IN THE SUPREME COURT OF OHIO

Embassy Healthcare,	:	**Case No. 2017-1031**
	:	
Appellee	:	**On Appeal from the Warren County**
	:	**Court of Appeals, Twelfth Appellate**
v.	:	**District**
	:	
Cora Sue Bell,	:	**Court of Appeals Case No. CA2016-08-**
	:	**072**
Appellant.	:	

BRIEF OF AMICI CURIAE THE LEGAL AID SOCIETY OF COLUMBUS, SOUTHEASTERN OHIO LEGAL SERVICES, ADVOCATES FOR BASIC LEGAL EQUALITY, INC., COMMUNITY LEGAL AID SERVICES, THE LEGAL AID SOCIETY OF CLEVELAND, AND THE OHIO ASSOCIATION FOR JUSTICE IN SUPPORT OF APPELLANT CORA SUE BELL

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STATEMENT OF INTEREST OF AMICI CURIAE

The undersigned legal services programs, The Legal Aid Society of Columbus, Southeastern Ohio Legal Services, Advocates for Basic Legal Equality, Inc., Community Legal Aid Services, and The Legal Aid Society of Cleveland, serve low income and senior Ohioans. They share the goal of securing justice and resolving fundamental problems for those who are low income and vulnerable. To that end, the Ohio legal services community assists clients in addressing a number of important legal issues, including ensuring that senior Ohioans have financial stability. In connection with their missions, they submit amicus curiae briefs in cases, such as the instant appeal, in which outcomes may affect important rights or obligations of Ohioans by providing input to jurists and government officials who address decisions of great public interest that affect the economic security of the vulnerable and the poor.

The Ohio Association for Justice ("OAJ") is a statewide association of lawyers whose mission is to preserve Constitutional rights and to protect access to the civil justice system for all Ohioans. OAJ is devoted to strengthening the civil justice system to ensure that deserving individuals receive justice and wrongdoers are held accountable.

STATEMENT OF FACTS

Amici hereby adopt the Statement of Facts included in Ms. Bell's merit brief.

APPELLANT'S PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. 1:

The plain language of R.C. 2117.06(C) mandates a claim under R.C. 3103.03 for necessaries supplied to a decedent must be presented to the estate and failure to do so bars the claim against both the estate and the spouse.

PROPOSITION OF LAW NO. 2:

By definition, a creditor who fails to timely present its claim to the decedent's estate cannot prove, as a matter of law, the decedent is unable to pay the claim such that a claim cannot be brought against the spouse under R.C. 3103.03.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

I. Congress and the General Assembly have come to recognize that the illness or death of a spouse has devastating financial consequences on a healthy spouse. The Twelfth District's decision goes against the policies enacted to protect men and women with an ailing partner.

This action was filed against Ms. Bell at a time when she was most financially vulnerable. Her husband passed away in May 2014, leaving her newly widowed. Thirteen months later, Appellee Embassy Healthcare filed its claim under R.C. 3103.03, Ohio's necessaries statute. The Twelfth District's decision eliminated one of the statutory protections afforded to Ms. Bell as a new widow: that her husband's creditors must file claims against his estate within six months of his death. In its decision, the Twelfth District dilutes the purpose of R.C. 2117.06, which is "manifestly to secure an expeditious and efficient administration of an estate by promptly providing such a fiduciary with necessary information relating to the existence, amount and character of all indebtedness of the estate." *Fortelka v. Meifert*, 176 Ohio St. 476, 479, 200 N.E.2d 318 (1964). This Court should recognize the policies behind R.C. 2117.06 and similar statutes, which aim to protect the spouse of a sick or deceased partner.

A. Because spouses – particularly elderly women – are reliant on the income and assets of their partner, the poverty rates of widows are much higher than married women.

