No. 23-365

In the Supreme Court of the United States

MEDICAL MARIJUANA, INC.; DIXIE HOLDINGS, LLC, AKA DIXIE ELIXIRS; RED DICE HOLDINGS, LLC,
PETITIONERS,

v.

DOUGLAS J. HORN,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONERS

ROY A. MURA
SCOTT D. MANCUSO
MURA LAW GROUP, PLLC
930 Rand Building
14 Lafayette Square
Buffalo, NY 14203

Counsel for Medical Marijuana, Inc. and Red Dice Holdings, LLC

RICHARD E. LERNER
HANOCH SHEPS
MAZZOLA LINDSTROM LLP
1350 Avenue of the Americas, Second Floor
New York, NY 10019

Counsel for Dixie Holdings, LLC

LISA S. BLATT
Counsel of Record
SARAH M. HARRIS
AARON Z. ROPER
KRISTEN A. DEWILDE
CLAYTON P. PHILLIPS
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases:

Page

Cases—cont'd:

Statutes:

Other Authorities:

Page

Other Authorities—cont'd:

In the Supreme Court of the United States

No. 23-365

MEDICAL MARIJUANA, INC.; DIXIE HOLDINGS, LLC, AKA DIXIE ELIXIRS; RED DICE HOLDINGS, LLC,
PETITIONERS,

v.

DOUGLAS J. HORN,
RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONERS

Under civil RICO, only a plaintiff "injured in his business or property by reason of" racketeering activity may "recover threefold the damages he sustains." 18 U.S.C. § 1964(c). Horn does not dispute that the text excludes personal injuries and that this case involves a personal injury. The only dispute is whether Horn's lost wages are merely the *damages* sustained from Horn's personal injury (petitioners' view) or a separate actionable RICO injury (Horn's view).

Petitioners' position is clear: Civil RICO bars recovery for personal injuries, full stop. Horn seeks such recovery here. Horn's complaint alleges that

racketeering activity injured his person—purported fraud inducing Horn to unwittingly consume THC. Civil RICO does not allow Horn to recover damages for that personal injury. In civil RICO's parlance, Horn's lost wages are the "damages sustain[ed]" from his personal injury, not a separate "injur[y]" to "business or property." 18 U.S.C. § 1964(c). The Clayton Act uses identical language to describe actionable antitrust injuries, and that language bars suits for economic damages from personal injuries. The same rule should apply here.

Horn's contrary rule is that *every* economic harm from a personal injury generates its own standalone civil RICO claim. In Horn's words (at 32-33), civil RICO authorizes treble damages for any "harm" for which the plaintiff can "produce receipts, like lost profits, increased expenditures, bills, lost wages, and the like." Horn (at 32) would limit civil RICO's exclusion of personal injuries to "nonpecuniary damages," like pain and suffering.

Horn's rule would circumvent civil RICO's exclusion of personal injuries and elide the statute's textual distinction between injuries and damages. Virtually every plaintiff personally injured by a dangerous product, mislabeled medicine, undisclosed allergen, or the like suffers pocketbook consequences, be that a doctor's bill, insurance copay, or lost wages. *Every* personal-injury claim involving any of the dozens of RICO predicates (including fraud) could become a federal claim with treble economic damages and attorneys' fees. Congress did not plausibly exclude personal injuries from civil RICO, then turn around and authorize suit for all personal injuries that can be quantified in dollars and cents.

A. Civil RICO's Text Excludes Personal-Injury Damages

1. Civil RICO permits suit only by a plaintiff "injured in his business or property by reason of" racketeering activity, and thus undisputedly "exclud[es] … personal injuries." *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 350 (2016). An "injur[y]" is an "invasion of a legal right." *Ballentine's Law Dictionary* 627 (3d ed. 1969). So the RICO injury is the invasion of the plaintiff's legal rights caused by the defendant's racketeering activity. Courts thus look to "the circumstances surrounding the alleged injury," including "the racketeering activity that directly caused it." *Yegiazaryan v. Smagin*, 599 U.S. 533, 543-44 (2023). If the plaintiff seeks recovery for a personal injury, there is no RICO claim. That rule bars Horn's suit because the alleged injury is unwitting ingestion of THC due to purported fraud—an undisputed personal injury. Br. 20-22; *cf.* Br. in Opp. 17-20 (originally contesting this premise).

