No. COA24-454 TWENTY-EIGHTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

ALLISON SWEENEY MOHEBALI,

Plaintiff-Appellant,

v.

JOHN DAVID HAYES, M.D. and HARVEST MOON WOMEN'S HEALTH, PLLC,

Defendants-Appellants.

From Buncombe County
No. 21 CVS 2884

BRIEF OF *AMICI CURIAE* AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AND AMERICAN TORT REFORM ASSOCIATION IN SUPPORT OF THE CONSTITUTIONALITY OF N.C. GEN. STAT. § 90-21.19

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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici curiae include the American Property Casualty Insurance Association, Chamber of Commerce of the United States of America, and American Tort Reform Association. These organizations have a substantial interest in the constitutionality of N.C. Gen. Stat. § 90-21.19, which advances the predictability and fairness of North Carolina's civil justice system by providing a reasonable limit on the subjective portion of awards—amounts awarded for noneconomic damages. Invalidating this law will expose businesses that operate in North Carolina, including healthcare providers and their insurers, to unlimited and unpredictable awards and excessive settlement demands. *Amici*'s motion for leave provides further detail on *amici*'s missions and interests.

ISSUE ADDRESSED

Is the limit on the portion of damages awarded for noneconomic losses in medical liability actions established by N.C.G.S. § 90-21.19 consistent with the right to jury trial provided by the North Carolina Constitution?

[1] No person or entity, other than the *amici curiae*, their members, or their counsel, helped write this brief or contributed money for its preparation.

SUMMARY OF ARGUMENT

Historically, noneconomic damage awards were modest and noncontroversial. In recent decades, however, these awards have outpaced other types of liability exposure. The unpredictability of noneconomic damages, the disparity of results for the same or similar injuries, and the potential for runaway awards threaten the availability and affordability of healthcare. Open-ended uncertainty also poses an obstacle to the ability of parties to resolve claims and avoid time-consuming, expensive litigation. For these reasons, many states place reasonable upper limits on such awards.

When the North Carolina legislature enacted N.C.G.S. § 90-21.19, 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 cost caused by negligent care. Economic damage awards, particularly for lifelong injuries, whether physical or psychological, can be substantial and are fully recoverable. The legislature sought to maintain predictability in the civil justice system and stability for North Carolina's healthcare environment by choosing a considerable, but not unlimited, remedy for the subjective, non-quantifiable portion of an award. It also included adjustments for inflation and an exception to the statutory limit, allowing plaintiffs to obtain uncapped awards when grossly negligent, reckless,

or intentional misconduct causes permanent injuries or death, N.C.G.S. § 90-21.19(b), which the Plaintiff did not invoke.

The vast majority of courts have upheld similar laws as consistent with the right to jury trial and other constitutional provisions. Invalidating North Carolina's statutory limit would expose healthcare providers to unpredictable, unlimited noneconomic damages, and prevent the legislature from responding to excessive damage awards in other contexts.

ARGUMENT

I. STATUTORY LIMITS ON NONECONOMIC DAMAGES RESPOND TO A RISE IN PAIN AND SUFFERING AWARDS AND THEIR UNPREDICTABILITY

Historically, the availability of noneconomic damages and factfinders' inability to objectively measure pain and suffering did not raise serious concern because "personal injury lawsuits were not very numerous and verdicts were not large." Philip L. Merkel, *Pain and Suffering Damages at Mid-Twentieth Century: A Retrospective Review of the Problem and the Legal Academy's First Responses*, 34 Cap. U. L. Rev. 545, 560 (2006). Further, prior to the twentieth century, courts typically reversed large noneconomic awards. *See* Ronald J. Allen & Alexia Brunet, *The Judicial Treatment of Noneconomic Compensatory Damages in the Nineteenth Century*, 4 J. Empirical Legal Stud. 365, 369 (2007). In fact, a study found "literally no cases affirmed on appeal prior to 1900 that plausibly involved noneconomic compensatory damages in which the total

damages (noneconomic and economic combined) exceeded $450,000" in 2007 dollars (about $700,000 today). *Id*.

