APPENDIX 1
BRIEF OF AMICUS CURIAE INDIANA TRIAL LAWYERS ASSOCIATION*

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Melody Martin alleges that her doctor negligently failed to detect her breast cancer, affirmatively advised her to forgo a biopsy that might have detected it, and concealed his knowledge of important medical facts from her. The question presented in this tragic case is whether Indiana residents like her are left utterly remediless by the two-year, occurrence-based medical malpractice statute of limitations. Ind. Code § 27-12-7-1(b).

The Court of Appeals correctly held that the statute violates Art. I, § 12 and Art. I, § 23 of the Indiana Constitution. These guarantees are central elements of Indiana's proud constitutional heritage and should not be reduced to mere echoes of the federal due process and equal protection clauses. Section 27-12-7-1(b) abrogates all remedies for medical malpractice injuries after two years have elapsed, even if a plaintiff had no reasonable way to know that she had been injured. As the Court of Appeals explained, the statute operates in an "Alice-in-Wonderland" way, foreclosing Melody Martin's right to a remedy before her cause of action had even accrued. 674 N.E.2d 1015, 1027 (decision below). "'It is sought here to declare the bread stale before it is baked.'" *Id.* (citation omitted). Such a statute cannot possibly be squared with Art. I, § 12's guarantee that "every person" "shall" receive a "complete" remedy for injuries to her "person." To decide otherwise would render Art. I, § 12 a nullity — "only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." *Edwards v. California*, 314 U.S. 160, 186 (1941) (Jackson, J., concurring).

In addition, § 27-12-7-1(b) violates Art. I, § 23 because it targets particular injuries — those arising from medical malpractice — for a unique burden: while all other tort plaintiffs enjoy a "discovery-based" statute, med-mal victims must sue within two years of the occurrence, even if (as here) they could not reasonably know of their injury until after the two years had passed. Yet the Constitution (specifically Art. I, § 12) treats all injuries equally and bars invidious discrimination among them. If Melody Martin's payment to Dr. Richey for his services had been fraudulent, any suit he brought would have enjoyed the benefit of a discovery rule. But she is singled out for a harsher rule when she seeks redress for her life-threatening injuries.

As the Court of Appeals explained, the statute violates § 23 in another way: not only does it discriminate *between* med-mal and other tort plaintiffs, it also unreasonably differentiates *among* med-mal victims. The statute penalizes those, like Melody Martin, who through no fault of their own cannot discover the malpractice until after two years have passed. 674 N.E.2d at 1023.

The precedent cited by petitioner is inapposite in light of this Court's holding

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* In opposition of petition to transfer, Martin v. Richey, 674 N.E.2d 1015 (Ind. Ct. App. 1997). The authors would like to thank Ned Miltenberg for his substantial assistance in the preparation of this Brief. The *Indiana Law Review* editorial staff did not edit this Brief. It is printed here in its original form.

in *Collins v. Day*, 644 N.E.2d 72 (Ind. 1994), that Art. I, § 23 is to be governed not simply by the minimum rationality test of the Fourteenth Amendment[1] but rather requires that "legislative classifications be 'just,' 'natural,' 'reasonable,' 'substantial,' 'not artificial,' 'not capricious,' and 'not arbitrary.'" 644 N.E.2d at 79. Section 27-12-7-1(b) cannot pass this test.

II. ARGUMENT

A. The Statute Violates Art. I, § 12

The issue is not, as one of petitioner's *amici* contends, the Legislature's abstract "right to alter the common law" (IDLA Br. 1); such power of course exists, but only so long as legislative "change[s] do[] not interfere with constitutional rights." *State v. Rendleman*, 603 N.E.2d 1333, 1336 (Ind. 1992). Accordingly, the real question is whether the legislature may, consistent with Art. I, § 12, deprive persons like Melody Martin of *any remedy at all* by requiring them to sue before they knew (or reasonably could know) that their claims exist. In *Chaffin v. Nicosia*, 261 Ind. 698, 703-04, 310 N.E.2d 867, 870 (1974), this Court emphasized that such a rule "would raise substantial questions under the Article I, § 12 guarantee of open courts and redress for injury to every man, not to mention the offense to lay concepts of justice."

