IN THE SUPREME COURT OF FLORIDA

CASE NO: **SC08-2269**

RAFAEL VARGAS,

Petitioner,
vs.

ENTERPRISE LEASING COMPANY, a Florida corporation, ELIZABETH PRICE, and JIMMY MIDDLETON,

Respondents.

Certified Question of Great Public Importance From
The District Court Of Appeal, Fourth District

Petitioner's Initial Brief On The Merits

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PREFACE

This case presents a question of great public importance certified by the Fourth District Court of Appeal.

The petitioner, Rafael Vargas, was the plaintiff before the trial court and the appellant before the Fourth District Court of Appeal. The respondents, Enterprise Leasing Company, a Florida corporation, Elizabeth Price, and Jimmy Middleton, were the defendants before the trial court and the appellees before the Fourth District Court of Appeal.

In this brief the parties will be referred to by name or as plaintiff and defendants.

The following symbols will be used in this brief:

(R.__p.__) record on appeal;

(T.___) transcript.

STATEMENT OF THE CASE AND FACTS

Elizabeth Price rented a motor vehicle from Enterprise Leasing Company for a period of less than a year. On February 12, 2006, Mrs. Price's son, Jimmy Middleton, operated the rented vehicle in a northbound direction on I-95 near Yamato Road in Boca Raton. He crashed the rental car into the rear end of a vehicle operated by Rafael Vargas, causing Vargas' vehicle to collide with the guardrail. (R. 3 p. 428) Vargas was injured in the crash.

The plaintiff filed a three-count complaint against Enterprise Leasing Company, Elizabeth Price, and Jimmy Middleton. (R. 1 p. 1-4) Count two asserted a vicarious liability claim against Enterprise Leasing Company as the owner of the motor vehicle. Enterprise Leasing filed an amended answer and affirmative defenses to the complaint, asserting an affirmative defense that pursuant to 49 U.S.C. § 30106, the Graves Amendment, it had no liability. (R. 1 p. 32-35)

Enterprise Leasing filed a motion for summary judgment and amended motion for summary judgment, contending that the Graves Amendment barred the action against it. (R. 1 p. 48-86; R. 2 p. 345-385) Plaintiff filed a memorandum of law in opposition to the motion for summary judgment, asserting that the exception set forth in 49 U.S.C. 30106(b) applied. Alternatively, plaintiff argued that if the

exception were inapplicable, the Graves Amendment is unconstitutional. (R. 2 p. 254-264)

The trial judge granted Enterprise Leasing's motion for summary judgment. (R. 2 p. 343; R. 3 p. 515) The trial court found that as a matter of law the Graves Amendment is plain, unambiguous, and preempts section 324.021(9)(b)2, Florida Statutes. The trial court ruled that §324.021(9)(b)2 is a vicarious liability provision, not a financial responsibility statute. The trial court determined that Florida's financial responsibility statute that governs is section 324.021(7). (R. 3 p. 516)

The plaintiff moved for rehearing, which the trial court denied. (R. 3 p. 471-474, 475-476) Enterprise Leasing filed a notice of confession/consent to judgment, consenting to entry of a judgment against it in the amount of $10,000.00. (R. 3 p. 477-480) Enterprise Leasing then moved for entry of a final judgment against it. (R. 3 p. 520-523) The trial court entered a final judgment against Enterprise Leasing for the sum of $10,000.00. (R. 3 p. 530-531)[1]

The plaintiff, Rafael Vargas, filed a timely notice of appeal seeking review of that final judgment. (R. 3 p. 545-548) The Fourth District Court of Appeal, in an *en banc* six to four split decision, affirmed the appealed order. Judges Farmer and

[1] The case proceeded to trial against Elizabeth Price and Jimmy Middleton. The jury returned a verdict against the defendants for the sum of $343,966.41. (A. 2)

Hazouri wrote dissents. The Fourth District Court of Appeal certified the following question of great public importance to this court:

> DOES THE GRAVES AMENDMENT, 49 U.S.C. § 301.06, PREEMPT SECTION 324.021(9)(b)2, FLORIDA STATUTES (2007)?

QUESTION PRESENTED

DOES THE GRAVES AMENDMENT, 49 U.S.C. § 301.06, PREEMPT SECTION 324.021(9)(b)2, FLORIDA STATUTES (2007)?

SUMMARY OF ARGUMENT

Section 324.021(9)(b)2, Florida Statutes, which pertains to short-term motor vehicle leases, is a financial responsibility law. The purpose of the statute is to insure financial responsibility of those operating motor vehicles on Florida highways. The chapter specifies in section 324.031 that there are several ways that an operator or owner of a motor vehicle can establish financial responsibility.

