

**In The Supreme Court of Ohio**

STATE OF OHIO,  Plaintiff-Appellant,  v.  John D. Yerkey,  Defendant-Appellee.	CASE NO. 2020-1392  REGULAR CALENDAR  APPEAL FROM THE COURT OF APPEALS OF OHIO, SEVENTH DISTRICT, COLUMBIANA COUNTY  CASE NO. 19 CO 0044
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BRIEF OF *AMICI CURIAE* NATIONAL CRIME VICTIM LAW INSTITUTE, OHIO  
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CRIME VICTIM SERVICES, AND ADVOCATING OPPORTUNITY IN SUPPORT OF  
APPELLANT, STATE OF OHIO

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STATEMENTS OF INTEREST OF *AMICI CURIAE*

The National Crime Victim Law Institute (NCVLI) is a nonprofit educational and advocacy organization located at Lewis and Clark Law School, in Portland, Oregon. NCVLI's mission is to actively promote victims' rights and victim voice throughout the justice system through crime victim-centered legal advocacy, education, and resources. NCVLI accomplishes its mission through training and education; providing legal technical assistance on cases nationwide; researching and analyzing developments in crime victim law; promoting the National Alliance of Victims' Rights Attorneys & Advocates; and participating as amicus curiae in select state, federal and military cases that present victims' rights issues of broad importance.

Ohio Crime Victim Justice Center (OCVJC) is a statewide nonprofit organization with offices in Columbus, Cincinnati, and Cleveland. OCVJC was founded in 2000 to provide crime victims a place to report victims' rights violations and to provide free legal representation to preserve and enforce their rights. OCVJC's mission is to ensure that the constitutional, statutory, and inherent rights of Ohio's state and federal crime victims are upheld throughout the criminal justice process in Ohio's 88 counties. OCVJC accomplishes this mission by providing free direct legal representation to Ohio crime victims in state and federal courts to preserve and enforce victims' rights during criminal proceedings. OCVJC also assists victims in accompanying protection order proceedings, Title IX proceedings, military proceedings, and immigration proceedings. In addition to providing direct legal assistance, OCVJC provides free victims' rights education and training to hospital personnel, social workers, counselors, court appointed special advocates, guardians *ad litem*, law enforcement, prosecutors, courts, and the community, and briefs courts as amicus curiae on issues of importance regarding the rights of Ohio crime victims in state and federal courts.

The Ohio Alliance to End Sexual Violence (OAESV), Ohio's federally designated sexual violence advocacy and prevention coalition, advocates for a coordinated comprehensive community response to sexual violence and for rape crisis services for sex crime victims. OAESV provides training and technical assistance for Ohio's 34 rape crisis centers and direct advocacy in the 11 Ohio counties without rape crisis services. OAESV works with law enforcement, prosecutors, hospitals, rape crisis centers, and other stakeholders to improve responses to survivors, and collaborates with federal and state lawmakers on survivor-centered legislation. OAESV works tirelessly to help victims attain the tools necessary for physical, emotional, and financial recovery. OAESV bases its recommendations on crime victim feedback and direct advocacy work. Ultimately, OAESV's position as a statewide resource for victims and an advocacy agent against sex crimes comes with valuable insight into the stark reality that most survivors of sexual violence will not receive their day in criminal court, and those that do are often at risk for financial fallout, among other consequences.

Advocating Opportunity, Inc. (AO) is a nonprofit advocacy organization which provides holistic legal and supportive services and whole person advocacy for victims of human trafficking. AO is dedicated to helping ensure that the constitutional, statutory, and unalienable rights of victims of crimes like human trafficking are upheld throughout the criminal justice process. Through its offices in Toledo and Columbus, Ohio, AO works to uphold the rights of trafficking victims across the state of Ohio; to raise awareness in Ohio about the need for proper criminal justice responses; to ensure equal access to justice for all survivors; and to advocate for victims of crimes like human trafficking and exploitation.

Crime Victim Services (CVS), is a community-based nonprofit located in Allen and Putnam Counties in Ohio. CVS believes that communities thrive when all members prevail over

trauma and support one another with empathy and respect. Since 1980, CVS has led the way in education, advocacy, and outreach to help victims prevail over the trauma of their victimization through safety, healing, justice, and restitution. CVS continues to impact society by challenging systems of oppression and cultivating a culture of prevention by providing victims of crime with the resources and supports needed while educating the public about victim related issues and impacts.

