

IN THE SUPREME COURT OF OHIO

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Case No. 2021-0497

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AMANDA BRANDT,  
Plaintiff-Appellant,

On Appeal from the Ohio Court of  
Appeals, Eighth Appellate District  
Case No. 20 109517

v.

ROY POMPA,  
Defendant-Appellee.

**BRIEF OF AMICI CURIAE CHILD USA, THE AMERICAN PROFESSIONAL  
SOCIETY ON THE ABUSE OF CHILDREN, THE OHIO CRIME VICTIM JUSTICE  
CENTER, THE COALITION FOR CHILDREN, THE CRIME VICTIMS CENTER,  
INC., AND MY SISTER'S PLACE IN SUPPORT OF THE APPELLANT**

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## INTRODUCTION

Child sexual abuse is a public policy crisis affecting 1 in 5 girls, and 1 in 13 boys in this nation. G. Moody, et. al., Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., The prevalence of child sexual abuse in community and student samples: A meta-analysis, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively). Historically, most child victims never go to the authorities and the majority of claims expire before the victims are able to get into court. CHILD USA, Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse, CHILDDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-DisclosureFactsheet-2020.pdf>. Of those individuals who do choose to disclose, even fewer seek to hold their perpetrators accountable by filing civil claims. The decision to file a civil claim

is not one that is easily made as it requires the victim to relive the horrors of and shame associated with their abuse.

These challenges are compounded when states impose tort limits on damages and/or have an overly restrictive statute of limitations (“SOLs”), as is the case in Ohio, where victims only have until age 30 to bring a civil claim. Ohio Rev. Code § 2305.111.<sup>1</sup> The Ohio damages cap, Ohio Rev. Code. §2315.18, reduces, if not effectively eliminates compensation, for certain classes of victims and protects a disturbing record of wrongdoers, including violent child predators. When it comes to making it easier for victims of sexual abuse to report crimes and seek justice, Ohio’s laws are some of the worst in the nation; only ten (10) states other than Ohio impose a non-economic damages cap on civil tort claims, and of those ten, four (4) states provide some type of exception to the cap that may apply to claims of sexual assault.<sup>2</sup> Ohio’s short civil SOL together with its cap on damages for civil tort claims creates a system of deterrence for victims that favors the child predator and the institutions that cover up for them. Therefore, we respectfully request that this Court find the damages cap, Ohio Rev. Code. § 2315.18, unconstitutional. In the alternative, we ask that this Court find the life-long injuries resulting from child

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<sup>1</sup> The criminal SOL in Ohio is also very short. Victims of rape and sexual battery have the longest amount of time to bring a claim compared to other crimes, but that is only until age 43. OHIO REV. CODE ANN. § 2901.13(D).

<sup>2</sup> 10 states that apply a non-economic damages cap to civil tort claims: AK, CO, HI, ID, KS, MD, MS, OK, OR, TN; 4 states provide exceptions to the cap that may apply in sexual assault cases: AK, HI, ID, TN.



sexual abuse qualify for the “permanent physical deformity” or “permanent physical-dysfunction” exception.

### **STATEMENT OF INTEREST OF AMICUS CURIAE**

CHILD USA is the leading national non-profit think tank working to end child abuse and neglect in the United States. CHILD USA pairs the best social science research with the most sophisticated legal analysis to determine the most effective public policies to end child abuse and neglect. Distinct from an organization engaged in the direct delivery of services, CHILD USA develops evidence-based solutions and information needed by policymakers, youth-serving organizations, courts, media, and the public to increase child protection and the common good.

CHILD USA’s interests in this case are directly correlated with its mission to increase child protection from sex abuse and eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions. Civil caps on damages create a system of deterrence that subverts the tort laws’ intended effects to the detriment of victims and society at large.

The American Professional Society on the Abuse of Children (“APSAC”) respectfully appear as amicus curiae so that APSAC can provide the specialized knowledge of their members regarding the harms of child sexual abuse. APSAC is non-profit organization focused on serving children and families impact by child maltreatment, including both abuse and neglect. Founded in 1986, APSAC brings

together professionals from across disciplines who focus on combating child maltreatment. APSAC's members include physicians, attorneys, social workers, child protective service workers, law enforcement officers, researchers, professors, psychologists, clergy, and social service administrators.

