IN THE SUPREME COURT OF OHIO

CASE Nos. 2022-0424, 2022-0407

MACHELLE EVERHART,
Plaintiff-Appellee,

-vs-

COSHOCTON COUNTY MEMORIAL HOSPITAL *et al.*,
Defendant-Appellant.

ON APPEAL FROM THE TENTH DISTRICT COURT OF APPEALS, FRANKLIN COUNTY, CASE NO. 21AP-74

BRIEF OF *AMICUS CURIAE*, OHIO ASSOCIATION FOR JUSTICE, IN SUPPORT OF PLAINTIFF-APPELLEE

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AMICUS CURIAE'S **STATEMENT OF INTEREST**

While medical practitioners and organizations have numerous associations to protect their interests, such as *Amicus Curiae* Ohio Hospital Association, Ohio State Medical Association, and Ohio Osteopathic Association ("Associations"), no such organizations exist to represent, organize, and advocate on behalf of the victims of medical negligence. The Ohio Association for Justice ("OAJ") seeks to level the playing field. OAJ is devoted to strengthening the civil justice system so that deserving individuals may secure fair compensation by holding wrongdoers accountable. The OAJ comprises approximately one thousand five hundred attorneys practicing in such specialty areas as personal injury, general negligence, medical negligence, products liability, consumer law, insurance law, employment law, and civil rights law. These lawyers seek to preserve the rights of private litigants and to promote public confidence in the legal system.

The OAJ submits this brief out of concern that Defendant-Appellants, Joseph J. Mendiola, M.D. ("Dr. Mendiola"), Coshocton County Memorial Hospital ("Hospital"), and Mohamed Hamza, M.D. ("Dr. Hamza"), have asked for an interpretation of the wrongful death statute, R.C. 2125.02, that would erect purposeless barriers to wrongful death claims contrary to the express intent of the General Assembly. Lining up predictably behind Defendants, *Amici Curiae* Associations and Thomas Keane, M.D. ("Dr. Keane"), have offered a similarly too-broad view of the statute. But the needless procedural red tape from which the Defendants and their loyal *Amici* seek to benefit finds no basis in the text of the wrongful death statute. In the interest of furthering a view of these enactments that respects the words chosen by this state's legislative authority, the OAJ offers the following argument and urges this Court to reject Defendants'

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Propositions of Law and hold that the medical claim statute of repose does not apply to wrongful death claims.

STATEMENT OF THE CASE AND FACTS

The OAJ adopts by reference the background statements furnished in the Merit Brief of Plaintiff-Appellee, Machelle Everhart filed September 23, 2022. But the outcome of this case will directly affect numerous other cases, including the following that are currently pending in this Court: *Davis v. Mercy St. Vincent Med. Ctr.*, S.Ct. Ohio Nos. 2022-0460 and 2022-0658; *McCarthy v. Lee*, S.Ct. Ohio Nos. 2022-0717 and 2022-0718; *Wood v. Lynch*, S.Ct. Ohio Nos. 2022-0693 and 2022-0880; *Maxwell v. Lombardi*, S.Ct. Ohio Nos. 2022-0781 and 2022-0890; and *Ewing v. UC Health,* S.Ct. Ohio Nos. 2022-1121 and 2022-1166.

In *McCarthy*, in 2020 the plaintiffs on behalf of three minor children refiled an action against healthcare providers for medical negligence, wrongful death, and loss of consortium stemming from injury to the children's mother, Kathleen McCarthy ("Kathleen"). *McCarthy v. Lee*, 10th Dist. Franklin No. 21AP-105, 2022-Ohio-1033, ¶ 2. In 2010, the defendant physician found that Kathleen had Grade 1 hemorrhoids, and when she returned to the physician in 2015 due to increased symptoms, he did not order another colonoscopy. *Id.* at ¶ 3-4. In 2017, Kathleen was diagnosed with stage IV colon cancer that had already spread to her lymph nodes. *Id.* at ¶ 6-7. Kathleen is still living but has "incurable" stage IV colon cancer, and the complaint explained the plaintiffs preemptively raised a wrongful death claim to avoid statue of repose defenses. *Id.* at ¶ 8-9. Plaintiffs alleged that the physician was negligent in 2015 for failing to order a colonoscopy that would have identified the cancer before it progressed. *Id.* at ¶ 9. The trial court granted judgment on the pleadings in favor of the providers based on the four-

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year medical claim statute of repose, and the Tenth District Court of Appeals reversed as to the wrongful death claim, holding that the medical claim statute of repose does not apply to wrongful death claims. *Id.* at ¶ 33.