This case involves issues that are fundamental to the rights and interests of all crime victims in Ohio, with particular burdens hitting victims who are financially insecure. This Court's decision will impact the ability of crime victims to have the full financial impact of their victimization recognized in restitution; exercise their constitutional rights at court proceedings related to their victimization; to be treated with fairness and dignity throughout the criminal justice process; and to access to justice. *Amici* respectfully submit this brief in aid of the Court's task of analyzing and determining the correct rule of law in this matter.

#### STATEMENT OF FACTS

*Amici curiae* reference and incorporate the Statement of Facts submitted as part of the Appellant's Brief on the Merits.

#### INTRODUCTION

To secure "justice and due process" for crime victims throughout the criminal justice system, Ohio's constitutional victims' rights amendment guarantees victims a number of rights, "which are to be protected in a manner no less vigorous than the rights afforded to the accused." Ohio Constitution, Article I, Section 10a(A). Among these rights is the right "to full and timely

restitution.” *Id.* at (A)(7). The lower court’s denial of the Victim’s request for restitution for lost income violated this clear constitutional right.<sup>1</sup>

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<sup>1</sup> Across the country, courts have concluded that wages lost as a result of a victim’s noncompulsory attendance at court proceedings are economic losses that may be recovered through restitution. *See, e.g., United States v. Evers*, 669 F.3d 645, 659-660 (6th Cir.2012) (affirming trial court’s restitution order for wages lost when the child-victim’s legal guardian attended court proceedings because, *inter alia*, such economic loss was proximately caused by the appellant’s criminal conduct, given that it “is reasonably foreseeable that the parent or guardian of a minor victim of sexual exploitation will attend proceedings related to the prosecution of the case and, as a consequence, miss work”); *State v. Lindsley*, 953 P.2d 1248, 1252 (Ariz. Ct. App.1997) (affirming an order awarding restitution to a theft victim for wages lost due to noncompulsory attendance at trial, under statute authorizing restitution for economic losses incurred “as a result of the commission of an offense,” on the ground that the trial attendance “was a direct result of defendant’s crime” and noting that “it makes no difference whether the victim attended [the proceedings] pursuant to subpoena or not”); *State v. Crisler*, 81 Cal. Rptr. 3d 887, 891–892 (Cal. Ct. App.2008) (internal citations omitted) (finding that wages lost by parents of murder victim while attending trial “readily qualify as ‘economic loss incurred as the result of the defendant’s criminal conduct’ since they would not have been incurred had defendant not murdered their son” and noting the foreseeability of the victim’s parents attending the trial regarding their child’s murder); *State v. Reale*, 343 P.3d 49, 53–55 (Idaho 2014) (affirming an order awarding restitution to the child-victim’s mother to reimburse her for lost wages resulting from taking time off from a nightshift job to sleep before morning court appearances under statute defining economic loss, for restitution purposes, as including “lost wages \* \* \* resulting from the criminal conduct” and finding that the decision to miss work was “not an intervening, superseding cause,” as it is “foreseeable that the mother of a child victim would want or need to attend the same court proceedings”); *Huddleston v. State*, 764 N.E.2d 655, 657 (Ind. Ct. App.2002) (finding that mother of child molestation victim was entitled to restitution for, *inter alia*, wages lost to attend court proceedings because such economic costs were the “direct and immediate result of the criminal acts of a defendant”); *State v. Palubicki*, 727 N.W.2d 662, 666–67 (Minn.2007) (affirming an order awarding restitution to reimburse a murder victim’s adult children for wages lost due to their noncompulsory attendance at trial on the ground that “[i]t is a direct result of the crime that the children of the murder victim attended the proceedings and suffered lost wages”). *But see, e.g., Koile v. State*, 934 So.2d 1226, 1234 (Fla.2006) (finding that restitution statute did not authorize restitution for the lost wages of a next of kin who attended their child’s a murder trial because “the lost income was not a result of the offense but was a result of a voluntary decision and does not bear a significant relationship to the offense”); *State v. Cummings*, 589 S.E.2d 48, 53 (W. Va.2003) (finding that restitution statute did not authorize restitution for wages victim lost while attending trial, where statute limited restitution for lost wages to instances of bodily injury). Because this issue is well briefed by Appellant, Appellant’s Br. at 8-10, *Amici* focus their analysis on the other victims’ rights placed in jeopardy by the lower court’s unconstitutionally narrow interpretation of the right to restitution.



