SUPREME COURT
STATE OF NEW MEXICO

No. S-1-SC-37231

SUSAN L. SIEBERT,

Plaintiff-Appellee,

VS.

REBECCA C. OKUN, M.D., AND
WOMEN'S SPECIALISTS OF NEW MEXICO, LTD.,

Defendants-Appellants.

On Appeal from the Second Judicial District Court, Bernalillo County
No. D-202-CV-2013-05878, Hon. Victor S. Lopez, Presiding

APPELLANTS' REPLY BRIEF

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STATEMENT OF COMPLIANCE

Pursuant to Rule 12-318(a)(1)(c) NMRA, defendants-appellants Rebecca C. Okun, M.D., and Women's Specialists of New Mexico, Ltd., state that this Appellants' Reply Brief complies with the length limitations of Rule 12-318(F)(3) NMRA. The brief uses a proportionately spaced font, has a typeface of 14 points, and contains 4,033 words,

excluding the parts of the brief exempted by Rule 12-318(F)(1). The word count is obtained using Microsoft Word 2010.

/s/ Alice T. Lorenz

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INTRODUCTION

Three threshold observations about Siebert's Answer Brief are in order. First, Siebert fails to acknowledge that an overwhelming majority of jurisdictions—including all federal courts applying the Seventh Amendment—have upheld damages caps against jury-right challenges on the principle that caps impose a legal rule as to remedies but do not affect jury fact finding. *See infra* pp. 9-11. Second, as to the Legislature's rational basis for enacting the MMA, Siebert completely ignores the evidentiary record showing the efficacy of damages caps that was developed at the three-day hearing below and is set out in the Brief in Chief—including the testimony of her own expert, J. Robert Hunter, as to New Mexico's salutary experience under the MMA. *See infra* pp. 21-23. Third, Siebert does not dispute that the district court failed to undertake necessary inquiries regarding (1) who would be liable for the amount of Siebert's judgment in excess of the cap, (2) the severability of the cap from the rest of the MMA, and (3) whether any invalidation of the MMA cap should operate only prospectively. [BIC 38-40] This Court should obviate the need for these inquiries by reversing the district court and upholding the constitutionality of the MMA cap.

ARGUMENT

I. The MMA cap does not violate Siebert's jury right.

A. The MMA merely creates a broad legal rule limiting the scope of remedies in all MMA cases.

Siebert's discussion of the "inviolate" nature of the jury right misses the point: the MMA did not deny her a jury, and a jury did find the facts as to her damages. [AB 4-10] The jury right, no matter how inviolate or transcendent, simply does not create any right to a legal remedy in the amount of what the jury awards. New Mexico precedent supports that principle [BIC 19-20, 23-26], and, for that same reason, at least eight other states with similar "inviolate" jury-right provisions in their state constitutions have upheld damages caps against jury-right challenges [BIC 22-23 n.6][1] That a common-law action for medical malpractice existed before the New Mexico Constitution was adopted [AB 5-6] makes no difference as to this ground, because wherever the jury right applies, it pertains to the finding of facts, *not the legal remedy based on the facts found.* Thus, the cases cited by Siebert as to the *applicability* of the jury right are irrelevant because they do not address the question of the right's *scope* presented here. [AB 5-10]

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[1] While Siebert correctly notes that *Fein v. Permanente Med. Grp.*, 695 P.2d 665, 681 (Cal. 1985), rejected only an equal-protection challenge [AB 19], the California court rejected the jury-right challenge to the malpractice cap in *Chan v. Curran*, 188 Cal. Rptr. 3d 59, 80-82 (Ct. App. 2015) (citing, inter alia, *Am. Bank & Tr. Co. v. Cmty. Hosp.*, 683 P.2d 670 (Cal. 1984)).

