

NORTH CAROLINA COURT OF APPEALS

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GREGORY COHANE,

Plaintiff-Appellant,

v.

THE HOME MISSIONERS OF  
AMERICA d/b/a Glenmary Home  
Missioners, ROMAN CATHOLIC  
DIOCESE OF CHARLOTTE, North  
Carolina, and AL BEHM,

Defendants-Appellees.

From Mecklenburg County

\*\*\*\*\*

**BRIEF OF AMICUS CURIAE  
THE STATE OF NORTH CAROLINA  
IN SUPPORT OF PLAINTIFF-APPELLANT**

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<sup>1</sup> No outside persons or entities wrote any part of this brief or contributed any money to support the brief's preparation. See N.C. R. App. P. 28(i)(2).

## INTRODUCTION

In 2019, our General Assembly unanimously passed the SAFE Child Act to better “protect children from sexual abuse” and “strengthen and modernize” our sexual assault laws. “SAFE Child Act,” S.L. 2019-245, 2019 N.C. Sess. Laws 1231. The Act reflects developments in our understanding of the effects of childhood abuse. Research has shown that child victims can delay disclosing sexual abuse for many years.<sup>2</sup> And children who are sexually abused suffer devastating and lifelong injuries.<sup>3</sup>

Among many other notable features, the Act revived—for a two-year period from 2020 to 2021—“any civil action for child sexual abuse otherwise time-barred” by the statute of limitations. S.L. 2019-245, § 4.2(b). The plaintiff in this case, Gregory Cohane, invoked this revival provision to bring otherwise time-barred claims for child sexual abuse. Cohane alleges that his former spiritual counselor sexually abused him during his childhood, and that the counselor’s employers negligently enabled that abuse. (R pp 12-18)

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<sup>2</sup> See, e.g., ChildUSA, *Delayed Disclosure 2* (Mar. 2020), <https://bit.ly/3HRdjff>.

<sup>3</sup> See Ctrs. for Disease Control, *Preventing Child Sexual Abuse 2* (Apr. 30, 2021), <https://bit.ly/3Ksi8x3>.

However, the trial court below dismissed the claims against the employers. In the court's view, the Act's revival provision is "narrow" and "only applies to claims against alleged perpetrators of child sexual abuse." (R pp 68-70) That is, the court held that Cohane may bring claims against the counselor who directly abused him, but not against the counselor's employers who allegedly facilitated that abuse.

The court reached this conclusion based on perceived differences between the text of the revival provision and other parts of the Act. Specifically, the revival provision revives otherwise time-barred claims "for child sexual abuse," whereas the Act's preceding sections extend the statute of limitations for "claims related to sexual abuse suffered while the plaintiff was under 18 years of age." See S.L. 2019-245, §§ 4.1-4.2(b). But as explained below, any textual differences between these two provisions are immaterial. By its plain text, the revival provision applies to "*any civil action* for child sexual abuse" that was previously time-barred, no matter the defendant. And to the extent the phrase "for child sexual abuse" is ambiguous, that ambiguity should be resolved in favor of the Act's remedial purpose.

The point of the revival provision is to provide a meaningful opportunity for survivors to recover for past harms. Interpreting the revival

provision to apply only to individual abusers—many of whom are judgment proof—would shield from liability institutional defendants who enabled child sexual abuse. But when the General Assembly unanimously passed the revival provision, it intended to provide victims of child sexual abuse access to meaningful relief. The trial court’s cramped reading of the revival provision would drastically undermine that legislative purpose.

For these reasons, the State of North Carolina, through Attorney General Joshua H. Stein, respectfully requests that this Court clarify that the revival provision applies to all defendants who could otherwise be held legally responsible for child sexual abuse.

## ARGUMENT

### **I. The Revival Provision Applies to Any Civil Action for Child Sexual Abuse, No Matter the Defendant.**

The revival provision’s text shows that it applies to a broad category of civil actions for child sexual abuse, including actions against both perpetrators of abuse and their enablers.

First, the provision revives “any” civil action for child sexual abuse. The indefinite adjective “any” “has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” *United States v. Gonzales*, 520 U.S.

