IN THE SUPREME COURT OF OHIO

JOHN PAGANINI,	:	
	:	**Case No. 2025-0386**
Plaintiff-Appellee,	:	
	:	**On appeal from the**
v.	:	**Eighth District Court of Appeals**
	:	**Cuyahoga County, Ohio**
THE CATARACT EYE CENTER OF	:	
CLEVELAND, INC., et al.,	:	**Court of Appeals Case No. CA-24-113867**
	:	**CA-24-114019**
***Defendants-Appellants*.**	:	

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 of 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 is a non-profit 501(c)6 representing 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 were 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*. The higher of the two limitations — the $500,000 limit on noneconomic damages for "catastrophic injuries" — is the subject of Paganini's constitutional challenge. He argues the statutory limitations are unconstitutional as applied to him. The trial court and the court of appeals agreed, unraveling statutory reform which has been in existence for more than 20 years. The Court of Appeals reached this conclusion without considering that, 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.

When SB 281 was first proposed over twenty years ago, it was amidst growing concerns over the loss of physicians and the inability to recruit new ones throughout Ohio 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 and innovation for their nationally and internationally renowned teams of clinical and research physicians. The effect — 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.[1] Hospitals closed maternity wards and eliminated services — while some closed their doors entirely.[2]

Thus, the General Assembly adopted SB 281 in response, including the key component at issue in this case: the cap on noneconomic damages. As set forth in R.C. 2323.43's uncodified law, the reforms proposed by SB 281 were carefully designed by the legislature to balance all parties' interests. 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

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[1] This data comes from the Report of the Ohio Medical Malpractice Commission, April 2005.
[2] From 1994-2003, approximately 32 different hospitals were closed, compared with only 22 during the prior 14-year period, according to data maintained by the OHA and shared with the legislature during the discussion of SB 281.

claims and that Ohio's failure to implement some check on rampant medical malpractice litigation and excessive noneconomic damages could render Ohio a less attractive state for physicians and other healthcare providers — defeating the very cure R.C. 2323.43 was designed to bring. *Id.,* Section (A)(3)(e).

This case could undo all that. Over the last decade, the percentage of premiums that have increased across the United States has grown steadily. Predictably, the states with the highest premiums are also states where legislation capping damages do not exist or have been unraveled. *See* National Association of Benefits and Insurance Professionals, Malpractice Damage Caps by State, https://nabip.org/media/8331/medical_malpractice_cap.pdf. Undoubtedly, predictability in medical malpractice litigation has a real and substantial impact on controlling premiums.

Amici Curiae ask this Court to accept jurisdiction over this critically important appeal, overturn the erroneous decision of the appeals court, and find that the caps on noneconomic damages set forth in R.C. 2323.43 for those who suffer "catastrophic injury" are constitutional under the due process clause of the Ohio Constitution as they meet the applicable rational basis test.

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

Ohio Revised Code 2323.43(A) 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 physicians for the benefit of all Ohioans? From this query came a two-tiered damage cap.

This carefully crafted compromise preserves the healthcare community's (and the State's) interest in maintaining fair and predictable jury awards to ensure stable and affordable malpractice insurance rates and retain top medical talent in the State. Likewise, it 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 v. Savoy*, 61 Ohio St.3d 684 (1991).

But all these significant State interests — a physician retention crisis, diminished expertise within Ohio's hospitals, increased malpractice premiums (and the practical risk of cost-shifting to the patient), keeping healthcare costs down for consumers and employers, 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 — are unconstitutional "as applied" to Appellee, John Paganini. To be clear, had Paganini's damages award included economic damages to compensate him for payments made toward medical care, he would recover every last dime of that award, because damages for economic loss are not at all limited by the statute. Rather, R.C. 2323.43(A) 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. Ptship.,* 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 could only reflect 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.