Nor do Siebert's references to the historical importance of the jury right [AB 8 -9] answer the question presented, because "[t]o say … that the right was viewed as an essential attribute of liberty does not say what the right encompasses." *Horton v. Oregon Health & Sci. Univ.*, 376 P.3d 998, 1036 (Or. 2016); *accord Salopek v. Friedman*, 2013-NMCA-087, ¶ 51, 308 P.3d 139 ("[The 'inviolate' guarantee of a jury trial 'simply means that the jury right is protected absolutely in cases where it applies; the term does not establish what that right encompasses.'") (quoting *Learmonth v. Sears, Roebuck & Co.*, 710 F.3d 249, 263 (5th Cir. 2013)). As is discussed at length in Defendants' Response Brief to Plaintiff's Amici [Resp. Br. 10-11], the Oregon Supreme Court undertook an extensive historical inquiry into the nature of the jury right and concluded that the jury right does not limit "the legislature's authority to define, as a matter of law, the substantive elements of a cause of action or the extent to which damages will be available in that action." *Horton*, 376 P.3d at 1040.

No doubt there is a split among other jurisdictions over whether statutory damages caps violate the jury right, but that split favors upholding the MMA cap, as is explained below.

1. The majority rule favors the constitutionality of damages caps. As the Oregon Supreme Court tallied the score in 2016, 18 of the 23 jurisdictions that had considered the issue (including Oregon) "have held that a damages cap does not violate either the state or federal

constitutional right to a jury trial." *Horton*, 376 P.3d at 1043. And that tally did not include the then-recent California decision in *Chan* (*see supra* p. 8 n.1) or subsequent pro-cap decisions from the Eighth Circuit, North Dakota, and Pennsylvania. [BIC 20-22; Resp. Br. 19]

While Siebert acknowledges the importance of Seventh Amendment jurisprudence to construction of New Mexico's jury right [AB 7; *see* Resp. Br. 13-14], federal courts universally uphold caps against Seventh Amendment challenges [Resp. Br. 14]. Siebert cannot cite a single federal decision invalidating a damages cap under the Seventh Amendment.

Instead, Siebert points to a seminal Fourth Circuit case upholding a damages cap, *Boyd v. Bulala*, 877 F.2d 1191, 1196 (4th Cir. 1989), and argues that the court's citation to *Tull v. United States*, 481 U.S. 412 (1987), undermines *Boyd*'s vitality in light of the Supreme Court's later decision in *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340 (1998). [AB 11-13] But *Boyd* remains good precedent, numerous courts having cited it approvingly, including the Eighth Circuit in 2018. *Schmidt v. Ramsey*, 860 F.3d 1038, 1045-46 (8th Cir. 2017) (upholding Nebraska malpractice cap); *see, e.g.*, *Smith v. Botsford Gen. Hosp.*, 419 F.3d 513, 519 (6th Cir. 2005) (finding *Boyd* "persuasive" in upholding Michigan malpractice cap against Seventh Amendment challenge); *Phillips v. Mirac, Inc.*, 685 N.W.2d 174, 183 n.11 (Mich. 2004) (same with respect to jury right under state constitution). Moreover, no court

apparently has ever agreed with Siebert's *Tull-Feltner* hypothesis. Instead, as Defendants have explained, federal and state courts have recognized in upholding damages caps that *Feltner* is irrelevant, as it did not concern statutory caps, but only whether there was a right to have a jury, rather than a judge, find the amount of statutory damages in the first instance. [Resp. Br. 16-18]

Siebert also misreads the Virginia Supreme Court's decision in *Pulliam v. Coastal Emergency Servs. of Richmond, Inc.*, 509 S.E.2d 307, 314-15 (Va. 1999), as suggesting that the Virginia Constitution has a "feeble" or "weaker" jury right. [AB 14] In fact, the Virginia Constitution provides that "trial by jury … ought to be held sacred," Va. Const. art. I, § 11, and the Virginia court merely distinguished *Smith v. Department of Insurance*, 507 So. 2d 1080 (Fla.1987), because "Florida law prohibits the legislature from abolishing a common law right without providing a 'reasonable alternative,'" while "Virginia law does not impose such a quid-pro-quo requirement." *Id.* at 1088. Neither does New Mexico law. [*See* BIC 24-26 (discussing New Mexico precedent recognizing the Legislature's plenary authority to alter or abrogate the common law)]

2. Siebert relies on a handful of primarily older cases from other states that have struck down damages caps based on the jury right: *Smith v. Dep't of Ins.*, 507 So. 2d 1080 (Fla. 1987); *Sofie v. Fibreboard Corp.*, 771 P.2d 711 (Wash. 1989); *Moore v. Mobile*

