389 N.C.—No. 1 Pages 1-197

DISCIPLINE AND DISABILITY OF ATTORNEYS;
RULES OF PROFESSIONAL CONDUCT

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

MAY 22, 2026

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

THE SUPREME COURT

OF

NORTH CAROLINA

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[1] Died 29 December 2025. [2] Died 18 November 2025.

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SUPREME COURT OF NORTH CAROLINA

CASES REPORTED

FILED 20 MARCH 2026

Armistead v. County of Carteret 21
Byrd v. Avco Corp. 32
In re N.M.W. 57
Jay v. Jay 61
Smith Debnam Narron Drake Saintsing & Myers, LLP v. Muntjan 70
State v. Perry 88
State v. Thomas 105
Talley v. Earth Fare 2020, Inc. 129
Wardson Constr., Inc. v. City of Raleigh 140
Warren v. Cielo Ventures, Inc. 151

ORDERS

Chesapeake Diagnostic Imaging Ctrs., LLC v. N.C. Dep't of Health & Hum. Servs. 167
Cloer v. King Arthur, Inc. 168
Harrington v. Laney 170
In re Se. Eye Ctr. 1
Kivett v. N.C. State Bd. of Elections 2
Kivett v. N.C. State Bd. of Elections 4
State ex rel. Jackson v. E.I. Du Pont De Nemours and Co. 171
State v. Shoe 180
State v. Townsend 181
State v. Tucker 182
State v. Wingate 5

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

Adams v. Dillon 15
Armistead v. Shaw 13
Atwater v. Heaton 18
Benbow v. Cordova 188
Bilfinger Inc. v. Cargill, Inc. 11
Blades v. Blusky Restoration Contractors, LLC 16
Brown v. State of N.C. 10
Brown v. Williams 187
Bryant v. Fields 192
Builders Mut. Ins. Co. v. EMPWR Solar LLC 195
Butler v. N.C. Gen. Ct. of Just. 194
Byrd v. Avco Corp. 193
C.R. England, Inc. v. N.C. Dep't of Transp. 16
Cardiac Pack v. NCAA 196
Chesapeake Diagnostic Imaging Ctrs., LLC v. N.C. Dep't of Health & Hum. Servs. 192
Cloer v. King Arthur, Inc. 191
Davidovic v. Allbound Carrier, Inc. 193
Durham Cnty. v. Wallace 185
Edwards v. Strata Solar, LLC 184
Ellis-Smith v. Smith 197
Fifth Ave. United Methodist Church of Wilmington v. N.C. Conf., Se. Jurisdiction, of UMC, Inc. 9
Fincannon v. Anderson 183
Garner v. Jessup 188
Gonzalez v. Marfione 14
Gray v. Rambaran 17
Harrington v. Laney 196
Harris v. Hillside Nursing Rehab. 19
Hedgepeth v. Smoky Mountain Country Club 18
Hedgepeth v. Smoky Mountain Country Club Prop. Owners' Ass'n, Inc. ... 13
Henagan v. Henagan 186
Hull v. Dismukes 16
In re Armstrong 8
In re B.I.C.M. 14
In re B.M.T. 184
In re Brown 20
In re C.H. 196
In re Dickens 18
In re E.R. 17
In re Hedgepeth 18
In re Hinton 20
In re M.A.C. 183

In re Ochsner 10
In re Rogers 195
In re Se. Eye Ctr. 9
In re Se. Eye Ctr. 12
In re Stanley 185
In re Voigt 18
In re Z.R.B. 6
Jandrew v. Rowan Cnty. Respondents 17
Johnson v. GDBKB, LLC 189
Johnson v. Low 184
Jones v. N.C. Dep't of Adult Corr. 15
Justice v. Carriage Hill of Carthage Homeowner's Assoc. Inc. 7
Kivett v. N.C. State Bd. of Elections 10
Kivett v. N.C. State Bd. of Elections 15
Kivett v. N.C. State Bd. of Elections 186
Kivett v. N.C. State Bd. of Elections 194
Kruglyak v. Reuter Fam. YMCA 183
Lake v. State Health Plan for Teachers & State Emps. 20
LDI Shallotte 179 Holdings, LLC v. State of N.C. Dep't of Envtl. Quality 185
Lerner v. Lerner 184
Lineberger v. Glen Williams Constr. Co. 192
Lomax v. Lomax 193
Lucas v. Childress 196
Mann v. Goshen Med. Ctr., Inc. 12
Martin v. Gavenus 17
McCormick v. Dismukes 190
Miller Farms of Wilkes Real Est. LLC v. She Luv A II LLC 19
Moore v. Richmen Enters., LLC 186
Morrow v. Morrow 13
Newkirk-Baker v. James City Congregation of Jehovah's Witnesses 14
No Limit Games, LLC v. Sheriff of Robeson Cnty. 9
PDII, LLC v. Sky Aircraft Maint., LLC 6
Pedraza v. Dismukes 7
Pyles v. SDH Raleigh, LLC 197
Reynolds v. Devotion Fam., LLC 6
Sargent v. N.C. Bd. of Nursing 7
Savage v. N.C. Dep't of Transp. 14
Se. Pub. Safety Grp., Inc. v. N.C. Dep't of Justice 10
Shively v. ACI Learning Holdings, LLC 183
Simons v. Connelly 16
Skoutelis v. Greasy Branch Water Corp. 15
Smith v. Broyles 16
Smith v. Ellis-Smith 19
Southland Nat'l Ins. Corp. v. Lindberg 184
Southland Nat'l Ins. Corp. v. Lindberg 188
Southland Nat'l Ins. Corp. v. Lindberg 191
State ex rel. Jackson v. E.I. du Pont de Nemours & Co. 197
State ex rel. Jackson v. TikTok Inc. 18
State v. Ballard 183
State v. Banner 15
State v. Banner 193
State v. Bastas 187
State v. Blackburn 194
State v. Braswell 185
State v. Bryant 195
State v. Byers 10
State v. Cataldo 13
State v. Clark 196
State v. Cobb 188
State v. Copenhaver 13
State v. Crisp 8
State v. Daniel 15
State v. Daniels 193
State v. Dean 196
State v. Diaz-Rodriguez 190
State v. Dingle 16
State v. Ducker 11
State v. Dupree 194
State v. Epley 197
State v. Evans 19
State v. Flowers 193
State v. Gibbon 189
State v. Glenn 17
State v. Harkey 190
State v. Hatcher 14
State v. Hickman 17
State v. Hodge 183
State v. Hunter 194
State v. Jackson 11
State v. Jackson 192
State v. Jacobs 185

State v. Jacobs 189
State v. Jones 194
State v. Leopard 13
State v. Lewis 190
State v. Maney 190
State v. Martinez 14
State v. Mason 186
State v. McIntyre 16
State v. Meadows 12
State v. Middleton 187
State v. Murphy 190
State v. Noonsab 190
State v. Pica 192
State v. Pittman 183
State v. Pole 192
State v. Powell 19
State v. Pride 190
State v. Prince 16
State v. Reich 19
State v. Richards 7
State v. Robinson 184
State v. Rosado 16
State v. Sanchez 189
State v. Sheridan 197
State v. Shoe 187
State v. Smith 14
State v. Stanley 185
State v. Thomas 15
State v. Thomas 193
State v. Thompson 184
State v. Townsend 190
State v. Tucker 190
State v. Velasco 10
State v. Walker 7
State v. Wilson 196
State v. Wingate 13
State v. Woodard 17
State v. Wright 8
Stroupe v. Mills 6
Sun v. Milcarek 183
Tanger Props. Ltd. P'ship v. ACE Am. Ins. Co. 186
Taylor v. Dollar Tree Store, Inc. 12
Tebib v. Burnette 16
Walker v. Davie Med. Ctr. 185
Welbourne v. Barbee 6
Whalen v. Tuttle 186
Williams v. Crandall 193
Wise v. Lake Pointe Assisted Living, Inc. 10
Wright v. Stinson 18
Wyman v. Barber 14

HEADNOTE INDEX

APPEAL AND ERROR

Interlocutory order—denying motion for reconsideration—partial summary judgment—rejecting statute of repose defense—substantial right affected— In a products liability action arising from a fatal plane crash, where the aircraft's engine manufacturer (defendant) argued that all of plaintiffs' claims were barred by the eighteen-year statute of repose under the General Aviation Revitalization Act (GARA), but where the trial court denied summary judgment to defendant with respect to plaintiffs' claim for negligent failure to warn, the Court of Appeals' order dismissing defendant's appeal from the trial court's subsequent interlocutory order—denying defendant's motion to reconsider the partial summary judgment ruling—was reversed because the Court of Appeals had incorrectly concluded that it lacked subject matter jurisdiction over defendant's appeal. Firstly, defendant had timely appealed from the correct order. Secondly, plaintiffs' contention that interlocutory orders denying reconsideration are never immediately appealable was meritless, especially where the order at issue substantially altered the court's earlier reasoning for granting partial summary judgment. Finally, unlike statutes of limitations, which are purely procedural and only provide immunity from civil liability, statutes of repose provide immunity from suit—a substantial right that is lost if a case proceeds to trial; therefore, appellate jurisdiction was proper where the order affected defendant's substantial right to immunity from suit under GARA's statute of repose. **Byrd v. Avco Corp., 32.**

CLASS ACTIONS

Certification—class consisting of home builders—entitlement to refund of water and sewer impact fees paid to city—In a declaratory judgment action filed by two home construction companies, each seeking a refund of allegedly illegal Capital Facilities Fees (CFFs) paid to the City of Raleigh in exchange for connection to the city's water and sewer systems, the trial court did not abuse its discretion by granting the companies' motion to certify—pursuant to Civil Procedure Rule 23—a class consisting of home builders who had also paid the CFFs. The plain language of the applicable "refund statute" (N.C.G.S. § 160D-106) provided for refunds of illegally imposed fees to any "person who made the payment," making no distinction between those who ultimately bore the economic burden of the fee and those who passed that burden on to others through subsequent private transactions. Therefore, the fact that some class members incorporated the CFFs into the prices they charged home buyers did not defeat the existence of a class, create conflicts of interest among class members, or render a class action inferior to other available methods of adjudicating the case. **Wardson Constr., Inc. v. City of Raleigh, 140.**

Certification—feasibility of ascertaining class members—no predominance or superiority issues—In a class action lawsuit against a county regarding two types of waste disposal fees, the trial court's order certifying three of four proposed classes was affirmed. First, members of two of the proposed classes—those who paid either a "Green Box Fee" or a "Landfill Fee" but who used private waste collection services—could be feasibly and objectively ascertained from customer lists of the few private waste collection services in the county. Second, with regard to one of the proposed classes, any individualized issues regarding whether a member did or did not use a county-provided waste disposal unit did not predominate over the common issues, including whether the private facilities offered the "same services" as the county. Finally, with regard to the class encompassing those from whom the county overcollected—based on fees that exceeded the cost of operating the county's waste disposal facilities in violation of N.C.G.S. § 153A-292(b)—the trial court did not abuse its discretion by determining that a class action was a superior method of adjudicating those claims than any alternative, based on efficiency considerations. **Armistead v. County of Carteret, 21.**

DOMESTIC VIOLENCE

Protective order—annotated statement from complainant—incorporation by reference—factfinding sufficient—In a proceeding for a domestic violence protective order (DVPO), the trial court's incorporation-by-reference approach to factfinding—attaching to the DVPO a copy of the complainant's written statement bearing the judge's strike-throughs and other notes—was sufficient to sustain the DVPO issued because it allowed the appellate court to determine that the DVPO, and its underlying legal conclusions, reflected an appropriate application of law. A comparison of the testimony at the DVPO hearing with the judge's annotated copy of the written statement revealed that the judge struck the portions that were not corroborated by the parties' testimonies and left intact the portions that were corroborated. While not the best practice, the trial court's method demonstrated sufficient engagement with the written statement to transform what would otherwise be improper "mere recitations" of evidence into proper evidentiary findings under Civil Procedure Rule 52. **Jay v. Jay, 61.**

ROBBERY

Robbery with a dangerous weapon—taking of property—sufficiency of evidence—The trial court properly denied defendant's motion to dismiss the charge of robbery with a dangerous weapon where the State's evidence, viewed in the light most favorable to the State, constituted substantial evidence from which a jury could conclude that defendant took the victim's property—either himself or acting in concert with another—including: the victim was first pistol-whipped by defendant and then stomped on by defendant and other assailants and, when the victim woke up after a period of unconsciousness, his phone, house key, and cash were missing. Along with evidence of defendant's opportunity to take the victim's property, the State presented evidence pursuant to Evidence Rule 404(b) that defendant participated in a prior armed robbery, which tended to support the inference that defendant committed the attack in this case with the intent to rob the victim. Therefore, the decision of the Court of Appeals reversing defendant's conviction was itself reversed. **State v. Perry, 88.**

SENTENCING

Harsher punishment following successful appeal—original minimum sentence erroneously undercalculated—proper punishment imposed after second trial—In a prosecution where defendant's multiple convictions on charges arising from a string of motor vehicle and credit card thefts were consolidated into two judgments for sentencing and where, on one consolidated judgment, the trial court erroneously undercalculated defendant's minimum sentence under the Structured Sentencing Act (SSA) after his first trial, the prohibition on imposing a harsher punishment following a criminal defendant's successful appeal (as set forth in N.C.G.S. § 15A-1335) was not offended when the trial court imposed the proper, lawful minimum sentence after defendant's second trial. While both the SSA and section 15A-1335 appeared applicable to defendant's resentencing, the former controlled because it provided more specific sentencing criteria than the latter. Thus, on remand, the trial court was required to enter a harsher sentence than defendant's original sentence in order to comply with the SSA because courts may not impose illegal sentences. **State v. Thomas, 105.**

STATUTE OF FRAUDS

Agreement by father to pay son's legal bills—enforceability—sufficiency of email correspondence—memorandum or note—In an action filed by plaintiff law firm to collect monies owed for legal services it provided to defendant's son, defendant's oral promise to pay his son's legal bills was enforceable where his email correspondence with the firm constituted a sufficient written "memorandum or note" of his promise, thereby satisfying the statute of frauds requirement (N.C.G.S. § 22-1); therefore, the Court of Appeals' decision reversing the trial court's judgment in favor of the law firm was itself reversed. Defendant's emails, though informal, were signed by defendant and provided adequate evidence of the essential terms of his oral guaranty, including the debt owed (the legal fees), the principal debtor (defendant's son), the promisor (defendant), and the promisee (the law firm). Notably, the emails indicated both defendant's ongoing involvement in managing his son's legal affairs and his commitment to paying his son's debt to the firm, including: an assurance that an "invoice" for "services rendered" by the firm would be "turned around promptly"; a request that the firm send all invoices directly to defendant's email; and a recurring use of plural pronouns like "us" and "our," suggesting a shared responsibility between him and his son. **Smith Debnam Narron Drake Saintsing & Myers, LLP v. Muntjan, 70.**

UNFAIR TRADE PRACTICES

Statute of limitation—plain language—ability of parties to shorten the limitation period by contract—In a case brought under the Unfair and Deceptive Trade Practices Act (UDTPA)—arising from defendant's failure to timely remediate damage from a water heater leak, resulting in plaintiffs' home being demolished due to mold—a term of the contract between the parties limiting plaintiffs' right to seek damages from defendant to one year controlled over the UDTPA's four-year statute of limitation. While statutes of limitation establish the maximum amount of time that can elapse between the accrual of a claim and the filing of that claim, because the legislature chose not to restrict parties' ability to contractually shorten the limitation period for UDTPA claims, the general rule of freedom of contract applied. Accordingly, where the Court of Appeals erred in determining that the contractual limitation was unenforceable, its decision was reversed. **Warren v. Cielo Ventures, Inc., 151.**

SCHEDULE FOR HEARING APPEALS DURING 2026

NORTH CAROLINA SUPREME COURT

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

February 10, 11, 12, 17, 18, 19
April 14, 15, 16, 21, 22, 23
September 8, 9, 10, 15, 16, 17
November 10, 12, 17, 18, 19

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

AT

RALEIGH

IN RE SOUTHEASTERN
EYE CENTER

From N.C. Business Court
12CVS11322,15CVS1648,23SP1872

From Wake
15CVS1648

From Guilford
12CVS11322,23SP1872

No. 125A25

ORDER OF THE COURT

Defendant's Motion to Dismiss Its Appeal is allowed. Additionally, the Court, *ex mero motu*, dismisses plaintiff's appeal. N.C. R. App. P. 13(c).

By order of the Court this the 30th day of December 2025.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 30th day of December 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

TELIA KIVETT; KARYN MULLIGAN; WAKE COUNTY REPUBLICAN PARTY; REPUBLICAN NATIONAL COMMITTEE; AND NORTH CAROLINA REPUBLICAN PARTY

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS; KAREN BRINSON BELL, IN HER OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; ALAN HIRSCH, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA BOARD OF ELECTIONS; STACY EGGERS IV, KEVIN N. LEWIS, AND SIOBHAN O'DUFFY MILLEN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS

and

DEMOCRATIC NATIONAL COMMITEE, INTERVENOR

From N.C. Court of Appeals
P25-30

From Wake
24CV041789-910

No. 51P25

ORDER OF THE COURT

The parties are directed to submit supplemental filings to the Court no later than 30 days from the date of this order addressing what relief, if any, plaintiffs are still pursuing from this Court and whether the relief sought is now moot or otherwise not justiciable.

By order of the Court this the 30th day of January 2026.

Riggs, J., recused.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 30th day of January 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

TELIA KIVETT; WANDA NELSON FOWLER; THE REPUBLICAN NATIONAL COMMITTEE; AND THE NORTH CAROLINA REPUBLICAN PARTY

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS; KAREN BRINSON BELL, IN HER OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; ALAN HIRSCH, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS; JEFF CARMON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE NORTH CAROLINA BOARD OF ELECTIONS; STACY EGGERS IV, KEVIN N. LEWIS, AND SIOBHAN O'DUFFY MILLEN IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE NORTH CAROLINA STATE BOARD OF ELECTIONS

From N.C. Court of Appeals
P24-735

From Wake
24CV031557-910

No. 281P24

ORDER OF THE COURT

The parties are directed to submit supplemental filings to the Court no later than 30 days from the date of this order addressing what relief, if any, plaintiffs are still pursuing from this Court and whether the relief sought is now moot or otherwise not justiciable.

By order of the Court this the 30th day of January 2026.

Riggs, J., recused.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 30th day of January 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE v. WINGATE

[389 N.C. 5 (2026)]

STATE OF NORTH CAROLINA	From N.C. Court of Appeals 24-815
v.	From Wake
KEVIN LEIGH WINGATE	18CR201795-910, 19CR218465-910, 19CR218467-910

No. 184P25

ORDER OF THE COURT

The State's conditional petition for discretionary review is dismissed as moot.

The State's petition for discretionary review as to an additional issue is allowed, and the Court acknowledges that the additional issue and the issue raised by the State in its notice of appeal based on Chief Judge Dillon's dissent have already been briefed by the parties.

The State's petition for writ of supersedeas is allowed. By order of the Court this the 28th day of January 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 30th day of January 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

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

30 JANUARY 2026

1P26	William B. Stroupe & Allen Sturgill v. Jamie Mills & Aquiva Hamrick	1. Defs' Pro Se Motion for Temporary Stay (COA25-70) 2. Defs' Pro Se Petition for Writ of Supersedeas	1. Denied **01/06/2026** 2. Denied **01/06/2026**
3P26	Stephanie Welbourne, in her individual capacity, and Stephanie Welbourne, in her capacity as the Administratrix of the Estate of Zachary Thomas Welbourne v. Knox Barbee and Geromy Barbee	1. Plt's Motion for Temporary Stay (COA25-325) 2. Plt's Petition for Writ of Supersedeas 3. Defs' Motion to Dissolve Temporary Stay 4. Plt's PDR Under N.C.G.S. § 7A-31 5. Plt's Petition in the Alternative for Writ of Certiorari to Review Decision of the COA	1. Allowed **01/06/2026** 2. 3. 4. 5.
5P26	In re Z.R.B., M.B., M.B., Jr.	1. Petitioner and Guardian ad Litem's Motion for Temporary Stay (COA25-475) 2. Petitioner and Guardian ad Litem's Petition for Writ of Supersedeas 3. Petitioner and Guardian ad Litem's PDR Under N.C.G.S. § 7A-31	1. Allowed **01/09/2026** 2. 3.
8P26	PDII, LLC v. Sky Aircraft Maintenance, LLC, et al.	1. Def's (Textron Inc.) Motion for Temporary Stay (COA25-202) 2. Def's (Textron Inc.) Petition for Writ of Supersedeas 3. Def's (Textron Inc.) Notice of Appeal Based Upon a Constitutional Question 4. Def's (Textron Inc.) PDR Under N.C.G.S. § 7A-31 5. General Aviation Manufacturers Association's Motion to Admit Carsten G. Hoyt Pro Hac Vice 6. Plt's Motion to Dismiss Appeal 7. Plt's Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed **01/09/2026** 2. 3. 4. 5. 6. 7.
13P26	W. Noah Reynolds v. Devotion Family, LLC; and Brook E. Reynolds	1. Def's (Brook E. Reynolds) PDR Under N.C.G.S. § 7A-31 (COA24-711) 2. Def's (Brook E. Reynolds) Motion for Temporary Stay 3. Def's (Brook E. Reynolds) Petition for Writ of Supersedeas 4. Plt's PDR Under N.C.G.S. § 7A-31 5. Def's (Brook E. Reynolds) Motion to Amend PDR by Submission of Additional Authorities	1. 2. Allowed **01/20/2026** 3. 4. 5.

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

30 JANUARY 2026

15P26	Theodore Justice v. Carriage Hill of Carthage Homeowners Association, Inc.	1. Plt's Pro Se Motion to Proceed *In Forma Pauperis* 2. Plt's Pro Se Emergency Petition for Writ of Mandamus 3. Plt's Pro Se Motion for Invocation of Supervisory Authority 4. Plt's Pro Se Motion for Emergency Stay 5. Plt's Pro Se Motion for Emergency Stay 6. Plt's Pro Se Motion for Leave to Supplement Emergency Petition 7. Plt's Pro Se Motion for Supplemental Petition to Emergency Petition for Writ of Mandamus, Invocation of Supervisory Authority, and Motion for Emergency Stay	1. Allowed **01/20/2026** 2. Denied **01/20/2026** 3. Denied **01/20/2026** 4. Denied **01/20/2026** 5. Denied **01/20/2026** 6. Dismissed as moot **01/20/2026** 7. Dismissed as moot **01/20/2026**
16P26	Jose Ramon Pedraza v. Leslie Dismukes, NCDAC Secretary	1. Petitioner's Pro Se Petition for Writ of Habeas Corpus 2. Petitioner's Pro Se Petition Alternatively for Writ of Certiorari	1. Denied **01/13/2026** 2. Dismissed **01/13/2026**
19P26	State v. David Raymond Richards	1. Def's Motion for Temporary Stay (COA24-1037) 2. Def's Petition for Writ of Supersedeas	1. Allowed **01/13/2026** 2.
31P26	Kimball Sargent v. North Carolina Board of Nursing	1. Petitioner's Motion for Temporary Stay (COA25-356) 2. Petitioner's Petition for Writ of Supersedeas 3. Petitioner's PDR Under N.C.G.S. § 7A-31	1. Allowed **01/28/2026** 2. 3.
39P08-2	State v. William Shaun Walker	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-732) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal (COA99-8)	1. --- 2. Denied 3. Allowed

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

30 JANUARY 2026

41P17-14	In the Matter of Arthur O. Armstrong	1. Plt's Pro Se Petitions for Writ of Mandamus	1. Dismissed
		2. Plt's Pro Se Petitions for Writ of Mandamus	2. Dismissed
		3. Plt's Pro Se Petitions for Writ of Mandamus	3. Dismissed
		4. Plt's Pro Se Petitions for Writ of Mandamus	4. Dismissed
		5. Plt's Pro Se Petitions for Writ of Mandamus	5. Dismissed
		6. Plt's Pro Se Petitions for Writ of Mandamus	6. Dismissed
		7. Plt's Pro Se Petitions for Writ of Mandamus	7. Dismissed
		8. Plt's Pro Se Petitions for Writ of Mandamus	8. Dismissed
		9. Plt's Pro Se Petition for Writ of Mandamus	9. Dismissed
		10. Plt's Pro Se Petitions for Writ of Mandamus	10. Dismissed
		11. Plt's Pro Se Motion to Put Case to Trial	11. Dismissed
		12. Plt's Pro Se Petition for Writ of Mandamus	12. Dismissed
42P25	State v. Brian Crisp	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-2)	1. ---
		2. Def's PDR Under N.C.G.S. § 7A-31	2. Denied
		3. State's Motion to Dismiss Appeal	3. Allowed
43P20-2	State v. Quintin Sinclair Wright	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Mecklenburg County	1. Dismissed
		2. Def's Pro Se Motion to Proceed *In Forma Pauperis*	2. Allowed
		3. Def's Pro Se Motion to Appoint Counsel	3. Dismissed as moot

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

30 JANUARY 2026

44P25	Fifth Avenue United Methodist Church of Wilmington v. The North Carolina Conference, Southeastern Jurisdiction, of the United Methodist Church, Inc.; The Board of Trustees of the North Carolina Conference, Southeastern Jurisdiction, of the United Methodist Church, Inc., Connie Shelton, Tara C. Lain, Deborah Black, Mike Priddy, Rebecca W. Blackmore, Earl Hardy, M. Francis Daniel, Becca Detterman, Sue W. Hauser, Heather Reaves, Ismael Ruiz-Millan, Dena M. White, Jon Strother, Kenneth Locklear, David Blackman, Michael D. Frese	1. Defs' Notice of Appeal Based Upon a Constitutional Question (COA23-1013) 2. Defs' Petition in the Alternative for Discretionary Review Under N.C.G.S. § 7A-31 3. Plt's Motion to Dismiss Appeal 4. WNCC UMC's Motion for Leave to File Amicus Brief	1. --- 2. Allowed 3. Allowed 4. Allowed **02/12/2025**
45A25	In re Southeastern Eye Center	1. Plts' (Nivison Family Investments, LLC, et al.) Motion for Extension of Time to Extend Stay 2. Parties' Joint Motion to Dismiss Appeal	1. Dismissed as moot **12/30/2025** 2. Allowed **12/30/2025**
47A25	No Limit Games, LLC v. Sheriff of Robeson County, et al.	1. Plt's Notice of Appeal Based Upon a Dissent (COA24-12) 2. Plt's Conditional PDR Under N.C.G.S. § 7A-31 3. Defs' Motion to Dismiss Appeal 4. Defs' Conditional PDR Under N.C.G.S. § 7A-31 5. Plt's Motion to Stay the Briefing 6. Plt's Motion in the Alternative for Extension of Time to File Brief 7. Plt's Motion to File Amended Response to Defs' Motion to Dismiss Appeal	1. --- 2. Dismissed as moot 3. Denied 4. Dismissed as moot 5. Allowed **02/26/2025** Dissolved 6. Dismissed as moot **02/26/2025** 7. Dismissed as moot

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

30 JANUARY 2026

51P25	Kivett, et al. v. North Carolina State Board of Elections, et al.	The Court's Order for Supplemental Filings	Special Order **Riggs, J., recused**
67A25	Wise, et al. v. Lake Pointe Assisted Living, Inc., et al.	Parties' Motion to Dismiss Appeal	Allowed **01/28/2026**
69P06-5	State v. Terraine Sanchez Byers	1. Def's Pro Se Motion for Extension of Time to File Petition for Writ of Certiorari (COAP25-747) 2. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA	1. Dismissed as moot 2. Dismissed
78P25	In re Petition of Nicholas A. Ochsner	Petitioner's PDR Under N.C.G.S. § 7A-31 (COA24-343)	Denied
83P18-2	Marshall Lee Brown, Jr. v. State of North Carolina (N.C. Department of Adult Public Safety, f/k/a N.C. Department of Corrections, n/k/a N.C. Department of Adult Corrections, Leslie Cooley Dismukes, Secretary, Kevin Barnes, Warren Correctional Institution, Warden, et al.)	1. Petitioner's Pro Se Petition for Writ of Mandamus 2. Petitioner's Pro Se Petition for Writ of Mandamus	1. Denied 2. Denied
83P25	State v. Zuammett Velasco	1. Def's PDR Under N.C.G.S. § 7A-31 (COA24-333) 2. State's Motion to Deem Response Timely Filed	1. Denied 2. Dismissed as moot
84P25	Southeastern Public Safety Group, Inc. d/b/a Southeastern Company Police v. North Carolina Department of Justice, Criminal Standards Division, and Randy Munn, in his official capacity as the North Carolina Company Police Administrator	Plt's PDR Under N.C.G.S. § 7A-31 (COA24-191)	Denied

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

30 JANUARY 2026

105P25	Bilfinger Inc. v. Cargill, Incorporated	1. Def's Motion for Temporary Stay (COA24-320)	1. Allowed **04/23/2025** Dissolved
		2. Def's Petition for Writ of Supersedeas	2. Denied
		3. Plt's Motion for Extension of Time to Respond to Petition for Writ of Supersedeas	3. Allowed **05/02/2025**
		4. Def's PDR Under N.C.G.S. § 7A-31	4. Denied
		5. Def's Motion to Admit Aaron Van Oort Pro Hac Vice	5. Allowed
		6. Plt's Motion to Admit Lee C. Davis Pro Hac Vice	6. Allowed
		7. Plt's Motion to Admit Tracey K. Ledbetter Pro Hac Vice	7. Allowed
		8. Plt's Motion to Partially Lift Temporary Stay to Avoid Loss of Evidence	8. Denied **12/12/2025**
		9. Def's Motion in the Alternative to Direct that Plt Proceed in Arbitration	9. Dismissed as moot **12/12/2025**
108P25	State v. Austin Alvy Jackson	Def's PDR Under N.C.G.S. § 7A-31 (COA24-421)	Denied
115P24-2	State v. Eric James Ducker	1. Def's Motion for Temporary Stay (COA24-373)	1. Allowed **05/20/2025**
		2. Def's Petition for Writ of Supersedeas	2. Allowed
		3. Def's Notice of Appeal Based Upon a Constitutional Question	3. Retained
		4. Def's PDR Under N.C.G.S. § 7A-31	4. Allowed
		5. Def's Petition for Writ of Certiorari to Review Order of the COA	5. Denied
		6. Def's Petition for Writ of Certiorari to Review Order of Superior Court, Buncombe County	6. Denied
		7. Def's Petition for Writ of Certiorari to Review Decision of District Court, Buncombe County	7. Denied
		8. State's Motion to Dismiss Appeal	8. Denied

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

30 JANUARY 2026

117P25-3	Cassius Taylor v. Dollar Tree Store, Inc., and Judy D. Faw, James Clayton Faw, and Diana Faw Shaw, as Co-Executors of the Estate of J.C. Faw	1. Plt's Pro Se Motion for Petition for Rehearing 2. Plt's Pro Se Motion for Appeal 3. Plt's Pro Se Motion for Reconsideration or Clarification 4. Plt's Pro Se Motion for Temporary Stay 5. Plt's Pro Se Motion for Preliminary Injunction 6. Plt's Pro Se Motion for Reconsideration or Clarification of the June 6, 2023 Judgment 7. Plt's Pro Se Motion to Direct Clerk of Superior Court Forsyth County to Preserve All Physical Evidence, Including Transcripts, Exhibits, and Recordings 8. Plt's Pro Se Motion for Petition for Review 9. Plt's Pro Se Motion to Vacate Order Denying Appellant's Right to Appeal Court	1. Dismissed **12/17/2025** 2. Dismissed **12/17/2025** 3. Dismissed **12/17/2025** 4. Dismissed **12/17/2025** 5. Dismissed **12/17/2025** 6. Dismissed **12/17/2025** 7. Dismissed **12/17/2025** 8. Dismissed **12/17/2025** 9. Dismissed **12/17/2025**
125A25	In re Southeastern Eye Center	Def's Motion to Dismiss Appeal	Special Order **12/30/2025**
127A25	State v. Deonte D. Meadows	1. State's Motion for Temporary Stay (COA24-149) 2. State's Petition for Writ of Supersedeas 3. State's Notice of Appeal Based Upon a Dissent 4. State's Conditional PDR Under N.C.G.S. § 7A-31 5. State's Motion to Amend Notice of Appeal and Conditional PDR 6. State's Amended Notice of Appeal Based Upon a Dissent 7. State's Amended Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed **05/16/2025** 2. Allowed 3. --- 4. --- 5. Allowed **06/17/2025** 6. --- 7. Dismissed as moot
158P25	John R. Mann, M.D. v. Goshen Medical Center, Inc. and Gregory M. Bounds v. Ibrahim Oudeh and Ibrahim N. Oudeh, M.D., P.A.	Plt's PDR Under N.C.G.S. § 7A-31 (COA24-679)	Denied

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

30 JANUARY 2026

164P25	State v. Julia Louise Copenhaver	Def's PDR Under N.C.G.S. § 7A-31 (COA24-221)	Denied
184P25	State v. Kevin Leigh Wingate	1. State's Motion for Temporary Stay (COA24-815) 2. State's Petition for Writ of Supersedeas 3. State's Notice of Appeal Based Upon a Dissent 4. State's Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed **07/25/2025** 2. Special Order 3. --- 4. Special Order
208P25	Calvin Frank Morrow III v. Kerry Susan Vallant Morrow	Plt's PDR Under N.C.G.S. § 7A-31 (COA25-20)	Denied
211P25	State v. Frank Cataldo	Def's PDR Under N.C.G.S. § 7A-31 (COA24-855)	Denied **Berger, J., recused**
223P25	Ronnie C. Hedgepeth and Shira L. Hedgepeth v. Smoky Mountain Country Club Property Owners' Association, Inc., a North Carolina Corporation	1. Plts' Pro Se Notice of Appeal Based Upon a Constitutional Question (COA24-1020) 2. Plts' Pro Se PDR Under N.C.G.S. § 7A-31 3. Def's Motion to Dismiss Appeal 4. Plts' Pro Se Motion for Leave to File Sur-Reply in Response to Motion to Dismiss Appeal and Petition for Discretionary Review 5. Plts' Pro Se Motion to Stay Proceedings 6. Plts' Pro Se Motion to Stay Transfer of Property	1. --- 2. Denied 3. Allowed 4. Denied 5. Denied **11/20/2025** 6. Denied **11/20/2025**
232P25	State v. Gene Allen Leopard	Def's PDR Under N.C.G.S. § 7A-31 (COA24-749)	Denied
233P25	Mark Armistead, as Administrator of the Estate of Roger Armistead and Diane Williams Armistead v. Van Shaw, individually, and in his official capacity as Sheriff of Cabarrus County, North Carolina, et al.	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA24-481) 2. Defs' Motion to Have Response Deemed Timely Filed	1. Denied 2. Dismissed as moot

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

30 JANUARY 2026

234P25	Lori Newkirk-Baker v. James City Congregation of Jehovah's Witnesses, et al.	Defs' Petition for Writ of Certiorari to Review Order of Superior Court, Craven County	Dismissed as moot **12/11/2025**
235PA23-2	Thurman Crofton Savage v. N.C. Department of Transportation	1. Petitioner's PDR Under N.C.G.S. § 7A-31 (COA22-673) 2. Petitioner's Motion for Temporary Stay 3. Petitioner's Petition for Writ of Supersedeas 4. Petitioner's Motion to Amend PDR 5. Respondent's Conditional PDR Under N.C.G.S. § 7A-31	1. 2. Allowed **12/29/2025** 3. 4. 5.
236P25	State v. Jose Luis Roman Martinez	Def's Pro Se Motion for PDR (COA24-963)	Denied
238P25	State v. Aaron Gerard Hatcher	Def's Pro Se Petition for Writ of Certiorari	Dismissed
244P25	Kristin Black Wyman, individually, Joe Wyman, Daniel Robert Black, individually, Sherill Black, Kristin Black Wyman, Co-Executor of the Estate of Mary Cameron Black, Daniel Robert Black, Co-Executor of the Estate of Mary Cameron Black v. Derek S. Barber	Def's PDR Under N.C.G.S. § 7A-31 (COA25-41)	Denied
245P25	Denise Gonzalez and Evan Drew v. Sean Marfione and Kelly Marfione	Plts' PDR Under N.C.G.S. § 7A-31 (COA24-921)	Allowed
246P25	State v. Jorden Kasey Smith	Def's PDR Under N.C.G.S. § 7A-31 (COA23-1114)	Denied
248P25	In the Matter of B.I.C.M.	Respondent-Mother's PDR Under N.C.G.S. § 7A-31 (COA24-973)	Denied

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

30 JANUARY 2026

249PA25	State v. Rayshawn Denard Banner, Nathaniel Arnold Cauthen, Christopher Bryant, and Jermal Tolliver	1. State's Motion for Temporary Stay (COAP25-576) 2. State's Petition for Writ of Supersedeas 3. State's Motion to Stay Enforcement of Underlying Trial Court Order 4. State's Petition for Writ of Certiorari to Review Order of the COA 5. Defs' Motion to Dissolve Stay 6. State's PDR Prior to Determination by the COA 7. State's Petition for Writ of Certiorari to Review Order of Superior Court, Forsyth County	1. Allowed **10/01/2025** 2. Special Order **10/15/2025** 3. Special Order **10/01/2025** 4. Special Order **10/15/2025** 5. Denied **12/23/2025** 6. 7.
253P25	Darron J. Jones v. North Carolina Department of Adult Corrections, et al.	Petitioner's Pro Se Motion for PDR (COAP25-354)	Dismissed
257P25	Meridith Adams v. David Dillon and Brittany Dillon v. Kimberly Travis, Intervenor	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA24-999) 2. Plt's Petition in the Alternative for Writ of Certiorari to Review Decision of the COA	1. Denied 2. Denied
277P25	State v. Kenneth Lee Daniel	1. Def's Motion for Temporary Stay (COA24-971) 2. Def's Petition for Writ of Supersedeas 3. Def's Notice of Appeal Based Upon a Constitutional Question 4. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **10/17/2025** 2. Allowed 3. Retained 4. Allowed
281P24	Kivett, et al. v. North Carolina State Board of Elections, et al.	The Court's Order for Supplemental Filings	Special Order **Riggs, J., recused**
281P25	State v. Carlton Deprece Thomas	Def's PDR Under N.C.G.S. § 7A-31 (COA24-940)	Denied
282P25	George Skoutelis and Stephanie Ebert Guzman v. Greasy Branch Water Corporation	1. Plts' Notice of Appeal Based Upon a Constitutional Question (COA25-161) 2. Plts' PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied

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

30 JANUARY 2026

285P25	State v. Malik Abdur Rahman Prince	Def's PDR Under N.C.G.S. § 7A-31 (COA24-814)	Denied
287P25	State v. Dathan Shaka McIntyre	1. Def's Motion for Temporary Stay (COA24-1117) 2. Def's Petition for Writ of Supersedeas 3. Def's Notice of Appeal Based Upon a Constitutional Question 4. Def's PDR Under N.C.G.S. § 7A-31 5. State's Motion to Dismiss Appeal	1. Allowed **10/23/2025** Dissolved 2. Denied 3. --- 4. Denied 5. Allowed
288P25	Michele Simons f/k/a Michele Connelly v. Camden Lee Connelly	1. Def's Pro Se Motion for Temporary Stay of District Court Order 2. Def's Pro Se Petition for Writ of Supersedeas 3. Def's Pro Se Petition for Writ of Certiorari to Review Order of District Court, New Hanover County	1. Denied **10/24/2025** 2. Denied 3. Denied
293P25	C.R. England, Inc. v. North Carolina Department of Transportation	Plt's PDR Under N.C.G.S. § 7A-31 (COA24-1100)	Denied
303P25-2	State v. Luis Antonio Rosado	Def's Pro Se Motion for Notice of Appeal	Dismissed
313P25	Andrew M. Blades v. Blusky Restoration Contractors, LLC	Def's PDR Under N.C.G.S. § 7A-31 (COA24-186)	Denied
322P25-2	John Timothy Hull v. Leslie Dismukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **12/15/2025**
323P23-6	Hamza Tebib v. Caroline Burnette, Granville County Sheriff Robert Fountain, Chief Fred Robertson, Clerk of Granville Superior Court, Betty Lou Tebib	1. Plt's Pro Se Petition for Writ of Certiorari to Review Order of the COA 2. Plt's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Granville County	1. Denied 2. Dismissed
326P25	Contessa Smith v. Hon. Kelly Kristen Broyles, Hon. George Cleland, and Hon. David Siprell	1. Plt's Pro Se PDR Under N.C.G.S. § 7A-31 2. Plt's Pro Se Motion for Rule 2 Suspension	1. Denied 2. Denied
327P25	State v. Randy Dingle	1. Def's Pro Se Motion for Appeal 2. Def's Pro Se Motion to Deem Appeal Timely Filed	1. Dismissed 2. Denied

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

30 JANUARY 2026

328P25	State v. Johnnie Denise Hickman	1. State's Motion for Temporary Stay (COA24-893) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **11/21/2025** 2. Allowed 3. Allowed
329P25	Enjoli Gray v. Leighton Rambaran	1. Def's Pro Se Motion for Appeal 2. Def's Pro Se Motion for Discovery	1. Dismissed 2. Dismissed
334P25	State v. Ryell Carlos Woodard	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-1058) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
339P25	State v. James Aaron Glenn	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA23-1103)	Denied
341P25	In the Matter of E.R., a juvenile	1. Petitioner's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COAP25-768) 2. Petitioner's Pro Se Motion to Supplement the Record	1. Denied 2. Allowed
342P25-2	Mary Dallam Martin, in her capacity as Co-Trustee of the Nancy Dallam Martin Revocable Trust and Approximate 50% Beneficiary of The Estate of Nancy Dallam Martin v. Judge Gary M. Gavenus, in his official capacity as Senior Resident Superior Court Judge for Yancey County presiding over the Trust and Estate of Nancy Dallam Martin and Estate of Harry Corpening Martin in Buncombe County	1. Petitioner's Pro Se Emergency Motion for Reconsideration Seeking Limited Supervisory Relief, Temporary Suspension of Gatekeeper Order, Review and Ruling of Concealed Filings 2. Petitioner's Pro Se Motion for Emergency Distribution	1. Dismissed 2. Dismissed
344P25	John P. Jandrew v. Rowan County Respondents	1. Petitioner's Pro Se Petition for Writ of Habeas Corpus 2. Petitioner's Pro Se Motion to Appoint Non Local Alternate Counsel 3. Petitioner's Pro Se Motion of Indigent Requesting Copies	1. Dismissed **12/12/2025** 2. Dismissed **12/12/2025** 3. Dismissed **12/12/2025**

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

30 JANUARY 2026

347P25	In the Matter of The Estate of Peggy Lee Voigt	1. Plt's Pro Se Motion to Request Reasonable Accommodation Under Title II Americans with Disabilities Act 2. Plt's Pro Se Petition for Writ of Certiorari to Review Decision of District Court, Wake County	1. Dismissed 2. Dismissed
349A25	State of North Carolina, *ex rel.* Jeffrey N. Jackson, Attorney General v. TikTok Inc., et al.	1. Defs' Motion to Admit Daniel M. Petrocelli Pro Hac Vice 2. Defs' Motion to Admit Jonathan D. Hacker Pro Hac Vice 3. Defs' Motion to Admit Stephen D. Brody Pro Hac Vice	1. Allowed 2. Allowed 3. Allowed
349P18-2	Frederick Lynn Atwater v. Sammy Heaton - Warden Brown Creek Corr. Inst.	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **12/29/2025** **Dietz, J., recused**
350P25	Joyce M. Wright v. Ethel A. Stinson	Plt's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Mecklenburg County	Dismissed
351P23-2	In re Hedgepeth	1. Respondents' Pro Se Motion to Stay Proceedings (COA23-226) 2. Respondents' Pro Se Motion to Stay Transfer of Property 3. Respondents' Pro Se Notice of Appeal Based Upon a Constitutional Question 4. Respondents' Pro Se PDR Under N.C.G.S. § 7A-31 5. Respondents' Pro Se Motion to Strike Opposition for Improper Consolidation and Misstatement of Procedural Posture	1. Denied **11/20/2025** 2. Denied **11/20/2025** 3. Dismissed *ex mero motu* 4. Denied 5. Denied
352P23-2	Ronnie C. Hedgepeth, Jr., and Shira Hedgepeth v. Smoky Mountain Country Club, SMCC Clubhouse, LLC, Conleys Creek Limited Partnership, and Smoky Mountain Country Club Property Owners Association, Inc., a North Carolina Corporation	1. Plts' Pro Se Motion to Stay Proceedings (COA23-222) 2. Plts' Pro Se Motion to Stay Transfer of Property 3. Plts' Notice of Appeal Based Upon a Constitutional Question 4. Plts' Pro Se PDR Under N.C.G.S. § 7A-31 5. Plts' Pro Se Motion to Strike Opposition for Improper Consolidation and Misstatement of Procedural Posture	1. Denied **11/20/2025** 2. Denied **11/20/2025** 3. Dismissed *ex mero motu* 4. Denied 5. Denied
363P25	In re Richard Anthony Dickens, Sr.	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **12/16/2025**

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

30 JANUARY 2026

366P25	Miller Farms of Wilkes Real Estate LLC v. She Luv A II LLC and Layvette Stembridge	1. Defs' Pro Se Motion for Temporary Stay (COAP25-899) 2. Defs' Pro Se Petition for Writ of Supersedeas 3. Defs' Pro Se Motion for Petition for Extraordinary Relief 4. Defs' Pro Se Motion to Declare a Constitutional Emergency 5. Defs' Pro Se Motion to Take Judicial Notice	1. Dismissed **12/31/2025** 2. Dismissed **12/31/2025** 3. Dismissed **12/31/2025** 4. Dismissed **12/31/2025** 5. Dismissed as moot **12/31/2025**
373P25	State v. Dontrell Deleon Evans	Def's Pro Se Petition for Writ of Habeas Corpus	Denied **12/30/2025**
374P25	Johanna Harris v. Hillside Nursing Rehabilitation	1. Plt's Pro Se Petition for Writ of Certiorari 2. Plt's Pro Se Motion for Temporary Stay 3. Plt's Pro Se Petition for Writ o f Supersedeas	1. Dismissed **12/31/2025** 2. Dismissed **12/31/2025** 3. Dismissed **12/31/2025**
376P25	Barrington Smith v. Armagene Ellis-Smith	1. Def's Pro Se Motion to Stay Eviction 2. Def's Petition for Writ of Supersedeas	1. Dismissed **01/02/2026** 2. Dismissed **01/02/2026**
415P19-5	State v. Scott Randall Reich	1. Def's Pro Se Motion for Notice of Appeal (COAP23-524) 2. Def's Pro Se Motion for Notice of Appeal 3. Def's Pro Se Motion for Extension of Time to File Brief for Allowance of Time for Honorable Court to Consider Constitutional and Proper Right of Legal 4. Def's Pro Se Motion to Appoint Counsel	1. Dismissed 2. Dismissed 3. Dismissed as moot 4. Dismissed as moot **Berger, J., recused** **Dietz, J., recused**
417P21-4	State v. Kenneth Lewis Powell, Jr.	Def's Pro Se Motion to Dismiss	Dismissed

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

30 JANUARY 2026

436PA13-6	Lake, et al. v. State Health Plan for Teachers and State Employees, et al.	1. Plts' Motion to Dismiss Appeal	1.
		2. Plts' Motion to Stay Briefing	2. Denied **01/15/2026**
		3. Defs' Motion for Extension of Time to File Response to Motion to Dismiss	3. Allowed **12/31/2025**
		4. Defs' Petition for Writ of Certiorari to Review Order of Superior Court, Gaston County	4.
449P11-36	In re Charles Everette Hinton	1. Petitioner's Pro Se Common Petition for Writ of Certiorari	1. Dismissed
		2. Petitioner's Pro Se Motion for Petition Showing Capacity to Petition	2. Dismissed
		3. Petitioner's Pro Se Independent Petition for Writ of Certiorari	3. Dismissed
		4. Petitioner's Pro Se Motion for Liens	4. Dismissed **01/28/2026**
		5. Petitioner's Pro Se Petition for Writ of Habeas Corpus	5. Denied **01/28/2026**
513P20-2	In re Thomas Sonny Brown	Petitioner's Pro Se Motion for Petition for Writ of Habeas Corpus	Denied **01/06/2026**

ARMISTEAD v. COUNTY OF CARTERET

[389 N.C. 21 (2026)]

GEORGE ROBERT ARMISTEAD, JR., MADISON ARMISTEAD, GREG RHODES, AND WILLIAM YATES, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

v.

COUNTY OF CARTERET

No. 66A25

Filed 20 March 2026

Class Actions—certification—feasibility of ascertaining class members—no predominance or superiority issues

In a class action lawsuit against a county regarding two types of waste disposal fees, the trial court's order certifying three of four proposed classes was affirmed. First, members of two of the proposed classes—those who paid either a "Green Box Fee" or a "Landfill Fee" but who used private waste collection services—could be feasibly and objectively ascertained from customer lists of the few private waste collection services in the county. Second, with regard to one of the proposed classes, any individualized issues regarding whether a member did or did not use a county-provided waste disposal unit did not predominate over the common issues, including whether the private facilities offered the "same services" as the county. Finally, with regard to the class encompassing those from whom the county overcollected—based on fees that exceeded the cost of operating the county's waste disposal facilities in violation of N.C.G.S. § 153A-292(b)—the trial court did not abuse its discretion by determining that a class action was a superior method of adjudicating those claims than any alternative, based on efficiency considerations.

Appeal pursuant to N.C.G.S. § 7A-27(a)(4) from an order on plaintiffs' motion for class certification entered on 19 August 2024 by Judge R. Kent Harrell in Superior Court, Carteret County. Heard in the Supreme Court on 10 September 2025.

Milberg Coleman Bryson Phillips Grossman, PLLC, by Martha A. Geer, Scott C. Harris, James R. DeMay, and John Hunter Bryson; and Lewis & Roberts, PLLC, by James A. Roberts III and Matthew D. Quinn, for plaintiffs-appellees.

Womble Bond Dickinson (US) LLP, by Sonny S. Haynes, for defendant-appellant.

DIETZ, Justice.

Carteret County does not provide trash and recycling services to county residents. Instead, it offers access to small waste collection sites spread across the county. These sites have dumpsters or other waste receptacles. The county also provides access to a landfill.

For years, Carteret County funded these disposal sites by charging fees to county property owners. Plaintiffs brought this class action lawsuit alleging that the county's fees are unlawful because the fees cannot be charged to those who never used the disposal sites and cannot be charged to those who hired a private waste collection service to handle their trash and recycling. Plaintiffs also alleged that the revenue collected from these fees exceeded the cost of operating the sites in violation of state law.

After years of pretrial discovery, the trial court held a class certification hearing and ultimately rejected one of plaintiffs' four proposed classes but certified the other three.

As explained below, we affirm the trial court's certification order. The key issue in this case is whether it is possible to ascertain the identity of class members who hired private waste collection services. We hold that it is. There are only a handful of firms offering these services, and the customer lists of those firms offer a feasible, objective means of ascertaining class membership. In addition, on the record before us, the challenged classes do not present predominance or superiority issues.

The county also contends that, as the facts and law develop in this case, additional ascertainability, predominance, or superiority issues could emerge. That does not bar class certification now. Should circumstances change as the case progresses, the county can move to modify or decertify the class.

Facts and Procedural History

Plaintiffs are property owners in Carteret County. Like many counties, Carteret County does not have county-wide trash and recycling services. Instead, the county provides twelve waste disposal sites that the parties refer to as "Green Box sites," apparently because of the color of the dumpsters or other receptacles at these sites. The county also provides access to a landfill that is operated by a regional authority serving Carteret County and other nearby coastal counties.

By statute, counties may charge several different types of fees for solid waste services. N.C.G.S. § 153A-292(b) (2025). First, a county "may

impose a fee for the collection of solid waste." *Id.* As noted above, Carteret County does not offer its own waste collection services and therefore does not charge this fee.

Second, a county may "impose a fee for the use of a disposal facility provided by the county." *Id.* The parties refer to this as a "use fee." This fee "may be imposed only on those who use the facility" and "may not exceed the cost of operating the facility." *Id.*

Third, a county may charge an "availability fee" to "all improved property in the county that benefits from the availability" of a county waste disposal facility. *Id.* The county cannot charge this fee to property owners "served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the county disposal facility." *Id.* As with the use fee, the "fee for availability may not exceed the cost of providing the facility." *Id.*

At the times relevant to this lawsuit, Carteret County enacted ordinances authorizing two separate waste disposal fees that the county believed were authorized by these statutes. Carteret County, N.C., Code of Ordinances, § 14-56 (2007) (amended 2024). First, the county charged a "Green Box Fee" to "each residential household in the county which does not have household waste collection service." *Id.* This fee was "intended to recover the costs of disposing of solid waste from households utilizing the county provided solid waste and recycling collection sites." Carteret County Code of Ordinances, § 14-57 (repealed 2024). Since 2017, the Green Box Fee has ranged from $157 to $165 per year.

