IN THE SUPREME COURT OF OHIO

GIBSON BROS., INC., et al., Plaintiffs-Appellees, v. OBERLIN COLLEGE, et al., Defendants-Appellants.	)))))))))	Case No. 2022-0583 On Appeal from the Lorain County Court of Appeals, Ninth Appellate District, Case Nos. 19CA011563 and 20CA011632

MEMORANDUM IN SUPPORT OF JURISDICTION OF *AMICUS CURIAE* THE OHIO CHAMBER OF COMMERCE

Larry J. Obhof, Jr. (0088823)
**Counsel of Record*
Mark D. Wagoner (0068577)
SHUMAKER, LOOP & KENDRICK, LLP
41 South High Street,
Suite 2400
Columbus, OH 43215
Tel: 614.463.9441
Fax: 614.463.1108
lobhof@shumaker.com
mwagoner@shumaker.com

Kevin D. Shimp (0097660)
OHIO CHAMBER OF COMMERCE
34 S. Third St., Suite 100
Columbus, Ohio 43215
Tel: 614.228.4201
kshimp@ohiochamber.com

Counsel for Amicus Curiae the Ohio Chamber of Commerce

Benjamin C. Sassé (0072856)
Elisabeth C. Arko (0095895)
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113
Tel: 216.592.5000
Fax: 216.592.5009
benjamin.sasse@tuckerellis.com
elisabeth.arko@tuckerellis.com

Attorneys for Defendants-Appellants Oberlin College and Dr. Meredith Raimondo

Terry A. Moore (0015837)
Jacqueline Bollas Caldwell (0029991)
Owen J. Rarric (0075367)
Matthew W. Onest (0087907)
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W.
P.O. Box 36963
Canton, OH 44735-6963
Tel: 330.497.0700
Fax: 330.497.4020
tmoore@kwgd.com / jcaldwell@kwgd.com
orarric@kwgd.com / monest@kwgd.com

Attorneys for Plaintiffs-Appellees Gibson Bros., Inc., David R. Gibson, and Allyn W. Gibson

Lee E. Plakas (0008628)
Brandon W. McHugh (0096348)
PLAKAS | MANNOS
200 Market Avenue North, Suite 300
Canton, OH 44702
Tel: 330.455.6112
Fax: 330.455.2108
lplakas@lawlion.com
bmchugh@lawlion.com

James N. Taylor (0026181)
JAMES N. TAYLOR CO., L.P.A.
409 East Ave., Suite A
Elyria, OH 44035
Tel: 440.323.5700
taylor@jamestaylorlpa.com

Additional Attorneys for Plaintiffs-Appellees Gibson Bros.,Inc., David R. Gibson, and Allyn W. Gibson

Ronald D. Holman, II (0036776)
Julie A. Crocker (0081231)
TAFT STETTINIUS & HOLLISTER LLP
200 Public Sq., Suite 3500
Cleveland, OH 44114-2302
Tel: 216.241.2838
Fax: 216.241.3707
rholman@taftlaw.com
jcrocker@taftlaw.com

Richard D. Panza (0011487)
Matthew W. Nakon (0040497)
Rachelle Kuznicki Zidar (0066741)
WICKENS HERZER PANZA
35765 Chester Rd.
Avon, OH 44011-1262
Tel: 440.695.8000
Fax: 440.695.8098
RPanza@WickensLaw.com
MNakon@WickensLaw.com
RZidar@WickensLaw.com

Seth D. Berlin (PHV #21649-2020)
Joseph Slaughter (PHV #21599-2020)
BALLARD SPAHR LLP
1909 K St., NW
Washington, D.C. 20006
Tel: 202.661.2200
Fax: 202.661.2299
berlins@ballardspahr.com
slaughterj@ballardspahr.com

Additional Attorneys for Defendants-Appellants Oberlin College and Dr. Meredith Raimondo

TABLE OF CONTENTS

I. THIS CASE RAISES AN ISSUE OF PUBLIC AND GREAT GENERAL INTEREST.

The Court of Appeals' decision in this case upsets the crucial balance between ensuring that plaintiffs are fully compensated for their injuries and protecting defendants from runaway damages awards. The Ohio legislature weighed these issues carefully and struck the balance codified in R.C. 2315.21, which generally caps punitive damages awards at twice the amount recoverable by a plaintiff from a defendant. Yet in its decision below, the Court of Appeals allowed a punitive damages award that doubled the *uncapped* amount of a jury award for noneconomic loss—thereby allowing a punitive damages award that is significantly inflated by sums that *are not recoverable* by plaintiffs as compensatory damages. At least two appellate courts have now made this error. The Ohio Chamber of Commerce therefore urges this Court to grant jurisdiction for the specific purpose of clarifying the proper interpretation and application of R.C. 2315.21.[1]

