

1-1-1997

The Noneconomic Damages Cap of Ohio Revised Code Section 2744.05(C)(1): Legislative Usurpation of the Constitutional Right to Trial by Jury

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Recommended Citation

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THE NONECONOMIC DAMAGES CAP OF OHIO REVISED CODE
SECTION 2744.05(C)(1): LEGISLATIVE USURPATION OF THE
CONSTITUTIONAL RIGHT TO TRIAL BY JURY

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I. INTRODUCTION

Robert M. Gladon was assaulted and battered in Cleveland, Ohio by two unknown assailants while waiting for a Greater Cleveland Regional Transit Authority (GCRTA) rapid train.¹ Gladon, while in a state of unconsciousness and with his legs draped over the train rail, was struck by an approaching train, causing him serious and permanent injuries.² After Gladon received a jury verdict in excess of two million dollars for his pain and suffering, the City of Cleveland appealed, arguing that Ohio Revised Code section 2744.05(C)(1) limited a victim's noneconomic damages against a political subdivision to \$250,000.³ The Ohio Court of Appeals for the Eighth Appellate District upheld the jury verdict,⁴ finding section 2744.05(C)(1) to be constitutionally invalid since it infringed upon the right to trial by jury.⁵ Reversing the decision

1. Gladon v. Greater Cleveland Regional Transit Auth., 662 N.E.2d 287, 290 (Ohio 1996).

2. *Id.*

3. See Gladon v. Greater Cleveland Regional Transit Auth., No. 64029, 1994 Ohio App. LEXIS 902 (Ohio Ct. App. Mar. 10, 1994), *rev'd on other grounds*, 662 N.E.2d 287 (Ohio 1996). "'Political subdivision' or 'subdivision' means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state." OHIO REV. CODE ANN. § 2744.01(F) (Anderson 1992).

4. Gladon, 1994 Ohio App. LEXIS 902, at *2.

5. *Id.* at *9. The right to trial by jury in Ohio derives from Article I, Section 5 of the Ohio Constitution.

of the court of appeals on other grounds, the Ohio Supreme Court declined to address the constitutionality of Ohio Revised Code section 2744.05(C)(1) and instead focused upon the duty owed to Gladon by the train operator.⁶ In a vigorous dissent, Justice Douglas called for scholarly debate on the constitutionality of damage caps as applied to the right to trial by jury.⁷

In response to Justice Douglas' challenge, this Note argues that a plaintiff possesses the fundamental constitutional right to trial by jury in a civil action against a political subdivision because the jury trial right existed before the Ohio Constitution was adopted in 1851. As such, this Note establishes that section 2744.05(C)(1) of the Ohio Revised Code facially violates a plaintiff's substantive due process right to jury trial since the statute undermines the legal duty of a jury to determine *all* factual issues, including the assessment of recoverable noneconomic damages.⁸ Section II of this Note sets forth the pertinent text of Ohio Revised Code section 2744.05(C)(1) and examines the historical progression leading to the enactment of chapter 2744, the Ohio Political Subdivision Tort Liability Act.⁹ Section III provides a background for the constitutional right to trial by jury.¹⁰ Section III also critically analyzes the legislature's authority to pass statutes limiting recoverable noneconomic damages while considering the due process implications of such legislative enactments.¹¹ Section IV concludes that Ohio Revised Code section 2744.05(C)(1) should be repealed since it unconstitutionally violates an individual's fundamental right to trial by jury.

II. BACKGROUND

Section 2744.05(C)(1) of the Ohio Revised Code limits the amount of noneconomic damages that a plaintiff may recover from a political subdivision in a civil suit.¹² The state's interest in promulgating this piece of legislation is to safeguard the financial stability of political subdivisions.¹³ This interest, however, has not always been of utmost importance to the Ohio legislature or judiciary. During the early nineteenth century, emphasis was placed on establishing a rule that promoted "substantial justice" by considering municipal

6. *Gladon*, 662 N.E.2d at 291.

7. *Id.* at 301 (Douglas, J., dissenting).

8. The author of this article acknowledges that § 2744.05(C)(1) also may be attacked on equal protection grounds, but such an argument is beyond the scope of this Note. For a discussion of the equal protection issue, see, e.g., *Gladon*, 1994 Ohio App. LEXIS 902, at *14 (arguing that § 2744.05(C)(1) "creates differing classifications between non-wrongful death tort sufferers and wrongful death tort sufferers that impact on the non-wrongful death tort sufferer's rights to have a jury fully litigate the factual issues of damages").

9. See *infra* notes 12-44 and accompanying text.

10. See *infra* notes 45-69 and accompanying text.

11. See *infra* notes 70-141 and accompanying text.

12. OHIO REV. CODE ANN. § 2744.05(C)(1) (Anderson 1992).

13. *Fabrey v. McDonald Village Police Dep't*, 639 N.E.2d 31, 34 (Ohio 1994).

corporations and individuals equally responsible in tort.¹⁴ Justice was promoted only by spreading the losses inflicted upon private individuals among those who benefited from the implementation of governmental activity.¹⁵ This traditional and impartial outlook, however, has since been abrogated, resulting in the legislative usurpation of Ohio's constitutional right to trial by jury.

A. Statutory Language of Ohio Revised Code Section 2744.05(C)(1)

The text of section 2744.05 states the following:

Notwithstanding any other provisions of the Revised Code or rules of a court to the contrary, in an action against a political subdivision to recover damages for injury, death, or loss to persons or property caused by an act or omission in connection with a governmental or proprietary function:

(C)(1) There shall not be any limitation on compensatory damages that represent the actual loss of the person who is awarded the damages. However, except in wrongful death actions brought pursuant to Chapter 2125 of the Revised Code, damages that arise from the same cause of action, transaction or occurrence, or series of transactions or occurrences and that do not represent the actual loss of the person who is awarded the damages shall not exceed two hundred fifty thousand dollars in favor of any one person. The limitation on damages that do not represent the actual loss of the person who is awarded the damages provided in this division does not apply to court costs that are awarded to a plaintiff, or to interest on a judgment rendered in favor of a plaintiff, in an action against a political subdivision.¹⁶

To fully understand the implications of the damage cap created by section 2744.05(C)(1), it is important to consider the evolution of political subdivision immunity, also commonly referred to as municipal corporation immunity.