APSAC's work includes conducting expert training, educational activities, and policy leadership (see APSAC Center for Child Policy, a leading national think-tank on ending child maltreatment, <http://centerforchildpolicy.org>). APSAC is focused on combating child maltreatment through various evidence-based principles. For example, APSAC routinely issues policy reports on various issues related to child welfare through which APSAC's professionals detail current research and propose policy outcomes in order to enhance the practice of child protection.

OCVJC is a statewide nonprofit organization. OCVJC was founded in 2000 to provide no-cost legal representation to preserve and enforce crime victims' rights. The mission of OCVJC is to ensure that the constitutional, statutory, and inherent rights of Ohio's state and federal crime victims are upheld throughout the criminal justice process. OCVJC accomplishes this mission by providing no cost legal representation to Ohio crime victims in state and federal courts to preserve and enforce victims' rights during criminal proceedings. OCVJC also assists victims in protection order proceedings, Title IX proceedings, military

proceedings, and immigration proceedings. In addition to providing legal assistance, OCVJC provides free victims' rights education and training to criminal justice system officials and allied professionals, and briefs courts as amicus curiae on issues of importance regarding the rights of Ohio crime victims in state and federal courts.

The Coalition for Children is a not-for-profit (501c(3)) organization founded by Dr. Sherryll Kraizer in 1982. Coalition for Children has been a leader in prevention of child sexual abuse, research on program effectiveness and education on mandatory reporting. Currently, all its programs are being made available opensource worldwide to support developing countries in protecting children from sexual abuse.

The Crime Victims Center, Inc. dba *Parents for Megan's Law* is a not-for-profit 501(c)(3) organization dedicated to the prevention and treatment of child sexual abuse and rape, the provision of comprehensive trauma informed support services to victims of violent crime, and elderly, minor, and disabled victims of all crime. Violence directed against victims is an abuse of power, often directed at our most vulnerable, and must be met with unwavering resolve to hold perpetrators accountable, and provide victims with the support and services they need.

The organization is a New York State Certified Rape Crisis Center and a Crime Victim Center. The Crime Victims Center is committed to informing

victims of their rights, involving them in the decision making process, securing crime victim compensation to which they are entitled and treating every victim with respect and dignity. The organization provides victim services training to law enforcement and works collaboratively with them to ensure an accurate and up-to-date sex offender registry. The agency staffs the Local and National Megan's Law Help lines.

My Sister's Place is a domestic violence agency in Athens, Ohio serving Athens, Hocking, and Vinton Counties, providing 24/7 hotline, outreach counseling, and an emergency shelter. Rooted in empowering all individual and families experiencing interpersonal violence. We provide holistic support and resources by respecting the victim survivor, honoring their right to self-determination. We recognize and validate current and past traumas by providing space to foster safety, resiliency, healing, and hope in our community.

### **STATEMENT OF CASE AND FACTS**

Amici hereby adopt, in its entirety, and incorporate by reference, the statement of the case and facts contained within Appellant's Memorandum In Support Of Jurisdiction of Appellant Amanda Brandt.

### **ARGUMENT**

Civil litigation of child sexual abuse claims serves compelling public interests of justice, healing, and prevention of abuse that are disrupted by caps on noneconomic damages because of the ways they create barriers to court for victims of child sexual abuse. Perpetrators of abuse and institutions who enable abuse are effectively sheltered by the damages cap, allowing child sexual abuse to flourish. Caps on noneconomic damages have a negative, disparate impact on the most vulnerable survivors of child sexual abuse because of the permanence of their injuries and the reluctance of litigators to represent cases where recovery is severely limited. Even if the Court upholds the damages cap, recovery should not be limited in this case. Although the “permanent physical deformity” and “permanent physical-dysfunction” exceptions to the damage cap have historically been interpreted to exclude the injuries sustained by child sexual abuse victims, research now shows that child sexual abuse results in life-long, structural damage to the brain that falls within the exception.

