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GERALD E. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY

**IN THE OHIO COURT OF COMMON PLEAS  
CUYAHOGA COUNTY**

**OHIO ASSOCIATION FOR JUSTICE** )  
655 Metro Place South, Suite 140 )  
Dublin, Ohio 43017 )

Judge: EILEEN T GALLAGHER  
CV 12 790971

and )

**JUDGE**

**ROBERT E. DeROSE, PRESIDENT** )  
**OHIO ASSOCIATION FOR JUSTICE** )  
655 Metro Place South, Suite 140 )  
Dublin, Ohio 43017 )

and )

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**DAVID E. NAGER, ESQ.** )  
27730 Euclid Avenue )  
Cleveland, Ohio 44132 )

**Plaintiffs,** )

**vs.** )

**STEVE BUEHRER,** )  
**ADMINISTRATOR, OHIO BUREAU** )  
**OF WORKERS' COMPENSATION** )  
c/o Attorney General Mike DeWine )  
State Office Bldg., 11<sup>th</sup> Floor )  
615 West Superior Avenue )  
Cleveland, Ohio 44113 )

and )

**THE INDUSTRIAL COMMISSION** )  
**OF OHIO** )  
c/o Attorney General Mike DeWine )  
State Office Bldg., 11<sup>th</sup> Floor )  
615 West Superior Avenue )  
Cleveland, Ohio 44113 )

and )

**JON HUSTED, OHIO SECRETARY  
OF STATE,**

c/o Attorney General Mike DeWine  
State Office Bldg., 11<sup>th</sup> Floor  
615 West Superior Avenue  
Cleveland, Ohio 44113

**Defendants**

**COMPLAINT**

Plaintiffs, The Ohio Association for Justice, President Robert E. DeRose, and David E. Nager, Esq., state as their Complaint against Defendants, Steve Buehrer, Administrator, Ohio Bureau of Workers' Compensation (Bureau"), the Industrial Commission of Ohio ("Commission"), and John Husted, Ohio Secretary of State ("Secretary"), as follows:

**BACKGROUND**

1. Plaintiff, Ohio Association for Justice, is a non-profit corporation that was formed under, and exists pursuant to, the laws of the State of Ohio. Originally founded in 1954, the organization is comprised of approximately 2000 attorneys who represent victims and their families in civil tort and product liability actions. The vast majority of workers who are injured in Ohio are represented by members of the OAJ. A substantial number of these attorneys, and their clients, reside and work in Cuyahoga County, Ohio.

2. Plaintiff, Robert E. DeRose, is a resident and citizen of the State of Ohio and the current President of Plaintiff, Ohio Association for Justice. He is also an attorney who has represented thousands of workers' compensation claimants throughout Ohio, including scheduled loss beneficiaries.

3. Plaintiff, David E. Nager, is the Managing Partner of Nager, Romaine &

Schneiberg Co., L.P.A. in Cleveland, Ohio. He has represented thousands of workers' compensation claimants primarily in Cuyahoga County, including scheduled loss beneficiaries.

4. Defendants, Bureau and Commission, are instrumentalities of the State of Ohio that maintain offices and conduct governmental operations in Cuyahoga County and elsewhere. Defendants are charged with enforcing the laws and regulations governing workers' compensations claims in Ohio.

5. Defendant, Jon Husted, is currently the Ohio Secretary of State and is charged under Article III of the Ohio Constitution with implementing and enforcing the enactments of the Ohio General Assembly.

6. Pursuant to R.C. §4123.57 and corresponding regulations, employees who have lost limbs, appendages, and other organs in work-related accidents in Ohio have been entitled to a lump-sum payment of "scheduled loss" benefits. The purposes of these benefits is to compensate the worker for the permanent disfigurement that has been sustained, and is therefore paid immediately in full upon Defendants' approval of the claim.

7. The Ohio General Assembly adopted Am. Sub. H.B. 487 on May 23, 2012, which was then signed by Governor John R. Kasich, on June 11, 2012. The Bill is known as the 2012 Mid-Biennium Budget Review. The stated purpose of the legislation is "to make operating and other appropriations and to provide authorization and conditions for the operation of state programs[.]"

8. Effective September 10, 2012, H.B. 487 will revise Subsection (B) of R.C. §4123.57 to require Defendants to issue scheduled loss benefits in weekly installments instead of a single lump-sum. Eligible injured workers will thus be forced to wait for a

substantial period to receive their full benefits after suffering the loss of the limb, appendage, or other organ. Lump-sum payments will only be permitted when authorized by Defendant Bureau in accordance with R.C. §4123.64.

9. Plaintiffs reasonably believe, and therefore allege, that more eligible amputees residing and/or working in Cuyahoga County will be affected by the amendment that in any other county in Ohio.

