Supreme Court of Ohio Clerk of Court - Filed September 25, 2024 - Case No. 2024-0451

IN THE SUPREME COURT OF OHIO

CHRISTINE LEWIS, **Plaintiff-Appellee,** **vs.** **MEDCENTRAL HEALTH SYSTEM dba OHIOHEALTH MANSFIELD HOSPITAL, et al.,** **Defendants-Appellants.**	))))))))))	**Case No. 2024-0451** **On Appeal from the Fifth Appellate District, Richland County** **Court of Appeals** **Case No. 2023-CA-0043**

REPLY BRIEF OF AMICI CURIAE AMERICAN MEDICAL ASSOCIATION, OHIO STATE MEDICAL ASSOCIATION, OHIO OSTEOPATHIC ASSOCIATION, AND OHIO HOSPITAL ASSOCIATION IN SUPPORT OF APPELLANTS

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I. INTRODUCTION

Appellee did not "discover" her claims against Dr. Patel and his practice group during the post-complaint discovery period that R.C. 2323.451(C) created; to the contrary, Appellee knew so much about her claims against Dr. Patel that she could describe him, and her claims, in her Original Complaint. She named him pseudonymously along with the other John Doe Defendants, but she described his role, the location where and the time when he cared for her, and specifically recited the incident that caused her injury. For this reason, Appellee's claims against Dr. Patel cannot have been "additional," and the limited six-month extension to the statute of limitations that R.C. 2323.451 contains did not apply to the Appellee's claims against him. The Court's inquiry could end there.

Further, because she knew about and described her claims against Dr. Patel in her Original Complaint, and because she identified him as a John Doe Defendant, she needed to have complied with Civ.R. 15(D)'s service requirements to have met the new statute's requirement that she join Dr. Patel "in an amendment to the complaint pursuant to [Civ.R.] 15 . . ." R.C. 2323.451(D)(1). She admittedly did not do so.

On these facts, Appellee could not avail herself of the six-month extension to the one-year statute of limitations that applied to her medical claims against Dr. Patel, and the trial court properly granted Dr. Patel's and his practice group's Motion to Dismiss.

Nothing in Appellee's Merit Brief or in the Merit Brief of Amici Curiae Ohio Association For Justice and Cleveland Academy of Trial Attorneys in Support of Plaintiff-Appellee (the "Trial Attorneys' Amici Brief") rebuts these facts or the resulting conclusions.

Instead, Appellee mischaracterizes Appellants' arguments regarding the public or great interest that this case raises. For instance, Dr. Patel, Mid-Ohio,[1] and the Healthcare Amici[2] never conceded that R.C. 2323.451 extends the statute of limitations for *all* medical malpractice claims; instead, Dr. Patel and the Healthcare Amici argue – just as Dr. Patel did in the Memorandum in Support of Jurisdiction to this Court – that the Fifth District Court of Appeals' application of R.C. 2323.451 improperly extended the statute of limitations as to defendants who plaintiff had clearly identified and sued under fictitious names. Those known and fictitiously sued defendants could not, by definition, constitute "additional" defendants under the statute, and plaintiff certainly did not "discover" them during the discovery process that Division (C) of the statute provides. *See* Appellants' Merit Brief, p. 4; *see also* Memorandum in Support of Jurisdiction of Appellants Anand Patel, M.D. and Mid-Ohio Emergency Physicians, LLP ("Appellants' Jurisdictional Memo."), p. 2 ("The [Fifth District's] Opinion . . . extends [R.C. 2323.451] to physicians whose alleged negligence and names are known to a medical malpractice plaintiff before the statute of limitations expires.").

Further, Appellee's Merit Brief and the Trial Attorneys' Merit Brief fail to rebut Appellants' and the Healthcare Amici's propositions that:

- R.C. 2323.451 does not eliminate the service requirements found in Civ.R. 15(D) for identified but fictitiously named defendants; and
- R.C. 2323.451 does not allow the addition of claims or defendants plaintiff knew about well before the expiration of the statute of limitations.