The period immediately following the death of a husband is an emotionally and financially difficult time for women. "Households headed by elderly women still experience substantially higher rates of poverty than do other households." Sevak, *Perspectives: The Economic Consequences of a Husband's Death: Evidence from the HRS and AHEAD*, Social Security Bulletin, Vol. 65, No. 3 (2003/2004) 31. When approximately 20,000 participants in

the Health and Retirement Study[1] were observed in 1998, only 3.9 percent of married women were living in poverty; by contrast, 17.3 percent of widows were living below the poverty level. *Id*. at 33. This is because Social Security benefits and pensions decrease after the death of a spouse, any employment income that a deceased working spouse was earning is lost, and funeral, burial, and other expenses related to the spouse's death must be paid. The study found that "[f]ollowing a husband's death, widow benefits will in general range from 67 percent of the married level, assuming the spousal benefit was equal to half that of the primary earner, down to 50 percent replacement in the case in which both partners had equal benefits based on earnings." *Id*. at 35. This meant "[n]ew widows averaged about $10,000 per year in benefits in 1998 compared with just over $15,000 when married (1993) * * *." *Id*.

Recent figures from the United States Census Bureau support these long-term findings. Among Ohio households in which the head of household was age 65 or older and the household consisted of a married couple, 3.1 percent had income below the poverty level. United States Census Bureau, *American Fact Finder, Poverty Status in the Last 12 Months, 2012-2016*, https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_S1702&prodType=table (accessed Mar. 26, 2018). However, when the head of the household is an unmarried female, 10.5 percent had income below the poverty level. *Id*.

Prospects are even more bleak for women living in poverty at the time they are widowed. "Poorer husbands have lower life expectancy than do their wealthier peers; women married to poorer men will thus be widowed at an earlier age and will make up a disproportionate share of widows and especially of long-duration widows." Sevak, *Perspectives: The Economic*

[1] The Health and Retirement Study, conducted by the National Institute on Aging and the National Institutes of Health, surveys approximately 20,000 Americans over the age of 50. The survey began in 1992, and the same participants answer similar questions every two years.

Consequences of a Husband's Death at 37. The death of a husband before the age of retirement means "a loss of potential future private savings, pension accrual, and Social Security benefit increases. Consumption must be supported for several or many years before pension or Social Security benefits begin." *Id*. at 39. Unfortunately, "[e]ven women who have some accumulated wealth are more likely to be in poverty many years later, as they are forced to spend down their wealth in the years before gaining Social Security eligibility." *Id*. at 44.

R.C. 2117.06(C) was enacted to protect widows like Ms. Bell. As Ms. Bell and similarly situated spouses navigate the confusion that follows the death of a partner, they rely on the certainty of the six-month time limit laid out in R.C. 2117.06. Widows and widowers should be able to rely on the fact that creditors must present claims against their deceased spouse's estate within six months. Embassy's position undermines the protections in R.C. 2117.06 and creates doubt for a group of elderly men and women who are already financially vulnerable.

B. Both federal and state laws have been passed to aid spouses with a sick or deceased partner.

Recognizing the economic crisis facing America's aging population, legislators have enacted laws that offer limited protections. In addition to the six-month statute of limitations contained in R.C. 2117.06(C), other statutory protections include the Retirement Equity Act, PL 98-397, 98 Stat. 1426 (Aug. 23, 1984); the Medicare Catastrophic Coverage Act, 42 U.S.C. 1396r-5; and the Medicaid Estate Recovery Program, R.C. 5162.21.

In 1984, Congress passed the Retirement Equity Act ("REA") to amend the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. 1001, et seq. Congress enacted ERISA in 1974 to provide guidelines for pension plans. ERISA gives participants the option of a single-life benefit plan or a joint-and-survivor benefit plan. Pratt, *Marriage, Divorce, Death, and ERISA*, 31 Quinnipiac Prob.L.J. 101, 107-108 (2018). A single-life benefit runs only for the life

of the participant worker and does not offer a continuing benefit for the surviving spouse. *Id*. A joint-and-survivor benefit provides a reduced benefit amount for the life of a named beneficiary. *Id.* at 108. ERISA initially gave the participant worker the sole discretion to choose whether he or she wanted a single-life or joint-and-survivor benefit plan. *Id*. at 107-108. REA introduced "mandatory spousal rights in pension plans so the choice of the form of benefit received from a pension plan was no longer solely the participant's choice * * *. Prior to REA's enactment, the spouse of a plan participant had very few rights to share in the participant's pension benefits." Internal Revenue Service, Internal Revenue Manual, *Qualified Joint and Survivor Annuity Requirements*, 4.72.9.1.1, ¶ 1 (2015), https://www.irs.gov/irm/part4/irm_04-072-009 (accessed Mar. 26, 2018). As explained by the United States Supreme Court, "[REA] enlarged ERISA's protection of surviving spouses in significant respects." *Boggs v. Boggs*, 520 U.S. 833, 843, 117 S.Ct. 1754, 138 L.Ed.2d 45 (1997). This protection means that nonparticipant spouses must provide written consent to the participant's choice of a single-life benefit. 29 U.S.C. 1055(c)(2)(A). These statutory protections secure an income stream for qualified surviving spouses for the remainder of their lives. *Boggs* at 843.

