387 N.C.—No. 3 Pages 445-615

STATE BAR OFFICER ELECTIONS; FEE DISPUTE RESOLUTION;
CONTINUING LEGAL EDUCATION

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

JULY 30, 2025

MAILING ADDRESS: The Judicial Department
P. O. Box 2170, Raleigh, N. C. 27602-2170

THE SUPREME COURT

OF

NORTH CAROLINA

Chief Justice

PAUL MARTIN NEWBY

Associate Justices

ANITA EARLS
PHIL BERGER JR.
TAMARA PATTERSON BARRINGER
RICHARD D. DIETZ
CURTIS H. ("TREY") ALLEN III
ALLISON J. RIGGS

Former Chief Justices

RHODA B. BILLINGS
JAMES G. EXUM JR.
BURLEY B. MITCHELL JR.
HENRY E. FRYE
SARAH PARKER
MARK D. MARTIN
CHERI BEASLEY

Former Justices

ROBERT R. BROWNING
J. PHIL CARLTON
WILLIS P. WHICHARD
JAMES A. WYNN JR.
FRANKLIN E. FREEMAN JR.
G. K. BUTTERFIELD JR.
ROBERT F. ORR
GEORGE L. WAINWRIGHT JR.
EDWARD THOMAS BRADY
PATRICIA TIMMONS-GOODSON
ROBERT N. HUNTER JR.
ROBERT H. EDMUNDS JR.
BARBARA A. JACKSON
MARK A. DAVIS
ROBIN E. HUDSON
SAMUEL J. ERVIN IV
MICHAEL R. MORGAN

Clerk
GRANT E. BUCKNER

Librarian
THOMAS P. DAVIS

Marshal
WILLIAM BOWMAN

ADMINISTRATIVE OFFICE OF THE COURTS

Director
Ryan S. Boyce

Assistant Director
Ragan R. Oakley

OFFICE OF APPELLATE DIVISION REPORTER

Alyssa M. Chen
Niccolle C. Hernandez
Jennifer C. Sikes

SUPREME COURT OF NORTH CAROLINA

CASES REPORTED

FILED 23 MAY 2025

ORDERS

PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

HEADNOTE INDEX

CHILD ABUSE, DEPENDENCY, AND NEGLECT

Adjudication of neglect—sufficiency and specificity of findings—substantial risk of impairment—The Supreme Court reversed the Court of Appeals' decision to vacate and remand the trial court's adjudication of respondent-mother's child as a neglected juvenile, holding that the trial court's findings regarding the mother's ongoing substance abuse, hallucinations, unsafe living conditions, and violation of a safety plan (two days after signing it) were sufficient to support the trial court's adjudication. Importantly, the trial court was not required to make a specific written finding regarding a substantial risk of impairment because its findings, when viewed by a reasonable person in the totality of the circumstances, contained enough factual specificity to logically support its conclusion that the child was neglected. **In re L.C., 475.**

DAMAGES AND REMEDIES

Punitive damages—insurance application—material misrepresentations by agent—willful and wanton conduct—In a real property insurance dispute arising from an insurer's cancellation of plaintiff's homeowners policy and refusal to cover plaintiff's losses from hurricane damage, plaintiff's claim against his insurance agent for punitive damages based on gross negligence—for submitting an application for insurance that contained material misrepresentations, which was the basis for the insurer's actions—was not subject to dismissal at the pleading stage. Plaintiff's allegations were sufficient to support punitive damages based on willful and wanton conduct and to put the agent on notice of that aggravating factor, where the details of the agent's conduct were averred with particularity, including that the agent: induced plaintiff to apply for a policy with a new insurer by promising the same coverage at a lower premium; knowingly misrepresented basic information about plaintiff's property on the application for insurance (by failing to disclose the existence of a pond on the property and understating the size of the property by several acres);

and realized a financial gain by obtaining issuance of the new policy. **Jones v. J. Kim Hatcher Ins. Agencies, Inc., 489.**

IMMUNITY

Public official—not available to an employee of a government agency—position not created by statute—no exercise of sovereign power—In a tort action brought by a surgeon (plaintiff) against his former supervisor (defendant), who held several positions at the UNC Burn Center (part of UNC Hospitals)—alleging, among other claims, tortious interference with contract and slander per se in the form of false accusations of inappropriate and unprofessional behavior and sexual misconduct by plaintiff at his going-away party—the Court of Appeals erred in affirming the trial court's order granting summary judgment in favor of defendant on the ground of public official immunity. Public official immunity did not extend to defendant because his positions (1) as division chief did not arise under the constitution, by statute, or through the delegated authority of the State, and the conduct at issue did not involve the discretionary exercise of sovereign power; and (2) as medical director did not involve the discretionary exercise of sovereign power. **Hwang v. Cairns, 448.**

JUDGES

Misconduct—DWI—minor daughter in car—uncooperative during arrest—invoking judicial title to avoid legal consequences—censure—The Supreme Court censured a district court judge for violations of Canons 1 and 2A of the Code of Judicial Conduct—amounting to willful misconduct that was prejudicial to the administration of justice—after the judge was arrested for driving while impaired, where he: had been driving with a high blood alcohol level (.23) on a workday during regular court hours, and with his thirteen-year-old daughter inside the car; was uncooperative with and disrespectful toward the officer who arrested him; and then repeatedly invoked his judicial title while pleading with the officer for leniency. After weighing the egregiousness of the judge's conduct against his commendable behavior following his arrest (he self-reported the incident to the Judicial Standards Commission, cooperated with the Commission's investigation, and sought treatment for alcohol abuse), the Court concluded that censure was the appropriate sanction, while noting that it was also the "minimum acceptable consequence" in this case. **In re Kimble, 462.**

JURY

Criminal trial—constitutional right to unanimity—amended juror substitution statute—deliberations begin anew—In a prosecution that resulted in convictions on charges of first-degree murder and assault with intent to kill inflicting serious injury arising from a shooting at a hotel that left a man dead and a woman injured, defendant's state constitutional right that a conviction only be returned by a unanimous jury of twelve was not violated where, after a partial hour of deliberations was completed, one juror was excused, an alternate juror was substituted, and the newly composed jury was instructed to restart its deliberations from the beginning. The amended version of the statutory section relied upon by the trial court (N.C.G.S. § 15A-1215(a))—allowing a juror to be excused and an alternate juror to be substituted after the deliberations in a criminal trial had begun (altering the previous version of the law, which only allowed such a substitution before the case was

submitted to the jury)—was upheld because it required that (1) no "more than 12 jurors participate in the jury's deliberations," and (2) after a substitution, the jury must begin its deliberations anew. **State v. Chambers, 521.**

NEGLIGENCE

Insurance agent—misrepresentations on application—sufficiency of pleading—no contributory negligence as a matter of law—In a real property insurance dispute arising from an insurer's cancellation of plaintiff's homeowners policy and refusal to cover plaintiff's losses from hurricane damage, plaintiff's claim against his insurance agent for ordinary negligence—by submitting an application for insurance that contained material misrepresentations, which was the basis for the insurer's actions—was not subject to dismissal pursuant to Civil Procedure Rule 12(b)(6). First, plaintiff adequately pleaded the claim by alleging that the agent assured plaintiff that the new policy would provide the same coverage as his existing coverage, told plaintiff that all he needed to do was sign the (single) application page and make the first payment, and had previously applied for and obtained a policy for plaintiff using this same procedure. Second, although plaintiff signed a blank application page and trusted his agent to accurately complete the application without reading the entire document, since plaintiff alleged a prior course of conduct between himself and the agent as well as the agent's specific assurances regarding the new policy, the complaint did not establish contributory negligence as a matter of law sufficient to overcome the ordinary negligence claim. **Jones v. J. Kim Hatcher Ins. Agencies, Inc., 489.**

SEXUAL OFFENSES

Right to unanimous verdict—first-degree forcible sexual offense—disjunctive instruction—evidence of alternative acts to establish an element—no error—In defendant's prosecution on charges including two counts of first-degree forcible sexual offense, his right to a unanimous jury verdict was not violated where the trial court instructed the jury that it could find defendant guilty of each count upon its determination that the State proved beyond a reasonable doubt that defendant committed a "sexual act"—an element of first-degree forcible sexual offense—against the victim, as established by the commission of any qualifying underlying act which the evidence tended to show: fellatio, anal intercourse, or any penetration of the victim's genital or anal openings. While jury unanimity as to the commission of the element—a "sexual act"—was required, there was no error, let alone plain error, in the disjunctive instruction listing multiple alternative acts, any one of which could establish that element. The Court of Appeals' holding to the contrary was reversed, and the matter was remanded to the lower appellate court for consideration of defendant's other arguments. **State v. Bowman, 509.**

SCHEDULE FOR HEARING APPEALS DURING 2025

NORTH CAROLINA SUPREME COURT

Appeals will be called for hearing on the following dates, which are subject to change.

February 11, 12, 13, 18, 19, 20
April 15, 16, 17, 22, 23, 24
September 9, 10, 11, 16, 17, 18
October 28, 29, 30
November 4, 5, 6

HANSON v. CHARLOTTE-MECKLENBURG BD. OF EDUC.

[387 N.C. 445 (2025)]

RICHARD C. HANSON, FRED ALLEN, RICHARD BURGESS, VERNON L. CATHCART, ANGIE CATHCART, CHRISTOPHER L. DAVIS, JAMES J. FLOWERS, KENNETH C. LYNCH, LARRY F. MATKINS, THOMAS RODDEY, DARYL STURDIVANT, ALVESTER W. TUCKER, AND CARLOS VALENTIN
v.
CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

No. 70PA24

Filed 23 May 2025

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 292 N.C. App. 221 (2024), affirming in part and reversing in part an order entered on 30 June 2022 by Judge Casey Viser in Superior Court, Mecklenburg County, and remanding the case. Heard in the Supreme Court on 22 April 2025.

John W. Gresham for plaintiff-appellees.

Wallace Law Firm PLLC, by Terry L. Wallace, for defendant-appellant.

PER CURIAM.

AFFIRMED.

Chief Justice NEWBY concurring.

I join the unanimous opinion of my colleagues but write separately to clarify our longstanding approach to legislative history. I believe this explanation is warranted in light of how the arguments in this case relied heavily on this statutory canon.

There are at least two kinds of legislative history. The first type consists of "[t]he proceedings leading to the enactment of a statute, including hearings, committee reports, and floor debates." *Legislative History*, *Black's Law Dictionary* (12th ed. 2024). These factors have no place in a proper statutory analysis, as numerous jurists and legal scholars have explained in great detail. *See*, *e.g.*, *Thompson v. Thompson*, 484 U.S. 174, 191–92, 108 S. Ct. 513, 522–23 (1988) (Scalia, J., concurring) (describing them as "frail substitutes" for the enacted text and noting the "danger[ ]" of thinking "all the necessary participants in the law-enactment

process are acting upon the same unexpressed assumptions"); Kenneth W. Starr, *Observations About the Use of Legislative History*, 1987 Duke L.J. 371, 376–77 ("The most compelling and widely discussed concern about the use of legislative history is its potential for manipulation. . . . It is well known that technocrats, lobbyists[,] and attorneys have created a virtual cottage industry in fashioning legislative history so that the Congress will appear to embrace their particular view in a given statute."). North Carolina's courts have an additional, more practical reason to avoid relying on legislative history of this sort: our General Assembly rarely records it. Accordingly, for both philosophical and practical reasons, "this Court does not look to the record of the internal deliberations of . . . the legislature considering proposed legislation." *N.C. Dep't of Corr. v. N.C. Med. Bd.*, 363 N.C. 189, 202, 675 S.E.2d 641, 650 (2009) (quoting *Elec. Supply Co. of Durham v. Swain Elec. Co.*, 328 N.C. 651, 657, 403 S.E.2d 291, 295 (1991)); *see also State ex rel. N.C. Milk Comm'n v. Nat'l Food Stores, Inc.*, 270 N.C. 323, 332–33, 154 S.E.2d 548, 555 (1967) (explaining that courts may not consider "[t]estimony, even by members of the [l]egislature which adopted the statute, as to its purpose and . . . construction").

The second kind of legislative history, also known as statutory history, consists of changes that the legislature has made to the statutory text over time. We had this type of legislative history in mind when we noted less than two years ago that "the legislature's intent may be revealed from the legislative history of the statute in question, as changes the legislature makes to a statute's text over time provide evidence of the statute's intended meaning." *Wynn v. Frederick*, 385 N.C. 576, 582, 895 S.E.2d 371, 377 (2023) (citations omitted), *reh'g denied*, 896 S.E.2d 254 (N.C. 2024). The second half of that sentence is important and shows that we were referring to legislative enactments, not legislative proceedings. Courts can examine legislative enactments—to include clarifying or altering amendments—for evidence of legislative intent without resorting to records of committee reports and floor debates.[1] *See Ray v. N.C. Dep't of Transp.*, 366 N.C. 1, 9, 727 S.E.2d 675,

1. As Justice Gorsuch of the Supreme Court of the United States once explained:

> To be clear, the statutory history I [consider persuasive in this case] isn't the sort of unenacted legislative history that often is neither truly legislative (having failed to survive bicameralism and presentment) nor truly historical (consisting of advocacy aimed at winning in future litigation what couldn't be won in past statutes). Instead, I mean here the record of *enacted* changes Congress made

681 (2012) ("A clarifying amendment, unlike an altering amendment, is one that does not change the substance of the law but instead gives further insight into the way in which the legislature intended the law to apply from its original enactment."). And of course, this second category of legislative history only exists with respect to statutes whose previously enacted words have since been altered.

Although the textual history of a statute can provide insight into legislative intent, we still disfavor its use and only turn to it in the event we exhaust both the plain text and other statutory canons. *See Wynn*, 385 N.C. at 581–82, 895 S.E.2d at 377 (looking first to the plain language, then to "the broader statutory context, the structure of the statute, and certain canons of statutory construction," before finally noting that "the legislature's intent may be revealed from the legislative history" (citations, quotations, and alterations omitted)); *cf. Sturdivant v. N.C. Dep't of Pub. Safety*, 386 N.C. 939, 944, 909 S.E.2d 483, 488 (2024) (quoting *Wynn*, 385 N.C. at 581, 895 S.E.2d at 377, for the proposition that ambiguous language prompts this Court to "look to other methods of statutory construction such as the broader statutory context, the structure of the statute, and certain canons of statutory construction," but omitting its reference to legislative history). In other words, this canon should be considered a last resort with limited applicability.

I respectfully concur.

Justices BERGER, BARRINGER, DIETZ, and ALLEN join in this concurring opinion.

> to the relevant statutory text over time, the sort of textual evidence everyone agrees can sometimes shed light on meaning.

BNSF Ry. Co. v. Loos, 139 S. Ct. 893, 906 (2019) (Gorsuch, J., dissenting); *see also* Antonin Scalia & Bryan A Garner, *Reading Law: The Interpretation of Legal Texts* 256 (2012) ("[Earlier versions of the statute] form part of the context of the statute, and (unlike legislative history) can properly be presumed to have been before all members of the legislature when they voted.").

HWANG v. CAIRNS

[387 N.C. 448 (2025)]

JAMES HWANG, M.D.
v.
BRUCE CAIRNS, THE UNIVERSITY OF NORTH CAROLINA, THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, AND UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM

No. 58PA23

Filed 23 May 2025

Immunity—public official—not available to an employee of a government agency—position not created by statute—no exercise of sovereign power

In a tort action brought by a surgeon (plaintiff) against his former supervisor (defendant), who held several positions at the UNC Burn Center (part of UNC Hospitals)—alleging, among other claims, tortious interference with contract and slander per se in the form of false accusations of inappropriate and unprofessional behavior and sexual misconduct by plaintiff at his going-away party—the Court of Appeals erred in affirming the trial court's order granting summary judgment in favor of defendant on the ground of public official immunity. Public official immunity did not extend to defendant because his positions (1) as division chief did not arise under the constitution, by statute, or through the delegated authority of the State, and the conduct at issue did not involve the discretionary exercise of sovereign power; and (2) as medical director did not involve the discretionary exercise of sovereign power.

Justice RIGGS concurring.

Justice EARLS joins in this concurring opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous, unpublished decision of the Court of Appeals, No. COA22-31 (N.C. Ct. App. Jan. 17, 2023), affirming orders entered on 6 August 2021 by Judge John M. Dunlow in Superior Court, Durham County. On 30 August 2023, the Supreme Court allowed defendant Dr. Cairns's conditional petition for discretionary review as to the Court of Appeals' dismissal of his cross-appeal from an order entered on 4 April 2019 by Judge Lora Cubbage in Superior Court, Durham County. Heard in the Supreme Court on 17 April 2024.

Zaytoun & Ballew, PLLC, by Robert E. Zaytoun, Matthew D. Ballew, and Zachary R. Kaplan, for plaintiff-appellant/cross-appellee.

Jeff Jackson, Attorney General, by Lindsay Vance Smith, Deputy Solicitor General; and Hartzog Law Group LLP, by Katie Weaver Hartzog, for defendant-appellee/cross-appellant Bruce Cairns.

No brief submitted for defendant-appellees the University of North Carolina, the University of North Carolina at Chapel Hill, and the University of North Carolina Health Care System.

BERGER, Justice.

Defendant Bruce Cairns, M.D., was employed as a division chief in the Department of Surgery and Medical Director of the Jaycee Burn Center (UNC Burn Center) with UNC Hospitals. In this appeal he seeks to extend public official immunity to administrators working in a public university setting. While exceptions apply, public official immunity generally shields qualifying individuals from personal liability for tortious conduct in execution of discretionary acts committed while acting within the scope of his or her governmental duties.

But the doctrine of public official immunity does not extend to "employee[s] of a governmental agency . . . since the compelling reasons for the nonliability of a public officer, clothed with discretion, are entirely absent." *Miller v. Jones*, 224 N.C. 783, 787 (1945). Thus, a governmental employee may be "personally liable for negligence in the performance of his or her duties proximately causing an injury." *Isenhour v. Hutto*, 350 N.C. 601, 610 (1999) (cleaned up).

Because defendant is not a public official clothed with immunity, we reverse the decision of the Court of Appeals affirming the trial court's grant of summary judgment in favor of defendant and remand.

I. Factual & Procedural Background

At all relevant times herein, defendant was a tenured professor, Chair of the Faculty, Medical Director of the UNC Burn Center, and a division chief in the Department of Surgery with the University of North Carolina School of Medicine. As division chief and Medical Director, defendant supervised plaintiff James Hwang, M.D.

Plaintiff was a surgeon with the UNC Burn Center from 2010 until 2017. In June 2017, plaintiff resigned to accept a similar position with

another medical center. Plaintiff alleged that his decision to leave resulted from, in part, defendant's relentless harassment and creation of a hostile work environment.

When plaintiff announced that he was leaving the UNC Burn Center, three of plaintiff's colleagues planned and paid for a surprise going-away party at an off-campus restaurant. The party was not an official work event. Party invitations were sent to UNC Burn Center employees' work emails and featured a photoshopped picture of plaintiff shirtless and riding a llama. Party decorations included posters with plaintiff's head photoshopped onto the bodies of barely dressed men. Hosts of the party hired a male stripper to serve as a topless waiter at the party. According to party attendees, the stripper did not fully undress; he danced with party attendees while serving appetizers and beverages including Ensure shakes, a non-alcoholic protein shake that plaintiff was often teased for drinking. UNC Burn Center employees, family members, and plaintiff's wife attended. Defendant was invited but did not attend.

Two weeks after the party, a complaint was filed with the UNC School of Medicine Human Resources Department alleging that plaintiff had exhibited inappropriate, disruptive, and sexually offensive behavior during the party. Specifically, the complaint stated that social media posts showed plaintiff touching female coworkers' breasts and posing with the stripper. The UNC School of Medicine conducted an investigation and interviewed plaintiff, defendant, and two of the party hosts.

The final report for the investigation did not disclose the source of the complaint, and the parties dispute whether the complaint was made by defendant or Dr. Shiara Ortiz-Pujols, a research fellow who worked for defendant.[1] However, it is undisputed that no individual who attended the party filed a complaint claiming plaintiff touched them inappropriately.

Defendant was interviewed twice as part of the investigation, and he told investigators that "after getting reports from people who attended the party and seeing pictures on social media, there was no doubt that he/she needed to bring it forward to discuss." But defendant claimed that he could not remember who showed him the pictures or on which social media site they were posted. Defendant testified in a deposition, contrary to the information he provided to investigators, that he did not

1. The Court of Appeals' decision stated that Dr. Ortiz-Pujols made the complaint. *Hwang v. Cairns*, No. COA22-31, slip op. at 4–5 (N.C. Ct. App. Jan. 17, 2023). However, the record shows that the question of who made the complaint is disputed. During the UNC investigation, the investigators believed, according to their deposition testimony, that defendant himself made the complaint.

actually see the pictures and that Dr. Ortiz-Pujols was the source of the complaint. Although the Associate Dean for Human Resources testified that investigators routinely interview individuals with information relevant to alleged misconduct, Dr. Ortiz-Pujols was not interviewed. The final report contained no conclusion that plaintiff had violated any policy.

On 22 June 2017, before the Human Resources complaint was made, plaintiff was notified that he had earned an incentive payment of approximately $63,000 for his work at the UNC Burn Center in 2017. But supervisors withheld plaintiff's incentive payment when the formal investigation began the following week. On 9 November 2017, when the investigation concluded, plaintiff received his incentive compensation.

On 30 May 2018, plaintiff filed suit against defendant, the University of North Carolina (UNC), the University of North Carolina at Chapel Hill (UNC-CH), and the University of North Carolina Health Care System. The complaint named defendant in his individual capacity, and alleged, among other things, claims for tortious interference with contract and slander per se. Specifically, plaintiff asserted that defendant falsely accused him of "inappropriate and unprofessional behavior and sexual misconduct[.]" This included touching co-workers' breasts, taking inappropriate pictures, and making other false statements about plaintiff. Plaintiff's complaint also alleged that defendant made false statements "with malice . . . knowing they were false and fraudulent."

Each of the defendants moved to dismiss, arguing that the claims were barred by public official immunity. On 29 March 2019, the trial court found that defendant "is not a public official entitled to assert the defense of public official immunity." The trial court further explained that even if defendant was a public official, plaintiff sufficiently alleged that defendant's "conduct was done with malice, was corrupt, and/or was done outside the scope of his official duties." For these reasons, the trial court denied the motion to dismiss.

In February 2021, all of the defendants moved for summary judgment. The trial court considered the pleadings, motions, briefs, depositions, affidavits, and other record material. These documents suggested conflicting evidence about the Human Resources complaint's origin and timing. Both human resources investigators testified at depositions that they believed defendant initiated the complaint and personally saw the photos that were the basis for the complaint to human resources. The record also contained deposition testimony from Associate Dean for Human Resources, Harvey Lineberry, PhD., that defendant had brought the complaint about plaintiff to Melina Kibbe, M.D., Chair of the Department of Surgery and defendant's immediate supervisor.

On the other hand, Dr. Ortiz-Pujols testified in her deposition that she initiated the complaint after seeing a picture on Facebook of plaintiff touching a woman's breast. She claimed that after seeing the picture, she sent a text about the picture to UNC Burn Center surgeon Samuel Jones, M.D., who then informed defendant. In her deposition, Dr. Ortiz-Pujols' asserted that only after Dr. Jones told defendant about the text did defendant approach her to discuss the matter. Dr. Ortiz-Pujols could not produce the text message that she purportedly sent to Dr. Jones.

Dr. Jones testified in his deposition that he did not receive a text message from Dr. Ortiz-Pujols about a picture from the party. Dr. Jones further testified that defendant approached him asking what had transpired at the party. Dr. Jones told defendant that he did not attend the party because he was out of town and that he does not use social media, therefore he never saw any picture of plaintiff engaged in inappropriate activities.

Contrary to the statement he provided investigators, defendant testified at his deposition that Dr. Ortiz-Pujols told him about the picture while sitting in her cubicle, with a third, unidentified person listening. He claimed that Dr. Ortiz-Pujols was the source of the complaint and that he never saw photographs of plaintiff. According to defendant, his only role in the filing of the complaint was to "immediately report what I had heard and then escort Dr. Ortiz-Pujols to Dr. Kibbe and then essentially stand there and await further instructions."

In July 2021, the trial court held a summary judgment hearing during which defendant again contended he was entitled to public official immunity. The trial court granted defendant's motion for summary judgment, and plaintiff appealed.

The Court of Appeals affirmed the trial court, concluding that defendant was a public official entitled to immunity because he "exercise[d] 'personal deliberation, decision and judgment' in carrying out his duties." *Hwang v. Cairns*, No. COA22-31, slip op. at 26 (N.C. Ct. App. Jan. 17, 2023) (cleaned up). Acknowledging that public official immunity does not confer total immunity from suit, the Court of Appeals then considered whether defendant's conduct was malicious, corrupt, or outside the scope of official authority such that the shield of immunity could be pierced. *Id.* at 27–28. The Court of Appeals concluded that plaintiff did not produce sufficient evidence to support an element of his claim that defendant acted with malice, *id.* at 28, and affirmed the trial court's grant of summary judgment in favor of defendant. *Id.* at 32.

Plaintiff petitioned this Court for discretionary review to determine whether the Court of Appeals erred in affirming summary judgment for

defendant on the slander per se and tortious interference of contract claims. Defendant filed a conditional petition for discretionary review on the issue of whether the trial court erred by denying his motion to dismiss plaintiff's claims. We allowed plaintiff and defendant's petitions for review.[2]

II. Analysis

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C.G.S. § 1A-1, Rule 56(c) (2023). Courts "must view the evidence in the light most favorable to the non-moving party." *Value Health Sols., Inc. v. Pharm. Rsch. Assocs., Inc.*, 385 N.C. 250, 267 (2023). On appeal, we review orders allowing summary judgment de novo. *James H.Q. Davis Tr. v. JHD Props., LLC*, 387 N.C. 19, 23 (2025).

In general, public officials are immune from personal liability in tort when "engaged in the performance of governmental duties involving the exercise of judgment and discretion." *Smith v. Hefner*, 235 N.C. 1, 7 (1952). The primary goals of this type of immunity are to promote "fearless, vigorous, and effective administration of government policies" and to mitigate the fear of "personal liability that may deter competent people from taking office." *Est. of Graham v. Lambert*, 385 N.C. 644, 654 (2024) (cleaned up). But public official immunity does not extend to actions performed outside of the scope of official duties or those done with malice or corruption. *See Meyer v. Walls*, 347 N.C. 97, 112 (1997) ("As long as a public officer lawfully exercises the judgment and discretion with which he is invested by virtue of his office, keeps within the scope of his official authority, and acts without malice or corruption, he is protected from liability." (cleaned up)).

An employee, however, may be "personally liable for negligence in the performance of his or her duties proximately causing an injury." *Isenhour*, 350 N.C. at 610 (cleaned up). It has long been established that public employees of governmental agencies are not entitled to public official immunity because "the compelling reasons for the nonliability of a public officer, clothed with discretion, are entirely absent." *Miller*, 224 N.C. at 787.

---

2. Defendant appealed denial of his 2019 motion to dismiss to the Court of Appeals. Defendant's cross-appeal on this issue was determined to be moot given the Court of Appeals' decision regarding summary judgment, and we conclude that defendant's conditional petition for discretionary review was improvidently allowed.

To determine if a position qualifies for public official immunity, this Court has identified three essential characteristics distinguishing public officials from public employees. *See Isenhour*, 350 N.C. at 610. First, public officials occupy positions "created by the constitution or statutes of the sovereignty, or . . . [where the State] delegated to an inferior body the right to create the position in question." *State v. Hord*, 264 N.C. 149, 155 (1965). Second, public officials' duties "involve the exercise of some portion of the sovereign power." *Id.* Lastly, performance of these governmental duties requires the public official to "exercise . . . judgment and discretion." *Hefner*, 235 N.C. at 7 (cleaned up). Put another way, we consider how the position was created, the nature of the power exercised by the position-holder, and the position-holder's discretion in the exercise of that power, if sovereign. All three are required for public official immunity to attach, and based upon the record here, defendant is not entitled to public official immunity.

Defendant held six positions within UNC-CH and the Health Care System. Defendant acknowledges that he acted as plaintiff's supervisor in two of his roles: division chief and Medical Director with the UNC Burn Center. Therefore, we address only these two positions.

1. Dr. Cairns's Positions Were Not Created by Statute or Delegated Authority and Do Not Exercise Sovereign Power.

In determining whether defendant was a public official or public employee, we first consider if (1) the position was "created by the constitution or statutes of the sovereignty, or . . . the [State] delegated to an inferior body the right to create the position in question," and (2) the position "involve[s] the exercise of some portion of the sovereign power." *Hord*, 264 N.C. at 155.

In *Smith v. State*, 289 N.C. 303, 307 (1976), this Court examined whether a medical superintendent of a state hospital qualified as a public official or whether he was a state employee. There, the plaintiff was appointed hospital superintendent pursuant to section 122-25 of our General Statutes. *Id.* at 308. In pertinent part, the statute provided "[t]he Commissioner of Mental Health with the approval of the State Board of Mental Health, shall appoint a medical superintendent for each hospital." *Id.* at 308 (quoting N.C.G.S. § 122-25 (1964) (repealed 1973)).

In finding that the medical superintendent was an employee rather than a public official, this Court recognized that, even though the position was created by statute and the State Board of Mental Health "exercised the State's sovereign power by formulating the policies and

guidelines for the operation of its mental hospital," the superintendent "was subordinate to the Board [of Mental Health]" and his "duties were to implement the Board's directives and policies." *Id.* at 308–09. This distinction established that the mere statutory creation of a position does not confer public official status. Rather, the statute must also delegate some portion of the sovereign power to the position holder.

This rule was reinforced by this Court's analysis in *Isenhour*. There, this Court assessed whether a school crossing guard qualified as a public official. *Isenhour*, 350 N.C. at 605. In that case, this Court reaffirmed that municipal police officers are public officials because the General Assembly expressly delegated the exercise of general police power to towns and cities and charged police officers "with the duty to enforce the ordinances of the city or town in which [they are] appointed to serve, as well as the criminal laws of the state." *Id.* at 610–11 (citing *Hord*, 264 N.C. at 155). However, "[u]nlike the specific grant of statutory authority given municipalities to employ police officers," the General Assembly did not "specifically authoriz[e] municipalities to employ school crossing guards." *Id.* at 611. Additionally, the statutes delegating sovereign power to police officers do not likewise delegate sovereign power to crossing guards. *See id.* (noting that school crossing guards do not "exercise a legally significant portion of sovereign power in the performance of their duties"). Therefore, because the crossing guard was not specifically authorized for employment by the General Assembly and the delegation of sovereign power to police officers does not apply to crossing guards, we held that the crossing guard was not a public official. *Id.*

Here, defendant's position as division chief was not created by statute. We must, therefore, consider whether this position is created by a body authorized to delegate sovereign authority, and if the position "exercise[d] a legally significant portion of sovereign power." *Id.*

Similar to the medical superintendent in *Smith* and the school crossing guard in *Isenhour*, defendant's position as division chief is subordinate to the authority that exercises a portion of sovereign power—here the Board of Governors. The General Assembly authorized the Board of Governors to "plan and develop a coordinated system of higher education in North Carolina," N.C.G.S. § 116-11(1) (2023), including adopting "policies and regulations" for the governance of the University of North Carolina and its constituent institutions. N.C.G.S. § 116-11(2) (2023). The Board of Governors, however, lacks authorization to delegate sovereign power, create public official positions, or expand the categories of positions that enjoy public official immunity to the network of institutions

that comprise UNC. *See generally* N.C.G.S. § 116-11 (2023) (establishing the powers and duties of the Board of Governors). In addition, any delegation of authority is expressly subject to the Board of Governors' policies and regulations. N.C.G.S. §§ 116-30.1, -34(d) (2023).

Defendant's position is also subordinate to the UNC-CH Board of Trustees and Chancellor, thus even further removed from a position that is protected by public official immunity and the exercise of sovereign power. Defendant's argument that any entity that possesses sovereign power can delegate sovereign power without express authorization would dramatically expand the scope of public official immunity, and we conclude that defendant's position as division chief fails to meet the requirements for whether a person is a public official.

Defendant further contends that his position as Medical Director entitles him to public official immunity because it was created by the General Assembly in N.C.G.S. § 116-37 (2013) (repealed 2023).[3] That provision states that the Board of Directors can hire "additional administrative and professional staff employees of the University of North Carolina Health Care System as may be deemed necessary to assist in fulfilling the duties of the office of the Chief Executive Officer, all of whom shall serve at the pleasure of the Chief Executive Officer." *Id.* Defendant argues that his exercise of discretion in this role is the same as exercising sovereign power.

We first note that the plain language of this statute identifies those assisting the CEO as employees of the Health Care System, and employees are not entitled to public official immunity. *Miller*, 224 N.C. at 787. Moreover, defendant's position as an employee is, by statute, subordinate to the CEO and the Board of Directors for the Health Care System. Under their control, defendant's position as Medical Director is similar to the medical superintendent in *Smith* and crossing guard in *Isenhour*. In addition, the multiple layers of supervision here make the Medical Director far removed from sovereign power. As such, the Medical Director fails to qualify as a public official.

Thus, defendant has failed to establish that either of his positions meet the first two criteria for whether they are public official positions. This failure shows that defendant, when acting in these positions, is not entitled to public official immunity.

---

3. N.C.G.S. § 116-37 was repealed effective 3 October 2023; however, the statute was in force at all relevant times during this case.

2. Dr. Cairns Did Not Exercise Discretion in the Performance of Sovereign Power.

While defendant does not qualify for public official immunity, given the emphasis the Court of Appeals placed on the third characteristic, we find it pertinent to discuss exercise of discretion in the performance of sovereign power. *See Hefner*, 235 N.C. at 7.

Public official immunity applies to discretionary acts that "requir[e] personal deliberation, decision and judgment." *Isenhour*, 350 N.C. at 610 (quoting *Meyer*, 347 N.C. at 113). But discretionary conduct by itself is not protected by public official immunity; only when the discretionary conduct is in the exercise of sovereign power does it fall within the scope of public official immunity. *See Meyer*, 347 N.C. at 112.

In both relevant roles, defendant certainly exercised broad discretion in caring for patients and managing employees. But in concluding that plaintiff was a public official entitled to public official immunity, the Court of Appeals only considered whether defendant's positions required any exercise of discretion. In so doing, the Court of Appeals relied on dicta in *White v. Trew*, 366 N.C. 360, 363 (2013), to conclude that mere use of decision and judgment entitles one to public official immunity. But *White* was decided on sovereign immunity, not public official immunity. *See id.* at 366 (holding that the plaintiff's claims were barred by sovereign immunity). The discussion of public official immunity in *White* was "unnecessary to the determination of [the] case, and must be regarded as *obiter dicta*." *Washburn v. Washburn*, 234 N.C. 370, 373 (1951).

The Court of Appeals erred by failing to consider whether defendant's positions arose by statute or identify any sovereign power exercised by defendant and their determination on the basis of characteristic three alone was error.

For the reasons stated above, we conclude that defendant's position as division chief does not arise under the constitution, statute, or delegated authority of the State, and defendant's conduct at issue did not involve the discretionary exercise of sovereign power. Further, defendant's position as Medical Director does not involve the discretionary exercise of sovereign power. Neither position shields his conduct from liability under the doctrine of public official immunity, and we reverse the Court of Appeals.

III. Conclusion

Defendant is not a public official, and he is not entitled to public official immunity. Having resolved the narrow issue over which we granted

discretionary review, we decline the parties' invitation to address additional issues, and we remand this matter to the Court of Appeals for consideration of the parties' outstanding arguments.

REVERSED AND REMANDED.

Justice RIGGS concurring.

I join with the majority's holding that Dr. Cairns does not, as a matter of law, enjoy public official immunity for acts committed while supervising employees at the UNC Burn Center. However, the majority ends its analysis on the question of public official immunity without addressing other issues on which we allowed discretionary review. I write separately because I fear our decision will sow confusion on remand because of the majority's approach to simply ignoring the conclusions reached by the Court of Appeals beyond the issue of public official immunity.

The majority states that it resolves the narrow issue upon which we allowed discretionary review. But, in our Order we allowed review of the following issues:

> On the plaintiff's petition for discretionary review filed 21 February 2023, the Court hereby allows the petition as to Dr. Hwang's first proposed issue: Did the Court of Appeals err in affirming the order granting Defendant Cairns's Motion for Summary Judgment? This issue is only allowed as to plaintiff's slander *per se* and tortious interference of contract claims against defendant Cairns.
>
> On defendants' conditional petition for discretionary review filed 6 March 2023, the Court hereby allows defendants' petition as to the sole issue presented: Did the trial court err in denying defendants' initial motions to dismiss plaintiff's amended complaint under Civil Rules 12(b)(1), 12(b)(2)[,] and 12(b)(6). This issue is only allowed as to defendant Cairns's immunity defenses as they apply to Dr. Hwang's claims for slander *per se* and tortious interference with contract.

See Hwang v. Cairns, 385 N.C. 298 (2023).

Therefore, this Court should address whether the evidence in the record, taken in the light most favorable to the non-moving party, demonstrates a genuine issue of material fact such that the trial court erred in granting summary judgment to Dr. Cairns for Dr. Hwang's claims for slander per se and tortious interference with contract. This Court obviously could decide that discretionary review was improvidently allowed, but we did not do so and cannot just ignore issues we have explicitly decided to address.

The Court of Appeals concluded that Dr. Hwang "cannot demonstrate that [Dr.] Cairns acted contrary to his duty to report" and that Dr. Hwang "is unable to show that [Dr.] Cairns acted with [ ] malice." *Hwang v. Cairns*, No. COA22-31, 2023 WL 192912, at *11 (N.C. Ct. App. Jan 17, 2023) (unpublished). To reach these conclusions, the Court of Appeals had to resolve or disregard disputed facts, which it is not permitted to do. Specifically, the Court of Appeals inappropriately resolved the question of who made the complaint and whether it was made for malicious purposes. *Id*. Because these conclusions implicate whether Dr. Cairns is entitled to qualified immunity or whether Dr. Hwang is entitled to pursue further relief on his claim for slander per se, the better course is to address the Court of Appeals' erroneous resolution of disputed facts rather than asking the trial court to speculate whether our reversal of the Court of Appeals' decision also reverses these conclusions.

While curiously omitting our most recent case on public official immunity, *Bartley v. City of High Point*, 381 N.C. 287 (2022), the majority nonetheless acknowledges that "public official immunity generally shields qualifying individuals from personal liability for tortious conduct in execution of discretionary acts committed while acting within the scope of his or her governmental duties." *See* majority *supra* introduction. Importantly, the doctrine of public official immunity does not extend to "employee[s] of a governmental agency . . . since the compelling reasons for the nonliability of a public officer, clothed with discretion, are entirely absent." *Meyer v. Walls*, 347 N.C. 97, 113 (1997) (quoting *Miller v. Jones*, 224 N.C. 783, 787 (1945)).

An employee "is personally liable for negligence in the performance of his or her duties proximately causing an injury." *Isenhour v. Hutto*, 350 N.C. 601, 610 (1999) (cleaned up). And Dr. Cairns is an employee responsible for his negligent or intentional acts. *See Miller*, 224 N.C. at 788 ("[I]t is a broad general rule that any person who violates a legal duty he owes to another is liable for the natural and probable consequences of his act or omission, and exceptions to that rule should not,

by mere judicial rationalization, be extended beyond the recognized public policy out of which they spring.").

Nonetheless, on a claim of slander per se, employees may be protected by qualified immunity "where (1) a communication is made in good faith, (2) the subject and scope of the communication is one in which the party uttering it has a valid interest to uphold," and "(3) the communication is made to a person or persons having a corresponding interest, right, or duty." *Presnell v. Pell*, 298 N.C. 715, 720 (1979) (emphases omitted). Even if qualified privilege applies, Dr. Hwang can still recover "if he can prove that the words were not used *bona fide*, but that the defendant used the privileged occasion artfully and knowingly to falsely defame the plaintiff." *Ponder v. Cobb*, 257 N.C. 281, 293 (1962).

At summary judgment, Dr. Hwang put forth evidence that Dr. Cairns made the complaint for malicious purposes. *See Koontz v. City of Winston-Salem*, 280 N.C. 513, 518 (1972) ("The issue is denominated 'genuine' if it may be maintained by substantial evidence."). At this procedural posture, Dr. Hwang does not need to "convince the court that he would prevail on a triable issue of material fact but only that the issue exists." *Lowe v. Bradford*, 305 N.C. 366, 370 (1982).

At summary judgment then, the question for this slander per se claim is whether Dr. Hwang has forecast evidence of each element of the slander per se claim and has also forecast evidence that qualified immunity does not apply. *See Creech v. Melnik*, 347 N.C. 520, 526 (1998) ("To overcome a motion for summary judgment, the nonmoving party must then 'produce a forecast of evidence demonstrating that the [nonmoving party] will be able to make out at least a *prima facie* case at trial.' " (alteration in original) (quoting *Collingwood v. G.E. Real Est. Equities, Inc.*, 324 N.C. 63, 66 (1989))). At this procedural posture, "the movant's papers are carefully scrutinized [and] those of the adverse party are indulgently regarded." *Dobson v. Harris*, 352 N.C. 77, 83 (2000) (internal citations omitted). Because Dr. Cairns moved for summary judgment, the trial court should view the evidence and make all inferences in the light most favorable to Dr. Hwang. *See id.* ("All facts asserted by the adverse party are taken as true, and their inferences must be viewed in the light most favorable to that party." (internal citations omitted)).

On the claim for slander per se, Dr. Hwang must forecast evidence that: (1) Dr. Cairns spoke "defamatory words which tended to prejudice [Dr. Hwang] in his reputation, office, trade, business or means of livelihood or hold him up to disgrace, ridicule or contempt; (2) the statement was false; and (3) the statement was published or communicated to

and understood by a third person." *West v. King's Dep't Store, Inc.*, 321 N.C. 698, 703 (1988). And then Dr. Hwang must forecast evidence that, because Dr. Cairns manufactured the complaint "artfully and knowingly to falsely defame the plaintiff," Dr. Cairns is not entitled to qualified privilege. *Ponder*, 257 N.C. at 293.

Dr. Hwang forecast evidence from the investigation report and the depositions of the investigators indicating that the source of the complaint was Dr. Cairns, not Dr. Ortiz-Pujols. Dr. Hwang forecast evidence that Dr. Cairns significantly changed his testimony between his interview with the investigators and his deposition in this case. In his interview with the investigators, Dr. Cairns stated that he personally saw pictures of misconduct. In contrast, in his deposition, Dr. Cairns testified that he never saw any pictures of sexual misconduct. This evidence, coupled with Dr. Cairns' pattern of harassing and threatening Dr. Hwang and other medical doctors who left the institution, may support an inference at this permissive stage that Dr. Cairns was manufacturing a complaint rather than bringing forth a valid concern. Dr. Hwang also forecast evidence that he was prejudiced or injured by these false statements because: the University withheld compensation due to him for five months; he would be required to disclose the allegation to prospective employers and medical licensing boards; and the accusation led to stress-related health issues.

Assuming, without deciding, that privilege applies here, Dr. Hwang forecast evidence that Dr. Cairns acted with malice and proof of malice defeats the element that the statement was made in good faith. *See Ponder*, 257 N.C. at 294 ("[M]alice may be proved by some extrinsic evidence, such as ill-feeling or personal hostility or threats and the like on the part of the defendant towards the plaintiff." (cleaned up)). Dr. Hwang produced numerous depositions and affidavits from UNC Burn Center employees in which those employees attested that Dr. Cairns previously threatened or made false complaints for the purpose of damaging the professional reputations of doctors, nurses, and physician assistants at the UNC Burn Center. Furthermore, the deposition testimony supports an inference that Dr. Cairns acted in a threatening and hostile manner towards Dr. Hwang. Last, Dr. Hwang produced deposition and affidavit evidence from several witnesses who attended the party at issue and attested that there was no basis for a complaint. Generally, issues of witness credibility should not be resolved by the "trial court at summary judgment." *N.C. Farm Bureau Mut. Ins. Co. v. Herring*, 385 N.C. 419, 425–26 (2023).

Thus, on remand, the trial court must consider the forecast of evidence to determine whether qualified immunity is applicable and

whether there is a triable issue of fact for a jury on slander per se. On the claim of tortious interference with contract, because Dr. Cairns is not entitled to public official immunity, Dr. Hwang's claim for tortious interference with a contract is not barred.

Justice EARLS joins in this concurring opinion.

IN RE INQUIRY CONCERNING A JUDGE, NO. 23-488

JASON P. KIMBLE, RESPONDENT

No. 321A24

Filed 23 May 2025

Judges—misconduct—DWI—minor daughter in car—uncooperative during arrest—invoking judicial title to avoid legal consequences—censure

The Supreme Court censured a district court judge for violations of Canons 1 and 2A of the Code of Judicial Conduct—amounting to willful misconduct that was prejudicial to the administration of justice—after the judge was arrested for driving while impaired, where he: had been driving with a high blood alcohol level (.23) on a workday during regular court hours, and with his thirteen-year-old daughter inside the car; was uncooperative with and disrespectful toward the officer who arrested him; and then repeatedly invoked his judicial title while pleading with the officer for leniency. After weighing the egregiousness of the judge's conduct against his commendable behavior following his arrest (he self-reported the incident to the Judicial Standards Commission, cooperated with the Commission's investigation, and sought treatment for alcohol abuse), the Court concluded that censure was the appropriate sanction, while noting that it was also the "minimum acceptable consequence" in this case.

Justice BERGER concurring.

This matter is before the Court pursuant to N.C.G.S. §§ 7A-376 and -377 upon a recommendation by the Judicial Standards Commission entered on 18 December 2024. The Commission recommends that respondent Jason P. Kimble, a Judge of the General Court of Justice,

District Court Division, Judicial District 12, be censured for conduct in violation of Canons 1 and 2A of the North Carolina Code of Judicial Conduct and for conduct prejudicial to the administration of justice that brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376. This matter was calendared for argument in the Supreme Court on 12 February 2025 but determined on the record without briefs or oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure and Rule 2 of the Rules of Procedure in the Supreme Court in Judicial Standards Cases.