Still, both the trial court and the appellate court below agreed with Paganini, finding the General Assembly's limitation to Paganini's noneconomic damages was unconstitutional as applied to his particular circumstances. However, neither Paganini, the trial court, nor the Eighth District Court of Appeals could effectively articulate how his specific circumstances made R.C. 2323.43(A) so different when applied to him, such that it violates his due process rights. His challenge is premised only on the fact that his verdict was otherwise limited by statute — in his case, the higher tier of the noneconomic damages cap. However, there is nothing meaningful about the higher tier as it relates to Paganini's challenge — it just happens to be the particular tier that limits his noneconomic damages award. He does not challenge the substance of the statute itself. He merely asserts that because the verdict in his case exceeded the statutory limit for noneconomic damages, it is unconstitutional as to him.

The initial misstep by both courts below was finding that Paganini made a proper "as applied" challenge to the statute. He did not. The Court of Appeals concluded that Paganini's "unique" circumstances renders his challenge one "as applied" to him; those circumstances being only that the jury returned a verdict in his 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.

But the lower courts' errors did not stop there. Both lower courts went on to apply the appropriate test to determine constitutionality, but applied the test erroneously, without giving deference to the General Assembly. Specifically, the Court of Appeals relied almost exclusively

on this Court's analysis in *Morris*[3] (despite that *Morris* involved a facial challenge) finding the $200,000 singular noneconomic damages cap applicable to all plaintiffs was unconstitutional in that it "impose[d] the cost of the intended benefit to the general public solely upon a class consisting of those most severely injured by medical malpractice." *See* Journal Entry and Opinion ("Opinion"), at ¶ 54, quoting *Morris* (citations omitted). However, by emphasizing this part of the *Morris* analysis, the court ignored that the General Assembly introduced SB 281 as a curative response to *Morris*. Thus, the *Morris* rationale is not controlling.

Likewise, the court below compared apples to oranges by relying upon this Court's rejection of the ***facial*** challenge of *Arbino,* wherein this Court upheld R.C. 2315.18(B)(2)'s noneconomic damages cap for general tort claims, on the basis that it was a two-tiered system, the higher tier allowing no limit for catastrophic injuries. The Court of Appeals takes this to mean that a two-tiered system is constitutional, so long as the higher tier remains unchecked. But that was not this Court's holding in *Arbino*. Rather, the *Arbino* Court found the two-tier system to alleviate the concerns it expressed in *Morris*, while achieving certain articulated desired ends. In *Arbino*, the state interest advanced by the General Assembly was reforming the state civil justice system to make it fairer and more predictable (as noneconomic damages are "inherently subjective"), but at the same time, "curbing the number of frivolous lawsuits, which increases the cost of doing business, threatens Ohio jobs, drives up costs to consumers, and may stifle innovation." *Id*., ¶ 68. In other words, the goal was to improve and protect the state economy.

[3] Curiously, the Court of Appeals does not reference more recent jurisprudence, including *Simpkins v. Grace Brethren Church of Delaware, Ohio*, 2016-Ohio-8118, wherein this Court left intact the court of appeals decision finding R.C. 2315.18(B) constitutional "as applied" to plaintiff's noneconomic damages.

Here, the desired ends are vastly different. Whereas the general tort statute was designed to promote the economy by deterring frivolous lawsuits, the statute applicable to medical claims is designed to promote Ohioans' access to healthcare. Tort reform in the medical malpractice space was intended to keep professional liability insurers with affordable rates in the Ohio market, thereby keeping talented physicians here, too. The General Assembly reasonably determined, based on data presented to it, that one way to do that is by enhancing predictability and mitigating harm through the implementation of noneconomic damage caps.

The court below took issue with the fact that the data reported by the Ohio Department of Insurance in a 2019 report did not report specifically on figures that reflect claims relating to the higher tier damage cap — the limit at issue here. Opinion, at ¶ 64. On this basis, the court found there was clear and convincing "evidence" that R.C. 2323.43(A) was unconstitutional. This conclusion is illogical. First, while the data may be helpful in supporting a position, it is not "evidence" at all. Second, even if it could be considered as evidence, the data does not demonstrate, clearly and convincingly, that there is ***no*** tie between the statute and the General Assembly's articulated intent.

