# IN THE SUPREME COURT OF OHIO

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| **Susana Lyon,** | : | |
| | : | **Case No. 2025-1317** |
| **Appellee,** | : | |
| **v.** | : | **On Appeal from the** |
| | : | **Tenth District Court of Appeals,** |
| **Riverside Methodist Hospital, et al.,** | : | **Franklin County** |
| | : | **Case No. 23AP000379** |
| **Appellants.** | : | |

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**MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICUS CURIAE, OHIO HOSPITAL ASSOCIATION, OHIO STATE MEDICAL ASSOCIATION, OHIO OSTEOPATHIC ASSOCIATION, OHIO ALLIANCE FOR CIVIL JUSTICE, AND ACADEMY OF MEDICINE OF CLEVELAND & NORTHERN OHIO, IN SUPPORT OF APPELLANTS**

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## STATEMENT OF INTEREST OF AMICI CURIAE

The Ohio Hospital Association ("OHA") is a private, non-profit trade association established in 1915 as the first state-level hospital association in the United States. For more than 100 years, the OHA has provided a mechanism for Ohio's hospitals to come together and advocate for healthcare legislation and policy in the best interest of hospitals and their communities. The OHA is comprised of 252 hospitals and 15 health systems. OHA's member hospitals directly employ more than 430,000 employees in Ohio.

The Ohio State Medical Association ("OSMA") is a non-profit professional association established in 1835 and is comprised of physicians, medical residents, and medical students in the State of Ohio. The OSMA's membership includes most Ohio physicians engaged in the private practice of medicine. The OSMA's purposes are to improve public health through education, encourage interchange of ideas among members, and maintain and advance the standards of practice by requiring members to adhere to the concepts of professional ethics.

Established in 1898, the Ohio Osteopathic Association ("OOA") works to advance the distinctive philosophy and practice of osteopathic medicine and promote public health. The OOA, a non-profit professional association and divisional society of the American Osteopathic Association, advocates for the more than 7,500 licensed osteopathic physicians ("DOs") in Ohio as well as approximately 1,000 medical students who attend Ohio University Heritage College of Osteopathic Medicine.

The Ohio Alliance for Civil Justice ("OACJ") is a group of small and large businesses, trade and professional associations, non-profit organizations, local government associations, and others. The OACJ leadership includes members from the Ohio Manufacturers Association, Ohio Council of Retail Merchants, NFIB Ohio, Ohio Chamber of Commerce, Ohio Association of Certified Public Accountants, Ohio Hospital Association, Ohio State Medical Association, and other organizations. OACJ members support a balanced civil justice system that provides sufficient safeguards to ensure that defendants are not unjustly penalized and plaintiffs are fairly compensated, but not unjustly enriched.

The Academy of Medicine of Cleveland & Northern Ohio ("AMCNO"), founded in 1824, is the region's professional medical association and the oldest professional association in Ohio. The AMCNO represents over 7,200 physicians and medical students from Northern Ohio. The mission of the AMCNO is to support physicians and medical students in being strong advocates for all patients and to promote the practice of the highest quality medicine. The AMCNO is proud to be the stewards of Cleveland's medical community of the past, present, and future.

Together, the OHA, the OSMA, OOA, the OACJ, and AMCNO (referred to herein as "Amici Curiae") support reasonable compensation for injuries caused by alleged medical negligence. However, noneconomic "pain and suffering" damage awards that are unpredictable, unlimited, and virtually impossible to reverse are inconsistent with a fair civil justice system, as they unjustly enrich some while unjustly penalizing others. That is why Amici Curiae have been strong proponents of the carefully constructed tort reform measures contained in Senate Bill 281 ("SB 281"), including the two-tiered limitations on noneconomic damages codified in R.C. 2323.43(A) — an intentional and direct response by the Ohio General Assembly to this Court's decision in *Morris v. Savoy,* 61 Oho St.3d 684 (1991). The higher of the two limitations — the $500,000 limit on noneconomic damages for certain injuries described in R.C. 2323.43(A)(3)[1] —

[1] Sometimes the injuries described in R.C. 2323.43(A)(3) are referred to as "catastrophic injuries." However, the term "catastrophic injuries" is not used in the statute. *See Brandt v. Pompa*, 2022-Ohio-4525, ¶ 119-120 (Fischer, J. dissenting) ("The term, 'catastrophic injury' appears nowhere in the statute. Rather the *Arbino* court coined the term 'catastrophic' injury to easily describe the injuries exempt from capped damages in R.C. 2315.18 [the noneconomic damages cap for general tort claims].").

is the subject of Plaintiff-Appellee Lyon's ("Lyon") constitutional challenge. Lyon argues the statutory limitations are unconstitutional as applied to her. The trial court and the court of appeals agreed, unraveling statutory reform which has been in existence for more than 20 years. And, during the past 20 years, professional liability insurance rates for medical providers in Ohio stabilized, in large part as a result of the tort reform measures enacted in SB 281, and expressly identified by the General assembly as an intended result of that legislation.

