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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Docket No. 327 CD 2022

HAYLEY FREILICH,
Plaintiff/Appellant,

v.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
Defendant/Appellee.

BRIEF OF *AMICUS CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM IN SUPPORT OF APPELLEEE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

Appeal from the Judgment of the Philadelphia County Court of Common Pleas in June Term 2018, No. 401, entered March 28, 2022

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The Pennsylvania Coalition for Civil Justice Reform ("PCCJR") is a statewide, bipartisan organization representing businesses, health care, and other perspectives. PCCJR is dedicated to improving Pennsylvania's civil justice system by elevating awareness of problems and advocating for legal reform in the legislature and fairness in the courts. As such, PCCJR often participates as an *amicus* in appeals of statewide importance.

PCCJR and its members have a compelling interest in the issues presented in this appeal. This appeal involves a constitutional challenge to Section 8528 of the Sovereign Immunity Act, 42 Pa.C.S. §8528, which imposes a statutory cap on damages in tort actions against the Commonwealth. Section 8553 of the Political Subdivision Tort Claims Act, 42 Pa.C.S. §8553, establishes a substantially similar cap on damages in tort actions against political subdivisions. Since 1980, counties, townships, boroughs, and other political subdivisions across Pennsylvania have relied upon Section 8553 to protect the public treasury and, in turn, ensure that vital government services are provided to the public. Because of the harmful impact that a reversal of the Trial Court could have on the Commonwealth and its political subdivisions, PCCJR views its participation as essential to this appeal.

SUMMARY OF ARGUMENT

Since 1980, counties, townships, boroughs, and other political subdivisions across the Commonwealth have relied upon the statutory cap imposed by Section 8553 the Political Subdivision Tort Claims Act, 42 Pa.C.S. §8553—which is substantially similar to the statutory cap imposed by the Sovereign Immunity Act, 42 Pa.C.S. §8528—to protect the public treasury and, in turn, ensure that vital government services are provided to the public. Thus, for over 40 years, local governments have conducted their affairs and allocated their scarce resources without accounting for the possibility of facing an uncapped tort liability scheme.

Nonetheless, and even though this Court and the Pennsylvania Supreme Court have upheld statutory caps in tort actions against the Commonwealth or a political subdivision amid multiple constitutional challenges, Plaintiff/Appellant Hayley Freilich ("Plaintiff") is asking this Court to declare Section 8528 of the Sovereign Immunity Act—and by extension, Section 8553 of the Tort Claims Act—unconstitutional. However, pursuant to the doctrine of *stare decisis*, this Court is compelled to follow its own decisions and those of the Pennsylvania Supreme Court subject to a limited exception that is inapplicable.

This Court should heed its own words from eight years ago:

> As tragic as the circumstances are in this case, we are constrained by the precedential case law that has previously upheld the constitutionality of the statutory cap . . . multiple times. It is the role of the General Assembly, not this Court, to make the difficult policy

> decisions and enact them into law if such decisions receive the support of the necessary majority.

Zauflik v. Pennsbury Sch. Dist., 72 A.3d 773, 797-98 (Pa. Commw. Ct. 2013), *aff'd* 104 A.3d 1096 (Pa. 2014).

Were this Court to usurp the Legislature's policymaking function, ignore over four decades of precedent, and depart from the near-national consensus on the topic, it would not only undermine the integrity of the court system, but also impose a significant financial burden on the Commonwealth and already cash-strapped local governments. This Court should not countenance such a result, especially when the Legislature is the appropriate forum to address Plaintiff's concerns over the adequacy of the statutory cap. Accordingly, this Court should affirm the Trial Court's Order granting Defendant/Appellee SEPTA's Motion to Mold Verdict.

ARGUMENT

I. Section 8528 Of The Sovereign Immunity Act Is Constitutional Under Article I, Section 6 And Article I, Section 11 Of The Pennsylvania Constitution

A. Pursuant to the Doctrine of *Stare Decisis*, this Court is Required to Follow its own Decisions and Those of the Pennsylvania Supreme Court

The doctrine of *stare decisis* states that, for the sake of clarity, a conclusion reached in one case should be applied to those which follow, if the facts are substantially the same, even though the parties may be different. *See, e.g.*, *Commonwealth v. Tilghman*, 673 A.2d 898, 903 n.9 (Pa. 1996). The doctrine "is of fundamental importance to the rule of law." *Welch v. Tex. Dep't of Highways & Pub. Transp.*, 483 U.S. 468, 494 (1987).

Stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual . . . integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). The doctrine also "avoids the instability and unfairness that accompany disruption of settled expectations," particularly where "the principle has become settled through iteration and reiteration over a long period of time." *Randall v. Sorrell*, 548 U.S. 230, 244 (2006).