Horn cannot evade that rule by claiming that the economic nature of lost wages makes them a standalone "injury … to business or property." Br. 22-25. Horn's lost wages are his *damages* from his personal injury. Injury and damages are "separate legal concept[s]." *See WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407, 417 (2018). As RICO's text elucidates, damages are something the plaintiff "sustains." 18 U.S.C. § 1964(c). Sustains means "experience[s] or suffer[s]." *American Heritage Dictionary of the English Language* 1296 (1969); *accord Webster's Third New International Dictionary* 2304 (1968) ("suffer, receive, undergo"). Under civil RICO, damages are what the plaintiff experiences as a result of his injury.

Here, Horn's complaint alleges that petitioners induced Horn to ingest their product. That personal injury,

in turn, led Horn to suffer damages: lost wages. Petitioners did not separately injure Horn when he lost his job because petitioners had nothing to do with his firing. The only theory of injury alleged is the ingestion. Thus, when the district court asked Horn to identify "the *damages* sustained by reason of" racketeering activity on the RICO case statement he filed with his complaint, Horn answered: "lost employment," "lost 401 k contributions, life insurance and other benefits." J.A.30-31 (emphasis added); Br. 24-25. Horn now ignores this concession.

Horn (at 24-25) argues that defining "injury" as "the invasion of a legal right" would raise unanswerable questions about how to define a "legal right." But plaintiffs are the masters of their complaints and what legal rights they assert. Courts routinely examine complaints to determine whether they allege an actionable business or property injury or a non-actionable personal injury. *E.g.*, *Jackson v. Sedgwick Claims Mgmt. Servs.*, 731 F.3d 556, 566 (6th Cir. 2013) (en banc); *Doe v. Roe*, 958 F.2d 763, 768-70 (7th Cir. 1992); *cf. Yegiazaryan*, 599 U.S. at 543 (assessing domestic injury based on "particular facts alleged in [the] complaint" (citation omitted)).

Horn (at 29) queries why this case should be different than a hypothetical complaint seeking lost wages had Horn's employer fired him for bringing Dixie X to work. But Horn does not flesh out the basis for such a claim since Dixie X was made from mature hemp stalk and is thus entirely lawful. Br. 5-6. The hypothetical does not state how petitioners could have induced Horn to bring Dixie X to work or induced his employer to make Dixie X possession a fireable offense.

Horn (at 25-26) raises difficulties in distinguishing personal injuries from business or property injuries. But Horn no longer disputes that his ingestion of THC is a personal injury. Regardless, RICO's text requires courts

to draw that line by including "business or property" injuries and "exclud[ing] … personal injuries." *RJR Nabisco*, 579 U.S. at 350. Other statutes likewise ask courts to distinguish personal injuries from other injuries. *E.g.*, 26 U.S.C. § 104(a)(2); 28 U.S.C. § 1605A(a)(1), (c); 45 U.S.C. § 51.

For example, *United States v. Burke* held that, to determine whether taxpayers received "damages … on account of personal injuries" excludable from gross income under 26 U.S.C. § 104(a)(2), courts use "traditional tort principles" to analyze "the nature of the claim underlying [the] damages award." 504 U.S. 229, 235-37 (1992). Because an award of Title VII backpay damages does not redress "a tort-like personal injury," Title VII backpay damages are not "damages received … on account of personal injuries." *Id.* at 238, 242. Contrary to Horn's suggestion (at 27-28), *Burke* recognized that, under traditional tort principles, lost wages *are* classic damages to redress personal injuries. *Id.* at 235.

Horn (at 13-15) defines "damages" as "what the wrongdoer pays to compensate" the plaintiff and criticizes petitioners for using a definition of "damage" (singular) as "the loss, hurt, or harm resulting from the 'injury.'" If Horn means that civil RICO uses "damages" to refer to the dollar amount the plaintiff obtains from the defendant, that is incorrect. Civil RICO allows plaintiffs to recover treble the "damages he sustains," *i.e.*, that he experiences or suffers. *Supra* p. 3. A plaintiff cannot "sustain[]" a numerical sum of money. Rather, he sustains losses, *e.g.*, lost wages, for which he recovers money. *Cf. Comm'r v. Schleier*, 515 U.S. 323, 329 (1995) (describing accident victim as "suffer[ing]" "lost wages" "as a result of th[e] injury"). As Horn (at 14) admits, "damages" can refer to "the result of the injury alleged and proved" (citation

omitted). Here, Horn alleges that lost wages are "the result" of ingesting THC and seeks recovery for that result. In any event, Horn (at 17) admits that this case turns on whether his lost wages are a distinct RICO "injur[y]," regardless of whether his definition of "damages" is correct.

2. Horn (at 18-32) excerpts out-of-context sentences from petitioners' brief and declares them "different tests." But the one "test" Horn does not tackle is the first sentence of petitioners' argument: "Plaintiffs cannot use civil RICO to sue for personal injuries." Br. 14.[1] Horn undisputedly alleged a personal injury, and he seeks lost wages to redress that personal injury. Horn thus lacks a civil RICO cause of action.