Infirmary Ass'n, 592 So. 2d 156 (Ala.1991); *Atl. Oculoplastic Surgery, P.C. v. Nestlehutt*, 691 S.E.2d 218 (Ga. 2010); *Watts v. Lester E. Cox Med. Ctrs.*, 376 S.W.3d 633 (Mo. 2012)). [AB 13-16] In their Response Brief to Plaintiff's Amici, Defendants explained why these cases have no persuasive value. [Resp. Br. 21-29]

To these state cases, Siebert adds the Sixth Circuit's striking of a punitive-damages cap under the Tennessee Constitution [AB 16], but the lengthy, blistering dissent in that 2-1 decision catalogued "ample reasons to doubt the majority's holding" in a "hasty invalidation" that "overlooks critical issues," and criticized the majority for failing to certify the issues to the Tennessee Supreme Court, for misreading Tennessee law, and for failing to follow both other states that have upheld caps and federal "circuits addressing state damages caps under the Seventh Amendment," including the Fourth Circuit in *Boyd* and the Sixth Circuit itself in *Smith v. Botsford General* (*see supra* p. 10). *Lindenberg v. Jackson Nat'l Life Ins. Co.*, 912 F.3d 348, 370-86 (6th Cir. 2018) (Larsen, C.J., concurring in part and dissenting in part). *Lindenberg* is very much an outlier among recent jury-right cases.

3. Siebert's remaining arguments about contrary authority attempt to distinguish the cases based on considerations other than the courts' stated rationales. For example, Siebert erroneously dismisses several cases because they involved the application of caps to claims against government entities, to which the jury right may not have

attached at common law. [AB 16-18] *See Wachocki v. Bernalillo County Sheriff's Department*, 2010-NMCA-021, 147 N.M. 720, 228 P.3d 504; *Horton v. Ore. Health & Sci. Univ.*, 376 P.3d 998 (Ore. 2016); *Larimore Pub. Sch. Dist. No. 44 v. Aamodt*, 908 N.W.2d 442 (N.D. 2018); *Zauflik v. Pennsbury Sch. Dist.*, 104 A.3d 1096 (Pa. 2014). But those courts did not rely on the proposition that the jury right never attached in the first place; they assumed for the sake of argument that it did, but concluded that the jury right did not foreclose legislative caps on monetary recovery. In *Wachocki*, the New Mexico Court of Appeals explained that it could not see how "the right to a jury incorporate[s] a right to maximum recovery," 2010-NMCA-021, ¶ 45, and all Siebert can argue (however inconsequentially) is that this was somehow *dicta* "inessential to its holding." [AB 17] *Larimore* and *Zauflik* both expressly "'assumed that the right to a jury trial in negligence cases filed against governmental agencies existed … such that it must "remain inviolate" now.'" *Larimore*, 908 N.W.2d at 454-55 (quoting *Zauflik*, 104 A.3d at 1133). And the Oregon Supreme Court's extensive historical analysis and survey of federal state decisions concluded with its holding that the jury right, where it applies, is not infringed by legislative caps on monetary recovery. *Horton*, 376 P.3d at 1044.[2]

[2] Moreover, Siebert's reference to the alternative nature of remittitur is irrelevant [AB 10, 17], because a remittitur is based on the evidence in the case and the reasonableness of the jury's factual findings, while a statutory damages cap is *not*.

Similarly, the Ninth Circuit did *not* uphold the Title VII cap on punitive damages in *Hemmings v. Tidyman's Inc.*, 285 F.3d 1174 (9th Cir. 2002), because Title VII did not have a common-law analog, as Siebert implies. [AB 19] Rather, the court reasoned that that "[t]he Seventh Amendment does not provide unlimited protection to jury determinations," other "courts of appeals have upheld such caps against Seventh Amendment challenges," and invalidating the cap would have "paradoxical implications" because it would call into question statutes that provide for double or treble damages. *Id. at* 1201-02. Siebert cannot disregard the stated principles on which courts decide cases.

