IN THE SUPREME COURT OF OHIO

SUSANA LYON,	:	
	:	Case No. 2025-1317
Plaintiff-Appellee,	:	
	:	On Appeal from the Franklin
v.	:	County Court of Appeals,
	:	Tenth Appellate District
RIVERSIDE METHODIST	:	
HOSPITAL, *et al*.,	:	Court of Appeals
	:	Case No. 23AP-379
Defendants-Appellants.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF *AMICI CURIAE* OHIO CHAMBER OF COMMERCE, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN TORT REFORM ASSOCIATION, AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, AND MEDICAL PROFESSIONAL LIABILITY ASSOCIATION

Joshua A. Weiner (0084233)
(Counsel of Record)
SHOOK, HARDY & BACON L.L.P.
1 Rockefeller Plaza
Suite 2801
New York, NY 10020
(212) 989-8844
jweiner@shb.com

Cary Silverman (PHV-2576-2025)
SHOOK, HARDY & BACON L.L.P.
1800 K Street NW, Suite 1000
Washington, DC 20006
(202) 783-8400
csilverman@shb.com

Counsel for Amici Curiae Ohio Chamber of Commerce, Chamber of Commerce of the United States of America, American Tort Reform Association, American Property Casualty Insurance Association, and Medical Professional Liability Association

David I. Shroyer, Esq. (0024099)
Tyler B. Shroyer, Esq. (0093838)
COLLEY SHROYER & ABRAHAM CO., LPA
536 South High Street, 2nd Floor
Columbus, Ohio 43215
(614) 228-6453
dshroyer@csajustice.com
tshroyer@csajustice.com

Counsel for Plaintiff-Appellee Susana Lyon

Brian D. Sullivan, Esq. (0063536)
Brianna M. Prislipsky, Esq. (0101170)
REMINGER CO., L.P.A.
200 Public Square, Suite 1200
Cleveland, Ohio 44114
(216) 687-1311
bsullivan@reminger.com
bprislipsky@reminger.com

David H. Krause, Esq. (0070577)
Jackie M. Jewell, Esq. (0090499)
REMINGER CO., L.P.A.
200 Civic Center Drive, Suite 800
Columbus, Ohio 43215
(614) 228-1311
dkrause@reminger.com
jjewell@reminger.com

Counsel for Defendants-Appellants, Rohit Makkar, MD, Reghuram Reddy, MD, Ryan Gaible, MD, and Ohio Gastroenterology Group, Inc.

Anna Marie Sferra (0030855)
BRICKER GRAYDON LLP
100 South Third Street
Columbus, Ohio 43215-4291
(614) 227-2300
asferra@brickergraydon.com

Counsel for Amici Curiae Ohio Hospital Association, Ohio Alliance for Civil Justice, Ohio State Medical Association, and Ohio Osteopathic Association

TABLE OF CONTENTS

Page

The Ohio Chamber of Commerce, Chamber of Commerce of the United States of America, American Tort Reform Association, American Property Casualty Insurance Association, and Medical Professional Liability Association respectfully submit this jurisdictional memorandum as *amici curiae* in support of Defendants-Appellants.

STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici represent businesses, insurers, and others that are concerned with the predictability and fairness of Ohio's civil justice system. *Amici* have a substantial interest in the constitutionality of R.C. 2323.43, which advances these goals by providing a reasonable limit on the portion of awards in medical liability cases that is exceedingly difficult (if not impossible) to objectively measure—the amounts awarded for noneconomic damages.

The Ohio Chamber of Commerce ("Ohio Chamber") is Ohio's largest and most diverse statewide business advocacy organization representing businesses ranging in size from small, sole proprietorships to some of the largest U.S. companies. The Ohio Chamber works to promote and protect the interests of its more than 8,000 business members while building a more favorable business climate in Ohio by advocating for the interests of Ohio's business community on matters of statewide importance. By promoting its pro-growth agenda with policymakers and in courts across Ohio, the Ohio Chamber seeks a stable and predictable legal system, which fosters a business climate where enterprise and Ohioans prosper. The Ohio Chamber regularly files *amicus* briefs in cases important to its members' interests in courts across the state of Ohio.