In *Davis*, the plaintiffs timely brought a wrongful death claim, among others, against healthcare providers stemming from the death of Monica Davis in April 2014 from medical negligence committed in November 2013. *Davis v. Mercy St. Vincent Med. Ctr.*, 2022-Ohio-1266, 190 N.E.3d 77, ¶ 2 (6th Dist.). After discovery, the plaintiffs dismissed the action and refiled it in August 2018 within one year after dismissing it but over four years after the negligence. *Id.* The trial court granted judgment as a matter of law in favor of the healthcare providers, but the Sixth District Court of Appeals reversed, holding that the four-year medical claim statute of repose did not bar the wrongful death claim. *Id.* at ¶ 68.

In *Wood*, the plaintiff found his wife unresponsive on the floor in September 2016, and she was later pronounced dead due to a narcotics overdose. *Wood v. Lynch*, 10th Dist. Franklin No. 20AP289, 2022-Ohio-1381, ¶ 4. In an August 2018 complaint against a physician and institutions where he practiced, the plaintiff brought a wrongful death action claiming that the physician negligently prescribed his wife the narcotics for her joint pain. *Id.* at ¶ 5. One of the medical centers moved for judgment on the pleadings, arguing that the physician left that practice in 2011, and the medical claim statute of repose therefore barred the wrongful death claim against that clinic. *Id.* at ¶ 6. The trial court granted the motion, and the Tenth District reversed. *Id.* at ¶ 21.

In *Maxwell*, the plaintiff filed an action in 2015 for survivorship, loss of consortium, and wrongful death alleging that a physician's negligence during a total hip replacement surgery in August 2013 caused Robert Maxwell's death the following month.

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Maxwell v. Lombardi, 10th Dist. Franklin No. 21AP-556, 2022-Ohio-1686, ¶ 2-3. The plaintiff voluntarily dismissed the case in January 2018 and refiled it in January 2019. The trial court granted the healthcare providers' motion for summary judgment, finding that the medical claim statute of repose rendered the wrongful death claim time-barred, and the Tenth District reversed on the authority of *Everhart v. Coshocton Cty. Mem. Hosp.,* 10th Dist. Franklin No. 21AP-74, 2022-Ohio-629 and *McCarthy*, 10th Dist. Franklin No. 21AP-105, 2022-Ohio-1033. *Id.* at ¶ 6, 19.

In *Ewing*, an adult daughter whose mother died in March 2014 after a stay in a medical center filed a wrongful death action, among other claims, against multiple healthcare providers in August 2015. *Ewing v. UC Health*, C.P. Hamilton No. A-1504406. The daughter voluntarily dismissed the complaint in April 2017 and refiled it within one year later in April 2018. *Ewing v. UC Health*, 2022-Ohio-2560, 193 N.E.3d 1132, ¶ 2 (1st Dist.). She alleged that the providers fractured her mother's leg and otherwise deviated from accepted standards of care during her mother's in-patient stay at the medical center from February to March 2014, which caused her mother to pass away three days after leaving the facility. *Id.* The defendants moved for judgment on the pleadings on the wrongful death claim based on the medical claim statue of repose, and the trial court granted the motion. *Id.* at ¶ 4. The First District Court of Appeals reversed the dismissal of the wrongful death claim, holding that wrongful death claims are not subject to the medical claim statute of repose. *Id.* at ¶ 31.

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ARGUMENT

This Court agreed to review the following:

> **CERTIFIED CONFLICT QUESTION: DOES THE STATUTE OF REPOSE FOR MEDICAL CLAIMS, SET FORTH UNDER R.C. 2305.113(C), APPLY TO**

STATUTORY WRONGFUL DEATH CLAIMS?

HOSPITAL AND DR. HAMZA'S PROPOSITION OF LAW: EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED THEREIN, THE OHIO MEDICAL CLAIM STATUTE OF REPOSE, R.C. §2305.113(C), APPLIES TO ANY WRONGFUL DEATH ACTION THAT IS COMMENCED MORE THAN FOUR YEARS AFTER THE OCCURRENCE OF AN ACT OR OMISSION THAT IS THE ALLEGED BASIS OF A MEDICAL CLAIM.