**I. OHIO’S CAP ON NON-ECONOMIC DAMAGES CREATES A SYSTEM OF DETERRENCE THAT SUBVERTS THE PRINCIPLES OF CIVIL LITIGATION**

Civil cases help child sexual abuse victims in ways that the criminal justice system cannot. Civil litigation can help relieve victims of the financial burdens of abuse as well as provide a forum to hold perpetrators and culpable third parties directly accountable to the victim for the harms that they caused. When states

arbitrarily impose damages caps on civil tort claims, victims suffer re-traumatization at the hands of the very system that is designed to make them “whole” and important public interests go unserved. Civil litigation for claims arising from child sexual abuse serves three important public interests; it: 1) identifies previously unknown child predators and their aiding and abetting institutions to the public, shielding other children from future abuse; 2) shifts the costs of abuse from the victim and tax payers to the one(s) that caused it; and 3) educates the public about the prevalence and harm of child sexual abuse so that families and the legal system can prevent it in the future. Each of these public interests is thwarted by the cap on noneconomic damages in Ohio.

**A. Damages Caps Discourage Victims from Filing Civil Claims Which Would Otherwise Help Identify Previously Unknown Predators and Their Aiding and Abetting Institutions to The Public**

Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by state tort limitations that have deterred or completely disabled victims from filing claims. That is a major reason why the public knew so little about the epidemic of child sex abuse. Yet, it is in society’s interest to have sex abuse survivors identify hidden child predators to the public. As well as providing already-existing victims of abuse a path to justice, civil litigation protects society at large. By enabling victims to bring claims against their abusers,



hidden predators are brought into the light and are deterred from further abusing more children.

Damages caps, however, are irrational and counterproductive because limiting tort liability “diminishes the deterrent effect of tort law.” Ferdon ex. Rel. Petrucelli v. Wisconsin Patients Compensation Fund, 701 N.W.2d 440, 464 (2005); see also Farley v. Engelken, 740 P.2d 1058, 1067 (Kan. 1987). Indeed, “[o]ptimal deterrence requires that injurers bear the full social cost of their risk-taking activities, including nonpecuniary losses.” Jennifer Arlen, Tort Damages, 2 ENCYC. OF L. & ECON. 682, 702 (B. Bouckaert, ed., 2000). Potential liability for full damages deters future bad actors and gives potential tortfeasors an incentive to invest in child protection. Yet, Ohio’s damages cap essentially immunizes wrongdoers for all non-economic damages that exceed \$250,000, thereby significantly undermining incentives for reform while rewarding those who ignore the safety of children. Preventing further abuse only serves to help society by reducing the costs of healthcare for victims, allowing more people into the workforce, and increasing the ability of children to grow into healthy adults. Laws that limit access to civil courts do a terrible disservice to child sexual abuse victims, denying them the ability to hold fully accountable those responsible, as well as those who are able to prevent future abuse.



## **B. Just Compensation Through Civil Litigation Helps Shift the Cost of Abuse from the Victim and Society to Those Who Caused the Abuse**

Child sexual abuse victims face tremendous financial burdens associated with the trauma attendant to the abuse that the criminal justice system is not designed to compensate. The effects of childhood trauma can be profound, extensive, and lasting. As explained by the Center for Disease Control (“CDC”), Adverse Childhood Experiences (“ACEs”) “have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity.” U.S. DEP’T HEALTH & HUMAN SERVICES, The Adverse Childhood Experiences (ACEs) Study, Centers for Disease Control & Prevention, available at <https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/> (hereinafter “ACE Study”); see also, Felitti, et al., Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study, 14(4) AM. J. PREV. MED. 245-58 (1998) (hereinafter “Felitti”); S.R. Dube et al., Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span: Findings from the Adverse Childhood Experiences Study, 286 JAMA 24, 3089-96 (Dec. 2001) (explaining that childhood trauma can lead to negative health outcomes) (hereinafter “Dube”). The ACE Study is one of the largest investigations of the effects of childhood abuse, definitively showing a strong correlation

between ACES and negative effects across the lifespan, including, disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease; and disability. See, e.g., Felitti et. al., at 245-58 (1998); Robert F. Anda et al., The Enduring Effects of Abuse and Related Adverse Experiences in Childhood, 256 EUR. ARCH PSYCHIATRY CLIN. NEUROSCIE. 174, 175 (Nov. 2005) (“Numerous studies have established that childhood stressors such as abuse or witnessing domestic violence can lead to a variety of negative health outcomes and behaviors, such as substance abuse, suicide attempts, and depressive disorders.”) (hereinafter “Anda”).