Because Horn declines to engage with petitioners' actual argument, much of his brief is irrelevant. For example, Horn (at 25) recasts petitioners' statement that his "lost wages are prototypical damages from his personal injury," Br. 24, as a "rule … that civil RICO does not allow recovery for 'prototypical' personal injury cases." And Horn (at 29-30) discerns "at least three different" subtests in the four-word statement "[e]xtortion involves obtaining property." None of those is petitioners' "test."

Horn (at 21) conjures an "initial-harm test" from petitioners' description of the injury in two cases about seamen as "the initial harm caused by the defendants' wrongdoing." Horn then says that an "initial-harm test" is an "attenuation principle" inconsistent with RICO's proximate-causation requirement. Horn (at 18-19) similarly divines a "resulting-from-personal-injury test" from

---

[1] *See also, e.g.*, Br. 14 ("Civil RICO Does Not Allow Recovery for Personal-Injury Damages"); Br. 14 ("Civil RICO Excludes Personal Injuries and Thus Excludes Personal-Injury Damages"); Br. 17 ("RICO's Antitrust Roots Confirm that Personal-Injury Damages Are Not Actionable").

the question presented, which he equates with a rule that a personal injury anywhere in the causal chain bars recovery, even if the plaintiff suffers a separate business or property injury. And Horn (at 19) identifies other formulations that would more directly impose a causation-based rule. Again, petitioners did not espouse an initial-harm test or an anywhere-in-the-causal-chain test. Petitioners argue that civil RICO does not permit any recovery for personal injuries.

Horn (at 19-20) objects that denying recovery for the economic consequences of personal injuries "would effectively read out" RICO predicates that typically inflict personal injuries. RICO's predicates also apply to *criminal* RICO, which has no "business or property" requirement. Br. 35; WLF Br. 8-13. Horn responds with silence. Regardless, RICO predicates like extortion—say, a mobster assaulting a carwash owner to obtain valuable contracts, *see* Pet.App.17a—routinely injure both people *and* businesses or property. Br. 33-35; WLF Br. 6-8. The carwash owner has two distinct injuries from the extortion: assault (a personal injury) and the extorted business (a business injury). Civil RICO permits recovery for the latter, not the former. Br. 34. As RICO's text requires, courts focus on the plaintiff's asserted *injury*, not as Horn (at 29-31) conjectures, the elements of extortion, whether the mobster personally benefits, or his motive.

Horn (at 28) offers his own carwash hypothetical: a carwash attendant who is assaulted by a mobster "to force him to quit." Horn calls it "strange" to deny recovery to the attendant, but permit the owner to recover. But this hypothetical does not even involve RICO predicates. Assault is not a RICO predicate, Br. 34 n.7, and forcing someone to quit his job is not extortion because it does not involve obtaining property. If the mobster used violence

to extort property from the carwash attendant, petitioners agree the attendant has a RICO injury—the extorted property.

Horn (at 23) invokes *Rotella v. Wood*, which likewise involved at least two distinct injuries: (1) false imprisonment in a psychiatric hospital (a personal injury), and (2) fraudulent charges for the hospital stay (a property injury). 528 U.S. 549, 551 n.1 (2000). Civil RICO allows suit for the latter. *See id.* at 552.

Nor does petitioners' position rule out civil RICO recovery for human-trafficking victims. *Contra* HTLC Br. As illustrated by amicus' cited cases (at 12-14), such plaintiffs can recover treble damages for the injury of performing labor without pay—a business or property injury. *E.g.*, *Ross v. Jenkins*, 325 F. Supp. 3d 1141, 1169, 1177 (D. Kan. 2018); *Alabado v. French Concepts, Inc.*, 2016 WL 5929247, at *7 (C.D. Cal. May 2, 2016). As amicus also notes, Congress gave trafficking victims an additional damages remedy, with attorneys' fees, in the Trafficking Victims Protection Act without any "business or property" limitation. 18 U.S.C. § 1595(a); *see* HTLC Br. 5.

B. Horn's Reading Defies RICO's Text

1. Horn would treat each "harm" as a distinct RICO "injur[y]." Thus, Horn (at 1, 12-14) deems his lost wages an "injur[y] in his business." Horn (at 13) then defines his "damages" as the "sum of money" sought as compensation. Petitioners agree that, depending on context, injury can mean harm, damages can mean a sum of money, and injury, harm, and damages might be used interchangeably. Horn Br. 12-14, 17, 22-23 & n.5. But under civil RICO, the *relevant* legal "injur[y]" (or harm, to use Horn's definition) is still purely personal—the ingestion

of petitioners' product. *Supra* pp. 3-4. In this context, defining every harm as its own injury would "wrongly conflate[] legal injury with the damages arising from that injury." *See WesternGeco*, 585 U.S. at 417.

