Stolz’s claim of violation of Section 5, Article I of the Ohio Constitution, the right to a jury trial, although inviolate, is not absolute. Section 5, Article I

applies only to those causes of action to which the right attached at common law when Section 5 was adopted. *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 32. Moreover, Section 5's specific guarantee is that a jury will resolve any questions of fact, and a challenge to a statute under that section will succeed “only if the statute actually intrudes upon the jury's fact-finding function.” *Id.* at 486. The right to trial by jury does not act as “a limit on the ability of the legislature to act within its constitutional boundaries.” *Id.* at 494 (Cupp, J., concurring). “[I]t is long-settled constitutional law that it is within the power of the legislature to alter, revise, modify, or abolish the common law as it may determine necessary or advisable for the common good.” *Id.* at 495. Thus, the right to trial by jury does not prevent the General Assembly from altering a cause of action.

Here, the General Assembly enacted R.C. 4123.35(O) under its authority to alter a common-law cause of action, and acted within the bounds of its authority in setting the parameters of workers' compensation authority. Specifically, the General Assembly determined that employees who are injured on large scale construction jobs covered by wrap-up agreements must seek recovery pursuant to Ohio's workers' compensation statutes. As this Court previously found, “Ohio law limits recovery through tort law by employees or their families for workplace injury or death from any enrolled subcontractor on the project, to the same extent that recovery is limited by workers' compensation law.” *Stolz*, 146 Ohio St. 3d 281, 2016-Ohio-1567, 55 N.E.3d 1082, at ¶ 22.

This Court has established that workers who recover pursuant to Ohio's workers' compensation statutes do not have a constitutional right to a jury. *Arrington v. DaimlerChrysler Corp.*, 109 Ohio St. 3d 539, 2006-Ohio-3257, 849 N.E.2d 1004, ¶ 26. Because R.C. 4123.35(O)

is contained within Ohio's workers' compensation statute, the issue of whether it violates Section 5, Article I has been firmly resolved in the negative.

C. R.C. § 4123.35(O) Does Not Violate Section 16, Article I of the Ohio Constitution, which Guarantees the Right to a Remedy

Section 16, Article I of the Ohio Constitution provides, "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay." The rights encompassed by the "remedy" aspect of Section 16 are well settled, and have not been violated here. "When the Constitution speaks of remedy and injury to person, property, or reputation, it requires an opportunity granted at a meaningful time and in a meaningful manner." *Hardy v. VerMeulen*, 32 Ohio St. 3d 45, 47, 512 N.E.2d 626 (1987).

R.C. 4123.35(O) does not violate the right to an open court or the right to a remedy, as the statute provides for meaningful remedies. As this Court has often recognized, workers' compensation laws are the result of a unique compromise between employees and employers, in which employees give up their common-law remedy and accept possibly lower monetary recovery, but with greater assurance that they will receive reasonable compensation for their injury. Employers in turn give up common-law defenses but are protected from unlimited liability. *See Stetter v. R.J. Corman Derailment Servs., L.L.C.*, 125 Ohio St. 3d 280, 2010-Ohio-1029, 927 N.E.2d 1092, ¶ 54. In *Stetter*, this Court held that workers' compensation recovery is a meaningful remedy for workers whose injuries occur on the job. *Id.* at ¶ 55. R.C. 4123.35(O) ensures that workers who are injured on large scale construction projects covered by a wrap-up agreement receive workers' compensation. As such, R.C. 4123.35(O) provides a meaningful recovery to those workers.

D. R.C. § 4123.35(O) Does Not Violate Section 32, Article II of the Ohio Constitution, which Prohibits the General Assembly from Exercising Judicial Powers, and Does Not Violate Section 1, Article IV, which Vests Superintending Authority over the Court System to the Ohio Supreme Court

Section 32, Article II provides, “The general assembly shall grant no divorce, nor exercise any judicial power, not herein expressly conferred.” Section 1, Article IV provides, “The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.” In challenging R.C. 4123.35(O), Mr. Stolz summarily states that R.C. 4123.35(O) “interferes with the judiciary’s authority over the courts by unconstitutionally purporting to permit the legislature to dictate non-liability as a matter of law.” Second Amended Complaint with Jury Demand at ¶ 28, *Stolz v. J & B Steel*, No. 1:14-cv-44 (S.D. Ohio Nov. 4, 2016). Therefore, while Mr. Stolz references the above-listed sections of the Ohio Constitution individually, he is, in effect, arguing that R.C. 4123.35(O) violates the separation of powers doctrine. Although Ohio does not have a separate constitutional provision expressly providing for the separation of powers, this Court has determined that the doctrine is “implicitly embedded in the entire framework” of the Ohio Constitution sections that define the authority of the three branches of government. *S. Euclid v. Jemison*, 28 Ohio St. 3d 157, 158-59, 503 N.E.2d 136 (1986).

