No. 109PA22-2 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

DUSTIN MICHAEL MCKINNEY, GEORGE JERMEY MCKINNEY, and JAMES ROBERT TATE,

Plaintiffs-Appellees,

STATE OF NORTH CAROLINA,

Intervenor-Appellee,

v.

GASTON COUNTY BOARD OF EDUCATION,

Defendant-Appellant.

From Wake County

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NEW BRIEF FOR INTERVENOR-APPELLEE STATE OF NORTH CAROLINA

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INDEX

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Session Laws

Rules

Other Authorities

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ISSUE PRESENTED

Did the Court of Appeals correctly hold that the SAFE Child Act's revival provision does not violate North Carolina's law-of-the-land clause?

INTRODUCTION

In 2019, every member of the General Assembly voted to pass the SAFE Child Act, a landmark piece of legislation to help protect our state's children from sexual abuse. An important part of this law temporarily allowed victims of child sexual abuse to file civil lawsuits against their abusers and the institutions that enabled their abuse, even if the statute of limitations had lapsed. By opening a two-year window to file otherwise time-barred claims, the General Assembly sought to give survivors a meaningful opportunity to seek justice, to ensure that abusers and their enablers paid for some of the moral and financial costs of their abuse, and to help identify abusers to prevent them from harming more children.

The Court of Appeals correctly held that the revival window is constitutional. Nothing in the text of our state constitution bars the General Assembly from reviving civil tort claims. Constitutional history likewise confirms that our constitution's framers intended for the legislature to have the authority to pass retroactive statutes, subject only to exceptions that do

not apply here. And no decision of this Court is to the contrary. Although this Court has rightly held that the legislature may not retroactively interfere with vested property rights, this principle does not extend to tort claims. Unlike a property owner who may act in reliance on settled rights to title and ownership, a tortfeasor cannot form a vested right to engage in or facilitate child sexual abuse.

The Board's contrary arguments profoundly misunderstand the state constitution. In the Board's view, once a limitations period runs, the General Assembly may not, under any circumstances, revive time-lapsed civil claims. The Board would therefore place its alleged right to be free from child-sexual-abuse claims at the very apex of constitutional rights—over even the right to be free from discrimination based on race or religion. To state the argument is to refute it.

The Board falls far short of supporting its sweeping claims. The Board all but concedes that its proposed rule has no basis in the constitution's text. The Board misconstrues the historical record. And the Board's reliance on this Court's precedents cannot withstand scrutiny. Against text, history, and precedent, the Board resorts to policy arguments and rhetoric about why the

revival provision is unwise. But the Board should direct those arguments to the political branches, not this Court.

The General Assembly did not violate our state constitution when it unanimously enacted legislation to provide victims of child sexual abuse a short window during which they could sue their abusers. This Court should affirm.

STATEMENT OF THE CASE

In November 2020, Dustin Michael McKinney, George Jermey McKinney, and James Robert Tate filed this lawsuit against their former wrestling coach, Gary Goins, and the Gaston County Board of Education. (R pp 6-21) Plaintiffs alleged that, while they were still high-school students, Goins sexually assaulted them on "multiple occasions," including in school classrooms, vehicles, and athletic offices. (R pp 8-11) As the complaint recounts, Goins was convicted of numerous criminal charges in connection with this abuse. (R p 8) Plaintiffs also alleged that the Board "knew, or should have known," of Goins's abuse, in part because it received "[m]any complaints" about that abuse while it was ongoing. (R p 8) All parties agree that plaintiffs' claims would be time-barred but for the SAFE Child Act's revival provision.

The Board moved to dismiss. It argued that plaintiffs' claims were untimely, because the Act's revival provision facially violates the law-of-the-land clause. (R pp 22-40, 70-74) Goins has never appeared in this case, and the claims against him were dismissed without prejudice. (R pp 125-26)

The facial challenge was transferred to a three-judge panel, and the State intervened to defend the revival provision's constitutionality. (R pp 84-95) In a 2-1 decision, the trial court held that the provision violates the law-of-the-land clause. (R pp 96-115) Plaintiffs and the State appealed. (R pp 116-119)

In a 2-1 decision, the Court of Appeals reversed, holding that the revival provision is constitutional. *McKinney v. Goins*, 892 S.E.2d 460, 480 (N.C. Ct. App. 2023). The Board appealed to this Court based on the dissent and the "substantial constitutional question" that the dissent raised about whether the General Assembly may revive a claim "barred by the applicable statute of limitations." No. 109A22-2, Notice of Appeal (Oct. 2, 2023).

STATEMENT OF THE FACTS

A. Scientific developments result in a more complete understanding of child sexual abuse.

Children who are sexually abused suffer devastating and lifelong physical and psychological injuries. Child sexual abuse can "affect how a

person thinks, acts, and feels over a lifetime, resulting in short- and long-term physical and mental/emotional health consequences." Ctrs. for Disease Control, *Preventing Child Sexual Abuse* 1 (2021), https://bit.ly/3Ksi8x3. These consequences include increased rates of heart disease, obesity, and cancer, as well as post-traumatic stress disorder, substance abuse, depression, and even suicide. *Id*. All told, research estimates that the nationwide economic burden resulting from child sexual abuse in a single year can total billions of dollars. *Id.* at 2.

In recent years, medical experts have developed a more complete understanding of child sexual abuse. Specifically, research shows that coming to terms with child sexual abuse is a "complex and lifelong process," resulting in "disclosures [that] are too often delayed until adulthood." Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000–2016)*, 20 Trauma, Violence & Abuse 260, 276 (2019), https://bit.ly/3MHN3aP. Studies consistently find that "rates of disclosure increase with age, especially into adulthood." *Id.* at 278; *see also id.* at 279 ("The younger the child victim, the less likely they will purposefully disclose.").

This delayed disclosure can have many causes. Child victims frequently know their abuser, making it difficult for them "to view the perpetrator in a negative light, thus leaving them incapable of seeing what happened as not their fault." Melissa Hall & Joshua Hall, Am. Counseling Ass'n, *The Long-Term Effects of Childhood Sexual Abuse: Counseling Implications* 2 (2011), https://bit.ly/3CujWmu. Children also often lack the "developmental capacity," the "understanding of sexual abuse as victimization," and the "independence" needed to articulate that they have been abused. Alaggia, 20(2) Trauma, Violence & Abuse at 279. "[S]hame, self-blame, and fear" are also "significant factors deterring disclosure." *Id.*

In response to these scientific developments, states across the country have passed laws that "revive" otherwise time-barred civil claims for child sexual abuse. More than half the states have now passed laws of this kind. *See* Alice Nasar Hanan, *Revival Laws for Child Sexual Abuse*, ChildUSA (Nov. 1, 2023), bit.ly/3NA9wso.

B. The General Assembly unanimously passes the SAFE Child Act to better protect children from sexual abuse.

Against this backdrop, in 2019, the General Assembly unanimously passed the SAFE Child Act, which Governor Cooper signed into law. *See* An Act to Protect Children From Sexual Abuse and to Strengthen and

Modernize Sexual Assault Laws, S.L. 2019-245, §§ 1-9, 2019 N.C. Sess. Laws 1231, 1231-39.

Before the Act, a three-year statute of limitations typically applied to the common-law claims that victims use to seek civil redress for child sexual abuse. *See* N.C. Gen. Stat. § 1-52 (July 2019). This limitations period was tolled only until the victim reached the age of 18. *Id.* § 1-17(a). As a result, victims had to bring claims by the time they turned 21 years old.

To account for delayed disclosure, the General Assembly changed the statute of limitations for claims seeking redress for child sexual abuse. The Act permanently extends the civil statute of limitations for child sex offenses, ensuring that "a plaintiff may file a civil action against a defendant for claims related to sexual abuse suffered while the plaintiff was under 18 years of age until the plaintiff attains 28 years of age." S.L. 2019-245, § 4.1 (codified at N.C. Gen. Stat. § 1-17(d)). The Act also permits a suit of this kind within two years of a defendant's criminal conviction for a related felony. *Id.* (codified at N.C. Gen. Stat. § 1-17(e)). And most significantly here, the Act—for a two-year period from 2020 to 2021—revived "any civil action for child sexual abuse otherwise time-barred under G.S. 1-52 as it existed immediately before the enactment of this act." *Id.* § 4.2(b). This revival provision authorized, for

a limited time, civil suits like this one, where the statute of limitations had previously expired.

One of the Act's primary sponsors in the House, Representative Riddell, summarized the General Assembly's objective in passing the revival provision: "The trend in our land," he explained, "is recognizing the brain science," which shows that many victims of child sexual abuse have "the ability to finally come forward only as an adult—as a seasoned adult." *House Chamber Audio*, N.C. Gen. Assembly, at 33:05 (June 19, 2019), https://ncleg.gov/Documents/9/1548. To account for this reality, the Act "allows a two-year window of looking back"—a "one-time deal"—for victims with otherwise time-barred civil claims. *Id.* at 33:39.

The revival provision accomplished its goal to encourage victims to bring civil claims. In its brief, the Board identifies an "illustrative" list of roughly 250 lawsuits that were filed during the revival window before it closed. *See* Br. 62 & App. 2-28. That so many individuals came forward with claims powerfully demonstrates the law's importance to victims of child sexual abuse across the State. And it confirms Representative Riddell's observation, backed by extensive scientific literature, that many victims of child sexual abuse are able to come forward only "as a seasoned adult."

C. Plaintiffs sue under the Act, and a divided three-judge panel holds that the revival provision is unconstitutional.

Plaintiffs here invoked the revival provision to bring otherwise time-barred claims arising from the sexual abuse that they suffered as children. (R pp 7-11, ¶¶ 8-38) Plaintiffs were wrestlers at East Gaston High School in the mid-to-late 1990s and early 2000s. (R p 9, ¶¶ 18, 25; R p 10, ¶ 33) Plaintiffs allege that their wrestling coach, Gary Goins, sexually assaulted them on "multiple occasions," including in school classrooms, vehicles, and athletic offices. (R p 8, ¶ 14; R p 9, ¶ 21; R p 10, ¶ 29; R p 11, ¶ 37) In 2014, Goins was found guilty on several criminal charges, including statutory rape and indecent liberties with children. (R p 8, ¶ 15)

Plaintiffs also allege that Goins's employer, the Gaston County Board of Education, "knew, or should have known," about Goins's abuse. (R p 8, ¶ 13) Specifically, plaintiffs allege that "[m]any complaints" were made to the Board about Goins but that "nothing was done" after the Board's "minimal investigation." (R p 8, ¶ 13)

Relying on the revival provision, plaintiffs sued Goins and the Board for damages under various common-law tort theories. (R pp 11-19, ¶¶ 39-82) Goins remains incarcerated and has never appeared in this case. Following

entry of judgment in the Board's favor, plaintiffs voluntarily dismissed, without prejudice, their claims against him. (R pp 125-26)

Defendant Gaston County Board of Education answered and counterclaimed, seeking a declaration that the Act's revival provision is facially unconstitutional under the law-of-the-land clause. (R pp 22-40) The Board also moved to dismiss plaintiffs' claims under Rule 12(b)(6) on the same ground. (R pp 70-74) The facial challenge was transferred to a three-judge panel. *See* R pp 84-86; N.C. R. Civ. P. 42(b)(4). The State intervened to defend the constitutionality of the revival provision. (R pp 87-95)

In a 2-1 decision, the three-judge panel held that the revival provision violates the law-of-the-land clause. The trial court held that, under our state constitution, the General Assembly cannot revive any civil cause of action after the statute of limitations passes. (R pp 101-05) Citing this Court's decision in *Wilkes County v. Forester*, the court reasoned that once a limitations period expires, a defendant has a "vested right" to a limitations defense that the General Assembly cannot infringe. R pp 102-03 (citing *Wilkes*, 204 N.C. 163, 167 S.E. 691 (1933)). This vested right, the court held, is absolute: under no circumstances may the General Assembly pass a law interfering with the right after it vests. (R pp 104-05)

Judge Martin B. McGee dissented. The dissent would have reviewed the revival provision under the rational-basis test. (R pp 111-12) Under that test, the dissent explained, the revival provision is rationally related to promoting the government's interest in protecting children from sexual abuse. (R p 112) In the alternative, the dissent would have held that the revival provision passes even strict scrutiny. (R pp 112-13)

Plaintiffs and the State appealed the three-judge panel's order. (R pp 116-19)

D. The Court of Appeals reverses, holding that the revival provision is facially constitutional.

The Court of Appeals reversed and upheld the revival provision as constitutional. Two judges agreed that the revival provision is facially constitutional. *McKinney*, 892 S.E.2d at 480. Judge Riggs wrote an opinion for the court. *Id.* at 463-80. Judge Gore concurred in the result, without a separate written opinion. *Id.* at 480.

