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No. 2025-1317

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
TENTH APPELLATE DISTRICT
FRANKLIN COUNTY, OHIO
CASE NO. 23AP-379

SUSANA LYON,

Plaintiff-Appellee,

v.

RIVERSIDE METHODIST HOSPITAL, et al,

Defendants-Appellants.

MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICUS CURIAE OHIO ASSOCIATION OF CIVIL TRIAL ATTORNEYS IN SUPPORT OF DEFENDANT-APPELLANT

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I. INTEREST OF AMICUS CURIAE

The Ohio Association of Civil Trial Attorneys' (OACTA) wide array of members includes attorneys, corporate executives, and claims professionals dedicated to the defense of tort litigation and other civil actions throughout Ohio. For over 50 years, OACTA has provided a forum where professionals work together to improve the administration of justice in Ohio. OACTA promotes fairness, predictability, stability, and consistency in Ohio's civil justice system. The medical claim tort reform measures in Amended Substitute Senate Bill 281 (S.B. No. 281), including the limits on noneconomic damages in R.C. 2323.43, align with OACTA's mission by making Ohio's civil justice system fairer and more predictable.

II. THIS CASE RAISES SUBSTANTIAL CONSTITUTIONAL QUESTIONS AND IS OF PUBLIC AND GREAT GENERAL INTEREST

This case shows the need to clarify Ohio law on as-applied constitutional challenges, including how to analyze equal protection and due-course-of-law challenges to tort reform. R.C. 2323.43 establishes a two-tiered cap on noneconomic damages in medical-claim actions. This Court accepted review of another challenge to the constitutionality of this cap in *Paganini v. Cataract Eye Ctr. of Cleveland*, Case No. 2025-0386. At the very least, this Court should accept and hold this appeal for *Paganini*.[1] Yet the Tenth District's decision here extends the flaws in *Paganini* and warrants review. *See Lyon v. Riverside Methodist Hosp.*, 2025-Ohio-2991 (10th Dist.) ("App. Op.").

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[1] This Court accepted jurisdiction in *Paganini* over the following proposition of law:

> The "hard limit" on recoverable noneconomic loss in R.C. 2323.43(A)(3) that applies to "catastrophic injuries" does not violate the "due course of law" provision in Article I, Section 16 of the Ohio Constitution and is therefore constitutional.

The Tenth District found the cap was facially constitutional under both the Equal Protection Clause and "due course of law" provision in the Open Courts Clause. App. Op. ¶¶ 30, 38. As to the as-applied equal protection challenge, the Tenth District treated the capped damages amount—specifically, that Ms. Lyon's noneconomic damages were reduced by 57.4%—as proof that R.C. 2323.43(A)(3) is arbitrary, unreasonable, and irrational as applied to Ms. Lyon. But the court below identified no trait Ms. Lyon possessed that other medical claim plaintiffs lacked—and thus no classification among medical claim plaintiffs to support an as-applied equal protection challenge. In effect, then, the court allowed its disagreement with the statute's result to substitute for constitutional analysis, measuring constitutionality by the amount of the damages reduction. Rooted in the Tenth District's decision are several substantial constitutional questions that merit this Court's review.

First, this Court's review is necessary to reaffirm the proper rational-basis framework under Ohio's Equal Protection Clause and restore uniformity to the lower courts. Rational-basis review is intentionally deferential and does not require legislative proof or post hoc evidentiary showings. Rather, it is satisfied by any conceivable, or plausible, legitimate rationale for the classification. *See Am. Assn. of Univ. Professors v. Cent. State Univ.*, 87 Ohio St.3d 55, 60 (1999) (no obligation to produce evidence to sustain rationality under Ohio rational-basis review); *Columbia Gas Transm. Corp. v. Levin*, 2008-Ohio-511, ¶ 91 (challenger bears burden to negate every conceivable basis). The Tenth District's decision in *Lyon*, however, replaces that settled standard with outcome-driven judicial policymaking, deeming a statute unconstitutional because the cap produced a 57.4% reduction in one plaintiff's noneconomic damages award. That inversion of rational-basis review conflicts with decisions recognizing that courts must defer to the General Assembly's predictive

judgments and refrain from substituting judicial preferences for legislative policy. *See Arbino v. Johnson & Johnson*, 2007-Ohio-6948, ¶ 58 (substantial deference to legislative factfinding under rational basis); *State v. Grevious*, 2022-Ohio-4361, ¶ 39 (due process and equal protection rational-basis review are essentially equivalent). This Court should accept jurisdiction to confirm that constitutionality under rational-basis review turns—not on outcome-driven dissatisfaction with the caps' application—but on whether any conceivable legitimate rationale exists for the classification the damages cap creates.

