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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2026-_____

Case No. 2021-CP-40-01276

WANDA WHETSTONE,.....Respondent,

v.

STATE OF SOUTH CAROLINA, OFFICE OF THE GOVERNOR,.....Petitioner.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In *Wade v. Berkeley County*, this Court held that "§ 15–78–70(d) permits a plaintiff to maintain an action against a governmental employee in his individual capacity, settle, and then pursue an action against the governmental employer for the tort of his employee allegedly committed while in the scope of employment." 348 S.C. 224, 230, 559 S.E.2d 586, 589 (2002). Does *Wade* create, as the Court of Appeals effectively held and despite section 15-78-40, an absolute right for a plaintiff to settle with the employee and then sue the government employer, even if the employer would have other common-law defenses to that suit based on the settlement?

2. If *Wade* stretches as far as the Court of Appeals held, should *Wade* be narrowed or overruled so that *Wade* does not conflict with the rest of the Tort Claims Act and cause horrific consequences for government entities and the public?

INTRODUCTION

According to the Court of Appeals, a plaintiff has an absolute right to pursue a claim against a government employee individually, settle with the employee, and then sue the government employer. That is incompatible with the Tort Claims Act. That Act, which is "the exclusive remedy for any tort committed by an employee of a governmental entity," makes that employee generally "not liable" for a tort committed "while acting within the scope of his official duty." S.C. Code Ann. § 15-78-70(a). The Court of Appeals eliminated this protection for government employees.

On top of disregarding this protection for government employees, the Court of Appeals took away a separate, critical protection for government employers. In fact, that court effectively erased the central standard of liability under the Tort Claims Act. The Act makes "a governmental entity liable for [its] torts in the same manner and to the same extent as a private individual under like circumstances." *Id.* § 15-78-40. A private employer could not be liable on the facts here

because a covenant not to sue an employee relieves the employer of liability under a vicarious-liability theory. So the Act allows the Governor's Office to assert that same defense. Otherwise, it isn't liable "to the same extent as a private individual in like circumstances." *Id.* But the Court of Appeals' decision makes his Office—and any other government entity—*more* liable than private persons.

The Court of Appeals reached its flawed decision by deeming this Court's decision in *Wade* "controlling authority." Pet.App.80. Either the Court of Appeals misread *Wade*, or *Wade* must be narrowed or overruled. Whichever it is, this Court should grant certiorari and correct the Court of Appeals' error.

On the one hand, *Wade* was about—and only about—section 15-78-70(d). As the Court held, that provision "permits" a plaintiff to sue a government employee individually, settle, and then sue the government employer. 348 S.C. at 230, 559 S.E.2d at 589. In that case, Berkeley County had moved for summary judgment solely under section 15-78-70(d), and the parties in that case briefed whether section 15-78-70(d) allowed what the plaintiff had done. Section 15-78-70(d) was therefore the only issue that this Court discussed because courts "do not answer questions they are not asked." *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991).

Given *Wade*, the Governor did "*not* mov[e] for summary judgment here pursuant to the provisions of § 15-78-70(d)." Pet.App.32 (summary judgment motion) (emphasis added). Instead, he moved for summary judgment under the common-law rule that an employee's settlement with a plaintiff also releases the employer under any vicarious-liability theory, Pet.App.32, which he was entitled to do because "[t]he Tort Claims Act expressly preserves all existing common law immunities." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 635, 743 S.E.2d 808, 814 (2013). To read *Wade* broadly enough to preclude the Governor from making that

argument ignores both the specifics of *Wade* and the rest of the Tort Claims Act. It transmogrifies a narrow holding into a rule that upends the Tort Claims Act.

On the other hand, if the Court of Appeals interpreted *Wade* correctly, this Court should reconsider *Wade* and either narrow or overrule it. Although the *Wade* Court relied on "legislative history," 348 S.C. at 231, 559 S.E.2d at 589, the analysis there ignored the "cardinal rule of statutory construction," *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000), by openly "circumvent[ing] the policy of the Act," *Wade*, 348 S.C. at 230, 559 S.E.2d at 589. The Tort Claims Act makes a private defendant's liability the ceiling of any government defendant's liability because "at no time did the Legislature intend government liability to exceed that of a private entity." *Kerr v. Richland Mem'l Hosp.*, 383 S.C. 146, 149, 678 S.E.2d 809, 811 (2009). Reading section 15-78-70(d) as an affirmative right to go after the employee and then sue the government employer thwarts that legislative intent by eliminating a common-law defense that private litigants enjoy. *See Andrade v. Johnson*, 345 S.C. 216, 227, 546 S.E.2d 665, 670 (Ct. App. 2001) (settlement with an employee releases an employer of any derivative-liability claim), *rev'd on other grounds* 356 S.C. 238, 588 S.E.2d 588 (2003). So if *Wade* does go as far as the Court of Appeals took it, *Wade* flouts this Court's longstanding rules on statutory interpretation.