When SB 281 was first proposed over twenty years ago, it was amidst growing concerns over physicians leaving Ohio or retiring early and the inability to recruit new ones throughout the state as a result of out of control medical malpractice insurance rates. There was an especially severe shortage of primary care physicians and obstetricians in rural Ohio. Urban providers were affected too; renowned Ohio healthcare centers, including The Ohio State University and the Cleveland Clinic, struggled to recruit and retain specialists, impeding access to their nationally and internationally renowned teams of clinical and research physicians. The effect was a lack of accessibility and diminished healthcare for Ohioans.

These recruitment and retention challenges stemmed from a larger healthcare crisis in the late 1990s and early 2000s, due, at least in part, to medical malpractice litigation. At the time, more than half the state's medical liability carriers left the market, and physicians and hospitals faced a significant increase in premiums.[2] Many hospitals closed maternity wards and eliminated services, while some closed their doors entirely.[3]

In response, the General Assembly adopted SB 281, including the key component at issue in this case: the cap on noneconomic damages applicable to medical malpractice claims,

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[2] This data comes from the Report of the Ohio Medical Malpractice Commission, April 2005.
[3] From 1994-2003, approximately 32 Ohio hospitals were closed according to data maintained by the OHA and shared with the legislature during the discussion of SB 281.

R.C. 2323.43. As set forth in R.C. 2323.43's uncodified law, the noneconomic damage reforms proposed by SB 281 were carefully designed by the legislature to balance all parties' interests. *See* SB 281, Uncodified Law, Sections (A)-(C). What's more, the General Assembly recognized that many other states had already enacted noneconomic damage caps for medical claims and that Ohio's failure to implement a check on rampant medical malpractice litigation and excessive noneconomic damages could render Ohio a less attractive state for physicians and other healthcare providers. *Id.,* Section (A)(3)(e).

Amici Curiae ask this Court to accept jurisdiction over this critically important appeal, overturn the erroneous decision of the Court of Appeals, and find that the caps on noneconomic damages in R.C. 2323.43(A)(3) are constitutional under both the due process and equal protection clauses of the Ohio Constitution.

## EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST

Ohio Revised Code 2323.43 is the General Assembly's answer to a delicate, yet critical question: how can the State reasonably compensate those who suffer injuries as a result of medical negligence, while ensuring retention and recruitment of talented health care providers for the benefit of all Ohioans? From this query came a two-tiered noneconomic damage cap that allows for higher noneconomic damages for the most severe injuries caused by medical malpractice (as described in R.C. 2323.43(A)(3)). The legislature is the appropriate branch of government to make this policy decision and courts should not merely second guess that decision.

The legislature's carefully crafted compromise preserves the State's interest in maintaining fair and predictable jury awards to ensure stable and affordable malpractice insurance rates, retain top medical talent in the State, and provide accessible and affordable health care to all Ohioans, all while fairly compensating plaintiffs. It also ensures that those most severely injured by medical negligence are permitted to recover higher noneconomic damages than those less severely injured. In short, R.C. 2323.43(A)'s two-tiered noneconomic damages cap model is the legislature's response to *Morris*.

But all these significant State interests — a physician retention crisis, diminished expertise within Ohio's hospitals, increased malpractice premiums (and cost-shifting to patients and employers), providing accessible and affordable health care, reasonable compensation to those injured by medical negligence — hang in the balance with this appeal. Since all of Ohio's hospitals, healthcare professionals, and medical care providers are potential medical negligence defendants, this Court's decision will impact all of them, as well as those who provide professional liability insurance coverage to them.

