

SUPREME COURT OF NORTH CAROLINA

DUSTIN MICHAEL MCKINNEY,)	
GEORGE JEREMY MCKINNEY,)	
<i>and</i> JAMES ROBERT TATE,)	<u>From Wake County</u>
PLAINTIFFS-APPELLEES,)	
STATE OF NORTH CAROLINA)	No. COA 22-261
INTERVENOR-APPELLEE,)	No. 21 CVS 7438
)	
<i>v.</i>)	
THE GASTON COUNTY BOARD OF)	
EDUCATION,)	
DEFENDANT-APPELLANT)	
)	

BRIEF OF AMICUS CURIAE THE ROMAN CATHOLIC DIOCESE OF
CHARLOTTE, NORTH CAROLINA IN SUPPORT OF DEFENDANT-
APPELLANT THE GASTON COUNTY BOARD OF EDUCATION *

* Per North Carolina Rule of Appellate Procedure 28(i), Amicus Curiae the Roman Catholic Diocese Of Charlotte, North Carolina (the “Diocese”) states that no person or entity—other than amicus curiae, its members, or its counsel—either directly or indirectly wrote this amicus brief or contributed money for its preparation.

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INTRODUCTION

While Amicus the Roman Catholic Diocese of Charlotte, North Carolina (“Diocese”) agrees with Defendant-Appellant Gaston County Board of Education (“Gaston”) that the SAFE Child Act’s revival provision—Section 4.2(b)—violates our Constitution’s Law of the Land Clause, the Diocese respectfully submits that, consistent with established principles of constitutional avoidance, this Court should

determine the revival provision's scope, as a statutory matter, *before* addressing that constitutional question—if at all. Specifically, this Court should determine whether the revival provision applies to claims like Plaintiffs' that are brought against the employers of alleged abusers, seeking to recover for injuries that are *related to* child sexual abuse, not *for* such abuse.²

On the merits of this logically prior, statutory question, straightforward principles of statutory interpretation compel the conclusion that the revival provision does *not* apply to claims brought against the employers of alleged abusers, like the claims of Plaintiffs here or the claims against the Diocese in *Cohane*. Specifically, the

² Both before this Court at the bypass petition stage and before the Court of Appeals below, the Diocese argued in amicus briefs that the appellate courts of this State did not have jurisdiction to address either this statutory question regarding the revival provision's scope or the question of that provision's constitutionality, given that the Superior Court itself failed to address this statutory question (among other questions logically prior to the question of the provision's constitutionality) prior to transferring this case to the three-judge panel of the Wake County Superior Court. See N.C. Gen. Stat. §§ 1-267.1(a), 1A-42(b)(4); *Holdstock v. Duke Univ. Health Sys., Inc.*, 270 N.C. App. 267, 841 S.E.2d 307 (2020). It appears that both this Court and the Court of Appeals may have implicitly rejected this argument. In any event, this Court could also address both of these questions in *Cohane v. The Home Missioners of America*, No. 278A23, a case currently pending before this Court involving materially identical claims against the Diocese as Plaintiffs' claims here but which presents no similar jurisdictional questions.

revival provision narrowly applies only to claims “for” child sexual abuse—meaning claims asserted against an alleged abuser—but not for claims merely “related to,” such abuse, as a comparison between the revival provision and other statutory sections makes clear. *Infra* Part I.

Nevertheless, if the Court does address the constitutionality of the revival provision in this case, it should adhere to the long settled, bright line rule it established almost 100 years ago in *Wilkes County v. Forester*, 204 N.C. 163, 167 S.E. 691 (1933). *Wilkes County* is a well-reasoned, correct interpretation of the law. Moreover, entities across North Carolina—such as Gaston and the Diocese—have for decades relied heavily on *Wilkes County*’s long-settled rule, the discarding of which would generate enormous disruption. This alone warrants the application of *stare decisis* here. *Infra* Part II.