B. Evolution of Political Subdivision Immunity

"In the early reported American cases it apparently was assumed, without argument and as a matter of basic justice, that municipal corporations were subject to actions for torts."¹⁷ The early cases in Ohio also support the idea of tort liability against municipal corporations.¹⁸ In 1854, however, the liability of Ohio municipal corporations took a drastic turn with *City of Dayton v.*

14. Robert M. Hunter & Ralph E. Boyer, *Tort Liability of Local Governments in Ohio*, 9 OHIO ST. L.J. 377, 379-80 (1948).

15. *Id.*

16. OHIO REV. CODE ANN. § 2744.05.

17. *Hack v. City of Salem*, 189 N.E.2d 857, 862 (Ohio 1963) (Gibson, J., concurring) (involving a negligence action against a municipality that owned and operated a community swimming pool).

18. *Id.* at 863; see, e.g., *McCombs v. Town Council of Akron*, 15 Ohio 475 (1846); *Rhodes v. City of Cleveland*, 10 Ohio 160 (1840); *Goodloe v. City of Cincinnati*, 4 Ohio 500 (1831); *Smith v. City of Cincinnati*, 4 Ohio 514 (1831); see *infra* notes 57-69 and accompanying text for a full discussion of facts giving rise to tort liability.

Pease.¹⁹ The *Pease* case represented a new era in the realm of municipal corporation liability. For the first time, the Ohio Supreme Court began to draw a distinction between a municipality's discretionary acts and its ministerial acts when determining tort liability.²⁰ According to this distinction, immunity only attached when the duties of the municipality involved judgment, discretion, and the prescription of rules that regulated governmental conduct.²¹ When a municipal corporation, however, undertook to implement its own established regulations, then the municipality was subject to liability.²²

The *Pease* distinction was subsequently refined when the Ohio Supreme Court recognized a dichotomy between governmental and proprietary functions.²³ *City of Cincinnati v. Cameron*²⁴ outlined this dichotomy by recognizing that municipal immunity attached when the municipality exercised powers that benefited the community as a whole and when it acted on behalf of the state government [*i.e.*, governmental function].²⁵ A municipality, however, was held liable as a private individual and entity when it acted only for the benefit of its own citizens and not for the benefit of the state as a whole [*i.e.*, proprietary function].²⁶ In 1919, the Ohio Supreme Court abandoned the *Cameron* test and resurrected the ministerial-discretionary test adopted in *Pease*.²⁷ This reversion, though, did not last long since the Ohio Supreme Court, in the 1922 case of *Aldrich v. City of Youngstown*,²⁸ reinstated the governmental-proprietary distinction.²⁹

Despite vacillation by the Ohio Supreme Court, the doctrine of municipal sovereignty, based upon the distinction between governmental and proprietary functions, endured until 1982. Then, in the landmark case of *Haverlack v. Portage Homes, Inc.*,³⁰ the court abrogated the doctrine of municipal sovereignty and held that "[a] municipal corporation, unless immune by statute, is liable for its negligence in the performance or nonperformance of its acts."³¹ The court further noted that "[s]tare decisis alone is not a sufficient reason to retain the doctrine which serves no purpose and produces such harsh results."³²

The overall conclusion reached in *Haverlack* did not prosper for long. In

19. 4 Ohio St. 80 (1854).

20. *See id.* at 80.

21. *Id.* at 99 (e.g., voting by municipal office holders to construct a bridge within the municipality).

22. *Id.* at 100 (e.g., construction of a bridge by the municipality).

23. *Western College of Homeopathic Medicine v. City of Cleveland*, 12 Ohio St. 376, 377-78 (1861) (finding liability for proprietary acts, but immunity for governmental acts).

24. 33 Ohio St. 336 (1878).

25. *Id.* at 367-68 (construction of sewers is not a power for governmental purposes).

26. *Id.* (keeping the streets repaired is a special legislative grant that all citizens have an interest in).

27. 4 Ohio St. 80 (1854); *see supra* notes 19-22 and accompanying text for discussion of *Pease*.

28. 140 N.E. 164 (Ohio 1922).

29. *Id.* at 165.

30. 442 N.E.2d 749 (Ohio 1982).

31. *Id.* at 752.

32. *Id.*

Enghauser Manufacturing Co. v. Eriksson Engineering Ltd.,³³ the Ohio Supreme Court, while recognizing municipal liability, returned to the antiquated, discretionary-ministerial test adopted in *Pease*.³⁴ In *Enghauser*, the court noted that no tort action would lie against a municipal corporation for acts involving the exercise of a legislative or judicial function, or for the exercise of an executive or planning function.³⁵ A decision to engage in a certain activity or function would open the municipality to liability for the negligence of its employees and agents in the performance of their activities, as it would private corporations and persons.³⁶ In response to the *Enghauser* decision, the Ohio General Assembly passed the Political Subdivision Tort Liability Act³⁷ on November 20, 1985. The Act provides the guidelines for imposing municipal liability in Ohio and additionally limits the amount of noneconomic damages recoverable in a suit against a political subdivision.³⁸

The Ohio General Assembly enacted chapter 2744 in an effort to limit the implications of *Haverlack* which had "abrogated the doctrine of sovereign immunity for political subdivisions to the extent it was rooted in the common law."³⁹ The underlying statutory purpose of chapter 2744 is twofold.⁴⁰ First, the statute preserves the financial integrity of Ohio political subdivisions by limiting the liability of those subdivisions.⁴¹ Second, the statute allows injured persons, who might otherwise have no source of reimbursement for their damages due to the constraints of sovereign immunity, to recover for a tort committed by a political subdivision.⁴² With exceptions, Ohio Revised Code chapter 2744 immunizes those municipal functions which are classified as "governmental" and exposes a political subdivision to liability for those functions deemed to be "proprietary."⁴³ Rather than define the manner and

33. 451 N.E.2d 228 (Ohio 1983).

34. *Id.*; 4 Ohio St. 80 (1854); see *supra* notes 19-22 and accompanying text for discussion of *Pease*.

35. *Enghauser Mfg. Co. v. Eriksson Eng'g Ltd.*, 451 N.E.2d 228, 229 (1983).