The county also charged a "Landfill Fee" that was "based upon optional use privileges at county solid waste convenience sites." Carteret County Code of Ordinances, § 14-56 (2007) (amended 2024). This fee was $15 per year.

In 2020, plaintiffs brought this putative class action lawsuit alleging that the Green Box Fees and Landfill Fees charged to certain county property owners are unlawful and must be refunded. Specifically, plaintiffs alleged that the county unlawfully charged the Green Box Fee to people who never used a Green Box site and unlawfully charged both the Green Box Fee and Landfill Fee to people who had private waste collection services. Plaintiffs also alleged that the fees the county charged exceeded the cost of operating these county waste disposal sites.

More than three years after filing the complaint, and after extensive discovery, plaintiffs moved to certify four proposed classes. The trial

court declined to certify the first proposed class, labeled the "Green Box Fee/Failure-to-Use Class." This class concerned plaintiffs' allegation that the county charged the Green Box Fee to people who never used a Green Box disposal site in violation of N.C.G.S. § 153A-292(b). The trial court concluded that determining whether each proposed class member "did or did not use a county-provided waste disposal unit" would "predominate over the common issue" for the class.

The trial court certified the other three classes, which involved plaintiffs' allegations that the county illegally charged the Green Box Fee and Landfill Fee to people with private waste collection services, in violation of both N.C.G.S. § 153A-292(b) and its own ordinance, and that all the fees exceeded the cost to operate the waste disposal sites in violation of N.C.G.S. § 153A-292(b).

The county appealed the trial court's class certification order directly to this Court as provided by N.C.G.S. § 7A-27(a)(4). Plaintiffs did not cross-appeal the trial court's decision not to certify the first proposed class, and that issue is not before us.

Analysis

I. Class certification criteria

The county challenges the trial court's certification order on multiple separate grounds. We therefore begin our analysis by briefly summarizing the legal standard for class certification. "As a threshold matter, the party seeking class certification bears the burden to show that a proper class exists, meaning the named and unnamed members each have an interest in either the same issue of law or of fact, and that issue predominates over issues affecting only individual class members." *Jackson v. Home Depot U.S.A., Inc.*, 388 N.C. 109, 113 (2025) (cleaned up). "Beyond this threshold requirement, the party seeking class certification also must satisfy a number of other certification criteria" designed to protect the interests of the absent class members, such as notice and adequacy of representation. *Id.* These legal criteria for class certification are questions of law that we review de novo. *Empire Contractors, Inc. v. Town of Apex*, 388 N.C. 552, 556–57 (2025).

"Once these legal prerequisites are met, the trial court may, in its discretion, certify a class." *Jackson*, 388 N.C. at 113. "In evaluating whether class certification is appropriate, the trial court should consider whether a class action is superior to other available methods to adjudicate the controversy and whether the class action is likely to serve useful purposes such as preventing a multiplicity of suits or inconsistent

results." *Id.* The court also considers whether the class mechanism is "efficient and economically reasonable" given the administrative costs and the likely recovery for individual claimants. *Surgeon v. TKO Shelby, LLC*, 385 N.C. 772, 781 (2024). Because these final factors for class certification are more subjective than the legal prerequisites, trial courts have broad discretion when assessing them. *Empire Contractors*, 388 N.C. at 557. On appeal, we review these factors solely for abuse of discretion. *Id.* With this standard of review in mind, we turn to the county's arguments against class certification.

II. Ascertainability

The county first argues that two of the classes certified by the trial court—the "Green Box Fee/Waste Collection Class" and the "Landfill Fee/Waste Collection Class"—cannot be certified because the class members are not ascertainable. The class definitions for these two classes apply only to people who paid either the Green Box Fee or the Landfill Fee but who used private waste collection services. According to the county, the parties "do not know how many taxpayers had waste collection services during the proposed class period." Thus, the county argues, no one can identify the members of these two classes.

This argument concerns a prerequisite for class certification known as "ascertainability." This class prerequisite, like the other legal criteria for class certification described above, is "designed to protect the absent class members." *Empire Contractors*, 388 N.C. at 556. In particular, the ascertainability requirement protects the absent class members' right to notice. *Cf. Surgeon*, 385 N.C. at 777. All class members are bound by the judgment obtained by the named plaintiffs. *See Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 379 (1996). Thus, the trial court cannot certify a class unless it is "possible to provide sufficient notice to all putative class members." *Empire Contractors*, 388 N.C. at 557. Without that notice, due process does not permit a judgment that binds the absent parties. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1985); *Crow v. Citicorp Acceptance Co.*, 319 N.C. 274, 283 (1987). This is the source of our state's ascertainability requirement: To ensure that class members receive the required notice, the trial court must confirm that there is a feasible, objective way to identify who those class members are.

Importantly, ascertaining the members of the class cannot be done in a manner that defeats other legal criteria for class certification. For example, if class members cannot be identified without "separate evidence for each class member and then separate resolution by a factfinder," the ascertainability requirement would not be satisfied because

the identification process would devolve into "a series of mini-trials that would dwarf the adjudication of the common issues." *Empire Contractors*, 388 N.C. at 558, 560 (cleaned up). This, in turn, would defeat the predominance prong of class certification because the common issues among class members would no longer predominate the proceeding. Instead, the predominant part of the litigation would be figuring out who is a member of the class. *Id*.

The trial court's reasoning concerning the first proposed class in this case is an example of a proper ascertainability analysis. That proposed class applied to people who "paid a Green Box Fee" to the county but "did not use a Green Box site." In other words, this class covers anyone who was charged the fee to use the county's "Green Box" disposal sites but never actually visited one of those disposal sites to throw out any trash or recycling. Plaintiffs argued that this class could be ascertained by sending notice to every person who paid the Green Box Fee and then permitting prospective class members to self-identify by filing "affidavits asserting that they paid the fee but never used the Green Box."

The trial court concluded that this self-identification process would cause the case to "devolve into individualized mini trials, including the need for discovery, to determine if the claimant in fact did or did not use a county-provided waste disposal unit despite having no private waste collection service." This, the court explained, would mean the common issues in the class would no longer predominate, defeating the legal criteria for class certification.

This analysis is correct and no party challenges it on appeal. But the county argues that the trial court erred by failing to apply the same analysis to the next two proposed classes, which involve people who hired private waste collection services. The county argues that plaintiffs "do not know how many taxpayers had waste collection services during the proposed class period" and "waste collection services can change on an annual basis and can change when properties are transferred from one owner to another in any given year." Thus, the county argues, identifying the members of these two classes will require the same sort of fact-intensive investigation that prevented certification of the first proposed class.

This argument fails because of *how* the fact issues for these two classes can be resolved. Unlike the first proposed class, which required individualized determinations to identify each class member, the latter two classes can be identified efficiently and objectively on a class-wide basis. Specifically, after the opportunity for extensive discovery on this

issue, the parties have only identified a handful of private waste collection services operating in Carteret County. At oral argument, plaintiffs acknowledged that they obtained the business records of these private firms during discovery and asserted that the lists can be used to identify the class members.

The parties did not include those customer lists in the record on appeal, leaving us with no way to evaluate them. We must therefore presume that these customer lists support the trial court's ascertainability determination. *See Nicholson v. Thom*, 236 N.C. App. 308, 325 (2014). If, as this case moves to the notice phase of class certification, the customer lists prove insufficient to identify and notify the class members, the county can move to decertify the class. *See, e.g.*, *Jacobs v. Physicians Weight Loss Ctr. of Am., Inc.*, 173 N.C. App. 663, 677–78 (2005).

Moreover, we emphasize that the county is not required to accept the accuracy of these business records, just as it is not required to take class members at their word in affidavits. *See Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). The county can investigate these businesses and make any appropriate challenges to the truthfulness of their records. But even if fact disputes arise over the accuracy of the customer lists, those issues would not predominate the case in the same way that the class member affidavits would. Instead, because of how few firms offer private waste collection services in the county, those fact disputes could be resolved without overshadowing the core, common issues for all class members.

Simply put, the customer lists provide an objective means of ascertaining class membership, and any fact disputes concerning those lists can be resolved efficiently on a class-wide basis. Accordingly, the trial court did not err by determining that these two proposed classes were ascertainable.

In a few stray sentences in its brief, the county also points to two other potential ascertainability issues. First, the county argues that the text of the applicable ordinances requires anyone who uses a Green Box site to pay the Green Box Fee, even if they also use a private waste collection service. This means that people who typically rely on their private waste collectors but occasionally use the Green Box site—for example, during a holiday when they accumulated too much trash to wait for collection day—would not be entitled to a refund of the Green Box Fee. The county contends that separating these people from the rest of the class creates individualized ascertainability issues as well as other class certification problems.

Second, the county contends that its ordinance permits it to collect the challenged Green Box Fee upfront so long as the county provides a refund to anyone who submits proof of private waste collection services later. The county argues that assessing whether class members submitted the necessary refund information likewise creates ascertainability issues as well as issues with other certification requirements.

The flaw in these arguments is that they concern the merits of plaintiffs' claims. Plaintiffs do not agree with the county's interpretation of its ordinances. In plaintiffs' view, the ordinances prohibit the county from collecting a Green Box Fee from *anyone* who uses private waste collection services, regardless of whether those people ever use a Green Box site. Likewise, plaintiffs contend that the ordinances do not permit the county to collect these fees upfront and put the burden on the fee payer to submit documentation and obtain a refund later. As a result, the county's arguments on these class certification issues cut to the heart of some of the key legal issues in this case.

Ordinarily, merits questions in class certification proceedings "may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Conn. Ret. Plans and Tr. Funds*, 568 U.S. 455, 466 (2013); *see also Surgeon*, 385 N.C. at 781–82. Thus, it might be appropriate to examine these merits issues at the class certification stage solely to assess the certification criteria. But when doing so, these merits issues are subject to the same appellate preservation requirements as everything else. N.C. R. App. P. 10(a)(1). Here, we are not confident that these merits issues were presented to the trial court and ruled upon below as required to preserve them for appellate review.

The hearing transcript indicates that both parties expressed their intent to pursue cross-motions for summary judgment on the merits *after* the court ruled on the class certification question. Moreover, at various points during the hearing, the trial court emphasized that it was reluctant to get "more into the substance of the claims as opposed to the identification of the class." Then, when addressing whether the law permitted the county to collect the fees upfront but refund them upon proof of private waste services, the trial court directly responded, "That's another one of those kind of arguments for another day in the sense that I would expect I'll probably hear from you again on that issue when we get to summary judgment." The county did not assert that the trial court must make a ruling on these issues as part of the certification analysis and did not object when the court declined to do so.

Ultimately, the trial court's class certification order did not address these questions about the meaning of the county's ordinances and their interplay with the enabling statutes. Because these questions go to the heart of the merits of plaintiffs' claims, we are reluctant to rule on them now—particularly where the county did not "obtain a ruling" from the trial court on the issue as required by the Rules of Appellate Procedure and neither party devoted much attention to these issues in their briefing to us. *Id.* Accordingly, we leave these issues for further proceedings in the trial court.

III. Predominance

The county next argues that the third proposed class does not meet the certification criteria because individualized issues predominate over the common ones.

This third proposed class, called the "Landfill Fee/Waste Collection" class, alleges that the county's Landfill Fee violated N.C.G.S. § 153A-292(b). This statutory provision permits a county to charge an "availability fee" to property owners to fund a "disposal facility provided by the county." *Id.* But the statute prohibits counties from charging this fee to property owners who hire private waste collection using a private facility that offers "*the same services* as those provided by the county disposal facility." *Id.* (emphasis added).

The county argues that "the determination of whether the services provided by any of these companies are the 'same services' as those provided by the County disposal facility requires individualized inquiries into the provisions of the service contracts and potentially multiple contract analyses per property, particularly in cases where the waste collector or the service contract has changed over time." These individualized issues, the county argues, would predominate over the common issues in the case.

This argument fails because it mischaracterizes common issues as individualized ones. To be sure, this "same services" issue is likely to be a key fact issue in this case. But it is not an issue that is individualized to each class member. There could be many thousands of class members; the parties have identified only a handful of private waste collection firms.

Because there are only a few private firms, there will be—at most—only a few private disposal facilities to examine. Indeed, in its brief, plaintiffs point to deposition testimony from a county employee indicating that all county waste services, both private and public, are taken

to facilities operated by a regional waste management authority that jointly serves Carteret County and several of its neighboring coastal counties. In other words, plaintiffs believe these private services are not just offering comparable services at their facilities, they are literally offering the same services.

Now, to be fair to the county, this is a fact question that will need to be resolved either at summary judgment or at trial. But the trial court correctly concluded that, on the current record, this fact question will not involve numerous individualized inquiries.

In sum, the county has not established that there are individualized fact issues that will predominate over common issues for the third proposed class. Instead, the county has simply highlighted a shared factual issue among class members that is amenable to resolution through a class action. Accordingly, the trial court did not err by concluding that plaintiffs' third proposed class satisfied the predominance prong of class certification.

IV. Superiority of the class action mechanism

Finally, the county argues that a class action is not the superior method of adjudicating the claims in the fourth proposed class. That class, which the parties label the "Cost-to-Operate" class, alleges that the county collected more in fees than it cost to operate its waste facilities. Plaintiffs allege that this overcollection violates N.C.G.S. § 153A-292(b), which prohibits counties from charging fees that exceed the "cost of operating" the facilities. *Id.*

As noted above, once the legal prerequisites to class certification are met, the trial court should evaluate whether the class action mechanism is superior to other available methods of adjudication. *Surgeon*, 385 N.C. at 777. Importantly, this superiority analysis is not a legal question. It involves a more subjective component and is therefore "left to the trial court's discretion." *Empire Contractors*, 388 N.C. at 557.

Here, the county argues that the trial court abused its discretion by failing to recognize that, if any single plaintiff prevails on a cost-to-operate claim, the county would be obligated to issue a refund to *everyone* who paid the illegal fees, not just to that plaintiff. Thus, the county argues, a class action cannot be superior to an individual action by the named plaintiffs because the result will be the same either way.

To support this argument, the county relies on an unpublished Court of Appeals opinion. *See Manning v. Halifax County*, No. COA03-1118 (N.C. Ct. App. Sept. 7, 2004) (unpublished). That opinion, of course, is

not precedential. Moreover, the holding that the county identifies in *Manning* is, at best, an implied one.

But even assuming the county's position is correct, that would not compel the trial court to deny class certification in this case. Class actions are designed as "a means for potential litigants with valid legal claims to have those claims aggregated in an efficient and economically reasonable manner." *Surgeon*, 385 N.C. at 781 (cleaned up). "The entire notion of class actions is grounded in this concept of efficiency." *Id.*

Here, it was well within the trial court's sound discretion to conclude that joining all fee payers together in a class action is superior to the alternative because of efficiency. Nothing in that initial, individual lawsuit proposed by the county would prevent others from filing similar suits. Thus, there could be "a multiplicity of suits or inconsistent results"—important concerns that underpin the existence of class action litigation. *Crow*, 319 N.C. at 284. Moreover, it is arguably more efficient to identify and bring all fee payers together now, rather than relying on the county to locate them later. If the county were, shall we say, less than vigorous in tracking down those entitled to a refund, it could lead to a stream of future lawsuits that the class mechanism could have avoided. Simply put, the trial court's superiority analysis reflects a consideration of important efficiency issues that are at the core of the class action process. The court's analysis is a reasoned one and not an abuse of discretion.

Conclusion

For the reasons explained above, we affirm the trial court's class certification order.

AFFIRMED.

HOPE SWICEGOOD BYRD, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF CHRISTOPHER BYRD AND PHILLIP BYRD; ELIZABETH ETHERIDGE, ADMINISTRATOR OF THE ESTATE OF GRADY G. BYRD; ROBERT BYRD, INDIVIDUALLY AND AS A NATURAL SON OF GRADY G. BYRD; CATHLEEN M. KULZER, INDIVIDUALLY AND AS NATURAL MOTHER OF JACKELYN K. KULZER; MATTHEW B. BAILER, ADMINISTRATOR OF THE ESTATE OF JACKELYN K. KULZER

v.

AVCO CORPORATION; LYCOMING ENGINES; AEROLINA, INC.; JOHN FADOK, JOHN'S HENDERSONVILLE AIRPORT, LLC D/B/A, F/K/A, AND/OR A/K/A HENDERSONVILLE AIRPORT; BELLE AIRCRAFT MAINTENANCE, LLC; PENN YAN AREO SERVICE, INC. A/K/A PENN YAN NY, INC.; AND GREGORY DOBSON

No. 270PA24

Filed 20 March 2026

Appeal and Error—interlocutory order—denying motion for reconsideration—partial summary judgment—rejecting statute of repose defense—substantial right affected

In a products liability action arising from a fatal plane crash, where the aircraft's engine manufacturer (defendant) argued that all of plaintiffs' claims were barred by the eighteen-year statute of repose under the General Aviation Revitalization Act (GARA), but where the trial court denied summary judgment to defendant with respect to plaintiffs' claim for negligent failure to warn, the Court of Appeals' order dismissing defendant's appeal from the trial court's subsequent interlocutory order—denying defendant's motion to reconsider the partial summary judgment ruling—was reversed because the Court of Appeals had incorrectly concluded that it lacked subject matter jurisdiction over defendant's appeal. Firstly, defendant had timely appealed from the correct order. Secondly, plaintiffs' contention that interlocutory orders denying reconsideration are never immediately appealable was meritless, especially where the order at issue substantially altered the court's earlier reasoning for granting partial summary judgment. Finally, unlike statutes of limitations, which are purely procedural and only provide immunity from civil liability, statutes of repose provide immunity from suit—a substantial right that is lost if a case proceeds to trial; therefore, appellate jurisdiction was proper where the order affected defendant's substantial right to immunity from suit under GARA's statute of repose.

Justice EARLS dissenting.

Justice RIGGS joins in this dissenting opinion.

On writ of certiorari pursuant to N.C.G.S. § 7A-32(b) to review an order of the Court of Appeals dismissing defendants' appeal from an order denying defendants' motion to reconsider entered on 5 June 2024 by Judge Forrest D. Bridges in Superior Court, Buncombe County. Heard in the Supreme Court on 28 October 2025.

Searson, Jones, Gottschalk & Cash, PLLC, by W. Bradford Searson, and Arthur Alan Wolk, pro hac vice, for plaintiff-appellees.

Troy D. Shelton, Mary McHugh Webb, John A. Tarantino, pro hac vice, and Nicole J. Benjamin, pro hac vice, for defendant-appellants.

Fox Rothschild LLP, by Nathan M. Wilson, and Carsten Goodrich Hoyt, pro hac vice, for General Aviation Manufacturers Association, amicus curiae.

Cranfill Sumner LLP, by Rebecca A. Knudson and Maxwell P. Shafer, and Elizabeth C. Stephens, for North Carolina Home Builders Association, Inc., amicus curiae.

BERGER, Justice.

Defendants sought appellate review of the trial court's interlocutory order denying their motion to reconsider entry of a partial summary judgment order. By order and without explanation, the Court of Appeals allowed plaintiffs' motion to dismiss the appeal, presumably because it determined it lacked appellate jurisdiction to consider the interlocutory order. The Court of Appeals erred in allowing plaintiffs' motion to dismiss, and we reverse and remand to the Court of Appeals.

I. Factual and Procedural Background

Defendants Avco Corporation and its unincorporated operating division, Lycoming Engines, (collectively, Avco) manufacture aircraft engines. In 1978, Avco manufactured and shipped an engine that was eventually installed in a small aircraft piloted by Greg Byrd. On 8 May 2015, Greg Byrd, Christopher Byrd, Phillip Byrd, and Jackelyn Kulzer boarded the aircraft at Peachtree DeKalb Airport in Chamblee, Georgia. The aircraft experienced a loss of power as it departed the runway, then collided with a barrier and erupted in flames. All on board were killed.

On 1 May 2017, plaintiffs filed suit asserting various claims against Avco and other defendants, including parties who had performed

maintenance on the aircraft's engine in the time between its manufacture and the accident. As is relevant here, plaintiffs asserted claims of strict liability, unfair and deceptive trade practices, negligence, negligent failure to warn, fraud, breach of warranties, and negligent misrepresentation.

The matter was designated as an exceptional case and assigned to a senior resident superior court judge in September 2018. Avco moved for partial summary judgment on 23 December 2019. The trial court granted the motion as to plaintiffs' breach of warranties claim but denied the motion as to plaintiffs' remaining claims. Avco subsequently filed a motion for summary judgment on 17 November 2021, arguing in relevant part that summary judgment was warranted for "each and every one" of plaintiffs' claims because plaintiffs' suit "is barred in its entirety by the statute of repose provided for by the General Aviation Revitalization Act of 1994."[1] On 21 September 2022, the trial court entered an order granting in part and denying in part Avco's motion for summary judgment, effectively dismissing all of plaintiffs' claims against Avco except for plaintiffs' negligent failure to warn claim. Regarding Avco's argument that all of plaintiffs' claims were barred by the statute of repose provided by Congress in the General Aviation Revitalization Act of 1994 (GARA), the trial court reasoned:

> This Court concludes that the affidavit of Plaintiffs' expert witness Allen J. Fielder and attached exhibits, including numerous Service Difficulty Reports, is sufficient to create a genuine issue of material fact as to whether the Plaintiffs can persuade a jury at trial that the manufacturer misrepresented to the Federal Aviation Administration, or concealed or withheld from the Federal Aviation Administration, "required information that is material and relevant to the performance or the maintenance or operation of such aircraft." 49 U.S.C. § 40101 Notes, § 2(b)(1).
>
> The Court further finds that the product liability claims of the Plaintiffs that survive Avco's motion for summary judgment will be limited to those that are encompassed by and related to acts or omissions of Avco within the (b)(1) exception under GARA,

1. Though plaintiffs initially named numerous other defendants in their complaint, plaintiffs voluntarily dismissed their claims against these other defendants and by November 2021, Avco was the sole remaining defendant.

> as described above. The surviving claims for negligence will be limited to the claim for negligent failure to warn during such period of time determined to fall within the GARA (b)(1) exception, which may require a factual finding by the jury on a potential issue related to the GARA exception under subsection (b)(1).

On 22 February 2024, Avco filed a motion pursuant to Rules 7 and 54(b) of the North Carolina Rules of Civil Procedure, asking the trial court to reconsider and amend its prior order granting in part and denying in part Avco's 2021 motion for summary judgment. On 5 June 2024, the trial court entered an order ostensibly denying Avco's motion for reconsideration. In this order, the trial court's reasoning differed and it determined in relevant part that:

> The Summary Judgment Order indicates that a finding of fact may be required as to the (b)(1) exception. At this stage, it is clear that a jury finding *will be required* in order for Plaintiffs' claims to survive GARA. The Court cannot say, as a matter of law, that Defendants either did or did not knowingly misrepresent, withhold, or conceal required information from the FAA. Plaintiffs have alleged enough to get this question to the jury, and the jury should be the ultimate fact finder as to the knowing concealment, if any, of required information. That is all that is required at this stage to deny Defendant's motion.

Avco filed a notice of appeal from this order on 27 June 2024 and petitioned the Court of Appeals for a writ of supersedeas and a temporary stay on 9 September 2024. The Court of Appeals granted a temporary stay on 12 September 2024, and plaintiffs filed a response to Avco's petition for writ of supersedeas on 23 September 2024. On 14 October 2024, the Court of Appeals entered an order denying Avco's petition for writ of supersedeas and dissolving the temporary stay. Avco then petitioned for a writ of supersedeas and a temporary stay, and this Court allowed the temporary stay on 18 October 2024 to preserve the status quo while the Court of Appeals considered the appeal.

Plaintiffs thereafter moved to dismiss Avco's appeal to the Court of Appeals on 7 January 2025. On 24 February 2025, the Court of Appeals entered an order dismissing Avco's appeal. Avco then petitioned this Court for a writ of certiorari to review the Court of Appeals' order of

dismissal, and this Court allowed Avco's petitions for writs of supersedeas and certiorari on 21 March 2025.[2]

II. Standard of Review

Whether the Court of Appeals has subject-matter jurisdiction to review an appeal from a trial court's order is a question of law which we review de novo. *See State v. Thomsen*, 369 N.C. 22, 24 (2016).[3]

III. Discussion

A. Appellate Jurisdiction

The Court of Appeals ordinarily has jurisdiction to consider appeals from "any final judgment of a superior court." N.C.G.S. § 7A-27(b)(1) (2025). However, there is generally no right of immediate appeal from "[i]nterlocutory orders and judgments . . . made during the pendency of an action which do not dispose of the case, but instead leave it for further action by the trial court to settle and determine the entire controversy." *Sharpe v. Worland*, 351 N.C. 159, 161 (1999) (cleaned up). Therefore, "to prevent fragmentary and premature appeals that unnecessarily delay the administration of justice," appellate jurisdiction over interlocutory orders is limited to specific, narrow situations. *Id.* (cleaned up).

One of these situations occurs "when the trial court enters a final judgment as to one or more, but fewer than all, claims or parties and certifies there is no just reason for delay" under Rule 54 of the North Carolina Rules of Civil Procedure. *Id.* at 161–62. "When the trial court certifies its order for immediate appeal under Rule 54(b), appellate review is mandatory." *Id.* at 162.

Appellate jurisdiction may also be invoked when the trial court's interlocutory order "deprives the appealing party of a substantial right which will be lost if the order is not reviewed before a final judgment is entered." *Id.* (cleaned up); *see also* N.C.G.S. § 7A-27(b)(3)(a) (2025); N.C.G.S. § 1-277(a) (2025). Thus, so long as the appealing party carries

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2. After oral argument in this case, plaintiffs' counsel filed a motion to withdraw their responses to the briefs of amicus curiae. The motion is allowed and counsel are reminded to exercise caution when considering making personal allegations of misconduct against opposing counsel.

3. As is customary with orders entered by the Court of Appeals, the order dismissing Avco's appeal contains no reasoning or analysis supporting its decision. However, because the dismissal was presumably predicated on the Court of Appeals' agreement with some or all of plaintiffs' arguments in their motion to dismiss Avco's appeal, we review de novo whether any of these arguments support dismissal.

his or her burden of demonstrating that the interlocutory order affects a substantial right which will be lost absent immediate appellate review, the Court of Appeals has jurisdiction over that appeal even in the absence of a Rule 54(b) certification.

Here, plaintiffs presented three arguments to the Court of Appeals in their motion to dismiss Avco's appeal. First, they contended that Avco's appeal was untimely because Avco was actually appealing from the trial court's 21 September 2022 order granting in part and denying in part Avco's motion for summary judgment rather than the trial court's 5 June 2024 order denying Avco's motion for reconsideration. Second, plaintiffs argued that even if Avco was timely appealing from the 5 June 2024 order, the appeal was nevertheless subject to dismissal because orders denying motions to reconsider are not immediately appealable. Finally, plaintiffs asserted that even if Avco had properly appealed from the 21 September 2022 order, appellate jurisdiction would be lacking because an order denying a statute of repose argument does not deprive the moving party of a substantial right which will be lost absent immediate appellate review. We address each argument in turn.

B. Order on Appeal

Plaintiffs first argued that Avco's appeal was untimely because it was an appeal from the trial court's 21 September 2022 order, not the trial court's 5 June 2024 order. But the record clearly demonstrates that Avco gave timely notice of appeal from the trial court's 5 June 2024 order denying Avco's motion to reconsider and amend and that no appeal was taken from the trial court's 21 September 2022 order. Accordingly, plaintiffs' first argument could not support dismissal of Avco's appeal.

C. Appealability of the Order Denying Reconsideration

In their second argument for dismissal, plaintiffs contend that an order denying reconsideration under Rule 54 cannot satisfy jurisdictional requirements for an interlocutory appeal. Plaintiffs argue that *Zairy v. VKO, Inc.*, 212 N.C. App. 687 (2011), establishes a bright-line rule that appellate jurisdiction can never lie from an interlocutory order denying reconsideration. But *Zairy* does not go that far.

In *Zairy*, the trial court entered an order allowing motions to dismiss for defendants. *Id.* at 688. Subsequently, the trial court denied the plaintiff's motion for reconsideration of that order. *Id.* The plaintiff appealed only from the order denying reconsideration but argued to the Court of Appeals that the trial court erred in its initial order granting the motion to dismiss. *Id.* The Court of Appeals, citing Rule 3(d) of the

North Carolina Rules of Appellate Procedure, determined the plaintiff's failure to designate the initial order as the basis of the appeal failed to invoke appellate jurisdiction to review the initial order. *Id.*

As to the order denying reconsideration, which was properly designated in the notice of appeal, the plaintiff argued that N.C.G.S. § 1-277(b) provided the basis for jurisdiction. *Zairy*, 212 N.C. App. at 689. That subsection provides, in relevant part, that "[a]ny interested party has the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant." N.C.G.S. § 1-277(b) (2025).

The Court of Appeals rejected the plaintiff's argument, concluding that subsection 1-277(b) did not apply to the order denying reconsideration because, although the original order of dismissal was an adverse jurisdictional determination, the order denying reconsideration was "not such an order." *Zairy*, 212 N.C. App. at 690. Instead, the court specifically noted that the reconsideration order "substantively denie[d] plaintiff's request to reevaluate" the initial order and "in no way ma[de] any determinations as to jurisdiction." *Id.* In other words, because the order denying reconsideration in *Zairy* did not itself constitute an "adverse ruling as to the jurisdiction of the court over the person or property of the defendant," N.C.G.S. § 1-277(b), plaintiff's only route for appeal in *Zairy* was interlocutory jurisdiction based on deprivation of a substantial right, which plaintiff failed to argue. *Zairy*, 212 N.C. App. at 690.

But here, Avco appealed from the reconsideration order and accurately argued that the substantive reasoning therein was different from that contained in the original summary judgment order. Avco is, therefore, in a much different position than the *Zairy* plaintiff because Avco is not arguing defects from the original order, but rather that the trial court committed error in the order on reconsideration.

This is consistent with Court of Appeals precedent in *Doe v. City of Charlotte*, 273 N.C. App. 10 (2020). In *Doe*, the trial court dismissed many of the plaintiffs' claims stemming from an incident with a Charlotte Police Officer. *Id.* at 14. The plaintiffs moved for reconsideration under Rule 59 of the North Carolina Rules of Civil Procedure, and the trial court denied plaintiff's motion. *Id.* The plaintiffs then sought certification of the original order of dismissal for immediate appeal under Rule 54(b). The trial court "entered a stand-alone order granting [p]laintiffs' motion and stating that the trial court 'hereby certifies that its Summary Judgment Order is a final judgment as to all claims against the City of Charlotte and as to the state law claims against Defendant Smith, and

that there is no just reason for delay in entering that final judgment.' " *Id.* at 15. Plaintiffs appealed from the original summary judgment order based upon this certification. *Id.*

Doe instructed litigants that Rule 54 was textually the more appropriate avenue to pursue reconsideration of a pre-trial determination.[4] That provision "permits trial courts to change their interlocutory orders at any time before entry of final judgment." *Id.* at 20 (citing N.C.G.S. § 1A-1, Rule 54(b)).

But the Court of Appeals reasoned that the plain language of the rule compelled a determination that the stand-alone Rule 54 certification of the prior order could not be a vehicle for appeal. *Id.* Thus, the ex-post certification of the prior summary judgment order in *Doe* was improper because a trial court may not "go back and 'certify' a previously entered order as immediately appealable under Rule 54(b)." *Id.* (citing *Branch Banking & Tr. Co. v. Peacock Farm, Inc.*, 241 N.C. App. 213, *aff'd per curiam*, 368 N.C. 478 (2015)).

However, *Doe* recognized that "there is an easy work-around in this situation." *Id.* Because Rule 54 allows trial courts to amend their interlocutory orders at any time prior to final judgment, "the trial court could simply amend the initial order by entering a new order with the *same substantive language* as the initial order but with the additional Rule 54(b) certification language added." *Id.* (cleaned up) (emphasis added). "Then, the aggrieved party can appeal that new order." *Id.*

Although not procedurally identical, *Doe* is persuasive here. As in *Doe*, the trial court in this case entered a "new order" addressing the substance of the underlying claim. Indeed, as noted above, the court's new order expressly *changed* the substance of its initial ruling. This is distinguishable from cases such as *Zairy* where the trial court summarily declined to alter or amend its initial order and simply denied the motion for reconsideration. Thus, while *Zairy* supports the principle that reconsideration orders typically are non-appealable when they fail to restate, alter, or amend the trial court's substantive basis for its ruling, it does not follow that such orders are non-appealable when they *do* contain such a substantive basis—particularly where, as here, that substantive basis alters the court's original reasoning. Accordingly, plaintiffs' sweeping contention that appellate jurisdiction can never lie from

4. The Court of Appeals clarified that Rule 59 "is not an appropriate means of seeking reconsideration of interlocutory, pre-trial rulings of trial courts." *Doe*, 273 N.C. App. at 15.

an order denying reconsideration is without merit and could not support dismissal of Avco's appeal.

D. Statutes of Repose as a Substantial Right

Here, the trial court's 5 June 2024 order "denying" Avco's motion for reconsideration under Rule 54 set forth the trial court's substantive reasoning, which had evolved since its September 2022 summary judgment order. Had the trial court certified its 2024 order under Rule 54(b), our analysis would therefore be complete: the Court of Appeals would possess appellate jurisdiction over Avco's appeal of the 2024 order.

However, because the trial court did not certify its order, Avco cannot rely on Rule 54(b) for appellate jurisdiction. Instead, Avco must establish the appealability of this order by demonstrating that it "deprives [Avco] of a substantial right which will be lost if the order is not reviewed before a final judgment is entered." *Sharpe*, 351 N.C. at 162 (cleaned up). "Our precedent defines a substantial right as one materially affecting those interests which a person is entitled to have preserved and protected by law." *Land v. Whitley*, 388 N.C. 296, 303 (2025) (cleaned up). To support interlocutory jurisdiction, the "right must be one they might lose if the order is not reviewed before final judgment." *Id.* (cleaned up). "Because defining a substantial right is often easier than identifying one, the particular facts of th[e] case and the procedural context in which the order from which the appeal is sought was entered serve as helpful guidance." *Id.* at 304 (cleaned up).

For example, this Court has determined that sovereign immunity and governmental immunity are substantial rights sufficient to support interlocutory jurisdiction because "those immunities are *immunity from suit* . . . that shields a defendant entirely from having to answer for its conduct at all in a civil suit for damages." *Id.* (cleaned up). Because "[t]hat immunity is effectively lost if a case is permitted to go to trial," appellate review after a trial and final judgment could not remedy an erroneous interlocutory order adversely affecting that immunity. *Id.* On the other hand, we have held that immunity "from any civil *liability*" does not constitute a substantial right supporting interlocutory jurisdiction because such immunity does not protect a defendant "from the burden of being dragged into court to defend themselves." *Id.* at 305 (emphasis added).

At the Court of Appeals, Avco argued that its appeal of the trial court's interlocutory order denying reconsideration was proper because that order deprived Avco of its substantial right to immunity from suit provided by GARA's statute of repose. Plaintiffs contended that under the

Court of Appeals' precedent in *Lee v. Baxter*, 147 N.C. App. 517 (2001), a statute of repose does not confer a substantial right and therefore an order denying a statute of repose defense is not immediately appealable.

In *Lee*, the plaintiff was injured when her husband drove their Ford Ranger off the road and crashed. *Id.* at 518. After her husband died of unrelated causes two months after the accident, the plaintiff sued her husband's estate to recover damages for her injuries sustained in the accident. *Id.* The estate filed a third-party complaint against Ford "alleging entitlement to contribution and/or indemnification based on negligence and breach of warranty." *Id.* Ford moved for summary judgment under a then-existing six-year statute of repose. The trial court denied Ford's motion and certified the order for appeal under Rule 54(b). *Id.*

The Court of Appeals first determined that the appeal was improperly certified under Rule 54(b) because the appealed from order "was not final as to either a claim or a party." *Id.* at 519. It then rejected Ford's argument "that the statute of repose gives a defendant a vested right not to be sued and is therefore similar to the defense of immunity, which is considered a substantial right." *Id.* (cleaned up). According to the *Lee* court, Ford's comparison fell short because "[u]nlike a claim for immunity, Ford's right to raise the statute of repose defense will not be lost if we do not review the case prior to a final judgment" because "[t]he only loss Ford will suffer will be the time and expense of trial." *Id.* at 520. The court also noted our precedent holding that an order denying a statute of limitations defense does not affect a substantial right and "s[aw] no reason to treat a motion for summary judgment based on the statute of repose differently than a motion to dismiss based on the statute of limitations." *Id.*

But *Lee* is clearly wrong.[5] *Lee* conflated statutes of repose and limitations because it fundamentally misunderstood the right conferred by a statute of repose. "[A] statute of limitations is not the same as a statute of repose." *McKinney v. Goins*, 387 N.C. 35, 48 n.7 (2025). "Unlike a statute of limitations, a statute of repose 'establishes a time period in which suit must be brought *in order for the cause of action to be recognized*.' " *Id.* (quoting *Boudreau v. Baughman*, 322 N.C. 331, 340–41

5. The panel below was bound to follow *Lee* regardless of its soundness due to our decision in *In re Civil Penalty*, 324 N.C. 373, 384 (1989), which prohibits the Court of Appeals from altering or correcting its own precedent. As *Lee* was the probable basis for the Court of Appeals' dismissal of Avco's appeal, and as there are significant errors in that decision's reasoning, we take this opportunity to overrule *Lee* and its progeny.

(1988)). "Unlike statutes of limitations, which run from the time a cause of action accrues, statutes of repose create time limitations which are not measured from the date of injury." *Hargett v. Holland*, 337 N.C. 651, 654 (1994) (cleaned up). And unlike statutes of limitations, which are "clearly procedural, affecting only the remedy directly and not the right to recover," statutes of repose are "condition[s] precedent to the action itself." *Boudreau*, 322 N.C. at 340. "If the action is not brought within the specified period, the plaintiff literally has *no* cause of action." *Id.* at 341 (cleaned up). Essentially, a "statute of repose creates an additional element of the claim itself which must be satisfied in order for the claim to be maintained." *Hargett*, 337 N.C. at 654.

"[T]he repose serves as an unyielding and absolute barrier that prevents a plaintiff's right of action even before his cause of action may accrue." *Boudreau*, 322 N.C. at 340 (alteration in original) (quoting *Black v. Littlejohn*, 312 N.C. 626, 633 (1985)). "For this reason we have previously characterized the statute of repose as a *substantive* definition of rights rather than a procedural limitation on the remedy used to enforce rights." *Id.* at 341 (emphasis added). Put simply, when the statute of repose has expired, a defendant cannot be hailed into court to bear the burden and expense of trial.

Federal courts have consistently determined that section 2 of GARA provides a statute of repose. *See Lyon v. Agusta S.P.A.*, 252 F.3d 1078, 1084 (9th Cir. 2001) ("[GARA] is a classic statute of repose[;] . . . if an accident occurs one day before the GARA period runs, an action will be possible and will be governed by the usual statute of limitations. If it occurs on the day after the GARA period runs, no action whatsoever is possible."); *Crouch v. Honeywell Int'l, Inc.*, 720 F.3d 333, 342 (6th Cir. 2013) ("GARA specifically bars lawsuits arising out of defects in an aircraft part that is more than eighteen years old.") *see also Weiss v. Cont'l Aerospace Tech., Inc.*, 298 N.C. App. 293, 298 (2025) (recognizing GARA as creating "an 18-year statute of repose for civil actions against manufacturers of general aviation aircraft and component parts").

But even though the federal courts agree that GARA is a statute of repose rather than limitations, there are differing views on whether the interlocutory denial of a GARA defense entitles a defendant to immediate appellate review. Federal appellate review of interlocutory orders, which differs from our state jurisprudence detailed above, is limited to orders that fall within the "collateral order doctrine." *Estate of Kennedy v. Bell Helicopter Textron, Inc.*, 283 F.3d 1107, 1110 (9th Cir. 2002).

> The collateral order doctrine arises from a practical construction of 28 U.S.C. § 1291's final decision rule and establishes a narrow class of decisions that do not terminate the litigation, but must, in the interest of achieving a healthy legal system nonetheless be treated as final. In order to fall into this narrow class of immediately appealable orders, a district court decision must be conclusive, resolve important questions completely separate from the merits, and render such important questions effectively unreviewable on appeal from a final judgment in the underlying action.

Id. (cleaned up).

There are meaningful differences between the federal collateral order doctrine and our substantial right test, but there is an important similarity. Just as our test requires an appellant claiming an immunity-based substantial right to demonstrate entitlement to an immunity that "shields a defendant entirely from having to answer for its conduct at all in a civil suit for damages," *Land*, 388 N.C. at 304 (cleaned up), the third condition of the collateral order doctrine is satisfied when a defendant is afforded "an explicit statutory or constitutional guarantee that trial will not occur" and the lower court's failure to recognize this guarantee constitutes a "deprivation of the right not to be tried." *Estate of Kennedy*, 283 F.3d at 1110 (citing *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 800–01 (1989)).

The Ninth Circuit has held that "[a]n appeal from an adverse decision of the district court by a party claiming GARA protection falls within the collateral order doctrine" because "[i]t is clear that an essential aspect of the GARA statute of repose is the right to be free from the burdens of trial." *Id.* at 1111. On the other hand, the Third Circuit has reached the opposite conclusion and determined that an interlocutory order "denying application of the GARA statute of repose should not be appealable under the collateral order doctrine" in part because "the GARA statute of repose is not a pure immunity [as] it contains exceptions under which immunity does not attach." *Robinson v. Hartzell Propeller, Inc.*, 454 F.3d 163, 173 (3d Cir. 2006).

We are not bound to follow either of these federal decisions, nor are we inclined to engraft federal collateral order doctrine requirements onto our well-developed substantial right jurisprudence. However, we note that the Third Circuit's emphasis on GARA's exceptions is particularly inapposite to our analytical framework, which "requires consideration

of the particular facts of that case and the procedural context in which the order from which the appeal is sought was entered." *Dep't of Transp. v. Rowe*, 351 N.C. 172, 175 (1999) (cleaned up). Indeed, the Third Circuit's view that immediate appealability is limited to a "pure" immunity and not an immunity that "contains exceptions" squarely conflicts with our state court doctrine. Many immunities that we have long recognized as immediately appealable—such as public official immunity or governmental immunity—contain multiple exceptions. *See Bartley v. City of High Point*, 381 N.C. 287 (2022) (holding that trial court's interlocutory order denying defendant's motion for summary judgment on the basis of public official immunity was immediately appealable, but remanding to determine factual issues related to one of the immunity's exceptions); *Meyer v. Walls*, 347 N.C. 97 (1997) (discussing exceptions to and waiver of governmental immunity).

Whether plaintiffs here adequately pled an exception to GARA may well be determinative on the *merits* of Avco's immunity argument, but it is not relevant to whether Avco has demonstrated that the trial court's order "affects a substantial right . . . which will be lost if the order is not reviewed before a final judgment is entered." *Sharpe*, 351 N.C. at 162 (cleaned up). When properly viewed as a "classic statute of repose," *Lyon*, 252 F.3d at 1084, GARA provides Avco with the "right to be free from the burdens of trial," *Estate of Kennedy*, 283 F.3d at 1111, and the trial court's order deprived Avco of that right.

With this understanding in hand, *Lee*'s reasoning that a defendant's right to raise the statute of repose defense would not be lost absent review "prior to a final judgment" because the defendant's "only loss . . . w[ould] be the time and expense of trial," is erroneous. Like the immunities discussed above, the expiration of a statute of repose "shields a defendant entirely from having to answer for its conduct at all in a civil suit for damages." *Land*, 388 N.C. at 304. And that shield is obviously "lost if a case is permitted to go to trial." *Id.* When a defendant is entitled to a statute of repose defense, that entitlement relieves the defendant from the burden of even having to come to court to defend itself, and that burden cannot be lifted retroactively by an appellate court following a trial and final judgment. Accordingly, we overrule *Lee*'s holding that an interlocutory order denying a statute of repose defense cannot support interlocutory jurisdiction.

Accordingly, the Court of Appeals has appellate jurisdiction to review the trial court's interlocutory order and determine whether that deprivation was erroneous. We reverse the order of the Court of Appeals dismissing Avco's appeal and remand to that court so that it may do so.

IV. Conclusion

Plaintiffs presented three arguments to the Court of Appeals in support of their motion to dismiss Avco's interlocutory appeal. Though the Court of Appeals was bound to follow its own precedent and allow plaintiffs' motion, we conclude that precedent was erroneous and that plaintiffs' arguments could not have supported dismissal. Accordingly, we reverse the order of the Court of Appeals and remand. On remand, the Court of Appeals is instructed to review whether the trial court's 5 June 2024 order correctly concluded that Avco is not entitled to the immunity from suit provided by GARA's statute of repose.

REVERSED AND REMANDED.

Justice EARLS dissenting.

The majority appears to elevate a conditional statute of repose defense to a sort of quasi-governmental immunity for the purposes of taking an interlocutory appeal. This decision is contrary to longstanding doctrine and fails to model a workable method for discerning when a private defendant is entitled under statute to immediate appellate review to avoid the time and expense of trial. By applying its holding to all statutes of repose defenses, the majority's decision categorically enlarges what has historically been a narrow and fact-specific substantial rights doctrine and signals that appellate courts will arrogate more power to review interlocutory orders involving factual issues. This trend of diverting more issues to midstream appellate review delays civil justice, takes time away from other cases, and increasingly inserts appellate courts into potentially controversial policy issues. *See generally* Elizabeth Lee Thompson, *The Changing Face and Increasingly Targeted Tool of State Interlocutory Appeals*, 55 Seton Hall L. Rev. 483, 491 (2024). In short, the majority's broad expansion of immunity from suit and open-ended opportunities for pretrial appeals dramatically limits access to civil justice for injured parties. I would stand by our narrow and fact-specific substantial rights doctrine and hold that the Court of Appeals did not err by dismissing Avco's interlocutory appeal where the trial court concluded that a jury trial would be necessary to determine whether the statute of repose's protections apply at all.

Because participation in the civil litigation process is a routine and necessary part of what it means to be subject to our civil justice system, parties generally have no right to "avoid[ ] the time and expense of trial."

Lee v. Baxter, 147 N.C. App. 517, 520 (2001). Denying an injured person their day in court just because the defendant is completely immune from the lawsuit itself is generally quite unfair. The narrow instances where defendants may receive such preferential treatment are rooted in longstanding common law or carefully considered statutory provisions. These narrow exceptions are meant to balance important, competing policy interests distinctly impacted by the burden and uncertainty of litigation. Common law governmental immunity from suit, for example, protects the democratic process by safeguarding the competent and vigorous enforcement of governmental policies by public officials. *E.g.*, *Bartley v. City of High Point*, 381 N.C. 287, 294 (2022). The statutory immunity from suit offered by the Workers' Compensation Act offers "limited but assured" benefits for employees injured on the job, in exchange for shielding employers from potentially larger but less certain awards of damages for the same injuries. *Whitaker v. Town of Scotland Neck*, 357 N.C. 552, 556 (2003) (cleaned up). *See generally Land v. Whitley*, 388 N.C. 296, 304 (2025) (summarizing these distinctions).

The General Aviation Revitalization Act (GARA) is an example of conditional statutory immunity from suit. It affords airline manufacturers immunity from suit in only some circumstances: *if* a case falls outside of four factual scenarios, *then* the defendant airline manufacturer is immune from suit. *See* General Aviation Revitalization Act of 1994, Pub. L. No. 103-298, 108 Stat. 1552 (codified at 49 U.S.C. § 40101 note). That is, if an exception applies, the repose defense does not. Under our fact-specific substantial rights doctrine, then, Avco as the party seeking appeal had the burden to show that it is entitled to immunity from suit as a matter of law such that denial of its repose defense impairs its substantial rights and cannot be remedied after final judgment. Here, because the trial court "c[ould not] say, as a matter of law, that Defendants either did or did not knowingly misrepresent, withhold, or conceal required information from the [Federal Aviation Administration (FAA)]," defendant Avco was not entitled to immediate appellate review of that fact-based, interlocutory determination. The Court of Appeals did not err by dismissing this appeal, and I respectfully dissent.

I. The Order on Appeal

The majority's sparse description of the "order on appeal" implies that the parties only disputed whether Avco timely appealed. *See* majority *supra* Section III.B. This description is not quite accurate or helpful.

The plane crash giving rise to this lawsuit happened in 2015. The administrators and heirs of those killed in the accident (collectively,

Byrd) brought suit in May of 2017. Defendants (collectively, Avco) moved for partial summary judgment on some claims in 2019, which the trial court granted in part and denied in part in 2020.

Avco moved for summary judgment on the remaining claims on 17 November 2021, invoking GARA's statute of repose. It argued that none of the parts alleged to have caused the accident were manufactured, installed, or sold by Avco within eighteen years of the accident, so GARA's general statute of repose applied, and that it had no duty to warn about the alleged defects, so GARA's misrepresentation exception did not apply. Avco also made a motion in limine to exclude testimony from Byrd's expert, Allen J. Fielder, on service difficulty reports tied to Avco that could form the basis of Avco's alleged misrepresentation.

On 21 September 2022, the trial court granted Avco's motion for summary judgment on all of Byrd's claims against Avco except for its "negligent failure to warn" claim. The trial court noted that GARA's misrepresentation exception might apply to this claim. That is, the service difficulty reports examined in testimony from Mr. Fiedler could support "that the manufacturer misrepresented to the [FAA], or concealed or withheld from the [FAA], 'required information that is material and relevant' " to the product that caused Byrd's injury, as the trial court stated, quoting GARA, 49 U.S.C. § 40101 note § 2(b)(1). The service difficulty reports together with Fiedler's testimony and other exhibits were, in the trial court's view, "sufficient to create a genuine issue of material fact." Thus resolving Byrd's negligent misrepresentation claim "may require a factual finding by the jury." The trial court denied summary judgment, and Avco did not appeal this order.

Later, in 2023 and 2024, the trial court considered the outstanding motion in limine on Mr. Fiedler's testimony, and in February of 2024, Avco moved for the court to reconsider and amend its 2022 order denying summary judgment in part. In May of 2024, Avco also moved to preclude evidence of the service difficulty reports on which the trial court had relied.

On 5 June 2024, the trial court ostensibly "denied" the motion to reconsider and amend the 2022 order partially denying summary judgment. But it is clear from the substance of the order that the court partially allowed Avco's motion to the limited extent that the court amended its reasons for denying summary judgment.

First, the trial court credited Avco's argument that the service difficulty reports could not form the basis of the GARA misrepresentation exception because Avco was not "required" to report those incidents to

the FAA. Even so, the trial court noted that summary judgment orders are not required to "list every piece of 'required information' " that created triable fact issues under GARA. The trial court elaborated that other evidence could form the basis for the misrepresentation exception. Namely, Byrd had adduced evidence that "a potential solution to camshaft issues was presented to Defendants," and "it seems that facts exist that would support a finding that Defendants were required to investigate and report to the FAA the alleged issues with their camshaft and a potential fix." The court found persuasive Byrd's forecasting that organization designation authorization (ODA) holders like Avco are required to investigate and report to the FAA "any suspected unsafe condition or finding of noncompliance with the airworthiness requirements for any product, part or appliance," and this could potentially be the basis of "required" information that was not disclosed under this misrepresentation exception.

The trial court ultimately stood by its initial determination that Avco was not entitled to summary judgment because "a jury finding *will be required* in order for Plaintiff's claims to survive GARA," and because the trial court could not conclude, "as a matter of law, that Defendants either did or did not knowingly misrepresent, withhold, or conceal required information from the FAA." It thus "denied" the motion to reconsider. The trial court proceeded with scheduling trial to start on October 2024, over seven years after Byrd filed suit. This narrow order denying Avco's motion for reconsideration is what Avco appealed and what the Court of Appeals subsequently dismissed.