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[1] For the sake of consistency and brevity, we use the same defined terms that appeared in the Healthcare Amici's Merit Brief.

[2] Underscoring the case's statewide and general interest, several blocs of amici have filed briefs in this case. For ease of reference, we define Amici Curiae American Medical Association, Ohio State Medical Association, Ohio Osteopathic Association, and Ohio Hospital Association as the "Healthcare Amici."

Instead, Appellee's Merit Brief and the Trial Attorneys' Amici Brief rely on conjecture and selected readings of R.C. 2323.451's legislative history to support their contentions about the General Assembly's purported intent in passing Am. Sub. H.B. 7. Appellee and the Trial Attorney Amici urge this Court to abandon ordinary principals of statutory construction to support their argument that this Court should dismiss this appeal or, in the alternative, affirm the mistaken decision of the Fifth District Court of Appeals.

In response, the Healthcare Amici respectfully suggest that the Court need not attempt to suss out the General Assembly's legislative intent; the plain language of R.C. 2323.451 and Civ.R. 15(D) show that Civ.R. 15(D) applies and that R.C. 2323.451 does not extend to the statute of limitations as to defendants a plaintiff already knew about, did not need to discover, and described and sued under a fictitious name. To find otherwise would eliminate Civ.R. 15(D)'s protections for John Doe Defendants and it would extend the statute of limitations in medical claims far more broadly than the plain language of R.C. 2323.451 permits.

To the extent the Court finds the statute's language ambiguous, it needs to look no further than the sponsor testimonies' repeated emphasis that Am. Sub. H.B. 7 would only extend the statute of limitations as to "additional" claims and defendants. That sponsor testimony supports the notion that this statute only applies to "additional" medical defendants and claims who the plaintiff had a chance to "discover" during Division (C)'s discovery period.[3]

Because the Court of Appeals' decision violated both the statute's plain language and the legislature's intent, the Healthcare Amici urge the Court to reverse the decision of the Court of Appeals and reinstate the trial court's correct decision to grant Dr. Patel's and Mid-Ohio's Motion to Dismiss.

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[3] *See Cox v. Mills, Franklin C.P.* 21-CV-000365, 2021 WL 11659227, at *4 (Dec. 29, 2021); Healthcare Amici Merit Brief, p. 24.

II. THE HEALTHCARE AMICI'S RESPONSES TO SPECIFIC ASSERTIONS IN THE BRIEFS OF APPELLEE AND HER AMICI.

A. Appellee's argument to dismiss this appeal as improvidently accepted lacks merit.

Appellee mistakenly contends that Appellant's arguments are unrelated to the proposition of law the Court accepted, or that Appellants' arguments eliminate the questions of public interest that led the Court to accept this appeal.

As an initial matter, that multiple groups of amici have appeared on both sides of the appeal highlights the great public interest that the case carries.

Appellee's attempt to shoehorn this Court's holding in *State v. Jordan* 2023-Ohio-2666 into the Court's review of this case is unconvincing and misapplied. Unlike *Jordan*, the propositions of law asserted in Appellant's Jurisdictional Memo. are the very same propositions of law asserted in Appellants' Merit Brief. *Jordan,* 2023-Ohio-2666, at ¶ 3 (dismissing an appeal because the three propositions of law in appellant's merit brief differed from the single proposition of law the Court had accepted for review); Compare Appellants' Merit Brief, p. 5, 9 with Appellants' Jurisdiction Memo. p. 7, 10.

The Court may consider arguments even if the jurisdictional memorandum analyzed the substance of a proposition in a different context. *See Rancho Cincinnati Rivers, L.L.C. v. Warren Cnty. Bd. of Revision*, 2021-Ohio-2798, ¶ 14 (refusing to strike a proposition of law in a merit brief on the ground that it was not included in the jurisdictional memorandum, where the substance of the proposition was consistent with the proposition of law accepted in the case). Accordingly, the specific analysis in a memorandum in support of jurisdiction does not contravene *S.Ct.Prac.R.* 7.10 if the substance of the public or great general interest is effectively communicated, regardless of the specific legal framing used. *See id*.

