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IN THE
INDIANA SUPREME COURT

CHRISTINE COSME AND ROY COSME,	)	**COURT OF APPEALS**
	)	**CASE NO. 22-A-CT-1897**
	)	
Appellants,	)	
	)	**TRIAL COURT**
vs.	)	**CASE NO. 45D01-1803-CT-39**
DEBORA A. WARFIELD CLARK, DAN CHURILLA d/b/a CHURILLA INSURANCE, ERIE INSURANCE EXCHANGE,	)	
	)	
Appellees,	)	

BRIEF OF *AMICUS CURIAE* INDIANA TRIAL LAWYERS ASSOCIATION

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STATEMENT OF INTEREST

The Indiana Trial Lawyers Association ("ITLA") consists of Indiana attorneys who regularly represent Indiana citizens in trials and appeals of personal injury and wrongful death actions. The questions raised by the Court's October 12, 2023, Order are important to ITLA and Indiana citizens as they will affect every trial and the appeal of every order on a motion for a directed verdict going forward.

SUMMARY OF ARGUMENT

This Court's Order of October 12, 2023:

> invite[d] amicus curiae briefing on the question of whether we should clarify or modify the framework our Court articulated in *Purcell v. Old National Bank*, 972 N.E.2d 835 (Ind. 2012), as it relates to (a) the standard a trial court should apply when deciding whether to grant a Trial Rule 50(A) motion and (b) the standard of review an appellate court should apply when reviewing the trial court's decision to grant or deny a Trial Rule 50(A) motion.

ITLA urges the Court to reconsider both the standard trial courts use in considering motions for directed verdict, and the standard appellate courts use in reviewing trial court rulings on such motions.

First, ITLA urges the Court to replace *Purcell*'s complex "quantity and quality" standard with the standard it implemented in *Whitaker v. Borntrager*, 122 N.E.2d 734 (Ind. 1954) because no other jurisdiction in the country requires trial courts to use the *Purcell* standard; the *Purcell* standard invades the province of the jury and is incompatible with the Indiana Constitution (ART. 1, §12's access to the courts and ART. 1, §20's trial by jury); and the *Purcell* standard does not deliver the administrative efficiency and judicial economy it promises.

As explained in *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394 (2006), judicial economy counsels that trial courts should be encouraged to submit cases to the jury rather than granting directed verdicts because wrongly granting a directed verdict requires a second jury be impaneled to hear the exact same case.

Second, for directed verdicts, ITLA urges this Court to replace *Purcell's* abuse of discretion standard of review with the *de novo* standard of review.

The Court of Appeals' decision below shows how Indiana courts have addressed this issue for forty years, with *Purcell* requiring appellate courts to uphold "a directed verdict under Trial Rule 50(A)" unless "the trial court abused its discretion." *Purcell*, 972 N.E.2d at 837, citing *American Optical Co. v. Weidenhamer,* 457 N.E.2d 181, 183 (Ind. 1983).

The *American Optical/Purcell* abuse of discretion standard, which once mirrored the one used by every federal and state appellate court, has become an outlier.

In 1983, *American Optical* accurately reflected the standard of review that **all** federal and state appellate courts applied to motions for directed verdicts. **By 2012**, *Purcell* accurately reflected only **some** of the state and federal appellate court standards on this issue. **Today**, *American Optical* and *Purcell* reflect the views of **no** other federal or state appellate court.

As Professors Wright and Miller summarize the current state of federal law: "**every federal circuit** has pronounced that the litigants are entitled to full [*de novo*] review by the appellate court without special deference to the views of the trial court."

9B C. Wright & A. Miller, FED. PRAC. & PROC.: CIVIL 3D §2536 (3d Ed., 2008 and April 2023 update) (emphasis added).

The appellate courts of every State do the same. Except Indiana's.