Second, review is needed not only to confirm that a legitimate rationale for the classification is enough to sustain the cap, but also to determine and what kind of "classification" supports an as-applied challenge under Article I, Section 2. The Tenth District concluded it was arbitrary to treat medical-malpractice plaintiffs differently from general tort plaintiffs because one plaintiff's award was reduced more sharply under the medical-claim cap than it would have been under the general tort cap:

> [A]s applied to the facts of this case, the distinction between Lyon and a nonmedical tort victim seeking a comparable recovery under R.C. 2315.18(B)(3) is clearly and convincingly unreasonable and arbitrary. Under R.C. 2323.43(A)(3), Lyon would be required to accept a 57.4 percent reduction in damages that would not have occurred had her injuries derived from a general tort matter. Thus, ... it is unreasonable and arbitrary that Lyon should be treated differently in this instance than an individual that suffered catastrophic injuries in a nonmedical malpractice context.

App. Op. ¶ 42.

That reasoning confuses the noneconomic damages cap's effect in a particular case with a classification among medical claimants that is needed to support an as-applied equal protection challenge. Equal protection analysis requires identifying a trait the plaintiff possesses that makes the legislative classification unconstitutional as applied to her and

others with the same trait, not analyzing after-the-fact disparities in damages awards. *See Morris v. Savoy*, 61 Ohio St. 3d 684, 691 (1991) ("Equal protection of the laws requires the existence of reasonable grounds for making a distinction between those within and those outside a designated class."); *Oliver v. Cleveland Indians Baseball Co. Ltd. P'ship*, 2009-Ohio-5030, ¶ 30 (upholding damages limitation by identifying the General Assembly's express distinction and legitimate policy rationale). By treating a percentage reduction in damages as a surrogate for a trait the plaintiff possesses that could support an as-applied challenge, the Tenth District has transformed every statutory reduction in damages into a constitutional offense. And by doing so, the Tenth District has substituted case-specific arithmetic for a review of any classification among medical claim plaintiffs that R.C. 2323.43(A)(3) creates.

Third, the Court should confirm that as-applied equal protection challenges require identifying a trait the claimant possesses—one not shared by all others subject to the legislative classification—that makes the law unconstitutional as applied to her and others with that trait. The challenge cannot be predicated solely on the statute's neutral, prospective application to a plaintiff. *See Wymsylo v. Bartec, Inc.*, 2012-Ohio-2187, ¶ 22 (as-applied relief turns on the challenger's circumstances); *Libertarian Party of Ohio v. Husted*, 2017-Ohio-7737, ¶¶ 44, 54 (rational-basis review centers on the statute's classification and relation to a legitimate interest). Reducing non-economic damages post-verdict is a policy consequence of R.C. 2323.43(A)(3)'s cap. It is not a trait that can support an as-applied challenge. *See Sherman v. Ohio Pub. Emps. Retirement Sys.*, 2020-Ohio-4960, ¶¶ 41–42 (judicial restraint and wide latitude in social and economic regulation under rational basis). The Tenth District's approach blurs the line between legitimate legislative distinctions and

case-by-case outcomes, inviting courts to invalidate statutes whenever a cap meaningfully reduces a particular award—an invitation that threatens stability across Ohio's tort-reform framework and erodes separation of powers.

In short, the decision below departs from this Court's rational-basis precedents, misconceives the kind of "classification" at issue in an as-applied constitutional challenge, and expands as-applied equal protection beyond its permissible bounds. It also conflicts with this Court's consistent emphasis that equal protection scrutiny is triggered by intentional legislative distinctions among groups, not by individual outcomes produced by a generally applicable statute. *See McCrone v. Bank One Corp.*, 2005-Ohio-6505, ¶ 9 (two-step rational-basis analysis focused on valid state interest and rational means); *Oliver*, 2009-Ohio-5030, ¶¶ 14–15, 30 (identifying the legislature's line-drawing and deferring where a legitimate public rationale exists). Without this Court's guidance, trial and appellate courts will continue to apply inconsistent and outcome-driven equal protection analyses to damages-cap statutes—undermining legislative intent, separation of powers, and predictability in Ohio tort law.

In sum, this case involves substantial constitutional questions and presents issues of public or great general interest. The Court should grant review, reaffirm the constitutional boundaries of rational-basis review, and clarify the scope of as-applied equal protection challenges in the statutory-damages-cap context.

