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 Reply Brief On The Merits

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TABLE OF CONTENTS

	PAGES
TABLE OF CITATIONS	iii
PREFACE	iv
ARGUMENT	1
Does the Graves Amendment, 49 USCA § 30106, preempt Section 324.021(9)(b)2, Florida Statutes (2007)?	
CONCLUSION	6
CERTIFICATE OF SERVICE	7
CERTIFICATE OF COMPLIANCE	7

TABLE OF CITATIONS

CASES	**PAGES**
Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996)	2
Susco Car Rental Sys. of Fla. v. Leonard, 112 So. 2d 832 (Fla. 1959)	1

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.

ARGUMENT

DOES THE GRAVES AMENDMENT, 49 U.S.C.A. § 30106, PREEMPT SECTION 324.021(9)(b)2, FLORIDA STATUTES (2007)?

In the interest of brevity, Vargas adopts the arguments set forth in the amicus curiae brief in support of petitioner of the Florida Justice Association.

Enterprise Leasing argues that the legislative history of the Graves Amendment expressly and unambiguously evinces Congress' intent to preempt the Florida statute. That argument is inaccurate. Is evident from the discussions on the house floor is that the Graves Amendment was aimed at state statutes, like that of New York, that permit imposition of unlimited vicarious liability damages against rental car companies. The Florida statute does not provide for unlimited vicarious liability damages.

The Graves Amendment clearly preempts state laws that impose vicarious liability on rental and leasing companies. But the Graves Amendment does not relieve rental and leasing companies from state imposed insurance responsibility. Under Florida common law, the lessor of the vehicle may be held vicariously liable under the dangerous instrumentality doctrine for negligent operation of a vehicle by a lessee. *Susco Car Rental Sys. of Fla. v. Leonard,* 112 So. 2d 832 (Fla. 1959). This common law principle has been augmented by the legislature. By

statute, a lessor of a vehicle who fails to ensure that the lessee meets statutory insurance conditions is vicariously liable. The legislature, in drafting section 324.021, a part of the financial responsibility chapter of the Florida Statutes, clearly manifested that this statute concerns the financial responsibility of lessors who allow the operation of motor vehicles on the public highways of Florida, as well as the minimum requirements of financial responsibility.

In *Medtronic, Inc. v. Lohr,* 518 U.S. 470 (1996), the United States Supreme Court explained the correct methodology for determining preemption

> "interpretation [of federal statutes for pre-emption] is informed by two presumptions about the nature of pre-emption. First, because the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law in causes of action. In all pre-emption cases, and particularly in those in which Congress has 'legislated … in a field which the States have traditionally occupied,' we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.' Although dissenting Justices have argued that this assumption should apply only to the question whether Congress intended any pre-emption at all, as opposed to questions concerning the scope of its intended invalidation of state law, w used a 'presumption against the pre-emption of state police power regulations' to support a narrow interpretation of such an express command in Cipollone. That approach is consistent with both federalism concerns and the historic primacy of state regulation of matters of health and safety
>
> "Second, our analysis of the scope of the statute's pre-emption is guided by our oft-repeated comment, that '[t]he purpose of Congress is the ultimate touchstone' in every pre-emption case. As a result, any understanding of the scope of a

> pre-emption statute must rest primarily on a fair understanding of congressional purpose.'" 518 U.S. at 485-486.

The operative principle for discerning federal preemption of state law involving the exercise of the police powers for public health and safety is: 1) there is a presumption against preemption of such state law unless Congress has made that intention clear and manifest; and 2) when Congress has clearly and manifestly stated an intent to preempt state law, even then the scope extent of that preemption must be narrowly interpreted. Application of these principles to the Florida statute results in the conclusion that the Graves Amendment does not preempt the Florida statute. There must be a clear, manifest intent on the part of Congress to preempt Florida law. Subsection B of the Graves Amendment evinces a clear, manifest intent not to preempt laws that impose financial responsibility on entities that lease motor vehicles when those entities fail to meet financial responsibility or liability insurance requirements imposed by state law.