The issue in this case is whether R.C. 2323.43's noneconomic damages caps — and specifically, the higher of the two reserved for those most severely injured plaintiffs by medical malpractice — are constitutional. To be clear, Lyon's award for economic damages is not at all limited by the statute. Rather, R.C. 2323.43 only places limitations on noneconomic damages — *i.e.*, "damages that do not present 'actual loss' to an injured party." *Oliver v. Cleveland Indians Baseball Co. Ltd. Partnership.,* 2009-Ohio-5030, ¶ 4. Noneconomic damages do not compensate for actual loss; they are "inherently subjective and difficult to evaluate." *Arbino v. Johnson & Johnson,* 2007-Ohio-6948, ¶ 69. With "no scale by which the detriment caused by suffering can be measured," such awards reflect only a "rough" connection between the amount awarded, and the plaintiff's suffering. Restatement (Second) of Torts § 903, cmt. a (1965). In short, these are awards divorced from fact, and, as this Court has observed, "susceptible to influence from irrelevant factors, such as the defendant's wrongdoing" and other extraneous considerations. *Arbino*, ¶ 54.

Both the trial court and the appellate court below agreed with Lyon, finding the General Assembly's limitation on her noneconomic damages was unconstitutional as applied to her particular circumstances. But the lower courts fundamentally erred in analyzing this case as an "as applied" challenge. Lyon's challenge is premised only on the fact that her verdict was otherwise limited by statute — in his case, the higher tier of the noneconomic damages cap. There is nothing unique about the higher tier as it relates to Lyon's challenge — it just happens to be the particular tier that limits her noneconomic damages award. She merely asserts that because the verdict in her case exceeded the statutory limit for noneconomic damages, it is unconstitutional as applied to her.

The initial misstep by both courts below was finding that Lyon made a proper "as applied" challenge to the statute. She did not. What are Lyon's unique circumstances that make the statute unconstitutional as applied to her? The Court of Appeals concluded that the statute was unconstitutional as applied to Lyon because the jury returned a verdict in her favor in excess of the higher noneconomic damages cap. By this reasoning, every single plaintiff whose verdict is limited by R.C. 2323.43(A) has the very same "as applied" challenge. If R.C. 2323.43(A) is unconstitutional "as applied" to every single conceivable plaintiff whose verdict exceeds the applicable cap, it is, in reality, a facial challenge.[4]

But the lower courts' errors did not stop there. Although the lower courts applied the rational basis test to determine constitutionality, they applied it erroneously and without giving deference to the General Assembly. Further, the Court of Appeals relied heavily on (1) the Eighth District's decision in *Paganini v. Cataract Center of Cleveland*, 2025-Ohio-275 (8th Dist.),

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[4] Notably, the Court of Appeals held that Lyon's facial challenge to the constitutionality of the statute had no merit. *Lyon v. Riverside Methodist Hospital*, 2025-Ohio-2991 (10th Dist.) (finding due process facial challenge failed, ¶ 30, and equal protection facial challenge failed, ¶ 37).

jurisdiction accepted, 2025-Ohio-1846, to find the statute unconstitutional on due process grounds, and (2) a Florida decision to find the statute unconstitutional on equal protection grounds. Such reliance is misplaced. Perhaps even more importantly, neither of these decisions is controlling authority or provides a sound framework for Ohio's lower courts to utilize in determining as applied constitutional challenges to R.C. 2323.43. Although the lower courts wrongly treated this case as an as applied challenge, even if this Court concludes that the lower courts were correct in that characterization, their application of the law is still flawed (as stated below).

Regarding due process, the Court of Appeals adopted *Paganini's* analysis that because he was required to "forego 66.4% of the [noneconomic] damages awarded to him by the jury," the statute was irrational and arbitrary. *Lyon v. Riverside Methodist Hospital*, 2025-Ohio-2991, ¶ 32 (10th Dist.) More specifically, the Court of Appeals stated, "[t]he reduction in noneconomic damages for Lyon is analogous to the plaintiff in *Paganini*. * * * This represents a 57.4 percent reduction in damages 'in order to lower medical-malpractice insurance rates for the public's benefit.'" *Id*., citing *Paganini* at ¶ 50. The percentage reduction of a jury's award necessary to apply the noneconomic damages cap cannot possibly be the correct analysis to determine whether the higher tier noneconomic damage cap in R.C. 2323.43 violates due process in an as applied challenge. What if the jury award exceeds the cap by 1%, 15%, or 49% — is that a violation of due process too? This issue will continue to recur in every medical malpractice case where the jury awards noneconomic damages in excess of the statutory cap. Hence, it is necessary for this Court to instruct Ohio's lower courts as to the proper due process analysis for an as applied constitutional challenge in the context of noneconomic damages caps.