III. STATEMENT OF THE CASE AND FACTS

OACTA adopts the Statement of the Case and Facts in Appellants Defendants-Appellants, Rohit Makkar, M.D., Raghuram P. Reddy, M.D., Ryan B. Gaible, M.D., and Ohio Gastroenterology Group, Inc.'s Memorandum in Support of Jurisdiction.

IV. ARGUMENT

Proposition of Law 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.

The Ohio Supreme Court accepted jurisdiction in *Paganini v. Cataract Eye Ctr. of Cleveland*, Case No. 2025-0386, to decide whether the "hard limit" on noneconomic damages in R.C. 2323.43(A)(3) violates Article I, Section 16's Due Course of Law Clause. This proposition of law is identical to the proposition accepted in *Paganini*; both cases therefore present the same constitutional question concerning the statute's validity.

OACTA, appearing as amicus in *Paganini*, explained that the Eighth District erred in holding R.C. 2323.43(A)(3) was unconstitutional as-applied to Mr. Paganini under the "due course of law" provision in the Open Courts Clause. *See* OACTA Merit Br. at 2–23 (Aug. 12, 2025). First, the Eight District incorrectly treated Mr. Paganini's challenge as an as-applied challenge—when it was a facial challenge, which faces a higher constitutional and evidentiary standard. *Id.* at 2–6. Second, the Eighth District erred by applying a heightened form of rational-basis review that, unlike the federal standard, requires the State to prove rationality with affirmative evidence. *Id.* 4–11. This improperly shifts the burden from the challenger to the State and turns courts into policymakers. Under a correct rational-basis analysis, R.C. 2323.43(A)(3) easily passes muster: the General Assembly could rationally find that reducing paid losses leads to lower insurance rate increases and helps stabilize the cost of health care in Ohio. *Id.* at 12–24.

The Tenth District's decision in *Lyon* repeats the Eighth District's errors in *Paganini*. App. Op. ¶¶ 21–35. The Court should reverse for the reasons summarized above and more fully addressed in OACTA's *Paganini* Merit Brief.

Proposition of Law 2:

> **The catastrophic non-economic 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.**

In *Lyon*, the Tenth District confirmed R.C. 2323.43(A)(3) was facially constitutional under the Equal Protection Clause. App. Op. ¶ 38. Yet, despite this finding, the Tenth District invalidated the statue on Equal Protection grounds as-applied to Ms. Lyons. This finding is flawed. And it was flawed from the start. This is because the Tenth District's equal-protection analysis skipped a threshold question—whether R.C. 2323.43(A)(3) applies to Ms. Lyon any differently than it applies to other claimants asserting medical claims. Equal protection examines governmental classifications. *Pickaway Cty. Skilled Gaming, L.L.C. v. Cordray*, 2010-Ohio-4908, ¶ 16. Because the Tenth District upheld classifying medical claimants differently than other tort claimants when rejecting Ms. Lyon's facial challenge, her as-applied challenge required her to show that she has a trait that differs from most medical claimants that makes the statute unconstitutional as to her. *See State v. Grevious*, 2022-Ohio-4361, ¶37 (as-applied equal protection claim failed because claimant failed to distinguish between a facial and as-applied challenge).

Ms. Lyon made no such showing—and the Tenth District conducted no such analysis. Neither Ms. Lyon nor the Tenth District identified a trait she possessed that most medical-claim plaintiffs lack that could make the statute unconstitutional as applied to her; instead,

the only trait she identified—being a medical-claim plaintiff—is the same one the Tenth District analyzed when addressing the facial challenge:

> [A]s applied to the facts of this case, the distinction between Lyon and a nonmedical tort victim seeking a comparable recovery under R.C. 2315.18(B)(3) is clearly and convincingly unreasonable and arbitrary.

App. Op. ¶ 42.

By repeating the same trait for both challenges, Ms. Lyon confirmed she has no as-applied challenge. The reason is simple: Ms. Lyon has no trait that makes R.C. 2323.43(A) operate any differently as to her than it does as to other medical claim plaintiffs. That is, it allows full recovery of economic loss and caps noneconomic damages at $500,000 for all. Ms. Lyon's only asserted "trait" is the magnitude of her ultimate reduction in noneconomic damages:

> Under R.C. 2323.43(A)(3), Lyon would be required to accept a 57.4 percent reduction in damages that would not have occurred had her injuries derived from a general tort matter. Thus, Lyon is treated differently based on the nature of her victimization.

App. Op. ¶ 42. This reduction is an outcome—not a trait. And because no unique trait exists to support an as-applied challenge, it fails at the outset.

Still, the Tenth District's analysis of Ms. Lyon's "as applied" challenge fails on its own terms for two reasons.

