No. 14-1380

In the Supreme Court of the United States

ERICA Y. BRYANT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly interpreted the North Carolina statute of repose applicable to personal injury claims.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 768 F.3d 1378. The opinion of the district court (Pet. App. 17a-33a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 14, 2014. A petition for rehearing en banc was denied on January 20, 2015. On April 13, 2015, Justice Thomas extended the time to file a petition for writ of certiorari to May 20, 2015, and the petition was filed on May 19, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case involves consolidated actions that petitioners separately filed against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C.

2671 *et seq.* The district court rejected petitioners' argument that their claims are categorically exempt from North Carolina's ten-year statute of repose applicable to personal injury causes of action. Pet. App. 33a. The court of appeals affirmed that conclusion and remanded the case for the district court to address whether the statute of repose bars petitioners' claims based on the particular facts at issue. *Id.* at 16a & n.13.

1. Petitioners were residents at the Camp Lejeune Marine Corps base in North Carolina at various periods in the 1980s. Pet. 6. Close to two decades later, they were diagnosed with cancer or other diseases. Pet. 6-7. Petitioners believe that their medical conditions were caused by contaminated drinking water that they consumed at Camp Lejeune. Pet. 5-6. They assert that the government was negligent in failing to take appropriate steps to ensure that the water supply was safe, and in failing to warn them of chemicals in the water. *Ibid.*

a. Beginning in 2009, petitioners began filing separate actions against the United States under the FTCA. Pet. 7. That law provides a limited waiver of the government's sovereign immunity from tort actions predicated on state law. See 28 U.S.C. 1346(b), 2671-2680. Subject to certain exceptions, the FTCA makes the United States liable in tort for the actions or omissions of its employees "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. 1346(b)(1); see 28 U.S.C. 2674.

Petitioners' cases were consolidated for pretrial proceedings by the Judicial Panel on Multi-District

Litigation. The Panel consolidated the cases in the Northern District of Georgia, the venue in which one of the cases was proceeding and the location of a large number of relevant documents stemming from the government's investigation into environmental issues at Camp Lejeune. See *In re Camp Lejeune, N.C. Water Contamination Litig.*, 763 F. Supp. 2d 1381 (J.P.M.L. 2011).

b. The government moved to dismiss petitioners' FTCA claims pursuant to N.C. Gen. Stat. Ann. § 1-52(16) (West 2013), which establishes both a statute of limitations and a statute of repose applicable to actions "for personal injury or physical damage to claimant's property."[1] Under Section 1-52(16), a plaintiff who brings such an action must sue within three years of when his or her claim accrues. The statute provides that the cause of action in such cases "shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or

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[1] Section 1-52 provides, in relevant part, as follows:

> Within three years an action— * * * (16) Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action, except in causes of action referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

N.C. Gen. Stat. Ann. § 1-52 (West 2013). The statute's exception for "causes of action referred to in G.S. 1-15(c)" encompasses "cause[s] of action for malpractice arising out of the performance of or failure to perform professional services." *Id.* § 1-15(c).

ought reasonably to have become apparent to the claimant, whichever event first occurs." *Ibid.*

In addition, Section 1-52(16) establishes a ten-year statute of repose applicable to those same actions, stating that "no cause of action shall accrue more than ten years from the last act or omission of the defendant giving rise to the cause of action." N.C. Gen. Stat. Ann. § 1-52(16) (West 2013). The statute of repose extinguishes the cause of action based on when the defendant's act or omission occurred, regardless of when a plaintiff would reasonably have known of his injury. See *Black* v. *Littlejohn*, 325 S.E.2d 469, 474-75 (N.C. 1985); see also *CTS Corp.* v. *Waldburger*, 134 S. Ct. 2175, 2183 (2014) ("Statutes of repose effect a legislative judgment that a defendant should be free from liability after the legislatively determined period of time.") (internal quotation marks omitted).