As part of a constitutional package of rights designed to enhance victim participatory status in criminal justice, restitution is designed, in part, to compensate victims for their losses and restore them to their pre-crime financial state. *See* Ohio Constitution, Article I, Section 10a(A)(7) (affording victims the right to full and timely restitution); *see also Hughey v. United States*, 495 U.S. 411, 416, 110 S.Ct. 1979, 109 L.Ed.2d 408 (1990) (observing that the “ordinary meaning of ‘restitution’ is restoring someone to a position he occupied before a particular event”); *United States v. Gifford*, 90 F.3d 160, 163 (6th Cir.1996) (observing that “a primary purpose of restitution is to compensate the innocent victim of a crime”).

This Court has also acknowledged that requiring an offender to pay restitution to the victim as a criminal sanction “serves both remedial and punitive purposes.” *State v. Aguirre*, 144 Ohio St.3d 179, 2014-Ohio-4603, 41 N.E.3d 1178, ¶ 23. Importantly, this Court has also recognized that “the primary goal of restitution is remedial or compensatory.” *Id.*, citing *Paroline v. United States*, 572 U.S. 434, 134 S.Ct. 1710, 1726, 188 L.Ed.2d 714 (2014). Rather than ensuring that the Victim in this case could meaningfully participate in the justice system and still be financially restored in the aftermath of the crime committed against her, the Seventh District interpreted Ohio law in a manner that upends these promises. In fact, the court’s holding means that if a victim meaningfully participates in the criminal justice process, the victim will, in all likelihood, be less well-off financially. Such an approach is directly at odds with express constitutional rights and public policy of this state.<sup>2</sup>

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<sup>2</sup> This approach is also at odds with the rehabilitative function of restitution. Restitution is rehabilitative to the extent that it compels defendants to recognize the real harms that their actions cause victims. *Paroline v. United States*, 572 U.S. 434, 457–58, 134 S.Ct. 1710, 188 L.Ed.2d 714 (2014). An approach to restitution that disregards the financial losses victims suffer as a result of missing work to protect their rights and interests in court leaves defendants with the mistaken impression that they bear no responsibility for the harms victims suffer by virtue of being forced into the criminal justice system. A defendant’s prosecution is an entirely natural

In reaching its holding, the lower court adopted a fundamentally flawed legal analysis, which resulted in a violation of the Victim’s right to restitution, as well as violations of a number of additional constitutional rights. Specifically, the lower court premised on the conclusion that Marsy’s Law’s broad promise does not alter how courts are to interpret statutes that predate the constitutional amendment. *See State v. Yerkey*, 2020-Ohio-4822, 159 N.E.3d 1232, ¶ 26 (7th Dist.) (stating that the rights provided under Marsy’s Law “must be construed within the valid and unchanged statutory framework for restitution set forth by the General Assembly”). This approach misunderstands not only the mandatory nature of restitution under Ohio Constitution, Article I, Section 10a(A)(7), but also the amendment’s express provision that victims’ constitutional rights shall supersede all conflicting state laws. *Id.* at (E).

Ohio’s constitutional rights for victims are not to be construed within the context of existing laws; instead, existing laws are to be construed within the context of the constitutional guarantees. *See* Ohio Constitution, Article I, Section 10a(A) (affording victims substantive and procedural rights in order “[t]o secure for victims justice and due process throughout the criminal \* \* \* justice system[.]”); *State v. Lee*, 12th Dist. Warren No. CA2018-11-134, 2019-Ohio-4725, ¶ 12 (observing that Marsy’s Law “expands the rights afforded to victims of crimes”).