The Court of Appeals' error is not some isolated mistake that this Court can ignore. Far from it. This case requires this Court's attention. The consequences of not granting certiorari here are disastrous for government employers across the State. Left uncorrected, the Court of Appeals has created a roadmap for plaintiffs that undermines government's functioning, casts aside the General Assembly's policy choice, and harms the public fisc.

This Court should grant the petition.

STATEMENT OF THE CASE

A. Campbell and Whetstone are in a car accident

As it relates to this Petition, the facts are undisputed. Wanda Whetstone was driving down Trenholm Road in Columbia when Karen Campbell pulled out of a parking lot and collided with Whetstone. Pet.App.16. Whetstone accused Campbell of being negligent and injuring her in various ways. Campbell was the special assistant to the First Lady and the director at the Governor's Mansion when the accident happened.

Whetstone filed a claim with Campbell's insurance company. That claim was resolved for $100,000, and in exchange, Whetstone "discharge[d]" Campbell "from any and all claims" and "agree[d] and covenant[ed] that [Whetstone] will never seek to execute any judgment obtained against the releasees and will not seek to collect any such judgment from the personal assets of the releasees." Pet.App.59.

B. Procedural history

1. After settling with Campbell, Whetstone sued the Office of the Governor, claiming that Campbell was acting in the scope of her employment when Campbell hit her car. Whetstone asserted a single claim "under the doctrine of respondeat superior and pursuant to the S.C. Tort Claims Act." Pet.App.17 (complaint).

The Office moved for summary judgment based on Whetstone's settlement with Campbell, relying on the common-law rule in *Andrade*. Pet.App.23–24. The Governor expressly denied that he was relying on section 15-78-70(d) in seeking summary judgment. Pet.App.32. The circuit court granted that motion. Pet.App.10.

2. The Court of Appeals reversed, holding that *Wade* controls. Despite the Governor's unequivocal statement in circuit court, the Court of Appeals claimed that the Governor moved for

summary judgment, "arguing that under section 15-78-70(d)" Whetstone's "settlement with Campbell extinguished her claims against" the Office. Pet.App.68. *Wade* was therefore, according to the Court of Appeals, "factually on all fours with the present case" and "controlling authority," foreclosing the Governor's argument. Pet.App.69–70.

The Governor petitioned for rehearing. He explained that he did not move for summary judgment under section 15-78-70(d), so *Wade* cannot control. Instead, he moved for summary judgment under the common-law rule that settling with an employee also releases the employer under a vicarious-liability theory. Pet.App.77–84. The Court of Appeals denied that petition. Pet.App.89.

It did, however, issue a substituted opinion. The only change was a single sentence in the background section. The original opinion said that the Governor moved for summary judgment "arguing that under section 15-78-70(d) of the TCA, [Whetstone's] settlement with Campbell extinguished her claims against [the Office]." Pet.App.68. The substituted opinion just generalized the Governor's position, noting that the Governor moved for summary judgment "arguing that [Whetstone's] claims under the TCA were extinguished as a matter of law when [Whetstone] settled with Campbell." Pet.App.91. That generic statement still didn't capture the Governor's argument, and the rest of the substituted opinion did not change anything in the Court of Appeals' analysis, nor did it change the Court of Appeals' opening sentence that this case is about section 15-78-70(d) or that *Wade* is "controlling authority." Pet.App.90, 92.