The proper application of R.C. 2315.21 is an issue of public and great general interest. The limitation on punitive damages, along with numerous other civil justice reforms enacted as part of Senate Bill 80 of the 125th General Assembly, has increased fairness and predictability in our justice system and has helped improve Ohio's overall business climate. The statutory limitation on punitive damages serves as a key protection for employers and helps maintain stability in our State's economy. Indeed, prior to the law's enactment, the Ohio General Assembly determined that the State's tort laws were harming Ohio's economy and impeding economic growth and job creation.

[1] This Memorandum is limited to supporting jurisdiction for this issue. *Amicus curiae* does not take a position on other issues involved in this case, or the merits thereof.

The reforms in Senate Bill 80 were carefully considered by the General Assembly. In fact, this Court has previously recognized the work that went into the law, some of which is described in the legislature's statement of findings and intent included as part of the bill itself. *See Groch v. Gen. Motors Corp.*, 2008-Ohio-546, ¶ 161, 117 Ohio St. 3d 192, 220, 883 N.E.2d 377, 405 (noting that in Section 3 of the bill, "the General Assembly made a 'statement of findings and intent' explaining certain provisions of the bill"). As this Court itself has acknowledged, "the General Assembly reviewed several studies and other forms of evidence" to reach its conclusions. *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 68. These crucial tort reforms were the result of a multi-year effort to study our State's justice system; to assess its impact on the parties involved, whether plaintiffs or defendants; and to consider the wider impact that civil justice laws have on the economy as a whole.

During its consideration of Senate Bill 80, the General Assembly concluded that Ohio's civil litigation system posed "a challenge to the economy of the state of Ohio, which is dependent on business providing essential jobs and creative innovation." Am.Sub.S.B. 80 (125th G.A.), *effective* April 7, 2005 ("S.B. 80"), Section 3(A)(1). The General Assembly broadly justified the tort reforms in the bill by emphasizing that the State has an "interest in making certain that Ohio has a fair, predictable system of civil justice" that preserves the rights of those who have been harmed while also curbing litigation "which increases the cost of doing business, threatens Ohio jobs, drives up costs to consumers, and may stifle innovation." S.B. 80, Section 3(A)(3). With respect to noneconomic injuries, the General Assembly found that awards for such injuries are inherently subjective and susceptible to improper inflation. *See Arbino*, 116 Ohio St.3d 468, 2007-Ohio-6948, at ¶ 68 (citing S.B. 80, Section 3(A)(6)(a), (c), and (d)). The legislature also determined that "[i]nflated damage awards create an improper resolution of civil justice claims." *Id.* (quoting S.B. 80, Section 3(A)(6)(e)).

The General Assembly specifically emphasized the importance of reforming Ohio's punitive damages laws. The legislature enacted R.C. 2315.21 and other provisions upon determining that those reforms were "urgently needed to restore balance, fairness, and predictability to the civil justice system." S.B. 80, Section 3(A)(4)(a). Indeed, the General Assembly found that the lack of a statutory ceiling upon recoverable punitive or exemplary damages in tort actions had resulted in punitive damages awards "that have no rational connection to the wrongful actions or omissions of the tortfeasor." S.B. 80, Section 3(A)(4)(b)(ii). That is why the legislature prohibited courts from entering judgments "for punitive or exemplary damages in excess of the two times the amount of compensatory damages awarded to the plaintiff." S.B. 80, Section 3(A)(4)(b).

The General Assembly struck an "essential balance" between the rights of plaintiffs and defendants. S.B. 80, Section 3(A)(2). That statutory balance included capping damages for noneconomic loss under R.C. 2315.18(E)(1), as well as limiting judgments for punitive or exemplary damages to "two times the amount of the compensatory damages awarded to the plaintiff from that defendant." R.C. 2315.21(D)(2)(a). These provisions ensure that plaintiffs can get a fair and reasonable recovery for their injuries, while preventing grossly excessive damages awards that are unfair to defendants and harmful to the economy.