Another significant protection afforded to elderly individuals is the Medicare Catastrophic Coverage Act, which changed Medicaid eligibility for married couples with a spouse in a nursing home. *Martin v. Ohio Dept. of Human Servs.*, 130 Ohio App.3d 512, 518, 720 N.E.2d 576 (2d Dist.1998). Medicare does not cover the costs of nursing home expenses and, prior to 1988, many individuals in nursing homes did not qualify for Medicaid because their income and resources exceeded the eligibility criteria. *Id*. Before the Medicare Catastrophic Coverage Act was enacted, a married couple was required to "spend down" all the family's assets before the ailing spouse could qualify for Medicaid coverage to help with nursing home

costs. *Id*. When Senator Barbara Mikulski first introduced these changes to Medicaid eligibility as Senate Bill 776 in 1987, she explained this crisis:

> Mr. President, today I am introducing a legislative package which addresses a national problem facing thousands of elderly citizens each year – spousal impoverishment. This problem occurs when either the husband or wife of an elderly couple must enter a nursing home, and cannot afford to pay the costs of such care.
>
> At the time a husband or wife enters a nursing home, several things occur. First, middle-class couples who have "played by the rules" all their lives, and have saved for their retirement, are forced to "spend-down" to meet State Medicaid standards for eligibility. Second, the noninstitutionalized, or "community spouse" suffers a loss of income that most often leaves him or her with a monthly income below the poverty line. Third, previously independent persons become dependent on public assistance.

133 Cong. Rec. S3388-02 (1987). Now, the community spouse can retain protected income and resources while his or her spouse in a nursing home qualifies for Medicaid. *Martin* at 518. This important change serves to prevent spousal impoverishment. *Id*. Community spouses are no longer forced to spend their life savings on nursing home expenses and, instead, can retain a portion of their income and assets to help them live after the institutional spouse passes. *Id*.

The policy of preventing spousal impoverishment is extended to the Medicaid Estate Recovery Program. The Ohio Department of Medicaid is permitted to recover the costs of Medicaid services paid to an institutionalized individual from his estate after he dies. R.C. 5162.21(B). However, the Department of Medicaid is not permitted to seek recovery from the institutionalized spouse's estate while his widow is still alive. R.C. 5162.21(C)(1)(a). As the Ninth District explains, "Because both federal and state law allow recovery only after the death of an individual's surviving spouse, dual interests are served. One policy prevents the impoverishment of the surviving spouse during his or her lifetime. Once that spouse dies and the need for protection from impoverishment ceases, allowing a state to recover medical assistance

benefits previously paid furthers the broader purpose of funding future services to the medically needy." *Ohio Dept. of Job & Family Servs. v. Tultz*, 152 Ohio App.3d 405, 2003-Ohio-1597, 787 N.E.2d 1262, ¶ 15 (9th Dist.), quoting *In re Estate of Jobe*, 590 N.W.2d 162, 166 (Minn.App.1999).

These statutory protections have a significant positive effect on the financial lives of the elderly, and widows, like Ms. Bell, in particular. "In the 1970s, 37 percent of new widows became poor after widowhood. By the 1990s, this rate had fallen to between 12 percent and 15 percent." Sevak, *Perspectives: The Economic Consequences of a Husband's Death* at 31. The enactment of ERISA in 1974, its 1984 amendment through REA, and the changes to Medicaid eligibility in 1988, surely lowered the poverty rate of widows. When the General Assembly amended R.C. 2117.06(C) in 2003, it similarly sought to extend protections afforded to the spouses of decedents. Embassy's position looks to undermine these protections by expanding and extending the period of financial uncertainty past the six-month limitation in R.C. 2117.06.