The Governor now petitions for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

I. The Court of Appeals overread *Wade*.

The Court of Appeals focused so heavily on section 15-78-70(d) and *Wade* only because

that court misunderstood the Governor's argument. The Court of Appeals originally said that the Governor "moved for summary judgment . . . under section 15-78-70(d)." Pet.App.68. That's incorrect. That section does not appear in his motion to dismiss. *See* Pet.App.23–24. It appeared in his memorandum in support of that motion only to explain why *Wade* didn't control. *See* Pet.App.32. In fact, that memorandum said that the Governor was "*not* moving for summary judgment here pursuant to the provisions of § 15-78-70(d)." Pet.App.32. (emphasis added). So too on appeal. This subsection appeared in his Court of Appeals brief only to explain why *Wade* didn't apply. *See* Governor's Ct. App. Br. 1, 8–9.

In its substituted opinion, the Court of Appeals merely generalized the Governor's basis for summary judgment, saying that he argued that Whetstone's claims "under the TCA were extinguished as a matter of law when [Whetstone] settled with Campbell." Pet.App.91. That's true, but it's such a generic statement that it does not capture the Governor's specific argument.

Failing to capture the Governor's specific argument is what led the Court of Appeals to erroneously deem *Wade* "controlling authority." Pet.App.92. The Court of Appeals wrongly interpreted *Wade* as some sweeping holding on the Tort Claims Act. *Wade* is no such thing. *Wade* held only that section 15-78-70(d) doesn't bar claims like Whetstone's. It never addressed whether the Governor's common-law defense under section 15-78-40 would bar them—precisely why the Governor disclaimed reliance on section 15-78-70(d) and utilized a common-law defense that 15-78-40 affords.

To appreciate *Wade*'s limit, recall the details of how that case arose. The county there moved for summary judgment under "§ 15-78-70, subsection D" as "a complete bar" to the plaintiff's claim. *Wade* Sup. Ct. Record on Appeal 19, 22. The circuit court granted summary judgment to the county based on section 15-78-70(d). *Id.* at 15–17. The Court of Appeals' en banc

opinion focused on that subsection and "h[e]ld § 15–78–70(d) d[id] not bar Wade's action against the County under the Tort Claims Act" because the covenant not to execute was not a settlement and that the plaintiff's claim against the employee was not a claim "under the Tort Claims Act." *Wade v. Berkeley Cnty.*, 339 S.C. 513, 528, 529 S.E.2d 743, 751 (Ct. App. 2000) (en banc).

When the case reached this Court, the county's issues on appeal focused (unsurprisingly) on section 15-78-70(d). *See Wade* Sup. Ct. Pet.'s Br. 1 (Jan. 9, 2001). When the concept of respondeat superior issue showed up later in the briefing, it was only in the context of how the Court of Appeals' conclusion *on section 15-78-70(d)* was inconsistent with the common-law rule, undermining the lower court's conclusion on section 15-78-70(d). *See id.* at 21–24. It was not—and this is important—to argue that a common-law rule via section 15-78-40 was why the county should prevail. (Nor could the county have argued that it prevailed under section 15-78-40 because the county had not raised that issue below. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).)

Given the county's basis for seeking summary judgment, the circuit court's decision, the Court of Appeals' en banc decision, and the briefing in this Court, it's no surprise that this Court's decision focused only on whether section 15-78-70(d) prohibited Wade from pursuing his claim against the county. The Court's holding was specific and narrow: "§ 15–78–70(d) permits a plaintiff to maintain an action against a governmental employee in his individual capacity, settle, and then pursue an action against the governmental employer for the tort of his employee allegedly committed while in the scope of employment." 348 S.C. at 230, 559 S.E.2d at 589.

So even if *Wade* "permits" a plaintiff to do what Whetstone did here under section 15-78-70(d), *id.*, *Wade* said nothing about whether another provision of the Tort Claims Act prohibits it. And how could *Wade* have done so? The only issue facing this Court was whether the circuit court

properly granted summary judgment to the county under section 15-78-70(d). For the Court to have said anything more about the Tort Claims Act would've made that Court the misbehaved child our judiciary has denounced. *See Austin*, 306 S.C. at 19, 409 S.E.2d at 817.

It doesn't matter if the facts here and in *Wade* are similar because the defendants' legal arguments about those facts are different. *Wade* therefore cannot be "controlling," Pet.App.92, and the Court of Appeals erred in treating *Wade* as such. That error led that court to overlook the Governor's distinct defense to liability—a defense that *Wade* never discussed. The result is an expansion of *Wade* from a narrow decision on section 15-78-70(d) to a sweeping rule that upends the Tort Claims Act's foundations.