No counsel for Judicial Standards Commission or respondent.

PER CURIAM.

The issue before the Court is whether District Court Judge Jason P. Kimble, respondent, should be censured for violations of Canons 1 and 2A of the North Carolina Code of Judicial Conduct—violations which amounted to conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of N.C.G.S. § 7A-376(b) (2023). Respondent entered a stipulation pursuant to Rule 18 of the Rules of the Judicial Standards Commission (Stipulation) in which Respondent stipulated to the facts surrounding his conduct.

I. Recommendation of the Judicial Standards Commission

A. Findings of Fact

The recommendation of the Judicial Standards Commission (Commission) contains the following stipulated findings of fact.

> 1. At approximately 3:09 p.m. on September 25, 2023, the North Carolina State Highway Patrol, specifically Trooper Geoffrey C. Middlebrooks ("the Trooper"), responded to a vehicle collision involving two white passenger cars at the intersection of Turlington Road and Red Hill Church Road in Harnett County, North Carolina. The investigation and resulting arrest were captured on dash camera footage. The Trooper memorialized his investigation in an implied consent report summary with supporting documentation used in Driving While Impaired ("DWI") investigations.

2. Upon his arrival at the scene of the vehicle collision, the Trooper encountered Respondent getting out of a white GMC SUV . . . . During that initial interaction, Respondent admitted to "bumping" into the other white vehicle at the scene . . . , told the Trooper no one was injured, showed the Trooper the damage to the vehicles, and stated, "She hit the brakes and I couldn't hit them fast enough." It was at this time the Trooper observed someone seated in the front passenger seat of Respondent's SUV, Respondent's thirteen-year-old daughter.

3. After filling out paperwork related to the crash, the Trooper requested Respondent step out of his SUV and asked him how much alcohol he had had to drink. Respondent denied drinking any alcohol but said, "one busted in the car." Respondent initially refused the Trooper's request for a portable breath test ("PBT"), but when the Trooper informed Respondent he could smell alcohol on his person, Respondent replied, "I'm a District Court Judge," then agreed to take the PBT.

4. While preparing to administer the PBT, the Trooper asked Respondent again about his consumption of alcohol, to which Respondent admitted, "I had some earlier," and commented, "It isn't going to come back with zeros, it will come back to something," regarding the potential results of the PBT. The initial reading from the PBT returned a positive result of .22.

5. Following the positive PBT sample, the Trooper conducted a battery of Standardized Field Sobriety Tests. The Trooper attempted to administer the Horizontal Gaze Nystagmus test but was unable to do so as Respondent was unable to follow the relevant instructions. The Trooper also administered the Walk and Turn test, observing four out of eight clues, and the One Leg Stand test, observing three out of four clues. Following these tests, the Trooper administered the second PBT which returned a positive result of .23.

6. At the conclusion of these various tests, the Trooper informed Respondent that he was under arrest for DWI, after which Respondent failed to comply with the Trooper's instructions to place his hands behind his back and began moving away from and pleading with the Trooper for leniency. While placing the handcuffs on Respondent, the Trooper had to physically place Respondent on the trunk of his patrol vehicle to finish taking Respondent into custody. During this time, Respondent said to the Trooper, "You are going to ruin my career."

7. While in the patrol vehicle but before leaving the scene, Respondent made multiple comments and pleas to the Trooper for leniency, invoking his judicial title, naming other State Highway Patrolmen he knew, and suggesting the Trooper charge him with careless and reckless driving instead of DWI. While the Trooper was outside of his patrol vehicle speaking with Respondent's daughter, the in-car camera captured Respondent saying, "You're a fucking asshole." Respondent then continued to request leniency while in route to the Harnett County Detention Center ("HCDC").

8. At the HCDC, Respondent submitted one breath test to the Intox-EC/IR-II machine, blowing a .23, then refused to submit to the mandatory second blow. Respondent was charged with DWI, reckless driving to endanger, misdemeanor child abuse, and failure to reduce speed in Harnett County court file number 23CR420511-420. Further, due to his failure to submit to the second breath test, Respondent's driver's license was suspended for one year.

9. On September 26, 2023, Respondent called the Commission and was advised by staff to self-report this conduct, which he did the same day.

10. On April 4, 2024, Respondent pled guilty in Harnett County district court to one count of DWI pursuant to a plea agreement and received

a Level One DWI judgment due to the presence of one grossly aggravating factor (driving, at the time of the offense, while a child under the age of 18 was in the vehicle) and one aggravating factor (having an alcohol concentration of at least 0.15 within a relevant time after driving). Respondent was sentenced to 24 months in the misdemeanant confinement program and received credit for the 60 days he spent in an inpatient treatment facility after his arrest. Special conditions of Respondent's probation included that he: (1) pay fines and costs of $543, (2) obtain a substance abuse assessment, monitoring, or treatment, (3) surrender his driver's license and not operate a motor vehicle until his privilege is restored by the Department of Motor Vehicles, (4) continue ongoing treatment and provide monthly proof to the prosecution, (5) waive his right to appeal, and (6) abstain from alcohol consumption for thirty days and submit to continuous alcohol monitoring. The remaining charges were dismissed pursuant to Respondent's plea.

11. Respondent's arrest and subsequent conviction garnered media attention in and around Harnett County, a county which falls within Respondent's judicial district and where he regularly presides over court sessions.

(Citations omitted.)

B. Conclusions of Law

Based upon the foregoing findings of fact, the Commission made the following conclusions of law:

1. Canon 1 of the Code of Judicial Conduct sets forth the broad principle that "a judge should uphold the integrity and independence of the judiciary." To do so, Canon 1 requires that a "judge should participate in establishing, maintaining, and enforcing, and should personally observe, appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved."

2. Canon 2A of the Code of Judicial Conduct generally mandates that "a judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

3. Upon the Commission's independent review of the stipulated facts concerning Respondent's conduct on September 25, 2023, during his DWI arrest, and Exhibit 1 included with the Statement of Charges and Stipulation, the Commission, by unanimous vote of the hearing panel concludes that Respondent:

    a. failed to respect and comply with the law and conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary in violation of Canons 1 and 2A of the Code.

    The Commission notes that Respondent conceded in the Stipulation that the facts were sufficient to support these conclusions.

4. The Commission further concludes, and accepts Respondent's admission, by unanimous vote of the hearing panel, that the facts establish Respondent engaged in willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of N.C. Gen. Stat. § 7A-376(b). *See also* Code of Judicial Conduct, Preamble ("a violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute.").

5. The North Carolina Supreme Court defined "willful misconduct in office" as "improper and wrong conduct of a judge acting in his official capacity done intentionally, knowingly and, generally in bad faith. It is more than a mere error of judgment or an act of negligence." *In re Edens*[,] 290 N.C. 299, 305 (1976). The Supreme Court further

held in *In re Nowell*, 293 N.C. 235 (1977), while willful misconduct in office necessarily encompasses "conduct involving moral turpitude, dishonesty, or corruption," it also can be found based upon "any knowing misuse of the office, whatever the motive." *Id.* at 248. The Supreme Court further held "these elements are not necessary to a finding of bad faith. A specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond a legitimate exercise of his authority constitutes bad faith." *Id.*

6. In reaching this conclusion, the Commission weighed the Respondent's conduct on September 25, 2023, with the remedial actions that he has since taken, while also considering analogous matters that the Commission and Supreme Court have considered in the past.

7. In the case at hand, the Commission was extremely troubled by Respondent's behavior surrounding Respondent's arrest on September 25, 2023, given that [(]1) notwithstanding Respondent was scheduled for an administrative day, the event occurred on an otherwise regular work day during regular court hours, (2) Respondent was picking up his minor child from school at the time, (3) Respondent had his minor child in the car with him while he was extremely intoxicated, (4) Respondent utilized his judicial title in an attempt to avoid criminal prosecution, and (5) Respondent was otherwise uncooperative, exhibiting behavior unbecoming of a judge in his interactions with law enforcement while at the scene.

8. However, the Commission also acknowledged that Respondent has conducted himself in an exemplary manner since his arrest by (1) self-reporting his conduct to various entities, including the Commission, (2) immediately submitting himself to inpatient rehabilitation, (3) accepting criminal responsibility for his actions by pleading

guilty to DWI on April 4, 2024, (4) accepting responsibility for his judicial misconduct on November 8, 2024, at his Commission hearing and fully cooperating with the Commission's investigation, and (5) based on reports from himself and others, taking the steps necessary to maintain his sobriety.

9. In balancing these interests, the Commission aims to be consistent in its recommendations guided by and relying upon precedent from the North Carolina Supreme Court in a similar matter, *In re LeBarre*, 369 N.C. 538, 798 S.E.2d 736 (2017). In *LeBarre*, the respondent judge received a censure for his conduct surrounding his arrest for and later guilty plea to DWI. *Id.* In *LeBarre*, the respondent judge was found by law enforcement in the driver's seat, slumped over the steering wheel of his vehicle while it was still running in a highly intoxicated state. *Id.* Further, at the scene and continuing to the hospital where his blood was eventually drawn, the respondent judge refused to cooperate with law enforcement officers and emergency personnel and was rude to them, directing expletives and other vulgar language at them. *Id.* The respondent judge in *LeBarre*, a judge with an otherwise unblemished 37-year judicial career, also accepted responsibility for his conduct by entering a guilty plea to DWI, resigning his commission as an emergency judge, agreeing not [to] seek a commission in the future, and stipulating to the facts and disposition of a censure, which was adopted by the North Carolina Supreme Court in its opinion. *Id.* Further, like Respondent, this respondent judge had significant support, enjoyed a good reputation within his community, and readily admitted his error and remorse to the Commission. *Id.*

10. The Commission also noted the Supreme Court's issuance of a public reprimand in *In re Shipley*, 370 N.C. 595, 811 S.E.2d 556 (2018), to the respondent Deputy Commissioner on the North

Carolina Industrial Commission ("respondent commissioner") for being charged with DWI after getting into a traffic accident and registering a BAC of .08. However, the Commission found this case distinguishable from the facts in this matter, and less persuasive than *LeBarre* because the DWI was later voluntarily dismissed by the District Attorney's Office, there was no evidence that the respondent commissioner failed to comply with law enforcement or otherwise acted inappropriately on the scene, and there was no other aggravating factors (e.g.[,] a high BAC, a child being in the car, etc.). *Id.*

11. As a result, the Commission concludes, and Respondent agrees, that a censure in this matter would be consistent with prior disciplinary actions taken by the Supreme Court in matters with analogous facts and circumstances.

12. The North Carolina Supreme Court in *In re Crutchfield*, 289 N.C. 597 (1975) first addressed sanctions under the Judicial Standards Act and stated that the purpose of judicial discipline proceedings "is not primarily to punish any individual but to maintain due and proper administration of justice in our State's courts, public confidence in its judicial system, and the honor and integrity of its judges." *Id.* at 602.

13. The Commission and Respondent acknowledge the ultimate jurisdiction for the discipline of judges is vested in the North Carolina Supreme Court pursuant to Chapter 7A, Article 30 of the North Carolina General Statutes, which may either accept, reject, or modify any disciplinary recommendation from the Commission.

(Cleaned up.)

C. Recommendation

Based on the foregoing findings of fact and conclusions of law, the Commission, by unanimous vote of the hearing panel, recommended that the North Carolina Supreme Court censure respondent.

II. Analysis

The Code of Judicial Conduct was established "in furtherance of an independent and honorable judiciary," which is "indispensable to justice in our society." N.C. Code of Jud. Conduct, pmbl. A violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice where that violation brings the judicial office into disrepute, or for willful misconduct in office, or for other grounds for disciplinary proceedings pursuant to Article 30 of Chapter 7A of the General Statutes of North Carolina. For such violations, the Judicial Standards Commission conducts a hearing, which is "neither a civil nor a criminal action." *In re Nowell*, 293 N.C. 235, 241 (1977). The purpose is not primarily to punish the individual but to ensure the conduct of one exercising judicial power maintains the "due and proper administration of justice in our State's courts, public confidence in its judicial system, and the honor and integrity of its judges." *In re Crutchfield*, 289 N.C. 597, 602 (1975).

This Court, upon the Commission's recommendations, has the authority and responsibility to discipline judges by issuing a public reprimand, censure, suspension, or removal of a judge "for willful misconduct in office, willful and persistent failure to perform the judges' duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute." *In re Foster*, 385 N.C. 675, 689–90 (2024) (quoting N.C.G.S. § 7A-376(b) (2023)).

Conduct is prejudicial to the administration of justice and constitutes willful misconduct when a judge intentionally, improperly, or wrongfully uses the power of the office with gross unconcern for his or her conduct and in bad faith. *Id.* 385 N.C. at 690. We look "not so much upon the judge's motives but more on the conduct itself, the results thereof, and the impact such conduct might reasonably have upon knowledgeable observers." *In re Edens*, 290 N.C. 299, 306 (1976) (quoting *Crutchfield*, 289 N.C. at 603).

When reviewing the Commission's recommendations, this Court acts as a court of original jurisdiction rather than as an appellate court. *In re Badgett*, 362 N.C. 202, 207 (2008) (quoting *In re Daisy*, 359 N.C. 622, 623 (2005)). "[T]his Court must first determine if the Commission's findings of fact are adequately supported by clear and convincing evidence, and in turn, whether those findings support its conclusions of law." *Id.* at 207. While each case is decided solely by its own facts and the Commission's recommendation is not binding on this Court, if this Court does adopt

the Commission's findings of fact, it may choose to also "adopt the Commission's recommendations or exercise independent judgment as to the appropriate sanction." *In re Foster*, 385 N.C. at 690.

After reviewing the record and noting that respondent has stipulated to the Commission's findings of fact, we conclude the Commission's findings are supported by clear and convincing evidence, and we adopt them as our own. The Commission's conclusions of law are supported by those facts, so we adopt the Commission's conclusions of law. By extension, we agree with the Commission's conclusions that respondent's conduct violates Canons 1 and 2A of the North Carolina Code of Judicial Conduct, is prejudicial to the administration of justice, and brings the judicial office into disrepute in violation of N.C.G.S. § 7A-376(b).

Because respondent has violated Canons 1 and 2A of the North Carolina Code of Judicial Conduct and N.C.G.S. § 7A-376(b), we must now decide whether to accept the Commission's recommendation of censure or exercise our independent judgment as to the appropriate sanctions. Our guidepost in determining the appropriate sanctions is the impact of the conduct on public confidence in our judicial system and ensuring the honor and integrity of judges who serve the people of this State. *In re Crutchfield*, 289 N.C. at 602. Censure is appropriate where "a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute." N.C.G.S. § 7A-374.2(1) (2023). This Court has previously censured judges for driving while intoxicated, acting disrespectfully to the responding law enforcement officers, and attempting to use their office to avoid the legal ramifications of their conduct. For example, in *In re LaBarre*, the Court censured a judge who was found intoxicated while sitting in the driver's seat of a running vehicle. 369 N.C. 538, 540 (2017). The respondent judge refused to cooperate with law enforcement and was rude to both law enforcement and emergency personnel. *Id.* Although the respondent judge had an esteemed judicial career and reputation, acknowledged his behavior's impact on public confidence, and voluntarily resigned his commission as an emergency judge, this Court concluded that censure was appropriate. *Id.* at 544–46.

In contrast, in *In re Shipley*, this Court agreed with the Commission's recommendation for a public reprimand where respondent, a Deputy Commissioner on the North Carolina Industrial Commission, was charged with driving while intoxicated. 370 N.C. 595 (2018). In *In re Shipley*, the respondent's charge was later dismissed and there was no evidence that he failed to comply with law enforcement or otherwise acted inappropriately. *Id.* at 598.

We conclude that the facts of this case are more closely akin to *LeBarre* although more egregious than the misconduct in *LeBarre*. Here, respondent was driving while intoxicated—with his minor child in the car—and he was involved in an accident which endangered the safety of his child and another driver. Additionally, respondent had an extremely high blood alcohol level and was driving while intoxicated during normal work hours. Because of these aggravating factors, we requested additional briefing from the parties to consider whether censure was, in fact, the appropriate recommendation. Neither the Commission nor respondent provided additional briefing.

The Court concludes that the Commission's findings of fact establish that respondent did, in fact, willfully engage in misconduct prejudicial to the administration of justice. Although respondent's behavior on the day of the incident here was more troubling and severe than the behavior leading to the censure issued in *LeBarre*, we appreciate that respondent self-reported the incident to the Commission, immediately underwent treatment for alcohol abuse, and cooperated with the Commission's investigation. Respondent recognizes that his conduct warrants disciplinary consequences and agreed to the recommended action. Weighing the severity and extent of respondent's misconduct against his acknowledgement and cooperation, we conclude that the Commission's recommendation of censure is appropriate and supported by the Commission's findings of fact and conclusions of law. Although we have ultimately decided to accept the Commission's recommendation of censure, we emphasize that, under these facts, censure is the minimum acceptable consequence for respondent's conduct.

The Supreme Court of North Carolina orders that respondent Jason P. Kimble be CENSURED for conduct in violation of Canons 1 and 2A of the North Carolina Code of Judicial Conduct and for conduct prejudicial to the administration of justice that brings the judicial office into disrepute and willful misconduct in office in violation of N.C.G.S. § 7A-376(b).

Justice BERGER concurring.

District court judges function where the law meets the average citizen—domestic cases, traffic offenses, relatively minor violations of criminal law. They are not shielded from public view like monks in the judicial monastery but are the real faces of justice in their communities. With this comes somewhat of an obvious truth: a judge who cannot govern his own conduct has no claim to govern anyone else's.

I would not write separately if respondent had done the appropriate thing and resigned, or if this were the run of the mill Level V DWI that respondent here sees every day: a .08 alcohol concentration where the defendant was polite and cooperative. But it was not. This was a Level I DWI where a sitting judge was involved in an accident, blew a .23 on the Intox EC/IR II before refusing his second sample, had his minor child in the vehicle, attempted to use his judicial position to influence the state trooper, was belligerent to the state trooper, and then called the state trooper "a fucking asshole."

Certainly, judges have faults and make mistakes just like anyone else. They are regular people who, on occasion, may drink too much, have heated disagreements with spouses or coworkers, and show emotion when mishaps occur. These behaviors are not atypical, even for judges, and there is some measure of grace that should be available for screw ups and lapses of judgment. People are people, and judges do not cease being human simply because they put on a robe.

But the consequence here should be more than mere finger wagging.

If this Court's "guidepost in determining the appropriate sanctions is the impact of the conduct on public confidence in our judicial system and ensuring the honor and integrity of judges who serve the people of this state," *In re Foster*, 385 N.C. 675, 690–91 (2024), then we have fallen short.

Because the tradition of this Court is for unanimity in Judicial Standards cases, I reluctantly concur.

IN RE L.C.

[387 N.C. 475 (2025)]

IN THE MATTER OF L.C.

No. 108PA24

Filed 23 May 2025

Child Abuse, Dependency, and Neglect—adjudication of neglect—sufficiency and specificity of findings—substantial risk of impairment

The Supreme Court reversed the Court of Appeals' decision to vacate and remand the trial court's adjudication of respondent-mother's child as a neglected juvenile, holding that the trial court's findings regarding the mother's ongoing substance abuse, hallucinations, unsafe living conditions, and violation of a safety plan (two days after signing it) were sufficient to support the trial court's adjudication. Importantly, the trial court was not required to make a specific written finding regarding a substantial risk of impairment because its findings, when viewed by a reasonable person in the totality of the circumstances, contained enough factual specificity to logically support its conclusion that the child was neglected.

Justice RIGGS dissenting.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 293 N.C. App. 380, 900 S.E.2d 697 (2024), vacating and remanding an adjudication order entered on 5 January 2023 by Judge Donna F. Forga in District Court, Swain County. Heard in the Supreme Court on 16 April 2025.

Crystal Louise Bryson for petitioner-appellant Swain County Department of Social Services.

Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, by Sam J. Ervin IV, for appellant Guardian ad Litem.

Wendy C. Sotolongo, Parent Defender, by Annick Lenoir-Peek, Deputy Parent Defender, for respondent-appellee mother.

NEWBY, Chief Justice.

In this case we decide whether the Court of Appeals erred by vacating and remanding the trial court's order adjudicating two-year-old L.C.

(Layla) as a neglected juvenile.[1] The Court of Appeals concluded that remand was necessary because the trial court's order lacked specific factual findings about how respondent, Layla's mother, had impaired or substantially risked impairing her daughter's welfare. Although a trial court's written findings of fact must sufficiently support its conclusions of law, the trial court does not need to specifically find a substantial risk of impairment in order to conclude that a child is neglected. The order's findings here—which detailed facts including respondent's continued drug abuse and her failure to follow the safety plan she had signed just two days earlier—sufficiently support a conclusion of neglect. We therefore reverse the decision of the Court of Appeals.

Respondent gave birth to Layla in August 2019. Layla's biological father is unknown, and respondent's "live-in girlfriend" is listed on Layla's birth certificate in place of the father.[2] Prior to the events of this case, Layla resided with respondent and respondent's girlfriend. While respondent and her girlfriend were Layla's primary caretakers, the girlfriend's mother would occasionally help care for the child as well.

Respondent has a lengthy history of alcohol and illegal drug abuse. At the time of Layla's birth, both respondent and Layla tested positive for methamphetamine and THC. Respondent also admitted to using both marijuana and unprescribed Valium on the same day she gave birth to her twin children, born about two years after Layla.[3] The twins remained in the neo-natal intensive care unit for two weeks; one of them was hospitalized for more than a month. Respondent denied that the twins' hospitalizations resulted from drug withdrawals.

In response to the circumstances of the twins' births, a social worker with the Swain County Department of Social Services (DSS) visited respondent's home to check on Layla's wellbeing. The social worker recalled that respondent spoke "very erratically," "mov[ed] her arms a lot," and had difficulty remaining on topic, which caused the social worker to believe respondent was under the influence at the time of

---

1. We refer to the minor child by a pseudonym to protect her identity and for ease of reading. *See* N.C. R. App. P. 42(b).

2. The Court of Appeals held that the girlfriend was not entitled to appeal the trial court's adjudication order because she was not Layla's parent, guardian, or custodian. *In re L.C.*, 293 N.C. App. 380, 383–89, 900 S.E.2d 697, 702–06 (2024). *See generally* N.C.G.S. § 7B-1002(4) (2023) ("Appeal . . . may be taken by . . . . [a] parent, a guardian . . . or a custodian . . . ."). The parties did not challenge this ruling in their arguments to this Court.

3. Respondent relinquished her parental rights over the twins. They are not part of this appeal.

their meeting. Respondent told the social worker that she used methamphetamine, heroin, marijuana, benzodiazepines, and other drugs for which she claimed to have prescriptions. Respondent also stated that the home was infested with rats and said that Layla had been exposed to drugs through "spore to spore contact."[4] When the social worker suggested that Layla receive drug testing, respondent declined, asserting that "Swain DSS is only good for breaking up families."

Subsequent interactions between the social worker and respondent turned hostile, with respondent becoming "very aggressive" and demanding that the social worker leave the home. Respondent and her girlfriend eventually signed a temporary safety plan, under which neither respondent nor her girlfriend were permitted to "have any unsupervised contact" with Layla. Instead, the plan assigned the girlfriend's mother as Layla's primary caretaker. Yet just a few days after the plan's implementation, the same social worker encountered respondent, the girlfriend, and Layla—without the girlfriend's mother and thus unsupervised—at the Bryson City Federal Building. The discovery of this violation of the recent safety plan led DSS to take Layla into temporary custody. DSS then filed a petition in District Court, Swain County, alleging that Layla was a neglected and dependent juvenile.

After receiving testimony at an adjudication hearing on 7 December 2022, the trial court entered an order concluding that Layla was a neglected juvenile. The trial court's order detailed the facts above and also found, in relevant part:

> 3. That there have been multiple prior encounters between DSS and [respondent] involving [Layla]. One prior occurrence was in December of 2020. At that time a social worker went to [respondent's] home with an allegation that the minor child had grabbed a needle and that [respondent] was selling drugs out of a bathroom window.
>
> 4. That [respondent] reports that the needle was a tattoo needle and [that DSS] instructed [her] to put it in a lock box.
>
> . . . .

4. In the adjudication order, the trial court stated that it "ha[d] no information or knowledge of what ['spore to spore'] mean[t]." The social worker herself believed respondent meant "skin to skin" or "pore to pore" contact.

15. That on or about [15 November] 2021[,] the social worker found [respondent], [Layla], and [respondent's girlfriend] at the [Bryson City Federal Building] without a suitable supervisor. At that time the social worker made the decision to assume [twelve-]hour custody of the child.

16. That [respondent] left the child and was gone for approximately two hours. When she returned she had a stroller, three outfits[,] and a couple of toys for the child.

17. That [respondent and her girlfriend] refused to sign a [second] temporary safety plan with [the original] social worker . . . but did finally sign when . . . a [second] social worker[ ] arrived.

18. That [respondent] testified that she could not remember much after [Layla] was taken from her because she drank a lot of [whiskey] to the point that she was blacking out and found herself in the bathtub without knowledge of how she got there.

19. That during at least one interaction with the social worker, [respondent] was irate, threatened . . . a relative of [the girlfriend], and admitted to a willingness to threaten [the girlfriend's relative].

20. That [respondent] refused to supply to the court information regarding where she had obtained the [V]alium that she took.[5]

21. That [respondent] had previously testified that when she left [Layla] with the [girlfriend] and social worker and walked from the [Bryson City] Federal Building to her home (a mile away), she had ingested methamphetamine during her time away from [Layla].

22. That there is uncontroverted evidence that [respondent] has struggled with substance abuse during [Layla]'s entire lifetime, including being a recovering heroin addict.

---

5. The trial court held respondent in contempt of court for this behavior.

> 23. That [respondent] could not convey to the court any clear timeline as to how long [Layla]'s siblings were in the NICU after their birth[s].
>
> 2[4]. That the Swain County Department of Social Services has made reasonable efforts to prevent or eliminate the need for placement of the juvenile, to reunify the juvenile following placement[,] and to enact a permanent plan on behalf of the juvenile. Some of those reasonable efforts are entering into a safety plan with [respondent and her girlfriend], attempting a temporary safety placement for the juvenile, performing a CPS investigation, and taking temporary custody of the juvenile.
>
> 2[5]. That it is contrary to the best interest of the juvenile to return to the home of [respondent] at this time.

Accordingly, the trial court concluded as a matter of law that Layla was a neglected juvenile.

Respondent appealed the trial court's adjudication order and an additional, subsequent disposition order to the Court of Appeals.[6] The Court of Appeals unanimously held that the trial court's factual findings lacked the requisite specificity to support its conclusion of neglect. *See In re L.C.*, 293 N.C. App. 380, 394–401, 900 S.E.2d 697, 709–13 (2024). The court directly acknowledged our decision in *In re G.C.*, 384 N.C. 62, 884 S.E.2d 658 (2023), and quoted its substantive holding: "[A]lthough 'there is no requirement of a specific written finding of a substantial risk of impairment[,] . . . the trial court must make written findings of fact sufficient to support its conclusion of law of neglect.' " *In re L.C.*, 293 N.C. App. at 394, 900 S.E.2d at 709 (quoting *In re G.C.*, 384 N.C. at 69, 884 S.E.2d at 663). The Court of Appeals nonetheless vacated the order and remanded for "additional findings of fact . . . address[ing] whether and how [respondent's actions] have harmed Layla or have placed her at a substantial risk of harm." *Id.* at 401, 900 S.E.2d at 713. Following the decision, DSS and the guardian ad litem jointly filed a petition for discretionary review with this Court, which we allowed.

"An appellate court reviews a trial court's adjudication to determine whether the findings are supported by clear, cogent[,] and convincing

6. The disposition order is not before this Court.

evidence and the findings support the conclusions of law." *In re G.C.*, 384 N.C. at 65, 884 S.E.2d at 661 (quoting *In re K.S.*, 380 N.C. 60, 64, 868 S.E.2d 1, 4 (2022)). "Where no [objection is made] to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Id.* at 66, 884 S.E.2d at 661 (alteration in original) (quoting *In re K.S.*, 380 N.C. at 64, 868 S.E.2d at 4). The trial court's adjudication of Layla as a neglected juvenile receives de novo review because it is a conclusion of law. *See id.* To apply de novo review in this context, we use the trial court's factual findings to draw our own legal conclusions, which we then "freely substitute" for the conclusions of the trial court. *Id.* (quoting *In re T.M.L.*, 377 N.C. 369, 375, 856 S.E.2d 785, 790 (2021)).

We first evaluate the trial court's conclusion that Layla was a neglected juvenile. A minor child is neglected if, *inter alia*, her parent or legal guardian "[d]oes not provide proper care, supervision, or discipline" or "[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2023). "In order to adjudicate a juvenile neglected, our courts have additionally required that there be some physical, mental, or emotional impairment of the juvenile or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline." *In re Stumbo*, 357 N.C. 279, 283, 582 S.E.2d 255, 258 (2003). But "to be clear, there is no requirement of a specific written finding of a substantial risk of impairment." *In re G.C.*, 384 N.C. at 69, 884 S.E.2d at 663.[7] "Rather, the trial court must make written findings of fact sufficient to support its conclusion of law of neglect." *Id.*

In re G.C. nonetheless explained that some level of factual specificity is still necessary to conclude that a juvenile is neglected: "The ultimate findings of fact that [the child] does not receive proper care, supervision, or discipline from her parents is supported by the trial court's evidentiary findings of fact and *reached by natural reasoning*

---

7. The statutory text guides our reasoning on this point. As we explained in *In re G.C.*, the statute's definition of neglect—unlike its definition of abuse—does not include a substantial risk requirement. 384 N.C. at 69 n.4, 884 S.E.2d at 663 n.4. *Compare* N.C.G.S. § 7B-101(15) (2023) (defining a "neglected juvenile" in part as one whose parent or guardian "[c]reates or allows to be created a living environment that is injurious to the juvenile's welfare"), *with id.* § 7B-101(1) (defining an "abused juvenile[ ]" in part as one whose parent or guardian "[c]reates or allows to be created *a substantial risk* of serious physical injury to the juvenile by other than accidental means" (emphasis added)). We noted that these textual differences "further indicat[ed] that the legislature did not intend to require a finding of fact of substantial risk of impairment" when adjudicating a neglected juvenile. *In re G.C.*, 384 N.C. at 69 n.4, 884 S.E.2d at 663 n.4.

from the evidentiary findings of fact." *Id.* at 67, 884 S.E.2d at 662 (emphasis added). The phrase "reached by natural reasoning" means reached logically—in other words, the conclusion at which a reasonable person would arrive after considering all of the trial court's evidentiary findings. Accordingly, the trial court does not need to explicitly connect each of the dots between factual findings and legal conclusions, even though such connections assist appellate review and provide clarity. If the objective reasonable person, examining the totality of the circumstances, would understand how the trial court's written findings lead to its conclusion of neglect, those findings are sufficient.

Using this standard here, we conclude that the trial court's factual findings adequately support its conclusion of neglect. A small sampling of the trial court's findings is sufficient to make this point. Layla was born to a mother with a severe and ongoing addiction to illegal drugs;[8] indeed, the child tested positive at birth for both methamphetamine and THC and respondent admitted to smoking marijuana and using unprescribed drugs *on the same day she gave birth to Layla's siblings*. The home in which Layla, respondent, and respondent's girlfriend lived was—at least according to respondent—infested with rats.[9]

---

8. A parent's substance abuse alone is not grounds for adjudicating neglect. *In re E.P.*, 183 N.C. App. 301, 304–05, 645 S.E.2d 772, 774, *aff'd per curiam*, 362 N.C. 82, 653 S.E.2d 143 (2007).

9. The Court of Appeals expressed particular concern with the trial court's factual finding on this point, which stated "[t]hat there was discussion about rats in the building and holes in the walls of [respondent's] home," and that respondent "believed the rats would come out of the holes in the walls and cabinets and try to bite her." *In re L.C.*, 293 N.C. App. at 398–99, 900 S.E.2d at 712. The Court of Appeals concluded that this finding was insufficient because other evidence suggested that respondent's drug use had caused her to hallucinate the rats and that the home was in no real danger of rodent infestation. *Id.* at 399, 900 S.E.2d at 712. According to the Court of Appeals, the trial court should have specified whether it believed the rats actually existed or were just a hallucination, as well as the kind of impairment to Layla—physical, mental, or emotional—that would have resulted. *Id.*

But a trial court does not need to specify whether the impairment in question is physical, mental, or emotional. *See In re Stumbo*, 357 N.C. at 283, 582 S.E.2d at 258 (listing the three kinds of impairments). Instead, the trial court merely needs to conclude the existence of impairment (or a substantial risk thereof) based on a reasonable interpretation of the evidentiary findings.

Here the Court of Appeals unnecessarily distinguished between the physical impairment caused by actual rats and the mental impairment caused by respondent's hallucinations of rats. "Either possibility could indicate a risk of substantial harm to the child," as the Court of Appeals itself recognized. *In re L.C.*, 293 N.C. App. at 399, 900 S.E.2d at 712. Under *In re G.C.*, a reasonable person would understand that Layla faced a significant risk of impairment regardless of whether the rats were real or imaginary. Moreover, impairments

Layla had access to unsecured needles that respondent claimed were for "tattooing," despite the fact that respondent did not have a tattoo license. Respondent continues to struggle with substance abuse, admitting to the trial court that she uses combinations of illegal drugs, unprescribed prescription drugs, and alcohol to the point of "blacking out . . . in the bathtub without knowledge of how she got there." Respondent was uncooperative with DSS when the department proposed both drug testing Layla and entering into a safety plan. When respondent eventually signed the plan, a social worker observed her violating it just two days later. Considering the totality of these evidentiary findings, the trial court reasonably concluded that Layla was a neglected juvenile because she lacked proper care, supervision, or discipline and lived in an environment injurious to her welfare. Thus, the Court of Appeals erred in vacating the trial court's order.

We close by addressing the trial court's decision to recite some of the evidence in its findings of fact without stating whether it found that evidence credible. For example, Finding of Fact 6 reads, "[Respondent] testified to using controlled substances including . . . [V]alium and smoking marijuana regularly prior to the birth of her twins ([Layla]'s siblings)." The Court of Appeals correctly recognized that the trial court is required to "resolv[e] any material disputes" when making findings of fact. *In re L.C.*, 293 N.C. App. at 396, 900 S.E.2d at 710 (quoting *In re C.L.C.*, 171 N.C. App. 438, 446, 615 S.E.2d 704, 708 (2005), *aff'd per curiam in part and disc. rev. improvidently allowed in part*, 360 N.C. 475, 628 S.E.2d 760 (2006)). But when the recited evidence is a statement against interest, like respondent's testimony in Finding of Fact 6, we may assume that the trial court found it credible without the trial court expressly characterizing it as such. *Cf.* N.C.G.S. § 8C-1, Rule 804(b)(3) (2023) ("A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest . . . that a reasonable man in his position would not have made the statement unless he believed it to be true."). Because a reasonable woman would not admit to using illegal drugs during her pregnancy unless she actually had used those

---

do not always fall neatly into one of the three categories. For example, if respondent were indeed hallucinating the rats, she "may be unable to care for [her] child due to her mental impairment." *In re L.C.*, 293 N.C. App. at 399, 900 S.E.2d at 712. The same hallucinations, however, could also create a physical impairment—for instance, in the event that respondent began using weapons in the home to repel her hallucinations or started hallucinating that *Layla herself* was a threat. Although the three types of impairments help us better understand the term's meaning, the trial court does not need to expressly place a given impairment within these rough categories. The trial court did not err here.

drugs, the trial court did not need to state that it found respondent's testimony credible here.[10]

In sum, the Court of Appeals erred by vacating and remanding for specific written findings of impairment. Despite citing *In re G.C.* and quoting its holding, *see In re L.C.*, 293 N.C. App. at 394, 900 S.E.2d at 709, the opinion below proceeded as if our analysis in that case did not exist. The Court of Appeals instead cited several cases about an appellate court's inability "to assume findings of fact the trial court did not make." *Id.* at 395, 900 S.E.2d at 710 (citing *In re A.H.D.*, 287 N.C. App. 548, 564, 883 S.E.2d 492, 504 (2023)). It then relied upon those general principles to conclude that the trial court's findings here were insufficient because they "[did] not address the impact on Layla as required to support an adjudication of neglect." *Id.* at 397, 900 S.E.2d at 711 (citing *In re K.J.B.*, 248 N.C. App. 352, 355, 797 S.E.2d 516, 518–19 (2016)). But as our decision in *In re G.C.* unequivocally stated, "To the extent any Court of Appeals' decision requires a written finding of fact by the trial court of substantial risk of impairment, *such decisions are overruled.*" *In re G.C.*, 384 N.C. at 69 n.5, 884 S.E.2d at 663 n.5 (emphasis added).

Because the trial court's findings sufficiently supported its conclusion that Layla was a neglected juvenile, the Court of Appeals should have affirmed the adjudication order. The decision of the Court of Appeals is reversed.

REVERSED.

Justice RIGGS dissenting.

The crux of the issue is whether this Court in *In re G.C.*, 384 N.C. 62 (2023), disclaimed the necessity for impairment-related findings. While we emphasized in *In re G.C.* that an adjudication can be justified if "[t]he ultimate finding[ ] of fact that [a child is neglected] is supported by the trial court's evidentiary findings of fact and reached by natural reasoning from the evidentiary findings of fact," 384 N.C. at 67, I do not read that case as completely destroying any requirement under the statutes that a trial court "show its work" before adjudicating a child to be neglected. Indeed, we confirmed that the trial court's assessment that

10. Of course, this is a narrow exception to the general rule. The best practice is for the trial court to err on the side of too much detail when making credibility determinations and written findings of fact.

there is "some physical, mental, or emotional impairment *of the juvenile* or a substantial risk of such impairment as a consequence of the failure to provide proper care, supervision, or discipline" "remains useful and remains the law." *Id.* at 69 (cleaned up) (emphasis added). We then proceeded to ascertain the extent to which a showing of impairment is sufficient for the purpose of finding neglect.

In *In re G.C.*, we clarified that while "there is no requirement of a specific written finding of a substantial risk of impairment," a trial court must nevertheless "make written findings of fact sufficient to support its conclusion of law of neglect." *Id.* When we pair this with our affirmation in the same opinion that there "must be some physical, mental, or emotional impairment" and that this requirement "remains the law," *id.*, only one relevant inference can be drawn: if the trial court does not make a specific written finding of impairment, then it must make findings of fact sufficient to demonstrate impairment. The Court of Appeals vacated the trial court's order and remanded for further proceedings based on a reading of *In re G.C.* that matches my own: a required demonstration that when the petition was filed, Layla suffered some physical, mental, or emotional impairment or a substantial risk of such impairment because of respondent-mother's failure to provide proper care, supervision, or discipline. *In re L.C.*, 293 N.C. App. 380, 400–01 (2024).

The majority focuses its discussion of *In re G.C.* on the ultimate conclusion "that [the child, Glenda,] does not receive proper care, supervision, or discipline from her parents," which was "supported by the trial court's evidentiary findings of fact and reached by natural reasoning from the evidentiary findings of fact." *In re G.C.*, 384 N.C. at 67. However, we also went on to describe what those findings were:

> Specifically, Glenda lived in the same residence as Glenda's mother, respondent, and Gary. Respondent provided care and supervision for Glenda as he had for her brother Gary until his death. Glenda's mother had previously been convicted of misdemeanor child abuse, and her older children had previously been adjudicated abused, neglected, and dependent juveniles for reasons that included Glenda's mother's failure to feed one of the older children.
>
> On 12 March 2020, respondent was at work, and only Glenda's mother was with Gary. That day, Glenda's mother left Gary, who was three months old, in his Pack 'n Play on his side with blankets for over

> three hours without supervision even though "*sleeping in an environment with blankets while less than one year of age is a risk factor for an accidental asphyxial event.*" When Glenda's mother did finally check on Gary around 7:38 p.m., she found Gary unresponsive. She responded by running to the home of a relative, who was a nurse and lived nearby. Glenda's mother called 911 after the relative instructed her to do so. Gary was pronounced dead by Emergency Medical Services upon arrival at the residence. Emergency Medical Services observed Gary "foaming from the nose and the mouth, indicative of asphyxiation," and the medical examiner could not rule out an asphyxial event given the autopsy findings. Both respondent and Glenda's mother had been instructed about proper sleeping arrangements for children.
>
> Although there is no mention of Glenda, who was approximately one and a half years old at the time, or her whereabouts on 12 March 2020 in the trial court's findings of fact, the foregoing evidentiary findings support the ultimate finding that Glenda does not receive proper care, supervision, or discipline from her parents and the conclusion of law that Glenda is a neglected juvenile.

Id. at 67–68. We reiterated that

> [i]n determining whether a juvenile is a neglected juvenile, it is *relevant* whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

Id. at 68 (quoting N.C.G.S. § 7B-101(15) (2021)). In Glenda's case, both situations were present. Thus, we concluded that the trial court's findings supported the conclusion that there were "current circumstances that present a risk" to Glenda. *Id.* (quoting *In re J.A.M.*, 372 N.C. 1, 9 (2019)).

The facts here do not map onto the facts in *In re G.C.*, and given the cases' differences, a different result should follow. Here, neither of the situations that dictated the outcome in *In re G.C.* were present. Therefore, given the lack of an ultimate finding that satisfies the statutory definition of Layla being a neglected juvenile and the lack of

findings of fact to suggest that Layla was neglected, the trial court in this case needed to independently find and demonstrate that Layla was neglected. Those findings were required, per our precedent, to support an adjudication of neglect.

Here, many of the trial court's findings, specifically Findings of Fact 6, 7, 8, and 9 provided what Layla's mother testified to or reported to a third party without indicating whether the trial court found those "facts" to be true or that they adopted them as such. Other findings indicated that Layla's mother was unwilling to work with the Department of Social Services (DSS) and that she struggled with substance abuse in the home. However, those findings do not signify whether the substance abuse in the home or the unwillingness to work with DSS had an effect on Layla.

As to Finding of Fact 9, the trial court did not make a finding as to whether Layla was exposed to controlled substances due to "spore to spore" or any other type of contact. Indeed, the trial court itself said it "had no information or knowledge" of what "spore to spore" even meant. Similarly, in Findings of Fact 14 and 15 the trial court found that the safety plan referenced in Finding of Fact 10 was violated and that Layla was found without a suitable supervisor, but it made no finding as to the impact of these findings on Layla.

As for the trial court's Finding of Fact 11, noting the discussion about rats in the building or holes in the walls, the trial court did not find the home unsuitable or unsafe. While it is true that even if the finding regarding rats may signal hallucinations by Layla's mother, *see In re L.C.*, 293 N.C. App. at 398–99, indicating potential mental impairment that could still support a risk of substantial harm to the child—that is a different finding of fact from a physical risk created by an unsuitable or inhabitable home environment. Further, it is a finding of fact that, as the Court of Appeals recognized, the trial court did not make. *Id.* at 398. And it would certainly strain natural reasoning to conclude from the fact that a discussion happened that Layla's mother was hallucinating. A natural and more straightforward inference might be that the home did suffer from some kind of infestation problem, which would not itself support a legal conclusion that the home was unsafe. Further, DSS's North Carolina Safety Assessment on 12 November 2021, did not note Layla's physical living conditions as "hazardous and immediately threatening to the health and/or safety of the child." It is a trial court's role to make findings to support its legal conclusions, and it is not possible to determine from the adjudication order whether the trial court did so.

The Court of Appeals explained that the trial court did not provide any findings of fact that addressed or could allow the Court of Appeals

to reason how Layla suffered impairment or was at substantial risk of impairment. *Id.* at 395–96. The Court of Appeals did not rule out that a particular finding of fact could support the conclusion that Layla was impaired or faced a substantial risk of impairment, but it emphasized that it is the trial court's job to make such findings. *Id.* 396–98. The trial court cannot simply "describe testimony" or "infer," and it is not the job of the appellate courts to reweigh the evidence afterwards. *Id.* 396–98, 400. Thus, the Court of Appeals did not err when it vacated the trial court's adjudication order. It simply required the trial court to make findings that support a conclusion that *this child* was neglected and found on de novo review that the trial court failed to make findings sufficient to demonstrate that Layla was subjected to impairment or substantial risk of impairment. *Id.* at 401.

These cases are never easy. Protecting children from abuse, neglect, or dependency is of the utmost importance to promoting the general welfare of our state. And the constitutional rights of parents to raise their children in the ways they choose are also a serious consideration. *See Happel v. Guilford Cnty. Bd. of Educ.*, No. 86PA24, slip op. at 14 (N.C. Mar. 21, 2025) ("This Court affirmed 'the paramount right of parents to custody, care, and nurture of their children' even earlier than the Supreme Court of the United States[,] . . . [and] North Carolina law 'fully recognized' the natural and substantive rights of parents to 'the custody and control of their infant children.' " (first quoting *Petersen v. Rogers*, 337 N.C. 397, 402 (1994); and then quoting *Atkinson v. Downing*, 175 N.C. 244, 246 (1918))). Balancing these considerations requires us to resist the temptation to sacrifice the statutory, procedural requirements set forth by this state in a purported attempt to achieve the former consideration. Even in these sensitive cases, we must identify the limits to which we must adhere before intervening in the parent-child relationship. *See In re Stumbo*, 357 N.C. 279, 286 (2003) ("While acknowledging the extraordinary importance of protecting children from abuse, neglect, or dependency by prompt and thorough investigations, we likewise acknowledge the limits within which governmental agencies may interfere with or intervene in the parent-child relationship."); *Atkinson*, 175 N.C. at 263 (explaining that government interference is not justified "except when the good of the child clearly requires it"). A court's findings and intervention must be made in recognition that a finding of a parent's neglect of a child within the meaning of neglect under N.C.G.S. § 7B-101 is grounds for later termination of that parent's parental rights. *See* N.C.G.S. § 7B-1111(a)(1) (2023). That is precisely why the General Assembly and our precedent recognize that statutory requirements for what a trial court must consider and explain is more

than mere formalism. N.C.G.S. § 7B-100(1) (2023) (stating that one purpose of the abuse, neglect, and dependency subchapter is "[t]o provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents"); *In re Stumbo*, 357 N.C. at 286 ("[S]o long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." (alteration in original) (quoting *Troxel v. Granville*, 530 U.S. 57, 68–69 (2000))); *In re Stumbo*, 357 N.C. at 288 ("By enacting chapter 7B, subchapter I, the General Assembly has provided a mandate to departments of social services in addressing reports of abuse, neglect, and dependency."). The majority's dismissal of these procedural safeguards for protecting the child-parent relationship as mere "best practice" chips away at any work that the procedural requirements actually do in that safeguarding. *See* majority *supra* note 10.