The controlling opinion began by explaining the high bar that a party must clear to show that a statute violates the state constitution. Specifically, courts "will not declare [a statute] invalid unless its unconstitutionality is demonstrated beyond reasonable doubt." *Id.* at 468 (quoting *Hart v. State*,

368 N.C. 122, 131, 774 S.E.2d 281, 287 (2015)). To resolve that issue here, the Court of Appeals looked to the text of the constitution, our state's history, and this Court's precedents. *Id.* at 468. Those legal sources, it concluded, showed that the Board could not establish that the revival provision is unconstitutional beyond a reasonable doubt.

As for the text, the Court of Appeals noted that our state constitution specifically limits the General Assembly's authority to revive time-barred claims in only two ways: the legislature may not pass "*ex post facto* criminal laws" or laws that allow for "retrospective taxation." *Id.* at 471 (citing N.C. Const. art. I, § 16). North Carolinians, however, have "ratified no other express provisions further restricting retrospective acts specifically." *Id.* Thus, the court reasoned, "retroactive civil laws, including ones reviving statutes of limitation, are not inherently unconstitutional." *Id.*

As for history, the Court of Appeals examined how our constitution was originally understood from "the Founding through Reconstruction." *Id.* at 472. The court began by observing that our state's original 1776 constitution barred only retroactive *criminal* laws. *Id.* at 469 (citing N.C. Const. of 1776, Declaration of Rights, § XXIV). And in a case decided shortly after the founding, this Court's predecessor authorized the Attorney General

to retroactively pursue judgments against delinquent receivers of public money. *Id.* (citing *State v.* ____, 2 N.C. (1 Hayw.) 28 (1794)). This history, the Court of Appeals explained, shows that retroactive *civil* laws were originally understood as constitutionally permissible. *See id.*

The court next examined Reconstruction-era history, focusing on two decisions from this time period. The court first addressed *State v. Bell*, where this Court upheld a retroactive tax law "in light of the 'well established right [of the legislature] to pass a retrospective law which is not in its nature criminal.'" *Id.* at 470 (quoting 61 N.C. 76, 86 (1867)). As the Court of Appeals explained, however, "in apparent reaction to *Bell*," North Carolinians ratified a new provision in the 1868 constitution that barred retroactive tax laws. *See id.* at 471. But in so doing, they left the more general power to pass retroactive civil legislation intact. *See id.* This history, the Court of Appeals reasoned, "plainly demonstrates" that laws reviving otherwise time-barred claims do not "unerringly" violate the state constitution. *Id.*

The court next addressed *Hinton v. Hinton*, 61 N.C. 410 (1868). There, this Court upheld a law reviving claims that were previously barred by a statute of limitations. *Id.* at 415. Under *Hinton*, the Court of Appeals explained, "a statute of limitations, as a general proposition, simply serves to

procedurally bar recovery by a plaintiff"—meaning that it limits a plaintiff's right to seek a remedy in court. *McKinney*, 892 S.E.2d at 470. But a limitations period does not "extinguish[ ] any underlying liability." *Id.* And because *Hinton* held that "[t]he power of the Legislature to pass retroactive statutes affecting remedies is settled," the case shows that the "revival of a statute of limitations does not per se violate the North Carolina Constitution." *Id.* at 471 (quoting *Hinton*, 61 N.C. at 415).

The Court of Appeals went on to reject the Board's argument that this Court's decision in *Wilkes County v. Forester* categorically bars the General Assembly from reviving time-barred civil claims. The court acknowledged that *Wilkes* stated that "an enabling statute to revive a cause of action barred by the statute of limitations is inoperative and of no avail." *Id.* at 474 (quoting 204 N.C. at 170, 167 S.E. at 695). But for at least two reasons, the court explained, this statement does not support the Board's categorical rule. First, the Court of Appeals noted that the statement was dicta. Because the revival provision at issue in *Wilkes* did not apply on the facts of that case, the statement was "not necessary to [the Court's] decision." *Id.* Second, the court noted that the revival provision at issue in *Wilkes* affected rights to real property. Specifically, the case involved a county's "attempt to foreclose

on real property" after a limitations period had expired. *Id.* at 475. As the court further observed, "virtually all the decisions cited by [this Court] in *Wilkes County* discussed the unconstitutionality of revival statutes where the expired claim was explicitly for *title* to property." *Id*. In light of this property-based focus, the court concluded that *Wilkes* does not bar the legislature from reviving time-barred civil *tort* claims. *Id.* at 476-78.

Given its conclusion that the revival provision is not per se unconstitutional, the Court of Appeals went on to consider the provision under tiered scrutiny. *Id.* at 478-80. The court first held that rational-basis review applies, because the revival provision does not implicate a fundamental right. *Id.* But if heightened scrutiny applied, the court concluded that the revival provision would pass even strict scrutiny. *Id.* at 479. The provision advances a compelling state interest: vindicating "the rights of child victims of sexual abuse—and ensuring abusers and their enablers are justly held to account to their victims for the trauma inflicted." *Id.* And it does so in a narrowly tailored fashion: by reviving time-barred civil claims for child sexual abuse only for a two-year period. *Id.* Thus, the Court of Appeals concluded that the revival provision passes any level of judicial scrutiny.

Judge Carpenter dissented. He would have held that "*Wilkes County* and its progeny control this case." *Id.* at 481. Although Judge Carpenter agreed that *Wilkes* "could plausibly be read to prohibit only revival statutes affecting real property," he stated that subsequent decisions have not drawn this distinction. *Id.* at 483. He further read *Wilkes* as squarely holding that revival provisions are per se unconstitutional under the law-of-the-land clause. *Id.* Judge Carpenter acknowledged that this Court's earlier decision in *Hinton* "hold[s] that the General Assembly can revive lapsed claims." *Id.* at 485. But because *Hinton* and *Wilkes* reached "opposite conclusions" on this point, and because *Hinton* was decided earlier, he reasoned that this Court "by implication" "overruled *Hinton* when it decided *Wilkes*." *Id.*

SUMMARY OF THE ARGUMENT

This Court should affirm the judgment below. Text, history, and precedent all show that the General Assembly has the authority to revive civil tort claims otherwise barred by a statute of limitations. The constitution's text does not prohibit the General Assembly from doing so. History provides further support: Contemporaneous cases interpreting both the original 1776 constitution and the 1868 constitution make clear that, when those constitutions were enacted, it was understood that the General

Assembly could revive time-barred civil claims. And this Court's precedents hold that statutes of limitations are procedural—not substantive—rules that reflect legislative policy choices about when a plaintiff may sue. As mere procedural devices, statutes of limitations do not confer an absolute constitutional right to be free from tort liability once a limitations period expires.

The Board resists this conclusion largely by relying on this Court's decision in *Wilkes County v. Forester*. But *Wilkes* states a property-based rule. Specifically, it states that the General Assembly may not revive expired civil claims when the revival would divest owners of their property. By contrast, *Wilkes* acknowledges no similar right to avoid *tort* liability after a limitations period runs—especially liability for child sexual abuse. In any event, the basis for *Wilkes*'s constitutional analysis is unclear. It does not cite any provision of the North Carolina Constitution. Instead, it discusses *federal* cases and the Fourteenth Amendment, and thus appears to be based on the U.S. Constitution. But shortly after *Wilkes*, the U.S. Supreme Court made clear that the federal constitution allows legislatures to revive civil tort-based (but not property-based) claims. *Chase Secs. Corp. v. Donaldson*, 325 U.S. 304, 311, 316 (1945).

Finally, because there is no "vested" or "fundamental" right to immunity from civil claims of child sexual abuse, the revival provision is subject to only rational-basis review. It easily passes this deferential test. And it would pass even strict scrutiny as well. Reviving civil tort claims for a two-year window is narrowly tailored to the compelling governmental interest of protecting children from abuse. It provides a measure of justice to victims, helps identify perpetrators and their enablers, and shifts some of the tremendous costs of abuse away from victims and their communities.

The Board does not argue otherwise. Thus, if the Court rejects the Board's categorical rule, the Board effectively concedes that the revival provision is facially constitutional.

The Board concludes with policy arguments about why the revival provision is unwise. Those arguments are for the political branches, not this Court. The General Assembly unanimously passed, and the Governor signed into law, the SAFE Child Act. The Board portrays the revival provision as an afterthought, but the provision plays a key role in fulfilling the Act's overriding goal: giving victims of child sexual abuse an opportunity to seek justice in our courts. Because that was a policy choice the General Assembly was free to make, this Court should affirm.

ARGUMENT

Standard of Review

This Court reviews challenges to a statute's constitutionality *de novo*. *Hart*, 368 N.C. at 131, 774 S.E.2d at 287-88. In doing so, the Court "presume[s] that a statute is constitutional" and "will not declare [the statute] invalid unless its unconstitutionality is demonstrated beyond reasonable doubt." *Id*. "In other words, the constitutional violation must be plain and clear." *State ex rel. McCrory v. Berger*, 368 N.C. 633, 639, 781 S.E.2d 248, 252 (2016). To decide whether a statute is plainly unconstitutional, this Court looks to "the text of the constitution, the historical context in which the people of North Carolina adopted the applicable constitutional provision, and [judicial] precedents." *Id.*

Discussion of Law

I. The General Assembly Can Revive Civil Tort Claims Otherwise Barred by a Statute of Limitations.

Text, history, and precedent all show that the General Assembly may, consistent with our state constitution, revive civil tort claims otherwise barred by a statute of limitations.

A. The text of the state constitution does not prohibit the revival of civil tort claims.

Nothing in the text of the state constitution prevents the General Assembly from passing a law that revives time-barred civil tort claims.

Our constitution acts as a limit on—not a grant of—state power. *Hart*, 368 N.C. at 131, 774 S.E.2d at 287. Thus, "the General Assembly is free to implement legislation as long as that legislation does not offend some specific constitutional provision." *Baker v. Martin*, 330 N.C. 331, 338-39, 410 S.E.2d 887, 891-92 (1991).

Here, the constitution expressly limits the legislature's authority to enact only two kinds of retroactive laws. A retroactive law—sometimes also referred to as a "retrospective" law—changes the legal consequences of "acts or transactions occurring before [the law] came into effect." *Ashley v. Brown*, 198 N.C. 369, 372, 151 S.E. 725, 727 (1930) (quoting *Black on Interpretation of Laws* 247). The constitution expressly bars the General Assembly from passing ex post facto laws—laws that retroactively criminalize past conduct. N.C. Const. art. I, § 16. It also bars retroactive tax laws—laws "taxing . . . sales, purchases, or other acts previously done." *Id.* Other than those two exceptions, the constitution imposes no express limits on the General Assembly's power to pass retroactive laws.

Under "the doctrine of *expressio unius est exclusio alterius*," the inclusion of one or more limitations "implies the exclusion of [others] not contained in the list." *Cooper v. Berger*, 371 N.C. 799, 810-11, 822 S.E.2d 286, 296 (2018) (applying this canon to the constitution where "the scope of the General Assembly's power is at issue"). Applying this interpretive principle here, the constitution's two express limitations on retroactive legislation establish that "retrospective laws, merely as such, were not intended to be forbidden." *Bell*, 61 N.C. at 83.

Other state constitutions provide a telling comparison. In contrast to our constitution, several state constitutions expressly prohibit legislatures from reviving time-barred civil claims. For example, since 1784, the New Hampshire Constitution has prohibited "retrospective laws" "either for the decision of civil causes, or the punishment of offenses." N.H. Const. pt. 1, art. 23. As the New Hampshire Supreme Court has explained, this language bars retroactive criminal and civil laws, thus protecting individuals "from any interference of the legislature whatever, in any cause, by a retrospective law." *Woart v. Winnick*, 3 N.H. 473, 474-75, 477 (1826). If the framers of our state constitution had wanted to include a similar limitation in the text of our constitution, they could have easily done so. *See also, e.g.*, Okla. Const. art.

V, § 52 ("The Legislature shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this State."); Tenn. Const. art. I, § 20 ("That no retrospective law . . . shall be made."); Tex. Const. art. I, § 16 ("No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.").

The Board effectively concedes that its position has no basis in our state constitution's text. The Board acknowledges, as it must, that the text of the law-of-the-land clause does "not mention time bars." Br. 12. And the Board fails to identify any other constitutional provision that could support the argument that the General Assembly is categorically prohibited from reviving time-lapsed civil tort claims.

Instead, the Board argues that this Court's precedents under the law-of-the-land clause recognize an implicit, unenumerated right to immunity from civil tort liability after a limitations period expires. As discussed below, this Court's cases do not support a constitutional right of that kind.

B. This Court's historical case law confirms that the General Assembly may revive expired civil tort claims.

This Court's original interpretations of our constitution confirm what constitutional text makes clear: the General Assembly has the power to enact retroactive legislation, subject only to express constitutional limits.

1. Founding-era case law shows that the General Assembly may revive expired civil claims.

At the time of the State's founding, the law was clear that revival provisions like the one at issue here were constitutional.

