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IN THE SUPREME COURT OF OHIO

Case No. 2021-0497

AMANDA BRANDT,	:	
	:	
Plaintiff-Appellant,	:	On Appeal from the Cuyahoga
	:	County Court of Appeals,
v.	:	Eighth Appellate District
	:	Case No. CA 20 109517
ROY POMPA,	:	
	:	
Defendant-Appellee.	:	

BRIEF OF *AMICI CURIAE*
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
NFIB SMALL BUSINESS LEGAL CENTER,
AMERICAN TORT REFORM ASSOCIATION,
COALITION FOR LITIGATION JUSTICE, INC., AND
AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION
IN SUPPORT OF APPELLEE'S POSITION
ON THE CONSTITUTIONALITY OF R.C. 2315.18

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Barnett v. Hills, 79 N.E.2d 691 (Ohio Ct. App. 1947) 7

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Bobbitt v. Maher Beverage Co., 89 N.E. 583 (Ohio 1949)...7

Bova v. Roig, 604 N.E.2d 1 (Ind. App. 1992)...16

Boyd v. Bulala, 877 F.2d 1191 (4th Cir. 1989)...21

Busch v. McInnis Waste Sys., Inc., 468 P.3d 419 (Or. 2020)..20

Butler v. Flint Goodrich Hosp. of Dillard Univ., 607 So. 2d 517 (La. 1992) 16

C.J. v. Dep't of Corrections, 151 P.3d 373 (Alaska 2006) 16, 18-19

Condon v. St. Alexius Med. Ctr., 926 N.W.2d 136 (N.D. 2019).......................................16, 18

Coppock v. Horine, 32 Ohio L. Abs. 109, 1940 WL 2942 (Ohio Ct. App. 1940) 7

Davis v. Omitowoju, 883 F.2d 1155 (3d Cir. 1989)..21

DRD Pool Serv., Inc. v. Freed, 5 A.3d 45 (Md. 2010) 16, 17

Estate of Verba v. Ghaphery, 552 S.E.2d 406 (W. Va. 2001) 16

Etheridge v. Med. Ctr. Hosps., 376 S.E.2d 525 (Va. 1989)..16, 17

Evans ex rel. Kutch v. State, 56 P.3d 1046 (Alaska 2002) 16

Fein v. Permanente Med. Group, 695 P.2d 665 (Cal. 1985) 16

Garhart ex rel. Tinsman v. Columbia/HealthONE, L.L.C., 95 P.3d 571 (Colo. 2004) 16

Gilbert v. DaimlerChrysler Corp., 685 N.W.2d 391 (Mich. 2004)..13

Gourley ex rel. Gourley v. Neb. Methodist Health Sys., Inc., 663 N.W.2d 43 (Neb. 2003)....16

Green v. N.B.S., Inc., 976 A.2d 279 (Md. 2009) 16

Greenville Elec. Light & Power Co. v. Puterbaugh,
8 Ohio L. Abs. 359, 1930 WL 2861 (Ohio Ct. App. 1930) 8

Grossnickle v. Village of Germantown, 209 N.E.2d 442 (Ohio 1965) 9

Hilburn v. Enerpipe Ltd., 442 P.3d 509 (Kan. 2019)...20

Hoffman v. United States, 767 F.2d 1431 (9th Cir. 1985) 21

Ind. Patient's Comp. Fund v. Wolfe, 735 N.E.2d 1187 (Ind. App. 2000) 16

Johnson v. St. Vincent Hosp., 404 N.E.2d 585 (Ind. 1980), *overruled on other grounds by In re Stephens*, 867 N.E.2d 148 (Ind. 2007) 16

Judd v. Drezga, 103 P.3d 135 (Utah 2004).. 16-17

Kirkland v. Blaine Cnty. Med. Ctr., 4 P.3d 1115 (Idaho 2000) 16, 19

Knowles v. United States, 544 N.W.2d 183 (S.D. 1996), superseded by statute....................16

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Learmonth v. Sears, Roebuck & Co., 710 F.3d 249 (5th Cir 2013).......................................21

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MacDonald v. City Hosp., Inc., 715 SE 2d 405 (W. Va. 2011)..16, 20

Mayo v. Wisconsin Injured Patients & Families Comp. Fund,
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McClay v. Airport Mgm't Servs., LLC, 596 S.W.3d 686 (Tenn. 2020) 21

Murphy v. Edmonds, 601 A.2d 102 (Md. 1992) 16

Nelson v. Keefer, 451 F.2d 289 (3d Cir. 1971) 9

N. Broward Hosp. Dist. v. Kalitan, 219 So. 3d 49 (Fla. 2017)...20

Oliver v. Cleveland Indians Baseball Co., LP, 915 N.E.2d 1205 (Ohio 2009) 16

Oliver v. Magnolia Clinic, 85 So. 3d 39 (La. 2012) 16

Ordinola v. University Physician Assocs., 625 S.W.3d 445 (Mo. 2021)..........................16, 20

Osman v. Cook, 43 N.E.2d 641 (Ohio Ct. App. 1942) 7

Owen v. United States, 935 F.2d 734 (5th Cir. 1991) 21

Patton v. TIC United Corp., 77 F.3d 1155 (10th Cir. 1996)...18, 21

Peters v. Saft, 597 A.2d 50 (Me. 1991) 17

Phillips v. Mirac, Inc., 685 N.W.2d 174 (Mich. 2004) 16

Portsmouth Gas Co. v. Maddox, 185 N.E. 527 (Ohio Ct. App. 1930) 8

Pulliam v. Coastal Emer. Servs. of Richmond, Inc., 509 S.E.2d 307 (Va. 1999)....................16

Quackenbush v. Super. Ct. (Congress of Cal. Seniors), 60 Cal App. 4th 454 (1997).............16

Robinson v. Charleston Area Med. Ctr., 414 S.E.2d 877 (W. Va. 1991)..............................16

Rose v. Doctors Hosp., 801 S.W.2d 841 (Tex. 1990)..16

Scharrel v. Wal-Mart Stores, Inc., 949 P.2d 89 (Colo. App. 1998)......................................16

Schmidt v. Ramsey, 860 F.3d 1038 (8th Cir. 2017) 21

Scholz v. Metro. Pathologists, P.C., 851 P.2d 901 (Colo. 1993)..16

Schweich v. Ziegler, Inc., 463 N.W.2d 722 (Minn. 1990)...16

Siebert v. Okun, 485 P.3d 1265 (N.M. 2021) 16-17

Simpkins v. Grace Brethren Church of Del., 75 N.E.3d 122 (Ohio 2016) .... *passim*

Smith v. Botsford Gen. Hosp., 419 F.3d 513 (6th Cir. 2005)..21

Stoll v. Balazs, 167 N.E. 522 (Ohio Ct. App. 1929) 8

Tam v. Eighth Jud. Dist. Ct., 358 P.3d 234 (Nev. 2015) 16, 17

Watts v. Lester E. Cox Med. Ctrs., 376 S.W.3d 633 (Mo. 2012), superseded by statute 20

Wayt v. DHSC, 122 N.E.3d 92 (Ohio 2018) 5, 23

Wessels v. Garden Way, Inc., 689 N.W.2d 526 (Mich. Ct. App 2004) 16

Zdrojewski v. Murphy, 657 N.W.2d 721 (Mich. Ct. App. 2002)...16

Statutes

Alaska Stat. § 09.17.010 ....13, 15

Alaska Stat. § 09.55.549 13

Cal. Civ. Code § 3333.2............................13, 15

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Colo. Rev. Stat. § 13-64-302 13

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N.C. Gen. Stat. § 90-21.19............................13

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Tenn. Code Ann. § 29-39-102 ....13, 15

Tex. Civ. Prac. & Rem. Code § 74.301 14

Utah Code § 78B-3-410..14

Va. Code Ann § 8.01-581.15 14

W. Va. Code Ann. § 55-7B-8 14

Wis. Stat. § 893.55..14

Other Authorities

Ronald J. Allen & Alexia Brunet Marks, *The Judicial Treatment of Noneconomic Compensatory Damages in the Nineteenth Century*, 4 J. Empirical Legal Stud. 365 (2007) 6-7

Ronen Avraham, *An Empirical Study of the Impact of Tort Reforms on Medical Malpractice Settlement Payments*, 36 J. Legal Stud. S183 (June 2007)......................14