ARGUMENT

I. A LOGICALLY PRIOR STATUTORY QUESTION REGARDING THE SCOPE OF THE REVIVAL PROVISION RESOLVES THIS CASE WITHOUT NEED TO DECIDE THE PROVISION’S CONSTITUTIONALITY

Despite multiple years of litigation, numerous rounds of briefing, three judicial decisions, and the principle of constitutional avoidance, *Holdstock*, 270 N.C. App. at 277, a critically important question in this

case remains unanswered: whether, as a statutory matter, the revival provision applies to decades-old claims brought against the employers of alleged abusers that are only “*related to*” child sexual abuse, like Plaintiffs’ claims here, but are not “*for*” child sexual abuse, like a plaintiff’s claims against the perpetrator of such abuse. As the Diocese explains below—and as it also intends to argue more fully before this Court in *Cohane*, should the Court grant the Diocese’s pending Petition for Discretionary Review Pursuant to N.C. Gen. Stat. § 7A-31(C) in that case—the answer to that question is no, under straightforward principles of statutory interpretation. And should this Court agree with the Diocese’s arguments on that statutory question, it would have no need to decide the constitutional question presented here. *Holdstock*, 270 N.C. App. at 277 (“[T]he courts of this State will avoid constitutional questions, even if properly presented, where a case may be resolved on other grounds.”).

A. Straightforward Principles Of Statutory Interpretation Compel The Conclusion That The Revival Provision Does *Not* Revive Claims “Related To” Child Sexual Abuse

This Court interprets statutes according to their “ordinary meaning,” *Morris Commc’ns Corp. v. City of Bessemer City*, 365 N.C.

152, 157, 712 S.E.2d 868 (2011), while ensuring that “different words used in the same statute” are given “different meanings,” *In re M.I.W.*, 365 N.C. 374, 379, 722 S.E.2d 469 (2012) (citation omitted).

Here, Section 4.2(b) purports to revive claims “*for* child sexual abuse otherwise time-barred under G.S. 1-52 as it existed immediately before the enactment of this act.” S.L. 2019-245 § 4.2(b) (emphasis added). However, the SAFE Child Act makes a clear distinction between claims “*for* child sexual abuse”—which are *covered* by the revival provision—and claims “*related to*” such abuse, which are not. *Compare* S.L. 2019-245 § 4.2(b), *with* S.L. 2019-245 § 4.1.

Section 4.1 of the SAFE Child Act sets up the clearest example of the distinction within the statute between claims “related to” child sexual abuse and claims “for” child sexual abuse, in two respects. First, Section 4.1 extends the statute of limitations “for claims *related to* sexual abuse suffered while the plaintiff was under 18 years of age.” *Id.* § 4.1 (emphasis added). Prior to the SAFE Child Act, a plaintiff was required to assert claims *related to* sexual abuse suffered as a minor by his or her 21st birthday. N.C. Gen. Stat. §§ 1-52(19), 1-17(a)(1) (2018). Now, however, Section 4.1 allows a plaintiff to assert such claims until

age 28. S.L. 2019-245 § 4.1; *see also id.* § 4.3. Second, Section 4.1 also provides that a plaintiff “may file a civil action within two years of the date of a criminal conviction for a related felony sexual offense against a defendant for claims *related to* sexual abuse suffered while the plaintiff was under 18 years of age.” *Id.* § 4.1 (emphasis added).

As is apparent from their plain text, the revival provision and Section 4.1 use “different words” to define their respective scopes, and these “different words” must have “different meanings.” *M.I.W.*, 365 N.C. at 379. Where the revival provision addresses only claims “for” child sexual abuse, Section 4.1 concerns claims “*related to* sexual abuse suffered while the plaintiff was under 18 years of age.” S.L. 2019-245 § 4.1 (emphasis added). As a matter of plain meaning, “related to” is clearly broad in scope. *See* *Relate*, *Oxford English Dictionary* (March 2022) (“To have some connection with; to stand in relation to”);³ *Related*, *Black’s Law Dictionary* (11th ed. 2019) (“Connected in some way”); *accord Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (noting that “ordinary meaning” of phrase “relating to” is

³ Available at <https://www.oed.com/view/Entry/161807?rskey=xU5LWH&result=1&isAdvanced=false> (last accessed Nov. 20, 2023).