Central to this process is the constitutional recognition that victims’ rights to justice and due process necessitate victims having the rights to be present and heard at public proceedings involving their victimization and implicating their rights. Ohio Constitution, Article I, Section 10a(2), (3). Barring victims from recovering restitution for income lost while exercising these rights erects a financial barrier to the rights’ very exercise of the rights. If left to stand, the lower

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and foreseeable consequence of a criminal offense, as is the fact that such a prosecution will disrupt a victim’s life in a manner that has costs, financial and otherwise.

court's decision will force victims to choose between maintaining their income and participating in criminal justice. For victims who lack the financial security to lose income without the prospect of compensation, this is not a meaningful choice. Instead, for these victims the outcome is inevitable: they cannot exercise their constitutional rights. Such a result is itself a violation of financially vulnerable victims' rights; specifically, this result violates the constitutional rights to be treated with fairness and respect for the victims' dignity, and their right, under the state and federal constitutions, to access justice.<sup>3</sup> Therefore, *Amici* urge this court to reverse the lower court's decision.

### ARGUMENT

**Proposition of Law No. I: The constitutional rights of victims to be treated with fairness and respect for their dignity, pursuant to the Ohio Constitution, and the right of these victims to access justice, pursuant to the Ohio and United States Constitutions, include the right to restitution for wages lost while attending court proceedings related to their victimization.**

**A. VICTIMS IN OHIO HAVE A STATE CONSTITUTIONAL RIGHT TO BE TREATED WITH FAIRNESS AND RESPECT FOR THEIR DIGNITY.**

The Ohio Constitution affords crime victims a range of participatory rights within the criminal justice system, including the rights to be present and heard at court proceedings related to their victimization. *See, e.g.*, Ohio Constitution, Article I, Section 10a(A)(2) (providing crime victims with the right “upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings”); *id.* at § 10a(A)(3) (providing crime victims with the right “to be heard in any

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<sup>3</sup> Although the lower court's decision has far-reaching implications for the rights and interests all victims in Ohio, *Amici* focus their argument on the disparate impact of this decision on the rights and interests of financially vulnerable victims. The court's decision creates unequal paths within the criminal justice process for victims based on their economic resources. Such disparities undermine the very concept of justice.

public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated”). The Constitution expressly recognizes that victims have standing to personally assert these rights. *See* Ohio Constitution, Article I, Section 10a(B) (affording victims the right to assert their rights under Marsy’s Law).

While victims choose whether and when to exercise their right to attend court proceedings, any such exercise is directly tied to the criminal acts of another and will take place within a justice process that they did not elect to join.<sup>4</sup> *See State v. Belbachir*, 7th Dist. Belmont No. 08 BE 24, 2009-Ohio-1511, ¶ 23 (noting, in the context of considering whether a victim was entitled to restitution for wages lost when, *inter alia*, attending a restitution hearing to which the defendant failed to appear, that “it strains credulity to assert that [the victim] ‘chose’ to miss work on” such an occasion); *State v. Shifflet*, 2015-Ohio-4250, 44 N.E.3d 966, 986, ¶ 59 (4th Dist.) (finding that wages lost by the parents of child sexual abuse victims while attending trial or due to an inability to secure child care were not “voluntarily incurred or would [not] have been incurred regardless of the commission of Appellant’s offenses”). Because victims do not choose to become involved in the criminal justice system, the economic losses they suffer due to attending proceedings are costs of the crime committed against them.

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<sup>4</sup> A victim’s presence in a courtroom as an exercise of their constitutional rights is as directly and proximately related to an offender’s conduct as when the attendance is compelled by a subpoena or the victim’s participation is otherwise required. *See Lindsley*, 953 P.2d at 1252 (observing, for the purposes of determining whether a victim’s restitution for lost income included income lost attending trial, that “it makes no difference whether the victim attended [the proceedings] pursuant to subpoena or not” and concluding that wages lost as the result of a victim’s noncompulsory attendance at court proceedings were subject to restitution on the ground that, *inter alia*, the victim did not “choose” to attend such proceedings “as a disinterested bystander might, but because she was the victim of defendant’s actions and, thus, unavoidably entwined in the criminal proceedings”).

An approach to restitution that forces victims to bear these economic losses or forgo the exercise of their constitutional rights causes victims more than general financial harm. The lower court's decision results in a deprivation of victims' state constitutional right to be treated with fairness and dignity because it treats financially insecure victims differently than their financially secure peers, imposes significant practical hurdles to victim recovery, safety and security, and causes financially insecure victims secondary harms.