Robert Barbieri, *Professional Liability Payments in Obstetrics and Gynecology*, 107 Obstetrics & Gynecology 578 (Mar 2006) 14

Mark Behrens, *Medical Liability Reform: A Case Study of Mississippi*, 118 Obstetrics & Gynecology 335 (Aug 2011) 14

Mark A. Behrens, Cary Silverman & Christopher E. Appel, *Summation Anchoring: Is it Time to Cast Away Inflated Requests for Noneconomic Damages?*, 44 Am. J. Trial Advoc. 321 (2021).. 9-10

Melvin M. Belli, *The Adequate Award*, 39 Cal. L. Rev. 1 (1951)...8

William Bernet & David Corwin, *An Evidence-Based Approach for Estimating Present and Future Damages from Child Sexual Abuse*, 34 J. Am. Academy of Psychiatry & L. 224 (2006) 22

John Campbell et al., *Time is Money: An Empirical Assessment of Non-Economic Damages Arguments*, 95 Wash. U. L. Rev. 1 (2017)............................9

Gretchen B. Chapman & Brian H. Bornstein, *The More You Ask for, the More You Get: Anchoring in Personal Injury Verdicts*, 10 Applied Cognitive Psychology 519 (1996)..9

Oscar G. Chase, *Helping Jurors Determine Pain and Suffering Awards*, 23 Hofstra L. Rev. 763 (1995) 11

Thomas H. Cohen, *Tort Bench and Jury Trials in State Courts*, 2005 (U.S. Dep't of Justice, Bureau of Justice Stat., Nov. 2009), https://www.bjs.gov/content/pub/pdf/tbjtsc05.pdf..10

Telis Demos, *The Specter of Social Inflation Haunts Insurers*, Wall St. J., Dec. 27, 2019 10

Dan B. Dobbs & Robert L. Caprice, Law of Remedies (3d ed. 2018) 11

William Encinosa & Fred Hellinger, *Have State Caps on Malpractice Awards Increased the Supply of Physicians?*, 24 Health Aff. 250 (2005)...............................14

Steven Farmer et al., *Association of Medical Liability Reform with Clinician Approach to Coronary Artery Disease Management*, 10 JAMA Cardiology E1 (June 2018) 14-15

Stanley Ingber, *Rethinking Intangible Injuries: A Focus on Remedy,* 73 Cal. L. Rev. 772 (1985) 4

Carly N. Kelly & Michelle M. Mello, *Are Medical Malpractice Damages Caps Constitutional? An Overview of State Litigation*, 33 J. L. Med. & Ethics 515 (2005) 20

Joseph H. King, Jr., *Counting Angels and Weighing Anchors: Per Diem Arguments for Noneconomic Personal Injury Tort Damages*, 71 Tenn. L. Rev. 1 (2003).............9

Joseph H. King, Jr., *Pain and Suffering, Noneconomic Damages, and the Goals of Tort Law*, 57 S.M.U. L. Rev. 163 (2004) 8, 11

Lynn Langton & Thomas H. Cohen, *Civil Bench and Jury Trials in State Courts*, 2005 (U.S. Dep't of Justice, Bureau of Justice Stat., Apr. 9, 2009), https://www.bjs.gov/content/pub/pdf/cbjtsc05.pdf.. 9-10

Meredith L Kilgore et al., *Tort Law and Medical Malpractice Insurance Premiums,* 43 Inquiry 255 (2006) 14

Michelle Mello, *Medical Malpractice: Impact of the Crisis and Effect of State Tort Reforms,* Research Synthesis Rep No. 10 (Robert Wood Johnson Found 2006), https://www.rwjf.org/en/library/research/2006/05/medical-malpractice-impact-of-crisis.html 14

Philip L. Merkel, *Pain and Suffering Damages at Mid-Twentieth Century: A Retrospective Review of the Problem and the Legal Academy's First Responses*, 34 Cap. U. L. Rev. 545 (2006) 6, 8

Paul Niemeyer, *Awards for Pain and Suffering: The Irrational Centerpiece of Our Tort System,* 90 Va. L. Rev. 1401 (2004) 10, 13

Marcus L. Plant, *Damages for Pain and Suffering*, 19 Ohio St L.J. 200 (1958) 8

Restatement (Second) of Torts § 903 (1965) 4

Shawn Rice, *Nuclear Verdicts Drive Need for Insurers' Litigation Change*, Law360, Sept. 8, 2021, https://www.law360.com/insurance-authority/articles/1418518/nuclear-verdicts-drive-need-for-insurers-litigation-change 10

Victor E. Schwartz & Leah Lorber, *Twisting the Purpose of Pain and Suffering Awards: Turning Compensation Into 'Punishment'*, 54 S.C. L. Rev. 47 (2002) 12

Samuel Stebbins, *What Does it Take to be Considered Rich in Your State?*, USA Today, Nov. 20, 2020, https:// www.usatoday.com/story/money/2020/11/20/income-it-takes-to-be-considered-rich-in-every-state/114967522/ 12

Ronald Stewart et al., *Tort Reform is Associated with Significant Increases in Texas Physicians Relative to the Texas Population*, 17 J Gastrointest. Surg. 168 (2013) 14

Stephen D. Sugarman, *A Comparative Look at Pain and Suffering Awards*, 55 DePaul L. Rev. 399 (2006) 10

Neil Vidmar, *Empirical Evidence on the Deep Pockets Hypothesis: Jury Awards for Pain and Suffering in Medical Malpractice Cases*, 43 Duke L.J. 217 (1993) 11

U.S. Census, Historical Income Tables: Households, tbl. H-8, Median Household Income by State, https://www2.census.gov/programs-surveys/cps/tables/time-series/historical-income-households/h08.xls 12

U.S. Dep't of Health & Human Servs, *Confronting the New Health Care Crisis: Improving Health Care Quality and Lowering Costs by Fixing Our Medical Liability System* 15 (2002), https://aspe.hhs.gov/system/files/pdf/72891/litrefm.pdf 14

U.S. Dep't of Labor, Bureau of Labor Stat., CPI Inflation Calculator, https://data.bls.gov/cgi-bin/cpicalc.pl 7

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici represent businesses, insurers, and others that are concerned with the predictability and fairness of Ohio's civil justice system. *Amici* have a substantial interest in the constitutionality of R.C. 2315.18, which advances these goals by providing a reasonable limit on the subjective and immeasurable portion of awards in personal injury cases—those awarded for noneconomic damages—except in cases involving "permanent and substantial physical deformity" or "permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities." R.C. 2315.18(B)(3). Plaintiff-Appellant and supporting *amici* invite the Court to disregard stare decisis by either finding this law facially unconstitutional or, through finding the limit unconstitutional as applied in this case, judicially creating an exception for cases that do not reach the level of catastrophic injury set by the legislature. But the extremely sympathetic facts of this case should not blind this Court to the enormous consequences of that invitation: Invalidating the law or opening the door to a vague new exception will expose businesses, nonprofits, and others to unlimited and unpredictable awards and excessive settlement demands in personal injury lawsuits when no more than negligence is alleged.

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The NFIB Small Business Legal Center, a nonprofit, public interest law firm established to protect the rights of America's small-business owners, is the legal arm of the National Federation of Independent Business (NFIB). NFIB is the nation's oldest and largest organization dedicated to representing the interests of small-business owners throughout all fifty states. Members of NFIB own a wide variety of America's independent businesses from manufacturing firms to hardware stores.

The American Tort Reform Association (ATRA) is a broad-based coalition of businesses, municipalities, associations, and professional firms that have pooled their resources to promote fairness, balance, and predictability in civil litigation.

The Coalition for Litigation Justice, Inc. is a nonprofit association formed by insurers in 2000 to address and improve the litigation environment for asbestos and other toxic tort claims.[1] The Coalition files *amicus* briefs in important cases that may have a significant impact on the mass tort litigation environment.

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions – protecting families, communities, and businesses in the U.S. and across the globe.

