

NORTH CAROLINA  
FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
20 CVS 951

JOSEPH CRYAN, SAMUEL CRYAN, )  
KERRY HELTON, THOMAS HOLE, )  
RICKEY HUFFMAN, JOSEPH PEREZ, )  
JOSHUA SIZEMORE and MICHAEL )  
TAYLOR, )  
Plaintiffs, )  
v. )  
NATIONAL COUNCIL OF YOUNG )  
MEN'S CHRISTIAN ASSOCIATIONS OF )  
THE UNITED STATES OF AMERICA; )  
YOUNG MEN'S CHRISTIAN )  
ASSOCIATION OF NORTHWEST NORTH )  
CAROLINA d/b/a KERNERSVILLE )  
FAMILY YMCA and MICHAEL TODD )  
PEGRAM, )  
Defendants. )

**PLAINTIFFS' MOTION TO TRANSFER  
DEFENDANT YOUNG MEN'S  
CHRISTIAN ASSOCIATION OF  
NORTHWEST NORTH CAROLINA D/B/A  
KERNERSVILLE FAMILY YMCA'S  
MOTION TO DISMISS**

Pursuant to N.C. Gen. Stat. § 1-267.1 and N.C. R. Civ. P. 42(b)(4), Plaintiffs respectfully move that this court transfer Defendant Young Men's Christian Association of Northwest North Carolina D/B/A Kernersville Family YMCA's Motion to Dismiss to the Wake County Superior Court for appointment of a three-judge panel to determine the facial challenge brought by Defendant to the General Assembly's 2019 amendments to N.C. Gen. Stat. §§ 1-17 (e) and 1-52 (5), (16) and (19).

In support of this motion Plaintiffs show the Court the following:

1. In 2019, the North Carolina General Assembly joined numerous other states in passing much-needed legislation designed to permit individuals who were victims of child sexual abuse to bring claims that otherwise would be barred by the existing three year statute of limitations in N.C. Gen. Stat. § 1-52.

2. Through Session Law 2019-245, the General Assembly amended N.C. Gen. Stat. § 1-17(e) to provide:

Notwithstanding the provisions of subsections (a), (b), (c), and (d) of this section, a plaintiff may file a civil action within two years of the date of a criminal conviction for a related felony sexual offense against a defendant for claims related to sexual abuse suffered while the plaintiff was under 18 years of age.

3. Additionally, the General Assembly amended N.C. Gen. Stat. § 1-52 to add the same limitations extension quoted above:

For assault, battery, or false imprisonment, except as provided by G.S. 1-17(d) and (e). Notwithstanding this subdivision, a plaintiff may file a civil action within two years of the date of a criminal conviction for a related felony sexual offense against a defendant for claims related to sexual abuse suffered while the plaintiff was under 18 years of age.

4. Child victims of sexual abuse often suffer alone during their adolescent years and beyond. Studies indicate that approximately 90% of children never report their abuse to the police and the vast majority of claims are barred by statutes of limitation before the victims are emotionally and psychologically able to go to court.<sup>1</sup> Extensive scientific evidence has established that child sex abuse victims often need decades to report what happened to them.<sup>2</sup> It is estimated that the average age of a victim to first disclose child sexual abuse is 52.<sup>3</sup> Approximately 3.7 million children are sexually abused in the United States every single year.<sup>4</sup> Every nine (9) minutes another child becomes a victim of sexual violence.<sup>5</sup>

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<sup>1</sup> Centers for Disease Control and Prevention, The Adverse Childhood Experiences (ACE) Study, available at <http://www.cdc.gov/violenceprevention/acestudy/#1>; see also, U.S. Dep’t of Health and Human Services Administration for Children and Families, Administration on Children, Youth and Families, and Children’s Bureau, Child Maltreatment 2017, available at <https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf>.

<sup>2</sup> Rebecca Campbell, Ph.D., "The Neurobiology of Sexual Assault: Explaining Effects on the Brain," NAT'L INST. OF JUSTICE (2012), available at <https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobilityWebinar.pdf>; R.L. v. Voytac, 971 A.2d 1074 (N.J. 2009); Bessel A. van der Kolk M.D., et al., Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society (2006).

<sup>3</sup> N. Spröber et al., Child sexual abuse in religiously affiliated and secular institutions, 14 BMC PUB. HEALTH 282, 282 (Mar. 27, 2014).