The costs to the individual victims are devastating, and the economic cost to society is staggering. The negative effects over a survivor’s lifetime generate many costs that impact the nation’s health care, education, criminal justice, and welfare systems. Fang, et. al., The Economic Burden of Child Maltreatment in the United States & Implications for Prevention, 36 CHILD ABUSE & NEGLECT 156-165 (2012) (Noting the estimated average lifetime cost per victim of nonfatal child maltreatment includes: \$32,648 in childhood health care costs, \$10,530 in adult medical costs, \$144,360 in productivity losses, \$7,728 in child welfare costs, \$6,747 in criminal justice costs, \$7,999 in special education costs; the estimated average lifetime cost per death includes: \$14,100 in medical costs, and \$1,258,800 in productivity losses). Estimates based on investigated cases place the economic

burden of abuse at \$2 trillion annually. See CHILD USA, Fiscal Impact of SOL Reform, (2018) available at <https://www.childusa.org/fiscalimpact>. The number is likely significantly higher when taking into consideration the high incidence of unreported cases of child sexual abuse. Id. (Noting nearly 1/3 of cases are never reported). As a result, society pays a hefty price when victims cannot rely on the civil justice system to provide just compensation for their harms.

### **C. The Opportunity for Public Education and Scrutiny to Prevent Future Abuse Are Lost When Damages Caps Block Victims from Bringing Their Claims**

When victims cannot meaningfully access justice through the civil courts, the opportunity to bring chronic abuses and misconduct to the public's and lawmakers' attention is lost. This is especially true of claims involving institutional cover-ups of child sexual abuse. To best protect children from abuse, there must be some reasonable expectation and degree of assurance that youth-serving organizations and institutions will recognize when they fall short of public expectations and are held meaningfully accountable.

Yet damages caps that deter civil litigation not only immunize perpetrators of child sexual abuse, they also disincentivize institutions from regulating employees who pose a sexual safety risk to children and from adopting policies and procedures that protect children. Take the Catholic Church as an example. Civil litigation played a significant role in positioning clergy sexual abuse as an institutional failure

on the part of Catholic Church officials rather than merely a problem of a few “bad apple” priests. For years, Church officials were aware of the sexual abuse by clergy members and yet spent obscene amounts of time and money to cover it up by moving predatory priests from parish to parish. See generally Reports of Attorneys General, Grand Juries, Individuals, Commissions, and Organizations, BISHOPACCOUNTABILITY.ORG (last visited Sept. 30, 2021), <https://www.bishop-accountability.org/AtAGlance/reports.htm>. Untold numbers of children suffered as a result of their actions and yet the Church did not even attempt to change until a wave of civil litigation forced them to compensate their victims. Civil litigation and the attendant public concern also prompted Church officials, law enforcement authorities and child protection organizations to investigate and publish reports on clergy sexual abuse which forced these institutions to adopt more protective policies. Vatican laws changed to toughen sexual abuse punishment, BBC (last visited Sept. 30, 2021), <https://www.bbc.com/news/world-europe-57318959>. The imposition of an arbitrary cap on damages takes away these tools, making it harder for victims to hold their abusers accountable in a way that has a meaningful impact on both the perpetrator and the third parties that enabled them. When victims of institutional abuse find themselves able to hit back against the organizations that created a welcoming atmosphere for their assailants, laws should not protect the organizations from their victims and shield them from financial liability. To protect guilty

organizations is an affront to sensible public policy and a slap in the face to their victims.

By creating greater awareness of systemic problems, civil litigation has also prompted state legislatures to fill perceived gaps in laws aimed at protecting children from sexual abuse and punishing those responsible. For example, lawmakers have enacted and proposed legislation to extend or eliminate SOLs for child sexual abuse, to enhance mandatory child-abuse-reporting laws, and to increase liability for youth-serving organizations who turn their backs when faced with allegations of child sexual abuse. See generally History of US SOL Reform: 2002-2020, CHILDUSA.ORG (Feb. 26, 2021), <https://childusa.org/2020-sol-report/>. By creating greater awareness of systemic problems, putting pressure on stakeholders, and using the courts to promote change, civil litigation has served as a catalyst for significant child protection reforms.