The Court of Appeals' decision threatens this carefully-struck balance. To undo these reforms through judicial interpretation would deal a significant blow to the State's economy. It would reduce fairness and predictability in Ohio's justice system. It would run counter to the intent of the General Assembly, as expressed in the statement of findings and intent found within the text of the bill itself. Most importantly, *amicus curiae* believes it would run counter to the text of the statutory provisions at issue here. The Ohio Chamber of Commerce respectfully submits that a correct reading of R.C. 2315.21(D)(2)(a) and related provisions should limit

punitive damages to two times the "recoverable" amount of compensatory damages, rather than two times an uncapped amount that cannot even be recovered by plaintiffs.

This Court's review is necessary to bring clarity to this issue. The decision below is at least the second time that an appellate court has held that R.C. 2315.21's provisions "refer to the uncapped, total compensatory damages the jury awarded," rather than the amount of capped compensatory damages actually recoverable by plaintiffs. *See* App. Op. ¶ 113, Appx. 40 (quoting *Faieta v. World Harvest Church*, 10th Dist. Franklin No. 08AP-527, 2008-Ohio-6959, 2008 WL 5423454, ¶ 90). Senate Bill 80's limitations on damages have a significant statewide impact, both on the civil justice system and the overall economy. A question of such statewide importance should be resolved by this Court, rather than continuing to percolate in trial and appellate courts across the State.

The reforms in Senate Bill 80 are as important today as they were when they were enacted by the legislature. The Ohio Chamber of Commerce therefore urges this Court to grant jurisdiction for the specific purpose of clarifying the proper interpretation and application of R.C. 2315.21.

II. INTEREST OF *AMICUS CURIAE*.

Founded in 1893, the Ohio Chamber of Commerce (the "Ohio Chamber") is Ohio's largest and most diverse statewide business advocacy organization, representing businesses ranging from small sole proprietorships to some of the nation's largest companies. The Ohio Chamber works to promote and protect the interests of its more than 8,000 business members, while building a more favorable business climate in Ohio by advocating for the interests of Ohio's business community on matters of statewide importance. By promoting its pro-growth agenda with policymakers and in courts across Ohio, the Ohio Chamber seeks a stable and predictable legal system which fosters a business climate where enterprise and Ohioans prosper.

The Ohio Chamber regularly files amicus briefs in cases important to its members' interests in courts across the State of Ohio.

III. STATEMENT OF THE CASE AND FACTS.

Amicus curiae assumes, for the purposes of this Memorandum in Support of Jurisdiction, that the factual and procedural background set out by the Court of Appeals in its decision is correct. *See generally* App. Op. ¶¶ 6-18, Appx. 3-7. *Amicus curiae* therefore relies upon that background as set out by the appellate court.

IV. ARGUMENT AND LAW

Proposition of Law No. I: Revised Code 2315.21 limits punitive damages to twice the "recoverable" compensatory damages awarded to a plaintiff from a defendant.

A. Revised Code 2315.21 and related tort reforms were enacted to increase fairness and predictability in our justice system and improve Ohio's overall business climate.

The tort reforms included in Senate Bill 80 were the result of a deliberate legislative process that included extensive study, review of evidence, and consideration of the positions of competing interests. That process led the General Assembly to conclude that Ohio's civil litigation system was harmful to the State's economy. Specifically, the legislature determined that the system posed "a challenge to the economy of the state of Ohio, which is dependent on business providing essential jobs and creative innovation." S.B. 80, Section 3(A)(1).

The General Assembly did not reach this conclusion lightly. Indeed, as noted above, this Court has previously recognized the work that went into Senate Bill 80's enactment. *See Arbino*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 68. When considering the bill—including the provisions that are at issue here—the General Assembly reviewed numerous studies and other forms of evidence regarding the impact of Ohio's civil litigation system. *Id.* These included, among others:

- A National Bureau of Economic Research ("NBER") study which estimated that States that had adopted tort reforms had experienced employment growth, productivity growth, and total output growth. The NBER study estimated increases of employment growth between eleven and twelve percent, productivity growth of seven to eight percent, and total output growth between ten and twenty percent for liability-reducing reforms. *See* S.B. 80, Section 3(A)(3)(a).

- A 2002 study from the White House Council of Economic Advisors, which found that the cost of tort litigation is equal to a two and one-tenth percent wage and salary tax, a one and three-tenth percent tax on personal consumption, and a three and one-tenth percent tax on capital investment income. *See* S.B. 80, Section 3(A)(3)(b).