Early in our state's history, this Court's founding-era predecessor considered the General Assembly's power to pass retroactive legislation. In 1794, in *State v.* ____, the court considered a statute that authorized the Attorney General, on his own motion, to obtain default judgments against delinquent receivers of public money. 2 N.C. at 28-29. The trial judge held that the statute violated several constitutional provisions, including the law-of-the-land clause, and therefore barred the Attorney General from pursuing such judgments. *Id.* at 29-30.

The next day, the Attorney General moved for reconsideration, asking the trial judge to revisit his prior ruling. *Id.* at 30. Among "other objections" to the law's constitutionality, the Attorney General addressed an argument

that the law could operate retroactively. *Id.* at 39. The Attorney General acknowledged that the ex post facto clause "prohibits the passing of a retrospective law so far as it magnifies the criminality of a former action." *Id.* But he defended the statute's constitutionality on the ground that, beyond this "restraint" on retroactive criminal laws, the legislature remained "free to pass all others." *Id.* The Attorney General emphasized, moreover, that passing retroactive legislation "ha[d] been found frequently necessary" in the revolutionary period. *Id.* (citing examples of retroactive laws). And based on that experience, he argued that the drafters of our original constitution were "careful to word" the ex post facto clause "so as not to exclude the power of passing a [non-criminal] retrospective law . . . when the public convenience required it." *Id.* Despite these arguments, the trial judge "still adhered to his opinion." *Id.* at 40.

The Attorney General appealed, raising the same arguments that he had made to the trial judge. *Id.* The appellate court held in the State's favor, reversing the trial judge's holding that the statute violated the state constitution and allowing the Attorney General to pursue judgments against delinquent receivers of public money. *Id.* Although the appellate court did not issue a written opinion, this ruling necessarily rejected the argument

that the statute was unconstitutionally retroactive. *See id.*; *accord* William Michael Treanor, *Judicial Review Before* Marbury, 58 Stan. L. Rev. 455, 508, 512 (2005) (recounting the facts and historical context surrounding the decision in *State* and concluding that the court "presumably accepted the attorney general's argument," because it "voted in favor of the state").

The Board's efforts to downplay the court's decision in *State* are not persuasive. The Board has no response to the Attorney General's argument in *State* that the constitution was understood at the founding to permit retroactive civil laws. *See* Br. 36. Nor does the Board respond to the court's apparent acceptance of that argument in its decision upholding the law's constitutionality. *See* Br. 36.

The Board instead points to this Court's decision roughly a decade later in *Trustees of University of North Carolina v. Foy*, 5 N.C. (1 Mur.) 58 (1805), suggesting that *Foy* effectively overruled *State*. *See* Br. 36-37. But *Foy* concerned a law that interfered with tangible property rights that the legislature itself had previously conveyed. *See* 5 N.C. at 81-82. Because the law impaired real property rights, the Court held that the law was barred by the express language of the law-of-the-land clause. *See id.* at 87-89. Then, as

now, that clause prohibited the deprivation of "property, but by the law of the land." *See* N.C. Const. of 1776, Declaration of Rights, § XII.

In *State*, by contrast, the Attorney General pointed out that our constitution had no express, general prohibition on retroactive legislation. 2 N.C. at 39 ("Does any part of our constitution prohibit the passing a retrospective law? It certainly does not."). Instead, the constitution had only one express limit on retroactive laws—the ex post facto clause's bar on retroactive criminal laws. *Id.* The Court of Appeals was therefore right that *Foy*'s "narrow" holding that the law-of-the-land clause bars the General Assembly from "retroactively rescind[ing] a prior grant of title to real property" "cannot overrule the much broader recognition" in *State* that "retroactive civil laws are not always unconstitutional." *McKinney*, 892 S.E.2d at 472.

The Board nonetheless claims that there is "no serious question among legal historians" that legislatures were "limited to making only prospective laws" at the founding. Br. 32-33. The Board misconstrues the historical record. Although the Board purports to rely on "writings before and around the time of the adoption of the original North Carolina Constitution," the Board does not cite a single North Carolina historical source that supports its

position. Br. 33-34. The Board instead relies on one New York case and two New Hampshire cases. *See* Br. 33-34. And those cases entirely fail to support the Board's sweeping claim.

The Board first cites two cases from New Hampshire: *Merrill v. Sherburne*, 1 N.H. 199 (1818), and *Society for the Propagation of the Gospel v. Wheeler*, 22 F. Cas. 756 (C.C.D.N.H. 1814). Br. 33-34. But the Board fails to mention that New Hampshire, as discussed above, has long had an express provision in its constitution prohibiting *all* retroactive laws, civil and criminal. N.H. Const. pt. 1, art. 23. Case law from New Hampshire therefore has no persuasive value here, when interpreting a state constitution that lacks any analogous provision.

The Board also cites a New York case, *Dash v. Van Kleeck*, stating that laws "must be prospective." Br. 33 (quoting 7 Johns 477, 477 (N.Y. Sup. Ct. 1811)). But the Board ignores the footnote immediately preceding this statement, which explains that "this principle does not apply to a statute which merely alters or modifies a remedy." *Dash*, 7 Johns. at 477 n.b.

The Board's reliance on legal scholarship is similarly off point. *See* Br. 33 n.9. For example, the Board's own scholarly literature demonstrates that the founding generation had diverse perspectives on retroactive laws,

including some who believed that "there are occasions when such laws are not only just, but highly requisite." Laura Ricciardi & Michael B.W. Sinclair, *Retroactive Civil Legislation*, 27 U. Tol. L. Rev. 301, 307 (1996) (quotation marks omitted) (Board's authority, cited at Br. 33 n.9); *see generally id.* at 303-12 (cataloging different founding-era views).

The Board's claim to historical unanimity on this issue also ignores federal cases at the founding that recognized a state legislature's right to pass retroactive civil laws. For example, in *Calder v. Bull*, Justice Chase's now-controlling seriatim opinion set out four types of criminal laws regulating past conduct that legislatures cannot enact under the U.S. Constitution's ex post facto clause. 3 U.S. 386, 390 (1798) (opinion of Chase, J.); *see Carmell v. Texas*, 529 U.S. 513, 525 (2000) (noting that the Court has "repeatedly endorsed" Justice Chase's understanding of ex post facto laws). Justice Chase further explained, however, that legislatures could generally pass retroactive civil laws. *Calder*, 3 U.S. at 391 ("Every ex post facto law must necessarily be retrospective; but every retrospective law is not an ex post facto law: The former, only, are prohibited."). Justice Chase even specifically noted that it "may be proper or necessary" for a legislature to retroactively alter a statute of limitations. *Id.* Likewise, just a few decades

later, Justice Story confirmed that "the constitution of the United States does not prohibit the states from passing retrospective laws generally; but only ex post facto [criminal] laws." *Watson v. Mercer*, 33 U.S. 88, 110 (1834).

In sum, founding-era history shows that our original 1776 constitution was not understood to bar the General Assembly from enacting retroactive civil laws. As the next section shows, this understanding continued through the formation of our 1868 constitution.

2. Reconstruction-era case law shows that the General Assembly may revive expired civil claims.

The case law surrounding the ratification of our state's 1868 constitution accords with this earlier history. Two cases decided by this Court are particularly instructive.

First, in *State v. Bell*, this Court affirmed the legislature's "well established right to pass a retrospective law which is not in its nature criminal." 61 N.C. at 86. In October 1865, the General Assembly had passed a law taxing business activity done that year—including activity occurring before the law's passage. *Id.* at 80. This Court upheld the law, noting that it was "universally accepted and approved" that such retroactive legislation was constitutional. *Id.* at 81.

At that time, our constitution did not expressly prohibit retroactive taxation. This "omission," the Court explained, was powerful evidence of the law's validity. *Id.* at 83. In other words, the fact that our constitution specifically limited only one kind of retroactive legislation—ex post facto criminal laws—strongly indicated that other types "were not intended to be forbidden." *Id.* (applying the *expressio unius* canon).

The following year, however, the people ratified the 1868 constitution. Unlike its predecessor, that constitution expressly prohibited retroactive tax laws. N.C. Const. of 1868 art. I, § 32. Although that change substantively overruled *Bell*, it also strengthened its reasoning. The framers of the 1868 constitution could have chosen to include a general bar on retroactive legislation. Instead, they chose to narrow—not eliminate—the General Assembly's authority to pass such legislation. And they did so in a tailored fashion that addressed only retroactive tax laws, leaving in place the legislature's general power to pass retroactive civil laws on other topics.

The second instructive case from this time period is *Hinton v. Hinton*, 61 N.C. 410. The Civil War had significantly disrupted the operation of our state courts, leaving many people unable to pursue civil claims. *Id.* at 413-14. Prompted by those "extraordinary" circumstances, the General Assembly

passed several laws suspending statutes of limitations and, later, reviving previously time-barred claims. *See id.* at 413-15. In *Hinton*, this Court affirmed the constitutionality of those revival laws. *Id.* at 416.

Specifically at issue in *Hinton* was the six-month statute of limitations on a widow's ability to exercise her common-law right of dower—that is, her right to claim a life estate in her husband's property. *Id.* at 412. During the Civil War, that six-month limit proved woefully inadequate. *Id.* at 413. To solve this problem, the General Assembly enacted a revival provision that allowed widows "further time" to assert their dower rights, even if the limitations period had already lapsed. *Id.* at 414-15.

This Court upheld the revival provision as "unquestionabl[y]" constitutional. *Id.* at 415. The Court explained that the original six-month limitations period did not "extinguish" the widow's common-law right to dower. *Id.* at 416 (emphasis omitted). Instead, it merely barred her ability to seek a *remedy* for that underlying right. *Id.* The revival provision renewed the widow's access to the dower remedy, in line with the legislature's "settled" power to "pass retroactive statutes affecting remedies." *Id.* at 415. By doing so, the provision did not deprive defendants of any "vested rights," because its effect was "not to take . . . property." *Id.*

Hinton's timing shows that the drafters of the 1868 constitution understood—and chose not to tamper with—the legislature's general power to revive civil claims. The revival provision in *Hinton* was passed just a few years before the 1868 constitution was drafted. And this Court's decision was issued in the January term of 1868, coinciding almost precisely with the 1868 constitution's drafting and ratification. *Id.* at 410; *see* N.C. Const. of 1868 (noting that the Constitutional Convention took place from January 14, 1868 to March 17, 1868). Yet unlike their reaction to this Court's tax-focused decision in *Bell* (which was decided just one year earlier), the framers of the 1868 constitution chose to allow the legislature to continue its practice of reviving civil claims outside the tax context. Indeed, as this Court would later confirm, such laws were "not only *not* forbidden by the state constitution," but "sustained by numerous decisions" of this Court. *Tabor v. Ward*, 83 N.C. 291, 294 (1880) (emphasis added) (citing, among other cases, *Hinton* and *Bell*).

The Board attempts to dismiss this history, but its arguments lack merit. To begin, the Board has no answer for *Bell*. All the Board can say is that *Bell* did not involve a statute of limitations and did not specifically discuss the law-of-the-land clause. Br. 44-45. That is of course true. But the

Board cannot dispute that *Bell* squarely addressed the key issue in this case: the scope of the General Assembly's authority to pass retroactive civil laws under the state constitution. And although the 1868 constitution removed the legislature's power to impose retroactive taxes, the constitution otherwise left the General Assembly's authority in this area intact. *Bell* and its aftermath therefore strongly indicate that laws like the revival provision "were not intended to be forbidden." 61 N.C. at 83.

The Board fares no better in its efforts to minimize *Hinton*. The Board argues that *Hinton* involved "two vested rights"—the right to dower and the right to rely on an expired statute of limitations. Br. 42. The Board reasons that the Court in *Hinton* had to decide which vested right "trump[ed] the other." Br. 42. Because the Court allowed the General Assembly to revive an otherwise time-barred claim for dower, the Board argues that *Hinton* is best understood as "making a decision based on the facts of that particular case" to prioritize the vested right of dower over the vested right to a limitations defense. Br. 43.

The Board's argument that two vested rights were at issue in *Hinton* is plainly incorrect: this Court was clear that "[t]here is in this case no interference with vested rights." *Hinton*, 61 N.C. at 415. And the Board's

dower-specific exception cannot be squared with *Hinton*'s reasoning in any event. As this Court explained, the statute of limitations on a widow's dower right affected merely her ability to seek a judicial "*remedy*"; it did not affect her underlying "right of property." *Id.* And because "[t]he power of the Legislature to pass retroactive statutes affecting remedies is settled," the revival of time-barred claims posed no constitutional problem. *Id.* The Court even posed a hypothetical outside the dower context to illustrate its reasoning—making clear that it was not establishing a dower-specific rule. *Id.* (imagining a statute that revived a time-barred claim to recover a debt and explaining that the debtor "surely" could not argue that such a statute deprived him of a vested right). Notably, even the dissent below rejected the Board's cramped reading of *Hinton*. *McKinney*, 892 S.E.2d at 485 (Carpenter, J., dissenting) (agreeing that "the *Hinton* Court held that a statute-of-limitations defense is not a vested right").