The Graves Amendment does not define the term financial responsibility. Because it is not defined, Congress must look to Florida law regarding the meaning of financial responsibility. The title of the chapter in which the statute is found is indicative of the legislative intent. Chapter 324 is titled Financial Responsibility. Because the statute is a financial responsibility law, it is not preempted by the Graves Amendment.

In the event this court determines that the Graves Amendment preempts section 324.021(9)(b)2, this court should address constitutionality of the Graves Amendment. The majority below erroneously concluded that the amendment is constitutional. It is not. It violates Congress' powers under the Commerce Clause.

STANDARD OF REVIEW

Pure legal issues pertaining to federal preemption are reviewed *de novo. Marcy v. Daimler-Chrysler Corp.*, 921 So. 2d 781 (Fla. 5th DCA 2006), *rev. denied*, 939 So. 2d 1059 (Fla. 2006).

ARGUMENT

DOES THE GRAVES AMENDMENT, 49 U.S.C. § 301.06, PREEMPT SECTION 324.021(9)(b)2, FLORIDA STATUTES (2007)?

A. The Graves Amendment does not preempt section 324.021(9)(b)2, Florida Statutes.

In 2005, Congress passed and the President signed a transportation bill that included the Graves Amendment. The Graves Amendment preempted and abolished any state statutory or common law that held lessors of motor vehicles vicariously liable for the lessees' negligence, except where the lessor was negligent or engaged in criminal wrongdoing. The Graves Amendment provides:

> (a) In general. An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any state or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if-
>
> (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
>
> (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).
>
> (b) ***Financial responsibility laws. Nothing in this section supersedes the law of any state or political subdivision thereof-***
>
> (1) ***imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or***

> (2) ***imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under state law.*** (emphasis supplied)

Subsection (a) of the Graves Amendment preempts state laws that impose liability on owners in the business of renting or leasing motor vehicles, except when there is negligence or criminal wrongdoing on its part. Subsection (b) of the statute exempts from the preemption provisions those state financial responsibility laws that impose financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle. Alternatively, the statute exempts from preemption state laws that impose liability on entities in the trade or business of leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under state law. Subsection (b)2 of the Graves Amendment does not pertain to laws imposing standards for registration and operation of a motor vehicle.

The issue certified in this case is whether section 324.021(9)(b)2 is a financial responsibility law. To answer that question, the Court must review all of Chapter 324 of the Florida Statutes.

Chapter 324 is entitled "Financial Responsibility." The purpose of the chapter is set forth in section 324.011:

> It is the intent of this chapter to recognize the existing privilege to own or operate a motor vehicle on the public streets and highways of this state when such vehicles are used with due consideration for others and their property, and to promote

> safety and provide financial security requirements for such owners or operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle. Therefore, it is required herein that the operator of a motor vehicle involved in a crash or convicted of certain traffic offenses meeting the operative provisions of s. 324.051(2) shall respond for such damages and show proof of financial ability to respond for damages in future accidents as a requisite to his or her future exercise of such privileges.

The primary purpose of chapter 324, as recognized in Attorney General Opinion 058-74, is to ensure the financial responsibility of those driving and operating motor vehicles on Florida highways. The chapter is intended to provide a means whereby those who suffer injury as a result of negligent operation of motor vehicles in this state may secure recompense for their damages. *Harrison v. Larson,* 133 So. 2d 446 (Fla. 1st DCA 1961).

Section 324.021(9)(b)2, which defines the terms "owner" and "owner/lessor," is set forth in the part of chapter 324 entitled "Definitions; Minimum Insurance Required." The subsection provides:

> The lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, shall be deemed the owner of the motor vehicle for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith only up to $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than $500,000 combined property damage and bodily injury liability, the lessor shall be liable for up to an additional $500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages shall be reduced by amounts actually

> recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator. Nothing in this subparagraph shall be construed to affect the liability of the lessor for its own negligence.

The Graves Amendment speaks to financial responsibility laws and financial responsibility, but does not define the term "financial responsibility." As Judge Farmer recognizes, Congress omitted any special definition of "financial responsibility laws" because the term is widely used and understood to refer to an entire class of laws. 993 So. 2d at 262. At footnote 6, Judge Farmer notes that the term "financial responsibility" is strewn throughout all the federal statutes.