The data offers little to Paganini's claim regardless, since in reality, Paganini's appeal has nothing to do with the distinction between the higher cap and the lower cap. His challenge is essentially this: "the jury awarded me a verdict that exceeded the higher damages cap, so the statute must be unconstitutional as applied to me." However, had there been no finding in Paganini's case that he was catastrophically injured, and the jury's noneconomic damage award merely exceeded the ***lower*** cap, Paganini's challenge would be "the jury awarded me a verdict that exceeded the ***lower*** damage cap, so the statute must be unconstitutional as applied to me." In other words, there is nothing unique about the higher tier damage cap for Paganini's "as applied" challenge.

Ultimately, 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 arbitrary." *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 Eighth 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

Proposition of Law: The Two-Tiered Noneconomic Damage Caps Set Forth In R.C. 2323.43(A) Is Constitutional Under the Applicable Rational Basis Test

A. R.C. 2323.43(A) "As-Applied" to Every Plaintiff Awarded a Verdict in Excess of Damages Caps is Actually a Facial Challenge

Contrary to Paganini's assertion, and the Court of Appeals' conclusory finding, this case presents a facial challenge to R.C. 2323.43(A), and the court below should have applied a higher "beyond a reasonable doubt" standard. *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. Of Edn*., 2006-Ohio-5512, ¶ 21, citing *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142 (1955). Paganini argued, and the Court of Appeals found, that "Paganini's argument is specific to his unusual circumstances, namely that the statute requires him to forego 66.4% of the damages awarded to him…" Opinion, ¶ 50. But there is nothing "unusual" about these circumstances. This rationale is applicable to every single Ohio medical malpractice plaintiff awarded 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***.

Accepting Paganini's challenge as an "as applied" constitutional challenge based on his "unique" circumstances guts the entire purpose of the statute. 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, P. 22. The Court of Appeals' decision, in practice, renders R.C. 2323.43(A) unconstitutional in every conceivable set of circumstances in which it applies. This outcome makes it clear that Paganini's challenge is squarely a facial one.

B. The Damage Caps Set Forth in R.C. 2323.43(A) Bear a Real and Substantial Relation to Public Health and Welfare

Notwithstanding that the Court of Appeals ought to have applied a higher standard in analyzing Paganini's thinly-veiled facial challenge for what it is, it misapplied the constitutional analysis required under the lower standard it ***did*** apply.

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,* 28 Ohio St.3d at 274 quoting *Benjamin*, 167 Ohio St. 103, paragraph five of the syllabus. 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 the *Arbino* Court, "[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).

Notwithstanding this framework, the Court of Appeals' analysis of this prong improperly focused on this Court's *Morris* decision, which analyzed a previous version of the statute, and ***one without the challenged provision***. In *Morris*, this Court found that a singular $200,000 cap on damages for all plaintiffs was unreasonable and arbitrary because it "impose[d] the cost of the intended benefit to the general public solely upon a class consisting of those most severely injured by medical malpractice." *Morris*, 61 Ohio St. 3d at 691 (quotation omitted). 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 (and quoted by the court below), 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." Opinion, ¶ 62 quoting 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).

Notwithstanding these express findings by the General Assembly, the Court of Appeals drew a contrary conclusion that "it is not clear from the legislative findings how the noneconomic damages for catastrophic injuries will have any impact in reducing malpractice insurance rates since there have been so few cases involving these types of injuries." Opinion, ¶ 63. According to the Court of Appeals, 2019 data demonstrates that there were only 30 cases between 2005 and 2019 in which a jury returned a verdict for a medical malpractice plaintiff in excess of the statutory caps. *Id*., ¶ 64. Regardless of whether it is appropriate for a Court of Appeals to base a decision on data that was not before the trial court (and that was prepared decades after the General Assembly's findings were made), the Court of Appeals' conclusions are misplaced. These conclusions demonstrate two critical points: first, that the Court of Appeals ignored the findings by the General Assembly; and second, that the data — gleaned ***after*** the enactment of the statute — actually tends to demonstrate that these goals have been met.