The doctrine of *stare decisis* has long been a part of Pennsylvania jurisprudence, with this Court repeatedly extolling its benefits. *See, e.g.*, *In re Burtt's*

Estate, 44 A.2d 670, 677 (Pa. 1945) (collecting cases). For example, the Pennsylvania Supreme Court has remarked that "[s]tare decisis should not be trifled with[;] [i]f the law knows no fixed principles, chaos and confusion will certainly follow." *Commonwealth v. Woodhouse*, 164 A.2d 98, 104 (Pa. 1960). The Pennsylvania Supreme Court has also observed:

> It is sometimes said that . . . adherence to precedent is slavish; that it fetters the mind of the judge, and compels him to decide without reference to principle. But let it be remembered that *stare decisis* is itself a principle of great magnitude and importance. ***It is absolutely necessary to the formation and permanence of any system of jurisprudence***. Without it we may fairly be said to have no law; for law is a fixed and established ***rule***, not depending in the slightest degree on the caprice of those who may happen to administer it. . . . The uncertainty of the law—an uncertainty inseparable from the nature of the science—is a great evil at best, and we would aggravate it terribly if we could be blown about by every wind of doctrine, ***holding for true to-day what we repudiate as false to-morrow***.

McDowell v. Oyer, 9 Harris 417, 423 (Pa. 1853) (first and third emphasis added; second emphasis in original).[1]

While the doctrine of *stare decisis* does not have special force on matters of constitutional interpretation, *see*, *e.g.*, *Hunt v. Pa, State Police*, 983 A.2d 627, 637

[1] *See also Davis v. Pa. Co. for Insurances on Lives and Granting Annuities*, 12 A.2d 66, 70-71 (Pa. 1940) ("An interpretation of law consistently followed by an appellate court over so long a period that it has become fundamentally imbedded in the common law of the Commonwealth should not be changed except through legislative enactment, which is a remedy always available and the proper one under our scheme of government. ***Otherwise the law would become the mere football of the successively changing personnel of the court***, and 'the knowne certaintie of the law,' which Lord Coke so wisely said 'is the safetie of all,' would be utterly destroyed." (emphasis added; footnote omitted)).

(Pa. 2009), the doctrine is still applicable to matters of constitutional dimension. *See, e.g., Gerlach v. Moore*, 90 A. 399, 400 (Pa. 1914). Although adherence to precedent is not rigidly required in constitutional cases, "any departure from the doctrine of stare decisis demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212 (U.S. 1984) (alteration added).

Notably, pursuant to the doctrine, this Court is bound by its prior decisions and those of the Pennsylvania Supreme Court. *See*, *e.g.*, *Crocker v. WCAB (Ga. Pac. LLC)*, 225 A.3d 1201, 1210 (Pa. Commw. Ct. 2020); *Griffin v. SEPTA*, 757 A.2d 448, 451 (Pa. Commw. Ct. 2000); *see also Catagnus v. Montgomery Cnty.*, 536 A.2d 505, 508 (Pa. Commw. Ct. 1988) (acknowledging that the Commonwealth Court is "powerless to alter decisions" of the Pennsylvania Supreme Court).

B. This Court and The Pennsylvania Supreme Court Both Have Upheld Section 8528 of the Sovereign Immunity Act—and the Substantially Similar Section 8553 of the Tort Claims Act—Amid Multiple Constitutional Challenges

Historically, the Commonwealth and its political subdivisions were immune from tort liability in the absence of legislative authorization. *See*, *e.g.*, *Ayala v. Board of Public Education*, 305 A.2d 877, 880-81 (Pa. 1973), *superseded by statute on other grounds as recognized in Michel v. City of Bethlehem*, 478 A.2d 164, 165 (Pa. 1984); *Freach v. Commonwealth*, 370 A.2d 1163, 1167 (Pa. 1977). However, in 1973, the Pennsylvania Supreme Court abolished the judicially created doctrine

of local governmental immunity. *Ayala*, 305 A.2d at 878-79. Five years later, the Supreme Court eliminated the judicially created doctrine of sovereign immunity. *Mayle v. Pa. Dep't of Highways*, 388 A.2d 709, 710 (Pa. 1978), *superseded by statute as recognized in Kapil v. Ass'n of Pa. State Coll. & Univ. Faculties*, 470 A.2d 482, 485 (Pa. 1985).

In response, the General Assembly passed the Political Subdivision Tort Claims Act, Act of Oct. 5, 1980, P.L. 693, No. 142 §221(l) (as codified 42 Pa.C.S. §§8541-64) (the "Tort Claims Act"), and the Sovereign Immunity Act, Act of Oct. 5, 1980, P.L. 693, No. 142 §221(l) (as codified 42 Pa.C.S. §§8521-8528), reinstating the general rule of governmental and sovereign immunity from tort liability. *See*, *e.g.*, *Degliomini v. ESM Prods., Inc.*, 253 A.3d 226, 241 (Pa. 2021).