B. The MMA damages cap does not violate the jury right because the MMA cause of action is statutory.

Siebert also takes issue with the court of appeals' alternative ground in *Salopek v. Friedman* for upholding the MMA cap, namely, the MMA created a new statutory claim to which attaches a *statutory* jury right but not a *constitutional* jury right. [AB 19-26] In their Brief in Chief, Defendants responded to the district court's unjustified refusal to follow *Salopek*, and to many of the arguments Siebert now makes. [BIC 26-37] The essential question for this Court is whether the court of appeals correctly concluded that the Legislature exercised its plenary authority to substitute a new cause of action for the common-law claim, as opposed to merely regulating the common-law claim. The court of appeals and this Court have previously catalogued all of the aspects of

the *quid pro quo* that the Legislature offered through the MMA, and they need not be repeated here. [*See* BIC 29-33]

Siebert relies on this Court's citation in *Lisanti v. Alamo Title Insurance of Texas*, 2002-NMSC-032, 132 N.M. 750, 55 P.3d 862, to the U.S. Supreme Court's opinion in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), but this Court did not adopt the test that the jury right applies necessarily to statutory rights "that are analogous to common-law causes of action." *Granfinanciera*, 492 U.S. at 41-42. Nor, as the Brief in Chief indicates, did *Lisanti* adopt or explain the contours of such an "analogousness" test.[3] [BIC 28-29] This is not a case for the "public rights" analysis of *Granfinanciera*, as it does involve the legislature's consigning of *fact finding* to a nonjudicial body—here, a jury did determine the amount of accrued damages. Moreover, one only reaches that inquiry under *Granfinanciera* if the court decides in the first place that "a party is entitled to a jury trial under the Seventh Amendment," *Granfinanciera*, 492 U.S. at 42, and the point of *Salopek* was that there is no *constitutional* right to a jury trial on the MMA claim, although the Legislature did provide a *statutory* jury right. NMSA 1978, § 41-5-4 (1977).

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[3] There is no suggestion in *Granfinanciera* that the statutory fraudulent-conveyance claim under the bankruptcy laws differed from the common-law fraudulent-conveyance claim.

Siebert misconstrues *Salopek*, setting up a series of strawmen by stating that *Salopek* found certain specific provisions "decisive" and "transformative," like prefiling presentation to the Medical Review Commission or the statute of limitations. [AB 23-24] To the contrary, *Salopek* looked to "how the Act *as a whole* accomplishes its purposes," 2013-NMCA-087, ¶ 58 (emphasis added), and Defendants have discussed at length the panoply of unique and revolutionary changes the MMA introduced and this Court has previously acknowledged. [BIC 29-33] While the statutory claim shares certain elements with the common-law claim (a negligence standard and proximate causation, for example), it differs in many other respects. These are not "peripheral aspects of the cause of action" or "mere decoration." [AB 25-26] The *Salopek* decision is sound, but this Court need not reach this alternative ground if it decides the case, as it should, on the ground other state and federal courts have chosen in upholding statutory damages caps against jury-right challenges.

II. The MMA cap does not violate Siebert's rights to equal protection or substantive due process.

A. Siebert lacks standing to challenge the distinction between qualified and nonqualified heath care providers.

Siebert argues that the MMA unfairly classifies patients based on whether they were treated by QHCPs or non-QHCPs [AB 27], but she ignores that this Court already held that *patients* lack standing to raise

this classification [BIC 41-42]. *See Cummings v. X-Ray Assocs. of N.M., P.C.*, 1996-NMSC-035, ¶ 26, 121 N.M. 821, 918 P.2d 1321.

This leaves Siebert to complain that the MMA unfairly discriminates against "catastrophically injured" plaintiffs by capping elements of their damages [AB 28], but that is not generally true, and it was not true of Siebert. If a patient is severely injured and requires extensive or expensive medical care, the patient will be *better off* under the MMA because, as part of the Legislature's *quid pro quo*, the MMA uniquely provides *uncapped and PCF-funded* recovery of the cost of accrued and future medical expenses, whether or not the expenses are foreseeable at the time of judgment. [BIC 31-32] The expert evidence introduced at the hearing showed that protection against the hard costs of medical care—particularly in an age in which such costs are spiraling upward—is what people value most highly. [BIC 34 n.12]

Siebert herself recovered over $935,000 for medical expenses apart from the $600,000 in capped damages that more than covered her economic damages—a recovery greater than would have been available from insurance coverage for 97% of health-care providers, whose personal assets rarely are a source of any recovery. [BIC 13-14, 34-37] *See Condon v. St. Alexius Med. Ctr.*, 926 N.W.2d 136, 143 (N.D. 2019) (rejecting equal-protection challenge against malpractice cap on noneconomic damages that "does not prevent seriously injured individuals from being fully compensated for any amount of medical

care or lost wages"). Siebert cites *Brannigan v. Usitalo*, 587 A.2d 1232 (N.H. 1991) [AB 28], but the New Hampshire statute in that case capped noneconomic damages in personal-injury actions without providing any balancing benefit, particularly in the form of a secure source of uncapped funding for medical expenses.