Our precedent is not quite clear on the scope of possible appellate review where a trial court ostensibly denies a motion to reconsider an order denying summary judgment but offers amended reasons for doing so. Both Byrd and Avco advanced persuasive arguments for their respective positions. I agree with Avco that in general, a best practice for appellate review is to look at the substance of what an order is doing, not simply the decretal portion indicating "affirm" or "deny." *E.g.*, *Brown v. Brown*, No. COA06-682, slip op. at 6 (N.C. Ct. App. Jan. 15, 2008) (unpublished); *cf. also Stanback v. Stanback*, 297 N.C. 181, 205 (1979) (explaining that an order on a Rule 12(b)(6) motion is converted to a Rule 56 summary judgment order where the trial court considers matters outside the pleadings), *disapproved of on other grounds by*, *Dickens v. Puryear*, 302 N.C. 437 (1981). Applying that practice here could support that Avco can appeal the entire summary judgment determination on Byrd's negligent failure to warn claim because the trial court did in fact partially allow Avco's motion to reconsider and amend the 2022 order.

But that conclusion is somewhat in tension with the trial court's correct observation that it was not required in the first instance to identify all the reasons for denying Avco's motion for summary judgment—indeed it was not required to provide any reasons at all. *E.g.*, *Bland v. Branch Banking & Tr. Co.*, 143 N.C. App. 282, 285 (2001). Troublingly, if a movant is permitted to take an interlocutory appeal of an order denying reconsideration so long as the order lists new or additional reasons to support the same conclusion, the non-movant is effectively punished by the trial court's effort to transparently explain the bases for its rulings. Such a rule could create the wrong incentives by encouraging trial courts not to offer reasons at all, potentially confusing issues for parties and making appellate review much more difficult. That rule would also invite parties to use motions to reconsider—which are not limited in time or frequency by the Rules of Civil Procedure—as a tactic for delaying trial proceedings. *See* N.C.G.S. § 1A-1, Rule 54(b) (2025). Our interlocutory order doctrine exists to safeguard against exactly this type of death by a thousand fragmentary appeals. *See Bailey v. Gooding*, 301 N.C. 205, 209 (1980).

In my view, the proper way to resolve this tension in our competing procedural rules is to try to do what is fair and consistent. *Cf. State v. Hart*, 361 N.C. 309, 317 (2007) (noting that the Rules of Appellate Procedure were designed to safeguard "[f]undamental fairness and the predictable operation of the courts"). Here, it would be unfair to Byrd to allow Avco the opportunity to secure wide-ranging appellate review of all pretrial matters decided in orders that Avco chose not to appeal. Avco may not use a motion to reconsider as a freewheeling opportunity to relitigate disfavored pretrial rulings and reopen the opportunity for interlocutory appeal. It would similarly be unfair to Avco to deny it the opportunity to seek appellate review of the 2024 reconsideration order where the trial court admitted its earlier reasoning was wrong yet offered new reasons to support the same conclusion. Fairness considerations thus compel the conclusion that the "order on appeal" is limited to the trial court's amended reasons for denying summary judgment—namely that Avco may have been required as an ODA holder to report certain information to the FAA and that a jury finding is required as to whether Avco misrepresented such information or failed to disclose it.

II. GARA's Conditional Statute of Repose

Because I would hold that the order on appeal is limited to the trial court's amended reasoning in its order denying reconsideration, the next question is whether GARA creates a substantial right in immunity from

suit where a trial court determines that it is a question of fact whether the statute of repose applies.

An interlocutory order is one "made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Veazey v. Durham*, 231 N.C. 357, 361–62 (1950). Such orders are generally not immediately appealable. *E.g.*, *Land*, 388 N.C. at 303. That is true even where the interlocutory order decides a potentially dispositive pretrial motion. For example, an order denying a statute of limitations defense is not immediately appealable, *Johnson v. Pilot Life Insurance Co.*, 215 N.C. 120, 121–22 (1939), nor is an order denying a motion to dismiss for lack of justiciable controversy or a motion for judgment on the pleadings, *Waters v. Qualified Personnel, Inc.*, 294 N.C. 200, 208–09 (1978) (collecting cases).

An exception to this general rule exists where an interlocutory order affects a substantial right. *Davis v. Davis*, 360 N.C. 518, 524 (2006); N.C.G.S. §§ 1-277(a), 7A-27(b)(3) (2025). In that case, a two-part test applies: the order is immediately appealable if (1) "the right itself [is] substantial," and (2) "the deprivation of that substantial right . . . potentially work[s] injury to plaintiff if not corrected before appeal from final judgment." *See Goldston v. Am. Motors Corp.*, 326 N.C. 723, 726 (1990) (citing *Wachovia Realty Invs. v. Hous., Inc.*, 292 N.C. 93 (1977)). Determining what rights are "substantial" requires a case-by-case and fact intensive approach, "considering the particular facts of that case and the procedural context in which the order from which appeal is sought was entered." *Waters*, 294 N.C. at 208; *see also Land*, 388 N.C. at 303–04. The burden of showing a substantial right is on the appellant. *See Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380 (1994) ("In civil cases, the burden is on the appellant not only to show error but to enable the court to see that he was prejudiced or the verdict of the jury probably influenced thereby." (quoting *Hajmm Co. v. House of Raeford Farms, Inc.*, 328 N.C. 578, 589 (1991) (cleaned up))).

For substantial rights purposes, an appellant's interest in being immune *from suit* gives rise to an appealable interlocutory order, but there is no equivalent substantial right in an immunity from liability generally. *Land*, 388 N.C. at 307–08. Immunities from suit are relatively limited. For example, governmental immunities offer immunity from suit in furtherance of two important public-regarding goals: "fearless, vigorous, and effective administration of government policies" and avoiding "the negative impact that trepidation about personal liability might otherwise have on the willingness of individuals to assume public

office." *Bartley*, 381 N.C. at 294 (cleaned up). This immunity creates a substantial right that cannot be remedied after final judgment because the public official would have to proceed through the litigation process and experience the deterrent effect of the litigation before the interest can be vindicated. Thus without right of immediate appeal, the immunity from suit is "effectively lost." *Land*, 388 N.C. at 304.

Simple statutory immunities from liability, however, do not serve similar public purposes and thus do not convey in the claimant a substantial right in avoiding trial. *E.g.*, *id.* at 305. In *Land*, for example, we held that a statute affording a health care provider "immunity from any civil liability" subject to several factual exceptions created only conditional protection from liability, not an immunity from suit, and thus did not create a substantial right that cannot be vindicated on appeal from a final judgment. *Id.* (quoting N.C.G.S. § 90-21.133(a) (2023)). In that way, conditional immunity from liability is analogous to other potentially dispositive affirmative defenses that do not give rise to an immediate right of appeal.

Taking a case-by-case approach, then, we must carefully parse GARA's text and structure to determine what type of immunity it conveys. GARA's text provides that "no civil action for damages for death or injury to persons . . . arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft" eighteen years after a specified date, irrespective of when the action accrued. GARA, 49 U.S.C. § 40101 note §§ 2(a), (3). The cut-off period in subsection 2(a) is subject to four enumerated "[e]xceptions." *Id.* at § 2(b). In addition to the misrepresentation exception, subsections (b)(2)–(4) also depend on facts specific to the action: the identity of the claimant and their attributes (that they were seeking medical treatment or "not aboard the aircraft at the time of the accident") or that the action is brought to enforce "a written warranty." *Id.* at § 2(b)(1)–(4).[1]

Thus, GARA is structured as a conditional statute of repose designed to spare airline manufacturers from suit decades in the future, conditioned on certain factual circumstances. *See Hargett v. Holland*, 337 N.C. 651, 654 (1994) (describing that a statute of limitations runs from

1. The four exceptions are where (1) the manufacturer knowingly misrepresented or concealed material information from the FAA causally related to the claimant's harm; (2) the claimant was aboard as a medical or emergency passenger; (3) the claimant was not aboard the aircraft at the time of the accident; or (4) the action arises under an otherwise enforceable written warranty. *See GARA*, 49 U.S.C. § 40101 note § 2(b)(1)–(4).

the time a cause of action accrues, while a statute of repose usually runs from some time period unrelated to the claimant's injury). Text and structure confirm what legislative history suggests is GARA's purpose: to carefully balance competing interests. The eighteen-year repose period is intended to protect the aircraft industry from "the long tail of liability attached" to a well-maintained aircraft. *Lyon v. Agusta S.P.A.*, 252 F.3d 1078, 1084 (9th Cir. 2001), *cert. denied*, 534 U.S. 1079 (2002) (citing H.R. Rep. No. 103-525, pt. I, at 1–4 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1638, 1638–41). Simultaneously, the factual exceptions limit potentially unfair consequences of such an immunity to "afford[ ] fair treatment to persons injured in general aviation aircraft accidents." H.R. Rep. No. 103-525, pt. I, at 1–2.

Because Congress conditioned immunity on fact-heavy determinations like whether the manufacturer made knowing misrepresentations, it follows that immunity from suit only attaches where those facts do not apply. *Cf. Land*, 388 N.C. at 305 ("Given that the General Assembly predicated immunity from liability on fact-heavy determinations like whether the defendant acted in good faith or whether the services were impacted by the COVID-19 pandemic, it follows logically that the General Assembly did not intend to create an immunity from being brought into court entirely."). That is, a defendant does not have a substantial right that cannot be remedied after a final judgment where they are not entitled as a matter of law to the statute of repose defense.

Because GARA creates a conditional immunity from suit, the relevant substantial-rights framework is that expressed in *Wallace v. Jarvis*, 119 N.C. App. 582 (1995). There the Court of Appeals addressed a statute making "[p]ersons . . . immune from suit for all statements made without malice, and intended for transmittal to the North Carolina State Bar[,] . . . pertaining to alleged misconduct, incapacity or disability or to reinstatement of an attorney." *Id.* at 584 (quoting N.C.G.S. § 84–28.2 (1985)). The defendant-appellant who had made statements to the Bar claimed that this statute gave him immunity from suit akin to sovereign immunity. *Id.* The Court of Appeals rejected that argument, reasoning that the statutory immunity from suit was available to the defendant-appellant only "if he satisfies all of the [statutory] requirements," i.e. "only if his communications to the State Bar were made without malice." *Id.* at 585. And because the defendant-appellant was only immune in that factual circumstance, he did not have a substantial right to appeal where the trial court denied summary judgment because there was sufficient evidence to go to the jury on the issue of whether the statements were made with malice. *Id.* Simply put, the defendant had no substantial right which

would be jeopardized absent an immediate appeal where the defendant did not show as a matter of law that he was entitled to the statutory immunity from suit, and the appeal was properly dismissed. *Id.*

Here, the *Wallace* framework applies only to the amended reasons in the trial court's 2024 order. The Court of Appeals was limited to reviewing the trial court's determination that "a jury finding *will be required* in order for Plaintiff's claims to survive GARA," and the trial court could not "say, as a matter of law, that Defendants either did or did not knowingly misrepresent, withhold, or conceal required information from the FAA." Avco's statutory obligations as an ODA holder formed the basis for this potential misrepresentation, and "Plaintiffs have alleged enough to get this question to the jury, and the jury should be the ultimate fact finder as to the knowing concealment, if any, of required information." Because Avco's entitlement to the conditional statutory immunity from suit depends on a factual question, and because it has not shown that the trial court erred as a matter of law in construing its ODA obligations, the Court of Appeals did not err by dismissing Avco's appeal. *See Wallace*, 119 N.C. App. at 585.[2]

III. A Conditional Statute of Repose Defense Is Not Akin to Governmental Immunity

The majority's decision does not simply interpret GARA as applied to the narrow issues raised in the order on the motion to reconsider. Rather, the Court broadly proclaims that statutes of repose as a category create substantial rights in immunity from suit that are not remedied on review after a final judgment. This holding is insufficiently attentive to the variety of legislatively created repose schemes, inconsistent with our fact-specific substantial rights doctrine, and unjustified by reference to policy concerns that motivate governmental immunities. And even if deadly plane crashes are hopefully rare, this decision poses significant consequences for other areas of law. Other statutes create repose periods subject to factual exceptions, including for claims by homeowners injured by construction defects in their new home, or patients who experienced medical treatment gone awry. Where fact issues determine

2. Notably, federal precedent is not inconsistent with this approach. The Ninth Circuit allowed an interlocutory appeal where the issue presented was classifying the triggering event for the GARA statute of repose period—a question of law about the meaning of the statute. *Est. of Kennedy v. Bell Helicopter Textron, Inc.*, 283 F.3d 1107, 1112 (9th Cir. 2002). The Third Circuit rejected an interlocutory appeal involving the applicability of the misrepresentation exception, as that factual issue was closely intertwined with the merits. *Robinson v. Hartzell Propeller, Inc.*, 454 F.3d 163, 173–74 (3d Cir. 2006).

whether a repose statute even applies, the effect of the majority's rule is to delay resolution of meritorious claims and undermine the appropriate role of the trial courts and juries as finders of fact.

The majority takes this opportunity to overturn *Lee v. Baxter*, but it is important to remember that case stood for the simple proposition that there is generally no substantial right in "avoiding the time and expense of trial." 147 N.C. App. at 520. That simple proposition must be true. After all, any recipient of an adverse ruling on a potentially dispositive pretrial motion could claim a right to avoid the time and expense of trial if their underlying legal theory is correct. This cannot distinguish a statute of repose from other affirmative defenses for substantial rights purposes. And it is contrary to our system of civil justice, which presumes that the burdens of suit are necessary and appropriate to allocate liability on responsible parties.

The majority reaches for adjacent precedent describing a statute of repose as a substantive limitation of rights rather than a procedural one. But it is difficult to see why this distinction makes a difference for substantial rights purposes. If, conceptually, a statute of repose adds an element to a claim, and thus cuts off the cause of action at the outset (in contrast to procedurally limiting a right to recover on a valid claim as in a statute of limitations), that still makes the denial of a statute of repose defense akin to denial of a motion to dismiss for failure to state a claim. *See Hargett*, 337 N.C. at 654 ("A statute of repose creates an additional element of the claim itself which must be satisfied in order for the claim to be maintained."); *McCrater v. Stone & Webster Eng'g Corp.*, 248 N.C. 707, 710 (1958) ("[Compliance with a statute of repose] is an inseparable part of the plaintiff's substantive right of action."). An interlocutory denial of a motion to dismiss for failure to state a claim, absent sovereign immunity grounds, is a classic non-appealable interlocutory order that does not affect a substantial right. *See*, *e.g.*, *Teachy v. Coble Dairies, Inc.*, 306 N.C. 324, 326 (1982).

The majority's own language shows its distinctions are unworkable. When a plaintiff's complaint fails to state a claim, it is similarly true that "the plaintiff literally has *no* cause of action." *See* majority *supra* Section III.D. If the trial court lacks subject matter jurisdiction to hear the claim, neither the plaintiff nor the court have the right to "hail[the defendant] into court." *See* majority *supra* Section III.D. Yet in both of these scenarios we have long held that the corresponding interlocutory order is non-appealable and does not affect a substantial right that cannot be remedied after final judgment. That there is no general right to avoid the burdens of trial is, in part, a core assumption of a non-appealable interlocutory order doctrine.

The majority further analogizes repose statutes to governmental immunity. It implies that because GARA's statute of repose contains exceptions, and governmental immunity contains exceptions, a statute of repose defense conveys immunity from suit akin to governmental immunity. *See* majority *supra* Section III.D. But other non-appealable interlocutory orders that do not affect a substantial right also have exceptions. For example, orders denying a motion to dismiss for lack of a justiciable controversy do not affect a substantial right, *N.C. Consumers Power, Inc. v. Duke Power Co.*, 285 N.C. 434, 439 (1974), even though our justiciable controversy doctrine is subject to exceptions such as mootness, *Sharpe v. Park Newspapers of Lumberton, Inc.*, 317 N.C. 579, 585–86 (1986). Simply put, whether the underlying legal doctrine contains exceptions is a poor test for whether the order affects a substantial right. Adopting such a test is at odds with our substantial rights doctrine, which is supposed to examine the particular facts of the appeal and the issues raised. *See Land*, 388 N.C. at 304.

Our precedent in *Black v. Littlejohn*, 312 N.C. 626 (1985), does not support the majority's conclusion either. The facts of that case were that a doctor allegedly performed a hysterectomy on a patient; only later did the patient learn that the surgery was not likely needed to treat her endometriosis because she could have just taken a new drug instead. *Id.* at 626–27. The Court considered whether the patient's later discovery of the existence of the new drug rendered her injury via the hysterectomy one that was not "readily apparent" for the purposes of the discovery-based statute of limitations. *Id.* at 628. The legislature, we noted, balanced the harshness of the statute of repose against the more nuanced discovery rules in the statute of limitations aimed at protecting unsuspecting victims. *Id.* at 637. Where three distinct limitations periods applied, and where the statute of repose loomed to cut off otherwise valid claims, we more generously interpreted the "readily apparent" rule of discovery to allow the patient's claims to proceed past a Rule 12(b)(6) motion. *Id.* at 635–36. That reasoning underscores that statutes of repose are traditionally part of a nuanced regulatory scheme, and our analysis of the substantial rights issues should be attuned to a plaintiff's actual allegations and corresponding statutory exceptions.

It bears emphasizing that statutes of repose are frequently conditional, not pure immunities from suit. For example, the home builder's statute also has factual exceptions: that repose defense excludes, for example, persons guilty of fraud. N.C.G.S. § 1-50(a)(5)(e) (2025). Similarly, the medical malpractice statute of repose contains an exception where the source of the injury was a "foreign object . . . having been left in the body." N.C.G.S. § 1-15(c) (2025). These types of factual

exceptions are inconsistent with the notion that the legislature intended to grant defendants immunity from the very lawsuits necessary to show whether those factual exceptions apply. *See Land*, 388 N.C. at 305.

Another consequence of treating the denial of all statute of repose defenses as affecting substantial rights is also that it apparently changes our pleading standards. Generally, "a plaintiff has no burden at the pleading stage to allege facts showing that its complaint was filed within the applicable statute of repose." *Gaston Cnty. Bd. of Educ. v. Shelco, LLC*, 285 N.C. App. 80, 84 (2022). The prevailing practice has been that "it is generally inappropriate to grant a defendant's Rule 12(b)(6) motion to dismiss a complaint merely because it failed to *allege* facts showing that it was filed within the applicable statute of repose." *Id.* Absent some other source of law, plaintiffs are not required to plead around a statute of repose defense; rather, a "repose defense may be raised by way of a motion to dismiss if it appears on the face of the complaint that such a statute bars the claim." *Hargett*, 337 N.C. at 653.

The majority would apparently depart from that longstanding practice and require plaintiffs to affirmatively plead around a statute of repose defense. If repose defenses are like governmental immunities, a defendant who raises this affirmative defense at 12(b)(6) could appeal any adverse ruling and potentially win on appeal by shifting the burden to the plaintiff, just as the Court of Appeals has interpreted a complainant's failure to plead a waiver of sovereign immunity as grounds to dismiss the complaint for failure to state a claim. *See, e.g.*, *Green v. Kearney*, 203 N.C. App. 260, 268 (2010).

At bottom, the majority appears to rely on general principles about what a statute of repose is to make categorical claims about the way such statutes affect parties' rights. This converts carefully designed legislative policies on conditional immunities from suit into judicially imposed standards detached from the facts of an appeal or a particular statute. Governmental immunities are already an unfair if necessary aspect of our common law. It is the duty of the legislature, not our Court, to decide which private defendants should be protected from a lawsuit generally and under what circumstances. Our Court should enforce the parameters of such statutes in ways that do not threaten to balloon immediate appeals of interlocutory orders and delay access to justice for injured parties. Because I would hold that the Court of Appeals did not err by dismissing this appeal, I respectfully dissent.

Justice RIGGS joins in this dissenting opinion.

IN RE N.M.W.

[389 N.C. 57 (2026)]

IN THE MATTER OF N.M.W. AND A.N.D.

No. 159PA25

Filed 20 March 2026

On discretionary review pursuant to N.C.G.S. § 7A-31 of a divided decision of the Court of Appeals, 299 N.C. App. 20 (2025), vacating an order entered on 3 November 2023 and affirming in part and vacating in part an order entered on 30 May 2024 by Judge Andrew K. Wigmore in District Court, Carteret County, and remanding the case. Heard in the Supreme Court on 19 February 2026.

Stephanie Sonzogni for petitioner-appellant Carteret County Department of Social Services; and Maya M. Engle and Stephen V. Carey for appellant Guardian ad Litem.

Jason Senges for respondent-appellee mother.

PER CURIAM.

On petition of the guardian ad litem and the Carteret County Department of Social Services, we allowed discretionary review of the Court of Appeals' decision as to respondent-mother.[1] We reverse the decision of the Court of Appeals as it pertains to respondent-mother for the reasons stated in the concurring in part and dissenting in part opinion. We remind the Court of Appeals that it is bound to apply properly the precedent of this Court. Because the findings of fact in the permanency planning order were sufficient to satisfy the requirements of N.C.G.S. § 7B-906.2(d) under our precedent in *In re L.L.*, 386 N.C. 706, 909 S.E.2d 151 (2024), the concurrence in part and dissent in part's discussion of remand rather than vacatur as the proper remedy for insufficient findings was unnecessary.

REVERSED.

1. No party sought this Court's review of the Court of Appeals' decision as to respondent-father, and we therefore do not consider that portion of the Court of Appeals' opinion.

Justice BERGER concurring.

In re Civil Penalty solidified the principle of horizontal stare decisis for Court of Appeals decisions.[1] *See In re Civil Penalty*, 324 N.C. 373, 384 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court."). In a perfect world, this rule would provide consistency and stability in the law.

But we have seen a pattern of decisions from the Court of Appeals that conflict not only with prior Court of Appeals opinions but with clear precedent from this Court. The per curiam opinion, with which I concur, reminds the Court of Appeals that it is bound to follow our decisions. Such a declaration is so obvious that it need not be made.

But inattentiveness or recalcitrance by the Court of Appeals can have the practical effect of overruling this Court's precedent, and the Constitution does not give the Court of Appeals this authority. *See* N.C. Const. art. IV, § 12; *see also Holmes v. Moore*, 384 N.C. 426, 437 (2023) ("[I]t is the duty of the Supreme Court of North Carolina alone to declare what the law is under our Constitution." (citing *Bayard v. Singleton*, 1 N.C. 5 (1787)). Therefore, it may be time for us to revisit *In re Civil Penalty* and consider whether decisions of the Court of Appeals should be persuasive authority unless that court sits en banc. *See* N.C. R. App. P. 31.1.

This case is a clear example of the problem. Our decisions in *In re L.L.*, 386 N.C. 706 (2024) and *In re L.R.L.B.*, 377 N.C. 311 (2021) provide straightforward holdings concerning the content of juvenile court orders: magic words are not required. *See In re L.L.*, 386 N.C. at 716 ("[T]he trial court's written findings need not track the statutory language verbatim . . . ."); *In re L.R.L.B.*, 377 N.C. at 320 (holding that a trial court's written findings "need not quote [the statute's] exact language" and that findings of fact in a termination order and permanency planning order may be considered together (quoting *In re L.M.T.*, 367 N.C. 165, 168 (2013)). These are not the only decisions in which we have made this declaration. In fact, in *In re L.L.*, we were forced to "reiterate this Court's previously articulated standard for written findings under the Juvenile Code." 386 N.C. at 716.

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1. Horizontal stare decisis refers to the idea that an intermediate court is bound by its own precedent. Vertical stare decisis, by contrast, binds lower courts to the decisions of higher courts.

But even after this reminder, the panel below issued an opinion that is in obvious tension with not only binding precedent from this Court but plain English. Compounding the problem, the panel below decided to publish its opinion, and under *In re Civil Penalty*, it had the weight of precedent in our state until today. Thus, for more than a year, enterprising attorneys could have legitimately used the decision below to suggest the law was something other than that established by this Court, and application in our trial courts was potentially contrary to North Carolina law.

The brief filed by the guardian ad litem and the Carteret County Department of Social Services highlighted the issue: "Statewide reliance on the Court of Appeals' published majority opinion would cause confusion and endanger the safety of vulnerable children across the state . . . ." In fact, when asked if unpublishing Court of Appeals decisions might alleviate confusion in the trial courts, counsel for DSS stated, "[T]hat would be the most helpful thing to do."

The practical shortcomings of *In re Civil Penalty* are obvious. A rule intended to provide stability instead does the opposite and in a way that undermines the constitutionally established judicial hierarchy in this state. The resolution of important issues of first impression is relegated to the luck of the three-judge-panel draw, and first-in-time decisions set a baseline from which future panels cannot deviate. These panels wield unequal influence by moving the law in a direction before it has had an opportunity to percolate. *See* Robert Edmunds, Jr., *In re Civil Penalty (Again)*, N.C. App. Prac. Blog (Jan. 22, 2019), https://ncapb.foxrothschild.com/2019/01/22/in-re-civil-penalty-again/.

Some may say that eliminating horizontal stare decisis for Court of Appeals decisions will lead to even greater confusion. But when Court of Appeals panels are in disagreement, there is a mechanism already in place to resolve panel splits: en banc review pursuant to Rule 31.1. When *In re Civil Penalty* was issued, the Court of Appeals did not have this procedure available. Now, Rule 31.1 provides a direct method for resolving panel splits efficiently, but *In re Civil Penalty* has not been updated. Declaring, by rule or otherwise, that Court of Appeals decisions are mere persuasive authority unless issued en banc would allow multiple panels to contribute to the intermediate court's jurisprudence without prematurely binding the state to one interpretation of the law.

Judiciously applied, such a rule would not lead to unpredictability or confusion. Rather, panels and trial courts could grapple more directly with principles set forth in this Court's jurisprudence and would be

encouraged to follow a Court of Appeals panel's reasoning when persuaded by its soundness. This would allow subsequent panels to make deliberative decisions rather than be handcuffed by every prior published opinion, well-reasoned or otherwise.

If we strive for coherence in the law, then we should promote a system in which legal reasoning develops and is tested over time. Giving precedential weight to the first-in-time panel deciding an issue, merely because it is first, prevents this development from occurring. Indeed, we have long stated that stare decisis attaches only "where a principle of law has become settled by *a series of decisions*." *State v. Ballance*, 229 N.C. 764, 767 (1949) (emphasis added); *see also Mial v. Ellington*, 134 N.C. 131, 158 (1903) ("It is going quite too far to say that a single decision of any court is absolutely conclusive as a precedent."); *Williamson v. Rabon*, 177 N.C. 303, 307 (1919) ("[A] single decision can seldom serve as a basis for stare decisis . . . ." (cleaned up)). Inconsistent with this bedrock principle of stare decisis, *In re Civil Penalty* enables the Court of Appeals to bind the state with a one-off decision, unless and until addressed by this Court.

Contrary to our constitutional structure, our current system allows the Court of Appeals to assume supremacy over this Court. Revisiting *In re Civil Penalty* has, therefore, become necessary, and the better course moving forward is to allow legal principles to develop in the lower courts and reserve binding authority for Court of Appeals decisions that are the product of en banc review.

JAY v. JAY

[389 N.C. 61 (2026)]

YANLI JAY
v.
GARY WAYNE JAY

No. 97A25

Filed 20 March 2026

Domestic Violence—protective order—annotated statement from complainant—incorporation by reference—factfinding sufficient

In a proceeding for a domestic violence protective order (DVPO), the trial court's incorporation-by-reference approach to factfinding—attaching to the DVPO a copy of the complainant's written statement bearing the judge's strike-throughs and other notes—was sufficient to sustain the DVPO issued because it allowed the appellate court to determine that the DVPO, and its underlying legal conclusions, reflected an appropriate application of law. A comparison of the testimony at the DVPO hearing with the judge's annotated copy of the written statement revealed that the judge struck the portions that were not corroborated by the parties' testimonies and left intact the portions that were corroborated. While not the best practice, the trial court's method demonstrated sufficient engagement with the written statement to transform what would otherwise be improper "mere recitations" of evidence into proper evidentiary findings under Civil Procedure Rule 52.

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from a divided panel of the Court of Appeals, 298 N.C. App. 50 (2025), affirming an order entered on 17 August 2023 by Judge James T. Hill in District Court, Durham County. This matter was calendared for argument in the Supreme Court on 18 September 2025 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

No brief filed for plaintiff-appellee.

Matthew C. Suczynski for defendant-appellant.

RIGGS, Justice.

It is well-established that trial courts sitting without a jury are required to make appropriately detailed findings. *See Coble v. Coble*, 300 N.C. 708, 712 (1980); N.C.G.S. § 1A-1, Rule 52(a) (2025). Meeting that requirement ensures that trial courts substantively address litigants' issues and allows for meaningful appellate review. *Coble*, 300 N.C. at 712. In this appeal from a domestic violence protective order, Gary Wayne Jay (Mr. Jay) challenges the sufficiency of the trial court's incorporation-by-reference approach to factfinding. The Court of Appeals held that there was competent evidence to support the trial court's findings of fact and order because the trial court relied on the written statement Yanli Jay (Mrs. Jay) attached to her initial complaint and because it considered both parties' testimony at trial. *Jay v. Jay*, 298 N.C. App. 50, 55 (2025). Based on the dissent below, Mr. Jay's appeal to this Court centers on the form of the findings. The dissenting judge reasoned that the trial court failed to specifically find the necessary facts under Rule 52 because it referred to Mrs. Jay's written statement of allegations as its findings rather than explicitly documenting the facts itself. *Id.* at 63 (Carpenter, J., dissenting).

The trial court was able to assess the credibility of Mrs. Jay's written statement through hearing the parties' testimony. Therefore, we hold that the trial court's factfinding in this matter complied with Rule 52 and we affirm the Court of Appeals' judgment holding that there was competent evidence to support the trial court's findings of fact and order.

I. Factual and Procedural Background

Mr. Jay and Mrs. Jay were married on 15 April 2016 and separated around August 2022. On 7 June 2023, Mrs. Jay filed an unverified complaint and motion for a domestic violence protective order (DVPO) against Mr. Jay in the District Court, Durham County. In a written statement accompanying her complaint, Mrs. Jay alleged various instances of sexual abuse and other allegations against Mr. Jay that had occurred in the months leading up to the filing of her complaint and motion.

On the same date Mrs. Jay filed her complaint, the trial court granted Mrs. Jay an ex parte DVPO effective until 14 June 2023. In the additional findings section of the ex parte DVPO, the judge handwrote "violent sexual contact. Repeatedly isolated [Mrs. Jay]. English not her [first] language. [Mr. Jay] has caused physical injury to [Mrs. Jay]."

After several continuances, the trial court held a hearing on 17 August 2023 to consider Mrs. Jay's motion for a one-year DVPO. Mrs. Jay testified that on 28 March 2023, she expressed her unwillingness to engage in sexual intercourse with Mr. Jay. She testified that Mr. Jay told

her to take off her clothes, said he was going to have sex with her, and that, "at the time, he was very violent." Mrs. Jay testified that Mr. Jay caused her serious injury.

Mrs. Jay also testified that on 9 May 2023, Mr. Jay called her to try to have sex with her and that she refused him. Mrs. Jay stated that Mr. Jay texted her after she did not answer his call. She testified that she ultimately told him "I can't" and that Mr. Jay responded by telling her, "This is my home. I can come back whenever I can."[1] This prompted Mrs. Jay to contact her attorney and file for a protective order.

Mrs. Jay was also questioned about various allegations that she included in the written statement submitted with her complaint. Mrs. Jay's counsel asked Mrs. Jay to expand on her written allegation that Mr. Jay told her the parties "would become enemies." Mrs. Jay testified that Mr. Jay told her they "would become enemies" when she expressed that she wanted to go to court. She further testified that his words made her feel afraid. Her counsel also asked her to expand on her allegation that Mr. Jay called her "moron, stupid, idiot." Mrs. Jay testified that Mr. Jay rarely used her name and instead always called her an "idiot" and referred to her with insults including "moron, bullshit, stupid, full of baloney." Mrs. Jay also testified that she felt physically and emotionally mistreated by Mr. Jay and provided examples like having to massage Mr. Jay's back every night and that Mr. Jay often spoke to her with disrespect.

Mr. Jay also testified at the hearing. He stated that he had never sexually assaulted or physically hurt Mrs. Jay. He testified that the "[l]ast two years of the marriage were essentially nil." Mr. Jay further testified that he had wanted to resume their relationship, so he contacted Mrs. Jay in March 2023 and met with her several times that year.

After hearing from both parties, the trial court found by the greater weight of the evidence that Mrs. Jay had proven her case and therefore met the standard required to grant the DVPO. The presiding judge noted on the record that he had a copy of the written statement Mrs. Jay submitted with her complaint. He said he "marked up" and "Xed out" the facts alleged in Mrs. Jay's written statement, and that he would include the marked-up copy as additional factual findings in the DVPO.

The trial court entered the one-year DVPO, effective until 17 August 2024. In the additional findings section of the DVPO, the trial court

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1. Because the record reflects that the parties separated around August 2022, Mr. Jay and Mrs. Jay were not living together at the time the 9 May 2023 incident occurred.

described Mr. Jay's conduct as follows: "Violent sexual contact. [Mr. Jay] has caused physical injury to [Mrs. Jay]. Exhibit A is attached for further findings of fact by the court." The judge handwrote "Exhibit A" across the top of a copy of Mrs. Jay's written statement, and consistent with the judge's statement on the record that he "marked up" and "Xed out" sections of the statement, several lines and whole paragraphs were struck. Based on the judge's signature at the end of the DVPO, it appears that the judge wrote his initials beside each line and paragraph he struck. The judge entered the DVPO concluding that, based on the facts, Mr. Jay committed acts of domestic violence against Mrs. Jay and there was danger of serious and immediate injury to her. Shortly after the entry of the DVPO, Mr. Jay filed a Rule 60 motion to set the DVPO aside. The trial court considered the motion on 15 September 2023 and denied it. Mr. Jay filed a notice of appeal the same day.

On appeal, Mr. Jay argued that there was insufficient evidence to support the findings of fact made by the trial court. *Jay*, 298 N.C. App. at 53. The Court of Appeals issued its opinion in a divided decision on 5 March 2025, holding that there was competent evidence to support the trial court's findings of fact supporting entry of the DVPO. *Id.* at 55.

The majority held that the trial court did not err by incorporating Mrs. Jay's written statement by reference into the DVPO's findings of fact. *Id.* at 54–55. The majority noted that the trial court was presented with documentary evidence to support its findings and heard testimony from both sides. *Id.* at 54. Thus, the majority concluded that the findings were supported by competent evidence because the trial court "had ample opportunity to consider the credibility of both parties." *Id.* at 55. The majority therefore deferred to the trial court's credibility and fact-finding conclusions. *Id.* at 55.

In dissent, Judge Carpenter argued that, by implicitly approving the trial court's incorporation of Mrs. Jay's statement into its findings of fact, the majority "incentiviz[es] behavior that violates the North Carolina Rules of Civil Procedure." *Id.* at 56 (Carpenter, J., dissenting). The dissent agreed with the majority "that the evidence, viewed in isolation, could have supported findings identifying the basis for an act of domestic violence." *Id.* Notwithstanding that acknowledgment, the dissent argued that the trial court's purported findings were insufficient under Rule 52 because the trial court adopted Mrs. Jay's written statement instead of making its own findings. *Id.* at 56–57; *see also* N.C.G.S. § 1A-1, Rule 52(a)(1) ("In all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment."). While

the dissent acknowledged that the trial court engaged with the written statement by striking certain sentences and paragraphs, the dissent concluded that those amendments were only evidence of a "cursory review" and "were not sufficient to demonstrate the process of logical reasoning required by Rule 52." *Id.* at 62 (Carpenter, J., dissenting).

The dissent also questioned whether it was permissible for trial courts to incorporate by reference allegations from an unverified complaint, as occurred here. *Id.* at 56, 59–61. The dissent emphasized that Mrs. Jay's written statement here was unverified, thus "lacking any guarantee of reliability and trustworthiness." *Id.* at 61. Ultimately, the dissent would have vacated the one-year DVPO and remanded for additional findings. *Id.* at 63.

Mr. Jay appealed pursuant to N.C.G.S. § 7A-30(2) based on the dissent's argument that the trial court improperly issued the DVPO because of its factfinding method. *See* N.C.G.S. § 7A-30(2) (2023). He asked this Court to examine whether the trial court improperly delegated its factfinding duty by incorporating Mrs. Jay's unverified, typed statement into the DVPO as support for its conclusion that Mr. Jay committed domestic violence.

II. Standard of Review

Because DVPO proceedings are matters where the trial court sits without a jury, to review the issuance of a DVPO, the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts. *State v. Williams*, 362 N.C. 628, 632 (2008). Where there is competent evidence to support the trial court's findings of fact, those findings are binding on appeal. *Id.* Factfinding in these matters must comply with Rule 52 of the North Carolina Rules of Civil Procedure. *See*, *e.g.*, *Williams v. Cabrera*, 298 N.C. App. 611, 615 (2025) ("The issuance of a one-year DVPO [requires trial courts] to comply with Rule 52."). Interpreting the Rules of Civil Procedure is a matter of statutory interpretation and thus a question of law reviewed de novo. *See In re E.D.H.*, 381 N.C. 395, 398 (2022).

III. Analysis

The Court of Appeals held that competent evidence supported the trial court's findings, *Jay*, 298 N.C. App. at 55, and the dissent conceded that competent evidence was presented that "could have supported findings identifying the basis for an act of domestic violence," *id.* at 56 (Carpenter, J., dissenting). Thus, the issue at the heart of this matter is

simply the proper form of the trial court's findings—whether the trial court's findings in the DVPO were sufficient under Rule 52 of the North Carolina Rules of Civil Procedure.

"In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." N.C.G.S. § 1A-1, Rule 52(a) (2025). The purpose of Rule 52 is to ensure that the findings of specific facts are sufficient to allow a reviewing court to determine whether the judgment, and the underlying legal conclusions, reflect the appropriate application of law. *See Coble*, 300 N.C. at 714 ("Evidence must support findings; findings must support conclusions; conclusions must support the judgment.").

> [W]hile Rule 52(a) does not require a recitation of the evidentiary and subsidiary facts required to prove the ultimate facts, it does require *specific findings* of the ultimate facts established by the evidence, admissions and stipulations which are determinative of the questions involved in the action and essential to support the conclusions of law reached.

Quick v. Quick, 305 N.C. 446, 452 (1982). Ultimate facts "establish the plaintiff's cause of action or the defendant's defense" and are the middle ground between evidentiary facts and conclusions of law. *Woodard v. Mordecai*, 234 N.C. 463, 470, 472 (1951).

This Court has stated that trial courts may, as a general matter, incorporate documents and recitations in their orders, subject to certain constraints. *Compare In re H.B.*, 384 N.C. 484, 486 (2023) (holding that the incorporation of a party's exhibit into a termination of parental rights order was proper factfinding where the trial court also found that the exhibit was "credible and reliable"), *with In re A.E.*, 379 N.C. 177, 185 (2021) (holding that the trial court's incorporation of "mere recitations of testimony" as findings in its termination order was improper factfinding where there were no indications that the trial court had evaluated the credibility of the testimony).

Although other statutes govern factfinding requirements for juvenile court proceedings such as *In re H.B.*, our doctrine in that area illuminates what qualifies as sufficient factfinding under Rule 52.[2] In *In re*

2. Juvenile court proceedings governed by Chapter 7B of the General Statutes of North Carolina often involve the application of Rule 52:

K.R.C., this Court stated that if evidentiary findings "are untethered to any ultimate facts which undergird an adjudication pursuant to [the relevant statute] or to any particularized conclusions of law which would otherwise explain the trial court's reasoning[,]" then meaningful appellate review cannot occur. *In re K.R.C.*, 374 N.C. 849, 861 (2020). We have also stated that "the trial court may not rely solely on prior court orders and reports but must receive some oral testimony at the hearing and make an independent determination regarding the evidence presented." *In re T.N.H.*, 372 N.C. 403, 410 (2019). Finally, we have stated that a "mere recitation" by a trial court is not a proper evidentiary finding standing alone but may be transformed into a proper evidentiary finding when a trial court makes a credibility determination about the recited evidence. *In re H.B.*, 384 N.C. at 490.

Mr. Jay argues that the issuance of the DVPO was improper due to the trial court's method of factfinding in this matter. He claims that the trial court's findings should not be considered findings at all, given the trial court's reliance on the written statement of allegations Mrs. Jay filed with her unverified complaint. We disagree. Because the record reflects that the trial court considered Mrs. Jay's written statement in conjunction with her testimony from the DVPO hearing to evaluate the statement's credibility and meaningfully altered the statement to reflect the trial court's thinking, the trial court's findings and its issuance of the DVPO were not improper. We hold that the trial court sufficiently engaged with the factfinding process and did not violate Rule 52.

Although the trial court's explicit written findings are not long or extraordinarily detailed, they are material to the resolution of the

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> The Juvenile Code provides that adjudication orders "shall contain appropriate findings of fact and conclusions of law." N.C. Gen. Stat. § 7B-807(b). Rule 52 of our rules of civil procedure mandates the trial court make findings of "facts specially and state separately its conclusions of law thereon. . . ." N.C. Gen. Stat. § 1A-1, Rule 52. "[T]he trial court's factual findings must be more than a recitation of allegations. They must be the specific ultimate facts . . . sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence." *In re Anderson*, 151 N.C. App. 94, 97 (2002).

In re H.P., 278 N.C. App. 195, 202 (2021); *see also In re K.R.C.*, 374 N.C. 849, 856 (2020) ("We have previously held that N.C.G.S. § 7B-1109(e) 'places a duty on the trial court as the adjudicator of the evidence' which is equivalent to the duty imposed by Rule 52(a)(1) of the North Carolina Rules of Civil Procedure." (footnote omitted) (quoting *In re T.N.H.*, 372 N.C. 403, 407 (2019))).

dispute and therefore are ultimate facts essential to support the trial court's conclusions of law. After hearing testimony from both parties, the trial court made the ultimate findings of fact required by Rule 52(a): "Violent sexual contact. [Mr. Jay] has caused physical injury to [Mrs. Jay]. Exhibit A is attached as further findings of fact by the court." As indicated in the DVPO, the trial court concluded that "[t]he defendant has committed acts of domestic violence against the plaintiff" and "[t]here is danger of serious and immediate injury to the plaintiff." Thus, as a preliminary matter, the trial court did find ultimate facts that support its conclusions of law in issuing the DVPO.

The trial court's incorporation-by-reference approach of including Mrs. Jay's written statement as additional findings of fact, with the judge's alterations to that statement, did not violate Rule 52. The trial court did not indiscriminately credit Mrs. Jay's unverified written statement. Rather, the trial court judge struck through specific lines and whole paragraphs in Mrs. Jay's statement while adopting others as findings. Furthermore, he signed off on each amendment by initialing beside each portion struck. The trial court did not "rely solely" on Mrs. Jay's written statement, nor did the Court disregard our instructions to avoid "mere recitations." *See In re T.N.H.*, 372 N.C. at 410; *In re H.B.*, 384 N.C. at 490. Instead, Mrs. Jay's sworn testimony at the one-year DVPO hearing bolstered her unverified allegations in her written statement and contributed to the trial court's opportunity to assess credibility.

For example, in her written statement, Mrs. Jay detailed incidents that occurred on 28 March 2023 and 9 May 2023, and Mrs. Jay provided testimony regarding both of those incidents at the DVPO hearing. Mrs. Jay also alleged in her statement that Mr. Jay would say various insults to her, and she testified similarly at the DVPO hearing. In the factual findings, those sections were not struck from her statement by the trial court judge.

In sum, in comparing the testimony at the hearing to the trial court judge's marked-up copy of Mrs. Jay's written statement, the trial court judge struck portions of her written statement that were not corroborated by the parties' testimonies and left intact the portions that were corroborated. We acknowledge that the trial court judge did not expressly state in the DVPO whether he found Mrs. Jay's written statement credible. Even so, we are satisfied based on how the testimony and the marked-up copy match up that there are adequate assurances here that the trial court assessed the credibility of Mrs. Jay's written allegations. The trial court judge thus sufficiently engaged with the written statement and transformed what would otherwise be improper "mere

recitations" into proper evidentiary findings under Rule 52. *See In re H.B.*, 384 N.C. at 490.[3]

Mr. Jay challenged the sufficiency of the trial court's factfinding and did not argue on appeal to this Court that the findings were unsupported by competent evidence. Because we hold that the trial court's findings were sufficient in form and find no merit in Mr. Jay's arguments, the trial court's findings are binding on this Court and support the trial court's issuance of the one-year DVPO.

IV. Conclusion

In sum, we affirm the Court of Appeals' judgment affirming the trial court's order issuing the DVPO in this matter and conclude that the trial court did not improperly delegate its factfinding obligations in violation of Rule 52.

AFFIRMED.

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3. We reiterate the caution we expressed previously in a similar matter where we determined that the trial court's incorporation by reference of a party's exhibit was proper because the trial court indicated it made credibility determinations:

> We stress that our holding today is not an endorsement of this sort of fact finding. . . . [T]he better practice always will be to make specific, express findings in the written order about what the trial court determined the facts to be, rather than referencing evidence in record and stating that the referenced evidence is credible.

In re H.B., 384 N.C. 484, 490–91 (2023).

SMITH DEBNAM NARRON DRAKE SAINTSING & MYERS, LLP
v.
PAUL MUNTJAN

No. 29A24

Filed 20 March 2026

Statute of Frauds—agreement by father to pay son's legal bills—enforceability—sufficiency of email correspondence—memorandum or note

In an action filed by plaintiff law firm to collect monies owed for legal services it provided to defendant's son, defendant's oral promise to pay his son's legal bills was enforceable where his email correspondence with the firm constituted a sufficient written "memorandum or note" of his promise, thereby satisfying the statute of frauds requirement (N.C.G.S. § 22-1); therefore, the Court of Appeals' decision reversing the trial court's judgment in favor of the law firm was itself reversed. Defendant's emails, though informal, were signed by defendant and provided adequate evidence of the essential terms of his oral guaranty, including the debt owed (the legal fees), the principal debtor (defendant's son), the promisor (defendant), and the promisee (the law firm). Notably, the emails indicated both defendant's ongoing involvement in managing his son's legal affairs and his commitment to paying his son's debt to the firm, including: an assurance that an "invoice" for "services rendered" by the firm would be "turned around promptly"; a request that the firm send all invoices directly to defendant's email; and a recurring use of plural pronouns like "us" and "our," suggesting a shared responsibility between him and his son.

Justice DIETZ dissenting.

Justice RIGGS dissenting.

Justice EARLS joins in this dissenting opinion.

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. 141 (2024), reversing a judgment entered on 3 November 2022 by Judge Ned Mangum in District Court, Wake County. Heard in the Supreme Court on 24 September 2024.

Smith Debnam Narron Drake Saintsing & Myers, L.L.P., by Byron L. Saintsing and Joseph A. Davies, for plaintiff-appellant.

Mark Hayes for defendant-appellee.

BARRINGER, Justice.

This Court considers whether the Court of Appeals erred by reversing the trial court's judgment in favor of plaintiff. We hold that the Court of Appeals erred, because defendant's emails to plaintiff satisfy the statute of frauds requirement that a contract to pay a third party's debt "be in writing, and signed by the party charged." *See* N.C.G.S. § 22-1 (2025). Therefore, we reverse the judgment of the Court of Appeals.

I. Background

Plaintiff, Smith Debnam Narron Drake Saintsing & Myers, LLP, is a law firm. Nick Muntjan is the owner of a construction business called Triangle Home Remodeling, LLC (THR). Defendant, Paul Muntjan, is Nick's father. In 2019, Nick and defendant met with Byron Saintsing, a partner at plaintiff law firm, to discuss securing plaintiff's services for Nick and THR. At this meeting, prior to the engagement of plaintiff, defendant orally promised to pay for plaintiff's services.

In September 2019, approximately one month after that meeting, plaintiff prepared and delivered an engagement letter addressed to defendant and Nick. Neither defendant nor Nick signed that letter. However, less than a week after the engagement letter was delivered, defendant responded to plaintiff via email, writing the following:

> Received your email as addressed to son Nick regarding the case and request for prompt payment. It is important to us to always pay our valued partners quickly for their services rendered so rest assured your invoice will be turned around immediately and a check sent upon receipt. Please note as of this date no invoice has been received. As a reminder, please insure [sic] any and all invoices are sent to my email due to my travel schedule.

The email was signed, "Best Regards, Paul Muntjan."

In December 2019, Nick was served with a complaint filed against him and THR. Defendant emailed the complaint to plaintiff and wrote: "It looks like the saga continues with Nick's legal issues with his business.

I am attaching the legal document he just received for your review. Please let me know how we can best work together in this regard."

Plaintiff received some payments made through defendant's credit card for services rendered. In June 2020, defendant replied to plaintiff's request for additional payment with another email asking: "Would you be so kind to furnish a list of the payments made on this account? We may be missing a payment made on, or about 1/10/20."

In mid-July, in reply to another email from plaintiff, defendant asked for further clarity on legal fees, writing: "Thank you all sincerely for your great work on behalf of my son Nick! The finances and the stress from this situation have been profound and a major setback on many levels. Would this $3000 be the cap you mentioned could be achieved[,] Mr. Saintsing?" Mr. Saintsing, on behalf of plaintiff, answered: "Yes, we would agree to cap the fees for responding to the discovery at $3,000.00." In response, defendant wrote: "It sounds like [d]iscovery would be the last item we need to deal with now that we have the bankruptcy being considered?"

Approximately six months later, plaintiff emailed and mailed a notice to defendant and Nick requesting payment of the outstanding balance of $13,528.06 for legal services rendered. That balance remains unpaid.

II. Procedural History

To collect the unpaid fees, plaintiff filed the underlying lawsuit against defendant alleging various breach of contract claims. Following a bench trial, the trial court found that "[defendant] promised to pay for [p]laintiff's services." The trial court then concluded that defendant breached an "original promise" to plaintiff, not a "special promise to answer the debt . . . of another person." Therefore, the statute of frauds did not apply, and no writing was required to enforce defendant's promise to pay.

Defendant appealed the trial court's judgment, and the Court of Appeals reversed. *Smith Debnam Narron Drake Saintsing & Myers, LLP v. Muntjan*, 292 N.C. App. 141, 142, 148 (2024). A majority of the Court of Appeals panel disagreed with the trial court's conclusion of law that defendant made an "original promise" to plaintiff. *Id.* at 145. Instead, the majority held that defendant made a "collateral promise"—a guaranty—to pay Nick's debts. *Id.* After noting that collateral promises must satisfy the statute of frauds to be enforceable, *id.* at 145–46, the majority determined that defendant's guaranty was unenforceable, *id.*

at 148. It held that defendant's emails to plaintiff failed to satisfy the statute of frauds, because they did not express a clear, written promise that defendant would personally pay plaintiff. *Id.* at 147–48.

Although the dissent agreed that the statute of frauds was applicable, it would have held that the statute of frauds' requirements were satisfied by the emails. *Id.* at 149 (Arrowood, J., dissenting). In other words, defendant's emails constituted a writing sufficient to make enforceable defendant's oral promise to personally pay Nick's debts. *Id.* at 150.

Plaintiff filed a notice of appeal based on the dissent in the Court of Appeals.[1]

III. Standard of Review

Because defendant's appeal is based solely upon the Court of Appeals' dissent, our review is limited to those issues set out in the dissenting opinion. *See* N.C. R. App. P. 16(a). Accordingly, this Court reviews only the Court of Appeals' legal conclusion that defendant's oral guaranty to pay Nick's debt for plaintiff's legal services is unenforceable because defendant's emails do not satisfy the statute of frauds.

"Questions of law receive *de novo* review . . . ." *In re Appeal of The Greens of Pine Glen Ltd. P'ship*, 356 N.C. 642, 647 (2003). " 'Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment' for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632–33 (2008) (quoting *In re Appeal of The Greens of Pine Glen Ltd. P'ship*, 356 N.C. at 647).

IV. Analysis

Defendants have not challenged the trial court's finding of fact that "[defendant] promised to pay for [p]laintiff's services," and we are bound by this fact on appeal. *See Schloss v. Jamison*, 258 N.C. 271, 275 (1962) ("Where no exceptions have been taken to the findings of fact, such findings are presumed to be supported by competent evidence and are binding on appeal."). This, however, does not end our inquiry, as an

1. Since this case was pending at the Court of Appeals before the repeal of N.C.G.S. § 7A-30(2), the dissent triggered a right of appeal to this Court under that statute. *See* N.C.G.S. § 7A-30(2) (2023), *repealed by*, Current Operations Appropriations Act of 2023, S.L. 2023-134, § 16.21(d)–(e), 2023 N.C. Sess. Laws 760, 1171.

oral guaranty[2] contract cannot be enforced unless the statute of frauds is satisfied. *See* N.C.G.S. § 22-1.