Early tort awards in North Carolina are consistent with this national history. There are few reported North Carolina appellate decisions in personal injury cases prior to 1900 discussing awards for pain and suffering, mental anguish, or other forms of noneconomic damages. When plaintiffs sought such damages, juries awarded relatively small amounts as an add-on to economic losses. *See, e.g.*, *Whitley v. S. Ry. Co.*, 119 N.C. 724, 25 S.E. 1018 (1896) (in which plaintiff, thrown from a departing train, sought $2,000 (about $75,000 today) for "great bodily [injury] and mental anguish" that left him a "permanent invalid or cripple"). Even later, awards remained small compared to today. For example, in 1925, a jury awarded the family of a railroad worker who had died in an explosion $2,250 ($41,000 today) for the worker's conscious pain and suffering, on top of $24,000 ($436,000 today) for the family members' pecuniary losses. *See Gerow v. Seaboard Air Line Ry*., 189 N.C. 813, 128 S.E. 345 (1925) (upholding judgment).

The average size of pain and suffering awards took its first leap after World War II, as personal injury lawyers became adept at finding ways to enlarge these awards. *See* Melvin Belli, *The Adequate Award*, 39 Cal. L. Rev. 1 (1951); *see also* Merkel, 34 Cap. U. L. Rev at 560-68 (examining post-war expansion of pain and suffering awards). Early academic concerns over the rise

in noneconomic damage awards went unheeded. *See, e.g.*, Marcus L. Plant, *Damages for Pain and Suffering*, 19 Ohio St. L.J. 200, 210 (1958).

By the 1960s, plaintiffs' lawyers began the now ubiquitous practice of "anchoring," in which they suggest to juries extraordinary amounts for noneconomic damages. *See* Joseph H. King, Jr., *Counting Angels and Weighing Anchors: Per Diem Arguments for Noneconomic Personal Injury Tort Damages*, 71 Tenn. L. Rev. 1, 13 (2003). While about one-third of state courts restrict such tactics, *see* Behrens, 44 Am. J. Trial Advoc. at 330-31 (citing cases), North Carolina attorneys may suggest both lump sum amounts and per diem calculations to juries. *See Weeks v. Holsclaw*, 295 S.E.2d 596, 600 (N.C. 1982) (in which an attorney requested fifty cents per minute for a plaintiff's pain and suffering over 608 days for 15 hours per day, which is 367,000 minutes). Anchoring "dramatically increases" noneconomic damage awards. John Campbell, et al., *Time is Money: An Empirical Assessment of Non-Economic Damages Arguments*, 95 Wash. U. L. Rev 1, 28 (2017); *see also* Mark Behrens, Cary Silverman & Christopher Appel, *Summation Anchoring: Is it Time to Cast Away Inflated Requests for Noneconomic Damages?*, 44 Am. J. Trial Advoc. 321, 327-29 (2021). By the 1970s, "in personal injuries litigation the intangible factor of 'pain, suffering, and inconvenience constitute[d] the largest single item of recovery, exceeding by far the out-of-pocket 'specials' of medical expenses and loss of wages." *Nelson v. Keefer*, 451 F.2d 289, 294 (3d Cir 1971).

This upward trend has continued.[2] Today, "nuclear verdicts," which are generally defined as awards of $10 million or more, often include noneconomic damages that are vastly disproportionate to other damages awarded. *See* Shawn Rice, *Nuclear Verdicts Drive Need for Insurers' Litigation Change*, Law360, Sept. 8, 2021 (reporting that between 2010 and 2018, the average size of verdicts exceeding $1 million rose nearly 1,000% from $2.3 million to $22.3 million and that nuclear verdicts "encompass awards where the noneconomic damages are extremely disproportionate"); *see also* Cary Silverman & Christopher Appel, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* 13 (U.S. Chamber Inst. for Legal Reform, 2024) (in a study of reported nuclear verdicts between 2013 and 2022, finding, in six of the ten years, the total awarded for noneconomic damages exceeded the total awarded for economic damages and punitive damages combined).

Not only have noneconomic damage awards increased in size, but their subjective nature makes them "highly variable, unpredictable, and abjectly arbitrary." Joseph H. King, Jr., *Pain and Suffering, Noneconomic Damages,*

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[2] For example, the median damage award in medical liability jury trials in state courts, adjusted for inflation, was 2.5 times higher in 2005 ($682,000) than in 1992 ($280,000). *See* Lynn Langton & Thomas H. Cohen, *Civil Bench and Jury Trials in State Courts, 2005*, at 10 tbl. 11 (U.S. Dep't of Justice, Bureau of Justice Stat., Apr. 9, 2009). Noneconomic damages accounted for approximately half of these awards. *See* Thomas H. Cohen, *Tort Bench and Jury Trials in State Courts, 2005*, at 6 fig. 2 (U.S. Dep't of Justice, Bureau of Justice Stat., Nov. 2009).