I do not read *In re G.C.* to have totally eviscerated the requirement that a trial court make findings or have justified in the record the findings that would support a legal conclusion of neglect. *See In re G.C.*, 384 N.C. at 69. A trial court's adjudication of neglect must be "supported by the trial court's evidentiary findings of fact and reached by natural reasoning from the evidentiary findings of fact." *Id.* at 67. "Natural reasoning" means that an adjudication of neglect must be the natural conclusion—i.e., that if appellate courts are faced with interpreting trial court orders that could support multiple conclusions, then the trial court has not satisfactorily shown their work in their findings and conclusions. Our General Assembly set forth, in N.C.G.S. § 7B-101(15), what must be established for a child to be adjudicated neglected, and longstanding case law requires that this showing be more than performative. Because I believe the majority's interpretation continues to chip away at these safeguards that recognize the importance of the child-parent relationship, I respectfully dissent.

JONES v. J. KIM HATCHER INS. AGENCIES, INC.

[387 N.C. 489 (2025)]

DANIEL JONES
v.
J. KIM HATCHER INSURANCE AGENCIES, INC.; HXS HOLDINGS, INC.; GEOVERA SPECIALTY INSURANCE COMPANY; AND GEOVERA ADVANTAGE INSURANCE SERVICES, INC.

No. 264A23

Filed 23 May 2025

1. Negligence—insurance agent—misrepresentations on application—sufficiency of pleading—no contributory negligence as a matter of law

In a real property insurance dispute arising from an insurer's cancellation of plaintiff's homeowners policy and refusal to cover plaintiff's losses from hurricane damage, plaintiff's claim against his insurance agent for ordinary negligence—by submitting an application for insurance that contained material misrepresentations, which was the basis for the insurer's actions—was not subject to dismissal pursuant to Civil Procedure Rule 12(b)(6). First, plaintiff adequately pleaded the claim by alleging that the agent assured plaintiff that the new policy would provide the same coverage as his existing coverage, told plaintiff that all he needed to do was sign the (single) application page and make the first payment, and had previously applied for and obtained a policy for plaintiff using this same procedure. Second, although plaintiff signed a blank application page and trusted his agent to accurately complete the application without reading the entire document, since plaintiff alleged a prior course of conduct between himself and the agent as well as the agent's specific assurances regarding the new policy, the complaint did not establish contributory negligence as a matter of law sufficient to overcome the ordinary negligence claim.

2. Damages and Remedies—punitive damages—insurance application—material misrepresentations by agent—willful and wanton conduct

In a real property insurance dispute arising from an insurer's cancellation of plaintiff's homeowners policy and refusal to cover plaintiff's losses from hurricane damage, plaintiff's claim against his insurance agent for punitive damages based on gross negligence—for submitting an application for insurance that contained material misrepresentations, which was the basis for the insurer's actions—was not subject to dismissal at the pleading stage. Plaintiff's allegations were sufficient to support punitive damages based on willful

and wanton conduct and to put the agent on notice of that aggravating factor, where the details of the agent's conduct were averred with particularity, including that the agent: induced plaintiff to apply for a policy with a new insurer by promising the same coverage at a lower premium; knowingly misrepresented basic information about plaintiff's property on the application for insurance (by failing to disclose the existence of a pond on the property and understating the size of the property by several acres); and realized a financial gain by obtaining issuance of the new policy.

Justice ALLEN concurring in part and dissenting in part.

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 290 N.C. App. 316 (2023), affirming in part and reversing in part an order entered on 23 February 2021 by Judge Phyllis M. Gorham in Superior Court, New Hanover County. On 26 June 2024, the Supreme Court allowed plaintiff's petition for discretionary review as to an additional issue pursuant to N.C.G.S. § 7A-31. Heard in the Supreme Court on 12 February 2025.

The Armstrong Law Firm, P.A., by L. Lamar Armstrong III, for plaintiff-appellee.

McAngus Goudelock & Courie, PLLC, by Jeffrey B. Kuykendal, John T. Jeffries, and Jared M. Becker, for defendant-appellant.

EARLS, Justice.

The question presented in this case is whether a person is contributorily negligent for signing a blank insurance application and trusting his or her agent to complete it carefully, no matter the circumstances. In other words, when a complaint discloses that someone signed a blank insurance application, must the complaint be dismissed as a matter of law? According to the pleadings, Plaintiff Daniel Jones signed a blank application for a homeowner's insurance policy, relying on his agent, J. Kim Hatcher Insurance Agencies, Inc. (Hatcher), to do the rest. Jones trusted Hatcher's assurance that it would accurately fill out the application, based on their prior course of dealings and because Hatcher would earn a commission for the sale. But after Hurricane Florence destroyed Jones's home and belongings, Jones's insurer refused to cover his losses

and instead canceled his policy, citing "material misrepresentations" in Jones's insurance application. Jones discovered that Hatcher had omitted any reference to the existence of the half-acre pond in front of his house and understated the size of his property by three acres when it completed his insurance application.

Jones brought an action against Hatcher alleging, among other things, that it was grossly negligent or at least negligent in how it handled Jones's application. Hatcher moved to dismiss the ordinary negligence claim under Civil Procedure Rule 12(b)(6) based on contributory negligence. *See* N.C.G.S. § 1A-1, Rule 12(b)(6) (2023). In essence, Hatcher contended that a person is always negligent for signing a blank legal document and trusting another to complete it carefully, regardless of the relationship between the parties or the context. The trial court granted Hatcher's motion on that basis, and the Court of Appeals reversed.

We agree with the Court of Appeals that dismissal of the complaint was not warranted here. Our precedent as well as common sense support that factual circumstances do bear on whether it is reasonable to trust another person with a "blank check" and therefore whether it is contributorily negligent to do so. A reasonable person could conclude that Jones acted with ordinary prudence when he trusted Hatcher to carefully do as it promised, based on Hatcher and Jones's course of dealing and Hatcher's specific assurances. Thus, Jones's complaint does not, on its face, reveal facts that necessarily defeat his claim for ordinary negligence. Jones's claim for gross negligence is similarly undefeated, because contributory negligence does not bar a claim for gross negligence. *See Cullen v. Logan Devs., Inc.*, 386 N.C. 373, 382 (2024). The Court of Appeals' decision on the contributory negligence issue is affirmed.

Separately, Hatcher also moved to dismiss Jones's claim for punitive damages, which the trial court granted and the Court of Appeals affirmed. This was error. Under *Estate of Long v. Fowler*, 378 N.C. 138 (2021), notice pleading principles apply to claims for punitive damages. Here, Jones's complaint sufficiently alleged his general theory of punitive damages liability based on Hatcher's particular actions that were allegedly willful and wanton, giving Hatcher adequate notice of Jones's claims. *See* N.C.G.S. § 1A-1, Rule 9(k) (2023); N.C.G.S. § 1D-15(a) (2023). Jones therefore stated a claim for punitive damages sufficient to survive dismissal, and the Court of Appeals' decision to the contrary on this issue is reversed.

I. Background

A. Jones's Allegations

At the Rule 12(b)(6) stage, a court must "take the allegations in the complaint as true and draw all reasonable inferences in the plaintiff's favor." *New Hanover Cnty. Bd. of Educ. v. Stein*, 380 N.C. 94, 106–07 (2022). We therefore credit the following in Jones's complaint as true in reviewing the decision to grant Hatcher's Rule 12(b)(6) motion to dismiss. *See Cato Corp. v. Zurich Am. Ins. Co.*, 386 N.C. 667, 668 (2024).

Jones and his wife lived on an eight-acre property in Pender County containing his house, farmland, and a half-acre pond directly in front of his house. In 2014, Hatcher, a North Carolina corporation that procures and sells insurance throughout eastern North Carolina, began soliciting Jones to purchase insurance. Hatcher told Jones that he could obtain coverage from Nationwide equivalent to his existing N.C. Farm Bureau policy at a lower premium.[1] In the summer of 2016, Jones agreed that Hatcher could quote him a new homeowner's insurance policy. Jones asked Hatcher if he would also qualify for a farm insurance policy, informing Hatcher that he farmed some portion of his eight acres of land. Hatcher responded that he would not qualify and advised a homeowner's policy through Nationwide instead.

That August, Jones met with Hatcher to discuss the Nationwide policy. Hatcher provided him with the coverage limits and premium costs, and Jones signed the single-page application form. Hatcher did not ask Jones any questions regarding his property or the policy application, but merely instructed Jones to sign "a single[-]page application form." In lieu of questioning Jones, Hatcher inspected and photographed his home and property—including the half-acre pond directly in front of Jones's house.

1. Jones's complaint describes the actions of "Hatcher," the corporation, rather than any particular agent of Hatcher acting on its behalf.

After gathering the needed information, Hatcher applied for and obtained the Nationwide policy for Jones.

Jones remained with Nationwide until 2017, when he switched back to N.C. Farm Bureau for a few months. Hatcher continued to solicit Jones's business and, in August 2017, offered Jones a homeowner's

insurance policy through GeoVera Specialty Insurance Company (GeoVera). Hatcher advised Jones that GeoVera's policy would provide the same coverage as his existing policy at a significantly lower premium. Jones agreed to apply for it through Hatcher.

Hatcher then used the same application procedure it had used to procure Jones a Nationwide policy a year earlier. Hatcher again did not ask Jones any questions about his home or property. Just as it had done before, Hatcher presented Jones with only "a single[-]page document with a signature line." Above the space for Jones's signature, preprinted text read: "I have read the above application and any attachments and declare that the information is true and complete." Hatcher advised that "all [Jones] needed to do was sign the application page and pay the first payment."

"Based on Hatcher's prior inspection, photographing and knowledge of [Jones]'s property," Jones believed Hatcher had all the necessary information to apply for the policy, and Jones "trusted that Hatcher would accurately reflect its knowledge on the application." Hatcher did not provide any documents aside from the third page of the blank application for Jones's review, and Jones complied with its instructions by signing the blank application.

A designated "producer" for Hatcher ultimately signed the application and dated it for the same day as Jones's signature. A "producer" is an agent or broker licensed to sell, solicit, or negotiate insurance. N.C.G.S. § 58-33-10(7) (2023). GeoVera soon issued a homeowner's policy to Jones, which was effective from August 2017 to August 2018. Jones then renewed the policy in August 2018 without issue, to be effective until August 2019. A copy of the "policy renewal declarations," attached to Jones's amended complaint, included a "property detail page" reciting several details about Jones's property but not mentioning the pond or the acreage.

In September 2018, Hurricane Florence tore through eastern North Carolina and substantially damaged Jones's home and property. It blew shingles off the roof, damaged every room in the home, and destroyed most of Jones's personal belongings. Jones and his wife could no longer live inside their home and were forced to rent and relocate to a camper. Jones filed a claim with GeoVera, who initially advised Jones that his losses were covered. But a month later, GeoVera informed Jones that it was canceling his policy, because Jones's application did not mention his pond or accurately describe his property acreage and thus contained "material misrepresentations." GeoVera contended that, had it known

these facts, it would not have issued Jones the policy. It follows that Hatcher would not have received a commission from selling the policy to Jones, absent its misrepresentations in the application.

B. Procedural Posture

Jones sued Hatcher, a surplus line broker HXS, and GeoVera in New Hanover County Superior Court.[2]

Against Hatcher, in particular, Jones brought tort claims for negligence, gross negligence, and punitive damages. His amended complaint alleged that Hatcher acted negligently in how it handled Jones's application, including by providing answers that it knew were incorrect. Hatcher knew or should have known that providing such false answers could substantially harm Jones should GeoVera seek to void the policy instead of paying out a claim. This conduct, he alleged, was "[i]n conscious and intentional disregard of and indifference to [Jones's] rights." Hatcher's knowing misrepresentations, from which it derived a financial benefit at a substantial risk to Jones's rights, constituted willful and wanton misconduct entitling him to punitive damages. Hatcher answered and moved to dismiss under Rule 12(b)(6).

The trial court held a hearing on Hatcher's (and other defendants') motions to dismiss and dismissed all of Jones's claims except for his breach of contract claim against GeoVera. Jones then voluntarily dismissed that claim with prejudice on 15 September 2022. Twelve days later, he filed notice of appeal from the trial court's dismissal order.

C. The Court of Appeals Decision

The Court of Appeals largely affirmed the trial court's dismissal of all of Jones's claims. *Jones v. J. Kim Hatcher Ins. Agencies, Inc.*, 290 N.C. App. 316, 319 (2023). That included his claim for punitive damages against Hatcher. On that issue, the Court of Appeals reasoned first that Jones erred by not "referenc[ing] . . . the *conduct* of Hatcher that he claims to be an aggravating factor." *Id.* at 335 (emphasis added). Second, Jones failed to allege that "an officer, director, or manager of Hatcher was responsible for the negligence" giving rise to punitive damages, it concluded. *Id.* at 336.

The Court of Appeals reversed, though, on the dismissal of the ordinary negligence claim against Hatcher. *Id.* at 319. Because Jones alleged

2. Jones's claims against GeoVera and HXS, a surplus line broker, were dismissed below and are not at issue in this appeal.

that Hatcher acted as his agent, that he provided Hatcher with accurate information about his property, that Hatcher assured him the policy would offer the same coverage, that Hatcher assured Jones that he need only sign the signature page of the multipage application and let Hatcher do the rest, and that Hatcher did not in fact provide the correct information, leading to the denial of Jones's insurance claim, Jones sufficiently alleged a negligence claim. *Id.* at 332–33. The court declined to find that Jones was contributorily negligent as a matter of law for signing the blank application form. *Id.* at 334.

The dissent would have affirmed the trial court's dismissal of this claim against Hatcher because, in its view, his complaint disclosed his contributory negligence. *Id.* at 338 (Collins, J., concurring in result in part and dissenting in part). The dissent reasoned that by signing the blank application, Jones represented that the information was true and accurate. *Id.* Jones did not allege that Hatcher did or said anything to mislead him or put him off his guard, thus his failure to act carefully barred his claim, the dissent concluded. *Id.*

Hatcher appealed the decision to this Court based on the dissent's contrary view of the contributory negligence issue. *See* N.C.G.S. § 7A-30(2) (2023). Separately, Jones filed a petition for discretionary review. On 26 June 2024, we allowed Jones's petition on whether the Court of Appeals erred in its analysis of his punitive damages claim.

II. Analysis

A. Standard of Review

Ours is a "system of notice pleading afford[ing] a sufficiently liberal construction of complaints so that few fail to survive a motion to dismiss." *Button v. Level Four Orthotics & Prosthetics*, 380 N.C. 459, 467 (2022) (quoting *Embree Constr. Grp., Inc. v. Rafcor, Inc.*, 330 N.C. 487, 491 (1992)). A complaint should survive a Rule 12(b)(6) motion "unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim." *Sutton v. Duke*, 277 N.C. 94, 103 (1970) (emphasis omitted). Thus, granting a motion to dismiss is only appropriate (1) when no law supports plaintiff's claim; (2) when the complaint lacks allegations essential to make a good claim; or (3) when an allegation "necessarily defeats" the claim as a matter of law. *Cato Corp.*, 386 N.C. at 672 (quoting *Jackson v. Bumgardner*, 318 N.C. 172, 175 (1986)).

"To determine whether a Rule 12(b)(6) motion was properly granted, this Court examines whether the allegations of the complaint,

if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Cohane v. Home Missioners of Am.*, 387 N.C. 1, 7 (2025) (cleaned up). We review de novo the Court of Appeals' errors of law. N.C. R. App. P. 16(a); *New Hanover Cnty. Bd. of Educ.*, 380 N.C. at 106.

B. Contributory Negligence

[1] For appeals based on a dissent in the Court of Appeals, our review is limited to the scope of the issues specifically set out in the dissent and argued for by the parties. *Cryan v. Nat'l Council of YMCAs of U.S.*, 384 N.C. 569, 574 (2023); N.C. R. App. P. 16(b) (amended 2025). Here that issue is whether Jones's complaint disclosed his contributory negligence on its face, sufficient to defeat a claim for ordinary negligence against Hatcher. *See Sorrells v. M.Y.B. Hosp. Ventures*, 332 N.C. 645, 648 (1992) ("[A] plaintiff's contributory negligence is a bar to recovery from a defendant who commits an act of ordinary negligence.").

To establish contributory negligence as an affirmative defense, a defendant must prove that the "plaintiff could have avoided injury by exercising reasonable care." *Cullen*, 386 N.C. at 377. Whether a plaintiff exercised reasonable care, in turn, depends on whether he "conform[ed] to an *objective* standard of behavior—the care an ordinarily prudent person would exercise under the same or similar circumstances to avoid injury." *Id.* (quoting *Smith v. Fiber Controls Corp.*, 300 N.C. 669, 673 (1980)). "[S]ince the standard of reasonable care should ordinarily be applied by the jury under appropriate instructions from the court," contributory negligence is generally an issue for the jury. *Ragland v. Moore*, 299 N.C. 360, 363 (1980).

At the pleading stage, then, dismissal based on contributory negligence is proper only if the complaint demonstrates that the plaintiff's own negligence proximately contributed to his injury "so clearly that no other conclusion can be reasonably drawn therefrom." *Ramey v. S. Ry. Co.*, 262 N.C. 230, 234 (1964); *see also Davis v. Hulsing Enters., LLC*, 370 N.C. 455, 458 (2018). Put another way, disposing of the claim before trial is only appropriate where the plaintiff was "contributorily negligent as a matter of law." *E.g.*, *Ragland*, 299 N.C. at 368 (applying this standard at summary judgment). The face of the plaintiff's complaint must make it obvious that he was contributorily negligent. If a plaintiff sufficiently alleges gross negligence, any contributory negligence by the plaintiff is not a barrier to relief. *Cullen*, 386 N.C. at 382.

In general, everyone who can read a document has a duty to do so when signing it. *Mills v. Lynch*, 259 N.C. 359, 362 (1963). Thus material

misrepresentations in an insured's application for insurance, signed by the insured, can be grounds to later void the policy. For example, in *Inman v. Sovereign Camp of the Woodmen of the World*, 211 N.C. 179 (1937), we held that an insurance company had no duty to honor a life insurance policy where the policyholder signed an application containing material misrepresentations. *Id.* at 180, 182. There, an insurance agent helped a war veteran to complete an application for life insurance. *Id.* at 180. The agent questioned the veteran and wrote down the veteran's answers on the application before having the veteran sign it. *Id.* at 180–81. The veteran did not read the completed application before he signed it, nor did the agent say anything to induce him not to do so. *Id.* at 181–82. Had the veteran read the completed application, he would have seen that the application answers misrepresented his background: They wrongly indicated that he had never drawn a pension, had not been under hospital observation, had not suffered a bodily infirmity, and had not recently been attended by a physician. *Id.* The veteran had in fact experienced each of these, as he had shared with the agent. *Id.* at 180. But because the policy was issued contingent on truthful responses to the life insurance application, and because the veteran had signed the application containing material inaccuracies, we affirmed dismissal of the contract action to recover on the policy. *Id.* at 182.

Similar facts were present in *Thomas-Yelverton Co. v. State Capital Life Insurance Co.*, 238 N.C. 278 (1953). There, a man procured a life insurance policy after concealing that he had been diagnosed with a serious stomach ulcer and had been repeatedly denied for insurance coverage. *Id.* at 279–80. Apparently, his health information was relayed to the insurance agent, and the agent responded that he nevertheless could help the man procure a policy. *Id.* at 280. The man ultimately signed the application, which falsely represented that he had no stomach issues and had never been denied for insurance. *Id.* at 279–80, 283. After the man's death, the company denied liability due to the man's substantial misrepresentations on his application. *Id.* at 279. We affirmed the judgment for the insurance company barring recovery on the policy: "[W]hen the insured signed the application he knew the agent had written the answers to the questions contained in it; and by signing it in the form submitted, he represented that the answers were true." *Id.* at 283.

These contract law cases follow common-sense intuitions. When an insured could review the relevant documents to correct any errors, his failure to do so is of his own making. False, material statements on the application the insured signed can be grounds for the insurance company not to honor its obligations.

Here, though, Jones's claims are of a different nature. His is not a contract action to recover on the policy, but an action against his insurance agent directly for the agent's negligence in procuring the policy. Our most analogous precedent is *Elam v. Smithdeal Realty & Insurance Co.*, 182 N.C. 599 (1921). There, the insured asked an agent to secure car insurance for losses from "fire or collision or other kind of accident." *Id.* at 601. The agent procured a policy and delivered the policy documents to the "proprietor of the garage where [the insured's] car was kept." *Id.* at 603. The proprietor placed the documents in his safe, beyond the insured's access. *Id.* at 601. While the documents were in the safe, the insured's car was in a "near accident" but sustained no "pecuniary damage." *Id.* The agent advised the insured that, had his car been damaged, his policy would have covered it. *Id.* On another occasion and in the insured's presence, the agent told a different client that the insured's policy covered collisions. *Id.* at 601–02. Later, when the insured's car was damaged in a collision, he discovered that his losses were not covered because the agent secured the wrong type of coverage. *Id.* at 602. He then sued the agent. *Id.*

Had the insured read the policy, he would have learned that it lacked the coverage he had requested. *Id.* at 603. Yet this Court reversed the trial court's judgment of nonsuit in his claim against the agent. *Id.* at 604. We acknowledged that the insured had a duty to read the "formal contract affecting his pecuniary interest" and that knowledge of its contents would be imputed to him if he signed or accepted the contract. *Id.* at 603. But that general duty to read "is subject to the qualification that nothing has been said or done to mislead him or to put a man of reasonable business prudence off his guard in the matter." *Id.* Even though the insured could not recover on the policy because it did not cover his damages, we allowed his suit against the agent to continue to a jury trial on whether he *did* breach his duty to read, in light of the agent's specific assurances that his policy covered collision damages. *Id.* at 604.[3]

---

3. The partial dissent appears to suggest in a footnote that *Elam v. Smithdeal Realty & Insurance Co.*, 182 N.C. 599 (1921), is distinguishable in part because the claim there sounded in contract, not tort. But in our view, *Elam* made clear that the same contributory-negligence principles would apply whether the plaintiff sued his agent in tort or contract for the agent's negligence. *See id.* at 603.

That was so, this Court explained, because the plaintiff brought a particular kind of claim for "breach of contract of agency." *Id.* at 604. The insured sued the agent for "negligent failure to perform a duty he had undertaken and assumed as agent." *Id.* at 602. That failure gave the plaintiff two paths for recovery—one in contract, for breaching the duty of faithfulness imposed by the agreement; the other in tort, for breaching the same duty imposed by law. *Id.* at 604. Either way, the theory of harm was the same: The agent failed

As *Elam* shows, whether an individual was reasonably put off his guard, and thus was not contributorily negligent, is fact specific. The interactions between the insured and the agent before and after the policy was issued are relevant to the determination of whether it was reasonable for the insured to trust the agent enough to not double-check the agent's work.

Here, taking the factual inferences in Jones's favor and assuming his allegations are true, Hatcher's specific assurances and the course of prior dealings between the two of them could have put Jones "off his guard" and thus made it reasonable that Jones trusted Hatcher to complete the application accurately. *Elam*, 182 N.C. at 603. Hatcher told Jones that "all [he] needed to do was sign the application page and pay the first payment" to have homeowner's insurance that provided him the same coverage as his previous policy. It then provided only the third, signature page of a blank application for him to sign. Hatcher had previously applied for and secured Jones a homeowner's insurance policy using this same procedure. Jones knew Hatcher had inspected and photographed Jones's property and used the results of its inspection to complete the earlier application, in lieu of asking Jones specific questions. He relied on that previous experience and instructions by Hatcher, his agent, when he signed the blank application a second time. Jones also knew Hatcher stood to make commission from providing Jones the service of selling and procuring an appropriate insurance policy—so it, too, had an incentive to take care. These allegations of a prior course of conduct and Hatcher's specific assurances are sufficient to allege that Jones may have been reasonably put off his guard, and therefore that Jones was not contributorily negligent.

---

to act with reasonable care after agreeing to secure coverage, and "his negligent default" caused the plaintiff's loss. *Id.* at 602. And either way, common contributory-negligence principles applied. *See id.* at 603. The injured party—whether suing for a "breach of contract which is definite and entire or tort committed"—must "do what reasonable care and business prudence requires to minimize the loss." *Id.* That imports a basic duty to read a document that bears on one's financial interests when accepting or signing it—unless the plaintiff is misled or lulled "off his guard." *Id.*

Thus *Elam* did not vary its rule based on a claim's label. *See id.* And for the plaintiff in *Elam*, the nature of his claim did not alter our conclusion: It was for the jury to decide whether his failure to secure coverage came from his own lapse in not reading the policy. *See id.* at 603–04. This conclusion supports our determination here, that dismissal of Jones's ordinary negligence claim is not appropriate at this Rule 12(b)(6) stage. And it is distinct from *Elam*'s acknowledgement that, in a contract action, the effect of a plaintiff's negligence is only to reduce an award of damages, not to defeat the claim entirely. *See id.* at 604.

Our conclusion that this pleading survives dismissal at this stage is consistent with broader tort law principles. Tort law attaches civil liability to "socially unreasonable" behavior that interferes with the interests of others. W. Page Keeton et al., 1 *Prosser and Keeton on the Law of Torts* § 1, at 6 (5th ed. 1984). What is "socially unreasonable" in turn depends on "the point of view of the individual" and "the point of view of the community as a whole." *Id.* at 6–7. Community members may reasonably expect that, where an agent stands to earn commission for performing a service for a customer, the agent can be trusted to perform that service with due care. After all, if a customer can never trust their agent, what is the point of hiring the agent to begin with? Requiring customers to double-check their agent's homework, no matter the circumstances and as a matter of law, is inconsistent with reasonable social expectations. Simply put, this is not the "rare" case where negligence is so obvious that the court should decide it as a matter of law, because "[w]hat is reasonable under the[se] circumstances is . . . a question on which well-informed people of good faith can disagree." Mark W. Morris, *North Carolina Law of Torts* § 19.20[1][c][iv] (2024). Where, as shown by the pleadings here, "reasonable [people] could reach different conclusions" as to whether the parties acted with due care, the pleadings survive the dismissal motion. *Page v. Sloan*, 281 N.C. 697, 708 (1972).

In sum, we decline Hatcher's invitation to adopt a tort rule detached from common-sense notions of whether a person may reasonably trust his or her agent to carefully complete a document the person signs. We agree with the Court of Appeals that Jones's complaint does not show that he contributed to his injury "so clearly that no other conclusion can be reasonably drawn therefrom." *Ramey*, 262 N.C. at 234. Jones's claim for ordinary negligence was therefore improperly dismissed.

C. Punitive Damages

[2] We also allowed Jones's petition for discretionary review to address a second issue: whether the Court of Appeals erred by misapplying the pleading standard for punitive damages when it affirmed dismissal of Jones's claim. We conclude that the Court of Appeals erred, and we reverse this part of its decision.

In addition to bringing an ordinary negligence claim, Jones brought a claim for gross negligence and separately alleged that punitive damages should be awarded based on Hatcher's allegedly willful or wanton conduct. Gross negligence is a greater degree of negligence than ordinary negligence. *Cullen*, 386 N.C. at 382; *Est. of Savino v. Charlotte-Mecklenburg Hosp. Auth.*, 375 N.C. 288, 300 (2020). Willful or wanton

conduct for punitive damages purposes is a higher or greater degree of negligence than gross negligence. *Est. of Long v. Fowler*, 378 N.C. 138, 154 (2021); N.C.G.S. § 1D-5(7) (2023) (defining "[w]illful or wanton conduct" as "more than gross negligence," and specifically as "the conscious and intentional disregard of and indifference to the rights and safety of others, which the defendant knows or should know is reasonably likely to result in injury, damage, or other harm"). Thus, when a court concludes that a complaint adequately states a claim for willful or wanton conduct, a separate inquiry into whether it states a claim for gross negligence is unnecessary. *Fowler*, 378 N.C. at 154. Contributory negligence is not grounds to dismiss the claim for gross negligence or the demand for punitive damages. *See Cullen*, 386 N.C. at 382.

Because we conclude that Jones sufficiently alleged facts to support punitive damages based on willful or wanton conduct, Jones's claim for gross negligence likewise survives and necessarily overcomes Hatcher's allegation of contributory negligence. *See Fowler*, 378 N.C. at 154; *Cullen*, 386 N.C. at 382. Still, we address contributory negligence in Section II.B and punitive damages in this Section because both are properly before us based on the dissent below and our exercise of discretionary review. Further, should evidence obtained after discovery indicate that a jury could find Hatcher only ordinarily negligent, the issue of whether Jones was contributorily negligent as a matter of law would again be in dispute. Thus, both the contributory negligence issue and the punitive damages issue are ripe for our review.

Turning to the substance of Jones's allegations, "[n]otice pleading principles are applicable to claims for punitive damages." *Fowler*, 378 N.C. at 151. For that reason, a "complaint need not lay out the detailed and specific facts giving rise to punitive damages" liability. *Id.* at 152 (cleaned up). Instead, a plaintiff need only allege "sufficient information . . . from which defendant can take notice and be apprised of the events and transactions which produce the claim to enable him to understand the nature of it and the basis for it." *Id.* at 151 (cleaned up).

These notice pleading principles apply to the specific pleading requirements for a demand for punitive damages. *Id.* Section 1D-15(a) provides that punitive damages can be awarded only if a defendant is liable for compensatory damages and engaged in an "aggravating factor" related to the same injury for which compensatory damages were awarded. One such aggravating factor is "[w]illful or wanton conduct," N.C.G.S. § 1D-15(a), defined by N.C.G.S. § 1D-5(7) as "the conscious and intentional disregard of and indifference to the rights and safety of others, which the defendant knows or should know is reasonably likely to

result in injury, damage, or other harm." Our Rules of Civil Procedure clarify that only the aggravating factor must be "averred with particularity." N.C.G.S. § 1A-1, Rule 9(k). Otherwise, "[m]alice, intent, knowledge, and other condition of mind of a person may be averred generally." N.C.G.S. § 1A-1, Rule 9(b) (2023); *cf. Est. of Savino*, 375 N.C. at 297–99 (concluding that notice pleading principles apply to the specific pleading requirements of medical negligence).

Jones's complaint satisfied this standard. He alleged that Hatcher, while acting as his agent to procure him insurance coverage, knowingly misrepresented basic information about Jones's property. It omitted the existence of the half-acre pond immediately in front of Jones's house, which would have been apparent to any person stepping foot on Jones's property, as the photo incorporated in the complaint showed. And it understated the size of Jones's property, even though Jones had specifically asked Hatcher for insurance for his "roughly 8 acres of land" during a previous deal, Hatcher had inspected the property, and the property's size was a matter of public record. After inducing Jones to apply for a GeoVera policy by promising the same coverage at a substantially lower premium, Hatcher induced GeoVera to issue the policy and thereby realized a financial gain. Given these allegations, as well as the unusually high risk of a substantial claim in this hurricane-vulnerable part of the state and the significant harm to Jones should Hatcher fail to procure him the promised insurance coverage, Jones sufficiently alleged that Hatcher acted with a state of mind of "conscious and intentional disregard of and indifference to the rights and safety of others which the defendant knows or should know is reasonably likely to result in injury, damage, or other harm." N.C.G.S. § 1D-5(7). Thus Jones's allegations state a general theory of punitive damages liability for the "willful or wanton conduct" aggravating factor sufficient to give Hatcher notice of his claims. *See Fowler*, 378 N.C. at 154; N.C.G.S. § 1A-1, Rule 9(k). No more is required to make a demand for punitive damages at the pleading stage.

The Court of Appeals further affirmed dismissal of Jones's demand for punitive damages because Jones failed to allege that "any officer, director, or manager of Hatcher . . . participated in or condoned" the conduct giving rise to punitive damages. *Jones*, 290 N.C. App. at 336. It relied on N.C.G.S. § 1D-15(c) (2023), which bars awards of punitive damages "solely on the basis of vicarious liability for the acts or omissions of another."

Chapter 1D of the General Statutes modified the common law to provide a statutory scheme "governing the standards and procedures

for awarding punitive damages in this state." *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 166–67 (2004). It provides that "a plaintiff must prove certain aggravating factors to be entitled to an award of punitive damages," *id.* at 167 (citing N.C.G.S. § 1D-15(a)), and it guides the trier of fact through the evidence it may consider in making such an award, *id.* (citing N.C.G.S. § 1D-35). Under that statute, punitive damages "may be awarded" against a corporation "only if . . . the officers, directors, or managers of the corporation participated in or condoned" the qualifying tortious conduct. N.C.G.S. § 1D-15(c).

While this statutory scheme provides certain limits on the "award" of punitive damages, it does not use the words "pled" or "plead" or "pleading." A different statutory scheme governs punitive damages pleading requirements: Civil Procedure Rule 9. *See* N.C.G.S. § 1A-1, Rule 9 (2023) ("Pleading special matters."). That rule requires that the aggravating factor for such demands be "averred with particularity," and that the "amount of damages shall be pled in accordance with Rule 8." *Id.* Thus Rule 9 incorporates by reference certain of Chapter 1D's requirements, since the latter identifies and defines the aggravating factors referenced in the pleading rule. Rule 9 does not, however, incorporate by reference N.C.G.S. § 1D-15(c)'s requirements. "We assume that when the General Assembly acts, it does so in accordance with other statutory provisions and rules, including the North Carolina Rules of Civil Procedure," so we must construe Rule 9's special pleading requirements in harmony with Chapter 1D's other provisions. *Rhyne*, 358 N.C. at 190. That Rule 9(k) expressly incorporates some of Chapter 1D's requirements, but not others, indicates that requirements not mentioned in Rule 9 are not part of the special pleading standard for punitive damages. As a matter of statutory interpretation, only the aggravating factor, and not the details of the allegedly tortious corporate agent, must be "averred with particularity."

The operative issue at the Rule 12(b)(6) stage, then, is whether Jones "is barred *as a matter of law* from asserting a claim for punitive damages against defendant in [its] capacity as" a corporate defendant. *Harrell v. Bowen*, 362 N.C. 142, 144 (2008). Traditional notice pleading principles apply. *See Fowler*, 378 N.C. at 151. A plaintiff must only allege facts sufficient to infer that an officer, manager, or director with authority to bind the corporation engaged in the aggravated conduct. *See* N.C.G.S. § 1D-15(c).

At this stage, allegations show Jones did just that. Jones alleged that Hatcher's conduct was engaged in "through [its] authorized employees and agents who were acting within the course and scope of their employment and authority." From this pleading, viewed in the light most

favorable to Jones, it can be inferred that the agent acting on behalf of Hatcher had the authority to bind the corporation as an officer, manager, or director. Jones incorporated into his complaint a copy of the signature page that he and Hatcher's agent signed, which identified Hatcher's signatory as a "producer" for Hatcher and gave Hatcher notice as to which of its agents was involved in the dispute. These allegations give Hatcher notice of the events giving rise to its possible liability for punitive damages and are therefore sufficient to make such a demand at the pleadings stage. The Court of Appeals' contrary holding is reversed.

III. Conclusion

Jones's claims do not present one of those rare cases where contributory negligence is apparent on the face of a plaintiff's complaint as a matter of law. Whether Jones was reasonably put "off his guard" such that he did not violate his general duty to read depends on facts and circumstances as yet to be developed in discovery. His complaint further states a demand for punitive damages liability in any event. For the foregoing reasons, the decision of the Court of Appeals is affirmed in part and reversed in part.

AFFIRMED IN PART AND REVERSED IN PART.

Justice ALLEN concurring in part and dissenting in part.

I agree with the majority that plaintiff Daniel Jones sufficiently alleged a claim for punitive damages against defendant J. Kim Hatcher Insurance Agencies (Hatcher). Try as I might, however, I cannot accept its rationale for holding that plaintiff was not contributorily negligent as a matter of law.

"With certain exceptions, [the defense of] contributory negligence will bar a plaintiff's negligence claim if the defendant shows that the plaintiff could have avoided injury by exercising reasonable care for the plaintiff's own safety." *Cullen v. Logan Devs., Inc.*, 386 N.C. 373, 377 (2024). Although ordinarily a jury must decide whether a plaintiff was contributorily negligent, a court may dismiss a negligence claim if the plaintiff's own factual allegations "show[ ] negligence on [the plaintiff's] part . . . so clearly that no other conclusion can be reasonably drawn." *Ramey v. S. Ry. Co.*, 262 N.C. 230, 234 (1964).

As the majority acknowledges, the law imposes a general duty on individuals to read documents before signing them. *See, e.g.*, *Mills v. Lynch*,

259 N.C. 359, 362 (1963) ("The duty to read an instrument or to have it read before signing it is a positive one, and the failure to do so, in the absence of any mistake, fraud or oppression, is a circumstance against which no relief may be had, either at law or in equity." (cleaned up)). There are good reasons for this duty. With respect to contracts, for example, "[t]he thought is that no one could rely on a signed document if the other party could avoid the transaction by not reading or not understanding the [document]." Joseph M. Perillo, *Calamari and Perillo on Contracts* § 9.41 (6th ed. 2009).

In this case, Hatcher argues that plaintiff's failure to read his 2017 application for homeowner's insurance amounted to contributory negligence. Plaintiff admits in his amended complaint that he signed the signature page of his 2017 application without first reading the application. Indeed, according to the amended complaint, "[t]he signature page did not include the rest of the application, any factual questions for [plaintiff] to answer regarding [plaintiff's] home or property, or any answers to such questions." Moreover, Hatcher "did not ask [plaintiff] any of the application questions relating to [plaintiff's] home or property." The following statement appeared on the signature page just above where plaintiff signed his name: "I have read the above application and any attachments and declare that the information is true and complete."

The majority does not deny that the factual allegations described above would constitute contributory negligence as a matter of law if they told the whole story of plaintiff's dealings with Hatcher. Of course, those allegations do not tell the whole story, or this would be a much simpler case. The amended complaint further alleges that Hatcher assisted plaintiff in obtaining a separate homeowner's insurance policy in 2016. In the majority's view, Hatcher's "specific assurances and the course of prior dealings between [plaintiff and Hatcher] could have put [plaintiff] 'off his guard' and thus made it reasonable that [plaintiff] trusted Hatcher to complete the [2017] application accurately."

The problem with the majority's argument is that plaintiff also exhibited negligence in his 2016 interactions with Hatcher. The amended complaint alleges that the two held a "brief meeting" during which Hatcher outlined the 2016 policy's coverage limits and premiums. Although it inspected and took photographs of plaintiff's property, Hatcher "did not ask [plaintiff] any of the application questions or any other questions regarding the details of [plaintiff's] home or property." Nor did plaintiff "personally fill out the application." Rather, as with the 2017 application, Hatcher merely provided plaintiff with a "single page application form" to sign. In short, the amended complaint alleges that in 2016 and again in

2017 plaintiff signed an insurance application that he did not see—much less read—prepared by an agent who asked him no questions and to whom he furnished no answers.

Negligence plus negligence does not equal reasonable care. In circumstances such as these, a plaintiff should not be able to overcome the defense of contributory negligence by alleging that he engaged in similarly negligent conduct on a previous occasion. I therefore agree with the dissenting judge in the Court of Appeals that "[p]laintiff's conduct, or lack thereof, as alleged in his amended complaint constituted contributory negligence as a matter of law." *Jones v. J. Kim Hatcher Ins. Agencies, Inc.*, 290 N.C. App. 316, 338 (2023) (Collins, J., concurring in result in part and dissenting in part).

The majority relies heavily on *Elam v. Smithdeal Realty & Ins. Co.*, 182 N.C. 599 (1921). There the plaintiff purchased automobile insurance from the defendant insurance agent, who repeatedly assured him that the policy included collision coverage. *Elam*, 182 N.C. at 601. In reality, the policy provided no such coverage, a fact the plaintiff would have grasped if he had read the policy. *Id.* at 603. The plaintiff did not have ready access to the policy, however, because the agent left it with the proprietor of the garage where the plaintiff kept his car. *Id.* at 601. The plaintiff's car was damaged a few days later in an automobile accident. *Id.* After learning that his insurance policy did not cover collisions, the plaintiff sued his insurance agent. *Id.* At the close of the plaintiff's evidence, the trial court granted the insurance agent's motion to end the case. *Id.* This Court reversed, holding that the issue of the plaintiff's own negligence in not reading the policy should have gone to the jury.[1] *Id.* at 603–04.

I think that *Elam* does little to bolster the majority's position. The contributory negligence question in that case was plainly much closer than the one here. The automobile accident in *Elam* occurred less than a week after the agent notified the plaintiff that he had left the policy with the garage proprietor. *Id.* at 601. It is not apparent that the plaintiff acted unreasonably as a matter of law by failing to retrieve the policy and read it during that brief period. In contrast, more than a year passed between

1. Notably, the *Elam* plaintiff did *not* sue his insurance agent for negligence; he sued "for breach of contract of agency." *Elam*, 182 N.C. at 604. In explaining why we were reversing the trial court, this Court remarked that, although contributory negligence could defeat negligence claims, it was not a complete defense to the plaintiff's claim for breach of contract. *Id.* Instead, it was merely a factor for the jury to consider in deciding what damages to award the plaintiff, if he proved his contract claim. *Id.*

plaintiff's signing of the 2017 insurance application and the arrival of Hurricane Florence. Plaintiff thus had over twelve months to obtain and review his application. Had he done so, he would have discovered that it contained materially incorrect information.

The majority is correct in construing *Elam* to say that the duty to read is not absolute. It is "subject to the qualification that nothing has been said or done to mislead [the plaintiff] or to put a man of reasonable business prudence off his guard in the matter." *Id.* at 603. Unlike the majority, I do not see how this case fits into that exception. If anything, Hatcher's reluctance to share the completed 2016 and 2017 applications with plaintiff should have raised plaintiff's suspicions, not put him off his guard. Nonetheless, I can imagine scenarios in which plaintiff's failure to read his 2017 application might be regarded as reasonable. For instance, if plaintiff had reviewed the 2016 application and found it to be accurate, he could plausibly argue that he acted reasonably in trusting Hatcher to complete the 2017 application. No such argument is available, though, based on the facts alleged in the amended complaint.

The majority offers the following additional justification for refusing to classify plaintiff's conduct as contributory negligence: "Community members may reasonably expect that, where an agent stands to earn commission for performing a service for a customer, the agent can be trusted to perform that service with due care."

I see two issues with the majority's statement. First, taken at face value, it completely nullifies the duty to read insurance and other contracts procured by agents who work on commission. Second, the statement ignores the obvious financial incentive—commissions—that such agents have to sell products to customers regardless of whether the products meet the customers' needs. The majority seems momentarily to have forgotten that the amended complaint in this very case alleges that the prospect of a commission motivated an agent to procure a policy that ultimately proved worthless to the customer.

The facts alleged in the amended complaint show that the failure by plaintiff to examine his 2017 homeowner's insurance application amounted to contributory negligence. Accordingly, I respectfully dissent from the majority's conclusion that plaintiff may proceed with his negligence claim against Hatcher.

STATE OF NORTH CAROLINA
v.
JAMES FREDRICK BOWMAN

No. 49A24

Filed 23 May 2025

Sexual Offenses—right to unanimous verdict—first-degree forcible sexual offense—disjunctive instruction—evidence of alternative acts to establish an element—no error

In defendant's prosecution on charges including two counts of first-degree forcible sexual offense, his right to a unanimous jury verdict was not violated where the trial court instructed the jury that it could find defendant guilty of each count upon its determination that the State proved beyond a reasonable doubt that defendant committed a "sexual act"—an element of first-degree forcible sexual offense—against the victim, as established by the commission of any qualifying underlying act which the evidence tended to show: fellatio, anal intercourse, or any penetration of the victim's genital or anal openings. While jury unanimity as to the commission of the element—a "sexual act"—was required, there was no error, let alone plain error, in the disjunctive instruction listing multiple alternative acts, any one of which could establish that element. The Court of Appeals' holding to the contrary was reversed, and the matter was remanded to the lower appellate court for consideration of defendant's other arguments.

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 292 N.C. App. 290 (2024), reversing in part a judgment entered on 25 January 2022 by Judge Josephine K. Davis in Superior Court, Durham County, and remanding the case for a new trial concerning the two counts of first-degree forcible sexual offense. Heard in the Supreme Court on 24 October 2024.

Jeff Jackson, *Attorney General*, *by Sherri Horner Lawrence*, *Special Deputy Attorney General*, *for the State-appellant.*

Glenn Gerding, *Appellate Defender*, *by Aaron Thomas Johnson*, *Assistant Appellate Defender*, *for defendant-appellee.*

RIGGS, Justice.

At the most basic level, the right to a unanimous jury verdict ensures that a person accused of a crime is only convicted if the jury unanimously agrees on the accused's culpability for each charge. In cases where the accused has allegedly committed multiple acts or has been charged with multiple counts of an offense, challenges arise when the trial court's jury instructions either undermine unanimity or fail to emphasize the need for unanimity as to each act. This can occur when jury instructions are disjunctive, meaning that they include mutually exclusive alternative elements joined by the conjunction "or." A new trial might be warranted if circumstances surrounding the trial do not remove the ambiguity of the verdict (i.e., it is unclear whether the jury came to a unanimous verdict). However, controlling precedents establish that if the trial court merely instructs the jury disjunctively as to various alternative acts *which will establish an element of the offense*, the requirement of unanimity is satisfied. Because the Court of Appeals did not apply the controlling precedents and failed to consider the circumstances surrounding the trial that removed ambiguity of the verdict below—such as the entirety of the jury instructions and the evidence incriminating Mr. Bowman—we reverse the Court of Appeals' decision and remand for further proceedings.