B. This Court applies rational-basis scrutiny to damages caps.

As the court of appeals recognized in *Salopek v. Friedman*, 2013-NMCA-087, ¶¶ 64-66, the MMA cap, as an "economic regulation," is subject to rational-basis review under *Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶¶ 2, 15, 26, 125 N.M. 721, 965 P.2d 305 (TCA damages cap), and *Cummings*, 1996-NMSC-035, ¶¶ 18, 36 (MMA statute of repose), and numerous jurisdictions have reached the same conclusion. [BIC 43] Siebert does not acknowledge the holding of *Salopek* or *Trujillo*, and instead claims *Cummings* applied rational-basis scrutiny only "because state courts always apply it to statutes of limitations and repose." [AB 29] That was *not* this Court's rationale. *Cummings* held that strict scrutiny did not apply because "the type of categorization alleged in this case" did not "concern an inherently suspect classification," *Cummings*, 1996-NMSC-035, ¶¶ 24-25, while *Trujillo* recognized that the cap did not warrant intermediate scrutiny because "[t]he interests at stake in a challenge of the TCA cap are of an economic or financial nature," *Trujillo*, 1998-NMSC-031, ¶ 26. In short,

the damages cap is not the equivalent of a "poll tax on voters," as Siebert argues. [AB 30]

C. The MMA cap is supported by a rational basis in the evidence of record.

Siebert challenges whether there is a rational basis for the MMA, but her arguments mischaracterize the MMA and ignore the evidence developed at the three-day evidentiary hearing in this case.

1. Siebert acknowledges that the Legislature enacted the MMA in response to a real crisis: the withdrawal of Travelers, the state's only malpractice carrier, would have left the state's providers practicing bare, if at all. [AB 30] But the MMA's legal rationale was not limited to that imminent crisis. Rather the Legislature's *stated* rationale was broader: "to promote the health and welfare of the people of New Mexico *by making available professional liability insurance for health care providers in New Mexico.*" NMSA 1978, § 41-5-2 (1976) (emphasis added); *see Salopek* 2013-NMCA-087, ¶ 68; *Moncor Tr. Co. ex rel. Flynn v. Feil*, 1987-NMCA-015, ¶ 9, 105 N.M. 444, 733 P.2d 1327.

2. Siebert argues that the 1970s crisis is over, and that insurers currently write coverage outside of the MMA. But Siebert ignores the stabilizing effect of the MMA on the entire New Mexico market for malpractice insurance. Her own expert witness, J. Robert Hunter, testified at the hearing below that, since the enactment of the MMA, New Mexico has not had the economic cycles of the insurance

market nationally and in many of the larger states, and has not experienced even a "muted hard market."[4] Hunter agreed that the MMA "has, in fact, insulated New Mexico from the national economic cycles." (1 Tr. 150:1-5.) He testified that the country will "probably" experience a hard market again, but when it does, *New Mexico will not experience it*. (1 Tr. 152:20-23, 152:1-9.) He explained that New Mexico's market stability results from the effect of the MMA cap in limiting private insurers' exposure to $200,000, and the responsibility of the PCF, a government-run program, for the remainder of the coverage provided by the MMA. (1 Tr. 120:12-25, 150:20-151:1, 153:10-11.) He testified that New Mexico gains a benefit through the PCF when there is a national hard market because it "softens the upward premium increases." (1 Tr. 151:10-17.) Whatever Hunter may have said about national phenomena, his testimony about *New Mexico's* own experience under the MMA was unrebutted.

