STATE OF MICHIGAN

IN THE SUPREME COURT

IN RE CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN,	Supreme Court No. 167831
WHITNEY BEAUBIEN, as Personal Representative of the Estate of CRAIG A. BEAUBIEN, Plaintiff, v. CHARU TRIVEDI, M.D., TOLEDO CLINIC, INC. d/b/a TOLEDO CLINIC CANCER CENTERS, Defendants.	ED Mich No. 21-cv-11000 Hon. Gershwin A. Drain

---

AMICI CURIAE BRIEF OF INSURANCE ALLIANCE OF MICHIGAN, THE AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, AND THE NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES IN SUPPORT OF DEFENDANTS' BRIEF ON CERTIFIED QUESTION

PLUNKETT COONEY

By: Jeffrey C. Gerish (P51338)
Briana L. Combs (P85366)
Attorneys for *Amici Curiae* IAM, APCIA, and NAMIC
38505 Woodward Ave., Suite 100
Bloomfield Hills, MI 48304
(248) 901-4031
jgerish@plunkettcooney.com
bcombs@plunkettcooney.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

RULES

OTHER AUTHORITIES

CONSTITUTIONAL PROVISIONS

STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Insurance Alliance of Michigan ("IAM") is the principal state government affairs and public information association made up of insurers, groups, and related organizations operating in Michigan. Its membership includes property/casualty insurers representing approximately 60% of Michigan's commercial insurance market, 90% of Michigan's home insurance market, and 94% of Michigan's auto insurance market. IAM's purpose is to serve both the industry and consumers by providing educational, legislative, and public information regarding significant issues affecting the insurance business in the State of Michigan.

The American Property Casualty Insurance Association ("APCIA") is a 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's member companies represent 66% of the overall U.S. property-casualty insurance market and 65% of Michigan's property-casualty insurance market, including 41.5% of the state's medical professional liability insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members and their policyholders in legislative and regulatory forums at the federal and state levels and submit *amicus curiae* briefs in significant cases before federal and state courts.

[1] Counsel for *Amici Curiae* certifies, pursuant to MCR 7.312(H)(5), that none of the parties or their counsel contributed monetarily or to the authorship of this brief. In addition to Insurance Alliance of Michigan members, American Property & Casualty Insurance Association members, and National Association of Mutual Insurance Companies members, ISMIE Mutual Insurance Company and the Medical Professional Liability Association made monetary contribution to preparing this brief.

The National Association of Mutual Insurance Companies ("NAMIC") consists of over 1,300 member companies, including six of the top 10 property/casualty insurers in the United States. The Association supports local and regional mutual insurance companies on main streets across America, as well as many of the country's largest national insurers. NAMIC member companies write $383 billion in annual premiums and represent 61% of homeowners, 48% of automobile, and 25% of the business insurance markets. Through its advocacy programs, NAMIC promotes public policy solutions that benefit member companies and the policyholders they serve and fosters greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

STATEMENT OF SUPREME COURT JURISDICTION

MCL 600.215 states that this Court "has jurisdiction and power over . . . any question of law brought before it in accordance with court rules, by certification by any trial judge of any case pending or tried before him[.]" MCL 600.215(2). Further, under MCR 7.308(A)(2), a federal court may certify a question to this Court. Upon certification of the question, this Court may "deny the request for a certified question by order, issue a peremptory order, or render a decision in the ordinary form of an opinion to be published with other opinions of the Court." MCR 7.308(A)(5).

On November 8, 2024, the United States District Court for the Eastern District of Michigan issued an opinion and order granting Plaintiff's request for certification of the following questions to this Court: "[W]hether, under the Michigan Constitution, MICH. COMP. LAWS § 600.1483's noneconomic damages cap violates (1) the right to trial by jury, (2) the equal protection clause, and (3) the separation of powers clause." (Nov. 8, 2024 Opinion and Order Granting Plaintiff's Motion for Certification, p. 20, Plaintiff's Apx. 033a). This Court has discretionary jurisdiction to consider the certified question. See, e.g., *In re Certified Question from United States Ct of Appeals for Ninth Cir*, 474 Mich 1228; 711 NW2d 752 (2006) ("the question certified by the United States Court of Appeals for the Ninth Circuit is considered, and the Court respectfully declines the request to answer the certified question.").

STATEMENT OF THE QUESTIONS PRESENTED

I.

WHETHER THIS COURT SHOULD DECLINE TO ANSWER THE CERTIFIED QUESTIONS REGARDING THE CONSTITUTIONALITY OF THE MEDICAL MALPRACTICE DAMAGES CAPS?

Plaintiff Whitney Beaubien, as Personal Representative of the Estate of Craig A. Beaubien, answers "no."

Defendants Charu Trivedi, M.D. and Toledo Clinic, Inc. d/b/a Toledo Clinic Cancer Centers answer "yes."

Amicus Curiae IAM answers "yes."

The trial court would answer "no."

II.

WHETHER MICHIGAN'S NONECONOMIC DAMAGE CAPS UNDER MCL 600.1483 ARE CONSTITUTIONAL WHERE THE CAPS: 1) DO NOT INVOLVE A FUNDAMENTAL ELEMENT OF A JURY TRIAL AND THE AMOUNT A PLAINTIFF ACTUALLY RECEIVES IS NOT WITHIN THE THINGS A JURY CAN DECIDE, 2) ARE RATIONALLY RELATED TO LOWERING INSURANCE PREMIUMS, A LEGITIMATE GOVERNMENT INTEREST, AND 3) ARE SUBSTANTIVE IN NATURE AND DO NOT INFRINGE ON THIS COURT'S RULEMAKING AUTHORITY?

Plaintiff Whitney Beaubien, as Personal Representative of the Estate of Craig A. Beaubien, answers "no."

Defendants Charu Trivedi, M.D. and Toledo Clinic, Inc. d/b/a Toledo Clinic Cancer Centers answer "yes."

Amicus Curiae IAM answers "yes."

The trial court did not answer this question.

INTRODUCTION

The first of two questions before the Court is whether the Court should address the constitutionality of noneconomic damages caps that were enacted by our Legislature nearly *40 years ago*. The Legislature did so only after thoroughly studying the subject from all sides. Several committees were formed to hear testimony from numerous experts and stakeholders with various perspectives, and many public hearings were held. The result of these painstaking efforts to enact legislation to carry out the will of Michigan's citizens in this area—the enactment of damages caps—has worked as intended for decades. Even if the question of the caps' constitutionality were being considered for the first time only now, 40 years after the statute's enactment, common sense would counsel against doing so—especially since this subject matter is so uniquely suited to being decided by Michiganders through their elected representatives, and also given the comprehensiveness of the Legislature's analysis of the issue.[2]

In fact, the constitutionality of the caps is not being considered on a clean slate—as one would expect for a 40-year-old piece of heavily vetted, highly publicized legislation. The question has already been answered by the courts—both the Court of Appeals and *this Court*. The very questions certified to this Court were squarely addressed by the Court of Appeals in *Zdrojewski v Murphy*, 254 Mich App 50; 657 NW2d 721 (2002), which held that the damage caps under MCL 600.1483 do not violate the right to a jury trial. *Zdrojewski*

[2] And the Legislature analyzed this area again just a few months ago when considering proposed House bill 6085. See https://www.legislature.mi.gov/documents/2023-2024/billintroduced/House/pdf/2024-HIB-6085.pdf

also found no equal protection violation because the caps are rationally related to the legitimate government purpose of controlling healthcare costs by reducing malpractice insurance premiums. And where it is apparent that the statute reflects legislative policy considerations other than court practice and procedure, *Zdrojewski* also held that the statute does not violate separation of powers principles.

After *Zdrojewski* was decided, this Court analyzed the constitutionality of damage caps in *Phillips v Mirac, Inc*, 470 Mich 415; 685 NW2d 174 (2004), and held that damage caps legislation is permissible and inoffensive to the constitution.

In other words, the certified questions have already been thoroughly analyzed and answered. And respectfully, the mere fact that a single medical malpractice plaintiff was able to persuade a single federal district judge to certify this already-answered question is simply not a compelling basis for this Court to devote its limited resources to doing so. The Court should instead issue an order declining that invitation.