The legal arguments contained in Appellants' Merit Brief directly relate to and support the propositions of law in Appellants' Jurisdictional Memo. This is further evidenced by the fact that the propositions of law in Appellants' Merit Brief are identical to the propositions of law in Appellants' Jurisdictional Memo.

Further, Appellants' and their amici's arguments fall well within the scope of the issue over which this Court accepted jurisdiction. Any evaluation of the Court of Appeals' improper application of R.C. 2323.451 must include analysis of what that statute means. Moreover, Appellee herself raised arguments about legislative history and statutory construction in her opposition to the Jurisdictional Memo. What the law means, and how it should be applied to Dr. Patel, were squarely before the trial court, the Court of Appeals, and now this Court. In short, the plain language of R.C. 2323.451 requires compliance with Civ.R. 15, and the statute only applies to additional defendants or claims discovered following the filing of a complaint. *See* Appellants' Merit Brief, pp. 14–15; Appellants' Jurisdictional Memo., p. 14. Those issues have been at the center of the case from the outset and are properly before the Court now.

Appellee's Merit Brief also mischaracterizes Appellants' jurisdictional arguments concerning this case's public or great general interest. The question in this proceeding is whether R.C. 2323.451's use of the term "additional defendant" applies to a defendant the plaintiff knew about and described in detail, but did not name or serve in her original complaint. The question has never been whether R.C. 2323.451 extends the one-year statute of limitation for medical malpractice claims across the board, only whether it does so as to physicians like Dr. Patel, who Appellee perfectly well knew about and described in her Original Complaint filed before the passing of the statute of limitations.

Rather than accurately addressing the substance of these issues, Appellee's Merit Brief presents a flawed summary that distorts Appellants' arguments and misrepresents the key points the Court is considering. In particular, Appellee erroneously contends that Appellants' Merit Brief concedes that R.C. 2323.451 extends the statute of limitations for all medical malpractice claims and thereby abandons the jurisdictional argument that the Fifth District Court of Appeals' Opinion improperly extended the medical malpractice statute of limitations as to Dr. Patel. Appellee's Merit Brief, pp. 10–11. Appellee also asserts that the arguments in Appellants' Merit Brief "differ starkly [from the arguments in Appellants' Jurisdictional Memo] in that they revolve far more narrowly around Civ.R. 15(D)." *Id.*, at p. 12. Appellee cites to Appellants' Merit Brief, p. 5, 8 and Appellants' Jurisdictional Memo., pp. 1–3, 7–8, 11, 13 to support her dismissal argument. *Id.*, at pp. 11–12.

First, Appellants' Merit Brief never suggested that R.C. 2323.451 extends the statute of limitations for *all* medical malpractice claims. For instance, Appellant specifically argued that:

> "R.C. 2323.451 permits a plaintiff, **under certain circumstances**, to extend the statute of limitation for medical claims. The statute, however, . . . does not extend to the statute of limitations for claims against a defendant [that] the plaintiff can identify but whose real name is unknown and designated as a John Doe in a complaint."

(Emphasis added.) Appellants' Merit Brief, p. 5. While Appellee points to Appellants' assertion that "[t]here is no indication in R.C. 2323.451 that the legislature intended to change the medical malpractice statute of limitation found in R.C. 2305.11[3]," Appellee mischaracterizes Appellants' argument. Even a glancing review of Appellants' argument in this regard shows that Appellants couched their argument to highlight the Court of Appeals' erroneous application of R.C. 2323.451:

> There is no indication in R.C. § 2323.451 that the legislature intended to change the medical malpractice statute of limitations found in R.C. § 2305.11. Instead, R.C. § 2323.451's stated purpose was to allow extra time for discovery to commence and, if additional claims or defendants were discovered, to allow their inclusion in the lawsuit. But the Fifth's District's interpretation of R.C. § 2323.451 applies the extra six months to every physician involved in the care whether the physician's alleged malpractice was known to the plaintiff at the outset of the case or discovered during discovery. In short, the Fifth District misinterpreted the plain language contained in R.C. § 2323.451 and created a new statute of limitations.