Thus, this Court considers whether defendant's emails, in which defendant assured he would personally pay for plaintiff's services, satisfy the statute of frauds. We hold that defendant's emails are a "memorandum or note" of defendant's promise sufficient to satisfy the statute of frauds. *See* N.C.G.S. § 22-1. Accordingly, we reverse the judgment of the Court of Appeals.

It has been long and well established that the statute of frauds "was not enacted to afford persons a means of evading just obligations; it was not intended to supply a cloak of immunity to hedging litigants lacking integrity; nor was it adopted to enable defendants to interpose the Statute [of Frauds] as a bar to a contract fairly, and admittedly, made." 10 *Williston on Contracts* § 29:4 (4th ed. 2011) (footnotes omitted); *see also Manhattan Fuel Co. v. New England Petrol. Corp.*, 422 F. Supp. 797, 801 (S.D.N.Y. 1976) ("[The statute of frauds] was never meant to be used as a means of evading just obligations based on contracts fairly, and admittedly, made." (extraneities omitted)); *House v. Stokes*, 66 N.C. App. 636, 641 (1984) ("The statute of frauds was designed to guard against fraudulent claims supported by perjured testimony; it was not meant to be used by defendants to evade an obligation based on a contract fairly and admittedly made.").

Defendant's main contention is that because his emails do not *expressly* say "I promise to pay for services rendered to Nick," they do not satisfy the statute of frauds. This argument misapprehends the fact that the statute of frauds only requires sufficient written *evidence* of an agreement's essential terms—not that the agreement *itself* be written.

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2. Of course, to the extent that defendant may have made an *original* promise to pay, it is not subject to the statute of frauds. *See Burlington Indus., Inc. v. Foil*, 284 N.C. 740, 752, 754 (1974) ("If the promisor becomes himself primarily, and not collaterally, liable, the promise is not within the statute [of frauds] . . . ." (quoting *Clark on Contracts* 67–68 (2d ed. 1904))). However, as correctly pointed out by Justice Dietz, we cannot rule on whether defendant made an original promise, as the dissent upon which plaintiff gave notice of appeal does not discuss original promises in any way. *See Mitchell v. Univ. of N.C. Bd. of Governors*, 388 N.C. 341, 350 (2025).

The *only* reason such a distinction is relevant here is to determine whether a statute of frauds analysis is even necessary. *See* 72 Am. Jur. 2d *Statute of Frauds* § 3 (2023) ("The statute of frauds is an affirmative defense that carves out an exception to the general rule that oral contracts are enforceable . . . ."). In any event, because the statute of frauds was indeed satisfied, defendant is obliged to fulfill his promise to pay, regardless of whether that promise is best thought of as being original or collateral.

In relevant part, our State's statute of frauds provides:

> No action shall be brought whereby to charge . . . any defendant upon a special promise to answer the debt, default or miscarriage of another person, unless the agreement upon which such action shall be brought, *or some memorandum or note thereof*, shall be in writing, and signed by the party charged . . . .

N.C.G.S. § 22-1 (emphasis added). Importantly, the statute's plain language does not require the *guaranty agreement itself* to be in writing to be enforceable. *See id.* Rather, an oral guaranty is also enforceable if "some memorandum or note thereof" is produced "in writing, and signed by the party charged." *Id.* The memorandum "may be informal[,]" and it "need not be contained in a single document but may consist of several papers properly connected together." *Smith v. Joyce*, 214 N.C. 602, 604 (1939).

"The memorandum itself need not constitute a contract, and apart from its effect as a writing sufficient to enable proof of a contract—that is, to remove the alleged agreement from the Statute of Frauds—it may have no legal significance." 10 *Williston on Contracts* § 29:3. Rather, the memorandum must merely perform an adequate *evidentiary* function. *See Phillips v. Hooker*, 62 N.C. (Phil. Eq.) 193, 196 (1867) ("[A] note or memorandum of a contract is, in its very essence, an informal and imperfect instrument. Its object is to furnish aid to the memory of a transaction, and . . . it will answer the purpose . . . if it do so in such words as will enable the court, without danger of mistake, to declare the meaning of the parties."); *Gilbert v. Wright*, 195 N.C. 165, 167 (1928) (same); *see also McInerney v. Charter Golf, Inc.*, 680 N.E.2d 1347, 1351 (Ill. 1997) ("[The statute of frauds] functions more as an evidentiary safeguard than as a substantive rule of contract."); *Gagne v. Stevens*, 696 A.2d 411, 415 (Me. 1997) (noting that the "primary" purpose of the Statute of Frauds is "evidentiary"); Restatement (Second) of Conts. § 131 cmt. c (A.L.I. 1981) ("The primary purpose of the Statute [of Frauds] is evidentiary . . . .").[3]

For this reason, the memorandum need not contain *all* contractual terms to satisfy the statute of frauds; an adequate evidentiary function is performed so long as the *essential* terms are shown.[4] For example, a

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3. Although the foreign authorities cited in this opinion are not controlling, this Court finds them to be persuasive.

4. The dissents insist that the statute of frauds is not satisfied unless the memorandum is not susceptible to multiple interpretations. Tellingly, neither dissent cites *any*

memorandum of a guaranty agreement can satisfy the statute of frauds even if it does not describe the consideration. *Standard Supply Co. v. Person*, 154 N.C. 456, 461 (1911). Instead, a memorandum of a guaranty agreement need only identify the debt, the principal debtor, the promisor, and the promisee. *See John Deere Co. v. Haralson*, 599 S.E.2d 164, 166 (Ga. 2004). So long as these essential terms are shown by a writing, the contract will be enforceable.

To interpret the statute of frauds as defendant contends would render the statutory language "or some memorandum or note thereof" mere surplusage. This Court's precedent demands otherwise. *See State v. Geter*, 383 N.C. 484, 491 (2022) (explaining and applying the surplusage cannon). Statutory language is to be interpreted in a way that, if possible, gives effect to every word. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 174–79 (2012) (explaining that application of the surplusage canon is to give every word effect and refuse to interpret a provision as having no consequence). We give effect to this statutory language by holding that a memorandum—even an informal email[5]—outlining the essential terms of an oral agreement satisfies the statute of frauds. *See* 10 *Williston on Contract*s § 29:3 ("The difference between requiring that the contract be in writing and requiring a written note or memorandum of an oral contract is important."); *Olsen v. Johnston*, 301 P.3d 791, 795 (Mont. 2013) ("The note or memorandum need not contain the entire contract.").

In his brief, defendant cites several cases related to conveyances of land. *E.g.*, *Smith*, 214 N.C. 602 (contract for conveyance of real property); *Jamerson v. Logan*, 228 N.C. 540 (1948) (same). It has long been noted, however, that courts impose heightened particularity requirements to property descriptions in real estate contracts. 10 *Williston on Contracts* § 29:20 (noting that even before the Uniform Commercial Code was adopted, "generally, the courts required greater particularity in descriptions of real estate than in descriptions of goods"); *see also Durham v. Davison*, 118 S.E. 736, 737–38 (Ga. 1923) (noting that

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authority that directly supports this proposition. That is because it is not the law. A memorandum need only *evidence* the agreement—not detail its every element with certitude beyond dispute. *See Norton v. Smith*, 179 N.C. 553, 556 (1920) ("[I]t is not necessary [that an essential element] be so described as to admit . . . *no* doubt [of] what it is . . . ." (emphasis added) (quoting *Fry on Specific Performance* § 209)).

5. Justice Riggs would require plaintiff to identify an email containing a "formalized promise" to pay. This contradicts the long-standing rule that a memorandum suffices even if it is "informal." *Smith*, 214 N.C. at 604.

because "the lines of the tract of land sought to be conveyed, or the key to these lines, must appear in the writing," "a description of land sold or contracted to be sold may apparently be very elaborate, and yet not sufficient"). This reflects a characteristic difficulty of real estate law: ascertaining land boundaries with exactitude. *See* Bureau of Land Mgmt., U.S. Dep't of the Interior, BLM/WO/GI-17/007+1813, Specifications for Descriptions of Land intro., at 4 (2017), https://www.blm.gov/sites/default/files/SpecificationsForDescriptionsOfLand.pdf (noting that a "land description . . . must be susceptible to one, and only one, interpretation," because "[t]he ambiguous [land] descriptions of the past are the boundary disputes of the future"); *Dayston, LLC v. Brooke*, 630 S.W.3d 220, 224 (Tex. App. 2020) (holding that, under Texas law, "[w]hen it is possible that more than one tract of land fits the description, the statute of frauds is not satisfied"). Such concerns do not predominate other areas of contract law. Accordingly, this Court hesitates to extend real estate conveyance caselaw to the guaranty contract at issue in the present case.

To be sure, both in and out of the context of real estate conveyances, a memorandum must supply "all the essential elements of the agreement with reasonable certainty." *Kluttz v. Allison*, 214 N.C. 379, 383 (1938). "[B]ut it is not necessary [that an essential element] be so described as to admit . . . *no* doubt [of] what it is . . . ." *Norton*, 179 N.C. at 556 (emphasis added) (quoting *Fry on Specific Performance* § 209); *accord Murdock v. Anderson*, 57 N.C. (4 Jones Eq.) 77, 78 (1858) ("[W]here a sufficient description is given, parol evidence [can] be resorted to . . . in order to fit the description to the thing . . . .").

Thus, even for contracts conveying real property, this Court has not invariably required a memorandum to include a detailed description of the property. Rather, this Court has deemed sufficient many phrases not describing the land itself, such as "his entire tract . . . of 146 acres[,]" *Norton*, 179 N.C. at 553, 556, "the farm on which I now live[,]" *Bateman v. Hopkins*, 157 N.C. 470, 472–73 (1911), and "her house and lot north of Kinston[,]" *Phillips*, 62 N.C. at 194, 197; *accord Carson v. Ray*, 52 N.C. (7 Jones) 609, 610 (1860).

These cases also demonstrate that the use of possessive adjectives is a particularly efficient way to describe an essential element of the contract. *Contrast Bateman*, 157 N.C. at 472–73 (holding the phrase "the farm on which *I* now live" to be sufficient (emphasis added)), *and Phillips*, 62 N.C. at 194, 197 (holding the phrase "*her* house and lot north of Kinston" to be sufficient (emphasis added)), *with Murdock*, 57 N.C. at 78 (holding the phrase "*one* house and lot in the town of Hillsborough"

to be insufficient (emphasis added)), *and Capps v. Holt*, 58 N.C. (5 Jones Eq.) 153, 154–55 (1859) (holding the phrase "*a* tract of land lying on the north side of the Watery Branch, in the county of Johnston, and State of North Carolina, containing 150 acres" to be insufficient (emphasis added)).

With these principles in mind, we turn now to their application to the present case.

In the September email, defendant wrote, "It is important to *us* to always pay *our* valued partners quickly . . . ." (Emphases added.) Being written by defendant, it is readily apparent that the words "us" and "our" refer to himself and Nick. The email goes on to read, ". . . for their services rendered . . . ." Although informal, the average person reading this language would interpret it to mean that defendant was paying for services rendered pursuant to some type of agreement. Next, the email states, "[S]o rest assured your invoice will be turned around immediately and a check sent upon receipt." Here, "so" means "therefore" or "consequently." *So*, *Merriam-Webster's Collegiate Dictionary* (10th ed. 1999). The use of the language "*your* invoice will be turned around immediately," following the word "so," has a clear apparent meaning: you are one of our trusted partners rendering services to us, and therefore, you will be paid quickly.[6] (Emphasis added.) This written statement memorializes defendant's obligation to pay.[7] Indeed, defendant would have had no reason to make such assurances unless he *himself* bore responsibility for such payment.

Defendant's subsequent emails further evidence the guaranty agreement. For example, defendant's December email to plaintiff attached the complaint filed against Nick and wrote: "It looks like the saga continues with Nick's legal issues with his business. I am attaching the legal document he just received for your review." Then, in the very next line, defendant asked plaintiff to communicate with *him* specifically: "Please let *me* know how *we* can best work *together* in this regard." (Emphases added.) Likewise, when asking for further clarity on the outstanding balance in his June email, defendant wrote: "*We* may be missing a payment

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6. At oral argument, defendant conceded that one "could make that inference" upon a "close textual reading" of the email. *See* Oral Argument at 48:24–40, *Smith Debnam Narron Drake Saintsing & Myers, LLP v. Muntjan* (No. 29A24) (Sept. 24, 2024), https://www.youtube.com/watch?v=QfQsAyuv2Mg.

7. Even Justice Riggs's dissent recognizes that "[i]t is true some of [defendant]'s language implies shared responsibility, particularly his . . . use[ ] [of] the plural pronouns 'us' and 'our.' "

made on, or about 1/10/20." (Emphasis added.) Usage of the term "we" in these emails makes sense only if it includes *defendant* as one of the parties[8] responsible for missed payments.

This happened yet again in July, when the following emails were sent:

> Defendant: The finances and the stress from this situation have been profound and a major setback on many levels. Would this $3000 be the cap you mentioned could be achieved[,] Mr. Saintsing?
>
> Saintsing: Yes, we would agree to cap the fees for responding to the discovery at $3,000. . . .
>
> Defendant: Thanks . . . ! It sounds like [d]iscovery would be the last item *we* need to *deal with* now that we have the bankruptcy being considered?

(Emphases added.) "Deal," in this context, is defined as: "To take action with respect to someone or something." *Deal*, *The American Heritage College Dictionary* (3d ed. 1997). In choosing to say "we," defendant positioned *himself* as one who would be responsible for taking action with respect to the $3,000-capped fee for discovery responses.[9] The action one takes on a fee is to pay it.

In combination, defendant's emails constitute a written memorandum of the essential terms of defendant's oral promise to pay for Nick's legal debts to plaintiff, satisfying the statute of frauds. *See Smith*, 214 N.C. at 604. Accordingly, we reverse the judgment of the Court of Appeals.

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8. Justice Riggs insists that the statute of frauds will liberate defendant from performing his oral guaranty contract unless a memorandum shows that he "assumed *sole* responsibility to pay Nick's legal fees." (Emphasis added.) This misapprehends the law. A guaranty agreement is "[a] promise to answer for the payment of some debt . . . in case of the failure of *another who is liable in the first instance*." *Guaranty*, *Black's Law Dictionary* (12th ed. 2024) (emphasis added). "A guaranty can exist only where there is some principal or substantive liability to which it is collateral." *Id.*

By contrast, if a "writing recommend[s] *another*" as reliable "and assur[es] . . . that *the third person* will comply fully with any contract that may be entered into with him," this does not imply that the writer will guaranty the contract. *Fain Grocery Co. v. Early & Daniels Co.*, 181 N.C. 459, 461 (1921) (emphases added) (construing *Clerke v. Harwood*, 3 U.S. 415 (1797)).

9. It is notable that the invoices were paid using defendant's credit card.

V. Conclusion

For the reasons stated above, we hold that defendant's emails to plaintiff constitute a memorandum or note of defendant's oral guaranty to pay for Nick's legal debts to plaintiff. Here, on these specific facts, the statute of frauds is satisfied. *See* N.C.G.S. § 22-1. Accordingly, we reverse the judgment of the Court of Appeals.

REVERSED.

Justice DIETZ dissenting.

I agree with the majority that the trial court's judgment is correct and that the Court of Appeals should have affirmed it. As the trial court properly determined, Muntjan entered into an *original* promise with the firm. The law firm's testimony and evidence—which the trial court expressly found credible—together with the parties' course of dealings demonstrate that Muntjan bargained for a level of control over this legal case that an ordinary guarantor would not have. This "distinct consideration" creates a contract directly between Muntjan and the firm. *See Kelly Handle Co. v. Crawford Plumbing & Mill Supply Co.*, 171 N.C. 495, 501 (1916).

Unfortunately, although this was the express reasoning of the trial court, it is not the reasoning of the dissent at the Court of Appeals. And, for whatever reason, the firm chose not to petition for discretionary review of grounds not addressed by the dissent. Thus, our review is limited to the statute of frauds issue "specifically set out in the dissenting opinion as the basis for that dissent." *Mitchell v. Univ. of N.C. Bd. of Govs.*, 388 N.C. 341, 349 (2025).

On that issue, this is a much closer case. I certainly think it is reasonable to interpret Muntjan's string of emails as confirmation that he is a guarantor. But I'm not sure that is the *only* reasonable interpretation, and thus I am not persuaded that these emails satisfy the statute of frauds. *See Kluttz v. Allison*, 214 N.C. 379, 383 (1938).

In any event, I expect this case to have very little impact on our statute of frauds jurisprudence. Given the unusual facts, this Court's holding is quite fact-bound. In my view, the biggest lesson in this case is about appellate practice. The law firm squeaked out a win here, but had it bothered to petition for discretionary review, that narrow victory might instead be a unanimous one.

Justice RIGGS dissenting.

The only issue before us now is whether Paul Muntjan's emails to a law firm satisfy the statute of frauds and establish a written guaranty to cover his son Nick Muntjan's legal fees.[1] While the firm provided services and its desire to be paid for those services is understandable, when that equitable consideration conflicts with black letter law, our hands as judges are tied. I do not believe that we can provide the relief requested by the firm. Because Paul Muntjan's emails do not contain an explicit, definite promise to pay for his son's continued legal services, I would hold the purported agreement unenforceable for failing to meet the statute of frauds, and thus I respectfully dissent.

I. Discussion

I do not share the majority's belief that there has been a misapprehension of the law as to whether North Carolina's statute of frauds required Mr. Muntjan's promise to be in writing for the promise to be enforceable. That is exactly what the statute of frauds required here. *Burlington Industries, Inc. v. Foil*, 284 N.C. 740, 750–52 (1974) (providing oral guaranties fall within the statute of frauds and are required to be in writing). Although the writing, however informal, does not need to be a complete contract nor follow a particular form, this Court has said it must contain the essential or material terms of the parties' agreement. *Smith v. Joyce*, 214 N.C. 602 (1939). In *Winders v. Hill*, we explained that, though admission of an agreement in certain correspondence and conversation between parties is "sufficient memorandum," 144 N.C. at 617, compliance with the statute of frauds requires that the written admission, when used to evidence an agreement, must contain "internal evidence of the contract or refer to some writing that does." *Id.* at 618.

I read the majority's interpretation of the statute to suggest that all an oral guaranty needs to be enforceable is some signed "memorandum or note"—such as the emails sent by Mr. Muntjan—that bolsters that the guaranty exists. However, the statute requires that the emails show that Mr. Muntjan, who was not the firm's client, actually promised to pay the entirety of his son's legal fees. None of the emails contained such a promise nor referred to it. Thus, I believe the statute of frauds was not satisfied here.

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1. As Justice Dietz and the majority both recognize, a different analysis applies to original promises, which do not fall under the statute of frauds.

A. The statute of frauds was developed to limit enforcement of some contracts prone to fraud.

First, the ultimate purpose of the statute of frauds was historically, and still is, to limit judicial enforcement of certain kinds of agreements more susceptible to fraud, and to that end, courts required written evidence of those agreements. 9 *Williston* on Contracts § 21:1 (4th ed. 2025) (explaining the purpose and history of the English statute of frauds and its influence on American courts); *see Allison v. Steele*, 220 N.C. 318 ("But the purpose of the statute is to prevent fraud upon individuals charged with participation in transactions coming within its purview . . . "). Thus, the statute of frauds has served an evidentiary purpose in our courts. *Steele*, 220 N.C. at 325 (explaining that a plaintiff is not permitted to show [in evidence] by parol a contract which the law requires to be in writing).

Courts have also uniformly said a writing relied on to satisfy the statute of frauds must contain the essential or material terms of the alleged contract, which in turn promotes reasonable certainty regarding the agreement's terms. 10 *Williston* on Contracts § 29:8 (explaining that inclusion of essential terms of the agreement in the memorandum, according to some courts and the Uniform Commercial Code, show that a contract has actually been made).

B. North Carolina's statute of frauds requires guaranty contracts to contain the guarantor's promise to pay a particular debt if the obligor defaults.

North Carolina codified the statute of frauds in the predecessor to Chapter 22 of the North Carolina General Statutes, thereby requiring certain contracts to be written and signed to be enforceable. *Durham Consol. Land & Improvement Co. v. Guthrie*, 116 N.C. 381, 384 (1895); N.C.G.S. § 22-1 (2025). A guaranty is one such contract. In simple terms, a third party's promise to be personally liable for another's debt is a guaranty. *See Burlington Indus., Inc.*, 284 N.C. at 748. Thus, for guaranty contracts to be enforceable, N.C.G.S. § 22-1 requires (1) a writing (2) signed by the guarantor and (3) containing the guarantor's promise to pay a particular debt if the obligor defaults. *See Balentine v. Gill*, 218 N.C. at 498.

To satisfy the writing requirement, a guaranty must be spelled out in "the agreement upon which [the] action [is] brought" or captured in "some memorandum or note thereof." N.C.G.S. § 22-1. A "memorandum" can be contained in a single document or in "several papers properly connected together." *Smith*, 214 N.C. at 604. While such a memorandum

by nature may be informal, *Phillips v. Hooker*, 62 N.C. 193, 196 (1867), the memorandum at issue "must state the contract with reasonable certainty so that its essential terms can be ascertained from the writing itself without resort to parol evidence." *Smith*, 214 N.C. at 605 (cleaned up). Put differently, the statute of frauds still requires that an enforceable contract contain expressly or by necessary implication "the essential elements of a valid contract." *Id.* at 604. Thus, to constitute an enforceable contract covered under the statute of frauds, the written memorandum or note must be sufficiently definite to show the essential elements of a valid contract.; *Carr v. Good Shepherd Home, Inc.*, 269 N.C. 241, 243 (1967) (quoting *Smith*, 214 N.C. at 604).

If a party offers separate documents as written evidence of an agreement, those papers must be so linked "physically or by internal reference that there can be *no uncertainty* as to their meaning and effect when taken together." *Smith*, 214 N.C. at 604 (emphasis added) (cleaned up); *see also Simpson v. Beaufort Cnty. Lumber Co.*, 193 N.C. 454, 455 (1927) ("Two or more writings properly connected may be considered together, matters missing or uncertain in one may be supplied or rendered certain by the other, and their sufficiency will depend upon whether, taken together, they meet the requirements of the statute as to contents and signature." (cleaned up)). But, that "connection cannot be shown by extrinsic evidence." *Simpson*, 193 N.C. at 455; *see also Mayer & Morgan v. Adrian & Vollers*, 77 N.C. 83, 88 (1877) (explaining that an enforceable "agreement must adequately express the intent and obligation of the parties," and so "[p]arol evidence cannot be received to supply anything which is wanting in the writing to make it the agreement on which the parties rely"). Thus, for such correspondence (like emails) to constitute an agreement enforceable under the statute of frauds, the correspondence must "sufficiently refer[s] to some writing in which the terms are set out and which itself contains all the requisites of a valid contract or memorandum under the statute." *Winders*, 144 N.C. at 618–19; *Balentine*, 218 N.C. at 498.

C. Mr. Muntjan's emails do not contain a promise to pay Nick's debt.

Mr. Muntjan's emails, when read together, refer to the impending litigation, the firm's services, and the general topic of payment. But they neither contain an express promise undertaking sole responsibility to be indefinitely liable for Nick's legal fees nor do they refer to any written instrument of such an agreement. It is true some of Mr. Muntjan's language implies shared responsibility, particularly his email from September 2019 which uses the plural pronouns "us" and "our," and

asks the firm to send future invoices to Mr. Muntjan's email, suggesting his ongoing involvement. But it does not change the key fact that the firm cannot point to any statement in which Mr. Muntjan assumed sole responsibility to pay Nick's legal fees. Nor can the firm point to any statement in which Mr. Muntjan references a formalized promise to do so.

That is a crucial omission. In case after case, this Court has declined to enforce a contract if a writing did not capture a guarantor's express promise to pay. For example, an attorney did not guaranty a client's debt based on a letter reading: "Subject to Mr. Simpson's approval, which I feel certain he will give, this firm will make restitution to you out of the net proceeds from any settlement or court recovery we make with regard to Mr. Simpson's personal injury claim[.]" *Forbes Homes, Inc. v. Trimpi*, 318 N.C. 473, 474 (1986). A company did not guaranty the defendant's debt when it sent a telegram stating: "[Defendant company] reliable people. Any justifiable claims will be taken care of promptly." *Fain Grocery Co. v. Early & Daniels Co.*, 181 N.C. 459, 459 (1921). A defendant's note to reimburse the plaintiff for $600 did not show an enforceable "contract for the conveyance of the land to the [plaintiff]" because the writing "contained only a promise on the [defendant's] part to pay the money, but no reciprocal promise of the defendant to convey the land." *Burriss v. Starr*, 165 N.C. 657, 659, 661 (1914). Moreover, this Court has voided agreements when they failed to contain an express promise. *Id.* at 661–62. ("There is no such contract here. The note of the defendant, although written by the plaintiff, contained only a promise on his part to pay the money, but no reciprocal promise of the defendant to convey the land . . . ").

By contrast, we held there was a binding guaranty contract where a letter contained a written assumption of personal responsibility. In *Standard Supply Co. v. Person & Finch*, the defendant made a "definite promise" in a letter, amongst a series of letters, that said: "[J]ust as soon as the dry kiln gets in operation, I will see that your bill is paid." 154 N.C. 456, 461 (1911). In *Simpson v. Beaufort County Lumber Co.*, we held that the plaintiff had shown a "sufficient memorandum in writing, signed by the party to be charged therewith" as required under the statute of frauds based on the letters and telegrams that showed a "plain and explicit" contract to buy a tract of land. 193 N.C. at 456.

Perhaps unsurprisingly, this case is not our first time dealing with a father's promise to cover his son's debts. In *Hickory Novelty Co. v. Andrews*, we held that a series of letters established a father's promise to cover his sons' debts. 188 N.C. 59 (1924). But that case featured what this case lacks: A father's express written agreement to pay his

children's obligations. *Id.* The sons owned and operated a lumber firm that owed a debt to the plaintiff, and the father, hoping to keep his sons' business afloat, wrote a letter reading as follows: "This will advise that I am interested in [the lumber firm], and will personally see that all business transactions between [the lumber firm] and [plaintiff] are settled and adjusted satisfactorily entirely with your concerns." *Id.* at 60. To vouch for his solvency, the father attached a letter from a bank showing that he was "personally responsible for all outstanding accounts up to this date, and all accounts which will follow." *Id.* The father implored the plaintiff that "if there is anything pertaining to this business which is questionable, please advise me personally at once, and I will straighten out the matter entirely to your satisfaction." *Id.*

When the firm incurred more debt, one of the plaintiff's managers wrote the father "reminding him of his obligation" for his sons' business debts. *Id.* at 61. After "discuss[ing] the matter with [the lumber firm]," the father explained, his sons agreed to send $500 checks every fifteen days until the debt was paid. *Id.* at 62. But if "they do not carry out the above plans," the father advised the plaintiff, "kindly notify me and I will see that they are carried out to your satisfaction." *Id.* In reply, the manager confirmed that the father "will be responsible for this agreement being carried out to my satisfaction, which is in accordance with your former guarantee to us." *Id.*

By the time the case reached this Court, though, the issue was simple: did the father make an enforceable guaranty to pay his sons' debt? *Id.* at 64. We said yes. *Id.* First, the "guaranty was in writing, as required by the statute [of frauds]." *Id.* at 66. More, the father expressly promised to pay "the future debts or obligations" incurred by the lumber firm. *Id.* at 67. And it was not a one-time agreement but a continuing guaranty. *Id.* Simply put, the *Novelty* father's promise was not susceptible to multiple interpretations. *Id.* And later writings confirmed "that [he] understood the liability he had created and incurred." *Id.*

In the present case, the firm cites *Novelty* as support and centers the reference in *Novelty* to *Newcomb v. Kloeblen*, 77 N.J.L. 791 (1909), an "on point" New Jersey decision. In *Novelty*, this Court cited *Newcomb* with approval in finding a continuing guaranty when a father wrote to a company: "I will be responsible for any bill that my son James will make." *Novelty*, 188 N.C. at 66. Based on that language, the firm contends that a promise to pay can be a simple statement rather than a robust declaration, but it misses the more important point: the fathers in both *Novelty* and *Newcomb* explicitly promised to make good on their sons' debts. No such language exists here. Mr. Muntjan never assumed responsibility

for Nick's legal expenses in the same way. And his emails were not connected—either physically or by "internal reference"—to "other writings so as to constitute a valid and sufficient memorandum" containing "the essential elements of a contract." *Smith*, 214 N.C. at 604–05. That omission overrides any facial similarities between this case and *Novelty*. Mr. Muntjan—like the father in *Novelty*—certainly seems to have involved himself in his son's business affairs. As the firm notes, Mr. Muntjan used plural pronouns like "us" and "ours," gestured at future business with the firm, and asked that "any and all invoices [be] sent to my email." But those parallels cannot patch the key difference. The father in *Novelty* put his guaranty into writing across multiple letters. Mr. Muntjan did not— a fact that holds true whether the focus is on a single email or a number of his messages stitched together.

The reason why the statute of frauds requires us to deem as unenforceable any contract established here, as unpalatable as it may be from an equity perspective, can be demonstrated through a counterfactual based on the actual emails in this case: Suppose Mr. Muntjan had orally promised the firm that he would help manage the legal case for Nick by occasionally paying his legal fees and handling administrative tasks, such as communications with the firm, but he verbally emphasized he did not agree to be a guarantor or to be contractually bound to pay if his son did not. The emails relied on by the majority in this case to support the argument that Mr. Muntjan's emails constitute a memorandum or note of Mr. Muntjan's oral guaranty would now support with equal weight the counterfactual scenario in which Mr. Muntjan promised to occasionally assist Nick. For example, consider the following emails sent between the firm and Mr. Muntjan:

- On 23 September 2019, Mr. Muntjan wrote:

  > "Hi Byron, Received your email as address to son Nick regarding the case and request for prompt payment. It is important to us to always pay our value partners quickly for their service rendered so rest assured your invoice will be turned around immediately and a check sent upon receipt. Please note as of this date that no invoice has been received. As a reminder, please insure any and all invoices are sent to my email due to my travel schedule."

- On 18 December 2019, Mr. Muntjan wrote:

  > "Hi Byron and Happy Holidays! It looks like the saga continues with Nick's legal issues with his

> business. I am attaching the legal document he just received for your review. Please let me know how we can best work together in this regard."

- On 4 June 2020, Mr. Muntjan wrote:

  > "Please be advised that the attached invoice the firm sent dated June 4, 2020 does not reflect payment made on the account dated May 12, 2020. Attached is a record of the payment in question. Please send a corrected invoice at your earliest convenience."

- On 8 June 2020, Mr. Muntjan wrote:

  > "Would you be so kind to furnish a list of payments made on this account? We may be missing a payment made on or about 1/10/20.

- On 16 July 2020, Mr. Muntjan wrote:

  > "Thanks Byron! It sounds like Discovery would be the last item we need to deal with now that we have the bankruptcy being considered? Please refresh my memory on what the Discovery pertains to. Could we eliminate Discovery if we close the company?"

Though these emails imply a shared responsibility, reading the emails now with the counterfactual in mind, it can be just as true that these emails support the counterfactual contention offered: Mr. Muntjan is assisting Nick by handling his emails, managing his case, and assuring that his son will timely pay his legal fees, especially given that Nick was on the brink of bankruptcy. The emails could plausibly and reasonably support both the alleged promise in the case at hand and the counterfactual promise, and the statute of frauds was designed to require proof to avoid such uncertainties. *See Winders*, 144 N.C. at 618 (requiring writing to contain internal evidence of the contract to be proved or refer to some writing that does).

The majority places excessive emphasis on inferred meanings and implications rather than a clear assumption of responsibility. But without a written agreement to foot Nick's legal bills "then existing [or] to be incurred in the future," the emails lack an essential element of a guaranty contract. *Cf. Novelty*, 188 N.C. at 67.

II. Conclusion

While I understand the firm's reasonable desire to recover for their services rendered, this Court should not set aside decades of clear precedent on the application of the statute of frauds to guaranty agreements to produce that outcome. In short, the emails here did not contain a clear, definite promise to pay for another's debt. Thus, the firm lacks an enforceable guaranty under the statute of frauds. Accordingly, I respectfully dissent.

Justice EARLS joins in this dissenting opinion.

STATE OF NORTH CAROLINA
v.
DAMARLO JAMON PERRY

No. 64PA24

Filed 20 March 2026

Robbery—robbery with a dangerous weapon—taking of property—sufficiency of evidence

The trial court properly denied defendant's motion to dismiss the charge of robbery with a dangerous weapon where the State's evidence, viewed in the light most favorable to the State, constituted substantial evidence from which a jury could conclude that defendant took the victim's property—either himself or acting in concert with another—including: the victim was first pistol-whipped by defendant and then stomped on by defendant and other assailants and, when the victim woke up after a period of unconsciousness, his phone, house key, and cash were missing. Along with evidence of defendant's opportunity to take the victim's property, the State presented evidence pursuant to Evidence Rule 404(b) that defendant participated in a prior armed robbery, which tended to support the inference that defendant committed the attack in this case with the intent to rob the victim. Therefore, the decision of the Court of Appeals reversing defendant's conviction was itself reversed.

Justice RIGGS dissenting.

Justice EARLS joins in this dissenting opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous, unpublished decision of the Court of Appeals, No. COA23-375 (N.C. Ct. App. Feb. 20, 2024), reversing an order denying defendant's motion to dismiss entered on 29 August 2022 and vacating a judgment entered on 1 September 2022 by Judge David L. Hall in Superior Court, Cabarrus County. Heard in the Supreme Court on 17 September 2025.

Jeff Jackson, *Attorney General*, *by Stacey A. Phipps*, *Special Deputy Attorney General*, *for the State-appellant.*

Kaelyn N. Sweet for defendant-appellee.

BERGER, Justice.

Defendant was convicted of, among other things, robbery with a dangerous weapon. The Court of Appeals reversed the conviction after it determined that the State failed to present substantial evidence that defendant, or someone with whom he was acting in concert, took the victim's property. We are, therefore, concerned here with the sufficiency of evidence needed to survive a motion to dismiss and submit a charge to the jury.

In our system of justice, the jury has dominion over questions of fact. Mindful of the jury's sphere, a motion to dismiss should be granted only when no "reasonable inference of the defendant's guilt of the crime charged may be drawn from the evidence." *State v. Powell*, 299 N.C. 95, 99 (1980) (emphasis omitted). In this case, the trial court applied the appropriate standard and properly denied defendant's motion to dismiss. We, therefore, reverse the decision of the Court of Appeals.

I. Factual and Procedural Background

Around 8:00 p.m. on 18 May 2021, Damon Scott arrived at the apartment of Shenika Lynch with his phone, house key, and $250. When Scott attempted to enter the apartment, he was struck from behind and fell to the ground. Defendant hit Scott on the top of his head with a gun, and as Scott attempted to get to his feet, defendant and other assailants stomped on Scott. Scott recognized defendant among his attackers and saw defendant holding a gun.

Scott passed out during the attack. Later that night, he woke up in the middle of the road, severely injured. Scott realized his phone, house

key, and cash were missing.[1] He flagged down a driver who drove him home where he attempted to sleep. Later, after Scott woke up gagging on his own blood and struggling to breathe, his niece Lemon Collins, took him to a hospital where he was intubated and later transferred to a Level 1 Trauma Center in Charlotte. Scott was hospitalized for more than two weeks, and during that time he underwent blood transfusions and multiple surgeries. His missing possessions were never recovered.

Defendant was indicted for robbery with a dangerous weapon, assault inflicting serious bodily injury, drug-related offenses, and attaining habitual felon status. At trial, the State introduced Rule 404(b) evidence related to defendant's participation in a 2012 armed robbery. *See* N.C.G.S. § 8C-1, Rule 404(b) (2025). Testimony showed that in the prior incident, defendant had "approached the victim, asked the victim for his money, . . . assaulted the victim with [a] handgun," and then stole his wallet. The witness explained that defendant had "pistol-whipped" the victim, which the witness clarified meant "[s]triking him with the handgun on his head." The evidence regarding this prior crime was allowed for limited purposes to

> prove that at the time of the alleged offenses, [defendant] had the intent, which is a necessary element of both assault inflicting serious bodily injury and robbery with a dangerous weapon, [and the evidence] is offered to the extent that [the jury] find[s] that . . . there may have existed in [defendant's] mind a plan or scheme, design, involving the crimes he is accused of or the absence of accident or mistake.

At the close of the State's evidence, defendant moved to dismiss the charge of robbery with a dangerous weapon, arguing that there was insufficient evidence for the jury to determine that defendant "took property from the person of another or in that person's presence." The trial court denied the motion. At the close of all evidence, defendant

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1. While evidence is conflicting regarding the moment Scott realized his possessions were missing, *see State v. Perry*, No. COA23-375, 2024 WL 687053, at fn. 1 (N.C. Ct. App. Feb. 20, 2024), on a motion to dismiss, "we view the evidence in the light most favorable to the State, resolving all conflicts in the evidence in favor of the State and giving it the benefit of all reasonable inferences," *State v. Tirado*, 358 N.C. 551, 582 (2004). Here, Scott's statement to Detective John Cramer that he realized his possessions were missing after waking up in the road was elicited by the defense on cross-examination of Detective Cramer. As the trial court acknowledged, the statement was thus admitted into evidence. Accordingly, for purposes of this opinion, we accept as true Scott's statement that he realized his possessions were missing after waking up in the road.

declined to put on evidence and renewed his motion to dismiss. The trial court denied the motion, reasoning:

> In this case there is the evidence properly admitted about the 2012 event. And there's a uniqueness there. It is not unheard of, but it is relatively uncommon in terms of robbery with a firearm or robbery with a dangerous weapon. There is evidence that was admitted about [defendant] approaching the subject, striking him with a firearm instead of threatening him with a firearm or in fact shooting him or firing the weapon, but using it as a blunt instrument and robbed the gentleman. That has been judicially established. I limited the evidence such that it would not be unfairly prejudicial.
>
> This allegation from Mr. Scott, if the jury chooses to believe him, is that . . . [d]efendant used the firearm as something to strike him with, a blunt force instrument to strike him in the head. And there is evidence that a reasonable jury could believe that the alleged victim's property was missing potentially very soon thereafter. But there is a reasonable inference that those who attacked the alleged victim took the alleged victim's property.
>
> For those reasons I deem it a question of fact for the jury, and will respectfully deny the motion.

The jury found defendant guilty of robbery with a dangerous weapon and assault inflicting serious bodily injury. Defendant thereafter pled guilty to attaining habitual felon status, and he was sentenced to 146 to 188 months in prison. Defendant appealed the robbery conviction to the Court of Appeals, arguing that the State failed to present sufficient evidence for a reasonable jury to find that he, or someone with whom he was acting in concert, took Scott's property.

In an unpublished opinion, the Court of Appeals reversed the trial court's order denying defendant's motion to dismiss and vacated defendant's conviction for robbery with a dangerous weapon, holding that "the circumstantial evidence in this case—the victim's missing property, [d]efendant's opportunity to commit the crime, and [d]efendant's intent or plan to rob—even in the light most favorable to the State, is not sufficient to sustain [d]efendant's conviction under our Supreme Court's caselaw." *State v. Perry*, No. COA23-375, 2024 WL 687053, at *1 (N.C.

Ct. App. Feb. 20, 2024). We allowed the State's petition for discretionary review on 13 December 2024. For the reasons discussed herein, we reverse the judgment of the Court of Appeals.

II. Discussion

To survive a motion to dismiss, the State faces a "low bar." *State v. Ford*, 388 N.C. 713, 727 (2025) (Berger, J., concurring). "If there is more than a scintilla of competent evidence to support the allegations in the warrant or indictment, it is the court's duty to submit the case to the jury." *State v. Horner*, 248 N.C. 342, 344–45 (1958); *see also State v. Dover*, 381 N.C. 535, 547 (2022) (more than a scintilla of evidence simply means "the amount necessary to persuade a rational juror to accept a conclusion[.]" (cleaned up)). While precedent has also articulated the standard as requiring "substantial evidence," *State v. Golder*, 374 N.C. 238, 249 (2020), "[t]he terms 'more than a scintilla of evidence' and 'substantial evidence' are in reality the same," *State v. Gillard*, 386 N.C. 797, 832 (2024) (quoting *State v. Earnhardt*, 307 N.C. 62, 66 (1982)).

"When reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the State, resolving all conflicts in the evidence in favor of the State and giving it the benefit of all reasonable inferences." *State v. Tirado*, 358 N.C. 551, 582 (2004). "Moreover, circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence." *Id.* (cleaned up). "When the motion calls into question the sufficiency of circumstantial evidence, the question for the Court is whether a reasonable inference of defendant's guilt may be drawn from the circumstances." *Powell*, 299 N.C. at 99 (cleaned up).

"[E]vidence favorable to the State is to be considered as a whole in order to determine its sufficiency. This is especially necessary . . . when the proof offered is circumstantial, for rarely will one bit of such evidence be sufficient, in itself, to point to a defendant's guilt." *State v. Thomas*, 296 N.C. 236, 244–45 (1978). Further, "[c]ontradictions and discrepancies must be resolved in favor of the State, and the defendant's evidence, unless favorable to the State, is not to be taken into consideration." *State v. Stone*, 323 N.C. 447, 452 (1988) (quoting *State v. Bullard*, 312 N.C. 129, 160 (1984)). In other words, if there is more than a scintilla of evidence, "whether direct or circumstantial, or a combination, to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied." *Golder*, 374 N.C. at 250 (cleaned up).

To prove a defendant committed the offense of robbery with a dangerous weapon, the State must provide sufficient evidence of (1) an unlawful taking or an attempt to take personal property from the person or in the presence of another; (2) by use or threatened use of a firearm or other dangerous weapon; and (3) whereby the life of a person is endangered or threatened. *See State v. Hill*, 365 N.C. 273, 275 (2011); N.C.G.S. § 14-87(a) (2025). We have noted that "it is immaterial whether the intention to commit the theft was formed before or after force was used upon the victims." *State v. Barden*, 356 N.C. 316, 352 (2002) (quoting *State v. Green*, 321 N.C. 594, 605 (1988)).

Here, defendant challenged the sufficiency of the State's evidence as to the first element. Specifically, defendant argued that evidence of his "opportunity" to take Scott's property was insufficient to survive a motion to dismiss.

The Court of Appeals, relying on our precedent in *State v. Moore*, 312 N.C. 607 (1985), and *State v. Baker*, 338 N.C. 526 (1994), determined that the facts in this case were analogous to *Moore*. The court reasoned that "[u]nlike in *Baker*, the evidence here did not establish for how long Scott laid unconscious in the road before he awoke to discover his property missing," and "Scott's location in the road placed the vulnerable property in a public location inviting to passersby—like the store in *Moore*." *Perry*, 2024 WL 687053, at *4. The Court of Appeals concluded that "evidence of a defendant's mere opportunity to commit a crime is not sufficient to send the charge to the jury," *id.* at *3 (cleaned up), and "[e]vidence of a defendant's intent or plan to take property does not itself support the inference that he followed through when presented with an opportunity," *id.* at *5.

But splintered, piecemeal, and formulaic comparisons to the facts of prior cases are not dispositive where precedent commands that the evidence must be considered "as a whole," *Thomas*, 296 N.C. at 245, and "[c]ontradictions and discrepancies must be resolved in favor of the State," *Stone*, 323 N.C. at 452 (quoting *Bullard*, 312 N.C. at 160). Thus, the Court of Appeals' application of our precedent was in error.

In *Moore*, we held that the trial court properly granted the defendant's motion to dismiss because the evidence "disclose[d] no more than an opportunity for [the] defendant, as well as others, to have taken the money." 312 N.C. at 613. There, the defendant sexually assaulted a store clerk at knifepoint in the store bathroom. *Id.* at 608–10. During the incident, the victim's purse was located behind the cashier's counter. *Id.* at 611. When the defendant left the store, the victim fled for help, leaving

her purse behind and the store unlocked and unattended for at least forty minutes until police arrived. *Id.* at 612.

Notably, the store was located in a high-crime area described as "a vicinity in which [the victim's] sense of insecurity caused her to keep the store's *front* door locked during business hours." *Id.* at 613. When the victim returned to the store "some two hours" after the assault, her wallet was missing from inside her purse. *Id.* at 610. Without any other evidence to indicate the defendant had taken the wallet, this Court reasoned that the bare "opportunity for [the] defendant, as well as others," to commit the crime was insufficient to send the robbery charge to the jury. *Id.* at 613.

In *Baker*, conversely, "[t]he disappearance of the [victim's] money was discovered around thirty minutes after [the] defendant was seen with the victim outside the store." *Baker*, 338 N.C. at 560. We concluded that the motion to dismiss was properly denied because "[the victim's] forceful abduction and the taking of the money are so closely related in time as to form a continuous chain of events." *Id.* at 561.

In the light most favorable to the State, the evidence here tended to show that defendant pistol-whipped Scott with the intent to rob him and that Scott's possessions were on his person at the time of the assault and missing when he regained consciousness in the road. More specifically, the State's evidence indicated that defendant was Scott's primary assailant, striking him on the head with a gun as he entered the apartment. Not only was defendant with Scott around the time period when Scott's possessions went missing, but he was a central force among the attackers who "started stomping [Scott] and knocked [him] out and took [him] and threw [him] out in the road."

Further, the 404(b) evidence was admitted to establish defendant's intent to commit the robbery in this case, and the jury was properly instructed on use of this evidence.[2] Although reasonable jurors might

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2. The dissent fails to meaningfully engage with the 404(b) evidence and concludes that "the State only established that [defendant] had the opportunity to commit the offense[.]" But we are not at liberty to ignore the 404(b) evidence in our analysis, and when included, the State presented more than a scintilla of evidence of defendant's opportunity, intent, and temporal and spatial proximity to the victim and the victim's missing property at the time of the assault.

In addition to ignoring the 404(b) evidence, the dissent appears to argue that the doctrine of recent possession is relevant here. But that doctrine is applicable where the State presents evidence of a defendant's ex post possession of stolen property, a fact which does not exist in this case. Even though we have consistently held that recovery of a stolen

disagree on the ultimate question of guilt, the evidence "as a whole," *see Thomas*, 296 N.C. at 245, permitted an inference that the absence of Scott's wallet was the result of a continuous chain of events connected to defendant even though there is no direct evidence defendant took Scott's wallet.

Our precedent makes clear that direct evidence is not required to overcome a motion to dismiss[.]" *See Tirado*, 358 N.C. at 582 ("[C]ircumstantial evidence may withstand a motion to dismiss . . . ." (quoting *Stone*, 323 N.C. at 452)). While the Court of Appeals was correct that "evidence of a defendant's mere opportunity to commit a crime is not sufficient to send the charge to the jury," *Perry*, 2024 WL 687053, at *3 (quoting *State v. Campbell*, 373 N.C. 216, 221 (2019)), the court failed to consider the State's evidence "as a whole," *see Thomas*, 296 N.C. at 245.

Here, there was more than a scintilla of evidence to allow the jury to "decide whether the evidence satisfies them beyond a reasonable doubt that the defendant is guilty." *See id.* The State did not simply present

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item is not required to prove a taking occurred, *see State v. Palmer*, 334 N.C. 104, 112–113 (1993), the dissent suggests that the lack of such evidence is determinative here. We agree that evidence defendant possessed Scott's property after the assault, had it existed, would have certainly bolstered the State's case. But the lack of such evidence does not negate or otherwise discount the evidence that was elicited, and the dissent is simply wrong about the applicability of the doctrine here.

Moreover, the dissent mistakenly introduces a subjective component to its analysis, stating in a footnote that "in cases where the State's evidence was weak, like it is here, our Court has treated possession as significant." But the question here is not the weight but the existence of evidence. That is an objective measure. And by describing the evidence as "weak," the dissent impliedly acknowledges that the evidence in fact exists. This apparent misapprehension reveals yet another reason why use of the "substantial evidence" language favored by the dissent can confuse the inquiry, and "the more than a scintilla of evidence standard is probably the more accurate framing . . . [.]" *State v. Ford*, 388 N.C. 713, 727 (Berger, J., concurring) (cleaned up).

The dissent is also wrong to use *State v. Evans*, 279 N.C. 447 (1971), for support because, as the Court stated there, the State's evidence was "utterly inconsistent with an attempt to rob," and "completely negate[d] the allegation in the indictment of an assault upon [the victim] . . . and the allegation that they attempted to take personal property from [the] business establishment." *Evans*, 279 N.C. at 455. Here, the State's evidence is not nearly so deficient.

Finally, the dissent contends that "no evidence was presented creating an inference that [defendant] possessed Mr. Scott's property[.]" Although the State does not specifically argue this point, we note that robbery with a dangerous weapon does not require possession or even acquisition of stolen property to complete the offense; an attempt to take the property is enough. *See* N.C.G.S. § 14-87(a); *see also Hill*, 365 N.C. at 275 (conviction for robbery with a dangerous weapon requires either an "unlawful taking *or an attempt to take* personal property . . . [.]" (emphasis added)).

evidence of opportunity alone. To the contrary, the State's evidence tended to show that, in addition to the Rule 404(b) evidence discussed above, Scott had his possessions *on his person* at the time he was assaulted and that he realized his possessions were missing when he regained consciousness in the road after the assault. Unlike the victim's purse in *Moore* which was left in an unlocked and unattended store for forty minutes, the facts here, in the light most favorable to the State, tended to show that Scott and his attackers had direct access to the missing property during the relevant timeframe.

The Court of Appeals embraced defendant's argument that a thieving passerby or another individual unconnected with the assault might have robbed Scott while he lay in the road or sometime thereafter. The court stated that "[d]uring the period Scott laid unconscious, anyone in the vicinity could have happened upon him and opportunistically seized his possessions from his person." *Perry*, 2024 WL 687053, at *4. But appellate courts may not assume the function of the jury, and the State's evidence may survive a motion to dismiss "even when [it] does not rule out every hypothesis of innocence." *Tirado*, 358 N.C. at 582 (cleaned up).

Moreover, like the "continuous chain of events" in *Baker*, 338 N.C. at 561, Scott indicated that his possessions were missing when he woke up in the road after he was assaulted by defendant with the intent to rob him. Defendant's argument that someone else might have passed by and robbed Scott while he lay unconscious, although perhaps a proper jury argument, cannot discount or otherwise take away from the evidence presented by the State.[3] We emphasize that the evidence at this stage need not convince the judge beyond a reasonable doubt; rather, evidence need only allow for a "reasonable inference of the defendant's guilt." *Powell*, 299 N.C. at 99 (emphasis omitted). Taken as whole, the State presented enough evidence to infer that the assault and robbery were part of a "continuous chain of events." *See Baker*, 338 N.C. at 561.

We also note that it is a defendant's burden to present evidence identifying an alternative perpetrator. Indeed, evidence proffered to show

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3. The dissent makes the same mistake as the Court of Appeals panel below by failing to evaluate the State's evidence as a whole. Both made rigid, mechanical comparisons to *Moore* and *Baker* while ignoring the totality of the State's evidence. Compounding this error, the dissent entirely disregards the well-established rule that the State's evidence need not "rule out every hypothesis of innocence." *Tirado*, 358 N.C. at 582 (cleaned up). While the dissent is correct that Scott was "vulnerable to the public" when he was unconscious in the road, the State is not required to exclude the possibility of alternative perpetrators at the motion to dismiss stage. Rather, the State need only present enough evidence to allow for a reasonable inference of defendant's guilt.

that someone other than the defendant committed the crime charged must "point directly to the guilt of some *specific* person." *State v. Abbitt*, 385 N.C. 28, 41 (2023) (emphasis added) (quoting *State v. McNeill*, 326 N.C. 712, 721 (1990)). Defendant cannot succeed on a motion to dismiss by speculating simply that "it could have been someone else."

At bottom, the Court of Appeals' analysis overlooked the dispositive inquiry on a motion to dismiss, i.e., whether the State presented more than a scintilla of evidence to support a reasonable inference of defendant's guilt. At this stage, the State's evidence must be considered as a whole. The Court of Appeals, relying on rigid comparisons to distinguishable fact patterns in our prior cases failed apply the proper standard. Because the State presented more than a scintilla of evidence, or the amount necessary to persuade a rational juror to accept a conclusion, the motion to dismiss was properly denied.

III. Conclusion

On a motion to dismiss, we are mindful that the court "is concerned only with the sufficiency of the evidence to carry the case to the jury and not with its weight." *Powell*, 299 N.C. at 99. It is for the jury to serve as the ultimate arbiters of guilt, and a court should dismiss a charge only when the evidence is so lacking that no "reasonable inference of the defendant's guilt of the crime charged may be drawn from the evidence." *Id.* (emphasis omitted).