## **II. OHIO'S CAP ON NON-ECONOMIC DAMAGES LIMITS VICTIMS' ABILITY TO ACCESS LEGAL COUNSEL & TO SEEK MEANINGFUL REDRESS FOR THEIR HARMS**

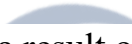
Non-economic damages play a critical role in ensuring that victims of child sexual abuse have meaningful access to justice. Damages caps, apart from denying full compensation to seriously injured victims, also impede victims' ability to obtain



legal counsel and thus effectively close the courthouse doors on many victims of childhood sexual abuse.

As a practical matter, non-economic damages play an important role in convincing plaintiffs' attorneys to take on certain cases such that "limits on awards may affect access to the civil justice system by making cases financially unattractive to plaintiffs' lawyers working on a contingency fee basis." Daniels & Martin, The Texas Two-Step: Evidence on the Link Between Damage Caps and Access to the Civil Justice System, 55 DEPAUL L. REV. 635, 645 (2006) (hereinafter "Daniels & Martin"). The consequences are particularly acute for children who generally have limited if any economic damages and thus may be left "[w]ithout meaningful legal representation" or any "realistic remedy for their injuries." Daniels & Martin, at 669. In fact, the American Bar Association has articulated a longstanding policy opposing caps precisely because of the impact they have on the most vulnerable populations and those most severely injured. See, e.g., *Letter from Thomas M. Susman, Director, Governmental Affairs Office, American Bar Association, to the Obama-Biden Presidential Transition Office*, at 2 (Jan. 13, 2009), available at [http://www.abanet.org/poladv/transition/2009jan13\\_accesstohealth\\_1.pdf](http://www.abanet.org/poladv/transition/2009jan13_accesstohealth_1.pdf).

The right to representation is fundamental to ensuring victims redress for their harms as "it is through counsel that all other rights," including access to the courts are secured. Penson v. Ohio, 488 U.S. 75, 84 (1988). If victims are unable to retain



counsel as a result of such caps on damages, the right to access courts is nothing but “a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will.” Edwards v. California, 314 U.S. 160, 186 (1941) (Jackson, J., concurring).

Studies suggest this is precisely the circumstance that has arisen in Ohio. Since the start of the #MeToo movement, data show that plaintiffs filed significantly more tort claims for sexual assault in states without non-economic damage caps. Christina Rua, Lawyers for #UsToo: An Analysis of the Challenges Posed By the Contingent Fee System in Tort Cases for Sexual Assault, 51 COLUM. HUM. RIGHTS L. REV. 723, 746 (2020). By way of example, plaintiffs filed five times the number of tort suits for sexual assault in Illinois—which has roughly the same total population and relevant sexual assault statistics as Ohio but does not limit non-economic damages caps—than in Ohio. Id. at 747.

As a result of caps like those in Ohio, access to the civil justice system has become increasingly unavailable to children and adult survivors of sexual abuse and any deterrent value derived from civil litigation effectively subverted. Unfortunately, society will absorb the financial costs attendant to these injuries and scores of children will remain unprotected.





### III. OHIO'S CAP ON NON-ECONOMIC DAMAGES HAS A DISPROPORTIONATE NEGATIVE IMPACT ON CHILD SEXUAL ABUSE VICTIMS

Non-economic damages caps have a damaging effect on all individuals who have fewer economic damages, even if we assume that all victims suffer nearly identical physical injuries. The impacts of caps on children, however, are especially devastating. For one, children typically lack any income that would entitle them to significant let alone *any* economic loss damages. Also, children suffer relatively unique injuries, including childhood sexual abuse, that do not primarily affect them in economic terms. Finley, The Hidden Victims of Tort Reform: Women, Children, and the Elderly, 53 EMORY L. J. 1263, 1281 (2004) (hereinafter “Finley”). As we detail in section IV, the types of injuries commonly associated with child sexual abuse include emotional distress, disruption to development and the formation of identity, impaired relationships, and impaired physical capacities—injuries that are generally compensated through non-economic loss damages. See *infra*, section IV. Caps on non-economic damages, therefore, “distort the civil justice system by rendering cases involving some of the most distressing types of harm into ones in which such injuries are the least likely to be fully compensated.” Finley at 1286. Children are most affected by caps, not only because they disproportionately suffer non-economic injuries, “but also because many can expect to be affected by their injuries over a 60- or 70-year life expectancy.” Ferdon, 701 N.W.2d at 466. Indeed,

research demonstrates that non-economic damages comprise a large portion of the total tort damages recovered by children, and caps significantly diminish that recovery, despite the fact their injuries may have lifelong effects. Finley, at 1313.