I. Factual and Procedural Background

A. Factual Background

On 3 March 2019, James Bowman messaged S.B.[1] on Facebook, and the two began chatting online for a couple of weeks before exchanging numbers. Eventually, they met in person and became involved in an intimate relationship. The relationship soured after S.B. learned that Mr. Bowman was controlling and violent.

On 8 September 2019, S.B. agreed to pick up Mr. Bowman from work early the following morning. S.B.'s phone service turned off and she was unable to get in touch with Mr. Bowman by the time Mr. Bowman was ready to leave work. Around five-thirty in the morning, S.B. woke up to Mr. Bowman banging on the window, exclaiming, "Open up this effing door." S.B. complied.

Mr. Bowman accused S.B. of sleeping with another man while he was at work. S.B. denied that allegation, and Mr. Bowman became violent. First, he punched S.B. in her chest multiple times. S.B. felt her only option was to endure the blows. S.B. testified that she was afraid of Mr.

1. We use the pseudonym S.B. to protect the victim's identity pursuant to Rule 42(b).

Bowman because she knew he was armed with a firearm that she had loaned to him.

Mr. Bowman drew the gun at S.B. and demanded that she remove her clothes. S.B. complied and Mr. Bowman her told to "[t]urn around" and "bend over so he could go in anally." Mr. Bowman inserted his fingers into S.B.'s anal opening while still pointing the gun at her head. Mr. Bowman then removed his fingers and inserted his penis into S.B.'s anal opening. Next, Mr. Bowman forced S.B. to perform fellatio. At this point, he cocked the gun and "put it to the top of [S.B.'s] head." S.B. believed that Mr. Bowman would kill her if she did not do what he demanded. After forcing S.B. to perform oral sex, Mr. Bowman forced her to have vaginal sex with him. During the course of the attack, S.B. "zoned out" and did not remember all of the details of the attack.

B. Grand Jury Indictment and Trial

A Durham County grand jury indicted Mr. Bowman for seven criminal offenses on 21 October 2019. Relevant here, the indictment labeled 19CR002364 listed two charges (Charges II and III) of first-degree forcible sexual offense in violation of N.C.G.S. § 14-27.26. Charges II and III of the indictment both provide:

> The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously engage[d] in a sex offense with [S.B.], by force and against the victim's will.

Mr. Bowman entered pleas of not guilty on all charges and opted for trial. On 23 March 2021, the trial court declared a mistrial because of a hung jury. Mr. Bowman's second trial commenced on 17 January 2022. Along with S.B., the State offered the testimony of several police officers, investigators, nurse practitioners, Mr. Bowman's ex-girlfriend, one of S.B.'s daughters, and S.B.'s children's father. Mr. Bowman did not present any evidence.

The trial court provided jury instructions for each of the charged offenses. As to the sexual act prong of the statute for first-degree forcible sexual offense, the trial court stated the following:

> For you to find [Mr. Bowman] guilty of first degree forcible sexual offense, the State must prove to you four things beyond a reasonable doubt. First, that the defendant engaged in a sexual act with the alleged

> victim. A sexual act means fellatio, which is any touching by the lips or tongue of one person and the male sex organ of another; anal intercourse, which is any penetration, however slight, of the anus of any person by their male or sexual organ; and, C, any penetration, however slight, by an object into the genital or anal opening of a person's body. . . .
>
> If you find from the evidence beyond a reasonable doubt that on or about the alleged date, [Mr. Bowman] engaged in a sexual act . . . with [S.B.] . . . by force and/or threat of force and that this was sufficient to overcome any resistance which the alleged victim might make, that the alleged victim did not consent and it was against the alleged victim's will and that the defendant employed and/or displayed a weapon, it would be your duty to return a verdict of guilty of first degree forcible sexual offense. If you do not so find or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of first degree forcible sexual offense but consider whether or not [Mr. Bowman] is guilty of second degree forcible sexual offense.

After reciting the elements for each respective charge, the trial court then instructed the jury on unanimity:

> It is your duty to find the facts and render a verdict reflecting the truth. All 12 of you must agree to your verdict. You cannot reach a verdict by majority vote.
>
> When you have agreed upon a unanimous verdict as to each charge, your foreperson should so indicate on the verdict forms.

The next day, on 25 January 2022, the jury returned guilty verdicts against Mr. Bowman on all seven charges. For the two first-degree forcible sexual offense charges, the verdict sheet completed by the jury foreperson is shown below:

IN 19CRS2364, COUNT 2, WE, THE JURY, BY UNANIMOUS DECISION, FIND THE DEFENDANT TO BE:

__X__ 1. GUILTY OF FIRST DEGREE SEXUAL OFFENSE

OR

_____ 2. GUILTY OF SECOND DEGREE SEXUAL OFFENSE

OR

_____ 2. NOT GUILTY

IN 19CRS2364, COUNT 3, WE, THE JURY, BY UNANIMOUS DECISION, FIND THE DEFENDANT TO BE:

__X__ 1. GUILTY OF FIRST DEGREE SEXUAL OFFENSE

OR

_____ 2. GUILTY OF SECOND DEGREE SEXUAL OFFENSE

OR

_____ 2. NOT GUILTY

The trial court then sentenced Mr. Bowman to a consolidated sentence of 365 to 498 months of active imprisonment. At the conclusion of sentencing, Mr. Bowman entered notice of appeal.

C. Court of Appeals' Decision

In a split decision, the Court of Appeals reversed Mr. Bowman's judgment in part and remanded for a new trial on the offenses of first-degree forcible sexual offense. *See State v. Bowman*, 292 N.C. App. 290, 298 (2024). The majority held that Mr. Bowman established the trial court's plain error in instructing the jury on only one count of first-degree forcible sexual offense. *Id.* Specifically, the Court of Appeals concluded that under its precedent in *State v. Bates*, 179 N.C. App. 628 (2006) (setting forth four factors to consider in determining whether the defendant was denied a unanimous verdict: (1) the evidence, (2) the indictments, (3) the jury charge, and (4) the verdict sheets), a new trial was required "because it was not 'possible to match the jury's verdict of guilty with specific incidents presented in evidence' without a special verdict sheet, the trial court's single instruction as to first-degree forcible sexual offense was erroneous and jeopardized [Mr. Bowman's] right to a unanimous verdict." *Bowman*, 292 N.C. App. at 296 (quoting *Bates*, 179 N.C. App. at 634).

The dissent argued the trial court did not commit plain error in failing to repeat its jury instruction regarding the first-degree forcible sexual offense, pointing to controlling precedents. *Id.* at 298 (Thompson, J., dissenting). The dissent acknowledged that the indictments did not

specify which sexual acts Mr. Bowman committed; however, the dissent further argued that the record evidence of fellatio, anal sex, and other forms of penetration "could support the two first-degree forcible sexual offenses." *Id.* at 298–99. Moreover, the dissent argued the majority incorrectly applied the four-factor test adopted in *Bates* because, in sum, the case at hand was distinguishable from *Bates*. *Id.* at 302; *see Bates*, 179 N.C. App. at 633. Further, *Bates* was decided on remand in light of our decision in *State v. Lawrence*, 360 N.C. 368 (2006), for the proposition that the statute for first-degree forcible sexual offense, N.C.G.S. § 14-27.26, does not list "discrete criminal activities in the disjunctive" and, thus, does not involve the "risk of a nonunanimous verdict." *Bowman*, 292 N.C. App. at 303 (cleaned up).

After the Court of Appeals ordered a new trial, the State moved for a temporary stay and petitioned this Court for a writ of supersedeas on 23 February 2024. We allowed those filings on 26 February 2024 and 14 March 2024, respectively, and the State filed its notice of appeal based on Judge Thompson's dissent on 12 March 2024.

II. Analysis

A. Standard of Review

This Court has jurisdiction to hear appeals "from any decision of the Court of Appeals rendered in a case . . . [i]n which there is a dissent." N.C.G.S. § 7A-30(2) (2023), *repealed by* Current Operations Appropriations Act of 2023, S.L. 2023-134, § 16.21(d)–(e), https://www.ncleg.gov/Sessions/2023/Bills/House/PDF/H259v7.pdf.[2] And on appeal before this Court, our "review . . . is limited to a consideration of those issues that are (1) specifically set out in the dissenting opinion as the basis for that dissent, (2) stated in the notice of appeal, and (3) properly presented in the new briefs." N.C. R. App. P. 16(b) (amended 2025).

The instant appeal is one based upon the dissent in *Bowman*, 292 N.C. App. 290. Judge Thompson dissented on the ground that the trial court did not commit plain error, and the State's notice of appeal and principal brief argue the same. Mr. Bowman's principal brief defends the Court of Appeals majority's decision but asks, if we overturn that decision, that we remand for consideration of Mr. Bowman's unaddressed arguments in which Mr. Bowman requested—at the Court of Appeals—that the court reverse one of the two sex offense convictions, vacate the

2. Although the General Assembly repealed subsection 7A-30(2), we nonetheless proceed with mandatory review because "[t]his appeal was filed and docketed at the Court of Appeals before the effective date of that act." *Bottoms Towing & Recovery, LLC v. Circle of Seven, LLC*, 386 N.C. 359, 361 n.1 (2024).

trial court's judgment, and remand his case for resentencing. Thus, our appellate review is limited to two questions: (1) whether the Court of Appeals correctly concluded that the trial court committed plain error by violating Mr. Bowman's right to a unanimous jury verdict; and (2) if not, whether we should remand the case so the Court of Appeals can decide Mr. Bowman's remaining arguments.

B. Plain Error Review

Under Rule 10 of our appellate rules, if a person accused of a crime fails to preserve an issue for appeal during trial, then they waive the right to appeal that issue unless the accused demonstrates that the trial court committed plain error.[3] N.C. R. App. P. 10(a)(4). Plain error review applies to "unpreserved instructional or evidentiary error[s]" which occur at trial. *State v. Lawrence*, 365 N.C. 506, 518 (2012). "[P]lain error review is unavailable for issues that fall within the realm of the trial court's discretion." *State v. Gillard*, 386 N.C. 797, 821 (2024) (cleaned up). Because Mr. Bowman is contesting the trial court's jury instructions that he did not object to at trial, the proper standard of review to be applied in the instant case is plain error.

Our plain error test requires the accused to show that (1) a fundamental error occurred at trial (2) that had a probable impact on the outcome and (3) is an exceptional case that warrants plain error review. *State v. Reber*, 386 N.C. 153, 158 (2024) (citing *Lawrence*, 365 N.C. at 518–19); *cf. State v. Odom*, 307 N.C. 655, 660 (1983) ("The plain error rule is always to be applied cautiously and only in the exceptional case . . . ." (cleaned up)). This rule is designed to "incentivize the parties to make timely objections so that the trial court may resolve the issue in real time," *State v. Collington*, 375 N.C. 401, 410 (2020), but to also "alleviate the potential harshness of preservations rules," *id.* (quoting *Lawrence*, 365 N.C. at 514).

For the reasons below, we hold that the Court of Appeals erred in holding that the trial court's jury instruction amounted to plain error. Thus, we reverse the order for a new trial. Additionally, we remand to the Court of Appeals for consideration of Mr. Bowman's remaining arguments.

C. Right to a Unanimous Jury Verdict

The North Carolina Constitution and the General Statutes of North Carolina require a unanimous jury verdict in a criminal jury trial. N.C.

---

3. An issue on appeal may also be preserved as a matter of rule or law. Mr. Bowman does not argue that this case involves such an issue.

Const. art. I, § 24; N.C.G.S. § 15A-1237(b) (2023); *see also State v. Jordan*, 305 N.C. 274, 279 (1982); *State v. Williams*, 286 N.C. 422, 427 (1975) ("It has never been doubted that the Constitution of this State requires a unanimous verdict for a valid conviction for any crime."). This is a bedrock principle in our state.

In contrast, this Court has established that "if the trial court merely instructs the jury disjunctively as to various alternative acts *which will establish an element of the offense*, the requirement of unanimity is satisfied." *Lawrence*, 360 N.C. at 374 (quoting *State v. Lyons*, 330 N.C. 298, 303 (1991)); *see State v. Hartness*, 326 N.C. 561 (1990) (holding that when a "single wrong is established by a finding of various alternative elements" a trial judge's disjunctive instruction as to the alternatives that establish the element does not implicate the right to a unanimous verdict). In other words, a disjunctive instruction does not violate a defendant's right to a unanimous verdict if that instruction only involves alternative acts which will establish an element of an offense. The jury does not need to be unanimous in finding a particular act among two or more alternative acts that constitute an element of an offense.

A first-degree forcible sexual offense is "a sexual act with another person by force and against the will of the other person." N.C.G.S. § 14-27.26(a) (2023). A "sexual act" includes "[c]unnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse." N.C.G.S. § 14-27.20(4) (2023). "Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body." *Id.*

In *Hartness*, we established that the risk of a nonunanimous verdict does not arise in cases where a statute does not list, as elements of the offense, discrete criminal activities in the disjunctive in the same manner as statutes that enumerate proscribed activities, each of which is a discrete criminal offense. *See Hartness*, 326 N.C. at 564–65. There, Mr. Hartness was indicted for three counts of taking indecent liberties with a minor. *Id.* at 562. The State's evidence tended to show Mr. Hartness engaged in various forms of sexual relations with children. *Id.* at 563. The trial court's instruction on indecent liberties instructed the jury to the first element as follows: "That the defendant willfully took an indecent liberty with a child for the purpose of arousing or gratifying sexual desire." *Id.* The court defined "indecent liberty" as "an immoral, improper or indecent touching or act by the defendant upon the child," or "an inducement by the defendant of an immoral or indecent touching by the child." *Id.* Mr. Hartness argued that the jury could have split in its decision regarding *which* act constituted the offense—his touching of

his stepson or his stepson's touching of him—making it impossible to determine whether the jury was unanimous in its verdict. *Id.* The Court of Appeals agreed with Mr. Hartness after incorrectly applying the analysis from *State v. Diaz*, 317 N.C. 545 (1986), *abrogated by Hartness*, 326 N.C. 561, which dealt with a drug trafficking statute. *Hartness*, 326 N.C. at 564.

This Court, however, explained that the indecent liberties statute, N.C.G.S. § 14-202.1, does not list discrete criminal activities in the same manner as the drug trafficking statute in *Diaz*, N.C.G.S. § 90-95(h)(1), which enumerates proscribed activities (sale, manufacturing, delivery, transportation, or possession) that may each be charged as separate offenses. *Hartness*, 326 N.C. at 564–65; *see* N.C.G.S. § 90-95(h)(1) (2023). The indecent liberties statute proscribes *any* "immoral, improper, or indecent liberties," each of which is one of the means to meet an element of the crime charged. *See Hartness*, 326 N.C. at 565; N.C.G.S. § 14-202.1(a)(1) (2023). Thus, whether the jury found that Mr. Hartness touched his stepson or his stepson touched him, "the jury as a whole would unanimously find that there occurred sexual conduct" that is prohibited by the indecent liberties statute, and such a finding would establish the element of the crime charged. *Hartness*, 326 N.C. at 565.

This Court in *Diaz* held that disjunctive instructions resulted in an ambiguous and uncertain verdict because the drug trafficking statute at issue in that case criminalized the "[s]ale, manufacture, delivery, transportation, and possession of 50 pounds or more of marijuana" which are separate trafficking offenses for which a defendant may be separately convicted and punished. *Diaz*, 317 N.C. at 554. The trial court submitted two possible crimes to the jury and the jury could find the defendant guilty of either or both crimes. *Id.* at 554. We held it was not possible to determine whether the jurors unanimously found that the defendant was guilty of possession, transport, or both, or whether there were any splits in what the jury determined the defendant was guilty of. *Id.* (stating that there is no way for the Court to know whether "some jurors found that defendant possessed [the drugs] . . . and some found that he transported [them]"). However, we also recognized that it is not the case that "a simple verdict of guilty based on an indictment and instruction charging crimes in the disjunctive will always be fatally ambiguous." *Id.* Further, the verdict, the charge, the jury instructions, and the evidence in a case may remove any ambiguity created by the charge. *Id.* (citing *State v. Hampton*, 294 N.C. 242 (1978)).

In *Lyons*, we clarified that "critical difference between the lines of cases represented by *Diaz* and *Hartness*" is that the former line

"establishes that a disjunctive instruction, which allows the jury to find a defendant guilty if he commits either of two underlying acts, *either of which is in itself a separate offense*, is fatally ambiguous because it is impossible to determine whether the jury unanimously found that the defendant committed one particular offense." *Lyons*, 330 N.C. at 302. "The latter line establishes that if the trial court merely instructs the jury disjunctively as to various alternative acts *which will establish an element of the offense*, the requirement of unanimity is satisfied." *Id.* at 303.

In *Lyons*, the trial instructions at issue were given in a disjunctive form on the charge of maliciously assaulting in a secret manner, which involves the jury agreeing that the defendant had assaulted a particular individual. 330 N.C. at 314. The trial court's instructions allowed the jury to decide one of two possible crimes for which the defendant could be separately convicted and punished: malicious secret assault against one victim and the same against another possible victim. *Id.* We held that the jury's verdict could not be deemed unanimous because the jury could have returned a verdict of guilty without all jurors agreeing that the defendant assaulted one particular individual. *Id. Lyons* was different from the *Hartness* line of cases because the "gravamen of the offense of maliciously assaulting in a secret manner" is the assault of a *particular* individual in that manner. *Id.* In contrast, the gravamen of the offenses in the *Hartness* line of cases—the taking of indecent liberties with a child—is not the particular conduct. *Id.* It is the intent or purpose of the defendant, and the statute provides the alternative ways to establish that the wrong occurred. *Id.*

We dealt with a challenge to jury instructions on the offense of first-degree sexual offense in *State v. Foust*, 311 N.C. 351, *opinion reinstated sub nom. State v. Peoples*, 311 N.C. 515 (1984). There, the indictment against Mr. Foust charged him with one count of first-degree sexual offense. *Foust*, 311 N.C. at 359. The State's evidence tended to show the commission of two distinct first-degree sexual offenses: anal intercourse and fellatio. *Id.* The trial court instructed the jury that "[a] sexual act . . . mean[t] oral sex or anal intercourse" and that it "must return a verdict of guilty if [it] found that [Mr. Foust] engaged in 'oral sex or anal sex' with the victim and . . . all the other elements of first-degree sexual offense." *Id.* Mr. Foust was convicted of the first-degree sexual offense charge. *Id.* Based on this instruction, Mr. Foust appealed, arguing "that possibly six of the jurors could have found him guilty of anal intercourse, while the remaining six jurors could have found him guilty of the act of oral sex." *Id.* We acknowledged that the trial court's instructions "would allow the jury to return a guilty verdict . . . without requiring that all twelve

members agree as to the guilt on at least one of the offenses." *Id.* Under those circumstances, there would be no unanimity among the jurors as to the specific crimes committed.

But we ultimately held in *Foust* that there was no error. *Id.* at 360. We considered that the trial court had instructed the jury to "return a verdict of not guilty" if it "[did] not so find or if [it had] a reasonable doubt as to one or more of [the specific acts]." *Id.* at 359. Further, the trial court instructed that the jury's "verdict[ ] must be unanimous" rather than reflecting a mere "majority." *Id.* "[R]ead as a whole," we were convinced that the trial court's jury instruction "obviously required a verdict of not guilty if all twelve jurors were not satisfied beyond a reasonable doubt that the defendant participated in either fellatio or anal intercourse, or both." *Id.* at 360. This conclusion was bolstered by the absence of "any confusion, misunderstanding[,] or disagreement among the jury members regarding the unanimity of the verdict" and the presence of "evidence amply sustain[ing] a conviction for either or both offenses." *Id.* Considering these factors, we upheld Mr. Foust's conviction, but we made it clear that it was the "better practice" in first- and second-degree sexual offense cases for trial courts to "submit separate issues of each unlawful sexual act if more than one act exists." *Id.*

Here, like in *Foust*, the trial court below issued jury instructions that "obviously required a verdict of not guilty if all twelve jurors were not satisfied beyond a reasonable doubt that [Mr. Bowman] participated in either" fellatio, anal intercourse, or any penetration into the genital or anal openings. *See id.* Relevant to the first element of first-degree sexual offense, those instructions provided:

> For you to find the defendant guilty of first degree forcible sexual offense, the State must prove to you four things beyond a reasonable doubt. First, that the defendant engaged in a sexual act with the alleged victim. A sexual act means *fellatio*, which is any touching by the lips or tongue of one person and the male sex organ of another; *anal intercourse*, which is any penetration, however slight, of the anus of any person by their male or sexual organ; and, C, *any penetration*, however slight, by an object into the genital or anal opening of a person's body.

(Emphases added.). The trial court then explained that the jury could only return a guilty verdict if it found that Mr. Bowman "engaged in a sexual act . . . with the alleged victim." The trial court further instructed

that the jury could "not return a verdict of guilty of first degree forcible sexual offense" if it did "not so find or have a reasonable doubt as to one or more of these things." Then, after instructing the jury on the remaining charges, the trial court informed the jury that "[a]ll 12 of [the jurors] must agree to [the] verdict" and that there could be no "verdict by majority vote." Thus, the trial court's entire jury instructions as a whole provided adequate constitutional certainty as to the unanimity of the verdict.

This is not to say that Mr. Bowman's trial was flawless. The State's indictment against Mr. Bowman contained two identical counts of first-degree forcible sexual offense that did not specify a sexual act but instead stated: "[T]he defendant named above unlawfully, willfully and feloniously engage[d] in a sex offense . . . by force and against the victim's will." And the verdict sheets provided no clarity as to which specific sexual act on which the jury unanimously agreed. They simply referred to the charges listed in the indictment by "Count 2" and "Count 3." These verdict sheets were not consistent with the "better practice" we offered in *Foust*: "[T]rial judges in cases involving first or second-degree sexual offenses[ ] [should] submit *separate* issues of *each unlawful sexual act* if more than one act exists." *Foust*, 311 N.C. at 360 (emphases added).

We find the case at bar to track the *Hartness* line of cases and most relevantly, the logic in *Foust* carries particular weight. Here, evidence submitted to the jury does allow us to conclude that there was possible unanimity in the jury's decision. S.B. testified in detail about the incident. She talked about how Mr. Bowman pointed a firearm "[t]o the back of [her] head" with one hand while inserting his fingers into her anus. According to S.B., Mr. Bowman next "forc[ed]" her to engage in anal intercourse, producing a painful feeling that continued for what "seemed like forever." And following that, S.B. claimed Mr. Bowman placed his firearm "at the top of [her] head," "cocked it," and forced her to perform fellatio on him. This testimony was further substantiated by her police report, the sexual assault examination report, and her underwear stained with blood from her anus. Also concerning is Mr. Bowman's history—he previously expressed a desire to commit forcible anal intercourse with a different victim, albeit some years ago. The jury heard evidence of three separate acts that would fall within the definition of "sexual act." Further, the trial court's instructions provided the elements of the first-degree forcible sexual offense charge, defining the various acts that would constitute a forcible sexual offense (i.e., meet the statute's definition of the crime), and the instructions emphasized the need for unanimity.

Because the trial court's jury instructions and the evidence on record cleared the verdict of any ambiguity, we cannot say that the trial

court violated Mr. Bowman's right to a unanimous jury verdict, let alone that it committed plain error.

III. Conclusion

Mr. Bowman has not demonstrated that the trial court committed plain error. Thus, we reverse the Court of Appeals' decision. Because the Court of Appeals did not reach Mr. Bowman's additional arguments, though, we remand to the Court of Appeals for further proceedings to address those arguments in a manner not inconsistent with this opinion.

REVERSED AND REMANDED.

STATE OF NORTH CAROLINA
v.
ERIC RAMOND CHAMBERS

No. 56PA24

Filed 23 May 2025

Jury—criminal trial—constitutional right to unanimity—amended juror substitution statute—deliberations begin anew

In a prosecution that resulted in convictions on charges of first-degree murder and assault with intent to kill inflicting serious injury arising from a shooting at a hotel that left a man dead and a woman injured, defendant's state constitutional right that a conviction only be returned by a unanimous jury of twelve was not violated where, after a partial hour of deliberations was completed, one juror was excused, an alternate juror was substituted, and the newly composed jury was instructed to restart its deliberations from the beginning. The amended version of the statutory section relied upon by the trial court (N.C.G.S. § 15A-1215(a))—allowing a juror to be excused and an alternate juror to be substituted after the deliberations in a criminal trial had begun (altering the previous version of the law, which only allowed such a substitution before the case was submitted to the jury)—was upheld because it required that (1) no "more than 12 jurors participate in the jury's deliberations," and (2) after a substitution, the jury must begin its deliberations anew.

Justice RIGGS concurring in part and dissenting in part.

Justice EARLS joins in this concurring in part and dissenting in part opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 292 N.C. App. 459, 898 S.E.2d 86 (2024), vacating judgments entered on 8 April 2022 by Judge Rebecca W. Holt in Superior Court, Wake County, and remanding the case for a new trial. Heard in the Supreme Court on 11 February 2025.

Jeff Jackson, Attorney General, by Caden William Hayes, Assistant Attorney General, for the State-appellant.

Glenn Gerding, Appellate Defender, by Heidi Reiner, Assistant Appellate Defender, for defendant-appellee.

NEWBY, Chief Justice.

In this case we resolve whether a statute that allows a juror to be excused and substituted by an alternate after the jury in a criminal trial has begun to deliberate violates our state constitution. Article I, Section 24 requires a conviction to be by a unanimous jury in open court. This Court has consistently held that a constitutionally prescribed jury in a criminal case must be composed of twelve people. The statute in question requires a jury to begin its deliberations anew following the substitution of an alternate juror. We therefore conclude that the statute does not violate defendant's state constitutional right to a jury of twelve, and we reverse the decision of the Court of Appeals.

Defendant was charged with first-degree murder and assault with a deadly weapon with intent to kill inflicting serious injury after a man was killed and a woman was injured in a shooting at a Raleigh motel. Defendant represented himself at trial, and he chose to be absent from the courtroom after the trial court cut off his closing argument for failure to follow the trial court's instructions.

At 4:44 p.m. on 7 April 2022, the jury retired to commence deliberations. At 4:57 p.m., the jury sent a note to the trial court asking if deliberations would end for the day at 5:15 p.m. The trial court informed the jury that they would be released at 5:15 p.m. unless the jury decided unanimously to stay later. Deliberations resumed at 5:02 p.m. but halted again at 5:11 p.m., when Juror #5 asked to be excused for a medical appointment the next morning. The trial court called and released the jury for the day. The trial court then conducted a colloquy with Juror

#5 and ultimately excused him. Having elected to remain absent, defendant was not in the courtroom during the trial court's discussions with the jury or Juror #5, and he therefore did not raise any objection to the excusal.

Defendant was absent again when the jury reassembled at 9:35 a.m. the next morning. The trial court informed the jury that Juror #5 had been excused and that the first alternate juror would be substituted. The trial court instructed the jury to "restart . . . deliberations from the beginning. This means that you should disregard entirely any deliberations taken place before the alternate juror was substituted and should consider freshly the evidence as if the previous deliberations had never occurred." Defendant, being absent, did not object to the substitution of the alternate or the trial court's instruction. The jury exited the courtroom at 9:38 a.m. and deliberated, asking to review evidence and for clarification on relevant law. At 12:27 p.m., it informed the court that it had reached a verdict. The jury found defendant guilty of both charges, and the trial court sentenced him to life in prison without the possibility of parole for the first-degree murder conviction and 110 to 144 months imprisonment for the assault conviction, to be served consecutively with his life sentence.

Defendant filed a petition for writ of certiorari with the Court of Appeals, which that court allowed. *State v. Chambers*, 292 N.C. App. 459, 460, 898 S.E.2d 86, 87 (2024). There defendant contended that the trial court's substitution of an alternate juror during deliberations violated his state constitutional right to a twelve-person jury. The Court of Appeals unanimously agreed. *Id.* at 460, 462, 898 S.E.2d at 87, 88. Specifically, it reasoned that Article I, Section 24 of the North Carolina Constitution forbids substitution of alternate jurors after deliberations commence because such substitution results in juries of more than twelve persons determining a defendant's guilt or innocence. *Id.* at 460–61, 898 S.E.2d at 87–88 (citing *State v. Bunning*, 346 N.C. 253, 255–56, 485 S.E.2d 290, 291–92 (1997)). Therefore, the Court of Appeals held that by substituting the alternate juror, the verdict was reached by a jury of thirteen people in violation of our state constitution. *Id.* at 461, 898 S.E.2d at 87–88. It further held that N.C.G.S. § 15A-1215(a), which expressly allows for mid-deliberation juror substitution, conflicted with the state constitution and thus could not support a different outcome. *Id.* at 462, 898 S.E.2d at 88. The Court of Appeals therefore vacated defendant's convictions and remanded for a new trial. *Id.* at 459, 461–62, 898 S.E.2d at 87–88.

The State filed a petition for discretionary review, seeking review of two issues: (1) whether defendant waived his challenge to the

constitutionality of subsection 15A-1215(a), and (2) whether subsection 15A-1215(a) is constitutional as amended. We allowed the State's petition on 28 June 2024. We review these questions of law and constitutional questions de novo. *State v. Romano*, 369 N.C. 678, 685, 800 S.E.2d 644, 649 (2019); *N.C. State Bd. of Educ. v. State*, 371 N.C. 149, 157, 814 S.E.2d 54, 60 (2018).

As a preliminary matter, the State contends that defendant waived his right to challenge the constitutionality of subsection 15A-1215(a) on appeal by failing to object to the substitution of the alternate juror at trial. Ordinarily, "[i]n order to preserve an issue for [appeal], a party must . . . present[ ] to the trial court a timely request, objection, or motion"; "stat[e] the specific grounds for the ruling . . . desired"; and "obtain a ruling" from the trial court. N.C. R. App. P. 10(a)(1). "[E]ven constitutional challenges are subject to the . . . strictures of Rule 10(a)(1)." *State v. Bursell*, 372 N.C. 196, 199, 827 S.E.2d 302, 305 (2019). These criteria were clearly not met here.

The Rules of Appellate Procedure provide, however, that some issues may be, "by rule or law[,] . . . deemed preserved . . . without [taking] any such action." N.C. R. App. P. 10(a)(1). At times, this Court has recognized the significance of errors related to a jury's structure. In *State v. Bindyke*, this Court concluded that the presence of an alternate in the jury room was error per se, noting that such "a fundamental irregularity of constitutional proportions . . . requires a mistrial or vitiates the verdict . . . notwithstanding the defendant's counsel consented, or failed to object." 288 N.C. 608, 623, 220 S.E.2d 521, 531 (1975). We made a similar observation in *State v. Bunning*: "A trial by a jury which is improperly constituted is so fundamentally flawed that the verdict cannot stand." 346 N.C. 253, 257, 485 S.E.2d 290, 292 (1997) (declining to apply harmless error review to issues regarding the jury's structure). This make sense; after all, the jury is perhaps *the* hallmark of the American criminal justice system. Accordingly, we hold that issues related to the structure of the jury that found defendant guilty were preserved notwithstanding defendant's failure to object at trial.

We now turn to consider the constitutionality of subsection 15A-1215(a), which pertinently provides:

> The judge may permit the seating of one or more alternate jurors. . . . If at any time prior to a verdict being rendered, any juror dies, becomes incapacitated or disqualified, or is discharged for any other reason, an alternate juror becomes a juror, in the order in which selected, and serves in all respects as those selected

> on the regular trial panel. If an alternate juror replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. In no event shall more than [twelve] jurors participate in the jury's deliberations.

N.C.G.S. § 15A-1215(a) (2023). When originally enacted in 1977, section 15A-1215 allowed an alternate juror to be substituted at any point *before the case was submitted to the jury*. An Act to Amend the Laws Relating to Criminal Procedure, ch. 711, § 1, 1977 N.C. Sess. Laws 853, 858. Upon submission of the case to the jury, alternate jurors who had not been substituted were dismissed. *Id.* Because substitution of an alternate necessarily occurred prior to the commencement of the jury's deliberations, the original statute did not require the trial court to instruct the jury to begin deliberations anew with the alternate juror. *Id.* Subsection 15A-1215(a) was amended to its current language in 2021 to permit the substitution of an alternate juror at any time *before the verdict is rendered*. An Act to Modify the Provisions Regulating the Service and Release of Alternate Jurors, S.L. 2021-94, § 1, 2021 N.C. Sess. Laws 374, 374. The amendment also added two new provisions to the statute: (1) the requirement for the trial court to instruct the jury to restart its deliberations following substitution of the alternate, and (2) the express mandate that no more than twelve jurors participate in deliberations. *Id.*

In reviewing the constitutionality of this statute, we must "presume that [it] is constitutional." *State v. Tirado*, No. 267PA21, slip op. at 14 (N.C. Jan. 31, 2025). Furthermore, we may strike it down only if "it violate[s] the express constitutional text" and its unconstitutionality is demonstrated "beyond a reasonable doubt." *Id.* at 17–18. "Every constitutional inquiry examines the text of the relevant provision, the historical context in which the people of North Carolina enacted it, and this Court's precedents interpreting it." *Id.* at 18.

Article I, Section 24 generally requires a criminal conviction to be by "the unanimous verdict of a jury in open court." N.C. Const. art. I, § 24. The "essential attributes" of a constitutionally prescribed jury include "number, impartiality, and unanimity." *State v. Dalton*, 206 N.C. 507, 512, 174 S.E. 422, 425 (1934).[1] The question before us involves the first essential attribute: number.

---

1. Our discussion in this case is limited to the constitutional requirements for juries in criminal cases. In civil cases, the General Assembly has provided that "parties may stipulate that the jury will consist of any number less than [twelve]" in circumstances where a jury is not required by statute. N.C.G.S. § 1A-1, Rule 48 (2023).

At common law, a jury was comprised of twelve people, John V. Orth & Paul Martin Newby, *The North Carolina State Constitution* 80 (2d ed. 2013), and our precedent has long recognized that this common law requirement was engrafted into Article I, Section 24's right to a jury trial, *Dalton*, 206 N.C. at 512, 174 S.E. at 424–25 ("It is not questioned either that trial by jury is deeply rooted in our institutions or that the term 'jury' as understood at common law and as used in the [c]onstitution imports a body of twelve men duly summoned, sworn, and impaneled . . . ."); *State v. Hudson*, 280 N.C. 74, 79, 185 S.E.2d 189, 192 (1971) ("It is a fundamental principle of the common law, declared in Magna Charta and incorporated in our Declaration of Rights, that '[n]o person shall be convicted of any crime but by the unanimous verdict of a jury in open court.' . . . It is elementary that the jury provided by law for the trial of indictments is composed of twelve persons . . . ." (alteration in original)); *Bindyke*, 288 N.C. at 623, 220 S.E.2d at 531 ("[T]here can be no doubt that the jury contemplated by our Constitution is a body of twelve persons who reach their decision in the privacy and confidentiality of the jury room."). This Court has repeatedly held that no variation in the number of jurors participating in a verdict is permissible. *Whitehurst v. Davis*, 3 N.C. (2 Hayw.) 113, 113 (1800) (per curiam) (ordering a new trial where thirteen jurors participated in the verdict because "any innovation amounting in the least degree to a departure from the ancient mode, may cause a departure in other instances, and in the end, endanger or pervert this excellent institution from its usual course"[2]); *Hudson*, 280 N.C. at 78–80, 185 S.E.2d at 192–93 (awarding *ex mero motu* a new trial where defendant consented to be bound by the verdict of a jury of eleven after the twelfth juror fell ill prior to deliberations).

Looking to subsection 15A-1215(a), we conclude that its unconstitutionality has not been shown beyond a reasonable doubt. Indeed, although it contemplates the substitution of alternative jurors, it provides two critical safeguards that ensure that the twelve-juror threshold remains sacrosanct. Not only does subsection 15A-1215(a) provide that "[*i*]*n no event* shall more than [twelve] jurors participate in the jury's deliberations"; it also requires trial courts to instruct juries to "begin . . . deliberations anew" if an alternative juror is substituted after jury deliberations have begun. N.C.G.S. § 15A-1215(a) (2023) (emphasis added). This requirement preserves the statute's constitutionality. When a jury follows the trial court's instruction and restarts deliberations, as

2. The word "pervert" in this quotation was changed to "prevent" in the current printing of the North Carolina Reports. We use the language from the first printing here for accuracy.

it is presumed to do, *see State v. Prevatte*, 356 N.C. 178, 254, 570 S.E.2d 440, 482 (2002), there is no longer a risk that the verdict will be rendered by thirteen people. This is because any discussion in which the excused juror participated is disregarded and entirely new deliberations are commenced by the newly-constituted twelve: the original eleven jurors and the substituted alternate. Therefore, the ultimate verdict is rendered by the constitutionally requisite jury of twelve.

The trial court in defendant's case gave the jury exactly the instruction required by statute:

> The law of this state grants the defendant to [sic] a unanimous verdict reached only after full participation of the [twelve] jurors who ultimately return a verdict. This right may . . . only be assured if the jury deliberations begin anew. So, fortunately, this happened after you-all had not gotten far in this because it was late in the day, but I need to tell you that you must restart your deliberations from the beginning. This means that you should disregard entirely any deliberations taken place before the alternate juror was substituted and should consider freshly the evidence as if the previous deliberations had never occurred.

A jury is presumed to follow the instructions given by the trial court. *Prevatte*, 356 N.C. at 254, 570 S.E.2d at 482. Accordingly, we presume that defendant's jury obeyed the trial court's direction to restart deliberations entirely, disregarding any discussion of the case that took place while Juror #5 was a member of the jury. Therefore, defendant's constitutional right to a jury of twelve was not violated, and we reverse the decision of the Court of Appeals.

This Court's decision in *Bunning* does not compel a different result. In that case, this Court addressed "whether an alternate juror may be substituted for a juror after deliberations have begun in a sentencing hearing." 346 N.C. at 255, 485 S.E.2d at 291. The defendant argued on appeal that the substitution was erroneous. *Id.* This Court observed that Article I, Section 24 requires a jury of no more or less than twelve. *Id.* at 255–56, 485 S.E.2d at 291–92. The Court also examined several statutory provisions that all required dismissal of alternate jurors prior to submission of the case to the jury: N.C.G.S. § 15A-2000(a)(2) (1988) (pertaining to capital felony trials), subsection 15A-1215(a) (1988), and subsection 15A-1215(b). *Bunning*, 346 N.C. at 256–57, 485 S.E.2d at 292. Based on these *statutory* provisions, the Court concluded that the

General Assembly did not intend to allow jurors to be substituted after deliberations had begun. *Id.* This Court therefore held that the substitution of the alternate juror meant that the defendant was sentenced by more than twelve people because it "ha[d] to assume [the excused juror] made some contribution to the verdict" and the substituted alternate juror had missed important discussions that had taken place before he joined the jury. *Id.* at 256, 485 S.E.2d at 292.

Although *Bunning* cites Article I, Section 24 in its juror substitution discussion, its conclusion was founded upon its statutory analysis. Indeed, although the Court's conclusion that substitution of the alternate juror violated the requirement that a jury be composed of twelve members shortly followed its discussion of Article I, Section 24, the Court notably did not connect its ultimate conclusion to the constitutional provision. Further, the Court primarily focused on the General Assembly's intent in enacting the various statutes—an analytical step not required in constitutional analyses. *Id.* at 256–57, 485 S.E.2d at 292.

Moreover, the facts of this case are a far cry from those present in *Bunning*. That case involved substitution of an alternate juror during the sentencing phase of the defendant's capital trial. *Id.* at 255–57, 485 S.E.2d at 291–92. Under North Carolina law, both guilt/innocence determinations and sentencing are decided by the same jury in capital trials. N.C.G.S. § 15A-2000(a)(2) (2023). Therefore, the juror who was excused had already participated in the deliberations that led to a verdict of guilty. In defendant's case, by contrast, no determination of guilt had been rendered when Juror #5 was excused and the alternate was substituted. Juror #5 took no part in the deliberations that led to conviction. Therefore, defendant's verdict was rendered by a jury of twelve as required by subsection 15A-1215(a) and Article I, Section 24.

For these reasons, the decision of the Court of Appeals is reversed. The case is remanded to the Court of Appeals for consideration of defendant's remaining issues raised in that court.

REVERSED AND REMANDED.

Justice RIGGS concurring in part and dissenting in part.

I agree with the majority's holding that issues related to the structure of the jury are automatically preserved for appellate review. S*ee* N.C. R. App. P. 10(a)(1). However, the North Carolina Constitution requires a unanimous verdict of twelve people—a verdict reached with the consent

of all jurors. N.C. Const. art. I, § 24. Long-standing precedent from this Court holds that deliberations involving more than twelve people violate the constitutional right to a unanimous verdict. *See Whitehurst v. Davis*, 3 N.C. (2 Hayw.) 113, 113 (1800) (per curiam); *State v. Bindyke*, 288 N.C. 608, 624 (1975). The statute at issue here, N.C.G.S. § 15A-1215(a), which allows for the replacement of a juror during deliberations does not safeguard the requirement for a unanimous verdict from a jury of twelve enshrined in our constitution. N.C. Const. art. I, § 24. Instructions that mandate that jurors "begin . . . deliberations anew" cannot remedy the structural error resulting from more than twelve participants in the jury verdict. *See* N.C.G.S. § 15A-1215(a) (2023). Thus, I would conclude that allowing for the substitution of an alternate juror during deliberations violates Article I, Section 24 of the North Carolina Constitution and is unconstitutional beyond a reasonable doubt. For that reason, I respectfully dissent.

I. Constitutional Requirement for a Unanimous Jury of Twelve

Article I, Section 24 of the North Carolina Constitution provides the people of North Carolina with the protection that "[n]o person shall be convicted of any crime but by the unanimous verdict of a jury in open court." N.C. Const. art. I, § 24. This "grand bulwark" of English liberty was enshrined in North Carolina's 1776 State Constitution as a prized protection against tyranny. 4 William Blackstone, Commentaries 349; *see also* John V. Orth & Paul Martin Newby, *The North Carolina State Constitution* 80 (2d ed. 2013). Indeed, the right predates our Constitution. *See State v. Stewart*, 89 N.C. 563, 564 (1883) ("It is a fundamental principle of the common law, declared in '*Magna Charta*,' and again in our Bill of Rights, that 'no person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court.' "). And, while the state right to trial by jury traces its origins to monarchical English common law, our Founding-Era appellate court recognized that the right to trial by jury is *more* sacrosanct to the people of our State than under English common law because the right is so fundamental to our democratic form of government. *See Dalgleish v. Grandy*, 1 N.C. (Cam. & Nor.) 249, 251 (1800) (rejecting an English common law form of pleading that violated a defendant's right to trial by jury because, "if this mode of proceeding had ever been sanctioned by custom before the revolution, it is utterly irreconcilable to the spirit of our free republican government").

The right to trial by a jury of twelve has always been afforded an inviolable sanctity under our Constitution. *See, e.g.*, *Bayard v. Singleton*, 1 N.C. (Mart.) 5, 7 (1787) (decreeing a statute unconstitutional for

unlawfully infringing the constitutional right to trial by jury). "It is elementary that a jury, as understood at common law and as used in our constitutions, Federal and State, signifies twelve men duly impaneled in the case to be tried." *State v. Rogers*, 162 N.C. 656, 659 (1913). The legal proposition that a jury is "a body of twelve men in a court of justice[ ] is as well settled as any legal proposition can be." *Id.* (quoting *Lamb v. Lane*, 4 Ohio St. 167, 177 (1854)).

As the majority acknowledges, "innovation amounting in the least degree to a departure from the ancient mode [of trial by jury] may cause a departure in other instances, and in the end endanger or prevent this excellent institution from its usual course." *Whitehurst*, 3 N.C. (2 Hayw.) at 113. In *Whitehurst*, the Court was not willing to accept the verdict by thirteen because it deviated from the "ancient" process and endangered the institution of a criminal justice system regulated by juries of peers. *Id.* This statute, N.C.G.S. § 15A-1215(a), which allows replacement of a juror after the start of deliberations, is an innovation that departs from the mode of trial by a jury of twelve and endangers the impartiality and unanimity of the jury. Thus, the majority's conclusion that the statute is constitutional runs contrary to this Court's recent embrace of arcane originalism. *See McKinney v. Goins*, 387 N.C. 35, 45–46 (2025); *Happel v. Guilford Cnty. Bd. of Educ.*, 913 S.E.2d 174, 183 (N.C. March 21, 2025).

While the Legislature may modify trial procedure, we have always held that it may not do so in a manner that diminishes fundamental rights. *See Keddie v. Moore*, 6 N.C. (2 Mur.) 41, 44 (1811) ("It is true that the Legislature cannot impose any provisions substantially restrictive of the trial by jury; they may give existence to new forums; they may modify the powers and jurisdictions of former courts, in such instances as are not interdicted by the Constitution, from which their legitimate power is derived; but still the sacred right of every citizen, of having a trial by jury, must be preserved."). Although the Court presumes that statutes enacted by the legislature are valid, it is undoubtably the responsibility of the Court to declare a law unconstitutional "if its unconstitutionality is demonstrated beyond reasonable doubt." *Hart v. State*, 368 N.C. 122, 126 (2015); *see also Bayard*, 1 N.C. (Mart.) at 6–7. Our constitutional role is to determine whether legislation is plainly and clearly prohibited by the Constitution. *Hart*, 368 N.C. at 126.

The majority concludes that the unconstitutionality of N.C.G.S. § 15A-1215(a) "has not been shown beyond a reasonable doubt." But this conclusion runs contrary to centuries of case law interpreting Article I, Section 24, to mean a unanimous jury of no more or less than twelve people. *See, e.g.*, *Whitehurst*, 3 N.C. (2 Hayw.) at 113; *State v. Dalton*,

206 N.C. 507, 512 (1934); *Bindyke*, 288 N.C. at 623; *State v. Bunning*, 346 N.C. 253, 255–56 (1997). The Court has held that the constitutional right to a unanimous jury of twelve is not violated when a juror is substituted *before the case is submitted to the jury*, but it has held that substitution *after the start of the deliberations* is a violation. *See Dalton*, 206 N.C. at 512 (allowing replacement of a juror before the case is submitted to the jury); *Bindyke*, 288 N.C. at 622–23 (affirming the constitutionality of replacing a juror before the case is submitted to the jury); *Bunning*, 346 N.C. at 256 (concluding that the "jury verdict was reached by more than twelve persons" when an alternate juror was substituted after the start of deliberations).