If the Court nevertheless decides to answer the certified questions, settled law regarding the right to a jury trial, equal protection, and separation of powers overwhelmingly confirms the constitutionality of the caps. And data and studies regarding damage caps legislation overwhelmingly support the effectiveness of damage caps in achieving the Legislature's intended purpose, namely alleviating insurance cost pressures on medical practitioners to ensure access to care for patients. Indeed, what Plaintiff fails to recognize is that without the caps, it is the *patients* who will suffer, because with higher damage awards come increased premiums, which prompt doctors to leave the state to practice elsewhere, retire, or restrict their practice.

Ultimately, because the caps 1) are constitutional, 2) directly correlate with lower insurance premiums and healthcare costs, 3) support an increase in physician supply, and 4) in turn support patients' access to care, there is no reason to disturb this settled, longstanding Michigan law.

STATEMENT OF FACTS

Amicus Curiae IAM relies on the Statement of Facts set forth in Defendants' brief filed in this Court on the certified questions.

ARGUMENT I

THIS COURT SHOULD DECLINE TO ANSWER THE CERTIFIED QUESTIONS

When a lower court certifies a question to this Court, this Court "need not respond to the question certified." § 1:5. Supreme court—Direct review, 1 Mich. Ct. Rules Prac., Forms § 1:5. Under MCR 7.308(A)(5), this Court may "deny the request for a certified question by order[.]" As Defendants' brief explains, this Court has received 18 certified questions from foreign courts since 2000 and declined to answer 11 of those questions. (Defendants' Brief, p. 30 n 7).

Indeed, questions should not be certified to this Court "unless a court has well-founded doubts regarding them, or *where they are new* and of public importance." 7A Mich. Pl. & Pr. § 52:16 (2d ed.) (emphasis added), citing *Reichert v Metro Tr Co*, 262 Mich 123, 135; 247 NW 128, 133 (1933). As set forth below, the question of the constitutionality of noneconomic damages caps is *not* new, and, therefore, should not have been certified—and should not be answered by this Court. Helpful guidance in this regard is found in Justice Young's concurring opinion in *In re Certified Question from US Dist Ct for E Dist of Michigan*, 490 Mich 922; 805 NW2d 449 (2011). The Court in that case declined to answer questions certified by a federal district court. Concurring, Justice Young noted his belief that "Michigan Court of Appeals' caselaw accurately interprets the statutory provision[.]" *Id.* at 923. Justice Young further reasoned that the Supreme Court "should not expend its limited resources in an attempt to accommodate a federal court judge—even one that indicates that he might be unwilling to follow caselaw that is binding on every court in Michigan." *Id.* at 924.

Here, the same reasoning should be used to arrive at the same conclusion: there is no reason for this Court to expend its limited resources answering the certified questions where the Michigan Court of Appeals has already squarely addressed those questions, and where this Court has already confirmed the constitutionality of damage caps legislation. This is especially so given the length of time the caps have been in place and the fact that the subject of damages caps is one uniquely reserved for the Legislature to address—as it continues to do.

A. The Court of Appeals already squarely addressed the certified questions.

In *Zdrojewski*, the Court of Appeals directly addressed the constitutionality of MCL 600.1483, and all three sub-issues presently certified to this Court: whether the noneconomic damages cap under MCL 600.1483 violates 1) the right to trial by jury, 2) the equal protection clause, and 3) the separation of powers clause. (See Nov. 8, 2024 Opinion and Order Granting Plaintiff's Motion for Certification, p. 20, Plaintiff's Apx. 033a). On the trial by jury issue, *Zdrojewski* reasoned that the plaintiff in that case was able to try the case in front of a jury that rendered a verdict awarding damages, *id.* at 77, and there was "no allegation . . . that the jury was constrained in reaching its verdict because of the requirements of M.C.L. § 600.1483." *Id.* The court further reasoned that despite Zdrojewski's argument that the Michigan Constitution guaranteed her the right not only to have a jury determine her damages, but also the right to recover precisely what the jury awarded, "the Legislature has the authority to change or abolish common-law tort claims, including the ability to limit remedies for such claims." *Id.*, citing MI Const. Art. 3, § 7; *Shavers v Attorney General*, 402 Mich 554, 612, n 36; 267 NW2d 72 (1978); *Donajkowski v Alpena Power Co*, 460 Mich 243, 256, n 14; 596 NW2d 574 (1999).

Zdrojewski ultimately held that the noneconomic damages cap in MCL 600.1483 does not violate a plaintiff's jury trial right because: 1) "the Legislature has the authority to limit remedies in tort actions," and 2) "the limitations of th[e] statute impede neither plaintiff's ability to present her case to a jury nor the jury's ability to determine the factual extent of plaintiff's damages." *Zdrojewski*, 254 Mich App at 78.

The court also found no violation of the right to equal protection under the Michigan Constitution. Rejecting Zdrojewski's contention that strict scrutiny should apply, the court explained that "the classification schemes created by various tort reform legislation are social or economic legislation subject to the rational basis test." *Id.* at 79. Further rejecting the contention that "distinguishing between medical malpractice plaintiffs and other personal injury plaintiffs creates a suspect classification[,]" the court reasoned that "[a] class of personal injury plaintiffs cannot be compared to classes based on race, gender, or mental incapacity." *Id.* at 79–80. And because it determined that MCL 600.1483 does not violate the right to a jury trial, the court confirmed that "plaintiff's argument that strict scrutiny applies because a fundamental right is affected fails as well." *Id.* at 80 n 13.

Under the applicable rational basis test, the court held that the statute is rationally related to a legitimate governmental purpose where: 1) "[t]he purpose of the damages limitation was to control increases in health care costs by reducing the liability of medical care providers, thereby reducing malpractice insurance premiums, a large component of health care costs[,]" 2) "[c]ontrolling health care costs is a legitimate governmental purpose[,]" and 3) "[b]y limiting at least one component of health care costs, the noneconomic damages limitation is rationally related to its intended purpose." *Id.* at 80–

81. As a result, the Court held that MCL 600.1483 does not violate a plaintiff's right to equal protection. *Id.* at 81.

On the third issue—separation of powers—*Zdrojewski* explained that the judicial authority under MI Const. Art. 6, § 5, to make rules that "establish, modify, amend and simplify the practice and procedure in all courts[,]" is authority that "extends only to matters of practice and procedure, and the Legislature, not the courts, has the authority to enact substantive law." *Zdrojewski*, 254 Mich App at 81. And because the Legislature "may change the substantive law without infringing the Supreme Court's rulemaking authority[,]" the noneconomic damage cap can violate the separation of powers doctrine only if it is "purely procedural." *Id.* at 81–82. But MCL 600.1483 is not purely procedural where it: 1) "reflect[s] legislative policy considerations other than court practice and procedure[,]" 2) is "intended to address perceived crises in the health care system[,]" and has as its purpose to "control health care costs by reducing medical malpractice liability." *Id.* at 82. As a result, because the statute is substantive in nature, the court held that MCL 600.1483 does not infringe on this Court's rulemaking authority. *Id.*

Notably, after *Zdrojewski* was decided, the Court of Appeals held that a similar noneconomic damages cap for product liability actions under MCL 600.2946a is not unconstitutional, in *Kenkel v Stanley Works*, 256 Mich App 548; 665 NW2d 490 (2003). There, too, the court held that the cap did not violate the plaintiff's right to a jury trial or equal protection and does not violate separation-of-powers principles. *Kenkel*, 256 Mich App at 561–62. Relying on *Zdrojewski* and the earlier Court of Appeals opinion in *Phillips v Mirac, Inc*, 251 Mich App 586; 651 NW2d 437 (2002) (which this Court later affirmed), *Kenkel* reasoned that: 1) both *Zdrojewski* and *Phillips* were properly decided, 2) the analysis

in those cases applies with equal force to MCL 600.2946a, and 3) "MCL 600.2946a is rationally related to the legitimate governmental interests of encouraging the manufacture and distribution of products in Michigan and protecting those who place products into the stream of commerce from large damage awards in jury trials." *Kenkel*, 256 Mich App at 562–63. On the issue of equal protection, the *Kenkel* Court agreed with the finding in *Zdrojewski* that "the classification created by the damages limitation is not arbitrary." *Kenkel*, 256 Mich App at 564. The Court also adopted the analysis in *Zdrojewski* finding no separation of powers violation. *Kenkel*, 256 Mich App at 564–65.