36. *Id.*

37. AM. SUB. H.B. 176, 116th General Assembly (1985) (codified at OHIO REV. CODE ANN. §§ 2744.01-.09 (Anderson 1992)) [hereinafter Act]. The various sections of chapter 2744 are enumerated as follows: § 2744.01 Definitions; § 2744.02 Classification of functions of political subdivisions; liability; exceptions; § 2744.03 Defenses or immunities of subdivision and employee; § 2744.04 Statute of limitations; demand for judgment; § 2744.05 Limitations on damages awarded; § 2744.06 Exemption from attachment; payment of judgments; annual installments; § 2744.07 Defense and indemnification of employees; authority to settle; § 2744.08 Liability insurance; self-insurance programs; waiver of immunity; § 2744.081 Joint self-insurance pools; risk-management programs; § 2744.09 Actions and claims exempted from provisions. OHIO REV. CODE ANN. §§ 2744.01-.09 (Anderson 1992).

38. *Id.*

39. *Garrett v. City of Sandusky*, 624 N.E.2d 704, 707 (Ohio 1994) (Pfeifer, J., concurring).

40. See, e.g., *Fabrey v. McDonald Police Dep't*, 639 N.E.2d 31, 34 (Ohio 1994); *Wilson v. Stark County Dep't of Human Servs.*, 639 N.E.2d 105 (Ohio 1994); *Galanos v. City of Cleveland*, 638 N.E.2d 530, 532 (Ohio 1994); *Menefee v. Queen City Metro*, 550 N.E.2d 181, 182 (Ohio 1990).

41. *Menefee*, 550 N.E.2d at 182.

42. *Id.*

43. *Garrett*, 624 N.E.2d at 707 (Pfeifer, J., concurring). The exceptions to political subdivision liability are provided in § 2744.02(B)(1)(a)-(c). An example of an exception is the negligent operation of a motor vehicle by a member of the municipal police department or fire department. OHIO REV. CODE ANN. §

venue in which tort actions against a political subdivision may be brought, the basis of chapter 2744 is to define the extent to which political subdivisions may be sued.⁴⁴

III. ANALYSIS

In examining the constitutionality of a legislative enactment, a premise exists that all such laws are presumed to be constitutional.⁴⁵ In Ohio, the constitutionality of Ohio Revised Code section 2744.05(C)(1) is questionable since the Ohio Supreme Court has yet to address the constitutional validity of the statute.⁴⁶ The Ohio Court of Appeals for the Eighth Appellate District, however, has determined section 2744.05(C)(1) to in fact violate a plaintiff's right to trial by jury on substantive due process grounds.⁴⁷

In addressing the constitutionality of Ohio Revised Code section 2744.05(C)(1) under a due process analysis, the Ohio Supreme Court must embrace a three step process.⁴⁸ First, the court must determine whether a plaintiff is guaranteed a fundamental right to trial by jury in cases involving political subdivision liability.⁴⁹ If so, the court must next determine whether section 2744.05(C)(1) infringes on that jury right.⁵⁰ Third, if the court concludes that section 2744.05(C)(1) infringes on the fundamental right to trial by jury, it must determine whether there is a compelling state interest that justifies the limitation of that right.⁵¹ This Note argues that under this three

2744.02(B)(1)(a), (b).

44. *Garrett*, 624 N.E.2d at 707 (Pfeifer, J., concurring).

45. *Roosevelt Properties Co. v. Kinney*, 465 N.E.2d 421, 427 (Ohio 1984) (per curiam).

46. See *supra* note 6 and accompanying text.

47. *Gladon v. Greater Cleveland Regional Transit Auth.*, No. 64029, 1994 Ohio App. LEXIS 902 (Ohio Ct. App. Mar. 10, 1994), *rev'd on other grounds*, 662 N.E.2d 287 (Ohio 1996). The Ohio Supreme Court reversed the Eighth Appellate District on the basis of improper jury instructions. This reversal did not overturn the unconstitutional finding of § 2744.05(C)(1).

48. See generally *Roe v. Wade*, 410 U.S. 113 (discussing the process for testing the constitutionality of a challenged governmental statute or regulation burdening a "fundamental" or "nonfundamental" right), *reh'g denied*, 410 U.S. 959 (1973).

49. See *infra* notes 53-69 and accompanying text. The initial inquiry into the constitutionality of a statute is the level of scrutiny to be applied to the statutory classification under attack. A classification is subject to strict scrutiny when it impermissibly interferes with the exercise of a fundamental right explicitly or implicitly protected by the Constitution (e.g., voting, travel, or privacy) or operates to the particular disadvantage of a "suspect" class (e.g., race). See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, *reh'g denied*, 411 U.S. 959 (1973). Gender discrimination cases are scrutinized under an intermediate level of scrutiny. See *United States v. Virginia*, 116 S. Ct. 2264 (1996). The rational basis test is applicable to economic and social legislation not involving "suspect" classes, impingement of fundamental rights, or instances of gender discrimination. See *McGowan v. Maryland*, 366 U.S. 420 (1961).

50. See *infra* notes 70-110 and accompanying text.

51. See *infra* notes 111-141 and accompanying text. Under the strict scrutiny test, the government must "demonstrate that its classification has been precisely tailored to serve a compelling governmental interest." *Plyler v. Doe*, 457 U.S. 202, 217 (1982). To survive an intermediate level of scrutiny, the government must show that its classification serves an exceedingly persuasive governmental justification. *Virginia*, 116 S. Ct. at 2275-76. A governmental classification under the rational basis test "will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan*, 366 U.S. at 426.

step process, the Ohio Supreme Court should conclude that section 2744.05(C)(1) violates the fundamental constitutional right to trial by jury and cannot be justified by a compelling state interest.⁵² Therefore, the Ohio State General Assembly should repeal Ohio Revised Code section 2744.05(C)(1).

A. Constitutional Infringement upon the Right to Trial by Jury

The Ohio Constitution provides: "The right of trial by jury shall be inviolate,⁵³ except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury."⁵⁴ This constitutional provision, however, does not guarantee a right to a jury trial in all cases, rather the Article I, Section 5 "guaranty only preserves the right of trial by jury in cases where . . . it existed previously to the adoption of the Constitution."⁵⁵ Thus, to determine whether citizens possess a right to trial by jury in cases involving a cause of action against a municipal corporation for its negligent acts, it is necessary to examine the common law at the time the Ohio Constitution was adopted in 1851.⁵⁶

52. The outcome of any case that addresses the constitutionality of Ohio Revised Code § 2744.05(C)(1) will have tremendous ramifications on the validity of all Ohio statutes which limit the amount of recoverable economic and noneconomic damages in negligence civil suits.