The government's motion to dismiss argued that petitioners' claims were barred under Section 1-52(16)'s ten-year statute of repose, because those claims were filed close to two decades after petitioners were last exposed to the drinking water at Camp Lejeune. See Pet. App. 17a-18a.[2] In response, petitioners asserted that Section 1-52(16)'s statute of repose was preempted by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.* See Pet. App. 19a (citing 42 U.S.C. 9658). Petitioners also argued, in the

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[2] The parties do not dispute that Section 1-52(16)'s statute of repose is a substantive rule of North Carolina law and applies in FTCA actions. It is also undisputed that the statute of limitations applicable to this case is the FTCA statute of limitations set forth in 28 U.S.C. 2401(b), and not the three-year statute of limitations set forth in Section 1-52(16). See Pet. App. 19a-20a.

alternative, that Section 1-52(16)'s statute of repose contains an implicit exception for claims based on a latent disease. See Pet. App. 18a-21a.

c. The district court agreed with petitioners that CERCLA preempts Section 1-52(16)'s statute of repose. D. Ct. Doc. 13, at 23 (Sept. 29, 2011); Pet. App. 18a-20a. But the court nonetheless went on to interpret Section 1-52(16) and hold that it does not contain an implicit exception for latent diseases. Pet. App. 20a-33a.

With respect to the latter ruling, the district court grounded its analysis in the "plain language of the statute." Pet. App. 21a. It held that the statute "plainly covers causes of action of negligence resulting in personal injury or property damage," and it emphasized that "[n]othing in the statute implies or even remotely indicates that it might contain an exception for latent diseases." *Id.* at 22a.

The district court acknowledged that in *Wilder* v. *Amatex Corp.*, 336 S.E.2d 66 (N.C. 1985), the North Carolina Supreme Court had interpreted N.C. Gen. Stat. § 1-15(b) (Supp. 1976)—a different North Carolina provision containing a statute of repose—and had concluded that it did not apply to claims based on a disease. See Pet. App. 24a. The district court explained that in reaching that conclusion, the North Carolina Supreme Court had noted that—unlike Section 1-52(16)—Section 1-15(b) "was not intended to govern all negligence claims," but rather "applied only to 'latent injury claims' or 'cases in which the bodily injury . . . was not readily apparent to the claimant at the time of its origin.'" *Id.* at 25a-26a (quoting *Wilder*, 336 S.E.2d at 70).

The district court explained that *Wilder* had held that this language, which is absent from Section 1-52(16), did not encompass disease claims. Pet. App. 25a-26a. The court noted that *Wilder* made clear that Section 1-15(b)'s primary purpose had been to enact a "discovery rule" to govern latent injury claims and to add a statute of repose for such claims. *Id.* at 26. In particular, the discovery rule delayed accrual of the cause of action until the injury could reasonably have been discovered in "cases in which the bodily injury . . . was not readily apparent to the claimant at the time of its origin." *Id.* at 25a (quoting *Wilder*, 336 S.E.2d at 70). *Wilder* further noted that, even before Section 1-15(b) was enacted, the North Carolina Supreme Court had "recognized * * * that a disease's diagnosis was the first injury from which limitations periods would run." *Id.* at 26a (quoting *Wilder*, 336 S.E.2d at 72). Because the diagnosis constituted the "first injury" in disease cases, there was no period of time in which the claimant was unaware of that injury—and thus no need for a new discovery rule. *Ibid.* The court explained that, for these reasons, "[t]he *Wilder* court held * * * that [Section] 1-15(b) did not apply to disease." *Ibid.*

The district court also pointed out that when the North Carolina legislature enacted Section 1-15(b), it deliberately removed an express reference to "disease" claims from a draft of that provision. Pet. App. 26a. It emphasized that *Wilder*'s analysis had rested on "the statute's [Section 1-15(b)'s] purpose, the state of the law when the statute was enacted, and the deliberate omission of reference to disease as [it] made its way through the legislative process." *Ibid.* (quoting *Wilder*, 336 S.E.2d at 73). The district court

therefore concluded that *Wilder* was inapplicable to Section 1-52(16) because of the clear differences between that provision and Section 1-15(b). *Id.* at 27a-29a.