II. Embassy's position renders R.C. 2117.06(C) meaningless in violation of several rules of statutory interpretation that are the foundation of Ohio jurisprudence.

The position advanced by Embassy and adopted by the majority of the Twelfth District renders R.C. 2117.06(C) irrelevant and, therefore, is contrary to several basic rules of statutory interpretation. This Court should follow the well-established rules of statutory construction so that both R.C. 2117.06(C) and R.C. 3103.03 are relevant and meaningful.

A. An entire statute is presumed to be effective.

"In enacting a statute, it is presumed that the entire statute is intended to be effective." R.C. 1.47(B). This statutory presumption has been a part of Ohio case law for more than 150 years. As this Court said in 1860, "The presumption always is, that every word in a statute is designed to have *some* effect, and hence the rule that, 'in putting a construction upon any statute,

every part shall be regarded, and it shall be so expounded, if practicable, as to give some effect to *every part of it*.'" (Emphasis sic.) *Turley v. Turley*, 11 Ohio St. 173, 179 (1860), quoting *Commonwealth v. Alger*, 61 Mass. 53, 89 (Mass.1851) (original without emphasis). "It is the duty of courts to give effect to the words used in the statute, not to delete words used or to insert words not used." *Kendall v. U.S. Dismantling Co.*, 20 Ohio St.3d 61, 64, 485 N.E.2d 1047 (1985), citing *Wheeling Steel Corp. v. Porterfield*, 24 Ohio St.2d 24, 28, 263 N.E.2d 249 (1970). This Court has continued to follow *Turley* as a foundation of its statutory interpretation. *E.g. Ford Motor Co. v. Ohio Bur. of Emp. Servs.*, 59 Ohio St.3d 188, 190, 571 N.E.2d 727 (1991) (quoting *Turley* and R.C. 1.47(B)); *State v. Arnold*, 61 Ohio St.3d 175, 178, 573 N.E.2d 1079 (1991) (calling the rule from *Turley* "a cardinal rule of statutory construction"); *State v. Gonzales*, 150 Ohio St.3d 276, 2017-Ohio-777, 81 N.E.3d 419, ¶ 49 (Kennedy, J., dissenting) (quoting both *Ford Motor Co.* and *Turley*).

Allowing the intended target of a statute to evade that statute creates an unjust and unreasonable result, in contradiction to R.C. 1.47(C). *See Buckeye Boxes, Inc. v. Franklin Cty. Bd. of Revision*, 78 Ohio App.3d 634, 639, 604 N.E.2d 992 (10th Dist.1992). The result of the enactment of a statute should be in line with the policy behind the statute. *State ex rel. Perrea v. Cincinnati Pub. Schools*, 123 Ohio St.3d 410, 2009-Ohio-4762, 916 N.E.2d 1049, ¶ 32. As this Court said, it "avoids adopting a construction of a statute that would 'result in circumventing the evident purpose of the enactment.'" *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 543, 668 N.E.2d 903 (1996), quoting *Daiquiri Club, Inc. v. Peck*, 159 Ohio St. 52, 55, 110 N.E.2d 705 (1953).

In this case, Embassy has argued that the duty of spouses to support each other set forth in R.C. 3103.03 nullifies the six-month time limit for presentation of claims against a decedent

set forth in R.C. 2117.06(C). *Embassy Healthcare v. Bell*, 2017-Ohio-1499, 89 N.E.3d 40, ¶ 11 (12th Dist.) (stating "Embassy argues that the court erred when it concluded that Embassy's failure to present a claim against Robert's estate within the time requirements set forth in R.C. 2117.06 preclude it from asserting a R.C. 3103.03 necessaries claim against Bell for the same debt."). Embassy's reading of the two statutes – which the Twelfth District adopted – renders R.C. 2117.06(C) meaningless in violation of R.C. 1.47(B), *Turley*, and its progeny. If the Twelfth District's decision becomes the law of Ohio, all other kinds of suits against surviving spouses would become cognizable even if the plaintiff failed to present its claims to the decedent's estate under R.C. 2117.06(C).

The appropriate reading under these authorities – and one that respects *Turley*'s rule that "every word in a statute is designed to have *some* effect" and that a statute be construed to "give some effect to *every part of it*" – is for R.C. 3103.03 to generally require spouses to support each other and for R.C. 2117.06(C)'s sixth-month requirement to apply in the specific situation in which a claim exists following a spouse's death.