STATEMENT OF THE CASE AND FACTS

Amici summarize the facts and procedural history relevant to this brief as follows. This case raises the constitutionality of Ohio's statutory limit on noneconomic damages, R.C. 2315.18,

[1] The Coalition includes Century Indemnity Company; Allianz Reinsurance America, Inc.; Great American Insurance Company; Nationwide Indemnity Company; Resolute Management, Inc., a third-party administrator for numerous insurers; and TIG Insurance Company.

as applied to a $134 million verdict in favor of a survivor of childhood sexual abuse against a convicted felon who has been sentenced to life in prison. The award included $14 million in noneconomic damages prior to enactment of the statutory limit and $20 million in noneconomic damages following enactment of the statutory limit, plus $100 million in punitive damages. *See* Final Judgment Entry at 2 (Ct. of Common Pleas, Jan. 21, 2020). The trial court applied the statutory limit to the $20 million portion of the award, reducing that amount to $250,000. *Id.*[2] The trial court also awarded plaintiff $194,920 in attorney fees and $11,941.43 in litigation expenses, entering judgment for a total of $114,456,861.43 after applying the noneconomic damage limit. *Id.* Plaintiff challenges the constitutionality of applying R.C. 2315.18 to reduce the $20 million portion of the award.

The Court of Appeals affirmed, applying the statutory text of R.C. 2315.18 and adhering to this Court's rulings in *Arbino v. Johnson & Johnson*, 880 N.E.2d 420 (Ohio 2007), and *Simpkins v. Grace Brethren Church of Del.*, 75 N.E.3d 122 (Ohio 2016), which upheld the constitutionality of the statutory limit facially and as applied in the context of a childhood sexual abuse case. As in *Simpkins*, the Court of Appeals found that while the Plaintiff undoubtedly suffered emotional and psychological injuries as a result of sexual abuse that are real and serious, these injuries did not reach the level required by R.C. 2315.18 that permit a court to set aside the cap. *See* J. Entry & Op. at ¶¶ 45-51 (Mar. 18, 2021). The record indicated that while the Plaintiff continues to experience limitations as a result of the abuse, she has been able to work, complete classes, and have a family, and therefore it "appears that she is able to independently care for herself and perform life-sustaining activities." *Id.* ¶ 48. For this reason, even if her injuries are considered

[2] R.C. 2315.18 limits noneconomic damages in tort actions to $250,000 or three times the amount of economic loss up to a maximum of $350,000 for each plaintiff or $500,000 per occurrence.

"physical" injuries under the statute, the Court of Appeals found that the statutory limit applied as it would in other cases involving substantial, but not catastrophic, injuries. *See id.* at ¶¶ 45-51.

SUMMARY OF ARGUMENT

"One cannot deny that noneconomic-damages awards are inherently subjective and difficult to evaluate." *Arbino*, 880 N.E.2d at 437. "There is no scale by which the detriment caused by suffering can be measured and hence there can only be only a very rough correspondence between the amount awarded as damages and the extent of the suffering." Restatement (Second) of Torts § 903 cmt. a (1965). Juries are "left with nothing but their consciences to guide them." Stanley Ingber, *Rethinking Intangible Injuries: A Focus on Remedy,* 73 Cal. L. Rev. 772, 778 (1985).

Historically, noneconomic damage awards were modest and noncontroversial. Over several decades, however, these awards have become inflated to the point that they outpace other types of liability exposure. The unpredictability of noneconomic damages, the disparity of results for the same or similar injuries, and the potential for runaway awards threaten the economic stability of businesses, the medical profession, and the affordability of liability insurance. Open-ended uncertainty also poses an obstacle to the ability of parties to settle cases and avoid time-consuming, expensive litigation. For these reasons, many states place reasonable and rational upper limits on such awards.

When the Ohio legislature enacted R.C. 2315.18, it struck a careful balance. The legislature left uncapped all economic recoveries, including for past and future medical care and treatment expenses, lost earning capacity, or any "other care, treatment, services, products, or accommodations as a result of an injury." R.C. 2315.18(A)(2)(b). Economic damage awards, particularly for lifelong injuries, whether physical or psychological, can be substantial and are fully

recoverable. The legislature sought to maintain predictability in the civil justice system and economic stability for all Ohioans by choosing a considerable, but not unlimited, remedy for the subjective, non-quantifiable portion of an award.

The legislature provided two exceptions to the statutory limit to address extreme cases involving plaintiffs with catastrophic injuries. The first exception applies to cases involving "permanent and substantial physical deformity," such as "the loss of use of a limb, or loss of a bodily organ system." These types of injuries are objectively identifiable. The second exception applies to cases involving "permanent physical functional injury." R.C. 2315.18((B)(3)(a). While this exception provides more flexibility to lift the cap, its scope is cabined by a requirement that the injury "permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities." R.C. 2315.18(B)(3)(b). As the Court of Appeals found, while the Plaintiff has experienced serious injuries, her injuries do not reach this standard.

Upholding R.C. 2315.18 facially and as applied in this case is consistent with this Court's precedent, which has twice affirmed the statute's constitutionality, including in the same context presented here. *See Simpkins v. Grace Brethren Church of Del.*, 75 N.E.3d 122 (Ohio 2016); *Arbino v. Johnson & Johnson*, 880 N.E.2d 420 (Ohio 2007). It is also consistent with *Wayt v. DHSC*, 122 N.E.3d 92 (Ohio 2018), in which this Court rejected an invitation to exclude cases alleging intentional torts from the statutory limit. In addition, reaffirming the constitutionality of R.C. 2315.18 is in line with the decisions of most courts across the country and respects the legislature's legitimate role in shaping the civil justice system.

Accepting Plaintiff-Appellant's invitation to abandon stare decisis and nullify the statutory limit would have significant consequences outside of the sympathetic context in which she brings her suit—lawsuits against perpetrators of childhood sexual abuse. Finding the statute facially

unconstitutional would have the ripple effect of exposing businesses of all sizes, nonprofits, and others to unpredictable, unlimited damages for subjective pain and suffering that results from negligence, and not a higher level of fault, in a wide range of cases. And judicially creating a new exception to the statutory limit—one that lifts the cap in cases that do not involve permanent physical injuries or injuries that prevent a person from independently caring for herself and performing life-sustaining activities—would also have widespread implications and severely undermine the effectiveness of the statute.

Importantly, the legislature has already provided an exception to Ohio's statutory limit on *punitive* damages for crime victims, allowing them to obtain uncapped multimillion-dollar awards to punish those who are convicted of, or plead guilty to, a felony, as occurred here. *See* R.C. 2315.21(D)(6). If there is to be an exemption from Ohio's statutory limit on *noneconomic* damages as well, it is the job of the legislature, not this Court, to craft it in a manner that is consistent with sound public policy and avoids unanticipated consequences.

ARGUMENT

I. NONECONOMIC DAMAGE LIMITS WERE ENACTED IN RESPONSE TO A RISE IN PAIN AND SUFFERING AWARDS AND THEIR UNPREDICTABILITY

A. Historically, Noneconomic Damage Awards Paled in Comparison to Amounts Awarded Today

Historically, the availability of noneconomic damages and factfinders' inability to objectively measure pain and suffering did not raise serious concern because "personal injury lawsuits were not very numerous and verdicts were not large." Philip L. Merkel, *Pain and Suffering Damages at Mid-Twentieth Century: A Retrospective Review of the Problem and the Legal Academy's First Responses*, 34 Cap. U. L. Rev. 545, 560 (2006). Further, prior to the twentieth century, courts often reversed large noneconomic awards. *See* Ronald J. Allen & Alexia Brunet

Marks, *The Judicial Treatment of Noneconomic Compensatory Damages in the Nineteenth Century*, 4 J. Empirical Legal Stud. 365, 369 (2007) (finding "literally no cases affirmed on appeal prior to 1900 that plausibly involved noneconomic compensatory damages in which the total damages (noneconomic and economic combined) exceeded $450,000" in 2007 dollars (about $610,000 today)).

Early awards in Ohio are consistent with this national experience. For example, in 1942, the Court of Appeals affirmed an $11,000 award (about $191,000 today)[3] to a young plaintiff who suffered a fractured skull and brain injuries as a result of a collision with an ambulance. *See Osman v. Cook*, 43 N.E.2d 641, 645 (Ohio Ct. App. 1942). That award provided compensation for his medical expenses, his "great pain and suffering" following the accident, and the expectation that he would continue to suffer in the future. *See id.* In 1949, this Court referred to a $40,000 award for both economic and noneconomic damages (about $460,000 today) as "very substantial," and declined to modify it, when awarded to a plaintiff who, at age 21, developed "a tumor over his right shoulder, one leg shorter than the other, an atrophied thigh, a tilted pelvis and a deviation of the spinal column, not to mention other disabilities and disfigurements," all due to an automobile accident. *Bobbitt v. Maher Beverage Co*., 89 N.E. 583, 587 (Ohio 1949). There are numerous other examples of Ohio appellate courts finding jury awards for severe injuries excessive or affirming total damage awards for such injuries at levels that pale in comparison to today's multimillion-dollar noneconomic damage awards.[4]

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[3] All adjustments for inflation in this brief are computed through the U.S. Bureau of Labor Statistics CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm.