The district court further acknowledged that there was a division in the courts of appeals over the proper application of *Wilder* to the former North Carolina statute of repose governing product liability claims. Pet. App. 26a-28a. It pointed out that the Seventh Circuit had rejected an effort to apply *Wilder* and hold that the product liability statute of repose did not contain an exception for latent disease claims. *Id.* at 26a-27a (discussing *Klein* v. *DePuy, Inc.*, 506 F.3d 553 (7th Cir. 2007)). By contrast, the Fourth Circuit had held that, in accordance with *Wilder*, the statute of repose for product liability claims did contain such an exception. *Id.* at 27a (discussing *Hyer* v. *Pittsburgh Corning Corp.*, 790 F.2d 30 (4th Cir. 1986), and its statement that the North Carolina Supreme Court "does not consider disease to be included within a statute of repose directed at personal injury claims unless the Legislature expressly expands the language to include it") (citation omitted).[3]

The district court expressed its agreement with the Seventh Circuit's analysis of *Wilder*. Although it

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[3] The product liability statute of repose at issue in those cases has been recodified on several occasions, without any change to the features relevant to this case. See *Klein*, 506 F.3d at 557 n.6 (discussing N.C. Gen. Stat. § 1-50(a)(6) (2007)); *Hyer*, 790 F.2d at 32 (discussing N.C. Gen. Stat. § 1-50(6) (Supp. 1981)); see also 2009 N.C. Sess. Laws 808 (repealing N.C. Gen. Stat. § 1-50(a)(6) (2007) and replacing it with N.C. Gen. Stat. Ann. § 1-46.1(1) (2013)). For ease of reference, this brief will refer to the product liability statute of repose as Section 1-50(6), as codified at the time that the Fourth Circuit decided *Hyer*.

acknowledged petitioner's argument that "*Hyer*, the product of the Fourth Circuit, ought to be of particular importance in interpreting a North Carolina statute of repose," it noted that neither North Carolina's courts nor its legislature had done anything to indicate agreement with *Hyer*'s analysis of North Carolina law. Pet. App. 29a-30a. The court also noted that the North Carolina Supreme Court had itself "implicitly reject[ed]" *Hyer*'s analysis, insofar as that court had held that Section 1-52(16) applied to a disease case even though that statute contains no express reference to disease. *Id.* at 30a (citing *Dunn* v. *Pacific Emp'rs Ins. Co.*, 418 S.E.2d 645 (N.C. 1992), which addressed Section 1-52(16)'s three-year statute of limitations).

2. The district court certified an interlocutory appeal with respect to (1) its CERCLA preemption ruling, and (2) its ruling that Section 1-52(16) contains no exception for latent disease claims. Pet. App. 4a. The court of appeals permitted the appeal as to both issues. *Ibid.* While the interlocutory appeal was pending, this Court held in *Waldburger* that CERCLA does not preempt state-law statutes of repose. 134 S. Ct. at 2180. Accordingly, the only remaining issue on appeal in this case was the state-law question of whether Section 1-52(16) is categorically inapplicable to petitioners' claims because it contains an unstated exception for latent disease claims. See Pet. App. 4a-5a.

The court of appeals agreed with the district court that Section 1-52(16)'s statute of repose "contains no exception for latent diseases." Pet. App. 5a. It explained that "[t]he plain text of the statute is unambiguous," and it further noted that "no other North

Carolina statute excepts latent diseases from the statute of repose." *Ibid.* In support of its reliance on the plain text, the court of appeals cited the North Carolina Supreme Court's statement in *Carolina Power & Light Co.* v. *City of Asheville*, 597 S.E.2d 717, 722 (2004), that "[w]here the statutory language is clear and unambiguous, the Court does not engage in judicial construction but must apply the statute to give effect to the plain and definite meaning of the language." Pet. App. 6a n.5.