The Board instead relies on two nineteenth-century cases decided after *Hinton* to support its argument. Br. 40-41. But unlike *Hinton*, neither of these cases actually addressed the question at issue here: whether the General Assembly could revive a time-barred civil claim. The Board's first case is *Johnson v. Winslow*, 63 N.C. 552 (1869); *see* Br. 40. There, this Court

held that the General Assembly could pause a limitations period that had yet to expire. *Johnson*, 63 N.C. at 553. In reaching this conclusion, the Court cited a treatise for the proposition that "the Legislature has no power to revive a right of action after it has been barred." *Id*. But as this Court would recognize several years later, that statement in *Johnson* was dicta. *Pearsall v. Kenan*, 79 N.C. 472, 473 (1878) (explaining that "the point was not before the Court, and no additional force is given to it"); *see McKinney*, 892 S.E.2d at 473 (same). And nothing in *Johnson* otherwise purported to overrule *Hinton*, which had been decided a mere year-and-a-half earlier.

The Board's second case is *Whitehurst v. Dey*, 90 N.C. 542 (1884); *see* Br. 41. But in *Whitehurst*, this Court expressly interpreted the federal, rather than the state, constitution. 90 N.C. at 545. The Court stated that reviving a time-barred claim for a debt would "be an impairment of vested rights and as falling within the inhibition of the federal constitution." *Id.* Just a year later, however, the U.S. Supreme Court rejected that interpretation of the federal constitution. *See Campbell v. Holt*, 115 U.S. 620, 628 (1885) (enslaved persons

at issue); *see also infra* Part II.A (discussing *Campbell*).[1] And in any event, the Court's statement was again dicta, because the Court held that the challenged statute did not actually attempt to revive time-barred claims in the first place. *Whitehurst*, 90 N.C. at 546; *see Dunn v. Beaman*, 126 N.C. 766, 770, 36 S.E. 172, 173 (1900) (confirming that *Whitehurst*'s statement was dicta because it "was not necessary to the disposition of that case"). The Court of Appeals below was therefore right that these two cases are "inapposite to the dispute" at issue here and do not otherwise show that *Hinton* is "no longer good law absent any explicit overruling of it." *McKinney*, 892 S.E.2d at 473.

In sum, this Court's early case law strongly supports the conclusion that our constitution's framers intended the General Assembly to have the authority to revive time-barred civil claims.

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[1] *Campbell* arose out of a pre-Civil War dispute over enslaved persons. 115 U.S. at 620-21. The State does not rely on *Campbell* to reflect current law. As discussed below, the U.S. Supreme Court's more recent decision in *Chase* sets out the rule under the Fourteenth Amendment's due process clause for whether a state may revive an otherwise time-barred civil claim. *See infra* Part II.B. In addition, because the Board's primary case, *Wilkes*, cites *Campbell* on multiple occasions, *Campbell* helps inform the proper understanding of that decision. *See infra* Part II.A.

C. Allowing the revival of civil tort claims is consistent with this Court's modern precedents on statutes of limitations.

This Court's precedents on statutes of limitations also support the General Assembly's authority to revive time-barred civil tort claims.

As this Court has explained, statutes of limitations are "procedural" devices, meant to encourage the "diligent prosecution of known claims." *Christie v. Hartley Constr., Inc.*, 367 N.C. 534, 538, 766 S.E.2d 283, 286 (2014) (quoting *Black's Law Dictionary* 1636 (10th ed. 2014)). When statutes of limitations function properly, they can "prevent the problems inherent in litigating claims in which 'evidence has been lost, memories have faded, and witnesses have disappeared.'" *Id.* (quoting *Order of R.R. Telegraphers v. Ry. Express Agency, Inc.*, 321 U.S. 342, 349 (1944)).

Thus, at bottom, statutes of limitations "represent a public policy about the privilege to litigate"—one whose "shelter" has never been considered absolute. *Chase*, 325 U.S. at 314; *see Nowell v. Great Atl. & Pac. Tea Co.*, 250 N.C. 575, 579, 108 S.E.2d 889, 891 (1959) (noting that "lapse of time . . . is a technical legal defense" that "equity [may] deny"). Because statutes of limitations do not "discriminate between the just and the unjust claim, or the voidable and unavoidable delay," courts and legislatures have recognized the need for flexibility in their enforcement. *Chase*, 325 U.S. at

314; *see Black v. Littlejohn*, 312 N.C. 626, 645, 325 S.E.2d 469, 482 (1985) (construing statutes of limitations "broadly to comport with the policy of fairness").

These principles reflect the understanding that some plaintiffs reasonably cannot comply with an initial timeframe for bringing suit—not for lack of diligence, but because of circumstances beyond their control. It is therefore well understood that statutes of limitations "do not confer upon defendants any [absolute] right to be free from liability." *Goad v. Celotex Corp.*, 831 F.2d 508, 511 (4th Cir. 1987). Instead, the law has always made room for exceptions to limitations periods when equity demands them. *See Christie*, 367 N.C. at 538, 766 S.E.3d at 286 (noting that their "enforceability is subject to equitable defenses"). For example, North Carolina law tolls most limitations periods during times of disability. N.C. Gen. Stat. § 1-17. The revival provision here fits comfortably within this tradition. The General Assembly's unanimous passage of the SAFE Child Act merely built another equitable exception into the law for claims of child sexual abuse.

This understanding of the revival provision's scope is reinforced by a comparison between statutes of limitations and statutes of repose. Unlike statutes of limitations, statutes of repose make the commencement of a

claim within a certain time a "condition precedent to the maintenance of the action." *Bolick v. Am. Barmag Corp.*, 306 N.C. 364, 369, 293 S.E.2d 415, 419 (1982). In this way, a statute of repose serves as "an unyielding and absolute barrier," potentially foreclosing a claim before a cause of action even accrues. *Black*, 312 N.C. at 633, 325 S.E.2d at 475. In contrast, statutes of limitations "affect[ ] only the remedy[,] . . . not the right to recover." *Boudreau v. Baughman*, 322 N.C. 331, 340, 368 S.E.2d 849, 857 (1988). And it is well within the legislature's authority "to define the circumstances under which a remedy is legally cognizable and those under which it is not." *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 170, 594 S.E.2d 1, 9 (2004) (quoting *Lamb v. Wedgewood South Corp.*, 308 N.C. 419, 444, 302 S.E.2d 868, 882 (1983)).[2]

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[2] The Board argues that section 1-52(16) is a statute of repose that bars plaintiffs' claims on the facts of this particular case. Br. 49-60. In his dissent, Judge Carpenter did not reach this fact-specific question. Because the Board's repose argument is outside the scope of the dissent, and because the Board chose not to file a petition for discretionary review or notice of appeal based on a substantial constitutional question on the repose issue, this Court does not have jurisdiction to review the Board's argument. *See supra* at 5; *accord* N.C. Gen. Stat. § 7A-30(2); N.C. R. App. P. 16(b); *Cryan v. Nat'l Council of YMCA*, 384 N.C. 569, 570, 887 S.E.2d 848, 850 (2023) ("A dissent that does not contain any reasoning on an issue cannot confer jurisdiction over that issue.").

Even if the issue were properly before this Court, however, the Court of Appeals was correct that, whether section 1-52(16) is a statute of limitations

Yet in the Board's view, when a limitations period expires, a defendant has a substantive constitutional right not to be sued. *E.g.*, Br. 2. The Board identifies no other procedural rule that gives rise to this kind of absolute immunity. Applying the Board's rule to the revival provision here, moreover, would be especially anomalous. In reviving time-barred claims for child sexual abuse, the General Assembly unanimously recognized that a procedural rule of its own making was acutely unfair. The Board would prevent the General Assembly from ever correcting for unforeseen circumstances that prevent plaintiffs from timely asserting claims—such as when the General Assembly revived claims for dower in the wake of the Civil War. *See Hinton*, 61 N.C. at 412. This result cannot be squared with this Court's flexible approach to applying statutes of limitations.

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or repose, the provision does not apply to the facts of this case. *McKinney*, 892 S.E.2d at 477 n.15. Section 1-52(16) provides that a cause of action "shall not accrue until bodily harm to the claimant . . . becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs." This Court has therefore held that section 1-52(16) applies to latent injuries—injuries that are not immediately apparent to a victim. *Boudreau*, 322 N.C. at 334 n.2, 368 S.E.2d at 853 n.2. Because "plaintiff[s] w[ere] aware of [their] injur[ies] as soon as [they] occurred," however, section 1-52(16) is "inapplicable on the facts of this case." *Id.*

II. *Wilkes* Does Not Show That the Revival Provision Is Facially Unconstitutional.

Text, history, and precedent all show that the General Assembly may permissibly revive civil tort claims that have otherwise expired under a statute of limitations. Against this authority, the Board offers a single decision of this Court from the 1930s: *Wilkes County v. Forester*.

The Court of Appeals below correctly rejected the Board's claim that *Wilkes* is controlling here. *Wilkes* states a property-based rule that does not apply to the tort claims in this case. It is not even clear that *Wilkes* is an interpretation of the state constitution with precedential effect. And nothing in this Court's post-*Wilkes* case law compels a different conclusion.

A. *Wilkes* states a property-based rule.

This Court's decision in *Wilkes* involved a statute that purported to revive expired claims to foreclose on tax liens. The plaintiff, Wilkes County, sought to foreclose on a couple's land, even though the county's claim was clearly time-barred. 204 N.C. at 165, 168, 167 S.E. at 692, 694. In deciding whether the county could nonetheless bring a foreclosure action, this Court considered a 1931 statute that allowed a plaintiff to sue even if it "should have . . . brought" the foreclosure action at an earlier time. *Id.* at 166, 167 S.E. at 693.

Ruling against the county, the Court held that the General Assembly could not constitutionally revive expired claims to foreclose on real property. Because the statute of limitations on the county's foreclosure action had passed, the Court explained, "[b]oth the legal title and the real ownership" of the couple's land "had become vested." *Id.* at 168, 167 S.E. at 694 (quoting *Campbell*, 115 U.S. at 623). Thus, reviving the county's expired cause of action would have "the effect of transferring" the land from the couple to the county "without due process of law." *Id.* (quoting *Campbell*, 115 U.S. at 623).

In reaching this conclusion, *Wilkes* appeared to announce a broad rule. The Court stated that "an enabling statute to revive a cause of action barred by the statute of limitations is inoperative and of no avail." *Id.* at 170, 167 S.E. at 695. But broad language in judicial opinions must be understood in light of the case's facts and the court's reasoning. "The law discussed in any opinion," this Court has cautioned, "is set within the framework of the facts of that particular case." *Nantahala Power & Light Co. v. Moss*, 220 N.C. 200, 208, 17 S.E.2d 10, 16 (1941). Thus, absent indication otherwise, courts "read general language in judicial opinions . . . as referring in context to circumstances similar to the circumstances then before the Court and not

referring to quite different circumstances that the Court was not then considering." *Illinois v. Lidster*, 540 U.S. 419, 424 (2004).

Applying that approach here, *Wilkes* is best read as announcing a property-law rule that does not extend to the tort claims at issue in this case. *Wilkes* struck down a revival provision that would have deprived owners of their land after *title and ownership* had been settled. Again and again, *Wilkes* tied its rule to this property-based concern:

- "[T]he Legislature cannot divest a vested right to a defense under the statute of limitations, whether the case involves the title to real estate or personal property." *Wilkes*, 204 N.C. at 169, 167 S.E. at 694 (quoting 17 R.C.L. 674-75 (William M. McKinney ed.) (1917));
- "Where a right of action to recover property is barred in favor of one having possession thereof the possessor becomes the owner of the property, with all the incidents of ownership, and his title cannot be impaired by subsequent legislation." *Id.* (quoting 17 R.C.L. 674-75);
- "Where title to property has vested under a statute of limitations it is not possible by any enactment to extend the statute or revive the

remedy since this would impair a vested right in the property." *Id.* (quoting 6 R.C.L. 320 (William M. McKinney ed.) (1915)).

By contrast, *Wilkes* said nothing about the revival of time-barred tort claims.

The text of the law-of-the-land clause confirms that *Wilkes* is best read as establishing a property-based rule. The clause provides that "no person shall be . . . in any manner deprived of his life, liberty, or *property*." N.C. Const. art. I, § 19 (emphasis added). This explicit protection for property rights is consistent with *Wilkes*'s similar focus on protecting property rights. And of course, nothing in the constitutional text mentions torts.

