

STATE OF MICHIGAN

SUPREME COURT

*In re* CERTIFIED QUESTION FROM  
THE FOURTEENTH DISTRICT COURT  
OF APPEALS OF TEXAS.

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GLENN MILLER, ESTATE OF CAROLYN  
MILLER, SHAWN DEAN, JOHN  
ROLAND, and ALMA ROLAND,

Plaintiffs,

v

No. 131517

FORD MOTOR COMPANY,

Defendant.

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WEAVER, J. (*dissenting*).

I dissent from this Court's decision to answer a question certified from the Fourteenth District Court of Appeals of Texas.

I. CONSTITUTIONALITY

I would decline to answer the certified question in this matter because Michigan Court Rule MCR 7.305(B) represents an improper expansion of this Court's limited power under the Michigan Constitution to answer certain certified questions from the Governor and Legislature, and the majority's use of MCR 7.305(B) to answer a question certified by another state's intermediate appellate

court is unprecedented. I continue to question this Court’s authority to answer such questions.<sup>1</sup>

Michigan Court Rule 7.305 addresses “certified questions.” MCR 7.305(B) articulates the power the Michigan Supreme Court has created for itself to answer certified questions from other courts, stating:

(1) When a federal court, a state appellate court, or tribal court considers a question that Michigan law may resolve and that is not controlled by Michigan Supreme Court precedent, the court may on its own initiative or that of an interested party certify the question to the Michigan Supreme Court.

MCR 7.305 is a modified version of the Uniform Certification of Questions of Law Act (UCQLA), which provides states a model for court rules on certified questions of law.<sup>2</sup> The UCQLA has not been adopted by the people of Michigan by constitutional amendment, nor has it been adopted by the Michigan Legislature.

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<sup>1</sup> See, e.g., *Proposed Amendment of MCR 7.305*, 462 Mich 1208 (2000) (Weaver, J., dissenting); *In re Certified Question (Wayne Co v Philip Morris, Inc)*, 622 NW2d 518 (Mich, 2001) (Weaver, J., dissenting); *In re Certified Question (Kenneth Henes Special Projects Procurement, Marketing & Consulting Corp v Continental Biomass Industries, Inc)*, 468 Mich 109; 659 NW2d 597 (2003) (Weaver, J., concurring in the result only); *In re Certified Questions (Melson v Prime Ins Syndicate, Inc)*, 472 Mich 1225 (2005) (Weaver, J., concurring).

<sup>2</sup> The “power to answer” section of the UCQLA, 95 § 3, provides:

The [Supreme Court] of this State may answer a question of law certified to it by a court of the United States or by [an appellate]  
(continued...)

MCR 7.305(B) improperly expands this Court’s power by granting the Michigan Supreme Court the authority to answer a certified question beyond the scope authorized by the Michigan Constitution. Article 3, § 8 of the Michigan Constitution states:

Either house of the legislature or the governor may request the opinion of the supreme court on important questions of law upon solemn occasions as to the constitutionality of legislation after it has been enacted into law but before its effective date.

MCR 7.305(B) goes beyond the duties articulated in article 3, § 8 because it undeniably expands the scope of those who may request answers to questions of law, when the questions can be answered, and what types of questions may be answered.

MCR 7.305(B) broadly permits “a federal court, state appellate court, or tribal court” to certify questions of law to the Supreme Court of Michigan, while

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(...continued)

[the highest] court of another State [or of a tribe] [or of Canada, a Canadian province or territory, Mexico, or a Mexican state], if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling appellate decision, constitutional provision, or statute of this State.

The UCQLA suggests that “an appellate court of another State” or “the highest court of another State” may be the appropriate certifying body. Further, the UCQLA suggests that the answer to a certified question would be determinative.

the Michigan Constitution only allows for advisory opinions to issue in response to certain requests from the state Legislature or the Governor. Further, MCR 7.305(B) allows an issuing body to ask “a question that Michigan law may resolve and that is not controlled by Michigan Supreme Court precedent.” Article 3, § 8, on the other hand, constrains the question of law to be one that is “important” and rests on the “constitutionality of legislation after it has been enacted into law but before its effective date.” Moreover, MCR 7.305(B) lacks any limiting language on when the Court may answer a certified question, leaving the door and the docket open to the whims of the majority. In contrast, the Michigan Constitution limits advisory opinions by the Supreme Court, on the constitutionality of legislation, to be issued only on “solemn occasions” and “after [legislation] has been enacted into law but before its effective date.” Const 1963 art 3, § 8. MCR 7.305 unduly expands the scope of this Court’s judicial powers.

Furthermore, MCR 7.305(B) does not and cannot give binding effect to Michigan Supreme Court opinions answering certified questions. Any such answers are merely advisory and do not have binding or precedential value. Thus, this Court’s opinion answering the question certified by the Texas Court of Appeals has no more precedential value than a brief submitted to that court.<sup>3</sup>

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<sup>3</sup> As noted by Justice Levin in *In re Certified Question (Bankey v Storer Broadcasting Co)*, 432 Mich 438, 467-471; 443 NW2d 112 (1989),

(continued...)

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In the instant case, the response to the certified question will not determine the controversy. No binding order or judgment will be entered. The response will not be made effective by a final judgment, decree or process of this Court. No decision of this Court that will be binding on the parties or that will be res judicata of an issue will be entered by the Court. The response does not end the controversy, and this Court has no way of enforcing its response to the certified question by appropriate means.

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It appears that because the response to the certified question in the instant case would not be determinative of the cause or controversy and, even if it were, the response cannot be enforced through an order or judgment of this Court, that the response to this certified question is not the exercise of judicial power but closer to an advisory opinion.