1. The 1816 Constitution

The right to a remedy guarantee was originally contained in Art. I, § 11 of the 1816 Constitution. Although little convention history regarding this provision has survived, *see* 1 Charles Kettleborough, CONSTITUTION MAKING IN INDIANA 83 n.1, 88 n.5 (1916), history reveals its meaning clearly.

Art. I, § 11 was adopted against a backdrop of centuries of concern about governmental interference with access to justice, stretching back to Magna Carta. *See* Judge William C. Koch, Jr., *Reopening Tennessee's Open Courts Clause: A Historical Reconsideration of Article I, Section 17 of the Tennessee Constitution*, 27 U. MEM. L. REV. 333, 349-66 (1997). Lord Edward Coke, seventeenth century England's preeminent jurist and commentator, revitalized the Great Charter and transformed it into a font of Anglo-American liberties. William S. McKechnie, MAGNA CARTA 120-21, 178 (2d ed. 1914). According to Coke, Magna Carta expressly guaranteed that "every subject of this realme, for injury done to him ... by any other subject ... without exception, may take his remedy by the course of the law, and have justice, and right for the injury done to him, freely without sale, fully without any deniall, and speedily without delay." 1 Edward Coke, THE

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1. A statute of limitations is invalid even under rational basis scrutiny if it provides merely an "illusory" opportunity to vindicate a state-recognized right. *Mills v. Habluetzel*, 456 U.S. 91, 97 (1982); *Pickett v. Brown*, 462 U.S. 1, 12 (1983). In *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), six Justices held that not even minimum rationality was satisfied by a statute depriving a plaintiff of a cause of action despite her diligent pursuit of redress through the state system, based solely on events beyond her control. *See id.* at 442 (Blackmun, J., joined by Brennan, Marshall, and O'Connor, JJ., concurring); *id.* at 444 (Powell, J., joined by Rehnquist, now C.J., concurring in the judgment). This Court should construe the Indiana Constitution so as to avoid a question as to the *federal* validity of § 27-12-7-1(b).

SECOND PART OF THE INSTITUTES OF THE LAWS OF ENGLAND *55 (London, E.&R. Brooke 1797). Coke thus "read[] into Magna Carta the entire body of the common law of the seventeenth century." McKechnie, MAGNA CARTA at 178. Blackstone similarly emphasized the common law "right of every Englishman" to "apply[] to the courts of justice for redress of injuries." 1 William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 141 (1765). These principles were later famously invoked by Chief Justice Marshall in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (right to a remedy is "the very essence of civil liberty").

"The American colonists were intimately familiar with Coke," *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 29 (1991) (Scalia, J., concurring in judgment), and they regularly invoked Coke and Magna Carta in challenging the constitutionality of many of the infamous Parliamentary enactments that spawned the Revolution, such as the Navigation Act of 1761, the Stamp Act of 1765, the Intolerable Acts of 1774, and the Restraining Act of 1775.[2]

In particular, the Stamp Act of 1765 "awakened" Americans "to the fact that Parliament did not recognize the English constitution necessarily followed the flag." William F. Swindler, MAGNA CARTA: LEGEND AND LEGACY 216 (1965). Although the Stamp Act was nominally intended to raise general revenues by taxing official documents, its principal effect was severely to restrict access to the civil justice system. Brogan, HISTORY at 116; Edmund S. Morgan & Helen M. Morgan, THE STAMP ACT CRISIS: PROLOGUE TO REVOLUTION 126, 137, 145, 146, 175-86 (3d ed. 1992). "In most colonies there was no interruption in the trial of criminals, for the Stamp Act imposed no tax on the documents used in criminal cases. *It was only the civil courts which were closed.*" *Id.* at 184 (emphasis added). Importantly, when James Otis argued that the Navigation Act of 1761 and the Stamp Act were void, he cited Coke and Magna Carta for the proposition that Parliament could not abridge common law rights inasmuch as "'there are Limits beyond which if Parliaments go, their Acts bind not.'" *Id.* at 146 (citation omitted).