B. Two statutes that cover the same subject matter are presumed to be compatible with each other.

For nearly two centuries, this Court has held that statutes that have the same subject matter "must be construed together, each given such reasonable construction as to give the proper force and effect to each and all of said statutes." *Maxfield v. Brooks*, 110 Ohio St. 566, 144 N.E. 725 (1924), paragraph two of the syllabus. *Accord Lindsley's Lessee v. Coats*, 1 Ohio 243, 247 (1823); *Kendrick v. Farquhar*, 8 Ohio 189, 195-196 (1837); *State ex rel. Fockler v. Husted*, 150 Ohio St.3d 422, 2017-Ohio-224, 82 N.E.3d 1135, ¶ 13.

In this case, R.C. 2117.06 and R.C. 3103.03 clearly deal with the same subject matter: the payment of debts by someone other than the person who incurred the debt. Both Embassy

and the Twelfth District take a position that follows R.C. 3103.03 while ignoring the text and purpose of R.C. 2117.06. In doing so, Embassy and the Twelfth District violate the cannon of in pari materia by not "giv[ing] the proper force and effect to each and all of said statutes." *Maxfield* at paragraph two of the syllabus. *Accord Fockler* at ¶ 13, quoting *State v. Cook*, 128 Ohio St.3d 120, 2010-Ohio-6305, 942 N.E.2d 357, ¶ 45, quoting *United Tel. Co. of Ohio v. Limbach*, 71 Ohio St.3d 369, 372, 643 N.E.2d 1129 (1994), quoting *Johnson's Mkts., Inc. v. New Carlisle Dept. of Health*, 58 Ohio St.3d 28, 35, 567 N.E.2d 1018 (1991). This Court should reject this position and, instead, adopt Appellant's position of reading R.C. 2117.06 and R.C. 3103.03 together so that each statute has the proper force and effect that the General Assembly intended.

C. When two statutes are in in conflict, the latest in time prevails.

"If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails." R.C. 1.52(A). In the nearly fifty years following its enactment, this Court has repeatedly used R.C. 1.52(A) to resolve statutory conflicts. *E.g.*, *Davis v. State Personnel Bd. of Review*, 64 Ohio St.2d 102, 105, 413 N.E.2d 816 (1980); *Summerville v. Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, 943 N.E.2d 522, ¶ 25-33; *State v. Thomas*, 148 Ohio St.3d 248, 2016-Ohio-5567, 70 N.E.3d 496, ¶ 17. R.C. 1.52(A) is consistent with "the well-established rule of statutory construction that 'when language is inserted in a statute it is inserted to accomplish some definite purpose.'" *Gonzales*, 150 Ohio St.3d 276, 2017-Ohio-777, 81 N.E.3d 419, at ¶ 49, quoting *State ex rel. Cleveland Elec. Illum. Co. v. Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756 (1959).

In this case, R.C. 3103.03 was last substantively changed via S.B. No. 180, 2000 Ohio Laws 291, which had an effective date of March 22, 2001. R.C. 2117.06(C)'s six-month rule

was created in Am.Sub.H.B. 51, 2003 Ohio Laws 52, which had an effective date of April 8, 2004. As a result, R.C. 2117.06(C) should prevail and control based on its more recent effective date.

D. The existence of an exception in R.C. 2117.06(C) but not an exception for the situation at issue in this case shows that R.C. 3103.03 is does not apply to this case.

Courts have long used the doctrine of expressio unius est exclusio alterius, which means that "expressing one item of an associated group or series excludes another left unmentioned." *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 80, 122 S.Ct. 2045, 153 L.Ed.2d 82 (2002), quoting *United States v. Vonn*, 535 U.S. 55, 65, 122 S.Ct. 1043, 152 L.Ed.2d 90 (2002).[2] This Court has used the doctrine for more than 165 years. *See Exchange Bank of Columbus v. Hines*, 3 Ohio St. 1, 41 (1853) (Thurman, J., concurring); *State ex rel. Ohio Presbyterian Retirement Servs., Inc. v. Indus. Comm. of Ohio*, 151 Ohio St.3d 92, 2017-Ohio-7577, 86 N.E.3d 294, ¶ 28.