DR. MENDIOL'S PROPOSITION OF LAW: EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED THEREIN, THE MEDICAL CLAIM STATUTE OF REPOSE PROVIDED IN R.C. §2305.113(C), APPLIES TO WRONGFUL DEATH ACTIONS BROUGHT UNDER R.C. §2125.01 AND BARS ANY ACTION THAT IS NOT COMMENCED WITHIN FOUR YEARS OF THE ACT OR OMISSION THAT IS THE ALLEGED BASIS OF THE MEDICAL CLAIM.

I. Medical claims under R.C. 2305.113 are separate and distinct from wrongful death claims arising out of R.C. 2125.02.

Contrary to the *Amici* Associations' contention that "there can be no doubt that medical-based wrongful-death claims" are "medical claims," Ohio law is well settled to the contrary. Claims for wrongful death, which are brought by a representative of the decedent's estate on behalf of a decedent's beneficiaries, are separate and distinct from medical claims brought by or on behalf of an injured patient. *Associations' Amicus Brief, p. 5; Thompson v. Wing*, 70 Ohio St.3d 176, 637 N.E.2d 917 (1994); *Koler v. St. Joseph Hosp.,* 69 Ohio St.2d 477, 432 N.E.2d 821 (1982); *Klema v. St. Elizabeth's Hosp. of Youngstown*, 170 Ohio St. 519, 521, 166 N.E.2d 765 (1960) citing *Mahoning Valley Ry. Co. v. Van Alstine*, 77 Ohio St. 395, 83 N.E. 601 (1908); *May Coal Co. v. Robinette*, 120 Ohio St. 110, 165 N.E. 576 (1929); *Karr v. Sixt*, 146 Ohio St. 527, 67 N.E.2d 331 (1946).

As the basis for this distinction in Ohio law, this Court pointed to the United States

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Supreme Court's explanation in *St. Louis, Iron Mountain & S. Ry. Co. v. Craft*:

> Although originating in the same wrongful act or neglect, the two claims are quite distinct, no part of either being embraced in the other. One is for the wrong to the injured person, and is confined to his personal loss and suffering before he died, while the other is for the wrong to the beneficiaries, and is confined to their pecuniary loss through his death. One begins where the other ends, and a recovery upon both in the same action is not a double recovery for a single wrong but a single recovery for a double wrong.

Klema, 170 Ohio St. at 521, 166 N.E.2d 765, quoting *St. Louis, Iron Mountain & S. Ry. Co. v. Craft*, 237 U.S. 648, 35 S.Ct. 704, 706, 59 L.Ed. 1160 (1915). The Court in *Klema* further noted that this distinction is all the more pointed in light of the fact that judgment on one claim does not preclude recovery on the other. *Id.* This fact remains true. *Thompson*, 70 Ohio St.3d 176, 637 N.E.2d 917, at paragraph one of the syllabus.

In *Koler,* this Court affirmed this substantive distinction and rejected the notion that changes to the language in the statute superseded it. *Koler,* 69 Ohio St.2d at 480, 432 N.E.2d 821. The Court then confirmed the distinction between wrongful death and medical claims on this same basis again in *Thompson*, explaining that wrongful death is a separate, independent action, even where it shares the same set of underlying facts with a related medical claim. *Thompson*, 70 Ohio St.3d at 179, 183, 637 N.E.2d 917.

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Separate treatment for wrongful death claims also comports with Ohio statutory law. R.C. 2315.18(B)(3) and 2323.43(A)(3) carve out exceptions to legal limitations for the most severe injuries. Death is unquestionably one of the most severe injuries a tortfeasor can inflict, and so the Ohio Constitution itself protects recovery for wrongful death by prohibiting any limitation on recovery. *Article I, Section 19(a) of the Ohio Constitution*. This limitless recovery for wrongful death starkly contrasts strict limitations on recovery for medical claims. *See R.C. 2323.43*. These protections to

recovery for severe injury and resulting death persist despite statutory changes applicable to medical claims due to public-policy concerns.