In Florida, the title of the chapter generally reflects the legislative intent. *Horowitz v. Plantation Gen. Ltd. Partnership,* 959 So. 2d 176, 182 (Fla. 2006); *Aramark Uniform and Career Apparel, Inc. v. Easton,* 894 So. 2d 20, 25 (Fla. 2005). By statute the Florida legislature is responsible for chapter and statute titles. Section 11.242(5)(c), Fla. Stat. Since the legislature named the entire chapter "Financial Responsibility," and included section 324.021(9)(b)2 in that chapter, there is a presumption that the legislature intended this to be a financial responsibility law. Moreover, Florida courts have indicated that section 324.021(9)(b), is a financial responsibility law that imposes minimum insurance requirements. *Poole v. Enterprise Leasing Co.,* 2006 WL 1388442 (Fla. 18th Cir. Ct. March 9, 2006); *Edwards v. C.A. Motors Ltd.*, 985 So. 2d 1147 (Fla. 1st DCA 2008); *Sontay v. Avis Rent-a-Car Systems Inc.,* 872 So. 2d 316 (Fla. 4th DCA

2004); *Rodriguez-Cespedes v. Creative Leasing Inc.*, 728 So. 2d 811 (Fla. 3d DCA 2008); and *Gedert v. Southeast Bank Leasing Co.,* 637 So. 2d 253 (Fla. 4th DCA 1994).

There is a significant difference between subsection (b)1 and (b)2 of the Graves Amendment. The *Vargas* majority views subsection (b)2 of the Graves Amendment to reference only those state laws that make minimum liability insurance compulsory for the registration of vehicles by the lessors. Section (b)2 of the Graves Amendment does not impose such a requirement on lessors. Rather, that subsection specifies that the Graves Amendment does not preempt the law of any state that imposes liability on rental vehicle companies for failure to meet the financial responsibility or liability insurance requirements.

Section 324.021(9)(b)2 caps the liability of a rental car company for damages based on vicarious liability at $100,000.00 per person and $300,000.00 per incident, except where the lessee or motor vehicle operator is uninsured or has insurance limits of less that $500,000.00. In those cases, the lessor's financial responsibility is increased to an additional $500,000.00 in economic damages arising out of use of the motor vehicle. But subsection (b)2 does not require lessors to buy insurance for registration of vehicles, as subsection (b)1 of the Graves Amendment requires.

That the provisions of section 324.021(9) are financial responsibility laws is well illustrated by the 2008 amendment to section 324.021(9)(b) which added

subsection 3. That provision, like subsection 324.021(9)(b)2, increases the vehicle owner's liability, that is the owner's potential financial responsibility, if the vehicle operator is uninsured or has less than $500,000 insurance coverage. That provision specifies:

> The owner who is a natural person and loans a motor vehicle to any permissive user shall be liable for the operation of the vehicle or the acts of the operator in connection therewith only up to $100,000 per person and up to $300,000 per incident for bodily injury and up to $50,000 for property damage. If the permissive user of the motor vehicle is uninsured or has any insurance with limits less than $500,000 combined property damage and bodily injury liability, the owner shall be liable for up to an additional $500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the owner for economic damages shall be reduced by amounts actually recovered from the permissive user and from any insurance or self-insurance covering the permissive user. Nothing in this subparagraph shall be construed to affect the liability of the owner for his or her own negligence.

This new provision is similar to the provisions of subsection 324.021(9)(b)2 in that it establishes the responsibility of a motor vehicle owner who loans that vehicle to a permissive user. Subsection 3 is a financial responsibility provision, just as subsection 324.021(9)(b)2 is a financial responsibility provision.

The terms of the Graves Amendment itself recognize that insurance is not the only type of financial responsibility law. The Graves Amendment states that it does not supercede the law of any state imposing liability on business entities engaged in the business of renting or leasing motor vehicles for failure to meet the financial responsibility ***or*** liability insurance requirements under state law. If

Congress had intended the term "financial responsibility laws" to mean only liability insurance requirements, it would not have provided an exemption for financial responsibility ***or*** insurance standards. It would not have included the words "financial responsibility." By including both the terms, "financial responsibility" and "liability insurance requirements," Congress must have intended more than just liability insurance coverage.

When Congress provided that state financial responsibility law is not preempted by the Graves Amendment, it obviously was referring to state laws that impose financial responsibility by any method, not just insurance. In its own laws, Congress does not limit financial responsibility to liability insurance coverage. For instance, in 10 U.S.C.A. § 2110, regarding private businesses which provide logistical support to the Department of Defense, the statute provides:

> [The] Secretary may accept a bond without surety if the institution to which the property is issued furnishes to him satisfactory evidence of its financial responsibility.