*1. The Denial of Restitution for Income Lost While Attending Court Proceedings Unconstitutionally Creates Two Classes of Victims: Those Who Can Afford to Exercise Their Participatory Rights and Those Who Cannot.*

The lower court's decision presents victims with a choice: they can exercise their constitutional rights to be present and/or heard or they can maintain their post-victimization financial status quo. This is simply not a meaningful choice for financially vulnerable victims. *See State v. Lindsley*, 953 P.2d 1248, 1252 (Ariz. Ct. App. 1997) ("To deny a victim the right to reimbursement for wages lost in attending court proceedings which he or she may attend by right would be tantamount in some instances to denying that individual the opportunity to exercise that right."). As a result, the lower court's decision creates two classes of victims: those who can financially afford to assert their rights and those who cannot.

Such disproportionate impact is a violation of these victims' constitutional right to be treated with fairness and respect throughout the criminal justice system. Ohio Constitution, Article I, Section 10a(A)(1). Imbedding such economic injustice for victims within the criminal justice system is also at odds with the overall purpose of Ohio's constitutional amendment. *See* Ohio Constitution, Article I, Section 10a(A) (affording victims substantive and procedural rights in order "[t]o secure for victims justice and due process throughout the criminal \* \* \* justice system[']"). As such, the lower court's decision must be reversed.

2. *The Denial of Restitution for Income Lost While Attending Court Proceedings Interferes with Victim Recovery and Jeopardizes their Safety and Security.*

The effective deprivation of financially vulnerable victims' constitutional participatory status interferes with the recovery of these victims and jeopardizes their safety and security.<sup>5</sup> A victim's presence at court proceedings related to their victimization can aid their recovery.<sup>6</sup> See Douglas E. Beloof & Paul G. Cassell, *The Crime Victim's Right to Attend the Trial: The*

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<sup>5</sup> In addition, the lower court's decision undermines the well-established state interest in victim participation as a key to the administration of justice. See generally Ohio Constitution, Article I, Section 10a (providing crime victims with participatory rights within the criminal justice system); R.C. 2930.09 (providing crime victims with the right to be present at court proceedings); R.C. 2930.13 (providing crime victims with the right to make a written or oral impact statement). Indeed, in a statutory victims' rights provision that predates Marsy's Law, Ohio recognizes that victims play such a critical within the justice system that their rights as employees must be protected to ensure that they can leave work to aid in the investigation or prosecution of a case and otherwise protect their interests in court without facing discharge, discipline or another form of retaliation. R.C. 2930.18 ("No employer of a victim shall discharge, discipline, or otherwise retaliate against the victim, a member of the victim's family, or a victim's representative for participating, at the prosecutor's request, in preparation for a criminal or delinquency proceeding or for attendance, pursuant to a subpoena, at a criminal or delinquency proceeding if the attendance is reasonably necessary to protect the interests of the victim."). Although a victim's right to not have their employer discharge, discipline or otherwise retaliate against them for participating pursuant to a subpoena "generally does not require an employer to pay an employee for time lost as a result of attendance at a criminal or delinquency proceeding," R.C. 2930.18, an employer may not decrease or withhold a victim-employee's pay for any time lost as the result of compliance with a subpoena when the victim-employee has been subpoenaed to appear at a proceeding that pertains to an offense against the employer or an offense involving the employee during the course of their employment. R.C. 2151.211; R.C. 2939.121; R.C. 2945.451. This reflects clear public policy in Ohio in favor of criminal justice without imposing financial costs on the employer or employee.

<sup>6</sup> Some courts outside of Ohio have recognized that victims are entitled to restitution for wages lost while attending court proceedings because, among other things, such presence provides victims with an opportunity to heal. See, e.g., *Crisler*, 81 Cal. Rptr. 3d at 891–892 (internal citations omitted) (finding that wages lost by parents of murder victim while attending trial "readily qualify as 'economic loss incurred as the result of the defendant's criminal conduct' since they would not have been incurred had defendant not murdered their son" and noting that "[i]t is entirely reasonable that the parents of a murder victim will attend the murder trial in an attempt to gain some measure of closure and a sense that justice has been done") (internal citation omitted); *Palubicki*, 727 N.W.2d at 667 (finding that the trial court did not abuse its discretion in ordering restitution for the wages lost by a murder victim's adult children, where such attendance was, in part, to achieve closure in coping with the victim's death).