R.C. 2117.06(C) begins, "Except as provided in section 2117.061 of the Revised Code, a claim that is not presented within six months after the death of the decedent shall be forever barred as to all parties * * *." R.C. 2117.061 involves the Medicaid Estate Recovery Program, a program that is not at issue in this case. This exception was added to R.C. 2117.06(C) in Am.Sub.H.B. 95, 2003 Ohio Laws 12, which had an effective date of September 26, 2003 – more than two years after the last substantive change to R.C. 3103.03.

If the General Assembly intended for another exception to R.C. 2117.06(C) – such as an exception for claims made pursuant to R.C. 3103.03 – to exist, then it would have simply added

[2] As the United States Supreme Court helpfully explained in a recent case, "If a sign at the entrance to a zoo says 'come see the elephant, lion, hippo, and giraffe,' and a temporary sign is added saying 'the giraffe is sick,' you would reasonably assume that the others are in good health." *N.L.R.B. v. SW Gen., Inc.*, ___ U.S. ___, 137 S.Ct. 929, 940, 197 L.Ed.2d 263 (2017).

it to the start of the statute as it did with R.C. 2117.061. Over the past fourteen years, it has chosen not to do so. The only conclusion is that, pursuant to the doctrine of expressio unius est exclusio alterius, an exception in R.C. 2117.06(C) for R.C. 3103.03 does not exist.

III. Public policy favors interpreting R.C. 2117.06(C) and R.C. 3103.03 in a way in which both statutes are effective.

In addition to the several rules of statutory interpretation that favor the interpretation of R.C. 2117.06(C) and R.C. 3103.03 advanced by Ms. Bell and adopted by the trial court, public policy also favors Ms. Bell's position. R.C. 2117.06(C) serves several important purposes, all of which contribute to the public good.

First, the relatively brief time frame contained in R.C. 2117.06(C) allows estates to be settled quickly and a surviving spouse to have financial certainty. As discussed above, the death of any spouse will create a situation of financial uncertainty. Social Security benefits or a pension may decrease or end; the deceased spouse may have been working, leaving the surviving spouse without that income; and there may be financial obligations related to the spouse's death. When the General Assembly chose in 2003 to change the time limit in R.C. 2117.06(C) from one year to six months, it presumably did so for a reason. Am.Sub.H.B. 51, 2003 Ohio Laws 52; *In re Smith's Estate*, 188 N.E.2d 650, 656 (Hamilton P.C.1962) ("When the legislature changes a statute it is presumed that it had some reason for the change* * *."); *Mistak v. Trimbur*, 121 N.E.2d 108, 110 (Trumbull P.C.1953) ("Where the Legislature changes a Statute it is presumed that it had some reason for the change * * *."). The likely reasoning was to have a decedent's financial affairs wrapped up sooner. As this Court said less than a year ago in reviewing the same statute,

> R.C. 2117.06's requirement for presenting claims against an estate is a mandatory part of the state's legislative scheme, *Fortelka v. Meifert*, 176 Ohio St. 476, 480, 200 N.E.2d 318 (1964), that fosters the expeditious and efficient administration of

> estates, *id*. at 479, 200 N.E.2d 318, citing *Gerhold v. Papathanasion*, 130 Ohio St. 342, 345, 199 N.E. 353 (1936). *See also Vitantonio, Inc. v. Baxter*, 116 Ohio St.3d 195, 2007-Ohio-6052, 877 N.E.2d 663, ¶ 11 (O'Donnell, J., dissenting). It is well settled that the "'state has a strong interest in the administration of its citizens' estates,'" *In re Estate of Greer*, 197 Ohio App.3d 542, 2011-Ohio-6721, 968 N.E.2d 55, ¶ 22 (1st Dist.), quoting *In re Emery*, 59 Ohio App.2d 7, 12, 391 N.E.2d 746 (1st Dist.1978), and we assume that the General Assembly's commands in the statutory scheme were intended to be met with strict coWilson's contention that substantial compliance with R.C. 2117.06(A) should be permitted is unpersuasive because "a statute or rule that uses the word 'shall' in describing an act to be performed is not generally susceptible of a 'substantial compliance' standard of interpretation," *Lyons* at ¶ 28. And Wilson identifies no other language in the statute that would be evidence of a clear and unequivocal intent to overcome the mandatory nature of the presentment obligation.
>
> In reaching this conclusion, we recognize that the requirements of R.C. 2117.06 are not arbitrary ones that elevate form over substance. Rather, they protect the vital interests of the estate and its beneficiaries, as well as the estate's creditors, by ensuring the orderly, efficient, and legally proper administration of the estate by "a probate fiduciary, an officer of the Probate Court." *Beacon Mut. Indemn. Co. v. Stalder*, 95 Ohio App. 441, 445, 447, 120 N.E.2d 743 (9th Dist.1954); *see, e.g., Fortelka* at 479, 200 N.E.2d 318; *Beach* [*v. Mizner*], 131 Ohio St. [481] at 485, 3 N.E.2d 417 [1936].