Appellants' Jurisdictional Memo. p. 2.

Additionally, the plain language of R.C. 2323.451 only extends the statute of limitations by 180 days under certain circumstances and Appellants' Jurisdictional Memo. demonstrates that Appellants argued that the Court of Appeals improperly found that Appellee's claims against Dr. Patel fell within R.C. 2323.451's limited extension of the statute of limitations. *See* R.C. 2323.451 ("[T]he period of time . . . the plaintiff may join in the action any additional medical claim or defendant . . . shall be equal to the balance of any days remaining from the filing of the complaint to **the expiration of that one-year period of limitation, plus one hundred eighty days** from the filing of the complaint."); *see also* Appellants' Jurisdictional Memo., p. 10 ("Proposition of Law No. II: "R.C. 2323.451 only allows addition of a newly discovered claim or defendant with 180 days after the end of the statute of limitations").

Second, Appellants consistently relied upon Civ.R. 15(D) to argue that R.C. 2324.451 presents issues of public of great general interest. For instance, Proposition of Law No. I in Appellants' Jurisdictional Memo. states: "R.C. 2323.451 does not eliminate the requirement for John Doe service found in Civ.R. 15(D)." Appellants' Jurisdictional Memo., p. 7. Indeed, Appellants' Jurisdictional Memo., the trial court's July 21, 2023 Order, as well as the Court of Appeals' February 13, 2024 Order make clear that the intersection between R.C. 2323.451 and

Civ.R. 15(D) has been at the heart of this case all along, and that was certainly true by the time the Court accepted jurisdiction over this case of great general and public interest.

B. Appellee and the Trial Attorneys have failed to rebut the propositions of law in Appellants' and their Amici's Merit Briefs.

As the Healthcare Amici explained in their Merit Brief, this case turns on two points: (1) whether R.C. 2323.451 eliminates the timely service requirements of John Doe defendants under Civ.R. 15; and (2) whether R.C. 2323.451 allows the plaintiff to add new defendants who plaintiff knew about and identified in great detail in the original complaint even after the expiration of the original one-year statute of limitations. Healthcare Amici Merit Brief, p. 11.

1. Appellee's statutory construction argument is contradictory.

Appellee and her Amici ask this Court to disregard Civ.R. 15(D)'s service requirements, claiming that R.C. 2323.451 permits a plaintiff to join "any additional defendant," including defendants known to plaintiff and identified in the original complaint. *See* Appellee's Merit Brief, p. 18 ("There is little doubt that the plain and ordinary meaning of the terms of R.C. 2323.451(D)(1) permitted [Appellee] to add 'any additional' defendant . . . within the period defined in subsection (D)(2)"); Trial Attorneys' Amici Brief, p. 14 ("R.C. 2323.451, as written, created balance for plaintiffs to properly identify and join legitimate defendants").

However, Appellee and her Trial Attorney Amici[4] fail to provide any substantive support for their contention that R.C. 2323.451(D)(1) "clearly and unambiguously permit[] [Appellee] to abandon . . . Civ.R. 15(D)." Appellee Merit Brief, p. 14. Instead, Appellee and her Amici rely on selective readings of R.C. 2323.451's legislative history and incomplete application of the rules of

[4] The Trial Attorneys' Amici Brief relies on public policy and legislative history arguments to support Appellee, but does not provide any arguments in response to the Civ.R. 15(D) Propositions.

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statutory construction to support their arguments. *See* Appellee's Merit Brief, pp. 16–27; Trial Attorneys' Amici Brief, pp. 10–14.

Specifically, Appellee argues R.C. 2323.451 is unambiguous and this "Court . . . must simply apply it." Appellee's Merit Brief, pp. 16–17. The Healthcare Amici concur the Court should apply the statute's plain meaning, but reach the opposite conclusion. The statute extends the statute of limitations only for "additional" claims and defendants, and only those discovered in the process that Division (C) contemplates. The statute of limitations is not extended across the board as to defendants the plaintiff knew about all along, particularly defendants who a plaintiff described and sued as a John Doe Defendant.