Horn (at 17) dismisses *WesternGeco* as a patent case, which Horn says matters because the Patent Act uses the word "infringement," not "injury." But *WesternGeco* described "injury" and "damages" as "separate legal concept[s]" in the course of addressing an argument about *civil RICO*. *Id.* Regardless, *WesternGeco* characterized patent infringement as "th[e] injury" and lost profits as the "damages." *Id.* That distinction conflicts with Horn's assertion that any economic harm (including "lost profits," Horn Br. 33) is itself a distinct injury.

Other cases reinforce that Horn's lost wages are damages for a personal injury, not an independent, standalone injury. This Court has described a sailor who "injur[ed] his arm and shoulder" in a tugboat accident and sought recovery for food, lodging, and medical expenses as suffering a "personal injury"—not three property injuries. *See Atl. Sounding Co. v. Townsend*, 557 U.S. 404, 407-08, 418 (2009). Lost wages for a railroad worker injured on the job were "personal injury damages"—not a separate business injury. *See BNSF Ry. Co. v. Loos*, 586 U.S. 310, 322-24 (2019). Medical expenses for an automobile-accident victim "clearly constitute damages received on account of personal injuries," and "lost wages" and "pain and suffering" are no different. *Schleier*, 515 U.S. at 329 (citation omitted). Likewise, under ordinary tort-law principles, "the victim of a physical injury may … recover damages … for lost wages, medical expenses, … emotional distress and pain and suffering." *Burke*, 504 U.S. at 235.

This Court has also described seamen suffering workplace accidents as experiencing "a single wrongful

invasion of [their] primary right of bodily autonomy," *i.e.*, a single injury, whatever damages they claimed. *See Pac. S.S. Co. v. Peterson*, 278 U.S. 130, 138 (1928); *accord Balt. S.S. Co. v. Phillips*, 274 U.S. 316, 321 (1927); Br. 23. Horn (at 24) counters that these are res judicata cases where the Court was not specifically defining "injury." But petitioners' point is more basic: Congress in civil RICO, like this Court in numerous decisions, logically distinguished between personal injuries and the resulting damages.

Horn's approach makes a hash of RICO's domestic-injury requirement. Courts determine whether the plaintiff has the required domestic injury by looking to "where the injury 'arises'"—not just where the harms (*i.e.*, the damages) are "felt." *Yegiazaryan*, 599 U.S. at 543-44. Thus, this Court held that a fraudulent scheme to prevent the collection of a California judgment caused a single domestic injury in California. *Id.* at 545-46. But that injury caused various "effects": The plaintiff lost the right to seize assets, obtain discovery, or seek other relief. *Id.* at 546. Were Horn correct that each harm is its own RICO injury, this Court should have evaluated each harm separately to determine whether it was domestic. Horn (at 17) responds with the non sequitur that the "effects" in *Yegiazaryan* were undisputed. Whatever the effects *were*, this Court's analysis of the single injury (the inability to collect the California judgment) refutes Horn's all-economic-harms-are-separate-injuries approach.[2]

2. Horn (at 32) accepts that civil RICO's "business or property" requirement must have "restrictive significance." Br. 25; *Jackson*, 731 F.3d at 565. And he (at 20)

---

[2] Horn (at 17) also mischaracterizes *Yegiazaryan* as presenting only a factual dispute over where the "injurious effects were 'felt.'" The Court *rejected* petitioners' proposed test based on "where the economic injury is felt" and instead held that RICO asks "where the injury 'arises.'" 599 U.S. at 543.

admits that plaintiffs with "*only* personal injuries" cannot sue, although he ignores this Court's statement that the "business or property" requirement "exclud[es] … personal injuries." *RJR Nabisco*, 579 U.S. at 350.

But when giving meaning to that exclusion, Horn (at 32-33) concedes only that plaintiffs cannot recover "nonpecuniary damages," which he defines as "damages" for "'nonpecuniary,' 'noneconomic,' or 'general' injuries." Thus, Horn says, "things like pain and suffering, emotional distress, and the like," do not support civil RICO claims.