II. If the Court of Appeals interpreted *Wade* correctly, *Wade* should be narrowed or overruled.

A broad reading of *Wade* cannot be reconciled with the Tort Claims Act, nor is *Wade* itself compelling from a methodological perspective.

A. The broad reading of *Wade* conflicts with the rest of the Tort Claims Act.

1. Reading *Wade* to create an affirmative right for plaintiffs to sue public employees, settle, then sue a government entity puts the Court of Appeals at odds with other provisions in the Tort Claims Act. That Act waived some of the State's sovereign immunity. *See* S.C. Code Ann. § 15-78-20(a). In doing so, the Tort Claims Act sought to treat the State like a "private entrepreneur" who "may be readily held liable for negligence of his employees." *Id.* So where the Act doesn't preserve sovereign immunity or limit the government's liability in some way, it makes a government entity "liable for [its] torts in the same manner and to the same extent as a private individual under like circumstances." *Id.* § 15-78-40.

In other words, the *ceiling* of government liability is that of a private person. "[A]t no time did the Legislature intend government liability to exceed that of a private entity." *Kerr*, 383 S.C.

at 149, 678 S.E.2d at 810. A government entity can be less liable than a private defendant. *See, e.g.*, S.C. Code Ann. § 15-78-60(5) (immunity for discretionary acts). But a government entity can never be more liable. That's why the Tort Claims Act did not take common-law tort defenses away from state agencies. Rather, it "expressly preserved" them. *Id.* § 15-78-20(b); *Health Promotion Specialists*, 403 S.C. at 635, 743 S.E.2d at 814 (same). So if a private defendant could invoke a common-law defense to foreclose liability in a case, a government entity can do the same. And because a private defendant can claim the benefit of the *Andrade* rule, *see* 345 S.C. at 227, 546 S.E.2d at 670, so can the Governor. The Court of Appeals' conclusion to the contrary wrongly reads section 15-78-40 (not to mention 15-78-20) out of the Code. *See CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (rule against superfluity).

Those aren't the only conflicts caused by a broad reading of *Wade*. The Tort Claims Act provides the "exclusive remedy for any tort committed by [a government] employee." S.C. Code Ann. § 15-78-70(a); *see also id.* § 15-78-20(b). The Court of Appeals' reading of *Wade* erases this provision too. If nothing in the Tort Claims Act prevents a plaintiff from suing an employee, settling, and then suing the State, then the Act's remedy is no longer "exclusive."

Worse yet, if *Wade* makes section 15-78-70(d) do all the court below says it does, *Wade* ignores the legislature's command to "liberally construe[]" the Tort Claims Act "in favor of limiting the liability of the State." *Id.* § 15-78-20(f). All *Wade* said was that 15-78-70(d) does not bar claims like the ones here. The Court of Appeals, however, read *Wade* to say that, because that provision doesn't bar these types of claims, neither can the rest of the Tort Claims Act. That is how *not* to read a statute that "must be liberally construed in favor of limiting liability of the State." *Id.*

Those are just a few examples. "When reading the Tort Claims Act as a whole, which [a

court] must," *Kerr*, 383 S.C. at 149, 678 S.E.2d at 810, the broad reading of *Wade* doesn't fit with the rest of the Act.

2. None of the four points in the Court of Appeals' opinion can rebut this conclusion. Even worse, they plunge uncertainty into decades of precedent. *First*, the Court of Appeals thought that this rule didn't apply here because *Andrade* "involved common law negligence between private actors and was not a TCA case." Pet.App.94. But that's why the rule *should* apply here. If a private employer is not vicariously liable after a covenant not to execute with an employee under a common-law defense, then a government entity cannot be liable in that situation either. Otherwise, the government entity would be liable not "to the same extent as," but to a greater extent than, "a private individual under like circumstances." S.C. Code Ann. § 15-78-40. This Court has continuously considered common-law defenses in ascertaining the State's liability under the Tort Claims Act. *See, e.g.*, *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 307 S.C. 161, 165, 414 S.E.2d 138, 140 (1992) (the jury should have been instructed "regarding assumption of the risk" in a Tort Claims Act case).