“broad”). Thus, by using “related to,” Section 4.1’s statute-of-limitations-extension provision and criminal revival provision apply to both claims *for* sexual abuse—*i.e.*, claims against an abuser, seeking recovery for said abuse—and claims “related to” child sexual abuse—*i.e.*, claims that merely “have some connection with,” or “stand in relation to” claims for sexual abuse. In contrast, the revival provision’s “*for* child sexual abuse” language must be more limited, extending *only* to claims of a victim against an abuser, seeking recovery for the abuse. See *M.I.W.*, 365 N.C. at 379.

Applying these basic principles here, the word “for” as contained in the revival provision narrows that provision’s scope to civil actions that assert claims *against alleged perpetrators* of child sexual abuse. But claims against the *employers* of the alleged abusers, who are not alleged to have committed abuse, are only “related to” child sexual abuse, as Section 4.1’s statute-of-limitations-extension provision and criminal revival provision uses that term. The revival provision therefore does *not* reach those claims.⁴

⁴ This is the precise conclusion the Superior Court reached in *Cohane*. See Order Denying in Part and Granting in Part Defendants’ Motion to Dismiss and Denying as Moot Plaintiff’s Motion to Transfer,

Another provision of the SAFE Child Act further demonstrates the significant distinction between claims only “for” child sexual abuse—which are covered by the revival provision—and claims that are “related to” child sexual abuse, which are not. *See State v. Rankin*, 371 N.C. 885, 889, 821 S.E.2d 787 (2018); *Lunsford v. Mills*, 367 N.C. 618, 628, 766 S.E.2d 297 (2014). Specifically, Section 4.4(f) instructs schools to “adopt and implement a *child sexual abuse* and sex trafficking training program” addressing topics such as “the grooming process of sexual predators,” “warning signs of sexual abuse and sex trafficking,” and “how to intervene when sexual abuse or sex trafficking is suspected.” S.L. 2019-245 § 4.4 (f) (emphasis added). This list of topics demonstrates that the term “child sexual abuse,” as used in the SAFE Child Act, refers to *actual abusive* acts, but not to, among other things, negligent employment practices—given its focus on the abuser’s conduct. Thus, a civil action “for child sexual abuse” necessarily must be an action against the individual who actually engaged in the abusive acts.

Cohane v. The Home Missioners of Am., Case No. 22CVS10955 (Meck. Cnty. Sup. Ct. Oct. 27, 2021).

Failing to give effect to the clear distinction between the narrow phrase “*for* child sexual abuse” (as used in the revival provision) and the broad phrase “*related to* [child] sexual abuse” (as used in Sections 4.1 and 4.4(f)) would violate foundational principles of statutory interpretation. Indeed, interpreting “for” and “related to” as having the same meaning would fail to “give *every word* of the statute effect,” *Preston v. Movahed*, 374 N.C. 177, 187, 840 S.E.2d 174 (2020) (citation omitted; emphasis added); would violate the principle that “[p]arts of the same statute dealing with the same subject matter”—here, child sexual abuse—must be read as “a whole,” *Rankin*, 371 N.C. at 889 (citation omitted); and would neglect to apply “different meanings” to “different words used,” *M.I.W.*, 365 N.C. at 379 (citation omitted). That result would effectively render Sections 4.1 and 4.4(f)’s “related to” language completely “meaningless.” *Lunsford*, 367 N.C. at 628.