While Appellee correctly recites the maxim that "words may not . . . be added or deleted from a statute through judicial action," her interpretation would read Division (C)'s process for how a plaintiff should "discover" the additional to-be-added defendants right out of the statute. If Appellee is right, it would render Division (C) meaningless, and it would also excuse plaintiffs who name John Doe Defendants from complying with the joinder rules that specifically relate to those John Doe Defendants. In short, Appellee's position violates the very axiom of statutory interpretation that she invokes.

Contrary to Appellee's contention, applying the plain meaning of R.C. 2323.451 mandates that Appellee amend her Complaint pursuant to Civ.R. 15(D) and reinforces that joinder of additional claims or defendants must proceed from R.C. 2323.451(C)'s post-complaint discovery process. *See* R.C. 2323.451(D)(1) ("the plaintiff, in an amendment to the complaint pursuant to rule 15 of the Rules of Civil Procedure, may join in the action any additional medical claim or defendant"); *see also* R.C. 2323.451(C). The only way to join a John Doe Defendant is by following the service process that Civ.R. 15(D) specifies; thus, for Appellee to have successfully

joined Dr. Patel "pursuant to rule 15," she needed to have followed the part of Civ.R. 15 that applied to Dr. Patel, who she had already described and named fictitiously as a John Doe Defendant. By neglecting to comply with Civ.R. 15(D), she also failed to join Dr. Patel in the manner that R.C. 2323.451 contemplated, and her efforts to join him to the lawsuit were untimely.

Appellee attempts to avoid her argument's contradictions by constraining her strict rules-of-construction argument to Division (D) of R.C. 2323.451, while casting aside the plain meaning of Division (C) and Civ.R. 15(D). Appellee's selective application of strict construction to some, but not, all parts of the statute and the Civil Rules amounts to a have-your-cake-and-eat-it-too argument. For instance, Appellee claims that "nothing in subsection (D) [of R.C. 2323.451] limits joinder to those that were found during the discovery period." *See* Appellee's Merit Brief, p. 18. But that interpretation would require the Court to ignore the discovery process that Division (C) contains, and the Court would have to further ignore the specific joinder process for John Doe Defendants like Dr. Patel that Civ.R. 15(D) specifies.

In other words, while Appellee wants to lean into a narrow construction of Division (D), she can only win if the court reads Division (C) out of the statute. Yet, as Appellants and their Amici point out in their respective merit briefs, "for [Appellee] to prevail . . . this Court would have to treat R.C. 2323.451(C) as superfluous,"[5] which directly contradicts Appellee's argument that "words may not . . . be added or deleted from a statute through judicial action."[6] Healthcare Amici's Brief, p. 17; Appellee's Merit Brief, p. 17.

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[5] Healthcare Amici's Merit Brief, p. 17; *see also* Appellants' Merit Brief, p.11 ("To read the statute as [Appellee] suggest would render R.C. 2323.451(C) superfluous.)

[6] Appellee's Merit Brief, p. 17.

2. Appellee claims to read R.C. 2323.451(D) in pari materia with the 180-day-letter statute contained in R.C. 2305.113, but would skip right past R.C. 2323.451's process for discovering additional claims and defendants after filing an original complaint.

Appellee suggests that because R.C. 2323.451(A)(2) may be used in lieu of R.C. 2305.113(B)(1) (i.e., the 180-day statute), "taken together with these other provisions . . . R.C. 2323.451(D)(1) permits joinder of any defendant, notwithstanding the requirements of Civ.R. 15(D)." *Id*., at p. 19. What exactly the 180-day statute has to do with ignoring the Civil Rules' requirements for John Doe Defendants is not a point that Appellee explores, much less explains.

Appellee's argument in this regard is symptomatic of her cherry-picking the favorable portions R.C. 2323.451 while eliding the parts of the statute—particularly R.C. 2323.451(C)—that undercut her position.