and the Goals of Tort Law, 57 S.M.U. L. Rev. 163, 185 (2004). Noneconomic damage awards have also strayed from their compensatory purpose. In reaching a monetary sum, juries may be influenced by whether they relate to the plaintiff, or other biases for or against a party, rather than the level of the harm. *See generally* Dan B. Dobbs & Robert L. Caprice, *Law of Remedies*, § 8.1(4), at 683 (3d ed. 2018). Noneconomic damages may also be misused to punish a defendant rather than compensate a plaintiff or inflated because a defendant is viewed as having "deep pockets." *See* Victor Schwartz & Leah Lorber, *Twisting the Purpose of Pain and Suffering Awards: Turning Compensation Into 'Punishment'*, 54 S.C. L. Rev. 47 (2002).

In sum, at the time of adoption of the North Carolina Constitution, jury awards for pain and suffering paled in comparison to today. The right to trial by jury does not encompass a right to recover unlimited noneconomic damages.

II. NORTH CAROLINA IS AMONG MANY STATES WITH A REASONABLE UPPER LIMIT ON NONECONOMIC DAMAGES

The dramatic rise of pain and suffering awards and their unpredictability led many states, including North Carolina, to adopt commonsense statutory ceilings on them. Today, about half of states limit

noneconomic damages[3] or total damages[4] in medical negligence cases. Other states have set a maximum level for noneconomic damages that extends to personal injury claims.[5]

N.C.G.S. § 90-21.19 is within the mainstream. Some states have lower limits. *See, e.g.,* Idaho Code § 6-1603 ($490,512 inflation-adjusted limit in personal injury actions)[6]; 24-A Me. Rev. Stat. Ann. § 4313(9)(B) ($400,000 limit on noneconomic damages in medical liability actions); Nev. Rev. Stat. § 41A.035 ($430,000 inflation-adjusted limit in medical liability actions). Other states have noneconomic damage limits in the same range as North Carolina's law. *See, e.g.*, Mich. Comp. Laws § 600.1483 ($569,000 inflation-adjusted limit in medical liability cases).[7] Unlike North Carolina, some states do not provide

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[3] *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.

[4] *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).

[5] *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.

[6] Idaho Industrial Comm'n, Calculation – Non-economic Damages Caps, July 2024 (setting inflation-adjusted limit).

[7] Mich. Dep't of Treasury, *Limitation on Noneconomic Damages and Product Liability Determination on Economic Damages*, Jan. 31, 2024 (setting inflation-

an exception to the statutory limit in cases involving permanent injuries or death.[8] Other states raise the limit, rather than eliminate it, in such cases.[9]

These laws all recognize that the broader public good is served when liability is predictable and noneconomic damage awards are not improperly inflated. A substantial body of literature has found that statutory limits lead to lower insurance premiums and higher physician supply. *See, e.g.*, Mark A. Behrens, *Medical Liability Reform: A Case Study of Mississippi*, 118 Obstetrics & Gynecology 335, 338-39 (Aug 2011). These laws also facilitate fair settlements and constrain the potential for arbitrariness that may raise due process and horizontal equity concerns.[10]

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adjusted limit).

[8] *See, e.g.*, Miss. Code Ann. § 11-1-60(2)(a).

[9] *See, e.g.,* Alaska Stat. § 09.55.549 ($250,000 noneconomic damage limit in medical liability actions, rising to $400,000 in cases involving severe permanent impairment or death); Iowa Code § 147.136A ($250,000 limit in medical liability actions, rising to $1 million, or $2 million in actions involving a hospital, for catastrophic injuries); Mo. Rev. Stat. § 538.210 and Mo. Dep't of Ins., *Medical Malpractice Limit* (indicating inflation-adjusted limit of $465,531 in medical liability actions, rising to $814,679 for catastrophic injuries and death, in 2024); Mich. Dep't of Treasury, *supra* ($1,016,000 noneconomic damage limit in medical liability cases for certain permanent injuries); Tenn. Code Ann. § 29-39-102 ($750,000 noneconomic damage limit in personal injury cases, rising to $1 million in catastrophic injury cases).

[10] *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.").

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.