This distinction between vested property rights and tort claims is supported by well-settled common-law principles. When a property-based claim expires, a property owner relies on the limitations bar to exercise possession and control over the disputed property. It is thus established that "time may vest the right of property." *Wilkes*, 204 N.C. at 168, 167 S.E. at 694. The couple in *Wilkes*, for example, enjoyed title to a piece of land well before the county decided to sue. *Id.* at 163, 167 S.E. at 691. Thus, enforcing the revival provision could have taken that land away from them, stripping them of their vested property rights. *Cf. Dockery v. Hocutt*, 357 N.C. 210, 217-18,

581 S.E.2d 431, 436-37 (2003) (after a given time period, open, notorious, and adverse possession may vest property ownership).

Taking away the couple's land in this way, moreover, would have upset fundamental reliance interests. The common law has long recognized that property owners justifiably order their affairs around their ownership rights. They may build a house, start a family, open a business, or make other improvements to the property. *See Kirby v. N.C. Dep't of Transp.*, 368 N.C. 847, 852, 786 S.E.2d 919, 923 (2016) ("The fundamental right to property is as old as our state."); 1 William Blackstone, *Commentaries on the Laws of England* *138 ("The third absolute right, inherent in every [man], is that of property: which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land.").

The common law similarly recognizes property owners' freedom to alienate—to sell, lease, or otherwise transfer their property without undue interference. *See Smith v. Mitchell*, 301 N.C. 58, 61-62, 269 S.E.2d 608, 610-11 (1980). As a result, a property-law regime where "title to the subject land . . . would be in limbo" would have "undesirable and chaotic" effects on property ownership and transfer. *State v. Brooks*, 279 N.C. 45, 57, 181 S.E.2d 553, 560

(1971); *see also J. T. Hobby & Son, Inc. v. Fam. Homes of Wake Cty., Inc.*, 302 N.C. 64, 71, 274 S.E.2d 174, 179 (1981) ("It is in the best interests of society that the free and unrestricted use and enjoyment of land be encouraged to its fullest extent.").

Unlike a property owner, who may permissibly rely on rights to title or ownership, a tortfeasor has no analogous legal "right" to engage in torts, let alone torts relating to child sexual abuse. Nor does a tortfeasor justifiably order its affairs—for example, by making capital investments—based on its understanding that it may assert a limitations defense in the future. *See Chase*, 325 U.S. at 316 (noting that the defendant "could hardly say" that it committed securities fraud "depending on a statute of limitation for shelter from liability").

The sources that *Wilkes* cited to support its reasoning bear out this property-tort distinction. For example, the Court twice cited the 1925 version of the American Law Reports on the topic of a legislature's power "to revive a right of action barred by limitation." *See Wilkes*, 204 N.C. at 170, 167 S.E. at 695 (citing 36 A.L.R. 1318-19 (1925)). The ALR noted that although "[t]here are a number of cases in which can be found a general statement to the effect that the legislature cannot remove a bar of limitation which has

already become complete," "this general statement is subject to qualification in a good many of the cases." 36 A.L.R. 1316. Specifically, the ALR grouped cases on the revival of civil claims into three categories: (1) "actions concerning title to property," *id.* at 1317-19; (2) "actions for debts," *id.* at 1319-21; and (3) "actions for tort," *id.* at 1321. As for property claims, the ALR explained the consensus view that "the fall of the bar of the statute of limitations creates a vested right which cannot be impaired by the legislature." *Id.* at 1317. By contrast, the ALR explained that courts had reached different conclusions on whether the legislature could revive time-barred debt or tort claims. *Id.* at 1316.

Given this taxonomy, it is notable that *Wilkes* relied exclusively on cases about property and debt claims—but not tort claims—to explain the rationale for its decision. *See Wilkes*, 204 N.C. at 168-170, 167 S.E. at 694-95. For example, the case that *Wilkes* cited for its statement that "an enabling statute to revive a cause of action barred by the statute of limitations is inoperative and of no avail," was *Booth v. Hairston*, a case involving a dispute over a deed conveying a piece of land in fee simple. 193 N.C. 278, 279, 136 S.E. 879, 880 (1927); *see McKinney*, 892 S.E.2d at 476 n.13.

Wilkes also cited multiple times to the U.S. Supreme Court's decision in *Campbell*, 115 U.S. 620. There, the U.S. Supreme Court held that it did not violate the Fourteenth Amendment's due process clause for a state to revive a time-barred claim for repayment of a debt. *Campbell*, 115 U.S. at 628. Echoing the reasoning of this Court in *Hinton*, the Court explained that "no right is destroyed when the law restores a remedy which had been lost." *Id.* But it also emphasized that the case did not involve "a suit to recover possession of real or personal property"—a distinction the Court found "clear" and "important." *Id.* at 622. Had real property been at issue, the Court stressed, it "may" have found a due process violation. *Id.* at 623. That *Wilkes* cited a U.S. Supreme Court case expressly distinguishing the revival of property claims further shows that *Wilkes* is best understood as stating a property-based rule.

In sum, *Wilkes* states a property-based rule that prevents the General Assembly from reviving expired civil claims if the revival would divest an owner of her property. *Wilkes* should not be extended to confer an absolute "right" to avoid tort liability after a certain period of time—especially liability for child sexual abuse.

B. *Wilkes* did not "plainly and clearly" limit the General Assembly's authority to revive civil claims.

The Board's reliance on *Wilkes* fails for another reason as well. For a statute to be unconstitutional, it must violate a "plain and clear" limitation on the General Assembly's power. *McCrory*, 368 N.C. at 639, 781 S.E.2d at 252. Additionally, this Court has explained that it is the role of the legislature—not the Court—to "balance disparate interests and find a workable compromise." *Beaufort Cty. Bd. of Educ. v. Beaufort Cty. Bd. of Comm'rs*, 363 N.C. 500, 502, 681 S.E.2d 278, 280 (2009). This Court's role, meanwhile, is to "measure the balance struck in the statute against the minimum standards required by the constitution." *Id.* *Wilkes* is far too thin a reed for this Court to conclude that the revival provision plainly and clearly violates the minimum requirements of our constitution.

To begin, the legal basis for *Wilkes*'s statement that revival provisions are unconstitutional is genuinely unclear. The decision did not cite any provision of the North Carolina Constitution to support this statement—whether the law-of-the-land clause or otherwise. 204 N.C. at 170, 167 S.E. at 695; *compare Baker*, 330 N.C. at 338-39, 410 S.E.2d at 891-92 (a statute violates our state constitution only if it "offend[s] some specific constitutional provision"). In fact, the only constitutional provision

mentioned anywhere in the opinion is the Fourteenth Amendment to the U.S. Constitution. *See Wilkes*, 204 N.C. at 170, 167 S.E. at 695. Plaintiffs do not cite—and the State has been unable to locate—any subsequent decision from this Court that tethers *Wilkes*'s rule to our state constitution at all—let alone a specific constitutional provision. *See infra* Part II.C. The Board claims that *Wilkes* must have interpreted the state constitution because the case used the term "vested rights." Br. 16-17. But that term was used in federal case law interpreting the federal constitution as well, including in the U.S. Supreme Court's decision in *Campbell*, a case that *Wilkes* cited multiple times. *E.g.*, *Campbell*, 115 U.S. at 628.

Nor did *Wilkes* purport to overrule prior decisions affirming the legislature's general authority to revive civil claims. *Wilkes* mentioned *Hinton* only in passing—and cited it *favorably* by referring to *Campbell*, a *federal* case that echoed *Hinton*'s reasoning. 204 N.C. at 168, 167 S.E. at 694 (recognizing that the reasoning in *Hinton* was "sustained" by *Campbell*). This Court in *Wilkes* could therefore hardly have intended to overrule *Hinton*, as the Board claims. *See* Br. 44.

To the extent the Court in *Wilkes* explained the basis for its decision, it appears to have largely relied on the federal due process clause, whose scope

at that time was unsettled. When *Wilkes* was decided, U.S. Supreme Court precedent suggested that it "may" violate due process to revive an otherwise time-barred claim for real or personal property. *Campbell*, 115 U.S. at 623. The Court in *Wilkes* began its analysis by citing this federal precedent. 204 N.C. at 168, 167 S.E. at 694 (citing *Campbell*, 115 U.S. at 623). The Court went on to quote a New Jersey court's discussion of whether revival provisions "violat[e] the inhibition of the 14th Amendment to the Federal Constitution." *Id*. at 169-70, 167 S.E. at 694-95 (citing *P. Ballantine & Sons v. Macken*, 110 A. 910, 910 (N.J. 1920)). By relying on these federal authorities, the Court appeared to be seeking to ascertain and apply the federal rule.[3]

But whatever ambiguity there might have been about the federal rule when *Wilkes* was decided, it soon became clear that revival provisions do not automatically run afoul of the federal due process clause outside the property context. Roughly a decade after *Wilkes* was decided, the U.S. Supreme Court confirmed what it had suggested in *Campbell*: that "where

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[3] The Board argues that this Court in *Wilkes* "squarely considered" "and rejected" the U.S. Supreme Court's decision in *Campbell*. Br. 18. But the decision itself shows otherwise. The Court explicitly recognized that *Campbell*'s discussion of property claims had "been frequently cited" and said nothing to cast doubt on its holding. *Id.* at 168, 167 S.E. at 694.

lapse of time has not invested a party with title to real or personal property," a legislature may "lift[ ] the bar of a statute of limitation so as to restore a remedy lost." *Chase*, 325 U.S. at 311, 316. In so doing, the Court's decision also explicitly made clear that legislatures have the authority to revive civil claims for *torts*. *Id.* at 309, 311.

As the Court of Appeals recognized, moreover, this Court's discussion of revival provisions in *Wilkes* was also dicta. *McKinney*, 892 S.E.2d at 474. *Wilkes* held that a 1931 revival statute *did not apply to the county* because the county had filed suit before the statute was enacted. *See* 204 N.C. at 168, 167 S.E. at 693-94. Thus, the Court held that the action was time-barred under a preexisting statute of limitations that was in place when the case was filed. *Id.* The Court emphasized this threshold flaw in the county's position multiple times. *Id.* at 168, 167 S.E. at 694 ("[P]laintiff's action is barred by the statute in force applicable to this controversy."); *id.* at 170, 167 S.E. at 695 ("Again we think under the proviso the present action is exempted from the statute.").

It is true that the Court also opined on whether the 1931 revival provision—a provision that *did not apply in the case at hand*—was valid. *Id.* at 168, 167 S.E. at 694. But the Court's discussion of this issue had no effect

on the outcome of the case. It was therefore nonbinding dicta. *Trs. of Rowan Tech. Coll. v. J. Hyatt Hammond Assocs., Inc.*, 313 N.C. 230, 242, 328 S.E.2d 274, 281 (1985) ("Language in an opinion not necessary to the decision is *obiter dictum* and later decisions are not bound thereby.").

Despite this flaw in its argument, the Board maintains that the constitutionality of the revival provision was "squarely presented to and addressed by the court." Br. 24. But that is incorrect. As the appendix to plaintiffs' brief shows, the briefs that the parties in *Wilkes* filed do not mention "vested rights," nor do they make any constitutional argument at all. In fact, none of the cases that the Court in *Wilkes* cited on this point were included in either party's brief. *Id.* And as the Board itself admits, "*dicta* are statements of law that address issues that were *not presented to*" the Court. Br. 23 (emphasis added). Because the constitutionality of the revival provision was never presented to the Court in *Wilkes*, the Court's discussion of that issue is dicta.

In short, *Wilkes*'s statement that a revival provision is "inoperative and of no avail" was not based on any specific provision of the North Carolina Constitution, but instead appeared to be based on an at-the-time unclear area of federal law. *Wilkes* did not substantively grapple with this Court's

earlier governing precedent. And *Wilkes*'s discussion of the revival provision at issue was dicta in any event.

C. This Court has never applied *Wilkes* to prohibit the revival of time-barred tort claims.

The Board contends that, even if *Wilkes* states a property-based rule, this Court has since applied *Wilkes* to bar the revival of expired tort claims. The Board is incorrect. The Board fails to cite a single post-*Wilkes* case from this Court that even involves a provision reviving limitations-barred claims, let alone a case that holds that revival provisions violate the law-of-the-land clause under *Wilkes*.

The Board primarily relies on this Court's decision in *Jewell v. Price*, 264 N.C. 459, 142 S.E.2d 1 (1965); *see* Br. 17-19. In *Jewell*, the plaintiffs alleged that the negligent installation of a furnace had caused their house to burn down. 264 N.C. at 460, 142 S.E.2d at 2-3. The defendant installed the furnace in November 1958, and while the plaintiffs' house burned down in January 1959, they did not sue until January 1962. *Id.* at 460-62, 142 S.E.2d at 2-4. When the plaintiffs sued, their claim had a three-year statute of limitations. *Id.* at 460, 142 S.E.2d at 3.