B. This Court confirmed the constitutionality of damage caps legislation.

Aside from the Court of Appeals decisions, *this* Court addressed the constitutionality of damage caps legislation in *Phillips*, holding that the statutory cap in MCL 257.401(3) is constitutional, does not implicate a plaintiff's right to a jury trial, and does not violate a plaintiff's right to equal protection or due process. *Phillips*, 470 Mich at 419.[3]

On the jury trial issue, this Court held that the damage cap does not offend the constitutional right of trial by jury "because the amount the plaintiff actually receives was never within those things a jury can decide." *Id.* at 429–30. In support, this Court explained that at the time of the drafting and ratification of the 1963 Constitution, "the right of trial by jury encompassed a jury that could find facts, including the amount of damages. . . . However, regarding the law, it was for the court to decide that on the basis of

[3] MCL 257.401 "caps the amount of a lessor's liability in motor vehicle leases of thirty days or less." *Phillips*, 470 Mich at 419. The statute "imposes on a motor vehicle lessor vicarious liability for bodily injury or death resulting from the negligence of the lessee[,]" and "sets upper limits on that vicarious liability in the amounts of $20,000 for each person and $40,000 for each accident." *Id.* at 424.

the common law, the Constitution, or the statutes the Legislature had enacted." *Id.* at 427–28. As a result, excluded from the jury's purview are matters such as "whether a party has met its burden of proof, whether certain evidence may be considered, which witnesses may testify, whether the facts found by the jury result in a party being held liable, *and the legal import of the amount of damages found by the jury*." *Id.* at 428 (emphasis added).

This Court gave examples of a court's permissible role in limiting the effect of a jury's damages verdict in other contexts, such as: applying the governmental immunity act, MCL 691.1407, and finding that there is no liability despite the plaintiff's damages; precluding liability under the recreational trespass act, MCL 324.73107, despite a jury's finding of negligence; entering an order doubling or tripling the amount of damages assessed under various statutes concerning the postverdict adjustment of damages after the jury has been dismissed. *Id.* at 428–29. This Court then reasoned that a damage cap "is of a piece with these numerous examples that for generations have not been successfully challenged on the basis of constitutional infirmity and that reflect the previously unchallenged understanding springing from a recognition that juries decide only facts." *Id.* at 429.

Ultimately, this Court held that damage caps are constitutional in causes of action under the common law because the Constitution provides the Legislature with the power to "abolish or modify nonvested, common-law rights and remedies." *Id.* at 430. And where the statutory damage cap does not implicate the plaintiff's right to a jury trial but instead "only limits the *legal* consequences of the jury's finding regarding . . . liability[,]" *id.* at 431, it does not offend the constitutional jury trial right. In *Phillips*, like in this case, the plaintiff had a jury trial, the jury determined the facts of her case, and the jury's function was

completed. *Id.* It was then up to the court "to determine the legal effect of those findings, whether it be that [plaintiff's] damages are capped, reduced, increased, tripled, reduced to present value, or completely unavailable." *Id.*

On the issue of equal protection, this Court further held that the statutory damage cap satisfies the rational basis test and does not violate the rights guaranteed by the Equal Protection Clause of the Michigan Constitution. *Id.* at 435. In support, this Court clarified that while *Phillips* advocated for the application of strict scrutiny, characterizing the right at issue as the right to a jury trial, the right at issue was not the overarching right to have a jury trial, but rather, the claimed right "to have a jury's assessment of damages be unmodifiable as a matter of law." *Id.* at 433. And because *Phillips* (like this case) did not involve discrimination by race, national origin, or ethnicity, nor affect a fundamental interest, the statute did not warrant strict scrutiny review. *Id.* at 434. This Court explained: "The right to full recovery in tort is not only not a fundamental right, it is not a right at all, as the discussion above makes clear. Therefore, strict scrutiny does not apply." *Id.* Intermediate scrutiny also did not apply, because the statute had nothing to do with allegations of gender or illegitimacy. *Id.*

Under the proper rational basis test, this Court held that the statutory cap on damages was rationally related to a legitimate governmental interest. *Id.* at 435. Specifically, where the statute was designed to reduce insurance costs for automobile lessors, this Court reasoned that such a reduction in costs could be viewed as a measure that increases the number of providers for Michigan consumers to choose from due to a reduction in the cost of operations, or as a measure that enhances automobile sales as more lessors transact business. *Id.* Further, by removing the possibility of unlimited liability, the

statute could also been viewed as a measure taken to join with other states that consider vicarious liability unwise public policy. *Id.* With all of this in mind, this Court held that the statutory damage cap, by satisfying the rational basis test, does not violate the Equal Protection Clause, nor the right to substantive due process. *Id.* at 435–36.

Significantly, the Court in *Phillips* further explained that "[b]y holding that *damage caps legislation is permissible and inoffensive to the Constitution*[,]" this Court joined many other states in reaching that conclusion. *Id.* at 436 (emphasis added), citing *Fein v Permanente Med Group*, 38 Cal 3d 137, 161; 695 P2d 665; 211 Cal Rptr 368 (1985); *English v New England Med Ctr, Inc*, 405 Mass 423, 427; 541 NE2d 329 (1989); *Robinson v Charleston Area Med Ctr, Inc*, 186 WVa 720, 729; 414 SE2d 877 (1991); *Johnson v St Vincent Hosp, Inc*, 273 Ind 374, 396; 404 NE2d 585 (1980) (overruled on other grounds); *Etheridge v Med Ctr Hosps*, 237 Va 87, 95, 96; 376 SE2d 525 (1989). This Court also cited to the United States Supreme Court's decision in *Duke Power Co v Carolina Env't Study Grp, Inc*, 438 US 59 (1978), stating: "Reinforcing the findings of a majority of state supreme courts on this issue is the analysis of the United States Supreme Court that 'statutes limiting liability are relatively commonplace and have consistently been enforced by the courts.'" *Phillips*, 470 Mich at 437, citing *Duke Power*, 438 US at 88–89 n 32. Even further, this Court explained that from the time of the Supreme Court's majority decision in *Nebbia v New York*, 291 US 502, 537 (1934), "economic regulation, such as the measure we deal with today, has consistently been held to be an issue for the political process, not for the courts." *Phillips*, 470 Mich at 438.[4]

[4] Notably, shortly after *Phillips*, this Court issued its opinion in *Jenkins v Patel*, 471 Mich 158; 684 NW2d 346 (2004), holding that the noneconomic damages cap in medical
(cont'd next page)

C. The Legislature's prior and current treatment of the issue counsels against this Court's answering the certified questions.

The decision to enact noneconomic damages caps is one uniquely reserved for the Legislature in its fundamental role as enacting laws that reflect the will of the people of Michigan. The issue of caps strikes at the heart of the health, safety and welfare of Michigan's citizens, which is precisely why it falls within the province of the Legislature, not the courts. The Legislature can—and did—conduct studies, take testimony, and balance the competing interests of all stakeholders before arriving at a decision that best reflects the will of the people. The Legislature also can, and did, study what other states have done to preserve quality care, while taking appropriate steps to keep insurance affordable. It is because such things are so consequential to the citizens of the State that it is the Legislature that makes the compromises and adjusts and balances the competing considerations to arrive at a public policy.

The Legislature, unlike the courts, can also make adjustments based on perceived changes in public policy. Indeed, just a few months ago, the Legislature considered the damage caps and whether a substantial increase in the caps would be appropriate going forward. The Legislature's continued analysis of the caps is evidence that the system is working as it should be. Just as the initial decision to adopt noneconomic damages caps at

---

malpractice actions under MCL 600.1483 does not violate a plaintiff's statutory right to have the jury "award damages as the court or jury shall consider fair and equitable" under the wrongful death act, MCL 600.2922. *Jenkins*, 471 Mich at 173. In reaching its holding, this Court relied on both *Zdrojewski* and *Phillips* and explained: "Although § 1483 reduces the damages awarded by the trier of fact, it does nothing to impinge upon the trier of fact's ability to determine an amount that is 'fair and equitable.'" *Id.* at 172. In other words, "§ 1483 does not diminish the ability of the trier of fact to render a fair and equitable award of damages; it merely limits the plaintiff's ability to recover the full amount awarded in cases where the cause of action is based upon medical malpractice and the amount exceeds the cap." *Id.*

set amounts was one uniquely within the province of the Legislature, so, too, is the decision of whether to modify those caps.