The Tort Claims Act and Sovereign Immunity Act share many similarities. *See*, *e.g.*, *Jones v. SEPTA*, 772 A.2d 435, 438-39 (Pa. 2001). Both statutes were part of the same legislation. Act of Oct. 5, 1980, P.L. 693, No. 142 §221(l). Both statutes reinstate a form of immunity subject to certain enumerated exceptions. *Compare* 42 Pa.C.S. §8521, *with id.* §8541. Both statutes include exceptions for vehicle liability, care, custody, or control of personal property, care, custody, or control of animals, and sexual abuse. *Compare id.* §8522(b)(1), (3), (6), (10), *with id.* §8542(b)(1), (2), (8), (9). And of particular importance here, both statutes impose a cap on damages. *Compare id.* §8528, *with id.* §8553.

Specifically, the Sovereign Immunity Act limits damages arising from the same cause or transaction or occurrence—or series of causes of action or transactions or occurrences—to $250,000 per plaintiff or $1 million in the aggregate in actions against Commonwealth parties. *Id.* §8528(b). The Tort Claims Act similarly limits damages arising from the same cause or transaction or occurrence—or series of causes of action or transactions or occurrences—to $500,000 in the aggregate in actions against a local agency or employee thereof. *Id.* §8553(b).

Given the substantial similarities between the two statutes and since there are "no legally significant differences between a statute which limits damages recoverable against agencies of the Commonwealth and a statute which limits damages recoverable against the Commonwealth itself," *Lyles v. PennDOT*, 516 A.2d 701, 703 (Pa. 1986), the Pennsylvania Supreme Court has held that Sovereign Immunity Act and Tort Claims Act "are to be interpreted consistently, as they deal with indistinguishable subject matter." *Finn v. City of Phila.*, 664 A.2d 1342, 1344 (Pa. 1995) (collecting cases).

In accordance with that principle, this Court and the Pennsylvania Supreme Court have interpreted the statutory cap set forth in the Sovereign Immunity Act and cap contained in the Tort Claims Act consistently with one another. *See*, *e.g.*, *Lyles*, 516 A.2d at 703; *Zauflik*, 72 A.3d at 791-92. In the process, this Court and the Pennsylvania Supreme Court have upheld the statutory caps amid multiple

constitutional challenges. *Lyles v. City of Phila.*, 490 A.2d 936, 939-41 (Pa. Commw. Ct. 1985) (holding that Section 8553 of the Tort Claims Act is constitutional under Article I, Section 11 of the Pennsylvania Constitution, Article III, Section 18 of the Pennsylvania Constitution, Article III, Section 32 of the Pennsylvania Constitution, and the Fourteenth Amendment to the U.S. Constitution); *Smith v. City of Phila.*, 516 A.2d 306, 309-12 (Pa. 1986) (holding that Section 8553 of the Tort Claims Act is constitutional under Article I, Section 11 of the Pennsylvania Constitution, Article III, Section 18 of the Pennsylvania Constitution, Article III, Section 32 of the Pennsylvania Constitution, and the Fourteen Amendment to the U.S. Constitution); *Lyles*, 516 A.2d at 703 (holding that Section 8528 of the Tort Claims Act is constitutional under Article III, Section 18 of the Pennsylvania Constitution, Article III, Section 32 of the Pennsylvania Constitution, and the Fourteenth Amendment of the U.S. Constitution); *PennDOT v. Consolidated Rail Corp.*, 519 A.2d 1058, 1060 (Pa. Commw. Ct. 1986) (holding that Section 8528 of the Tort Claims Act is constitutional under Article I, Section 18 of the Pennsylvania Constitution and the Fourteenth Amendment of the U.S. Constitution); *Griffin v. SEPTA*, 757 A.2d 448, 450-51 (Pa. Commw. Ct. 2000) (*en banc*) (holding that Section 8528 of the Sovereign Immunity Act is constitutional under, *inter alia*, Article I, Section 11 of the Pennsylvania Constitution); *Zauflik*, 72 A.3d at 783-96 (holding that Section 8553 of the Tort Claims Act is constitutional

under Article I, Section 6, Article I, Section 11, Article I, Section 26, Article III, Section 18, and Article V, Section 1 of the Pennsylvania Constitution, as well as the Fourteenth Amendment to the U.S. Constitution); *Zauflik v. Pennsbury School District*, 104 A.3d 1096, 1124, 1127-30, 1133 (Pa. 2014) (same); *see also Carroll v. York Cnty.*, 437 A.2d 394, 396-70 (Pa. 1981) (holding that the Tort Claims Act is constitutional under Article I, Section 11 of the Pennsylvania Constitution).