In 38 U.S.C.A. § 7317(e) regarding contractors who provide hazardous research, the statute provides:

> Each contractor which is a party to an indemnification agreement under subsection (a) shall have and maintain financial protection of such type and in such amounts as the Secretary shall require to cover liability to third persons and loss of or damage to the contractor's property. The amount of financial protection required shall be the maximum amount of insurance available from private sources, except that the Secretary may establish a lesser amount, taking into consideration the cost and terms of private insurance. ***Such***

> ***financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures.*** [emphasis supplied]

33 U.S.C.A. § 2716 addresses the financial responsibility of any party responsible for a vessel over 300 tons, and provides:

> Financial responsibility under this section may be established by any one, or by any combination, of the following methods which the Secretary (in the case of a vessel) or the President (in the case of a facility) determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, ***or other evidence of financial responsibility.*** [emphasis supplied]

The statute regarding financial responsibility of licensees authorized to produce atomic energy or transport nuclear fuel, 42 U.S.C.A. § 2210, provides:

> Such primary financial protection may include private insurance, private contractual indemnities, self-insurance, ***other proof of financial responsibility,*** or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. [emphasis added]

Florida does not limit the term "financial responsibility" to liability insurance coverage. For example, section 324.031, Florida Statutes, permits owners of vehicles other than taxi cabs to prove financial responsibility by obtaining insurance, posting a bond, being self-insured, or depositing cash. Likewise, physicians are permitted to prove financial responsibility by several different methods, including liability insurance, maintenance of an escrow account, or an irrevocable letter of credit. § 458.320, Florida Statutes. The cited federal and

Florida statutes demonstrate that a "financial responsibility law" is any law that insures that a person is able to pay for damage caused by him.

In *Kramer v. General Motors Acceptance Corp.*, 572 So. 2d 1363, 1365 (Fla. 1990), this court explained that the dangerous instrumentality doctrine seeks to provide greater financial responsibility to pay for the carnage on our roads." In enacting chapter 86-229, Laws of Florida, the Legislature incorporated the dangerous instrumentality into Florida's financial responsibility law. With the enactment of section 324.021(9) as part of chapter 324, the dangerous instrumentality doctrine as modified by the Legislature became part of the financial responsibility law of the state of Florida. The Legislature established a reasonable method to insure that the lessor obtain insurance coverage.

Because section 324.021(9)(b)2 is a part of the chapter pertaining to Florida's financial responsibility plan, it is not preempted by the Graves Act. Accordingly, this court should quash the majority opinion in *Vargas v. Enterprise Leasing* and adopt the dissents authored by Judges Farmer and Hazouri.

B. The Eleventh Circuit's decision in *Garcia v. Vanguard,* is not binding on this court.

Enterprise Leasing will argue that the Eleventh Circuit's decision in *Garcia v. Vanguard Car Rental, U.S.A., Inc.*, 540 F.3d 1242 (11th Cir. 2008), *cert. denied*, 129 S.Ct. 1369, 173 L.Ed. 2d 591 (U.S. 2009), is controlling. It is not. A state court judge is not bound to follow decisions of the Eleventh Circuit Court of Appeals,

even on a matter of federal law. This court held in *Raymond James Financial Services, Inc. v. Saldukas*, 896 So. 2d 707, 710 (Fla. 2005), that decisions of the federal circuit courts are persuasive precedent, but they are not binding.

Vargas respectfully submits that the Eleventh Circuit decision in *Garcia* is not controlling because it is wrongly decided. In *Garcia*, the court held that section 324.021(9)(b) does not qualify as a financial responsibility law, and is not preempted. The court concluded that because 324.021(9)(b)2 merely induces, but does not require, rental companies to ensure that lessees purchase the requisite amount of insurance, the statute is not a financial responsibility law. In reaching this conclusion, the court ignored the fact that the statute is a part of the chapter that is entitled "Financial Responsibility" and that the provision is contained within the section dealing with "Definitions; Minimum Insurance Required."

The Eleventh Circuit also addressed constitutionality of the Graves Amendment. The court concluded that the Graves Amendment is constitutional. It held that the amendment is within Congress' power to regulate interstate commerce because commercial leasing of cars is an economic activity with substantial effect on interstate commerce.

C. The Graves Amendment is unconstitutional as a violation of the Commerce Clause.

If this court concludes that the Graves Amendment preempts Vargas' lawsuit, then this court should address the constitutional issue—whether Congress

had the power to enact the Graves Amendment. The majority opinion in this case erroneously concluded that the Graves Amendment is constitutional. The plaintiff submits that the Graves Amendment is outside the scope of the Commerce Clause and unconstitutionally intrudes on areas of traditional state control.