III. MOST COURTS UPHOLD NONECONOMIC DAMAGE LIMITS AS CONSISTENT WITH THE RIGHT TO JURY TRIAL

Courts across the nation have upheld limits on noneconomic damages that apply to medical liability cases[11] as well as laws that limit a plaintiff's total recovery against healthcare providers.[12] They have also upheld statutory limits on noneconomic damages that apply to all civil actions[13] and damage limits that apply to various other types of claims or entities.[14]

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[11] *See, e.g., Fein v. Permanente Med. Group*, 695 P.2d 665 (Cal. 1985); *Garhart ex rel. Tinsman v. Columbia/HealthONE, L.L.C.,* 95 P.3d 571 (Colo. 2004); *Oliver v. Magnolia Clinic,* 85 So. 3d 39 (La. 2012); *Butler v. Flint Goodrich Hosp. of Dillard Univ.*, 607 So. 2d 517 (La 1992); *Zdrojewski v. Murphy*, 657 N.W.2d 721 (Mich. Ct. App. 2002); *Ordinola v. Univ. Physician Assocs*., 625 S.W.3d 445 (Mo. 2021); *Tam v. Eighth Jud. Dist. Ct.,* 358 P.3d 234 (Nev. 2015); *Siebert v. Okun,* 485 P.3d 1265 (N.M. 2021); *Condon v. St. Alexius Med. Ctr*., 926 N.W.2d 136 (N.D. 2019); *Knowles v. United States,* 544 N.W. 2d 183 (S.D. 1996), superseded by statute; *Rose v. Doctors Hosp*., 801 S.W.2d 841 (Tex. 1990); *Judd v. Drezga*, 103 P.3d 135 (Utah 2004); *MacDonald v. City Hosp., Inc*., 715 S.E.2d 405 (W. Va. 2011); *Mayo v. Wisconsin Injured Patients & Families Comp. Fund*, 914 N.W.2d 678 (Wis. 2018).

[12] *See, e.g., Garhart ex rel. Tinsman v. Columbia/HealthONE, L.L.C*., 95 P.3d 571 (Colo. 2004); *Indiana Patient's Comp. Fund v. Wolfe*, 735 N.E.2d 1187 (Ind. App. 2000); *Gourley ex rel. Gourley v. Neb. Methodist Health Sys., Inc*., 663 N.W.2d 43 (Neb. 2003); *Pulliam v. Coastal Emer. Servs. of Richmond, Inc.,* 509 S.E.2d 307 (Va. 1999).

[13] *See, e.g*., *C.J. v. Dep't of Corrections*, 151 P.3d 373 (Alaska 2006); *Scharrel v. Wal-Mart Stores*, *Inc.*, 949 P.2d 89 (Colo. App. 1998); *Kirkland v. Blaine Cnty. Med. Ctr*., 4 P.3d 1115 (Idaho 2000); *Murphy v. Edmonds*, 601 A.2d 102 (Md. 1992); *Arbino v. Johnson & Johnson*, 880 N.E.2d 420 (Ohio 2007); *McClay v. Airport Mgm't Servs., LLC*, 596 S.W.3d 686, 700 (Tenn. 2020).

[14] *See, e.g., Quackenbush v. Super. Ct. (Congress of Cal. Seniors),* 60 Cal. App. 4th 454 (1997) (uninsured motorists, intoxicated drivers, and fleeing felons); *Peters v.*

Specifically, most courts have found that a limit on damages is a policy judgment that does not interfere with the right to trial by jury. *See Siebert v. Okun,* 485 P.3d 1265, 1277 (N.M. 2021) (following the "great weight of persuasive authority" from other states holding that statutory damage limits do not violate the constitutional right to a jury trial).[15] The right to a jury trial, in North Carolina and elsewhere, mandates that an unbiased and impartial jury decide contested factual issues. But a limit on noneconomic damages "does not interfere with the jury's factual findings because it takes effect only after the jury has made its assessment of damages, and thus, it does not implicate a plaintiff's right to a jury trial." *Tam v. Eighth Judicial Dist. Ct.*, 358 P.3d 234, 238 (Nev. 2015). As the New Mexico Supreme Court similarly ruled, "the right to trial by jury is satisfied when evidence is presented to a jury, which then deliberates and returns a verdict based on its factual findings. The legal consequence of that verdict is a matter of law, which the Legislature has the authority to shape." *Siebert,* 485 P.3d at 1277. In addition, courts observe that just as the legislature has constitutional authority to alter tort law, it has

Saft, 597 A.2d 50 (Me. 1991) (alcohol servers); *Phillips v. Mirac, Inc.*, 685 N.W.2d 174 (Mich. 2004) (motor vehicles lessors); *Wessels v. Garden Way, Inc.*, 689 N.W.2d 526 (Mich. Ct. App. 2004) (product liability actions); *Schweich v. Ziegler, Inc.*, 463 N.W.2d 722 (Minn. 1990) (loss of consortium damages).