First, the Tenth District inverted—and effectively eliminated—a challenger's burden under rational-basis review. The rational basis test is deferential by design: a statute survives if its classification bears any rational relationship to a legitimate government interest. *See Sherman*, 2020-Ohio-4960, ¶ 15, citing *McCrone*, 2005-Ohio-6505 at ¶¶ 8-9. The State "has no obligation to produce evidence to sustain the rationality of a statutory classification." *Pickaway Cty. Skilled Gaming, L.L.C.*, 2010-Ohio-4908, ¶ 20. Nor must it prove

the wisdom of its policy or support it with data; it may rely on "rational speculation unsupported by evidence or empirical data." *Am. Assn. of Univ. Professors*, 87 Ohio St. 3d 55, 58, quoting *Beach Communications,* 508 U.S. at 315. Rather, the burden falls on the challenger to negate *every conceivable basis* that might support the law. *See Columbia Gas*, 2008-Ohio-511, ¶ 91.

These principles are well settled. Yet the Tenth District departed from them entirely. The Tenth District declared R.C. 2323.43 unconstitutional as applied to Ms. Lyon simply because the cap reduced her noneconomic damages by 57.4%. App. Op. ¶ 42. To the Tenth District, this result was "clearly and convincingly unreasonable and arbitrary." *Id*. By treating the statute's operation as proof of irrationality, the court flipped the rational-basis inquiry—demanding, in essence, that the State prove the statute's rationality as-applied to Ms. Lyon.

That is not the law. *See Am. Assn. of Univ. Professors*, 87 Ohio St.3d at 60 (finding there is no obligation to produce evidence to sustain rationality). And to hold otherwise would impermissibly shift the burden to a defendant by requiring them to prove the rationality of the cap's outcome in every case. That burden should remain with Ms. Lyon, who must present clear and convincing evidence that negates every conceivable rational basis supporting R.C. 2323.43(A) as to her. She did not carry this burden, so reversal is warranted.

Second, the Tenth District's analysis was outcome- and policy-driven, not classification-focused. As discussed, equal protection asks whether the statute's classification is irrational as applied to a given trait. It does not ask whether the particular outcome is favorable. *See McCrone*, 2005-Ohio-6505 at ¶ 8-9. Yet that is what the Tenth District's analysis does. By focusing on a 57.4% reduction, the Tenth District substituted an ad-hoc critique of the cap's merits in a given case for the required inquiry into whether the

legislative classification is rational given the need to stabilize medical costs and promote access to care. *See Arbino*, 2007-Ohio-6948, ¶¶ 55, 58, 66 (recognizing legislative judgments about unpredictability of noneconomic awards and economic effects); *State v. O'Malley*, 2022-Ohio-3207, ¶ 24 (quoting *State v. Williams*, 88 Ohio St.3d 513, 531 (2000)) (courts grant substantial deference to legislative findings under rational-basis review).

This ad-hoc critique effectively creates a new cap, implying that any jury award exceeding $1,173,708.92 is constitutionally protected. That approach substitutes judicial policy for legislative judgment, injects uncertainty into the tort system, and invites ongoing litigation over what percentage reduction is "irrational." This is the opposite of the legislature's purpose in adopting caps—to bring certainty, uniformity, and predictability to the medical-malpractice system. Indeed, courts are not permitted to invalidate statutes because they would have struck a different balance:

> [T]he General Assembly is charged with making the difficult policy decisions on such issues and codifying them into law. This court is not the forum in which to second-guess such legislative choices; we must simply determine whether they comply with the Constitution.

Arbino at ¶ 71; *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) ("the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations[].").

Thus, the Tenth District could not find R.C. 2323.43(A)(3) was irrational because it disagreed with how the cap applied to Ms. Lyon. Rational basis tolerates lines that are "not made with mathematical nicety" and that "in practice [result] in some inequality." *Sherman*, 2020-Ohio-4960, ¶ 15, quoting *McCrone*, 2005-Ohio-6505 at ¶ 8–9. The Tenth District erred in finding otherwise.

In sum, this Court should reaffirm that, under Article I, Section 2, rational-basis review is highly deferential; the challenger bears the burden; admissible evidence is unnecessary to sustain a statute's classification; legislative findings receive substantial deference; and a precise fit is not required. *See Sherman*, 2020-Ohio-4960, ¶¶ 15–16; *Columbia Gas*, 2008-Ohio-511, ¶ 91; *O'Malley*, 2022-Ohio-3207, ¶ 24; *Arbino*, 2007-Ohio-6948, ¶ 66. When applied faithfully, those principles foreclose Ms. Lyon's as-applied equal-protection challenge, even if she could identify a trait that makes her different from other medical claim plaintiffs. The Tenth District's contrary ruling should be reversed.