Regarding equal protection, the Florida case the Court of Appeals relied on addressed a facial challenge to Florida's noneconomic damages statute, not an as applied challenge. *See North*

*Broward Hosp. Dist. v. Kalitan*, 2017 Fla. LEXIS 1277 (Fla. 2017). Thus, it is inapplicable if, in fact, Lyon's case is an as applied challenge. Further, *Kalitan* held that there was no rational relationship between the statute and its purported purpose "to address the alleged medical malpractice insurance crisis in Florida." *Id*. In this case, the Court of Appeals reached the opposite conclusion—finding that R.C. 2323.43 bears a real and substantial relationship to the general welfare of the public. *Lyon*, ¶ 28, 37, citing *Morris* at 691 ("[W]e do not take issue on equal protection grounds with the legislature's determination to respond as it did with the Act.").

It is important for the Court to accept this appeal to provide needed guidance to Ohio's lower courts on the issue of equal protection. Ohio's lower courts have been inconsistent in determining whether the noneconomic damages caps in R.C. 2323.43 violate equal protection. For instance, in *Paganini*, the trial court held that there was no equal protection violation (and that decision was not appealed). Thus, the appeal this Court accepted in *Paganini*[5] does not address an equal protection violation. So, even if this Court reverses in *Paganini* and finds that there was no due process violation (which is the only issue in *Paganini*), the issue of equal protection still needs to be resolved by this Court (as it will continue to be raised in medical malpractice cases). Otherwise, lower courts will continue to struggle to define the correct analysis and litigants' fates will depend on the county in which the lawsuit is filed, with some courts applying the caps as intended and others allowing completely unlimited and unpredictable noneconomic damage awards.

Under both due process and equal protection analyses, the record clearly demonstrates the noneconomic damages cap adopted by the General Assembly has "a real and substantial relationship to the public's health, safety, morals or general welfare and it is not unreasonable or

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[5] Ohio Supreme Court Case No. 2025-0386.

arbitrary." *See Mominee v. Scherbarth*, 28 Ohio St.3d 270, 274 (1986) quoting *Benjamin v. Columbus*, 167 Ohio St. 103, paragraph five of the syllabus (1957). Accordingly, the judgment of the Tenth District Court of Appeals should be reversed.

## STATEMENT OF THE CASE AND FACTS

Amici Curiae adopt the Statement of the Case and Facts set forth in the memorandum in support of jurisdiction of the Appellants.

## LAW AND ARGUMENT[6]

**Proposition of Law I: Challenges to R.C. 2323.43 "as applied" to every plaintiff awarded noneconomic damages in excess of the statutory caps are actually facial challenges.**

An "as applied" challenge requires a plaintiff to show by clear and convincing evidence that the statute is unconstitutional when applied to an existing set of facts. *Simpkins v. Grace Brethren Church of Delaware, Ohio*, 2016-Ohio-8118, ¶ 22. Lyon argued, and the Court of Appeals found, that as applied to her R.C. 2323.43 is unconstitutional because the statute requires her to forego 57.4% of the noneconomic damages awarded to her. *Lyon*, ¶ 50. But there is nothing unusual or unique about these circumstances — the statutory damages caps were simply applied to Lyon's case as they are to every plaintiff whose jury award exceeds the caps. Accepting Lyon's challenge as an "as applied" constitutional challenge based on her existing set of facts guts the entire purpose of the statute. The Court of Appeals' decision, in practice, renders R.C. 2323.43(A) unconstitutional in every conceivable set of circumstances whenever a jury awards noneconomic damages in excess of the statutory cap. In other words, *every **single plaintiff affected by any statutory cap on noneconomic damages can make this very same constitutional challenge***. This outcome makes it clear that Lyon's challenge is squarely a facial one regardless of how it is

[6] Appellants' three propositions of law are addressed in a different order in this memorandum in support of jurisdiction and, thus, are renumbered herein.

designated. The Court of Appeals held that R.C. 2323.43 was constitutional on its face under due process and equal protection review, and that decision has not been appealed. Accordingly, once the appropriate conclusion is made that Lyon's challenge is a facial one, this Court can only come to one conclusion—to reverse the lower courts' decision.