[4] *See, e.g., Barnett v. Hills,* 79 N.E.2d 691, 692 (Ohio Ct. App. 1947) (affirming $17,500 award (about $208,000 today) to 24-year old plaintiff who, as a result of a car accident, was permanently disfigured and would suffer pain as long as she lived, would be unable to have children, and permanently lost her ability to work); *Coppock v. Horine,* 32 Ohio L. Abs. 109, 111, 1940 WL 2942 (Ohio Ct. App. 1940) (remitting $12,000 award to $10,000 (about $196,000 today)

B. Noneconomic Damage Awards Have Risen Since the 1950s

The average size of pain and suffering awards took its first leap after World War II, as personal injury lawyers became adept at finding ways to enlarge these awards. *See generally* Melvin M. Belli, *The Adequate Award*, 39 Cal. L. Rev. 1 (1951); *see also* Merkel, 34 Cap. U. L. Rev at 560-65 (examining post-war expansion of pain and suffering awards).[5] Early academic concerns over the rise in noneconomic damage awards were voiced, but went unheeded. *See, e.g.*, Marcus L. Plant, *Damages for Pain and Suffering*, 19 Ohio St. L.J. 200, 210 (1958) (expressing concern over the ease of proof of pain and suffering and the unpredictability of such awards, and proposing "a fair maximum limit on the award").

By the late 1950s and 1960s, plaintiffs' lawyers began the controversial and now ubiquitous practice of summation "anchoring," in which they suggested to juries, who struggled

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to 45-year old who experienced "excruciating pain and suffering [that] was unusual in the extreme" and rendered him totally disabled, after car accident resulted in a concussion, broken legs, multiple bruises and abrasions over entire body, loss of blood requiring transfusions, mental and nervous shock, and confinement in hospital for five months); *Greenville Elec. Light & Power Co. v. Puterbaugh*, 8 Ohio L. Abs. 359, 1930 WL 2861 (Ohio Ct. App. 1930) (affirming $6,700 award (about $109,000 today) to plaintiff who experienced complete loss of the sight of one eye, a serious skull injury, and other injuries that incapacitated her, where pain and suffering required her to remain in bed several hours of each day); *Portsmouth Gas Co. v. Maddox*, 185 N.E. 527, 528 (Ohio Ct. App. 1930) (affirming $11,500 award (about $187,000 today) to plaintiff who experienced "excruciating" third-degree burns, was "marked for life," and permanently lost free movement of his hands as a result of gas explosion); *Stoll v. Balazs*, 167 N.E. 522 (Ohio Ct. App. 1929) (finding excessive $20,000 award to a 17 or 18 year old plaintiff whose physician's failure to take an x-ray when treating a broken leg ultimately resulted in a permanently crippled condition; remitting the award to $15,000 (about $240,000 today)).

[5] Scholars attribute the rise in noneconomic damages to (1) the availability of future pain and suffering damages; (2) the rise in automobile ownership and personal injuries resulting from automobile accidents; (3) the greater availability of insurance and willingness of plaintiffs' attorneys to take on lower-value cases; (4) the rise in affluence of the public and a change in public attitude that "someone should pay"; and (5) better organization by the plaintiffs' bar. *See* Merkel, 34 Cap. U. L. Rev. at 553-66; Joseph H. King, Jr., *Pain and Suffering, Noneconomic Damages, and the Goals of Tort Law*, 57 S.M.U. L. Rev. 163, 170 (2004).

with assigning a monetary value to a person's pain and suffering, an extraordinary amount for such an award or a mathematical formula (per diem) designed and in a sense disguised to result in an enormous sum. *See* Joseph H. King, Jr., *Counting Angels and Weighing Anchors: Per Diem Arguments for Noneconomic Personal Injury Tort Damages*, 71 Tenn. L. Rev. 1, 13 (2003). The anchor establishes an arbitrary but powerful baseline for jurors to accept or negotiate upward or downward. *See id* at 37-40. Empirical evidence confirms that anchoring "dramatically increases" noneconomic damage awards. John Campbell et al., *Time is Money: An Empirical Assessment of Non-Economic Damages Arguments*, 95 Wash. U. L. Rev 1, 28 (2017). Research indicates that "the more you ask for, the more you get." Gretchen B. Chapman & Brian H. Bornstein, *The More You Ask for, the More You Get: Anchoring in Personal Injury Verdicts*, 10 Applied Cognitive Psychology 519, 526 (1996). While about one-third of state courts have restricted the use of anchoring tactics,[6] in a 1965 ruling, this Court allowed plaintiffs' lawyers to suggest that juries apply per diem calculations to arrive at pain and suffering awards. *See Grossnickle v. Village of Germantown*, 209 N.E.2d 442, 445 (Ohio 1965).

By the 1970s, "in personal injuries litigation the intangible factor of 'pain, suffering, and inconvenience constitute[d] the largest single item of recovery, exceeding by far the out-of-pocket 'specials' of medical expenses and loss of wages." *Nelson v. Keefer*, 451 F.2d 289, 294 (3d Cir 1971). This trend has continued.[7] As Judge Niemeyer of the U.S. Court of Appeals for the Fourth

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[6] *See* Mark A. Behrens, Cary Silverman & Christopher E. Appel, *Summation Anchoring: Is it Time to Cast Away Inflated Requests for Noneconomic Damages?*, 44 Am. J. Trial Advoc. 321, 330-31 (2021) (citing cases). Courts that prohibit anchoring practices find that they intrude into the jury's domain, are not founded upon admissible evidence, create an illusion of certainty, and can result in a noneconomic damage award of whatever amount counsel suggests. *See id.*

[7] For example, the median damage award in medical liability jury trials in state courts, adjusted for inflation, was 2.5 times higher when the Ohio Legislature enacted R.C. 2315.18 in 2005 ($682,000) than in 1992 ($280,000). *See* Lynn Langton & Thomas H. Cohen, *Civil Bench and Jury Trials in State Courts, 2005*, at 10 tbl. 11 (U.S. Dep't of Justice, Bureau of Justice Stat.,

Circuit observed, in the modern era, "irrationality [i.e., the lack of "rational criteria for measuring damages"] in awarding [m]oney for pain and suffering . . . provides the grist for the mill of our tort industry." Paul V. Niemeyer, *Awards for Pain and Suffering: The Irrational Centerpiece of Our Tort System,* 90 Va. L. Rev. 1401, 1401 (2004). Indeed, pain and suffering awards in the United States are often more than ten times those in the most generous of other nations. Stephen D. Sugarman, *A Comparative Look at Pain and Suffering Awards*, 55 DePaul L. Rev. 399, 399 (2006).

Now, so-called "nuclear verdicts," which are generally defined as awards of $10 million or more that often include noneconomic damages that are vastly disproportionate to other damages in the case, are rising in amount and frequency. *See* Shawn Rice, *Nuclear Verdicts Drive Need for Insurers' Litigation Change*, Law360, Sept. 8, 2021 (reporting that between 2010 and 2018, the average size of verdicts exceeding $1 million rose nearly 1,000% from $2.3 million to $22.3 million and that nuclear verdicts "encompass awards where the noneconomic damages are extremely disproportionate"); Telis Demos, *The Specter of Social Inflation Haunts Insurers*, Wall St. J., Dec. 27, 2019 (reporting a 300% rise in the frequency of verdicts $20 million or over in 2019 from the annual average from 2001 to 2010); Mark A. Behrens, Cary Silverman & Christopher E. Appel, *Summation Anchoring: Is it Time to Cast Away Inflated Requests for Noneconomic Damages?*, 44 Am. J. Trial Advoc. 321, 327-29 (2021) (providing examples of multimillion-dollar noneconomic damage awards in premises liability, construction liability, product liability, medical liability, and toxic tort litigation).