ITLA urges this Court to modify its Ind. T.R. 50(A) jurisprudence to align with the views of every other state and federal appellate court – not simply because Indiana's jurisprudence finds no support elsewhere, but because the unanimous views of all of Indiana's counterparts show the judicial community's evolved wisdom that the abuse of discretion standard counterproductively supports a practice that should be discouraged in the vast majority of cases.

ARGUMENT

I. The Court Should Replace *Purcell's* "Quantity and Quality" Test for Evaluating Directed Verdict Motions

In 1954, this Court held:

> When there is some evidence or legitimate inference supporting each material allegation of the complaint, the court will not weigh the conflicting evidence or inferences but will consider only the evidence and inferences that are most favorable to the party against whom the motion for a peremptory verdict is directed.

Whitaker, 122 N.E.2d at 735 (citations omitted).

In 1983, however, *American Optical* replaced the *Whitaker* standard with the "quantity and quality" test that *Purcell* reaffirmed. *See American Optical*, 457 N.E.2d at 184. *Purcell* stated that trial courts are "require[d] to [use] both a quantitative and a qualitative analysis" in deciding directed verdict motions. It explained:

> Evidence fails quantitatively only if it is wholly absent; that is, only if there is no evidence to support the

> conclusion. If some evidence exists, a court must then proceed to the qualitative analysis to determine whether the evidence is substantial enough to support a reasonable inference in favor of the non-moving party. Qualitatively, evidence fails when it cannot be said, with reason, that the intended inference may logically be drawn therefrom; and this may occur either because of an absence of credibility of a witness or because the intended inference may not be drawn therefrom without undue speculation. The use of such words as substantial and probative are useful in determining whether evidence is sufficient under the qualitative analysis. Ultimately, the sufficiency analysis comes down to one word: reasonable.

Purcell, 972 N.E.2d at 840 (internal quotation omitted).

ITLA submits *Whitaker* was correctly decided and this Court should now replace the *Purcell* standard with one closer to *Whitaker'*s.

First, *Purcell*'s complex "quantity and quality" test is, like its "abuse of discretion" standard, outside the mainstream of American law: no other court, state or federal, employs a test anything like *Purcell*'s. On the other hand, the *Whitaker* standard has ample support in both federal and Indiana law.

As the U.S. Supreme Court has emphasized, "[t]he court is required to draw all reasonable inferences in favor of … the nonmoving party, and may not make credibility determinations or weigh the evidence" and if "the jury's conclusions are not unreasonable, the court may not reject them." *Reeves v. Sanderson Plumbing Products,* 530 U.S. 133, 150 (2000). The *Reeves* standard not only mirrors *Whitaker's* but also is more consistent with Indiana's strong belief in juries and the jury system.

The fact that *Purcell*'s "quantity and quality" test is a jurisprudential outlier is not, by itself, grounds for abandoning it, but its isolated status reflects the legal

community's evolved wisdom that it improperly calls upon the trial court to invade the province of the jury by considering the "quality" of the evidence and the "credibility" of witnesses. *See Purcell,* 972 N.E.2d at 840.

Jurors are, by design, best positioned to resolve factual disputes. They watch and listen to the witnesses in real time and represent an "impartial…cross-section of the community" in which the case is venued. *Logan v. State*, 729 N.E.2d 125, 133 (Ind. 2000) (citation omitted).

Juries possess the necessary understanding of local standards and norms, which makes their insight so valuable to our justice system. As this Court stated in 1891:

> [I]t is said to be the highest effort of the law to obtain the judgment of twelve men of the average of the community, comprising men of learning, men of little education, men whose learning consists only of what they have themselves seen and heard, the merchant, mechanic, the farmer and the laborer, as to whether negligence does, or does not, exist in the given case. Such judgment is supposed to be more valuable in such cases than the judgment of a single judge.

Mann v. Belt R. & S.Y. Co., 26 N.E. 819, 820 (Ind. 1891) (quoting *R.R. Co. v. Stout*, 84 U.S. 657, 664 (1873)).