Ohio's cap on non-economic damages arbitrarily permits compensation for those persons who suffer minor injuries and those most capable of absorbing non-economic damage loss, while it effectively guts non-economic compensation for the most severely injured and vulnerable tort victims. The cap's disparate impact on child sex abuse victims generally, and especially on those most severely injured among them, is particularly burdensome given that many victims never file claims and those that do are generally undercompensated by the civil justice system even in the absence of a damages cap. Abraham, et al., Enterprise Responsibility for Personal Injury: Further Reflections, 30 SAN DIEGO L. REV. 333, 340 (1993). The idea of concentrating the costs of the most severe injuries on the most vulnerable members of society while ostensibly safeguarding the financial interests of insurance companies in cases of institutional child sex abuse seems especially abhorrent and inapposite to the goals of our civil justice system.

**IV. IN THE ALTERNATIVE, THE PHYSICAL INJURY EXCEPTION TO OHIO'S NON-ECONOMIC DAMAGES CAP APPLIES TO THIS CASE, ALTHOUGH IT MAY LIMIT VICTIMS' ABILITY TO RECOVER FOR THE UNIQUE HARMS ATTENDANT TO CHILD SEXUAL ABUSE**

Ohio law provides an exception to its arbitrary non-economic damages cap for plaintiffs who suffer “permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system” or “permanent physical functional injury that permanently prevents the injured person from being able to independently care for self and perform life-sustaining activities.” R.C. §2315.18(B)(3). This statutory language, however, limits victims of all types of crimes from recovering adequate compensation for their psychological and emotional injuries that can and often do last a lifetime. See *infra* section IV.A. It is also illustrative of the collective misunderstanding regarding the mind-body connection and the ways in which mental injuries manifest physically as well as the long-term impacts of trauma on the brain. *Id.* From this perspective, the cap on non-economic damages for child sexual abuse victims when they suffer psychological harm is unreasonable.

**A. The Harm From Child Sexual Abuse, Like the Harm Here, Includes “Physical Deformity” and “Permanent Physical-Functional Injury” and Therefore Applies to This Case**

Even if this Court finds that devastating psychological harm is still subject to the damages cap, the victim in this case meets the criteria for an exception—she has also suffered “permanent physical deformity” and “permanent physical-functional injury” as described in Ohio Rev. Code. §2315.18(B)(3). For the last two decades, the field of child maltreatment, including neurobiologists and epidemiologists studying child sexual abuse, have demonstrated scientifically that childhood abuse

causes significant and often permanent brain damage, including both anatomical and physiological brain damage, as well as damage to multiple organ systems and other physiological processes. See Gaskill and Perry, Child Sexual Abuse, Traumatic Experiences, and Their Effect on the Developing Brain, In (P. Goodyear-Brown, Ed) Handbook of Child Sexual Abuse: Identification, Assessment and Treatment (2012) (hereinafter “Gaskill & Perry”).

Gaskill & Perry write that child sexual abuse causes “enduring brain dysfunction” which results in “...*physical* problems throughout the child’s lifespan.” Id. at 30. They further write: “[child sexual abuse] decreases activation of the central nervous system regions [brain regions] involved in integration of sensory input, motor output, attention, memory, memory consolidation, modulation of physiological arousal, and the ability to communicate with words,” including decreased blood flow to these areas of the brain. Gaskill & Perry, at 34. From the perspective of a neurobiologist, childhood maltreatment can cause the following brain damages: “abnormalities in brain size, enlarged ventricles, cortical atrophy, alteration in the corpus callosum, decreased metabolic activity in the orbital frontal gyrus, and infralimbic prefrontal cortex, as well as brainstem.” Id., at 37. Just like a physical blow to the head can cause problems in brain anatomy, physiology, and function, so does sexual abuse cause problems in brain function as a result of permanent brain damage, including some portions of the brain being shrunken or



destroyed. Id. Sexual abuse causes “physical deformity” of the brain resulting in “permanent physical-functional injury,” exactly as described in the exception to the damages cap at R.C. §2315.18(B)(3).