Apr. 9, 2009). The median damage award in product liability jury trials in state courts grew even more substantially. Adjusted for inflation, product liability awards were five times higher in 2005 ($749,000) than in 1992 ($154,000). *Id*. Noneconomic damages accounted for approximately half of these awards. *See* Thomas H. Cohen, *Tort Bench and Jury Trials in State Courts*, 2005, at 6 fig. 2 (U.S. Dep't of Justice, Bureau of Justice Stat., Nov. 2009).

C. Noneconomic Damage Awards are Unpredictable and May be Influenced by Improper Considerations

Not only have noneconomic damage awards increased in size, but their subjective nature makes them "highly variable, unpredictable, and abjectly arbitrary." Joseph H. King, Jr., *Pain and Suffering, Noneconomic Damages, and the Goals of Tort Law*, 57 S.M.U. L. Rev. 163, 185 (2004). As one scholar observed:

> Some [juries] roughly split the difference between the defendant's and the plaintiff's suggested figures. One juror doubled what the defendant said was fair, and another said it should be three times medical[s]. . . . A number of jurors assessed pain and suffering on a per month basis. . . . Other jurors indicated that they just came up with a figure that they thought was fair.

Neil Vidmar, *Empirical Evidence on the Deep Pockets Hypothesis: Jury Awards for Pain and Suffering in Medical Malpractice Cases*, 43 Duke L.J. 217, 253-54 (1993). Absent a statutory upper limit on noneconomic damages, the unpredictability of these awards complicates the ability to settle personal injury cases, as plaintiffs may have unreasonable expectations of receiving an extraordinary pain and suffering award.

In reaching a monetary sum for immeasurable pain and suffering, juries may be influenced by whether they relate to the plaintiff, or other conscious or subconscious biases for or against a party, rather than the level of the harm. *See generally* Dan B. Dobbs & Robert L. Caprice, Law of Remedies, § 8.1(4), at 683 (3d ed. 2018) ("[V]erdicts vary enormously, raising substantial doubts as to whether the law is evenhanded in the administration of damage awards or whether it merely invites the administration of biases for or against individual parties."); Oscar G. Chase, *Helping Jurors Determine Pain and Suffering Awards*, 23 Hofstra L. Rev. 763, 770 (1995) (discussing evidence suggesting that race and gender influence noneconomic damage awards).

Juries may also be influenced by improper factors such as a desire to punish a defendant, which should be under law reserved for consideration of punitive damages. Further, awards can

be improperly inflated because of a plaintiffs' lawyer's view that a defendant has "deep pockets" and can afford to pay more. *See generally* Victor E. Schwartz & Leah Lorber, *Twisting the Purpose of Pain and Suffering Awards: Turning Compensation Into 'Punishment'*, 54 S.C. L. Rev. 47 (2002). The Ohio legislature was particularly cognizant of misuse of noneconomic damage awards in this manner when it enacted R.C. 2315.18(C)(3), which prohibits a trier of fact, when deciding a compensatory award for noneconomic loss, from considering evidence of wrongdoing, misconduct, or guilt, or any other evidence offered for the purpose of punishing a defendant.

In sum, today's multimillion-dollar noneconomic damage awards represent a dramatic and unwarranted departure from amounts that Ohio courts have traditionally found to provide reasonable compensation for an injury and raise the question of whether they truly serve compensatory purposes. In the case before this Court, for example, the jury awarded the Plaintiff-Appellant $34 million in noneconomic damages ($14 million pre-cap and $20 million post-cap). Putting the $100 million punitive damages verdict aside, the full amount of damages awarded for the Plaintiff's psychological and emotional harm would take the average Ohioan household 566 years of work to earn.[8] Even an Ohio household reaching the state's top 5% of income earners would not accumulate this sum in three lifetimes.[9]

[8] Computed by dividing the total $34 million noneconomic damage award by the median household income of Ohioans in 2019 ($60,110). *See* U.S. Census, Historical Income Tables: Households, tbl. H-8, Median Household Income by State, https://www2.census.gov/programs-surveys/cps/tables/time-series/historical-income-households/h08.xls.

[9] Computed by dividing the total $34 million noneconomic damage award by the median household income for the top 5% of Ohio households in 2019 ($204,940), equaling 165 years, and dividing that sum by 52 years of work between ages 18 and 70. *See* Samuel Stebbins, *What Does it Take to be Considered Rich in Your State?*, USA Today, Nov. 20, 2020 (indicating, based on 2019 U.S. Census data, that the threshold for falling in the top 5% of household median income in Ohio is $204,940).

II. OHIO IS AMONG MANY STATES THAT HAVE ENACTED A REASONABLE UPPER LIMIT ON NONECONOMIC DAMAGES

The dramatic rise of pain and suffering awards and their unpredictability led many states, including Ohio, to adopt commonsense statutory ceilings on subjective noneconomic damages. These limits recognize that the broader public good is served when liability remains predictable and when noneconomic damage awards are not improperly inflated. *See Arbino*, 880 N.E.2d at 437. Noneconomic damage limits facilitate fair settlements and constrain the potential for arbitrariness that may raise due process and horizontal equity concerns.[10]

Today, about half of the states limit noneconomic damages. Some states, like Ohio, have adopted an upper limit that extends to all personal injury claims.[11] Without a statutory limit, a small business owner could face millions of dollars in liability for a common slip-and-fall. Likewise, a minor, everyday "fender bender" could result in demands for exorbitant awards for pain and suffering, driving up auto insurance rates for all drivers. A generally applicable limit on noneconomic damages significantly reduces the potential for runaway verdicts and unreasonable settlement demands.

In addition, many states, including Ohio, specifically limit noneconomic damages,[12] and a

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[10] *See also Gilbert v. DaimlerChrysler Corp.*, 685 N.W.2d 391, 400 n.22 (Mich. 2004) ("A grossly excessive award for pain and suffering may violate the Due Process Clause even if it is not labeled 'punitive.'"); Niemeyer, 90 Va. L. Rev. at 1414 ("The relevant lesson learned from the punitive damages experience is that when the tort system becomes infected by a growing pocket of irrationality, state legislatures must step forward and act to establish rational rules.").

[11] *See, e.g.,* Alaska Stat. § 09.17.010; Colo. Rev. Stat. § 13-21-102.5; Haw. Rev. Stat. § 663-8.7; Idaho Code § 6-1603; Md. Cts. & Jud. Proc. Code § 11-108; Miss. Code Ann. § 11-1-60(2)(b); Tenn. Code Ann. § 29-39-102.

[12] *See*, *e.g.,* Alaska Stat. § 09.55.549; Cal. Civ. Code § 3333.2; Colo. Rev. Stat. § 13-64-302; Iowa Code § 147.136A; 24-A Me. Rev. Stat. Ann. § 4313(9); Md. Cts. & Jud. Proc. Code § 3-2A-09; Mass. Gen. Laws ch 231 § 60H, Mich. Comp. Laws § 600.1483; Mont. Code Ann. § 25-9-411; Mo. Rev. Stat. § 538.210; Nev. Rev. Stat. § 41A.035; N.C. Gen. Stat. § 90-21.19; N.D. Cent. Code § 32-42-02; Ohio R.C. 2323.43; S.C. Code Ann. § 15-32-220; S.D. Codified

few states cap total damages,[13] in medical negligence cases. While the case before this Court does not arise in this context, finding the generally applicable statutory limit, R.C. 2315.18, facially unconstitutional, or effectively creating the ability to seek an ad hoc exception may also have significant implications for Ohio's healthcare environment. A substantial body of literature shows that limits on noneconomic damages lead to lower insurance premiums,[14] higher physician supply,[15] and a greater focus on the quality of care over the practice of defensive medicine that merely increases the quantity of care.[16]

Laws § 21-3-11; Tex. Civ. Prac. & Rem. Code § 74.301; Utah Code § 78B-3-410; W. Va. Code Ann. § 55-7B-8; Wis. Stat. § 893.55.

[13] *See, e.g.,* Ind. Code Ann. § 34-18-14-3; La. Rev. Stat. § 40:1299.42; Neb. Rev. Stat. § 44-2825; Va. Code Ann. § 8.01-581.15; *see also* N.M. Stat. Ann. § 41-5-6 (limiting total damages in medical liability actions except damages for medical care or punitive damages).