<sup>4</sup> Preventing Child Sexual Abuse, CDC.GOV (last visited Jan. 24, 2020), available at <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; see also, Finkelhor, D., Turner H. A., Shattuck, A., &

5. The purpose behind these amendments is a significant and compelling legislative attempt to help minor victims of sexual abuse address what happened to them and to seek redress for one of the most damaging types of injury that a minor can suffer. This legislation recognizes the stark reality that the doors to the courthouse are closed long before the vast majority of victims of child sexual abuse are able to come to terms with what happened to them or to even discuss their experience. Through S. L. 2019-245, the General Assembly sought to bring some measure of relief for the unjust result wrought by the statute of limitations in these situations.

6. On June 26, 2019, Michael Todd Pegram plead guilty to five counts of first-degree sex offense, one count of attempted first-degree sex offense, one count of statutory sex offense with a child and twenty-one counts of taking indecent liberties with a child. All of the Plaintiffs were victims of sexual assault and abuse at the hands of Pegram.

7. On February 14, 2020, Plaintiffs filed their Complaint in Forsyth County Superior Court against Defendants Pegram, Kernersville YMCA and the National Council Of Young Men's Christian Associations of The United States of America, pursuant to N.C. Gen. Stat. §§ 1-17 and 1-52 and within two years of Pegram's conviction. Plaintiffs contend that Pegram carried out his despicable conduct by and through his improperly supervised affiliation with Defendant Kernersville YMCA.

8. On June 1, 2020, Defendant Kernersville YMCA filed a motion asserting that the amendments to N.C. Gen. Stat. §§ 1-17 and 1-52 violate substantive due process under the North Carolina Constitution as applied to Defendant Kernersville YMCA.

9. Defendant Kernersville YMCA's sole basis for this assertion is that the Kernersville YMCA has a "vested constitutional right to freedom from civil liability after the existing statutory limitation or repose period on claims has already expired." The Kernersville YMCA asserts that a statute of limitations and/or statute of repose defense is a property right protected by the North Carolina Constitution.

10. While Plaintiffs strongly disagree with Defendant's assertion that the amendments violate the North Carolina Constitution, if this Court were to agree with Defendant and find that

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Hamby, S.L., Prevalence of child exposure to violence, crime, and abuse: Results from the Nat'l Survey of Children's Exposure to Violence, JAMA PEDIATRICS 169(8), 746-54 (2015).

<sup>5</sup> Rape Abuse Incest Nat'l Network, Statistics (2020), <http://www.rainn.org/statistics> (last visited June 15, 2020).

it has a constitutionally protected fundamental and vested right in a limitations defense, then such a determination would invalidate the amendments as to every potential defendant in every pending or subsequent case.

11. Defendant's assertion that the S.L. 2019-245 amendments are unconstitutional only as applied to it does not change the reality that a determination that a constitutionally vested right exists in a limitations defense would apply to all defendants against whom any claim could be brought under any of the amended statutes.

12. N.C. Gen. Stat. § 1-267.1, vests exclusive jurisdiction for determining the validity of a facial challenge to an act of the General Assembly in a three-judge panel of the Wake County Superior Court to be appointed by the Chief Justice of the North Carolina Supreme Court. Further, N.C. Gen. Stat. § 1-267.1(a1) mandates that a trial court "shall" transfer a facial constitutional challenge to Wake County Superior Court.

13. N.C. Gen. Stat. § 1-267.1(c) also prohibits any court other than a three-judge panel of the Wake County Superior Court from entering an order or judgment finding an act of the General Assembly to be facially invalid. As such, if this Court were to determine that there is a constitutionally protected vested right in a limitations defense, then this court would lack authority to enter that order or judgment.

14. The determination of this constitutional issue is essential to this litigation and to the Plaintiffs' ability to pursue their claims. There are no other issues that this court needs to decide prior to transferring this motion to Wake County Superior Court.

**WHEREFORE**, Plaintiffs respectfully pray that this Court enter an order transferring Defendant Kernersville YMCA's Motion to Dismiss to the Wake County Superior Court for the appointment of a three-judge panel to determine the validity of the facial constitutional challenge raised by Defendant.

This the \_\_\_\_\_ day of June, 2020.

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **PLAINTIFFS' MOTION TO TRANSFER DEFENDANT YOUNG MEN'S CHRISTIAN ASSOCIATION OF NORTHWEST NORTH CAROLINA D/B/A KERNERSVILLE FAMILY YMCA'S MOTION TO DISMISS** was duly served upon all parties to this action by depositing a copy of same with the United States Postal Service, postage prepaid, properly addressed as follows:

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This the \_\_\_\_\_ day of June, 2020.

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DONALD S. HIGLEY, II