Here, considering the evidence as a whole and affording the State the benefit of all reasonable inferences, the State presented sufficient evidence that defendant, or someone acting in concert with defendant, took Scott's property. We reverse the judgment of the Court of Appeals.

REVERSED.

Justice RIGGS dissenting.

I disagree with the majority's holding that the State's evidence suggesting that Mr. Perry took Mr. Scott's property was sufficient for the charge of robbery with a dangerous weapon to be submitted to the jury. For that reason and because I believe this Court must step carefully to ensure that it does not render an important legal process—a motion to dismiss the State's charges for insufficiency of the evidence—essentially pointless, I respectfully dissent.

I. Factual Background

On 18 May 2021, Damon Scott was invited to Shenika Lynch's apartment. The time at which he arrived at the apartment was not clear from trial testimony. During trial, Mr. Scott testified that he arrived around 8:00 p.m.; however, in an interview conducted by a detective about a month after the incident, Mr. Scott stated that he arrived around 11:00 p.m. to 12:00 a.m.[1] He arrived carrying his cell phone, house key, and around $250 in cash. Shortly after arriving, Mr. Scott was struck by defendant, Demarlo Perry, and stomped by Mr. Perry and other individuals in the apartment. Mr. Scott testified that the assailants "knocked [him] out and . . . threw [him] out in the road."

At some point Mr. Scott lost consciousness, but the record is not clear about when this occurred. Mr. Scott testified that the last thing he recalled before passing out was being left in the middle of the road; however, he also testified that he did not know how he got outside. No evidence was presented regarding how long Mr. Scott was lying in the road. When he eventually came to, Mr. Scott flagged down a passerby to ask for a ride home. Once at home, Mr. Scott spoke with his niece and then slept, but later that night, he was taken to the hospital where his injuries required him to stay for an extended period of time.

The timeline is not clear about when Mr. Scott discovered he was no longer in possession of his phone, house key, and cash. At trial, Mr. Scott testified that he realized that his items were missing when he arrived at the hospital. Notwithstanding Mr. Scott's direct trial testimony, a detective testified that Mr. Scott told him in an interview that he noticed he was missing his possessions when he woke up in the road.

Mr. Perry was indicted for multiple charges including, among others, robbery with a dangerous weapon and assault with a deadly weapon inflicting serious injury. During the trial, the trial court allowed the State to introduce evidence of Mr. Perry's prior participation in a 2012 robbery where Mr. Perry struck the victim with a handgun and took the victim's wallet. The trial court allowed the evidence under Rule 404(b) for the

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1. To provide a fuller picture of what evidence was presented at trial, I am including instances in the testimony where Mr. Scott's direct testimony at trial conflicts with the statements he made during the interview he gave to Detective John Cramer on 30 June 2021. Of course, for the purpose of a motion to dismiss, "[t]he trial court does not weigh the evidence, consider evidence unfavorable to the State, or determine any witness' credibility." *State v. Parker*, 354 N.C. 268, 278 (2001) (citing *State v. Lucas*, 353 N.C. 568, 581 (2001)).

purpose of showing that Mr. Perry had the intent to commit robbery with a dangerous weapon or that the crime was a part of a common plan. Mr. Perry moved twice to dismiss the robbery with a dangerous weapon charge, and the trial court denied the motions each time.

II. Standard of Review

As a threshold matter, I take this opportunity to address the State's burden and how that burden is articulated by the majority. While the bar may be low for the State to survive a motion to dismiss, it cannot be the case that a motion to dismiss for insufficiency of the evidence is a functionally pointless motion, particularly in a case such as this.[2] To survive a motion to dismiss, the State must present substantial evidence of each of the essential elements of the offense charged and that the defendant is the perpetrator of the offense. *State v. Golder*, 374 N.C. 238, 249 (2020). The test for sufficiency of the evidence is the same whether the State provides direct evidence or circumstantial evidence. *State v. Barnes*, 334 N.C. 67, 75 (1993). For circumstantial evidence, the trial court must decide whether a reasonable inference of the defendant's guilt may be drawn from the circumstances. *Id.* If the evidence is only sufficient to raise a suspicion or conjecture as to either the commission of the offense or the identity of the perpetrator, then the motion to dismiss should be allowed. *State v. Powell*, 299 N.C. 95, 98 (1980); *see also State v. Campbell*, 373 N.C. 216, 221 (2019) ("Under well-settled caselaw, evidence of a defendant's mere opportunity to commit a crime is not sufficient to send the charge to the jury."). In contrast, if the record developed at trial contains substantial evidence, whether direct or circumstantial or both, to support a finding that the offense charged has been committed and that the defendant committed it, then the case is for the jury and the motion to dismiss should be denied. *Golder*, 374 N.C. at 250. "When reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the State, resolving all conflicts in the evidence in favor of the State and giving it the benefit of all *reasonable* inferences." *State v. Tirado*, 358 N.C. 551, 582 (2004) (emphasis added).

Courts evaluate whether the State has carried its burden by utilizing the above rules in what our courts have called the "substantial evidence"

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2. Here, the State has failed to present any evidence of a timeline that supports a *reasonable* inference, beyond mere speculation, that Mr. Perry could have been the perpetrator of a theft. The rule emerging from this case is one that could, I fear, lull the State into complacency in carrying its burden, relieving the government of the burden of providing sufficient timeline evidence to support the charges it brings.

test or the "more than a scintilla of evidence" test, and our precedent states these are the same. *See, e.g.*, *State v. Weinstein*, 224 N.C. 645, 648 (1944) ("The rule is that the motion for judgment of nonsuit must be denied if there be any substantial evidence—more than a scintilla—to prove the allegations of the bill."); *Powell*, 299 N.C. at 99 ("The terms 'more than a scintilla of evidence' and 'substantial evidence' are in reality the same . . . ."); *State v. Smith*, 40 N.C. App. 72, 78 (1979) (providing an overview of how the test has been articulated by this Court and concluding, "To this day, it appears that the 'more than a scintilla of evidence' test and the 'substantial evidence' test are in reality only one test which is most frequently designated the 'substantial evidence test' "). *But see State v. Agnew*, 294 N.C. 382, 396 (1978) (Exum, J., dissenting) (asserting that "more than a scintilla of evidence" is not the true test, rather, the test is whether there is "substantial evidence—direct, circumstantial, or both—to support a finding that the offense charged has been committed and that the accused committed it" (quoting *State v. Stewart*, 292 N.C. 219, 224 (1977))).

Yet even with precedent asserting that these articulations of the test are one and the same, in application the focus on a "scintilla," as the majority employs in this case, has the potential to effectively obviate any work that a court may ever do to hold the State to any standard of sufficiency of the evidence on a motion to dismiss. That would be wrong in both a practical and a precedential sense. For example, in *Powell*, this Court elaborated on those terms and announced that "the evidence must be existing and real, not just seeming or imaginary." 299 N.C. at 99. Further, this Court has stated that "[s]ubstantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion." *State v. Mann*, 355 N.C. 294, 301 (2002) (citing *State v. Frogge*, 351 N.C. 576, 584 (2000)). A motion to dismiss for insufficient evidence is an important procedural tool that serves as a safeguard against unfounded charges reaching the jury leading to potentially unwarranted convictions.[3] Therefore, it is important that this tool not lose all use.

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3. *See generally Thompson v. City of Louisville*, 362 U.S. 199, 206 (1960) (stating that "it [is] a violation of due process to convict and punish a man without evidence of his guilt"); *Harris v. United States*, 404 U.S. 1232, 1233 (1971) ("It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged would violate due process."); Carrie Leonetti, *When the Emperor Has No Clothes: a Proposal for Defensive Summary Judgment in Criminal Cases*, 84 S. Cal. L. Rev. 661, 711 (2011) (discussing mechanisms for summary dispositions of criminal charges including the motion to dismiss and observing that "[p]ermitting a weak or even frivolous prosecution case to proceed to trial and verdict unnecessarily risks having some juries convict despite the paucity of evidence of guilt").

III. The State failed to present sufficient evidence of the robbery with a dangerous weapon charge.

Returning to the matter at hand, I would hold that the State failed to present sufficient evidence of the robbery with a dangerous weapon charge. Based on the evidence presented, the State only established that Mr. Perry had the opportunity to commit the offense and did not present sufficient evidence for a rational juror to infer that it was Mr. Perry that took Mr. Scott's property rather than anyone else in the area that had access to Mr. Scott that night.

The elements of robbery with a dangerous weapon are: "(1) the unlawful taking or an attempt to take personal property from the person or in the presence of another (2) by use of a firearm or other dangerous weapon (3) whereby the life of a person is endangered or threatened." *State v. Small*, 328 N.C. 175, 181 (1991) (quoting *State v. Beaty*, 306 N.C. 491, 496 (1982)); *see also* N.C.G.S. § 14-87(a) (2025). "Force or intimidation occasioned by the use or threatened use of firearms[ ] is the main element of the offense." *Small*, 328 N.C. at 181 (quoting *Beaty*, 306 N.C. at 496).

The majority asserts that the Court of Appeals erred in holding that this case was more similar to the facts of *State v. Moore*, 312 N.C. 607 (1985), than *State v. Baker*, 338 N.C. 526 (1994). And the majority relies heavily on the rule that "[c]ontradictions and discrepancies must be resolved in favor of the State." *See State v. Stone*, 323 N.C. 447, 452 (1988) (quoting *State v. Bullard*, 312 N.C. 129, 160 (1984)). I disagree with the majority's analysis and would hold that the Court of Appeals applied our precedent correctly.

In *Moore*, the defendant was convicted of robbery with a dangerous weapon based upon a sexual assault at knifepoint when the victim was working alone in a store. 312 N.C. at 608–09. After the assault, the victim left the store to seek help and left the back door unlocked. *Id.* at 609–10. The victim only discovered that her wallet was missing from her purse when she returned. *Id.* at 610. Around two hours elapsed between the time of the attack and the time when the victim noticed her wallet was missing and approximately forty to forty-five minutes passed from the time the victim left the store until police arrived. *Id.* at 610, 612. The Court concluded that the evidence proved that the defendant had the opportunity to have taken the money but also proved that "[a]nyone in the vicinity . . . could have entered the store during this time and taken the wallet"; thus, the Court determined that the defendant's conviction of robbery with a dangerous weapon could not stand. *Id.* at 613.

And in *Baker*, the victim, also a shopkeeper like the victim in *Moore*, was seen outside the store being forcibly held by the defendant around thirty minutes before it was discovered that money had been taken from the cash register. 338 N.C. at 560. The Court determined that the evidence supported the inference that the abduction and the taking were essentially "a continuous chain of events" and held that the motion to dismiss the robbery charge was properly denied. *Id.* at 561.

The majority concludes that this case is unlike *Moore*, where there was a minimum timeframe of at least forty minutes when the store was unattended, and more like *Baker*, "a continuous chain of events," because the State's evidence "tended to show that [Mr.] Scott and his attackers had direct access to the missing property during the relevant timeframe." But that conclusion disregards the fact that the State failed to present *any* evidence of a reasonably short timeframe like the circumstances of *Baker*. Even viewing the evidence in the light most favorable to the State and accepting as true that Mr. Scott realized he was missing his possessions when he woke up in the road and not at the hospital, there is still an indeterminate amount of time that Mr. Scott was lying out in the road before waking up and getting a ride home. This was not a continuous chain of events like in *Baker*. Rather, while Mr. Scott was unconscious, he was vulnerable to the general public in addition to Mr. Perry or the other assailants. Therefore, likening the sufficiency of the evidence in this case to the sufficiency of the evidence presented in *Moore*, the Court of Appeals correctly held that the evidence presented by the State proved nothing more than the fact that Mr. Perry had the opportunity to take the property from Mr. Scott. And as this Court has determined, "evidence of a defendant's mere opportunity to commit a crime is not sufficient to send the charge to the jury." *Campbell*, 373 N.C. at 221.

And while the State may have presented evidence of Mr. Perry's prior similar offense to support an inference of Mr. Perry's intent, that evidence does not transform the State's evidence from showing a "mere opportunity" into a "reasonable inference" that he was, in fact, the perpetrator. *See id.*; *Barnes*, 334 N.C. at 75; *see also* N.C.G.S. § 8C-1, Rule 404(b) (2025) ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith."). Specifically, this Court has held that evidence of opportunity and intent can be sufficient to show that a defendant was the perpetrator of a robbery *where evidence is also presented that suggests the defendant possessed the taken property*. *See, e.g.*, *State v. Dover*, 381 N.C. 535, 548–51 (2022) (emphasis added) (holding that

the evidence was sufficient to support the reasonable inference that the defendant was the perpetrator of a robbery where the evidence tended to show that the defendant had the opportunity to commit the offense, had prior financial struggles indicating a motive, and was in possession of a large amount of money after the victim's money was stolen); *see also*, *e.g.*, *State v. Evans*, 279 N.C. 447, 452 (1971) (stating in dicta that "[p]roof of the defendant's presence in a place of business, his possession therein of a firearm and his intent to commit the offense of robbery is not sufficient to support a conviction of the offense described in G.S. 14-87, for it omits the essential elements of (1) a taking or attempt to take personal property, and (2) the endangering or threatening of the life of a person"). In this matter, no evidence was presented creating an inference that Mr. Perry possessed Mr. Scott's property, thus the Rule 404(b) evidence does not tip the balance of this test in the State's favor.[4]

Additionally, this Court's holding in *State v. Murphy*, 225 N.C. 115 (1945), supports a conclusion that the State failed to present sufficient evidence of the robbery charge. In *Murphy*, the victim was assaulted while riding his bike home and was left unconscious in the street for an indeterminate amount of time. 225 N.C. at 115–16. Two women later moved the victim to a porch, and the victim woke up after around ten minutes and discovered that the money he had been carrying was missing. *Id.* at 116. The Court determined that "the evidence disclose[d] no more than an opportunity for the defendants to take the money" and also showed "an equal opportunity for others to have taken the money." *Id.* at 117. Therefore, the Court stated that "[u]nder such circumstances to find that any particular person took the money is to enter the realm of speculation" and held that the State did not present sufficient evidence to sustain the robbery charge against the defendants. *Id.* The same result must follow here.

Finally, I wish to clarify the majority's assertion that "it is a *defendant's* burden to present evidence identifying an alternative perpetrator." While I agree that our caselaw states that "[w]here evidence 'is proffered to show that someone other than the defendant committed the crime charged, admission of the evidence must do more than

4. To be clear, we are not arguing that possession of the stolen property is a required element of robbery with a dangerous weapon. However, in cases where the State's evidence was weak, like it is here, our Court has treated possession as significant. Our point is to emphasize how the State's 404(b) intent evidence and the lacking timeline evidence (supporting that Mr. Perry had more than the "mere opportunity" to be the perpetrator) are not enough for the State to survive a motion to dismiss.

create mere conjecture of another's guilt in order to be relevant,' " *State v. Abbitt*, 385 N.C. 28, 40 (2023) (quoting *State v. McNeill*, 326 N.C. 712, 721 (1990)), that legal statement is irrelevant to the case at hand. Mr. Perry's argument is simply that the State failed to present sufficient evidence to create a timeline narrow enough to support a reasonable inference that Mr. Perry had more than just an opportunity to be the perpetrator of this offense.

The State bears the burden of presenting sufficient evidence and, unless we implicitly overrule *Moore* and *Murphy*, the State had the burden here to establish a timeline tight enough to make reasonable for a jury the inference that it was Mr. Perry, and not someone else, who committed the crime. The State could have elicited testimony from the passerby who gave Mr. Scott a ride home, from his niece who he chatted with once he arrived at home, or from hospital staff.[5] If the State had done so, my position in this matter may have been different because evidence that narrowed the timeline on opportunity would affect the reasonableness of the inference jurors were asked to make. But as it stands, I would hold that the State failed to carry its burden.

Accordingly, on these facts, the State has failed to meet its burden to show that Mr. Perry was the perpetrator of the robbery offense and the Court of Appeals did not err in vacating Mr. Perry's conviction of robbery with a dangerous weapon. Therefore, I respectfully dissent.

Justice EARLS joins in this dissenting opinion.

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5. The trial transcripts demonstrate the State called several witnesses who, at least in theory, could have provided timeline evidence that answered the reasonableness question, including Mr. Scott; Dr. MacNeill, an emergency medicine physician who treated Mr. Scott when he went to the hospital for his injuries during the night of the incident; Dr. Korn, a plastic surgeon who Mr. Scott was referred to on that night or shortly thereafter; and Detective John Cramer, the police investigator assigned to the case who interviewed Mr. Scott. The passerby that gave Mr. Scott a ride and Mr. Scott's niece were not called as witnesses. The State failed to elicit *any* testimony—that parties in this matter could have likely provided—clarifying the duration of time between the assault occurring and Mr. Scott noticing his possessions were missing.

STATE v. THOMAS

[389 N.C. 105 (2026)]

STATE OF NORTH CAROLINA
v.
QUANTEZ LASHAY THOMAS

No. 262PA24

Filed 20 March 2026

Sentencing—harsher punishment following successful appeal—original minimum sentence erroneously undercalculated—proper punishment imposed after second trial

In a prosecution where defendant's multiple convictions on charges arising from a string of motor vehicle and credit card thefts were consolidated into two judgments for sentencing and where, on one consolidated judgment, the trial court erroneously undercalculated defendant's minimum sentence under the Structured Sentencing Act (SSA) after his first trial, the prohibition on imposing a harsher punishment following a criminal defendant's successful appeal (as set forth in N.C.G.S. § 15A-1335) was not offended when the trial court imposed the proper, lawful minimum sentence after defendant's second trial. While both the SSA and section 15A-1335 appeared applicable to defendant's resentencing, the former controlled because it provided more specific sentencing criteria than the latter. Thus, on remand, the trial court was required to enter a harsher sentence than defendant's original sentence in order to comply with the SSA because courts may not impose illegal sentences.

Justice DIETZ dissenting.

Justice RIGGS dissenting.

Justice EARLS joins in this dissenting opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 295 N.C. App. 269, 905 S.E.2d 106 (2024), affirming judgments entered on 19 August 2022 by Judge R. Stuart Albright in Superior Court, Guilford County. Heard in the Supreme Court on 17 September 2025.

Jeff Jackson, Attorney General, by Benjamin T. Spangler, Assistant Attorney General, for the State-appellee.

Gilda C. Rodriguez for defendant-appellant.

NEWBY, Chief Justice.

Today we consider whether a criminal defendant who successfully appeals his original sentence may receive a harsher punishment on remand. In rare instances, the answer is yes. This case—in which the trial court erroneously undercalculated defendant's minimum sentence after his first trial, then rectified its mistake by imposing the proper, lawful punishment after his second trial—presents one such scenario. Because courts may not impose illegal sentences, the trial court was required to modify defendant's sentence to comply with our legislature's mandatory felony sentencing framework. We therefore affirm the decision of the Court of Appeals upholding defendant's corrected sentence.

In 2019, a Guilford County grand jury indicted defendant on charges related to a string of motor vehicle and credit card thefts. *See generally State v. Thomas* (*Thomas II*), 295 N.C. App. 269, 270–73, 905 S.E.2d 106, 108–10 (2024) (describing the underlying facts in greater detail). At trial, defendant opted to waive his right to counsel and proceeded *pro se*. The jury convicted him of thirteen offenses,[1] which the trial court consolidated into two judgments for sentencing purposes. The trial court had discretion as to which offenses it consolidated for sentencing. N.C.G.S. § 15A-1340.22(b) (2025). Once the offenses had been consolidated, however, the trial court was required to apply a punishment authorized by the North Carolina Structured Sentencing Act, also known as the structured sentencing framework. *See generally id.* §§ 15A-1340.10–1340.23.

Under the structured sentencing framework, the sentence imposed in a consolidated judgment "shall be consistent with" the punishment appropriate "for the most serious offense" in the group. *Id.* § 15A-1340.22(b). Accordingly, for the first judgment—structured around defendant's felony larceny conviction, the most serious offense in the first group—the trial court assigned defendant nine prior record level points, classified him as a prior record level III offender, and sentenced him to sixty-seven to ninety-three months in prison.

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1. The trial court erroneously sentenced defendant on fourteen counts rather than thirteen. *See State v. Thomas* (*Thomas I*), No. COA20-814, slip op. at 7 n.1 (N.C. Ct. App. Feb. 15, 2022) (unpublished) ("Defendant also contends the trial court erred by sentencing [d]efendant for an offense for which he had not been convicted. . . . Because of our disposition here, we do not reach this issue.").

In the second judgment, the one at issue here, the trial court again structured the sentence around the judgment's most serious offense: one of defendant's convictions for breaking or entering a motor vehicle. *See id.* As with the first judgment, the trial court assigned defendant nine prior record points, classified him as a prior record level III offender, and sentenced him to twenty-six to forty-four months in prison. As we explain below, this calculation was error.

Defendant appealed to the Court of Appeals. *See Thomas I*, slip op. at 1–2. The Court of Appeals held that the trial court had erred by accepting defendant's waiver of counsel and that this error had prejudiced defendant at trial. *Id.* at 9–14. Therefore, the court remanded for a new trial. *Id.* at 14. Although not pertinent to the waiver issue, the Court of Appeals also noted a few mistakes in the consolidated judgments:

> The written judgment included an order for [d]efendant to serve an active sentence for three convictions of felonious breaking [or] entering a motor vehicle, when [d]efendant was only convicted of two such charges. In addition, [d]efendant was convicted of three counts of misdemeanor larceny, but the trial court only sentenced him on two counts.

Id. at 7; *see also Thomas II*, 295 N.C. App. at 272 n.2, 905 S.E.2d at 109 n.2 ("The trial court made a clerical error in its judgments after the first trial, but in light of our disposition, we did not reach that issue in *Thomas I*.").

At defendant's second trial, the jury found him guilty of eight charges. The trial court again consolidated the verdicts into two judgments. It structured the first judgment around defendant's charge for possession of a stolen motor vehicle, an offense that carried a punishment identical to felony larceny. *See* N.C.G.S. §§ 14-71.2, 14-72, 15A-1340.17(c) (2025). For this judgment, the trial court assigned defendant nine prior record points, classified him as a prior record level III offender, and sentenced him to sixty-seven to ninety-three months in prison, exactly as it had done after defendant's first trial. Defendant does not contest the propriety of this sentence.

In the second judgment, the one that defendant challenges at this Court, the trial court again structured the consolidated sentence around defendant's conviction for breaking or entering a motor vehicle. But the trial court corrected its earlier error by assigning defendant *ten* prior record points instead of nine, apparently recognizing that because defendant had been convicted of a prior offense with "all the elements of the present offense"—that is, breaking or entering a motor vehicle—it was

required by law to impose an additional point. *Id.* § 15A-1340.14(b)(6). The extra point should have applied at defendant's first sentencing as well, since at both sentencings the trial court consolidated the judgment at issue around the same crime, breaking or entering a motor vehicle.

The additional point raised defendant's prior record level from III to IV. *See id.* § 15A-1340.14(c)(3)–(4) (defining level III as "[a]t least [six], but not more than [nine] points," and level IV as "[a]t least [ten], but not more than [thirteen] points"). In accordance with this classification, the trial court imposed a correctly calculated sentence at the bottom of the level IV sentencing range: thirty to forty-eight months.[2]

Defendant appealed to the Court of Appeals for a second time. He argued there, *inter alia*, that the trial court had violated section 15A-1335 of the General Statutes when it resentenced him to a longer prison term. This statute, which applies on remand following a criminal defendant's successful appeal for a new trial, "prophylactically" shields the defendant from "judicial vindictiveness" during resentencing. *State v. Schalow*, 379 N.C. 639, 647, 866 S.E.2d 417, 422 (2021) (emphasis omitted). Section 15A-1335 provides that if the new trial results in a conviction "for the same offense, or for a different offense based on the same conduct," the trial court "may not impose a new sentence . . . more severe than the prior sentence." N.C.G.S. § 15A-1335 (2025).

The Court of Appeals rejected defendant's argument that the trial court had violated section 15A-1335 here. *Thomas II*, 295 N.C. App. at 280, 905 S.E.2d at 114. The Court of Appeals noted that "defendant did not challenge the merits of" the tenth point, but simply contested "whether the point was statutorily required." *Id.* (citation modified). Citing its own precedent, the court explained that "where the trial court is required by statute to impose a particular sentence, section 15A-1335 does not apply to prevent the imposition of a more severe sentence." *Id.* (citation modified). Defendant filed a petition for discretionary review on this question, which this Court allowed.

The issue presented is whether section 15A-1335 prohibited the trial court in this case from resentencing defendant to a harsher prison term. Put differently, when the respective requirements of section 15A-1335 and structured sentencing conflict with one another, how must the trial court resolve the discrepancy? Questions of statutory interpretation

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2. Defendant was convicted of fewer offenses at his second trial than at his first trial. Nonetheless, the trial court used the same consolidation of offenses as it had used at his first trial.

receive de novo review. *Morris v. Rodeberg*, 385 N.C. 405, 409, 895 S.E.2d 328, 331 (2023).

We begin with a brief outline of felony sentencing in North Carolina. Most felony offenders are sentenced under the structured sentencing framework. *See* N.C.G.S. § 15A-1340.10 (2025) (listing the exceptions). By enacting these comprehensive and detailed requirements, the General Assembly "intended to produce consistency in criminal sentencing" and "ensure punishment is commensurate with the injury the offense has caused, taking into account factors that may diminish or increase the offender's culpability." *State v. Norris*, 360 N.C. 507, 511, 630 S.E.2d 915, 917 (2006) (citation modified). Structured sentencing accomplishes this task

> by requiring that trial courts specify minimum and maximum terms of imprisonment for felony convictions. A sentencing chart makes the potential minimum sentences available in a given case contingent on the offense class of the felony (A–I) and the defendant's prior record level (I–VI). For each combination of offense class and prior record level, the chart sets forth potential minimum sentences in aggravated, presumptive, and mitigated ranges.

Id. at 511–12, 630 S.E.2d at 917–18 (internal citations and quotation marks omitted). Importantly, after the trial court calculates the offense class and prior record level, it "*must* select a minimum sentence from the presumptive range unless it determines aggravating factors justify a more severe sentence or mitigating factors warrant a less severe sentence." *Id.* at 512, 630 S.E.2d at 918 (emphasis added) (citing N.C.G.S. § 15A-1340.16(b) (2005)).

The rigidity of the structured sentencing calculus is deliberate. *See id.* at 511, 630 S.E.2d at 917 ("North Carolina's move away from indeterminate sentencing resulted from 'a perceived evil of disparate sentencing, and . . . a perceived problem in affording trial judges and parole authorities unbridled discretion in imposing sentences.' " (alteration in original) (quoting *State v. Allen*, 359 N.C. 425, 430, 615 S.E.2d 256, 260 (2005), *withdrawn on other grounds*, 360 N.C. 569, 635 S.E.2d 899 (2006) (order)). Still, "trial courts retain considerable discretion during sentencing" as long as they comply with the statutory framework. *Id.* Thus, any deviation from the structured sentencing framework must be authorized by the framework itself.

That brings us to defendant's case and his challenge to the second consolidated judgment entered at his second sentencing. At defendant's first sentencing, the trial court determined that defendant's conviction for breaking or entering a motor vehicle must be raised to Class E because of defendant's habitual felon status. *See* N.C.G.S. § 14-56(a1) (2019) (categorizing the offense as Class I);[3] N.C.G.S. § 14-7.6 (2025) (providing that habitual felons "must . . . be sentenced at a felony class level that is four classes higher than the principal felony," up to Class C). The trial court then erroneously determined that defendant had nine prior record points, making him a prior record level III offender. *See* N.C.G.S. § 15A-1340.14(c) (2025) (defining level III as "[a]t least [six], but not more than [nine] points"). In the absence of aggravating or mitigating factors, a prior record level III offender who commits a Class E felony must be sentenced to a minimum of twenty-six to thirty-three months. *Id.* § 15A-1340.17(c). Accordingly, the trial court sentenced defendant to a minimum of twenty-six months for this offense.

Following defendant's second trial, the trial court determined again that defendant's habitual felon status raised his breaking or entering a motor vehicle charge to a Class E offense. But the trial court then correctly calculated that defendant had *ten* prior record points, not nine, because all the elements of breaking or entering a motor vehicle had been present in a prior offense. *See id.* § 15A-1340.14(b)(6). Because of the extra point, the trial court concluded that defendant was a prior record level IV offender. *See id.* § 15A-1340.14(c)(4) (defining level IV as "[a]t least [ten], but not more than [thirteen] points"). Therefore, the trial court sentenced defendant to a minimum term of thirty months—the lowest possible punishment for a Class E felony committed by a prior record level IV offender. *See id.* § 15A-1340.17(c).

The trial court did not have discretion to omit the extra point, even though the point's addition shifted defendant to level IV and increased his minimum prison term. *See id.* § 15A-1340.13(c) ("The judgment of the court shall contain a minimum term of imprisonment that is consistent with the class of offense for which the sentence is being imposed and with the prior record level for the offender."). The trial court's failure to include the tenth point during defendant's first sentencing was error that resulted in the imposition of an illegal sentence.

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3. Defendant committed this offense in 2019. Therefore, the General Assembly's subsequent repeal of subsection 14-56(a1) does not affect his case. *See* N.C.G.S. § 14-56(a1) (2025) ("Repealed by S.L. 2023-151, § 1(a), effective 1 December 2023, and applicable to offenses committed on or after that date." (citation modified)).

We turn now to defendant's argument that section 15A-1335 barred the trial court from sentencing him more severely on remand. In pertinent part, this statute reads:

> When a conviction or sentence imposed in superior court has been set aside on direct review or collateral attack, the court may not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence less the portion of the prior sentence previously served.

Id. § 15A-1335.

Defendant submits that the trial court could not have imposed a harsher sentence after his second trial without violating the plain text of section 15A-1335. To support this assertion, he notes that the structured sentencing framework is not absolute: "The . . . minimum term of imprisonment shall be within the range specified for the class of offense and prior record level, *unless applicable statutes require or authorize another minimum sentence of imprisonment*." *Id.* § 15A-1340.13(b) (emphasis added). Therefore, defendant suggests that a conflict between structured sentencing and section 15A-1335 must be resolved in the latter's favor because it is an "applicable statute[ ]" to which the former yields. *Id.*

We disagree. "This Court adheres to the long-standing principle that when two statutes arguably address the same issue, one in specific terms and the other generally, the specific statute controls." *High Rock Lake Partners, LLC v. N.C. Dep't of Transp.*, 366 N.C. 315, 322, 735 S.E.2d 300, 305 (2012); *see also State v. Baldwin*, 205 N.C. 174, 175, 170 S.E. 645, 646 (1933) (applying the same canon in the criminal-law context). In this case, both the structured sentencing framework and section 15A-1335 appear applicable to defendant's resentencing. The former, however, undoubtedly provides more specific criteria than the latter. Indeed, specificity and consistency lie at the heart of structured sentencing. *See Allen*, 359 N.C. at 431, 615 S.E.2d at 260–61 (explaining that "the Structured Sentencing Act repealed . . . and remedied many of the perceived weaknesses of . . . earlier legislation" that had "not controlled the sentence disposition . . . and set only a presumptive prison/jail term" (citation modified)). Because the structured sentencing framework prevails, trial courts must adhere to its requirements.

To be sure, a literal interpretation of section 15A-1335 would prohibit trial courts from *ever* imposing harsher sentences on remand. *See*

N.C.G.S. § 15A-1335 (2025) ("[T]he court may not impose a new sentence . . . more severe than the prior sentence . . . ."). But "[l]iteralism is not proper textual analysis." *Happel v. Guilford Cnty. Bd. of Educ.*, 387 N.C. 186, 206, 913 S.E.2d 174, 191 (2025). Here, among other issues, a literal reading of section 15A-1335 would likely violate the constitutional separation of powers. "Because the legislature has the exclusive authority to prescribe the punishments for crimes, any sentence ordered by the judicial branch and enforced by the executive branch must be within the parameters established by the legislature." *State v. Whitehead*, 365 N.C. 444, 446, 722 S.E.2d 492, 494 (2012); *see also State v. Tirado*, 387 N.C. 104, 120, 911 S.E.2d 51, 64 (2025) (noting the General Assembly's constitutional "prerogative to prescribe criminal punishment").

Both this Court and the Court of Appeals have highlighted the importance of correcting criminal punishments that conflict with the requirements set by our General Assembly.[4] *See*, *e.g.*, *Whitehead*, 365 N.C. at 446–47, 722 S.E.2d at 494–95 (first citing *State v. Ellis*, 361 N.C. 200, 205–06, 639 S.E.2d 425, 428–29 (2007); and then citing *State v. Roberts*, 351 N.C. 325, 327, 523 S.E.2d 417, 418 (2000)); *State v. Wall*, 348 N.C. 671, 675–76, 502 S.E.2d 585, 588 (1998); *State v. Powell*, 231 N.C. App. 129, 133, 750 S.E.2d 899, 902 (2013); *State v. Cook*, 225 N.C. App. 745, 747–48, 738 S.E.2d 773, 775 (2013); *State v. Holt*, 144 N.C. App. 112, 116–17, 547 S.E.2d 148, 152 (2001), *disc. rev. improvidently allowed*, 355 N.C. 347, 560 S.E.2d 793 (2002) (per curiam). For example, in *Roberts* this Court explained that it had been proper for the trial court to amend the defendant's initial, illegal sentence to make it comply with the structured sentencing framework:

> Defendant contends the resentencing by [the trial court] was improper. We disagree. *Trial courts are required to enter criminal judgments consistent with the provisions of the Structured Sentencing Act.* The General Statutes clearly provide that a sentence of unauthorized duration can be modified. . . . The original sentence . . . violated the Structured

4. As the second dissenting opinion notes, "[t]he Court of Appeals has had even more opportunity" than this Court to consider the application of section 15A-1335. Indeed, for nearly four decades our Court of Appeals has recognized "where the trial court is required by statute to impose a particular sentence on resentencing, section 15A-1335 does not apply to prevent the imposition of a more severe sentence." *State v. Kirkpatrick*, 89 N.C. App. 353, 355, 365 S.E.2d 640, 641 (1988) (citation modified). The rule we adopt today aligns with that longstanding precedent.

> Sentencing Act. Therefore, the resentencing by [the trial court] was proper in the instant case.

351 N.C. at 327, 523 S.E.2d at 418 (emphasis added) (citations omitted).

Defendant relies primarily on this Court's decision in *State v. Wagner*, 356 N.C. 599, 572 S.E.2d 777 (2002) (per curiam), which he argues "was directly contrary to" the outcome the Court of Appeals reached in his case. In *Wagner*, the trial court classified the defendant as a prior record level VI offender during both his initial and remanded sentencings. *Id.* at 600, 572 S.E.2d at 778. Despite using the same classification at both sentencings, the trial court sentenced the defendant to an additional thirty-four months on remand for the same offense. *Id.*

This Court reversed. *Id.* at 603, 572 S.E.2d at 780. It began by quoting and then paraphrasing section 15A-1335: "Pursuant to this statute a defendant whose sentence has been successfully challenged cannot receive a more severe sentence for the same offense or conduct on remand." *Id.* at 602, 572 S.E.2d at 779. Ultimately, however, this Court arrived at a fact-specific conclusion: "*In this case* [section] 15A-1335 is an applicable statute requiring 'another minimum sentence of imprisonment.' " *Id.* at 602, 572 S.E.2d at 780 (emphasis added) (quoting N.C.G.S. § 15A-1340.13(b) (2001)). This Court did not interpret section 15A-1335 as an absolute bar on harsher resentencing, as defendant argues.

The constraint on *Wagner*'s holding is crucial because that case involved a pair of sentences that were each *within* the authorized statutory range. The General Assembly contemplated that such decisions would be best left to the sound discretion of the trial court. *See* N.C.G.S. § 15A-1340.17(c)(2) (2025) (permitting the trial court to impose "any minimum sentence" in the presumptive range). The role of section 15A-1335 is to prohibit trial courts from using that discretion vindictively. *See North Carolina v. Pearce*, 395 U.S. 711, 725, 89 S. Ct. 2072, 2080 (1969) ("Due process of law . . . requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial."); *Schalow*, 379 N.C. at 647, 866 S.E.2d at 422 ("Section 15A-1335 was enacted specifically to prevent vindictiveness arising from repeated prosecutions under *Pearce* and its progeny."). Neither discretion nor vindictiveness occurred in the instant case. Rather, the disparity between defendant's sentences resulted from the trial court's correction of an earlier, objective error. Because *Wagner* did not grapple with the application of section 15A-1335 in non-discretionary matters, it does not control the outcome here.

"Section 15A-1335 is mandatory." *Schalow*, 379 N.C. at 647, 866 S.E.2d at 422. We do not suggest otherwise; to the contrary, we emphasize the narrowness of our holding. In the vast majority of new trials that result from successful criminal appeals, section 15A-1335 will prohibit the trial court from imposing a harsher sentence. But our task in this case is not so simple. Instead, we must determine what happens in the rare event section 15A-1335 clashes with the structured sentencing framework, which is a statutory requirement in its own right. *See Norris*, 360 N.C. at 512, 630 S.E.2d at 918. It is with this question in mind we conclude the more specific structured sentencing provisions govern.

A different ruling could effectively authorize—indeed, *require*—the trial court to enter a second illegal sentence if it made so much as an inadvertent counting error in the first.[5] That outcome would be at odds with the constitutional text, our precedent, and our basic logical intuition. *See*, *e.g.*, *Tirado*, 387 N.C. at 117, 911 S.E.2d at 62 (explaining that the state constitution's Cruel or Unusual Punishments Clause would have been understood at the time of its enactment "to protect against abuses of judicial power in the form of illegal and arbitrary sentencing practices"); *Roberts*, 351 N.C. at 327, 523 S.E.2d at 418 ("The General

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5. Both dissents highlight the State's failure to appeal from the initial sentencing miscalculation. These are valid concerns: when a litigant does not appeal a final judgment, the unchallenged decision ordinarily binds subsequent proceedings in the same case. *See*, *e.g.*, *State v. Summers*, 351 N.C. 620, 622, 528 S.E.2d 17, 20 (2000) (explaining the rationales behind "[t]he companion doctrines of *res judicata* and collateral estoppel" (quoting *Thomas M. McInnis & Assocs. v. Hall*, 318 N.C. 421, 427, 349 S.E.2d 552, 556 (1986))). "When a fact has been *agreed upon or decided* in a court of record, neither of the parties shall be allowed to call it in question, and have it tried over again at any time thereafter, so long as the judgment or decree stands unreversed." *Id.* at 623, 528 S.E.2d at 20 (emphasis added) (quoting *King v. Grindstaff*, 284 N.C. 348, 355, 200 S.E.2d 799, 805 (1973)).

Such limitations do not apply to the trial court's well-settled, inherent "power to correct its records to speak the truth," which includes the ability to correct "clerical errors." *State v. Cagle*, 241 N.C. 134, 139, 84 S.E.2d 649, 653–54 (1954) (collecting cases). A clerical error is one "resulting from a minor mistake or inadvertence *and not from judicial reasoning or determination*." *Clerical Error*, *Black's Law Dictionary* (12th ed. 2024) (emphasis added). This was the sort of objective mistake the trial court made when it undercalculated defendant's initial sentence here. Because the trial court's error was not the product of judicial reasoning, the State's failure to appeal it did not trigger our usual law-of-the-case doctrine. *See Cagle*, 241 N.C. at 139, 84 S.E.2d at 653 (noting that the trial court is not entitled to correct "errors of law"); *State v. Jarman*, 140 N.C. App. 198, 203, 535 S.E.2d 875, 879 (2000) (holding that the trial court could correct its earlier "mechanical and routine, though mistaken, application of a statutory mandate"). *Cf. Summers*, 351 N.C. at 622, 528 S.E.2d at 20 ("[The trial court] made findings of fact supporting [its] conclusion of law . . . and, *on that basis*, dismissed the revocation order. The State did not appeal the trial court's ruling, which accordingly became the law of the case." (emphasis added)).

Statutes clearly provide that a sentence of unauthorized duration can be modified."); *Happel*, 387 N.C. at 206, 913 S.E.2d at 191 ("[W]e must reject [statutory] readings that defy our common sense.").

The facts of this case created the perfect storm. Because all the elements of the second judgment's lead felony were included in a prior offense, the trial court should have added another prior record point at defendant's first sentencing. Because the trial court should have added another prior record point at defendant's first sentencing, defendant should have been assigned ten total points then. Because defendant should have been assigned ten total points then, he should have been categorized as a prior record level IV offender. And because he should have been categorized as a prior record level IV offender, he should have been sentenced to a minimum of thirty months for his commission of a Class E felony.

Taken as a whole, these circumstances led to an unusual but necessary outcome: the imposition of a harsher sentence on remand. The decision of the Court of Appeals is affirmed.

AFFIRMED.

Justice DIETZ dissenting.

I agree with the majority that "courts may not impose illegal sentences." Thus, in rare cases, a trial court could be required to impose a harsher sentence on remand despite the general statutory prohibition in N.C.G.S. § 15A-1335. But here, the original sentence is not illegal. This is where the majority misunderstands the import of the State's decision not to appeal that original judgment.

Like any other litigant, when the State has a right to appeal from a final judgment but does not do so, it is stuck with the trial court's legal ruling in that case. *Williams v. Asheville Contracting Co.*, 257 N.C. 769, 771 (1962). This is because, after entry of a final judgment, all legal matters for which no appeal is taken become what this Court has described as "the law of the case." *Id.* This form of law of the case is different from the more traditional form, which binds a lower court to a higher court's adjudication of legal issues in the case. *See State v. Lewis*, 365 N.C. 488, 504–05 (2012). Instead, this variant acts as a form of intra-case issue preclusion at all levels, prohibiting litigants from disputing legal rulings that they could have appealed after final judgment, but chose not to. *See*

Williams, 257 N.C. at 771. In other words, as the Court of Appeals has succinctly explained, "when a party fails to appeal from a tribunal's decision that is not interlocutory, the decision below becomes 'the law of the case' and cannot be challenged in subsequent proceedings in the same case." *Boje v. D.W.I.T., L.L.C.*, 195 N.C. App. 118, 122 (2009).

Applying this precedent here, the miscalculated prior record level is not an *error* in the case, it is the *law* of the case because the State could have cross-appealed and challenged the mistaken prior record level calculation. When the State chose not to do so, that portion of the trial court's judgment became the law of the case and binding in further proceedings.[1] *Id.* As a result, the trial court was required to adhere to N.C.G.S. § 15A-1335 and impose the same sentence on remand because the initial sentence was not an illegal one as between the parties in this case.

My dissenting colleagues generally agree that the State cannot challenge the initial sentence, but they reach this conclusion on the ground that the State's argument is not preserved for appellate review. I think preservation is a more difficult approach here because, by statute, an error in calculating a defendant's prior record level is automatically preserved for appellate review "even though no objection or motion has been made in the trial division." N.C.G.S. § 15A-1446(d) (2025). Now, to be fair, preservation is generally viewed as a procedural matter and, with respect to procedural matters, it is the Rules of Appellate Procedure, not the General Statutes, that control. *See* N.C. Const. art. IV, § 13(2). But there is also the reality that the State has prevailed at every stage of this case as it bounced between trial and appellate courts. As the appellee in all these appeals, the State doesn't really have any obligation to preserve its arguments. *See* N.C. R. App. P. 28(c); *Shore v. Brown*, 324 N.C. 427, 428 (1989).

In short, I do not view this as an issue *preservation* problem. Instead, it is an issue *preclusion* problem stemming from the State's choice not to appeal the trial court's initial final judgment, thus giving that judgment preclusive effect in all further proceedings in the same case. *See Williams*, 257 N.C. at 771. Because this preclusive effect means the trial court's initial sentence was not an unlawful sentence as between the

1. This variant of "law of the case" doctrine can be more complicated in criminal cases because criminal defendants are permitted in certain circumstances to collaterally attack a judgment against them even if they failed to appeal the judgment. *See, e.g.*, N.C.G.S. §§ 15A-1411 (motion for appropriate relief), 17-1 (2025) (habeas corpus). But with respect to the State, there are no exceptions to the general rule.

parties in this case, I would reverse the decision of the Court of Appeals and remand for entry of the same sentence Thomas received following his initial conviction.

Justice RIGGS dissenting.

The majority admits at least one troubling part of its ruling: that, contrary to an explicit North Carolina statute prohibiting exactly this, a criminal defendant who successfully appealed his original sentence will now receive a harsher punishment on remand. The disincentive this creates for litigants to appeal incorrect trial court rulings (and thus for the trust in our judicial system to be bolstered by the appellate review process) is significant. Further, it runs contrary to the constitutional principles underlying our legislature's decision to enact N.C.G.S. § 15A-1335 to codify the United States Supreme Court case in *North Carolina v. Pearce*, 395 U.S. 711 (1969), holding that states should be cautious in endorsing or allowing even the appearance of prosecutorial or judicial vindictiveness in sentencing following a successful appeal. Indeed, as is the legislature's right, it enacted a statute, N.C.G.S. § 15A-1335, which is even more protective than the United States Supreme Court decision it sets out to embody.

The overused saying that "bad facts make bad law" is particularly fitting here, where even a purportedly unusual or rare outcome like the one in this case will having lasting, broad, and predictable effects: our courts will punish a criminal defendant should he or she successfully appeal based on errors that a trial court made in the sentencing phase, even if the State itself does not appeal those initial errors and that initial sentencing becomes the law of the case. That outcome contradicts the plain language of N.C.G.S. § 15A-1335 and our structured sentencing laws, which anticipate the interplay between and need to harmonize the two statutory frameworks. The majority holds that the trial court was required to modify Mr. Thomas's sentence to comply with our legislature's structured sentencing framework—but the majority identifies an unpreserved error in the initial sentencing. That is not an actionable error for us to correct.

The Structured Sentencing Act did not apply in the same way at Mr. Thomas's resentencing as it did in his initial sentencing. On remand, N.C.G.S. § 15A-1335 was triggered to cap the maximum sentence that Mr. Thomas could have been given and the new sentence could not exceed the original sentence. The trial court acting on remand was bound by

our state's prohibition against a more severe sentence following a successful appeal. Thus, the majority, by acting improperly to correct an error not appealed or preserved, demands an unlawful sentence in violation of Mr. Thomas's due process rights. For those reasons, I respectfully dissent.

I. Factual and Procedural Background

In July 2019, defendant Quantez Lashay Thomas was indicted for a string of vehicle-related offenses, credit card thefts, and attaining habitual felon status. On 17 February 2020, a jury found Mr. Thomas guilty of thirteen of the charged offenses plus attaining habitual felon status, and the trial court consolidated the convictions into two judgments. In the first judgment, the trial court consolidated convictions for felony larceny, breaking or entering a motor vehicle, two counts of obtaining property by false pretenses, possession of a stolen motor vehicle, and attaining habitual felon status. The court sentenced Mr. Thomas as a prior record level III offender with nine prior record points to 67 to 93 months of imprisonment.

In the second judgment, the trial court consolidated convictions for two counts of breaking or entering a motor vehicle, three counts of financial card theft, two counts of misdemeanor larceny, and one count of misdemeanor fleeing to elude arrest with a motor vehicle. The court sentenced Mr. Thomas as a prior record level III offender with habitual felon status and nine prior record points to 26 to 44 months of imprisonment. The breaking or entering a motor vehicle conviction was punished as a Class E felony because of Mr. Thomas's habitual felon status. In total, Mr. Thomas was sentenced to 93 to 137 months.

Mr. Thomas appealed on grounds that the trial court erred by conducting a competency hearing at the same time as the arraignment hearing and constitutionally erred by failing to advise him of all the permissible punishments for the charges against him. *State v. Thomas* (*Thomas I*), No. COA20-814, slip op. at 7 (N.C. Ct. App. Feb. 15, 2022) (unpublished). On 15 February 2022, the Court of Appeals issued its unanimous opinion, concluding that Mr. Thomas was not properly advised of the maximum punishment he faced during a required waiver of counsel inquiry. *Id.* at *12. That is, the Court of Appeals recognized that Mr. Thomas's Sixth Amendment rights were violated, recognized the error was prejudicial, and awarded him a new trial. *Id.* at *9–14. The State did not appeal.

Mr. Thomas's second trial was conducted beginning on 15 August 2022. Before the start of trial, the State voluntarily dismissed one count

of financial transaction card fraud and one count of obtaining property by false pretenses. At the close of the State's evidence, it voluntarily dismissed one count of misdemeanor larceny and two counts of obtaining property by false pretenses. Upon Mr. Thomas's motion to dismiss, the court dismissed one count of financial transaction card theft and reduced the felony larceny charge to a misdemeanor.

The jury found Mr. Thomas guilty of eight of the charged offenses and of having attained habitual felon status. It found him guilty of misdemeanor rather than felony fleeing to elude arrest and returned a verdict of not guilty for misdemeanor larceny. So, after his second trial, Mr. Thomas was convicted of five fewer offenses, and one of the offenses was less severe than at his first trial. On 19 August 2022, the trial court again consolidated the convictions into two judgments. In the first judgment, the trial court consolidated one conviction for breaking or entering a motor vehicle and one conviction for possession of a stolen motor vehicle, which was punished as a Class D felony because of his habitual felon status. The court sentenced him as a prior record level III offender with nine prior record points to 67 to 93 months.

In the second judgment, the trial court consolidated two counts of financial card theft, three misdemeanors, and the second breaking or entering a motor vehicle conviction, which was punished as a Class E felony because of his habitual felon status. The State argued that the same elements of this breaking or entering conviction were included in one of Mr. Thomas's prior offenses. Specifically, Mr. Thomas had previously been convicted of felony breaking or entering a motor vehicle and misdemeanor attempted financial card theft, among other offenses. This situation would trigger an additional record point pursuant to N.C.G.S. § 15A-1340.14(b)(6). The court accepted this argument and added the additional point, raising Mr. Thomas's prior record points to ten. That placed him at a prior record level IV offender for sentencing, and he was sentenced to 30 to 48 months. In total, after being resentenced, Mr. Thomas was sentenced to 97 to 141 months.

Thus, on remand and after Mr. Thomas's successful appeal, the court increased his minimum sentence by four months and his maximum sentence by four months. Mr. Thomas appealed. On 6 August 2024, the Court of Appeals issued its opinion, finding no error as to the denial of Mr. Thomas's motion to dismiss, the admission of lay opinion testimony by an officer, and Mr. Thomas's harsher sentence on remand. *State v. Thomas*, 295 N.C. App. 269, 280 (2024).

Mr. Thomas petitioned this Court for discretionary review, arguing that the new sentence imposed, which was harsher than the original

sentence, violated N.C.G.S. § 15A-1335 and this Court's decision in *State v. Wagner*, 356 N.C. 599 (2002). We allowed Mr. Thomas's petition.

II. Discussion

This case centers on the interplay between N.C.G.S. § 15A-1335 and North Carolina's structured sentencing statutes. *See* N.C.G.S. § 15A-1335 (2025); N.C.G.S. §§ 15A-1340.10 to -1340.23 (2025). The State argued, and the majority holds, that Mr. Thomas's sentence on remand was statutorily mandated by the Structured Sentencing Act and therefore proper under N.C.G.S. § 15A-1335. That is not an accurate reading of the relevant statutes. While the trial court did err during Mr. Thomas's first sentencing, a different statutory framework applied to Mr. Thomas's resentencing after his successful appeal—both N.C.G.S. § 15A-1335 and the Structured Sentencing Act applied, unlike during his first sentencing, when only the Structured Sentencing Act applied. Our structured sentencing framework anticipates that other applicable statutes may require or authorize a different sentence. *See* N.C.G.S. § 15A-1340.13(b). The applicable statute in Mr. Thomas's case was N.C.G.S. § 15A-1335, and the trial court on remand was bound by N.C.G.S. § 15A-1335 to not impose a more severe sentence, even if it made a mistake on its first try.

Further, the State did not appeal this error and thus did not preserve this issue for appeal. The State's unpreserved assignment of error, the trial court's mistake in initial sentencing, is not one for this Court now to correct. The State had an opportunity to address the initial sentencing error but chose not to appeal to seek a review of the error now identified. Therefore, to the extent that Mr. Thomas's original maximum sentence was in error, it was not preserved for appeal, rendering our review of the issue improper.

Under N.C.G.S. § 15A-1340.13(b), "the court shall determine the prior record level for the offender pursuant to G.S. 15A-1340.14." Subsections 15A-1340.14(a) and (b) direct courts how to calculate a defendant's prior record level. If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense was used to determine the defendant's prior record level, the statute mandates that sentencing judges add one point. N.C.G.S. § 15A-1340.14(b)(6). Trial judges use a defendant's allocated points to determine his prior record level, which correspond to structured sentencing guidelines. N.C.G.S. § 15A-1340.14(c).