The question in the case was when the limitations period began to run. The plaintiffs argued that the limitations period began when their house burned down in January 1959, and that their suit was timely as a result. *See id.* at 461, 142 S.E.2d at 3. The defendant argued that the limitations period began when the furnace was installed in November 1958, and that the suit was therefore untimely. *See id.* This Court agreed with the defendant, holding that the limitations period began to run when the furnace was installed, even though the plaintiffs did not discover the alleged negligence until later. *Id.* at 462, 142 S.E.2d at 4. Limitations therefore barred plaintiffs' claim. *Id.* at 463, 142 S.E.2d at 5.

In reaching this conclusion, the Court noted that in 1963—after the plaintiffs filed their lawsuit—the General Assembly had extended the relevant limitations period from three to six years. *Id.* at 461, 142 S.E.2d at 3; *see* Act of June 19, 1963, ch. 1030, § 1, 1963 N.C. Sess. Laws 1300, 1300-01. The statute, however, provided that this change in the law applied only prospectively: it stated that it would "be in full force and effect *from and after* its ratification." 1963 N.C. Sess. Laws at 1301 (emphasis added). Given this language, the plaintiffs in *Jewell* conceded that the statute did not apply to their claim. 264 N.C. at 461, 142 S.E.2d at 3. After all, the statute was

passed after they filed their lawsuit, and the statute did not purport to have retroactive effect. *See id*.

Thus, when this Court stated that "[i]f this action was already barred when it was brought . . ., it may not be revived by an act of the legislature," the Court was merely accepting the plaintiffs' concession that the law extending the limitations period had "no application" to the facts of their case. *See id.* The Court did not, as the Board here argues, announce that *Wilkes* would apply to tort claims. The Court said nothing of the kind. It twice cited *Wilkes*, in passing, without any substantive analysis of the decision. The Court could not possibly have silently extended *Wilkes* to tort claims given the facts of the case, the plaintiffs' concession that no revival provision was at issue, and the fact that the relevant statute by its terms operated only prospectively. *See McKinney*, 892 S.E.2d at 475 n.11.

The Board is left to cite a hodgepodge of cases for its argument that courts have "reaffirmed" that the *Wilkes* rule invalidates all revival provisions, regardless of the context in which they arise. Br. 15, 19-20. The Board's arguments on these cases are wholly unpersuasive.

The Board cites three other cases from this Court: *Sutton v. Davis*, 205 N.C. 464, 171 S.E. 738 (1933); *Waldrop v. Hodges*, 230 N.C. 370, 53 S.E.2d 263

(1949); and *Rowan*, 313 N.C. 230, 328 S.E.2d 274. Br. 19-20. As in *Jewell*, none of these cases even involved a law that sought to revive a limitations-barred claim. *Sutton*, 205 N.C. at 467, 171 S.E. at 739 (the statute applied "from and after its ratification"); *Waldrop*, 230 N.C. at 373-74, 53 S.E.2d at 265 (the statute extended the limitations period before it expired); *Rowan*, 313 N.C. at 231, 328 S.E.2d at 275 (statute of repose). In these cases, as in *Jewell*, this Court merely cited *Wilkes* in passing, without any substantive analysis of the case or the scope of its holding. *Sutton*, 205 N.C. at 469, 171 S.E. at 740 (citing *Wilkes* once); *Waldrop*, 230 N.C. at 373, 53 S.E.2d at 265 (citing *Wilkes* once); *cf. Rowan*, 313 N.C. 230, 328 S.E.2d 274 (not citing *Wilkes*). And the cases never mention the law-of-the-land clause, much less provide the kind of definitive constitutional interpretation that the Board suggests.

The Board's remaining authorities come from the Court of Appeals and the federal courts—and are therefore not binding here. Br. 15, 18, 20. But these cases are unpersuasive in any event. Some do not involve revival

provisions at all.[4] And others concern statutes of repose, rather than statutes of limitations.[5] *See supra* at 39-40 & n.2. They are therefore irrelevant.

* * *

For all the reasons discussed above, *Wilkes* does not control this case. This Court therefore need not disturb *Wilkes* to uphold the revival provision. As the Court of Appeals held, although *Wilkes* does not govern the Board's claim here, *Wilkes* still applies "with precedential force to those legally and factually analogous cases governed by its substantive holding." *McKinney*, 892 S.E.2d at 477 n.14.

Yet if *Wilkes* means what the Board says—if *Wilkes* really does completely disable the General Assembly from ever reviving a time-barred tort claim—then this Court should overrule it. This Court has never applied

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[4] *Valleytown Twp. v. Women's Cath. Ord. of Foresters*, 115 F.2d 459, 462-63 (4th Cir. 1940) (statute extending limitations period applied only prospectively); *Troy's Stereo Ctr., Inc. v. Hodson*, 39 N.C. App. 591, 595, 251 S.E.2d 673, 675 (1979) (plaintiff conceded that statute did not apply to its claim); *Congelton v. City of Asheboro*, 8 N.C. App. 571, 573, 174 S.E.2d 870, 871-72 (1970) (trial court lacked discretion to excuse plaintiff's failure to comply with statute of limitations due to error by the clerk of court).

[5] *Bryant v. United States*, 768 F.3d 1378, 1380 (11th Cir. 2014); *Braswell v. Colonial Pipeline Co.*, 395 F. Supp. 3d 641, 648 (M.D.N.C. 2019); *Olympic Prods. Co. v. Roof Sys., Inc.*, 79 N.C. App. 436, 438, 339 S.E.2d 432, 434 (1986); *Colony Hill Condo. I Ass'n v. Colony Co.*, 70 N.C. App. 390, 392, 320 S.E.2d 273, 275 (1984).

the doctrine of stare decisis "to preserve and perpetuate error and grievous wrong." *State v. Ballance*, 229 N.C. 764, 767, 51 S.E.2d 731, 733 (1949). For all the reasons discussed above, a per se rule prohibiting the General Assembly from reviving time-barred tort claims is grievously wrong. *See supra* Part I. Indeed, even the dissent below acknowledged that "[g]iven its lack of support from the text of our state Constitution, perhaps *Wilkes* should be overruled." *McKinney*, 892 S.E.2d at 487 (Carpenter, J., dissenting).

Nor has *Wilkes* generated the kind of reliance interests that might counsel retaining it. Even though *Wilkes* is now almost a century old, the Board has not cited—and the State has not found—any case where this Court has since applied *Wilkes* to strike down a revival provision under the law-of-the-land clause. Rather, the Board relies on four cases from this Court that purportedly apply *Wilkes*, three of which discuss the case only in passing, and one of which does not cite the case at all. And none of those cases *even involved* a revival provision, let alone invalidated one under the law-of-the-land clause. The Board's claim that *Wilkes* is integral to a broader "vested rights" jurisprudence is therefore misplaced. Br. 19.

III. The Revival Provision Passes Any Level of Constitutional Scrutiny.

As shown above, our constitution imposes no categorical bar on the General Assembly's authority to revive time-barred civil claims. If this Court rejects the Board's contrary rule, the Board effectively concedes that the revival provision is facially constitutional. For good reason: the revival provision here would survive any level of constitutional review.

Absent a categorical bar on a specific type of legislation, courts use tiered scrutiny to evaluate challenges under the law-of-the-land clause. Courts first ask whether the legislation at issue "affects the exercise of a fundamental right." *Rhyne*, 358 N.C. at 180, 594 S.E.2d at 15. Courts then apply the appropriate level of scrutiny. For restrictions that do not implicate a fundamental right, courts apply the "rational basis test." *Id.*

Here, the revival provision is subject to that deferential standard of review, because the procedural benefit afforded by a limitations defense falls well short of a "fundamental right." At their core, statutes of limitations "represent a public policy about the privilege to litigate." *Chase*, 325 U.S. at 314. They come into being "only by legislative grace" and have historically been "subject to a relatively large degree of legislative control." *Id.* Because "[t]heir shelter" can hardly be "regarded as . . . 'fundamental,'" rational-basis

review applies. *Id.* And there has never been any dispute that the revival provision clears this deferential level of review.

Moreover, as the Court of Appeals rightly held, the revival provision is constitutional even under strict scrutiny. *McKinney*, 892 S.E.2d at 479. If this Court were to conclude that alleged child sexual abusers and their enablers have a "fundamental right" to a limitations defense, the revival provision would therefore still be constitutional. A law passes strict scrutiny if it (1) advances a compelling governmental interest and (2) is narrowly tailored to advance that interest. *State v. Bishop*, 368 N.C. 869, 876, 787 S.E.2d 814, 819 (2016). The revival provision satisfies this test.

Protecting children from sexual abuse is one of the State's most profound responsibilities. *See id*. at 877, 787 S.E.2d at 819-20 (recognizing "a compelling interest in the protection of minors"). As the General Assembly unanimously recognized, the revival provision advances that compelling interest in a straightforward way. It allows child-abuse victims to seek a legal remedy that, through no fault of their own, they were previously denied. And by doing so, the provision helps to limit future abuse—by identifying perpetrators and their enablers—and to shift the tremendous costs of abuse away from victims and their communities.

The provision is also narrowly tailored to advance its goals. The General Assembly structured the "revival window" to be open for only a limited two-year period that has now closed. S.L. 2019-245, § 4.2(b). And those plaintiffs who brought claims within the window will face the same rigorous burden of proof as all others—convincing a jury, by a preponderance of the evidence, that a defendant is liable in tort for the abuse that plaintiffs suffered as children. The revival provision did not make it easier for plaintiffs to prove their claims. It effected no change in the substantive law. Rather, it provided a narrow, procedural window to allow victims the *opportunity* to seek civil justice. The revival provision therefore withstands any level of scrutiny.

That the revival provision would withstand even the highest form of constitutional scrutiny casts yet another shadow over the Board's expansive interpretation of *Wilkes*. Under the Board's categorical theory, the State could *never* revive civil claims—no matter how extraordinary the circumstances. The Board would thus place its alleged right to be free from civil liability for child-sexual-abuse claims at the very apex of constitutional rights—over even the right to be free from religious or race-based discrimination. *See Rhyne*, 358 N.C. at 180, 594 S.E.2d at 15 (holding that a

statute that "affects the exercise of a fundamental right or classifies a person based upon a suspect characteristic" is subject to "strict scrutiny"). Nothing in the law requires that startling result. Nor does the law leave the General Assembly powerless when it concludes that a limitations period has caused a grave injustice to victims of child sexual abuse.

IV. The Board's Policy Arguments Are For the Political Branches, Not This Court.

The sole issue in this appeal is whether the revival provision is facially constitutional. Throughout its brief, however, the Board invites this Court to grade the provision as a policy matter. Those arguments are for the political branches, not the courts. And they are unpersuasive in any event.

The General Assembly unanimously passed the SAFE Child Act, and the Governor signed it into law. They did so to better "protect children from sexual abuse" and to "strengthen and modernize sexual assault laws." S.L. 2019-245, §§ 1-9. The revival provision furthers both of these purposes. It holds abusers and their enablers accountable. It responds to modern developments in our understanding of child abuse. And it gives victims an overdue chance to seek justice. *See supra* at 7-9. It also aligns North Carolina with the many other states that have passed similar legislation in recent years.

The Board's arguments that the revival provision constitutes bad public policy are for the political branches. As this Court has explained, "unlike the judiciary," the political branches are best equipped to "weigh all the factors surrounding a particular problem" and "balance competing interests." *Rhyne*, 358 N.C. at 170, 594 S.E.2d at 8 (quoting *Tetterton v. Long Mfg. Co.*, 314 N.C. 44, 58, 332 S.E.2d 67, 75 (1985) (cleaned up)).

In any event, the Board's policy concerns are misplaced. First, the Board predicts that the revival provision will force organizations that work with children to spend resources defending against allegations of child sexual abuse rather than serving children. Br. 72. But at present, *victims* must bear the cost of abuse themselves. The Act aims to shift some of that burden to those at fault for the abuse.

Second, the Board posits that many claims brought under the revival provision are so old that "witnesses, records, and insurance policies were not preserved." Br. 4. But if the passage of time creates evidentiary hurdles in these cases, it does so *for the plaintiffs*, who always bear the burden of proof. If some of the claims that have been filed are meritless, as the Board asserts, then they will fail under the ordinary rules that apply to all legal claims.

Third, the Board suggests that, if the revival provision is upheld, the General Assembly "will be able to resurrect claims whenever it wants, for whatever reason it wants, depending on how the political winds are then blowing." Br. 2. As discussed, however, courts should generally analyze a revival provision under the rational-basis test, so long as the provision does not violate an express constitutional bar. Although rational-basis review is deferential, it still allows courts to ensure that the political branches do not revive expired claims in irrational, unreasonable, or arbitrary ways. In addition, real-world experience suggests that the Board's concerns are exaggerated. States across the country—from Arizona to California, from Georgia to New York—allow their legislatures to revive civil claims.[6] The

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[6] *E.g.*, *Harvey v. Merchan*, 860 S.E.2d 561, 574 (Ga. 2021) ("[E]nacting a new limitation period that revives civil claims barred by a previous limitation period does not violate Georgia's constitutional prohibition against retroactive laws."); *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 89 N.E.3d 1227, 1243 (N.Y. 2017) ("[A] claim-revival statute will satisfy the Due Process Clause of the [New York] Constitution if it was enacted as a reasonable response in order to remedy an injustice."); *20th Century Ins. Co. v. Superior Court*, 90 Cal. App. 4th 1247, 1263 (2001) ("The [California] Legislature has the power to expressly revive time-barred civil common law causes of action." (cleaned up)); *Chevron Chem. Co. v. Superior Court*, 641 P.2d 1275, 1284 (Ariz. 1982) (rejecting "the proposition that [time-barred claims] can never be revived by a subsequent legislative extension"); *Roe v. Doe*, 581 P.2d 310, 315 (Haw. 1978) (same).

