The Decline of *Corum* Claims: How *Washington v. Cline* Limited Constitutional Protection for State Infringement of the Speedy Trial Right*

In an era of great instability surrounding the protection of fundamental rights at the federal level, it is particularly crucial that states safeguard individual liberties under their own constitutions. The Supreme Court of North Carolina's longstanding recognition of Corum *claims—causes of action plaintiffs can bring against the state for violating their constitutional rights—serves as a promising avenue for ensuring such protection. However, the efficacy of* Corum *claims in securing any given right from government infringement naturally turns on the availability of such claims for the right's violation. In* Washington v. Cline*, the Supreme Court of North Carolina closed the court's doors to plaintiffs seeking to vindicate the violation of their speedy trial right through a* Corum *claim. Despite the egregious circumstances of the infringement at hand, the foundational importance of the speedy trial right, and the flexible approach set out by* Corum*, the court rigidly foreclosed* Corum *claims for speedy trial violations on the grounds that adequate remedy already exists for them at state law. This Recent Development argues that the remedy of which the court speaks—dismissal of a defendant's criminal charges—is purely procedural remediation that is inadequate to address the substantive harms inherent in speedy trial violations. This conclusion is directly supported by the facts of* Washington*, where the substantive harms suffered incident to the violation of Mr. Washington's speedy trial right were undeniable, striking, and wholly distinct from the procedural harms that the dismissal of his charges addressed. Accordingly, the court should reevaluate or narrow its holding in* Washington *and, going forward, utilize its inherent judicial power to breathe life into* Corum *claims rather than curbing their potential to protect our most fundamental rights.*

INTRODUCTION

It is an understatement to say that reasonable minds differ regarding what rights are fundamental in the United States. Indeed, the brightest legal minds from the nation's highest court cannot agree on whether certain liberties are fundamental, to be safeguarded at all costs, or not worthy of protection at all.[1] However, the issue is settled when it comes to those liberties, like the right to

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1. *See, e.g.*, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2244–62, 2317–50 (2022) (demonstrating vehement disagreement between the majority and dissent over whether abortion is a fundamental right).

a speedy trial, that make up the Constitution's Bill of Rights.[2] When federal recognition of a fundamental right is compounded with its enumeration in a state constitution,[3] there can be no doubt that it is to be fiercely guarded from government intrusion. But what good is a dually fortified right when the remedy for its violation is inadequate to secure it?

The United States Supreme Court recently scaled back implied causes of action that provided individuals a route to redress government violations of their constitutional rights,[4] and states like North Carolina followed suit. In North Carolina, the implied cause of action known as a "*Corum* claim" is a common-law claim under the state constitution that helps cure constitutional injuries for which state law fails to provide "adequate" remedy.[5] In *Washington v. Cline*,[6] the Supreme Court of North Carolina categorically rejected such claims for violations of the speedy trial right, supplementally protected by the North Carolina Constitution.[7] Specifically, the court held that plaintiffs could not seek redress through a *Corum* claim for speedy trial violations because an "adequate remedy" for such violations already existed.[8]

The *Corum* channel for relief is consistent with the fundamental principle and oft-repeated phrase that "where there is a legal right, there is also a legal remedy."[9] Ironically, this assurance of remedies for rights is enshrined within the very same section of the North Carolina Constitution as the right to a speedy trial.[10] The court in *Washington* devitalized both guarantees by broadly construing "adequate remedy" for constitutional violations as a one-size-fits-all,

2. Darren Allen, *The Constitutional Floor Doctrine and the Right to a Speedy Trial*, 26 CAMPBELL L. REV. 101, 105 (2004).

3. *See* 5 WAYNE R. LAFAVE, JEROLD H. ISRAEL, NANCY J. KING & ORIN S. KERR, CRIMINAL PROCEDURE § 18.3(c) (4th ed. 2023) ("Virtually all states have provisions in their own constitutions safeguarding the right to speedy trial.").

4. *Compare* Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 397 (1971) (holding that federal agents' violation of an individual's Fourth Amendment right through an unconstitutional search and seizure gave rise to a cause of action against them for damages), *with* Egbert v. Boule, 142 S. Ct. 1793, 1809 (2022) (refusing to extend *Bivens* to a different Fourth Amendment context and explaining that, if called to decide the matter today, the Court would "decline to discover any implied causes of action in the Constitution").