[15] *See, e.g.*, *L.D.G., Inc. v. Brown*, 211 P.3d 1110, 1131 (Alaska 2009); *Murphy*, 601 A.2d at 116-18 *Arbino*, 880 N.E.2d at 432; *Etheridge v. Med. Ctr. Hosps.*, 376 S.E.2d 525, 529 (Va. 1989); *Judd*, 103 P.3d at 144.

authority to establish a maximum level of recovery in such actions. *See, e.g.*, *McClay*, 596 S.W.3d at 690-91. The legislature's sovereign authority to establish a scope of tort liability is consistent with a jury's role as a neutral finder of fact.

Federal courts, including the Fourth Circuit, have repeatedly found statutory limits on damages consistent with the right to jury trial under the Seventh Amendment as well as state constitutions.[16] Language in a state constitution indicating that the right to jury trial is "inviolable" or "inviolate," as Plaintiff emphasizes (*see, e.g.*, Pl. Br. at 20-21, 27, 31-33, 35-37), does not alter the outcome.[17]

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[16] *See, e.g., Davis v. Omitowoju*, 883 F.2d 1155, 1159-65 (3d Cir. 1989) (Virgin Islands statute); *Boyd v. Bulala*, 877 F.2d 1191, 1196 (4th Cir. 1989) (Virginia statute); *Learmonth v. Sears, Roebuck & Co.*, 710 F.3d 249, 258-62 (5th Cir. 2013) (Mississippi statute); *Smith v. Botsford Gen. Hosp.*, 419 F.3d 513, 519 (6th Cir. 2005) (Michigan statute); *Schmidt v. Ramsey*, 860 F.3d 1038, 1045-46 (8th Cir. 2017) (Nebraska statute); *Franklin v. Mazda Motor Corp.*, 704 F. Supp. 1325 (D. Md. 1989) (Maryland statute).

[17] Courts have upheld limits on noneconomic damages in states such as Idaho, Maryland, Nebraska, Nevada, New Mexico, and Tennessee, where state constitutions, like North Carolina, provide that the right to trial by jury shall remain "inviolate" or "inviolable." *Compare* N.C. Const. art I, § 25 *with* Idaho Const. art. I, § 7; Md. Dec. of Rts. art. 23; Neb. Const. art. I, § 6; Nev. Const. art. 1, § 3; Tenn. Const. art. I, § 6; *see Kirkland,* 14 P.3d at 1120; *Murphy*, 601 A.2d at 370-75; *Gourley,* 663 N.W.2d at 75; *Tam*, 358 P.3d at 238; *Siebert,* 485 P.3d at 1273-78; *McClay*, 596 S.W.3d at 690. As the Fifth Circuit recognized, "'[i]nviolability' simply means that the jury right is protected absolutely in cases where it applies; the term does not establish what that right encompasses." *Learmonth,* 710 F.3d at 263.

In contrast, relatively few state high courts have invalidated limits on noneconomic damages.[18] "Over the years, the scales in state courts have increasingly tipped toward upholding noneconomic damage caps." Carly Kelly & Michelle Mello, *Are Medical Malpractice Damages Caps Constitutional? An Overview of State Litigation*, 33 J. L. Med. & Ethics 515, 527 (2005); *see also MacDonald v. City Hosp., Inc.*, 715 S.E.2d 421 (W. Va. 2011) (upholding noneconomic damage limit in medical liability case "consistent with the majority of jurisdictions that have considered the constitutionality of caps on noneconomic damages in medical malpractice or in any personal injury action"); *Mayo v. Wisconsin Injured Patients & Families Comp. Fund*, 914 N.W.2d 678, 684 (Wis. 2018) (upholding a $750,000 limit on noneconomic damages in medical liability cases and overruling precedent invalidating a prior cap).