For instance, the *en banc* Commonwealth Court in *Griffin* rejected an as-applied challenge to Section 8528 of the Sovereign Immunity Act under Article I, Section 11 of the Pennsylvania Constitution. In reaching this conclusion, the Commonwealth Court wrote:

> Even if it were true that the opinions in *Lyles* and *Smith* were wrongly decided, we, as an intermediate appellate court are bound by the decisions of the Pennsylvania Supreme Court and are powerless to rule that decisions of that Court are wrongly decided and should be overturned. Any argument that *Lyles* and *Smith* were wrongly decided is an issue for a forum other than this court. Moreover, we are not convinced that those cases were wrongly decided. That the Commonwealth may bar suit against itself altogether by not waiving its right to sovereign immunity cannot be contested. Thus, if the General Assembly may abolish a cause of action, surely it has the power to limit that cause of action so long as that limitation does not otherwise offend the constitution. . . . For the greater power to abolish the cause of action certainly comprehends the lesser power to limit the cause of action.

Griffin, 757 A.2d at 450 (citations omitted).

The Commonwealth Court also debunked the contention that the statutory cap was rendered unconstitutional due to inflation—which is the very same argument that Plaintiff advances here (Appellant's Br. at 36-38)—reasoning:

> [T]he mere passage of time will not render the amount of the cap unconstitutional due to the influence of inflation. Presumably the legislature was aware of the effects of inflation and could have opted for some cap indexed to inflation. That the legislature did not index the cap to inflation but set forth an absolute dollar amount does not render the cap unconstitutional. As observed in *Smith,* the purpose of the cap was to protect the public fisc; with the passage of time, and the consequent decrease in the value of the absolute dollar figure, simply because the $250,000 cap better promotes this purpose today than in 1978 is no reason to declare it unconstitutional.

Griffin, 757 A.2d at 453 (alteration added).

More recently, this Court and the Pennsylvania Supreme Court in *Zauflik* both rejected a facial and an as-applied challenge to Section 8553 of the Tort Claims Act pursuant to Article I, Section 6 and Article I, Section 11 of the Pennsylvania Constitution, among other provisions.[2] This is despite the fact that, similar to here, the appellant claimed that her right to a jury trial was rendered meaningless because the liability cap operated to impose a 96% reduction in the jury's award. *Zauflik*, 104 A.3d at 1105. *Compare id.*, *with* (Appellants' Br. at 38 ("After deduction of her

[2] While Plaintiff repeatedly claims that *Zauflik* only involved a "facial challenge" to the governmental cap (Appellant's Br. at 8, 15, 33, 40, 41), this is nothing more than revisionist history. *Zauflik*, 73 A.3d at 778 ("Zauflik opposed District's motion to mold the verdict on the grounds that the Tort Claims Act violates the Pennsylvania and United States Constitutions ***both facially and as applied***, and filed a motion that the verdict not be molded, and judgment be entered based on the original verdict." (emphasis added)).

costs and fees, Ms. Freilich would receive 1% of the agreed-upon value of her claim. Considering the third-party insurer claims, she has the prospect of receiving no money at all.")).

C. Pennsylvania Precedent is in Conformity with the Overwhelming National Authority on the Subject

Numerous states have adopted statutes which, like the Sovereign Immunity Act and Tort Claims Act, limit the damages recoverable against the state or a local government in a tort action. *See*, *e.g.*, *Cauley v. City of Jacksonville*, 403 So.2d 379, 386 n.14 (Fl. 1981) (collecting statutes); *see also* James L. Isham, Annotation, *Validity And Construction Of Statute Or Ordinance Limiting The Kinds Or Amount Of Actual Damages Recoverable In Tort Action Against Governmental Unit*, 43 A.L.R. 4th 19, § 2[a] (1986 & Supp. 1996). Indeed, similar to Pennsylvania, many of these statutes were adopted following the abrogation of the judicially created doctrine of sovereign or governmental immunity. *See*, *e.g.*, *Larimore Pub. Sch. Dist. No. 44 v. Aamodt*, 908 N.W.2d 442, 451 (N.D. 2018); *Stanhope v. Brown County*, 280 N.W.2d 711, 717-18 (Wis. 1979); *see also Cargill's Estate v. City of Rochester*, 406 A.2d 704, 705 (N.H. 1979); *Wright v. Colleton County Sch. Dist.*, 391 S.E.2d 564, 566-67 (S.C. 1990); *Wells v. Panola County Bd. of Educ.*, 645 So.2d 883, 889 (Miss. 1994).