That exclusion is puzzling since pain and suffering and the like all "entail some pecuniary consequences" and get quantified in dollars in every personal-injury case. *See Doe*, 958 F.2d at 770. Regardless, by defining the personal-injury exclusion in terms of what *damages* are off-limits, Horn just confirms that he conflates injury with damages. "[N]onpecuniary damages," "noneconomic damages," and "general damages" are all types of *damages*, not injuries.[3] Like lost wages, damages for "pain, suffering, and emotional distress" are not separate injuries, but part of the "typical recovery in a personal injury case." *See Schleier*, 515 U.S. at 329; *accord Burke*, 504 U.S. at 235. Under Horn's interpretation, all personal injuries support civil RICO claims so long as some economic harm results. Horn just carves out certain *damages* from recovery.

---

[3] *E.g.*, *Black's Law Dictionary* 468-69 (rev. 4th ed. 1968) (defining "General damages" and "Pecuniary damages"); 3 *Restatement (Second) of Torts* § 621 (1977) (section on "General damages"); William B. Rubenstein, *Newberg and Rubenstein on Class Actions* §§ 12:7-12:13 (6th ed. June 2024 update) (chapter on "Nonpecuniary Damages"); Jacob A. Stein, *Stein on Personal Injury Damages* §§ 22:7-22:9.2 (3d ed. Apr. 2024 update) (chapter on "Non-Economic Damages").

Moreover, if all economic harms are separate injuries, Horn does not explain why plaintiffs should not recover the "damages … sustain[ed]" from those injuries, presumably including pain and suffering. Indeed, Horn sought recovery for "non-economic losses" resulting from his firing, including "emotional pain and anguish, humiliation, and degradation." J.A.24 (RICO Case Statement). Horn now appears to concede that such nonpecuniary damages are not recoverable. But if the lost job is itself the RICO injury, then damages sustained for that injury, including nonpecuniary ones, seemingly *would* be permissible under Horn's rule.

Horn's reading leads to strange results. Suppose misleading lawnmower instructions (*i.e.*, mail fraud) cause a landscaper to sever his foot. The landscaper is left traumatized and in excruciating pain, unable to work or consort with his spouse, and saddled with significant hospital bills. He hires a home health aide, installs a wheelchair ramp, and misses a credit-card payment while hospitalized, incurring late fees.

On Horn's account, those itemized damages count as eight "injur[ies]": (1) emotional distress (a personal injury, Horn Br. 32); (2) pain (also a personal injury, Horn Br. 32); (3) lost wages (a business injury, Horn Br. 14); (4) loss of consortium (who knows, Horn Br. 34 n.13); (5) hospital bills (seemingly a property injury, Horn Br. 33); (6) the aide's salary (also seemingly a property injury, Horn Br. 33); (7) the wheelchair ramp (same); and (8) the credit-card fees (ditto). The two supposed personal injuries (emotional distress and pain) are outside civil RICO. But the landscaper could file a five- or six-count RICO complaint (depending on whether consortium counts) alleging that the misleading lawnmower instructions were mail

fraud and identifying each separate economic consequence of the landscaper's severed foot as a distinct RICO injury warranting treble damages.

C. Antitrust Law Confirms Civil RICO's Exclusion of Personal-Injury Damages

Congress patterned civil RICO's "injured in his business or property" requirement on identical language in the Clayton Act. *See* 15 U.S.C. § 15(a). That language also "exclude[s] personal injuries," *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979), and thus precludes recovery for damages from personal injuries. The same rule logically governs civil RICO's identical text, reflecting both statutes' shared goal of remedying economic injuries. Br. 17-20; Chamber Br. 6-7.

Horn (at 38) claims that this Court "routinely" interprets civil RICO "more *broadly*" than the Clayton Act because RICO contains a liberal-construction clause. But Horn rests that proposition on the dissent from *Sedima, S.P.R.L. v. Imrex, Co.*, which Horn cites as if it were the majority opinion. *See* 473 U.S. 479, 510-11 (1985) (Marshall, J., dissenting). The *Sedima* majority merely held that civil RICO has no analogue to antitrust law's "antitrust injury" requirement. *Id.* at 498-99. This Court has repeatedly interpreted the two statutes in tandem, absent a "good reason to ignore the Clayton Act model." *Rotella*, 528 U.S. at 560; Br. 18 n.6 (collecting cases). Horn offers no reason why the identical "injured in his business or property" language would mean different things in the two statutes. Even Horn's amicus agrees that the statutes "contain identical remedies for injuries to business or property." AAJ Br. 10.

Horn (at 38-39) disputes whether the Clayton Act excludes damages from personal injuries. Horn conspicuously ignores this Court's distinction between

"business damages" recoverable under the Clayton Act and non-recoverable "damages resulting from a personal injury." *J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557, 566 (1981); Br. 18. Horn likewise ignores cases interpreting identical "business or property" requirements in state unfair-trade-practice laws the same way. Br. 20; Chamber Br. 13.