[14] *See, e.g.,* Mark Behrens, *Medical Liability Reform: A Case Study of Mississippi*, 118 Obstetrics & Gynecology 335, 338-39 (Aug 2011) (documenting medical liability insurance premium reductions and refunds following Mississippi's adoption of a $500,000 noneconomic damage limit in most medical liability cases); Ronen Avraham, *An Empirical Study of the Impact of Tort Reforms on Medical Malpractice Settlement Payments*, 36 J. Legal Stud. S183, S221 (June 2007) (study of more than 100,000 settled cases showed that caps on noneconomic damages "do in fact have an impact on settlement payments"); Michelle Mello, *Medical Malpractice: Impact of the Crisis and Effect of State Tort Reforms,* Research Synthesis Rep. No. 10, at 12 (Robert Wood Johnson Found 2006) (reporting that "the most recent controlled studies show that caps moderately constrain the growth of premiums"); Meredith L Kilgore et al., *Tort Law and Medical Malpractice Insurance Premiums,* 43 Inquiry 255, 268 (2006) (finding physicians in general surgery and obstetrics/gynecology experienced 20.7% and 25.5% lower insurance premiums, respectively, in states with damage caps compared to states without them); U.S. Dep't of Health & Human Servs, *Confronting the New Health Care Crisis: Improving Health Care Quality and Lowering Costs by Fixing Our Medical Liability System* 15 (2002) ("[T]here is a substantial difference in the level of medical malpractice premiums in states with meaningful caps . . . and states without meaningful caps.").

[15] *See, e.g.,* Ronald Stewart et al., *Tort Reform is Associated with Significant Increases in Texas Physicians Relative to the Texas Population*, 17 J Gastrointest. Surg. 168 (2013); William Encinosa & Fred Hellinger, *Have State Caps on Malpractice Awards Increased the Supply of Physicians?*, 24 Health Aff. 250 (2005); *see also* Robert Barbieri, *Professional Liability Payments in Obstetrics and Gynecology*, 107 Obstetrics & Gynecology 578, 578 (Mar 2006) ("Many studies demonstrate that professional liability exposure has an important effect on recruitment of medical students to the field and retention of physicians within the field and within a particular state.").

[16] *See, e.g.*, Steven Farmer et al., *Association of Medical Liability Reform with Clinician*

Ohio's limit on noneconomic damages is within the mainstream. Several states apply limits at similar levels. *See, e.g.,* Cal. Civ. Code § 3333.2(b) ($250,000 limit in medical liability cases); Haw. Stat. § 663-8.7 ($375,000 limit in personal injury cases, subject to certain exceptions); Idaho Code § 6-1603 ($250,000 limit in personal injury cases adjusted for inflation to $399,430.74 in 2021); Nev. Rev. Stat. § 41A.035 ($350,000 limit in medical liability actions). Some states, unlike Ohio, do not provide any exception to the statutory limit for catastrophic injuries.[17] Other states set a higher statutory limit, rather than eliminate the cap, in these cases.[18]

In short, limits on noneconomic damages are a rational and defensible legislative response to a growing distortion of liability law that has adverse consequences for businesses, healthcare providers, and the public.

III. THE SUPREME COURT OF OHIO IS AMONG THE MAJORITY OF COURTS THAT HAVE UPHELD NONECONOMIC DAMAGE LIMITS

This Court has rejected constitutional challenges to Ohio's statutory limit on noneconomic damages both facially and as applied in the same context as the case now before it. *See Simpkins*, 75 N.E.3d at 129-37; *Arbino*, 880 N.E.2d at 429-39. *Arbino* and *Simpkins* are consistent with the majority of other state and federal courts that have respected the prerogative of state legislatures

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Approach to Coronary Artery Disease Management, 10 JAMA Cardiology E1, E8 (June 2018) (finding that after adoption of damage limits, healthcare providers engaged in less invasive testing when treating coronary artery disease).

[17] *See, e.g.*, Md. Cts. & Jud. Proc. Code § 11-108 (increasing statutory limit only in wrongful death cases); Miss. Code Ann. § 11-1-60(2)(b) (no exception to statutory limit in personal injury cases).

[18] *See, e.g.,* Alaska Stat. § 09.17.010 (increasing noneconomic damage limit applicable to personal injury and wrongful death actions from $8,000 of anticipated life expectancy, not to exceed $400,000 to, in cases of "severe permanent physical impairment or severe disfigurement," $25,000 of anticipated life expectancy, not to exceed $1 million); Tenn. Code Ann. § 29-39-102 ($750,000 limit in all personal injury cases, rising to $1 million in cases meeting strict criteria for "catastrophic loss or injury").

to enact reasonable limits on awards for pain and suffering and other noneconomic damages. A straightforward application of these rulings should lead the Court to reaffirm the constitutionality of R.C. 2315.18 here.

Courts across the nation have upheld limits on noneconomic damages that apply to all civil claims[19] and those that apply specifically to medical liability cases.[20] Courts have also upheld laws that limit a plaintiff's total recovery against healthcare providers,[21] as well as damage limits that apply to various other types of claims or entities.[22]

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[19] *See, e.g.*, *C.J. v. Dep't of Corrections*, 151 P.3d 373 (Alaska 2006); *Evans ex rel. Kutch v. State*, 56 P.3d 1046 (Alaska 2002); *Scharrel v. Wal-Mart Stores*, *Inc.*, 949 P.2d 89 (Colo. App. 1998); *Kirkland v. Blaine Cnty. Med. Ctr*., 4 P.3d 1115 (Idaho 2000); *DRD Pool Serv., Inc. v. Freed*, 5 A3d 45 (Md. 2010); *Green v. N.B.S., Inc.*, 976 A.2d 279 (Md. 2009); *Murphy v. Edmonds*, 601 A.2d 102 (Md. 1992).

[20] *See, e.g., Fein v. Permanente Med. Group*, 695 P.2d 665 (Cal. 1985); *Garhart ex rel. Tinsman v. Columbia/HealthONE, L.L.C.,* 95 P.3d 571 (Colo. 2004); *Scholz v. Metro. Pathologists, P.C*., 851 P.2d 901 (Colo. 1993); *Oliver v. Magnolia Clinic,* 85 So. 3d 39 (La. 2012); *Butler v. Flint Goodrich Hosp. of Dillard Univ.*, 607 So. 2d 517 (La 1992); *Zdrojewski v. Murphy*, 657 N.W.2d 721 (Mich. Ct. App. 2002); *Ordinola v. University Physician Assocs*., 625 S.W.3d 445 (Mo. 2021); *Tam v. Eighth Jud. Dist. Ct.,* 358 P.3d 234 (Nev. 2015); *Siebert v. Okun,* 485 P.3d 1265 (N.M. 2021); *Condon v. St. Alexius Med. Ctr*., 926 N.W.2d 136 (N.D. 2019); *Knowles v. United States,* 544 N.W. 2d 183 (S.D. 1996), superseded by statute; *Rose v. Doctors Hosp*., 801 S.W.2d 841 (Tex. 1990); *Judd v. Drezga*, 103 P.3d 135 (Utah 2004); *MacDonald v. City Hosp., Inc*., 715 S.E.2d 405 (W. Va. 2011); *Estate of Verba v. Ghaphery*, 552 S.E.2d 406 (W. Va. 2001); *Robinson v. Charleston Area Med. Ctr.*, 414 S.E.2d 877 (W. Va. 1991); *Mayo v. Wisconsin Injured Patients & Families Comp. Fund*, 914 N.W.2d 678 (Wis. 2018).

[21] *See, e.g., Garhart ex rel. Tinsman v. Columbia/HealthONE, L.L.C*., 95 P.3d 571 (Colo. 2004); *Gourley ex rel. Gourley v. Neb. Methodist Health Sys., Inc*., 663 N.W.2d 43 (Neb. 2003); *Pulliam v. Coastal Emer. Servs. of Richmond, Inc.,* 509 S.E.2d 307 (Va. 1999); *Etheridge v. Med. Ctr. Hosps*., 376 S.E.2d 525 (Va. 1989); *Ind. Patient's Comp. Fund v. Wolfe*, 735 N.E.2d 1187 (Ind. App. 2000); *Bova v. Roig*, 604 N.E.2d 1 (Ind. App. 1992); *Johnson v. St. Vincent Hosp*., 404 N.E.2d 585 (Ind. 1980), *overruled on other grounds by In re Stephens*, 867 N.E.2d 148 (Ind. 2007).

