

IN THE SUPREME COURT OF OHIO

DONALD KRIEGER, et al.,	)	Case No.: 2008-1463
	)	
	)	On Appeal from the Cuyahoga
Plaintiffs-Appellees,	)	County Court of Appeals,
vs.	)	Eighth Appellate District
	)	
	)	Court of Appeals
CLEVELAND INDIANS BASEBALL	)	Case Nos. 89314, 89428, and 89463
Co., et al.,	)	
Defendant-Appellant.	)	

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REPLY BRIEF OF DEFENDANT-APPELLANT CITY OF CLEVELAND

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## ARGUMENT

**A. R.C. § 2744.05(C)(1)'s limitation on the award of noneconomic damages against political subdivisions is a constitutional legislative enactment that does not violate the due process clause of the Ohio Constitution.**

The merit brief of Appellees Oliver and Krieger concedes that in light of *Arbino v. Johnson* the statutory caps on noneconomic loss set forth in R.C. § 2744.05(C)(1) do not violate the trial by jury or equal protection clauses of the Ohio Constitution.<sup>1</sup> Despite that concession, Appellees argue that R.C. § 2744.05(C)(1) violates the due process protections of the Ohio Constitution. This is without merit.

A legislative enactment is deemed valid on due process grounds: (1) if it bears a real and substantial relation to the public health, safety, morals or general welfare of the public and (2) if it is not unreasonable or arbitrary.<sup>2</sup>

**1. R.C. § 2744.05(C)(1) bears a real and substantial relation to public health, safety, morals or general welfare of the public.**

There is a rational connection between limiting the amount of damages which may be recovered from a political subdivision and protecting fiscal integrity.<sup>3</sup> The U.S. Supreme Court has declared that the preservation of fiscal integrity is a valid state

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<sup>1</sup> *Arbino v. Johnson*, 112 Ohio St.3d 1468, 2007-Ohio-6948, 861 N.E.2d 143.

<sup>2</sup> *Id.* at ¶¶ 23-24.

<sup>3</sup> *See Galanos v. City of Cleveland* (1994), 70 Ohio ST.3d 220, 221, holding that: The purpose of R.C. 2744.05(B) is to permit recovery of injured persons for torts committed by political subdivisions while at the same time conserving the fiscal resources of those political subdivisions.

interest.<sup>4</sup> And further this Court in *Menefee v. Queen City Metro* stated that the primary purpose of R.C. Chapter 2744 is to preserve the fiscal resources of political subdivisions.<sup>5</sup>

While under the medical malpractice statute, the limitation on the amount of damages under which an injured party could recover benefited medical providers and their insurers—private entities, whereas the limitation under R.C. § 2744.05(C) protects public treasuries and thus benefits the public. This limitation on damages recoverable against political subdivisions is necessary to protect public funds. By placing this ceiling on a plaintiff's noneconomic damages, the Ohio legislature has attempted to develop fiscal security. In light of the foregoing, R.C. § 2744.05(C) satisfies the first prong of a due process review because it bears a real and substantial relation to the general welfare of the public by conserving the scarce resources of political subdivisions by limiting their tort liability.

**2. R.C. § 2744.05(C)(1) is not unreasonable or arbitrary.**

The second prong of the rational basis test asks whether the statute is unreasonable or arbitrary. It is neither. As this court noted in *Menefee*, the state could have extended sovereign immunity to all claims against a political subdivision.<sup>6</sup> As the State of Ohio eloquently stated in its *amicus* brief, “if the legislature can grant complete immunity to municipalities without regard to the severity of the plaintiff's injuries (ordinary, catastrophic, or fatal), then it can also grant partial immunity to municipalities

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<sup>4</sup> *Shapiro v. Thompson* (1969), 394 U.S. 618, 633, 89 S.Ct. 1322, 1330, 22 L.Ed.2d 600, 614.

<sup>5</sup> *Menefee v. Queen City Metro* (1990), 49 Ohio St.3d 27, 29, 550 N.E.2d 181, 182.

<sup>6</sup> *Id.*; *Fabrey v. McDonald Village Police Dept.*, 70 Ohio St.3d 351, 355, 1994-Ohio-368.

without regard to those distinctions.”<sup>7</sup> Instead, the Ohio legislature chose to design a carefully balanced system which permits injured persons to recover for their injuries without bankrupting the public coffers. R.C. § 2744.05(C) does not foreclose a personal injury plaintiff from obtaining compensation from a liable political subdivision and places no limitation on the recovery of actual damages.<sup>8</sup> Specifically, plaintiffs still receive full compensation for economic losses, including lost wages, future wages, medical expenses, services, and future medical bills. It is only those damages that are historically subjective and immeasurable that are capped for the recognized purpose of conserving public resources. As stated in the State of Ohio’s reply brief and adopted in the instant brief, the General Assembly could have immunized municipalities from all tort suits without violating the constitution, its decision to do the lesser—to extend partial immunity to municipalities under R.C. § 2744.05(C)(1) is well within its authority.<sup>9</sup>

Appellees also argue that the limitation imposed by R.C. § 2744.05(C)(1) is arbitrary because it does not contain an exception for catastrophic injuries. In its reply brief, the State of Ohio aptly points that Appellees have not suffered catastrophic injuries.<sup>10</sup> Thus, their argument that R.C. § 2744.05(C)(1) lacks a catastrophic injury exception does not violate their due process rights since they have not suffered such an injury.

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<sup>7</sup> State of Ohio *Amicus Curiae* Merit Brief at p. 14.

<sup>8</sup> *Shelton v. Greater Cleveland RTA* (1989), 65 Ohio App.3d 665, 682.

<sup>9</sup> *Menefee v. Queen City Metro* (1990), 49 Ohio St.3d 27, 29.

<sup>10</sup> State of Ohio Reply Brief at p. 5.

There is plethora of case law to support the basis that the limitation placed on political subdivisions' tort exposure bears a real and substantial relation to the general welfare of the public and is neither unreasonable nor arbitrary.

### CONCLUSION

For these reasons and those contained in the City of Cleveland's Merit Brief, the City of Cleveland respectfully requests that this court reverse the appellate court's decision—a decision which as it stands now threatens the fiscal stability of all Ohio political subdivisions and apply the statutory caps to the instant case.

Respectfully submitted,

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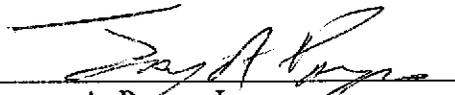
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