The Chamber of Commerce of the United States of America ("U.S. Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the

Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The American Tort Reform Association ("ATRA") is a national, nonpartisan, nonprofit coalition of large and small businesses, trade associations, and professional firms. ATRA is dedicated to improving the civil justice system with a focus on promoting fairness, balance, efficiency and predictability in civil litigation. In addition to legislative efforts and public education outreach, one of ATRA's important functions is to file *amicus curiae* briefs in cases involving important civil justice issues.

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions – protecting families, communities, and businesses in the U.S. and across the globe. APCIA's member companies represent approximately 66% of the U.S. property casualty insurance market and 58% of Ohio's medical professional liability insurance market.

The Medical Professional Liability Association is a leading insurer trade association, representing domestic and international medical professional liability (MPL) insurance companies owned and/or operated by physicians, hospitals, dentists, and other healthcare providers, as well as insurance carriers with a substantial commitment to the MPL line.

STATEMENT OF THE CASE AND FACTS

This case raises the constitutionality of Ohio's statutory limit on noneconomic damages in medical liability cases, R.C. 2323.43, as applied to an approximately $25.2 million verdict for a patient who alleges that a hospital and its doctors negligently failed to accurately diagnose her medical condition. In addition to awarding nearly $5.2 million in economic damages, the verdict

included a $20 million noneconomic damage award. Rather than enter a judgment consistent with the jury's findings and the $500,000 statutory limit on noneconomic damages, the trial court found the statutory limit unconstitutional. The Tenth District affirmed, finding the cap unconstitutional, as applied, on both due process and equal protection grounds.

In assessing whether the statutory cap is consistent with due process, the Tenth District held that the cap has a "real and substantial relationship to the general welfare of the public," providing proper deference to the legislature's public policy judgment. *See Lyon v. Riverside Methodist Hosp.*, 2025-Ohio-2001, at ¶¶ 25-28 (10th App. Dist. Aug. 21, 2025). Yet, the appellate court found the statutory limit "clearly and convincingly unreasonable and arbitrary" as applied to the Plaintiff's case, given the severity of her injuries, because it reduced her damages by 57.4% "in order to lower medical-malpractice insurance rates for the public's benefit." *Id.* ¶ 33. The appellate court also found it "troubling" that the legislature had not adjusted the level of the statutory limit since its enactment. *Id.*

Similarly, with respect to the equal protection challenge, the Tenth District declined to second-guess the General Assembly's policy judgment to establish separate limits on noneconomic damages for medical liability and other personal injury cases, given the legislature's concern with the affordability of healthcare and medical malpractice insurance coverage. *Id.* ¶ 37. Nevertheless, while "not tak[ing] issue with the General Assembly's efforts to combat the rising costs of healthcare," the court found that lack of a complete exemption from the statutory limit for plaintiffs who experience severe injuries, as would be available had she experienced a similar injury in an automobile accident, "is unreasonable and arbitrary." *Id.* ¶ 42.

THIS CASE RAISES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS ONE OF PUBLIC AND GREAT GENERAL INTEREST

This appeal raises the constitutionality of the $500,000 limit that applies in medical liability actions in cases involving severe injuries to the portion of damages awarded for a person's noneconomic losses, R.C. 2323.43(A)(3), while preserving a plaintiff's full recovery of economic losses. As discussed, the Tenth District invalidated the statute, as applied, on due process and equal protection grounds.

Precluding application of R.C. 2323.43 in any case alleging a "severe" injury stemming from medical treatment will not only nullify the statute's applicability in many circumstances, it will lead to confusion, complicate settlement, and result in unnecessary litigation and appeals over whether a plaintiff is eligible for up to $500,000 in noneconomic damages, as the General Assembly provided, or an unlimited amount, as court rulings may now allow on a case-by-case basis. The unpredictability and larger awards that will follow will reduce the accessibility and affordability of medical professional liability insurance, and ultimately healthcare, in Ohio.