This bright-line rule conforms to a common sense understanding of what constitutes a unanimous verdict from a jury of twelve. In *Dalton*, this Court determined there was no error when the statute at issue allowed substitution of a juror before the case was submitted to the jury. 206 N.C. at 510–11. We concluded this statute did not contravene "the first element" of a valid jury as "composed of twelve men" because an alternate "becomes a juror only when . . . *before final submission of the case to the jury* he takes the place of a member of the original panel." *Id.* at 512 (emphasis added). This specific mechanism of pre-deliberation substitution did not create any constitutional problem because the alternate juror, once substituted, would be present for the entirety of deliberations, which was itself necessary to the "essentials of a unanimous verdict of twelve men":

> It is not easy to perceive how the presence of the alternate could influence the reasoning of any juror to the prejudice of the accused. . . . The alternate . . . *is given equal opportunity to reach a definite, independent, and accurate conclusion.* . . . He is protected by every safeguard that surrounds the jury and insures an impartial verdict. By the uniform practice . . . the jurors are warned to refrain from discussing the merits of the case until the testimony is closed and the charge of the court is concluded; whereupon, after retiring, they enter upon their deliberations. If *before final submission of the case a vacancy results* . . . , the alternate . . . becomes one of the jury and serves in all respects as though selected as an original juror, *and the essentials of a unanimous verdict of twelve men is thus preserved.*

Id. at 512–13 (emphases added).

In contrast, even a *de minimis* intrusion of an alternate into the sanctity of the jury deliberations results in a "fundamental irregularity of constitutional proportions." *Bindyke*, 288 N.C. at 623. If this were not the rule, any process to determine whether there was prejudice made by a substitution would invade the sanctity, confidentiality, and privacy of the jury process. *Id.* at 627. Necessarily, then, substitution of a juror *after* deliberations have begun also does *not* protect this right to a jury of twelve as it has long and invariably been understood under and required by our constitution. *Dalton*, 206 N.C. at 513.

This Court addressed this exact question of whether substitution of a juror during deliberations violated the constitutional right to a unanimous verdict in *Bunning*, 346 N.C. at 256. The Court concluded that substituting the juror after the start of deliberations resulted in an improperly formulated jury that was "so fundamentally flawed that the verdict [could not] stand." *Id.* at 257. In *Bunning*, a juror was replaced by an alternate juror on the second day of deliberations during the sentencing phase of a capital trial, with the trial court "instruct[ing] the jury to begin its deliberations anew." *Id.* at 255. Relying on precedent in *Bindyke*, we held that substitution of the juror during deliberations was error mandating a new trial because it violated the constitutional right to a jury of "no more or less than a jury of twelve persons." *Id.* at 256. We explained:

> In this case, the jury verdict was reached by more than twelve persons. The juror who was excused participated in the deliberations for half a day. We cannot say what influence she had on the other jurors, but we have to assume she made some contribution to the verdict. The alternate juror did not have the benefit of the discussion by the other jurors which occurred before he was put on the jury. We cannot say he fully participated in reaching a verdict. In this case, eleven jurors fully participated in reaching a verdict, and two jurors participated partially in reaching a verdict. This is not the twelve jurors required to reach a valid verdict in a criminal case.

Id.

The same scenario exists here: eleven jurors fully participated in reaching a verdict, and two jurors partially participated in reaching a verdict. The original juror appears—in fact and law—to have participated in deliberations: he requested to be excused, stating, "I was trying

to work out with my fellow jurors to deliberate this evening, but I think more people had conflicts than I did." This statement discloses that the jury had engaged in some deliberations concerning the substantive issues in the case. *See Bindyke*, 288 N.C. at 629 (holding deliberations begin when there is "*any* discussion of the case").

In any event, and regardless of whether deliberations had in fact begun, per our precedent, we must presume by law that deliberations had begun. *See id.* at 628 (assuming that when a jury has been out for a substantial length of time "it has begun the business for which it was impaneled" and acknowledging that we cannot adopt a rule defining what constitutes a substantial length of time). This rule has developed for good reason because absent such a presumption, this Court would be forced to inquire into the jury's process of deliberation—which we are not allowed to do. *See id.* at 627 (recognizing that "an inquiry into what transpired in the jury room . . . invades the sanctity, confidentiality and privacy of the jury process"). That the jury deliberated less than thirty minutes is immaterial; again, we must assume by law that this deliberation meaningfully affected the proceedings. *See id.* at 629 ("[I]t cannot be assumed that observations and discussions which take place during the first few minutes after the jurors retire are less significant to the verdict than later deliberations."). Likewise, it is uncontroverted that the replacement juror did not participate in or "have the benefit of the discussion by the other jurors which occurred before he was put on the jury." *Bunning*, 346 N.C. at 256. In short, the same operative facts existed in this case as those that led to constitutional error in *Bunning*. The jury in this case was not a jury of twelve, rather two juries of eleven plus one.

This Court has never read the constitutional ruling in *Bunning* as narrowly as it does today. In *State v. Poindexter*, decided just four years after *Bunning*, we held that the constitutional requirement of trial by a jury of twelve was violated by removal of a juror for misconduct during the sentencing phase of a capital case. 353 N.C. 440, 444 (2001). Further, the juror's misconduct—although not discovered by the trial court until after the jury delivered the guilty verdict—also disqualified him during the guilt/innocence phase and "resulted in a guilty verdict by a jury composed of less than twelve qualified jurors." *Id.* The Court relied upon *Bunning* and *Bindyke* to conclude that violation of the "defendant's constitutional right to have the verdict delivered by twelve jurors constituted error per se" and the defendant was entitled to a new trial. *Id.* More recently, this Court acknowledged—in an opinion authored by or joined by three members of this majority—that *Bunning* stood for the

proposition that a "defendant's constitutional rights were violated per se when only eleven jurors *fully participated* in reaching a verdict in a capital case." *State v. Hamer*, 377 N.C. 502, 507 (2021) (citing *Bunning*, 346 N.C. at 257) (emphasis added).

Therefore, I would conclude that the language in subsection 15A-1215(a) allowing for substitution of a juror after the start of deliberation is unconstitutional because it allows for a verdict by a jury of more than twelve people.

II. Jury Instruction Cannot Cure Structural Errors

In the majority's view, the statutory requirement that jurors "begin . . . deliberations anew" after substitution of an alternate juror preserves the statute's constitutionality. *See* N.C.G.S. § 15A-1215(a). But curative instructions are insufficient to remedy a constitutional structural error. *See Francis v. Franklin*, 471 U.S. 307, 324–25 n.9 (1985) (recognizing instances where curative instructions are inadequate to preserve a defendant's constitutional rights); *Bruton v. United States*, 391 U.S. 123, 135 (1968) ("[T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored."). Our precedents invariably identify jury-of-twelve violations as ones in which no instruction can cure the defect. *See Bindyke*, 288 N.C. at 627 ("[T]he presence of an alternate in the jury room during the jury's deliberations violates N.C. Const. art. I, § 24 . . . and constitutes reversible error *per se*."); *Poindexter*, 353 N.C. at 444 ("A trial by a jury that is improperly constituted is so fundamentally flawed that the verdict cannot stand.").

A curative instruction cannot erase the thirty minutes of deliberation that occurred with the first jury of twelve. It is entirely possible that deliberation by the second jury of twelve was informed and influenced by the excused juror's views and discussion during the first deliberation. As we have previously recognized, it is always "quite possible that one or more jurors . . . [may] express[ ] an opinion as to [the] defendant's guilt or innocence," or comment on the evidence in a manner that was persuasive to another juror. *Bindyke*, 288 N.C. at 629. Each juror brings a unique perspective to the jury deliberations and those unique perspectives combine to create a dynamic that necessarily changes when the composition of the jury changes. Our rule precluding substitution of a juror after the case has been submitted to the jury tolerates the possibility that a juror may have contributed nothing specific to the deliberations, at least insofar as the court is free to ascertain, and, at the same

time, respects that by virtue of being in the room, each individual contributes to the dynamic of the jury of twelve. Our case law tells us that we must presume that juror number five had an impact on the deliberations in this case. Regardless of whether that original juror said anything to his fellow jurors during the deliberation period, we must assume by law that the original juror's mere presence impacted the verdict. *See Bindyk*e, 288 N.C. at 627–28 ("We hold that at any time an alternate is in the jury room *during deliberations* he participates by his presence and, whether he says little or nothing, his presence will void the trial.").

Any curative instruction cannot change the fact that the alternate in this case was not present for the jury's very first discussion about the merits of the case. *See Dalton*, 206 N.C. at 512–13 (recognizing that a juror's "equal opportunity to reach a definite, independent, and accurate conclusion" and other essential elements of a constitutional jury verdict are preserved by precluding the jury from discussing the case until deliberations begin and only allowing substitution pre-deliberation); N.C.G.S. § 15A-1236(a)(1) (2025) (recognizing that jurors are "[n]ot to talk among themselves about the case except in the jury room after their deliberations have begun"). The substituted juror would always, as an unavoidable factual matter, be a newcomer to the deliberative jury. There is a great and obvious risk that the other jurors could measure the newcomer's position, logic, and arguments against those previously expounded by the excused juror; the alternate juror could likewise internally question whether his or her own judgment aligned with that of the juror they replaced. Any or all of these considerations could shift a single vote from guilty to innocent or vice versa and impact the unanimity of any jury verdict—the foundational constitutional right to trial by jury.

Thus, the replacement of a juror after the start of jury deliberations is an error that cannot be remedied by a curative instruction. *Francis*, 471 U.S. at 324–25 n.9 (recognizing instances where "the risk of prejudice . . . may be so great that even . . . [an] instruction will not adequately protect a criminal defendant's constitutional rights"). A mid-deliberation substitution of a juror converts a constitutional jury of twelve into two unconstitutional juries of eleven plus one.

III. *Bunning* Was Decided on Constitutional Grounds and Provided Constitutional Relief

The majority states that this Court's holding in *Bunning*—that replacement of a juror during deliberations should result in a new trial—does not preclude a holding that N.C.G.S. § 15A-1215(a) is constitutional. *See Bunning*, 346 N.C. 253. While *Bunning* of course did not

address the particular statutory language at issue here, since that statutory language was not added until 2021, that fact does not undercut the weight of the *Bunning* constitutional rule.

In *Bunning*, the State argued and the Court considered whether three different statutes showed legislative intent to allow for the replacement of a juror after the start of deliberations. *Id.* at 257. The Court concluded that "[t]hese three sections clearly show that the General Assembly did not intend that an alternate can be substituted for a juror after the jury has begun its deliberations." *Id.* The Court then went on to hold that the error identified in *Bunning*—replacing a juror after the beginning of deliberations—was per se reversible because "a jury which is improperly constituted is so fundamentally flawed that the verdict cannot stand." *Id.* That is, the Court rejected the State's arguments that the three statutes at issue indicated that mid-deliberation substitution was constitutional. *Id.* After rejecting that argument, the Court noted the State argued that if any error existed, then it was harmless. *Id.* The Court also rejected this argument from the State, noting that harmless error review was not available. *Id.* In other words, the Court applied the standard applicable to structural error: "Structural error is a rare form of *constitutional* error resulting from structural defects in the constitution of the trial mechanism which are so serious that a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence." *State v. Garcia*, 358 N.C. 382, 409 (2004) (cleaned up) (emphasis added) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309–10 (1991)); *see also Hamer*, 377 N.C. at 506. The strong medicine of a new sentencing hearing demonstrates that the *Bunning* Court was addressing the grave wound caused by a constitutional injury. Similar to the situation here, the *Bunning* Court concluded that the replacement of a juror after the start of deliberations violated the constitutional right to a unanimous jury of twelve.

IV. Conclusion

In sum, a statute that allows a change in the composition of the jury during deliberations implicates the constitutional right to a unanimous jury of twelve. In accordance with the right enshrined in our 1776 State Constitution and centuries of case law from this Court, I would hold that allowing for the substitution of a juror after the start of deliberations under N.C.G.S. § 15A-1215(a) is unconstitutional. Thus, I would affirm the decision of the Court of Appeals. I respectfully dissent.

Justice EARLS joins in this concurring in part and dissenting in part opinion.

STATE v. HUNT

[387 N.C. 537 (2025)]

STATE OF NORTH CAROLINA
v.
GRANT LEE HUNT

No. 280A24

Filed 23 May 2025

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 908 S.E.2d 92 (N.C. Ct. App. 2024), vacating a judgment entered on 24 March 2023 by Judge James G. Bell in Superior Court, Robeson County, and remanding for a new trial. Heard in the Supreme Court on 15 April 2025.

Jeff Jackson, *Attorney General*, *by Thomas J. Campbell*, *Special Deputy Attorney General*, *for the State-appellant.*

Blau & Hynson, *PLLC*, *by Daniel M. Blau*, *for defendant-appellee.*

PER CURIAM.

We vacate the decision of the Court of Appeals and remand for reconsideration in light of this Court's opinion in *State v. Reber*, 386 N.C. 153 (2024).

VACATED AND REMANDED.

STATE OF NORTH CAROLINA
v.
STEPHON DENARD MELTON

No. 170A24

Filed 23 May 2025

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 294 N.C. App. 91 (2024), finding no error after appeal from a judgment entered on 15 September 2022 by Judge Steve R. Warren in Superior Court, Forsyth County. Heard in the Supreme Court on 18 February 2025.

Jeff Jackson, Attorney General, by Marc D. Brunton, General Counsel Fellow, for the State-appellee.

Caryn Strickland for defendant-appellant.

PER CURIAM.

AFFIRMED.

ELIZABETH AND JASON WHITE
v.
NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, FORSYTH COUNTY DEPARTMENT OF SOCIAL SERVICES, AND CHILDREN'S HOME SOCIETY OF NORTH CAROLINA, INC.

No. 140A24

Filed 23 May 2025

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) and on discretionary review pursuant to N.C.G.S. § 7A-31 of the decision of a divided panel of the Court of Appeals, 293 N.C. App. 797 (2024), reversing an order entered on 16 September 2022 by Judge William Long in Superior Court, Forsyth County. Heard in the Supreme Court on 16 April 2025.

Tiffany B. Massie for petitioner-appellants.

Jeff Jackson, Attorney General by Adrian W. Dellinger, Assistant Attorney General, for respondent-appellee Department of Health and Human Services.

Erica Glass for respondent-appellee Forsyth County Department of Social Services.

Michele G. Smith for respondent-appellee Children's Home Society of North Carolina, Inc.

PER CURIAM.

Petitioners Elizabeth and Jason White appealed the decision of the Court of Appeals that held the superior court erred when it reversed the Department of Health and Human Services' decision to deny adoption assistance benefits to petitioners. *See White v. N.C. Dep't of Health & Hum. Servs.*, 293 N.C. App. 797, 810 (2024). Having considered the opinion of the Court of Appeals, the record and briefs, and the oral arguments, we affirm the decision of the Court of Appeals for the reason stated in that decision. *See id.* at 803–10.

The Court cannot identify any differences between the issues presented in the notice of appeal and the issues presented in the petition for discretionary review. Thus, we conclude that the petition for discretionary review was improvidently allowed.

AFFIRMED; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.

ATLANTIC COAST CONFERENCE

v.

BOARD OF TRUSTEES OF FLORIDA STATE UNIVERSITY

From Mecklenburg
23CVS040918-590

No. 124A24

ORDER

Previously, the parties to this case jointly requested to have oral argument scheduled for the same day as oral argument in No. 221A24 *Atlantic Coast Conference v. Clemson University*. On 8 April 2025, the Court allowed a consent motion to remove No. 221A24 from the April 2025 oral argument calendar and continue oral argument until September 2025. In light of that ruling, the Court, on its own motion, removes this case from the April 2025 oral argument calendar and continues oral argument until September 2025.

By order of the Court in Conference, this the 8th day of April 2025.

/s/ Riggs, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 8th day of April 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

GRIFFIN v. STATE BD. OF ELECTIONS

[387 N.C. 541 (2025)]

JEFFERSON GRIFFIN

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS

AND

ALLISON RIGGS, INTERVENOR

From N.C. Court of Appeals
25-181 P25-104

From Wake
24CV040619-910
24CV040620-910
24CV040622-910

No. 320P24-3

ORDER

Recognizing the need for expeditious review of this matter, the Court, *ex mero motu*, orders petitioner to file his responses, if any, to respondent's and intervenor-respondent's filings by 11:00 a.m. on Friday, 11 April 2025.

By order of the Court in Conference, this the 10th day of April 2025.

/s/ Allen, J.
For the Court

Riggs, J., recused.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 10th day of April 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

JEFFERSON GRIFFIN

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS

AND

ALLISON RIGGS, INTERVENOR

From N.C. Court of Appeals
25-181 P25-104

From Wake
24CV040619-910
24CV040620-910 24CV040622-910

No. 320P24-3

ORDER

In its opinion filed on 4 April 2025, the Court of Appeals reversed orders entered by the Superior Court, Wake County, affirming dismissal of election protests filed by Petitioner Jefferson Griffin. The protests concern ballots cast by three categories of voters in the 2024 general election for Seat 6 on this Court: (1) voters with incomplete voter registration data, (2) military and overseas ballots cast under Article 21A of the North Carolina General Statutes but which failed to comply with the voter identification requirements in N.C.G.S. § 163-230.1, and (3) overseas voters who have never lived in North Carolina and have never expressed an intent to live in North Carolina.

On 6 April 2025, Respondent State Board of Elections and Intervenor-Respondent Allison Riggs filed motions for temporary stay, petitions for writs of supersedeas, and petitions for discretionary review with this Court. We allowed the motions for temporary stay on 7 April 2025.

This Court is aware of the valid competing interests in this case – the need for an expeditious resolution of an election that occurred more than five months ago and the importance of ensuring that only lawful votes are counted. *See James v. Bartlett*, 359 N.C. 260, 270 (2005) ("To permit unlawful votes to be counted along with lawful ballots in contested elections effectively 'disenfranchises' those voters who cast legal ballots[.]"). Bearing in mind these competing interests, we dispose of the petitions for discretionary review as explained below.

The Court of Appeals summarized the legal background of the first category of challenged voters as follows:

> To enable eligible voters to lawfully register, [respondent State Board of Elections] is statutorily tasked to develop a voter registration application form. [N.C.G.S.] § 163-82.3 (2023). The voter

> registration application form shall contain certain information to be provided by the voter applicant to lawfully register, including the applicant's "[d]rivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number[.]" [N.C.G.S.] § 163-82.4(a)(11) (2023).
>
> If the voter applicant has neither a current and valid driver's license, nor a social security number, the Board must assign the applicant a "unique identifier number" which "shall serve to identify that applicant for voter registration purposes." [N.C.G.S.] § 163-82.4(b) (2023).
>
> The General Assembly enacted this requirement in 2004 to comply with the federal Help America Vote Act ("HAVA"), 52 U.S.C. § 21083 (2024), and to provide a corresponding state mandate. N.C. Sess. Law 2003-226, § 9 (amending [N.C.G.S.] § 163-82.4), § 22 (amendment effective 1 January 2004).

Griffin v. N.C. State Bd. of Elections, No.COA25-181, slip op. at 21 (N.C. Ct. App. April 4, 2025).

As to the more than 60,000 challenged voters for whom Petitioner asserts that registrations were accepted without obtaining statutorily required information, this Court allows the petitions for discretionary review for the limited purpose of reversing the decision of the Court of Appeals.

Under this Court's longstanding precedent, mistakes made by negligent election officials in registering citizens who are otherwise eligible to vote "will not deprive the [citizens] of [their] right to vote or render [their] vote[s] void after [they have] been cast." *Overton v. Mayor & City Comm'rs of City of Hendersonville*, 253 N.C. 306, 315 (1960); *see also State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 433 (1897) ("[W]here a voter has registered, but the registration books show that he had not complied with all the minutiæ of the registration law, his vote will not be rejected."). Generally, absent fraud, negligence on the part of the government official charged with properly registering and entering voters onto the voter rolls should not negate the vote of an otherwise lawful voter. *See Woodall v. W. Wake Highway Comm'n*, 176 N.C. 377, 389 (1918) ("[W]hat may be a good reason for not allowing a party to register is not always a good reason for rejecting his vote after it has been cast.").

To the extent that the registrations of voters in the first category are incomplete, the Board is primarily, if not totally, responsible. Since 2004, state law has required election officials to collect voter registration applicants' "[d]rivers license number[s], or if the applicant[s] do[ ] not have . . . driver license number[s], the last four digits of the applicant[s'] social security number[s]" or, "assign [the applicant] a unique identifier number" if the applicant has no such information. N.C.G.S. § 163 82.4(a) and (b) (2023).[1] In 2023, however, the Board became aware and admitted that it had not been in compliance with these requirements since they were initially imposed. *See* Order at 4, *In re HAVA Complaint of Carol Snow* (N.C. State Bd. of Elections Dec. 6, 2023) (acknowledging that "the [then-]current North Carolina voter registration application form fail[ed] to require an applicant to provide an identification number or indicate that they do not possess such a number"). The Board took action by updating the voter registration application form going forward; it did nothing, however, to ensure that any past violations were remedied. These issues were brought to the Board's attention again in August 2024, when litigation was commenced regarding registration applicants using the previous form. *See generally Republican Nat'l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 398–99 (4th Cir. 2024). That litigation remains pending in federal court.

The Board's inattention and failure to dutifully conform its conduct to the law's requirements is deeply troubling. Nevertheless, our precedent on this issue is clear. Because the responsibility for the technical defects in the voters' registrations rests with the Board and not the voters, the wholesale voiding of ballots cast by individuals who subsequently proved their identity to the Board by complying with the voter identification law would undermine the principle that "this is a government of the people, in which the will of the people—the majority—legally expressed, must govern." *Lattimore*, 120 N.C. at 428–29. Accordingly, we cannot agree with the Court of Appeals that the Board erred by counting their ballots.

We stress that this would be a very different case if the record provided grounds for believing that a significant number of the roughly 60,000 ballots in the first category were cast by individuals whose identity was not verified by voter identification or who were not otherwise qualified to vote.

---

1. Federal law imposes an identical burden on state election officials when accepting or processing "application[s] for voter registration for an election for Federal office." 52 U.S.C. § 21083(a)(5)(A).

Our case law regarding registration mistakes by elections officials does not apply to petitioner's remaining challenges because each presents questions unrelated to "proving merely that *the registration law* had not been complied with." *Woodall*, 176 N.C. at 389 (emphasis added). "[T]he ultimate purpose of [an election] is to ascertain and give expression to the will of the majority, as expressed through the ballot box and *according to law*." *Id.* at 388 (emphasis added). We have, therefore, stated that "[t]o permit unlawful votes to be counted along with lawful ballots in contested elections effectively 'disenfranchises' those voters who cast legal ballots[.]" *James*, 359 N.C. at 270.

For the second category—military or overseas ballots cast under Article 21A for whom the Board of Elections failed to follow the express requirements of N.C.G.S. § 163-230.1 – we allow the petitions for the limited purpose of expanding the period to cure deficiencies arising from lack of photo identification or its equivalent from fifteen business days to thirty calendar days after the mailing of notice.

As to the "never residents" in the third category, the Court of Appeals held that allowing individuals to vote in our state's non-federal elections who have never been domiciled or resided in North Carolina or expressed an intent to live in North Carolina violated the plain language of Article VI, Section 2(1) of the North Carolina Constitution, and we deny review.

Except as provided above, the petitions for discretionary review are denied. In addition, the temporary stay issued 7 April 2025 is dissolved, and the petitions for writs of supersedeas are denied. Petitioner's conditional petition for discretionary review is denied. This matter is remanded to the Court of Appeals for further remand and actions not inconsistent with this order.

By order of the Court in Conference, this the 11th day of April 2025.

/s/ Allen, J.
For the Court

Riggs, J., recused.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 11th day of April 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

Justice EARLS concurring in part in the result only, dissenting in part.

It is no small thing to overturn the results of an election in a democracy by throwing out ballots that were legally cast consistent with all election laws in effect on the day of the election. Some would call it stealing the election, others might call it a bloodless coup, but by whatever name, no amount of smoke and mirrors makes it legitimate. The Court of Appeals took a shock-and-awe approach to the task, ruling that over 67,000 lawfully cast ballots were ineligible and could only be counted if voters took the initiative to correct errors not of their own making. This Court's special order instead employs a surgical strike, targeting some unknown in the record but possibly at least 2,000 to 7,000 votes of military and overseas voters, all of whom are now presumed to be fraudulent unless they can prove otherwise within thirty calendar days. What is worse, these targeted voters are only those who happened to have registered in Guilford County, or maybe one of three or four other counties that vote heavily Democratic, the special order is not clear, but in any case, not every such voter in the state. Therefore, as a result of the action taken by this Court in this matter, the vote of an overseas or military voter who is registered in Wake County and who voted pursuant to the laws applicable at the time is counted. However, the vote of an overseas or military voter who is registered in Guilford County is presumed to be fraudulent and will not count unless that voter provides proof of their identity within thirty business days. Explaining how that is fair, just, or consistent with fundamental legal principles is impossible, so the majority does not try. Who are these voters? Active servicemembers and their families, missionaries, exchange students, corporate officers, doctors, lawyers, teachers, diplomats and so many other loyal North Carolinians who deserve to have their votes count.[1]

Whether by overkill or surgically targeted, the attack on democratic principles is equally fatal. And even if, defying all odds, sufficient numbers of those voters are contacted and do provide photocopies of their passports or other acceptable identification documents by email or mail within the deadline such that the ultimate outcome of the election is not altered, the precedent for the complete disruption of the election process by losing candidates has been set.

---

1. Military voters are not necessarily overseas voters, either, and could include military members working domestically, for example on relief from Hurricane Helene. Griffin's protests explicitly challenge votes cast by military voters.

Apart from its illegitimacy, this special order is impossible to administer. The instruction to require overseas voters to provide photo identification or have their votes tossed out fails to identify which voters in exactly which counties must do so. The instruction to throw out the votes of overseas U.S. citizens domiciled in North Carolina but who have not physically lived here purports to require the Board of Elections to base that action on information the Board simply does not have, namely whether the individual intends to return to North Carolina. The special order has been hastily drawn without the benefit of proper deliberation. It is no small thing to overturn the results of an election, results confirmed by two recounts as provided for by state law. Apparently, this Court believes it is something that needs to be done quickly, preferably in the equivalent of the dark of night, without debate or discussion.

The majority does not dispute that the votes it orders canceled were cast consistent with the established election rules and procedures that were in place well before the 2024 general election. The Court of Appeals majority cited general concerns of voter fraud to justify its extraordinary intervention in the democratic process, reasoning that unqualified voters dilute the voting strength of qualified ones. But its concerns ironically run in only one direction. The majority is willfully blind to the equally fraudulent effect of throwing out the ballots of qualified voters, made even more pernicious when done under color of law and by order of court.

Along the theme that the majority has things completely backwards, this opinion proceeds in logically reverse order. First, I explain the multiple and independent state constitutional grounds that bar the majority's remedial order. Second, I explain how the majority has rewritten the election protest statute to reach its decision based on mere allegations and novel legal theories, moving the burden of proof from Griffin to the eligible voters. Third, I explain why Griffin's legal challenges fail on their own terms—the Board correctly applied state law as it is written. Fourth, I note this Court's alarming practice of affecting sweeping changes to election law via special order at the request of a Republican-aligned candidate and without merits briefing or public oral argument.

Should it stand, this order compels unequal treatment of North Carolina voters and infringes on their state constitutional right to vote.[2]

2. Parties have expressly asserted *England* reservations of rights so that their federal law defenses may be adjudicated by federal court. *See England v. La. State Bd. of Med. Exam'rs*, 375 U.S. 411 (1964). Accordingly, despite the obvious conflicts with federal law including the principles relied upon in *Bush v. Gore*, 531 U.S. 98 (2000), I address only state law issues.

It rewrites and inverts the election protest process, privileging allegations over evidence, and burdening voters rather than the candidate seeking to protest the election outcome with the requirement to put forward proof of their claims. It also contravenes the will of the people who enacted a constitutional amendment requiring the production of a voter ID only for voters who vote in person, and the express provision by the General Assembly that military and overseas voters in this state may vote without producing a photo ID. It threatens to make courts, not voters, the arbiter of which candidate wins an election in North Carolina. It betrays public trust in our elections process and our courts. From the majority's disrespect for the will of the people, its blatant legislating from the bench, and its deliberate effort to substitute its choice for that of the voters regarding who sits on our Court, I dissent.

I. Independent State Constitutional Limits on Retroactive Voter Requirements

The majority is blatantly changing the rules of an election that has already happened and applying that change retroactively to only some voters, understanding that it will change the outcome of a democratic election. That decision is unlawful for many reasons, including because: 1) it is inconsistent with this Court's longstanding precedent, 2) contrary to equitable principles that require parties to bring their claims in a timely manner, 3) contrary to equal protection concerns, 4) violative of due process requirements, and 5) contrary to state constitutional provisions vesting the right to elect judges in the qualified voters of this state, not the judge's colleagues.

I agree fully with Justice Dietz that our precedent requiring that courts "minimize disruption" to elections compels that courts not intervene after an election to change the rules, including to impose new retroactive requirements on voters. *See infra* (Dietz, J., concurring in part and dissenting in part); *Pender County v. Bartlett*, 361 N.C. 491, 510 (2007), *aff'd sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009). *Pender County* bars today's decision, because there is nothing more "disruptive" to an election than changing its rules retroactively to alter the election outcome. 361 N.C. at 510.

Our Court has embraced this fundamental principle time and again, as the dissent below ably noted. *See Griffin v. N.C. State Bd. of Elections*, No. 25-181 (N.C. Ct. App. Apr. 4, 2025), slip op. 18–19 (Hampson, J., dissenting) (first citing *Burgin v. N.C. State Bd. of Elections*, 214 N.C. 140, 145 (1938) ("Nor will the courts undertake to control the State Board in the exercise of its duty of general supervision so long as such supervision conforms to the rudiments of fair play and the statutes on the

subject."); and then citing *Gardner v. City of Reidsville*, 269 N.C. 581, 585 (1967) ("Every reasonable presumption will be indulged in favor of the validity of an election." (citation omitted))). Of course we have. This principle is foundational to our constitutional guarantee of "[f]ree elections" to effectuate the mandate that "[a]ll political power is vested in and derived from the people; all government of right originates from the people [and] is founded upon their will only." N.C. const. art. I, sec. 2, 10. That all political power resides with the people means courts cannot change the established rules to cancel votes after an election in order to change the election outcome.

And make no mistake, these longstanding rules were established well before the election. The majority does not dispute that. The Board clearly announced, before the 2024 general election, that military and overseas voters were "not required to submit a photocopy of acceptable photo identification" with their absentee ballots. 08 N.C. Admin. Code 17 .0109(d). The Rules Review Commission, whose members are appointed by the General Assembly, approved of this procedure three separate times, and it applied in five different elections before the 2024 general election. *See* N.C.G.S. § 143B-30.1(a).[3] The Board thus gave all candidates and the public clear and advance notice that military and overseas voters would not be required to submit a photocopy of their identification to cast a ballot.

Similarly, Griffin's challenge to the votes of U.S. citizens who inherited their North Carolina residency from their parents is a challenge to the constitutionality of a statute passed unanimously by the General Assembly more than thirteen years ago.[4] It has applied in over forty elections since then. This rule was well-established and preexisting by any measure. No one disputes that the votes tossed under today's order were cast consistent with these longstanding rules—the only contention is that the rules have changed.

---

3. The guidance was first effective in August of 2019. 08 N.C. Admin. Code 17 .0109(d) (2019). It expired when enjoined by a previous court order but was readopted as a substantively identical temporary rule on 2 August 2023 and was made permanent on 1 April 2024. *See* 08 N.C. Admin. Code 17 .0109. Nothing in the record suggests that Griffin ever objected to this rule during notice and comment for formal rulemaking, when the rule went into effect, or at any point before the 2024 general election.

4. *See* An Act to Adopt Provisions of the Uniform Military and Overseas Voters Act Promulgated by the National Conference of Commissioners on Uniform State Law, While Retaining Existing North Carolina Law More Beneficial to Those Voters, S.L. 2011-182, 2021 N.C. Sess. Laws 182, https://www.ncleg.gov/Sessions/2011/Bills/House/PDF/H514v0.pdf; N.C.G.S. § 163-258.2(1)(e) (defining a "covered voter" for the purposes of the military and overseas voter act as "[a]n overseas voter who was born outside the United States

Our precedent *James v. Bartlett* is consistent with this *Pender County* principle and further contradicts the majority's decision. 359 N.C. 260 (2005). There, the State Board counted provisional ballots that were cast out of precinct. This was a surprise to the public and to the candidates. Before the election, the State Board's "general counsel failed to indicate that the State Board of Elections would count out-of-precinct provisional ballots." *Id.* at 265. We specifically concluded that "with the absence of any clear statutory or regulatory directive that such action would be taken, [the Board's actions] failed to provide plaintiffs with adequate notice that election officials would count the 11,310 ballots now at issue." *Id.* Only then did we consider the merits of the protestor's challenges. There could not be more daylight between that case and the challenges here, where Griffin and the public had ample, advance notice of the very election rules he now challenges.

Moreover, the successful challenge in *James* did not result in the retroactive cancellation of any votes cast consistent with the State Board's instructions. This Court ultimately remanded to the trial court for further consideration. *Id.* at 271. Subsequently the General Assembly intervened to clarify that "[i]t would be fundamentally unfair to discount the provisional official ballots cast by properly registered and duly qualified voters voting and acting in reliance on the statutes adopted by the General Assembly and administered by the State Board of Elections."[5] As the dissent below noted, "The fact the General Assembly felt obliged to step in and remedy the potential result in *James* should only underscore the need for judicial restraint in election matters concerning the counting of ballots." *Griffin*, slip op. 21 n.4 (Hampson, J., dissenting).

This distinction based on notice—that the appropriateness of post-election protests should depend on whether the challenged rules were known in advance to parties who could have objected to them before the election and chose not to—is the essence of our equitable doctrine of laches. This doctrine incentivizes parties to bring their claims in a timely manner. Most basically, those who sleep on their rights cannot later cry foul at

---

. . . and, except for a State residency requirement, otherwise satisfies this State's voter eligibility requirements, [and] . . . [t]he last place where a parent or legal guardian of the voter was, or under this Article would have been, eligible to vote before leaving the United States is within this State").

5. An Act to Restate and Reconfirm the Intent of the General Assembly with Regard to Provisional Voting in 2004; And to Seek the Recommendations of the State Board of Elections on Future Administration of Out-of-Precinct Provisional Voting, S.L. 2005-2, § 1, 2005 N.C. Sess. Laws 13, 15, https://webservices.ncleg.gov/ViewDocSiteFile/55900.

great disruption to everyone else who followed the established rules. *E.g.*, *Taylor v. City of Raleigh*, 290 N.C. 608, 622 (1976) ("In equity, where lapse of time has resulted in some change in . . . the relations of the parties which would make it unjust to permit the prosecution of the claim, the doctrine of laches will be applied. Hence, what delay will constitute laches depends upon the facts and circumstances of each case." (cleaned up)); *Teachey v. Gurley*, 214 N.C. 288 (1938) ("Whenever the delay is mere neglect to seek a known remedy or to assert a known right, which the defendant has denied, and is without reasonable excuse, the courts are strongly inclined to treat it as fatal to the plaintiff's remedy in equity, even though much less than the statutory period of limitations, if an injury would otherwise be done to the defendant by reason of the plaintiff's delay."). This doctrine has particular purchase in the election law context: allowing challenges to preexisting rules after a candidate knows the outcome makes courts, not voters, the deciders of election outcomes. *See Trump v. Biden*, 2020 WI 91, ¶¶ 30–31, 394 Wis. 2d 629, 645–46 ("Unreasonable delay in the election context poses a particular danger—not just to municipalities, candidates, and voters, but to the entire administration of justice. . . . Striking [challenged] votes now—after the election, and in only two of Wisconsin's 72 counties when the disputed practices were followed by hundreds of thousands of absentee voters statewide—would be an extraordinary step for this court to take. We will not do so." (cleaned up)).

That point relates to another independent constitutional ground barring the majority's outcome-determinative decision, specific to protests that rely on novel legal theories to cancel votes in an election between two sitting judicial officials in a contest for a seat on the state Supreme Court. Namely, our Constitution vests the right to elect Supreme Court justices with the people. N.C. const. art. IV, sec. 16 ("Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State."). North Carolinians so deeply value the right to choose who serves on our bench that they previously rejected a constitutional amendment which would have undermined that right.[6] But a system of public accountability through popular elections for statewide judicial officials cannot work when state judges can change past

6. Michael Crowell, Univ. of N.C. Sch. of Gov't, *History of North Carolina Judicial Election*s, at 7 (Aug. 2020), https://www.sog.unc.edu/sites/default/files/additional_files/Judicial%20election%20history%20Aug%202020.pdf (describing a proposed constitutional amendment "to require the governor to fill judicial vacancies from names submitted by the General Assembly" which "appeared on the ballot in November 2018 but was defeated by a two to one margin").

state election rules to change the outcomes of state judicial elections. In that system, it is not the people who choose their judges, but the judges who choose their colleagues. That is not the system the people of North Carolina established in our Constitution, and it independently bars the majority's decision today.

This judicial coup is further exacerbated by the selective nature of the voters Griffin challenges. For military and overseas ballot challenges, he only challenges one or some small number of North Carolina's 100 hundred counties. (More on that later.) He does not challenge the more than 25,000 identically situated voters across the state who voted under the same preexisting rules, who are not required to clear additional hurdles to have their vote counted, in the same exact race for state Supreme Court. To give him the relief he requests, this Court is ordering the state to violate the voter's rights to equal protection under our laws. *See* N.C. const. art. I, sec. 19; *Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 747 (1990) ("The right to vote on equal terms is a fundamental right."). Griffin's failure to challenge *all* of the voters who should be disqualified under his novel legal theories is another threshold reason that his two remaining protest claims fail.[7] The Court's acceptance of these selective challenges compels the Board to cancel the votes of some but not all identically situated voters, and thus violate state constitutional guarantees of equal protection under law.

Related to which voters and counties Griffin challenges, the Court's order conflicts with due process rights by failing to specify which voters are affected by its order and must take some action or else have their vote canceled. Only the 1,409 voters Griffin challenged in Guilford County were protested by the statutory deadline. *See* N.C.G.S. § 163-182.9(b)(4). Griffin sought to protest voters in five more counties: Buncombe, Forsyth, Durham, Cumberland, and New Hanover. But Griffin acknowledged in briefing below that he has only additionally submitted the names of voters in Durham, Forsyth, and Buncombe to the judicial record at some point. I do not know, and the court orders do not clarify, which of these counties' voters are affected. I do not know whether all or only some of these voters received any kind of notice that their votes have been challenged. The profound uncertainty with this selective and destabilizing order further underscores that it does not comport with

7. This is yet another difference between this case and *James*. The protestor there challenged all of the ballots cast in the contested manner. *See James v. Bartlett*, 359 N.C. 260, 263 n.3 (2005). This Court did not indulge protestor cherry picking to change the election outcome.

due process requirements under our state constitution.[8] *See* N.C. const. art. I, sec. 19 (prohibiting deprivations of liberties unless by "law of the land"); *Halikierra Cmty. Servs. LLC v. N.C. Dep't of Health & Hum. Servs.*, 385 N.C. 660, 663 (2024) ("The Law of the Land Clause in Article 1, Section 19 of the North Carolina Constitution . . . serves 'to secure the individual from the arbitrary exercise of the powers of the government, unrestrained by the principles of private rights and distributive justice.' " (quoting *Gunter v. Sanford*, 186 N.C. 452, 456 (1923))).

A distinct due process problem arises from the special order's treatment of U.S. citizens who inherited their North Carolina voting rights from their parents. The special order interprets the Court of Appeals as holding that "allowing individuals to vote in our state's non-federal elections who have never been *domiciled* or *resided in* North Carolina or *expressed an intent* to live in North Carolina" violates our Constitution. (Emphasis added.) Accordingly, it denies review of the Court of Appeals' decision, which itself held that voters challenged by Griffin in this category must have their votes canceled without further opportunity to prove their eligibility. *See Griffin*, slip op. 36 (concluding that for Griffin's challenges in this category, "these purported voters are not eligible to vote in North Carolina . . . [and] are not to be included in the final count in the 2024 election for Seat 6").

This maneuver is bewildering. The special order's recitation of the holding is in the conjunctive—so a voter who meets any one of the three qualifying criteria (residency, domicile, intent to live in North Carolina) can vote under the Constitution's new construction. But Griffin has presented no evidence or made any allegations that any of the voters he challenges in this category lack an intent to live in North Carolina.[9] In

---

8. Judge Griffin asserted in briefing below that he was unable to timely file protests for at least some counties because those counties did not provide responses to his public records requests by the statutory deadline. The Board in its order did not reach the issue. It noted in a footnote that Griffin sought to add voters to each of his protest categories after the deadline, but it didn't reach "whether such supplementations are allowable" under statute and the administrative code because it decided the protests were otherwise legally deficient.

Although the Court's action here is wrong for the significant reasons outlined in this opinion, since it has decided to proceed in this way, it errs again by not remanding the issue for a fact finder to determine whether any of "supplements" to his challenges were timely filed or whether any reasonable barrier existed to his timely filing of other county protests.

9. The voters he challenges in this category have only expressed that "I am a U.S. citizen living outside the country, I have never lived in the United States." This representation says nothing of intent or domicile.

effect, the two orders announce a new interpretation of state constitutional law, and then categorically disqualify voters under it, without any showing that the disqualified voters do not meet the new standard. That is a due process violation in its most elemental form. *See Peace v. Emp. Sec. Comm'n*, 349 N.C. 315, 322 (1998) ("The fundamental premise of procedural due process protection is notice and the opportunity to be heard."). As the dissent below put it, "the majority effectively invents a new requirement for this group to fit its own agenda and gives them no opportunity to satisfy it." *Griffin*, slip op. 54 (Hampson, J., dissenting).

Related to opportunities to satisfy the court's new, retroactive requirement, the order purports to offer an opportunity to "cure deficiencies" for the military and overseas voters who did not provide a photocopy of identification, which this Court extends from fifteen business days to thirty calendar days. To be clear, this is not a "cure process" anything like the routine statutory procedures for correcting minor ballot deficiencies in the days immediately following an election. *See Griffin*, slip op. 22 (citing N.C.G.S. § 163-82.4(f) (2023) (providing a procedure for curing minor registration deficiencies)); *e.g.*, N.C.G.S. § 163-182.2(a)(4) (2023) (providing for circumstances in which a provisional ballot may be counted ahead of the canvass); N.C.G.S. § 163-230.1(e1) (2025) (delineating narrow "[c]urable deficiencies" that can be made by "supplemental documentation or attestation provided by the voter," including a missing photocopy of identification, that must be received "no later than 12:00 P.M. on the third business day after the election:"). There is no statutory analog for the Court of Appeals' decision to rewrite the rules of an election, impose new hurdles on only certain voters to comply with those retroactive requirements, and to cancel their votes should they fail to do so.

In any event, the majority fails to explain why our precedent protecting voters from being penalized for any negligence by elections officials in the registration process should not also protect voters who relied on elections officials when casting their ballots. Our caselaw makes clear that voters cannot have their votes cancelled due to any technical errors in the in the mechanics of voting, when they acted in reliance on guidance from election officials, even when that guidance is later determined to be incorrect. *See*, *e.g.*, *Owens v. Chaplin*, 228 N.C. 705, 711 (1948) ("We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake, or even the willful misconduct, of election officials in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it." (cleaned up)); *Overton v. Mayor of Hendersonville*, 253 N.C. 306, 315 (1960) ("[I]n the absence of actual fraud participated in by an election official or

officials and the voter, voters are not to be denied the right to vote by reason of ignorance, negligence or misconduct of the election officials.").

Similarly, there was no way for voters to have complied with the majority's new requirements at the time of the 2024 election. The record suggests that it was not possible for some military and overseas voters to submit a photocopy of their identification if they wanted to, because they voted through an electronic system that did not have a mechanism to send that information. There was no way for inherited residents to indicate an intent to return to North Carolina, because the federal post card checkboxes that form the basis of Griffin's challenge did not ask the question. Just as cancelling the votes of more than 60,000 challenged voters based on alleged issues with their registrations is inappropriate, retroactively canceling the votes of any one of the voters in these other two categories based on their failure to satisfy a requirement they could not possibly meet is contrary to our precedent and fundamentally unfair.

In sum, there are multiple, independent reasons why the Court of Appeals' decision below and the majority's special order "are directly counter to law, equity, and the Constitution." *Griffin*, slip op. 1 (Hampson, J., dissenting). I agree with the superior court's decision to affirm the Board's dismissal of these protests. I concur in the result only on the special order's summary reversal of the Court of Appeals decision. I strongly dissent from the retroactive cancellation of eligible votes.

II. Rewriting the Election Protest Statute to Shift Griffin's Burden to Eligible Voters

The Court of Appeals' decision refashions the procedures for bringing election protests. It shifts the burden for an election protest from Judge Griffin to the voters he challenges and places the requirement to notify those challenged voters on boards of elections rather than the petitioner bringing the challenge, contrary the statutes. This is a textbook act of "legislating from the bench." *Griffin*, slip op. 63 (Hampson, J., dissenting).

Under statute, an elections protest has three steps.[10] The first step starts after the party bringing the challenge files the protest, notifies the challenged voter(s), and offers probable cause that an election irregularity or misconduct has occurred. *See* N.C.G.S. §§ 163-182.9(a)–(b),

10. These procedures that apply to the county boards apply similarly to the state board when, as here, it takes jurisdiction for resolving the election protest. *See* N.C.G.S. §§ 163-182.10, -182.11(b), -182.12.