- A 2003 Harris Poll of senior corporate attorneys, conducted by the United States Chamber of Commerce's Institute for Legal Reform, which reported that eight out of ten respondents claimed that the litigation environment in a State could affect important business decisions about their company, such as where to locate or do business. One in four senior attorneys surveyed "cited limits on damages as one specific means for state policy makers to improve the litigation environment in their state and promote economic development." S.B. 80, Section 3(A)(3)(c).

- A 2003 study published by Tillinghast-Towers Perrin, which found that the cost of the United States tort system grew at a record rate in 2001. *See* S.B. 80, Section 3(A)(3)(d). "The Tillinghast-Towers Perrin study also found that the cost of the United States tort system grew fourteen and three tenths of a percent in 2001, the highest increase since 1986, *greatly exceeding overall economic growth* of two and six tenth percent." S.B. 80, Section 3(A)(3)(e) (emphasis added). The study estimated the cost of the tort system to be "equal to a five percent tax on wages." *Id.*

- Testimony by Ohio Department of Development Director Bruce Johnson, which noted that as a percentage of the gross domestic product, United States tort costs were roughly double the percentage that other industrialized nations pay annually. *See* S.B. 80, Section 3(A)(3)(f). The General Assembly found that these tort costs "put Ohio businesses at a disadvantage vis-a-vis foreign competition and are not helpful to development." *Id.*

After reviewing this information, the General Assembly reached the conclusion that reforms were "urgently needed to restore balance, fairness, and predictability to the civil justice system." S.B. 80, Section 3(A)(4)(a). The legislature issued findings, included within the bill, which specifically pointed to the need for a cap on punitive damages. "The absence of a statutory ceiling upon recoverable punitive or exemplary damages in tort actions has resulted in occasional

multiple awards of punitive or exemplary damages that have no rational connection to the wrongful actions or omissions of the tortfeasor." S.B. 80, Section 3(A)(4)(b)(ii).

Likewise, the General Assembly issued findings regarding the importance of curbing damages awards for noneconomic loss. With respect to noneconomic injuries, the General Assembly noted that awards for such injuries are inherently subjective and susceptible to being improperly inflated. *See Arbino*, 116 Ohio St.3d 468, 2007-Ohio-6948, at ¶ 68 (citing S.B. 80, Section 3(A)(6)(a), (c), and (d)).

The net effect of these problems was troubling. Indeed, the General Assembly concluded that these problems undermined the fairness of our justice system and created significant negative externalities. Specifically, the General Assembly found that inflated damages awards lead to the "improper resolution of civil justice claims." S.B. 80, Section 3(A)(6)(e)). It further concluded that the "cost of litigation and resulting rise in insurance premiums is passed on to the general public through higher prices for products and services." *Id.*

The caps on noneconomic damages in R.C. 2315.18 and limitations on punitive damages in R.C. 2315.21 were each enacted in response to these findings. They were deliberate policy choices by the legislature and were aimed at restoring fairness to Ohio's tort system and stability to Ohio's economy. And indeed, that is precisely what these provisions have done, for nearly two decades since they were enacted.

Importantly, *amicus curiae*'s reading of these statutes does not leave plaintiffs without a remedy. It simply requires the proper limitations on the size of a damages award, consistent with the statutory language. This is the "essential balance" that the General Assembly struck in Senate Bill 80. *See* S.B. 80, Section 3(A)(2). This Court should grant jurisdiction in order to clarify this issue and maintain that balance.

B. The text of Revised Code 2315.21 is best read as limiting punitive damages to twice the "recoverable" compensatory damages awarded to a plaintiff from a defendant.

The Ohio Chamber of Commerce respectfully submits that a correct application of R.C. 2315.21(D)(2)(a) and related provisions limits punitive damages to two times the "recoverable" amount of compensatory damages. This includes the capped amount of noneconomic loss awards—which are actually recoverable by a plaintiff—rather than the uncapped amount that was relied upon below.

The Court of Appeals looked at the relevant statutes and applied what it considered a plain language analysis. *See* App. Op. ¶¶ 110-113, Appx. 39-40. As the court noted, the text of R.C. 2315.21(D)(2)(a) provides that a court "shall not enter judgment for punitive or exemplary damages in excess of two times the amount of compensatory damages awarded to the plaintiff from that defendant, as determined pursuant to [subsection] (B)(2) or (3) of this section." App. Op. ¶ 111, Appx. 39 (quoting R.C. 2315.21(D)(2)(a)). From there the court looked to R.C. 2315.21(B)(2), which reads, in relevant part, "the court shall instruct the jury to return, and the jury shall return, a general verdict and, if the verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages *recoverable by the plaintiff* from each defendant." *Id.* (quoting R.C. 2315.21(B)(2)) (emphasis added).