When the General Assembly enacted R.C. 2323.43, it struck a careful balance. The legislature left uncapped all economic recoveries, including for past and future medical care and treatment expenses, lost earning capacity, or any other quantifiable costs caused by negligent care. Economic damages, particularly for lifelong injuries, can be substantial and are fully recoverable. R.C. 2323.43(A)(1). The General Assembly sought to maintain predictability in the civil justice system and stability for Ohio's healthcare environment by choosing a considerable, but not unlimited, remedy for a plaintiff's noneconomic damages, which are notoriously difficult (if not impossible) to measure objectively and reliably. Reflecting a careful balance, the General Assembly established a higher maximum compensation level for noneconomic losses associated with severe injuries ($500,000 for each plaintiff) than other injuries ($250,000 or an amount up to

three times the plaintiff's economic loss, but no more than $350,000, for each plaintiff). *See* R.C. 2323.43(A)(2), (3). Invalidating those statutory limits – even as applied – will return to the unpredictability that the General Assembly sought to avoid in enacting R.C. 2323.43.

A. The Court Should Comprehensively Address the Constitutionality of the Statute

This Court has already recognized the importance of this issue, as it has accepted jurisdiction in *Paganini v. Cataract Eye Center of Cleveland*, No. 2025-0386, in which the Eighth District also invalidated R.C. 2323.43. There are significant differences, however, in how these appellate courts decided the issue. This Court should also exercise jurisdiction over this case and consolidate it with *Paganini* so that it can address these inconsistencies, fully resolve the issues raised in each court, and provide clear guidance regarding the constitutionality of the statutory limit.

First and foremost, the Tenth District invalidated the statute both on due process and equal protection grounds. The Eighth District in *Paganini*, however, decided the issue solely based on the Ohio Constitution's due course of law clause. *See* 2025-Ohio-275, at ¶ 67 (8th App. Dist. Jan. 30, 2025). Unless the Court grants review here, a ruling upholding the statute in *Paganini* on due process grounds will leave continued uncertainty as to whether the statute may be unconstitutional on equal protection grounds. This unresolved issue will result in needless litigation in every case in which a plaintiff alleges a substantial injury or in which a jury awards an amount that is significantly higher than the statutory limit.

Second, the Tenth and Eighth Districts significantly differed in their applications of the rational-basis test. The Tenth Circuit declined to second-guess the General Assembly's public policy judgment that a statutory limit on noneconomic damages provides those who are harmed by a medical professional's negligence with "a reasonable level of compensation while also protecting the viability of the medical profession." *Lyon*, 2025-Ohio-2991, at ¶ 22. That court

properly deferred to the General Assembly's "meaningful findings" that motivated its enactment of the statutory limit, including the dramatic increase in the average medical liability award, the increasing challenge for healthcare professionals to find affordable liability coverage, and the public interest in stabilizing the cost of healthcare. *Id.* ¶ 23.

By way of contrast, in *Paganini*, the Eighth District did not defer to the General Assembly when it applied the rational-basis test. Rather, the court indicated that it was unconvinced by the legislature's findings. *See* 2025-Ohio-275, at ¶ 63. The Eighth District expected the legislature to prove that limiting damages would reduce medical liability insurance rates. *Id.* It also looked at post-enactment medical liability case filing statistics – as late as 2019 – to evaluate whether the General Assembly had a rational basis for enacting a law sixteen years earlier. *Id.* ¶ 64. This Court should consider and reject such an approach to rational-basis review. *See Arbino v. Johnson & Johnson*, 880 N.E.2d 420, 435 (Ohio 2007) ("Such an intensive reexamination is beyond the scope of our review. . . . [W]e need not cross-check its findings to ensure that we would agree with its conclusions.").

Third, the Tenth District's analysis raises an element not addressed in the *Paganini* decision. Here, as part of its due process analysis, the court below questioned whether the General Assembly's failure to increase the level of the statutory limit since its adoption in 2003 makes it more susceptible to as-applied challenges. *Lyon*, 2025-Ohio-2991, at ¶ 33. The Tenth District's decision suggests that absent regular inflation adjustments, the cap is prone to be "unreasonable and arbitrary." *Id.* This aspect of the Tenth District's ruling could raise questions about the constitutionality of other laws over time. It should be considered by this Court.

Addressing the issues raised in both decisions in a comprehensive manner is in the interests of lower courts, healthcare providers, and patients, and would also provide helpful guidance to the General Assembly.

B. Maintaining a Predictable Maximum for Noneconomic Damage Awards is Important to Ohio's Healthcare Environment

As this Court has recognized, "One cannot deny that noneconomic-damages awards are inherently subjective and difficult to evaluate." *See Arbino*, 880 N.E.2d at 437. The lack of predictability, as well as rising amounts of pain and suffering awards, led many states, including Ohio, to adopt commonsense statutory ceilings on them. Today, about half of states limit noneconomic damages[1] or total damages[2] in medical negligence cases, where inflated awards can have especially harmful consequences. Other states have set a maximum level for noneconomic damages that extends to personal injury claims,[3] for which Ohio has a separate statutory limit, RC 2315.18.