Unfortunately, after Independence the first state legislatures picked up where Parliament left off, abrogating the common law at whim and prompting Jefferson, Madison, and many others to decry the "'elective Despotism'" of popularly elected legislatures. Gordon S. Wood, THE CREATION OF THE AMERICAN REPUBLIC: 1776-1787, 451-2 (1967) (quoting Jefferson). *See Book v. Office Bldg. Comm'n*, 238 Ind. 120, 161, 149 N.E.2d 273, 294 (1958). "By the mid-1780s, many American leaders had come to believe that the democratic element of their mixed republics — the state assemblies — . . . were the political authority most to be feared." Gordon S. Wood, *State Constitution-Making in the American Revolution*, 24 RUTGERS L.J. 911, 923 (1993). State legislatures were abridging what Americans understood as their natural, inherent, and inalienable common law rights. "The confiscation of property . . . and the various devices

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2. Hugh Brogan, THE HISTORY OF THE UNITED STATES 124-25 (1990 ed.); A.E. Dick Howard, THE ROAD FROM RUNNYMEDE: MAGNA CARTA AND CONSTITUTIONALISM IN AMERICA 133-37 (1968).

suspending the ordinary means for recovery of debts, despite their 'open and outrageous . . . violation of every principle of justice,' were not the decrees of a tyrannical and irresponsible magistracy, but laws enacted by [highly representative] legislatures." Wood, CREATION at 404 (citation omitted). *See also* Stanley Elkins & Eric McKitrick, THE AGE OF FEDERALISM 10-11, 61, 702 (1993); Brogan, HISTORY at 184, 214-15.

"[D]epriving people of common law causes of action for damages" was not infrequent. William E. Nelson, AMERICANIZATION OF THE COMMON LAW 91-92 (1975) (emphasis added). State legislatures not only closed courts but also assumed their powers, "interfering in causes between parties, reversing court judgments, [and] staying executions after judgments." Wood, CREATION at 407. State legislatures "even prohibit[ed] court actions" from being commenced in certain matters , such as "land titles or private contracts involving bonds or debts." *Id.* (emphasis added). Tories were often deprived of judicial remedies not only in pending cases but also by statutes that abrogated common law causes of action *before* individuals' claims had accrued. Forrest McDonald, NOVUS ORDO SECLORUM: THE INTELLECTUAL ORIGINS OF THE CONSTITUTION 155 (1985). "[T]he major constitutional difficulty experienced in the Confederation period [was] the problem of legal tyranny, the usurpation of private rights under constitutional cover." Wood, CREATION at 412.

State constitutions were amended throughout the 1780s and 1790s in no small part to address these very problems. The separation of powers, substantive restrictions on legislative power, and explicit recognition of individual liberties — such as the right to a remedy — were all attempts to cabin legislative authority and to guarantee the availability of common law remedies. Wood, CREATION at 430-63. Significantly, although only two of the original thirteen colonies guaranteed open courts or complete remedies to their citizens in 1776, by 1796 half of the sixteen states in the Union had adopted such clauses, including all four of the states whose constitutions served as models for Indiana's Bill of Rights. *See* Koch, *supra*, at 367.

The 1816 Framers were quite familiar with this history and "with the principles of both the Declaration of Independence and the U.S. Constitution." John D. Barnhart & Dorothy L. Riker, 1 HISTORY OF INDIANA: INDIANA TO 1816, 444 (1971). "More than half the delegates had some legal training or experience." Howard H. Peckham, INDIANA 44 (1978). They "were, for the most part, educated men. They were scholars in the history and philosophy of government. Their personal memory reached back into the atmosphere of the Revolution ... when the principles of constitutional government were first formulated." James W. Noel, *In Re: Proposed Constitutional Convention*, 5 IND. L.J. 373, 377 (1930).

The 1816 Framers designed Indiana's first constitution with considerable care. The "process involved . . . was *not simply copying the constitutional law of another state, but was a matter of selection.* . . . [T]he delegates seem to have searched through several constitutions to find the sections which embodied the provisions they considered preferable . . . ." Barnhart & Riker, HISTORY at 449-50 (citation omitted; emphasis added). The 1816 Framers' independent cast of mind was particularly evident in Article I, the Bill of Rights, which was

assembled from portions of the constitutions of four states (Ohio, Kentucky, Tennessee, and Pennsylvania, each of which guaranteed then, as now, remedies to injured persons) as well as the federal Constitution. John D. Barnhart, VALLEY OF DEMOCRACY 191-92, 194 (1970).