**<u>Proposition of Law II</u>: The "hard limit" on recoverable economic loss in R.C. 2323.43(A)(3) that applies to serious or "catastrophic injuries" does not violate the "due course of law" provision in Article I, Section 16 of the Ohio Constitution and is, therefore, constitutional.**

It is a fundamental principal that "[a]ll statutes have a strong presumption of constitutionality." *Arbino*, ¶ 25. "A legislative enactment will be deemed valid on due process grounds if it bears a real and substantial relationship to the public's health, safety, morals or general welfare and it is not unreasonable or arbitrary." *Mominee v. Scherbath,* 28 Ohio St.3d 270, 274, quoting *Benjamin*, 167 Ohio St. 103, paragraph five of the syllabus. Often, this Court has examined the legislative record "to determine whether there is evidence to support such a relationship." *Arbino*, ¶ 49.

In *Arbino*, the Court found the record demonstrated a "rational connection" between the reforms implemented, that is, the damages caps for tort cases, and the General Assembly's desire to limit "uncertain and potentially tainted noneconomic damages awards" and its desire for economic improvement. *Id.* at ¶ 56. According to *Arbino*, "[i]n seeking to correct these problems, the General Assembly acted in the public's interests, ***which is all that is required under the first prong of the due-process analysis***." *Id.* (emphasis added.) Of course, as in all constitutional challenges, the *Arbino* Court emphasized that its review of the record is marked with deference toward the General Assembly's judgment. *Id.* at ¶ 58. Drawing on the words of the United States Supreme Court, the *Arbino* Court noted "it is not the function of the courts to substitute their evaluation of legislative facts for that of the legislature." *Id.* quoting *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 470 (1981). The same is true here. The legislative record clearly supports a rational connection between the reforms implemented and the General Assembly's articulated goals. *See* SB 281, Uncodified Law, Sections (A)-(C).

The Court of Appeals did not address the first prong of the due process analysis. Instead, it focused on the second prong, whether the statute is unreasonable or arbitrary. In finding that a reduction in Lyon's noneconomic damages award is unreasonable and arbitrary, the Court of Appeals relied almost exclusively on *Paganini*. *Lyon*, ¶ 31-35. As noted above, the Court of Appeals analogized *Paganini* with *Lyon* because both had their noneconomic damage awards reduced when the applicable noneconomic damage cap was applied. The Court of Appeals' brief analysis also cited to *Paganini's* quote from *Morris* that it is irrational and arbitrary "to impose the cost of the intended benefit to the general public solely upon a class consisting of those most severely injured by medical malpractice." *Lyon*, ¶ 32. However, in enacting SB 281, the General Assembly was well aware of *Morris* and, thus, created a second, higher tier damage cap, designed to alleviate the burden to those most severely injured by medical malpractice, while also accomplishing certain specific and articulated goals.

To be clear, these goals are critical to Ohio's health and welfare. As aptly stated by the General Assembly in the Editor's Notes of Uncodified Law, the statute is designed to "stabiliz[e] the cost of healthcare delivery by limiting the amount of compensatory damages representing noneconomic loss awards in medical malpractice actions." *See* SB 281, Uncodified Law, Section (A)(3). *See also Maynard v. Eaton Corp.*, 2008-Ohio-4542, ¶ 7 (finding that uncodified law is the law of Ohio).

The General Assembly went on to make specific findings about these costs, including that malpractice insurers left the Ohio market, in part due to the rising noneconomic loss awards in medical malpractice actions, and findings about data reported from sister states with similar statutory schemes. SB 281, Uncodified Law, Section (A)(3). Finally, after taking testimony and evidence in support and opposition of SB 281, the General Assembly made the explicit finding that "[t]he distinction among claimants with a permanent physical functional loss strikes a reasonable balance between potential plaintiffs and defendants in consideration of the intent of an award for noneconomic losses, while treating similar plaintiffs equally, acknowledging that such distinctions do not limit the award of actual economic damages." *Id*., SB 281, Uncodified Law, Section (A)(4)(a).

How can a statute designed to achieve these goals be unreasonable and arbitrary as applied to Lyon merely because the jury award exceeded the statutory cap when even the Court of Appeals agreed that the statute is not unreasonable and arbitrary on its face? It isn't. The statute is not unreasonable and it isn't arbitrary; it effectively accomplishes the articulated goals set forth by the General Assembly while balancing the interests of all parties to achieve the public good. As this Court stated in *Arbino*, "[a]t some point, though, the General Assembly must be able to make a policy decision to achieve a public good." *Id*., ¶ 61. While the statute here, R.C. 2323.43(A), does limit recovery of individuals with the type of severe injuries described in the statute, it does so at a much higher threshold, thereby still achieving the public good in the judgment of the legislature.