53. "Inviolable" means "free from substantial impairment." BLACK'S LAW DICTIONARY 826 (6th ed. 1990).

54. OHIO CONST. art. I, § 5. *But see* *Etheridge v. Medical Ctr. Hosps.*, 376 S.E.2d 525, 529 (Va. 1989) (upholding medical malpractice caps on the grounds that such caps do not violate the right to trial by jury). Unlike most states, Virginia does not hold the right to trial by jury to be inviolate. The Virginia constitution provides "[t]hat in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred." VA. CONST. art. I, § 11. Thus, the constitutional importance of the right to trial by jury in Virginia may be less significant than in other states. Virginia's lack of significance on the trial by jury right illuminates the court's decision to uphold the medical malpractice statute. Essentially, the judiciary is deferring to the decisions of the Virginia legislature by undermining the importance of an individual's right to trial by jury. The underlying and fundamental purpose of a jury, therefore, is abrogated if the legislature is allowed to override the provincial duty of a jury to assess damages, as a fact-finding obligation, at the conclusion of a civil trial.

55. *Belding v. Ohio ex rel. Heifner*, 169 N.E. 301, 302 (Ohio 1929).

56. In determining the guarantee of the right to trial by jury, a court must first consider whether the jury right existed prior to the adoption of the Ohio Constitution. Controversy exists, however, as to which constitution a court should examine, the Ohio Constitution of 1802 or the Ohio Constitution of 1851, to secure the fundamental right to trial by jury. Some case law suggests that the guaranty of the right to trial by jury, in the Ohio Constitution, means the right of trial by jury as it was recognized by the common law at the time of the adoption of the first constitution of Ohio in 1802. *See* *Mason v. Ohio ex rel. McCoy*, 50 N.E. 6, 9 (Ohio 1898). Other case law suggests that Article I, Section 5 of the Ohio Constitution guarantees the right to trial by jury only in those cases where the right existed previous to the adoption of Article I, Section 5 in 1851. *See Belding*, 169 N.E. at 302. Should a court rely on common law prior to the adoption of the November 29, 1802 constitution, it will find that a municipality could be found liable for its negligent acts or that of its employees. *See Hooe v. Alexandria*, 12 F. Cas. 461 (D.C. Cir. 1802) (No. 6666) (involving a jury trial for the negligent acts of a city employee in which no distinction was made between the liability of a private or public corporation). The author of this Note, however, assumes for two reasons that the proper test is whether the right to trial by jury existed prior to the Ohio Constitution of 1851. First, Ohio was not a state before 1803. If the court were to adopt the 1802 test, the only frame of reference it could rely on would be a survey of those rights enjoyed by citizens of other states or even England. *See, e.g., Russell v. Men of Devon*, 100 Eng. Rep. 359 (1788). Second, the 1851 test appears to be the most prevalent. *See, e.g.,* Published by eCommons, 1996

In *Goodloe v. City of Cincinnati*,⁵⁷ an 1831 case involving the city's careless repair of a street that damaged abutting property, the Ohio Supreme Court held that the City of Cincinnati was responsible to the land owner for its negligent injury.⁵⁸ The court stated:

When the corporation of a town grades the streets, the object is the benefit of the whole town. If an individual is injured, it is right he should have redress against all upon whose account the injury was perpetrated. There is no justice in sending him to seek redress from an irresponsible agent.⁵⁹

The court emphasized that, "[w]here benefits are derived, the corporation enjoys them. Where injury is inflicted, through their means, they ought to be responsible for it."⁶⁰ On remand to the trial court, the jury awarded the plaintiff one hundred dollars in damages as a result of the city's actions.⁶¹

Similarly, in the 1840 case of *Rhodes v. City of Cleveland*,⁶² the plaintiff brought a suit involving negligence for cutting ditches and water-courses in a manner that caused the water to overflow and wash away the plaintiff's land.⁶³ At trial, a jury found for the City of Cleveland; the plaintiff subsequently appealed to the Ohio Supreme Court.⁶⁴ In reversing the trial court decision, the *Rhodes* court expressly stated that a municipal corporation, like an individual, is liable in damages for the injuries it inflicts upon an aggrieved party.⁶⁵ The court reasoned "that justice and good morals require that a corporation should repair a consequential injury, which ensues from the exercise of its functions."⁶⁶

Furthermore, in 1846, the holding of *Rhodes* was embraced by the Ohio Supreme Court in *McCombs v. Town Council of Akron*.⁶⁷ After an appeal on the basis of improper jury instructions, the court concluded that a municipal corporation, like an individual, is liable for injuries resulting to the property of others from the acts of such corporation and its employees.⁶⁸ The majority opinion noted that if a municipal corporation sees it proper to construct a street for the good of all within the city limits, it is nothing more than right that an

Sorrell v. Thevenir, 633 N.E.2d 504, 510 (Ohio 1994); *Belding*, 169 N.E. at 302. Thus, the following analysis will demonstrate that the right to trial by jury is guaranteed to all plaintiffs in actions against a political subdivision.

57. 4 Ohio 500 (1831).

58. *Id.* at 500.

59. *Id.* at 514.

60. *Id.*

61. *Id.*; see also *Smith v. City of Cincinnati*, 4 Ohio 514, 514 (1831) (awarding the plaintiff a jury verdict for \$250 in damages after applying the same principle as *Goodloe*, except that the act complained of was not charged as malicious).

62. 10 Ohio 160 (1840).

63. *Id.* at 160.

64. *Id.*

65. *Id.* at 161.

66. *Id.*

67. 15 Ohio 475 (1846).

68. *Id.* at 475.

injury done to a single individual should be shared by all.⁶⁹ Thus, these cases support the proposition that the right to jury trial was recognized in actions against a municipality prior to the adoption of the Ohio Constitution in 1851. Therefore, the right to jury trial is guaranteed to all citizens who bring suit against a political subdivision of Ohio.

B. Ohio Revised Code Section 2744.05(C)(1) Violates the Right to Trial by Jury

The purpose of this country's civil judicial system is to redress aggrieved and injured plaintiffs.⁷⁰ The core rationale for a civil tort suit is to wholly compensate and remedy a plaintiff who has been injured by the actions of a defendant.⁷¹ An adequate remedy at law is "one that affords relief with reference to the matter in controversy, and which is appropriate to the particular circumstances of the case."⁷² Section 2744.05(C)(1) of the Ohio Revised Code, however, falls short of properly compensating and relieving injured victims for their pain and suffering, loss of consortium and the like.