Horn (at 38) agrees that at least one court has held that the Clayton Act does not permit recovery for economic harms from personal injuries. *Gause v. Philip Morris*, 2000 WL 34016343, at *1, *5 (E.D.N.Y. Aug. 8, 2000), *aff'd*, 29 F. App'x 761 (2d Cir. 2002). Horn (at 38 n.19) calls other cases making the same point "inapposite" because those complaints also failed on other grounds. But the fact that the complaints suffered additional flaws does not erase lower courts' uniform understanding that the Clayton Act does not permit plaintiffs to recover economic damages from personal injuries. Br. 19.

Similarly, Horn (at 39 n.20) says that *Hamman v. United States*, this Court's exemplar of the Clayton Act's ban on personal-injury claims, rested on the lack of proximate causation or "property" covered by the antitrust laws. 267 F. Supp. 420, 432 (D. Mont. 1967) (cited at *Reiter*, 442 U.S. at 339). But *Hamman* also observed that there was no authority supporting antitrust claims "for damages for personal injuries." *Id.* The Clayton Act consensus against personal-injury damages is clear.

Horn (at 38-39) offers a single district-court case purportedly holding that the Clayton Act permits personal-injury damages, *Iron Workers Local Union No. 17 Insurance Fund v. Philip Morris, Inc.*, 23 F. Supp. 2d 771 (N.D. Ohio 1998). The case held no such thing. That court permitted healthcare trusts to bring antitrust claims for their own pocketbook injury—the "substantial increase in the cost of medical care" as a result of smoking. *Id.* at 793.

Critically, the court observed, the smokers themselves "cannot make claim for personal injuries under § 4 of the Clayton Act," including for "[m]edical expenses." *Id.* at 785, 792-93. *Iron Workers* thus confirms that the Clayton Act excludes personal-injury damages.

Horn (at 27 & n.8, 39) notes that antitrust plaintiffs can sometimes recover lost wages. True, but irrelevant. When antitrust plaintiffs are "injured in [their] business or property," they may "recover threefold the damages … sustained," including lost wages. 15 U.S.C. § 15(a). Thus, a job applicant excluded from the market by a collusive boycott had a Clayton Act claim for that injury to "business or property" and could recover lost wages. *E.g.*, *Quinonez v. Nat'l Ass'n of Sec. Dealers*, 540 F.2d 824, 829-30 (5th Cir. 1976) (cited at Horn Br. 27 n.8, 39). The same held true when a company's anticompetitive conduct deprived a salesman of his accounts. *E.g.*, *Vines v. Gen. Outdoor Advert. Co.*, 171 F.2d 487, 491-92 (2d Cir. 1948) (also cited at Horn Br. 27 n.8, 39); *see* AAJ Br. 11 (collecting similar cases). But the Clayton Act does not permit plaintiffs suffering *personal* injuries to recover lost-wages damages just because lost wages are themselves economic. Horn cites no case holding otherwise.

D. Horn's Approach Would Explode Civil RICO

1. Horn (at 33) embraces a stunningly broad rule: Plaintiffs can recover RICO treble damages for *all* personal injuries, so long as the plaintiff can "produce receipts" for the consequences of those injuries, "like lost profits, increased expenditures, bills, [and] lost wages." Horn thus does not dispute that, under his interpretation, rashes, strokes, allergic reactions, knife wounds, poisonings, and broken bones all produce injuries to "business or property" if the victim incurs economic harms like lost wages, insurance copays, therapy bills, or medical expenses. Br. 2. Plaintiffs could bring federal RICO claims

over personal injuries from drug mislabeling, dangerous products, medical malpractice, workplace accidents, sexual abuse, false imprisonment, kidnapping, car accidents, and health consequences from pollution. Br. 27-28.

Horn's only limit (at 32) is that plaintiffs cannot recover "nonpecuniary damages" for their personal injuries. As explained, that attempt to exclude certain *damages* confirms that Horn conflates injury and damages. *Supra* pp. 8-10. Regardless, Horn's position would still vitiate the "business or property" requirement. "Nearly every personal injury case involves pecuniary harm." Chamber Br. 19. Congress did not plausibly copy antitrust law's restrictive "business or property" requirement just to turn every personal-injury case involving RICO predicates, including fraud, into a federal treble-damages lawsuit. Br. 25-29; Chamber Br. 19-25; DRI Br. 7-10; Hemp Roundtable Br. 17-20.

Horn (at 32-33) says that recoveries will be smaller because "[n]onpecuniary damages … dominate[] tort recoveries." But even if some damages are out, Horn would treble the remainder and tack on attorneys' fees—a "Holy Grail" for plaintiffs' lawyers. DRI Br. 16.