Second, the Court of Appeals tried to dismiss *Andrade*'s discussion as being one about the Uniform Contribution Among Tortfeasors Act, "which is expressly inapplicable to governmental entities." Pet.App.94. That misreads *Andrade*. The question there was not whether UCATA supplies the rule the Governor relies on here. It was the opposite: whether UCATA changed the existing "common law of this state," which "provides that a covenant not to sue an employee operates as an acquittal of the employer who is only derivatively liable." 345 S.C. at 226, 546 S.E.2d at 670. The Court of Appeals answered *no*, UCATA "does not change the common law." *Id. Andrade* thus reaffirms a longstanding defense that a private employer can invoke. *See, e.g.*, *Seaboard Air Line R.R. Co. v. Coastal Distrib. Co.*, 273 F. Supp. 340, 343 (D.S.C. 1967) ("a

covenant not to sue . . . operate[s] as a release of the master"). Because the Governor is liable only to the same extent as a private person under like circumstances, the Governor can assert this defense too.

Third, the Court of Appeals' observation that the Tort Claims Act "makes no distinction between derivative liability claims and claims against both employer and employee as joint tortfeasors" misapplies the Act and misses the point of *Andrade*. Pet.App.94. Because the Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity," S.C. Code Ann. § 15-78-70(a), the government entity and its employee can *never* be joint tortfeasors. Either (1) the employee was within the scope of her employment, so the plaintiff must sue the government entity, or (2) the employee was "not within the scope of his official duties" or his actions "constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude," so the plaintiff must sue the employee. *Id.* § 15-78-70(b). Thus, when the Tort Claims Act requires a plaintiff to sue the government employer for the employee's tort, the Act fully embraces the concept of derivative, or vicarious, liability. *See id.* §§ 15-78-70(a)–(b). Courts have long understood the Act in this way. *See, e.g.*, *Smith v. Reg'l Med. Ctr. of Orangeburg & Calhoun Cntys.*, 394 S.C. 110, 116, 713 S.E.2d 656, 659 (Ct. App. 2011) (discussing the Act in terms of "vicarious liability"); *Doe-4 v. Horry Cnty.*, No. 4:16-cv-03136-AMQ, 2018 WL 3227277, at *4 (D.S.C. July 2, 2018) (Quattlebaum, J.) (same); *Tarashuk v. Orangeburg Cnty.*, No. 5:19-cv-02495-JMC, 2022 WL 969752, at *14 n.11 (D.S.C. Mar. 30, 2022) (Childs, J.) (Tort Claims Act plaintiff brought "claims grounded in respondeat superior liability").

Fourth, the Court of Appeals' reliance on *Newkirk v. Enzor*, 240 F. Supp. 3d 426 (D.S.C. 2017), is misplaced. That case—like the ones just cited—explains why *Andrade* does apply. *Newkirk* simply recognized that, under the Tort Claims Act, either the government employer is

liable *or* the employee is liable, "but not both." *Id.* at 436. In other words, unlike in traditional doctrine of respondeat superior, a plaintiff could not sue the government employer *and* the employee under the Tort Claims Act. And the reason "the doctrine of respondeat superior . . . is inapplicable against South Carolina governmental entities," as *Newkirk* rightly says, is because "[g]overmental entities are vicariously liable for their employees' torts only as provided by the statute." *Id.* That is, they are considered vicariously liable, but only "in the same manner and to the same extent as a private individual under like circumstances." S.C. Code Ann. § 15-78-40. Because a "covenant not to sue an employee operates as an acquittal of the [private] employer who is only derivatively liable," *Andrade*, 345 S.C. at 226, 546 S.E.2d at 670, it acquits the Governor here too. So, if this Court is (as the Court of Appeals claimed to be) "persuaded by the . . . holding in *Newkirk*," Pet.App.94, it should grant the petition and reverse.

B. *Wade* is methodologically flawed.

The Court of Appeals' overreading of *Wade* invites scrutiny of *Wade*'s methodological flaws. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Rainey*, 341 S.C. at 85, 533 S.E.2d at 581. And "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent." *Id.*

Yet rather than sticking to the text, the Court's analysis in *Wade* focused exclusively on legislative history. 348 S.C. at 230–31, 559 S.E.2d at 589. Though legislative history might occasionally offer some guidance, courts are rightly wary about giving that history too much weight. *Cf. Planned Parenthood S. Atl. v. State*, 445 S.C. 600, 616 n.6, 916 S.E.2d 299, 307 n.6 (2025) (cautioning that the Court's "reliance on legislative history in this case should be read narrowly"). The *Wade* Court's conclusion—if it was as broad as the Court of Appeals claimed—cannot be squared with the plain text of the rest of the Tort Claims Act. Because the text is "the

best evidence of the legislative intent," it must prevail over any legislative history when it's as clear as the Tort Claims Act is. *Rainey*, 341 S.C. at 85, 533 S.E.2d at 581.