The right to trial by jury is a fundamental right of monumental proportions. Throughout the history of the human race, the right to trial by jury has been viewed as one of the most fundamental democratic institutions—the crown jewel of this country's precious liberty.⁷³ "Trial by jury [is] the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution."⁷⁴ In civil actions, the right to jury trial was considered by the founders of this Nation as an important bulwark against tyranny and corruption.⁷⁵ Too precious to be left to the whim of the sovereign or that of the judiciary, the jury right acted as a safeguard against oppressive governmental control.⁷⁶ Trial by a jury of laymen rather than by a sovereign's judges was important to the founding fathers of this country.⁷⁷ "[J]uries represent the layman's common sense, the 'passional elements in our nature,' and thus keep the administration of law in accord with the wishes and feelings of the community."⁷⁸

69. *Id.* at 481.

70. *Pryor v. Webber*, 263 N.E.2d 235, 238 (Ohio 1970).

71. *Id.*

72. *City of Mt. Vernon v. Berman & Reed*, 125 N.E. 116, 120 (Ohio 1919).

73. *Gladon v. Greater Cleveland Regional Transit Auth.*, 662 N.E.2d 287, 302 (Ohio 1996) (Douglas, J., dissenting).

74. 1 KENDALL J. FEW, IN DEFENSE OF TRIAL BY JURY 214 (1993) (quoting Thomas Jefferson).

75. *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 343 (1979) (Rehnquist, J., dissenting).

76. *Id.*

77. *Id.* at 343-44.

78. *Id.* at 344 (quoting OLIVER WENDALL HOLMES, COLLECTED LEGAL PAPERS 237 (1920)). *But see* *Franklin v. Mazda Motor Corp.*, 704 F. Supp. 1325 (D. Md. 1989). The Maryland Supreme Court has upheld noneconomic damage caps on the basis that such limitations do not violate the jury trial guarantees of the federal or Maryland state constitutions. *Id.* The court noted that the objective of awarding damages was "to compensate, no more and no less." *Id.* at 1332. As justification for its position, the majority concluded that

In Ohio, a jury, as a trier of fact, is impaneled in a civil suit to provide two distinct services. First, a jury must determine the culpability of civil defendants.⁷⁹ Second, the jury must assess, as a determination of fact, the amount of damages recoverable by a plaintiff.⁸⁰ As observed by the Ohio Supreme Court in *Toledo, Columbus and Ohio River Railroad Co. v. Miller*,⁸¹ "[t]he assessment of damages is so thoroughly within the province of a jury that we do not feel . . . we have the right to enter this field . . . and to substitute our judgment for theirs, unless their judgment appears to have been the result of passion and prejudice and manifestly excessive."⁸² Essentially, the right to trial by jury includes the right to have the jury determine *all* factual issues, including the assessment of compensatory damages to which a plaintiff may be entitled.⁸³

The right to a jury trial in Ohio does not involve merely a question of procedure.⁸⁴ Deriving from the Magna Charta, the jury trial right is reasserted

an award of pain and suffering damages should "not be subject to guesswork or speculation" by a jury. *Id.* Since there is no standard for measuring and awarding noneconomic damages, the *Franklin* court reasoned that a statutory cap of \$350,000 mitigated the chance for conjectured jury awards and represented a permissible application of legislative authority. *Id.* at 1332-33.

The reasoning and holding of the *Franklin* court, however, is misplaced. Allowing a jury to determine the amount of damages up to the \$350,000 mark does not alleviate the chance for guesswork and speculation by a jury anymore than without the cap. A jury is given wide latitude in determining verdicts such as the death penalty in criminal suits as well as punitive damages in civil suits. It is important to recognize that a legislature's decision to cap recoverable damages is, arguably, just as arbitrary as that of a jury. The jury's knowledge of a particular case, however, is much greater than that of a state assembly since the jury is responsible, as a trier of fact, to sit in the courtroom and listen to the merits of a case.

Moreover, the Maryland legislature has failed to consider situations and circumstances where a plaintiff may be entitled to more than the statutory cap. In some instances, \$350,000 is not sufficient enough to fully compensate an aggrieved plaintiff. In essence, the Maryland legislature has replaced its own judgment for that of the jury by predetermining a plaintiff's pain and suffering to be worth no more than \$350,000.

79. *Seth v. Capitol Paper Co.*, No. 11539, 1990 Ohio App. LEXIS 3796, at *24-25 (Ohio Ct. App. Aug. 29, 1990).

80. *Id.*

81. 140 N.E. 617 (Ohio 1923).

82. *Id.* at 621; see also *Spicer v. Armco Steel Corp.*, 322 N.E.2d 279, 280 (Ohio Ct. App. 1974) (per curiam) (noting that "it is axiomatic that the assessment of damages is thoroughly and peculiarly within the province of the jury which heard the testimony and appraised the witnesses as the incidents giving rise to the injury unfolded before it, and that such appraisal should not be disturbed, either upward or downward"). *Id.*

83. *Miller v. Wikel Mfg. Co., Inc.*, 545 N.E.2d 76, 81 (Ohio 1989) (Douglas, J., concurring in part and dissenting in part). Some states, however, do not endorse the notion that a jury is responsible for assessing the dollar value of a judgment and have thereby held damage caps to be a permissible and constitutional exercise of legislative authority. In Virginia, the supreme court upheld a \$750,000 medical malpractice cap against the constitutional right to trial by jury. See *Etheridge v. Medical Ctr. Hosps.*, 376 S.E.2d 525 (Va. 1989). Although the court recognized that a jury's fact-finding function extended to the assessment of damages, the court determined that once the facts and damages had been decided, the constitutional mandate was satisfied. *Id.* at 529. "Thereafter, it is the duty of the court to apply the law to the facts." *Id.* Furthermore, the court noted that the limitation of medical malpractice recoveries did nothing more than establish the outer limits of a remedy provided by the Virginia General Assembly. *Id.* The court reasoned that a remedy is a matter of law and not a matter of fact, and that the Virginia statute was constitutional since its application "does not apply until after a jury has completed its assigned function in the judicial process." *Id.*

84. *Sorrell v. Thevenir*, 633 N.E.2d 504, 510 (Ohio 1994) (citing *Kneisley v. Latimer-Stevens Co.*, 533 N.E.2d 743, 746 (Ohio 1988)).

both in the Constitution of the United States⁸⁵ and in the Constitution of the State of Ohio.⁸⁶ For centuries the right to a jury trial has been held to be a "fundamental constitutional right, a substantial right, and not a procedural privilege."⁸⁷ Procedural rules can limit access to the jury trial right, but cannot completely deny that right. In Ohio, the right to trial by jury, depending on the nature of the desired relief, cannot be abrogated, but it may be extended.⁸⁸ Legislatively capping noneconomic damages at \$250,000, in accordance with Ohio Revised Code section 2744.05(C)(1), unconstitutionally abrogates the fundamental and substantive right to trial by jury.