The court of appeals acknowledged that in *Jones* v. *United States*, 751 F. Supp. 2d 835 (2010), the United States District Court for the Eastern District of North Carolina had reached the opposite conclusion with respect to Section 1-52(16). Pet. App. 5a n.5. But the court of appeals explained that *Jones* had "reached that conclusion by bypassing the statutory text entirely." *Id.* at 5a-6a n.5 (further noting that *Jones* had "ignored the text"). It stated that the *Jones* court had mistakenly believed that reading the statute according to its terms would create an absurd result because "potential claimants would be denied an opportunity to seek relief before they became aware that they were ill." *Id.* at 6a n.5. The court of appeals rejected that analysis, explaining that "the point of a statute of repose" is to "bar any suit that is brought after a specified time since the defendant acted . . . , even if the period ends before the plaintiff has suffered a resulting injury." *Ibid.* (quoting *Black's Law Dictionary* 1546 (9th ed. 2009)).

The court of appeals also considered the effect of legislation that the North Carolina legislature enacted following this Court's 2014 *Waldburger* decision. Pet. App. 6a-15a. That legislation creates an exception to

Section 1-52(16)'s statute of repose for harm caused by contaminated groundwater. See N.C. Gen. Stat. Ann. § 1-52(16) (West Supp. 2014); *id.* § 130A-26.3. The court of appeals concluded that the new exception could not apply retroactively as a matter of state law. Pet. App. 15a. Petitioners do not challenge that conclusion in this Court.

The Eleventh Circuit ultimately remanded the case to the district court to allow that court to address petitioners' argument that "genuine issues of material fact exist as to whether the Government's last act or omission occurred within ten years." Pet. App. 16a & n.13.

ARGUMENT

Petitioners seek reversal of the court of appeals' interpretation of North Carolina state law. Recognizing that the proper interpretation of state law does not ordinarily warrant this Court's review, petitioners attempt to reframe the issue as a question of whether the Eleventh Circuit should have deferred to the views of the Fourth Circuit on a question of North Carolina law. But the Fourth Circuit decision on which petitioners rely does not involve the same statute of repose, and the Eleventh Circuit's decision did not turn on how much deference is owed to a decision of another court of appeals. That decision accordingly did not discuss whether or when such deference is appropriate. The Eleventh Circuit simply concluded that the text of the particular North Carolina statute at issue is unambiguous. That conclusion was correct, and it does not implicate any split of authority among the courts of appeals. The petition should be denied.

1. The courts below held that Section 1-52(16)'s statute of repose is unambiguous and does not contain

an unstated exception for latent disease claims. Pet. App. 5a, 21a-33a. That holding is a correct determination of North Carolina law that does not warrant further review. See, *e.g.*, *Virginia* v. *American Booksellers Ass'n*, 484 U.S. 383, 395 (1988) (noting that this Court "rarely reviews a construction of state law agreed upon by the two lower federal courts").

a. By its terms, Section 1-52(16) applies to any "action * * * for personal injury or physical damage to [the] claimant's property." N.C. Gen. Stat. Ann. § 1-52(16) (West 2013); see p. 10, *supra* (noting that petitioners do not argue that the post-2014 version of the statute governs this case). With respect to such cases, the statute unequivocally provides that "no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action." N.C. Gen. Stat. Ann. § 1-52(16) (West 2013). The statute's text contains no exception for causes of actions involving latent diseases. The court of appeals therefore properly applied the statute according to its plain terms. See Pet. App. 5a.