[22] *See, e.g., Quackenbush v. Super. Ct. (Congress of Cal. Seniors),* 60 Cal. App. 4th 454 (1997) (uninsured motorists, intoxicated drivers, and fleeing felons); *Peters v. Saft*, 597 A2d 50 (Me. 1991) (servers of alcohol); *Phillips v. Mirac, Inc*., 685 N.W.2d 174 (Mich. 2004) (lessors of motor vehicles); *Wessels v. Garden Way, Inc*., 689 N.W.2d 526 (Mich. Ct. App. 2004) (product liability actions); *Schweich v. Ziegler, Inc*., 463 N.W.2d 722 (Minn. 1990) (loss of consortium damages); *Oliver v. Cleveland Indians Baseball Co., LP*, 915 N.E.2d 1205 (Ohio 2009) (political subdivisions).

Courts from Maryland to Alaska have found that a limit on noneconomic damages represents a policy judgment that does not interfere with the right to trial by jury. *See L.D.G., Inc. v. Brown*, 211 P.3d 1110, 1131 (Alaska 2009); *DRD Pool Serv., Inc. v. Freed*, 5 A.3d 45, 57 (Md. 2010).[23] This year, for example, the New Mexico Supreme Court ruled that a limit on nonmedical damages merely restricts the scope of the remedy available to a plaintiff, and it rejected the argument that any limit on damages infringes on the state's "inviolate" right to trial by jury. *See Siebert v. Okun,* 485 P.3d 1265, 1273-78 (N.M. 2021).

This Court in *Arbino* joined the majority view when it found that the right to jury trial protects a jury's fact-finding process from interference, but does not mean that awards cannot be altered as a matter of law. *See* 880 N.E.2d at 431. The jury decides an amount of damages as a finding of fact, but it is the court's role to then "apply the law to the facts determined by a jury." *Id*. As this Court recognized, many Ohio laws require courts to enter a judgment for treble damages. *Id*. at 431-32 (citing statutes). These laws are the mirror image of a limit on damages. They require *increasing* a jury's award in accordance with the law – where compensation for an injury is not quantifiable or involves losses too low to provide an adequate incentive to seek recovery, or where such increases are otherwise warranted by public policy. If Ohio law can constitutionally require courts to triple a damage award in such circumstances, then it stands to reason that the legislature can limit recoverable damages in other circumstances, particularly when those damages are highly subjective, standardless, and unpredictable. *See id.* As this Court concluded, "Courts must simply apply the limits as a matter of law to the facts found by the jury; they do not alter the findings of facts themselves, thus avoiding constitutional conflicts." *Id*. at

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[23] *See also Tam v. Eighth Judicial Dist. Ct.*, 358 P3d 234, 238 (Nev. 2015); *Etheridge v. Med. Ctr. Hosps*., 376 S.E.2d 525, 529 (Va. 1989); *Judd*, 103 P.3d at 144.

432; *see also Simpkins*, 75 N.E.3d at 131 (finding that the statutory limit does not intrude on a jury's factfinding process when considering a childhood sexual abuse claim, as it does not in cases involving any other tort claimant).

Courts across the country have also rejected equal protection and other challenges to noneconomic damage limits. As this Court recognized, a generally-applicable limit on noneconomic damages in tort actions addresses the subjectivity, unpredictability, and rising costs associated with such awards, which contributed to the deleterious economic effects of the tort system. *See Arbino*, 880 N.E.2d at 434-35. Nor does a statutory limit deny a plaintiff a meaningful remedy or violate the open courts provision of the Ohio Constitution because the law allows full economic damages, up to $350,000 in noneconomic damages, and punitive damages. *Simpkins*, 75 N.E.3d at 132; *see also Condon v. St. Alexius Med. Ctr.*, 926 N.W.2d 136, 143 (N.D. 2019) (recognizing that a limit on noneconomic damages "does not prevent seriously injured individuals from being fully compensated for any amount of medical care or lost wages," but only prevents them from receiving "more abstract damages" above the cap). Survivors of abuse will often have expenses such as lifelong counseling costs and future lost income potential that are quantifiable and recoverable. And, as this case itself shows, punitive damages—the appropriate mechanism for punishing reprehensible acts—can be very substantial.

This Court and others have also found that a statutory limit on noneconomic damages "bears a real and substantial relation to the general welfare of the public." *Arbino*, 880 N.E.2d at 434-35.[24] A statutory limit constrains "inherently subjective" awards, brings a degree of

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[24] *See also Patton v. TIC United Corp.*, 77 F.3d 1155, 1246-47 (10th Cir. 1996) ("When a legislature strikes a balance between a tort victim's right to recover noneconomic damages and society's interest in preserving the availability of affordable liability insurance, it is engaging in its fundamental and legitimate role of structuring and accommodating the burdens and benefits of economic life.") (internal quotations and alterations omitted); *C.J. v. Dep't of Corrections*,

predictability and certainty to civil litigation, and avoids misuse of pain and suffering awards to punish defendants rather than to compensate plaintiffs. *See id.* While the case before this Court involves a single individual defendant, in the many cases that will include organizations as defendants, the cost of inflated damage awards will be passed on to the general public in the form of higher insurance rates, taxes, and prices for goods and services. *See id.* at 434.

This Court respected the legislature's policy decision to limit noneconomic damages, including its choice to create a narrow exception to the cap for the most severely injured plaintiffs, in both *Arbino*, 880 N.E.2d at 435-37, and *Simpkins*, 75 N.E.3d at 133-34. And, as this Court found in *Simpkins*, while sexual abuse is a heinous act that undoubtedly affects victims for the rest of their lives, it does not fall within the scope of the exceptions to the cap created by the legislature. 75 N.E.3d at 133-34. This Court has wisely declined to second-guess the legislature's policy choice to craft those exceptions for catastrophic injuries that "offer more concrete evidence of noneconomic damages and [for which] calculation of [] damages poses a lesser risk of being tainted by improper external considerations." *Id*. at 136 (quoting *Arbino*, 880 N.E.2d at 437).

This Court has also rejected claims that legislative constraints on noneconomic damages run afoul of the separation of powers doctrine. As the *Arbino* Court recognized, it is a judicial function to decide the facts in a case, including the amount of damages, but it is a legislative policy decision to regulate the amount of damages available in particular circumstances. *See Arbino*, 880 N.E.2d at 438; *see also Kirkland v. Blaine Cnty. Med. Ctr.*, 4 P.3d 1115, 1119 (Idaho 2000) (observing that since the legislature has the power to abolish or significantly modify a common law cause of action, then it must be able to limit the damages recoverable for that action). Plaintiff-

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151 P.3d 373, 381 (Alaska 2006) (recognizing limits on noneconomic damages "bear[] a fair and substantial relationship to a legitimate government objective").

Appellant does not appear to seek to re-litigate the constitutionality of the statute on this ground.

In comparison, relatively few state high courts have invalidated limits on noneconomic damages.[25] "Over the years, the scales in state courts have increasingly tipped toward upholding noneconomic damage caps." Carly N. Kelly & Michelle M. Mello, *Are Medical Malpractice Damages Caps Constitutional? An Overview of State Litigation*, 33 J. L. Med. & Ethics 515, 527 (2005); *see also MacDonald v. City Hosp., Inc.*, 715 SE 2d 421 (W. Va. 2011) (upholding noneconomic damage limit in medical liability case "consistent with the majority of jurisdictions that have considered the constitutionality of caps on noneconomic damages in medical malpractice or in any personal injury action"). In fact, the Supreme Court of Wisconsin expressly overruled an earlier decision nullifying such a law. *Mayo v. Wisconsin Injured Patients & Families Comp. Fund*, 914 N.W.2d 678, 684 (Wis. 2018) (overruling *Ferdon ex rel. Petrucelli v. Wisconsin Patients Comp. Fund*, 701 N.W.2d 440 (Wis. 2005), finding that "*Ferdon* erroneously invaded the province of the legislature").