The structured sentencing framework is comprehensive, but its language does not suggest that it supersedes all other statutes. In fact, just the opposite is true: the Structured Sentencing Act explicitly anticipates

the applicability of other statutes. Subsection 15A-1340.13(b) further provides that "[t]he sentence shall contain a sentence disposition specified for the class of offense and prior record level, and its minimum term of imprisonment shall be within the range specified for the class of offense and prior record level, *unless applicable statutes require or authorize another minimum sentence of imprisonment.*" N.C.G.S. § 15A-1340.13(b) (emphasis added). If our legislature did not intend for any other statute to apply or supersede the structured sentencing guidelines, then it would not have included the language "unless applicable statutes require or authorize another minimum sentence of imprisonment." *See id.* The legislature thus expressly provided for other statutes to require or authorize a different minimum sentence, one that falls outside of the mandated framework.

Section 15A-1335 of the General Statutes states:

> When a conviction or sentence imposed in superior court has been set aside on direct review or collateral attack, the court may not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence less the portion of the prior sentence previously served. This section shall not apply when a defendant, on direct review or collateral attack, succeeds in having a plea of guilty vacated.

N.C.G.S. § 15A-1335.

Section 15A-1335 was enacted after the United States Supreme Court's decision in *North Carolina v. Pearce*, 395 U.S. 711 (1969), where the Supreme Court held that imposing a longer sentence for the same offense upon retrial was unconstitutional, reasoning that vindictiveness on the part of the sentencing judge, or fear of vindictiveness on behalf of the appellant, may deter a defendant's exercise to his right to appeal, violating that defendant's due process rights. *Id.* at 725.

North Carolina's legislature adopted the general rule of *Pearce*. *See* N.C.G.S. § 15A-1335, Official Commentary. But our legislature's response to *Pearce* went a step further: our statutes prohibit a harsher sentence on remand even when factors supporting such a sentence are in the record. *See id.* (noting that the statute "does not allow a more severe sentence even if intervening factors would argue for a more severe sentence, as the *Pearce* decision permits"); *see also State v. Hemby*, 333 N.C. 331, 334–35 (1993); *State v. Swimm*, 316 N.C. 24, 31–33 (1986); *State v. Mitchell*, 67 N.C. App. 549, 551 (1984) ("North Carolina has changed that part of

. . . [*Pearce*] which would have allowed a more severe sentence . . . ."). Additionally, the North Carolina Criminal Code Commission explained that the meritorious exceptions to a rule prohibiting a more severe sentence would be so rare as to not merit even trying to draft an exception. *See* N.C.G.S. § 15A-1335, Crim. Code Comm'n Commentary ("The Commission felt that the circumstances under which this exception to the rule would apply are so rare as to not merit the difficulty of drafting an intelligible statement of the exception."). That legislative body communicated an intent consistent with this dissent's interpretation, and the legislature intended its plain language directive should apply.[1]

The Court of Appeals has had even more opportunity to deal with cases involving issues arising under N.C.G.S. § 15A-1335. From those, we know that a sentence is more severe when it is an increased sentence from the original. *See*, *e.g.*, *State v. Daniels*, 203 N.C. App. 350, 352–54 (2010) (holding that the defendant's resentencing violated N.C.G.S. § 15A-1335 because the trial court imposed a sentence of an additional 63 to 75 months for the same conviction). And while the resentencing court can change how convictions are consolidated, that court is still bound by N.C.G.S. § 15A-1335 to not impose a more severe sentence. *See State v. Ransom*, 80 N.C. App. 711, 713 ("While G.S. 15A-1335 prohibits trial courts from imposing stiffer sentences upon remand than originally imposed, nothing prohibits the trial court from changing the way in which it consolidated convictions during a sentencing hearing prior to remand."), *cert. denied*, 317 N.C. 712 (1986).

That is not to say that a resentencing court cannot identify new or different aggravating factors, but our precedent has respected the limits created by N.C.G.S. § 15A-1335; the new sentence may not be longer than the original. *See Hemby*, 333 N.C. at 334 ("Although a trial judge may find altogether new aggravating and mitigating circumstances at

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1. The majority defends its approach as textualist, not literalist, and argues that context is important to ensure a non-absurd result. I agree with the latter proposition, to be sure. But context here supports an interpretation that the General Assembly embraced the meaning of its chosen words. Looking to context, the General Assembly created a more protective rule in response to a United States Supreme Court decision emphasizing the constitutional problem of punishing a defendant who successfully appeals an error. *See* N.C.G.S. § 15A-1335, Official Commentary. And the comment from the Criminal Code Commission confirms that the drafters could not even contemplate an exception to the section 15A-1335 prohibition that would justify an attempt to draft an exception. *See* N.C.G.S. § 15A-1335, Crim. Code Comm'n Commentary. This context, taken with the plain language, makes the "perfect storm" described by the majority simply a judicial workaround to a clear and unambiguous statute that creates some protection for a criminal defendant's constitutional rights.

a resentencing hearing . . . , such findings cannot justify a sentence which is more severe than the original sentence imposed on the same offense[ ]."); *see also Swimm*, 316 N.C. at 32–33 (holding that the defendant's good behavior while in prison between initial incarceration and resentencing may constitute a mitigating factor, and the defendant's bad conduct during this period may be found as an aggravating factor to be used in determining whether to impose a sentence not greater than the one originally imposed).

This Court's decision in *Wagner*, 356 N.C. 599, established that N.C.G.S. § 15A-1335 is a statute to which N.C.G.S. § 15A-1340.14 is expected to yield. The majority's position cannot be reconciled with this precedent. In *Wagner*, the defendant pleaded guilty and received a sentence of 101 to 131 months for attempted possession of cocaine as a habitual felon. 356 N.C. at 600. After a successful motion for appropriate relief, his plea and judgment were set aside. *Id.* However, upon retrial, he received a harsher sentence of two consecutive sentences of 135 to 171 months. *Id.* at 600–01. On appeal, the Court of Appeals found no error. *Id.* at 601. Relying on N.C.G.S. § 15A-1335, this Court reversed the defendant's judgment for attempted possession of cocaine and remanded the case for resentencing. *Id.* at 601–03. We held the defendant was improperly sentenced because he could not receive a more severe sentence for the same offense or conduct on remand, even when the original conviction resulted from a negotiated guilty plea. *Id.* at 602.[2]

The majority states that *Wagner* does not apply because Mr. Thomas's case involves the trial court correcting an earlier mistake sentencing Mr. Thomas *outside* the range of permissible punishment whereas *Wagner* involved sentencing the defendant *within* the range permitted by statute. The majority explains that *Wagner* did not involve the application of section 15A-1335 in nondiscretionary matters, such as the Structured Sentencing Act, whereas the sentence imposed on Mr. Thomas here was mandatorily imposed. But that is wrong because at its core, *Wagner* clarified when section 15A-1335 acted to supersede the Structured Sentencing Act's guidelines, and this Court concluded that that the structured sentencing framework yields to section 15A-1335

2. In 2013, the North Carolina General Assembly modified N.C.G.S. § 15A-1335 in S.L. 2013-385 to clarify that the statute does not prohibit a harsher sentence on remand when a defendant succeeds in having a guilty plea vacated. *See* Act of Aug. 23, 2013, S.L. 2013-385, § 3, 2013 N.C. Sess. Laws 1594, 1595. In other words, the statute's protection does not apply when the original sentence was entered pursuant to a defendant's guilty plea rather than after conviction by a jury.

where there is a conflict. 356 N.C. at 601–02. The two statutes cannot be viewed in isolation. As we opined in *Wagner*, "N.C.G.S. § 15A-1335 is an applicable statute requiring 'another minimum sentence of imprisonment.' " *Id.* at 602 (quoting N.C.G.S. § 15A-1340.13(b) (2001)). Faithfully applying this precedent, it follows that section 15A-1335 would remain an applicable statute displacing subsection 15A-1340.13(b), requiring that Mr. Thomas's new sentence not exceed the original.

By imposing a lengthier term of imprisonment upon resentencing after a successful appeal, the trial court in Mr. Thomas's case violated N.C.G.S. § 15A-1335, but the court easily could have complied with both section 15A-1335 and the Structured Sentencing Act. The Court of Appeals was correct that the trial court erred under N.C.G.S. § 15A-1340.14 when the lower court initially sentenced Mr. Thomas pursuant to the second consolidated judgment. Because the trial court made the second felony breaking or entering a motor vehicle the lead offense, the court should have sentenced Mr. Thomas as a level IV offender instead of a level III. Mr. Thomas's previous convictions for breaking or entering a motor vehicle meant that the court should have added the "same elements" bonus point under N.C.G.S. § 15A-1340.14(b)(6). Subsection (b)(6), like the rest of those in the N.C.G.S. § 15A-1340.14(b), is nondiscretionary according to the statute's plain language. *See* N.C.G.S. § 15A-1340.14(b).

The second trial court, in its discretion, could have consolidated the second judgment under the credit card fraud charge, another equally serious Class I felony, instead of breaking or entering a motor vehicle. N.C.G.S. §§§ 14-56(a2)(5), 14-113.9(b), 14-113.17(b) (2025). Doing so would have harmonized both N.C.G.S. § 15A-1335 and the statutory sentencing mandates set out in N.C.G.S. § 15A-1340.14. Instead, the second trial court sentenced Mr. Thomas to a harsher sentence on remand, thereby running afoul of the protection N.C.G.S. § 15A-1335 sets out to provide criminal defendants.

The majority holds that the second trial court "corrected its mistake" by imposing the proper punishment after Mr. Thomas's second trial because it was "required to modify" Mr. Thomas's sentence to comply with our sentencing framework. I disagree. The record indicates that, during the second sentencing hearing, the second trial court did not consider its obligations under section 15A-1335, nor did it seek to "correct" a mistake in Mr. Thomas's previous sentence. No reference was made by the second trial court nor the State about correcting a mistake made by the first trial court. It seems that the second trial court was not aware of either obligation when it entered the new sentence.

The Court of Appeals also failed to refer to or analyze *Wagner* at all in its opinion, suggesting a further misapprehension of the law.

The majority does not address the fact that the State had the opportunity to appeal that mistake prior to Mr. Thomas's resentencing and did not do so. To the extent that the State now argues the resentencing court was "required to modify" Mr. Thomas's sentence to comply with our sentencing framework, we note that the State raised that argument for the first time in its brief to the Court of Appeals. The State's right to appeal in criminal cases is much more limited than a defendant's right to appeal, but a miscalculation of a prior record level and the imposition of an unauthorized sentence are inarguably two of the rare instances where our legislature expressly permits the State to appeal. *See* N.C.G.S. § 15A-1445(a)(3) (2025) (authorizing the State to appeal when the sentence contains a type of disposition or duration of imprisonment not authorized under the structured sentencing framework).

We have consistently applied Rule 10(a)(1) of the North Carolina Rules of Appellate Procedure to defendants, requiring an appellant to raise a specific issue before the trial court to preserve the issue for appellate review. N.C. R. App. P. 10(a)(1); *see*, *e.g.*, *State v. Valentine*, 357 N.C. 512, 525 (2003) ("The failure to raise a constitutional issue before the trial court bars appellate review."); *State v. Smith*, 352 N.C. 531, 557 (2000) (holding that the defendant waived his right to appellate review of an alleged due process violation "because he failed to raise it as constitutional error before the court"), *cert. denied*, 532 U.S. 949 (2001). We held in *State v. Bell* that "[i]t is well settled that an error, even one of constitutional magnitude, that defendant does not bring to the trial court's attention is waived and will not be considered on appeal." 359 N.C. 1, 28 (2004) (quoting *State v. Wiley*, 355 N.C. 592, 615 (2003)). In *Bell*, the defendant failed to raise an issue at trial and failed to properly raise double jeopardy in his assignments of error. *Id.* The trial court transcript cited in that case made no mention of double jeopardy, and we explained that "[o]ur scope of appellate review is limited to those issued set out in the record on appeal." *Id.* (quoting *State v. Hamilton*, 351 N.C. 14, 22 (1999)). In *State v. Bursell*, the transcript of a sentencing hearing revealed that the defendant did not clearly raise a constitutional issue, and we explained that he thereby waived the ability to raise that issue on appeal. 372 N.C. 196, 200 (2019).

We have applied the rule requiring an appellant to raise a specific issue to preserve the issue for appellate review against the State as well. *See State v. Cooke*, 306 N.C. 132, 136 (1982) (holding the State waived challenge to trial court's finding on appeal by failing to enter

an argument to justify a warrantless search and specific assignment of error in the record). In *Cooke*, we acknowledged that it would "clearly be unfair to the defendant" to allow the State to raise an unpreserved theory to justify a warrantless search on appeal while conversely denying the defendant the ability to raise an unpreserved objection to the admission of evidence on appeal. *Id.* at 137 (cleaned up).

We consistently decline to address unpreserved issues, most commonly when raised by defendants, and we should not decide differently when it is the State that failed to appeal or otherwise properly preserve a sentencing error. Following the State's failure to appeal the initial sentence, this unpreserved error cannot be corrected now. And because the initially erroneous sentence was not preserved for appeal, N.C.G.S. § 15A-1335 applied on remand to cap the maximum sentence that applied to Mr. Thomas following his appeal. Engaging in the correction of unpreserved error would contradict the well-settled procedural rule that appellate courts may not address issues not raised by the parties because "it is not the role of the appellate courts to create an appeal for an appellant." *See Bottoms Towing & Recovery, LLC v. Circle of Seven, LLC*, 386 N.C. 359, 363 (2024) (quoting *In re R.A.F.*, 384 N.C. 505, 512 (2025)).

Appellate courts may employ Rule 2 and suspend any part of the Appellate Rules "[t]o prevent manifest injustice to a party, or to expedite decision in the public interest" except when prohibited by other Rules. N.C. R. App. P. 2. In *State v. Bursell*, we inquired whether the Court of Appeals properly invoked Rule 2 to review the defendant's unpreserved argument. 372 N.C. at 200–01. However, we apply Rule 2 cautiously and in exceptional circumstances. *Id.* (cleaned up). The Court of Appeals in *Bursell* had invoked Rule 2 because the error in that case, as the State even conceded, related to a substantial right. *Id.* at 201. Here, the Court of Appeals below did not invoke Rule 2 to allow it to address the unappealed sentencing error.

The majority further contends that the trial court "has the [inherent] power to correct its records to speak the truth," which includes the ability to rectify clerical errors, and it identifies this error as clerical. (Alteration in original.) I again disagree. While a trial court has the inherent power to correct its records to speak the truth, which includes the ability to rectify clerical errors, the error here is a legal error, involving judicial reasoning and determination. *See State v. Ransom*, 74 N.C. App. 716, 719 (1985) (holding that it was not the correction of a clerical error for the court to change a judgment so that the sentence could be enhanced by ten years). In *State v. Cannon*, this Court held that a court

may not amend a judicial error "under the guise of an amendment of its records." 244 N.C. 399, 404 (1956). In addressing whether the trial court had the power to correct court transcripts, or "the minutes of the term," *see id.* at 402, this Court explained the trial court's authorization to amend an error is to make a record correspond to the facts, not to incorporate anything in the record except a recital of what occurred, *id.* at 404. Here, the State did not raise the sentencing error as an issue until after Mr. Thomas was resentenced and appealed the longer sentence. Then, for the first time, the State acknowledged the trial court had made a miscalculation in Mr. Thomas's initial sentence.

Where there has been uncertainty as to whether an error was "clerical," this Court has opted to "err on the side of caution and resolve [the discrepancy] in the defendant's favor." *State v. Morston*, 336 N.C. 381, 410 (1994); *see also id.* at 411 (remanding the case for resentencing). In *Morston*, a trial court used the same evidence to prove two aggravating factors in the sentencing phase of a trial, which ran afoul of the Fair Sentencing Act in place at the time. *Id.* at 409. The State argued that the indication on the sentencing form for one of the aggravating factors—which indicated it had been found to exist—was merely a clerical error. *Id.* at 410. This Court explained that even so, "the better course is to err on the side of caution and resolve in the defendant's favor the discrepancy between the trial court's statement in open court, as revealed by the transcript, and the sentencing form." *Id.* at 410. Similarly, here, I would hold that the State's failure to object on the record to the trial court's sentencing error—which it had the right to do before Mr. Thomas's original sentence became the law of the case—resulted in a error that should be resolved in Mr. Thomas's favor.

III. Conclusion

The majority's analysis rests on numerous layers of error. We cannot treat the State differently than we treat defendants when it comes to holding them to the consequences of a failure to preserve issues on appeal, and the majority cannot ignore the plain language and intent of legislative enactments because following the plain language and intent does not lead the majority to a result it desires.

Two of the majority's principal arguments for arriving at a conclusion contrary to the plain language of section 15A-1335 lack merit. Looking to what should have happened at the trial court, then, the violation of section 15A-1335 was avoidable. The trial court had the discretion to consolidate the two judgments to allow it to adhere to both section 15A-1335 and the Structured Sentencing Act.

Imposing on Mr. Thomas a greater sentence after a successful appeal punishes him for a mistake made not by him, but by the trial court. It further allows the State to escape the consequences of a failure to appeal a lower court's error. The implication of the majority's decision today is that if Mr. Thomas had not chosen to exercise his right to appeal, he would be serving a shorter sentence. In light of the statutory purpose of N.C.G.S. § 15A-1335, it does not matter if the trial court made a "mistake" in sentencing Mr. Thomas the first time—N.C.G.S. § 15A-1335 bars a more severe sentence after appeal, whether that more severe sentence results from correcting a mistake or from the exercise of a trial court's discretion. To hold otherwise would chill defendants' exercise of their constitutional rights.

This Court is not an error-correcting court. Nor should we ignore N.C.G.S. § 15A-1335's bar against a higher sentence after appeal by applying the sentencing provisions in N.C.G.S. § 15A-1340.14 in isolation. Applying these principles, Mr. Thomas's original sentence of 93 to 137 months should stand as the maximum range to which he can be sentenced. That maximum was exceeded by the trial court on remand when it increased Mr. Thomas's minimum sentence by four months and maximum sentence by four months. This outcome was, contrary to what the majority suggests, unnecessary and contrary to what our legislature intended when it codified N.C.G.S. § 15A-1335. I therefore respectfully dissent from the majority's decision.

Justice EARLS joins in this dissenting opinion.

JAMES R. TALLEY
v.
EARTH FARE 2020, INC. AND DENNIS HULSING

No. 174A25

Filed 20 March 2026

Appeal pursuant to N.C.G.S. § 7A-27(a)(2) from an order and opinion on post-trial motions entered on 12 December 2024 by Judge Michael L. Robinson, Special Superior Court Judge for Complex Business Cases, in Superior Court, Buncombe County, after the case was designated a mandatory complex business case by the Chief Justice pursuant to N.C.G.S. § 7A-45.4(a). Heard in the Supreme Court on 17 February 2026.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Agustin Martinez, Robert J. King III, and Daniel L. Colston, for plaintiff-appellee/cross-appellant.

Hall Booth Smith, P.C., by Michael R. Cline and Adam F. Peoples, for defendant-appellants/cross-appellees.

PER CURIAM.

AFFIRMED.[1]

Justice DIETZ concurring.

I would prefer for this Court to issue reasoned opinions when there are dissents, rather than per curiam decisions. But we occasionally do the latter. Here, I interpret the Court's per curiam affirmance as confirmation that the business court's order and opinion is "highly fact-bound and involved the application of settled law from this Court to the evidence presented in the case." *Vanguard Pai Lung, LLC v. Moody*, 387 N.C. 376, 384 (2025). In this circumstance, we have declined to write our own opinion because "repeating that court's analysis would not meaningfully add to our jurisprudence on these issues." *Id.* at 385.

1. The order and opinion of the North Carolina Business Court, 2024 NCBC 81, is available at https://www.nccourts.gov/assets/documents/opinions/2024%20NCBC%2081.pdf?VersionId=lBLbI3kd1OI4fJl0dX4dqfqgQCUTteqj.

My dissenting colleagues rather strongly disagree about this, so I want to make some observations. First, a Wage and Hour Act claim requires evidence that the plaintiff was *employed* to do the claimed work. *See Horack v. S. Real Est. Co. of Charlotte*, 150 N.C. App. 305, 309 (2002). This principle is the heart of the case. Plaintiff James Talley had a $50,000 salaried position at Earth Fare. Then, something changed. Talley went to his employer with a proposal—a new "deal" as he described it, not a request for a promotion or an expansion of his current job and salary. Talley proposed raising capital for the business in exchange for a significant equity stake in the company, a seat on the board of directors, an ownership interest for his son, and other perks that the company offered to its outside business partners.

The dissent points out that "Earth Fare promised and paid at least two *people* stock compensation" for doing similar work securing investors for the business. (Emphasis added.) This, the dissent believes, is evidence that Earth Fare employed Talley to do this work. But the "people" referenced by the dissent are not employees. They are real estate developers who owned one of the shopping centers where Earth Fare opened a retail location. Those two businessmen agreed to help Earth Fare obtain financing for its expansion plans in exchange for an ownership stake in the company, as well as a commitment to bring an Earth Fare location to their commercial property.

One does not need to be an employment law expert to know that if Earth Fare reneged on that deal, those wealthy developers could not bring Wage and Hour Act claims. They are not "employed" by Earth Fare. *See* N.C.G.S. § 95-25.2(4) (2025); *Laborers' Int'l Union of N. Am. v. Case Farms, Inc.*, 127 N.C. App. 312, 314 (1997). The same is true of any other outside contractor, consultant, or business partner who provides these types of independent services to the company.

This is where the dissent misunderstands the realities of business relationships. It has this rudimentary take on private enterprise where all that exists is some eternal struggle between labor and management. But there is so much more to the private sector. In the modern economy, employees in an emerging business like Earth Fare are free to be enterprising; to be entrepreneurial. They can watch their employer make lucrative deals with outside business partners and then make an independent pitch to do that same type of work and get that same kind of deal—all while keeping their current, salaried position.

That is what the evidence showed in this case. Talley's own testimony confirmed that he never proposed expanding his existing salaried

role as an employee of the company. He proposed a new "deal," as he called it, entirely independent of his existing employment. He wanted to be like those real estate developers. He, too, wanted to secure investors in exchange for things like an equity stake, a seat on the board of directors, and various other perks that Earth Fare extended to its key investors and business partners.

Thus, nothing in the business court's decision suggests that a written employment contract is required for a Wage and Hour Act claim. Instead, the business court's straightforward ruling is that the Wage and Hour Act claim required evidence that Talley was *employed* by Earth Fare to do this particular work. *See Horack*, 150 N.C. App. at 309. The business court reasoned that, because no employee had ever done this type of work before, absent evidence that Earth Fare *employed* Talley to do it, he was no different than those real estate developers—a sophisticated businessman offering to provide independent services far outside the role of any employee at the company. *Talley v. Earth Fare 2020, Inc.*, 2024 NCBC 81, ¶¶ 58–59.

The court instructed the jury to first determine if there was ever a meeting of the minds about employing Talley to do this work. *Id.* If the jury determined there was not, it was told not to consider the Wage and Hour Act claim. *Id.* ¶ 59. Instead, just like those other businessmen, if Talley independently performed these services but failed to enter into an enforceable contract, his recourse was a claim for unjust enrichment. That is precisely what the trial court instructed the jury in this case. And it is worth noting that the jury sided with Talley on that unjust enrichment claim; he received a six-figure jury award. *Id.* ¶¶ 32–34.

Finally, the dissent contends that my reasoning conflicts with our decision in *Morris v. Scenera Rsch., LLC*, 368 N.C. 857 (2016). Not so. *Morris* was a case about bonuses owed under an employee bonus program for filing successful patent applications. The legal question was whether plaintiff, who was "hired to invent," was entitled to bonuses for patents that were approved after he left the job. *Id.* at 860–62. Importantly, no one in that case disputed that the plaintiff was employed to do that patent work, which meant the Wage and Hour Act applied. *Id.* at 859–60.

Here, by contrast, the central question is whether Talley was employed to do the work to begin with. Beyond Talley's testimony about the deal he thought he had with Earth Fare, there was no evidence that Earth Fare employed Talley to do this particular work. The business court sent that issue to the jury, and the jury found that Earth Fare did not agree to Talley's terms.

Were the dissent correct in its view of the law here, employees could go to their employer and ask to take on additional work in exchange for equity in the business. When the employer says no, those employees could simply do the work anyway and demand to become part-owners of the company through the Wage and Hour Act.

The act does not permit this sort of shakedown. The Wage and Hour Act applies only if one is *employed* to do the work. *See* N.C.G.S. §§ 95-25.2(4), 95-25.22(a), 95-25.6. If a business does *not* agree to employ someone to do a job, that person cannot go out, do the job anyway, and then insist that the law made them an employee.

This is where the dissent seems to struggle most. It fixates on the idea that, under the Wage and Hour Act, one can be an "employee" even without an express employment agreement, and that one can be paid "wages" that include more than money, such as stock options. This is all true. No one in this case claims otherwise.

But all that has nothing to do with the question presented in this case. To recover under the act, one must be "employed." *See* N.C.G.S. § 95-25.2(3)–(5); *Horack*, 150 N.C. App. at 309. That has always been the heart of this case—what evidence does Talley have that he did this work *as an employee*, rather than independently like the investors and business partners with similar deals? The business court properly determined that Talley's only evidence was the negotiations around the new "deal" he thought he had reached with Earth Fare, which was separate from his existing salaried employment. Because the jury found that Earth Fare did not agree to Talley's terms, the court properly instructed them not to consider the Wage and Hour Act claim. Instead, Talley's recovery for his independent work was limited to a common law claim for unjust enrichment. This basic principle of the Wage and Hour Act is not the least bit unsettled or complicated, and it is why I believe this Court chose to summarily affirm the business court's judgment.

Justice RIGGS concurring in part and dissenting in part.

While I agree with the Business Court's decision with respect to the breach of contract claim, I cannot agree with its analysis regarding the North Carolina Wage and Hour Act (WHA), and this Court does a disservice to an underdeveloped area of law by affirming without opinion that portion of the decision below. The text of the WHA does not explicitly require an underlying contract for a plaintiff to bring a claim for unpaid wages. Here, though, the Business Court directed the jury

that it could not reach plaintiff James Talley's WHA claim without first finding an enforceable contract. In doing so, the Business Court inserted a requirement into the WHA that does not plainly exist in the text and created a conflict with *Morris v. Scenera Research, LLC*, 368 N.C. 857 (2016). Therefore, the Business Court committed legal error by instructing the jury that it could not reach Mr. Talley's WHA claim if it found that he did not have an enforceable contract with the defendants. Because the jury should have been able to decide whether Mr. Talley was entitled to unpaid compensation under the WHA, I would have held that the Business Court erred in denying Mr. Talley's motion for a new trial on his WHA claim.[1]

The WHA governs various provisions of North Carolina's employment law, including minimum wage, overtime, wage payment, and child labor. *See* N.C.G.S. §§ 95-25.1–.25 (2025). The WHA reflects the legislature's concern with "[t]he wage levels of employees, hours of labor, payment of earned wages, and the well-being of minors." N.C.G.S. § 95-25.1(b). Like the federal Fair Labor Standards Act (FLSA), the purpose of the WHA is to promote the general welfare by enforcing employment protections for employees. *See* 29 U.S.C. § 202(a); N.C.G.S. § 95-25.1(b). The WHA establishes a private cause of action permitting employees to recover unpaid wages. N.C.G.S. § 95-25.22(a) ("Any employer who violates the provisions of . . . G.S. 95-25.6 through 95-25.12 (Wage Payment) shall be liable to the employee or employees affected in the amount of . . . their unpaid amounts due under G.S. 95-25.6 through 95-25.12 . . . .").

Mr. Talley brought a WHA claim, alleging that defendants Dennis Hulsing and Earth Fare 2020, Inc. (Earth Fare) violated sections 95-25.6 and 95-25.7 of the WHA by failing to pay him the promised stock, stock options, and other compensation owed for his work raising money for Earth Fare. At trial, the jury was instructed that if it found no contract existed between Mr. Talley and defendants, it should not consider his

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1. Unlike other Rule 59 motions, which are reviewed for abuse of discretion, we review motions for a new trial under Rule 59(a)(8), which are based on "[e]rror in law occurring at the trial and objected to by the party making the motion," de novo. *See* N.C.G.S. § 1A-1, Rule 59(a)(8) (2025); *Bryant v. Nationwide Mut. Fire Ins. Co.*, 313 N.C. 362, 378–82 (1985) (discussing the difference between "fully reviewable" Rule 59(a)(8) motions and other Rule 59 motions); *Chiltoski v. Drum*, 121 N.C. App. 161, 164 (1995) ("While an order for new trial pursuant to Rule 59 which satisfies the procedural requirements of the Rule may ordinarily be reversed on appeal only in the event of 'a manifest abuse of discretion,' when the trial court grants or denies a new trial 'due to some error of law,' then its decision is fully reviewable." (quoting *Garrison v. Garrison*, 87 N.C. App. 591, 594 (1987))).

WHA claim. Mr. Talley objected to the instruction, arguing that WHA claims are legally distinct from breach of contract claims, so the jury should be entitled to consider both independently.

On 25 July 2024, the jury returned a verdict finding that Mr. Talley did not enter into a contract with Mr. Hulsing or Earth Fare, and therefore, it did not reach his WHA claims. The jury found that Mr. Hulsing was unjustly enriched by Mr. Talley and returned a verdict for recovery of $195,000. Following the verdict, Mr. Talley moved for judgment notwithstanding the verdict (JNOV) on his WHA claims or, in the alternative, a new trial. The court denied the motions, and Mr. Talley filed a notice of appeal.

In North Carolina, "[e]very employer shall pay every employee all wages . . . accruing to the employee on the regular payday." N.C.G.S. § 95-25.6. If wages are "based upon bonuses, commissions, or other forms of calculation," they "may be paid as infrequently as annually if prescribed in advance." *Id.* The WHA defines "wage" as "compensation for labor or services rendered by an employee whether determined on a time, task, piece, job, day, commission, or other basis of calculation." N.C.G.S. § 95-25.2(16). As related to the unpaid compensation sections of the WHA, " 'wage' includes . . . commissions, bonuses, and other amounts promised when the employer has a policy or a practice of making such payments." *Id.*

The text of the WHA does not explicitly require a contract. The very definition of wages in the WHA presupposes that there may not be an underlying employment contract. If bonuses can constitute wages when they are "promised when the employer has a policy or a practice of making such payments," *id.*, then the WHA does not require a contract defining the payment of such bonus. A "promise" does not necessarily require contract formalities, such as mutual assent or consideration. Instead, a jury could find a "promise," for example, where an employer tells an employee that it will pay a bonus for work already completed, and the employee never accepts the employer's offer. This example would not meet contract formalities, but it could constitute a "promise" under the WHA sufficient to support a claim for unpaid wages. We presume that the legislature carefully chose each word, and we do not "add to or subtract from the language of the statute." *Ferguson v. Riddle*, 233 N.C. 54, 57 (1950); *see also N.C. Dep't of Corr. v. N.C. Med. Bd.*, 363 N.C. 189, 201 (2009). If the legislature wanted to require claimants to prove an underlying contract, then it could have written the WHA to require a contract instead of a "promise." Because it did not do so, we cannot read into the statute an extra requirement that the legislature did not clearly intend.

Further, if an employee is terminated for any reason but is owed wages "based on bonuses, commissions or other forms of calculation," those wages "shall be paid on the first regular payday after the amount becomes calculable when a separation occurs." N.C.G.S. § 95-25.7. The fact that a wage need not be calculable at the time of termination indicates that a plaintiff may bring an unpaid compensation claim even if they do not have an enforceable contract defining specific wages.

The WHA was passed in 1979 to amend and consolidate four laws dealing with maximum hours, minimum wage, wage payment, and child labor. Wage and Hour Act, ch. 839, § 1, 1979 N.C. Sess. Laws 1157, 1157–65. It was modeled after the FLSA, which was enacted to address "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." 29 U.S.C. § 202(a); *see also Powell v. P2Enterprises, LLC*, 247 N.C. App. 731, 733–34 (2016); *Hyman v. Efficiency, Inc.*, 167 N.C. App. 134, 137 (2004); *Laborers' Int'l Union of N. Am. v. Case Farms, Inc.*, 127 N.C. App. 312, 314 (1997). The Court of Appeals has recognized that "the policy of the Wage and Hour Act is to 'protect[ ] those who, as a matter of economic reality, are dependent upon the business to which they render service.' " *Laborers' Int'l Union*, 127 N.C. App. at 314 (alteration in original) (quoting *Poole v. Loc. 305 Nat'l Post Off. Mail Handlers*, 69 N.C. App. 675, 678 (1984)). As a worker-protective statute, the WHA should not be used as a sword against employees who may, through no fault of their own, lack a formal employment contract. Nothing in the text of the WHA requires an underlying employment contract, and we should not read such a requirement into the statute.

Though it has not said so explicitly, this Court has implied that an enforceable contract is not necessary for a WHA claim. *See Morris*, 368 N.C. at 859, 862. In *Morris*, plaintiff Robert Morris sued his employer under the WHA to recover compensation for bonuses he alleged he was owed under the company's patent bonus program. *Id.* at 859. Mr. Morris did not have an employment contract with his employer, though they held multiple discussions regarding the details of his employment. *Id.* He threatened to sue under the WHA because he was "[f]rustrated with [the] lack of progress" towards a compensation agreement. *Id.* at 860. Later, when he was terminated, Mr. Morris brought several claims, including claims for breach of contract and unpaid wages under the WHA. *Id.* Mr. Morris prevailed only on his WHA and Retaliatory Employment Discrimination Act (REDA) claims, not his breach of contract claim. *Id.*

Despite his inability to prove his breach of contract claim, the trial court nonetheless permitted Mr. Morris to litigate his WHA claim.[2] *Id.* Mr. Morris's testimony demonstrated that his employer had a policy or practice of providing patent bonuses because he and other employees had "unique bonus plan[s]" that were earned when they filed patent applications. *Id.* at 862. The jury was instructed on the WHA claim, even though there was no underlying contract, and found for Mr. Morris on that claim. *Id.* at 860. This Court affirmed the Court of Appeals' judgment affirming the trial court's ruling and held that Mr. Morris met his burden under the JNOV standard. *Id.* at 862. Even though Mr. Morris failed on his breach of contract claim, this Court upheld the jury's verdict granting him unpaid compensation under the WHA. *Id.*

Morris impliedly supports Mr. Talley's argument that the trial court erred as a matter of law by instructing the jury that it had to find an enforceable contract before it could reach the WHA claim. But this important statute requires more careful treatment to clarify its reach, particularly given that the Court of Appeals and North Carolina's federal courts seem to disagree on how to apply the WHA.

In dicta in *Kornegay v. Aspen Asset Group, LLC*, 204 N.C. App. 213 (2010), the Court of Appeals speculated that "[i]f there were no enforceable contract regarding payment of a bonus, then defendants would have no obligations under the [ ]WHA with respect to a bonus." *Id.* at 245; s*ee also id.* at 245–46 (discussing the trial court's decision not to award liquidated damages under the WHA given that the case "hinge[d] entirely on the legal effect of initial negotiations between [the] plaintiff and [the defendant]" and the defendants believed in good faith that there was not a contract). But this cursory treatment by the Court of Appeals fails to provide any explanation for why it would read the plain language of the WHA to impose a greater burden of proof on a claimant, particularly where the General Assembly explicitly created an unusual basis for relief: promises based on past practices and procedures of the employer. Under contract law, such consideration would not be sufficient to satisfy all the elements of an enforceable contract. *Jones v. Winstead*, 186 N.C. 536, 540–41 (1923); *see also Penley v. Penley*, 314 N.C. 1, 18 (1985)

2. While the concurrence rightly points out that Mr. Morris was employed to perform patent work, it ignores that the employment relationship existed without an underlying contract, and the jury still reached Mr. Morris's WHA claim (and found in his favor) even though his breach of contract claim failed. The present case conflicts with *Morris* because it ignores *Morris*'s rule that the jury can reach a WHA claim even in the absence of an underlying contract and affirms the Business Court's legal error prohibiting the jury from reaching exactly such a claim here.

(describing the "general rule" that past services do not "supply[ ] the consideration necessary to support a subsequent promise").

Although not binding on us, North Carolina's federal district courts have regularly found that contracts are not required to obligate employers to pay unpaid wages under the WHA. In a case dealing with the definition of "work" under the WHA, the court found that the WHA requires "an employment relationship" but "the statute contains no requirement of an express contract or agreement to pay for particular work." *Martinez-Hernandez v. Butterball, LLC*, 578 F. Supp. 2d 816, 821 (E.D.N.C. 2008). Similarly, in unpublished cases, North Carolina's federal district courts affirmed that the WHA does not require an express contract. *Vinson v. Int'l Bus. Machs. Corp.*, No. 1:17-CV-00798, 2018 WL 4608250, at *8 (M.D.N.C. Sep. 25, 2018) ("To state a claim under [the WHA], there need not be an enforceable agreement, provided the employer has a policy or practice of making such payments." (cleaned up)); *Buckner v. United Parcel Serv., Inc.*, No. 5:09-CV-411-BR, 2010 WL 2889586, at *3 (E.D.N.C. July 21, 2010) (reasoning a violation of N.C.G.S. § 95-25.6 "need not be based upon an express contract"), *aff'd*, 489 F. App'x 709 (4th Cir. 2012).

Much of the language of the WHA is modeled after the FLSA, and "in interpreting the [ ]WHA, North Carolina courts look to the FLSA for guidance." *Powell*, 247 N.C. App. at 734 (cleaned up). The Court of Appeals has recognized the FLSA creates a compensable claim for unpaid overtime even when "the trial court f[inds] that there [is] no 'written or oral agreement' between the parties 'as to compensation of the contested hours.' " *Lowe v. Bell House, Inc.*, 74 N.C. App. 196, 199 (1985). In that case, even though there was no contract determining the plaintiff's wages during on-call shifts, the Court of Appeals affirmed the trial court's finding that the on-call time was compensable and remanded for findings of fact regarding the plaintiff's rate of pay, status as an hourly or salaried employee, and the number of hours subject to overtime compensation. *Id.* at 201. The lack of an underlying contract did not bar the plaintiff's recovery under the FLSA. *See id.*

Similarly, the Fourth Circuit has reasoned that "[f]or purposes of FLSA claims, there does not 'need[ ] to be any written contract, state law, regulation or statute, [or] collective bargaining agreement' if the terms of the agreement are 'obvious' from the 'employment policies, practices, and procedures' of the employer or 'the parties' conduct.' " *Conner v. Cleveland County*, 22 F.4th 412, 427 (4th Cir. 2022) (second and third alterations in original) (quoting *Monahan v. County of Chesterfield*, 95 F.3d 1263, 1275 (4th Cir. 1996)). Neither the Court of Appeals nor the Fourth Circuit require an enforceable contract for plaintiffs to bring

FLSA claims.[3] Our courts should not read a requirement for an enforceable contract into the WHA's statutory language, especially given the statutes' shared "remedial and humanitarian . . . purpose." *Tenn. Coal, Iron & R.R. Co. v. Muscoda Loc. No. 123*, 321 U.S. 590, 597 (1944), *superseded on other grounds by statute*, 29 U.S.C. § 251(a), *as recognized in*, *Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27 (2014); *see Brown v. Caruso Homes, Inc.*, 294 N.C. App. 9, 13 (2024) (denial of plaintiff's request for attorney's fees was insufficient to show trial court "ignored the remedial nature of the [ ]WHA").

While I agree with most of the Business Court's conclusions, this Court should have engaged more meaningfully with Mr. Talley's WHA claim. Mr. Talley testified that as his role with Earth Fare developed, he was promised additional compensation, including for his work securing capital investments for Earth Fare. Mr. Talley further testified that his work was instrumental in securing a deal with Dan Larimer (the Larimer deal). Trial testimony from both Mr. Talley and Mr. Hulsing indicates that Earth Fare promised and paid at least two people stock compensation for their work securing the Larimer deal. This was the evidence that was presented to the jury and the jury was not allowed to weigh this evidence in deciding Mr. Talley's WHA claim. The payments to the two other people involved in the Larimer deal could have indicated that Earth Fare had "a policy or a practice" of "making such payments" in stock for work on the Larimer deal. Therefore, had it not been erroneously prohibited from reaching the issue, the jury could have decided that the stock, stock options, and other compensation Mr. Talley was promised was a "wage" under N.C.G.S. § 95-25.2(16) subject to a WHA unpaid compensation claim.[4] Mr. Talley did not need to point to an enforceable contract

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3. The FLSA does not have a private cause of action for unpaid compensation, but the WHA does. *Conner v. Cleveland County*, 22 F.4th 412, 421 (4th Cir. 2022). Because the FLSA does not have a cause of action for unpaid compensation not related to minimum wage or overtime compensation violations, the FLSA is not the proper vehicle for claims where "an employee has worked no overtime and has been paid at least minimum wage for all hours worked." *Monahan v. County of Chesterfield*, 95 F.3d 1263, 1265 (1996). Instead, a "pure gap time" compensation claim is " 'enforceable only under' state law related to the parties' employment agreement." *Conner*, 22 F.4th at 421 (quoting *Monahan*, 95 F.3d at 1283).

4. Arguably, the concurrence reads a requirement into N.C.G.S. § 95-25.2(16) that does not exist. Section 95-25.2(16)'s definition of "wage" does not require that an employer have "a policy or a practice" of paying bonuses or commissions to *employees*, only that they have "a policy or a practice of making such payments." N.C.G.S. § 95-25.2(16). It is beyond the scope of this Court to add or change statutory language. *Ferguson*, 233 N.C.

if he could demonstrate that Earth Fare had "a policy or a practice" of paying other people similar compensation for similar work, particularly when it appears that Mr. Talley did more investor solicitation work than the people who received stock compensation.[5] That factual question, including how to weigh the trial evidence, should have been submitted to the jury. *See Cauble v. Bell*, 249 N.C. 722, 724 (1959) (citations omitted) ("Issues of fact must be determined by a jury unless such trial is waived.").

It is far from clear from the statute, our precedent, and persuasive caselaw that the WHA requires an underlying contract to support an unpaid compensation claim—indeed, I would conclude to the contrary. Like my concurring colleague, I would prefer that this Court issue reasoned opinions, as opposed to per curiam opinions, when there are dissents. Instead, today's per curiam affirmance of a Business Court decision that conflicts with a prior case from this Court only invites further confusion around the law (and likely harm to workers in North Carolina). The jury should have been permitted to reach Mr. Talley's claim for unpaid wages. Given the stated purpose of the WHA and the fact that our limited precedent suggests a worker-protective interpretation of the statute, I would have held that the trial court erred as a matter of law by requiring the jury to first find an enforceable contract. Therefore, it was error to deny Mr. Talley's motion for a new trial. To prevent double recovery upon a new trial, I would have also vacated the Business Court's decision regarding Mr. Talley's unjust enrichment claim and remanded the case. On these grounds, I respectfully dissent in part.

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

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at 57. Moreover, this was not the basis of the Business Court's decision—the lack of an enforceable contract was the basis. *Talley v. Earth Fare 2020, Inc.*, 2024 NCBC 81 ¶¶ 57–59, 64–65. And we affirmed that basis without any clarity or resolution of the conflict with *Morris*. The jury should have been permitted to determine whether the payments to the two people involved in the Larimer deal sufficiently established "a policy or a practice of making such payments" to support Mr. Talley's WHA claim.

5. I disagree with my concurring colleague that permitting juries to hear WHA claims even in the absence of an underlying contract will lead to "shakedowns" from employees seeking additional work. This hypothetical is hyperbolic and it misreads the statutory definition of "wage," which expressly permits promised compensation if an employer has "a policy or a practice of making such payments." N.C.G.S. § 95-25.2(16). Employees seeking compensation for work for which their employer has demonstrated "a policy or a practice" of compensating others are not committing a "shakedown;" they are seeking a wage as defined in the WHA.

WARDSON CONSTRUCTION, INC. AND HOMEQUEST BUILDERS, INC.
v.
CITY OF RALEIGH

No. 115A25

Filed 20 March 2026

Class Actions—certification—class consisting of home builders—entitlement to refund of water and sewer impact fees paid to city

In a declaratory judgment action filed by two home construction companies, each seeking a refund of allegedly illegal Capital Facilities Fees (CFFs) paid to the City of Raleigh in exchange for connection to the city's water and sewer systems, the trial court did not abuse its discretion by granting the companies' motion to certify—pursuant to Civil Procedure Rule 23—a class consisting of home builders who had also paid the CFFs. The plain language of the applicable "refund statute" (N.C.G.S. § 160D-106) provided for refunds of illegally imposed fees to any "person who made the payment," making no distinction between those who ultimately bore the economic burden of the fee and those who passed that burden on to others through subsequent private transactions. Therefore, the fact that some class members incorporated the CFFs into the prices they charged home buyers did not defeat the existence of a class, create conflicts of interest among class members, or render a class action inferior to other available methods of adjudicating the case.

Appeal pursuant to N.C.G.S. § 7A-27(a)(4) from an order granting plaintiffs' motion for class certification entered on 16 September 2024 by Judge G. Bryan Collins Jr. in Superior Court, Wake County. Heard in the Supreme Court on 28 October 2025.

James R. DeMay, Scott C. Harris, Martha A. Geer, and John Hunter Bryson for plaintiff-appellees.

Fox Rothschild LLP, by Robin L. Tatum and Kip D. Nelson; and Carolyn A. Bachl for defendant-appellant.

EARLS, Justice.

This case concerns whether a lawsuit challenging certain Capital Facilities Fees imposed by the City of Raleigh may proceed as a class action. Wardson Construction and other home builders allege that Raleigh unlawfully required them to pay these fees as a condition of development, and they seek return of those payments under state law. The trial court certified a class consisting of builders who paid the fees, allowing the claims to be resolved in a single proceeding. Raleigh appeals that decision, arguing that some builders passed the costs of the fees on to home purchasers and therefore cannot pursue relief together as a class.

We affirm the certification order. North Carolina law directs that any fee unlawfully collected by a local government be returned to the person who made the payment. *See* N.C.G.S. § 160D-106 (2025). Because the right to seek repayment turns on payment itself—not on who may ultimately have borne the cost—the possibility that some builders later incorporated the fees into home prices does not prevent class treatment. The question of whether the fees were lawful is for another day; today's decision addresses only whether the case may proceed on behalf of all affected home builders as certified in one action. We hold that the trial court did not err in its analysis of the legal criteria for class certification and did not abuse its discretion when it concluded that a class action is the superior method of adjudicating the claim.

I. Background

A. Statutory Background

In 2013, Raleigh adopted an ordinance related to water and sewer extension policies that imposed fees for connecting with the city's water and sewer systems. These Capital Facilities Fees (CFFs) were apparently reserved for future expansion or future water and sewer systems or services. Developers, builders, and other entities alike were required to pay CFFs any time they submitted a water or sewer connection application to the city.

In 2016, this Court held in *Quality Built Homes Inc. v. Town of Carthage*, 369 N.C. 15 (2016), that municipalities lack the statutory authority under the Public Enterprise Statutes to charge for the future furnishing of water and sewer services. *Id.* at 20–21. In so holding, however, we noted that municipalities may assess such impact fees by obtaining separate enabling legislation from the General Assembly to do so. *See id.* at 21.

In 2017, the General Assembly enacted the Public Water and Sewer System Development Fee Act (the Fee Act). S.L. 2017-138, § 1, 2017 N.C. Sess. Laws 996, 996–99. The Fee Act authorized local governments to adopt water and sewer impact fees, or "system development fee[s]," subject to certain "conditions and limitations," effective 1 October 2017. *Id.* §§ 1, 11, 2017 N.C. Sess. Laws at 997, 1002; *see also* N.C.G.S. § 162A-203(a) (2025). The Fee Act also included a "bridge provision," providing that any "system development fee adopted by a local government under any lawful authority other than this Article and in effect on October 1, 2017, shall be conformed to the requirements of this Article not later than July 1, 2018." N.C.G.S. § 162A-203(b). In response, Raleigh subsequently amended its CFF ordinance on 5 September 2017 and 5 June 2018.

In 2019, the General Assembly enacted a "refund statute," N.C.G.S. § 160D-106, which provides:

> If a local government is found to have illegally imposed a tax, fee, or monetary contribution for development or a development approval not specifically authorized by law, the local government shall return the tax, fee, or monetary contribution plus interest of six percent (6%) per annum to the person who made the payment or as directed by a court if the person making the payment is no longer in existence.

N.C.G.S. § 160D-106; *see also* An Act to Clarify, Consolidate, and Reorganize the Land-Use Regulatory Laws of the State, S.L. 2019-111, § 2.4, 2019 N.C. Sess. Laws 424, 443. Absent from this statute is any provision that limits the passing on of CFFs. Instead, the statute expressly states that such refunds will be made available to "the person who made the payment." N.C.G.S. § 160D-106.

B. Factual Background

Plaintiffs Wardson Construction, Inc. and HomeQuest Builders, Inc. (together, Wardson Construction) are home builder corporations organized and operated under North Carolina law. In adherence to defendant Raleigh's CFF ordinance, Wardson Construction allegedly paid a combined total of nearly $20,000 in CFFs in connection with six different properties between 2016 and 2018. Contending that the payment of the CFFs was illegal, Wardson Construction sued to recover these fees. It also sought to represent a class of residential and commercial developers, builders, and contractors who similarly paid CFFs to Raleigh. Although the cost of CFFs are often passed on to the property

owners who would, in turn, reimburse the payor, Wardson Construction contends that the party who paid an illegally charged fee is entitled to a state-mandated refund. Accordingly, it sought recovery for these fees, as well as recovery for other builders, contractors, and developers who also paid CFFs to Raleigh between 12 January 2016 and 30 September 2018.

C. Procedural Posture

On 12 August 2019, Wardson Construction filed a complaint in the Superior Court, Wake County and sought class certification. Wardson Construction sought a declaratory judgment that Raleigh adopted CFFs as a condition for issuing certain permits and in order to furnish future water or sewer services without lawful authority. Wardson Construction also sought certification of a class of all fee payors, the return of all unlawfully collected CFFs plus interest, and an award of costs, expenses, and attorneys' fees.

In response to the complaint, Raleigh moved to dismiss, petitioned for writ of certiorari to review the order denying its motion to dismiss, moved for judgment on the pleadings, and moved to stay discovery, each of which was ultimately denied.

On 8 July 2024, Wardson Construction moved for class certification under Rule 23 of the North Carolina Rules of Civil Procedure. On 16 September 2024, the trial court granted that motion. The trial court certified the class as follows:

> All natural persons, corporations, or other entities who (a) at any point from January 12, 2016 through June 30, 2018 (b) paid water or sewer Capital Facilities Fees to the City of Raleigh pursuant to the Schedule of Fees and Code of Ordinances adopted by the City of Raleigh.

The class here includes 735 payors of CFFs and over 3,900 different payments, and the class is comprised of contractors and builders, commercial developers, and individual property owners. In its certification order, the trial court reasoned that the identities of class members were ascertainable during the class period, plaintiffs would fairly and adequately represent the class, the number of class members was sufficiently numerous, common issues of law and fact predominated among all members of the class, and that a class action was a superior method of adjudication for the as many as 630 potential actions, in light of the potential for duplicative costs and potential to obtain recovery for otherwise nominal claims. It also concluded that proper notice would be sent

to the class. Accordingly, the trial court granted Wardson Construction's motion for class certification.

Also on 16 September 2024, by separate order, the trial court granted Wardson Construction's motion for summary judgment on the merits and denied Raleigh's similar motion. Raleigh then separately appealed the summary judgment order to the North Carolina Court of Appeals.[1]

On 15 October 2024, Raleigh appealed the trial court's class certification order directly to this Court under the provisions of N.C.G.S. § 7A-27(a)(4). The issue of class certification is the only issue we address on appeal.

II. Governing Law

A. Class Certification Under Rule 23

Rule 23 of the North Carolina Rules of Civil Procedure permits representative litigation "[i]f persons constituting a class are so numerous as to make it impracticable to bring them all before the court," provided that the representatives "fairly insure the adequate representation of all." N.C.G.S. § 1A-1, Rule 23(a) (2025). Although the rule's text is concise, this Court has developed guiding principles governing certification through its decisions.