The North Carolina Supreme Court has confirmed that Section 1-52(16) encompasses latent disease claims. In *Dunn* v. *Pacific Employers Insurance Co.*, 418 S.E.2d 645 (N.C. 1992), that court applied Section 1-52(16)'s statute of limitations to a latent disease case involving a death from cancer. *Id.* at 648. In that wrongful-death case, the court was faced with the question whether the decedent's claim "would have been barred, had he lived," by Section 1-52(16). *Id.* at 646 (quoting N.C. Gen. Stat. § 1-53(4) (1983)). The court noted that the cancer was diagnosed on August 29, 1985, and it held that "[d]ecedent's bodily injury claim, had he lived, would have accrued on 29 August

1985 and would have been time-barred three years later under [Section 1-52(16)'s statute of limitations]." *Id.* at 648; see also *Wilder* v. *Amatex Corp.*, 336 S.E.2d 66, 75 (N.C. 1985) (Meyer, J., concurring in part and dissenting in part) (agreeing with what Judge Meyer understood to be the majority opinion's implicit concession that Section 1-52(16) "is applicable to all occupational disease cases in which the diagnosis occurred subsequent to the [that statute's] effective date of 1 October 1979").

Dunn involved Section 1-52(16)'s three-year statute of limitations, and not its ten-year statute of repose. But there is no textual or other basis for concluding that Section 1-52(16)'s statute of repose governs only a subset of the claims to which that provision's statute of limitations applies. On the contrary, the North Carolina legislature's placement of the statute of repose within Section 1-52(16)—in the sentence immediately following the provision's statute of limitations—establishes that the legislature wanted to create a general rule that applies to all of the same "action[s] * * * for personal injury or physical damage to claimant's property" to which the statute of limitations applies. N.C. Gen. Stat. Ann. § 1-52(16) (West 2013).

b. In the court of appeals, petitioners argued that *Wilder* supports their view that Section 1-52(16)'s statute of repose contains an implicit exception for latent disease claims. See Pet. C.A. Br. 46-49. That argument is mistaken.

In *Wilder*, the North Carolina Supreme Court construed N.C. Gen. Stat. § 1-15(b) (Supp. 1976). See 336 S.E.2d at 69. That provision had two parts. First, it created a new discovery rule applicable to certain

personal injury causes of action. Section 1-15(b) stated that, with respect to such claims, the otherwise-applicable North Carolina statute of limitations would not accrue until "the time the injury was discovered by the claimant, or ought reasonably to have been discovered by him, whichever event first occurs." *Ibid.* (quoting N.C. Gen. Stat. § 1-15(b) (Supp. 1976) (repealed 1979)). The delayed accrual rule applied only to causes of action for personal injury or property damage "which originated under circumstances making the injury, defect or damage not readily apparent to the claimant at the time of its origin." *Ibid.* In *Wilder*, the North Carolina Supreme Court concluded that this language did not apply to latent disease claims, in which the first injury had traditionally been held to occur only upon diagnosis. *Id.* at 72 (discussing historical treatment of disease claims).

Second, Section 1-15(b) created a statute of repose applicable to the same subset of claims governed by the new discovery rule. In a clause immediately following that rule, Section 1-15(b) stated that "*in such cases*"—*i.e.*, in those cases subject to the new discovery rule—"the [limitations] period shall not exceed 10 years from the last act of the defendant giving rise to the claim for relief." *Wilder*, 336 S.E.2d at 69 (quoting N.C. Gen. Stat. § 1-15(b) (Supp. 1976) (emphasis added) (repealed 1979)).

The *Wilder* defendants sought to rely on Section 1-15(b)'s statute of repose to bar a claim for an asbestos-related disease that had been brought within three years after the plaintiff's disease was diagnosed, but more than ten years after the defendants' alleged misconduct. The North Carolina Supreme Court rejected that effort. *Wilder*, 336 S.E.2d at 72-73. The

court held that the statute of repose applied only to the claims subject to the new discovery rule, thereby excluding latent disease claims which were unaffected by that new rule. *Ibid.* The court also cited Section 1-15(b)'s legislative history, which in its view provided evidence that the North Carolina legislature had specifically intended to exclude disease claims from the scope of Section 1-15(b). *Id.* at 73 (twice emphasizing the deletion of an express reference to "disease" in an unenacted draft of the statute).