Yet another section, R.C. 2315.18(B)(2), caps compensatory damages for noneconomic loss. And R.C. 2315.18(E)(1) provides that "in no event shall a judgment for compensatory damages for noneconomic loss exceed the maximum recoverable amount" as provided in R.C. 2315.18(B)(2).

The appellate court reviewed these statutes and concluded that R.C. 2315.21(D)(2)(a) sets the cap on punitive damages in a jury case as two times the amount of compensatory damages determined by the jury. *See* App. Op. ¶ 113, Appx. 39-40. That is, the court found that the full

amount of the jury verdict on noneconomic loss—not the capped amount of recoverable damages—could be doubled when calculating the punitive damages amount. *See id.* The court emphasized that R.C. 2315.21(D)(2)(a) "does not contain any language capping the award based on the maximum recoverable amount as determined by R.C. 2315.18." App. Op. ¶ 113, Appx. 40. Thus, the court concluded that the trial court did not err when it capped the punitive damages award at twice the jury's uncapped compensatory damages award. *Id.*

The appellate court was correct in noting that R.C. 2315.21(D)(2)(a) does not contain a specific reference to R.C. 2315.18. That does not mean, however, that the cap on compensatory damages for noneconomic loss does not apply. None of these tort reform provisions exist in a vacuum. Rather, they must be read together.

This Court has made clear that in interpreting a statute, "we do not look at each word in isolation but rather consider the text as a whole." *Vossman v. AirNet Sys., Inc.*, 2020-Ohio-872, ¶ 14, 159 Ohio St. 3d 529, 532, 152 N.E.3d 232, 235; *see Great Lakes Bar Control, Inc. v. Testa*, 2018-Ohio-5207, ¶ 11, 156 Ohio St. 3d 199, 200–01, 124 N.E.3d 803, 805 (a reading of a statute "falls flat" where it "disregard[s] the importance of considering the text as a whole"); *see also United States v. Morton,* 467 U.S. 822, 828, 104 S. Ct. 2769, 2773, 81 L. Ed. 2d 680 (1984) ("We do not, however, construe statutory phrases in isolation; we read statutes as a whole."). This includes both the language and the overall design of the statute. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S. Ct. 1811, 1818, 100 L. Ed. 2d 313 (1988) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.").

Respectfully, in contrast to the Court of Appeals' holding, R.C. 2315.21(D)(2)(a) need not contain a specific reference to R.C. 2315.18. The provisions discussed above impact each other and work in tandem. They should be read that way when interpreting their meanings. Of

course, R.C. 2315.18(B)(2) *does* limit "the amount of compensatory damages that represents damages for noneconomic loss that is recoverable in a tort action." Likewise, Revised Code 2315.18(E)(1) indicates that no judgments "for compensatory damages for noneconomic loss [shall] exceed the maximum recoverable" amount provided for in division (B)(2). And by its plain terms, R.C. 2315.18(F)(1) deprives common pleas courts of jurisdiction to enter judgment on an award of compensatory damages for noneconomic loss in excess of the limits set forth in R.C. 2315.18(B)(2).

These provisions work together to cap the amount that is recoverable by a plaintiff for noneconomic loss under R.C. 2315.21(B)(2). And it is *that* section that R.C. 2315.21(D)(2)(a) acts upon directly: "the court shall not enter judgment for punitive or exemplary damages in excess of two times the amount of the compensatory damages awarded to the plaintiff from the defendant, as determined pursuant to division (B)(2) …." When the provisions are read as a whole, it is of little consequence that R.C. 2315.21(D)(2)(a) does not reference R.C. 2315.18. The latter caps the noneconomic damages recoverable under R.C. 2315.21(B)(2). The former limits punitive damages to twice the amount awarded under R.C. 2315.21(B)(2). They function together.