Many jurisdictions recognize damage cap statutes to be invalid on various constitutional grounds,⁸⁹ including the right to trial by jury. In Washington, the state supreme court held that a statute which limited noneconomic damages was unconstitutional since the statute violated the right to trial by jury.⁹⁰ Like the Ohio Constitution, the Washington Constitution states that "[t]he right of trial by jury shall remain inviolate."⁹¹ Because of this constitutional right to trial by jury, litigants have a continued interest in that right, and the jury right is not allowed to be removed by legislative action.⁹² The *Sofie* court noted that a "jury is consigned under the constitution the ultimate power to weigh the evidence and determine the facts [as well as] the amount of damages in a particular case."⁹³ Therefore, the court reasoned that a statute restricting the provincial obligations of a jury to assess damages violated the state constitutional right to trial by jury enumerated in the Washington Constitution.⁹⁴

Similarly, in *Smith v. Department of Insurance*,⁹⁵ a Florida statutory cap of \$450,000 on noneconomic damages recoverable by a tort victim, violated the victim's constitutional right to access to the courts.⁹⁶ The right to access to

85. U.S. CONST. amend. VII. "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." *Id.*

86. OHIO CONST. art. I, § 5. "The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury." *Id.*; *Sorrell*, 633 N.E.2d at 510.

87. *Sorrell*, 633 N.E.2d at 510 (quoting *Cleveland Ry. Co. v. Halliday*, 188 N.E. 1, 3 (Ohio 1933)).

88. *Gunsaulus v. Pettit*, 17 N.E. 231 (Ohio 1888).

89. See, e.g., *Wright v. Central Du Page Hospital Ass'n*, 347 N.E.2d 736 (Ill. 1976) (finding \$500,000 cap constituted "special law" in violation of Illinois Constitution); *Chamberlain v. Louisiana*, 624 So. 2d 874 (La. 1993) (finding statutory cap on general damages in personal injury suit against state to be unconstitutional); *Lucas v. United States*, 757 S.W.2d 687 (Tex. 1988) (finding that \$500,000 medical malpractice cap violated open courts provision of Texas Constitution).

90. *Sofie v. Fibreboard Corp.*, 771 P.2d 711 (Wash. 1989) (en banc) (involving a tort action against asbestos manufacturers).

91. WASH. CONST. art. I, § 21. Ohio adopts this same terminology. See *supra* note 86 and accompanying text.

92. *Sofie*, 771 P.2d at 720.

93. *Id.* at 716-17 (quoting *James v. Robeck*, 490 P.2d 878 (Wash. 1971)).

94. *Id.* at 723.

95. 507 So. 2d 1080 (Fla. 1987).

96. *Id.*

the courts is provided for in the Florida Constitution.⁹⁷ Further, this constitutional right must be read in conjunction with Article I, Section 22 of the Florida Constitution which deems the right to jury trial as “inviolable.”⁹⁸ The *Smith* court stated that the plaintiff was not receiving the constitutional benefit of a jury trial as understood by the Florida Constitution when a verdict was statutorily and arbitrarily capped.⁹⁹ Thus, the Florida statute limiting damages to \$450,000 was held to be unconstitutional.¹⁰⁰

Likewise, the Supreme Court of Kansas determined that statutes setting caps on recovery in medical malpractice actions infringed upon the jury’s determination of damages.¹⁰¹ Recognizing that a jury is responsible for assessing damages, the court noted that a limitation on damages restricted the duties of a jury before the trial had even commenced.¹⁰² This limitation could be an extreme constraint upon the most severely injured.¹⁰³ Furthermore, jeopardizing the “inviolability” of Kansas’ right to jury trial by limiting damages would be an injustice to all aggrieved plaintiffs.¹⁰⁴ The court in *Bell* decided that statutes setting caps on recoverable damages for medical malpractice actions were unconstitutional based upon an infringement of the jury trial right.¹⁰⁵

Finally, in *Henderson v. Alabama Power Co.*,¹⁰⁶ a provision in the Alabama Tort Reform Act limiting awards of punitive damages to \$250,000 was also recognized as being unconstitutional.¹⁰⁷ Relying on the state constitution, the *Henderson* court affirmed the notion that the right to trial by jury shall remain “inviolable” as set forth in the Alabama Constitution.¹⁰⁸ Given this affirmation, the court held the punitive damages cap to be constitutionally invalid since the rights of the injured plaintiff outweighed those of the financially stable defendant.¹⁰⁹ Thus, various states that adopt the constitutional outlook that the right to trial by jury is “inviolable,” like Ohio, agree that statutes limiting recoverable damages are an abuse of legislative

97. FLA. CONST. of 1968, art. I, § 21.

98. *Id.* § 22.

99. *Smith*, 507 So. 2d at 1088-89.

100. *Id.* at 1095.

101. *Kansas Malpractice Victims Coalition v. Bell*, 757 P.2d 251 (Kan. 1988); *but cf. Samsel v. Wheeler Transp. Servs., Inc.*, 789 P.2d 541 (Kan. 1990) (holding statutory cap on tort plaintiff’s right to receive noneconomic losses in excess of \$250,000 does not violate plaintiff’s constitutional right to jury trial or right to reparation for injury after due process).

102. *Bell*, 757 P.2d at 258.

103. *Id.*

104. *See* KAN. CONST. Bill of Rights, § 5 (“The right of trial by jury shall be inviolable.”).

105. *Bell*, 757 P.2d at 264.

106. 627 So. 2d 878 (Ala. 1993).

107. *Id.* at 893-94; *see also Moore v. Mobile Infirmary Ass’n*, 592 So. 2d 156, 171 (Ala. 1991) (holding that a statute setting a \$400,000 limit on noneconomic damages in medical malpractice cases violated the right to trial by jury under the Alabama Constitution).