A proper class exists when the members share an interest in the same issue of law or fact and that issue predominates over issues affecting only individual members. *Crow v. Citicorp Acceptance Co.*, 319 N.C. 274, 277 (1987). The party seeking certification bears the burden of demonstrating that the action satisfies Rule 23's requirements, including numerosity and adequate representation. *Id.* at 282. Adequate representation requires that the named plaintiffs possess a genuine interest in the litigation and that no conflict exists between the representatives and the absent class members. *Faulkenbury v. Tchrs.' & State Emps.' Ret. Sys.*, 345 N.C. 683, 697 (1997). Differences among class members do not necessarily rise to the level of an intraclass conflict of interest capable of defeating certification unless those differences create antagonistic legal interests. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 (1997) (noting that the plaintiffs could not adequately represent a class

1. The appeal of the order granting Wardson Construction's motion for summary judgment on the merits of its claims is still pending before the Court of Appeals. *See Wardson Constr., Inc. v. City of Raleigh*, No. 19CVS10860-910 (Super. Ct. Wake Cnty. Sep. 16, 2024), *appeal docketed*, No. 25-416 (N.C. Ct. App. Apr. 30, 2025). We reiterate that this Court's review is confined to the class certification order.

where diversity in their medical conditions created a direct contradiction between class members who needed "generous immediate payments" and those who needed "an ample, inflation-protected fund for the future"). Conflicts of interest that involve differing legal interests that are not directly antagonistic typically can be addressed by creating subclasses with separate counsel. *See Surgeon v. TKO Shelby, LLC*, 385 N.C. 772, 779 (2024).

In addition to these requirements, our precedents recognize that class actions serve important institutional purposes, including promoting efficiency, preventing inconsistent adjudications, and enabling the resolution of claims that might otherwise be impracticable to litigate individually. *See Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 369 N.C. 202, 215–16 (2016). When these prerequisites are satisfied, the determination of whether a class action is superior to other available methods of adjudication is committed to the sound discretion of the trial court. *Beroth Oil Co. v. N.C. Dep't of Transp.*, 367 N.C. 333, 337 (2014). Accordingly, the trial court's legal analysis of the class certification criteria is reviewed de novo, the court's corresponding fact findings are reviewed for competent evidence, and the court's ultimate determination to certify a class as the superior method of adjudicating the claims is reviewed solely for abuse of discretion. *Empire Contractors, Inc. v. Town of Apex*, 388 N.C. 552, 556–57 (2025).

Finally, certification does not resolve the merits of the underlying dispute. A court may examine issues touching on the merits only to the extent necessary to determine whether the requirements of Rule 23 are satisfied. *See Surgeon*, 385 N.C. at 781–82.

B. Interpretation of N.C.G.S. § 160D-106

In the case at hand, the home builders' claims arise from N.C.G.S. § 160D-106, which governs the refund of fees determined to have been unlawfully imposed. The statute in question provides as follows:

> If a local government is found to have illegally imposed a tax, fee, or monetary contribution for development or a development approval not specifically authorized by law, the local government shall return the tax, fee, or monetary contribution plus interest of six percent (6%) per annum to the person who made the payment or as directed by a court if the person making the payment is no longer in existence.

N.C.G.S. § 160D-106.

Statutory interpretation begins with the text enacted by the General Assembly. When statutory language is clear and unambiguous, courts apply the statute as written and do not add conditions the legislature did not include. *See Wynn v. Frederick*, 385 N.C. 576, 581 (2023); *O & M Indus. v. Smith Eng'g Co.*, 360 N.C. 263, 268 (2006). Section 160D-106 identifies a single criterion for return of an unlawful fee: payment by the claimant. The statute does not distinguish between those who ultimately bore the economic burden of the fee and those who may have incorporated the fee into subsequent private transactions. Nor does it require tracing the downstream incidence of the payment or authorize offsets based on possible reimbursements.

Therefore, if a fee is determined to have been unlawfully imposed, then the statutory injury occurs at the time the payment is made. This conclusion accords with our decisions recognizing that claims challenging unlawful development fees arise from the act of payment itself. *Quality Built Homes Inc. v. Town of Carthage*, 371 N.C. 60, 72 (2018).

The structure of section 160D-106 further confirms this reading. *See Cohane v. Home Missioners of Am.*, 387 N.C. 1, 8 (2025) ("[W]ords and phrases are interpreted in their statutory context . . . ."). By directing repayment to the payor alone, the General Assembly adopted an administrable and objective rule that avoids individualized inquiries into private contractual arrangements. This scheme also avoids making the local government vulnerable to multiple entities seeking to recoup the same fee. Nothing in the statutory text or structure encourages courts to undertake case-by-case determinations of ultimate economic incidence before a refund may be ordered where the entity that made the payment still exists.

Because entitlement under section 160D-106 turns on payment rather than downstream reimbursement, the alleged passing on of fees does not alter the nature of the statutory claim and does not independently create obstacles to class certification under Rule 23.

III. The Passing-On Defense Does Not Defeat Class Certification

Raleigh's challenge to certification rests on a single premise advanced in several forms. Raleigh contends that some members of the certified class incorporated the CFFs into the prices charged to home purchasers and therefore did not ultimately bear the economic burden of the fees. From this premise, Raleigh argues that the home builders lack a common injury, that individualized issues predominate, that conflicts exist within the class, and that a class action is not a superior method of adjudication.

Each of these arguments depends upon the same assumption—that the legally relevant payor is the party who ultimately absorbed the economic cost of the fee rather than the party who remitted payment to Raleigh. That assumption is inconsistent with the governing statute.

As explained above, N.C.G.S. § 160D-106 directs that an unlawfully imposed fee "shall return . . . to the person who made the payment." N.C.G.S. § 160D-106. The statute ties entitlement to the act of payment itself. Raleigh's argument instead asks this Court to look beyond the transaction between the home builders and Raleigh and determine who ultimately bore the economic burden through subsequent private arrangements. But legal rights arising from a payment ordinarily belong to the party who remitted funds to the counterparty, even when the expense is later reallocated through reimbursement or pricing decisions. Subsequent agreements between private actors may shift economic incidence, but they do not alter who made the initial payment in the underlying transaction.

Because entitlement under section 160D-106 turns on payment rather than ultimate economic burden, the alleged passing on of fees does not defeat certification under Rule 23.

A. Existence of a Class and Predominant Issue

Under Rule 23, a class exists when members share an interest in the same issue of law or fact and that issue predominates over issues affecting only individual members. *Crow*, 319 N.C. at 277. Here, the central question—whether Raleigh lawfully imposed the CFFs—is identical for every member of the certified class. Resolution of that question will determine liability for all home builders' claims in a single stroke. *See Dewalt v. Hooks*, 382 N.C. 340, 344 (2022).

Raleigh's passing-on theory does not alter this analysis. Because the statute defines the relevant injury as the payment of an unlawful fee, variations in how individual builders later structured their private transactions do not change the nature of the legal claim. Differences in downstream reimbursement therefore do not displace the predominant common issue presented by the legality of the fees.

Nor does Raleigh's argument affect numerosity. The record reflects hundreds of payors and thousands of fee transactions, rendering joinder impracticable. The possibility that some class members later recovered costs from purchasers does not alter the size or cohesion of the class defined by payment of the fees.

Raleigh's reliance on *Anderson Creek Partners, L.P. v. County of Harnett*, 382 N.C. 1 (2022), does not alter this conclusion. *Anderson Creek* involved a constitutional takings challenge to a "capacity use" development fee. *Id.* at 19. Resolving the merits of that challenge required considerations of proportionality and the factual nexus between the fee charged and the development's impact. *Id.* at 27–28. The case did not interpret section 160D-106 or consider a statutory refund scheme directing repayment to the person who made the payment. *See id.* at 42 (noting that "the passage of the Public Water and Sewer Development Fee Act" was "relevant to the validity of any challenge to the County's *statutory* authority to enact 'capacity use' fees like those at issue" but ultimately had "no bearing on the constitutionality of those fees," the issue presented).

Here, by contrast, entitlement arises from a statute that defines injury by the act of payment itself. The home builders' claims therefore do not depend on tracing downstream economic effects or determining who ultimately bore the cost of the fees. Because the statutory right asserted in this case is uniform across all payors, the individualized concerns present in *Anderson Creek*'s constitutional takings analysis are not implicated, and that decision does not undermine certification.

Raleigh also argues that certification will require individualized discovery to determine whether particular home builders passed the fees on to purchasers and therefore suffered no injury. That argument rests on the same mistaken premise discussed above. Because section 160D-106 defines the relevant injury as the payment of an unlawful fee, discovery concerning downstream pricing decisions or private reimbursement arrangements is not necessary to establish liability under the statute. The central questions in this litigation—whether Raleigh lawfully imposed the fees and which entities paid them—are capable of common proof. The possibility that individualized evidence may later bear on damages or private relationships among nonparties does not defeat certification where liability turns on issues common to the class. *See Crow*, 319 N.C. at 277.

B. Adequacy of Representation and Alleged Intraclass Conflict

Rule 23 requires that the class representatives fairly ensure the adequate representation of absent class members. That requirement is defeated where substantial conflicts of interest exist within the class. Some conflicts of interest, such as those creating fundamentally adverse legal interests, will preclude class certification altogether. *See Amchem*, 521 U.S. at 626; *Surgeon*, 385 N.C. at 779. Other conflicts, such as those requiring some class members to address additional defenses or evidentiary

burdens not applicable to other class members, could require the creation of subclasses with separate counsel. *Surgeon*, 385 N.C. at 779.

All members of the certified class share the same statutory claim: each paid the challenged fees and seeks return of those payments under section 160D-106. Wardson Construction advances that claim on behalf of all home builders and does not assert any distinct entitlement based on whether particular builders passed on costs to purchasers. The legal theory and requested relief are therefore uniform across the class.

The fact that some builders may have incorporated the fees into home prices does not create antagonistic interests. Differences in downstream economic effects do not transform aligned statutory claims into conflicting ones. *See Faulkenbury*, 345 N.C. at 698. Because the certified class consists solely of payors, any disputes between builders and home purchasers arise outside the class definition and do not create intraclass conflict, nor do they call into question the adequacy of the class representatives.

C. Superiority

Once the prerequisites of Rule 23 are satisfied, the determination of whether a class action is superior to other available methods of adjudication rests within the sound discretion of the trial court. *Beroth*, 367 N.C. at 337. Class actions promote efficiency, prevent inconsistent adjudications, and allow claims that might otherwise be impracticable to pursue individually to be resolved in a single proceeding. *Fisher*, 369 N.C. at 215–16.

The trial court reasonably concluded that those considerations support certification here. As the trial court noted, the legality of a uniform municipal fee presents a common question capable of resolution on a class-wide basis. Requiring individual actions by hundreds of home builders would risk inconsistent outcomes while imposing litigation costs disproportionate to many individual claims.

Raleigh argues that certification may permit recovery by builders who passed on the fees. But declining certification would not eliminate the possibility of unjust enrichment; it would instead make the retention of allegedly unlawful fees by Raleigh substantially more likely. The class mechanism ensures that the legality of the challenged exaction is adjudicated once, as Rule 23 contemplates.

Moreover, recovery by the home builders does not foreclose downstream adjustments among private parties. Contractual or equitable remedies may govern relationships between builders and purchasers, but

those issues do not affect whether aggregate adjudication is the superior means of resolving the statutory dispute between the payors and Raleigh.

The trial court therefore acted within its discretion in concluding that a class action is the superior method for adjudicating this controversy.

IV. Scope of the Decision

The question before this Court is limited to whether the trial court properly analyzed the legal criteria for class certification and whether the court abused its discretion in certifying a class action under Rule 23. This appeal does not require us to determine whether the CFFs were lawfully imposed, whether any particular class member is ultimately entitled to recovery, or the amount of any refund that may be owed. Those issues remain for resolution in further proceedings.

In evaluating certification, a court may consider aspects of the underlying claims only to the extent necessary to determine whether the requirements of Rule 23 are satisfied. *See Fisher*, 369 N.C. at 208–09. Our analysis of N.C.G.S. § 160D-106 therefore addresses the statute solely insofar as it bears on the existence of a common claim and the propriety of class treatment. Nothing in this opinion should be understood as resolving the merits of Wardson Construction's challenge to the fees or Raleigh's defenses to liability.

Nor does today's decision determine how any recovery, if one is ultimately ordered, must be distributed among private parties. Section 160D-106 governs the relationship between the payor and the governmental entity that collected the fee. Questions concerning contractual or equitable adjustments among home builders and home purchasers are not before us and are unaffected by this decision.

V. Conclusion

The trial court properly evaluated the legal criteria for class certification under Rule 23 and acted within its discretion in certifying a class consisting of home builders who paid the challenged CFFs. Because N.C.G.S. § 160D-106 ties entitlement to repayment to the act of payment itself, Raleigh's passing-on argument does not defeat the existence of a class, create impermissible conflicts among class members, or render class adjudication inferior to other available methods of resolving this controversy. Accordingly, the order certifying the class is affirmed.

AFFIRMED.

Justice BARRINGER did not participate in the consideration or decision of this case.

WARREN v. CIELO VENTURES, INC.

[389 N.C. 151 (2026)]

JAVA WARREN AND JANNIFER WARREN
v.
CIELO VENTURES, INC. D/B/A SERVPRO NORTH CENTRAL MECKLENBURG COUNTY

No. 203PA24

Filed 20 March 2026

Unfair Trade Practices—statute of limitation—plain language—ability of parties to shorten the limitation period by contract

In a case brought under the Unfair and Deceptive Trade Practices Act (UDTPA)—arising from defendant's failure to timely remediate damage from a water heater leak, resulting in plaintiffs' home being demolished due to mold—a term of the contract between the parties limiting plaintiffs' right to seek damages from defendant to one year controlled over the UDTPA's four-year statute of limitation. While statutes of limitation establish the maximum amount of time that can elapse between the accrual of a claim and the filing of that claim, because the legislature chose not to restrict parties' ability to contractually shorten the limitation period for UDTPA claims, the general rule of freedom of contract applied. Accordingly, where the Court of Appeals erred in determining that the contractual limitation was unenforceable, its decision was reversed.

Justice EARLS dissenting.

Justice RIGGS joins in this dissenting opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 293 N.C. App. 784 (2024), vacating an order entered on 23 May 2022 by Judge Louis A. Trosch in Superior Court, Mecklenburg County, and remanding for further proceedings. Heard in the Supreme Court on 16 September 2025.

Derek Crawford, Jeffrey Mitchell, and Hugo Chanez for plaintiff-appellees.

Hedrick Gardner Kincheloe & Garofalo LLP, by M. Duane Jones, for defendant-appellant.

BERGER, Justice.

Plaintiffs contracted with defendant to remediate water damage to their home, but defendant never initiated the work and plaintiffs' home had to be demolished. Though the parties' agreement provided for a one-year contractual limitation period to bring any claim arising from the subject matter of the contract, plaintiffs filed an unfair and deceptive trade practices claim against defendant nearly three years after plaintiffs knew of defendant's wrongful conduct. The trial court granted defendant's motion for summary judgment based upon the contractual limitation period, and the Court of Appeals reversed. We reverse the Court of Appeals.

I. Factual and Procedural Background

In July 2017, plaintiffs' water heater malfunctioned and began leaking a substantial amount of water into their home. Plaintiffs contacted their homeowner's insurance provider, which in turn contacted defendant to address the water damage. After inspecting the damage, defendant presented plaintiffs with its two-page "Authorization to Perform Services and Direction of Payment" agreement. The agreement stated in all capital letters and bold text directly above the signature line: "I have read this authorization to perform services and direction of payment, including the terms and conditions of service on the next page hereof, and agree to the same."

In underlined bold print, the words "READ CAREFULLY" appeared at the top of the second page of the two-page agreement, followed by "Note: This Contract includes a limitation of liability and limitation of remedies." The second page of the agreement also contained the contract's eleven terms and conditions of service. Relevant here, the seventh of these terms provided:

> 7. Any claim by Client for faulty performance, for nonperformance or breach under this Contract for damages shall be made in writing to Provider within sixty (60) days after completion of services. Failure to make such a written claim for any matter which could have been corrected by Provider shall be deemed a waiver by Client. NO ACTION, REGARDLESS OF FORM, RELATING TO THE SUBJECT MATTER OF THIS CONTRACT MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE CLAIMING PARTY KNEW OR SHOULD HAVE KNOWN OF THE CAUSE OF ACTION.

Plaintiff Jannifer Warren signed the agreement, and plaintiffs vacated the home on 10 July 2017 for defendant to begin the remediation work. However, ten days later plaintiffs discovered that defendant had taken no action to remediate the water damage. Plaintiffs contacted another remediation company which immediately began work on the home. Despite these efforts, an assessment revealed visible mold throughout the home, and it was later demolished.[1]

On 9 July 2021, after the one-year contractual limitation period expired, plaintiffs filed an unfair and deceptive trade practices claim against defendant in Superior Court, Mecklenburg County. Defendant moved for summary judgment on 17 February 2022, and the trial court held a hearing on the motion on 17 May 2022. After considering the parties' arguments, the trial court stated, "I am going to grant the motion for summary judgment in this case based on the statute of limitations." The trial court thereafter entered an order granting defendant's motion for summary judgment on 23 May 2022. Plaintiffs appealed.

At the Court of Appeals, plaintiffs argued that N.C.G.S. § 75-16.2, which provides a four-year statute of limitation for claims brought under the Unfair and Deceptive Trade Practices Act (UDTPA), "precludes contractual time limitations of UDTPA claims."[2] *Warren v. Cielo Ventures, Inc.*, 293 N.C. App. 784, 786 (2024). The Court of Appeals recognized that "our courts have acknowledged the ability of parties to contractually shorten their claim limitations in some cases," but nevertheless held the one-year contractual limitation period in defendant's agreement was unenforceable because "public policy weighs against permitting contractual abrogation of the [four-year] UDTPA statute of limitations." *Id.* at 789–90. The Court of Appeals vacated the trial court's order granting defendant's motion for summary judgment and remanded for further proceedings. *Id.* at 790. Defendant petitioned this Court for discretionary review, which we allowed on 11 December 2024.

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1. Prior to the filing of their complaint, plaintiffs' homeowner's insurance provider paid $871,875.00 under the dwelling portion of their policy and asserted a subrogation claim against defendant, which was settled for $100,000.00.

2. Plaintiffs also argued that "precedent rejects one-year limitation clauses for UDTPA claims as unreasonable," and the Court of Appeals rejected that argument. *Warren v. Cielo Ventures, Inc.*, 293 N.C. App. 784, 786–87 (2024). As we did not grant discretionary review on this issue, we do not address it.

II. Standard of Review

"We review de novo an appeal of a summary judgment order. When reviewing a matter de novo, this Court considers the matter anew and freely substitutes its own judgment for that of the lower courts." *Moseley v. Hendricks*, 388 N.C. 128, 135 (2025) (cleaned up). Similarly, we review issues of statutory interpretation de novo. *Morris v. Rodeberg*, 385 N.C. 405, 409 (2023).

III. Discussion

Statutes of limitations set general time limits for bringing claims and are public policy choices that "represent the legislature's determination of the point at which the right of a party to pursue a claim must yield to competing interests." *Id.* "The Legislature alone may determine the policy of the State, and its will is supreme, except where limited by constitutional inhibition, which exception or limitation, when invoked, presents a question of power for the courts to decide." *Holmes v. Moore*, 384 N.C. 426, 435 (2023) (quoting *State v. Revis*, 193 N.C. 192, 195 (1927)); *see also* N.C. Const. art. I, § 6 ("The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.").

Though statutes of limitations establish the maximum amount of time that can elapse between the accrual of a claim and the filing of that claim, this Court acknowledged more than a century ago that individuals may agree to contractually shorten the time to bring claims arising out of the subject matter of that contract. *See Muse v. London Assurance Corp.*, 108 N.C. 240, 241–42 (1891) ("It seems to be established that a provision in a policy that the insured may bring suit within 12 months after the less, and not later, . . . is not in contravention of the policy of statutes of limitation, and will be upheld by the courts."). The Supreme Court of the United States has also recognized this principle:

> [I]n the absence of a controlling statute to the contrary, a provision in a contract may validly limit, between the parties, the time for bringing an action on such contract to a period less than that prescribed in the general statute of limitations, provided that the shorter period itself shall be a reasonable period. Such shorter periods, written into private contracts, also have been held to be entitled to the constitutional protection of the Fourteenth Amendment under appropriate circumstances.

Ord. of United Com. Travelers of Am. v. Wolfe, 331 U.S. 586, 608 (1947). Thus, parties may agree to decrease the general limitation period for bringing claims if: (1) no statute forbids a shorter period, and (2) the shorter period is reasonable.

The legislature has established a four-year limitation period for bringing UDTPA claims, N.C.G.S. § 75-16.2 (2025), and in the absence of an agreement to the contrary, this limitation period controls. But the parties here explicitly reduced the limitation period for any claims "relating to the subject matter" of their contract to one year. It is undisputed that plaintiff Jannifer Warren signed the contract, and plaintiffs have not argued such signing was the product of coercion or duress. *See Canteen v. Charlotte Metro Credit Union*, 386 N.C. 18, 22–23 (2024) ("[W]ritten contracts are to be construed and enforced according to their terms. . . . [W]hen the parties' intent is clearly expressed, it must be enforced *as it is written*." (cleaned up)). Nor are there any serious contentions that the legislature has enacted a statute forbidding contractual limitation periods for UDTPA claim or that a one-year limitation period is per se unreasonable. *See Horne-Wilson, Inc. v. Nat'l Sur. Co.*, 202 N.C. 73 (1932) (upholding one-year limitation); *Welch v. Phx. Ins. Co.*, 192 N.C. 809 (1926) (same).

Instead, plaintiffs argue, and the Court of Appeals agreed, that "the policy underpinning the UDTPA" prohibits the one-year limitation clause plaintiffs agreed to. *Warren*, 293 N.C. App. at 786. The Court of Appeals reasoned that because the legislative purpose of the UDTPA is "[t]o provide civil legal means to maintain ethical standards of dealing between persons engaged in business and the consuming public," the contractual limitation must yield "where the interests of justice require vindication of the plaintiff's rights," despite the legislature's silence on the issue. *Id.* at 789–90 (cleaned up). This was error because the plain language of the statute provides no prohibition on contractual limitation.

It is not for the courts to second-guess legislative policy decisions or to insert unwritten terms into a statutory scheme. *See Lunsford v. Mills*, 367 N.C. 618, 623 (2014) ("[I]t is our duty to give effect to the words actually used in a statute and not to delete words used or to insert words not used"); *In re Banks*, 295 N.C. 236, 239 (1978) ("[C]ourts must give the statute its plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein."). If the legislature intended to forbid contractually shortened limitation periods for UDTPA claims, it would have said so in the UDTPA. *See State v. Daw*, 386 N.C. 468, 476 (2024) ("When interpreting a statute, 'it must be presumed that the means employed by the Legislature to express its

will are adequate to the purpose and do express that will correctly.' " (quoting *State v. Barco*, 150 N.C. 792, 796 (1909))).[3] To hold otherwise would require this Court to superimpose a contractual limitation prohibition onto the statute and thereby erode the fundamental right to contract in the absence of legislative action.

> The privilege of contracting is both a liberty and a property right. The right to contract is recognized as being within the protection of the Fifth and Fourteenth Amendments to the Constitution of the United States; and protected by state Constitutions. It has been held that the right to make contracts is embraced in the conception of liberty as guaranteed by the Constitution. . . . The Legislature has the power to impose reasonable restrictions on the right to contract when the restrictions imposed are conducive to public good. . . . But freedom of contract is the general rule and restraint the exception.

Alford v. Textile Ins. Co., 248 N.C. 224, 227 (1958) (cleaned up).

Here, the legislature has not chosen to "impose reasonable restrictions" on individuals' rights to contractually shorten the limitation period for UDTPA claims, and we must therefore default to "the general rule" of freedom of contract. *Id.* Because there is no controlling

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3. The dissent equates legislative silence with a statutory prohibition, turning our interpretative rules on their heads. Because "[t]he Legislature is presumed to know the existing law and to legislate with reference to it," *State v. S. Ry. Co.*, 145 N.C. 495, 542 (1907), we presume that in enacting section 75-16.2 the legislature knew that "in the absence of a controlling statute to the contrary, a provision in a contract may validly limit . . . the time for bringing on action on such contract to a period less than that prescribed in the general statute of limitations, provided that the shorter period itself shall be a reasonable period," *Wolfe*, 331 U.S. at 608. The dissent therefore asks the reader to believe that the legislature knew its silence would allow for reasonable contractual limitation periods yet somehow intended silence in the UDTPA to be an affirmative legislative prohibition on the right to contract.

Taken to its logical conclusion, the dissent's rationale would allow for courts to judicially amend any statutory scheme by "insert[ing] words not used," *Mills*, 367 N.C. at 623, so long as the court's preferred term is "[c]onsistent with the statute's purpose." Courts are then no longer interpreting the law but impermissibly legislating from the bench. *See* N.C. Const. art. I, § 6 ("[t]he legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other[.]"); *see also The Federalist* No. 47 (James Madison) ("The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.").

statutory language prohibiting contractual limitation periods of UDTPA claims, and because plaintiffs have failed to demonstrate or meaningfully argue that the one-year limitation period here is unreasonable, the trial court properly granted defendant's motion for summary judgment. The Court of Appeals therefore erred in concluding the one-year contractual limitation in this case is unenforceable.

IV. Conclusion

The public policy of this State, including statutes of limitations and prohibitions on decreasing limitations periods by contract, is determined by the legislature. The legislature has not prohibited downward adjustment of the limitation period for UDTPA claims, and plaintiffs have failed to demonstrate the provision is unreasonable. Accordingly, the trial court did not err in concluding defendant was entitled to judgment as a matter of law on plaintiffs' UDTPA claim. We reverse the decision of the Court of Appeals.

REVERSED.

Justice EARLS dissenting.

The Unfair and Deceptive Trade Practices Act (UDTPA) declares certain commercial practices unlawful and authorizes injured parties to bring civil actions to enforce that prohibition. N.C.G.S. §§ 75-1.1, 75-16 (2025). The statute also provides that "[a]ny civil action brought under this Chapter to enforce the provisions thereof shall be barred unless commenced within four years after the cause of action accrues." N.C.G.S. § 75-16.2 (2025).

The question presented is whether a generic contractual limitation clause contained in a standard-form service agreement may shorten that express statutory limitations period and bar a claim brought under Chapter 75. The majority holds that it does. The practical effect of that decision is to allow sophisticated parties to opt out of state law.

The facts of this case illustrate the problem. After a water heater leak severely damaged their home, plaintiffs Java and Jannifer Warren contacted their insurance provider, which referred them to defendant Cielo Ventures to remediate the property. Cielo Ventures represented that the situation was urgent and required immediate intervention, promising it would "bring in the cavalry." After signing an "Authorization to Perform Services and Direction of Payment" with Cielo Ventures, the Warrens moved into a hotel, per Cielo Ventures's instructions, while waiting for

Cielo Ventures to perform remediation. However, according to the complaint, Cielo Ventures failed to perform the promised remediation work. Instead, it directed its efforts toward remediating a twenty-two-unit apartment building nearby which had also suffered water damage, a perhaps more lucrative business opportunity, and simply never informed the Warrens that it would not be performing the promised services. Because the leaked water sat in the Warren's empty home for weeks, mold proliferated, and the condition of the home deteriorated to the point that the property ultimately had to be demolished. The Warren's insurance policy did not cover all the costs of having their home rebuilt.

The Warrens brought suit asserting a violation of the UDTPA. Cielo Ventures, in turn, relied on a provision in its service contract stating that "[n]o action, regardless of form, relating to the subject matter of this contract may be brought more than one (1) year after the claiming party knew or should have known of the cause of action." The majority holds that this contractual clause shortened the statutory four-year limitations period governing UDTPA claims.

In my view, that interpretation rests on an unreasonable inference from the statute's silence. Nothing in Chapter 75 suggests that the legislature intended the limitations period governing this statutory cause of action to be displaced by a generic private contract limitations period. On the contrary, the text, structure, and purpose of the UDTPA indicate that the General Assembly created a distinct statutory remedy designed to regulate unfair practices in the marketplace and provided its own limitations period for enforcing that remedy.

Because the majority's interpretation undermines the statutory scheme enacted by the legislature and interprets the UDTPA in a manner that makes consumers more vulnerable to unfair contract terms, I respectfully dissent.

I. The UDTPA creates a statutory remedy that operates independently of contractual rights.

Our task when interpreting a statute is to give effect to the General Assembly's intent. The starting point in that inquiry is the statutory text itself. When the legislature has spoken clearly, courts apply the statute as written. *E.g.*, *Fearrington v. City of Greenville*, 386 N.C. 38, 52 (2024).

At the same time, courts must interpret statutes in a manner consistent with reason and common sense. We therefore avoid constructions that would produce results the legislature could not reasonably have intended. As this Court has explained, "if a literal interpretation of a

word or phrase's plain meaning will lead to 'absurd results, or contravene the manifest purpose of the Legislature, as otherwise expressed, the reason and purpose of the law shall control.' " *State v. Rankin*, 371 N.C. 885, 889 (2018) (quoting *State v. Beck*, 359 N.C. 611, 614 (2005)). Likewise, even where a statute's text appears clear, courts may reject a literal reading when it produces consequences "so dangerous and absurd that they could never have been intended." *Jackson v. Home Depot U.S.A., Inc.*, 388 N.C. 109, 116 (2025) (quoting *McCullough v. Scott*, 182 N.C. 865, 876 (1921)).

These principles apply with particular force when a court is asked to draw an inference from statutory silence. A statute necessarily leaves many things unsaid. The absence of an express provision addressing a particular circumstance does not license courts to adopt an interpretation that would undermine the statute's evident purpose. *Cf. State v. Williams*, 286 N.C. 422, 432 (1975) (instructing that a statute should not be construed in such a manner as to render it ineffective if another construction will make it effective).

The majority nevertheless does exactly that here. Chapter 75 expressly establishes a four-year limitations period for civil actions brought under the statute. N.C.G.S. § 75-16.2. The statute does not say that private contracts may, or may not, shorten that period. From this silence, however, the majority concludes that a generic contractual limitation clause may override the more specific statutory limitations period governing a UDTPA claim.

That inference is difficult to reconcile with the basic principles of statutory interpretation described above. Courts do not normally interpret statutory silence to produce results that are inconsistent with the statute's purpose and weaken the operation of the statute itself. *See Rankin*, 371 N.C. at 889; *Jackson*, 388 N.C. at 116. Yet the rule adopted by the majority permits private contracts to narrow the time within which the statutory remedy created by the General Assembly may be invoked.

Understanding the nature of a UDTPA claim is essential to resolving the question before us. The Warrens do not seek merely to enforce the terms of their contract with Cielo Ventures. Instead, they assert a cause of action created by the General Assembly through the Unfair and Deceptive Trade Practices Act.

The UDTPA declares unlawful "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." N.C.G.S. § 75-1.1(a). The statute further authorizes any person injured by such conduct to bring a civil action and mandates

treble damages upon proof of a violation. N.C.G.S. § 75-16. Through this statutory framework, the General Assembly created a cause of action designed not merely to remedy private contractual disputes but also to regulate unfair practices in the marketplace.

Importantly, a claim under the UDTPA exists independently of traditional contract and tort remedies. "[I]t is well-recognized that actions for unfair or deceptive trade practices are distinct from actions for breach of contract." *Boyd v. Drum*, 129 N.C. App. 586, 593 (1998), *aff'd per curiam*, 350 N.C. 90 (1999). Indeed, the statute is designed to apply in situations where contractual remedies would be inadequate or unavailable. The "[UDTPA] was needed because common law remedies" such as "[t]ort actions" for fraud and deceit and contract actions for "breach of express [or] implied warranties, . . . [or] recision or restitution," had heavy burdens of proof and evidentiary hurdles, and thus "had proved often ineffective" to protect "aggrieved consumers." *Marshall v. Miller*, 302 N.C. 539, 543–44 (1981). As the Court of Appeals puts it, a UDTPA action "is the creation of statute. It is, therefore, sui generis. It is neither wholly tortious nor wholly contractual in nature." *Bernard v. Cent. Carolina Truck Sales, Inc.*, 68 N.C. App. 228, 230, *disc. rev. denied*, 311 N.C. 751 (1984) (cleaned up).

North Carolina courts have consistently recognized the breadth of the statute's reach. For example, this Court has explained that the UDTPA applies broadly to business activities "in or affecting commerce." *Bhatti v. Buckland*, 328 N.C. 240, 243 (1991). Consistent with that expansive language, courts have applied the statute in a wide range of consumer and commercial contexts. The Court of Appeals has held, for instance, that the rental of residential property falls within the statute's scope because such transactions constitute activity "in or affecting commerce." *Stolfo v. Kernodle*, 118 N.C. App. 580, 583 (1995).

Further, the Court of Appeals has expressly recognized that an action for unfair or deceptive trade practices is "distinct" from other claims including breach-of-contract and common-law-based claims and may proceed independently of those claims. *Page v. Lexington Ins. Co.*, 177 N.C. App. 246, 250–51 (2006). Put another way, UDTPA claims are not collapsed into claims arising from a contract, including for limitations purposes. Where a party brings both UDTPA claims and contract claims, the Court of Appeals has applied UDTPA's four-year limitations period to the UDTPA claims and the contract limitations period to the contract claims. *Id.* at 251 ("[P]laintiffs' UDTP claim was separate and distinct from plaintiffs' claims on the underlying insurance policy [a contract], and the UDTP claim is therefore governed by the four-year

statute of limitations applicable to such claims."). *Cf. also Skinner v. Preferred Credit*, 172 N.C. App. 407, 414 (2005) (applying UDTPA's four-year limitations period to the UDTPA claim and the three-year limitations period to the usury claim and holding plaintiffs' claims were barred under both), *aff'd on other grounds*, 361 N.C. 114 (2006). So parties may agree via contract to the scope of their contract claims, but contract claims are distinct from UDTPA claims, including for statute of limitations purposes.

Likewise, a plaintiff need not even be in contractual privity with the defendant to pursue relief under Chapter 75. *Hyde v. Abbott Lab'ys, Inc.*, 123 N.C. App. 572, 584 (1996). And where the parties are in privity, proving breach of contract is usually not enough to prove a UDTPA claim. *E.g.*, *Boyd*, 129 N.C. App. at 593 ("A mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain an action under [UDTPA]." (cleaned up)). Instead, a UDTPA action is proved according to "the facts of each case and the impact the practice has in the marketplace." *Marshall*, 302 N.C. at 548. These decisions reflect the statute's function as a mechanism for regulating fair conduct in commerce rather than merely enforcing private agreements.

Accordingly, courts have recognized UDTPA claims arising from conduct that formally complied with a contract yet nevertheless deceived consumers or violated public policy. For example, the Court of Appeals has held that a lender's scheme disguising usurious loans as "rebate" contracts constituted an unfair and deceptive practice under Chapter 75, even though the transactions were structured as contractual agreements. *State ex rel. Cooper v. NCCS Loans, Inc.*, 174 N.C. App. 630, 635–36 (2005). In such cases, the statute serves precisely the function the General Assembly intended: providing a remedy where private contractual arrangements operate in a manner that harms consumers or distorts fair competition. Similarly, the Court of Appeals has declined to apply a contractual forum selection clause to a UDTPA claim where doing so would defeat UDTPA's protections for aggrieved North Carolina consumers. *Wall v. Automoney, Inc.*, 284 N.C. App. 514, 531 (2022).

The statutory structure of Chapter 75 reinforces the conclusion that the limitations period governing UDTPA claims is fixed by the legislature rather than by private agreement. The UDTPA does more than prohibit certain practices in commerce. It also establishes a comprehensive enforcement scheme. Section 75-16 authorizes injured parties to bring civil actions to enforce the statute and mandates treble damages upon proof of a violation. N.C.G.S. § 75-16. Other provisions authorize the Attorney General to independently prosecute violations in the name of

the State. N.C.G.S. § 75-15 (2025). Among this comprehensive enforcement scheme, the General Assembly prescribed the limitations period governing such actions: "Any civil action brought under this Chapter . . . shall be barred unless commenced within four years after the cause of action accrues." N.C.G.S. § 75-16.2.

By enacting § 75-16.2, the legislature made a deliberate determination regarding the time within which claims under Chapter 75 may be brought. When the General Assembly creates a statutory cause of action and specifies the period within which it may be enforced, that determination reflects the legislature's judgment concerning how the statutory remedy should operate. *See Rankin*, 371 N.C. at 896 ("It is always presumed that the legislature acted with care and deliberation and with full knowledge of prior and existing law." (cleaned up)). It is plainly the prerogative of the General Assembly as our state's "policy-making agency" to "supplant[ ]" a "common law rule and [thereby adopt its new rule as] the public policy of the State in respect to that particular matter." *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 169 (2004) (quoting *McMichael v. Proctor*, 243 N.C. 479, 483 (1956)). The General Assembly could reasonably determine that contract and tort actions could not alone safeguard fair marketplace competition and create a new remedial scheme with that policy goal in mind.

In summary, because the UDTPA regulates marketplace conduct rather than merely contractual obligations, the statute's protections cannot be reduced to the terms of the parties' agreement. A contract may define the rights and obligations between the parties, but it does not necessarily determine whether a business practice violates Chapter 75. The statutory prohibition applies independently of the parties' private arrangements.

This distinction is critical here. The cause of action asserted by the Warrens does not arise from Cielo Ventures's contract alone. It arises from a statute enacted to regulate unfair practices in commerce and to provide injured parties with a means of enforcing that prohibition. The legislature expressly prescribed the applicable statute of limitations, and that four-year period is what should govern.

II. The majority's interpretation rests on an unreasonable inference from statutory silence.

The majority nevertheless concludes that a contractual limitation clause may shorten the UDTPA's express limitation period. In essence, the majority reasons that the legislature knew parties could contract out of the statute of limitations for a statutory action, so we should infer

from the legislature's silence that it intended that result. But none of the cases the majority cites support that this is what the legislature "knew." Rather, the majority cites myriad cases affirming a different proposition: that contracts may provide reasonable limitation periods for contract actions—that is, actions *arising out of the contract* to enforce rights fixed by the contract itself. *See Muse v. London Assurance Corp.*, 108 N.C. 240, 241–42 (1891) (action on insurance policy contract was bound by policy's one-year limitation period because "the rights of the parties in such cases are fixed by the contract" (cleaned up)); *Alford v. Textile Ins. Co.*, 248 N.C. 224, 226 (1958) (action on insurance policy); *Ord. of United Com. Travelers of Am. v. Wolfe*, 331 U.S. 586, 588–89, 599 (1947) (action on fraternal benefit certificate, an insurance policy); *Horne-Wilson, Inc. v. Nat'l Sur. Co.*, 202 N.C. 73, 73–74 (1932) (action on surety bond tied to contract for services). None of these cases stand for the proposition that contracts can curb statutory protections. The majority's reasoning thus merely restates the point it is trying to prove.

Of course, where a right arises from contract, the contract can reasonably limit the scope of the right. That is a different matter from whether a contract can limit the scope of rights arising from statute—let alone whether the legislature would have understood as much when it enacted UDTPA. The majority's conclusion that private agreements can cabin a legislatively created statutory remedy is as is inconsistent with legislative intent as it is unsupported by precedent.

We have long recognized limits on the ability of private parties to waive statutory protections enacted for public purposes. Although individuals may waive many rights that exist for their personal benefit, courts have been reluctant to enforce agreements that undermine statutory protections designed to address broader public concerns. As this Court has explained, rights may be waived "unless forbidden by law or public policy." *Clement v. Clement*, 230 N.C. 636, 639 (1949).

More recently, this Court reiterated that principle when considering whether a borrower could waive the protections of North Carolina's anti-deficiency statute through a guaranty agreement. We concluded that such a waiver would violate public policy because the statute was enacted to address specific instances of the public's vulnerability to lender overreach. *High Point Bank & Tr. Co. v. Highmark Props., LLC*, 368 N.C. 301, 308 (2015). In that circumstance, even though the statute was silent on whether guaranty agreements could waive the statute's protections, permitting contractual waiver would have undermined the statutory protection the legislature intended to provide. *See id.*

The same concern arises here. Chapter 75 represents the General Assembly's effort to regulate unfair practices in commerce and to provide injured parties with an effective means of enforcing that prohibition. Allowing private form contracts to shorten the limitations period governing UDTPA claims would permit businesses to unilaterally narrow the availability of the statutory remedy—precisely the sort of arrangements that the statute was designed, in part, to police.

Indeed, the implications of the majority's rule extend beyond the limitations period itself. If statutory silence permits private contracts to alter the time within which a UDTPA claim may be brought, it is difficult to see why other features of the statutory enforcement scheme could not likewise be restricted by contract. Yet the statute's structure suggests the opposite: the General Assembly established the cause of action, defined the available remedies, and specified the period within which those remedies may be pursued, in part because contract remedies alone were insufficient.

Taking the majority's reasoning to its logical conclusion, the majority appears to demand that if the General Assembly enacts a statute that will affect commercial dealings that are also governed by contract, the General Assembly must limit the operation of contracts explicitly. But it is unclear what principle of statutory interpretation gives this Court the right to compel the General Assembly to use particular words when that body endeavors to protect consumers and regulate the marketplace. Such a judicially imposed "magic words" requirement seems inconsistent with our obligation to merely give effect to the legislature's intent, however expressed.[1]

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1. The majority states that the approach to statutory interpretation advanced here amounts to "impermissibly legislating from the bench," citing the Federalist Papers. *See* majority *supra* n.3. It is hardly tyranny on the order of the eighteenth-century British monarchy to conclude that when the legislature created a cause of action and said what the limitation period was, it did not necessarily assume parties could just opt out. The majority tellingly does not respond to the point that the legislature may have reasonably assumed that there is a difference between a contract limiting a contract right, and a contract limiting a statutory right.

Perhaps the majority is intent on collapsing UDTPA actions into contract actions here because it believes that that the Warrens only adduced enough evidence at summary judgment of a time-barred breach of contract claim, not an unfair or deceptive commercial practices claim. There may be merit to that view, but that is not the issue presented on appeal. By casting its decision in the form of sweeping assertions about the right to contract, the majority torpedoes a statute based on words not in the statute, a troubling result for a Court that styles itself as textualist.

In short, the legislature created the cause of action and determined that it may be brought within four years. Absent some indication that the General Assembly intended private contracts to alter that determination, courts should apply the statute as written.

III. This case does not involve an express agreement to limit statutory UDTPA claims.

Finally, even if some contracts could limit a UDTPA statute of limitations period, it is unreasonable to conclude that this one in particular did so. The contractual provision at issue appears in Cielo Ventures's standard service agreement and states that "[n]o action, regardless of form, relating to the subject matter of this contract may be brought more than one (1) year after the claiming party knew or should have known of the cause of action." The majority interprets this general language as a specific decision to shorten the statutory limitations period governing the Warrens' claim under Chapter 75. But in my view, the language of this contract clause does not clearly demonstrate an intent to limit statutory claims under the UDTPA. The provision refers generally to actions "relating to the subject matter of this contract," in a provision explaining limitations on "[a]ny claim by Client for faulty performance, for nonperformance or breach under this Contract." But a claim under Chapter 75 does not arise from the contract itself. As explained earlier, the statute regulates unfair or deceptive practices in commerce and imposes duties that exist independently of the parties' contractual obligations.

At most, the clause reflects an agreement about the time for bringing contract claims. Interpreting such general language to curtail the statutory limitation period governing UDTPA claims extends the provision well beyond its ordinary meaning. In effect, the majority recasts a narrow contractual limitation clause as a broad restriction on the availability of a statutory remedy created by the General Assembly.

This appeal therefore does not require us to decide whether parties might ever expressly agree to limit statutory claims in some other context. This is not a case involving sophisticated parties who expressly negotiated the scope of their statutory remedies. The limitation clause at issue here appears in a standard-form service agreement presented to homeowners confronting an urgent and unexpected loss where their insurer recommended the service provider. The record does not suggest that the parties bargained specifically over the availability of statutory remedies under Chapter 75, much less that they intended to curtail those remedies specifically.

Perhaps a different case—one involving sophisticated commercial actors who clearly and expressly agreed to limit the availability of statutory claims—might present a closer question. But that is not the case before us. Here, the Court permits a generic contractual provision to shorten the limitations period governing a statutory cause of action created by the General Assembly, effectively allowing general language in a form contract to evade consumer protections against general language in form contracts. Because I would not interpret Chapter 75 to allow that result, I respectfully dissent.

Justice RIGGS joins in this dissenting opinion.

CHESAPEAKE DIAGNOSTIC IMAGING CTRS., LLC
v. N.C. DEP'T OF HEALTH & HUM. SERVS.

[389 N.C. 167 (2026)]

CHESAPEAKE DIAGNOSTIC IMAGING CENTERS, LLC v. NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF HEALTH SERVICE REGULATION, HEALTH CARE AND PLANNING & CERTIFICATE OF NEED, RESPONDENT, AND SENTARA ADVANCED IMAGING SOLUTIONS, LLC, RESPONDENT-INTERVENOR	From N.C. Court of Appeals 24-1106 From OAH 23 DHR 05034

No. 222P25

ORDER OF THE COURT

Chesapeake Diagnostic Imaging Centers, LLC (Chesapeake)'s Petition for Discretionary Review is allowed for the limited purpose of vacating the Court of Appeals' opinion and the Administrative Law Judge's Final Decision and remanding this case to the Court of Appeals to remand to the Office of Administrative Hearings for reconsideration in light of this Court's decision in *Pinnacle Health Servs. of N.C., LLC v. N.C. Dep't of Health & Human Servs.*, 388 N.C. 390 (2025).

By order of the Court this the 18th day of March 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th day of March 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

BESSIE PEACOCK CLOER, WIDOW AND ADMINISTRATOR OF THE ESTATE OF JAMES RICHARD CLOER, EMPLOYEE

v.

KING ARTHUR INC., EMPLOYER; THONET INDUSTRIES INC., EMPLOYER; SCH LIQUIDATING CORP., EMPLOYER; SHELBY WILLIAMS INDUSTRIES, INC., SELF-INSURED EMPLOYER, AND NORTH CAROLINA SELF-INSURANCE SECURITY ASSOCIATION

From N.C. Court of Appeals
24-587

From N.C. Industrial Commission
13-710197, 20-734821

No. 167P25

ORDER OF THE COURT

On 9 July 2025, plaintiff, Bessie Peacock Cloer, filed a 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 petition for discretionary review is allowed in part to address the following issues:

I. Whether the settlement agreements deprive plaintiff of a "covered claim" pursuant to N.C.G.S. § 97-130(4) against the North Carolina Self-Insurance Security Association;

II. Whether the merger and acquisition of Shelby Williams Industries, Inc., into the surviving corporation, Commercial Furniture Group, Inc., deprives plaintiff of a "covered claim" pursuant to N.C.G.S. § 97-130(4) against the North Carolina Self-Insurance Security Association;

III. Whether the 2005 bankruptcy proceedings had an effect on plaintiff's claim against the North Carolina Self-Insurance Security Association;

IV. Whether N.C.G.S. § 97-6 applies to the circumstances where an employer sells their liabilities and obligations to an entity that then seeks to discharge the North Carolina Workers' Compensation liabilities and obligations in bankruptcy; and

V. Whether the Court of Appeals otherwise correctly affirmed the North Carolina Industrial Commission's opinion and award denying plaintiff's motion to add the North Carolina Self-Insurance Security Association as a party.

Otherwise, plaintiff's petition for discretionary review is denied.

By order of the Court this the 18th day of March 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th day of March 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

ROBERT TERRY HARRINGTON

v.

CURTIS WAYNE LANEY, CYNTHIA ROWELL LANEY, AND THE ESTATE OF DANIEL HEDGEPETH

From N.C. Court of Appeals
24-1071

From Anson
22CVS000390-030

No. 336P25

ORDER OF THE COURT

On plaintiff's petition for discretionary review filed 19 November 2025, the Court allows review on the issue of whether the Court of Appeals erred in concluding that plaintiff's claims in these circumstances were barred by the statute of limitations.

By order of the Court this the 18th day of March 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th day of March 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE OF NORTH CAROLINA
EX REL. JEFFREY JACKSON,
ATTORNEY GENERAL

v.

E.I. DU PONT DE NEMOURS
AND COMPANY; THE CHEMOURS
COMPANY; THE CHEMOURS
COMPANY FC, LLC; CORTEVA, INC.;
DUPONT DE NEMOURS, INC.; AND
BUSINESS ENTITIES 1-10

From N.C. Business Court
20CVS005612-250

From Cumberland
20CVS005612-250

No. 436A21-2

ORDER OF THE COURT

Upon consideration of the petition filed by Defendants (E.I. du Pont de Nemours and Company, The Chemours Company, and The Chemours Company FC, LLC) on the 26th day of September 2025 in this matter for a writ of certiorari to review the decision of the North Carolina Business Court, the following order was entered and is hereby certified to the North Carolina Business Court:

Petition allowed.

By order of the Court this the 18th day of March 2026.

Therefore the case is docketed as of the date of this order's certification. Briefs of the respective parties shall be submitted to this Court within the times allowed and in the manner provided by Appellate Rule 15(g)(2).

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th day of March 2026.

s/ Grant E. Buckner
Clerk of the Supreme Court

M.C. Hackney
Assistant Clerk

Justice DIETZ concurring.

There are two reasons why I support issuing a writ of certiorari here. The first is that this case is right on the cusp of an appeal by right. Although there is no existing case law authorizing an immediate appeal here, that is likely because the State has never tried something like this before. There can't be precedent if the issue is unprecedented.

Let me begin with some key background: Chemours is claiming that the same party sued it twice for the same thing. In 2017, the State, through the Department of Environmental Quality, sued Chemours. After years of legal battles, the trial court entered a consent judgment resolving that dispute. The court order includes twenty-five pages of mandatory compliance and remediation conditions and over ten million dollars in fines. *State ex rel. Regan v. The Chemours Company FC, LLC*, No. 17 CVS 580 (N.C. Super. Ct. Feb. 25, 2019) (order).

After the court entered that order, the State turned around and sued Chemours again, this time through the Attorney General. Chemours claims that this second lawsuit covers the same alleged wrongs as the first, with the Attorney General acting "as a second environmental regulator."

We have long recognized that certain issues concerning "repetitious lawsuits" are immediately appealable as affecting a substantial right. *Turner v. Hammocks Beach Corp.*, 363 N.C. 555, 558 (2009). These cases usually involve principles such as res judicata, collateral estoppel, or the risk of inconsistent verdicts. *Bockweg v. Anderson*, 333 N.C. 486, 491 (1993). This one, by contrast, is about whether state actors are ultimately all one legal sovereign, or instead their own constituent litigants not bound by each other's actions. Still, "the particular facts of that case and the procedural context" always guide our substantial rights analysis. *Land v. Whitley*, 388 N.C. 296, 304 (2025). This peculiar case (which, as far as I can tell from case law, is the first time the State has ever tried to do this) seems to me sufficient to satisfy the substantial rights test.

Why, then, did Chemours and its co-defendants petition for a writ of certiorari instead? To their credit, they acknowledged the lack of any existing legal authority. In addition, the issue I just described is only one of *many* alternative legal theories they raised. And probably not the strongest one. So the challenge Chemours and its co-defendants faced is this: our court system "does not recognize pendent appellate jurisdiction." *State v. Carver*, 277 N.C. App. 89, 94 (2021). If they appealed the duplicative lawsuit issue by right, only that one tiny slice of the business court's ruling would make it to us, and all the meatier constitutional

and jurisdictional issues would be left behind. *Id.* That doesn't make much sense.

This brings me to my second reason supporting the writ: This entire case meets the criteria for certiorari review. *See Cryan v. Nat'l Council of YMCAs*, 384 N.C. 569, 572–73 (2023). I'll make an observation about the dissent here, because the dissent is actually quite helpful in showing why the case needs review. The dissent only references the State's first lawsuit in a footnote responding to this concurrence. Were it not for this concurrence, a reader would walk away thinking the Attorney General is bravely rushing in to stop a chemical company who, in the dissent's words, "allegedly perpetrated what is perhaps the most widespread contamination from an industrial facility in North Carolina history."

But the Attorney General is not leading the charge; he is bringing up the rear. As I noted above, the State of North Carolina has been all over this for years. The State sued Chemours and the two sides fought a lengthy legal battle. Ultimately the trial court entered a consent judgment that included twenty-five pages of mandatory conditions. The court order requires Chemours to accept dozens of new oversight and compliance requirements, help impacted people remediate the contamination, and pay millions and millions of dollars. *See Chemours Company*, No. 17 CVS 580 ¶¶ 7–33 (order).