In any event, the highest appellate court of every state but one that has reached the issue has held that legislatively prescribed limits on general

governmental tort liability are constitutional under the Fourteenth Amendment to the U.S. Constitution and/or state constitutional provisions that are similar, if not identical, to Article I, Section 6 ("right-to-jury" provision), Article I, Section 11 ("open courts" provision), Article III, Section 18 ("anti-cap" provision), and Article III, Section 32 ("special laws" provision) of the Pennsylvania Constitution. *See* Isham, *supra*, 43 A.L.R. 4th 19, §2[a]; *see, e.g., Aamodt*, 908 N.W.2d at 442–62 (holding that a state statute that capped tort liability for political subdivisions to $250,000 per person and $500,000 for injury to three or more persons during any single occurrence did not violate the equal protection provisions or the special law provisions of the North Dakota Constitution); *State By & Through Colorado State Claims Bd. of Div. of Risk Mgmt. v. DeFoor*, 824 P.2d 783, 786–91 (Colo. 1992) (*en banc*) (holding that the Colorado Governmental Immunity Act that limits tort liability for injury to one person in any single occurrence to $150,000 and for multiple persons in a single occurrence to $400,000 did not violate the claimants' right to equal protection, access to the courts, or substantive due process under the U.S. and Colorado Constitutions); *Cauley,* 403 So.2d at 384-87 (holding that a state statute which limited the amount of money damages recoverable in tort against a municipality to $50,000 per person and $100,000 per incident did not deny potential plaintiffs access to the courts under the Florida Constitution, due process of law under the Florida and U.S. Constitutions, or equal protection under

the Florida and U.S. Constitutions); *see also Stanhope,* 280 N.W.2d at 716-20 (concluding that a state statute which limited the recovery of victims of governmental tortfeasors to $25,000 was constitutional under the equal protection clauses of the Wisconsin and U.S. Constitution, as well as the "certain remedy" clause of the Wisconsin Constitution); *Cargill's Estate,* 406 A.2d at 706-09 (determining that a state statute which limited tort recovery from governmental units to $50,000 for bodily injuries sustained by one person was constitutional under Part I, Article I and Part I, Article 14 of the New Hampshire Constitution, and the Fourteenth Amendment to the U.S. Constitution); *Packard v. Joint Sch. Dist. No. 171,* 661 P.2d 770, 773-75 (Idaho Ct. App. 1983) (holding that a state statute which generally limited the amount of recovery against a public entity for personal injury to, or the wrongful death of, an individual to $100,000 was constitutional under the equal protection clauses of the Idaho and U.S. Constitutions); *Hallett v. Town of Wrentham*, 499 N.E.2d 1189, 1194 (Mass. 1986) ("Protecting public funds from unlimited liability is a legitimate legislative purpose, and the $100,000 limitation on governmental liability is reasonably calculated to further that purpose. We conclude that the $100,000 limitation . . . does not violate equal protection."); *Wilson v. Gipson,* 753 P.2d 1349, 1351-56 (Okla. 1988) (determining that a state statute which limited the amount of recovery against a political subdivision to $300,000 for all claims arising out of a single

accident or occurrence was constitutional under Article II, Section 6, and Article 23, Section 7 of the Oklahoma Constitution, as well as the Fourteenth Amendment to the U.S. Constitution); *Richardson v. State Highway & Transp. Comm'n,* 863 S.W.2d 876, 879-80 (Mo. 1993) (holding that a state statute which limited the amount of recovery against a political subdivision to the amount of its liability insurance was constitutional under Article I, Section 2, Article I, Section 10, and Article I, Section 22 of the Missouri Constitution, as well as the Fourteenth Amendment to the United States Constitution); *Wells,* 645 So.2d at 889-94 (concluding that a state statute which limited recovery for injuries arising from school bus accidents to $10,000 per person and $50,000 in the aggregate was constitutional under, *inter alia,* Section 1, Article I, Section 144, Article IV, Section 24, and Article III, Section 14 of the Mississippi Constitution, as well as the Fourteenth Amendment of the United States Constitution); *Trujillo v. City of Albuquerque,* 965 P.2d 305, 308, 313-14 (N.M. 1998) (determining that a state statute which limited the amount of recovery against a governmental entity to $300,000 per occurrence was constitutional under the equal protection clauses of the New Mexico and United States Constitutions); *Tindley v. Salt Lake City Sch. Dist.,* 116 P.3d 295, 299-305 (Utah 2005) (holding that a state statute which limited the amount of damages recoverable against the state or its political subdivisions was constitutional under Article I, Section 11, Article I, Section 24, Article I, Section 7,