Where, as here, the constitutionality of damages caps adopted by the people of Michigan through the Legislature some 40 years ago has already been addressed by the Court of Appeals and this Court, and where, as here, the Legislature continues to address the issue in accordance with its role as the people's representative body, this Court should decline to interrupt that process. When the Legislature enacts a statute that reflects its policy choices, it is not this Court's role to second-guess those policy decisions. See *People v Harris*, 499 Mich 332, 345; 885 NW2d 832, 837 (2016).

ARGUMENT II

MICHIGAN'S NONECONOMIC DAMAGE CAPS UNDER MCL 600.1483 ARE CONSTITUTIONAL WHERE THE CAPS: 1) DO NOT INVOLVE A FUNDAMENTAL ELEMENT OF A JURY TRIAL AND THE AMOUNT A PLAINTIFF ACTUALLY RECEIVES IS NOT WITHIN THE THINGS A JURY CAN DECIDE, 2) ARE RATIONALLY RELATED TO LOWERING INSURANCE PREMIUMS, A LEGITIMATE GOVERNMENT INTEREST, AND 3) ARE SUBSTANTIVE IN NATURE AND DO NOT INFRINGE ON THIS COURT'S RULEMAKING AUTHORITY

If this Court answers the certified questions, Plaintiff's position is properly rejected.

As noted, the Legislature enacted the noneconomic damages caps in medical malpractice actions under MCL 600.1483 in 1986, after thorough legislative study and fact-finding. The statute imposes two caps—low and high. The injury determines the applicable cap—generally the low cap applies, but the high cap applies for certain permanent injuries. See MCL 600.1483(1)(a)-(c). Both caps are adjusted annually. MCL 600.1483(4).

In *Zdrojewski*, the Court of Appeals held that the damage caps set forth in MCL 600.1483 are constitutional and do not violate a plaintiff's right to a trial by jury, equal protection, or separation of powers principles. *Zdrojewski*, 254 Mich App at 74–82. And this Court reinforced *Zdrojewski*'s holding when upholding other statutory caps on damages in *Phillips*, 470 Mich 415; 685 NW2d 174 (2004) and *Andary v USAA Cas Ins Co*, 512 Mich 207; 1 NW3d 186 (2023).

Stated simply, the Court of Appeals holding in *Zdrojewski* was correct. There is no fundamental right for a plaintiff to recover a jury's damage award, as this Court held in *Phillips*, stating: "The right to full recovery in tort is not only not a fundamental right, it is not a right at all[.]" *Phillips*, 470 Mich at 434. And capping damages in the context of medical malpractice claims is rationally related to lowering insurance premiums and health care costs, legitimate governmental interests. The Legislature's enactment of the statute also did not violate separation of powers principles because the statute is not purely procedural, and the Legislature may change the substantive law without infringing on the judiciary's rulemaking authority under MI Const. Art. 6, § 5.

Thus, if this Court answers the certified question, it should hold that the noneconomic damage caps under MCL 600.1483 are constitutional.

A. Statutes are presumed constitutional because they are the product of the Legislature's policy choices for the benefit of the public.

Statutes are presumed constitutional. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524, 529 (2014). As this Court has explained "[n]o rule of construction is better settled in this country, both upon principle and authority, than that the acts of a state legislature are to be presumed constitutional until the contrary is shown[.]" *Sears v Cottrell*, 5 Mich 251,

259 (1858). As a result, it is this Court's duty to construe a statute as constitutional unless its unconstitutionality is "clearly apparent." *In re Sanders*, 495 Mich at 404.

Stated simply, "the legislature represents the public interest[.]" *People ex rel Le Roy v Hurlbut*, 24 Mich 44, 63 (1871). The presumption of constitutionality arises because statutes are the product of the Legislature's specific policy choices. The Legislature makes public policy decisions for the benefit of the public, enacting statutes that reflect careful study, analysis, testimony, public hearings, reporting, and decision making. This Court has previously "decline[d] to encroach on the Legislature's plenary authority to create law or on its role in shaping and articulating policy by choosing among the plethora of possibilities." *People v Betts*, 507 Mich 527, 565; 968 NW2d 497, 516 (2021).

The presumption of constitutionality, and the Legislature's role as the public policy province of the citizens of the State of Michigan, must not be overlooked when analyzing the damage caps under MCL 600.1483. As this Court has recognized, "[a] court is not free to cast aside a specific policy choice adopted on behalf of the people of the state by their elected representatives in the Legislature simply because the court would prefer a different policy choice." *People v Schaefer*, 473 Mich 418, 432; 703 NW2d 774, 783 (2005) (holding modified on other grounds by *People v Derror*, 475 Mich 316; 715 N.W.2d 822 (2006)). Such a model of government "was not envisioned by the people of Michigan in ratifying our Constitution[.]" *Schaefer*, 473 Mich at 432.

B. The damage caps do not violate a plaintiff's right to a jury trial where the caps do not involve a fundamental element of a jury trial and where the amount a plaintiff actually receives is not within the things a jury can decide.

Plaintiff argues that the damage caps under MCL 600.1483 violate her right under the Michigan Constitution to have the amount of her damages determined by a jury.

(Plaintiff's Brief, p. 31). But this Court rejected that argument in *Phillips*, emphasizing that "[s]tatutes are presumed constitutional[,] and [w]e exercise the power to declare a law unconstitutional with extreme caution[.]" *Phillips*, 470 Mich at 422.

In *Phillips*, this Court held that the statutory damage cap in that case did not offend the constitutional right of trial by jury because "the amount the plaintiff actually receives was never within those things a jury can decide." *Id.* at 429–30. This Court further explained that the Legislature's limits on a defendant's liability "do not involve the substance of a common-law right to a trial by jury, or a fundamental element of a jury trial." *Id.* at 431 (quotations omitted), citing *Tull v United States*, 481 US 412, 426 (1987). Rather, "[t]hese are things that are not under the umbrella of the right." *Phillips*, 470 Mich at 431. In other words, the statutory damage cap "limits the *legal* consequences of the jury's finding regarding the liability[,]" and the plaintiff's right to a jury trial is not implicated. *Id.*

The Michigan Constitution states that "[t]he right of trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law." MI Const. Art. 1, § 14.[5] Under the common law at the time of the drafting and ratification of Michigan's Constitution in 1963, "the right of trial by jury encompassed a jury that could find facts, including the amount of damages." *Phillips*, 470 Mich at 427–28.

Where, as here and in *Phillips*, the plaintiff had a jury trial and the jury determined the facts of her case, the function of the jury is complete. *Id.* It is then up to the court to determine the legal effect of the jury's findings. *Id.* Despite a jury's finding of negligence,

[5] Michigan's original Constitution provided: "'The right of trial by jury shall remain inviolate.'" *Phillips*, 470 Mich at 424, citing MI Const. 1835, Art. 1, § 9.

for example, a court may apply immunity and similar statutes extinguishing liability. *Id.* at 428–29, citing MCL 691.1407 and MCL 324.73107. The court may also apply statutes doubling or trebling the damages award. *Phillips*, 470 Mich at 429 and n 12, citing MCL 125.966, MCL 230.7, MCL 257.1336. The jury's factfinding is not the final word on what the plaintiff does or does not recover.