-182.10(a) (2023). At the first step, the Board makes a "[p]reliminary [c]onsideration" of the protest's allegations. N.C.G.S. § 163-182.10(a). It must answer two questions: was the protest properly filed under § 163-182.9, and does it "establish[ ] probable cause to believe that a violation of election law or irregularity or misconduct has occurred?" N.C.G.S. § 163-182.10(a)(1). If the answer to either is "no," the protest must be dismissed. *Id.* Only if the Board answers "yes" to both questions at step one can it proceed to step two.

At step two, the Board proceeds to an evidentiary hearing. N.C.G.S. § 163-182.10(c). The board may receive evidence about the allegations and may question any witnesses. *Id.* Following the hearing, the Board must issue a "written decision" with findings of fact and conclusions of law. N.C.G.S. § 163-182.10(d)(1). The findings must be "based exclusively on the evidence" presented at the hearing "and on matters officially noticed." *Id.* Only if there is "substantial evidence of any violation, irregularity, or misconduct sufficient to cast doubt on the results of an election" can the Board move to step three, where it can correct vote totals, order a recount or take "[a]ny other action within [its] authority." *See* N.C.G.S. § 163-182.10(d)(2)(e); *see also* N.C.G.S. § 163-182.12.

In bringing his protests to more than 60,000 voters, Griffin had the burden to show "probable cause" to even clear the preliminary consideration hurdle at step one. N.C.G.S. § 163-182.10(a). He was also responsible for notifying voters of his challenges to their legal rights. 08 N.C. Admin. Code 2 .0111. Yet the Board determined that Judge Griffin failed to notify the challenged voters of his protest of their legal rights. It further determined that Griffin failed to identify a single voter in these three categories who was in fact ineligible to vote in the 2024 general election under the statutes, rules, and regulations in place for that election and thus had not shown probable cause. The Board rightfully dismissed the three categories of protests in light of those determinations. The Superior Court rightfully affirmed.

Note that even if Griffin succeeded at step one, he still would only have made out an initial showing of probable cause based solely on his allegations. The statutes still call for the Board to proceed to step two and to hold an evidentiary hearing on the merits of Griffin's claims. Such a hearing would produce evidence, including from witnesses providing testimony under oath, as to whether the challenged voters were actually ineligible to cast a ballot, say because they were not eighteen years old, not United States citizens, not who they represent themselves to be, or not residents of the jurisdiction where they voted. *E.g.*, N.C.G.S. §§ 163-85(c), -87, -89(c). Only after Griffin produced "substantial

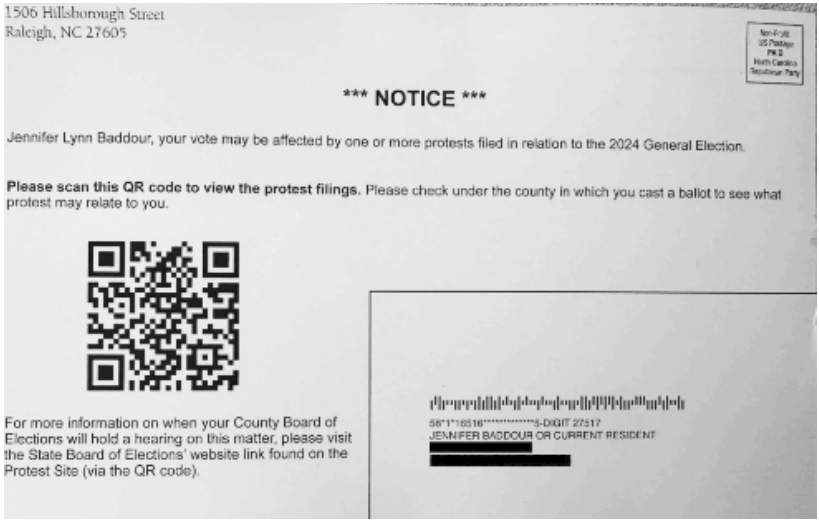
evidence" of outcome-determinative irregularities or misconduct would any step three remedy or additional action by challenged voters be appropriate. N.C.G.S. § 163-182.10(d)(2). Under this statutory process, substantial evidence of actual irregularity or misconduct is required before any new hurdles can be erected before voters or any vote totals can be corrected. Mere allegations are not enough.

The Court of Appeals, however, recast the step one probable cause inquiry to leapfrog any evaluation of actual evidence at step two to order a sweeping cancellation of votes at step three. Specifically, it determined that Judge Griffin had shown probable cause, because this Court had stayed certification of Griffin's contest at his request, and because the Fourth Circuit has made banal observations about high stakes elections in our state. *See Griffin*, slip op. 19 ("These observations and statements by the Fourth Circuit [including that "North Carolina has been flooded with dozens of challenges to the State's electoral regulations"], combined with the Supreme Court's decision to issue a stay of certification, are evidence of probable cause to warrant review on the merits." (citing *Sharma v. Hirsch*, 121 F.4th 1033, 1043 (4th Cir. 2024))). In essence, the Court of Appeals concluded that "Judge Griffin has shown probable cause that the voters he challenged were ineligible to vote, because the North Carolina Supreme Court suggests he has." And, "the Fourth Circuit says some North Carolina elections challenges are valid, so this one is minimally meritorious." No matter that the only officials to actually weigh Griffin's probable cause showing, the State Board and the Superior Court, did not find probable cause. And no matter that this Court's stay was issued *after* the Board's decision, so could not very well justify the Board's decision in the first place. This reasoning from a court of law would be laughable were it not so dangerous.[11]

11. The Court of Appeals' maneuver to skip step two, the evidentiary hearing, is ironic given its multiple, foundational misrepresentations of the facts at issue. *See*, *e.g.*, slip op. 21 ("The Board failed to amend the voter registration application form to obtain this information required by the 2004 law from new voter applicants until 2023."); slip op. 30 (indicating that none of the challenged overseas North Carolina voters who have checked a box indicating that they have never resided in North Carolina have an intent of physical residence in this state in the future, and suggesting they have somehow failed to demonstrate such intent for a requirement that has never before existed). It is worth repeating that public records confirm that the voter registration form expressly required this information until 2009 and was only changed to imply that the information was not required in 2013, the last time Republican-appointees had a majority on the State Board of Elections. The challenged overseas voters who are children of North Carolinians only checked a box indicating that "I am a U.S. citizen living outside the country, I have never lived in the United States," a statement that says nothing of such voters' intent.

This Court compounds that mistake. It again collapses steps one and two to leap over to step three and order a remedy—not even the one desired by Judge Griffin or other parties, but one proposed by an unrepresented voting rights activist in an amicus brief below. And because Griffin still has not identified any individuals who cast ballots who were otherwise ineligible to vote under existing rules in these protests, the majority changes the rules retroactive to an election five months ago. It transforms mere allegations of election irregularity and novel legal theories into an expressway for the unilateral cancellation of votes and imposition of retroactive requirements. This is a judicial "advance to go, cancel 200 votes" straight out of a game of Monopoly, not our statutes.

This conclusion is extreme because of the lower court's holding that the State Board has no authority to compel petitioners to notify voters and that Griffin *did* properly notify the voters whose rights he challenges. Collapsing all three election protest steps into one inquiry, as the majority did, would presumably make it all the more important that voters receive notice that their rights have been challenged at step one. Under the majority's rewriting of the statute, step one is the whole ball game. Yet the majority eliminated any obligation for protestors to actually notify those voters whose rights they challenge, and it so substantially lowered what counts as "notice" that confusing, misleading, unlabeled mail with a generalized threat that "your vote may be affected by one or more protests" and a QR code qualifies.



1506 Hillsborough Street
Raleigh, NC 27605

Non-Profit
US Postage
PAID
North Carolina
Republican Party

*** NOTICE ***

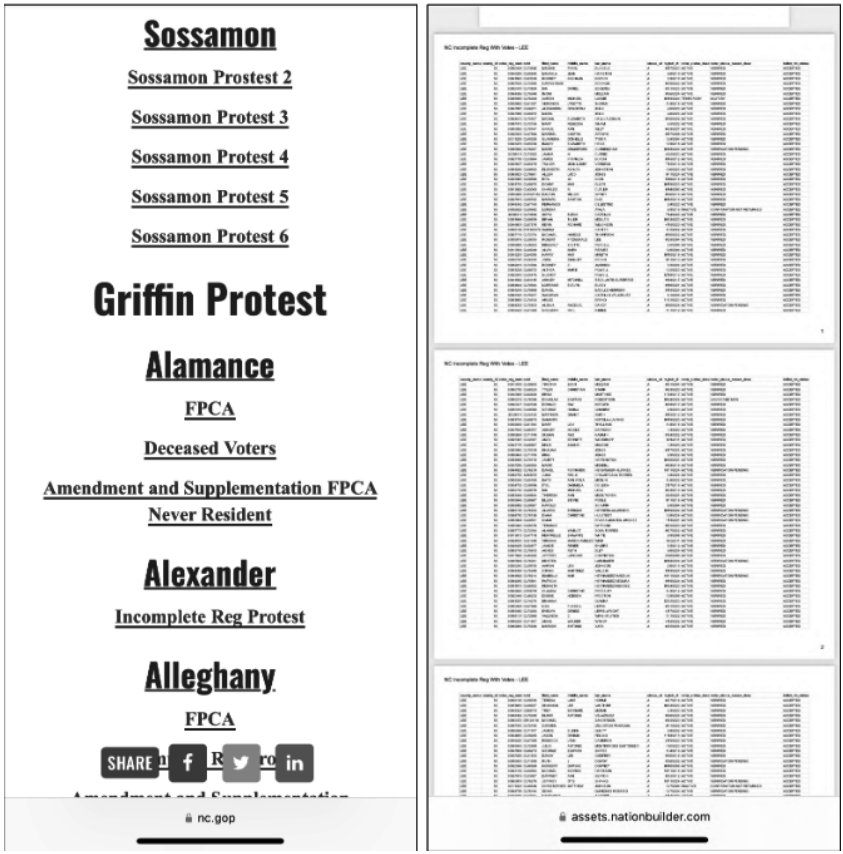
Jennifer Lynn Baddour, your vote may be affected by one or more protests filed in relation to the 2024 General Election.

Please scan this QR code to view the protest filings. Please check under the county in which you cast a ballot to see what protest may relate to you.

For more information on when your County Board of Elections will hold a hearing on this matter, please visit the State Board of Elections' website link found on the Protest Site (via the QR code).

5-DIGIT 27517
JENNIFER BADDOUR OR CURRENT RESIDENT
[redacted]
[redacted]

Should the voter have a smartphone, assume the risk of scanning a QR code, including one from a piece of spam-inspired mail addressed to them "OR CURRENT RESIDENT," the voter is then treated to an inscrutable webpage of spreadsheets, akin to some internet relic from the 1990s:



In my view, the State Board does have authority to compel petitioners to notify voters that their vote is being challenged, and Griffin's postcard fails to provide such notice. Under statute the Board has authority to "make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter." N.C.G.S. § 163-22(a). Specifically, the Board "shall promulgate rules providing for adequate

notice to parties." N.C.G.S. § 163-182.10(e). A rule that sets forth notice requirements consistent with Chapter 163 is therefore valid. The Board's notice requirements in 08 N.C. Admin. Code 2 .0111 are just that.

Below, the majority contended that the Board's "Election Protest Form instructions directly conflict with" N.C.G.S. § 163-182.10(b)'s requirement that the Board "shall give notice of the protest hearing." *Griffin*, slip op. 14. But the majority confuses the Board's obligation to notice the *protest hearing* with its duty to provide adequate notice *of the action*. The statute expressly requires the Board to notice a hearing on meritorious protests; it is also required to "prescribe forms for filing protests," and to make rules for providing adequate notice to parties, which it did here. N.C.G.S. § 163-182.9(c), 182.10(e).

The majority below further contended that, because "notice does not need to be given to any affected party until after it has been established an evidentiary hearing is set to take place," then the Board's rule requiring earlier notice "directly conflict[s]" with the statute. *Griffin*, slip op. 14. But this assertion again conflates the statute's notice of the hearing with notice of the challenge. Even if the statute was about notice in general, it does not follow that because earlier notice is not required under the statute, the Board is prohibited from requiring protestors to provide adequate notice. In short, there is no conflict, and Griffin was therefore required to comply with 08 N.C. Admin. Code 2 .0111.

He did not do so. The rule required Griffin to serve "copies" of the actual "filings," including the protest petition, to notify voters that their votes are being challenged. Griffin instead sent a postcard with the message "your vote *may* be affected by one or more protests filed in relation to the 2024 General Election" and a quick response or "QR" code to view his protest filings. (Emphasis added.) This is insufficient to put voters on guard that their legal rights are being challenged in a quasi-judicial proceeding.

Even if that rule did not apply, Griffin was still required to provide notice of the action that provided affected voters with constitutional due process. Election protests are quasi-judicial proceedings. *Bouvier v. Porter*, 386 N.C. 1, 12 (2024). As an "essential element of a fair trial," notice of the action may not be dispensed with in a quasi-judicial proceeding. *Humble Oil & Refining Co. v. Bd. of Aldermen of the Town of Chapel Hill*, 284 N.C. 458, 470 (1974); *Coastal Ready-Mix Concrete Co. v. Bd. of Comm'rs*, 299 N.C. 620 (1980). This requires at least "notice and an opportunity to be heard" before a deprivation of rights. *McMillan v. Robeson Cnty.*, 262 N.C. 413, 417 (1964). Griffin's mailing falls far

short of that standard, because it failed to inform voters that their rights were *in fact* being challenged let alone the precise grounds for the challenge. Indeed, nothing on the mailing identified Griffin as the challenger. The postcard form and the use of QR codes may be permissible in other contexts in which voters' constitutional rights are not at stake, but they were inadequate to provide notice to affected voters here.

In sum, the majority's decision to deny review effectively refashions the protest process to devise judicial authority to cancel votes based on mere allegations, not substantial evidence. This is contrary to the statutes and sets dangerous precedent. The Court of Appeals' decision is affected with legal error, and I would allow review to address these issues.[12]

III. The Majority's Novel Restrictions on Military and Overseas Voting

A. Military and Overseas Voters Challenged for Lacking Photocopies of Identification

Military and overseas voters are not required to submit photocopies of their identification when they cast their ballots, as a permanent rule promulgated by the Board explained, as the Rules Review Commission approved three distinct times, and as all five, bipartisan members of the Board of Elections agreed when it unanimously rejected Judge Griffin's challenges.

Yet the majority decided that those charged with administering our elections misapprehended the law on military and overseas requirements, and applied its new interpretation retroactively to create new requirements for only some voters in only some counties. Those who fail to jump through the majority's new hoops will have their votes thrown out.

Those retroactive requirements should fail for the reasons set forth above. Here I explain why the Board's interpretation of the law was consistent with the General Statutes.

The General Assembly has enacted two separate processes for distributing and collecting absentee ballots. The first is Article 20 of Chapter 163 of our General Statutes. It applies to the general public and authorizes "[a]ny qualified voter" to request an absentee ballot. N.C.G.S. § 163-226(a). The second is Article 21A of the same chapter, known

12. To the extent that the majority purports not to rewrite the statute, it is necessarily then ordering that Judge Griffin alone is to receive special treatment. Such a "good for one time only" ruling is antithetical to rule of law principles for obvious reasons.

as the Uniform Military and Overseas Voters Act (UMOVA). N.C.G.S. § 163-258.1. It covers military and overseas voters specifically. It was a specific response to the substantial barriers our servicemembers and their families have historically faced while voting, which lowered servicemember civic participation even as those individuals served our country. Unif. Mil. and Oversees Voter Act Refs. & Annos, U.L.A (2023), Prefatory Note 1 (noting that, prior to new reforms, military personnel were more likely than the general public to be registered but less likely to vote). Drafted by the National Conference of Commissioners on Uniform State Laws in 2010, and codified by the General Assembly in 2011, UMOVA functions to (1) "extend to state elections the assistance and protections for military and overseas voters currently found in federal law," and (2) "bring greater uniformity to the military and overseas voting processes." UMOVA, Prefatory Note 2. Like other state legislatures, our General Assembly unanimously enacted UMOVA to mitigate many of those barriers.

The below chart shows the a few of the differences between these two articles:

Requirement	**Article 20 – General Public**	**Article 21A – Military and Overseas**
Submission process[13]	Physical delivery	Option for electronic delivery
Authentication process[14]	Notary or two witnesses	Option to sign a declaration under penalty of perjury
Deadline[15]	Ballots must reach the county board by 7:30 p.m. on election day	Ballots must be sent by 12:01 a.m. on election day and received on the business day before canvass

Because they are distinct statutory procedures, Article 20 explicitly states when its processes extend to the military and overseas process in Article 21A. *See*, *e.g.*, N.C.G.S. § 163-231(b)(1) ("All ballots issued under the provisions of this Article *and Article 21A* of this Chapter

13. *Compare* N.C.G.S. § 163-258.10, *with* N.C.G.S. § 163-231(b).

14. *Compare* N.C.G.S. § 163-231(a)(6), *with* N.C.G.S. § 258.13.

15. *Compare* N.C.G.S. § 163-231(b)(2), *with* N.C.G.S. §§ 163-258.10, 163-258.12.

shall be transmitted by one of the following means . . . ." (emphasis added)). Otherwise, the sections are separate and distinct. The statutes make that distinction express by clarifying that the special procedures in the military and overseas voter provision "shall not apply to or modify the provisions" of the procedures of the general public absentee process in Article 20. To the extent there is a gap that needs to be filled in Article 21A, that statute instructs that its provisions should be applied and interpreted in ways that "promote uniformity" across peer states. N.C.G.S. § 163-258.19. North Carolina's military and overseas voters are to be treated similar to other state's military and overseas voters following the same uniform law.

So in 2019, when the General Assembly amended *only* Article 20 to require an absentee voter under that section to submit a photocopy of her identification with her ballot, it sensibly was understood to apply only to the general public voters following the Article 20 procedures.[16] The statute even made that point expressly: Article 20 states that only "ballots [voted] under this section [in Article 20] shall be accompanied by a photocopy of identification." N.C.G.S. § 163-230.1(f1). The procedures for military and overseas voters in Article 21A were not likewise amended. That makes sense, because as the dissent below noted, requiring photocopies likely would have caused a conflict with federal law, and would have made North Carolina an outlier among all other states. *See also* N.C.G.S. § 163-258.4(d) (ordering the State Board of Elections to "develop standardized absentee voting materials" for military and overseas voters, and to do so "in coordination with other states").[17] This intent is further apparent because North Carolina just passed a constitutional amendment requiring photo identification for *in-person* voting *only*. *See* N.C. const. art. VI, §§ 2(4), 3(2). Whatever the policy wisdom, the General Assembly and the voters were apparently not concerned with overhauling the military and overseas voting process to require photocopies of identifications.

---

16. I use shorthands like "general public" and "military and overseas" for ease of reading, but I note that voters who would qualify for military and overseas voting also have the choice of voting through Article 20's procedures. Of course, only eligible voters can use the generally applicable absentee voting procedures.

17. In 2017, for example, Virginia's legislature considered a photo ID requirement for absentee ballots. See Senate Bill 872 (2017 Va.). But after the Director of the Federal Voting Assistance Program raised concerns that the state law would conflict with the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the legislature created an exception for military and overseas voters. *See* Letter from Director David Beirne to Comm'r Edgardo Cortes, Va. Dep't of Elections, 6 Feb. 2017, https://www.fvap.gov/uploads/FVAP/EO/VaSEOLtrSB872_20170206_FINAL.pdf.

In the face of this straightforward question of statutory interpretation, the Court of Appeals buried its head, ostrich-like, in the sand. It draws a negative inference that because the special, military and overseas article "shall not apply to or modify" the general public article, all of the requirements in the general public article expressly apply to the special military and overseas article. To state the point is to refute it.

Given that our Court denies review of this issue, and indeed seemingly blesses its reasoning by extending the order below, dire questions arise. Do all of Article 20's requirements supersede Article 21A's? Will future candidates object after the fact to electronic submission of military and overseas voters' ballots? Their authentication? The date by which they must be received? The majority is opening Pandora's Box. Tomorrow's losing candidates for elected office can litigate and relitigate their losses after the election along the same lines as Judge Griffin does today. The right to vote for military and overseas voters is conditional on the whims of losing candidates and the limits of their lawyers' creativity.[18]

B. U.S. Citizens Who Inherit North Carolina Residency From Their Parents

Equally flawed is the refusal to review the Court of Appeals' conclusion that certain United States citizens born abroad—many to military families serving our country—are constitutionally barred from voting in North Carolina's elections. This Court declines to intervene. In doing so, it leaves standing a decision that disenfranchises a class of voters without proof of ineligibility and nullifies a statute passed unanimously by the legislature. That is a grave mistake. These citizens were entitled to vote—by statute and under the Constitution. Their ballots should count, and this Court errs in blessing their retroactive disenfranchisement.

From the outset, it matters enormously for this challenge that the Court of Appeals ignored the settled framework for voter challenges. A voter is presumed "properly registered," and that presumption stands unless the challenger offers "affirmative proof" to rebut it. N.C.G.S. § 163-90.1(b) (2023). Griffin's third challenge is against a group of American citizens born overseas, many into military families. Though these voters have never lived in North Carolina, they are legally tied to it.

---

18. Indeed, the precedent set today means that a losing candidate can use the election protest process to challenge any election law after the election in order to toss out their opponent's ballots and change the outcome of the election.

They are registered here alone and may vote nowhere else. *See* N.C.G.S. § 163-258.2(1)(e)(2) (2023). And critically, they swore—under penalty of perjury—that North Carolina was the "last place" where their parent (or guardian) was eligible to vote before moving abroad. *See* N.C.G.S. §§ 163-258.2(1)(e)(1), 163-258.4(e), 163-258.13 (2023). That sworn statement establishes that these voters' parent(s) were domiciled in this State, as discussed below.

The Court of Appeals dismissed these voters as "never residents," casting them as strangers to North Carolina's elections. But there is nothing illegitimate about their participation. The General Assembly recognized as much when it unanimously passed UMOVA to give these voters the right to register and vote in this State. *See* N.C.G.S. §§ 163-258.6, 163-258.7, 163-258.10 (2023).

Despite that legislative approval, Griffin asserts—and the Court of Appeals implicitly held—that these citizens are constitutionally ineligible to vote in North Carolina because they have not lived here. The Constitution, however, makes no such demand. Article VI, § 2 provides that a person is "entitled to vote at any election held in this State" if they have "resided" in North Carolina for one year before an election. This Court has long held that "residence," in the voting context, is "synonymous with domicile." *Hall v. Wake Cnty. Bd. of Elections*, 280 N.C. 600, 605 (1972) (quoting *Owens*, 228 N.C. at 708); *see also Hall*, 280 N.C. at 606 ("It is quite clear that residence, when used in the election law, means domicile."). Domicile does not require physical presence—it is a legal status that "denotes one's permanent, established home" in the eyes of the law. *Id.* at 605; *see also Baker v. Vaser*, 240 N.C. 260, 269 (1954) ("One may be a resident of one state, although having a domicile in another."). And "once established," this Court has explained, "a domicile is never lost until a new one is acquired." *Owens*, 228 N.C. at 709.

Domicile may be fixed in several ways. For the voters challenged here, the relevant path is domicile by origin, which attaches at birth. *Thayer v. Thayer*, 187 N.C. 573, 574 (1924); *In re Blalock*, 233 N.C. 493, 510 (1951). That domicile is inherited—a child "takes the domicile of the person upon whom he is legally dependent," usually their parents. *Hall*, 280 N.C. at 605. That birth-right domicile endures unless and until a new one takes its place. *See Reynolds v. Lloyd Cotton Mills*, 177 N.C. 412, 415 (1919) (describing as a "presumption of law" that a person's "domicil of origin subsists until a change of domicil is proved"). The burden to prove such a change lies with the person alleging it. *Id.*; *see also In re Blalock*, 233 N.C. at 510.

Griffin does not meet that burden. His only contention is that these "inherited resident" voters have never lived in North Carolina. But that is not the test. The law has never required physical presence to retain a domicile by origin in this State. To the contrary, our cases confirm that inherited domicile is not defeated "by merely proving residence in another place." *Reynolds*, 177 N.C. at 415; *see also In re Ellis' Will*, 187 N.C. 840, 843 (1921); *Plummer v. Brandon*, 40 N.C. 190, 192–93 (1848) (holding that a decedent remained domiciled in North Carolina despite "resid[ing] in Tennessee a year before his death," and stating that acquiring a new domicile requires more than residence elsewhere).

The Court of Appeals ignored these settled principles. First, it made a collective—and unfounded—determination about these voters' domicile. That approach contradicts our precedent. Domicile, this Court has made plain, is "necessarily a matter that must be determined on an individual basis," depending on the facts unique to each case. *Lloyd v. Babb*, 296 N.C. 416, 428 (1972). There is therefore "no appropriate way to make a group determination." *Id.* at 428–29. Yet a group determination is precisely what the Court of Appeals rendered—and without the process or proof such a pronouncement requires. *See id.*

The court also erred in its reading of the law. It reasoned that even if the challenged voters inherited a North Carolina domicile, they lost it when they turned eighteen and became legally independent from their parents. That is incorrect. Legal dependence matters at birth, because an infant "takes the domicile of the person upon whom they are legally dependent." *Hall*, 280 N.C. at 605. But once fixed, that domicile does not vanish with legal adulthood; it remains until affirmatively replaced. *Reynolds*, 177 N.C. at 420 (cleaned up); *see also id.* at 417 ("The original domicile . . . is to prevail until the party has not only acquired another but has manifested and carried into execution an intention of abandoning his former domicile and taking another as his sole domicile." (cleaned up)). Griffin offers no evidence—none—that the overseas-citizen voters abandoned their North Carolina domicile and secured another. *Cf. id.* at 421 ("To effect a change of domicile there must be an actual abandonment of the first domicile, coupled with an intention not to return to it, and there must be a new domicile acquired by actual residence within another jurisdiction, coupled with the intention of making the last acquired residence a permanent home." (internal citations omitted)). And without that "affirmative proof," he cannot defeat the presumption that the challenged voters were "properly registered" residents in this State, constitutionally eligible to vote here. *See* N.C.G.S. § 163-90.1(b). The Court of Appeals was wrong to indulge his fact-free

claim, and wrong again to invalidate hundreds of ballots in one stroke, without hearing from a single voter.

The consequences of those errors are grave. The Court of Appeals has, in effect, declared subsection (1)(e) of UMOVA facially unconstitutional. It did so by engrafting a physical presence requirement onto the constitutional definition of "resident." That interpretation cannot be squared with N.C.G.S. § 163-258.2(1)(e) of UMOVA, which allows certain overseas citizens to vote even if they have never lived in North Carolina. The Court of Appeals holds that the Constitution forbids the General Assembly's act. So applying that logic, the entire class of voters covered by subsection (1)(e) is categorically ineligible. Meaning the General Assembly has enacted a law that is unlawful in every application.

That is the essence of a facial constitutional challenge. *See Singleton v. N.C. Dep't of Health & Hum. Servs.*, 386 N.C. 597, 599 (2024) (defining a facial challenge as one in which the "claim and the relief that would follow could reach beyond the particular circumstances" of the case (cleaned up)). A facial challenge is no small matter. It carries unique "jurisdictional and procedural criteria," and demands a showing—beyond a reasonable doubt—that the challenged law is invalid across the board. *Id.* That bar is a high one. And the Court of Appeals did not meet it; it did not even try. Without serious analysis or explanation, it imposed a novel constitutional limit on the legislature, swept aside a duly enacted statute, and redefined the franchise. Gone apparently is the rigorous presumption of constitutionality for acts of the legislature not explicitly barred by the Constitution's text, and the requirement that violations of the same be proved beyond a reasonable doubt. *McKinney v. Goins*, 387 N.C. 35, 42 (2025) (Newby, C.J.). That kind of decision calls for this Court's review. It is wrong to look away.

IV. The Majority's Alarming Practice of Affecting Sweeping Changes to State Election Law via Special Order Without Merits Briefing or Argument

I conclude where opinions usually start, with a note about the procedural posture of this case. The Board and Justice Riggs have petitioned this Court for discretionary review. The majority allowed and summarily reversed the Court of Appeals on one issue, thus reaching the merits. As to the other two issues, it reiterated what it sees as the core holdings from the Court of Appeals' decision and then extended the underlying remedy by nine more days. Yet it purports to deny merits review of those issues. The signal is clear: the Court believes the Court of Appeals decision was correct with regard to those claims, but it declines to go on

record justifying its conclusion. The consequence is to deny parties the opportunity to fully brief the issues and further to sidestep the public oral arguments.

Make no mistake, this is a textbook case for discretionary review. *E.g.*, D. Martin Warf & Lorin J. Lapidus, *Discretion's Day—How To Prepare an Attractive Petition for Discretionary Review at the North Carolina Supreme Court*, N.C. State Bar J. (Spring 2025), at 8 (advising practitioners of the criteria for discretionary review by citing as an example "whether a statewide election can be conducted in a certain manner"). The Court of Appeals' decision affected sweeping changes to state law. It involved 1) a novel interpretation of the Constitution that facially invalidates a bipartisan act of the General Assembly and the right to vote for hundreds of North Carolinians and U.S. citizens, 2) stripped the elections boards of the power to compel petitioners to notify the voters they are challenging, 3) concluded that more than 60,000 votes were unlawfully cast in the 2024 general election, undermining public confidence in the accuracy and validity of our democratic system and inviting other destabilizing litigation from unsuccessful candidates in close races, 4) shifted the burden of proving an election protest from the protestor to the challenged voter, 5) invented whole cloth a judicial power to cancel the counting of ballots in some races but not others, in some counties but not others, contrary to equitable and equal protection principles, 6) contradicted constitutional limitations on changing the rules of an election after the election to invalidate votes that were lawfully cast under existing rules, 7) contradicted this Court's precedent that prevents votes from being invalidated where eligible voters did everything asked of them and any errors were on the part of the elections administrator. Denying review while leaving any part of the underlying decision intact is especially egregious given the multiple statements from multiple members of this Court contemplating that the Court would eventually and finally resolve the critical issues litigated here.[19]

---

19. The Court previously ordered briefing on the merits of the protestor's challenges, only to dismiss the extraordinary writ in favor of having Griffin follow the statutory process. *Griffin v. N.C. Bd. of Elections*, 909 S.E.2d 867 (N.C. Jan. 7, 2025); *Griffin v. N.C. Bd. of Elections*, 910 S.E.2d 348 (N.C. Jan. 22, 2025). Yet it signaled it would still resolve the critically important issues litigated here. *See Griffin*, 910 S.E.2d at 353 (Barringer, J., concurring in part) (objecting to having this matter "twist in the jurisprudential winds . . . before landing before this Court for the requisite de novo review"); *Griffin v. N.C. State Bd. of Elections*, 911 S.E.2d 365 (N.C. Feb. 20, 2025) (Barringer, J., concurring) ("Given the complexity and quantity of the issues presented in this case, this Court and our State will benefit from a well-reasoned, thoughtful, and deliberative analysis by the Court of

Although expeditious resolution of these issues is important, and I fully agree that summary reversal was warranted in this circumstance, special orders without merits briefing are not the way the Court should resolve these issues. This is the second time in the same election cycle that this Court has executed a sweeping re-write of state law via special order, without full briefing on the merits, at the request of a Republican-aligned candidate for office. *See generally Kennedy v. N.C. State Bd. of Election*s, 386 N.C. 620 (2024). I fear this practice is becoming too routine. We have developed a state analogue to the "shadow docket" which plagues the U.S. Supreme Court and threatens its legitimacy in the eyes of many.

Until other practices are adopted, litigants should take this Court at its word. It denied review of many of the important issues at stake in the Court of Appeals' opinion and therefore could not reach the underlying merits. The Court of Appeals' decision stands, but that body is not the highest authority on North Carolina law.

I have no doubt that this special order, upending years of precedent, violating due process, resulting in the discarding of thousands of legitimate votes, and issued with unseemly haste as though quickly ripping the bandage off the deep wound to our democracy will hurt less, marks one of the lowest points of illegitimacy in this Court's 205 year history. I look forward to the day when our Court will return to the rule of law and act to resolve the critical issues implicated in matters such as this with clarity, transparency, and even treatment for all voters and candidates. Until then, I dissent in the decision to deny review of two issues, and concur in the result only as to the summary reversal on the voters challenged based on their voter registration.

Justice DIETZ concurring in part and dissenting in part.

When these election claims first arrived at this Court three months ago, I urged the Court to summarily reject them. The election protest

---

Appeals."); *id.* at 366 (Allen, J., concurring) (supporting denial of the bypass petition because "I think that this Court could benefit from a well-reasoned and thorough evaluation of the parties' arguments").

Other members of this Court have expressed that this matter meets our criteria for review. *Griffin*, 910 S.E.2d at 349 (Newby, C.J., concurring) (noting that the case presented issues such as "preserving the public's trust and confidence in our elections through the rule of law"); *id.* at 352 (Berger, J., concurring) (noting that the case presented issues such as whether an "[a]genc[y] . . . operat[ed] outside the bounds of established rules").

process cannot be used "to remove the legal right to vote from people who lawfully voted under the laws and regulations that existed during the voting process." *See Griffin v. N.C. State Bd. of Elections* (*Griffin I*), 909 S.E.2d 867, 871 (N.C. 2025) (Mem.) (Dietz, J., dissenting). Endorsing this sort of post-election litigation, I warned, "invites incredible mischief." *Id.* at 872. "It will lead to doubts about the finality of vote counts following an election, encourage novel legal challenges that greatly delay certification of the results, and fuel an already troubling decline in public faith in our elections." *Id.*

The Court declined to put an end to these claims back then. But I remained hopeful that this was simply because the case was too important to warrant summary disposition. I expected that, when the time came, our state courts surely would embrace the universally accepted principle that courts cannot change election outcomes by retroactively rewriting the law.

I was wrong. The Court of Appeals has since issued an opinion that gets key state law issues wrong, may implicate a host of federal law issues, and invites all the mischief I imagined in the early days of this case. By every measure, this is the most impactful election-related court decision our state has seen in decades. It cries out for our full review and for a decisive rejection of this sort of *post hoc* judicial tampering in election results.

We should hear this case. I could spend pages laying out why the Court's failure to do so is a mistake—the origins of the so-called "*Purcell* principle," why it is so important to apply it here, and how it protects the public's faith in our elections. But I've already done that in this case, twice. *See Griffin I*, 909 S.E.2d at 871–72 (Dietz, J., dissenting); *Griffin v. N.C. State Bd. of Elections* (*Griffin II*), 910 S.E.2d 348, 353–54 (N.C. 2025) (Mem.) (Dietz, J., concurring). Doing so again is not a helpful exercise.

This is not to downplay the majority's concerns about the State Board of Elections. I agree that the agency displayed a troubling lack of competence in its maintenance of the voter rolls. And, as I have explained before, there may be merit to Griffin's other arguments had they been brought in a suit seeking relief in future elections. *Griffin I*, 909 S.E.2d at 871–72 (Dietz, J., dissenting).

The voter ID claim, for example, makes sense to me based on the interplay of the applicable statutes and the likely intent of the legislature. But implementing that voter ID requirement consistent with the federal Uniformed and Overseas Citizens Absentee Voting Act would require careful planning by state election staff, likely with input from

federal officials. It is not something that can be retroactively enacted by judicial edict.

Similarly, the so-called "never resident" issue is legitimate—although not for the reasons articulated by the Court of Appeals. Only residents of North Carolina can vote in our state elections. When not physically present in North Carolina, a person is a resident of our state for voting purposes only if "that person has the intention of returning." N.C.G.S. § 163-57. This applies whether the voter is an hour north in Norfolk or across the world in Beijing. The record in this case indicates that there is a category of overseas voters who checked a box on their ballots indicating that "I am a U.S. citizen living outside the country, and my intent to return is uncertain." It is this clash with our state's residency requirement that concerns me. But on the record before this Court, it is not even clear that any of these voters are among those Griffin challenged, or that simply tossing their votes—without permitting the opportunity to clarify the uncertainty—is a constitutionally permissible remedy.

All of this reinforces why we should allow review in this case and hold that, under our state version of *Purcell*, these claims are not justiciable in a backward-looking challenge to a past election. These are questions that should be resolved in a declaratory judgment action seeking prospective relief that would apply in future elections.

Whatever happens next in this case, it won't fix the Court of Appeals' implied rejection of a state *Purcell* doctrine. Even if the federal courts ultimately reverse the Court of Appeals' decision because of a conflict with UOCAVA, or *Bush v. Gore*, or whatever else, the door is open for losing candidates to try this sort of post-election meddling in state court in the future. We should not allow that.

So, with apologies for repeating myself for a third time, I believe our state version of the *Purcell* principle precludes the relief sought in this election protest. Election protests must be based on the failure to *follow* our election laws; they are not vehicles to bring challenges *to* our election laws. *See* N.C.G.S. § 163-182.10.

I would formally adopt a state analogue to *Purcell*—one that has always been lurking in our precedent—as part of our state election jurisprudence and uphold the decision of the State Board of Elections on that basis. *See Pender Cnty. v. Bartlett*, 361 N.C. 491, 510 (2007); *James v. Bartlett*, 359 N.C. 260, 265 (2005).

Accordingly, I concur in the Court's decision with respect to the voter registration challenge but respectfully dissent from the Court's decision on the remaining two grounds raised in the petitions.

STATE v. BACOTE

[387 N.C. 572 (2025)]

STATE OF NORTH CAROLINA v. HASSON JAMAAL BACOTE	From Johnston 07CRS1865 07CRS1866 07CRS51499

No. 360A09-1

ORDER

Defendant's Motion to Clarify Status of Direct Appeal is dismissed without prejudice to refile upon the conclusion of the appeal pending in *State v. Bacote*, No. 360A09-2. This Court's order staying further proceedings in this appeal, entered on 7 September 2010, remains in place until further order of this Court.

By order of the Court in Conference this the 25th day of April 2025.

/s/ Riggs, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 25th day of April 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE v. BARDEN

[387 N.C. 573 (2025)]

STATE OF NORTH CAROLINA	From Sampson 98CRS3718 98CRS3716
v	
IZIAH BARDEN	

No. 96A01-3

ORDER

Defendant's motion filed with this Court on 12 May 2025 is decided as follows:

With respect to the motion to lift the stay, the motion is allowed and the stay entered by this Court on 7 September 2010 is dissolved.

With respect to the motion to transfer this appeal to the Court of Appeals, this Court has exclusive appellate jurisdiction of all appeals "in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death." N.C.G.S. § 7A-27(a)(1). The parties are directed to brief the following question presented:

1. When the Governor commutes a defendant's death sentence to life imprisonment but no court has vacated, altered, or amended the judgment that includes a sentence of death, does initial appellate jurisdiction now rest with the Court of Appeals under N.C.G.S. § 7A-27?

Defendant's brief shall be filed with this Court within 30 days of the date of this order and further briefing shall be governed by Rule 13(a)(1) of the Rules of Appellate Procedure.

By order of the Court in Conference, this the 16th day of May 2025.

/s/ Riggs, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 16th day of May 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

RICHMOND COUNTY BOARD OF EDUCATION

v.

BRADFORD B. BRINER, NORTH CAROLINA STATE TREASURER, IN HIS OFFICIAL CAPACITY ONLY, NELS ROSELAND, NORTH CAROLINA STATE CONTROLLER, IN HIS OFFICIAL CAPACITY ONLY, KRISTIN WALKER, NORTH CAROLINA STATE BUDGET DIRECTOR, IN HER OFFICIAL CAPACITY ONLY, EDDIE M. BUFFALOE, JR., SECRETARY OF THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, IN HIS OFFICIAL CAPACITY ONLY, JEFF JACKSON, ATTORNEY GENERAL OF THE STATE OF NORTH CAROLINA, IN HIS OFFICIAL CAPACITY ONLY

From N.C. Court of Appeals
24-827

From Wake
24CV004687–910

No. 146P13-3

ORDER OF THE COURT

On 7 May 2025, Bradford B. Briner and Nels Roseland, defendants, filed a Motion for Temporary Stay, Petition for Writ of Supersedeas, and Petition for Discretionary Review of a divided decision of the North Carolina Court of Appeals pursuant to N.C.G.S. § 7A-31(c). By this order, the Motion for Temporary Stay is dismissed as moot, the Petition for Writ of Supersedeas is allowed, and the Petition for Discretionary Review is allowed as to all issues. This Court further directs the parties to address any other matters raised in the dissenting opinion below.

By order of the Court this the 21st of May 2025.

Dietz, J., recused.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of May 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STEIN v. BERGER

[387 N.C. 575 (2025)]

JOSHUA H. STEIN, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF NORTH CAROLINA

v.

PHILIP E. BERGER, IN HIS OFFICIAL CAPACITY AS PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; DESTIN C. HALL, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; AND THE STATE OF NORTH CAROLINA

AND

DAVE BOLIEK, IN HIS OFFICIAL CAPACITY AS NORTH CAROLINA STATE AUDITOR

From N.C. Court of Appeals
P25-298

From Wake
23CV029308-910

No. 114P25

ORDER OF THE COURT

This case arises from a legislative enactment altering the structure of the State Board of Elections and county boards of elections by transferring oversight of these administrative boards to the State Auditor. A divided three-judge panel of the Superior Court, Wake County, ruled that the law at issue, Session Law 2024 57, was unconstitutional. Defendants appealed to the Court of Appeals, which stayed enforcement of the three-judge panel's order by issuing the writ of supersedeas. Plaintiff Governor Joshua H. Stein, seeking review of the Court of Appeals' ruling, filed a Motion For Temporary Stay, Petition for Writ of Supersedeas, and Petition for Writ of Certiorari with this Court.

Importantly, the Governor's filings do not ask this Court to decide the substantive constitutional issue, nor do we decide it here. Instead, we must weigh the likelihood that the Court of Appeals made some error of law when it blocked enforcement of the three-judge panel's order. *See Cryan v. Nat'l Council of YMCAs*, 384 N.C. 569, 572, 887 S.E.2d 848, 851 (2023). We are therefore tasked with determining whether the Court of Appeals likely erred by allowing Session Law 2024 57 to remain intact pending appellate review.

We review the Court of Appeals' order solely for abuse of discretion. *Cf. id.* at 573, 887 S.E.2d at 851 (applying this standard when reviewing a

Court of Appeals order on the writ of certiorari). An abuse of discretion occurs when the ruling below was "manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision." *Id.* (quoting *State v. Locklear*, 331 N.C. 239, 248, 415 S.E.2d 726, 732 (1992)). Even if the Governor were to show error likely occurred at the Court of Appeals, he must also demonstrate "extraordinary circumstances" warranting the writ of certiorari, such as "a showing of substantial harm, considerable waste of judicial resources, or 'wide reaching issues of justice and liberty at stake.' " *Id.* at 572–73, 887 S.E.2d at 851 (quoting *Doe v. City of Charlotte*, 273 N.C. App. 10, 23, 848 S.E.2d 1, 11 (2020)).

The Governor's filings fail at the first step. There are multiple grounds upon which the Court of Appeals could have made a reasoned decision to stay the three judge panel's order here. *See*, *e.g.*, *McKinney v. Goins*, No. 109PA22 2, slip op. at 10–18 (N.C. 2025) (explaining the fundamental approach according to which North Carolina's courts evaluate a law's constitutionality); *Harper v. Hall*, 384 N.C. 292, 325–350, 886 S.E.2d 393, 415–31 (2023) (exploring the political question doctrine and non-justiciability). For purposes of this order, however, it suffices to point out just one: the three-judge panel unambiguously misapplied this Court's precedent.

It is well settled that the state constitution apportions executive power among the ten individually elected officers of the Council of State,[1] led by the Governor.[2] In other words, the Governor heads the executive branch but does not unilaterally exercise the executive power. Given the constitution's distribution of executive power among a multi-member executive branch, this Court's decisions interpreting the scope of that power have carefully and deliberately explained that they "take[ ] no position on how the [S]eparation of [P]owers [C]lause applies to those executive departments that are headed by the independently elected

---

1. These officers are the Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. *See* N.C. Const. art. III, §§ 7–8.

2. *See*, *e.g.*, *Tice v. Dep't of Transp.*, 67 N.C. App. 48, 55, 312 S.E.2d 241, 245 (1984); *Martin v. Thornburg*, 320 N.C. 533, 546, 359 S.E.2d 472, 480 (1987); *Atkinson v. State*, No. 09 CVS 006655, slip op. at 1–3 (N.C. Super. Ct. July 17, 2009) (order); *Conner v. N.C. Council of State*, 365 N.C. 242, 250, 716 S.E.2d 836, 841–42 (2011); *State ex rel. McCrory v. Berger*, 368 N.C. 633, 655–57, 781 S.E.2d 248, 262–63 (2016) (Newby, J., concurring in part and dissenting in part); *Cooper v. Berger* (*Cooper Confirmation*), 371 N.C. 799, 800 n.1, 822 S.E.2d 286, 290 n.1 (2018); John V. Orth & Paul Martin Newby, *The North Carolina State Constitution* 124–25 (2d ed. 2013) ("Under the 1868 constitution, the Council of State became a body of directly elected officers, with executive duties of their own.").

members of the Council of State." *State ex rel. McCrory v. Berger*, 368 N.C. 633, 646 n.5, 781 S.E.2d 248, 256 n.5 (2016); *Cooper v. Berger* (*Cooper I*), 370 N.C. 392, 407 n.4, 809 S.E.2d 98, 107 n.4 (2018); *Cooper v. Berger* (*Cooper Confirmation*), 371 N.C. 799, 806 n.5, 822 S.E.2d 286, 293 n.5 (2018).

The above-quoted language—which appears verbatim in all of these opinions—demonstrates that the present case is one of first impression. In cases of first impression, the presumption of constitutionality is especially strong.[3] The present case concerns the General Assembly's ability to reassign certain duties *among* executive constitutional officers *within* the executive branch. It does not implicate the classic separation of powers question of whether certain functions belong in the executive or legislative branches. This renders *McCrory*, *Cooper I*, and *Cooper Confirmation* inapposite, as each case explicitly noted.