Proposition of Law 3

> **A plaintiff fails to state a proper as applied equal protection challenge where the circumstances of their challenge rely on the broad and generalized statutory framework that results from a specific statute, rather than their own circumstances.**

There are two types of constitutional challenges: facial and as-applied. *Arbino v. Johnson & Johnson*, 2007-Ohio-6948, ¶ 26. The burdens of proof differ; a facial challenge requires proof beyond a reasonable doubt that no set of circumstances exists under which the statute would be valid. *State ex rel. Ohio Cong. Of Parents & Teachers v. State Bd. Of Edn.*, 2006-Ohio 5512, ¶ 21. Yet an as-applied challenge requires clear and convincing evidence that the statute is unconstitutional when applied to the challenger's particular set of circumstances. *Wymsylo v. Bartec, Inc.*, 2012-Ohio-2187, ¶ 22. Because the standards vary, it is essential that the court correctly identifies the type of challenge brought. *Id.* ¶ 20. A court must look behind the label a plaintiff applies to her challenge and ask instead whether the arguments made and relief sought "reach beyond the particular circumstances of" the plaintiff to create a facial challenge. *John Doe No. 1 v. Reed*, 561 U.S. 186 (2010).

Although Ms. Lyon framed her claims—and the Tenth District analyzed them—as facial and as-applied challenges, a close examination shows that, despite the label, Ms. Lyon failed to assert a valid as-applied challenge. The reason is simple: neither Ms. Lyon nor the Tenth District offered any basis for an as-applied challenge beyond noting that R.C. 2323.43(A)(3) caps noneconomic damages for catastrophic injuries for a medical malpractice claim—whereas the general tort statute leaves noneconomic damages for catastrophic injuries uncapped. App. Op. ¶ 42. But this argument identifies no trait specific to Ms. Lyon supporting a challenge that the statute is unconstitutional as applied to her, even though it may be constitutionally applied to other medical claim plaintiffs. Rather, this argument merely repackages a facial challenge to the cap on damages in R.C.2323.43(A)(3): *every* time R.C. 2323.43(A)(3) applies the claimant is treated differently from a general tort claimant subject to R.C. 2315.18.

The relief sought further confirms her challenges are facial—not as applied. This is because the relief Ms. Lyon requests is not tethered to a trait that could somehow make the cap unconstitutional as aplite to her individual circumstances. Rather, the practical outcome is that relief cannot be granted without striking down R.C. 2323.43(A)(3) altogether. That is precisely the outcome of the Tenth District's opinion—by deeming the distinction "between Lyon and a nonmedical tort victim seeking a comparable recovery" "clearly and convincingly unreasonable and arbitrary" without identifying any trait unique to Ms. Lyon, it effectively invalidated the statute in all its applications. App. Op. ¶ 42. That is the hallmark of a facial challenge.

It is no answer to focus on the fact that Ms. Lyon's award was reduced 57.4%. App. Op. at ¶ 42. First, that reduction reflects only the statute's operation, not a trait unique to Ms.

Lyon. *See* App. Op. ¶ 33 (comparing this case to *Paganini* because "[t]he reduction in noneconomic damages for Lyon is analogous[.]"). The outcome of a statute's application cannot supply the factual predicate for an as-applied challenge because it arises from the statute itself, not from any trait the claimant possesses.

Second, if left standing, the Tenth District's "as-applied" ruling would result in a new (and arbitrary) noneconomic damages cap. By declaring a 57.4% reduction unconstitutional under R.C. 2323.43 as applied to catastrophic medical claims, the court effectively raised the statutory limit from $500,000 to roughly $1.3 million—the point at which it deemed the statute's result "irrational." That is policymaking, not an as-applied constitutional analysis.

In sum, despite its packaging, Ms. Lyon's arguments asserted facial challenges, not as-applied ones. Thus, it was error for the Tenth District to engage in an as-applied analysis and to find R.C. 2323.43(A)(3) unconstitutional as applied to Ms. Lyon. Rather, the Tenth District's holding—that R.C. 2323.43(A)(3) is facially constitutional under both the Due Course Clause and Equal Protection—must stand and the as-applied holding reversed.

V. CONCLUSION

This Court should accept review, reverse the Tenth District's decision, and remand with instructions to enter a judgment that complies with the cap in R.C. 2323.43(A)(3).

Respectfully submitted,

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