Chief Justice Rehnquist, quoting Justice Holmes, made the same point decades later:

> Trial by a jury of laymen rather than by the sovereign's judges was important to the founders because juries represent the layman's common sense, the 'passional elements in our nature,' and thus keep the administration of law in accord with the wishes and feelings of the community.

Parklane Hosiery Co. v. Shore, 439 U.S. 322, 343 (1979) (Rehnquist, J., dissenting; quoting O.W. Holmes, COLLECTED LEGAL PAPERS 237 (1920)).

Purcell's formula encourages trial courts to play an outsized "role in the ultimate determination of cases," by considering the "quality" of evidence and "credibility" of witnesses. *Purcell*, 972 N.E.2d at 840-42. Such efforts not only invade the province of the jury but vitiate the constitutional rights and values this Court has consistently championed for more than a century—specifically, guarantees to meaningful access to the courts through IND. CONST. ART. 1, §12 and the inviolate right to trial by jury in civil actions though IND. CONST. ART. 1, §20.

ART.1, §20 guarantees Hoosiers the right to have their civil grievances determined by their peers and forms the bedrock of Indiana's judicial review. Because of ART.1, §20, "[a] court is without any rightful power to weigh conflicting oral evidence" and cannot overturn a verdict supported by *any* evidence. *Southern Products Co. v. Franklin Coil Hoop Co.*, 106 N.E. 872, 874 (Ind. 1914). *See also Novak v. Chicago & Calumet District Transit Co.*, 135 N.E.2d 1, 5 (Ind. 1956) ("[I]t is the constitutional right of the complaining party … to have a jury determine the credibility of the witnesses and the weight that shall be given the evidence and to decide the facts accordingly.").

These principles are inconsistent with *Purcell's* current standard. They are more consistent with the *Whitaker* standard, which largely reflects the U.S. Supreme Court's position:

> [I]n entertaining a motion for judgment as a matter of law, the court should review all of the evidence in the record. In doing so, however, the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence. Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.

Reeves, 530 U.S. at 151.

Finally, *Purcell*'s "quantity and quality" formula should be replaced because it does not advance the goals of administrative efficiency and judicial economy that it champions.

The earliest a defendant can move for a directed verdict is after the plaintiff rests. Because plaintiffs have the burden of proof, they typically provide more evidence to the jury than the defendants, have more witnesses, and offer more experts, among many other things that tax a court's resources. By the time plaintiffs rest, the trial is typically almost done, while by the time defendants can move for a directed verdict, they likely have scheduled their experts for trial, subpoenaed their witnesses, and prepared to present their case to the jury. There is not much judicial economy saved by a directed verdict.

Further, if plaintiffs invest time and other resources to prepare for trial, present their evidence, and have a directed verdict entered against them, they almost certainly will appeal. So, to the extent there is any "savings" of judicial economy at the trial court level, the work is simply transferred to the appellate courts.

Courts have recognized that, due to the consequences of an erroneously entered directed verdict, they should be entered much less frequently than judgments

notwithstanding the verdict or new trials. If a directed verdict is determined to be erroneous on appeal, the matter must be remanded, and the trial court must seat a second panel of citizens to rehear the same case. But if the trial court lets the matter go to the jury and enters a judgment notwithstanding the verdict or grants a new trial if he or she disagrees with the jury's verdict, and either of these is determined to be erroneous on appeal, the jury verdict can simply be reinstated. The latter procedure is clearly in the interest of judicial economy in the large majority of cases, as Justice Thomas, writing for the Supreme Court in *Unitherm Food Sys.*, explained:

> the text and application of Rule 50(a) support our determination that … while a district court is permitted to enter judgment as a matter of law when it concludes that the evidence is legally insufficient, … district courts are, if anything, encouraged to submit the case to the jury, rather than granting such motions. As Wright and Miller explain the best practice:
>
> > Even at the close of all the evidence it may be desirable to refrain from granting a motion for judgment as a matter of law despite the fact that it would be possible for the district court to do so. If judgment as a matter of law is granted and the appellate court holds that the evidence in fact was sufficient to go to the jury, an entire new trial must be had. If, on the other hand, the trial court submits the case to the jury, though it thinks the evidence insufficient, final determination of the case is expedited greatly. If the jury agrees with the court's appraisal of the evidence, and returns a verdict for the party who moved for judgment as a matter of law, the case is at an end. If the jury brings in a different verdict, the trial court can grant a renewed motion for judgment as a matter of law. Then if the appellate court holds that the trial court was in error in its appraisal of the evidence, it can reverse and order judgment on the verdict of

> the jury, without any need for a new trial. For this reason the appellate courts repeatedly have said that it usually is desirable to take a verdict, and then pass on the sufficiency of the evidence on a post-verdict motion.

546 U.S. at 405–06 (2006) (quoting "9B C. Wright & A. Miller, 9A FEDERAL PRACTICE § 2533"). *See also Wiltz v. Mobil Oil Exploration & Producing, Inc.*, 938 F.2d 47, 50 (5th Cir. 1991) (noting the waste of private and judicial resources caused by the reversal of a directed verdict and confirming the preferred process is to reserve a ruling until after the jury verdict).

While *Purcell* acknowledges "the function of weighing evidence and judging witness credibility is one which has always been within the purview of the jury," it asserts that allowing judges to "play a role in the ultimate determination of [T.R. 50 cases] … helps to ensure the proper administration of our laws with the added benefit of preserving judicial economy." *Purcell*, 972 N.E.2d at 842. To the extent this may be true, this Court has disavowed the notion that concerns about administrative efficiency and judicial economy can trump the right to trial by jury. Thus, "[o]ne will not find in the Bill of Rights any recognition that the 'interests of judicial economy' permit this or any other court to ignore the fundamental [constitutional] rights of litigants." *Greer v. State*, 321 N.E.2d 842, 845 (Ind. 1975); *see also St. Mary's Byzantine Church v. Mantich*, 505 N.E.2d 811, 814 (Ind. Ct. App. 1987) ("**a directed verdict,** or a motion for judgment on the evidence, under … Rule 50, should be a rarely used [and] **should never be granted lightly or for the sake of mere judicial economy**") (emphasis added) (citation omitted).

The U.S. Supreme Court has similarly confirmed that untested "concern[s] about judicial economy…remain an insufficient basis for departing from our longstanding commitment to preserving a litigant's right to a jury trial." *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 553–554 (1990). As Chief Justice Rehnquist stressed, "[t]he founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added to that of the judiciary. [T]hey were not animated by a belief that use of juries would lead to more efficient judicial administration." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 343 (1979) (Rehnquist, J., dissenting).

II. The Court Should Replace *Purcell's* Abuse of Discretion Standard of Review with the *De Novo* Standard of Review

The Court of Appeals' decision below accurately shows how Indiana courts have answered this question for forty years, with *Purcell* stating that appellate courts considering T.R. 50(A) decisions must uphold "a trial court's issuance of a directed verdict" unless "the trial court abused its discretion." *Purcell*, 972 N.E.2d at 837, citing *American Optical*, 457 N.E.2d at 183.

When Indiana's abuse of discretion standard of review was first promulgated that standard was consistent with the one applied throughout the country. In the 1980s, the U.S. Circuit Courts of Appeal considering appeals in directed verdict cases were united in the view that decisions granting or denying directed verdicts were

subject to reversal solely for an abuse of discretion.[1] During the same period, every state appellate court in the country, including this Court in *American Optical*, applied the abuse of discretion standard of review.[2]

That federal and state unanimity favoring abuse of discretion review evaporated in the late twentieth century.[3] For example, as the Seventh Circuit explained, "[w]e review *de novo* the denial of a motion for judgment as a matter of law" and "will reverse only if the evidence was legally insufficient for the jury to have found as it did." *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 414 (7th Cir. 2015).