*Reascendant National Consensus*, 9 Lewis & Clark L. Rev. 481, 536 (2005) (quoting Ken Eikenberry, *Victims of Crime/Victims of Justice*, 34 Wayne L. Rev. 29, 41 (1987)) (“[T]he right to attend the trial may be critical in allowing the victim to recover from the psychological damage of a crime. It seems reasonable to assume a victim’s attendance at a trial may ‘facilitate healing of the debilitating psychological wounds suffered by a crime victim.’”; *see generally* Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims’ Mental Health*, 23 J. of Traumatic Stress 182, 182 (2010) (describing the potential benefits to victims of participating in the criminal justice system). The lack of restitution for wages that a victim loses when exercising their participatory rights will disproportionately deprive financially insecure victims of a path to healing and recovery.

The financial barriers that the lower court’s approach to restitution erects may also jeopardize the safety and security of victims who lack the financial resources to permanently forfeit their income in order to exercise their right to be present at all public court proceedings. Victims who cannot afford to attend proceedings that involve an offender’s release may be caught off-guard when release conditions are agreed to without the victim’s input. Although a victim’s constitutional right, upon request, to reasonable and timely notification of such public court proceedings, Ohio Constitution, Article I, Section 10a(A)(2), may partially guard against this surprise, the right to notice is an insufficient substitute for the victim’s presence and input in the courtroom. This is especially so where victims lack the legal sophistication to know, in advance, how a proceeding will affect their rights and interests.<sup>7</sup> Additionally, a victim’s

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<sup>7</sup> A system that does not authorize restitution for income lost attending proceedings related to victimization forces financially vulnerable victims to choose which, if any, proceedings to attend based on their understanding about which proceedings will most affect their rights and interests. *See State v. Houser*, 314 P.3d 203, 210 (Idaho Ct. App.2013) (finding, *inter alia*, that distinguishing between the importance of criminal court proceedings in the context of restitution

noncompelled presence in the courtroom may give the victim insight into an offender's state of mind and level of accountability during the prosecution. Limiting the ability of financially insecure victims to access this information disproportionately jeopardizes the safety of such individuals.<sup>8</sup>

Such disparate treatment of financially vulnerable victims directly violates the constitutional right of these victims to fair treatment within the justice system. Ohio Constitution, Article I, Section 10a(A)(1). It also runs counter to the broad guarantee of Ohio's victims' rights amendment to secure justice and due process for victims. Ohio Constitution, Article I, Section 10a. Barriers to recovery, safety and security for financially insecure victims cannot be what the legislature envisioned in drafting its restitution laws or what the citizens of Ohio believed they were voting for in the passage of Marsy's Law. Reversal of the lower court's decision is necessary to avoid these outcomes.

3. *The Denial of Restitution for Income Lost While Attending Court Deprives Victims of Their Agency and Dignity, Thereby Imposing Secondary Harms.*

It is well-established that victims' interaction with legal system processes may result in psychological, emotional and/or physical harm. *See generally* Nat'l Crime Victim Law Inst. (NCVLI), *Polyvictims: Victims' Rights Enforcement as a Tool to Mitigate "Secondary Victimization" in the Criminal Justice System*, NCVLI Victim Law Bulletin 1–2 (2013), <http://law.lclark.edu/live/files/13798-polyvictims-victims-rights-enforcement-as-a-tool> (accessed Mar. 24, 2021) (detailing the harms victims may suffer as a result of their interactions with the

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requests for wages lost attending such proceedings "would be substantially unfair to crime victims who may not be legally sophisticated").

<sup>8</sup> In doing so, this approach to restitution may also run afoul of the constitutional right of financially vulnerable victims "to reasonable protection from the accused or any person acting on behalf of the accused[.]" Ohio Constitution, Article I, Section 10a(A)(4).



criminal justice system). The magnitude of such harm depends, in large measure, upon: “(1) the manner in which the victims are treated throughout the criminal justice process; and (2) the amount of control that the victims are given as well as the extent to which they are able to fairly participate within the system.” *Id.* at 1. Criminal justice practices can either compound a victim’s lack of agency and control or they can, at least partially, restore a victim’s power over their own life through respect for the victim’s choices and dignified treatment. *Id.* at 1, n.12.