108. *Henderson*, 627 So. 2d at 893-94; *see also* ALA. CONST. art. I, § 11.

109. *Henderson*, 627 So. 2d at 893.

power.¹¹⁰ Hence, the highest courts in these states have determined that such statutes are unconstitutional and therefore must be repealed.

Likewise, Ohio Revised Code section 2744.05(C)(1) should also be deemed unconstitutional and repealed. In Ohio, the right to trial by jury is not a procedural privilege but instead a substantive right. Denying a jury its obligation to assess damages in a civil suit is an encumbrance to the entire judicial process and contradicts decades of judicial logic and reasoning.

C. Ohio Revised Code Section 2744.05(C)(1) Does Not Satisfy a Compelling State Interest

"When the government interferes with an economic or non-economic interest that is a fundamental right due process requires a substantial higher level of judicial review or scrutiny."¹¹¹ Thus, to limit a fundamental right, such as the right to trial by jury, there must be a compelling state interest.¹¹² When an interest is as fundamental as the right to trial by jury, it is axiomatic constitutional law that the issue of validity is dispositive in the areas of substantive due process.¹¹³ A statute limiting the fundamental right to trial by jury should be struck down as unconstitutional¹¹⁴ since the right to trial by jury cannot be invaded or violated by either a legislative act or a judicial order or decree.¹¹⁵ By enacting Ohio Revised Code section 2744.05(C)(1), however, the Ohio legislature has crossed the constitutional boundaries of due process; no credible evidence exists to support the notion that the Ohio General Assembly did in fact promote a compelling state interest by enacting section 2744.05(C)(1).

The primary impetus for the Political Subdivision Tort Liability Act, Ohio Revised Code chapter 2744, resulted from the threat of an insurance crisis in the State of Ohio.¹¹⁶ Ideally, the legislation would secure available and

110. See *supra* notes 89-109 and accompanying text.

111. *Gladon v. Greater Cleveland Regional Transit Auth.*, No. 64029, 1994 Ohio App. LEXIS 902, at *13 (Ohio Ct. App. Mar. 10, 1994) (citing *Griswold v. Connecticut*, 381 U.S. 479 (1965)), *rev'd on other grounds*, 662 N.E.2d 287 (Ohio 1996).

112. *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969), *overruled in part by*, *Edelman v. Jordan*, 415 U.S. 651 (1974) (overruling as to those issues concerning the 11th Amendment).

113. *Gladon*, 1994 Ohio App. LEXIS 902, at *13-14. But see *Johnson v. St. Vincent Hosp., Inc.*, 404 N.E.2d 585 (Ind. 1980). Not all states view the right to trial by jury as a substantive right. The Indiana Supreme Court upheld a \$500,000 limit on medical malpractice damages despite challenges that the limit violated the right to a jury trial. *Id.* at 604-06. The court relied upon the predication that the Indiana legislature could terminate an entirely valid and provable claim by way of a statute of limitation. *Id.* at 602. It reasoned that failure to procedurally comply with the jury trial right may validly cause the loss of that jury claim. *Id.* Although it gave no clear reasons, the *Johnson* court essentially failed to recognize the jury's province to assess damages in a civil suit by inappropriately adhering to the notion that the jury trial right was a procedural matter. *Sofie v. Fibreboard*, 771 P.2d 711, 723 (Wash. 1989) (en banc). The rationale adopted by the Indiana court, however, is unpersuasive when compared with Ohio law.

114. *Gladon*, 1994 Ohio App. LEXIS 902, at *12-14.

115. *Gibbs v. Girard*, 102 N.E. 299, 301 (Ohio 1913).

116. See cases cited *supra* note 40.

affordable insurance for political subdivisions and thereby mitigate, if not alleviate, the alleged insurance crisis.¹¹⁷ The goal of Ohio Revised Code section 2744.05(C)(1) was to putatively satisfy two objectives. The first objective is to conserve the financial resources of political subdivisions by restoring limited liability to political subdivisions and its employees for negligent acts.¹¹⁸ The second objective allows injured persons to recover legislatively prescribed damages for a tort committed by the political subdivision.¹¹⁹ The driving force of the legislature's objectives, however, can and have been achieved by other means that do not encroach upon a plaintiff's constitutional right to trial by jury in Ohio.

The most evident way to mitigate the liability of a political subdivision is through insurance. A political subdivision can obtain liability insurance, self-insure, or join a self-insurance pool.¹²⁰ Advocates of chapter 2744, however, contend that unlimited liability will exorbitantly increase insurance premiums paid by a subdivision, and thereby defeat the purpose of the Act. This argument is without merit. A year after chapter 2744 was enacted, the Ohio Department of Insurance conducted a hearing to determine the effects of the new law.¹²¹ "Representatives of several local governments said that while the bill has apparently aided in the availability of liability insurance for subdivisions, it has done virtually nothing to help hold down the cost of such underwriting policies."¹²²

Following the enactment of Ohio Revised Code chapter 2744, the Ohio Attorney General filed a lawsuit, along with seventeen other state attorney generals, against thirty-one insurers, reinsurers, and trade groups.¹²³ The suit alleged a conspiracy to restrict the standard commercial general liability coverage and to illegally exert influence on the market place to keep broader or less expensive policies from being offered.¹²⁴ The Ohio Attorney General concluded that "evidence tends to support claims that a crisis atmosphere was 'manufactured' by the [insurance] industry which provided the major impetus for the General Assembly to rewrite the state's tort and sovereign immunity laws."¹²⁵ The "insurance crisis" was not caused by the tort system and will not be solved by changes in that system.

117. See cases cited *supra* note 40.

118. See *Menefee v. Queen City Metro*, 550 N.E.2d 181, 182 (Ohio 1990).

119. *Id.*

120. OHIO REV. CODE ANN. §§ 2744.08-.081 (Anderson 1992).

121. See *Insurance Panel Readies Risk Pooling Legislation*, 57 GONGWER NEWS SERV., INC., OHIO REPORT, May 8, 1986, at 2.

122. *Id.*

123. See *Ohio Decides to Press Insurance Anti-Trust Suit*, 8 OHIO INS. 8 (1988); see also *In re Insurance Antitrust Litig.*, 723 F. Supp. 464 (N.D. Cal. 1989), *rev'd* 938 F.2d 919 (9th Cir. 1991), *aff'd in part, rev'd in part sub nom.*, *Hartford Fire Ins. Co. v. California*, 509 U.S. 764 (1993).