The 1908 Constitution did not authorize this Court to issue advisory opinions. The 1963 Constitution authorizes the Court to provide the Legislature or the Governor with an advisory opinion.

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Advisory opinions are not precedentially binding under the doctrine of stare decisis.<sup>18</sup>

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<sup>18</sup> *Advisory Opinion on Constitutionality of 1975 PA 227*, 396 Mich 465; 242 NW2d 3 (1976); *Cassidy v McGovern*, 415 Mich 483; 330 NW2d 22 (1982), “modified” on other grounds *DiFranco v Pickard*, 427 Mich 32, 58; 398 NW2d 896 (1986).

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## II. OTHER CONCERNS BEYOND CONSTITUTIONALITY

This Court's decision to answer a certified question from another state's intermediate appellate court is unprecedented. This Court's decision to use MCR 7.305(B) to answer the certified question in this case exceeds how other states have answered certified questions. Although MCR 7.305(B) grants this Court the authority to answer a certified question from "a federal court, state appellate court, or tribal court," the power is not constitutionally derived and goes beyond how any other state has ever applied certified question laws.

Forty-six states have adopted or created a modified version of the UCQLA, § 1-14 (1995) and not one single state has utilized the reach of its rule as broadly as the majority does here today.<sup>4</sup> By answering a certified question from an intermediate appellate court of another state, the majority does what no other

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<sup>4</sup> See Alabama, ARAP Rule 18; Alas R App Proc 407; Ariz Sup Ct R 27; Arkansas, AR S Ct & Ct App Rule 6-8; CAL Rule of Court 8.548; Colorado, CAR 21.1; Conn Practice Book § 82-1; Del Sup Ct R 41; Fla R App P 9150; Ga Sup Ct Rule 46; Hawaii, HRAP Rule 13; Idaho, IAR Rule 12.2; Ill Sup Ct Rule 13; Ind R App P 64; Iowa Code § 684A.1; Kansas, KSA § 60-3201; Ky CR Rule 76.37; La Sup Ct R XI; Me R App P 25; Md Courts and Judicial Proceedings Code Ann § 12-603; Massachusetts, ALM Sup C Rule 1:03; Michigan, MCR 7.305(B); Miss, MRAP 20(a); Mont Code Ann, Ch 21, Rule 44; Nebraska, RRS Neb § 24-219; Nev RAP 5; NH Sup Ct Rule 34; NM RAP 12-607; ND R App P 47; Ohio S Ct R XVIII; Oklahoma, 20 Okl St § 1602; Oregon, ORS § 28.200; PA Sup Ct Internal Operating Proc 10; RI Sup Ct Art I, Rule 6; South Carolina, SCACR 228; SD Codified Laws § 15-24A-1; Tenn Sup Ct R 23, § 1; Tex R App P 58; Utah R App P 41; Vermont, VRAP Rule 14; Va Sup Ct R Pt 5, 5:42; Washington, Rev Code Wash (ARCW) § 2.60.020; W VA Code § 51-1A-3; Wis Stat § 821.01; Wyoming, WRAP 11.01.

state has done even when they have been explicitly granted the power to do so. Nineteen states, including Michigan, permit another state to certify questions of law to the supreme court of that state.<sup>5</sup> Of those 19 states, eight restrict the asking court to the “court of last resort” or the “highest appellate court” of another state.<sup>6</sup> Five states, including Michigan, each allows “an” or “any appellate court” of another state to certify questions of law to the supreme court of that state—by reference an intermediate appellate court may be authorized to certify a question to the state supreme court.<sup>7</sup> From my research it appears that *no state has ever answered a question certified to it by another state intermediate appellate court.* The majority’s decision today to answer a question certified by the Texas Court of Appeals is unprecedented. It leaves to another time for one to ponder why the

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<sup>5</sup> See CAL Rule of Court 8.548; Conn Practice Book § 82-1; Del Sup Ct R 41; Ga Sup Ct Rule 46; Iowa Code § 684A.1; Kansas, KSA § 60-3201; Ky CR Rule 76.37; Md Courts and Judicial Proceedings Code Ann § 12-603; Massachusetts, ALM Sup Ct Rule 1:03; Michigan, MCR 7.305(B); Mont Code Ann, Ch 21, Rule 44; NM RAP 12-607; ND R App P 47; Oklahoma, 20 Okl St § 1602; Oregon, ORS § 28.200; South Carolina, SCACR 228; Va Sup Ct R Pt 5, 5:42; W VA Code § 51-1A-3; Wis Stat § 821.01.

<sup>6</sup> See CAL Rule of Court 8.548; Conn Practice Book § 82-1; Del Sup Ct R 41; Ky CR Rule 76.37; Massachusetts, ALM Sup Ct Rule 1:03; Mont Code Ann, Ch 21, Rule 44; Va Sup Ct R Pt 5, 5:42; Wis Stat § 821.01.

<sup>7</sup> See Ga Sup Ct Rule 46; Md Courts and Judicial Proceedings Code Ann § 12-603; Michigan, MCR 7.305(B); NM RAP 12-607; Oklahoma, 20 Okl St § 1602.

majority chooses to reach so far “deep into the heart of Texas” to answer a question posed by the Texas Court of Appeals, an intermediate appellate court.

### III. CONCLUSION

I dissent from this Court’s decision to answer the certified question in this case because MCR 7.305(B) goes beyond this court’s constitutional authority to answer certified questions and the majority’s decision to answer the certified question in this case is unprecedented and unnecessary.

Elizabeth A. Weaver

Kelly, J., concurred with part II of Justice Weaver’s opinion.