In this light, Art. I, § 12's guarantee of a right to a remedy, which was deliberately adopted to safeguard private rights by restraining legislative power, must truly "be considered as though every word had been hammered into place." *Warren v. Indiana Tel. Co.*, 217 Ind. 93, 102, 26 N.E.2d 399, 403 (1940).

2. The 1851 Constitution

The 1851 Framers amended the right to a remedy guarantee by (i) adding the word "completely" to Art. I, § 12, and also (ii) separating the first full sentence with a semicolon, which underscores that the provision secures two independent rights: the right of access to the courts and the right to a complete tort remedy. IDLA contends that these changes were not meant to affect the provision's meaning. IDLA Br. 5. That could be so only in the sense that the Framers apparently believed that the meaning was already implicit in Art. I, § 11 of the 1816 Constitution and merely needed clarification. Indeed, IDLA itself concedes that the addition of the term "completely" reflected "a more accurate and complete translation" of Coke's text. IDLA Br. 8.

Tellingly, the 1851 Framers authorized only three narrow changes in the common law. Two changes related to the prosecution and defense of criminal charges. The third made it easier for plaintiffs to pursue civil suits. 674 N.E.2d at 1025 & n.8.

In contrast, those same Framers rejected — on three separate occasions — proposals to authorize the legislature to "abolish the common law of England," to "alter, amend, or repeal any law of the State," and to "systematize" and codify "the whole body of law of the State." 674 N.E.2d at 1025 n.7. That such proposals were even made demonstrates that the Framers believed that the legislature was without power to abrogate common law remedies in the manner of § 27-12-7-1(b) and could not acquire that power absent constitutional amendment.

IDLA insists that this history is irrelevant and that these three proposals were not only rejected but ridiculed because the Framers appreciated "the perpetual nature of the common law and its integral role in the body of law that governs non-code systems." IDLA Br. 6. That is just the point. The common law has protected individuals against negligently-caused injuries since at least 1367. C.H.S. Fifoot, HISTORY AND SOURCES OF THE COMMON LAW 66-78 (1949). *E.g.*, *Everard v. Hopkins*, 80 Eng. Rep. 1164 (1634) (doctor liable for personal injuries); *Ross v. City of Madison*, 1 Ind. 281, 284 (1848) (applying common law negligence). *See* 1 Blackstone, COMMENTARIES at 106-08; 2 Blackstone, COMMENTARIES at 438.

Americans' persistent appeals to the common law in the decades before and after the Revolution manifested "'a regard for its virtues that seems almost mystical.'" Morton J. Horwitz, THE TRANSFORMATION OF AMERICAN LAW: 1780-1860 5 (1977) (citation omitted). Just as "Coke insist[ed] that the common

law is the every essence of English justice,"[3] Revolutionary-era Americans maintained that the common law was the "embod[iment] [of] the principles of justice, equity, and rights."[4] A principled respect for the common law, and not merely practical concerns over the feasibility of codification, explains why proposals to expand the legislature's powers, such as through codification, failed in Indiana in 1850,[5] just as similar proposals largely failed elsewhere throughout the century. [6]

Not only did the framers refuse to expand the legislature's powers to allow it to abrogate common law rights and remedies, but in their official report to the people of the state summarizing their accomplishments, the Framers boasted that they had imposed more than a dozen "new" and "important" substantive and procedural rules expressly designed to "*check and regulate the Legislative branch.*" *Address to the Electors* (Feb. 8, 1851), reprinted in CONVENTION JOURNAL at 965 (emphasis added). These new restrictions limited the legislature's power to confer special "privileges and immunities" on favored friends (Art. I, § 23); banned "local or special" laws (Art. IV, § 22); specified that "all laws shall be general, and of uniform operation throughout the state" (Art. IV, § 23); limited bills to a "single subject" (Art. IV, § 19); required that votes in the General Assembly be recorded in journals (Art. IV, § 12); mandated multiple readings of a bill before a vote (Art. IV, § 18); and prescribed that bills be "plainly worded" (Art. IV, § 20).

The 1851 Framers clearly would not have countenanced the legislative abrogatation of common law remedies wholesale before claims had even arisen.