Finally, while this Court may not question the General Assembly’s “policy decision[s],” *State v. Conley*, 374 N.C. 209, 216, 839 S.E.2d 805 (2020), giving Section 4.1 a broader scope than the revival provision makes perfect sense. By carefully choosing “each word,” *N.C. Dep’t of Corr. v. N.C. Bd. of Med.*, 363 N.C. 189, 201, 675 S.E.2d 641 (2009), and

addressing claims “related to” child sexual abuse in Section 4.1 but only claims “for” such abuse in Section 4.2(b), the General Assembly reasonably meant to revive claims against *perpetrators*—meaning, claims against the person responsible for the heinous act—without reviving claims against persons or entities *other than* the perpetrator. This focus on alleged abusers’ conduct, *Conley*, 374 N.C. at 216, is especially reasonable in light of the impact that reviving decades-old claims has on entities like Gaston or the Diocese. Unlike claims against a perpetrator, who either did or did not commit the abusive acts, claims against related entities resting on allegations of, for instance, negligence or infliction of emotional distress, are far more nuanced. Given the age of these claims and the inevitable passage of time, these types of claims necessarily rely on decades-old documentary evidence obtained and reconstructed by the leaders, contributors, and staff of the related entities, many of whom were not alive when the alleged abuse occurred. *See generally Tetterton v. Long Mfg. Co.*, 314 N.C. 44, 58, 332 S.E.2d 67, 75 (1985) (the Legislature, not the Court, must “balanc[e] competing interests” and consider “all the factors surrounding a particular problem”). Requiring *institutions* like Gaston and the

Diocese to bear financial responsibility for heinous acts allegedly committed long ago by individuals—especially in the absence of insurance coverage and after memories of the events have long-faded—is unfair and severely threatens these institutions’ ability to carry out their public-service-related missions.

B. Here, Plaintiffs Assert Only Claims “Related To” Child Sexual Abuse, Thus The Revival Provision Does Not Apply To Their Claims

Here, Plaintiffs’ claims against Gaston are not “for” child sexual abuse; thus, they do not fall within the revival provision’s scope. Indeed, Plaintiffs assert tort claims against Gaston related to its supervision and employment of a Mr. Gary Goins, previously named as a defendant here.⁵ *Cohane v. The Home Missioners of Am.*, 892 S.E.2d 229, 231 (N.C. Ct. App. 2023). These claims are necessarily “related to” the child sexual abuse Plaintiffs suffered, but they are not “for” child sexual abuse as that term is used in Section 4.2(b)’s revival provision. As explained above and as a matter of straight forward statutory

⁵ Specifically, Plaintiffs’ claims are for assault and battery, negligent hiring and supervision, negligent infliction of emotional distress, and false imprisonment. *Cohane*, 892 S.E.2d at 230. Plaintiffs’ claims for assault and battery fails, as asserted against Gaston, as a matter of law because Gaston is an educational institution, not an individual capable of committing such a tort.

interpretation, only claims “for” child sexual abuse—meaning Plaintiffs’ claims *against Mr. Goins*, seeking recovery for the very abuse they allegedly suffered—are revived. In contrast, the claims Plaintiffs assert against Gaston, which are “related to” that abuse, fall outside the scope of the revival provision. Because the revival provision plainly does not apply to Plaintiffs’ decades-old claims that are not “for” child sexual abuse, Plaintiffs’ claims against Gaston are time barred.

II. IF THIS COURT PROCEEDS TO THE MERITS OF THE CONSTITUTIONAL ISSUE, IT SHOULD ADHERE TO *WILKES COUNTY*

If this Court does address the revival provision’s constitutionality here, *contra supra* Part I, it should adhere to the long-settled line of precedent it established with *Wilkes County*, 204 N.C. 163, and hold that the revival provision facially violates the Law of the Land Clause either for the reasons presented by Gaston in its brief or at least as a matter of *stare decisis*.

This Court scrupulously adheres to the doctrine of *stare decisis*, and it has “never overruled its decisions lightly.” *Rabon v. Rowan Mem’l Hosp., Inc.*, 269 N.C. 1, 20, 152 S.E.2d 485 (1967). And while “this Court has not articulated factors to consider when examining the

continued vitality of [its] precedents—perhaps because this Court has for so long respected the doctrine of *stare decisis*—prior decisions of this Court and the U.S. Supreme Court reveal the relevant considerations. For example, this Court considers: (1) “the quality of [the] reasoning of the precedent,” *State v. Hilton*, 378 N.C. 792, 2021-NCSC-115, ¶ 78, 862 S.E.2d 806 (Earls, J., dissenting) (citation omitted); *accord Rabon*, 269 N.C. at 20–21; (2) “the workability of the rule it established,” *Hilton*, 2021-NCSC-115, ¶ 78 (Earls, J., dissenting) (citation omitted); and (3) any “reliance on the decision,” *id.* (citation omitted); *accord Matter of S.C.C.*, 379 N.C. 303, 2021-NCSC-144, ¶ 20, 864 S.E.2d 521 (*stare decisis* “keep[s] the scale of justice even and steady”).