These laws recognize that the broader public good is served when liability is predictable. *See Arbino*, 880 N.E.2d at 437. There is a clear connection between limiting recovery for plaintiffs' subjective and widely varying noneconomic-damages awards and protecting access to affordable

[1] *See, e.g.,* Alaska Stat. § 09.55.549; Cal. Civ. Code § 3333.2; Colo. Rev. Stat. § 13-64-302; Iowa Code § 147.136A; Md. Cts. & Jud. Proc. Code § 3-2A-09; Mass. Gen. Laws ch. 231 § 60H, Mich. Comp. Laws § 600.1483; Mont. Code Ann. § 25-9-411; Nev. Rev. Stat. § 41A.035; N.D. Cent. Code § 32-42-02; Ohio Rev. Code Ann. § 2323.43; S.C. Code Ann. § 15-32-220; S.D. Codified Laws § 21-3-11; Tex. Civ. Prac. & Rem. Code § 74.301; Utah Code § 78B-3-410; W. Va. Code Ann. § 55-7B-8; Wis. Stat. § 893.55.

[2] *See, e.g.,* Ind. Code Ann. § 34-18-14-3; La. Rev. Stat. § 40:1299.42; Neb. Rev. Stat. § 44-2825; Va. Code Ann. § 8.01-581.15; *see also* N.M. Stat. Ann. § 41-5-6 (limiting total damages in medical liability cases except damages for medical care or punitive damages).

[3] *See, e.g.,* Alaska Stat. § 09.17.010; Colo. Rev. Stat. § 13-21-102.5; Haw. Rev. Stat. § 663-8.7; Idaho Code § 6-1603; Md. Cts. & Jud. Proc. Code § 11-108; Miss. Code Ann. § 11-1-60(2)(b); Tenn. Code Ann. § 29-39-102.

healthcare. *See id.* at 435. A substantial body of literature shows that limits on noneconomic damages lead to lower insurance premiums,[4] more practicing physicians,[5] and a greater focus on the quality of care over the practice of defensive medicine that merely increases the quantity of care.[6] These laws also facilitate fair settlements and constrain the potential for arbitrariness that may raise concerns regarding due process and equitable treatment of those with similar injuries.[7]

---

[4] *See, e.g.*, Mark Behrens, *Medical Liability Reform: A Case Study of Mississippi*, 118 Obstetrics & Gynecology 335, 338-39 (Aug 2011) (documenting medical liability insurance premium reductions and refunds following Mississippi's adoption of a $500,000 noneconomic damage limit in most medical liability cases); Ronen Avraham, *An Empirical Study of the Impact of Tort Reforms on Medical Malpractice Settlement Payments*, 36 J. Legal Stud. S183, S221 (June 2007) (study of more than 100,000 settled cases showed that caps on noneconomic damages "do in fact have an impact on settlement payments"); Michelle Mello, *Medical Malpractice: Impact of the Crisis and Effect of State Tort Reforms*, Research Synthesis Rep. No. 10, at 12 (Robert Wood Johnson Found. 2006) ("[M]ost recent controlled studies show that caps moderately constrain the growth of premiums"); Meredith L Kilgore et al., *Tort Law and Medical Malpractice Insurance Premiums*, 43 Inquiry 255, 268 (2006) (finding physicians in general surgery and obstetrics/gynecology experienced 20.7% and 25.5% lower insurance premiums, respectively, in states with damage caps compared to states without them); U.S. Dep't of Health & Human Servs, *Confronting the New Health Care Crisis: Improving Health Care Quality and Lowering Costs by Fixing Our Medical Liability System* 15 (2002) ("[T]here is a substantial difference in the level of medical malpractice premiums in states with meaningful caps . . . and states without meaningful caps.").