Indeed, damage caps offer negotiating parties a valuable tool in resolving their disputes: certainty. When the risk/reward to ***both*** parties is mitigated by a cap on noneconomic damages, the parties are able to resolve alleged malpractice cases outside the judicial system. This is one likely explanation for the low figure above. Put another way — the "low" number of verdicts exceeding the statutory limit demonstrates the very point of this inquiry: ***the caps work***.

Regardless, the Court of Appeals' reasoning is backward — the inquiry is not whether some future data might skew the "real and substantial" impact of the statutory scheme on Ohio's public health and welfare, but rather whether the connection was there when the statute was enacted. *Benjamin v. Columbus*, 167 Ohio St. 103 (1957) (stating that the proper constitutional inquiry is whether the legislature had a rational belief that its determinations were related to a legitimate government interest at the time the law was enacted). As clearly demonstrated by the General Assembly — ***the only body tasked with making this determination*** – that connection exists. SB 281, Uncodified Law, Section (A)(3).

C. The Damages Caps Set Forth In R.C. 2323.43(A) Are Not Unreasonable Or Arbitrary

The Court of Appeals concluded R.C. 2323.43(A) to be unreasonable and arbitrary based upon this Court's *Morris* analysis — notwithstanding that the present version of the statute was carefully drafted to resolve the issues that rendered the old version unconstitutional.

In *Arbino*, the appellant attempted to shoe-horn the *Morris* reasoning to argue that even with the exception for catastrophic injuries, the noneconomic damage limitations remain unreasonable and arbitrary by imposing the cost of the public benefit upon the "second-most severely injured." *Arbino*, ¶ 60. The *Arbino* Court expressly rejected this argument noting that the statue alleviated the concerns expressed in *Morris*. *Id.,* ¶ 61. "At some point, though," the Court explained, "the General Assembly must be able to make a policy decision to achieve a public good." *Id*. While the statute here, R.C. 2323.43(A), does limit recovery of individuals with catastrophic injuries, it does so at a much higher threshold, thereby still achieving the public good.

Ultimately, the Court of Appeals' (and the trial court's) analysis began in faulty framework, and failed to account for the remedial nature of R.C. 2323.43 to the concerns expressed in *Morris*. The statute is not unreasonable and it is not arbitrary and it effectively accomplishes the articulated

goals set forth by the General Assembly, while balancing the interests of Ohio's most injured plaintiffs.

CONCLUSION

Amici Curiae, Ohio Hospital Association, the Ohio State Medical Association, the Ohio Osteopathic Association, Ohio Alliance for Civil Justice, and the Academy of Medicine of Cleveland & Northern Ohio respectfully request that the Court grant jurisdiction in this case and reverse the judgment of the Eighth District Court of Appeals. 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, allowing insurance providers the assurance they need to continue to insure talented medical providers in Ohio, and to keep their premiums affordable. In the absence of this necessary reform, Ohio saw the exodus of professional liability insurers and healthcare providers. This statutory scheme is not only constitutional, it is effective.

Moreover, the Court of Appeals' opinion, as it stands, though fashioned as an affirmed "as-applied" challenge, is ***effectively*** "applicable" to each and every single plaintiff awarded a verdict in excess of the higher tier damage cap — and paves the way for the total dismantling of the statute as a whole. If the Eighth District's decision stands, there is no conceivable set of facts wherein the higher tier damage cap in R.C. 2323.43(A) is triggered, yet the statute could be rendered constitutional. Thus, what was framed as an "as-applied" constitutional challenge, is in fact, a facial challenge, and the Court should accept jurisdiction, reverse, and instruct the lower courts on the proper analysis to be applied in future constitutional challenges to the statute limiting noneconomic damages.

Respectfully submitted,

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