3. *Stare Decisis* Is Not Dispositive Here

Petitioner and his *amici* rely primarily on *stare decisis.* Yet they ignore both this Court's express reservation of the specific question presented in this case in *Chaffin v. Nicosia*, 261 Ind. at 703-04, 310 N.E.2d at 870, and this Court's repeated suggestions that statutes of limitation, to be valid, must afford a plaintiff a reasonable period to sue. *Bunker v. National Gypsum Co.*, 441 N.E.2d 8, 12 (Ind. 1982); *Short v. Texaco, Inc.*, 273 Ind. 518, 525, 406 N.E.2d 625, 630 (1980), *aff'd*, 454 U.S. 516 (1982); *Rohrabaugh v. Wagoner*, 274 Ind. 661, 664, 413 N.E.2d 891, 893 (1980). Many of the decisions cited by petitioner involve laws "alter[ing]" or "restrict[ing]" remedies,[7] or laws addressing specialized

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3. James R. Stoner, Jr., COMMON LAW AND LIBERAL THEORY: COKE, HOBBES, AND THE ORIGINS OF AMERICAN CONSTITUTIONALISM 20 (1992).

4. Bernard Bailyn, IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION 31 (1967).

5. 2 DEBATES IN INDIANA CONVENTION 1850, at 1713-18, 1737-65, 1813, 1820-28, 1838-45, 1848-51, 1928-29 (1850).

6. Morton J. Horwitz, THE TRANSFORMATION OF AMERICAN LAW, 1870-1960: THE CRISIS OF LEGAL ORTHODOXY 118-19 (1992); Lawrence M. Friedman, A HISTORY OF AMERICAN LAW 345 (1973); Howard, ROAD at 264.

7. *Johnson v. St. Vincent Hospital, Inc.*, 273 Ind. 374, 387, 404 N.E.2d 585, 594 (1980) (medical review panels).

contexts.[8] The statutes tested in these cases did not abolish remedies altogether.

Moreover, the decisions upon which petitioner relies were rendered without the benefit of the historical evidence advanced here. "The principle of *stare decisis* does not demand that we follow precedents that shipwreck justice." *Harris v. YWCA of Terre Haute*, 250 Ind. 491, 237 N.E.2d 242, 244 (1968). Even the authorities petitioner cites recognize that "the Indiana remedies clause says something and must mean something, more than the treatment afforded it to date." Jerome L. Withered, *Indiana's Constitutional Right to a Remedy by Due Course of Law*, 22 RES GESTAE 456, 463 (April 1994). "The time to re-examine this important provision in our Indiana Constitution thus may have arrived." *Id.* at 459.

The amicus brief of the State Medical Association unwittingly reveals that relatively few states have occurrence-based statutes without a discovery rule. Two-year occurrence statutes were invalidated in *Carson v. Maurer*, 424 A.2d 825, 834 (N.H. 1980), and, with respect to those like Melody Martin who could not discover their injury within 2 years, in *Nelson v. Krusen*, 678 S.W.2d 918, 922 (Tex. 1984) (statute "violates the open courts provision by cutting off a cause of action before the party knows, or reasonably should know, that he is injured"). Other state constitutions which informed Art. I of the 1816 Constitution have also been interpreted as invalidating statutes like § 27-12-7-1(b) on right-to-a-remedy grounds. *See Perkins v. Northeastern Log Homes*, 808 S.W.2d 809, 817 (Ky. 1991); *McCollum v. Sisters of Charity*, 799 S.W.2d 15, 19 (Ky. 1990); *Brennaman v. R.M.I. Co.*, 639 N.E.2d 425, 430-31 (Ohio 1994); *Hardy v. VerMeulen*, 512 N.E.2d 626, 628 (Ohio 1987), *cert. denied*, 484 U.S. 1066 (1988).[9]

Petitioner notes that the legislature has often altered the common law. IDLA cites Ind. Code § 1-1-2-1.[10] These arguments miss the point. Although the legislature unquestionably possesses the power to modify the common law, its power to do is cabined by constitutional constraints, such as Art. I, § 12. Section 12 does not limit the legislature's ability to *expand* remedies (by restricting the common law doctrine of sovereign immunity, for example), or *reconfigure* them (*e.g.*, through the *quid pro quo* of workers' compensation), but it does establish a floor below which the legislature may not go. By eliminating Melody Martin's remedy before she could even assert it, the legislature has passed that limit.