1, 5, (1997) (quoting Webster's Third New International Dictionary 97 (1976)); *see also Evans v. AT&T Techs., Inc.*, 332 N.C. 78, 83, 418 S.E.2d 503, 507 (1992) (noting that "[t]he term 'any' . . . carries a broad meaning"). Thus, by using the adjective "any" to modify the noun phrase "civil action for child sexual abuse," the legislature signaled its intent for the revival provision to apply broadly to otherwise time-barred claims of all kinds. Indeed, nothing in the text of the revival provision itself limits its scope to only those civil actions brought against direct perpetrators of abuse.

Second, the provision expressly revives actions that were "otherwise time-barred under [section] 1-52" of the General Statutes. Section 1-52, in turn, establishes the limitations period for many different claims, including those that regularly comprise suits for child sexual abuse. *See, e.g.*, N.C. Gen. Stat. § 1-52(5) ("any other injury to the person or rights of another, not arising on contract"), (16) ("personal injury"), (19) ("assault, battery, or false imprisonment"). Some of these claims are typically asserted against individual abusers alone. *E.g.*, *Hawkins v. Hawkins*, 101 N.C. App. 529, 530, 400 S.E.2d 472, 473 (1991) (action for assault and battery based on sexual abuse done by family member). But others can be asserted against entities alleged to have contributed to abuse indirectly as well. *E.g.*, *Doe v. Diocese*

*of Raleigh*, 242 N.C. App. 42, 42-43, 776 S.E.2d 29, 32-33 (2015) (action for negligence against employer based on sexual abuse done by employee).

Thus, by tethering the revival provision's scope to actions "otherwise time-barred under [section] 1-52," the legislature revived a broad set of claims, including those against defendants other than direct perpetrators.

This deliberate drafting choice makes sense. North Carolina law does not recognize a standalone statutory or common law cause of action "for child sexual abuse." Rather, plaintiffs can seek to recover for child sexual abuse by bringing any number of common law claims—including assault and battery, negligence, or negligent infliction of emotional distress. These claims can be brought against both individual and organizational defendants. *See, e.g., Doe*, 242 N.C. App. at 43-44, 776 S.E.2d at 32-33 (allowing several different claims against a priest, a bishop, and a diocese arising out of alleged sexual abuse perpetrated by the priest). Put another way, actions "for child sexual abuse" flow from a particular type of harm—sexual abuse—that can give rise to numerous claims. As a result, claims seeking redress "for child sexual abuse" can be brought against any party that causes that harm, including both direct perpetrators and those that enable abuse. This context further supports what the text already makes clear: the

revival provision applies to any civil action for child sexual abuse, no matter the defendant.

## **II. The Trial Court's Narrow Reading of the Revival Provision Was Misguided.**

In reaching a different conclusion, the trial court relied on slight textual differences between the revival provision and other parts of the Act. (R p 69-70) Specifically, the court looked to section 4.1, which permanently extends the statute of limitations for claims “related to” child sexual abuse. The court reasoned that the revival provision uses narrower language because it applies only to claims “for” child sexual abuse. As a result, the court concluded that the revival provision applies to claims against a “limited class” of potential perpetrator-defendants, and not to the entities that employed them. (R p 70) The trial court put too much stock in these superficial differences.

For starters, the phrases “related to sexual abuse” and “for child sexual abuse” can naturally be read to have the same meaning. After all, “for” and “related to” are practically synonymous prepositions. *See, e.g., For, Merriam-Webster Online*, <https://bit.ly/3CRkpiS> (“concerning” or “with respect to”).

The phrases also appear in closely related provisions of the Act. Section 4.1 expands the timeframe within which a plaintiff can file “a civil action . . . for claims related to sexual abuse suffered while the plaintiff was under 18 years of age.” S.L. 2019-245, § 4.1 (codified at N.C. Gen. Stat. § 1-17(d), (e)). The revival provision—which appears in the same part of the Act, in the very next section—expresses a similar concept, but in shorthand. It states that during the two-year revival period, a plaintiff may bring “any civil action for child sexual abuse” that was otherwise time-barred. *Id.* § 4.2(b). Thus, sections 4.1 and 4.2(b) share a common goal: both extend limitations periods for claims of child sexual abuse. Section 4.1 does so prospectively, while section 4.2(b) revives otherwise time-barred claims. That these two provisions appear in the same part of the Act and have a similar purpose supports reading them in harmony. *See Cape Fear Mem’l Hosp. v. N.C. Dep’t of Hum. Res.*, 121 N.C. App. 492, 494, 466 S.E.2d 299, 301 (1996) (“[T]he words of a statute must be construed as part of a composite whole.”).

