

SUPREME COURT OF NORTH CAROLINA

DORIS GRIFFIN LAND and ELLIOTT
LAND,

Plaintiffs-Appellees,

v.

KORI B. WHITLEY, M.D., PHYSICIANS
EAST, P.A. d/b/a GREENVILLE OB/GYN,
PITT COUNTY MEMORIAL HOSPITAL,
INC. d/b/a VIDANT MEDICAL CENTER,
and PITT COUNTY MEMORIAL
HOSPITAL, INC. d/b/a VIDANT
SURGICENTER,

Defendants-Appellants.

From Pitt County

**MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF
BY NORTH CAROLINA HEALTH CARE FACILITIES
ASSOCIATION,
NORTH CAROLINA SENIOR LIVING ASSOCIATION, AND
NORTH CAROLINA ASSISTED LIVING ASSOCIATION
IN SUPPORT OF DEFENDANTS-APPELLANTS**

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

The North Carolina Health Care Facilities Association, the North Carolina Senior Living Association, and the North Carolina Assisted Living Association hereby request leave to file an amici curiae brief in support of Defendants-Appellants, pursuant to Rule 28.1 of the North Carolina Rules of Appellate Procedure. The proposed brief is filed contemporaneously with this motion.

NATURE OF INTEREST OF AMICI CURIAE

Amici are the statewide associations of nursing homes, assisted living facilities, post-acute care facilities, and other skilled nursing facilities in North Carolina that house and care for many of our State's seniors. Amici write to amplify the defendants' concerns about the consequences of the Court of Appeals' decision on health care providers and to emphasize its harmful effects on long-term care facilities and, by extension, some of our most vulnerable citizens who depend on their shelter and care.

The Court of Appeals' narrow construction of the Emergency or Disaster Treatment Protection Act, which the General Assembly passed unanimously to provide health care providers and long-term care

facilities broad immunity from liability during Covid, and the Court of Appeals' lowering of the pleading standard for gross negligence, will deprive amici's members of immunity in most cases and will perpetuate the harmful effects of Covid on long-term care facilities for years to come.

REASONS WHY THE BRIEF WOULD BE BENEFICIAL TO THE COURT

Amici's brief would be beneficial to the court because it presents legal arguments supporting reversal of the Court of Appeals' decision and offers the long-term care industry's perspective on the harmful effects that would result from allowing the Court of Appeals' holdings to become precedent. The Court of Appeals' erred by narrowly construing the Emergency Or Disaster Treatment Protection Act to only provide immunity for negligence or injuries caused by Covid, when the General Assembly passed the Act with the express intent to provide broad immunity to health care providers from liability for negligence during the public health emergency. The Court of Appeals also established a new, diminished pleading standard for gross negligence by accepting allegations that merely label negligence as "gross negligence," without

requiring the specific types of facts our courts traditionally demanded to support a conclusion of gross negligence.

ISSUES THAT ARE ADDRESSED IN THE BRIEF

There are two main issues addressed in the brief.

First, did the Court of Appeals err in narrowly construing the Emergency Or Disaster Treatment Protection Act to only provide immunity for negligence or injuries caused by Covid, when the General Assembly passed the Act with the express intent to provide broad immunity to health care providers from liability for negligence during the public health emergency?

Second, did the Court of Appeals establish a new, diminished pleading standard for gross negligence by accepting allegations that merely label negligence as “gross negligence,” without requiring the specific types of facts our courts traditionally demanded to support a conclusion of gross negligence?

POSITION OF AMICI CURIAE ON THE ISSUES

First, the Court of Appeals erred by narrowly construing the Emergency or Disaster Treatment Protection Act to only provide immunity for negligence or injuries caused by Covid, when the General

Assembly enacted the Act with the express intent to provide broad immunity to health care providers from liability for negligence during the public health emergency. Amici submit to the Court that the General Assembly intended to grant broad immunity to health care providers who delivered health care during the public health emergency, not to restrict the immunity to liability only for negligence or injuries caused by Covid. The plain language of the Act is unambiguous and does not require the causal link the Court of Appeals imposed. Even if this Court decides the Act is ambiguous, the Act must be liberally construed to fulfill its purpose to broadly protect health care providers from liability during the public health emergency. The Act's title, legislative history, and context affirm the legislature's intent to grant broad immunity for negligence during Covid, with no causation requirement.

Second, the Court of Appeals also erred by establishing a new, diminished pleading standard for gross negligence, by accepting allegations that merely label negligence as "gross negligence," without requiring the specific types of facts our courts traditionally demanded to support a conclusion of gross negligence. Allowing plaintiffs to escape

properly pleading gross negligence nullifies the immunity granted by the Act and thwarts other important public policy.

APPELLATE RULE 37(c) CERTIFICATION

Amici certify that, pursuant to Rule 37(c) of the North Carolina Rules of Appellate Procedure, counsel for amici informed counsel for all other parties of the intended filing of this motion. The other parties consent to these amici filing an amici curiae brief in support of the defendants' petition for discretionary review. It is unclear whether any other party intends to file a response.

CONCLUSION

For the foregoing reasons, amici respectfully urge the Court to reverse the Court of Appeals' decision.

Respectfully submitted on this the 31st day of July, 2024.

YOUNG MOORE AND HENDERSON, P.A.

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Rule 33(b) Certification:
I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document has been served on the following counsel of record by e-mail on this the 31st day of July, 2024:

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