[18] *See, e.g., N. Broward Hosp. Dist. v. Kalitan,* 219 So. 3d 49 (Fla. 2017) (equal protection grounds); *Hilburn v. Enerpipe Ltd.*, 442 P.3d 509 (Kan. 2019) (right to jury trial); *Beason v. I.E. Miller Servs., Inc.*, 441 P.3d 1107 (Okla. 2019) (impermissible "special law"). Most recently, the Ohio Supreme Court rejected a facial challenge to Ohio's $250,000 limit on noneconomic damages in personal injury cases. A divided court found the statute unconstitutional as applied to a plaintiff with severe psychological injuries who did not qualify for an exception available to plaintiffs with permanent and substantial *physical* injuries. *See Brandt v. Pompa*, 220 N.E.3d 703, 716 (Ohio 2022). North Carolina's exception includes no such qualification. It is available to a plaintiff who suffered "permanent injury," regardless of whether that injury is physical or psychological. N.C.G.S. § 90-21.19(b).

The decisions cited by Plaintiffs finding statutory caps violate the right to trial by jury are both a minority position and involve caps that are not apposite to North Carolina's statute. For example, in *Arneson v. Olson*, 270 N.W.2d 125, 136 (N.D. 1978) (Pl. Br. at 36), the North Dakota Supreme Court invalidated a $300,000 cap on *total* damages in medical liability cases, including economic damages. That court subsequently *upheld* a $500,000 limit on *noneconomic* damages, finding it does not "prevent seriously injured individuals from being fully compensated for any amount of medical care or lost wages" but only "from receiving more abstract damages." *Condon*, 926 N.W.2d at 143. More recently, *Watts v. Lester E. Cox Med. Ctrs.,* 376 S.W.3d 633 (Mo. 2012) (cited in Pl. Br. at 36), was superseded by a $400,000 limit on noneconomic damages in non-catastrophic injury cases, which the Missouri Supreme Court upheld. *See Ordinola v. Univ. Physician Assocs*., 625 S.W.3d 445 (Mo. 2021).

In conclusion, although N.C.G.S. § 90-21.19 does not permit unlimited awards, those who are injured can recover full economic damages and substantial noneconomic damages, and may qualify for higher awards in cases in which grossly negligent or reckless conduct causes permanent injury or death. The statute reflects the duly elected legislature's decision to place an upper bound on noneconomic damages to promote stability and predictability

in the civil justice system. This Court should find, consistent with the majority of states, that the statutory limit on noneconomic damages is constitutional.

CONCLUSION

For these reasons, this Court should affirm the judgment and hold that N.C.G.S. § 90-21.19 is constitutional.

Respectfully Submitted,

SHOOK, HARDY & BACON L.L.P.

By: /s/ Caroline M. Gieser
Caroline M. Gieser
N.C. Bar #51610
1230 Peachtree Street, Suite 1200
Atlanta, Georgia 30309
Tel: (470) 867-6000
Fax: (470) 867-6001
cgieser@shb.com

Attorneys for Amici Curiae American Property Casualty Insurance Association, Chamber of Commerce of the United States of America, and American Tort Reform Association

Dated: October 7, 2024

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 28(j) and 28.1(b)(3)(d) of the North Carolina Rules of Appellate Procedure, counsel for *amici curiae* certifies that the foregoing brief, which is prepared using a proportional font, is less than 3,750 words (excluding the cover page, caption, index, Table of Authorities, signature blocks, Certificate of Service, and this Certificate of Compliance) as reported by the word-processing software.

Dated: October 7, 2024

/s/ Caroline M. Gieser
Caroline M. Gieser
Attorneys for Amici Curiae

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Brief of *Amici Curiae* was served by electronic means upon the following counsel of record:

Matthew D. Ballew, Esq.
(mballew@ballewlaw.com)
Zachary D. Kaplan, Esq.
(zkaplan@ballewlaw.com)
BALLEW PURYEAR PLLC

Jeremy Wilson, Esq.
(jw@wardandsmith.com)
Alexander C. Dale, Esq.
(acd@wardandsmith.com)
Taylor Rodney Marks, Esq.
(trmarks@wardandsmith.com)
WARD AND SMITH, P.A.

Counsel for Plaintiff-Appellant

John David Hayes, M.D.
david@harvestmoonwomenshealth.com

Harvest Moon Women's Health
c/o John David Hayes, M.D., as
Manager/Managing Agent
(david@harvestmoonwomenshealth.com)

Defendant-Appellant

Martin Warf, Esq.
(martin.warf@nelsonmullins.com)
NELSON MULLINS

Court-Appointed Amicus Curiae

Dated: October 7, 2024

/s/ Caroline Gieser
Caroline Gieser
Attorneys for Amici Curiae