Like many other laws and practical realities, the damage caps limit the *effect* (i.e., the legal consequences) of the jury's determination, but the caps do not prevent the jury from determining damages or giving a damages verdict. Several other examples of limitations on the legal consequences of damages exist. Present cash value reductions limit the effect of the jury's verdict. MCL 600.6306; MCL 600.6306a. Collateral source reductions limit the effect of the jury's damages verdict. MCL 600.6303. *See Heinz v Chicago Rd Inv Co*, 216 Mich App 289, 299–300; 549 NW2d 47 (1996) (reduction of jury award recognizing collateral-source benefits did not deny the plaintiffs their right to a jury trial). Collection laws exempting certain property from being used to pay a judgment limits the effect of a jury's award. MCL 600.6023; MCL 600.6023a. A trial court may also order a new trial following a jury's verdict award. *See Leary v Fisher,* 248 Mich 574, 578; 227 NW 767, 768 (1929) ("If the verdict was excessive, the trial court had a right to grant a new trial. . . . the trial court has a wide discretion in granting or refusing new trials."). Further, bankruptcy law, which can partially or completely extinguish a judgment, limits the effect of the jury's damages verdict. So too does a defendant's individual collectability. Simply put, a damages award does not guarantee recovery by the plaintiff.

There is no constitutional right to collect all or even part of a jury's damages award. Rather, jury awards have always been subject to law impacting whether and how much a

prevailing party may collect. The principles the Supreme Court discussed in *Ogden v Saunders*, 25 US 213, 309 (1827) are instructive here, wherein the Court explained: "There can be no natural right growing out of the relation of debtor and creditor, that will give the latter an unlimited claim upon the property of the former. It is a matter entirely for the regulation of civil society . . . modification and extent of such liability, is a subject within the authority of State legislation[.]"

C. The damage caps do not violate the Equal Protection Clause where they are rationally related to lowering insurance premiums, a legitimate government interest.

When a party raises an equal protection challenge, the court applies one of three traditional levels of review, "depending on the nature of the alleged classification." *Crego v Coleman*, 463 Mich 248, 259; 615 NW2d 218 (2000). The highest level of review—"strict scrutiny"—applies where the law imposes classifications based on "suspect" factors "such as race, national origin, or ethnicity[.]" *Id.* Absent the implication of these highly suspect categories, an equal protection challenge requires either rational-basis review or an intermediate, "heightened scrutiny" review. *Id.* The heightened scrutiny standard "has been applied to legislation creating classifications on such bases as illegitimacy and gender." *Id.* at 260.

Here, there is no argument that intermediate scrutiny applies, as the noneconomic damage caps do not involve classifications based on immutable distinctions such as illegitimacy and gender. See *id.* at 260. With respect to the strict scrutiny standard, Plaintiff argues strict scrutiny applies because she claims the damage caps under MCL 600.1483 both "impinge[] upon the exercise of a litigant's fundamental right to a jury trial," and "create[] an impermissible classification scheme[.]" (Plaintiff's Brief, p. 37).

Strict scrutiny applies "when the classification is based upon suspect factors (such as race, national origin, or ethnicity), or when the legislation that creates the classification impinges upon the exercise of a fundamental right." *Doe v Dep't of Soc Servs*, 439 Mich 650, 662; 487 NW2d 166, 171 (1992). With respect to the first situation under which strict scrutiny applies—classification based on suspect factors—the noneconomic damage caps do not make any suspect classifications. Plaintiff alleges that the caps create an impermissible classification scheme by arbitrarily distinguishing between: 1) "medical malpractice plaintiffs with serious injuries and those with relatively minor injuries;" 2) "medical malpractice plaintiffs as opposed to those injured through other forms of negligence;" and 3) "medical malpractice tortfeasors whose negligence is the most egregious." (Plaintiff's Brief, pp. 42-43). But none of these alleged classifications are based on suspect factors such as race, national origin, or ethnicity. As a result, strict scrutiny cannot be applied on this basis. See *Phillips*, 470 Mich at 432 ("For a decision to be subject to [strict] scrutiny, it must be a classification that is based on 'suspect' factors such as race, national origin, ethnicity[.]").

Regarding the second situation under which strict scrutiny applies—when the legislation impinges on the exercise of a fundamental right—Plaintiff argues that the right to a jury trial is her avenue to application of strict scrutiny. (Plaintiff's Brief, p. 38). But, as explained in subsection A above, this Court already rejected this argument in *Phillips*. In *Phillips*, this Court explained that for purposes of determining the applicable level of scrutiny, "rights are always to be identified at 'the most specific level at which a relevant tradition protecting, or denying protection to, the asserted right can be identified.'" *Id.* at 433. Thus, rather than identifying the right sweepingly, the right is to be defined "with the

most precision possible." *Id.* When properly defining the right here, "the right at issue . . . is not the overarching right to have a jury trial but, more precisely, a claimed right to have a jury's assessment of damages be unmodifiable as a matter of law." *Id.* As this Court confirmed in *Phillips*, "[t]he right to full recovery in tort is not only not a fundamental right, it is not a right at all . . . Therefore, strict scrutiny does not apply." *Phillips*, 470 Mich at 434.

Following prior decisions of this Court such as *Phillips* under the doctrine of stare decisis "is generally the preferred course of action because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Sington v Chrysler Corp*, 467 Mich 144, 161; 648 NW2d 624, 634 (2002) (quotations omitted).

Thus, since the damage cap neither involves suspect factors nor infringes on a fundamental right, rational basis review applies to Plaintiff's constitutional arguments.

Under the rational basis standard, which is a highly deferential standard of review, courts uphold the legislation so long as it is rationally related to a legitimate government purpose. *Crego*, 463 Mich at 259. A classification passes constitutional muster "if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable." *Id.* at 259–60. Notably, rational basis review does not test "the wisdom, need, or appropriateness of the legislation, or whether the classification is made with 'mathematical nicety,' or even whether it results in some inequity when put into practice." *Id.* at 260. Instead, the statute is presumed constitutional, "and the party challenging it bears a *heavy burden* of rebutting that

presumption." *Id.* (emphasis added). Rational basis review is the default standard for equal protection challenges to social and economic legislation. *Andary*, 512 Mich at 268.

Significantly, "[a] statute will be presumed to be constitutional by the courts unless the contrary clearly appears; and in case of doubt every possible presumption not clearly inconsistent with the language and the subject matter is to be made in favor of the constitutionality of legislation." *Cady v City of Detroit*, 289 Mich 499, 505; 286 NW 805, 807 (1939). To prevail under the rational basis standard, a challenger such as Plaintiff must show that the legislation is "arbitrary and wholly unrelated in a rational way to the objective of the statute." *Smith v Michigan Emp Sec Comm'n*, 410 Mich 231, 271; 301 NW2d 285, 297 (1981). Here, that showing simply cannot be made.

1. The caps are rationally related to a legitimate government interest.

In 1985, the House Special Committee on Liability Insurance studied liability insurance issues in Michigan. (1985 House Special Committee Report, p. 1, Defendants' APX 000002). Over the course of seven weeks, the Committee met 10 times and heard testimony from 32 expert witnesses. (*Id.*). At an all-day public hearing, 56 other individuals provided testimony regarding: "liability insurance industry practices, insurance regulation, state insurance facilities, physician competence, risk management, business and occupational licensure, legal theories of liability, and the impact of tort reform on liability insurance." (*Id.*).

The Committee's report identified several problems, which included the potential that the line of coverage for medical malpractice insurance may be in jeopardy where only three major insurers were marketing medical malpractice insurance in Michigan. (*Id.* at p. 11, Defendants' APX 000012). Of those companies, two were writing over capacity, and one

could not get reinsurance. (*Id.*). Further, the Committee also identified another related problem—that some healthcare providers were uninsured. (*Id.* at p. 12, Defendants' APX 000013). The Committee's report explained: "more medical care providers may become uninsured or find it more difficult to find coverage . . . one of the major carriers . . . is threatening to leave the state. The other two major medical malpractice insurers would not be able to pick up greater numbers of insureds because they are already writing far out of capacity. " (*Id.*).

Also in 1985, a Senate Select Committee on Civil Justice Reform issued a report. (1985 Report of the Senate Select Committee on Civil Justice Reform, Defendants' APX 000018-000088). The Committee held 14 public hearings that year, six of which were specific to medical malpractice reform. (*Id.* at p. 67, Defendants' APX 000088). In a section of the report dedicated to medical malpractice, the Committee stated: "The main concern is that the increase in medical malpractice premiums is endangering the availability and affordability of health care." (*Id.* at p. 2, Defendants' APX 000023). One witness at a Senate public hearing on the issue described the problem as follows: "Nobody cares about the insurance companies. Nobody cares about the lawyers. But when you go to the hospital and you need a bone set and the orthopedic surgeon won't touch you because you're too mangled and he's afraid you're going to sue him, then somebody cares." (*Id.*).