A 2021 article continues to discuss these findings. Noll initially echoes Gaskill & Perry, writing that child sexual abuse causes “structural damage in the brain and functional changes in neural networks.” Noll, Child Sexual Abuse as a Unique Risk Factor for the Development of Psychopathology: The Compounded Convergence of Mechanisms, ANNUAL REV. OF CLINICAL PSYCHOLOGY, 17 (2021) (hereinafter “Noll”). Further, she explains what experts have known for decades: that the stress of child sexual abuse can cause chronic inflammation in the body, resulting in physical disease and physical illness. Noll, at 450. These *physical* diseases and illnesses easily meet the criteria of being a “physical-functional injury”. Id. In this case, it is undisputed that the appellant suffered severe child sexual abuse, therefore she meets the criteria for an exception to the damages cap, based on having permanent brain deformity and permanent physical-functional harm.

#### **B. There Is No One-Size-Fits-All Harm Attendant To Child Sexual Abuse**

Research shows that victims of child sexual abuse suffer resulting harm in a wide variety of ways; that is, no signature injury flows from childhood sexual abuse. Putnam, F., Ten-Year Research Update Review: Child Sexual Abuse, 42 J. AM. ACAD. CHILD ADOLESCENT PSYCH. 269, 273 (2003). Studies reveal that sexual abuse

can alter a child's physical, emotional, cognitive, and social development and impact their physical and mental health in numerous ways throughout his or her lifetime. See, e.g., Elliot Nelson et. al., Association Between Self-reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results From a Twin Study, 59(2) ARCHIVES OF GEN. PSYCH. 139, 139-45 (2002).

There is also an extensive body of scientific evidence establishing that childhood sexual abuse victims are traumatized in a way that is distinguishable from victims of other crimes. As explained by the Center for Disease Control ("CDC"), Adverse Childhood Experiences ("ACEs") "have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity." U.S. Dep't Health & Human Services, The Adverse Childhood Experiences (ACEs) Study, CENTERS FOR DISEASE CONTROL & PREVENTION (1997) available at <https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/>; see also Felitti; Dube . The ACE Study is one of the largest investigations of the effects of childhood abuse, definitively shows a strong correlation between ACEs and negative effects across the lifespan, including disrupted neurodevelopment, impaired social, emotional, and cognitive development, psychiatric and physical disease, and disability. See, e.g., Felitti, at 245-58; Anda; Merricka, at 10; see also Sachs-Ericsson, et al., A Review of Childhood Abuse, Health, and Pain-Related Problems: The Role of Psychiatric Disorders and Current Life Stress, 10(2) J. TRAUMA &

DISSOCIATION 170, 171 (2009) (explaining that adult survivors are thirty percent more likely to develop serious medical conditions such as cancer, diabetes, high blood pressure, stroke, and heart disease); T.L. Simpson, et al., Concomitance between childhood sexual and physical abuse and substance use problems: A review, 22 CLINICAL PSYCHOL. REV., 27 (2002) (finding that adult survivors of child sexual abuse are nearly three times as likely to report substance abuse problems than their non-survivor peers).

Even in cases such as the one presently before this court, where the physical damage to the brain is only observable with the use of sophisticated medical equipment, the psychological and emotional injuries are equally immense. As applied to child sexual abuse cases, the statutes should not make a distinction between physical and psychological harm.

## CONCLUSION

Ohio's cap on non-economic tort damages severely restricts the rights of society's most vulnerable while it protects those of perpetrators and the institutions who aid and abet and their crimes. The cap creates an additional barrier for the most vulnerable victims in Ohio to access courts, who experience life-long injuries as a

result of being abused. Therefore, we respectfully ask this Court to find Ohio Rev. Code §2315.18 unconstitutional, or, in the alternative, apply the damages cap exception to this case.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document was served upon the following via electronic mail this 4<sup>th</sup> day of October, 2021:

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