The core legal issue raised in this petition is whether the ability of state administrative agencies to do what happened here—sue in defense of the public interest—limits the ability of the Attorney General to do the same. After all, this Court has long enforced the "common law rule against claim-splitting." *Bockweg*, 333 N.C. at 492. The rule "is based on the principle that all damages incurred as the result of a *single wrong* must be recovered in one lawsuit." *Id.* The dissent embraces the State's argument that its earlier lawsuit was focused on "civil penalties" and "injunctive relief" so the State should be allowed to sue a second time so long as it asks for different relief. The law does not permit ordinary litigants to do this. *Id.* If a plaintiff sues on a claim asking for injunctive relief, that plaintiff cannot sue again for the same wrong and ask for damages or something else. *Id.* That is the key to the claim-splitting doctrine articulated in *Bockweg*. *Id.*

So the question here is whether this doctrine applies to *everyone*, or just to everyone *except* the State. Does this principle mean the State has an obligation to choose which agency or department pursues relief for a particular wrong? Likewise, does the General Assembly, when it creates a vast administrative state with the power to sue, limit the

corresponding power of the Attorney General to also sue for the same harms? Or, instead, is the State the one litigant in our court system who truly gets multiple bites at the same apple?

This Court has never answered these questions. They are squarely raised by the petition in this case and ripe to be addressed. I will reserve judgment because I see strong arguments on both sides. But at a minimum, I can say that the petition is not plainly meritless. Indeed, our most recent decision on the scope of the Attorney General's powers (which, again, the dissent chooses to ignore) cuts against the State. *Bailey v. State*, 353 N.C. 142, 152 (2000). In *Bailey*, we held that the Attorney General, even when he brings a lawsuit claiming to represent "the people," is still just "the State." Here, the State already brought a lawsuit for the wrongs associated with this environmental contamination. There are genuine questions about whether the State's choice to create a sweeping environmental regulatory regime limits the State's ability to sue for old common law claims that cover the same ground. Thus, there is enough merit to the petition that the first prong of *Cryan* is satisfied. 384 N.C. at 572–73.

There are also extraordinary circumstances here. The State is on the verge of spending millions of taxpayer dollars on a case that it might have no legal or constitutional authority to pursue. To be fair, the Attorney General has enlisted the help of many private lawyers from huge out-of-state law firms to litigate this case. It isn't clear from the record how those private lawyers are being paid. But the State's response brief emphasizes that the Attorney General and his staff have "an active presence" in this lawsuit. Immediate review ensures that we do not waste all this public talent and accompanying taxpayer resources.

Moreover, there is no injustice in adding a few months of appellate review to this long-running case. Again, this is where the dissent omits information that a reader might want to know. From a review of the record in this case, there were (and, according to Chemours, still are) multiple lawsuits by thousands of litigants including counties, towns, impacted communities, and individuals seeking remedies from the defendants for this same alleged environmental contamination. *See*, *e.g.*, *Nix v. The Chemours Co. FC, LLC*, No. 7:17-C V-0189-D (E.D.N.C.); *Cape Fear Pub. Util. Auth. v. The Chemours Co. FC, LLC*, No. 7:17-CV-00195-D (E.D.N.C.); *Morton v. The Chemours Co.*, No. 7:17-CV-00197-D (E.D.N.C.); *Brunswick Co. v. DowDuPont, Inc.*, No. 7:17-CV-00209-D (E.D.N.C.).

Thus, the dissent is wrong to claim "a denial of access to justice" here. The courthouse doors are wide open. All we are doing today is

accepting review of the State's novel approach in this one particular case—an approach that the State has never tried before—to avoid the possible waste of taxpayer funds. This is precisely the sort of extraordinary circumstance we identified in *Cryan*. *See* 384 N.C. at 573.

In sum, the two-prong test from *Cryan* is satisfied and I fully concur in the majority's decision to issue a writ of certiorari so we can review these important legal issues. *Id.*

Justice EARLS dissenting.

Defendants allegedly perpetrated what is perhaps the most widespread contamination from an industrial facility in North Carolina history. At issue in this petition is defendants' stunning proposition that the claims against them should be dismissed because the Attorney General lacks authority to hold defendants accountable for their actions and to recover money damages for injured communities. That is, defendants argue that the Attorney General lacks the authority to enforce state law.

Defendants concede they have no right to appeal this order, and they have not carried their burden to show "extraordinary circumstances" and likely error below meriting immediate, interlocutory review by this Court. *See Cryan v. Nat'l Council of YMCAs*, 384 N.C. 569, 572–73 (2023) (criteria for writ of certiorari). By taking the extraordinary step of allowing such review anyway, this Court interrupts factfinding proceedings below in the trial court, further delays justice for allegedly injured communities, and wrongly suggests support for defendants' untenable position that the state's Attorney General is powerless to enforce the law. The defendants' arguments are all issues that should be decided in the normal course, if necessary, after trial. Allowing this petition at this stage is particularly egregious in light of the substantial public interests at stake in timely adjudicating these claims and the strong precedent that the Attorney General on behalf of "[t]he State is the proper party to complain of wrongs done to its citizens by public nuisance." *See McLean v. Townsend*, 227 N.C. 642, 643 (1947) (quoting *Pedrick v. Raleigh & Pamlico Sound R.R. Co.*, 143 N.C. 485, 498 (1906)). This case has already been before this Court on one pre-trial interlocutory appeal. *See State ex rel. Stein v. E.I. du Pont de Nemours & Co.*, 382 N.C. 549 (2022). Further delay with a second, piecemeal appeal is manifestly a denial of access to justice for the people of this state. The Court's order allowing this petition is wrong as a matter of law, and I dissent.

E.I. du Pont de Nemours and Company (DuPont), the Chemours Company, the Chemours Company FC, LLC, and other defendants allegedly released toxic chemicals into North Carolina's public air and water for decades. The State contends that these "forever" chemicals polluted natural resources across our state's southeastern region and severely threatened public health, dramatically changing living conditions for hundreds of thousands of North Carolinians who live along the Cape Fear River and impacting many more who visited this area.

By bringing these claims on behalf of the State, the Attorney General seeks to hold DuPont and other defendants accountable for their alleged actions. The Attorney General's claims, if proven, would entitle the State to recover money damages to help communities still suffering the effects of defendants' pollution—potentially hundreds of millions of dollars to clean up contamination across at least eight counties. There is obviously a substantial interest among the people of North Carolina in the swift resolution of these claims. Justice requires that the facts in the case be determined by a trial court. This Court appears determined to prevent that from ever happening.[1]

Further delay of likely another year will now ensue because five years into the litigation, defendants moved to dismiss the claims for lack of subject matter jurisdiction. The trial court denied that motion. That court concluded simply that the Attorney General *does* have common-law authority to bring this lawsuit—authority not disturbed by the particular legislative enactments to which defendants gesture.

Defendants do not have the immediate right to appeal this order. They admit as much, conceding that they "are aware of no authority holding that an order such as the trial court's decision here is immediately appealable under the substantial-right doctrine or otherwise." Yet this Court now allows review of that interlocutory order anyway. This is error.

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1. The State's response also explains why this appeal is not about defendants being "sued . . . twice for the same thing," as the concurrence puts it. The 2019 consent judgment appears to only have resolved the Department of Environmental Quality's claims for "civil penalties" and "injunctive relief" with respect to certain specified violations of environmental statutes and did not resolve causes of action belonging to other state agencies or release defendants from claims for damages.

It is worth underscoring that defendants' petition is focused almost entirely on challenging the scope of the Attorney General's authority, not on the alleged repetitious lawsuits issue the concurrence believes supports certiorari. The concurrence is making arguments for defendants that they did not make themselves.

It is black-letter law that an order denying a motion to dismiss for lack of subject matter jurisdiction is not immediately appealable. We said so as recently as last October. *Land v. Whitley*, 388 N.C. 296, 301 (2025) ("[T]he denial of a defendant's motion to dismiss under 12(b)(1) for a lack of subject matter jurisdiction is not immediately appealable."). This has been the rule for decades. *E.g.*, *Teachy v. Coble Dairies, Inc.*, 306 N.C. 324, 327 (1982); *Byers v. N.C. Sav. Insts. Div.*, 123 N.C. App. 689, 692 (1996).

We generally forbid fragmentary, interlocutory appeals for good reason. The law cannot protect individual rights and freedoms if the process to vindicate them is ineffective. And "[t]here is no more effective way to procrastinate the administration of justice than that of bringing cases to an appellate court piecemeal through the medium of successive appeals from intermediate orders." *Veazey v. City of Durham*, 231 N.C. 357, 363 (1950). Rules against "premature and unnecessary appeals," *Waters v. Qualified Pers., Inc.*, 294 N.C. 200, 207 (1978), safeguard the fundamental legal principle, itself dating back to the Magna Carta, that "justice delayed is justice denied," *Veazey*, 231 N.C. at 363.

These fundamental principles have special purchase here, where certain defendants have already availed themselves of their statutory right to appeal an interlocutory order denying a motion to dismiss for lack of personal jurisdiction. *See* N.C.G.S. § 1-277(b) (2025). In *State ex rel. Stein v. E.I. du Pont de Nemours & Co.*, 382 N.C. 549 (2022), we unanimously rejected out of state defendants' arguments that the courts of this state lacked personal jurisdiction over them for their alleged pollution just because they engaged in corporate restructuring to avoid liability. *Id.* at 551–52, 560. That unsuccessful interlocutory appeal, while within those defendants' rights to take, came with a cost: further trial court proceedings were placed on hold for nearly a year and a half, and now more than five years have passed since the Attorney General first brought suit. Thus, the proceedings in this very case demonstrate why pretrial, piecemeal appeals work to effectively deny justice.

Notably too, on remand from this Court's 2022 decision, the Business Court resolved the remaining grounds for dismissal and specifically rejected defendants' arguments that environmental statutes and regulations displaced the Attorney General's power to bring these claims. No defendant sought appellate review of that decision. These circumstances further counsel against permitting defendants to obtain review of this issue now—and they fall far short of demonstrating that "extraordinary circumstances" justify immediate review. *See Cryan*, 384 N.C. at 572. Basic principles of fairness do not permit parties to treat

appellate review of an interlocutory order as a freewheeling opportunity to rehash all disfavored pretrial rulings.

In light of these circumstances, defendants fail to show that they will suffer "substantial harm" or that "considerable" judicial resources will be "waste[d]" absent immediate review, *id.* at 573, or that their petition involves "wide-reaching issues of justice and liberty," *id.* (quoting *Doe v. City of Charlotte*, 273 N.C. App. 10, 23 (2020)). In fact, the petition and response show the opposite: *allowing* the petition risks wasting judicial resources through a second, pretrial trip to this Court to review issues decided in earlier proceedings by the Business Court and not timely appealed, and there is a risk of substantial harm to the public by further delaying resolution of the Attorney General's profoundly important claims. This alone is grounds to deny the petition. *See Cryan*, 384 N.C. at 572–73.

A further ground is that defendants fail to meet the other prerequisite for obtaining a writ of certiorari: likely error below. S*ee id.*; *Button v. Level Four Orthotics & Prosthetics, Inc.*, 380 N.C. 459, 465 (2022) ("A writ of certiorari is intended as an extraordinary remedial writ to correct errors of law." (cleaned up)). As the trial court explained, "[t]he ultimate question to be answered [by its order] is whether the Attorney General has the authority to bring this lawsuit." The trial court concluded simply that, yes, the Attorney General can bring traditional common law claims on behalf of the State like those at issue here. That straightforward conclusion appears to be consistent with longstanding precedent that, as a constitutional officeholder, "the Attorney General of this State has the common law duty to prosecute all actions necessary for the protection and defense of the property and revenue of the sovereign people of North Carolina." *Martin v. Thornburg*, 320 N.C. 533, 546 (1987); *accord Tice v. Dep't of Transp.*, 67 N.C. App. 48, 51–53 (1984).

Moreover, defendants offer no reason to believe that the Attorney General lacks authority to protect the public from a public nuisance. On the contrary, the Attorney General's authority to bring such actions appears to be supported by a litany of longstanding precedent. *E.g.*, *McLean*, 227 N.C. at 643; *Frizzle v. Patrick*, 59 N.C. (6 Jones Eq.) 354, 357 (1863) (per curiam) (observing that, absent a particular interest, public nuisance claims must be filed "in the name of the Attorney[ ]General," not a private party); *Justices of Pitt Cnty. v. Cosby*, 58 N.C. 254, 256 (1859) (noting that an action for public nuisance must be made "in the name of the Attorney[ ]General, or a bill, to which he is made a party"). It suffices to say that defendants' stunning proposition as to the Attorney General's authority falls short of a strong showing of error necessary to

entitle them to immediate appellate review under these circumstances. *See Cryan*, 384 N.C. at 573.

For these reasons, I would deny the petition and permit the trial court to continue adjudicating the merits of the Attorney General's claims against defendants for alleged industrial contamination and widespread injuries to the people and the State, without further delay.

Justice RIGGS joins in this dissent.

STATE OF NORTH CAROLINA	From N.C. Court of Appeals P25-838
v.	
KENNETH MICHAEL SHOE	From Alamance 21CR056436-000

No. 58P26

ORDER OF THE COURT

The State's motion for a temporary stay of the Alamance County Superior Court's order orally rendered 21 April 2025 and filed 27 July 2025 is allowed for the following limited purposes: that the Alamance County District Attorney's office be permitted to represent the State in the prosecution of matters pertaining to the pre-trial release, detention, or custody of the defendant including the prosecution of any motion to revoke bond, and that the parties be permitted to engage in any remaining discovery if otherwise appropriate, but the District Attorney's office is prohibited from participating in a plea hearing or calling this matter for trial pending this Court's resolution of the State's Petition for Writ of Ceriorari and Petition for Writ of Supersedeas herein. In addition, the aforementioned order's provision directing the Conference of District Attorneys to take action is temporarily stayed. The motion for a temporary stay is otherwise denied.

By order of the Court this the 20th day of February 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th day of February 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE v. TOWNSEND

[389 N.C. 181 (2026)]

STATE OF NORTH CAROLINA	From N.C. Court of Appeals 24-431
v.	
J'MAL RASHAD TOWNSEND	From Guilford 17CRS90566

No. 156P25

ORDER OF THE COURT

Defendant J'Mal Rashad Townsend's Petition for Discretionary Review is allowed only as to whether the Court of Appeals erred in holding that the trial court properly admitted the police detective's bullet trajectory testimony as lay opinion testimony. Defendant's Petition for Discretionary Review is otherwise denied.

By order of the Court this the 18th day of March 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th day of March 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE OF NORTH CAROLINA	From N.C. Court of Appeals P23-217
v.	
JEFFERY DEAN TUCKER	From Catawba 15CRS1757, 15CRS1758

No. 124P23-2

ORDER OF THE COURT

Upon consideration of the pro se motion to appoint counsel in this matter filed on the 11th day of August 2025 by Mr. Jeffery Dean Tucker, Defendant, the Court enters the following order:

Mr. Tucker's Pro Se Motion to Appoint Counsel is allowed for the purpose of representation in further proceedings herein. The Court directs the Appellate Defender to appoint counsel, pursuant to N.C.G.S. §§ 7A-498.3(a)(2) and (b)(1).

By order of the Court this the 18th day of March 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th day of March 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

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

20 MARCH 2026

2P26	In the Matter of M.A.C., M.D.C., I.A.J.	Respondent-Mother's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-242)	Denied
6P26	State v. LiMichael D. Pittman	Def's PDR Under N.C.G.S. § 7A-31 (COA24-896)	Denied
7P26	Mary Sun v. Tracey Milcarek	1. Plt's Pro Se Motion for Notice of Appeal (COA24-935) 2. Plt's Pro Se Motion for Extension of Time to File PDR 3. Plt's Pro Se Motion for Extension of Time to File PDR 4. Plt's Pro Se Motion for Extension of Time to File PDR 5. Plt's Pro Se Motion for Extension of Time to File PDR 6. Plt's Pro Se Motion for Extension of Time to File PDR 7. Plt's Pro Se Motion for Extension of Time to File PDR	1. Dismissed *ex mero motu* 2. Denied 3. Denied 4. Denied 5. Denied 6. Denied 7. Denied
10A26	Brett Shively v. ACI Learning Holdings, LLC; MIS Training Institute Holdings, Inc.; Boathouse Capital Continuation Fund, LP; Boathouse Capital LP; and Boathouse Capital III LP	1. Defs' (Boathouse Capital Continuation Fund, LP, et al.) Motion to Admit Aaron A. Nichols Pro Hac Vice 2. Plt's Motion to Admit Jason B. Sobelman Pro Hac Vice 3. Plt's Motion to Admit Chad A. Schiefelbein Pro Hac Vice	1. Allowed **02/04/2026** 2. Allowed **02/04/2026** 3. Allowed **02/04/2026**
18P24-2	State v. Charles A. Hodge	Def's Pro Se Petition for Writ of Habeas Corpus	Denied **01/29/2026**
18P26	State v. Jabar Ballard	1. Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA24-582) 2. Def's Pro Se Notice of Appeal Based Upon a Constitutional Question	1. Denied 2. Dismissed *ex mero motu*
20P26	Vladimir Kruglyak v. Reuter Family YMCA, YMCA of Western North Carolina, Bryan Messing, Todd Sevenz-Coleman, and the Y	Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-587)	Denied
24P25-4	Jeremy Keith Fincannon v. Warden Ben Anderson	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **02/19/2026**

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

20 MARCH 2026

26P26	State v. Marshaun Lynn Robinson	1. Def's Pro Se Motion for Petition for Supervisory Writ (COAP25-896) 2. Def's Pro Se Petition for Writ of Certiorari	1. Dismissed 2. Dismissed
28P26	Rebecca Edwards v. Strata Solar, LLC	1. Def's PDR Under N.C.G.S. § 7A-31 (COA25-605) 2. Def's Motion for Temporary Stay 3. Def's Petition for Writ of Supersedeas	1. 2. Allowed **03/11/2026** 3.
31P25-5	Charles D. Johnson and Medsyn.org d/b/a Medsyn Org., Inc. v. Aaron Low and Stott, Hollowell Windham & Stancil, PLLC	1. Plt's Pro Se Motion for Extension of Time to File Petition for Writ of Certiorari (COA24-236) 2. Plt's Pro Se Emergency Motion for Writ of Supersedeas to Prevent Sale of Properties Pending Resolution of Multiple Coordinated Fraud Proceedings	1. Dismissed **02/03/2026** 2. Dismissed **02/03/2026**
32PA23-2	In re B.M.T.	Respondent's Motion for Extension of Time to File Brief	Allowed **03/13/2026**
34P26	Susan Lerner v. Joseph Lerner	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-616)	Denied
35P26	Southland National Insurance Corporation in Liquidation, Bankers Life Insurance Company in Rehabilitation, Colorado Bankers Life Insurance Company in Rehabilitation, and Southland National Reinsurance Corporation in Rehabilitation v. Greg E. Lindberg, Global Growth Holdings, LLC, Edwards Mill Asset Management, LLC, New England Capital, LLC, and Private Bankers Life and Annuity Co., Ltd.	1. Defs' PDR Under N.C.G.S. § 7A-31 (COA25-167) 2. Defs' (Greg E. Lindberg and Global Growth Holdings, LLC) Motion for Temporary Stay 3. Defs' (Greg E. Lindberg and Global Growth Holdings, LLC) Petition for Writ of Supersedeas	1. 2. Denied **02/19/2026** 3.
36P26	State v. Roger Weldon Thompson	Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Mecklenburg County	Dismissed

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

20 MARCH 2026

37P26	State v. Cinquan Marquece Jacobs	1. Def's Pro Se Consolidated Petition for Promotion and Discretionary Review Under N.C.G.S. § 7A-31 (COA24-1081) 2. Def's Pro Se Motion for Recognition of Structural Constitutional Error 3. Def's Pro Se Motion to Appoint Counsel 4. State's Motion to Dismiss Appeal	1. Denied 2. --- 3. Dismissed as moot 4. Allowed
39P26	Christopher Teran Walker v. Davie Medical Center; Atrium Health Wake Forest Baptist Medical Center Corporation	1. Plt's Pro Se Motion to Appeal (COAP25-145) 2. Plt's Pro Se Petition for Writ of Certiorari 3. Plt's Pro Se Motion to Proceed as an Indigent	1. Dismissed *ex mero motu* 2. Dismissed 3. Allowed
40P26	Durham County *ex rel*. Maggie Clapp v. Amanda Shenelle Wallace	Shaunesi Y. DeBerry's Pro Se PDR Under N.C.G.S. § 7A-31 (COAP25-934)	Denied
41P26-1	In the Matter of Julia Catherine Stanley	1. Petitioner's Pro Se Emergency Petition for Writ of Certiorari to Review Order of Superior Court, Brunswick County 2. Petitioner's Pro Se Motion for Habeas Corpus and En Banc Justices	1. Dismissed **02/11/2026** 2. Denied **02/11/2026**
41P26-2	State v. Julia Catherine Stanley	1. Def's Pro Se Petition for Writ of Habeas Corpus 2. Def's Pro Se Motion for Notice of Appeal - Constitutional Challenges	1. Denied **03/04/2026** 2. Dismissed **03/04/2026**
44P26	LDI Shallotte 179 Holdings, LLC v. State of North Carolina Department of Environmental Quality, Division of Energy, Mineral, and Land Resources	1. Def's Motion for Temporary Stay (COA24-443) 2. Def's Petition for Writ of Supersedeas 3. Def's PDR Under N.C.G.S. § 7A-31 4. Def's Notice of Appeal Based Upon a Constitutional Question 5. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **02/10/2026** 2. 3. 4. 5.
45P26	State v. Richard D. Braswell	1. State's Motion for Temporary Stay (COA25-286) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **02/10/2026** 2. 3.

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

20 MARCH 2026

46A26	Patrick Whalen individually, and Cu Sobe, LLC, Plaintiffs v. Michael M. Tuttle, Defendant ——————— Michael M. Tuttle, individually and derivatively, Third-Party Plaintiff v. Kristin Whalen et al., Third-Party Defendants	Def's Motion to Dismiss Appeal	Allowed **03/09/2026**
47P26	State v. Issac Mason	Def's Pro Se Motion for Temporary Stay (COAP25-968)	Dismissed **02/25/2026**
50P26	Christina Henagan v. Willie Henagan	Plt's Pro Se PDR and Supervisory Relief (COA26-31)	Denied
51P25	Kivett, et al. v. North Carolina State Board of Elections, et al.	1. Plts' Petition for Writ of Supersedeas (COAP25-30) 2. Plts' Petition for Writ of Certiorari to Review Order of the COA 3. Plts' Petition for Writ of Certiorari to Review Order of Superior Court, Wake County 4. Plts' Motion to Dismiss Appeal	1. Dismissed as moot **02/25/2026** 2. --- 3. --- 4. Allowed **02/13/2026** **Riggs, J., recused**
52P26	Weldon Moore v. Richmen Enterprises, LLC d/b/a Darth Vapor; Joyetech USA, Inc.; and Midwest Goods, Inc.	1. Def's (Midwest Goods, Inc.) Motion for Temporary Stay (COA24-509) 2. Def's (Midwest Goods, Inc.) Petition for Writ of Supersedeas 3. Def's (Midwest Goods, Inc.) PDR Under N.C.G.S. § 7A-31	1. Allowed **02/13/2026** 2. 3.
55A26	Tanger Properties Limited Partnership v. ACE American Insurance Company and Liberty Mutual Fire Insurance Company	1. Defs' Motion for Temporary Stay 2. Defs' Petition for Writ of Supersedeas 3. Def's (ACE American Insurance Company) Motion to Admit Andrew Levine Pro Hac Vice 4. Def's (ACE American Insurance Company) Motion to Admit Zoheb Noorani Pro Hac Vice 5. Def's (ACE American Insurance Company) Motion to Admit Richard B. Goetz Pro Hac Vice	1. Allowed **02/17/2026** 2. 3. 4. 5.

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

20 MARCH 2026

		6. Def's (Liberty Mutual Fire Insurance Company) Motion to Admit Melissa D'Alelio Pro Hac Vice	6.
		7. Def's (Liberty Mutual Fire Insurance Company) Motion to Admit Sandra Badin Pro Hac Vice	7.
		8. Plt's Motion to Dismiss Appeal	8.
		9. Plt's Motion to Admit Robert J. Gilbert Pro Hac Vice	9.
		10. Plt's Motion to Admit Margaret A. Upshaw Pro Hac Vice	10.
		11. Plt's Motion to Admit Samuel A. Barrows Pro Hac Vice	11.
		12. Defs' Petition for Writ of Certiorari to Review Decision of Business Court	12.
56P25-2	State v. Robert Ahmaad Middleton, Jr.	Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COAP25-533)	Dismissed
57P26	Erin Hendricks Brown v. Christopher Williams v. Matthew W. Harmer	1. Respondent's Motion for Temporary Stay (COAP25-947)	1. Allowed **02/18/2026**
		2. Respondent's Petition for Writ of Supersedeas	2.
		3. Respondent's Petition for Writ of Certiorari to Review Order of the COA	3.
58P26	State v. Kenneth Michael Shoe	1. State's Motion for Temporary Stay (COAP25-838)	1. Special Order **02/20/2026**
		2. State's Petition for Writ of Supersedeas	2.
		3. State's Petition for Writ of Certiorari to Review Order of Superior Court, Alamance County	3.
		4. State's Motion for Order to Transmit ex parte Singagliese Report and Sealed Motions	4.
59P24-2	State v. Andreas Peter Bastas	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Wake County	1. Dismissed
		2. Def's Pro Se Motion to Proceed *In Forma Pauperis*	2. Allowed
		3. Def's Pro Se Motion to Appoint Counsel	3. Dismissed as moot
		4. Def's Pro Se Motion for Appropriate Relief	4. Dismissed
		5. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA	5. Dismissed

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

20 MARCH 2026

60P25	Jeffrey Garner v. Torre Jessup, Commissioner of the Division of Motor Vehicles, Department of Transportation and Highway Safety, State of North Carolina	Petitioner's PDR Under N.C.G.S. § 7A-31 (COA23-310)	Denied
60P26	Southland National Insurance Corporation in Rehabilitation, Bankers Life Insurance Company in Rehabilitation, Colorado Bankers Life Insurance Company in Rehabilitation, and Southland National Reinsurance Corporation in Rehabilitation v. Greg E. Lindberg	1. Def's Pro Se Motion for Temporary Stay 2. Def's Pro Se Petition for Writ of Supersedeas	1. Dismissed **02/24/2026** 2. Dismissed **02/24/2026**
63P26	Michael Benbow, Jr. v. Jeanette Cordova and Celia Cordova	1. Def's (Jeanette Cordova) Pro Se Motion for Emergency Stay Pending Appeal 2. Def's (Jeanette Cordova) Pro Se Motion for Notice of Appeal 3. Def's (Jeanette Cordova) Pro Se Motion to Set Aside Voluntary Dismissal and Restore Pending Motion	1. Dismissed **02/27/2026** 2. Dismissed **02/27/2026** 3. Dismissed **02/27/2026**
64P25-2	State v. Rodney Elroy Cobb	1. Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-491) 2. Def's Pro Se Petition for Writ of Certiorari	1. Denied 2. Denied

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

20 MARCH 2026

64P26	Charles Dexter Johnson v. Robert Peter Dowd, II, Jonathan Cater Dowd, Whitaker's Holdings, LLC, Gary D. Bullard, Kimberly Ann Bullard, GDBKB, LLC, William M. Van O'Linda, Jr., Rex A. Whitaker, Van Camp & Van O'Linda, PLLC, Aaron C. Low, Stott Hollowell Windham & Stancil, PLLC, and First Citizens Bank & Trust Company	1. Plt's Pro Se Motion for Administrative Temporary Stay Through March 1, 2026 (COAP26-144)	1. Dismissed as moot **03/04/2026**
		2. Plt's Pro Se Motion for Immediate Temporary Stay	2. Dismissed **03/04/2026**
		3. Plt's Pro Se Emergency Petition for Writ of Supersedeas	3. Dismissed **03/04/2026**
		4. Plt's Pro Se Motion to Expedite Consideration of Emergency Petition	4. Dismissed as moot **03/10/2026**
		5. Plt's Pro Se Supplemental Emergency Motion for Stay of Proceedings, Supplemental Authority in Support of Pending Emergency Stay, and Motion to Invoke Supervisory Jurisdiction	5. Dismissed **03/10/2026**
		6. Plt's Pro Se Petition for Writ of Prohibition	6. Dismissed **03/10/2026**
		7. Plt's Pro Se Petition for Writ of Mandamus	7. Dismissed **03/10/2026**
		8. Plt's Pro Se Emergency Motion to Suspend March 9, 2026 Hearing Pending Ruling	8. Dismissed **03/10/2026**
		9. Plt's Pro Se Motion to Waive Fees and Costs	9. Allowed **03/10/2026**
		10. Plt's Pro Se Emergency Motion for Reassignment to the Honorable Paul Newby, Chief Justice, North Carolina Supreme Court, and Renewed Motion for Continuance of March 9, 2026 Hearing	10. Dismissed as moot **03/10/2026**
69P26	State v. Charles Brandon Gibbon	1. Def's Motion for Temporary Stay (COA25-415)	1. Allowed **03/03/2026**
		2. Def's Petition for Writ of Supersedeas	2.
		3. Def's PDR Under N.C.G.S. § 7A-31	3.
73P26	State v. David Laudell Jacobs	Def's Pro Se Petition for Writ of Habeas Corpus	Denied **03/09/2026**
74P26	State v. Luis Alberto Sanchez	1. State's Motion for Temporary Stay (COA24-644)	1. Allowed **03/09/2026**
		2. State's Petition for Writ of Supersedeas	2.

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

20 MARCH 2026

79P26	State v. Carmaine Devon Pride	1. Def's Motion for Temporary Stay (COA25-367) 2. Def's Petition for Writ of Supersedeas 3. Def's Notice of Appeal Based Upon a Constitutional Question 4. Def's PDR Under N.C.G.S. § 7A-31 5. Def's Petition in the Alternative for Writ of Certiorari to Review Decision of the COA	1. Allowed **03/12/2026** 2. 3. 4. 5.
96P23-2	State v. Keayone Lamont Murphy	1. Def's Pro Se Petition for Writ of Certiorari to Review Decision of the COA (COA24-182) 2. Def's Pro Se Petition for Writ of Habeas Corpus 3. Def's Pro Se Motion to Proceed *In Forma Pauperis*	1. Denied **03/06/2026** 2. Denied **03/06/2026** 3. Allowed **03/06/2026**
104P23-3	Markus Odon McCormick v. Leslie Cooley-Dismukes	Petitioner's Pro Se Motion for Sanctions (COA22-690)	Dismissed
124P23-2	State v. Jeffery Dean Tucker	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Catawba County 2. Def's Pro Se Motion to Appoint Counsel	1. 2. Special Order
131P16-34	State v. Somchai Noonsab	Def's Pro Se Petition for Writ of Certiorari (COAP16-103)	Dismissed
140PA18-2	State v. Robert Dwayne Lewis	Def's PDR Under N.C.G.S. § 7A-31 (COA24-773)	Denied
141P25	State v. Francisco Javier Diaz-Rodriguez	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA23-979) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
147P25	State v. Jason Harkey	1. State's Motion for Temporary Stay (COA23-811) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **06/20/2025** 2. Allowed 3. Allowed
155P25	State v. Johnathon Micah Maney	Def's PDR Under N.C.G.S. § 7A-31 (COA24-894)	Denied
156P25	State v. J'Mal Rashad Townsend	Def's PDR Under N.C.G.S. § 7A-31 (COA24-431)	Special Order

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

20 MARCH 2026

167P25	Bessie Peacock Cloer, widow and Administrator of the Estate of James Richard Cloer, Employee v. King Arthur Inc., Employer; Thonet Industries Inc., Employer; SCH Liquidating Corp., Employer; Shelby Williams Industries, Inc., Self-Insured Employer; and North Carolina Self-Insurance Security Association	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA24-587) 2. Def's (North Carolina Self-Insurance Security Association) Conditional PDR Under N.C.G.S. § 7A-31	1. Special Order 2. Denied
173PA23-2	Southland National Insurance Corporation in Rehabilitation, Bankers Life Insurance Company in Rehabilitation, Colorado Bankers Life Insurance Company in Rehabilitation, and Southland National Reinsurance Corporation in Rehabilitation v. Greg E. Lindberg, Global Growth Holdings, Inc. f/k/a Academy Association, Inc., Edwards Mill Asset Management, LLC, New England Capital, LLC, and Private Bankers Life and Annuity Co., Ltd.	1. Defs' (Greg E. Lindberg and Global Growth Holdings, LLC) PDR Under N.C.G.S. § 7A-31 (COA25-183) 2. Defs' (Greg E. Lindberg and Global Growth Holdings, LLC) Motion for Temporary Stay 3. Defs' (Greg E. Lindberg and Global Growth Holdings, LLC) Petition for Writ of Supersedeas	1. 2. Denied **02/13/2026** 3.

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

20 MARCH 2026

183P25	Marcella Lineberger, widow and Executrix of the Estate of Tommy William Lineberger, Deceased Employee v. Glen Williams Construction Co., Williams Construction Co., Caldwell Electric & Furniture Co., and ABF Freight System, Inc. f/k/a Carolina Freight Carriers Corp., (Self-Insured) Employers	1. Def's (ABF Freight System, Inc.) Motion for Temporary Stay (COA24-608) 2. Def's (ABF Freight System, Inc.) Petition for Writ of Supersedeas 3. Def's (ABF Freight System, Inc.) PDR Under N.C.G.S. § 7A-31	1. Allowed **07/22/2025** Dissolved 2. Denied 3. Denied
188P25	Kenneth Bryant, Bryant Enterprises, LLC v. Bryan Donald Fields and Carsten Jason Gallini	Plts' PDR Under N.C.G.S. § 7A-31 (COA24-573)	Denied
204P25	Kenneth Bryant, Bryant Enterprises, LLC v. Bryan Donald Fields and Carsten Jason Gallini	1. Def's (Bryan Donald Fields) PDR Under N.C.G.S. § 7A-31 (COA24-610) 2. Def's (Bryan Donald Fields) Amended PDR Under N.C.G.S. § 7A-31	1. Dismissed as moot 2. Denied
212P25	State v. Lamonte Lamoore Jackson	Def's PDR Under N.C.G.S. § 7A-31 (COA24-731)	Denied
214P16-2	State v. Robert Thomas Pole	1. Def's Pro Se Motion for Notice of Appeal (COAP25-350) 2. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA	1. Dismissed 2. Dismissed
222P25	Chesapeake Diagnostic Imaging Centers, LLC, Petitioner v. N.C. Department of Health and Human Services, Division of Health Service Regulation, Health Care Planning & Certificate of Need, Respondent, and Sentara Advanced Imaging Solutions, LLC, Respondent-Intervenor	1. Petitioner's PDR Under N.C.G.S. § 7A-31 (COA24-1106) 2. Petitioner's Motion for Temporary Stay 3. Petitioner's Petition for Writ of Supersedeas 4. Petitioner's Petition in the Alternative for Writ of Certiorari to Review Decision of the COA	1. Special Order 2. Allowed **01/29/2026** Dissolved 3. Denied 4. Dismissed as moot
227P25	State v. Brent Herbert Pica	1. Def's Pro Se Motion for PDR (COAP25-368) 2. Def's Pro Se Motion for Judicial Notice	1. Dismissed 2. Dismissed as moot

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

20 MARCH 2026

228P25-2	Shiriece Hannah Lomax v. Donald Lomax	Petitioner's Pro Se Motion for Reconsideration (COAP25-614)	Dismissed
242P22-2	State v. Tyrell Dontaye Daniels	Def's Pro Se Petition for Writ of Habeas Corpus	Denied **02/06/2026**
249PA25	State v. Rayshawn Denard Banner, Nathaniel Arnold Cauthen, Christopher Bryant, and Jermal Tolliver	1. State's PDR Prior to Determination by the COA 2. State's Petition for Writ of Certiorari to Review Order of Superior Court, Forsyth County	1. Denied 2. Dismissed
250P25-2	Bobby L. Williams v. Jacob Crandall	Plt's Pro Se Motion for Petition for Rehearing (COA25-309)	Dismissed
256P25	State v. Rayvon Marquis Flowers	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-1044) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal 4. Def's Pro Se Motion for Appropriate Relief	1. --- 2. Denied 3. Allowed 4. Dismissed
262PA24	State v. Quantez Lashay Thomas	Def's Motion to Take Judicial Notice (COA23-774)	Allowed
270PA24	Byrd, et al. v. Avco Corporation, et al.	Plts' Motion to Withdraw Responses to Amicus Curiae Briefs	Allowed
273P25	Goran Davidovic, Employee v. Allbound Carrier, Inc., Alleged Employer, and Total Quality Logistics, Inc., LLC, (Freight Brokerage Firm), Alleged Statutory Employer, Old Republic Insurance Company, Carrier (Broadspire, Third-Party Administrator)	1. Defs' (Total Quality Logistics and Old Republic Insurance Co.) PDR Under N.C.G.S. § 7A-31 (COA24-1027) 2. Plt's Motion to Deem Response Timely Filed 3. Defs' (Total Quality Logistics and Old Republic Insurance Co.) Motion for Temporary Stay 4. Defs' (Total Quality Logistics and Old Republic Insurance Co.) Petition for Writ of Supersedeas	1. Denied 2. Allowed 3. Allowed **11/05/2025** Dissolved 4. Denied

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

20 MARCH 2026

281P24	Kivett, et al. v. North Carolina State Board of Elections, et al.	1. Plts' Petition for Writ of Supersedeas (COAP24-735)	1. Dismissed as moot **02/25/2026**
		2. Plts' PDR Under N.C.G.S. § 7A-31	2. ---
		3. Secure Families Initiative and Count Every Hero's Motion for Leave to File Amicus Brief	3. Dismissed as moot **02/25/2026**
		4. Secure Families Initiative and Count Every Hero's Motion to Admit Corey Stoughton, Elizabeth Snow, Alexandra G. Butler, Andrew L. Azorsky, Danielle Lang, and Alexandra Copper Pro Hac Vice	4. Dismissed as moot **02/25/2026**
		5. Secure Families Initiative and Admiral Steve Abbot, et al.'s Amended Motion for Leave to File Amicus Brief	5. Dismissed as moot **02/25/2026**
		6. Honorable Jefferson Griffin, et al.'s Motion for Leave to File Amicus Brief	6. Dismissed as moot **02/25/2026**
		7. Plts' Motion to Dismiss Appeal	7. Allowed **2/13/2026** **Riggs, J., recused**
286P25-2	State v. Jamie Richard Dupree	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA24-849)	Dismissed
290P25	State v. Javier Malik Blackburn	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-1012)	1. ---
		2. Def's PDR Under N.C.G.S. § 7A-31	2. Denied
		3. State's Motion to Dismiss Appeal	3. Allowed
293P22-3	State v. Harry Lee Hunter, Jr.	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA24-1009)	Dismissed
295P24-3	State v. Rodney Eugene Jones	1. Def's Pro Se Petition for Writ of Habeas Corpus	1. Denied **03/11/2026**
		2. Def's Pro Se Motion for Resentence Due to Subject Matter Jurisdictional Violation	2. Dismissed **03/11/2026**
		3. Def's Pro Se Petition for Writ of Mandamus	3. Denied **03/11/2026**
296P25	Solomon Nimrod Butler v. North Carolina General Court of Justice	Plt's Pro Se Motion for PDR (COAP25-393)	Denied

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

20 MARCH 2026

304P25	Builders Mutual Insurance Company and Builders Premier Insurance Company v. EMPWR Solar LLC f/k/a EMPWR Solar LLP f/k/a Source Energy Solutions LLP t/a Palmetto Direct and Douglas Sean Sullivan, individually and Robert Matthew Edge, individually	Defs' PDR Under N.C.G.S. § 7A-31 (COA24-918)	Denied
310P23-6	State v. Rocky J. Bryant	1. Def's Pro Se Motion for PDR 2. Def's Pro Se Motion for PDR	1. Dismissed **03/12/2026** 2. Denied **03/12/2026** **Riggs, J., recused**
317P25	In the Matter of Foreclosure of a Claim of Lien by Irish Creek Section 2 Owners Association, Inc. against Trenita Rogers	Petitioners' PDR Under N.C.G.S. § 7A-31 (COA24-788)	Denied

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

20 MARCH 2026

321A25	Members of North Carolina State University's 1983 NCAA Men's Basketball National Championship Team, a/k/a the "Cardiac Pack," including Thurl Bailey; Alvin Harrell Battle; Walt Densmore; Tommy Dinardo; Terrence Patrick Gannon; Martha Lou Mobley, as Administrator of the Estate of Quinton Leonard III; George Calvin McClain; Cozell McQueen; Ernie Myers; Walter Proctor; Harold Lewis Thompson; and Mike Warren v. National Collegiate Athletic Association a/k/a NCAA	1. Def's Motion to Admit Matthew R. Skanchy Pro Hac Vice 2. Def's Motion to Admit Rakesh Kilaru Pro Hac Vice 3. Def's Motion to Admit Calanthe Arat Pro Hac Vice 4. Def's Motion for Extension of Time to File Brief and to Continue Oral Argument	1. Allowed 2. Allowed 3. Allowed 4. Allowed **02/12/2026**
323PA24	State v. Melvin Howard Clark	Def's Motion for Extension of Time to File Brief and to Continue Oral Argument	Allowed up to and including 13 April 2026 **02/26/2026**
325P25	In re C.H., A.H.	Respondent-Mother's Pro Se Motion for Relief from Judgment Under Rule 60(b) (COA25-271)	Denied
330P25	Alan Ray Lucas v. Virginia Bradley Childress, an individual	Def's PDR Under N.C.G.S. § 7A-31 (COA25-227)	Allowed
336P25	Robert Terry Harrington v. Curtis Wayne Laney, Cynthia Rowell Laney, and the Estate of Daniel Hedgepeth	Plt's PDR Under N.C.G.S. § 7A-31 (COA24-1071)	Special Order
360P25	State v. Wayne Douglas Wilson	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-581) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. Dismissed *ex mero motu* 2. Allowed 3. Dismissed as moot
362P25	State v. James Matthew Dean	Def's PDR Under N.C.G.S. § 7A-31 (COA24-654)	Allowed

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

20 MARCH 2026

365P25	State v. Larry Eugene Epley	Def's PDR Under N.C.G.S. § 7A-31 (COA25-342)	Denied
368P25	Jonathan Pyles; Nikki Brassaw v. SDH Raleigh, LLC	1. Plts' PDR Under N.C.G.S. § 7A-31 (COAP25-772) 2. Plts' Petition for Writ of Mandamus	1. Denied 2. Denied
370P25	State v. Christopher Vance Sheridan	Def's PDR Under N.C.G.S. § 7A-31 (COA24-835)	Denied
376P25-2	Armagene Ellis-Smith v. Barrington Smith, et al.	1. Plt's Pro Se Notice of Appeal (COA26-73) 2. Plt's Pro Se Petition for Writ of Certiorari to Review Decision of District Court, Durham County 3. Plt's Pro Se Motion for Temporary Stay 4. Plt's Pro Se Petition for Writ of Supersedeas	1. Dismissed *ex mero motu* **02/23/2026** 2. Denied **02/23/2026** 3. Dismissed as moot **02/23/2026** 4. Dismissed as moot **02/23/2026**
436A21-2	State of North Carolina *ex rel.* Jeffrey Jackson, Attorney General v. E.I. du Pont de Nemours and Company; The Chemours Company; The Chemours Company FC, LLC; Corteva, Inc.; Dupont De Nemours, Inc.; and Business Entities 1-10	1. Defs' (E.I. du Pont de Nemours and Company, The Chemours Company, and The Chemours Company FC, LLC) Petition for Writ of Certiorari to Review Order of the Business Court 2. Defs' (E.I. du Pont de Nemours and Company, The Chemours Company, and The Chemours Company FC, LLC) Motion for Temporary Stay 3. Defs' (E.I. du Pont de Nemours and Company, The Chemours Company, and The Chemours Company FC, LLC) Petition for Writ of Supersedeas	1. Allowed 2. Allowed **10/29/2025** 3. Allowed

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

RULES GOVERNING DISCIPLINE AND DISABILITY RULES

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 January 23, 2026.

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. 01B, Section .0100, Rule .0133, *Rules Governing Discipline and Disability Rules*, be amended as shown in the following attachment:

TAB #1: 27 N.C.A.C. 01B, Section .0100, Rule .0133, *Confidentiality*

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 23, 2026.

Given over my hand and the Seal of the North Carolina State Bar, this the 10th day of February, 2026.

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 18th day of March, 2026.

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 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 18th day of March, 2026.

s/Riggs, J.
For the Court

27 NCAC 01B .0133 CONFIDENTIALITY

(a) Allegations of Misconduct or Alleged Disability - Except as otherwise provided in this rule and G.S. 84-28(f), all information, documentation, and proceedings involving allegations of misconduct by or alleged disability of ~~a member~~an attorney will remain confidential ~~until~~until:

(1) a complaint against ~~a member~~an attorney has been filed ~~with the secretary~~in the Disciplinary Hearing Commission after a finding by the Grievance Committee that there is probable cause to believe that the ~~member is guilty of~~attorney engaged in misconduct justifying disciplinary action or is disabled;

(2) the ~~member~~ attorney requests that the matter be made public ~~prior to the filing of a complaint~~;

(3) the investigation is predicated upon the attorney's conviction of ~~the member of or sentencing for~~ a crime;

(4) a petition or action is filed in the general courts of justice;

(5) the ~~member~~ attorney files an affidavit of surrender of license; ~~or~~

(6) an attorney ~~member~~ is transferred to disability inactive status pursuant to Rule .0122(a) or (b)~~(g)~~. In such an instance, the order transferring the ~~member~~ attorney shall be public. Any other materials, including the ~~medical~~ evidence of disability supporting the order, shall be kept confidential unless and until the ~~member~~ attorney petitions for reinstatement ~~pursuant to Rule .0122(c)~~, unless otherwise provided ~~otherwise~~ in the ~~order.~~order; or

(7) a petition for noncompliance suspension has been filed in the Disciplinary Hearing Commission pursuant to Rule .0135.

(b) Disciplinary Complaints Filed Upon Refusal of Grievance Committee Disposition- ~~Pursuant to Rule .0113(j)(4), .0113(l)(4) or .0113(m)(4).~~ The State Bar may disclose that it filed a~~the~~ complaint before the Disciplinary Hearing Commission pursuant to Rule .0113(j)(5) or .0113(l)(5) of this Subchapter ~~Rule .0113(j)(4), .0113(l)(4) or .0113(m)(4)~~upon the defendant's refusal of a disciplinary disposition offered by the Grievance Committee:

(1) after the proceedings before the Disciplinary Hearing Commission have concluded; or

(2) while proceedings are pending before the Disciplinary Hearing Commission, ~~in order~~ to address

(c) Letter of ~~Warning~~Warning; ~~or~~ Admonition - A letter of warning issued to an attorney within the preceding three years may be revealed in any subsequent disciplinary proceeding. ~~The previous issuance of a letter of warning, formerly known as a letter of admonition, or an~~An admonition issued to ~~a member~~an attorney may be revealed in any subsequent disciplinary proceeding.

(d) Attorney's Response to a Grievance - This provision will not be construed to prohibit the North Carolina State Bar from providing a copy of an attorney's response to a grievance to the complaining party ~~where such~~when the attorney has not objected thereto in writing.

(e) Law Enforcement or Regulatory Agency - This provision will not be construed to prohibit the North Carolina State Bar from providing information or evidence to any law enforcement or regulatory agency.

(f) Chief Justice's Commission on Professionalism - This provision will not be construed to ~~prevent~~ prohibit the North Carolina State Bar, with the approval of the chairperson of the Grievance Committee, from notifying the Chief Justice's Commission on Professionalism of ~~any allegation of~~alleged unprofessional conduct by ~~any member~~an attorney.

(g) Lawyer Assistance Program - This provision will not be construed to ~~prevent~~ prohibit the North Carolina State Bar from notifying the Lawyer Assistance Program of any circumstances that indicate ~~a member~~an attorney may have a substance ~~abuse~~use or mental health issue.

(h) Other Jurisdictions - This provision will not be construed to prohibit the North Carolina State Bar, with the approval of the chairperson of the Grievance Committee, from providing information concerning the existence of a letter of caution, letter of warning, or admonition to any agency that regulates the legal profession in any other jurisdiction so long as the inquiring jurisdiction maintains the same level of confidentiality respecting the information as does the North Carolina State Bar.

(i) National Discipline Data Bank - The ~~secretary~~ clerk of the Disciplinary Hearing Commission will transmit notice of all public discipline imposed and transfers to disability inactive status to the National Discipline Data Bank maintained by the American Bar Association.

(j) Client Security Fund Board of Trustees - The ~~secretary may also transmit any relevant~~Counsel may provide information that is confidential under subsection (a) to the Client Security Fund Board of Trustees to assist the Client Security Fund Board in determining losses caused by dishonest conduct of members of the North Carolina State Bar.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; October 9, 2008; March 6, 2002; November 7, 1996; February 20, 1996.

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

RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

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 January 23, 2026.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules of Professional Conduct of the North Carolina State Bar as set forth in 27 N.C.A.C. 02, Section .0100, Rule .1.10, *Rules of Professional Conduct of the North Carolina State Bar*, be amended as shown in the following attachment:

TAB #4: 27 N.C.A.C. 02, Section .0100, Rule 1.10, *Imputation of Conflicts of Interest: General Rule*

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 23, 2026.

Given over my hand and the Seal of the North Carolina State Bar, this the 10th day of February, 2026.

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 18th day of March, 2026.

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 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 18th day of March, 2026.

s/Riggs, J.
For the Court

CHAPTER 02 - RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

SECTION .0100 - CLIENT-LAWYER RELATIONSHIP

27 NCAC 02 RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer, including a prohibition under Rule 6.6, and the prohibition does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the personally disqualified lawyer is timely screened from any participation in the matter; and

(2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

(f) The disqualification prescribed by Paragraphs (a) and (b) of this Rule when applied to members of the North Carolina Department of Justice may be resolved by following the screening and notice requirements as set out in Subparagraphs (c)(1) and (c)(2) of this rule.

(g) Disqualification pursuant to Rule 1.9 as prescribed by Paragraphs (a) and (b) of this Rule when applied to members of a public defender's office may be resolved by following the screening and notice requirements as set out in Subparagraphs (c)(1) and (c)(2) of this rule.

COMMENT

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(d). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2] - [4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited

from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(l) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Where the conditions of paragraph (c) are met, imputation is removed, and consent to the new representation is not required. Lawyers should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify a lawyer from pending litigation.

[7] Requirements for screening procedures are stated in Rule 1.0(l). Paragraph (c)(2) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, nor does it specifically prohibit the receipt of a part of the fee from the screened matter. However, Rule 8.4(c) prohibits the screened lawyer from participating in the fee if such participation was impliedly or explicitly offered as an inducement to the lawyer to become associated with the firm.

[8] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] Rule 1.10(d) removes imputation with the informed consent of the affected client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers

of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed consent, see Rule 1.0(f).

[10] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11 (b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[11] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (j) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

[12] Lawyers working in a public defender's office provide clients with constitutionally guaranteed representation. Similarly, lawyers working in the North Carolina Department of Justice provide government entities, agencies, and individuals with statutorily guaranteed representation. See, e.g., N.C. Gen. Stat. § 114-2. Historically, lawyers working in either of these offices have been considered part of a single "firm" for conflict analysis. See, e.g., 98 FEO 5. However, application of the imputed conflict rules set out in Rule 1.10 can create a limitation on the provision of constitutionally or statutorily guaranteed representation, thereby hindering the public's or the government's ability to avail itself to the legal representation provided by law. Considering the Rules of Professional Conduct are "rules of reason" (see Rule 0.2 Scope [1]; see also RPC 55), Rule 1.10(f) and (g) permit the North Carolina Department of Justice and public defender offices, respectively, to resolve certain imputed conflict issues by taking reasonable precautions to screen disqualified lawyers from participation in the representation giving rise to the conflict under this Rule and provide notice to the affected individual(s) as set out in Rule 1.10(c). Rule 1.10(f) and (g) only apply to the referenced agencies or offices and do not permit private law firms to avoid imputed disqualification under Rule 1.10 by employing screening measures other than as set out in Paragraph (c) of this rule.

[13] The Chief Public Defender of any public defender office is tasked with making reasonable efforts to ensure all assistant public defenders employed by the office conform their conduct to the Rules of Professional Conduct. See generally Rule 5.1. Accordingly, the Chief Public Defender of a public defender office should review and make the determination as to whether a public defender office can proceed with representation pursuant to this Rule.

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