Wrongful death claims also differ from medical claims in a number of other ways. The statute of limitations for wrongful death claims is two years, while the statute of limitations for medical claims is only one year. *Compare R.C. 2125.02(D)(1)* with *R.C. 2305.113(A)*. The statute of limitations for medical claims can be extended by 180-days with proper notice to potential parties. *R.C. 2503.113(B)(1)*. But the wrongful death statue has its own savings clause. *R.C. 2125.04*.

Claims for wrongful death and medical negligence also have different elements. Wrongful death claims are pled separately from claims for medical negligence, even where the causes of actions arise from the same facts and circumstances. A wrongful death claim must be brought by a personal representative of the decedent's estate, while a medical claim is brought by the injured patient directly. *R.C. 2125.02(A)(1); Klema*, 170 Ohio St. at 521, 166 N.E.2d 765. Recovery for wrongful death is limited to beneficiaries of the decedent's estate for harms and losses incurred by the decedent's death. *Id*. And recovery for medical claims is limited to harms and losses the injured patient has suffered during their lifetime. *Id*.

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These intentional differences carefully balance the noted concerns of the legislature with the constitutional rights of Ohio citizens to recover for harms and losses caused by wrongful acts. Judicial expansion of the separate, medical claims statute of repose would disregard this balancing act.

At just two years from the time of death, the statute of limitations for wrongful death claims is still one of the shortest. In their wide-ranging and dubiously relevant policy arguments, Defendants and their *Amici* fail to note how many claims for wrongful

death are brought within two years of death but more than four years after the fatal act of negligence occurred, suggesting it is not a number that warrants further limitation of citizens' rights guaranteed by the Seventh Amendment to the United States Constitution. Moreover, there should be concern about further limiting the time in which an action can be brought. For instance, even though altering a patient's medical record to evade liability can incur punitive damages, it continues to be an ongoing concern. *Moskovitz v. Mt Sinai Med. Ctr.*, 69 Ohio St.3d 638, 635 N.E.2d 331 (1994). Adding another time bar would further encourage liable parties to foil efforts to uncover their negligence in time. A short statute of limitations without a statute of repose balances the concerns of both sides.

II. Only the wrongful death statute, R.C. 2125.02, governs claims for wrongful death.

A. A cause of action that is independent, rather than derivative, cannot be controlled by the statute for another cause of action.

Because wrongful death is an independent claim, the right to raise it cannot be controlled or dictated by a different cause of action or the controlling statute thereof. *Thompson*, 70 Ohio St.3d at 183, 637 N.E.2d 917; *Koler,* 69 Ohio St.2d 477, 432 N.E.2d 821; *Klema*, 170 Ohio St. at 525, 166 N.E.2d 765. Accordingly, an administrator or executor's cause of action for wrongful death cannot be defeated by a bar of limitation that would have applied to the decedent's own, separate action:

> A cause of action for wrongful death thus exists in his personal representative, which cause of action can not be defeated merely by reason of the bar of limitation which would have been applicable to decedent's action.

Klema at 525. This Court has therefore repeatedly held that restrictions in the medical claims statute do not apply to wrongful death claims. *Id.*; *Koler* at 478-480.

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B. There is no basis in the plain text of the wrongful death statute to apply any other statute.

The continuing viability of this Court's earlier precedent is confirmed here by the rules of statutory analysis. There is no dispute that the plain language of the wrongful death statute does not contain a statute of repose that would apply in this case. Clear and unambiguous statutory language must be applied as the Legislative Assembly wrote it. *Wilson v. Durrani*, 164 Ohio St.3d 419, 2020-Ohio-6827, 173 N.E.3d 448, ¶ 24. Review "starts and stops" with the words of the statute alone. *Gabbard v. Madison Local School Dist. Bd of Edn*, 165 Ohio St.3d 390, 2021-Ohio-2067, 179 N.E.3d 1169, ¶ 13 citing *Johnson v. Montgomery*, 151 Ohio St.3d 75, 2017-Ohio-7445, 86 N.E.3d 279, ¶ 15. There is no need to apply any rules of statutory interpretation nor considerations of public policy. *Id.*

R.C. 2125.02(D) specifies the time in which a plaintiff must bring a wrongful death claim, setting forth a general two-year statute of limitations and a ten-year statute of repose specifically for product-liability-based wrongful death claims:

> (1) Except as provided in division (D)(2) of this section, a civil action for wrongful death shall be commenced within two years after the decedent's death.
>
> (2)(a) Except as otherwise provided in divisions (D)(2)(b), (c), (d), (e), (f), and (g) of this section or in section 2125.04 of the Revised Code, no cause of action for wrongful death involving a product liability claim shall accrue against the manufacturer or supplier of a product later than ten years from the date that the product was delivered to its first purchaser or first lessee who was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

Divisions (D)(2)(b) through (g) enact rules specific to product liability claims. *R.C. 2125.02(D)(2)(b)-(g).* The statute does not create a repose period for any types of

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actions other than product liability claims. *See R.C. 2125.02(D)*. And it does not incorporate, explicitly or implicitly, the medical claim statute of repose in 2305.113(C). *See id*.