Here, *stare decisis* compels the conclusion that the revival provision facially violates the Law Of The Land Clause by it purporting to “remov[e] . . . the bar of the statute of limitations by legislative act passed after the bar has become perfect.” *Wilkes Cnty.*, 204 N.C. 168.

First, Wilkes County involves, at the very least, an *entirely reasonable* interpretation of the Law Of The Land Clause; thus, its “quality of reasoning” is necessarily high. *Hilton*, 2021-NCSC-115, ¶ 78

(Earls, J., dissenting) (citation omitted). At a bare minimum, *Wilkes County* is not so “grievous[ly] wrong” as to justify a departure from it here, after almost 100 years of routine affirmance by North Carolina’s appellate courts. *Rabon*, 269 N.C. at 21.

Second, *Wilkes County* announced an exceedingly workable rule. See *Hilton*, 2021-NCSC-115, ¶ 78 (Earls, J., dissenting). In *Wilkes County*, this Court held that, as a bright line rule, once a statute of limitations has expired, the Law of the Land Clause prohibits the General Assembly from “remov[ing]” that bar “by legislative act.” 204 N.C. 168. Thus, while the General Assembly may prospectively *extend* a statute of limitations, it may not revive expired claims. See *id.* The workability of this holding explains why this Court has affirmed the *Wilkes County* rule on multiple occasions. See, e.g., *Trs. of Rowan Tech. Coll. v. J. Hyatt Hammond Assocs., Inc.*, 313 N.C. 230, 234, 328 S.E.2d 274(1985); *Jewell v. Price*, 264 N.C. 459, 461, 463, 142 S.E.2d 1 (1965); *McCrater v. Stone & Webster Eng’g Corp.*, 248 N.C. 707, 710, 104 S.E.2d 858(1958); *Waldrop v. Hodges*, 230 N.C. 370, 373, 53 S.E.2d 263(1949); *Sutton v. Davis*, 205 N.C. 464, 469, 171 S.E. 738 (1933).

Finally, many entities have developed strong “reliance” interests on the *Wilkes County* rule, *Hilton*, 2021-NCSC-115, ¶ 78 (Earls, J., dissenting) (citation omitted); thus, adhering to it is required to “keep the scale of justice even and steady,” *Matter of S.C.C.*, 2021-NCSC-144, ¶ 20. Indeed, the Diocese and other institutions have structured their operations—including the purchase of general-liability insurance policies that exclude expired claims from coverage—under the well-informed understanding that they were no longer at risk of having to defend themselves against time-barred claims. Thus, a departure from *Wilkes County*’s bright line rule now could cause the Diocese and similar entities to face significant, uninsured liability if they are found liable for the decades-old claims that dozens of plaintiffs have now raised across the State, purportedly under the revival provision.

CONCLUSION

The Court should hold that, as a statutory matter, the revival provision of the SAFE Child Act does not revive claims “related to” child sexual abuse, like the claims of Plaintiffs here. However, if the Court does reach the constitutional question here, this Court should hold that

the revival provision of the SAFE Child Act is unconstitutional and reverse the judgment of the Court of Appeals.

Dated: November 20, 2023

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Pursuant to North Carolina Rules of Appellate Procedure 28(j), counsel for Amicus Curiae certifies that the foregoing Brief, which is prepared using a 14-point proportionally spaced font with serifs, contains no more than 3,750 words (excluding covers, captions, indexes, tables of authorities, counsel's signature block, certificates of service, this certificate of compliance, and any appendixes) as reported by the word-processing software.

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