Siebert also claims that most New Mexico providers are insured outside of the MMA [AB 31-32], but that claim is unsubstantiated, particularly because the market remains fluid. The evidence at the hearing showed that Hunter relied on the New Mexico Office of Superintendent of Insurance, but that office does not have any data on how many providers are insured outside of the MMA and, in any event,

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[4] (1 Tr. 150:1-19, 151:2-6; Hr'g Ex. 10, Hunter Report 24.)

the percentage of physicians insured under the MMA is growing. [BIC 35 n.14 (citing Hunter, 1 Tr. 137:11-16)] In fact, the most-recent publicly available statistics, provided in the New Mexico Medical Review Commission's 2017 Annual Report to the Chief Justice, show that in the 2016-2017 period, 1,179 physicians were added to the approximately 1,300 previously covered by the MMA. N.M. Medical Review Commission, *2017 Annual Report* 4 (Nov. 12, 2018). There is no evidence that any of these providers could obtain comparable coverage outside of the MMA.[5] [BIC 35-36 n.14]

3. When it comes to the evidentiary record developed at the three-day hearing before the district court—which was held precisely to flesh out the evidence on the efficacy of caps—Siebert has nothing at all to say regard the testimony of Harvard-trained economist and Vanderbilt University Professor W. Kip Viscusi and the published studies and meta-analyses by Viscusi, his colleagues, and other researchers on the effectiveness of damages caps in

- reducing losses from malpractice claims [BIC 48-49]
- reducing the frequency of malpractice claims [BIC 49]

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[5] While Siebert claims that MMA coverage is more expensive than non-MMA coverage [AB 32], she does not dispute that the act's "occurrence" coverage is broader than standard "claims made" coverage available outside the act. [BIC 30-31] Indeed, Siebert's expert, J. Robert Hunter, surmised that, in the long run, the costs of the two kinds of coverage are "pretty close." [BIC 35-36 n.14]

- improving insurers' profitability and willingness to enter and remain in insurance markets [BIC 50]
- making it easier to write coverage by reducing insurance-market uncertainty and volatility—particularly in New Mexico under the MMA [BIC 50-52]
- restraining the growth in insurance premiums [BIC 52], and
- improving physician supply, particularly in rural areas and medical specialties—the practice categories that most challenge New Mexico [BIC 52-55].

Indeed, Siebert's own testifying expert, J. Robert Hunter, agreed with many of these points. For example, he agreed that damages caps reduce claim payouts. (1 Tr. 148:6-8.) He agreed that damages caps improve insurer profitability. (1 Tr. 148:12-17.) He admitted that damages caps—including the MMA cap—had dampened the rate of increase in insurance premiums. (1 Tr. 67:17-68:1, 151:10-17.) And he agreed that the empirical research shows a small but positive correlation between damages caps and physician supply in rural areas and in medical specialties, and that the absence of a damages cap might influence a physician's decision regarding where to live. (1 Tr. 148:15-149:17.)

The North Dakota Supreme Court, in the latest decision on equal-protection challenges to malpractice caps, concluded in April 2019 that such caps satisfy even intermediate scrutiny because "there is a close correspondence between the damage cap at issue in this case and legitimate legislative goals," including "the goal ... to stabilize the risk

for insurance providers which would potentially have a beneficial effect on premiums." *Condon*, 926 N.W.2d at 142-43. This Court should reach the same result using rational-basis scrutiny.

Siebert's brief references to a handful of studies that are largely concerned with other issues like patient safety [AB 32-35] or to evidence that may have been before courts in other states does not meet the "beyond all reasonable doubt" standard. *Rodriguez v. Brand W. Dairy*, 2016-NMSC-029, ¶¶ 10, 25, 378 P.3d 13. This Court has warned that, "when employing the rational-basis test, courts will not consider the controversies surrounding the academic examination of legislative policy," including "[t]he validity and severity of [New Mexico's] medical malpractice insurance crisis of the 1970's as well as the effectiveness of the legislation enacted in response to it has been disputed." *Cummings*, 1996-NMSC-035, ¶ 40. Siebert's decision not to contest the evidence laid out at length in the Brief in Chief alone is enough to establish a rational basis for the MMA cap. Any further dispute on the efficacy of the caps should be directed to the Legislature, not the courts.

CONCLUSION

This Court should reverse the district court, uphold the constitutionality of the MMA cap, and remand the case to the district court to conform the judgment to the MMA cap.

DATED this 20th day of May, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Appellants' Reply Brief was electronically filed in the Court's Odyssey filing system, which in turn caused all counsel of record to be electronically served, on this 20th day of May, 2019.

/s/ Alice T. Lorenz