The people of Ohio authorized the General Assembly to create the workers’ compensation system through adoption of Ohio Constitution, Section 35, Article II. *Bickers v. W. & S. Life Ins. Co.*, 116 Ohio St. 3d 351, 2007-Ohio-6751, 879 N.E.2d 201, ¶ 19. Section 35 provides, in pertinent part:

For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen’s employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by

the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease.

Thus, Section 35, Article II grants the General Assembly authority to enact laws effectuating the workers' compensation system. In fact, this Court has repeatedly confirmed the legislature's authority.

In *Kaminski v. Metal & Wire Prods. Co.*, for example, this Court was presented with the argument that R.C. 2745.01, establishing employer liability for intentional torts, was in violation of Section 35, Article II. 125 Ohio St.3d 250, 2010-Ohio-1027, 927 N.E.2d 1066, ¶ 13. The Court ultimately upheld R.C. 2745.01 as constitutional, noting that Section 35 specified the effect of the General Assembly's power to enact workers' compensation laws. *Id. Kaminski* stands for the proposition that Section 35 provides the General Assembly generous latitude within which to enact legislation effectuating the workers' compensation system. *See id.* at ¶ 76. The legislature's authority to enact R.C. 4123.35(O) is "expressly conferred" by the Ohio Constitution and does not violate Ohio's separation of powers doctrine. *See Ohio Constitution, Section 32, Article II.* Thus, this Court should uphold the statute as constitutional.

E. R.C. § 4123.35(O) Does Not Violate Section 5, Article IV of the Ohio Constitution, which Vests in the Courts the Exclusive Power and Authority over the Rules Governing Judicial Practice and Procedure

Section 5(A)(1), Article IV provides, "In addition to all other powers vested by this article in the Supreme Court, the Supreme Court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the Supreme Court." Section 5(B), Article IV provides, in

pertinent part, “The Supreme Court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right.”

Section 5(B) “conferred authority on the Supreme Court of Ohio to promulgate rules relating to matters of procedure in courts of Ohio, while the right to establish the substantive law in Ohio remained with the legislative branch of government.” *Havel v. Villa St. Joseph*, 131 Ohio St. 3d 235, 2012-Ohio-552, 963 N.E.2d 1270, ¶ 2. In *Krause v. State*, this Court defined “substantive” as “that body of law which creates, defines and regulates the rights of the parties.” 31 Ohio St.2d 132, 145, 285 N.E.2d 736 (1972) (internal citation omitted), overruled on other grounds by *Schenkolewski v. Cleveland Metroparks Sys.*, 67 Ohio St.2d 31, 426 N.E.2d 784 (1981). “Thus, classification of [a statute] as a substantive or procedural law depends upon whether the statute creates a right.” *Havel* at ¶ 17. Accordingly, “a right is defined as ‘[a] power, privilege, or immunity secured to a person by law’” *Id.* (citing *Black’s Law Dictionary* 1436 (9th Ed.2009) (alteration in original) (emphasis added)).

Following this Court’s guidance, it is undisputed that R.C. 4123.35(O) grants subcontractors immunity from negligence claims made by employees of a general contractor or another subcontractor who are insured under a wrap-up plan and whose injuries arise thereunder. *See Stolz*, 146 Ohio St.3d 281, 2016-Ohio-1567, 55 N.E.3d 1082, at ¶ 2. As such, R.C. 4123.35(O)’s abrogation of the common law right to sue in tort is substantive in nature and well-within the legislature’s constitutionally-delegated authority. As such, R.C. 4123.35(O) does not violate Section 5, Article IV of the Ohio Constitution, and this Court should uphold the statute as constitutional.

F. R.C. § 4123.35(O) Does Not Violate Section 16, Article I of the Ohio Constitution, which Guarantees Due Process of Law

Section 16, Article I of the Ohio Constitution provides, “All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.” Section 16 contains several guarantees, including due process. The guarantee of remedy “by due course of law” is equivalent to the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Groch v. GMC*, 117 Ohio St. 3d 192, 2008-Ohio-546, 883 N.E.2d 377, ¶ 108.

An alleged violation of due process is reviewed using either a rational basis standard or a strict scrutiny standard. A rational basis test applies only if there is no interference with a fundamental right, while a strict scrutiny test applies when either a fundamental right is interfered with or the law itself disadvantages an inherently suspect class. *Arbino*, 116 Ohio St. 3d 468, 2007-Ohio-6948, 880 N.E.2d 420, at ¶ 49. Under the rational basis test, the law simply must be rationally related to a legitimate governmental interest in order to be constitutional. *Heller v. Doe*, 509 U.S. 312, 320, 113 S.Ct. 2637, 125 L. Ed. 2d 257 (1993). Under the strict scrutiny test, the law must be narrowly tailored to promote a compelling governmental interest to be constitutional. *Harrold*, 107 Ohio St. 3d 44, 2005-Ohio-5334, 836 N.E.2d 1165, at ¶ 39.