Wilson v. Lawrence, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, ¶ 14-15.

Courts have strictly followed to the six-month limit in R.C. 2117.06(C). *E.g. New Riegel Local School Dist., Bd. of Edn. v. Buehrer Group Architecture & Eng., Inc.*, 3d Dist. Seneca No. 13-17-04, 2017-Ohio-8522, ¶ 9 (finding that R.C. 2117.06(C)'s six-month limit barred a creditor from pursuing a claim that it presented to the estate six months and one day after the decedent's death). This Court should adhere to the General Assembly's desires and the policy behind it.

Second, R.C. 2117.06(C) helps funnel claims against a decedent to the proper place: probate court. This makes sense because "obligations incurred by a deceased during his or her lifetime become debts of his or her estate by operation of law." *Osborne v. Osborne*, 114 Ohio App.3d 412, 414, 683 N.E.2d 365 (2d Dist.1996). *Accord In re Estate of Cooke*, 5th Dist. Ashland No. 10-COA-024, 2011-Ohio-1637, ¶ 15 (quoting *Osborne*); *Kelley v. Ferrano*, 188

Ohio App.3d 734, 2010-Ohio-2771, 936 N.E.2d 986, ¶ 55 (8th Dist.) (holding that "Ohio law is clear that the legal representative of a decedent stands in the shoes of that decedent with respect to his financial and commercial rights and obligations * * *."); *Hopper v. Nicholas*, 106 Ohio St. 292, 302, 140 N.E. 186 (1922) (finding that the administrator of an estate "stands squarely in the legal shoes of" the decedent). As shown by Embassy's lawsuit against Ms. Bell, an interpretation of R.C. 3103.03 that makes a creditor's obligation to submit a claim pursuant to R.C. 2117.06(C) optional creates a situation in which a creditor can attempt to collect a decedent's debt while avoiding probate court – even after a probate case has concluded. This Court should not endorse such an interpretation. After all, "If a creditor fails through indifference, carelessness, delay, or lack of diligence to identify the administrator or executor, or to procure the appointment of one so that a claim can be presented, the law should not come to the creditor's aid." *Wilson* at ¶ 17. If Embassy's interpretation of these statutes becomes the law of Ohio, the reasonable question would be why any creditor would ever submit a claim in a probate case.

Third, when read together, R.C. 2117.06(C) and R.C. 3103.03 help ensure that surviving spouses have enough funds to survive. Ohio law has a clear policy towards helping surviving spouses. For example, a surviving spouse has the right to receive more than what is provided under the deceased spouse's will, R.C. 2106.01(A), and, as discussed above, the Department of Medicaid will not collect through its Medicaid Estate Recovery Program until the surviving spouse has also passed away. R.C. 5162.21(C)(1)(a). Under R.C. 3103.03(A), a spouse is obligated to provide financial support only "so far as the spouse is able," so that a surviving spouse is not continuously burdened with unaffordable obligations. Similarly, as discussed

above, the six-month limit contained in R.C. 2117.06(C) helps ensure that the surviving spouse's period of financial uncertainty will be brief.

Thus, the policy reasons for R.C. 2117.06(C) and R.C. 3103.03 support Ms. Bell's position.

CONCLUSION

This Court should follow the policy goals of the General Assembly and the longstanding rules of statutory construction. This Court should reverse the decision of the Twelfth District Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2018, a copy of this Brief was served by ordinary U.S. Mail upon the following pursuant to Civ.R. 5(B)(2)(c):

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