Plus, the *Wade* Court failed "to read the Tort Claims Act as a whole." *Kerr*, 383 S.C. at 149, 678 S.E.2d at 811. The statutory scheme the General Assembly enacted requires plaintiffs to sue government entities, not government employees, for torts that those employees commit within the scope of their employment. *See, e.g.*, S.C. Code Ann. § 15-78-70(a). The broad reading of *Wade* flouts that scheme. The result leaves the government more liable than a private person would be—something "at no time . . . the Legislature intend[ed]." *Kerr*, 383 S.C. at 149, 678 S.E.2d at 811. In fact, even the *Wade* Court acknowledged its deviation from the legislature's intent, admitting that its reading of section 15-78-70(d) "circumvents that policy of the Act . . . to protect employees from personal liability for torts committed while acting within the scope of employment." 348 S.C. at 230–31, 559 S.E.2d at 589.

* * *

This means that the broad reading of *Wade* is incorrect under the Tort Claims Act. That conclusion leaves the Court with two options: narrow *Wade* or overrule it.

To be sure, there's a good argument that *Wade* is wrong about section 15-78-70(d) as a textual matter and should be overruled completely. The opinion focused on the terms "under this chapter," while ignoring the preceding "or," which rendered the first half of the provision superfluous. And it disregarded conflicting commands across the Tort Claims Act.

But the Court need not go that far. It can simply hold that *Wade* reaches only section 15-78-70(d). It speaks only to whether section 15-78-70(d) prohibits what Whetstone did here, but it says nothing about whether any other part of the Tort Claims Act prohibits it.

Whichever way the Court goes, the result here is the same. *Wade* does not preclude the

Governor from asserting the *Andrade* rule, which applies here to require judgment for the Office on Whetstone's claim. The Court of Appeals' decision should therefore be reversed.

III. This case is worthy of certiorari.

The consequences of not granting the petition and allowing the Court of Appeals' decision to stand are drastic.

First, people will be discouraged from working for government. Government employees are generally supposed to be "not liable" for torts within the scope of their official duties. S.C. Code Ann. § 15-78-70(a). That's a significant protection in a litigation-happy world. Yet under the Court of Appeals' decision, plaintiffs are now incentivized to sue the government employee first. Indeed, there's no reason not to. So much for a statutory scheme that encourages the best and brightest citizens to go into public service.

Second, the Court of Appeals' broad rule creates an end run around the General Assembly's policy decision in the Tort Claims Act. The General Assembly enjoys "plenary authority to make policy decisions on behalf of the state," *ArrowPointe Fed. Credit Union v. Bailey*, 438 S.C. 573, 581, 884 S.E.2d 506, 510 (2023), and that authority is what the Court allowed the General Assembly to exercise after the Court abrogated the common-law sovereign immunity rule, *McCall by Andrews v. Batson*, 285 S.C. 243, 246, 329 S.E.2d 741, 742 (1985) (delaying abrogation's effect to give the legislature time to act). The General Assembly determined that its statutory scheme would be the "exclusive remedy for any tort committed by [its] employee." S.C. Code Ann. § 15-78-70(a). But under the Court of Appeals' reading of *Wade*, this legislative policy decision is effectively obliterated, and employees can be held liable *along with* their government employers. So much for the General Assembly's policy decision about how to handle liability for government's torts.

And third, a second bite at the apple for the plaintiff puts the public fisc at risk to compensate a plaintiff beyond the Tort Claims Act's cap. *Id.* § 15-78-120(a). Instead of the $300,000 limit, a plaintiff can obtain a judgment or settlement from the government employee first, and then that plaintiff may seek to recover more damages from the government. Doing otherwise would almost be malpractice for plaintiffs' lawyers. So much for the balance the General Assembly crafted between compensating injured people and protecting public funds.

All these consequences are avoidable. Staying true to the Tort Claims Act's text and legislative intent keeps these things from happening.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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