Despite the direct caveats of *McCrory*, *Cooper I*, and *Cooper Confirmation*, the three-judge panel treated those cases as dispositive:

> 14. This [p]anel cannot look past *Cooper I*, *the controlling authority for this specific separation of powers issue*. . . .
>
> 15. The Auditor's arguments about non-justiciability similarly cannot be squared with *Cooper I*. The Governor, relying on *McCrory*, *Cooper I*, and *Cooper Confirmation*, contends here that [Session Law 2024-57] violates limits established by Article III, [Sections] 1 and 5(4). Our Supreme Court has repeatedly recognized this claim as a justiciable question.
>
> **III. Application of Text, History, and Precedent**
>
> 16. Having determined that *Cooper I* is on point with the facts of this case as to justiciability, the [p]anel now turns to applying the functional *McCrory* test.

---

3. This is because cases of first impression inherently lack precedential guidance and require the reviewing court to conduct a novel constitutional analysis. Accordingly, it is particularly inappropriate for courts in such cases to declare an act of the General Assembly unconstitutional unless a rigorous examination of text and history reveals a constitutional violation beyond a reasonable doubt. *See McKinney*, slip op. at 10, 15 (explaining that enacted laws are presumptively constitutional and must be proven otherwise beyond a reasonable doubt, which courts evaluate by "examin[ing] the text of the relevant [constitutional] provision, the historical context in which the people of North Carolina enacted it, and this Court's precedents interpreting it").

> 17. Legislative [d]efendants contend that this case is different, and that *McCrory* and *Cooper I* are not controlling. But this argument, like the one [l]egislative [d]efendants raised in *Cooper I*, "rests upon an overly narrow reading of *McCrory* . . . ."
>
> . . . .
>
> 23. That [Session Law 2024-57] transfers the Governor's authority to the Auditor, rather than the General Assembly . . . *makes no difference to the constitutional analysis.*

Stein v. Hall, No. 23-CV-029308-910, slip op. at 9, 11 (N.C. Super. Ct. Apr. 23, 2025) (order) (emphases added) (quoting *Cooper I*, 370 N.C. at 417, 809 S.E.2d at 113).

But again, *McCrory*, *Cooper I*, and *Cooper Confirmation* all recognized that the General Assembly's decision to transfer an executive power "to those executive departments that are headed by the independently elected members of the Council of State," like the Auditor, *does* make a difference to the constitutional analysis—one of such magnitude that each of those opinions added an explicit disclaimer to its holding. The three-judge panel mistakenly concluded that *McCrory*, *Cooper I*, and *Cooper Confirmation* controlled this case. Having noted the three-judge panel's plain misapplication of our caselaw, we cannot conclude that the Court of Appeals abused its discretion by temporarily staying the order pending full appellate review.

We also take this opportunity to briefly outline the constitutional assignment of executive functions, powers, and duties. *See* N.C. Const. art. III. Although some executive functions, powers, and duties are exclusive to one of the ten Council of State members, others could plausibly be assigned to several, or even all, of the ten.[4] Executive functions,

---

4. For the sake of clarity, the Governor's duty to "take care that the laws be faithfully executed," N.C. Const. art. III, § 5(4), is a nonexclusive duty conferred upon all ten Council of State members. This Court's caselaw has already recognized that fact. *See Cooper Confirmation*, 371 N.C. at 800, 822 S.E.2d at 289–90 (" 'The Governor shall take care that the laws be faithfully executed.' But the Governor is not alone in this task. Our state constitution establishes nine other offices in the executive branch. . . . Collectively, these ten offices are known as the Council of State." (first quoting N.C. Const. art. III, § 5(4); and then citing N.C. Const. art. III, §§ 2, 7, 8)).

While it is unnecessary here to explain that conclusion from a historical perspective, we note that the non-exclusivity of this duty is plainly apparent from the constitutional text. In addition to Article III, Section 5(4), Article III, Section 4 requires the Governor to "take an oath or affirmation that he will support the Constitution and laws of the United

powers, and duties fall into three categories. The first type consists of those prescribed by the constitutional text itself. *See*, *e.g.*, *id.* art. III, § 5(5) ("The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States."). The second consists of those assigned by law. *See*, *e.g.*, *id.* § 6 ("The Lieutenant Governor . . . . shall perform such additional duties as the General Assembly or the Governor may assign to him."). The final category comprises those functions, powers, and duties inherent in a given executive role.[5] Any unassigned and noninherent executive functions, powers, and duties fall to the Governor. *See id.* § 1 ("The executive power of the State shall be vested in the Governor."). Notably, the constitution grants the General Assembly broad authority to reorganize the executive branch. *See id.* § 5(10) ("The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time . . . .").

The constitutionality of Session Law 2024-57 remains vigorously contested. Given that defendants have already exercised their appeal as of right to the Court of Appeals—and that the outcome of their appeal is still pending—the three judge panel will not have the final say on the law's enforceability. Accordingly, the Court of Appeals' ruling was not manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision.

The Governor's Petition for Writ of Supersedeas and Petition for Writ of Certiorari are denied, and his Motion for Temporary Stay is dismissed as moot.

By order of the Court this the 21st of May 2025.

States and of the State of North Carolina, and that *he will faithfully perform the duties pertaining to the office of Governor*." N.C. Const. art. III, § 4 (emphasis added). Likewise, Article VI, Section 7 mandates a similar oath for all "elected or appointed" officers, including the members of the Council of State: "I . . . swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that *I will faithfully discharge the duties of my office* . . . ." *Id.* art. VI, § 7 (emphasis added). As individually elected officers, all ten members of the Council of State therefore bear the burden to faithfully discharge—that is, execute—the laws as they relate to their respective executive offices.

5. For instance, the Attorney General has a duty to represent the State in legal proceedings even if that duty is not statutorily prescribed. *See Martin*, 320 N.C. at 545–46, 359 S.E.2d at 479.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of May 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

Justice BERGER concurring.

Executive power in North Carolina is not concentrated in one individual or office. The governor does indeed wield the bulk of what is considered executive authority. Art. III, section 1. But unlike the federal system, our constitutional structure is designed to scatter executive power amongst the governor and nine other statewide elected officials, collectively known as the Council of State. Art. III, § 8. Thus, the intent of the people as expressed in the constitution was and is the diffusion of power in the Executive Branch.

Unless a function or power is constitutionally committed to a particular executive branch office, it is the constitutional responsibility of the legislature to "assign executive duties to the constitutional executive officers and organize executive departments." *State v. Berger*, 368 N.C. 633, 664 (2016) (Newby, J., concurring in part); *see* N.C. Const. art. III, §§ 5 and 7. Even if the legislature "assigned a particular function to a constitutional executive officer at present, the constitution provides that the legislature can assign that function elsewhere." *Id*. While our constitution permits these types of changes to be undertaken by the Governor as well, any change initiated by that office which impacts existing law requires legislative approval. Art. III, § 5. Thus, unless prohibited by our constitution, the legislature retains the prerogative to alter the supervisory structure of the executive branch, including that of the governor. Art. III §§ 5, 11. Put another way, the ultimate responsibility for assigning duties among executive branch officials, absent an express commitment by the constitution, "has indeed been squarely placed in the hands of the General Assembly." *Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 639 (2004).

In such circumstances, this Court declines to exercise its judicial power. *See Harper v. Hall*, 384 N.C. 292, 298 (2023) ("when the constitution assigns the matter to another branch . . . or resolution of the matter involves policy choices, [the issues are] political questions and are nonjusticiable."). This form of judicial discipline respects the people's

express directives as to the form and function of their government, thus preventing the judiciary from impermissible encroachment on the political branches. *Bacon v. Lee*, 353 N.C. 696, 716–17 (2001).

Here, the intra-branch transfer of the Board of Elections to the State Auditor does not appear to delegate a core function of the office of the governor; nor does the transfer of authority disable the executive branch from functioning. Because the mere reallocation of this authority within the Council of State is expressly contemplated in the constitution, we may lack the authority to limit the legislature's actions here. *Harper*, 384 N.C. at 300.

But the weighty constitutional questions are for another day. The question before us currently is a limited one: did the Court of Appeals abuse its discretion? While the order of the lower court could have provided some roadmap, it is not devoid of reason. As seen in the order here and the concurrence by Justice Dietz, most of which I agree with, there are a host of arguments that support the Court of Appeals' determination, and it cannot objectively be said to have abused its discretion.

Justice DIETZ concurring.

In my view, this case presents a much closer legal question than either the Governor or the General Assembly seems to think it does. North Carolina does not have a unitary executive. Under the North Carolina Constitution, executive power is distributed among a group of statewide elected officials known as the Council of State. N.C. Const. art. III, §§ 2, 5, 7, 8. Each member of the Council of State has core "functions and duties under the constitution" that can be performed only by that official and no one else. *Martin v. Thornburg*, 320 N.C. 533, 546 (1987). So, for example, when then-Governor Bev Perdue sought to appoint a "CEO of the Public Schools" who would report to the State Board of Education, the courts struck it down because that role overlapped with core functions of another Council of State member, the Superintendent of Public Instruction. *Atkinson v. State*, No. 09 CVS 006655, 2009 WL 8597173 (N.C. Super. Ct. Wake County July 17, 2009) (order); *see also N.C. State Bd. of Educ. v. State*, 371 N.C. 170, 185 n.1 (2018) (approving the reasoning of *Atkinson*).

In addition to each Council of State member's core constitutional roles, the General Assembly has long assigned other executive duties to each Council of State member that are related to that member's core functions. The authority to do so comes from the constitutional

provisions authorizing the General Assembly to reorganize the executive branch however it sees fit, so long as administrative functions and duties are grouped together "as far as practicable according to major purposes." N.C. Const. art. III, §§ 5(10), 11.

So, for example, although the Attorney General is our State's top lawyer, he also administers the State Crime Lab because of the overlap between the lab's criminal investigatory work and the need to present that evidence in court. *See* N.C.G.S. §§ 114-60, 114-61(a), 15A-266.1. But the crime lab is likely not a core part of the Attorney General's constitutional role. Indeed, in the past, the crime lab was part of the State Bureau of Investigation, which was once overseen by the Attorney General but has since been moved to the Governor. *See* N.C.G.S. §§ 114-12, 114-13 (2013); N.C.G.S. § 143B-1208.12(a).

Likewise, the duties of the State Fire Marshal were long handled by the Commissioner of Insurance because of the relationship between insurance and our state's fire and safety codes. *See* N.C.G.S. § 58-80-1 (2023); N.C.G.S. § 58-78A-1(c) (Interim Supp. 2024). But again, those duties likely are not a core constitutional role of the Commissioner of Insurance, and other responsibilities of the fire marshal, such as training and certifying fire and rescue personnel, are not closely related to insurance. *See* N.C.G.S. § 58-78A-1(b).

With this background in mind, I view the dispositive issue in this case—and the question the trial court should have examined—to be whether the work of the State Board of Elections is sufficiently related to a "major purpose" of the State Auditor's core constitutional role. N.C. Const. art. III, § 11.

I see arguments on both sides here. In my view, the core constitutional role of the State Auditor is to conduct financial audits, internal control reviews, legal compliance checks, and other investigations of state government as authorized by law. On the one hand, overseeing elections could be a reasonable fit with these core roles because of the need to conduct our elections "without taint of fraud or corruption and without irregularities." *Bouvier v. Porter*, 386 N.C. 1, 3 (2024). On the other hand, in my historical research, the State Auditor's role typically involves ensuring that agencies run by *other* Council of State members are complying with the law, rather than being the one in charge of those agencies. So, as I said, it seems like a close legal question.

Unfortunately, the trial court's order did not grasp any of this legal complexity, or any of the constitutional doctrine that underpins it. The trial court sided entirely with the Governor's extreme position, reasoning

that it "makes no difference to the constitutional analysis" that the challenged law "transfers the Governor's authority to the Auditor, rather than the General Assembly." *Stein v. Hall*, No. 23CV029308-910, order at 11 (N.C. Super Ct. Wake County April 23, 2025). The trial court emphasized that the North Carolina Constitution "makes no mention of the nongubernatorial members of the Council of State" when it describes "the constitutional duty to take care that the laws be faithfully executed." *Id.* at 12. Thus, the trial court reasoned, the State Auditor cannot oversee the State Board of Elections because the elections board is tasked with faithfully executing our election laws and only the Governor can take care that laws are faithfully executed. *Id.*

This reasoning is plainly wrong; all Council of State members have a constitutional duty to ensure that the laws for which they are responsible are faithfully executed. *See* N.C. Const. art. VI, § 7. Indeed, when this Court last addressed the Governor's constitutional duty to "take care that the laws be faithfully executed," we emphasized that "the Governor is not alone in this task" because of the other Council of State members. *Cooper v. Berger*, 371 N.C. 799, 800 (2018).

More importantly, the trial court's reasoning could create an executive-branch earthquake that forcibly reorganizes huge portions of the administrative state. If the Governor were truly the only constitutional officer who can ensure that laws passed by the General Assembly are faithfully executed, it could upend everything from the Commissioner of Labor overseeing elevator inspections to the Commissioner of Agriculture presiding over the State Fair.

That brings me to the Court of Appeals order issuing a writ of supersedeas. Although I have huge concerns with the trial court's order, I have a hard time defending the Court of Appeals order for two reasons. First, and frustratingly, the order includes no reasoning. By tradition, routine orders of the Court of Appeals tend to be boilerplate affairs. But this is not a routine order. This order issued a writ of supersedeas, one of the so-called "extraordinary writs," in a case of first impression, involving a novel constitutional claim, in a high-profile, politically divisive case. It is the sort of case where, to strengthen public confidence in the courts, it is sensible to provide at least some explanation for the ruling.

Second, a writ of supersedeas "is a writ issuing from an appellate court *to preserve* the status quo pending the exercise of the appellate court's jurisdiction." *City of New Bern v. Walker*, 255 N.C. 355, 356 (1961) (emphasis added). Here, the Court of Appeals used the writ *to change* the status quo, not to preserve it. The effect of the writ was to

permit a law that had not yet taken effect to do so, despite a trial court judgment concluding that the law was unconstitutional. I think the better approach in these circumstances is to leave the trial court judgment undisturbed (i.e., not issue the writ) but to expedite the appeal on the merits so that, if the appellate court ultimately rejects the lower court's reasoning and upholds the challenged law, any delay in the law's implementation would be minimal.

All that being said, it is too late now for this Court to get involved. Ordinarily, appellate courts confine themselves to the trial record that existed when the appeal occurred. *State v. Branch*, 306 N.C. 101, 105 (1982). But in these unusual circumstances, we cannot ignore reality playing out around us. *Cf. In re Thomas' Est.*, 243 N.C. 783, 784 (1956). The status quo has changed. The transfer from the Governor to the State Auditor took place; the State Auditor appointed new board members; those board members began hiring new staff. It would create quite a mess to try to unring that bell through our own extraordinary writ.

Moreover, although I can only speculate about the reasoning of the Court of Appeals, I think the order signals the court's belief that the General Assembly is more likely to prevail on the merits than the Governor—either for the reasons discussed above, or more broadly because this type of reorganization within the executive branch is not a justiciable legal matter, *see supra* (Berger, J., concurring). With this in mind, and given the typical timeframe for appeals, an opinion from the Court of Appeals in the General Assembly's favor would probably issue shortly before, or during, the upcoming November municipal elections—meaning that, absent the court's writ of supersedeas, the elections board would be undergoing potential leadership changes in the middle of an election. If recent election litigation has taught us anything, it is that changes impacting election administration should occur well in advance of the election. *Griffin v. N.C. Bd. of Elections*, 387 N.C. 386, 392–94 (2025) (Dietz, J., dissenting) (discussing importance of the *Purcell* principle).

Accordingly, although I do not think it was appropriate for the Court of Appeals to issue a writ of supersedeas in this case without providing any reasoning, I cannot ignore the realities of this case and the obvious flaws in the trial court's order. Thus, it is not appropriate for this Court to intervene with our own extraordinary writ and inject further uncertainty. Instead, I would urge the Court of Appeals to expeditiously decide the case on the merits.

Justice EARLS dissenting.

The narrow issue presented is whether the Court of Appeals likely erred by allowing control of the State Board of the Elections to transfer from the Governor to the financial Auditor while the Governor contests the lawfulness of that measure. After hearing arguments by the parties, a three-judge panel selected by the Chief Justice held that it was unconstitutional "beyond reasonable doubt" for the legislature to assert this kind of control, based on binding precedent from this Court. *Stein v. Hall*, Order Granting Pl.'s Mot. for Summ. J., No. 23CV029308-910, slip op. 16 (N.C. Super. Ct. Apr. 23, 2025). It barred the law from going into effect. *Id.* Then the Court of Appeals, without argument or explanation, effectively overturned that decision. In an order issued at 3:54 P.M., it allowed the financial Auditor to take control of state election administration the following day. *Stein v. Berger*, Order, No. P25-298 (N.C. Ct. App. Apr. 30, 2025). The Governor immediately asked this Court to stay that decision. This Court effectively refused by failing to act. That refusal rewarded the financial Auditor with wide latitude to make appointments and control the Board of Elections under an adjudicated unconstitutional law while appellate courts mull the merits of the legislature's and the Auditor's appeal. Nearly a month passed before this Court deigned to offer any explanation for its inaction.

It does so now, in an unsigned order that purports not to reach the merits of the parties' arguments while explicitly reaching the merits of the parties' arguments. In a disingenuous act of double-speak, also known as gaslighting, the order concedes that "we are not asked to decide the substantive constitutional issue" and professes to not "decide it here." Yet it concludes that "the three-judge panel *unambiguously* misapplied this Court's precedent," and it offers to explain "the constitutional assignment of executive" power. (Emphasis added.) It then crafts an entirely new framework for executive power, unmoored from any precedent or party briefing. To do so, it reinterprets the Governor's authority under the "Take Care" Clause in a footnote, notwithstanding the ample precedent that contradicts its new interpretation. The order further dismisses applicable caselaw while announcing a new rule that the General Assembly is entitled to *extra* deference when there is no applicable caselaw. The order blesses the legislature's power grab, hiding its rubber stamp of approval with sophistry.

I disagree with the majority's new and destabilizing constitutional rules which threaten public accountability over our state government, and with its mistreatment of the litigants in this case who have been denied the opportunity to argue their case before our Court prejudges

the merits. If the voters of North Carolina wanted a Republican official to control the State Board of Elections, they could have elected a Republican Governor. If they wanted David Boliek (the Auditor) in particular to run our elections, they could have elected him Governor. The voters did not. They hired Joshua Stein and David Boliek to do specific jobs, and the General Assembly is without the power to thwart the voters' will by restructuring those jobs after the election. The General Assembly may not grab power over enforcement of election laws by shuttling the Board between statewide elected officials until it finds one willing to do its bidding. Because I would allow the Governor's motion for temporary stay, petition for writ of supersedeas, and petition for writ of certiorari to pause implementation of this likely unconstitutional law while the parties proceed through the appellate process, I dissent.

As to the Governor's first request, I fully agree with my colleague Justice Riggs that he is entitled to a temporary stay. The overarching goal of a temporary stay is "to preserve the status quo of the parties during litigation." *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401 (1983). It is difficult to imagine a more emblematic status quo than the Governor's more than one-hundred years of authority to appoint bipartisan members of our State Board of Elections—an authority displaced by the challenged law. That status quo should have been preserved during the pendency of this litigation, and the majority is wrong to decide otherwise.

The Governor secondly requests that we allow the writ of certiorari to review the Court of Appeals' decision. The operative question there is whether the Governor has shown good cause that the Court of Appeals likely erred by greenlighting the challenged law in its unexplained order. *See Button v. Level Four Orthotics & Prosthetics, Inc.*, 380 N.C. 459, 465 (2022) (noting that a writ of certiorari may issue to "correct errors of law" (quoting *State v. Simmington*, 235 N.C. 612, 613 (1952))); *In re Snelgrove*, 208 N.C. 670, 671 (1935) (noting that certiorari may issue upon a showing of "good or sufficient cause" (cleaned up)). He has, and this Court should allow the writ.

I agree with my colleague Justice Riggs's analysis of this issue, and I focus here on the General Assembly's likelihood of success on the merits and the prospect of irreparable harm. Such considerations should have figured heavily in the Court of Appeals' decision to allow the General Assembly's requested injunction below. (I say "should," because again that court gave no reasons for its decision, and the majority must invent some to conclude that the court below did not err.) The law challenged here "transfers the State Board [of Elections] to the Office of the State Auditor, removes all of the Governor's appointment and removal

powers for the State Board and county boards, and assigns to the Auditor the power to: (a) appoint all members of the State Board; (b) fill vacancies or remove members who fail to attend State Board meetings; and (c) direct and supervise 'budgeting functions' for the State Board." *Stein v. Hall*, Order, No. 23CV029308-910, slip op. 4. In essence, the law treats the Governor as fungible with the financial Auditor and signals that the General Assembly has carte blanche to reshuffle the powers and responsibilities of constitutional officeholders who are elected by the entire state.

While the tactic is new, the playbook is old. This effort represents the General Assembly's sixth attempt in the last decade to wrest control over election administration away from the Governor. The voters rejected the fourth such effort by a large margin.[1] Our Court rejected the second in *Cooper v. Berger* (*Cooper I*), 370 N.C. 392 (2018). There, we held that a configuration of the State Board of Elections that deprived the Governor of removal power over its members and limited his ability to appoint elections administrators who shared his preferences violated the Constitution by leaving the Governor with insufficient control. *Id.* at 416. In separations-of-powers cases, we explained, the question is whether "based upon a case-by-case analysis of the extent to which the Governor is entitled to appoint, supervise, and remove the relevant executive officials, the challenged legislation impermissibly interferes with the Governor's ability to execute the laws." *Id.* at 417. The test is a functional one—courts look at the specific configuration of the Elections Board's structure and "the practical ability of the Governor to ensure that the laws are faithfully executed." *Id.* at 418 (citing *McCrory v. Berger*, 368 N.C. 633 (2018)).

Applying that rubric, we held that the General Assembly could not create a State Board of Elections which left the Governor with "little control over the views and priorities" of that board. *Id.* at 416 (quoting *McCrory*, 368 N.C. at 647). That holding built on a line of cases dating back decades, which recognized that the Governor as chief executive has unique obligations and must have adequate control over certain state government functions to meet those obligations. *Id.* at 414–18 (first citing *Bacon v. Lee*, 353 N.C. 696, 716 (2001); and then citing *McCrory*, 368 N.C. at 645); *see also Cooper v. Berger* (*Cooper Confirmation*), 371 N.C. 799, 799 (2018) ("The Governor is our state's chief executive. He

1. *11/06/2018 Official General Election Results – Statewide*, N.C. State Bd. of Elections, https://er.ncsbe.gov/?election_dt=11/06/2018&county_id=0&office=REF&contest=0 (last visited May 22, 2025) (indicating that 61.60% of eligible voters cast their ballots against a "Bipartisan Board of Ethics and Elections" in 2018).

or she bears the ultimate responsibility for ensuring that our laws are properly enforced.").

The problem in *Cooper I* was that the Governor in particular was divested of appropriate control over the elections boards. *Where* that power was reallocated was not the core question. The order's tortured attempts to discard *Cooper I* willfully miss the point by insisting that reassigning the power to the Auditor cures the constitutional defect. Just as the reconfigured Board of Elections in *Cooper I* left the Governor with insufficient control, *see id.* at 416, the present law, which leaves no role for the Governor whatsoever, seems similarly invalid. *See also Cooper Confirmation*, 371 N.C. at 801 (upholding a law that required an up-or-down vote by the Senate of the Governor's cabinet because the Governor retained essential appointment, supervision, and removal power). At this preliminary stage, this clear precedent strongly suggests the Governor's likely success on the merits and the Court of Appeals' error in allowing the law to go into effect.

Moreover, the arguments advanced by the General Assembly below reveal the scope of this broad power grab. The General Assembly asserts sweeping authority to reshuffle the powers and responsibilities of elected officials on our Council of State. It interprets the Constitution as providing no limit on how the legislature may allocate duties among such officials. The logical extension of these arguments is that the General Assembly could decide that the Agriculture Commissioner must represent the State in criminal appeals, the Attorney General supervise the State Health Plan, and the Treasurer run the State Fair—even after voters chose who they thought would be best for each of those tasks. By the same reasoning, the five Republican members of the Council of State could be granted nearly all power over state government, while the five Democratic members are stripped of the same, even though the voters of this state wanted to divide state government power evenly between these political parties. What voters expect an "Auditor," "Attorney General," "Treasurer," or "Agriculture Commissioner" to do when they step into a voting booth would be irrelevant under the legislature's reading; its will would predominate over the public's.

These arguments clearly fail on separation-of-powers grounds and further cut in the Governor's favor on the likely merits. The Constitution vests ultimate sovereignty with the people. N.C. const. art. I, § 2. The people exercise that sovereignty by directly electing members of the executive branch. N.C. const. art. III, §§ 2(1), (7)(1). Popular sovereignty breaks down if voters have no guarantee that the officials they elect will actually be tasked with the responsibilities they were elected to do.

Quite simply, the public cannot elect statewide officials to do a particular job if the General Assembly retains total discretion to restructure that job after the results have come in. The General Assembly's assertion of unfettered power contradicts principles of popular sovereignty and the separation of powers under our constitutional structure.[2]

The Governor has further argued that he is likely to succeed on the merits because at no point has anyone understood that the *financial Auditor in particular* could have sole responsibility to execute state election laws. The Auditor's job is to "provide for the auditing and investigation of State agencies by the impartial, independent State Auditor." N.C.G.S. § 147-64.6(a). For example, he examines financial accounts and systems of accounting, conducts financial audits consistent with certified public accountant standards, examines the accounts kept by the Treasurer, and reports to appropriate officials—including the Governor and Attorney General—about apparent misconduct of state officials. *Id.* at § 147-64.6(b)–(c). Those duties comport with the traditional portfolio of responsibilities of an "auditor," typically "an accountant or an accounting firm[ ] that formally examines an individual's or entity's financial records or status." *Auditor*, Black's Law Dictionary (11th ed. 2019).

It strains credulity that this official would have authority to administer federal, state, and local elections as well as oversee campaign finance compliance. As a matter of common sense, no one calls their accountant to protect their right to vote. And the reality that no voter entrusted the Auditor with these critical tasks is in strong tension with the many ways that control of the State Board allows its controller to effectuate their policy preferences. *See Cooper I*, 370 N.C. at 415 n.11 (noting generally the "numerous discretionary decisions" entrusted to the State Board of Elections). Responsibility for administering state election laws even seems in tension with the Auditor's entire purpose, since the Auditor can hardly be "impartial[and] independent" of the elections agency if he alone has appointment, removal, and supervisory control over that agency. *Compare* N.C.G.S. § 147-64.6(a), *with* (c)(23).

---

2. *See* Jonathan L. Marshfield, *America's Other Separation of Powers Tradition*, 73 Duke L.J. 545, 551, 566 (2023) (noting that state constitutions organized the executive branch around discrete roles and functions as an essential aspect of popular accountability and offering a theory of separation of powers that accounts for the specialized departments that enable the public to monitor government). We have previously recognized that the title, function, and historical role of a Council of State member shape that official's inherent powers and duties. *See Martin v. Thornburg*, 320 N.C. 533, 546 (1987) (noting that the Attorney General as a representative of the people as sovereign has a common law duty to appear for and defend the State in certain actions).

The risk of irreparable harm by allowing this law to continue to be in effect is apparent. Because this Court's inaction has dramatically changed the parties' positions, ruling for the Governor now would require uninstalling the Auditor's appointees to the Board of Elections, rehiring nonpartisan staff members who were terminated by the new board, potentially reselecting hundreds of county board officials due to be replaced in the coming weeks, and reconfiguring appropriations currently being negotiated by state lawmakers. The harm caused in the interim, resulting from the early termination of duly appointed Board of Elections members and the understandable public confusion as to who controls our all-important elections infrastructure, has no adequate remedy. Far from using an injunction to prevent irreparable harm, the Court withholds necessary injunctive relief to double down on such harm to our state's chief executive and to the public.

There is further harm from the appellate court maneuvers that have wrongly denied the Governor the opportunity to present the merits of his arguments before the Court prejudges them, as it does by unsigned order today. This is procedurally improper, and obviously unfair.

That said, the majority's sweeping constitutional commentary will not go unanswered. Not only is its dismissal of multiple applicable separation-of-powers precedents pure theater for the reasons described above, but its stealthy footnote that reinterprets the "Take Care" Clause marks a dangerous sea-change in our constitutional scheme. As our Court has previously explained, that Clause assigns the Governor both "the power and the duty to 'take care that the laws be faithfully executed.' " *Cooper Confirmation*, 371 N.C. at 806 (quoting N.C. Const. art. III, § 5(4)). This "express constitutional" responsibility is unique to the Governor. *McCrory*, 368 N.C. at 636; *see also Winslow v. Morton*, 118 N.C. 486, 490 (1896). Indeed, the Take Care Clause appears just once in the Constitution in the section that "enumerates the express duties of the Governor." *Bacon*, 353 N.C. at 718; N.C. Const. art. III, § 5 ("Duties of Governor."). That placement is no accident—it aligns with the broader constitutional command that "[t]he executive power of the State shall be vested in the Governor." N.C. Const. art. III, § 1. So even as the Constitution creates nine other executive offices that, together, form the Council of State, the Governor alone "bears the ultimate responsibility for ensuring that our laws are properly enforced." *Cooper I*, 371 N.C. at 799.

The majority's footnote flouts this precedent and the constitutional text. It effectively farms out one of the Governor's core constitutional duties to every other Council member through an inversion of textualism. In the majority's view, the Governor's express duty under the Take

Care Clause is merely a "nonexclusive duty." That conclusion springs from a facile word-matching exercise between the Governor's oath and the oath taken by other officers. The Governor must swear to "faithfully perform the duties pertaining to the office of Governor." Other officials, the order notes, must pledge to "faithfully discharge the duties of my office." From that superficial overlap in phrasing, the majority infers that "all ten Council of State members" share the same duty, and therefore the same degree of corresponding authority, to execute the laws as the Governor. This functionally nullifies a core element of gubernatorial authority, expressed in our precedent and the Constitution's text, by demoting the chief executive to just one member of a ten-person council. And this logic has no limiting principle: by the same reasoning, the Governor's "Take Care" duties apply to all "elected or appointed" officers who must take the same oath. *See* N.C. const. art. VI, § 7. Egregiously, the order sees no irony with rendering superfluous an express textual provision of our Constitution, while lecturing that constitutional interpretation starts with "the text of the relevant [constitutional] provision." (Alteration in original.)

Still purporting not to reach the merits of this dispute, the majority "take[s] this opportunity to briefly outline the constitutional assignment of executive functions, power, and duties." The word "outline" suggests a handy summary of existing doctrine. It thinly masks what is, in reality, the order's invention of a new framework for executive power. The majority manufactures at least "three categories" of executive duties that seem to permit broad reshuffling of power between executive officeholders. It cites no precedent for such a framework, because none exists. No party has submitted any briefing on this novel theory. If the majority's new categories seem incoherent, that is because they appear to be hastily conjured up to serve a political end. And again without irony, the majority announces its atextual theory of executive power while favorably quoting *Harper v. Hall*, 384 N.C. 292 (2023), a case purporting to require that any limits on the legislature's authority must be express in the text. *Id.* at 298.

In case any confusion remained as to where the majority stands on the merits of this appeal, the order concludes with the glib observation that "the constitution grants the General Assembly broad authority to reorganize the executive branch." That claim, in turn, is supported by an out-of-context citation to Article III, section 5, clause 10, a provision which allows the legislature to define the functions and duties of "administrative departments, agencies, and offices of the State." Needless to say, there is a sharp distinction between assigning tasks to

administrative agencies and rewriting the balance of power among constitutional officeholders in our executive branch. Authority to do the former does not include authority to do the latter. Nothing in the text of this provision speaks to the legislature's authority to reorganize the executive branch as a whole. The majority's "not[e]" tips its hand and invites yet more consolidation of power in the General Assembly. This appeal may be, as the majority puts it, "vigorously contested" in the public square—but in this Court there appears to be no such contest.

By design, these maneuvers threaten to kneecap the Governor's authority, allowing duties entrusted to him by the Constitution and the people to be transferred to officers more aligned with particular partisan allegiances. The same is true for disfavored members of the Council of State, each directly and independently elected by the eligible voters of North Carolina, who may find their portfolio of responsibilities gutted by legislative fiat. Despite the majority's protestations, this order is a procedurally improper decision on core substantive constitutional issues—one that charts an entirely new allocation of state government power in service of partisan ends.

Justice RIGGS dissenting.

After an almost month-long delay by this Court, the majority allows an extraordinary writ that was issued by the Court of Appeals—without explanation—to remain in effect and created reasoning to support allowing a statute—that a panel of superior court judges found to be unconstitutional beyond a reasonable doubt—to go into effect during the pendency of this appeal. The majority frames this as allowing a law to "remain intact." Instead, the majority is rewriting precedent and creating an explanation for an unexplained Court of Appeals order in an effort to upend 125-years status quo for the North Carolina State Board of Elections while this case winds its way through the courts. The decision to allow this statute—found to be unconstitutional—to go into effect runs contrary to this Court's precedent and threatens to erode the integrity of the judicial branch. For this reason, I dissent.

I. Factual and Procedural Background

This case presents the latest chapter in a line of cases from the last decade examining, under the Separation of Powers Clause, N.C. Const. art. I, § 6, the Vesting Clause, *id.* art. III, § 1, and the Take Care Clause, *id.* § 5(4), the General Assembly's ability to limit the Governor's executive powers. In October 2023, the General Assembly overrode then-Governor

Cooper's veto to enact Senate Bill 749. Act to Revise the Structures of the North Carolina State Board of Elections and County Board of Elections, to Revise the Emergency Powers of the Executive Director of the State Boards of Elections, to Make Clarifying Changes to Senate Bill 512 of the 2023 Regular Session, to Make Additional Conforming and Clarifying Changes to Implement Photo Identification for Voting, and to Amend the Time for Candidates and Vacancy Appointees to File Statements of Economic Interests, S.L. 2023-139, §§ 1.1–8.5, https://ncleg.gov/EnactedLegislation/SessionLaws/PDF/2023-2024/SL2023-139.pdf (hereinafter Session Law 2023-139). Session Law 2023-139 would have replaced the five-member State Board of Elections appointed by the Governor with an eight-member State Board appointed by the legislature. *Id.* § 2.1. It would also have created county boards with four members that would also have been appointed entirely by the legislature. *Id.* § 4.1. Legislative leaders would also have the authority to designate the chair of the State Board, as well as its executive director, in certain circumstances. *Id.* §§ 2.1, 2.5.

After Session Law 2023-139 was enacted, the Governor filed his verified complaint, and the matter was transferred to a three-judge panel. Following a hearing, the panel preliminarily enjoined the challenged provisions before they took effect. On 11 March 2024, the panel ruled unanimously in the Governor's favor, permanently enjoining Session Law 2023-139's provisions that change the State Board and county boards of elections. The Legislative Defendants appealed but did not seek an injunction to stay the trial court's order.

On 29 May 2024, the Legislative Defendants filed a petition for discretionary review prior to determination by the Court of Appeals. This Court denied that petition on 23 August 2024. *See Cooper v. Berger*, No. 131P24 (N.C. Aug. 23, 2024) (order denying petition for discretionary review).

In the November 2024 election, the North Carolina voters decided that they did not want a Republican supermajority, with power to override the Governor's veto. But before the new terms of the legislature began, (and when the Legislative Defendants' appeal before the Court of Appeals was fully briefed and awaiting argument), the General Assembly, in essentially a lame-duck session, enacted Session Law 2024-57. Act to Make Modifications to and Provide Additional Appropriations for Disaster Recovery; to Make Technical, Clarifying, and Other Modifications to the Current Operations Appropriations Act of 2023; and to Make Various Changes to the Law, S.L. 2024-57, §§ 3A.1–.5, https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S382v4.pdf (hereinafter Session Law 2024-57). Governor Cooper vetoed the legislation in

December, and the legislature quickly moved to override the veto while it still had the power to do so. *Id.* § 4.2.

The challenged provisions of Session Law 2023-139 were repealed but the legislation adopted another structure for the state and county boards of elections. Before the enactment of Session Law 2024-57, then-Governor Cooper had appointed the then-current members for four-year terms in May 2023. The new provisions purported to change the appointment structure, terminating the current board on 30 April 2025, rather than on 30 April 2027.

Session Law 2024-57 transferred the Governor's authority to appoint members of the State Board to the State Auditor starting 1 May 2025. *Id.* § 3A.3.(c) (amending N.C.G.S. § 163-19(b)). It also transferred to the State Auditor the Governor's authority to fill vacancies or remove members who fail to attend State Board meetings. *Id.* § 3A.3.(d) (amending N.C.G.S. § 163-20(d)). Just as Session Law 2024-57 changed the appointment structure of the State Board, it also changed the county boards by transferring the Governor's powers to the State Auditor. The State Auditor would appoint the chair of each county board instead of the Governor. *Id.* § 3A.3.(f).

Then-Governor Cooper and then-Governor-Elect Stein, moved for leave to file a supplementary complaint. The Superior Court, Wake County—after a hearing on a joint motion—entered an order vacating the three-judge panel's prior summary judgment and preliminary injunction orders, permitted the supplementary complaint, and set a summary judgment briefing and argument schedule before a three-judge panel. On 14 April 2025, the panel held a hearing. One week later on 23 April 2025, the panel issued a decision concluding that "beyond a reasonable doubt" Session Law 2024-57's changes to the State Board and county elections boards are "unconstitutional and must be permanently enjoined." *Stein v. Hall*, No. 23CV029308-910, order at 16 (N.C. Super Ct. April 23, 2025) (order).

On 25 April 2025, the Legislative Defendants filed with the Court of Appeals a petition for writ of supersedeas and a motion for temporary stay or expedited consideration. Legislative Defendants asked that court to permit the law to remain in effect during the pendency of the appeal. At 3:54 p.m. on 30 April 2025, the Court of Appeals issued an order—without briefing on the merits or oral arguments—allowing the petition for writ of supersedeas, staying the 23 April 2025 order pending appeal, and dismissing the motion for temporary stay as moot. This permitted Session Law 2024-57 to take effect, despite the trial court's ruling that it was unconstitutional.

On the same day, 30 April 2025, Governor Stein filed a motion for temporary stay in this Court, arguing that the Court of Appeals' order allows the unconstitutional law to nonetheless take effect before this Court or the Court of Appeals has reviewed the merits or conducted arguments. This Court took no action on that motion for temporary stay until now.

II. Temporary Stay

As a primary issue, I am obligated to address one of the most distressing aspects of this case. Despite prompt action by a litigant to seek review of an unprecedented order by the Court of Appeals, and on the eve of an unprecedented writ of supersedeas going into effect this Court did nothing—allowing a law to go into effect that a panel of trial court judges appointed by the Chief Justice ruled to be unconstitutional beyond a reasonable doubt. When parties seek relief from this Court, even if this Court denies it, a functional justice system requires an answer. This Court obviously denied the stay by inaction, and that is shameful. We are constitutional officers, all elected to serve the people of this state, but that does not relieve us of the obligation to treat people and the parties that come before us with respect. This Court should have denied the motion for stay rather than just sitting on it.

Turning to the merits of the stay, after the trial court's ruling that the challenged legislation violated multiple state constitutional guarantees beyond a reasonable doubt, the Governor showed good cause for entry of the stay, even if a majority of this Court intended to overrule or significantly defang *State ex rel. McCrory v. Berger*, 368 N.C. 633, 645 (2016), *Cooper v. Berger* (*Cooper I*), 370 N.C. 392 (2018), and *Cooper v. Berger* (*Cooper Confirmation*), 371 N.C. 799 (2018). Failing to stay the unprecedented, unjustified, and deeply troubling writ of supersedeas from the Court of Appeals and thus allowing the harm it created to stand will only continue to erode public confidence in the impartiality of this Court.

The Court here ignores our precedent holding that "in injunction cases . . . there is a presumption that the judgment entered below is correct, and the burden is upon the appellant to assign and show error." *W. Conf. of Original Free Will Baptists v. Creech*, 256 N.C. 128, 140 (1962) (cleaned up); *Huggins v. Wake Cnty. Bd. of Educ.*, 272 N.C. 33, 39 (1967); Whaley v. Broadway Taxi Co., 252 N.C. 586, 588 (1960); *see also*, *e.g.*, *Town of Apex v. Rubin*, 277 N.C. App. 357, 370 (2021) ("We must presume the preliminary injunction is proper, and [the defendant appellant] bears the burden of showing error to rebut the presumption."). A trial court panel appointed by our own Chief Justice found a

law unconstitutional and enjoined the enactment of a law that intruded on the Governor's powers in a similar manner to unconstitutional intrusions identified by this Court in numerous cases over the last decade. That this Court's current majority does not agree with those cases or may intend to change the direction of this Court's jurisprudence does not mean we can just ignore case law instructing us how to deal with trial court injunctions in this type of situation.

A temporary stay maintains the status quo during the pendency of an appeal. *See Nken v. Holder*, 556 U.S. 418, 421 (2009) (recognizing that a stay provides an appellate court with the time to act responsibly in fulfilling its obligation to provide judicial review). The status quo when the Court of Appeals entered its order was—as it has been for the last 125 years in North Carolina—that the Governor appoints a five-member bipartisan State Board of Elections. *See* Act to Provide for the Holding of Elections in North Carolina, ch. 89, §§ 5–6, 1901 N.C. Sess. Laws 243, 244.

Moreover, this is not just a small change to the status quo. The shifting of an entire state agency from under the control of the Governor to control by a different member of the Council of State represents a dramatic departure from how things are done and a significant disruption of the State Board of Elections' operations and functioning. Because of the writ of supersedeas entered by the Court of Appeals and the inaction by this Court, existing members of the State Board of Elections whose terms ran until 2027 were terminated on 1 May 2025. Session Law 2024-57, § 3A.3(c), (amending N.C.G.S. § 163-19).

Furthermore, the status quo with respect to the county boards of elections remains as it was pre-30 April 2025—the Governor has appointed the chair of the county boards of elections and thus a majority of members of those boards. The terms of county boards of elections members are set to be statutorily terminated, prior to the completion of their four-year terms, on 24 June 2025, and the State Auditor will have the power to select their replacements on 25 June 2025. *Id.* § 3A.3(f), (amending N.C.G.S. § 163-30); *Id.* § 3A.3.(h). This Court pays no mind to any of these pending changes.

The change in county board of elections structure is not the only impending deadline that affects the status quo analysis (and, in my view, exacerbates the harm in leaving an unconstitutional law in place pending appeal). There are always election deadlines upcoming, of course, because there are elections every year. That of course does not mean that we lack the power to enjoin any statutes that affect election administration. But it does mean that, particularly as discussed below, we are choosing to let municipal elections this year and mid-term elections,

primary and general, proceed next year under a cloud of unconstitutionality. A trial court found the law to be unconstitutional, and this Court, although unconvincingly, says it is not reaching the merits here. Thus, the Court is allowing elections to be conducted under a law where the only court to carefully review it has concluded the law is unconstitutional. This court continues to misapprehend what actually constitutes election integrity and acts again to disrupt faith and orderliness in our election administration. *See Griffin v. N.C. Bd. of Elections*, 387 N.C. 395, 398 (2025) (Newby, C.J., concurring).

Finally, by inaction, this Court has overruled— without the courage to plainly state it—the rule that emerged from previous cases in this lengthy dispute. This Court unequivocally held in *Cooper I* that the status quo was the maintenance of the Board's structure before the legislative enactment. *Cooper v. Berger*, 370 N.C. 59, 59 (2017) (order) ("The status quo as of the date of this order is to be maintained. Therefore, until further order of this Court, the parties are prohibited from taking further action regarding the unimplemented portions of the act that establishes a new 'Bipartisan State Board of Elections and Ethics Enforcement.' "). In addition to plainly disrupting the status quo pending appeal, we dismiss any recognition we have previously given to maintain the peaceable state of legal relations between parties. We have said in an analogous context that an injunction maintained the status quo "as it existed before the defendants[ ]' asserted their right to operate without state licenses and refuse to obtain licenses—meaning the preliminary injunction operates to place the parties in the position they were prior to the dispute between them." *State v. Fayetteville St. Christian Sch.*, 299 N.C. 731, 732–33 (1980) ("[T]hus, [the preliminary injunction] maintains the last peaceable status quo between the parties.").

I agree with my colleague Justice Earls' explanation of the irreparable harm that the Court of Appeals has wrought. I add only that the Court of Appeals' order and our rubber stamping of that order creates confusion and chaos at a time where the integrity of our electoral process has been already too damaged by speculation and reckless charges. The Court of Appeals' order allowed a law determined to be unconstitutional and under review to go into effect, and it destroys the last peaceable status quo among the parties on a matter pending appeal. By denying the motion for temporary stay, this Court—in the shadow of darkness—blesses the action of the Court of Appeals and the derogation of constitutional authority exercised by the Governor for more than 125 years. Allowing the stay would have been prudent on so many levels, and that makes this Court's actions all the more troubling.

III. Writ of Certiorari

In a case with broad impact on the election process in North Carolina, prompt resolution of this matter is particularly important to the faith of the public in election administration and to the reputation of the Court. The public interest in the transparency and integrity of decisions by the intermediate appellate court of this state represents just the kind of extraordinary circumstances justifying issuance of a writ of certiorari to consider whether the Court of Appeals erred by allowing the statute to go into effect.

When considering whether to issue a writ of certiorari, this Court must determine whether (1) the matter has merit or if an error was committed in the lower courts, and (2) whether extraordinary circumstances exist to justify granting the writ. *Cryan v. Nat'l Council of YMCA*, 384 N.C. 569, 572 (2023). Generally, an extraordinary circumstance warranting certiorari review requires a showing of "substantial harm, considerable waste of judicial resources, or 'wide-reaching issues of justice and liberty.' " *Id.* at 573 (quoting *Doe v. City of Charlotte*, 273 N.C. App. 10, 23 (2020)).