**<u>Proposition of Law III</u>: The catastrophic noneconomic loss damage cap in R.C. 2323.43(A)(3) does not violate equal protection under Ohio law because the General Assembly has the ability to define a cause of action and can create unique rules and restrictions for separate causes of action.**

The Court of Appeals began its equal protection analysis by addressing Lyon's facial challenge to the statute. The Court of Appeals recognized that "[w]hile there may or may not be more effective ways to combat the problem of rising healthcare costs, 'the General Assembly is charged with making the difficult policy decisions on such issues and codifying them into law.'" *Lyon*, ¶ 37, citing *Arbino*, ¶ 71 ("This court is not the forum in which to second-guess such legislative choices; we must simply determine whether they comply with the Constitution."). It then looked to *Morris*, which found that the flat noneconomic damage cap in that case did not violate equal protection, and found it to be "highly persuasive" "if not binding." *Id*. The Court of Appeals also noted that other state courts have affirmed facial challenges to similar caps on noneconomic damages on equal protection grounds. *Id*., ¶ 38. Finally, it concluded that R.C. 2323.43(A)(3)'s cap on noneconomic damages did not constitute a violation of equal protection under the Ohio Constitution on its face. *Id*.

The Court of Appeals then addressed Lyon's as applied challenge and found that, as applied to her, R.C. 2323.43(A)(3) violated the Ohio Constitution's equal protection clause. In reaching this conclusion, the Court of Appeals relied heavily on *North Broward Hosp. Dist. v. Kalitan*, 2017 Fla. LEXIS 1277 (Fla. 2017). Reliance on *Kalitan* is misplaced as *Kalitan* involved a facial challenge to the statutory cap. Here, as noted above, the Court of Appeals did not find the statute unconstitutional on its face. So, to the extent *Kalitan* is applicable at all, it is contrary to the Court of Appeals' decision.

Further, *Kalitan* is based on the faulty premise that noneconomic damages can fully compensate for a loss. *See Kalitan* at *58. Because noneconomic damages are inherently subjective and speculative, and not tethered to any quantifiable value, there is no way to determine how much is enough to fully compensate for noneconomic loss. This Court should reject *Kalitan* as supporting an equal protection violation under the Ohio Constitution.

Additionally, this Court has previously held that a $250,000 flat cap on noneconomic damages did not violate the Ohio Constitution's equal protection clause. *Oliver v. Cleveland Indians Baseball Co. Ltd. Partnership*, 2009-Ohio-5030. If a $250,000 flat cap on noneconomic damages does not violate equal protection, neither should a two-tiered cap that allows those with more severe injuries to receive higher noneconomic damages. The Court of Appeals rejected application of this Court's *Oliver* decision because *Oliver* involves a noneconomic damages cap applicable to political subdivisions as opposed to private litigants. But that distinction only proves that the General Assembly has previously crafted different remedies depending on the claim at issue that have been upheld by this Court.

Contrary to the Court of Appeals' decision, it is not unreasonable and arbitrary to provide a different remedy depending on the claim at issue. For example, if a person lost the use of an arm in a workplace accident, they would receive workers' compensation benefits for their injury. If they lost the use of their arm due to the negligence of a political subdivision, their noneconomic damages would be limited to $250,000. If they lost the use of their arm as a result of medical malpractice, they would be permitted to recover higher noneconomic damages than for political subdivision negligence under R.C. 2323.43. And, if they lost the use of their arm due to negligence of another party outside of any of these scenarios, they would be eligible to recover additional noneconomic damages under R.C. 2315.18 (applicable to general tort claims). In each of these situations, the General Assembly considered what remedies were appropriate under the facts and circumstances and made legislative findings accordingly. These findings should not be ignored or set aside because a court would have reached a different policy decision. Yet, that is what the Court of Appeals decision does.

## CONCLUSION

Amici Curiae respectfully request that the Court grant jurisdiction in this case. The case is critically important to ensuring that all Ohioans continue to have access to essential medical care. The damages caps contained in R.C. 2323.43(A) are carefully tailored to promote predictability and reduce the risk of run-away jury verdicts, while at the same time ensuring accessible health care to all Ohioans and the availability of higher noneconomic damage awards for those suffering the most severe injuries from medical malpractice. This statutory scheme is not only constitutional, but also effective in achieving the legislature's goals.

The Court should accept jurisdiction, reverse, and instruct the lower courts on the proper analysis to be applied in future challenges to the statute limiting noneconomic damages for medical malpractice claims under the Ohio Constitution's due process and equal protection provisions.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent via email transmission on October 6, 2025 to the following:

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