124. *In re Insurance Antitrust Litig.*, 723 F. Supp. at 470-71.

125. *Celebrezze Joins Suit Alleging Insurance Industry Conspiracy*, 58 GONGWER NEWS SERV., INC., OHIO REPORT, June 14, 1988, at 1.

The case of *Morris v. Savoy*¹²⁶ further illuminates the misguided perception of an insurance crisis by addressing the constitutional validity of medical malpractice damage caps. In *Morris*, the Ohio Supreme Court determined that no evidence existed to buttress the proposition that a rational connection existed between limiting medical malpractice awards at \$200,000 and lower malpractice insurance rates.¹²⁷ “[A]n independent study . . . showed that less than .6 percent of all claims brought were for more than \$100,000.”¹²⁸ A 1987 study conducted by the Insurance Service Organization, the rate-setting arm of the insurance industry, indicated that premium savings from various tort reforms, including a \$250,000 cap on noneconomic damages, were “marginal to nonexistent.”¹²⁹ Accordingly, the court in *Morris* held that a limitation upon damages recoverable in a medical malpractice suit was unconstitutional.¹³⁰

Even assuming that insurance premiums were to increase if section 2744.05(C)(1) had not been enacted, the court should find that such an increase does not create a compelling state interest. Financial interests alone lack the requisite justification for restricting a fundamental right such as the right to trial by jury. Limiting the amount of damages recoverable, as in a medical malpractice suit, substitutes the will of the General Assembly for that of a jury.¹³¹ A damage cap “‘substantially impairs’ the right to a trial by jury and substantially erodes that sacred and fundamental constitutional right.”¹³² Reducing any portion of a jury’s award clearly infringes upon the jury’s function to determine damages and to provide a remedy that would compensate the victim.¹³³

Employing a similar rationale, the Eighth District Ohio Court of Appeals has declared noneconomic damage caps to in fact be unconstitutional.¹³⁴ Although the appellant, a political subdivision, alleged that its fiscal security may be jeopardized, the court found no evidence to support such an allegation.¹³⁵ The court concluded that “when a fundamental independent right such as the jury trial right is at issue, economic necessity is insufficient as a matter of law to justify penalization of that right.”¹³⁶ A limitation on noneconomic damages impairs the fundamental right to trial by jury because no evidence suggests that the “legislative objective [of such statute] cannot be

126. 576 N.E.2d 765 (Ohio 1991).

127. *Id.* at 770.

128. *Id.* at 770-71 (citing *Lucas v. United States*, 757 S.W.2d 687, 691 (Tex. 1988)).

129. *Id.* at 771 (citing brief of amici curiae Association of Trial Lawyers of America, Consumer Federation of America and Dissatisfied Parents Together, at 24).

130. *Id.* at 765.

131. *Id.* at 779.

132. *Id.*

133. *Id.*

134. *Gladon v. Greater Cleveland Regional Transit Auth.*, No. 64029, 1994 Ohio App. LEXIS 902 (Ohio Ct. App. Mar. 10, 1994), *rev'd on other grounds*, 662 N.E.2d 287 (Ohio 1996).

135. *Id.* at *14-15.

136. *Id.* at *15.

achieved in a less burdensome way [or] that [the] legislative objectives are compelling."¹³⁷

Proponents of Ohio Revised Code section 2744.05(C)(1), however, further argue that an uninsured political subdivision would have to unjustly use taxpayers' money to satisfy a jury verdict in favor of an injured plaintiff. Again, this argument is suspect when one considers who is awarding a plaintiff the compensatory damages in the first place. It must not be forgotten that a jury is composed of local community members who, themselves, determine the appropriate damages in any given trial. A limitation on damages sends an inappropriate message to political subdivisions that any negligent conduct on its part will be limited by section 2744.05(C)(1). Absent damage caps, however, political subdivisions and their employees will be reminded to act in a more safe and cautious manner to mitigate their degree of liability for negligent behavior.

In addition, a jury's verdict can always be reviewed by the court. A judge cannot, outside the scope of section 2744.05(C)(1), voluntarily reduce a pecuniary jury verdict in an effort to conserve the financial resources of a political subdivision. A judge can, however, determine the verdict to be unjust or arbitrary and thereby render a judgment notwithstanding the verdict. The court may also consider applying the doctrine of remittitur.¹³⁸ In the alternative, a judge can even order a new trial or a trial limited to the issue of damages. Therefore, concerns about misusing taxpayers' money to satisfy jury verdicts are misplaced.

Given the various studies by independent researchers and the lack of plausible support to verify the need of damage caps for insurance purposes, the state has not put forth sufficient evidence to support a compelling state interest for promulgating section 2744.05(C)(1). Indeed, Ohio courts are beginning to manifestly recognize that limitations on recoverable damages constitutionally violate a plaintiff's due process guarantees¹³⁹ by infringing on the fundamental right to trial by jury.¹⁴⁰

IV. CONCLUSION

Section 2744.05(C)(1) of the Ohio Revised Code should be struck down on the ground that a limitation on recoverable noneconomic damages violates a plaintiff's right to trial by jury. The right to sue a municipality existed at common law before the Ohio Constitution was adopted. Thus, a plaintiff possesses and is guaranteed the right to a jury trial on all factual issues,

137. *Id.* at *7.

138. Remittitur is the procedural process by which grossly excessive jury verdicts are reduced, as a matter of law, upon consent of the plaintiff.

139. See *Morris v. Savoy*, 576 N.E.2d 765 (Ohio 1991).

140. See *Gladon*, 1994 Ohio App. LEXIS 902.

including the assessment of noneconomic damages. Furthermore, the legislative purpose of Ohio Revised Code section 2744.05(C)(1)—to protect the financial stability of political subdivisions—is not sufficiently compelling to justify infringement upon an individual’s right to have a jury pass judgment on all issues of fact and remedy. Limiting a plaintiff’s recoverable damages is a due process violation of the fundamental right to trial by jury.

Therefore, the Ohio General Assembly must annul the caps to reassure injured plaintiffs that their right to have a case tried by a jury will not be impaired. With various jurisdictions now moving toward the abolishment of damage limitations, a strong incentive and basis exist for the Ohio legislature to follow suit. Denying a jury its obligation to properly assess a plaintiff’s damages challenges the fundamental right to trial by jury, thereby undermining a fundamental principle that the State of Ohio constitutionally embraces.

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