Even if the phrase “related to sexual abuse” is somewhat broader than the phrase “for . . . sexual abuse,” the revival provision’s reference to section 1-52 closes the gap. As explained above, there is no standalone cause of

action “for child sexual abuse.” *See supra* p 6. Section 4.1 and the revival provision both take account of this fact, albeit in different ways. The former uses the term “related to” to capture a wide range of claims, while the latter encompasses the many kinds of claims previously barred by section 1-52.

In short, the phrases cited by the trial court are functionally equivalent. The minor textual differences between them do not support the court’s narrow reading of the revival provision.

### **III. Any Ambiguity Should Be Resolved In Line With the Act’s Remedial Purpose.**

As discussed above, the trial court’s ruling is at odds with the revival provision’s plain text. In addition, any ambiguity in the scope of the phrase “for child sexual abuse” should be resolved in favor of the Act’s remedial purpose.

The revival provision aims to give survivors of child sexual abuse a meaningful civil remedy—one that accounts for our modern understanding of delayed disclosure and the lifelong consequences of abuse. Remedial statutes like this one “must be construed broadly” in light of “the evils sought to be eliminated, the remedies intended to be applied, and the objective to

be attained.” *O & M Indus. v. Smith Eng’g Co.*, 360 N.C. 263, 268, 624 S.E.2d 345, 348 (2006) (cleaned up). But the trial court took the opposite approach.

By ruling that the revival provision applied only to direct perpetrators, the court closed the door to meaningful recovery for the vast majority of victims. (R pp 69-70) Most individual perpetrators are judgment proof.<sup>4</sup> Thus, a revival provision that excluded actions against employers and institutions would provide little practical relief for most survivors of child sexual abuse.

The legislature did not intend to cabin the Act in this way. To the contrary, the Act’s legislative history is replete with comments about the pressing need for meaningful civil redress. Lawmakers seriously debated several components of the Act before it was passed. For example, the initial senate bill set the new limitations age at 50-years-old. Through the legislative process, that limit was initially lowered to 38, then finally to 28.<sup>5</sup>

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<sup>4</sup> See generally Merle H. Weiner, *Civil Recourse Insurance: Increasing Access to the Tort System for Survivors of Domestic and Sexual Violence*, 62 *Ariz. L. Rev.* 957, 970-71 (2020) (noting that “most perpetrators do not have vast wealth” and “the vast majority of Americans still have only modest assets”).

<sup>5</sup> See S.B. 199 (2019) (first edition (50 years); seventh edition (38 years); final edition (28 years)), <https://bit.ly/3JnyerR>.

In contrast, the terms of the revival provision remained unchanged from introduction to final passage, and received virtually no discussion on the floor. This lack of debate signals that lawmakers understood the revival provision's plain text to mean what it says, and saw no need to alter or clarify its scope.

In sum, the revival provision is quintessentially remedial. It therefore should be construed broadly. And nothing in the legislative history suggests that the General Assembly intended to limit the provision to a "narrow" class of potential defendants, as the trial court believed. (R pp 69-70) Instead, the provision's remedial purpose would be fulfilled by interpreting it to apply to claims against all defendants who could otherwise be held legally accountable for child sexual abuse.

## CONCLUSION

The State of North Carolina, by and through Attorney General Joshua H. Stein, respectfully requests that this Court reverse the judgment of the trial court below and hold that the SAFE Child Act's revival provision is not limited to direct perpetrators of child sexual abuse.

Respectfully submitted, this the 21st day of March, 2022.

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## CERTIFICATE OF COMPLIANCE

I certify that the attached brief complies with Appellate Rule 28(j)(2). The brief uses 14-point Constantia type. According to Microsoft Word, the body of the brief (including footnotes and citations) contains fewer than 3,750 words.

This the 21st day of March, 2022.

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## CERTIFICATE OF SERVICE

I certify that today, I served this brief on all parties to this case by email to counsel, as follows:

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