Horn's evidence regarding nonpecuniary damages is also dubious. Horn (at 33) principally offers a study of 1901-1910 Alameda County, California that, he says, classified over 95% of "the average award" in personal-injury cases as "nonpecuniary." Why 114-year-old data from one California county captures the state of American tort law today is left unexplained. Regardless, Horn's source describes the "average damage *request*," not (as Horn says) the plaintiffs' nonpecuniary *award*. Lawrence M. Friedman & Thomas D. Russell, *More Civil Wrongs: Personal Injury Litigation, 1901-1910*, 34 Am. J. Legal Hist. 295, 303 (1990) (emphasis added). Horn (at 32 n.12) also offers one modern study and one from 1986. Those were limited

to "nuclear" or "large verdicts"—not all personal-injury cases. U.S. Chamber of Com. Inst. for Legal Reform, *Nuclear Verdicts* 2-3 (May 2024) (analyzing 1,288 verdicts over $10 million); U.S. Dep't of Just., *Report of the Tort Policy Working Group* 36-39 (Feb. 1986) (discussing verdicts over $1 million between 1975 and 1985).

Moreover, "beginning in 1980," many States "enacted some form of statutory cap on the size of awards for noneconomic damages." Stein, *supra*, § 19:2. Today, scholars debate whether noneconomic damages make up more or less than 50% of products-liability and medical-malpractice awards. *Id.* § 22:7. Whatever the precise number, trebling the remaining economic damages and offering attorneys' fees provides a massive incentive for plaintiffs to bring mine-run personal-injury cases under RICO.

2. Horn (at 34) contends that civil RICO's other "guardrails" prevent endless lawsuits. Those guardrails would do little to curb the staggering reach of Horn's theory and do not justify gutting the "business or property" requirement. Br. 30-31.

Horn (at 34) says that civil RICO's racketeering-activity requirement would "foreclose the vast majority of tort suits." But plaintiffs try to satisfy the racketeering-activity element with "as little as an advertisement and an email" amounting to alleged wire fraud. Chamber Br. 14. Horn does not dispute that false-advertising or fraudulent-deception claims could be actionable under his theory. Br. 26. While Horn (at 35-36) notes that most RICO predicates require intent or recklessness, it is all too easy for plaintiffs to allege that purported fraud was "intentional," as this case illustrates. Given the difficulty of disproving intent at the pleading or summary-judgment stage, plaintiffs can push claims to trial, creating "costs for businesses and consumers." *See* Hemp Roundtable Br. 5.

Horn (at 34) cites RICO's "enterprise" requirement. But Horn claimed that he met that requirement because petitioners formed a joint venture "to market, distribute, [and] sell" Dixie X. Horn Mot. for Summ. J. 6, Dkt. 60-25. Plaintiffs in other cases against corporate defendants could make similar allegations.

Horn (at 35) also invokes RICO's proximate-causation requirement. Again, if Horn's asserted multistep chain from reading a third-party magazine article to losing his job suffices, it is hard to take that guardrail seriously. Br. 31; *see* Chamber Br. 16-19. Horn's amicus underscores the problem by incorrectly claiming that proximate causation exists whenever there is "[]continuity" between the defendant's acts and the plaintiff's injury. AAJ Br. 20. Horn (at 35 n.15) protests that petitioners have not challenged proximate causation on appeal. But it is a bit much for Horn (at 35) to assert that RICO's other guardrails "douse petitioners' parade of horrible[s]" and weed out "garden-variety" products-liability claims when Horn himself brought a garden-variety products-liability claim.

Horn is hardly the first plaintiff to attempt to repackage a run-of-the-mill personal-injury claim as a treble-damages RICO action. Br. 27, 31; Chamber Br. 19-22; DRI Br. 17-18 & n.18 (all collecting cases). Horn (at 36 & n.17) notes that many of these cases failed on other grounds, but apparently accepts that all satisfy his reading of the injury-to-business-or-property requirement.

Horn (at 36-37) contends that there has been no deluge of successful personal-injury claims in the Ninth Circuit, notwithstanding its rule that any "harm" to a state-law business or property interest, even one that "result[s] from a personal injury," can support a RICO claim.

Diaz v. Gates, 420 F.3d 897, 900 (9th Cir. 2005) (en banc).[4] Reported Ninth Circuit cases, which include multiple published decisions greenlighting RICO claims against police officers for lost wages incurred during allegedly false imprisonment, are hardly encouraging. *See id.*; *Guerrero v. Gates*, 442 F.3d 697, 707-08 (9th Cir. 2006). And Horn does not account for cases that settled in part because defendants know that the Ninth Circuit allows myriad personal-injury RICO claims. Were this Court to hold that civil RICO reaches every quantifiable harm, plaintiffs' lawyers would seek to punch their "golden ticket." DRI Br. 16. Horn's amicus admits as much: "Plaintiffs would always prefer treble damages." AAJ Br. 28.