The lower court’s decision strips financially vulnerable victims of their agency by depriving them of a meaningful choice between maintaining their income and exercising their rights. Additionally, the implicit denial of the existence of a causal connection between the losses a victim incurs as a result of participating in the investigation and prosecution of their offender and that offender’s underlying criminal conduct tells victims that they, at least in part, are to blame for the costs of their own victimization. This disregard for the connection between a victim’s financial losses and an offender’s crime deprives victims of their dignity. Such an approach treats these victims as having the same rights to attend court proceedings as members of the general public. Yet, unlike the general public, victims are not disinterested bystanders to court proceedings, they are individuals with indisputable interests in the outcome of a case. *See* Beloof & Cassell, 9 Lewis & Clark L. Rev. at 535 (observing that crime victims’ participatory rights within the criminal justice system “implicitly recognize that crime victims are more than passive bystanders to a criminal proceeding, but have genuine and legitimate interests in the outcome”). To treat victims otherwise is an affront to their dignity. *See id.* (“Excluding the victim from the criminal trial constitutes an affront to the crime victim’s dignity.”).

This deprivation of victim agency, disregard for the connection between a victim’s financial losses and an offender’s crime, and indifference to the victim’s unique role within the

justice process simply cannot fit within any reasonable meaning of fair and dignified treatment. Instead, these are what is known as secondary victimizations. *See* Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 *Social Justice Research* 313, 315-316, 321-322 (2002) (finding that victims’ perception of procedural justice—including whether they perceived they were treated with fairness and respect or whether they were subject to victim blaming attitudes, behaviors and practices—is a “powerful predictor[] of secondary victimization”). Such system-based revictimization compounds the initial trauma and pain that financially vulnerable victims suffer in the aftermath of crime. *See* NCVLI, *Polyvictims*, NCVLI Victim Law Bulletin at 2 (internal footnotes omitted) (“[V]ictims who feel they have been treated unfairly—e.g., confronted with victim-blaming or biased attitudes, behaviors and practices \* \* \* or denied the opportunity to exercise their rights—report experiencing more trauma symptoms [than those who feel that they have been treated fairly and afforded their rights]. These victims are more likely to feel that they have been harmed by the legal system.”); Parsons & Bergin, 23 *J. of Traumatic Stress* at 182–183 (observing that victims’ experience with the justice system can exacerbate existing trauma and lead to secondary victimization, “where crime victims feel blamed by the justice system or experience other negative societal reactions as a consequence of their initial (primary) victimization”).

An approach to restitution that causes these secondary harms violates victims’ constitutional rights to fair treatment and respect for their dignity. Ohio Constitution, Article I, Section 10a(A)(1). These harms are entirely avoidable. A recognition that restitution for income lost attending court proceedings is available under a straightforward reading of Ohio’s restitution laws and protects the agency and dignity of financially vulnerable victims within the criminal justice system.

**B. CRIME VICTIMS IN OHIO HAVE STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO ACCESS JUSTICE.**

The financial barrier to justice that the lower court’s decision creates also runs afoul of fundamental right of all people—including crime victims—to access the courts. This right exists under both the Ohio and United States Constitutions. *See* Ohio Constitution, Article I, Section 16 (“All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.”); *Swekel v. City of River Rouge*, 119 F.3d 1259, 1261–1262 (6th Cir.1997) (observing that the right to access the courts is a fundamental right protected by multiple provisions of the United States Constitution, including the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause, the First Amendment, and the Privileges and Immunities Clause of Article IV). An approach to restitution that forces victims to choose between maintaining their income and participating in the justice system interferes with this right. Moreover, the lower court’s decision impairs the constitutional right of financially insecure victims to access courts with the same freedom as victims who are financially secure enough to assume the burden of their lost wages. Such economic injustice within Ohio’s criminal justice system is at odds with the constitutional guarantee, under both the state and federal constitutions, of court access. To avoid these violations of financially vulnerable victims’ right of access, the lower court’s decision must be reversed.

**CONCLUSION**

If the lower court’s decision stands, victims in Ohio will be deprived of their rights to be treated with fairness and respect for their dignity and to access the courts. Notably, financially vulnerable victims in Ohio will be disparately impacted by such an outcome. This economic

injustice runs directly counter to the very purpose of these rights: to secure justice and due process for all crime victims. The lower court's decision should be reversed.

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