The *Vargas* majority upheld the constitutionality of the Graves Amendment, agreeing with the constitutional analysis of the Eleventh Circuit and district court in *Garcia v. Vanguard.* Two federal district court cases decided prior to the Eleventh Circuit's decision in *Garcia v. Vanguard* addressed constitutionality of the Graves Amendment and held that it violated Congress' powers under the Commerce Clause. In *Vanguard Car Rental, U.S.A. v. Huchon*, 532 F.Supp.2d 1371 (S.D. Fla. 2007), the trial judge determined that the Graves Amendment is an unconstitutional overreaching of Congress' power under the Commerce Clause. The court concluded that the amendment does not regulate the use of instrumentalities of interstate commerce. Rather, the Graves Amendment regulates tort liability. Similarly, in *Vanguard Car Rental, U.S.A. v. Drouin*, 521 F.Supp.2d 1343 (S.D. Fla. 2007), the court determined that the Graves Amendment is an unconstitutional violation of the commerce clause.

Pursuant to the Commerce Clause, Congress may regulate three categories of activity:

1) the use of the channels of interstate commerce;

> 2) the instrumentalities of interstate commerce, or persons or things in interstate commerce even though the threat may only come from intrastate activities; and
>
> 3) activities having a substantial relation to interstate commerce and that substantially effect interstate commerce.

United States. v. Lopez, 514 U.S. 549, 558-559, 115 S.Ct. 1624, 1629-1630 (1995). The regulation of vicarious liability by the Graves Amendment does not fall within the first two categories. Congress' authority to enact the Graves Amendment can only exist only under the third category as an activity that substantially effects interstate commerce.

The Supreme Court established a four-factor test for determination whether a regulated activity substantially effects interstate commerce, in evaluating a challenge to the constitutionality of a federal statute. *United States v. Morrison,* 529 U.S. 598, 610-612, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000). The four factors are:

> 1) Whether Congress made findings about the activity's impact on interstate commerce;
>
> 2) Whether the federal statute contains an "express jurisdictional element" limiting the statute's reach;
>
> 3) Whether the activity is commercial or economic by nature; and
>
> 4) Whether the connection between the activity and its effect on interstate commerce is attenuated.

Application of the *Morrison* four-pronged test mandates the conclusion that the Graves Amendment is unconstitutional and violates the Commerce Clause. Congress did not make findings about the impact of vicarious liability claims on the interstate car rental and leasing industries. *Vanguard Car Rental, U.S.A. v. Drouin,* 521 F.Supp.2d at 1349; *Vanguard Car Rental, U.S.A. v. Huchon,* 532 F.Supp.2d at 1380. The Graves Amendment does not contain an express jurisdictional element that limits the amendment's reach. *Drouin,* 521 F.Supp.2d at 1349; *Huchon,* 532 F.Supp.2d at 1380. The activity is arguably economic in nature. Rental and leasing companies may pass the expense of satisfaction of vicarious liability judgments onto customers. *Drouin*, 521 F.Supp.2d at 1349; *Huchon,* 532 F.Supp.2d at 1380. The *Drouin* and *Huchon* courts found that the connection between the regulated activity and its effect on interstate commerce is attenuated.

This court should adopt the reasoning of the *Drouin* and *Huchon* courts if it reaches the constitutional issue. The Graves Amendment fails to satisfy the *Morrison* test and is unconstitutional as violative of the Commerce Clause.

CONCLUSION

This court should quash the decision of the Fourth District Court of Appeal and answer the certified question no.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **U.S. mail** this _____ day of **July, 2009** to: **Mariano Garcia,** Gonzalez & Garcia, ABOGADOS HISPANOS USA, 939 Belvedere Road, West Palm Beach, FL 33405 (counsel for plaintiff); and **David C. Borucke,** Holland & Knight, P.O. Box 1288, Tampa, FL 33601 (counsel for defendant); **David V. King,** Cooke & King, 444 West Railroad Avenue, Suite 400, West Palm Beach, FL 33401 (counsel for defendant); **Roy D. Wasson,** Wasson & Associates, 28 West Flagler Street, Suite 600, Miami, FL 33130 (amicus for The Florida Justice Association); **Barbara Green,** 300 Sevilla Avenue, Suite 209, Coral Gables, FL 33134 (amicus for Ramon Villanueva); **Jimmy Middleton,** c/o Elizabeth Price (pro se defendant); and **Elizabeth Price,** 14541 SE 91st Terr., Summerfield, FL 34491 (pro se defendant).

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is written in 14 point "Times New Roman" font.

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