[5] *See, e.g.*, Ronald Stewart et al., *Tort Reform is Associated with Significant Increases in Texas Physicians Relative to the Texas Population*, 17 J Gastrointest. Surg. 168 (2013); William Encinosa & Fred Hellinger, *Have State Caps on Malpractice Awards Increased the Supply of Physicians?*, 24 Health Aff. 250 (2005); *see also* Robert Barbieri, *Professional Liability Payments in Obstetrics and Gynecology*, 107 Obstetrics & Gynecology 578, 578 (Mar. 2006) ("Many studies demonstrate that professional liability exposure has an important effect on recruitment of medical students to the field and retention of physicians within the field and within a particular state.").

[6] *See, e.g.*, Steven Farmer et al., *Association of Medical Liability Reform with Clinician Approach to Coronary Artery Disease Management*, 10 JAMA Cardiology E1, E8 (June 2018) (finding that after adoption of damage limits, healthcare providers engaged in less invasive testing when treating coronary artery disease).

[7] *See Gilbert v. DaimlerChrysler Corp.*, 685 N.W.2d 391, 400 n.22 (Mich. 2004) ("A grossly excessive award for pain and suffering may violate the Due Process Clause even if it is not labeled 'punitive.'"); Paul Niemeyer, *Awards for Pain and Suffering: The Irrational Centerpiece of Our Tort System*, 90 Va. L. Rev. 1401, 1414 (2004) ("The relevant lesson learned from the punitive damages experience is that when the tort system becomes infected by a growing pocket of irrationality, state legislatures must step forward and act to establish rational rules.").

R.C. 2323.43 is within the mainstream. Many states have set their limits at similar levels in medical liability actions, including for claims involving severe injuries. *See, e.g.,* Alaska Stat. § 09.17.010 ($400,000 limit in cases involving wrongful death or severe permanent physical impairment); Cal. Civ. Code § 3333.2(b), (g) ($430,000 limit in 2025); Colo. Rev. Stat. § 13-64-302(1)(c)(I)(B) ($415,000 limit in 2025); 24-A Me. Rev. Stat. Ann. § 4313(9)(B) ($400,000 limit); Miss. Code Ann. § 11-1-60(2)(a) ($500,000 limit); Mont. Code Ann. § 25-9-411 ($350,000 limit rising to $500,000 in 2029); Nev. Rev. Stat. § 41A.035(1), (2) ($510,000 limit in 2025); N.D. Cent. Code § 32-42-02 ($500,000 limit); S.D. Codified Laws § 21-3-11 ($500,000 limit); *see also* Idaho Code § 6-1603 ($509,013 inflation-adjusted limit in all personal injury actions, including medical liability cases).[8]

In short, limits on noneconomic damages are a rational and defensible legislative response to a growing distortion of liability law that has adverse consequences for healthcare providers and the public.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: 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.

Ohio law provides patients with unlimited recovery for all objectively quantifiable expenses should they experience an injury from negligent medical care, including past and future costs of medical care, rehabilitative services, other services or assistance needed, lost income, and "any other expenditures incurred" because of the injury. *See* RC 2323.43(A)(1), (H)(1). The

[8] Idaho Industrial Comm'n, Calculation – Non-economic Damages Caps, July 2025 (setting inflation-adjusted limit), https://iic.idaho.gov/wp-content/uploads/2025/07/Benefits-Non-economic-caps-effective-07_01_25.pdf.

General Assembly adopted a maximum level of compensation only for the portion of an award in medical liability cases that is exceedingly difficult to measure objectively, given the lack of predictability for such awards and the well-documented harm that this uncertainty and inflated awards can have on the state's healthcare environment and the public. *See infra* at 6-8. This rational connection between the statutory limit and public good to be achieved is all that is required under the first prong of the due-process analysis. *See Arbino*, 880 N.E.2d at 435.

The Tenth District, unlike the Eighth District, found that "it is not the role of this court to reexamine the evidence presented by the General Assembly," *Lyon*, 2025-Ohio-2991, at ¶ 28, yet it found the statutory limit constitutionally permissible only when the jury awards an amount of noneconomic damages that is so "close to the $500,000 cap such that a minimal reduction would be reasonable and not arbitrary to curtail the rising costs of healthcare to benefit the general public," *id*. ¶ 30. As a result, the Tenth District found the statute unconstitutional as applied to Lyon's $20 million noneconomic damage award (forty times the per-plaintiff maximum). *See id.* at ¶ 33. The Tenth District also appeared to agree with the Eighth District that the statutory maximum could not constitutionally apply in *Paganini*, in which the jury awarded approximately $1.5 million in noneconomic damages (three times the per-plaintiff maximum). *See id.* at ¶ 32. In other words, under the Tenth District's reasoning, the General Assembly's limit on noneconomic damages is only constitutional when the law does very little to reduce the award.[9]