Every federal Circuit Court agrees with the Seventh Circuit's decision in *Glickenhaus*.[4] As Wright and Miller stressed, "**a massive amount of case**

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[1] *See, e.g., Spesco, Inc. v. General Electric Co.,* 719 F.2d 233, 238 (7th Cir. 1983); *Rankin v. Shayne Bros.*, 234 F.2d 35, 37 (D.C. Cir. 1956); *Ellis v. Chevron U.S.A. Inc.,* 650 F.2d 94, 96–97 (5th Cir. 1981) *Bunch v. Walter,* 673 F.2d 127, 130 n.4 (5th Cir. 1982); *Molthan v. Temple*, 778 F.2d 955, 960 (3rd Cir. 1985); *Dimmitt & Owens Fin. v. Conrail*, 772 F.2d 906 (6th Cir. 1985); *Wright v. Willamette Indus.,* 91 F.3d 1105, 1108 n.2 (8th Cir. 1986).

[2] *See Huber v. Protestant Deaconess Hosp. Asso.,* 133 N.E.2d 864, 870 (Ind. Ct. App. 1956)*; Green v. Karol*, 344 N.E.2d 106, 111 (Ind. 1976); *See also, e.g., Arnold v. Goldstein*, 73 N.W.2d 272, 274 (Mich. 1955); *Schaible v. Cincinnati*, 106 N.E.2d 81, 82 (Ohio App. 1952); *Prater v. Arnett*, 648 S.W.2d 82, 83 (Ky. App. 1983); *McMillen v. Carlinville Area Hosp.*, 450 N.E.2d 5, 7 (Ill. App. 1983).

[3] Courts have not explained the reasons for the transition favoring abuse-of discretion review to unanimity favoring *de novo* review--and understanding the reasons is not necessary to adopt the now-universal agreement on *de novo* review--but it seems likely that among the reasons was the growing late-20th century view that a motion for directed verdict "raises only a question of law, for which our review is *de novo." North v. Madison Area Ass'n,* 844 F.2d 401, 403 (7th Cir. 1988).

[4] *See, e.g., Smith v. Dorchester Real Estate, Inc.*, 732 F.3d 51, 62 (1st Cir. 2013); *MacDermid Printing Solutions LLC v. Cortron Corp.*, 833 F.3d 172, 180 (2nd Cir. 2016); *Graboff v. Colleran Firm*, 744 F.3d 128, 134 (3rd Cir. 2014); *Fontenot v. Taser Int'l, Inc.*, 736 F.3d 318, 332 (4th Cir. 2013); *Seibert v. Jackson Cnty.,* 851 F.3d 430, 434 (5th Cir. 2017); *Hanover Am. Ins. Co. v. Tattooed Millionaire Ent., LLC*, 974 F.3d 767, 779 (6th Cir. 2020); *Jackson v. City of Hot Springs*, 751 F.3d 855, 860 (8th Cir. 2014); *Oracle Corp. v. SAP AG*, 765 F.3d 1081, 1086 (9th Cir. 2014); *Stroup v. United Airlines, Inc.*, 26 F.4th 1147, 1156 (10th Cir. 2022); *McGinnis v. Am. Home Mortg.*, 817 F.3d 1241, 1254 (11th Cir. 2016); *Medina v. District of Columbia*, 643 F.3d 323, 326 (D.C. Cir. 2011); *Rembrandt Wireless Techs., LP v. Samsung Elecs. Co.*, 853 F.3d 1370, 1378 (Fed. Cir. 2017).

authority ... makes it clear that the court of appeals reviews the trial court's ruling on a Rule 50 motion for judgment as a matter of law *de novo*." 9B FED. PRAC. & PROC. §2536 (emphasis added).