and Article XVI, Section 5 of the Utah Constitution, as well as the Fourteenth Amendment to the U.S. Constitution); *Stanley v. City of Omaha,* 713 N.W.2d 457, 468-71 (Neb. 2006) (concluding that a state statute which limited the amount of damages recoverable against a political subdivision to $1,000,000 for any person for any number of claims arising out of the same occurrence was constitutional under, *inter alia,* Article I, Section 3, Article I, Section 16, and Article III, Section 18 of the Nebraska Constitution); *Boiler v. Dep't of Transp.,* 712 S.E.2d 401, 403-05 (S.C. 2011) (determining that a state statute which limited the amount of damages recoverable against state-employed physicians and dentists to $1.2 million and all other state entities to $300,000 per person and $600,000 per occurrence was constitutional under the equal protection clause of the South Carolina and U.S. Constitutions). *But see Pfost v. State,* 713 P.2d 495, 500-06 (Mont. 1985) (holding that a state statute limiting the liability of the state or any political subdivision in tort actions for damages suffered from an act or omission of an officer, agent, or employee of the entity to $300,000 per claimant and $1,000,000 per occurrence was unconstitutional under Article II, Section 4 and Article II, Section 18 of the Montana Constitution), *overruled on other grounds by Meech v. Hillhaven West, Inc.,* 776 P.2d 488 (Mont. 1989).

Courts recognize that determinations regarding the amount of liability imposed on government entities is best left to the legislative branch of government. The following three examples are illustrative of this trend.

In *Richardson*, the Missouri Supreme Court confronted the constitutionality of a state statute which limited the amount of recovery against a political subdivision to the amount of its liability insurance. In rejecting the argument that the statute violated the equal protection, due process of law, and right to a trial by jury provisions of the Missouri Constitution, along with the Fourteenth Amendment to the U.S. Constitution, the Missouri Supreme Court wrote:

> The General Assembly has a rational basis to fear that full monetary responsibility for tort claims entails the risk of insolvency or intolerable tax burdens. Restricting the amount recoverable—like limited recovery to certain enumerated torts—allows for fiscal planning consonant with orderly stewardship of government funds, while permitting some victims to recover something.
> [The appellants] claim that full recovery will not 'bankrupt' Missouri governments. ***This argument is more properly directed to the General Assembly, which can balance the level of compensation of tort victims with the need to protect public funds***.

Richardson, 863 S.W.2d at 879 (citations omitted; alteration and emphasis added).

In *Tindley*, the Utah Supreme Court addressed the constitutionality of a state statute which limited the damages recoverable against the state or its political subdivisions to an aggregate amount of $500,000 for two or more persons in any one occurrence. In rebuffing the contention that the statute violated the uniform

operation of laws provision and due process provision of the Utah Constitution, the Utah Supreme Court reasoned:

> [T]he damage cap was intended to preserve the treasuries of the state and its political subdivisions. By limiting the damages payable by governmental entities, the Act protects an entity's operating budget from the possibility of substantial damage awards and the financial havoc they may wreak. We find this to be a legitimate governmental purpose. Although we recognize that the aggregate cap may impose significant financial and emotional burdens on those injured by a governmental entity, ***it is not our province to rule on the wisdom of the Act or to determine whether the Act is the optimal method for achieving the desired result***. Rather, our inquiry is limited to the Act's constitutionality.

Tindley, 116 P.3d at 303 (citation omitted; alteration and emphasis added).

In *Aamodt*, the Supreme Court of North Dakota held that a state statute that limited damages to $250,000 per person and $500,000 for injury to three or more persons did not violate the open court, jury trial, equal protection and special law provisions for the North Dakota Constitution. The North Dakota Supreme Court opined:

> While we sympathize with those who have suffered a catastrophic injury and loss, we agree with the Pennsylvania Supreme Court's rationale [in *Zauflik*] that ***the competing policy considerations involved with establishing damage caps for political subdivisions are legitimate considerations for the legislative branch***. In our view, the establishment of the aggregate statutory damage cap at issue in this case represents a core legislative function with a sufficiently close correspondence to the legitimate legislative goals of providing affordable liability insurance for political subdivisions within applicable fiscal constraints.

Aamodt, 908 N.W.2d at 461 (alteration and emphasis added).

In sum, a review of the relevant caselaw reveals that, like Pennsylvania, other jurisdictions overwhelmingly uphold the constitutionality of statutory limitations on government tort liability, including several limitations that are below the $250,000 limit at issue in this appeal. *See*, *e.g.*, *Cauley*, 403 So.2d at 381 ($100,000); *Stanhope*, 280 N.W.2d at 716-20 ($25,000); *see also* Isham, *supra*, 43 A.L.R. 4th 19, §2 [a].

D. Were this Court to Usurp the Legislature's Policymaking Function, Ignore Over Four Decades of Precedent, and Depart From the Near-National Consensus on the Topic, It Would Undermine the Integrity of the Court System and Impose a Significant Financial Burden on the Commonwealth and Already Cash-Strapped Local Governments

Over the last several years, states and local governments across the U.S. have suffered considerable budgetary and revenue shortfalls. *See, e.g.*, U.S. House of Representative, House Committee on the Budget, STATE AND LOCAL GOVERNMENTS ARE IN DIRE NEED OF FEDERAL RELIEF at 3 (Aug. 19, 2020) ("The confluence of plunging tax revenues and increasing demand for services is creating budget gaps for state, local, and tribal governments that may exceed the largest on record.");[3] *see also* Elizabeth McNichol & Michael Leachman, *States Continue to Face Large Shortfalls Due to COVID-19 Effects*, CENTER ON BUDGET & POLICY PRIORITIES (July

[3] *Available at*: https://budget.house.gov/sites/democrats.budget.house.gov/files/documents/COVID19%20state-local%20paper-FINAL.pdf.