[9] This Court's split decision in *Brandt v. Pompa*, 220 N.E.3d 703 (Ohio 2022), holding that Ohio's separate limit on noneconomic damages in personal injury cases violated due-course-of-law as applied to the claim of a childhood sexual abuse survivor is distinguishable in three significant ways. First and foremost, the statutory limit at issue here addresses the legislature's concern with the impact of unlimited and unpredictable damages on the availability of healthcare for Ohio residents, rather than broader concerns about the state's economy that the Court found were not advanced in litigation against an individual convicted of a crime. *See id.* at 713. Second, the conduct at issue here alleges negligence, not intentional conduct that is typically excluded from insurance coverage. *See id.* And third, while *Brandt* involved an exception to the statutory limit

Courts in other states have rejected arguments that a limit on noneconomic damages in medical liability cases runs afoul of due process because those who experience the most severe injuries will be most affected. As the Wisconsin Supreme Court understood in rejecting a due process challenge:

> By enacting the cap, the legislature made a legitimate policy choice, knowing that there could be some harsh results for those who suffered medical malpractice and would not be able to recover the full amount of their noneconomic damages. However, any cap, by its very nature, will limit the amount that some people will be able to recover. If the cap did not do so, it would have no economic effect.

Mayo v. Wisconsin Injured Patients & Families Comp. Fund, 914 N.W.2d 678, 694 (Wis. 2018) (also observing that "while there is a cap on noneconomic damages, there also is a guarantee of payment for all other categories of damages that a victim of medical malpractice may be awarded"). Under the statute, every person who experiences an injury from medical negligence is treated equally, whether that person is awarded $550,000, $1.5 million, or $20 million in noneconomic damages. *See id.* at 694-95; *see also Judd v. Drezga*, 103 P.3d 135, 144 (Utah 2004) (finding a limit on noneconomic damages consistent with due process despite concerns that it deprives a few severely injured plaintiffs of full recovery because it is a "targeted measure [that] has no impact on a victim's recovery of damages for actual expenses, loss of earning capacity, or other economic measures of injury.").

A factor in the Tenth District's decision finding the statutory limit unconstitutional was that the General Assembly has not adjusted the $500,000 maximum since it enacted R.C. 2323.43 in 2003. *See Lyon*, 2025-Ohio-2991, at ¶ 33 ("Even more troubling, the statute does not adjust the

---

that applied to catastrophic physical injuries but not similar psychological harm, here, the medical liability statute's increase in the noneconomic damage limit in cases involving severe injuries applies to the plaintiff's claim.

$500,000 cap for inflation making the recovery significantly less valuable than at the time the statute went into effect."). This policy decision belongs to the General Assembly, not the courts.

States have addressed the potential need to adjust limits on damages to respond to inflation in various ways. Some state legislatures have incorporated automatic adjustments into their statutes, annually or at other regular intervals.[10] Other states increase the limits to certain amounts or by a certain amount on specific dates.[11] Still other state legislatures, like Ohio, opted not to include inflation adjustments in the statute, leaving policymakers with the flexibility to revisit the statutory maximum if and when they decide an adjustment is warranted.[12]

In fact, this September, an Ohio legislator introduced a bill that would increase the maximum amount of noneconomic damages available in medical liability actions, index the new level to the consumer price index going forward, and eliminate the limit in cases involving permanent and substantial physical injuries. *See* H.B. 447, 136th Gen. Assem., Reg. Sess. 2025-2026.[13] The judiciary should not interfere with the General Assembly's consideration of these issues.

---

[10] *See, e.g.*, Idaho Code § 6-1603(1); Mich. Comp. Laws § 600.1483(4); Mo. Rev. Stat. § 538.210(10); S.C. Code Ann. § 15-32-220(F).