Curiously, Plaintiff's *amici* point to a Sixth Circuit panel's decision in *Lindenberg v. Jackson Nat'l Life Ins. Co.*, 912 F.3d 348, 363-70 (6th Cir. 2018), as an example of a recent decision finding a statutory limit on damages (in that case, punitive damages) is inconsistent with the "inviolate" right to jury trial. *See* Br. of Amici Curiae, Ohio Ass'n for Justice & Am. Ass'n for Justice at 20. The Tennessee Supreme Court promptly rejected this *Erie* guess at state law, finding the Sixth Circuit's reasoning "unpersuasive" in a case in which the Tennessee Supreme Court

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[25] *See, e.g., N. Broward Hosp. Dist. v. Kalitan,* 219 So. 3d 49 (Fla. 2017); *Hilburn v. Enerpipe Ltd.*, 442 P.3d 509 (Kan. 2019); *Watts v. Lester E. Cox Med. Ctrs.,* 376 S.W.3d 633 (Mo. 2012), *superseded by statute*; *Beason v. I.E. Miller Servs., Inc.*, 441 P.3d 1107 (Okla. 2019); *Busch v. McInnis Waste Sys., Inc.*, 468 P.3d 419 (Or. 2020). The Missouri Supreme Court recently upheld a statutory limit on noneconomic damages in medical liability cases. *See Ordinola v. University Physician Assocs.*, 625 S.W.3d 445 (Mo. 2021).

upheld Tennessee's statutory limit on noneconomic damages in personal injury cases. *See McClay v. Airport Mgm't Servs., LLC*, 596 S.W.3d 686, 700 (Tenn. 2020) (rejecting challenges to statutory limit based on right to jury trial, separation of powers, and equal protection grounds). Contrary to the outlier Sixth Circuit panel's decision, other federal appellate courts have upheld limits on noneconomic damages in all civil actions[26] and medical liability cases,[27] as well as upholding caps on total damages in other cases.[28]

This Court should reaffirm, consistent with its own precedent and that of the majority of states, that a statutory limit on noneconomic damages is constitutional.

IV. THE COURT SHOULD REJECT THIS LATEST INVITATION TO INVALIDATE THE CAP AS APPLIED

Plaintiff-Appellant and her supporting amici invite the Court to invalidate the statutory limit on noneconomic damages as applied in this case because the legislatively enacted exemptions are not written broadly enough to allow uncapped awards in claims alleging psychological and emotional harm stemming from childhood sexual abuse. While we recognize the harmful psychological and emotional effects of this reprehensible conduct and condemn those responsible, we must respectfully disagree with three contentions advanced in support of her as-applied challenge.

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[26] *See, e.g., Learmonth v. Sears, Roebuck & Co.,* 710 F.3d 249 (5th Cir. 2013) (Mississippi statute); *Patton v. TIC United Corp*., 77 F.3d 1235 (10th Cir. 1996) (Kansas statute).

[27] *See Smith v. Botsford Gen. Hosp*., 419 F.3d 513 (6th Cir. 2005) (Michigan statute); *Owen v. United States*, 935 F.2d 734 (5th Cir. 1991) (Louisiana statute); *Davis v. Omitowoju*, 883 F.2d 1155 (3d Cir. 1989) (Virgin Islands statute); *Hoffman v. United States*, 767 F.2d 1431 (9th Cir. 1985) (California statute).

[28] *See Schmidt v. Ramsey*, 860 F.3d 1038 (8th Cir. 2017) (Nebraska statute); *Boyd v. Bulala*, 877 F.2d 1191 (4th Cir. 1989) (Virginia statute).

First, Plaintiff-Appellant and her amici argue that childhood sexual abuse primarily results in noneconomic damages, not in pecuniary harm. *See, e.g.*, App. Br. at 12 ("[T]hese victims rarely suffer significant economic injury."). At the same time, they observe that "childhood sexual abuse victims face tremendous financial burdens," including thousands of dollars in medical costs and lifelong productivity losses. Brief of Amici Curiae Child USA et al. at 10-11. While survivors of sexual abuse victims may not be subject to a prolonged hospital stay or immediate physical limitations, or experience a loss of income before they are adults, they may be able to show the need for ongoing counseling and therapy, treatment for mental health disorders, and significantly reduced earning capacity over the course of their lifetime. These types of economic damages are recoverable under R.C. 2315.18 and may be substantial. *See generally* William Bernet & David Corwin, *An Evidence-Based Approach for Estimating Present and Future Damages from Child Sexual Abuse*, 34 J. Am. Academy of Psychiatry & L. 224 (2006) (examining the use of available research and clinical experience to establish the need for psychiatric treatment and medication in civil litigation).

Second, Plaintiff and her amici argue that a statutory limit on noneconomic damages serves no legitimate economic purpose when it is invoked in an intentional tort case in which the defendant is a perpetrator of sexual abuse. *See, e.g.*, App. Br. at 32. One amicus brief goes so far to blame the Court itself for "creat[ing] a loophole for child sexual predators." Br. of Amici Curiae Ohio Alliance to End Sexual Violence at 16. But as R.C. 2315.18(C)(3) makes clear, noneconomic damages are intended to compensate a plaintiff, not punish a defendant. Ohio law allows for uncapped *punitive* damages in cases brought by victims of crimes against those who are convicted of, or plead guilty to, a felony. *See* R.C. 2315.21(D)(6). Punitive damages provide the means to

punish a perpetrator of childhood sexual abuse, not noneconomic damages. Indeed, the jury awarded the Plaintiff here $100 million in punitive damages.

Along these same lines, Plaintiff and her amici argue that the statutory limit on noneconomic damages was intended for negligence-based actions against businesses, not intentional tort claims. *See, e.g.*, App. Br. at 31-32. This Court, however, has already rejected an invitation to exclude intentional tort claims from the statute, finding that its language "unambiguously" applies to any personal injury action. *Wayt v. DHSC*, 122 N.E.3d 92 (Ohio 2018). This argument also overlooks that in an action such as this one, it is common for plaintiffs to include negligence-based claims against a business or nonprofit organization—whether it is a school, youth group, daycare center, social service agency, camp, or religious institution, as was the case in *Simpkins*. These claims typically allege that an organization did not have sufficient safeguards in place when hiring, supervising, or retaining staff to detect a perpetrator in its midst. *See Simpkins*, 75 N.E.3d at 128. Finding the statutory limit on noneconomic damages invalid as applied to the Plaintiff's injuries in this case would appear equally to preclude its application to negligence-based claims in cases involving similar harm, regardless of who is named as a defendant. There would be no limit on noneconomic damages in cases that name multiple defendants or that target an organization as a defendant because the perpetrator is judgment-proof or dead.

Third, the focus of Plaintiff and her amici on the distinction in the statute between certain physical injuries, which may qualify for an exception to the noneconomic damage limit, and psychological or emotional harms, which lack a similar exception, would not change the outcome in this case. *See, e.g.*, Br. of Amicus Curiae Child USA at 19. The General Assembly tailored these exceptions narrowly to cases in which there is "concrete evidence" of catastrophic injuries in order

to avoid a return to the unpredictability and inconsistency that a statutory limit is intended to prevent. *See Arbino*, 880 N.E.2d at 437. But even if the word “physical” were read out of the statute, the Plaintiff here would not qualify for an exception, because, as the Court of Appeals found, she is able to independently care for herself and perform life-sustaining activities. *See* J. Entry & Op. at ¶ 45 (Mar. 18, 2021).

The statutory limit on noneconomic damages applied to the Plaintiff here in the same way in which it would apply to others who experienced physical harm that is permanent and substantial, but that does not reach the level set by the legislature for allowing unconstrained noneconomic damage awards. *See Simpkins*, 75 N.E.3d at 134 (“In the end, R.C. 2315.18 does not affect Simpkins any differently than it affects any other victim whose injuries do not fall within the R.C. 2315.18(B)(3) exceptions to the damage caps.”).

In sum, Ohio law provides a means for survivors of childhood sexual abuse to seek substantial compensation for their injuries, including economic damages, such as the cost of lifelong counseling, medication, and lost earning potential, as well as a limited but significant amount of noneconomic damages. They can also seek uncapped punitive damage awards against perpetrators of abuse and, as here, obtain multimillion-dollar verdicts to punish them for their reprehensible acts. The legislature narrowly drafted the exceptions to the statutory limit. An ad-hoc, judicially-created exception to the statutory cap will severely undermine the law’s predictability and effectiveness. If an exception is to apply in a case such as the one before this Court, it is the legislature’s role to carefully craft one that is consistent with sound public policy and does not lead to unintended consequences.

CONCLUSION

For these reasons, this Court should reaffirm that Ohio's statutory limit on noneconomic damages in personal injury cases, R.C. 2315.18, is both facially constitutional and constitutional as applied in this case.

Respectfully Submitted,

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