10. H.B. 487 will also affect not only the payment of scheduled loss benefits and a number of budgetary issues, but also a wide range of other topics including the publication of legal notices and advertisements (R.C. §7.10 and §7.16), the creation of a legislative task force on redistricting, reapportionment, and demographic research (R.C. §103.51), eligibility standards and procedures for programs administered by the Department of Aging, Department of Alcohol and Drug Addiction Services, Department of Development, Department of Developmental Disabilities, Department of Education, Department of Health, Department of Job and Family Services, Department of Mental Health, and Rehabilitation Services Commission (R.C. §121.35), the establishment of the SellOhio Global Initiative Fund (R.C. §122.862), the addition of the State Fire Marshall, or the State Fire Marshall's designee to the Multi-agency Radio Communications System Steering Committee (R.C. §701.50), a request to the Joint Committee on the Library of Congress to approve the replacement of the statue of Governor William Allen in the National Statutory Hall Collection with a statue of Thomas Edison (R.C. §701.121(A)), revisions to the Court of Claims Act and related issues concerning claims for wrongful imprisonment (R.C. §2743.40), and authorization for the Director of the Department of Public Safety to approve an online remedial driving course (R.C. §4508.02).

11. Plaintiffs now bring this action for declaratory and injunctive relief in accordance with the jurisdictional authority that has been afforded to common pleas courts by R.C. §2743.03(A)(2). Plaintiffs disavow any intention to seek an award of damages or other legal relief that would be required to be adjudicated in the Ohio Court of Claims.

**COUNT I**  
**(DECLARATORY RELIEF)**

12. Plaintiffs repeat the foregoing allegations of this Complaint as if fully restated herein.

13. By attempting to regulate not only the manner in which scheduled loss benefits are to be paid by Defendant Bureau, but also a wide variety of unrelated public issues, H.B. 487 lacks a common purpose or objective. There is no discernible, practical, rational, or legitimate reason for combining all of the wide-ranging areas of concern in a single 1,788 page Bill.

14. H.B. 487 thus violates Section 15(D), Article II of the Ohio Constitution, which has long directed that “[n]o bill shall contain more than one subject, which shall be clearly expressed in its title.”

15. To the extent that H.B. 487 exceeds the budgetary and appropriations objectives set forth in its title, those aspects of the bill are invalid and unenforceable, including the attempted revisions to the manner in which scheduled loss benefits are to be issued by Defendant Bureau to injured workers under R.C. §4123.57(B).

16. If allowed to stand, H.B. 487 will have a real and substantial impact upon Plaintiffs, their members, and their constituents. These consequences will include, but will not be limited to, denying the traditional lump sum payments to workers who have sustained amputations in Ohio while working for the benefit of their employers.

Those who require immediate compensation to sustain themselves and their families will be forced to seek Defendant Bureau's approval for a lump-sum settlement payment pursuant to R.C. §4123.64, in an amount that will be significantly less than the intended benefit.

17. A live, justiciable controversy exists between the parties over the enforceability of H.B. 487, for which there is no other readily available and expedient remedy at law or equity. To the full extent permitted by R.C. Chapter 2721, Plaintiffs are therefore entitled to a declaratory judgment establishing that the legislative attempt to amend R.C. §4123.57(B) through H.B. 487 violates Section 15(D), Article II of the Ohio Constitution and is thus unenforceable.

**COUNT II**  
**(INJUNCTIVE RELIEF)**

18. Plaintiffs repeat and reallege the foregoing allegation of this pleading as if fully restated herein.

19. Plaintiffs reasonably believe, and therefore allege, that Defendants intend to enforce H.B. 487 as soon as the statute takes effect, including the requirement that scheduled loss benefits must be paid in weekly installments over time.

20. Unless restrained from doing so, Defendants will thus inflict immediate and irreparable harm upon Plaintiffs, their members, and their constituents.

21. Ohio public policy is always served by prohibiting the enforcement of an unconstitutional statute. No third parties will suffer any undue injury if Defendants are directed to comply with the Ohio Constitution.

22. Under traditional principles of equity, this Court should issue preliminary and permanent injunctions prohibiting Defendants, and all persons and entities in active concert and participation with them, from enforcing any aspect of

H.B. 487 that is found to violate the Ohio Constitution.

**PRAYER**

**WHEREFORE**, Plaintiffs request that this Court issue (1) a declaratory judgment establishing that the amendment to R.C. §4123.57(B) imposed in H.B. 487 violates Section 15(D), Article II of the Ohio Constitution and (2) appropriate injunctive relief against Defendants and all persons and entities in active concert and participation with them. The costs of this action should be taxed to Defendants.

Respectfully Submitted,

Frank Gallucci, III (per authority)

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