R.C. 2323.451(C) provides the mechanism for a plaintiff asserting a medical claim to use the statute's 180-day discovery period to discover other medical claims and defendants that she had not included in her original complaint; the statute then permits a plaintiff to add additional claims and defendants discovered during the post-complaint discovery process. *See* R.C. 2323.451(C). Specifically, R.C. 2323.451(C) states: "parties may conduct discovery . . . for the period of time specified in division (D)(2) of this section . . . to discover the existence . . . of any other potential medical claims or defendants." Applying R.C. 2323.451 as Appellee suggests not only renders R.C. 2323.451(C) superfluous, but it also directly contradicts the plain language of the statute by allowing the addition of defendants known to plaintiff and identified in the original complaint.

3. Appellee's legislative history and public policy arguments rely on incomplete reviews of the sponsor testimony and depart from the statute's plain language.

Appellee and her Amici make several arguments to rebut the correct conclusion that R.C. 2323.451 only operates to extend the statute of limitations as to truly "additional" defendants, not those who a plaintiff knew enough about to be able to describe their title, role, location, date of care, and related details, as Appellee did as to Dr. Patel in her Original Complaint. Appellee's chief argument here is that the legislative history preceding the enactment of R.C. 2323.451 indicates that the General Assembly intended to offer a new method to join additional defendants to a medical malpractice claim following the expiration of the statute of limitations. That claim is true as far as it goes, but Appellee oversteps when she implicitly suggests that the Court should cast aside the ordinary meaning of "additional" and "discover."

The Healthcare Amici certainly would not have supported the law if they had known that Appellee's esoteric interpretation of "additional" might prevail. *See* Appellee's Merit Brief, p. 23; Trial Attorneys' Amici Brief, pp. 9–10. Appellee and her Amici rely on various iterations of Representative Robert Cupp's sponsor testimony of Am. Sub. H.B. 7 to support the argument that the purpose R.C. 2323.451 – "to reduce the need to sweep into the lawsuit unnecessary defendants" – was evidence that R.C. 2323.451's use of the term "additional defendants" included defendants known to plaintiff and identified pseudonymously in the original complaint. *See* Appellee's Merit Brief, p. 22; Trial Attorneys' Amici Brief, pp. 9–10; Representative Robert Cupp, Sponsor Testimony H.B. 7, p. 2 (accessed Sept. 20, 2024).[7]

[7] https://www.legislature.ohio.gov/legislation/132/hb7/committee.

Appellee's argument that the legislature somehow wanted to abrogate the one-year statute of limitations for defendant physicians who plaintiffs knew were at the heart of the case from the outset reappears throughout the Appellee and her Amici's Merit Briefs, including when:

(1) Appellee suggests the trial court's Order applied old law, as it existed before R.C. 2323.451. Appellee's Merit Brief, p. 21;

(2) Appellee asserts that "R.C. 2323.451 offered a new and independent method to join additional defendants . . . following the conclusion of . . . [the] limitations period." Appellee's Merit Brief, p. 23;

(3) Appellee proposes that "The General Assembly clearly intended to allow this kind of amendment through R.C. 2323.451(A)(2)." Appellee's Merit Brief, p. 25; and

The Trial Attorneys propose that "R.C. 2323.451, as written, created a workable balance for plaintiffs to properly identify and join legitimate defendants and avoid dragging unnecessary parties into litigation." Trial Attorneys' Amici Brief, p. 14.

The problem with these arguments is that, while they intone legislative concerns about shot-gunning, they fail to demonstrate how Dr. Patel's and the Healthcare Amici's correct interpretation of R.C. 2323.451 departs from the legislative history. Rep. Cupp and the OHA's testimony – cited at length in the Healthcare Amici's Merit Brief – emphasized that the bill would only extend the statute of limitations for additional defendants the plaintiff identified through the bill's post-filing discovery process. *See* Healthcare Amici Brief, p. 25 (including quotation from Rep. Cupp: "The bill allows suit to be filed with minimum number of defendants, permits formal discovery to determine other potentially liable parties and allows them to be joined within the same time frame as the 180-day notice permits. Enables more precise determination who should and should not be included in a medical claim lawsuit.").[8]

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[8] https://www.legislature.ohio.gov/legislation/132/hb7/committee (accessed July 23, 2024).