Petitioners' reliance on *Wilder* ignores the clear distinction between the statutes of repose included in Section 1-52(16) and Section 1-15(b), respectively. Whereas Section 1-15(b) covers only a subset of personal injury claims, Section 1-52(16) is a general provision that applies to any cause of action "for personal injury or physical damage to claimant's property." N.C. Gen. Stat. Ann. § 1-52(16) (West 2013). The North Carolina Supreme Court recognized this distinction in *Wilder* itself, "not[ing], importantly, that [Section 1-15(b)] is not intended to be a statute of limitations governing all negligence claims, *such as the statute of limitations contained in the first clause of [Section 1-52(16)]*." *Wilder*, 336 S.E.2d at 69 (emphasis added). The North Carolina Supreme Court has thus recognized that the provision at issue here—unlike the provision at issue in *Wilder*—governs "all negligence claims." *Ibid.*

c. In this Court, petitioners argue (Pet. 18-21) that the court of appeals erred by failing to defer to the Fourth Circuit's interpretation of North Carolina law in *Hyer* v. *Pittsburg Corning Corp.*, 790 F.2d 30 (1986). There, the Fourth Circuit held that the North Carolina statute of repose then applicable to product-

liability claims "for the recovery of damages for personal injury," N.C. Gen. Stat. § 1-50(6) (Supp. 1981), does not apply to latent disease claims. *Hyer*, 790 F.2d at 33-34. In doing so, the court concluded that the North Carolina legislature did not "intend[] to expand the definition of personal injury beyond that intended in the statute construed in *Wilder* [N.C. Gen. Stat. § 1-15(b) (Interim Supp. 1976)]." *Id.* at 34 (quoting *Gardner* v. *Asbestos Corp., Ltd.*, 634 F. Supp. 609, 612 (W.D.N.C. 1986)). The court also stated that the North Carolina Supreme Court "does not consider disease to be included within a statute of repose directed at personal injury claims unless the Legislature expressly expands the language to include it." *Ibid.* (same).

Petitioners argue (Pet. 12-13, 18-21) that the court of appeals in this case should have applied *Hyer*'s analysis to Section 1-52(16), in accordance with a general rule that courts should "defer to home circuit views of state law except in the rare instances in which a home circuit has ignored clear signals from the state's courts or clearly misread state law." Pet. 14. Their argument is mistaken for at least two reasons.

First, *Hyer* did not address Section 1-52(16). That statute of repose is materially different from Section 1-50(6)—the freestanding statute of repose at issue in *Hyer*—insofar as Section 1-52(16)'s statute of repose appears in a provision that unambiguously establishes the statute of limitations governing *all* personal injury claims, including those based on latent diseases. And as explained above (see pp. 11-12, *supra*), the North Carolina Supreme Court has already held that the statute of limitations in Section 1-52(16) applies to

latent disease claims. See *Dunn*, 418 S.E. 2d at 648. As further explained above, the language and structure of Section 1-52(16) make plain that the provision's statute of limitations and statute of repose apply to the same set of claims. See pp. 3-4, 11-12, *supra*. *Hyer* had no need to interpret a statute of repose in light of an accompanying statute of limitations. Given these important differences, the court of appeals in this case had no obligation to defer to *Hyer*'s analysis of Section 1-50(6) or to assume that it should have any bearing on the meaning of Section 1-52(16).

Petitioners mistakenly wrest from context the Fourth Circuit's statement that "the North Carolina 'Supreme Court does not consider disease to be included within a statute of repose directed at personal injury unless the Legislature expressly expands the language to include it.'" Pet. 4 (quoting *Hyer*, 790 F.2d at 34). Even if that statement were correct with respect to a freestanding statute of repose such as Section 1-50(6), nothing in the Fourth Circuit's decision suggests that it would be appropriate to construe a statute of repose more narrowly than a companion statute of limitations contained in the same provision. Petitioners are wrong to imply that the Eleventh Circuit was obligated not only to follow Fourth Circuit precedent, but to extend such precedent to cover new and materially distinct circumstances.