With one exception, every state appellate court reviews trial court decisions on directed verdicts *de novo*.[5]

Indiana is the exception.

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[5] *See Teague v. Adams*, 638 So. 2d 836, 837–38 (Ala. 1994) ("Because a trial court's ruling on a directed verdict motion is based on an objective standard, and, thus, is not discretionary, review of a directed verdict … is *de novo*); *Marshall v. Peter*, 377 P.3d 952, 956 (Ak.2016); *Torres v. JAI Dining Servs.*, 497 P.3d 481, 483 (Ariz. 2021); *City of Little Rock v. Nelson*, 592 S.W.3d 633, 638 (Ark. 2020); *Design Built Systems v. Sorokine*, 243 Cal.Rptr.3d 897, 904 (Cal. App. 2019); *In re People ex rel. L.S.,* 524 P.3d 847, 851 (Colo. 2023); *Sheehan v. Balasic*, 699 A.2d 1036, 1039 (Conn.App.1997); *Brown v. Liberty Mut. Ins. Co.*, 774 A.2d 232, 245 (Del. 2001); *Kopel v. Kopel*, 229 So.3d 812, 819 (Fla. 2017); *Rhoades v. McCormack*, 839 S.E.2d 171, 173 (Ga. App. 2020); *Calipjo v. Purdy*, 439 P.3d 218, 228 (Haw. 2019); *Griff, Inc. v. Curry Bean Co.*, 63 P.3d 441, 445 (Id. 2003); *Jacobs v. Yellow Cab Affiliation, Inc.*, 73 N.E.3d 1220, 1248 (Ill. App. 2017); *In re Cornelsen*, No. 20-1659, 2021 WL 4592736, at *2 (Iowa App. Oct. 6, 2021); *Siruta v. Siruta*, 348 P.3d 549, 558 (Kan. 2015); *Steel Techs., Inc. v. Congleton*, 234 S.W.3d 920, 931 (Ky. 2007); *Hall v. Folger Coffee Co.*, 874 So.2d 90, 99 (La. 2004); *Profit Recovery Group, USA, Inc. v. Comm'r, Dep't of Admin. & Fin. Serv.*, 871 A.2d 1237, 1240–41 (Me. 2005); *Blue Ink, Ltd. v. Two Farms, Inc.*, 96 A.3d 810, 819 (Md. App. 2014); *Sarvis v. Tucker*, 110 N.E.3d 1219 (Mass. App. 2018); *Elezovic v. Ford Motor Co.*, 697 N.W.2d 851, 857 (Mich. 2005); *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009); *Rogers v. Estate of Pavlou*, 326 So.3d 994, 997–98 (Miss. 2021); Ellison v. Fry, 437 S.W.3d 762, 768 (Mo. 2014); *Johnson v. Auto Handling Corp.*, 523 S.W.3d 452, 459 (Mo. 2017); *Spoja v. White*, 317 P.3d 153, 156 (Mont. 2014); *Summit Restoration, Inc. v. Keller*, 953 N.W.2d 816, 819 (Neb. App. 2020); *Winchell v. Schiff*, 193 P.3d 946, 951–52 (Nev. 2008); *Stachulski v. Apple New England, LLC*, 191 A.3d 1231, 1241 (N.H. 2018); *Guo v. Novartis Pharms. Corp.*, No. A-5652-18, 2022 WL 2912041, at *8 (N.J. App. 2022); *McNeill v. Burlington Res. Oil & Gas Co.*, 182 P.3d 121, 130 (N.M. 2008); *Mendoza v. Highpoint Assocs.,* 83 A.D.3d 1, 8 (N.Y. App. 2011); *Berg v. Dakota Boys Ranch Ass'n*, 629 N.W.2d 563, 566 (N.D. 2001); *Warner v. DMAX Ltd., LLC*, 46 N.E.3d 202, 209 (Ohio App. 2015); *Harder v. F.C. Clinton, Inc.*, 948 P.2d 298, 301–02 (Okla. 1997); *Wilmoth v. Ann Sacks Tile & Stone, Inc.,* 197 P.3d 567, 576–77 (Or. App. 2008); *Rounick v. Neducsin*, 231 A.3d 994, 1000 (Pa. Super. 2020); *Soares v. Langlois*, 934 A.2d 806, 808 (R.I. 2007); *Fields v. J. Haynes Waters Builders, Inc.*, 658 S.E.2d 80, 90 (S.C. 2008); *Ctr. of Life Church v. Nelson*, 913 N.W.2d 105, 110 (S.D. 2018); *Lake v. Memphis Landsmen, LLC*, 405 S.W.3d 47, 67 (Tenn. 2013); *Cox v. Helena Chem. Co.*, 630 S.W.3d 234, 244 (Tex. App. 2020); *Burns v. Cannondale Bicycle Co.*, 876 P.2d 415, 420 (Utah App.1994); *State v. Great Northeast Prods., Inc.*, 945 A.2d 897, 901 (Vt. 2008); *Condo. Servs. v. First Owners' Ass'n*, 709 S.E.2d 163, 169 (Va. 2011); *Or. Mut. Ins. Co. v. Barton*, 36 P.3d 1065, 1069 (Wash. App. 2001); *McClure Mgmt., LLC v. Taylor*, 849 S.E.2d 604, 605 (W.Va. 2020); *Dakter v. Cavallino*, 856 N.W.2d 523, 528 (Wisc. App. 2014); *Sherard v. Sherard*, 142 P.3d 673, 676 (Wyo. 2006).