The report explained that physicians were limiting their practices to avoid high risk services such as childbirth, surgery, and intensive care. (*Id.* at pp. 2, 12, Defendants' APX 000023, 000033). Doctors were refusing to perform emergency procedures and were "concerned about the dramatic increases in the costs of liability insurance." (*Id.* at p. 3, Defendants' APX 000024). One company writing medical malpractice policies—The

Medical Protective Services Co.—threatened to leave the state unless the medical malpractice crisis was curbed. (*Id.*). The report identified dramatic increases in medical malpractice insurance costs, stating: "Medical malpractice insurance costs have more than doubled in the past five years, and have tripled and quadrupled in some specialties." (*Id.* at p. 4, Defendants' APX 000025). In 1984, the average premium increase was 30.7 percent, and in 1985, the premiums increased by 47 percent. (*Id.*).

After describing the situation as a "malpractice crisis," the Committee explained that the crisis was manifested "by the large increase in premiums for insurance against malpractice losses." (*Id.* at p. 11, Defendants' APX 000032). Such increases "threaten[ed] to result in the lack of affordable insurance and even the very availability of insurance." (*Id.* at pp. 11-12, Defendants' APX 000032-000033). These realities posed "serious questions about the continued availability of certain medical specialists," such as neurosurgeons, OB/GYNs and orthopedic surgeons. (*Id.* at p. 12, Defendants' APX 000033).

In addition to other recommendations, the Committee recommended a damage cap on noneconomic damages. (*Id.* at p. 17, Defendants' APX 000038). In support, the Committee explained that translation of noneconomic losses into a dollar amount is a "very subjective process[,]"and data suggested that juries compensate medical malpractice plaintiffs at a higher level than injuries in other contexts. (*Id.*).[6] The Committee reasoned

[6] A number of studies have revealed the strength of the jury anchoring effect, i.e., that "the jury's damages decision is strongly affected by the number suggested by the plaintiff's attorney, independent of the strength of the actual evidence[.]" John Campbell, Bernard Chao, Christopher Robertson, David V. Yokum, Countering the Plaintiff's Anchor: Jury Simulations to Evaluate Damages Arguments, 101 Iowa L. Rev. 543 (2016) (**Attachment 1**, p. 2). In one study, mock jurors were exposed to a shortened medical malpractice trial, manipulated with different sets of damages arguments wherein the plaintiff demanded either $250,000 or $5 million in non-economic damages. (*Id.* at p. 1). The study found that *(cont'd next page)*

that a noneconomic damages cap would "help reduce the incidence of unrealistically high malpractice jury awards, yet at the same time . . . protect the right of the injured party to recover the full amount of economic losses, including lost wages and medical expenses." (*Id.* at pp. 17-18, Defendants' APX 000038-000039). The Committee pointed out that several other states had enacted noneconomic damage caps in the malpractice context, and another study showed that the states with caps experienced a drop in the severity of awards, which could lead to: stabilized insurance premiums, leading to lower premiums and reduced health care costs to consumers, further protecting the availability of heath care. (*Id.* at p. 18, Defendants' APX 000039).

Ultimately, the Committee concluded that a cap on noneconomic damages "will have a significant impact in reducing the amount of malpractice payments without denying the injured party's reimbursement for out-of-pocket losses." (*Id.*).

Soon after these 1985 reports were issued detailing the problems surrounding the escalating medical liability premiums, the Legislature enacted the cap on noneconomic damages in medical malpractice cases in 1986. P.A. 1986, No. 178; MCL 600.1483. For the reasons explained in detail in the legislative committee reports, and as this Court recently held in *Andary*, "lowering insurance premiums [is a] legitimate governmental objective[.]" *Andary*, 512 Mich at 216. And placing a reasonable cap on the subjective element of damages is a rational way to achieve that objective. The investigation and detailed reports

---

the anchoring effect "had an extremely powerful effect on juries." (*Id.* at p. 10). Stated simply, the plaintiff "dramatically increase[d] its potential for recovery by simply demanding more money." (*Id.*). In the study, the damages (when awarded) "increased by an average of 823% for individual jurors and 420% in the jury simulation." (*Id.*).

from two legislative committees confirms that implementation of the caps was neither arbitrary nor irrational. See *Smith*, 410 Mich at 271.

2. Nine federal circuit courts have upheld statutory damage caps, finding that the caps do not violate equal protection principles.

The equal protection guarantee of the Michigan constitution is coextensive with its federal counterpart. See *People v Idziak*, 484 Mich 549, 570; 773 NW2d 616, 628 (2009) ("[t]he equal protection clauses of the United States and Michigan Constitutions are coextensive."). As a result, federal precedent is especially relevant to the constitutionality of the damage caps under MCL 600.1483.

In her brief, Plaintiff cites no federal decision holding that noneconomic damage caps are unconstitutional. To the contrary, federal appellate courts have consistently and repeatedly held that damage caps are constitutional. The Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits have all upheld statutory damage caps, holding that the caps do not violate equal protection principles.

In *Tivoli v United States*, 164 F3d 619 (2d Cir 1998), the Second Circuit denied the plaintiff's argument that Maryland's cap on noneconomic damages in personal injury cases violates the Equal Protection Clause of the U.S. Constitution. And in *Davis v Omitowoju*, 883 F2d 1155 (3d Cir. 1989), the Third Circuit applied rational basis review to the reduction of a jury verdict under the Virgin Islands' statute capping noneconomic damages in medical malpractice cases, holding the plaintiff "did not assert any fundamental right to an uncapped jury verdict, nor could she." *Id.* at 1158. The court also reasoned that the plaintiff could not have styled herself and all malpractice plaintiffs as a suspect class. *Id.* And under the applicable rational basis standard, "the Virgin Island[s'] decision to curb, through legislation, the high costs of malpractice insurance and thereby promote quality

medical care to the residents of the islands," provided a rational basis for capping the damages that could be awarded to plaintiffs. *Id.*

Similarly, in the Fourth Circuit, in *Boyd v Bulala*, 877 F2d 1191 (4th Cir 1989), the court upheld Virginia's statutory cap on damages in medical malpractice actions. The court applied rational basis review and agreed with the Supreme Court of Virginia that the cap "bears a reasonable relation to a valid legislative purpose—the maintenance of adequate health care services in the Commonwealth of Virginia." *Id.* at 1197. *See also DiAntonio v Northampton-Accomack Mem'l Hosp*, 628 F2d 287, 291 (4th Cir 1980) (analyzing another section of the Virginia Medical Malpractice Act and reasoning that "[t]he different treatment of medical malpractice plaintiffs from other tort plaintiffs is not a denial of equal protection, when the special problems posed by soaring insurance costs are considered.").

In the Fifth Circuit, the court upheld Texas's statute limiting recoverable nonmedical damages in medical malpractice actions under the U.S. Constitution, again reasoning that rational basis review applies. *Lucas v United States*, 807 F2d 414, 422 (5th Cir 1986). The Fifth Circuit looked to the relation of the cap to the availability and cost of malpractice insurance, and the relation of such insurance to the distribution of medical care in Texas. *Id.* at 422.

