

**[J-1-2025] [MO: Todd, C.J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

HAYLEY FREILICH,	:	No. 10 EAP 2024
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court entered on
	:	July 6, 2023, at No. 327 C.D. 2022,
v.	:	affirming the Order entered on
	:	March 29, 2022, in the Court of
	:	Common Pleas of Philadelphia
SOUTHEASTERN PENNSYLVANIA	:	County, Civil Division, at No.
TRANSPORTATION AUTHORITY,	:	180600401.
	:	
Appellee	:	ARGUED: March 4, 2025

CONCURRING OPINION

CHIEF JUSTICE TODD

DECIDED: October 1, 2026

With today’s decision, which I authored, our Court rejects Appellant Hayley Freilich’s constitutional challenges to the statutory damages cap contained in Section 8528(b) of the Sovereign Immunity Act, whereby the General Assembly has limited her recovery against the Commonwealth to no more than \$250,000.¹ This recovery quite obviously pales in comparison to Ms. Freilich’s injuries — including a partial left foot amputation that has required multiple additional surgeries and significant medical care, leaving her with a lifetime of pain, suffering, and disfigurement — damages for which were stipulated to be \$7,000,000. As explained in full in our majority opinion, the law commands the rejection of her challenges. However, I am compelled to write separately,

¹ Section 8528(b) of the Sovereign Immunity Act provides that “[d]amages arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall not exceed \$250,000 in favor of any plaintiff or \$1,000,000 in the aggregate.” 42 Pa.C.S. § 8528(b).

unconstrained by majority authorship,² to highlight what I believe to be an unconscionable failure on the part of the General Assembly to raise the limits of this statutory cap in 40 years.

I echo the late Chief Justice Baer's lament for plaintiffs who suffered catastrophic injuries, and, yet, are denied fair compensation because of application of the statutory caps. *Grove v. Port Authority of Allegheny County*, 218 A.3d 877, 892 (Pa. 2019) (Baer, J., concurring). As explained by then-Justice Baer, litigation over such injuries is often complex, and requires, for example, plaintiffs' counsel:

to retain multiple liability and damages experts who are, in turn, mandated to develop their theories to a reasonable degree of certainty, provide detailed expert reports, sit for depositions, and often provide live testimony at the cost of tens of thousands of dollars.

Distinct from 1978, when the statutory damages cap was enacted, it is now necessary and extraordinarily expensive to produce demonstrative evidence There are also enormous sums expended for discovery and mediations, which each cost thousands or tens of thousands of dollars, as well as the inevitable miscellaneous expenditures for travel, lodging, meals and the like, which aggregate throughout all complex litigation. All of these expenses are without consideration of the contingent fees and general overhead every lawyer must charge and consider before accepting a case.

² As eloquently penned by Justice Anthony Kennedy in his concurrence in *Texas v. Johnson*, 491 U.S. 397, 420-21 (1989), "[t]he hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result. And so great is our commitment to the process that, except in the rare case, we do not pause to express distaste for the result, perhaps for fear of undermining a valued principle that dictates the decision. This is one of those rare cases." Indeed, special concurrences are "somewhat unusual but not without precedent." *Commonwealth v. King*, 57 A.3d 607, 633 n.1 (Pa. 2012) (Saylor, J., specially concurring) (collecting cases).

Zauflik v. Pennsbury School District, 104 A.3d 1096, 1135 (Pa. 2014) (Baer, J., concurring).

Given the decades-old cap, the real value of the damages cap has shrunk to a small fraction of its initial value. In its 2022 report, the Legislative Budget and Finance Committee suggested that a cap of \$1.04 million would be warranted in 2022 to match the purchasing power of \$250,000 in 1980. And the real value of the cap continues to shrink each year with inflation. As a result, “stagnant statutory caps” prevent reasonable compensation to victims who have suffered devastating losses through the negligence of government entities. *Grove*, 218 A.3d at 890 (Baer, J., concurring). This patent unfairness is, however, one that can be remedied only by the legislature.

While I am, as evidenced by today’s opinion, fully cognizant of the legislature’s policy-making role in this area, given the grossly inadequate recovery currently permitted in the small percentage of personal injury cases involving catastrophic injury, I call upon our General Assembly to revisit Section 8528(b) and increase the statutory damages cap to an amount commensurate with a reasonable recovery for all of our citizens injured by the Commonwealth.

Justices Dougherty and Mundy join this special concurring opinion.