[11] *See, e.g.*, Cal. Civ. Code § 3333.2(b) (increasing $350,000 limit set in 2023 by $40,000 per year over ten years); Colo. Rev. Stat. § 13-64-302 (increasing limit from $415,000 in 2025 to specific amounts from 2026 through 2029, then indexing adjustments to inflation every two years); Md. Cts. & Jud. Proc. Code Ann. § 3-2A-09 (increasing limit by $15,000 on January 1 of each year); Mont. Code Ann. § 25-9-411(c) (increasing limit from $300,000 in 2025 by $50,000 each year until it reaches $500,000 in 2029, then subjecting limit to 2% annual increase); Nev. Rev. Stat. Ann. § 41A.035 (increasing limit by $80,000 per year from $510,000 in 2025 until it reaches $750,000 in 2028).

[12] *See, e.g.*, Mass. Gen. Laws Ann. ch. 231, § 60-H ($500,000 set in 1986); 24-A Me. Rev. Stat. Ann. § 4313(9)(B) ($400,000 set in 1999); Miss. Code Ann. § 11-1-60(2)(a) ($500,000 set in 2004); N.D. Cent. Code § 32-42-02 ($500,000 set in 1995); Tex. Civ. Prac. & Rem. Code Ann. § 74.301 ($250,000 against one defendant, $500,000 against all defendants, set in 2003); Utah Code Ann. § 78B-3-410 ($450,000 set in 2010).

[13] The bill proposes similar changes to the limit on noneconomic damages in personal

In sum, the Tenth District's ruling undermines the General Assembly's goal of cabining the subjective portion of medical liability awards and severely undermines the law's effectiveness. The decision makes a law that is intended to provide predictability in medical liability awards, unpredictable in application. This Court should grant jurisdiction and find that the General Assembly acts neither arbitrarily nor unreasonably by providing those who are severely injured by medical negligence with unlimited recovery for objectively measurable economic losses, which can be tens of millions of dollars when lifelong care is necessitated, but not boundless amounts on top of those awards for noneconomic damages. This Court should also accept jurisdiction to clarify that adjusting dollar amounts set by statute for inflation, including for the maximum noneconomic damages recoverable, is a policy judgment reserved to the legislature, not a judicial determination.

Proposition of Law No. 2: 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 General Assembly may constitutionally distinguish between medical liability and other personal injury cases when establishing the maximum level of noneconomic damages available to claimants and setting any exceptions to the limit. As this Court recognized in *Arbino,* the General Assembly is charged with making difficult policy choices in which it balances the interests of what may be a few claimants each year in receiving an unlimited award for noneconomic damages with the interests of Ohioans in having access to needed care and healthcare providers in accessing affordable liability insurance coverage. *See Arbino*, 880 N.E.2d at 447.

The General Assembly made a rational public policy choice to set more restrictive noneconomic damage limits in cases against healthcare providers than other defendants. Damages

injury cases. *See id.*

for noneconomic losses in medical liability actions are generally limited to $350,000 per plaintiff, but can rise to $500,000 in cases involving specified permanent and substantial injuries. RS 2323.43(2), (3). In tort claims against other defendants, there is generally a $350,000 limit per plaintiff and the cap is inapplicable in actions in cases meeting the same criteria for permanent and substantial physical injuries. RS 2315.18(2), (3).

Ohio is not unique in this regard. States often treat medical liability actions differently from other tort claims given their especially strong interest in preserving the availability and affordability of healthcare for their residents. Several states, like Ohio, have separate statutory limits for noneconomic damages in medical liability and personal injury cases, setting lower caps for medical liability cases than other tort claims or tightened exceptions.[14] Many other states have limited noneconomic damages in medical liability actions, but not other cases. *See infra* n.1, 3. Courts have rejected equal protection challenges to these laws.[15] In addition, Ohio, like many other

[14] In addition to Ohio, other states with separate statutory limits for medical liability and other personal injury cases include Alaska, Colorado, Maryland, and Mississippi. *See* Alaska Stat. §§ 09.17.010 (personal injury) 09.55.549 (medical liability); Colo. Rev. Stat. §§ 13-21-102.5(3)(a) (personal injury), 13-21-203 (separate limits for wrongful death actions brought against healthcare professionals and institutions than other defendants), 13-64-302 (medical liability); Md. Cts. & Jud. Proc. Code Ann. §§ 3-2A-09 (medical liability), 11-108 (personal injury); Miss. Code Ann. § 11-1-60(2)(a), (b) (separate caps for medical liability and other personal injury claims).