Board cannot seriously argue that organizations in these states are unable to "plan for the future," negotiate contracts, or obtain insurance policies. *See* Br. 67.

Finally, the Board warns that the revival provision produced a flood of litigation during the two years when it was open from 2020 to 2021. In an appendix to its brief, the Board identifies an "illustrative" list of lawsuits filed under the revival provision during this time. *See* Br. 62; App. 2-28. But this list just shows that the revival provision was sorely needed—and worked as intended. That so many individuals came forward with claims during the revival window—which has since closed—only confirms the revival provision's critical importance to the people of North Carolina.

CONCLUSION

The State respectfully requests that this Court affirm the decision of the Court of Appeals.

This the 28th day of December, 2023.

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This the 28th day of December, 2023.

/s/ Electronically submitted
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CONTENTS OF APPENDIX

North Carolina Constitution

Article I

Declaration of Rights

§ 16 Ex post facto laws

Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

North Carolina General Statutes

Chapter 1

Civil Procedure

Subchapter II

Limitations

Article 3

Limitations, General Provisions

§ 1-17 Disabilities

(a) A person entitled to commence an action who is under a disability at the time the cause of action accrued may bring his or her action within the time limited in this Subchapter, after the disability is removed, except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents and services out of the real property, when the person must commence his or her action, or make the entry, within three years next after the removal of the disability, and at no time thereafter.

For the purpose of this section, a person is under a disability if the person meets one or more of the following conditions:

(1) The person is within the age of 18 years.

(2) The person is insane.

(3) The person is incompetent as defined in G.S. 35A-1101(7) or (8).

(a1) For those persons under a disability on January 1, 1976, as a result of being imprisoned on a criminal charge, or in execution under sentence for a criminal offense, the statute of limitations shall commence to run and no longer be tolled from January 1, 1976.

(b) Notwithstanding the provisions of subsection (a) of this section, and except as otherwise provided in subsection (c) of this section, an action on behalf of a minor for malpractice arising out of the performance of

or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except that if those time limitations expire before the minor attains the full age of 19 years, the action may be brought before the minor attains the full age of 19 years.

(c) Notwithstanding the provisions of subsection (a) and (b) of this section, an action on behalf of a minor for injuries alleged to have resulted from malpractice arising out of a health care provider's performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except as follows:

(1) If the time limitations specified in G.S. 1-15(c) expire before the minor attains the full age of 10 years, the action may be brought any time before the minor attains the full age of 10 years.

(2) If the time limitations in G.S. 1-15(c) have expired and before a minor reaches the full age of 18 years a court has entered judgment or consent order under the provisions of Chapter 7B of the General Statutes finding that said minor is an abused or neglected juvenile as defined in G.S. 7B-101, the medical malpractice action shall be commenced within three years from the date of such judgment or consent order, or before the minor attains the full age of 10 years, whichever is later.

(3) If the time limitations in G.S. 1-15(c) have expired and a minor is in legal custody of the State, a county, or an approved child placing agency as defined in G.S. 131D-10.2, the medical malpractice action shall be commenced within one year after the minor is no longer in such legal custody, or before the minor attains the full age of 10 years, whichever is later.

(d) Notwithstanding the provisions of subsections (a), (b), (c), and (e) of this section, a plaintiff may file a civil action against a defendant for claims related to sexual abuse suffered while the plaintiff was under 18 years of age until the plaintiff attains 28 years of age.

(e) Notwithstanding the provisions of subsections (a), (b), (c), and (d) of this section, 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.

Session Law 2019-245 **S.B. 199**

AN ACT TO PROTECT CHILDREN FROM SEXUAL ABUSE AND TO STRENGTHEN AND MODERNIZE SEXUAL ASSAULT LAWS.

The General Assembly of North Carolina enacts:

PART I. EXPAND DUTY TO REPORT CRIMES AGAINST JUVENILES

SECTION 1.(a) Article 39 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-318.6. Failure to report crimes against juveniles; penalty.**

(a) Definitions. – As used in this section, the following definitions apply:

(1) Juvenile. – As defined in G.S. 7B-101. For the purposes of this section, the age of the juvenile at the time of the abuse or offense governs.

(2) Serious bodily injury. – As defined in G.S. 14-318.4(d).

(3) Serious physical injury. – As defined in G.S. 14-318.4(d).

(4) Sexually violent offense. – An offense committed against a juvenile that is a sexually violent offense as defined in G.S. 14-208.6(5). This term also includes the following: an attempt, solicitation, or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(5) Violent offense. – Any offense that inflicts upon the juvenile serious bodily injury or serious physical injury by other than accidental means. This term also includes the following: an attempt, solicitation, or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(b) Requirement. – Any person 18 years of age or older who knows or should have reasonably known that a juvenile has been or is the victim of a violent offense, sexual offense, or misdemeanor child abuse under G.S. 14-318.2 shall immediately report the case of that juvenile to the appropriate local law enforcement agency in the county where the juvenile resides or is found. The report may be made orally or by telephone. The report shall include information as is known to the person making it, including the name, address, and age of the juvenile; the name and address of the juvenile's parent, guardian, custodian, or caretaker; the name, address, and age of the person who committed the offense against the juvenile; the location where the offense was committed; the names and ages of other juveniles present or in danger; the present whereabouts of the juvenile, if not at the home address; the nature and extent of any injury or condition resulting from the offense or abuse; and any other information which the person making the report believes might be helpful in establishing the need for law enforcement involvement. The person making the report shall give his or her name, address, and telephone number.

(c) Penalty. – Any person 18 years of age or older, who knows or should have reasonably known that a juvenile was the victim of a violent offense, sexual offense, or misdemeanor child abuse under G.S. 14-318.2, and knowingly or willfully fails to report as required by subsection (b) of this section, or who knowingly or willfully prevents another person from reporting as required by subsection (b) of this section, is guilty of a Class 1 misdemeanor.

(d) Construction. – Nothing in this section shall be construed as relieving a person subject to the requirement set forth in subsection (b) of this section from any other duty to report required by law.

(e) Protection. – The identity of a person making a report pursuant to this section must be protected and only revealed as provided in G.S. 132-1.4(c)(4).

(f) Good-Faith Immunity. – A person who makes a report in good faith under this Article, cooperates with law enforcement in an investigation, or testifies in any judicial proceeding resulting from a law enforcement report or investigation is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action, provided that person was acting in good faith.

(g) Law Enforcement Duty to Report Evidence to the Department of Social Services. – If any law enforcement officer, as the result of a report, finds evidence that a juvenile may be abused, neglected, or dependent as defined in G.S. 7B-101, the law enforcement officer shall make an oral report as soon as practicable and make a subsequent written report of the findings to the director of the department of social services within 48 hours after discovery of the evidence. When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, in accordance with G.S. 7B-302, to determine whether protective services should be provided or the complaint filed as a petition.

(h) Nothing in this section shall be construed as to require a person with a privilege under G.S. 8-53.3, 8-53.7, 8-53.8, or 8-53.12 or with attorney-client privilege to report pursuant to this section if that privilege would prevent them from doing so."

PART II. EXPANDING THE STATUTE OF LIMITATIONS FOR MISDEMEANOR CRIMES INVOLVING ABUSE AGAINST CHILDREN

SECTION 2.(a) G.S. 15-1 reads as rewritten:

"**§ 15-1. Statute of limitations for misdemeanors.**

(a) The crimes of deceit and malicious mischief, and the crime of petit larceny where the value of the property does not exceed five dollars ($5.00), and all misdemeanors except malicious misdemeanors, shall be charged within two years after the commission of the same, and not afterwards: Provided, that if any pleading shall be defective, so that no judgment can be given thereon, another prosecution may be instituted for the same offense, within one year after the first shall have been abandoned by the State.

(b) Notwithstanding subsection (a) of this section, the following misdemeanors shall be charged within 10 years of the commission of the crime:

(1) G.S. 7B-301(b).
(2) G.S. 14-27.33.
(3) G.S. 14-202.2.
(4) G.S. 14-318.2.
(5) G.S. 14-318.6."

PART III. PROTECTING CHILDREN ONLINE FROM HIGH-RISK SEX OFFENDERS

SECTION 3.(a) G.S. 14-202.5 reads as rewritten:

"**§ 14-202.5. ~~Ban use of commercial social networking Web sites by sex offenders.~~Ban online conduct by high-risk sex offenders that endangers children.**

(a) Offense. – It is unlawful for a high-risk sex offender ~~who is registered in accordance with Article 27A of Chapter 14 of the General Statutes to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages on the commercial social networking Web site.~~to do any of the following online:

(1) To communicate with a person that the offender believes is under 16 years of age.
(2) To contact a person that the offender believes is under 16 years of age.
(3) To pose falsely as a person under 16 years of age with the intent to commit an unlawful sex act with a person the offender believes is under 16 years of age.
(4) To use a Web site to gather information about a person that the offender believes is under 16 years of age.
(5) To use a commercial social networking Web site in violation of a policy, posted in a manner reasonably likely to come to the attention of users, prohibiting convicted sex offenders from using the site.

(b) Definition of Commercial Social Networking Web Site. – For the purposes of this section, a "commercial social networking Web site" ~~is an~~ includes any Web site, application, portal, or other means of accessing the Internet ~~Web site~~ that meets all of the following requirements:

(1) Is operated by a person who derives revenue from membership fees, advertising, or other sources related to the operation of the Web site.
~~(2) Facilitates the social introduction between two or more persons for the purposes of friendship, meeting other persons, or information exchanges.~~
(3) Allows users to create personal Web pages or ~~personal~~ profiles that contain ~~information such as~~ the user's name or ~~nickname of the user,~~ nickname, photographs ~~placed on the personal Web page by the user,~~ of the user, and other personal ~~information about the user, and links to other personal Web pages on the commercial social networking Web site of friends or associates of the user that may be accessed by other users or visitors to the Web site.~~information.
(4) Provides users or visitors ~~to the commercial social networking Web site mechanisms~~ a mechanism to communicate with ~~other users,~~ others, such as a message board, chat room, ~~electronic mail,~~ or instant messenger.

(c) Exclusions from Commercial Social Networking Web Site Definition. – A commercial social networking Web site does not include ~~an Internet~~ a Web site that ~~either:~~meets either of the following requirements:

~~(1) Provides only one of the following discrete services: photo-sharing, electronic mail, instant messenger, or chat room or message board platform; or~~
(2) Has as its primary purpose the facilitation of commercial ~~transactions involving goods or services between its members or visitors.~~transactions, the dissemination of news, the discussion of political or social issues, or professional networking.

(3) Is a Web site owned or operated by a local, State, or federal governmental entity.

(c1) Definition of High-Risk Sex Offender. – For purposes of this section, the term "high-risk sex offender" means any person registered in accordance with Article 27A of Chapter 14 of the General Statutes that meets any of the following requirements:

(1) Was convicted of an aggravated offense, as that term is defined in G.S. 14-208.6, against a person under 18 years of age.

(2) Is a recidivist, as that term is defined in G.S. 14-208.6, and one offense is against a person under 18 years of age.

(3) Was convicted of an offense against a minor, as that term is defined in G.S. 14-208.6.

(4) Was convicted of a sexually violent offense, as that term is defined in G.S. 14-208.6, against a person under 18 years of age.

(5) Was found by a court to be a sexually violent predator, as that term is defined in G.S. 14-208.6, based on a conviction of a sexually violent offense committed against a minor.

(d) Jurisdiction. – The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(e) Punishment. – A violation of this section is a Class ~~I~~H felony.

(f) Severability. – If any provision of this section or its application is held invalid, the invalidity does not affect other provisions or applications of this section that can be given effect without the invalid provisions or applications, and, to this end, the provisions of this section are severable."

SECTION 3.(b) G.S. 14-202.5A reads as rewritten:

"**§ 14-202.5A. Liability of commercial social networking sites.**

(a) A commercial social networking site, as defined in G.S. 14-202.5, that complies with G.S. 14-208.15A or makes other reasonable efforts to prevent a high-risk sex ~~offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes from accessing its Web site shall not be held civilly liable for damages arising out of a person's communications on the social networking site's system or network regardless of that person's status as a registered sex offender in North Carolina or any other jurisdiction.~~offender, as defined in G.S. 14-202.5, from using its Web site to endanger children shall not be held civilly liable for damages arising out of the sex offender's communications on the social networking site's system or network.