Although we review prerogative writs for abuse of discretion, review of supersedeas writ as issued by the Court of Appeals here is quite unusual. This is an extraordinary circumstance that should remind us that abuse of discretion review is not toothless. *See State v. Ricks*, 378 N.C. 737, 743 (2021) (holding the Court of Appeals abused its discretion when it allowed defendant's petition for writ of certiorari and suspended Rules of Appellate Procedure to reach merits of defendant's unpreserved challenge to trial court orders imposing lifetime satellite-based monitoring (SBM), after defendant was convicted of statutory rape of a child and statutory sex offense with a child, alleging that SBM was an unreasonable search); *Belk's Dep't Store v. Guilford Cnty.*, 222 N.C. 441, 445 (1943) ("According to the weight of authority, where the scope of the writ has not been narrowed by statute, its office extends to the review of all questions of jurisdiction, power, and authority of the inferior tribunal to do the action complained of, and all questions of irregularity in the proceedings, that is, of the question whether the inferior tribunal has kept within the boundaries prescribed by the express terms of the statute law or well-settled principles of the common law." (citing 10 Am. Jur. *Certiorari*, § 3)).

A troubling aspect of the Court of Appeals order is that it provides this Court and the public with no insight into the basis (or any potential error underlying) its decision. First, the Court of Appeals did not explain its balancing of the traditional stay factors in determining whether the

extraordinary writ was justified. *See* N.C. R. App. P. app. D (providing guidance that a party requesting a writ of supersedeas should provide a factual and legal argument "that irreparable harm will result to petitioner if it is required to obey decree pending its review; [and] that petitioner has meritorious basis for seeking review"). The Court of Appeals also did not explain why it did not follow this Court's precedent in *Cooper I* that the status quo was the structure of the State Board of Elections as it existed since 1901 and before Session Law 2024-57 was enacted. *See* N.C.G.S. § 163-19(b) (2023); Act to Provide for the Holding of Elections in North Carolina, §§ 5–6, 1901 N.C. Sess. Laws at 244; *Cooper I*, 370 N.C. 392. Absent an explained decision to overrule our precedent, this Court must view the trial court's injunction with a "presum[ption] that the judgment entered below is correct." *W. Conf. of Original Free Will Baptists*, 256 N.C. at 140 (cleaned up).

Under an abuse of discretion standard, the majority hypothesizes there are multiple grounds upon which the Court of Appeals could have made a reasoned decision to allow a statute found to be unconstitutional to go into effect. All of those hypotheticals require the majority, of course, to pre-decide the constitutional question, which it disingenuously disclaims. But the deferential abuse of discretion review, as applied here by the majority, essentially precludes all judicial review and gives the Court of Appeals unreviewable carte blanche to issue orders of substantial consequence, staying the judgment of learned trial courts that have heard the evidence and arguments of the parties, without any explanation at all.

"[W]hen the Court of Appeals issues a writ of certiorari, we review solely for abuse of discretion, examining whether the decision was "manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision." *Cryan*, 384 N.C. at 573 (cleaned up) (quoting *State v. Locklear*, 331 N.C. 239, 248 (1992); *see also In re Custodial Law Enf't Recording Sought by Greensboro*, 383 N.C. 261, 271 (2022) (finding the trial court abused its discretion when it—with no findings of fact, explanation or conclusions of law—refused to release police videos, noting that "[h]istory teaches that opaque decision-making destroys trust"); *Terrell v. Kernersville Chrysler Dodge, LLC*, 252 N.C. App. 414, 421 (2017) (reversing the trial court's decision to deny the motion to compel arbitration when the order provided no explanation to support the conclusion). We have given our state's intermediate court the greenlight today to engage in incredible overreach without any justification. That kind of substantial action, with no explanation, impedes our judicial review and cannot be countenanced.

Further, troublingly, the Court creates a new rule out of whole cloth today by wrongly suggesting that this is an issue of first impression and that the presumption of constitutionality here is particularly high. The presumption of constitutionality does not, as the Court here seems to assume, require us to refuse to do our job in enforcing the promises of our State Constitution. "Notwithstanding our deference to legislative enactments, when a challenger proves the unconstitutionality of a law beyond a reasonable doubt, this Court will not hesitate to pronounce the law unconstitutional and to vindicate whatever constitutional rights have been infringed." *Cmty. Success Initiative v. Moore*, 384 N.C. 194, 212 (2023). "The courts of this State have not hesitated to strike down regulatory legislation that is repugnant to the State Constitution." *Id.* at 213 (cleaned up) (quoting *N.C. Real Est. Licensing Bd. v. Aikens*, 31 N.C. App. 8, 11 (1976)).

And this case is most certainly not a matter of first impression. While this Court has reserved judgment on whether the legislature might constitutionally transfer from one executive office to another certain powers, because those questions were not presented in the previous cases in this long saga, the rules that emerged from those cases about separation of powers and the constitutional injury to the Governor by the legislature intruding too much into duties assigned to him were squarely addressed in the *McCrory* and *Cooper* cases. *McCrory*, 368 N.C. 633, *Cooper I*, 370 N.C. 392, and *Cooper Confirmation*, 371 N.C. 799. A new nuance in a constitutional inquiry is not a matter of first impression.

Looking to *McCrory*, the legislature here seeks to, again, make changes to how members of an administrative agency are appointed. In *McCrory*, it mattered that the degree of control the Governor had over administrative commissions depended on his ability to appoint the commissioners, supervise their day-to-day activities, and to remove them from office. 368 N.C. at 646. Whether it is the legislature giving itself the power to make the appointments or taking that power from the Governor to give to a different officer within the executive branch does not change what the law essentially does—it encroaches on the Governor's authority, a power that specific office has enjoyed for nearly 125 years. Now, it may be that ultimately this is the kind of intrusion on the Governor's powers that this Court did not intend to preclude in its previous cases. On that front, I appropriately refrain from deciding the constitutional question. But the previous cases are clear enough to identify a reasonable likelihood of a constitutional violation such that we should take seriously our duty to preserve the parties' legal rights pending our full review. This Court declares, unconvincingly, that this is

a matter of first impression in order to create a standard that does not exist. There is no "special" presumption of constitutionality in a case such as this.

Then, also, we should consider the issue we were actually asked to review:

> Should the Court of Appeals' 30 April 2025 Order be vacated because it destroys the last peaceable status quo among the parties and effectively reverses all relief ordered by the trial court without a record being docketed, merit briefs filed, and the case heard in the normal course of the appellate process?

Opaque decision-making is harmful to trust in our judiciary to do its job impartially and thus we are required to intervene on this specific question.

Turning to the Court's abuse of discretion analysis here and examining those hypothetical reasons that the Court of Appeals could have had for its unexplained, unprecedented order, the Court concluded that the Court of Appeals decided that the superior court misapplied our precedent. After expressly disavowing any decision on the merits of the constitutional question at issue, the majority goes on to discount the precedential value of *McCrory* and the *Cooper* cases and mischaracterizes our precedent.

The issue in this case—whether the General Assembly can remove power from the Governor and vest it in another member of the Council of State—is a natural and corollary extension of the Court's decisions in *McCrory* and the *Cooper* cases. *In Cooper I*, this Court acknowledged that

> Article III, Section 5(4) of the North Carolina Constitution requires the Governor to have enough control over commissions or boards that are primarily administrative or executive in character to perform his or her constitutional duty, with the sufficiency of the Governor's degree of control depending on his or her ability to appoint the commissioners, to supervise their day-to-day activities and to remove them from office.

370 N.C. at 414 (cleaned up). The test established in *McCrory* is "whether the Governor has 'enough control' over administrative bodies that have final executive authority to be able to perform his constitutional duties." *Id.* at 423 (Martin, C.J., dissenting) (citing *McCrory*, 368 N.C. at 646).

This Court has held that the Take Care Clause found in Article II, Section 5(4) of the Constitution gives the Governor the duty to "take care that the laws be faithfully executed." *McCrory*, 368 N.C. at 645 (quoting N.C. Const. art. III, § 5(4)). To be able to faithfully perform this duty the Governor must have enough control over commissions and boards that are executive in nature to perform his constitutional duty. *Id.* at 646. In *McCrory*, this Court considered whether the Governor had sufficient control over commissions when the General Assembly assumed the power to appoint and remove the members of the commission. *Id.* The Court concluded that when the Governor cannot appoint or remove members of the board of commission the Governor cannot perform the constitutional duty to take care that the laws are faithfully executed in those areas. *Id.* Similarly, here, if the State Auditor, rather than the Governor, has the authority to appoint and remove the members of the State Board of Elections, the Governor does not have control to perform his constitutional duty to take care that the laws are faithfully executed. We have never treated all members of the Executive Branch as interchangeable and fungible, particularly in relation to the Governor. Indeed, our State Constitution is full of references to the Governor's authority. The State Auditor's role, while important, does not carry the same level of constitutional authority, nor is the office charged with the ultimate duty to take care that the laws are faithfully executed. N.C. Const. art III, § 7. Again, this may be a case where there is an exception to the rules from the *McCrory* and *Cooper* cases, but a good faith reading of those cases and the rules that come from them requires us to allow the trial court's judgment to stand while this case proceeds through appellate review.

Now, if this Court truly wanted to avoid prematurely judging the merits of the case and wanted to resolve this matter with finality for the ease of future election administration, we could have (and should have) invoked our supervisory authority to convert the petition for writ of certiorari into a bypass petition for discretionary review. *See*, *e.g.*, *Hoke Cnty. Bd. of Educ. v. State*, 385 N.C. 380 (2023) (order) (allowing petition for discretionary review prior to determination by the Court of Appeals as to whether the trial court lacked subject matter jurisdiction to enter an order); *Cmty. Success Initiative*, 384 N.C. at 196 (judgment on a petition for discretionary review prior to determination by the Court of Appeals on a challenge to the constitutionality of statute governing restoration of citizenship rights); *In re A.R.A.*, 373 N.C. 190, 194 (2019) (same, for review of an order terminating parental rights); *Bailey v. State*, 348 N.C. 130, 135–36 (1998) (same, for review in an action challenging the constitutionality of legislation capping tax exemption for

state and local employees' retirement benefits); *State ex rel. Edmisten v. Tucker*, 312 N.C. 326, 327 (1984) (same, for review in a declaratory judgment action as to the meaning and validity of Safe Roads Act of 1983). But we did not, instead issuing an order that invites untold mischief from our lower appellate court and prejudges the merits of this case on expedited briefing alone. The people of this State deserve an independent judiciary committed to carrying out its constitutional obligation of judicial review.

The Court of Appeals permitted an unconstitutional law to take effect without accepting merit briefs or hearing arguments. To affirm the Court of Appeals' unexplained order, this Court starts to unwind a decade of precedent in an order without merit briefs or argument to create an explanation for the Court of Appeals. From this sad stain on our judiciary, I dissent.

STATE OF NORTH CAROLINA	From N.C. Court of Appeals 23-748
v.	
DEMISTRUS MCKINLEY INGRAM	From Caswell 19CRS50409 19CRS50454 21CRS33

No. 175PA24

ORDER OF THE COURT

This Court allowed the State's Petition for Writ of Supersedeas and Petition for Discretionary Review on 18 October 2024. The State subsequently filed a Motion to Hold in Abeyance Until this Court Decides *State v. Chambers*, which we allowed on 15 November 2024. We now vacate the decision of the Court of Appeals and remand to that court for reconsideration in light of our decision in *State v. Chambers*.

By order of the Court this the 22nd of May 2025.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of May 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

23 MAY 2025

4P25	State v. Derrick Shay Bishop	Def's PDR Under N.C.G.S. § 7A-31 (COA24-257)	Denied
10P25	State v. David Neil Brown	Def's PDR Under N.C.G.S. § 7A-31 (COA24-261)	Denied
15P25	Laney Fox, Nakia Hooks, Ashley Woodroffe, Michaela Dixon, Sydney Wilson, Tamerah Brown, Kennedy Weigt, Korbin Tipton, and Fatou Sall v. Lenoir-Rhyne University and Frederick Whitt	Plts' PDR Under N.C.G.S. § 7A-31 (COA24-16)	Denied
25P23-7	Kalishwar Das v. John F. Morgan, Jr. SCGVIII Lakepointe, LLC	Plt's Pro Se Motion for Rehearing of Denied Writs	Dismissed **Dietz, J., recused** **Riggs, J., recused**
29P25	Alice Barefoot v. Lafayette Cemetery Park Corporation and Heather Bosher	Defs' PDR Under N.C.G.S. § 7A-31 (COA24-282)	Denied
37P25	Adam Saad v. Town of Surf City	1. Def's PDR Under N.C.G.S. § 7A-31 (COA24-10) 2. Def's Consent Motion for Withdrawal of PDR	1. --- 2. Allowed
41P25	CL Howard Investments I, LLC v. Wilmington Savings Fund Society, FSB as Trustee for BCAT 2020-3TT; and Substitute Trustee Services, Inc.	Plt's PDR Under N.C.G.S. § 7A-31 (COA24-466)	Denied
46P25	David W. Collins, Employee v. Wieland Copper Products, LLC, Employer, Farmington Casualty Company, Carrier (CCSMI, Third-Party Administrator)	1. Defs' Motion for Temporary Stay (COA24-214) 2. Defs' Petition for Writ of Supersedeas 3. Defs' PDR Under N.C.G.S. § 7A-31	1. Allowed **02/06/2025** Dissolved 2. Denied 3. Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

23 MAY 2025

54PA24	Stephen Matthew Lassiter, Employee v. Robeson County Sheriff's Department, Alleged-Employer, Synergy Coverage Solutions, Alleged-Carrier, and Truesdell Corporation, Alleged-Employer, the Phoenix Insurance Co., Alleged-Carrier	Plt's Motion to Continue Oral Argument	Allowed **03/20/2025**
54P25	Luis Ortez and Theresa Beddard Estes, Individually and as Administratrix of the Estate of Darren Drake Estes v. Penn National Security Insurance Company, Pennsylvania National Mutual Casualty Insurance Company, and Pamela A. Tokarz	1. Plt's (Luis Ortez) PDR Under N.C.G.S. § 7A-31 (COA24-169) 2. Def's (Penn National Security Insurance Company) Conditional PDR	1. Denied 2. Dismissed as moot
56P25	State v. Robert Ahmaad Middleton, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA24-252)	Denied
59P25	State v. Jimmy Davenport	Def's PDR Under N.C.G.S. § 7A-31 (COA24-330)	Denied
64P25	State v. Rodney Elroy Cobb	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, New Hanover County 2. Def's Pro Se Motion for Recognizance, or Vacate Sentence 3. Def's Pro Se Petition for Writ of Habeas Corpus	1. 2. 3. Denied **03/28/2025**
70P25	Robert Calvin Craig, Jr. v. Jennifer S. Holl, MD	1. Plt's Pro Se Motion to Bypass the COA 2. Plt's Pro Se Motion to Stay the Appeal	1. Dismissed as moot 2. Dismissed as moot

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

23 MAY 2025

70PA24	Richard C. Hanson, Fred Allen, Richard Burgess, Vernon L. Cathcart, Angie Cathcart, Christopher L. Davis, James J. Flowers, Kenneth C. Lynch, Larry F. Matkins, Thomas Roddey, Daryl Sturdivant, Alvester W. Tucker, and Carlos Valentin v. Charlotte-Mecklenburg Board of Education	Plts' Motion to Take Judicial Notice	Dismissed as moot
71P25	State v. Michael Justin Hagaman	1. Def's Pro Se Motion for PDR (COAP23-616) 2. Def's Pro Se Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
72P25	State v. Anthony Van Long	1. State's Motion for Temporary Stay (COA24-531) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **03/10/2025** Dissolved 2. Denied 3. Denied
73P25	State v. Brandon Kason Boyd	Def's PDR Under N.C.G.S. § 7A-31 (COA24-36)	Denied
74A25	Chasity Vernon, on behalf of herself and all others similarly situated v. the Trustees of Gaston College	1. Def's Motion to Consolidate Appeals 2. Def's Motion to Set Extended Briefing Schedule	1. Allowed **04/02/2025** 2. Allowed **04/02/2025**
76A25	Ludenia Archie, individually and on behalf of all others similarly situated v. the Trustees of Gaston College	1. Def's Motion to Consolidate Appeals 2. Def's Motion to Set Extended Briefing Schedule	1. Allowed **04/02/2025** 2. Allowed **04/02/2025**
77A25	Shaquasia Eppes, an individual, on behalf of herself and all others similarly situated v. the Trustees of Gaston College	1. Def's Motion to Consolidate Appeals 2. Def's Motion to Set Extended Briefing Schedule	1. Allowed **04/02/2025** 2. Allowed **04/02/2025**
79P25	Leilei Zhang v. Cary Academy	Plt's Pro Se Motion for Notice of Appeal (COA24-744)	Dismissed *ex mero motu*

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

23 MAY 2025

80P25	State v. Ronald A. Henry	Def's Pro Se Motion for Notice of Appeal	Dismissed
81P25	Eric Dawkins v. Leslie D. Smukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **03/26/2025**
82P25	State v. Cynthia Anne Driscol Fearns	1. State's Motion for Temporary Stay (COA23-650) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **03/26/2025** 2. 3.
87P25	Aizhong Lei v. Progressive Corporation	Plt's Pro Se Motion for Notice of Appeal (COA25-162)	Dismissed *ex mero motu*
88P25	John M. Fish v. Wayne Douglas Stetina	1. Def's PDR Under N.C.G.S. § 7A-31 (COA23-1115) 2. Def's Petition in the Alternative for Writ of Certiorari to Review Decision of the COA 3. Plt's Motion to Dismiss PDR 4. Plt's Motion to Dismiss Petition for Writ of Certiorari 5. Plt's Motion for Sanctions and for Costs and Attorney Fees	1. Dismissed 2. Denied 3. Dismissed as moot 4. Dismissed as moot 5. Denied
89P25	Emily Jeffords Meister v. Tigress Sydney Acute McDaniel	Def's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA25-187)	Dismissed *ex mero motu*
90P25	State v. Scottie Hartsfield	Def's Pro Se Petition for Writ of Habeas Corpus	Denied **04/04/2025**
91A25	State v. Dallas Jerome McGirt	1. State's Motion for Temporary Stay (COA24-551) 2. State's Petition for Writ of Supersedeas 3. Notice of Appeal Based Upon a Dissent 4. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **04/07/2025** 2. 3. --- 4.
93P25	State v. Elizabeth Longman	Def's Pro Se Motion for Appropriate Relief	Dismissed
94P25	Shaunesi DeBerry v. North Carolina Department of Health and Human Services	Plt's Pro Se Petition for Writ of Mandamus	Dismissed **Riggs, J., recused**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

23 MAY 2025

95P25	In re S.W.	1. Guardian ad Litem's Motion for Temporary Stay (COA24-737) 2. Guardian ad Litem's Petition for Writ of Supersedeas 3. Guardian ad Litem's PDR Under N.C.G.S. § 7A-31	1. Allowed **04/09/2025** 2. Allowed 3. Allowed
96A01-3	State v. Iziah Barden	Def's Motion to Lift Stay and Transfer to the Court of Appeals	Special Order **05/16/2025**
96P25	Solomon Nimrod Butler v. William R. West	Plt's Pro Se Petition for Writ of Mandamus	Dismissed
98P25	State v. Charles Antonio Means	Def's Pro Se Petition for Writ of Habeas Corpus	Denied **04/09/2025**
100P24	State v. Saequan Marquette Jackson	1. Def's PDR Under N.C.G.S. § 7A-31 (COA23-636) 2. Def's Pro Se Motion for Appropriate Relief	1. Denied 2. Dismissed
105P25	Bilfinger Inc. v. Cargill, Inc.	1. Def's Motion for Temporary Stay (COA24-320) 2. Def's Petition for Writ of Supersedeas 3. Def's PDR Under N.C.G.S. § 7A-31 4. Def's Motion to Admit Aaron Van Oort Pro Hac Vice 5. Plt's Motion to Admit Lee C. Davis Pro Hac Vice 6. Plt's Motion to Admit Tracey K. Ledbetter Pro Hac Vice	1. Allowed **04/23/2025** 2. 3. 4. 5. 6.
106P25	State v. Patrick O'Neal Harris	Def's Pro Se Motion to Review/Appeal	Dismissed
107P25	Charity Mainville v. Anna De Santis and Desantis Rentals, LLC	1. Plt's Pro Se Motion for PDR (COAP25-113) 2. Plt's Pro Se Motion to Strike 3. Plt's Pro Se Motion in the Alternative for Sanctions	1. Denied 2. Denied 3. Denied
111P24	State v. Jonathan David Young	Def's PDR Under N.C.G.S. § 7A-31 (COA23-722)	Denied
113P25	State v. David Adam Windseth	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA24-718)	Dismissed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

23 MAY 2025

114P25	Joshua H. Stein, in his official capacity as Governor of the State of North Carolina v. Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate; Destin C. Hall, in his official capacity as Speaker of the North Carolina House of Representatives; and the State of North Carolina and Dave Boliek, in his official capacity as North Carolina State Auditor	1. Plt's Motion for Temporary Stay (COAP25-298) 2. Plt's Petition for Writ of Supersedeas 3. Plt's Petition for Writ of Certiorari to Review Order of the COA	1. Special Order 2. Special Order 3. Special Order
115P24-2	State v. Eric James Ducker	1. Def's Motion for Temporary Stay (COA24-373) 2. Def's Petition for Writ of Supersedeas	1. Allowed **05/20/2025** 2.
118P25	Jorindal Quantarius Parks v. Leslie Dismukes, NCDAC Sec.	Petitioner's Pro Se Petition for Writ of Habeas Corpus (COA10-209)	Denied **05/07/2025**
119PA21-2	State v. Maderkis Deyawn Rollinson	1. Def's Pro Se Petition for Writ of Habeas Corpus 2. Def's Pro Se Motion to Waive Fees	1. Denied **03/25/2025** 2. Allowed **03/25/2025**
119P25	Corey Walker v. Leslie Dismukes, NCDAC Sec.	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **05/07/2025**
120P25	Joshua Ryan v. Angela Ryan	1. Def's Pro Se Motion for Temporary Stay (COAP25-65) 2. Def's Pro Se Petition for Writ of Supersedeas 3. Def's Pro Se Motion for Emergency PDR 4. Def's Pro Se Motion to Proceed *In Forma Pauperis*	1. Denied **05/12/2025** 2. Denied **05/12/2025** 3. Denied **05/12/2025** 4. Allowed **05/12/2025**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

23 MAY 2025

123PA24	Craig Schroeder and Mary Schroeder v. The Oak Grove Farm Homeowners Association a/k/a The Oak Grove Farm Homeowners Association, Inc.	Def's Motion to Continue Oral Argument	Special Order **3/19/2025**
123A95-4	State v. Ervy L. Jones, Jr.	Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Cumberland County	Dismissed
124A24	Atlantic Coast Conference v. Board of Trustees of Florida State University	1. States of Florida, et al.'s Motion to Admit Kevin A. Golembiewski Pro Hac Vice 2. States of Florida, et al.'s Motion to Admit David M. Costello Pro Hac Vice	1. Allowed **04/04/2025** 2. Allowed **04/04/2025**
125P24	State of North Carolina, *ex rel.* Tom E. Horner, District Attorney for the 23rd Prosecutorial District v. Terry Buchanan, Sheriff of Ashe County	Movant's (Gray Media Group, Inc.) PDR Under N.C.G.S. § 7A-31 (COA23-762)	Denied
126P25	Otha Derik Archie v. Leslie Dismukes	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **05/15/2025**
127A25	State v. Deonte D. Meadows	1. State's Motion for Temporary Stay (COA24-149) 2. State's Petition for Writ of Supersedeas	1. Allowed **05/16/2025** 2.

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

23 MAY 2025

146P13-3	Richmond County Board of Education v. Bradford B. Briner, North Carolina State Treasurer, in his official capacity only, Nels Roseland, North Carolina State Controller, in his official capacity only, Kristin Walker, North Carolina State Budget Director, in her official capacity only, Eddie M. Buffaloe, Jr., Secretary of the North Carolina Department of Public Safety, in his official capacity only, Jeff Jackson, Attorney General of the State of North Carolina, in his official capacity only	1. Defs' (Briner, et al.) Motion for Temporary Stay (COA24-827) 2. Defs' (Briner, et al.) Petition for Writ of Supersedeas 3. Defs' (Briner, et al.) PDR Under N.C.G.S. § 7A-31	1. Special Order 2. Special Order 3. Special Order **Dietz, J., recused**
154P24	State v. Antwan Allen	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA23-831) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
157P24	Pauline Osborne Norman v. Allstate Insurance Company	Plt's PDR Under N.C.G.S. § 7A-31 (COA23-1111)	Denied
167P24-2	Kimarlo Ragland v. NC Division of Employment Security	1. Petitioner's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA24-692) 2. Petitioner's Pro Se Petition for Writ of Certiorari to Review Order of the COA 3. Petitioner's Pro Se Motion to Waive Any and All Future Appellate Expenses	1. Dismissed *ex mero motu* 2. Dismissed 3. Denied
194P24-2	State v. Christopher Harold Orr	1. Def's Petition for Writ of Habeas Corpus 2. Def's Pro Se Petition for Writ of Certiorari	1. Dismissed **03/26/2025** 2. Denied **03/26/2025**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

23 MAY 2025

197P24	State v. Arnold Travis Clark	1. Def's Motion for Temporary Stay (COA23-798) 2. Def's Petition for Writ of Supersedeas 3. Def's Motion for Temporary Stay 4. Def's PDR Under N.C.G.S. § 7A-31	1. Denied **07/25/2024** 2. Denied 3. Denied **10/22/2024** 4. Denied
210A24	Charles Schwab & Co., Inc. v. Lauren Elizabeth Marilley and Peter Joseph Marilley	Def (Lauren Elizabeth Marilley) and Plt's Joint Motion to Supplement Record on Appeal	Dismissed as moot **03/21/2025**
216P10-3	State v. Markese Donnell Rice	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COAP25-54) 2. Def's Pro Se Motion to Proceed *In Forma Pauperis* 3. Def's Pro Se Motion to Appoint Counsel	1. Denied **03/28/2025** 2. Allowed **03/28/2025** 3. Dismissed as moot **03/28/2025**
220P24	Bradley Home, Caring for Wake Community and the Carolinas, Inc. d/b/a Bradley Home (MHL #092-319) and d/b/a Bradley Home Extension-Kimberly House (MHL #092-412) v. N.C. Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure & Certification Section	Petitioner's PDR Under N.C.G.S. § 7A-31 (COA24-107)	Allowed
221A24	Atlantic Coast Conference v. Clemson University	Parties' Joint Motion to Continue Oral Argument	Allowed **04/08/2025**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

23 MAY 2025

225A24	State v. Blaine Dale Hague	1. State's Motion for Temporary Stay (COA23-734) 2. State's Petition for Writ of Supersedeas 3. State's Notice of Appeal Based Upon a Dissent 4. Def's PDR Under N.C.G.S. § 7A-31 5. Def's Motion to Hold State's Appeal in Abeyance 6. Def's Motion to Expedite Consideration of PDR	1. Allowed **08/27/2024** 2. Allowed **09/23/2024** 3. --- 4. Allowed 5. Allowed **10/23/2024** 6. Dismissed as moot
226P06-8	State v. De'Norris L. Sanders	Def's Pro Se Motion for Petition for Redress Under the Original Jurisdiction	Dismissed
228P24	T. Andrew Dykers v. Town of Carrboro	Petitioner's Pro Se PDR Under N.C.G.S. § 7A-31 (COA23-638)	Denied
265P24	In re A.D.H.	1. Petitioner's Motion for Temporary Stay (COA23-168) 2. Petitioner's Petition for Writ of Supersedeas 3. Petitioner's PDR Under N.C.G.S. § 7A-31	1. Allowed **10/10/2024** 2. Allowed 3. Allowed
272P24	State v. Xavier Jehlil Moody	1. Def's PDR Under N.C.G.S. § 7A-31 (COA24-61) 2. State's Motion to Deem Response to PDR Timely Filed	1. Denied 2. Allowed
296P15-6	In re Ernest James Nichols	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **04/29/2025**
297P24	State v. Johnny Wayne Ellison	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-30) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
299P22-4	Shaunesi DeBerry v. Duke Homecare and Hospice, Duke Hospital, et al.	1. Plt's Pro Se Petition for Writ of Mandamus 2. Plt's Pro Se Motion to Proceed *In Forma Pauperis*	1. Dismissed 2. Allowed **Riggs, J., recused**
299P24	State v. Thomas Anthony Martin	Def's PDR Under N.C.G.S. § 7A-31 (COA24-44)	Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

23 MAY 2025

311P24	State v. Terrance Hayes	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-325) 2. Def's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
315P24	State v. Johnathon Jessi McKinney	Def's PDR Under N.C.G.S. § 7A-31 (COA24-151)	Denied
320P24-3	Jefferson Griffin v. North Carolina State Board of Elections and Allison Riggs, Intervenor	1. Intervenor-Respondent's Motion for Temporary Stay (COA25-181) 2. Intervenor-Respondent's Petition for Writ of Supersedeas 3. Intervenor-Respondent's PDR Under N.C.G.S. § 7A-31 4. Respondent's Motion for Temporary Stay 5. Respondent's Petition for Writ of Supersedeas 6. Respondent's PDR Under N.C.G.S. § 7A-31 7. Petitioner's Conditional PDR	1. Allowed **04/07/2025** 2. Special Order **04/11/2025** 3. Special Order **04/11/2025** 4. Allowed **04/07/2025** 5. Special Order **04/11/2025** 6. Special Order **04/11/2025** 7. Special Order **04/11/2025** **Riggs, J., recused**
326P24	In re K.F., F.S., A.B., M.H., A.S.	Respondent-Mother's PDR Under N.C.G.S. § 7A-31 (COA24-270)	Denied
344P16-2	Richard Pridgen v. Edward Basen, Warden	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **04/10/2025**
344P16-3	Richard Pridgen v. State of North Carolina, et al.	Petitioner's Pro Se Motion for Petition for En Banc Rehearing	Dismissed
360A09	State v. Hasson Jamaal Bacote	Def's Motion to Clarify Status of Direct Appeal	Special Order **04/25/2025**
449P11-33	Charles Everette Hinton v. State of North Carolina, et al.	Petitioner's Pro Se Motion for Demand for Judicial Decree and Final Judgment	Dismissed
538P05-2	Terry Eugene Doub v. Leslie Dismukes	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **05/15/2025**

AMENDMENTS TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING ELECTIONS

The following amendment to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 25, 2025.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01A, Section .0400, Rule .0404, *Elections*, be amended as shown in the following attachment:

TAB #1: 27 N.C.A.C. 01A, Section .0400, Rule .0404, *Elections*

NORTH CAROLINA
WAKE COUNTY

I, Peter Bolac, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 25, 2025.

Given over my hand and the Seal of the North Carolina State Bar, this the 13th day of May, 2025.

s/Peter Bolac
Peter Bolac, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 21st day of May, 2025.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 21st day of May, 2025.

s/Riggs, J.
For the Court

27 NCAC 01A .0404 ELECTIONS

(a) A president-elect, vice-president and secretary shall be elected annually by the council at an election to take place at the council meeting held during the annual meeting of the North Carolina State Bar. ~~All elections will be conducted by secret ballot.~~

(b) If there are more than two candidates for an office, then any candidate receiving a majority of the votes shall be elected. If no candidate receives a majority, then a run-off shall be held between the two candidates receiving the highest number of votes.

History Note: *Authority G.S. 84-22; 84-23;*
Readopted Eff. December 8, 1994;
Amended Eff. September 24, 2015.

AMENDMENTS TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE PROCEDURES FOR FEE DISPUTE RESOLUTION

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 25, 2025.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .0700, *Rules Governing the Procedures for Fee Dispute Resolution*, be amended as shown in the following attachment:

TAB # 2A: 27 N.C.A.C. 01D, Section .0700, Rule .0706, *Powers and Duties of the Vice-Chairperson*

TAB # 2B: 27 N.C.A.C. 01D, Section .0700, Rule .0707, *Processing Requests for Fee Dispute Resolution*

TAB # 2C: 27 N.CA.C. 01D, Section .0700, Rule .0708, *Settlement Conference Procedure*

NORTH CAROLINA
WAKE COUNTY

I, Peter Bolac, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on

Given over my hand and the Seal of the North Carolina State Bar, this the 13th day of May, 2025.

s/Peter Bolac
Peter Bolac, Secretary

After examining the foregoing amendments to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same are not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 21st day of May, 2025.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were entered upon the minutes of the Supreme Court. The amendments shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 21st day of May, 2025.

s/Riggs, J.
For the Court

27 NCAC 01D .0706 POWERS AND DUTIES OF THE VICE-CHAIRPERSON

The vice-chairperson of the Grievance Subcommittee overseeing ACAP, or his or her designee, ~~who must be a councilor,~~ will:

(a) approve or disapprove a respondent's request to withhold the respondent's response from the petitioner; ~~approve or disapprove any recommendation that an impasse be declared in any fee dispute;~~ and

(b) refer to the Grievance Committee all cases in which it appears that

(i) a lawyer might have demanded, charged, contracted to ~~receive~~receive, or received an illegal or clearly excessive fee or a clearly excessive amount for expenses in violation of Rule 1.5 of the Rules of Professional Conduct; or

(ii) a lawyer might have failed to refund an unearned portion of a fee in violation of Rule 1.5 the Rules of Professional Conduct, or

(iii) a lawyer might have violated ~~one~~ any other provision of the ~~or more~~ Rules of Professional Conduct ~~other than or in addition to Rule 1.5~~.

History Note: *Authority G.S. 84-23;*
Adopted Eff. May 4, 2000;
Amendments Approved by the Supreme Court: February 5, 2002; March 8, 2007; March 11, 2010; September 25, 2019.

27 NCAC 01D .0707 PROCESSING REQUESTS FOR FEE DISPUTE RESOLUTION

(a) A request for resolution of a disputed fee must be submitted in writing to the coordinator of the Fee Dispute Resolution Program addressed to the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. A lawyer is required by Rule of Professional Conduct 1.5 to notify in writing a client with whom the lawyer has a dispute over a fee (i) of the existence of the Fee Dispute Resolution Program and (ii) that if the client does not file a petition for fee dispute resolution within 30 days after the client receives such notification, the lawyer will be permitted by Rule of Professional Conduct 1.5 to file a lawsuit to collect the disputed fee. A lawyer may file a lawsuit prior to expiration of the required 30-day notice period or after the petition is filed by the client only if such filing is necessary to preserve a claim. If a lawyer does file a lawsuit pursuant to the preceding sentence, the lawyer must not take steps to pursue the litigation until the fee dispute resolution process is completed. A client may request fee dispute resolution at any time before either party files a lawsuit. The petition for resolution of a disputed fee must contain:

(1) the names and addresses of the parties to the dispute;

(2) a clear and brief statement of the facts giving rise to the dispute;

(3) a statement that, prior to requesting fee dispute resolution, a reasonable attempt was made to resolve the dispute by agreement;

(4) a statement that the subject matter of the dispute has not been adjudicated and is not presently the subject of litigation.

(b) A petition for resolution of a disputed fee must be filed (i) before the expiration of the statute of limitation applicable in the General Court of Justice for collection of the funds in issue or (ii) within three years of the termination of the client-lawyer relationship, whichever is later.

(c) The State Bar will process fee disputes and grievances in the following order:

(1) If a client submits to the State Bar simultaneously a grievance and a request for resolution of disputed fee involving the same attorney-client relationship, the request for resolution of disputed fee will be processed first and the grievance will not be processed until the fee dispute resolution process is concluded.

(2) If a client submits a grievance to the State Bar and the State Bar determines it would be appropriate for the Fee Dispute

Resolution Program to attempt to assist the client and the lawyer in settling a dispute over a legal fee, the attempt to resolve the fee dispute will occur first. If a grievance file has been opened, it will be stayed until the Fee Dispute Resolution Program has concluded its attempt to facilitate resolution of the disputed fee.

(3) If a client submits a request for resolution of a disputed fee to the State Bar while a grievance submitted by the same client and relating to the same attorney-client relationship is pending, the grievance will be stayed while the Fee Dispute Resolution Program attempts to facilitate resolution of the disputed fee.

(4) Notwithstanding the provisions of subsections (c)(1), (2), and (3) of this section, the State Bar will process a grievance before it processes a fee dispute or at the same time it processes a fee dispute only when the State Bar ~~whenever it~~ determines that doing so is in the public interest.

(d) The coordinator of the Fee Dispute Resolution Program or a facilitator will review the petition to determine its suitability for fee dispute resolution. If it is determined that the dispute is not suitable for fee dispute resolution, ~~the coordinator and/or the facilitator will prepare a letter setting forth the reasons the petition is not suitable for fee dispute resolution and recommending that the petition be discontinued and that the file be closed~~ the parties will be notified in writing that the dispute is not suitable for fee dispute resolution and that a file will not be opened or, if a file has already been opened, that the file has been closed. ~~The coordinator and/or the facilitator will forward the letter to the vice-chairperson. If the vice chairperson agrees with the recommendation, the petition will be discontinued and the file will be closed. The coordinator and/or facilitator will notify the parties in writing that the file was closed.~~ Grounds for concluding that a petition is not suitable for fee dispute resolution or for closing a file include, but are not limited to, ~~the following~~:

(1) the petition is frivolous or moot; ~~or~~

(2) the committee lacks jurisdiction over one or more of the parties or over the subject matter of the dispute; or~~.~~

(3) due to complexity of the dispute, the amount of fees or expenses at issue, lack of cooperation by one or more of the parties, or other factors, facilitating resolution of the dispute will consume a disproportionally large amount of the fee dispute program's resources.

~~(e) If the vice-chairperson disagrees with the recommendation to close the file, the coordinator will schedule a settlement conference.~~

History Note: *Authority G.S. 84-23;*
Adopted Eff. May 4, 2000;
Amendments Approved by the Supreme Court:
March 8, 2007; March 11, 2010; September 25, 2019.

27 NCAC 01D .0708 SETTLEMENT CONFERENCE PROCEDURE

(a) The coordinator will assign the case to a facilitator.

(b) The State Bar will serve a letter of notice upon the respondent lawyer.

(1) The letter of notice shall be served by one of the following methods:

(A) mailing a copy thereof by registered or certified mail, return receipt requested, to the last known address of the member contained in the records of the North Carolina State Bar ~~or such later address as may be known to the person attempting service~~;

(B) mailing a copy thereof by designated delivery service (such as Federal Express or UPS), return receipt requested, to the last known address of the member contained in the records of the North Carolina State Bar ~~or such later address as may be known to the person attempting service~~;

(C) personal service by the State Bar counsel or deputy counsel or by a State Bar investigator;

(D) personal service by any person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process; or

(E) email sent to the email address of the member contained in the records of the North Carolina State Bar if the member sends an email from that same email address to the State Bar agreeing to accept service of the letter of notice by email. Service of the letter of notice will be deemed complete on the date that the letter of notice is sent by email.

A member who cannot, with reasonable diligence, be served by one of the methods identified in subparagraphs (A)–(E) above shall be deemed served upon publication of the notice in the State Bar Journal.

(2) The letter of notice shall enclose copies of the petition and of any relevant materials provided by the petitioner.

(3) The letter of notice shall notify the respondent (i) that the petition was filed and (ii) of the respondent's obligation to provide to the State Bar a written response to the letter of notice,

signed by the respondent, within 15 days of service of the letter of notice.

(c) Within 15 days after the letter of notice is served upon the respondent, the respondent must provide a written response to the petition which must be signed by the respondent. The facilitator may grant requests for extensions of time to respond. The response must be a full and fair disclosure of all the facts and circumstances pertaining to the dispute. The response shall include all documents necessary to a full and fair understanding of the dispute and~~. The response~~ shall not include documents that are not necessary to a full and fair understanding of the dispute. The facilitator will provide a copy of the response to the petitioner unless the vice-chair or the vice-chair's designee determines that good cause exists to approve a respondent's request not to provide the response to the petitioner. ~~unless the respondent objects in writing.~~ The determination of the vice-chair or of the vice-chair's designee whether good cause exists is final and is not subject to review.

(d) The facilitator may conduct ~~will conduct an~~ any investigation the facilitator determines to be necessary to understand the facts relevant to the dispute.

(e) The facilitator shall determine, in the facilitator's sole discretion, whether the settlement conference will be held via email or telephone communications, with both parties simultaneously, or with one party at a time. ~~may conduct a telephone settlement conference. The facilitator may conduct the settlement conference by conference call or by telephone calls between the facilitator and one party at a time, depending upon which method the facilitator believes has the greater likelihood of success.~~

(f) The facilitator will explain the following to the parties:

(1) the procedure that will be followed;

(2) the differences between a facilitated settlement conference and other forms of conflict resolution;

(3) that the settlement conference is not a trial;

(4) that the facilitator is not a judge;

(5) that participation in the settlement conference does not deprive the parties of any right they would otherwise have to pursue resolution of the dispute through the court system if they do not reach a settlement;

(6) the circumstances under which the facilitator may communicate privately with any party or with any other person;

(7) whether and under what conditions private communications with the facilitator will be shared with the other party or held in confidence during the conference; and

(8) that any agreement reached will be reached by mutual consent of the parties.

(g) It is the duty of the facilitator to be impartial and to advise the parties of any circumstance that might cause either party to conclude that the facilitator has a possible bias, prejudice, or partiality.

(h) It is the duty of the facilitator to timely determine when the dispute cannot be resolved by settlement and to declare that an impasse exists and that the settlement conference will ~~should~~ end.

(i) Upon completion of the settlement conference, the facilitator will prepare a disposition letter to be sent to the parties explaining:

(1) that the settlement conference resulted in a settlement and the terms of settlement; or

(2) that the settlement conference resulted in an impasse.

History Note *Authority G.S. 84-23;*
Adopted Eff. May 4, 2000;
Amendments Approved by the Supreme Court: March 11, 2010; September 25, 2019; March 20, 2024.

AMENDMENTS TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 25, 2025.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, Rule 1521, *Noncompliance*, be amended as shown in the following attachment:

TAB#3: 27 N.C.A.C. 01D, Section .1500, Rule 1521, *Noncompliance*

NORTH CAROLINA
WAKE COUNTY

I, Peter Bolac, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on January 25, 2025.

Given over my hand and the Seal of the North Carolina State Bar, this the 13th day of May, 2025.

s/Peter Bolac
Peter Bolac, Secretary

After examining the foregoing amendments to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 21st day of May, 2025.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were entered upon the minutes of the Supreme Court. The amendments shall be published in the forthcoming

volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 21st day of May, 2025.

s/Riggs, J.
For the Court

27 NCAC 01D .1521 NONCOMPLIANCE

(a) Failure to Comply with Rules May Result in Suspension. A member who fails to meet the minimum requirements of these rules, including the payment of duly assessed penalties and fees, may be suspended from the practice of law in North Carolina.

(b) Late Compliance. Any member who fails to complete his or her required hours by the end of the member's reporting period (i) shall be assessed a late compliance fee in an amount set by the Board and approved by the Council, and (ii) shall complete any outstanding hours within 60 days following the end of the reporting period. Failure to comply will result in a suspension order pursuant to Paragraph (c) below.

(c) Suspension Order for Failure to Comply. 60 days following the end of the reporting period, the Council shall issue an order suspending any member who fails to meet the requirements of these rules within 45 days after the service of the order, unless ~~(i)~~ the member shows good cause in writing why the suspension should not take effect. ~~effect; or (ii) the member meets the requirements within the 30 days after service of the order. The order shall be entered and served as set forth in Rule .0903(d) of this subchapter.~~ Additionally, the member shall be assessed a non-compliance fee as described in Paragraph (d) below. Notice shall be served on the member by mailing a copy thereof by registered or certified mail or designated delivery service (such as Federal Express or UPS), return receipt requested, to the last known address of the member according to the records of the North Carolina State Bar or such later address as may be known to the person attempting service. Service of the notice may also be accomplished by (i) personal service by a State Bar investigator or by any person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process, or (ii) email sent to the email address of the member contained in the records of the North Carolina State Bar if the member sends an email from that same email address to the State bar acknowledging such service.

(d) Non-Compliance Fee. A member to whom a suspension order is issued pursuant to Paragraph (c) above shall be assessed a non-compliance fee in an amount set by the Board and approved by the Council; provided, however, upon a showing of good cause as determined by the Board as described in Paragraph (g)(2) below, the fee may be waived. The non-compliance fee is in addition to the late compliance fee described in Paragraph (b) above.

(e) Effect of Non-compliance with Suspension Order. If a member fails to meet the requirements during the 45-day period after service of the

suspension order under Paragraph (c) above, the member shall be suspended from the practice of law subject to the obligations of a disbarred or suspended member to wind down the member's law practice as set forth in Rule .0128 of Subchapter 1B.

(f) Procedure Upon Submission of Evidence of Good Cause.

(1) Consideration by the Board. If the member files a timely response to the suspension order attempting to show good cause for why the suspension should not take effect, the suspension order shall be stayed and the Board shall consider the matter at its next meeting. The Board shall review all evidence presented by the member to determine whether good cause has been shown.

(2) Recommendation of the Board. The Board shall determine whether the member has shown good cause as to why the member should not be suspended. If the Board determines that good cause has not been shown, the member's suspension shall become effective 15 calendar days after the date of the letter notifying the member of the decision of the Board. The member may request a hearing by the Administrative Committee within the 15-day period after the date of the Board's decision letter. The member's suspension shall be stayed upon a timely request for a hearing.

(3) Hearing Before the Administrative Committee. The Administrative Committee shall consider the matter at its next regularly scheduled meeting. The burden of proof shall be upon the member to show cause by clear, cogent, and convincing evidence why the member should not be suspended from the practice of law for failure to comply with the rules governing the continuing legal education program.

(4) Administrative Committee Decision. If the Administrative Committee determines that the member has not met the burden of proof, the member's suspension shall become effective immediately. The decision of the Administrative Committee is final.

(g) Reinstatement. Suspended members must petition for reinstatement to active status pursuant to Rule .0904(b)-(h) of this Subchapter.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: August 23, 2012; October 9, 2008; October 1, 2003; February 3, 2000; March 6, 1997; March 7, 1996;
Rule transferred from 27 NCAC 01D .1523 on June 14, 2023;
Amendments Approved by the Supreme Court June 14, 2023 and re-entered into the Supreme Court's minutes March 20, 2024.

COMMERCIAL PRINTING COMPANY
PRINTERS TO THE SUPREME COURT AND THE COURT OF APPEALS