And significantly, in *Smith v Botsford Gen Hosp*, 419 F3d 513 (6th Cir 2005), the Sixth Circuit held that Michigan's cap on medical malpractice damages under MCL 600.1483 does not violate the Equal Protection Clause of the U.S. Constitution, holding that rational basis review applies because a common law measure of recovery is a "classic example of an economic regulation[.]" *Id.* at 520. The court quoted *Zdrojewski*, holding that the Michigan

Court of Appeals' sound reasoning in that case leads to the conclusion that the statute survives rational basis scrutiny. *Id.*

In *Schmidt v Ramsey*, 860 F3d 1038 (8th Cir 2017), the Eighth Circuit held that Nebraska's statutory cap on medical malpractice damages does not violate the Equal Protection Clause of the U.S. Constitution under the rational basis standard. The court reasoned that "Nebraska's goal of capping malpractice damages to reduce insurance costs to make the State more attractive to doctors is rational." *Id.* at 1048. The court further noted that "the Act provides, in exchange for capped damages, greater certainty of some recovery by ensuring that qualifying providers are financially responsible." *Id.*

In the Ninth Circuit, in *Hoffman v United States*, 767 F2d 1431 (9th Cir 1985), the court upheld the California statute limiting recovery for noneconomic damages in medical malpractice actions under rational basis review. In reaching its holding, the court explained that "[i]t was reasonable for the lawmakers to believe that placing a ceiling on noneconomic damages would help reduce malpractice insurance premiums." *Id.* at 1437. Ultimately, the statute "was written as part of a complex plan designed to reduce the dramatic rise in medical malpractice insurance premiums[,]" and since those high rates were adversely affecting the quality of medical services provided to California residents, "reduction of the rates was a legitimate state purpose." *Id. See also Lansdale v Hi-Health Supermart Corp*, 314 F3d 355 (9th Cir 2002) (holding that the federal statutory cap on damages in intentional employment discrimination cases does not violate the Equal Protection Clause under the rational basis standard).

The Tenth Circuit followed suit in *Patton v TIC United Corp*, 77 F3d 1235 (10th Cir 1996), upholding Kansas' statutory cap on noneconomic damages in personal injury

actions under rational basis review, holding that the state interests sought to be advanced by the cap are legitimate. *Id.* at 1247. The court reasoned that "[w]hen a legislature strikes a balance between a tort victim's right to recover noneconomic damages and society's interest in preserving the availability of affordable liability insurance, it is engaging in its fundamental and legitimate role of structur[ing] and accommodat[ing] the burdens and benefits of economic life." *Id.* at 1247 (quotations omitted).

And in *Est. of McCall ex rel. McCall v United States*, 642 F3d 944, 950 (11th Cir 2011), the Eleventh Circuit held that Florida's statutory cap on noneconomic damages for medical malpractice claims does not violate the Equal Protection Clause of the U.S. Constitution. Under the applicable rational basis standard, "[t]he legislature identified a legitimate governmental purpose in passing the statutory cap, namely to reduce the cost of medical malpractice premiums and health care." *Id.* at 951. In reaching its holding, the court considered that before enacting the cap, the Florida legislature "held public hearings, heard expert testimony and reviewed a separate report prepared by Governor Bush's Task Force[.]" *Id.* at 950. The Task Force report explained that health care providers were changing the scope of their practice, retiring, or leaving Florida due to the rising medical malpractice premiums. *Id.* at 950–51. Thus, implementation of the cap was rationally related to the legitimate government purpose of reducing those premiums. *Id.* at 951.

Since Michigan's equal protection clause is coextensive with its federal counterpart, the many decisions from federal appellate courts affirming the constitutionality of damages caps lend strong support for the constitutionality of the caps under MCL 600.1483.

D. The damage caps do not violate the separation of powers doctrine where they are substantive in nature and do not infringe on this Court's rulemaking authority.

As the Court of Appeals properly held in *Zdrojewski*, MCL 600.1483 also does not violate the separation of powers doctrine of the Michigan Constitution. *Zdrojewski*, 254 Mich App at 82. The Michigan Constitution grants to this Court the authority to make rules that "establish, modify, amend and simplify the practice and procedure in all courts of this state." MI Const. Art. 6, § 5. This Court's constitutional rule-making authority "extends *only* to matters of practice and procedure." *McDougall v Schanz*, 461 Mich 15, 27; 597 NW2d 148, 154 (1999). The Legislature, not the courts, has the authority to enact substantive law. *Zdrojewski*, 254 Mich App at 81; *McDougall*, 461 Mich at 27.

Thus, as the *Zdrojewski* Court reasoned, "[b]ecause the Legislature may change the substantive law without infringing the Supreme Court's rulemaking authority, M.C.L. § 600.1483 . . . violate[s] the separation of powers doctrine only if the statute[] [is] purely procedural." *Zdrojewski*, 254 Mich App at 81–82. A statute is procedural "when there is no clear legislative policy reflecting considerations other than judicial dispatch of litigation." *Id.* at 82 (quotations omitted), citing *McDougall*, 461 Mich at 30. In other words, "'[i]f a particular court rule contravenes a legislatively declared principle of public policy, having as its basis something other than court administration ... the [court] rule should yield.'" *McDougall*, 461 Mich at 30–31.

Here, MCL 600.1483 "reflect[s] legislative policy considerations other than court practice and procedure." *Zdrojewski*, 254 Mich App at 82. The purpose of the statute is to address perceived issues in the health care system and to use the reduction in medical malpractice liability to control health care costs. *Id.* Where the statute is substantive in

nature, and not purely procedural, it does not infringe on this Court's rulemaking authority. *Id. See also MacDonald v City Hosp, Inc*, 227 W Va 707, 717; 715 SE2d 405, 415 (2011) (West Virginia statutory cap on noneconomic damages did not violate separation of powers principles); *Evans ex rel Kutch v State*, 56 P3d 1046, 1056 (Alaska 2002) (Alaska's damage cap did not violate separation of powers); *Kirkland v Blaine Cnty Med Ctr*, 134 Idaho 464, 471; 4 P3d 1115, 1122 (2000) (Idaho's cap on noneconomic damages did not violate separation of powers doctrine where "[t]he Idaho Constitution expressly grants the legislature the power to modify or abolish common law causes of action"); *Edmonds v Murphy*, 83 Md App 133, 150; 573 A2d 853, 861 (1990) (Maryland's cap did not violate separation of powers doctrine); *Pulliam v Coastal Emergency Servs of Richmond, Inc*, 257 Va 1, 23; 509 SE2d 307, 319 (1999) (Virginia's cap did not violate separation of powers doctrine).

E. Numerous studies confirm the effectiveness of damage caps.

As the below data and studies confirm, "[t]he most direct way to alleviate insurance cost pressures on medical practitioners is by statutes designed to limit the amount of damages recoverable in a medical malpractice action." § 9:3. Damages limitation provisions, 2 Am. Law Med. Malp. § 9:3.

According to the American Medical Association, "[t]he research provides a convincing argument that physician supply is higher and patients' access to care is enhanced in areas where physicians are under less pressure from the liability system due to the enactment of MLR [medical liability reform] provisions, such as caps on noneconomic damages." American Medical Association, *Medical Liability Reform Now!*, p. 3 (2024) (Defendants' APX 000145). A 2012 study found that states with damage caps experienced

less physician departure from the state—indicating the caps increase physician supply. (*Id.*).

The American Medical Association report discusses three crises in the early 1970s, 1980s, and the early 2000s. (*Id.* at p. 8, Defendants' APX 000151). In the 1970s, several private insurers exited the medical liability market due to increasing claims and insufficient rates. (*Id.*). During the 1980s, an "affordability crisis" occurred when the frequency and severity of claims rose, and premiums rapidly increased. (*Id.*). And beginning in the early 2000s, "[l]iability premiums skyrocketed, and access to care was threatened in many states." (*Id.*). During the liability crisis in the mid-2000s, "45% of hospitals reported that the professional liability crisis resulted in the loss of physicians or reduced coverage in emergency departments." (*Id.*). And recently, in 2022, "over 36% of premiums increased." (*Id.* at p. 9, Defendants' APX 000152).

Research on damage caps reveals that the caps on noneconomic damages "have proven to be successful at maintaining a stable liability climate in states that enact them." (*Id.* at p. 12, Defendants' APX 000155). A large body of research confirms that noneconomic damage caps "lead to improved access to care for patients, constrained medical liability premium growth, lower claim frequency, reduced average claim payments and lower health care costs." (*Id.*). A 2006 study revealed that internal medicine premiums in states with noneconomic damage caps were 17.3% lower than in states without caps. (*Id.*). The impact was even more significant in the areas of general surgery and obstetrics/gynecology—20.7% and 25.5%, respectively. (*Id.*). The overall results suggested that by enacting a $250,000 cap in states that do not have caps, or that have

higher caps, "would result in premium savings of $1.4 billion annually." (*Id.* at p. 13, Defendants' APX 000156).