Dr. Patel and the Healthcare Amici's interpretation of the law is consistent with its unambiguous and plain meaning. But if it comes down to weighing the legislative history, that history also supports Appellant – the sponsor and proponent testimony emphasized a process to discover additional claims and defendants, and to add only those newly discovered additional claims and defendants later.[9] None of the legislative history contemplated the result that Appellee advocates here – a plaintiff knowing about an emergency room doctor, describing him, stating his role, stating where the purported negligence occurred and on what date, naming the doctor as a John Doe Defendant, but neglecting to serve him in the manner that the Civil Rules specify for such pseudonymous defendants. Instead, the legislature wanted to narrow the scope of who was sued so that ancillary healthcare providers were not pulled into lawsuits *en masse*. Thus, the statute only permitted the post-statute-of-limitations joinder of "additional" defendants who the plaintiff discovered after filing the lawsuit, and then, only in the manner that Civ.R. 15 specifies. If Appellee's interpretation were correct, the legislature wouldn't have needed a discovery process, and it wouldn't have needed to limit the statute's exceptions to "additional" claims or defendants.

4. Appellee and the Trial Attorney Amici fail to engage with the comprehensive and correct discussion of the legislative history of R.C. 2323.451 articulated in *Cox v. Mills*.

While Appellee and her Amici quote selectively from the legislative history, they entirely ignore the most fulsome discussion of that history, which appears in Judge Frye's decision in *Cox v. Mills, Franklin C.P.* 21-CV-000365, 2021 WL 11659227, at *3–4 (Dec. 29, 2021). After surveying the Legislative Service Commission's analysis and testimony relating to Am. Sub. H.B.

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[9] *See* Appellants' Merit Brief, p. 24–25; Nov. 13, 2018 Testimony of Rep. Cupp https://www.legislature.ohio.gov/legislation/132/hb7/committee (accessed July 23, 2024) (Emphasis added); *Cox*, 2021 WL 11659227, at *3–4 (after reviewing sponsor and proponent testimony relating to Am. Sub. H.B. 7, noting that **R.C. 2323.451 established a general framework for plaintiffs to gain additional time to discover new claims or discovery new defendants** if an action had been timely commenced. The statute used the word 'discover.'") (Emphasis added).

7, Judge Frye found: "R.C. 2323.451(C) does not contemplate adding new parties that were obvious when the case began." *Id.*, at *4. Judge Frye's conclusion, like the trial court's in this case, is most true to the statute's plain language, it honors the testimonial and analytical background of the bill, and it is consistent with the notion that the legislature created only a narrow exception – limited to additional claims and defendants discovered after a plaintiff's original complaint – to Ohio's one-year statute of limitations for medical claims.

For Appellee to win, the Court would need to remove division (C)'s post-complaint discovery process, ignore the plain meaning of the word "additional," and throw the bady of Ohio's one-year medical-claim statute of limitations out with the bathwater of the legislature's concern about shot-gunning. If the legislature meant to abrogate the one-year statute of limitations in such a broad way, it would have done so specifically, and there would have been abundant testimony about it. That testimony would have included the Healthcare Amici's strident opposition.

In short, Appellees would have the Court do what the legislature didn't. The Court should resist Appellee's overtures, it should reverse the Court of Appeals' erroneous decision, and it should reinstate the trial court's correct decision to grant Dr. Patel's and Mid-Ohio's Motion to Dismiss.

III. CONCLUSION

The Court should reverse the Court of Appeals' mistaken interpretation of this new law, and it should hold that Dr. Patel was not an "additional" Defendant, and that Appellee's attempt to join him to the lawsuit outside of Civ.R. 15(D)'s John Doe-specific joinder process failed. As a result, Appellee's claims against Dr. Patel and his practice group were time-barred, and the trial court properly dismissed them.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 25, 2024, a copy of the foregoing was filed electronically with the Clerk of the Supreme Court of Ohio, and that a copy of the foregoing was served upon the following by email:

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