Federalizing so many ordinary personal-injury claims disrespects States' varied, calibrated judgments about when (and when not) to offer tort recovery to their citizens. Br. 29-30. Horn (at 37) dismisses federalism concerns by claiming that Congress' "*inten*[*t*]" was "'to move large substantive areas formerly totally within the police power of the State into the Federal realm'" (quoting *United States v. Turkette*, 452 U.S. 576, 586 (1981), which in turn quotes 116 Cong. Rec. 35,217 (1970) (remarks of Rep. Eckhardt)). *Turkette* stated only that Congress "was well aware of the fear" raised by dissenting legislators, yet chose to "alter somewhat the role of the Federal Government in the war against organized crime." 452 U.S. at 586-87. Regardless, this Court ordinarily interprets statutes to avoid "affront[s] to federalism." Chamber Br. 10; *see Sackett v. EPA*, 598 U.S. 651, 679 (2023). Treating civil RICO as a "supercharged," "all-purpose federal tort statute" turns that principle on its head.

---

[4] Horn (at 36-37) describes "circuits" as having adopted his rule "for decades." Until the decision below, however, only the Ninth Circuit took Horn's view, having first done so in 2005. *Diaz*, 420 F.3d at 900.

See Chamber Br. 14; Hemp Roundtable Br. 18 (citation omitted).

3. Redefining any economic "harm" as a RICO "injury" would also subvert RICO's four-year limitations period by permitting plaintiffs to use each new economic damage to reset the limitations clock. Br. 31-32.

Horn (at 40) notes that plaintiffs cannot use new *predicate acts* "to recover for the injury caused by old overt acts outside the limitations period." *Klehr v. A.O. Smith*, 521 U.S. 179, 189 (1997). But Horn's theory is that each *harm* is a new injury that would reset the limitations period, whenever the predicate acts occurred.

Horn oddly underscores that his definition of "injury" would gut civil RICO's statute of limitations even outside personal-injury cases. Horn (at 40) would allow home buyers to sue years later over cascading damages caused by shoddy construction, trademark plaintiffs to sue over ongoing brand dilution caused by infringement, and investors to sue over long-term losses caused by fiduciary misconduct. (Again, set aside that Horn's hypotheticals do not involve RICO predicates.) Horn says that such extended limitations periods have not "doomed the statute of limitations under civil RICO." But that is because Horn is describing *his* rule, not how civil RICO actually works. The settled rule is that plaintiffs *cannot* use new damages to reset the RICO limitations clock. Br. 32. Horn's definition of "injury" would upset that practice in personal-injury and business-or-property-injury cases alike.

4. Finally, Horn (at 17-18) offers "a tiebreaker": RICO's instruction that the statute "be liberally construed to effectuate its remedial purpose[s]." Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947 (1970). But the liberal-construction language "is not an invitation to apply RICO to new purposes that Congress never intended." *Reves v.*

Ernst & Young, 507 U.S. 170, 183 (1993); Chamber Br. 15-16. Inviting "massive and complex damages litigation" would "hobble[]" rather than "help" "RICO's remedial purposes." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 274 (1992) (citation omitted); Br. 36.

Regardless, there is no tie to break; this case does not involve evenly matched textual interpretations headed for a photo finish. RICO's text is clear: Plaintiffs cannot sue for personal injuries. Plaintiffs cannot bypass that bar by brandishing receipts for the economic costs of personal injuries. Case closed.

CONCLUSION

The court of appeals' judgment should be reversed.

Respectfully submitted,

ROY A. MURA
SCOTT D. MANCUSO
MURA LAW GROUP, PLLC
930 Rand Building
14 Lafayette Square
Buffalo, NY 14203

Counsel for Medical Marijuana, Inc. and Red Dice Holdings, LLC

RICHARD E. LERNER
HANOCH SHEPS
MAZZOLA LINDSTROM LLP
1350 Avenue of the Americas, Second Floor
New York, NY 10019

Counsel for Dixie Holdings, LLC

LISA S. BLATT
Counsel of Record
SARAH M. HARRIS
AARON Z. ROPER
KRISTEN A. DEWILDE
CLAYTON P. PHILLIPS
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
(202) 434-5000
lblatt@wc.com

Counsel for Petitioners

SEPTEMBER 24, 2024