The language of T.R. 50 does not justify Indiana being an outlier. Although T.R. 50 is not an exact replica of Fed.R.Civ.P. 50, neither are the civil trial rules of every other State; none mimic the Federal Rules jot-for-jot, and it is difficult to conceive that each State's rules reproduce each other's verbatim. Thus, despite these disparities, all federal and state appellate courts–except Indiana's–have reached the same conclusion: directed verdict decisions must be reviewed *de novo*.

The current abuse of discretion standard counterproductively supports a practice that should be discouraged. As courts now recognize, directed verdicts should be discouraged in the vast majority of cases. Instead, trial courts should be encouraged to reserve ruling until the jury returns a verdict so a retrial is not necessary if a directed verdict is reversed on appeal. *See Unitherm Food System*, 546 U.S. at 405-06; *Wiltz*, 938 F.2d at 50.

For all these reasons, this Court should replace *Purcell*'s outdated abuse of discretion standard with the now otherwise universally accepted *de novo* standard.

CONCLUSION

ITLA respectfully requests the Court: 1) grant transfer; 2) encourage trial courts to submit cases to the jury rather than grant directed verdicts; 3) revise *Purcell*'s complex "quantity and quality" of the evidence test to remove credibility determinations and the weighing of evidence from the purview of trial judges considering T.R. 50(A) motions; and 4) change the standard of review appellate courts apply when reviewing a trial court's decision to grant or deny a T.R. 50(A) motion from an abuse of discretion to *de novo*.

Respectfully submitted,

INDIANA TRIAL LAWYERS ASSOCIATION

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VERIFIED STATEMENT OF WORD COUNT

Pursuant to Appellate Rule 44(E), the Brief of Amicus Curiae, Indiana Trial Lawyers Association contains less than 4,200 words, exclusive of the items listed in Appellate Rule 44(C), as counted by the word processing system used to prepare the Brief, MS Word 2016.

/s/ Nicholas C. Deets
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CERTIFICATE OF SERVICE

Pursuant to Ind. Appellate Rule 24(D), I hereby certify that on the 16th day of November, 2023, a true and complete copy of the foregoing document was served upon the following counsel through the Indiana E-Filing System:

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