7, 2020) ("The projected shortfall for 2021 fiscal year, which began on July 1 for most states, is much deeper than the shortfalls faced in any year of the Great Recission[.]").[4]

As a result, states and local governments have needed to increase taxes, cut expenditures, or draw on reserves to overcome their revenue shortfalls. *See*, *e.g.*, Elinor Haider & Jason Hachadorian, *How the Pandemic Has Affected Municipal Budgets in Philadelphia and Other Cities*, PEW CHARITABLE TRUSTS (Mar. 30, 2021).[5] Many cities are looking to the federal government to bail out their revenue shortfalls. *See*, *e.g.*, Irv Randolph, *Federal Financial Intervention Needed to Help the Safety of Cities*, THE PHILADELPHIA TRIBUNE (June 26, 2020) ("If they are not bailed out, cities will have to massively cut essential services. . . . The health and safety of an entire generation of Americans will be set back, people will die, and our economy will cease to function as we know it. And crime will go up."); *see also* David Harrison, *U.S. News: City's Belt-Tightening Highlights Pandemic-Induced Budget Woes*, THE WALL STREET JOURNAL at A6 (Nov. 30, 2020) ("Moody's Analytics estimates state and local governments faced a $70 billion to $74 billion shortfall in the 2020 fiscal year. That could balloon to $268 billion in 2021 and $312

[4] Available at: https://www.cbpp.org/research/state-budget-and-tax/states-continue-to-face-large-shortfalls-due-to-covid-19-effects.

[5] *Available at*: https://www.pewtrusts.org/en/research-and-analysis/articles/2021/03/30/how-the-pandemic-has-affected-municipal-budgets-in-philadelphia-and-other-cities.

billion in 2022 absent more federal help. Unlike the U.S. government, almost all state and local governments are required to balance their budgets every year.").

Arguably, no state is more representative of this national trend than Pennsylvania. Christina McFarland, *Cities Anticipate $360 Billion Revenue Shortfall*, NATIONAL LEAGUE OF CITIES ("[R]evenue losses for cities, towns and villages in 2020 is expected to be the most significant in Pennsylvania, with a shortfall representing 40.2% of revenues.").[6] A study by the University of Pittsburgh's Center for Metropolitan Studies estimated that municipalities located in southwestern Pennsylvania were to lose between $123 million and $485 million in 2020 alone. George W. Dougherty, Jr., *Assessing the Effects of the COVID-19 Pandemic on Municipal Revenues in Southwestern Pennsylvania*, UNIV. PITT. CENTER FOR METROPOLITAN STUDIES at 4.[7] Currently, there are 13 municipal governments that have been declared financially distressed by the Pennsylvania Department of Economic and Community Development under the Municipalities Financial Recovery Act (Act 47). *See* Pa. Dep't of Community and Econ. Dev., *Act 47 Financial Distress*, https://dced.pa.gov/local-government/act-47-financial-

[6] *Available at*: https://www.nlc.org/article/2020/05/14/cities-anticipate-360-billion-revenue-shortfall/.

[7] *Available at*: https://www.connect.pitt.edu/sites/default/files/assessing_the_effects_of_covid_19_on_municipal_revenues_in_swpa_5-19-2020.pdf.

distress/. Clearly, many local governments across the Commonwealth are in a perilous financial position.

However, the fiscal problems presently facing the Commonwealth and its political subdivisions will only be exacerbated if this Court were to usurp the Legislature's policymaking function, ignore over four decades of precedent, and impose an uncapped tort liability scheme upon them. *Zauflik*, 104 A.3d at 1122 ("[I]t is not difficult to imagine the adverse budgetary consequences for local agencies of even one multi-plaintiff lawsuit involving severe injuries, like those that led to the $11 million verdict here, or even multiple deaths, if liability were uncapped."). Indeed, many townships, boroughs, counties, and other local governments could meet the same fate as Westfall Township, Pike County, Pennsylvania, if this Court were to sanction such a regime.