~~(b) For the purposes of this section, "access" is defined as allowing the sex offender to do any of the activities or actions described in G.S. 14-202.5(b)(2) through G.S. 14-202.5(b)(4) by utilizing the Web site.~~"

PART IV. EXTEND CIVIL STATUTE OF LIMITATIONS AND REQUIRE TRAINING

SECTION 4.1. G.S. 1-17 is amended by adding two new subsections to read:

"(d) Notwithstanding the provisions of subsections (a), (b), (c), and (e) of this section, a plaintiff may file a civil action against a defendant for claims related to sexual abuse suffered while the plaintiff was under 18 years of age until the plaintiff attains 28 years of age.

(e) Notwithstanding the provisions of subsections (a), (b), (c), and (d) of this section, 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."

SECTION 4.2.(a) G.S. 1-52 reads as rewritten:

"**§ 1-52. Three years.**

Within three years an action –

…

(5) For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereafter ~~enumerated.~~enumerated, except as provided by G.S. 1-17(d) and (e).

…

(16) Unless otherwise provided by law, for personal injury or physical damage to claimant's property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Except as provided in ~~G.S. 130A-26.3,~~ G.S. 130A-26.3 or G.S. 1-17(d) and (e), no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

…

(19) For assault, battery, or false ~~imprisonment.~~imprisonment, except as provided by G.S. 1-17(d) and (e). Notwithstanding this subdivision, 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.

…."

SECTION 4.2.(b) Effective from January 1, 2020, until December 31, 2021, this section revives any civil action for child sexual abuse otherwise time-barred under G.S. 1-52 as it existed immediately before the enactment of this act.

SECTION 4.3. G.S. 1-56 reads as rewritten:

"**§ 1-56. All other actions, 10 years.**

(a) ~~An~~ Except as provided by subsection (b) of this section, an action for relief not otherwise limited by this subchapter may not be commenced more than 10 years after the cause of action has accrued.

(b) A civil action for child sexual abuse is not subject to the limitation in this section."

SECTION 4.4.(a) G.S. 115C-47 is amended by adding a new subdivision to read:

"(64) To adopt a child sexual abuse and sex trafficking training program. – Each local board of education shall adopt and implement a child sexual abuse and sex trafficking training program for school personnel who work directly with students in grades kindergarten through 12, as required by G.S. 115C-375.20."

SECTION 4.4.(b) G.S. 115C-218.75 is amended by adding a new subsection to read:

"(g) Child Sexual Abuse and Sex Trafficking Training Program. – A charter school shall adopt and implement a child sexual abuse and sex trafficking training program in accordance with G.S. 115C-375.20."

SECTION 4.4.(c) G.S. 115C-238.66 is amended by adding a new subdivision to read:

"(14) Child sexual abuse and sex trafficking training program. – The board of directors shall adopt and implement a child sexual abuse and sex trafficking training program in accordance with G.S. 115C-375.20."

SECTION 4.4.(d) G.S. 116-239.8(b) is amended by adding a new subdivision to read:

"(17) Child sexual abuse and sex trafficking training program. – The chancellor shall adopt and ensure implementation of a child sexual abuse and sex trafficking training program in accordance with G.S. 115C-375.20."

SECTION 4.4.(e) The title of Article 25A of Chapter 115C of the General Statutes reads as rewritten:

"Article 25A.

"Special Medical Needs of ~~Students.~~Students and Identification of Sexual Abuse of Students."

SECTION 4.4.(f) Article 25A of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-375.20. Child sexual abuse and sex trafficking training program required.**

(a) Definitions. – The following definitions shall apply in this section:

(1) School personnel. – Teachers, instructional support personnel, principals, and assistant principals. This term may also include, in the discretion of the employing entity, other school employees who work directly with students in grades kindergarten through 12.

(b) Each employing entity shall adopt and implement a child sexual abuse and sex trafficking training program for school personnel who work directly with students in grades kindergarten through 12 that provides education and awareness training related to child sexual abuse and sex trafficking, including, but not limited to, best practices from the field of prevention, the grooming process of sexual predators, the warning signs of sexual abuse and sex trafficking, how to intervene when sexual abuse or sex trafficking is suspected or disclosed, legal responsibilities for reporting sexual abuse or sex trafficking, and available resources for assistance. This training may be provided by local nongovernmental organizations with expertise in these areas, local law enforcement officers, or other officers of the court. All school personnel who work with students in grades kindergarten through 12 shall receive two hours of training consistent with this section in even-numbered years beginning in 2020.

(c) No entity required to adopt a child sexual abuse and sex trafficking training program by G.S. 115C-47(64), 115C-218.75(g), 115C-238.66(14), or 116-239.8(b)(17), or its members, employees, designees, agents, or volunteers, shall be liable in civil damages to any party for any loss or damage caused by any act or omission relating to the provision of, participation in, or implementation of any component of a child sexual abuse and sex trafficking training program required by this section, unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing. Nothing in this section shall be construed to impose any specific duty of care or standard of care on an entity required to adopt a child sexual abuse and sex trafficking training program by G.S. 115C-47(64), 115C-218.75(g), 115C-238.66(14), or 116-239.8(b)(17)."

SECTION 4.5. This Part becomes effective December 1, 2019. Each entity required by Section 4.4(a), (b), (c), and (d) to adopt and implement a child sexual abuse and sex trafficking training program shall do so by January 1, 2020, and training shall be required for school personnel beginning with the 2020-2021 school year.

PART V. RIGHT TO REVOKE CONSENT

SECTION 5.(a) G.S. 14-27.20 reads as rewritten:

"**§ 14-27.20. Definitions.**

The following definitions apply in this Article:

(1) Repealed by Session Laws 2018-47, s. 4(a), effective December 1, 2018.

(1a) Against the will of the other person. – Either of the following:

a. Without consent of the other person.

b. After consent is revoked by the other person, in a manner that would cause a reasonable person to believe consent is revoked.

…."

SECTION 5.(b) This section becomes effective December 1, 2019, and applies to offenses committed on or after that date.

PART VI. MODERNIZING SEXUAL ASSAULT LAWS

CLARIFY DEFINITION OF THE TERM "CARETAKER" USED IN THE JUVENILE CODE

SECTION 6.(a) G.S. 7B-101(3) reads as rewritten:

"(3) Caretaker. – Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a ~~stepparent,~~ stepparent; foster ~~parent,~~ parent; an adult member of the juvenile's ~~household,~~

household; an adult ~~relative~~ entrusted with the juvenile's ~~care,~~ care; a potential adoptive parent during a visit or trial placement with a juvenile in the custody of a ~~department,~~ department; any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational ~~facility,~~ facility; or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only."

AMEND G.S. 14-401.11 TO PROHIBIT THE KNOWING DISTRIBUTION OF A BEVERAGE THAT CONTAINS ANY SUBSTANCE THAT COULD BE INJURIOUS TO A PERSON'S HEALTH

SECTION 6.(b) G.S. 14-401.11 reads as rewritten:

"**§ 14-401.11. Distribution of certain food ~~at Halloween and all other times~~ or beverage prohibited.**

(a) It shall be unlawful for any person to knowingly distribute, sell, give away or otherwise cause to be placed in a position of human ~~accessibility,~~ accessibility or ingestion, any ~~food~~ food, beverage, or other eatable or drinkable substance which that person knows to ~~contain:~~contain any of the following:

(1) Any noxious or deleterious substance, material or article which might be injurious to a person's health or might cause a person any physical ~~discomfort, or~~discomfort.

(2) Any controlled substance included in any schedule of the Controlled Substances ~~Act, or~~Act.

(3) Any poisonous chemical or compound or any foreign substance such as, but not limited to, razor blades, pins, and ground glass, which might cause death, serious physical injury or serious physical pain and discomfort.

(b) Penalties.

(1) Any person violating the provisions of G.S. 14-401.11(a)(1):

a. Where the actual or possible effect on a person eating or drinking the ~~food~~ food, beverage, or other substance was or would be limited to mild physical discomfort without any lasting effect, shall be guilty of a Class I felony.

b. Where the actual or possible effect on a person eating or drinking the ~~food~~ food, beverage, or other substance was or would be greater than mild physical discomfort without any lasting effect, shall be punished as a Class H felon.

(2) Any person violating the provisions of G.S. 14-401.11(a)(2) shall be punished as a Class F felon.

(3) Any person violating the provisions of G.S. 14-401.11(a)(3) shall be punished as a Class C felon."

AMEND DEFINITION FOR THE TERM "MENTALLY INCAPACITATED" USED IN ARTICLE 7B OF CHAPTER 14 OF THE GENERAL STATUTES

SECTION 6.(c) G.S. 14-27.20(2) reads as rewritten:

"(2) Mentally incapacitated. – A victim who due to ~~(i) any act committed upon the victim or (ii) a poisonous or controlled substance provided to the victim without the knowledge or consent of the victim~~ any act is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act."

PART VII. SEX OFFENDER VICTIM RIGHTS

SECTION 7.(a) G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. Request for termination of registration requirement.**

(a) Ten years from the date of initial county registration, a person required to register under this Part may petition the superior court to terminate the 30-year registration requirement if the person has not been convicted of a subsequent offense requiring registration under this Article.

If the reportable conviction is for an offense that occurred in North Carolina, the petition shall be filed in the district where the person was convicted of the offense.

If the reportable conviction is for an offense that occurred in another state, the petition shall be filed in the district where the person resides. A person who petitions to terminate the registration requirement for a reportable conviction that is an out-of-state offense shall also do the following: (i) provide written notice to the sheriff of the county where the person was convicted that the person is petitioning the court to terminate the registration requirement and (ii) include with the petition at the time of its filing, an affidavit, signed by the petitioner, that verifies that the petitioner has notified the sheriff of the county where the person was convicted of the petition and that provides the mailing address and contact information for that sheriff.

Regardless of where the offense occurred, if the defendant was convicted of a reportable offense in any federal court, the conviction will be treated as an out-of-state offense for the purposes of this section.

(a1) The court may grant the relief if:

(1) The petitioner demonstrates to the court that he or she has not been arrested for any crime that would require registration under this Article since completing the sentence,

(2) The requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and

(3) The court is otherwise satisfied that the petitioner is not a current or potential threat to public safety.

(a2) The district attorney in the district in which the petition is filed shall be given notice of the petition at least three weeks before the hearing on the matter. The petitioner may present evidence in support of the petition and the district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied.

(a3) If the court denies the petition, the person may again petition the court for relief in accordance with this section one year from the date of the denial of the original petition to terminate the registration requirement. If the court grants the petition to terminate the registration requirement, the clerk of court shall forward a certified copy of the order to the Department of Public Safety to have the person's name removed from the registry.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated by the court under subsection (a1) of this section.

(c) The victim of the underlying offense may appear and be heard by the court in a proceeding regarding a request for termination of the sex offender registration requirement. If the victim has elected to receive notices of such proceedings, the district attorney's office shall notify the victim of the date, time, and place of the hearing. The district attorney's office may provide the required notification electronically or by telephone, unless the victim requests otherwise. The victim shall be responsible for notifying the district attorney's office of any changes in the victim's address and telephone number or other contact information. The judge in any court proceeding subject to this section shall inquire as to whether the victim is present and wishes to be heard. If the victim is present and wishes to be heard, the court shall grant the victim an opportunity to be reasonably heard. The right to be reasonably heard may be exercised, at the

victim's discretion, through an oral statement, submission of a written statement, or submission of an audio or video statement."

PART VIII. SEX OFFENDER RESIDENTIAL RESTRICTIONS

SECTION 8.(a) G.S. 14-208.16(b) reads as rewritten:

"(b) As used in this section, "school" does not include home schools as defined in G.S. 115C-563 or institutions of higher ~~education.~~ education; however, for the purposes of this section, the term "school" shall include any construction project designated for use as a public school if the governing body has notified the sheriff or sheriffs with jurisdiction within 1,000 feet of the construction project of the construction of the public school. The term "child care center" is defined by G.S. 110-86(3); however, for purposes of this section, the term "child care center" does include the permanent locations of organized clubs of Boys and Girls Clubs of America. The term "registrant" means a person who is registered, or is required to register, under this Article."

PART IX. SEVERABILITY CLAUSE/SAVINGS CLAUSE/EFFECTIVE DATE

SECTION 9.(a) If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or applications, and, to this end, the provisions of this act are severable.

SECTION 9.(b) Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SECTION 9.(c) Parts I, II, III, V, VI, VII, and VIII of this act become effective December 1, 2019, and apply to offenses committed on or after that date. Part IV of this act becomes effective December 1, 2019, and applies to civil actions commenced on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of October, 2019.