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8. *Pennington v. Stewart*, 212 Ind. 553, 558, 10 N.E.2d 619, 621 (1937) (noting special context of marriage and holding, in keeping with evolving social mores, that a husband has no property right to the affections of his wife).

9. Courts in other states have upheld statutes of limitation in medical malpractice cases, but chiefly under "minimum rationality" review rather than the kind of analysis we submit is required by Art. I, § 12, and chiefly where the plaintiff's right to a remedy is not eliminated altogether.

10. IDLA errs in asserting that § 1-1-2-1 definitively establishes the relative hierarchy of law in Indiana. The provision lists state statutes above federal statutes, the state constitution above federal statutes, and omits any reference to federal administrative regulations.

B. The Statute Violates Art. I, § 23

Section 27-12-7-1(b) "varies from the standard statute of limitation applicable generally to tort suits." *Havens v. Ritchey*, 582 N.E.2d 792, 794 (Ind. 1991). The general statute, Ind. Code § 34-1-2-2(1), provides that an action must be commenced within two years after the cause of action *accrues*. "The legislature left it for the courts to determine when the cause accrues." *Id.* Thus, whenever a foreign substances causes injury, a discovery rule is applied. *Barnes v. A.H. Robins Co.*, 476 N.E.2d 84, 87-88 (Ind. 1985).

In contrast, § 27-12-7-1(b) is a Procrustean statute that yields "brutal" results. *Hughes v. Glaese*, 659 N.E.2d 516, 518 (Ind. 1995). It discriminates against a discrete class of plaintiffs and a singular type of injury — even though the Constitution (in Art. I, § 12) commands that all injuries be treated equally. It discriminates against med-mal plaintiffs, particularly those whose claims do not even arise until after two years have passed. Petitioner's contention that the statute is neutral because it applies, on its face, to all med-mal victims ignores the statute's practical effect and recalls Anatole France's epigram about the "majestic egalitarianism" of French law, which forbade rich and poor alike to beg in the streets.

Section 27-12-7-1(b) cannot be justified by hypothetical problems of stale evidence or unavailable witnesses. Every other tort case is governed by the generally applicable rule.[11] Equally unavailing is petitioner's reliance on decades-old cases describing medical liability crises that have long passed (if they ever occurred). Section § 27-12-7-1(b) has outlived whatever utility it may once have had. It now serves as precisely the kind of special interest legislation that the 1851 framers sought to prohibit by adopting Art. I, § 23.

History reveals that thirty-four years of increasingly questionable performance by the legislature, John D. Barnhart, *The Democratization of Indiana Territory*, 43 IND. MAG. OF HIST. 8 (1947), led the 1851 framers to adopt more than a dozen measures to "check and regulate the Legislative branch." "[U]nder the old constitution the assembly had" engaged in "continuous logrolling and innumerable concessions to particular interests who found the system conducive to their selfish ends." 2 John D. Barnhart & Donald F. Carmody, INDIANA: FROM FRONTIER TO INDUSTRIAL COMMONWEALTH 87 (1954).

Although some of the delegates intended Section 23 to combat the problem of state-granted monopolies, *Collins*, 644 N.E.2d at 76-77, the provision was drafted in general terms. "It provides that if the Legislature grant to one set of persons a privilege, it shall grant the same privilege to all other persons." 2 DEBATES 1850-51, at 1397. Proposals to limit the scope of the provision to banking were defeated. *Id.* at 1397-98. "[I]t recognizes a principle of justice, a departure from which would inevitably result in injury to some person or persons." *Id.* at 1396. Notably, some delegates objected to the proposed amendment on grounds analogous to those used by petitioner to defend § 27-12-

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11. *See Clark v. Jeter*, 486 U.S. 456, 464-65 (1988) (invalidating special statute of limitation which departed from generally applicable rule).

7-1(b). The dissenting delegates argued that the legislature "can be trusted," that the proposal would "cripple the energies of the State," and that the legislature should be permitted to confer special privileges "to provide for the public interest." *Id.* at 1396-97. These views did not prevail. The framers highlighted Section 23 in their report to the people of the state as one of the "chief amendments which we have thought useful to make." *Id.* at 2042.

III. CONCLUSION

This Court should deny the petition to transfer or, in the alternative, should affirm the judgment of the Court of Appeals.

Respectfully submitted,
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