Westfall Township is located where New Jersey, New York, and Pennsylvania meet at the Delaware River and has a population of approximately 2,500 people. In 2005, Westfall Township lost a federal lawsuit, and in 2009, had a $20.8 million judgment entered against it—***an amount over 20 times its annual budget***. *See Katz, et al. v. Westfall Twp.*, Case No. 3:03-CV-02377, Order at 4-6 (Dkt. #161) (M.D. Pa. 2009); David Porter, *Facing $20M Judgment, Pa. Town Seeks Bankruptcy*, PITTSBURGH POST-GAZETTE at A10 (June 21, 2009). After

negotiations, the amount was reduced to $6 million. *See* Richard Gazarik, *City Faces 'Deep' Layoffs*, TRIBUNE-REVIEW (Feb. 19, 2013).

Westfall Township's liability, however, was not subject to a statutory cap. Westfall Township also lacked (or the relevant claim fell outside of) an insurance policy to cover the cost of the judgment. Therefore, to satisfy the judgment—which obligated Westfall Township to pay the plaintiff $75,000 per quarter for 20 years—the township was required to raise property taxes well in excess of the statutory limits and dedicate the increase to paying the judgment. *See id.* Westfall Township later filed for bankruptcy. *See In re Westfall Township*, Case No. 5:09-BK-02736, Chapter 9 Voluntary Petition (Dkt. #1) (Bankr. M.D. Pa. 2009). The uncapped judgment thus had a ruinous financial impact on the residents of Westfall Township.

While the plight of Westfall Township may seem like a far-fetched scenario, it may become all too common if this Court were to foist upon the Commonwealth and local governments a limitless tort liability scheme. Indeed, because of budgetary limitations, many local governments— especially financially-distressed municipalities and small municipalities— will lack the resources to purchase an insurance policy that will protect them from paying a single judgment on the scale of the one entered against Westfall Township, let alone multiple judgments.

Consequently, when faced with such a judgment, these local governments will likely be forced to either raise taxes to exorbitant levels or make deep cuts to essential government services; some may even be driven into bankruptcy. As such, every citizen of the Commonwealth will ultimately foot the bill for uncapped and potentially boundless jury verdicts.

CONCLUSION

Reasonable minds can certainly disagree as to whether the Commonwealth's tort liability should be limited to $250,000 per plaintiff or $1 million in the aggregate. 42 Pa.C.S. §8528(b). Indeed, the facts of this case demonstrate that, in some instances, the damages sustained by a plaintiff can far exceed that amount. However, in reviewing the constitutionality of a statute, this Court is not permitted to substitute its judgment for that of the General Assembly. *See, e.g.*, *Parker v. Children's Hosp. of Phila.*, 394 A.2d 932, 937 (Pa. 1978).[8]

In enacting the Sovereign Immunity Act, the General Assembly made the decision to limit the Commonwealth's tort liability to $250,000 per plaintiff or $1 million in the aggregate, rather than capping liability at a higher figure, indexing the cap, or even eliminating the cap altogether. 1 Pa.C.S. §1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."). Because this Court and the Pennsylvania Supreme Court both have held that

[8] *See Program Admin. Servs., Inc. v. Dauphin County Gen. Auth.*, 928 A.2d 1013, 1017-18 (Pa. 2007) ("[I]t is the Legislature's chief function to set policy and the courts' role to enforce that policy, subject to constitutional limitations."); *see also Weaver v. Harpster*, 975 A.2d 555, 563 (Pa. 2009) ("[T]he power of the courts to declare pronouncements of public policy is sharply restricted. Rather, it is for the legislature to formulate the public policies of the Commonwealth." (citation omitted)). *See generally Naylor v. Hellam Twp.*, 773 A.2d 770, 777 (Pa. 2001) (recognizing the General Assembly's superior ability to examine social policy issues and determine legal standards so as to balance competing concerns).

Section 8528 is constitutional, it is improper for this Court to now second-guess the Legislature's wisdom in imposing the cap. Plaintiff's argument therefore is one better suited for the General Assembly. *Zauflik*, 104 A.3d at 1133 ("[T]he conclusion that the General Assembly is in the better position than this Court to address the complicated public policy questions raised by the larger controversy has substantial force." (alteration added)); *see, e.g., Tindley*, 116 P.3d at 303; *Richardson*, 863 S.W.2d at 879.

Accordingly, consistent with the doctrine of *stare decisis*, *Amicus Curiae* Pennsylvania Coalition for Civil Justice Reform, on behalf of itself and its members, respectfully request that this Court affirm the Trial Court's Order.

Respectfully submitted,

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Dated: September 15, 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing BRIEF OF *AMICUS CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM IN SUPPORT OF APPELLEEE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY complies with the word-count limit set forth in Pa.R.A.P. 531(b)(3). Based on the word-count function of the word processing system used to prepare the Brief, the substantive portions of the Brief (as required by Pa.R.A.P. 2135(b) and (d)), contain 5,994 words.

I also certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Casey Alan Coyle

Date: September 15, 2022 Casey Alan Coyle, Esquire

PROOF OF SERVICE

I hereby certify that, on this 15th day of September, 2022, I am caused to be served the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

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