As this Court made clear in *Wilson*, 164 Ohio St.3d 419, 2020-Ohio-6827, 173 N.E.3d 448, at ¶ 24, "[w]e must apply clear and unambiguous statutory language as the General Assembly wrote it." In the context of identifying exceptions to the medical claims statute of repose, this Court looked specifically to the text of the provision for "express" exceptions to determine the legislature's intent. *Id.* at ¶ 29. Underlying this Court's reasoning is that when the legislature wants one statute to apply to another, the General Assembly will explicitly say so. *Id.* For example, the *Wilson* Court looked to the explicit reference in the product-liability statute of repose to the R.C. 2305.19 saving statute at issue in that instance to justify the conclusion that the medical malpractice repose restriction would have had to do the same:

> Not only does the General Assembly's incorporation of the saving statute in the product-liability statute, R.C. 2305.10(C), demonstrate that the General Assembly knew how to create an exception to a statute of repose for application of the saving statute when it intended to do so, but it also demonstrates the General Assembly's understanding that without an express indication to the contrary, the saving statute would not override the statutes of repose.

Id. at ¶ 31.

In the wrongful-death context, too, the General Assembly explicitly incorporated a ten-year statute of repose for causes of action "for wrongful death involving a product liability claim[.]" *R.C. 2125.02(D)(2)(a)*. The General Assembly's creation of a 10-year statute of repose for wrongful-death-product-liability claims shows that the legislature knew how to create a statue of repose for wrongful death claims "when it intended to do

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so." *Wilson* at ¶ 31. If the General Assembly meant to apply the medical claim statute of repose to wrongful death claims, it would have "expressly indicat[ed]" like it did for product-liability actions. *Id.*

While Defendants and the *Amici* Associations point to *Wilson* for the principle that exceptions to the medical claim statute of repose must be "express," the relevant starting point for wrongful death claims is the wrongful death statute of repose, not the medical claim statute of repose. *See Associations Amicus Brief, pp. 8-9.* The *Amici* Associations' arguments in reliance on *Wilson* completely contradict the statutory interpretation for which they advocated in *Elliot v. Durrani*, S.Ct. Ohio No. 2021-1352. *Merit Brief of* Amici Curiae *Ohio Hospital Association, et al. in Support of Appellants filed in* Elliot *on April 18, 2022, p. 10* (relying on *Wilson* to argue that because the medical claim statute of repose "does not expressly incorporate the Absent-Defendant Statute," that statute does not apply to the medical claim statute of repose). Applying the same mode of statutory analysis from *Wilson* to the wrongful death statute of repose demonstrates that the General Assembly did not intend to create a four-year statute of repose for any types of wrongful death claims because the legislature chose not to explicitly incorporate the medical claim statute of repose into the wrongful death statute. Consistent with this Court's logic in *Wilson*, the legislature therefore did not intend the medical claim statute of repose to apply to wrongful death claims. If the plain-text analysis applied in *Wilson* is truly what the law requires, then that rule should operate the same way whether the results cut in favor or against the medical-defendant community in new and different contexts.

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III. Defendants' and their *Amici's* arguments implicitly concede that the wrongful death statute does not say what they want it to say.

Although Defendants and their *Amici* profess that the plain text of the medical claim statute of repose compels this Court to find in their favor, they focus on the wrong statute. The medical claim statute of repose in R.C. 2305.113(C) is a red herring because, as discussed above, only the wrongful death statue governs wrongful death claims. Defendants and their *Amici* must have chosen to pound the table on the medical claim statute of repose because they recognize that the plain text of R.C. 2125.02(D) clearly does not incorporate a four-year statue of repose for medical-based wrongful death claims.