Importantly, by its plain text R.C. 2315.21(B)(2) requires that if a verdict favors the plaintiff, the jury must return "answers to an interrogatory that specifies the total compensatory damages *recoverable by the plaintiff* from each defendant." (emphasis added). This suggests that the process contains a built-in assumption that awards are limited to the amount "recoverable" under R.C. 2315.18. That is the most natural reading of the provision, or at the very least it is a plausible reading that deserves this Court's attention and review.

Statutory construction begins with the presumption that every word in the statute has independent meaning, and that no word was used unnecessarily or was needlessly added. Thus,

it is well-settled that courts must "give effect to the words used" in the statute and must not "delete words used" or "insert words not used." *Judy v. Ohio Bur. of Motor Vehicles*, 2003-Ohio-5277, ¶ 19, 100 Ohio St. 3d 122, 127, 797 N.E.2d 45, 49, *opinion modified on denial of reh'g,* 2003-Ohio-6611, ¶ 19, 100 Ohio St. 3d 1536, 800 N.E.2d 369; *see also Cleveland Elec. Illuminating Co. v. City of Cleveland*, 37 Ohio St. 3d 50, 524 N.E.2d 441, 442 (1988), paragraph three of the syllabus ("In matters of construction, it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used."). In short, when construing a statute, "none of the language employed therein should be disregarded." *Layman v. Woo*, 1997-Ohio-195, 78 Ohio St. 3d 485, 487, 678 N.E.2d 1217, 1218 (quotation omitted).

Consistent with that well-settled principle, courts should give meaning to the use of the phrase "recoverable by the plaintiff" in R.C. 2315.21(B)(2). And where a term is undefined in the statute, courts should use the term's common and ordinary meaning. *See, e.g.*, *State v. Nelson*, 2020-Ohio-3690, ¶ 18, 162 Ohio St. 3d 338, 342, 165 N.E.3d 1110, 1115 ("In the absence of a definition of a word or phrase used in a statute, words are to be given their common, ordinary, and accepted meaning.") (quoting *State v. Black*, 142 Ohio St.3d 332, 2015-Ohio-513, 30 N.E.3d 918, ¶ 39); *Layman*, 1997-Ohio-195, 78 Ohio St. 3d at 487, 678 N.E.2d at 1218 ("It is a basic principle of statutory construction that unless a different intention appears in a statute, words in a statute shall be construed in their ordinary and natural meaning to effectuate the intent of the legislature.").

Amicus curiae respectfully submits that the common and ordinary meaning of the term "recoverable" is known and is self-evident, particularly in light of its use in related sections of the Revised Code. In any event, however, this Court has instructed that when "determining the 'common and ordinary meaning' of words, courts may look to dictionaries." *Athens v. McClain*, 2020-Ohio-5146, ¶ 30, 163 Ohio St. 3d 61, 68, 168 N.E.3d 411, 419; *see also State v. Nelson*,

2020-Ohio-3690, ¶ 18, 162 Ohio St. 3d 338, 342, 165 N.E.3d 1110, 1115 (looking to legal dictionaries to define a term). In this instance, dictionaries define "recoverable" as capable of being recovered, able to be recovered, or capable of being regained or restored. *See, e.g.*, https://www.merriam-webster.com/legal/recoverable (visited May 15, 2022) (defining recoverable as "capable of being recovered"); https://www.dictionary.com/browse/recoverable (visited May 15, 2022) ("able to recover or be recovered"); https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100408460 (visited May 15, 2022) ("Capable of being recovered, regained, or restored."). *Amicus curiae* respectfully submits that the portion of a compensatory award for noneconomic loss above the capped amount, which a plaintiff cannot obtain and which courts are prohibited from including in the judgment, is not "recoverable" within the ordinary meaning of that term.

In summary, R.C. 2315.18(B)(2), (E)(1), and (F)(1) work together to cap the amount recoverable by a plaintiff for noneconomic damages under R.C. 2315.21(B)(2). By its own terms, R.C. 2315.21(B)(2) requires answers to an interrogatory "that specifies the total compensatory damages *recoverable by the plaintiff* from each defendant." (emphasis added) And R.C. 2315.21(D)(2)(a) prohibits a court from entering judgment for punitive damages "in excess of two times the amount of the compensatory damages awarded to the plaintiff from that defendant, as determined pursuant to [R.C. 2315.21(B)(2)]." The most natural reading of these provisions, when considered together, is that a punitive damages award may include double the *capped* amount of a jury award for noneconomic loss, but not a larger uncapped and unrecoverable amount.

For these reasons, *amicus curiae* the Ohio Chamber of Commerce asks this Court to grant jurisdiction and clarify the proper interpretation of these important statutes.