In Missouri, in the years leading up to tort reform, the state lost 225 physicians. (*Id.* at p. 21, Defendants' APX 000164). But after the first year of the medical liability reform, Missouri gained 486 new licensed physicians. (*Id.*). Similarly, in Texas, the number of newly licensed physicians per year has tripled from around 2,000 to over 7,000 since the state's liability reforms in 2003. (*Id.* at p. 22, Defendants' APX 000165). And in West Virginia, reforms resulted in an average premium reduction from $40,034 in 2004 to $24,959 in 2011. (*Id.* at p. 23, Defendants' APX 000166). Conversely, a 2010 ruling in Illinois that the state's noneconomic damage cap was unconstitutional resulted in an 18% jump in costs for Illinois medical liability carriers. (*Id.* at p. 21, Defendants' APX 000164).

Data collected on tort reform between 1991 and 2004 showed that "the introduction of a new damage cap lowered malpractice premiums for internal medicine, general surgery, and obstetrics/gynecology by 17.3%, 20.7%, and 25.5%, respectively." Kilgore, Morrisey, & Nelson, *Tort Law and Medical Malpractice Insurance Premiums*, 43 Inquiry 255, 256 (2006) (Defendants' APX 000178). The firmest conclusion from the study was that "caps on noneconomic damages can significantly constrain the growth of medical malpractice premiums." (*Id.* at p. 268, Defendants' APX 000191).

Another collection of 9 studies estimating the impact of malpractice reforms between 1985 and 2006 revealed the effectiveness of the reforms on reducing premiums. Nelson, Morrisey, & Kilgore, *Medical Malpractice Reform in Three Southern States*, 4 J. Health & Biomedical L. 69, 85-89 (2008) (Defendants' APX 000200-000202). The study analyzed three states: Louisiana, Alabama, and Mississippi. (*Id.* at 69, Defendants' APX 000195).

Notably, the state where damage caps were declared unconstitutional—Alabama—appeared to be the "most difficult environment for plaintiffs with its relatively lower number of paid claims per 1,000 physicians and lower total value of paid claims." (*Id.* at 149, Defendants' APX 000225).

Yet another analysis of 2004 liability insurance premiums in five states with the largest share of the insurance market revealed "strong evidence that non-economic damages hold down medical liability insurance premiums." Frech, Hamm, & Wazzan, *An Economic Assessment of Damage Caps in Medical Malpractice Litigation Imposed by State Laws and the Implications for Federal Policy and Law*, 16 Health Matrix: The Journal of Law-Medicine 693, 708–09 (2006) (Defendants' APX 000279-000280). Notably, a study of the effect of damage caps in Oregon—where caps were instituted and later removed—showed a significant decline in insurance premiums after institution of the cap, and a steady rise in premiums after the cap's removal. (*Id.* at 709-710, Defendants' APX 000280-000281). Ultimately, the 2006 economic assessment found that caps on medical malpractice damage awards "unambiguously improve access to health care and reduce medical expense costs across all levels of the health care system." (*Id.* at 722, Defendants' APX 000293).

Another 2003 report by the U.S. Department for Health and Human Services identifies a "litigation crisis" which resulted in unaffordable or unavailable insurance for doctors, in turn making it harder for Americans to find care. U.S. Department of Health and Human Services Assistant Secretary for Planning and Evaluation Office of Disability, Aging and Long-Term Care Policy, *Addressing the New Health care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care*, p. 3 (2003) (Defendants' APX 000302). The report explains the correlation between malpractice premiums and health

care costs, identifying that "[m]oney spent on malpractice premiums . . . raises health care costs." (*Id.* at p. 11, Defendants' APX 000310). Notably, "[t]he Federal Government spends $33.7-$56.2 billion per year for malpractice coverage and the costs of defensive medicine." (*Id.*). But the imposition of reasonable limits on noneconomic damages "would reduce the amount of taxpayers' money the Federal Government spends by $28.1-$50.6 billion per year." (*Id.*).

The report by the Department of Health and Human Services explains the following chain of causation: Costs imposed by the litigation system translate into rising insurance premiums (*id.* at p. 17, Defendants' APX 000316), and increased premiums affect patients' access to care in part because many doctors consider the high premiums unaffordable. (*Id.* at p. 20, Defendants' APX 000319). A 2001-2002 study regarding damage caps revealed that states without reasonable limits on noneconomic damages had average premium increases that were over 25% higher than the premium increases in states with caps of $250,000 or $350,000 on noneconomic damages. (*Id.* at p. 21, Defendants' APX 000320). The study showed a "substantial difference in the level of medical malpractice premiums in states with meaningful caps and states without meaningful caps." (*Id.* at p. 22, Defendants' APX 000321).

Ultimately, it is the *patients* who will pay the price unless the caps in Michigan remain, as rising premiums result in reduced access to care where doctors "increasingly leave the states with the highest costs, retire, or restrict their practice." (*Id.* at p. 34, APX 000333).

RELIEF REQUESTED

For the reasons set forth herein, *Amici Curiae* IAM, APCIA, and NAMIC request that this Court decline to answer the certified questions. In the alternative, if this Court answers the certified questions, IAM, APCIA, and NAMIC request that this Court hold that the caps under MCL 600.1483 are constitutional.

Respectfully submitted,

PLUNKETT COONEY

By: /s/ Jeffrey C. Gerish

Jeffrey C. Gerish (P51338)
Briana L. Combs (P85366)
Attorneys for *Amici Curiae* IAM, APCIA, and NAMIC
38505 Woodward Ave., Suite 100
Bloomfield Hills, MI 48304
(248) 901-4031
jgerish@plunkettcooney.com
bcombs@plunkettcooney.com

Dated: April 14, 2025

WORD COUNT CERTIFICATE

JEFFREY C. GERISH, being first duly sworn, certifies and states the following:

1. He is a shareholder with the firm Plunkett Cooney, and is in principal charge of the above-captioned cause for the purpose of preparing the attached amicus brief;

2. The answer prepared by his office complies with the type-volume limitation;

3. Plunkett Cooney relies on the word count of their word processing system used to prepare the answer, using Cambria size 12 font; and

4. The word processing system counts the number of words in the brief as 10,105.

s/Jeffrey C. Gerish
JEFFREY C. GERISH

STATE OF MICHIGAN

IN THE SUPREME COURT

IN RE CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN,	Supreme Court No. 167831
WHITNEY BEAUBIEN, as Personal Representative of the Estate of CRAIG A. BEAUBIEN, Plaintiff, v. CHARU TRIVEDI, M.D., TOLEDO CLINIC, INC. d/b/a TOLEDO CLINIC CANCER CENTERS, Defendants.	ED Mich No. 21-cv-11000 Hon. Gershwin A. Drain

---

PROOF OF SERVICE/STATEMENT REGARDING E-SERVICE

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

MONIQUE M. VANDERHOFF, being duly sworn, deposes and says that she is an employee of the law firm of Plunkett Cooney, and that on April 14, 2025, she caused to be served a copy of *Amici Curiae* Brief Of Insurance Alliance Of Michigan, The American Property Casualty Insurance Association, And The National Association Of Mutual Insurance Companies In Support Of Defendants' Brief On Certified Question and Proof of Service/Statement Regarding E-Service as follows:

Christopher P. Desmond (P71493) Ven R. Johnson (P39219) Attorneys for Plaintiff cdesmond@venJohnsonLaw.com TCarr@VenJohnsonLaw.com	**Counsel was served via MiFile**

Michael J. Cook (P71511) Attorney for Defendants Michael.cook@ceflawyers.com	**Counsel was served via MiFile**
Brian McKeen (P34123) Attorney for Amicus Curiae American Association for Justice bjmckeen@mckeenassociates.com	**Counsel was served via MiFile**
Eugenie B. Eardley (P48615) Attorney for Amici Curiae Eardley Law Firms genieb@eardleylaw.com	**Counsel was served via MiFile**
Samuel R. Bagenstos (P73971) Attorney for Amici Curiae Law Firms sbagen@gmail.com	**Counsel was served via MiFile**

/s/Monique M. Vanderhoff
MONIQUE M. VANDERHOFF