[15] *See, e.g.*, *Condon v. St. Alexius Med. Ctr.*, 926 N.W.2d 136, 143 (N.D. 2019) (rejecting an equal protection challenge to the state's $500,000 limit on noneconomic damages in medical liability actions, recognizing that this constraint "does not prevent seriously injured individuals from being fully compensated for any amount of medical care or lost wages," but only prevents them from receiving "more abstract damages" above the cap); *McDonald v. City Hosp., Inc.*, 715 S.E.2d 405, 415-20 (W. Va. 2011) (rejecting equal protection challenge to noneconomic damages limit in medical liability actions, given the legislative goals of attracting and keeping physicians in the state and reducing medical malpractice premiums); *Mayo*, 914 N.W.2d at 693-95 (finding a noneconomic damage limit in medical liability actions does not violate equal protection or due process because it supports the legislature's "overarching goal of "ensur[ing] affordable and accessible health care for all of the citizens of Wisconsin while providing adequate compensation to the victims of medical malpractice") (quoting legislative findings, alteration in original).

states, has established requirements for medical liability claims that do not apply to other tort actions, such as the need for an affidavit of merit to accompany a complaint, s*ee* RS 2323.451, or special criteria for individuals to qualify as expert witnesses on the duty of care, *see* RS 2743.43.

Yet, the Tenth District found it is constitutionally impermissible that Ohio law allows an individual who is severely injured in an automobile accident to receive uncapped noneconomic damages, *see* RC 2315.18, but that a patient who experiences a similar injury due to medical negligence can recover no more than $500,000 in noneconomic damages from a doctor, hospital, or other healthcare provider, *see* RS 2323.43. This Court should grant jurisdiction to reaffirm that making such distinctions is squarely within the legislature's public policy judgment, given the different interests and external consequences of such awards.

CONCLUSION

For these reasons, *amici* respectfully request that this Court exercise its discretionary jurisdiction, consolidate this case with its review of the Eighth District's ruling in *Paganini*, and find that R.C. 2323.43 is both facially constitutional and constitutional as applied in this case.

Respectfully Submitted,

/s Joshua A. Weiner
Joshua A. Weiner (0084233)
(Counsel of Record)
SHOOK, HARDY & BACON L.L.P.
1 Rockefeller Plaza, Suite 2801
New York, NY 10020
(212) 989-8844
jweiner@shb.com

Cary Silverman (PHV-2576-2025)
SHOOK, HARDY & BACON L.L.P.
1800 K Street NW, Suite 1000
Washington, DC 20006
(202) 738-8400
csilverman@shb.com

Counsel for Amici Curiae

Ohio Chamber of Commerce, Chamber of Commerce of the United States of America, American Tort Reform Association, American Property Casualty Insurance Association, and Medical Professional Liability Association

Dated: October 7, 2025

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by e-mail on October 7, 2025, upon:

David I. Shroyer, Esq.
Tyler B. Shroyer, Esq.
COLLEY SHROYER & ABRAHAM CO., LPA
536 South High Street, 2nd Floor
Columbus, Ohio 43215
dshroyer@csajustice.com
tshroyer@csajustice.com

Counsel for Plaintiff-Appellee Susana Lyon

Brian D. Sullivan, Esq. (0063536)
Brianna M. Prislipsky, Esq. (0101170)
REMINGER CO., L.P.A.
200 Public Square, Suite 1200
Cleveland, Ohio 44114
bsullivan@reminger.com
bprislipsky@reminger.com

David H. Krause, Esq. (0070577)
Jackie M. Jewell, Esq. (0090499)
REMINGER CO., L.P.A.
200 Civic Center Drive, Suite 800
Columbus, Ohio 43215
dkrause@reminger.com
jjewell@reminger.com

Counsel for Defendants-Appellants, Reghuram Reddy, MD, Ryan Gaible, MD, Rohit Makkar, MD, and Ohio Gastroenterology Group, Inc.

Anna Marie Sferra (0030855)
BRICKER GRAYDON LLP
100 South Third Street
Columbus, Ohio 43215-4291
asferra@brickergraydon.com

Counsel for Amici Curiae Ohio Hospital Association, Ohio Alliance for Civil Justice, Ohio State Medical Association, and Ohio Osteopathic Association

/s Joshua A. Weiner
Joshua A. Weiner (0084233)