In any event, even if the Fourth Circuit's *Hyer* decision had recognized an atextual exception for latent diseases in Section 1-52(16), none of the cases that petitioners cite would require the Eleventh Circuit to follow that erroneous ruling. As petitioners themselves acknowledge (Pet. 14), their own rule favoring "defer[ence] to home circuit views of state law" does

not apply in circumstances where the home circuit has "ignored clear signals from the state's courts or clearly misread state law." Here, the North Carolina Supreme Court has expressly described Section 1-52(16) as a provision that "govern[s] all negligence claims"—a category that includes negligence claims involving latent diseases. *Wilder*, 336 S.E. 2d at 69; see *Dunn*, 418 S.E.2d at 648; pp. 11-12, 14, *supra*. That is a clear signal that the North Carolina Supreme Court would conclude that Section 1-52(16)'s statute of repose—no less than its statute of limitations—encompasses latent disease claims.

Moreover, as explained by the court of appeals, Section 1-52(16)'s text provides no basis for creating an exception for latent diseases. Pet. App. 5a & n.5; see pp. 8-12, *supra*. And even if *Hyer* were read to interpret *Wilder* to create a general rule that *all* North Carolina statutes of repose directed at personal injury claims necessarily contain an implicit exception for latent disease claims, that interpretation would be mistaken. The *Wilder* court carefully tailored its narrow holding to the specific text of Section 1-15(b), and it emphasized the legislature's "deliberate" decision to exclude any reference to "disease" claims in the final text of Section 1-15(b). 336 S.E. 2d at 73. *Wilder* therefore does not support the broad rule urged by petitioners.

Thus even if *Hyer* had endorsed an expansive reading of *Wilder*, that mistaken interpretation would not be entitled to deference by other courts of appeals. See *Independent Petrochemical Corp.* v. *Aetna Cas. & Sur. Co.*, 944 F.2d 940, 945 (D.C. Cir. 1991) ("Deference is one thing; blind adherence quite another."), cert. denied, 503 U.S. 1011 (1992). For that reason,

even if petitioner could prevail in this Court with respect to the question presented, resolution of that question would not affect the ultimate outcome of this case. No further review is warranted in such circumstances.

2. According to petitioner (Pet. 14), the courts of appeals are divided over whether courts must "defer to home circuit views of state law" in circumstances where the home circuit has not "ignored clear signals from the state's courts or clearly misread state law." This case does not implicate any such split of authority.[4]

The court of appeals' decision below does not address petitioners' question presented—whether or when deference to the "home circuit[]" is appropriate when interpreting state law. Pet. i; see Pet. App. 5a-6a; see also Pet. 16 (acknowledging that court of appeals did not address Fourth Circuit's interpretation of North Carolina law in *Hyer*). It is therefore not clear whether the court of appeals considered the deference issue at all. And even if the court did consider that issue, it is not clear whether it declined to defer to the Fourth Circuit's analysis because it concluded that (1) deference is not required; (2) deference is generally warranted, but is inappropriate here because the statutory text is unambiguous; or (3)

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[4] This Court has occasionally deferred to a home circuit's "expertise" with respect to state law, *e.g.*, *McMillian* v. *Monroe Cnty., Ala.*, 520 U.S. 781, 786 (1997), although it has also suggested that deference to the courts of appeals with respect to questions of state law "reflects a judgment as to the utility of reviewing [state-law] questions in most cases, * * * not a belief that the courts of appeals have some natural advantage in this domain," *Leavitt* v. *Jane L.*, 518 U.S. 137, 145 (1996) (per curiam).

deference is not warranted here because *Hyer* did not construe Section 1-52(16).

This Court's review thus is not warranted because the court of appeals did not address the question presented in the petition. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view."). The court of appeals' decision does not create binding precedent on the deference issue, and nothing in its opinion forecloses a panel of that court from adopting petitioner's preferred rule in a future case. Moreover, to the extent petitioner is right (Pet. 13-16) that the question presented arises frequently in the courts of appeals, this Court will have the opportunity to resolve any confusion that might exist with respect to that question in a future case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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