Here, there is no inherently suspect class at issue. The question turns on whether a fundamental right is in application. As the Court did in *Arbino* and *Groch*, it should reject a strict-scrutiny approach to the due-process challenge raised in this case. R.C. 4123.35 does not impinge upon fundamental rights and should be reviewed using the rational basis standard.

Under the rational basis standard, substantial deference is granted to the predictive judgment of the General Assembly. The state does not have to choose the best means of serving a legitimate interest; it only must choose a rational one. *Watkins v. Dep't of Youth Servs.*, 143

Ohio St. 3d 477, 2015-Ohio-1776, 39 N.E.3d 1207, ¶ 52. Through the workers' compensation system, the General Assembly enacted a "mutual compromise . . . whereby employees relinquish their common law remedy and accept lower benefit levels coupled with the greater assurance of recovery and employers give up their common law defense and are protected from unlimited liability." *Blankenship v. Cincinnati Milacron Chems.*, 69 Ohio St.2d 608, 614, 43 N.E.2d 572 (1982). R.C. 4123.35(O) evidences two interest that are not only legitimate, but compelling: the state's interest in returning injured workers in large construction projects back to the workforce; and the state's interest in protecting the economic viability of Ohio employers who participate in large scale construction projects. *See Onderko v. Sierra Lobo, Inc.*, 148 Ohio St.3d 156, 2016-Ohio-5027, 69 N.E.3d 679, ¶ 25. Additionally, R.C. 4123.35(O) advances the government's compelling interest in judicial efficiency, as employees are required to seek recompense for their workplace injuries through the workers' compensation system, rather than being pitted against their employer in the courtroom, where "nothing is gained." *Id.*

R.C. 4123.35(O) is clearly rationally related to furthering each of the interests above. However, R.C. 4123.35(O) is also narrowly tailored to advance those interests, demonstrated by the specific type of construction project to which it pertains: large scale constructions projects with durations lasting up to six years. Therefore, even if this Court holds, *in arguendo*, that the higher, strict scrutiny test must be applied to determine the constitutional validity of R.C. 4123.35(O), Mr. Stolz's challenge still fails, as the statute is narrowly tailored to promote the government's compelling interests.

G. R.C. § 4123.35(O) Does Not Violate Article I, Section 2 of the Ohio Constitution, which Guarantees Equal Protection of the Laws

The Equal Protection Clause, Section 2, Article I, provides, "All political power is inherent in the people. Government is instituted for their equal protection and benefit." Ohio

courts have consistently applied the rational-basis test when addressing constitutional challenges to workers' compensation statutes. *See Fry v. Surf City, Inc.*, 137 Ohio Misc. 2d 6, 2006-Ohio-3092, 851 N.E.2d 573 (C. P.), ¶ 26; *Holeton*, 92 Ohio St. 3d at 131, 748 N.E.2d 1111. Under an equal protection analysis, the challenged statute will be upheld if the classification bears a rational relationship to a legitimate governmental interest or if reasonable grounds exist for drawing the distinction. *State ex rel. Doersam v. Indus. Com. of Ohio*, 45 Ohio St. 3d 115, 120, 543 N.E.2d 1169 (1989). A challenged statute must be upheld if there exists any conceivable set of facts under which the classification rationally furthers a legitimate legislative objective. *Id.*

As noted above, R.C. 4123.35(O) is a rational response to a legitimate legislative objective of ensuring that workers on large scale construction projects are covered by workers' compensation. On such projects, the number of contractors and subcontractors coming and going from the job site is large, and the construction period is long, with the timeline lasting up to six years. Rather than relying on each contractor or subcontractor to provide its employees with workers' compensation benefits, the statute allows the general contractor to provide workers' compensation coverage for “[a]ll contractors and subcontractors who perform labor or work or provide materials for the construction project[.]” R.C. 4123.35(O). By doing so, the statute provides for all workers on the job site included under the certificate to receive equal treatment and is, therefore, rationally related to the government's legitimate interest in ensuring that workers on large scale construction projects are covered by workers' compensation.

CONCLUSION

Based on the foregoing, J & B Steel, D.A.G., and TriVersity respectfully request that the Court accept the certified question and answer it in the negative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certify that a copy of the foregoing was served via email and/or U.S. Mail this 26th day of September 2017 upon the following:

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