The Defendants and their *Amici's* policy arguments also reveal that they cannot rely on the plain text of the wrongful death statute. As *Amicus* Dr. Keane acknowledges, courts have no authority to go beyond the plain meaning of an unambiguous statute. *Keane Amicus Brief, p. 10*. Defendants and their *Amici's* heavy reliance on policy arguments reveals a tacit acknowledgement that the plain text of the wrongful-death statute does not support their position.

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At the outset, this Court should not reach these policy arguments because the text of the wrongful death statute is clear and unambiguous:

> Ambiguity, in the sense used in our opinions on statutory interpretation, means that a statutory provision is "capable of bearing more than one meaning." *Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 16. **Without "an initial finding" of ambiguity, "inquiry into legislative intent, legislative history, public policy, the consequences of an interpretation, or any other factors identified in R.C. 1.49 is inappropriate."** *Id.*; *State v. Brown*, 142 Ohio St.3d 92, 2015-Ohio-486, 28 N.E.3d 81, ¶ 10. We "do not have the authority" to dig deeper than the plain meaning of an unambiguous statute "under the guise of either statutory

> interpretation or liberal construction." *Morgan v. Adult Parole Auth.*, 68 Ohio St.3d 344, 347, 626 N.E.2d 939 (1994). If we were to brazenly ignore the unambiguous language of a statute, or if we found a statute to be ambiguous only after delving deeply into the history and background of the law's enactment, we would invade the role of the legislature: to write the laws.

(Emphasis added.) *Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203, ¶ 8.

Moving past this foundational issue, this Court should remain un-swayed by the policy arguments. As this Court has recognized, " '[i]t is not this court's role to establish legislative policies or to second guess the General Assembly's policy choices.' " *Wilson*, 164 Ohio St.3d 419, 2020-Ohio-6827, 173 N.E.3d 448, at ¶ 37, quoting *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377, ¶ 212. When considering a statute, a court must " 'ascertain and give effect to the legislature's intent,' as expressed in the plain meaning of the statutory language." *State v. Pountney*, 152 Ohio St.3d 474, 2018-Ohio-22, 97 N.E.3d 478, ¶ 20, quoting *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶ 9; *see also State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 12, quoting *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph two of the syllabus (" 'The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.' "). The General Assembly's consequences are for it to choose.

Defendants' and their *Amici's* policy arguments can easily be flipped to support Plaintiff Everhart's position. The *Amici* Associations cite a statistic that "one-third of all reported medical claims create potential liability for medical-based wrongful-death claims" to imply that failing to apply a four-year statute of repose to wrongful-death

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claims would overwhelm courts with lawsuits against practitioners. *Associations' Amicus Brief, pp. 14-15.* Most obviously, the fact that a death has occurred is itself a legitimate reason for the General Assembly to have decided to treat wrongful death claims differently than the less-serious two-thirds of instances in which a person survived medical negligence. But if this Court were to read the four-year statue of repose for medical claims into the wrongful death statute, injured patients and their families would also be forced to file "preemptive" legal actions for wrongful death if a patient's prognosis worsened to avoid being time-barred from recovery, even if the patient is still alive. The Associations' "floodgate" argument cuts both ways, which is exactly why this Court should not speculate about legislative motives to fill an obvious textual gap in the arguments lodged by the medical community through its *Amici*.

The *Amici* Associations also complain that without a statue of repose for wrongful death claims, healthcare providers would have to maintain records longer and would be deprived a "fresh start" after four years. *Associations' Amicus Brief, pp. 8, 16.* This additional paperwork and desire for a clean slate pale in comparison to the burden placed upon family members who will lose loved ones due to medical negligence and lack a legal avenue for recourse due to the passage of time; these family members will have no "fresh start" option under any context.

If any policy concerns are appropriate for consideration here, this Court should be guided primarily by the "fundamental tenant" that cases should be decided on their merits instead of extinguished on technical grounds. *DeHart v. Aetna Life Ins. Co.,* 69 Ohio St.2d 189, 192, 431 N.E.2d 644 (1982); *Natl. Mut. Ins. Co. v. Papenhagen,* 30 Ohio St.3d 14, 15, 505 N.E.2d 980 (1987).

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CONCLUSION

For all the foregoing reasons, this Court should reject Defendants' Propositions of Law and affirm the Tenth Judicial District's unerring decision.

Respectfully Submitted,

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