V. CONCLUSION

For the foregoing reasons, *amicus curiae* the Ohio Chamber of Commerce urges this Court to grant jurisdiction. The case raises an issue of public and great general interest regarding the correct interpretation and application of R.C. 2315.21. This Court should reverse the Court of Appeals on that issue and hold that punitive damages are limited to twice the recoverable compensatory damages awarded to a plaintiff from a defendant.

Respectfully submitted,

/s/ Larry J. Obhof, Jr.
Larry J. Obhof, Jr. (0088823)
**Counsel of Record*
Mark D. Wagoner (0068577)
SHUMAKER, LOOP & KENDRICK, LLP
41 South High Street, Suite 2400
Columbus, OH 43215
Tel: 614.463.9441
Fax: 614.463.1108
lobhof@shumaker.com
mwagoner@shumaker.com

Kevin D. Shimp (0097660)
OHIO CHAMBER OF COMMERCE
34 S. Third St., Suite 100
Columbus, Ohio 43215
Tel: 614.228.4201
kshimp@ohiochamber.com

Counsel for Amicus Curiae
the Ohio Chamber of Commerce

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of May 2022, a copy of the foregoing Memorandum in Support of Jurisdiction of *Amicus Curiae* the Ohio Chamber of Commerce was served on all counsel of record via the Court's electronic filing system, as well as by email upon the following counsel:

Terry A. Moore (0015837)
Jacqueline Bollas Caldwell (0029991)
Owen J. Rarric (0075367)
Matthew W. Onest (0087907)
KRUGLIAK, WILKINS, GRIFFITHS
& DOUGHERTY CO., L.P.A.
4775 Munson Street, N.W.
P.O. Box 36963
Canton, OH 44735-6963
Tel: 330.497.0700
Fax: 330.497.4020
tmoore@kwgd.com / jcaldwell@kwgd.com
orarric@kwgd.com / monest@kwgd.com

Attorneys for Plaintiffs-Appellees Gibson Bros., Inc., David R. Gibson, and Allyn W. Gibson

Lee E. Plakas (0008628)
Brandon W. McHugh (0096348)
PLAKAS | MANNOS
200 Market Avenue North, Suite 300
Canton, OH 44702
Tel: 330.455.6112
Fax: 330.455.2108
lplakas@lawlion.com
bmchugh@lawlion.com

James N. Taylor (0026181)
JAMES N. TAYLOR CO., L.P.A.
409 East Ave., Suite A
Elyria, OH 44035
Tel: 440.323.5700
taylor@jamestaylorlpa.com

Additional Attorneys for Plaintiffs-Appellees Gibson Bros.,Inc., David R. Gibson, and Allyn W. Gibson

Benjamin C. Sassé (0072856)
Elisabeth C. Arko (0095895)
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113
Tel: 216.592.5000
Fax: 216.592.5009
benjamin.sasse@tuckerellis.com
elisabeth.arko@tuckerellis.com

Attorneys for Defendants-Appellants Oberlin College and Dr. Meredith Raimondo

Ronald D. Holman, II (0036776)
Julie A. Crocker (0081231)
TAFT STETTINIUS & HOLLISTER LLP
200 Public Sq., Suite 3500
Cleveland, OH 44114-2302
Tel: 216.241.2838
Fax: 216.241.3707
rholman@taftlaw.com
jcrocker@taftlaw.com

Richard D. Panza (0011487)
Matthew W. Nakon (0040497)
Rachelle Kuznicki Zidar (0066741)
WICKENS HERZER PANZA
35765 Chester Rd.
Avon, OH 44011-1262
Tel: 440.695.8000
Fax: 440.695.8098
RPanza@WickensLaw.com
MNakon@WickensLaw.com
RZidar@WickensLaw.com

Seth D. Berlin (PHV #21649-2020)
Joseph Slaughter (PHV #21599-2020)
BALLARD SPAHR LLP
1909 K St., NW
Washington, D.C. 20006
Tel: 202.661.2200
Fax: 202.661.2299
berlins@ballardspahr.com
slaughterj@ballardspahr.com

Additional Attorneys for Defendants-Appellants Oberlin College and Dr. Meredith Raimondo

/s/ Larry J. Obhof, Jr.
Larry J. Obhof, Jr. (0088823)
Counsel for Amicus Curiae the Ohio Chamber of Commerce