The Truck Renting and Leasing Association, Inc., in its amicus brief filed in support of the respondent, addresses leases for a period of one year or longer pursuant to Section 324.021(9)(b)1, as well as leases for a period of less than one year pursuant to Section 324.021(9)(b)2. As noted in the amicus brief of Ramon Villanueva filed in support of the petitioner, the *Vargas* case involves a short-term lessor, not a long-term lessor.

TRALA argues that Florida's vicarious liability law increases the cost of doing business for all car and truck lessors regardless of where the principal place of business is located.[1] Its argument ignores the fact that the applicable Florida financial responsibility law imposes vicariously liability against the lessor of the vehicle only if the lessor fails to assure that the lessee purchases the requisite insurance coverage. This is true whether the lease is a long-term or a short-term lease. If lessors made sure that lessees had the requisite insurance, the cost of renting or leasing a vehicle would not be increased.

The effect of Florida's financial responsibility law is to assure that all injured persons are financially compensated. The Florida statute requires rental car companies to assure that there is financial responsibility by imposing on the rental car companies a requirement that there be underlying insurance provided by the lessee; otherwise, the rental car company is responsible up to the sum of $500,000.00, where a short-term lease is involved. The result of the Fourth District's opinion is to permit rental car companies to lease vehicles to uninsured drivers with no or minimal financial recourse for innocent victims if an accident occurs.

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[1] There were no hearings on the Graves Amendment. The house debate took 20 minutes. Commerce Clause Jurisprudence and the Graves Amendment: Implications for the Vicarious Liability of Car Leasing Companies, 18 U. Fla. J.L. & Pub. Pol'y 153 (2007).

As noted in the Congressional Record, New York state is one of the most active rental car markets in the country. In New York City, many, many people do not own cars. Consequently, they do not have automobile insurance coverage. If an uninsured person rents a motor vehicle and the rental car company does not require the renter to purchase liability coverage, the natural result is that innocent victims of motor vehicle accidents have no financial recourse.

TRALA complains that a press article stated that in order to reserve a vehicle in Brooklyn or the Bronx, one may face a surcharge of $60.00 or $80.00 per day over what the same car would rent for in the rest of the country. TRALA neglects to mention the reason for the surcharge — most renters/lessees in that market do not have motor vehicle insurance. Obviously, the surcharge is to provide insurance coverage where the renter does not have it.

TRALA complains that the additional cost in certain markets imposes a heavy toll on lessors and has resulted in fewer independent rental agencies operating in New York two years ago. It fails to explain how the cost of insurance and the state of the economy may have caused the decrease in lessors.

The suggestion that the Graves Amendment eliminates vicarious liability in order to impose a uniform legal structure under which lessors are not held liable, ignores the fact that the real effect and reason for the Graves Amendment was to protect big rental and leasing companies at the expense of innocent accident

victims. The Act was nothing more than a special interest law designed to protect the profitable car rental and leasing industry and to leave injured accident victims with no recourse, or very limited recourse.

What TRALA, Enterprise Leasing, and Avis urge this court to do is to make it possible for a motor vehicle lessor to turn its dangerous instrumentality over to an uninsured motor vehicle operator who can, in turn, wreak havoc on the Florida highways and catastrophically injure innocent victims with no liability on the part of the lessor who fails to assure that the lessee has the requisite insurance coverage. This court should decline to do so.

CONCLUSION

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

Respectfully submitted,

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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 **26th** day of **October, 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); **Elizabeth Price,** 14541 SE 91st Terr., Summerfield, FL 34491 (pro se defendant); **Mark A. Perry and Thomas M. Johnson, Jr.,** Gibson, Dunn & Crutcher, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036 (amicus for Avis Budget Group); and **Richard P. Schweitzer,** 1776 K. Street, N.W., Suite 800, Washington, D.C. 20006 (amicus for TRALA).

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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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