5. Corum v. Univ. of N.C., 330 N.C. 761, 782, 413 S.E.2d 276, 289 (1992); *see, e.g.*, Craig *ex rel.* Craig v. New Hanover Cnty. Bd. of Educ., 363 N.C. 334, 335, 678 S.E.2d 351, 352 (2009); Tully v. City of Wilmington, 370 N.C. 527, 537, 810 S.E.2d 208, 216 (2018); Deminski *ex rel.* C.E.D. v. State Bd. of Educ., 377 N.C. 406, 413, 858 S.E.2d 788, 794 (2021).

6. 385 N.C. 824, 898 S.E.2d 667 (2024).

7. *Id.* at 831, 898 S.E.2d at 672.

8. *Id.*

9. *Id.* at 828, 898 S.E.2d at 670 (quoting Marbury v. Madison, 5 U.S. 137, 163 (1803)).

10. N.C. CONST. art. I, § 18 ("All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.").

bare-minimum requirement.[11] Had it applied the more flexible test laid out by its precedent,[12] the court would have found that the nature of the right at hand and the facts surrounding its violation demanded a more substantial remedy than the court deemed adequate. This Recent Development examines the contours of the *Washington* majority's more rigid approach.

Part I of this Recent Development provides background regarding *Corum* claims and an overview of *Washington*. Part II focuses on how the unique nature of the speedy trial right and the circumstances surrounding its violation in *Washington* called for heightened relief, and Part III explains why civil damages would more adequately protect the speedy trial right itself. Finally, Part IV suggests using a later *Corum* case's framework to better protect other individual rights left vulnerable in *Washington*'s aftermath. It additionally urges the court to, at the very least, clarify the limited applicability of *Washington*'s holding.

I. THE *CORUM* CLAIM AND ITS EROSION IN *WASHINGTON V. CLINE*

In *Corum v. University of North Carolina*,[13] the Supreme Court of North Carolina formally ushered in what are known as "*Corum* claims"—common-law causes of action that furnish a remedy for the violation of state constitutional rights.[14] These claims allow individuals to directly sue the state for relief in the absence of an existing, adequate state remedy.[15] In setting the standard for how courts should determine what remedy is appropriate, the *Corum* court explained that the result will depend on which right is at issue and "the facts of the particular case."[16] It then laid out two limitations relevant to the remedial inquiry: the court must (1) "bow to established claims and remedies where [they] provide an alternative to the extraordinary exercise of its inherent constitutional power" and (2) "minimize the encroachment upon other branches of government . . . by seeking the least intrusive remedy available and necessary to right the wrong."[17]

In *Washington*, the Supreme Court of North Carolina was tasked with determining whether or not the petitioner, Frankie Delano Washington, could bring a *Corum* claim for money damages against the State based on its violation of his constitutional right to a speedy trial.[18] The violation itself was not at issue;

11. *See Washington*, 385 N.C. at 830, 898 S.E.2d at 672 ("*Corum* . . . applies when one's rights are violated, and the law offers either no remedy or a remedy that is meaningless.").

12. *See* Corum v. Univ. of N.C., 330 N.C. 761, 784, 413 S.E.2d 276, 291 (1992) (explaining that the level of relief necessary to remedy the violation of a right depends on "the right violated and the facts of the particular case").

13. 330 N.C. 761, 413 S.E.2d 276 (1992).

14. *Id.* at 783, 413 S.E.2d at 290.

15. *Id.*

16. *Id.* at 784, S.E.2d at 291.

17. *Id.*

18. Washington v. Cline, 385 N.C. 824, 826, 898 S.E.2d 667, 669 (2024).

the Court of Appeals had already dismissed Washington's criminal charges based on "overwhelming evidence" that the State was at fault for the almost five-year delay between his arrest and trial.[19] During that time, Washington's numerous attempts to move to trial were consistently thwarted by the State's repeated requests for continuances and failure to test key evidence.[20] Despite Washington's insistence that this evidence would exonerate him and the compelling indications that another individual was responsible for the crime, the State's bad faith effort was relentless.[21]

The delay caused Washington to suffer substantial prejudice during his trial and myriad harms incident to the violation of his speedy trial right, for which he sought civil redress.[22] According to Washington's complaint, he spent over 366 days in jail while unable to afford a $1,000,000 bond, lost his job, was abruptly separated from his ten-year-old son, had to pay $37,000 to secure release, remained subject to conditions of his pretrial release for years, and suffered other severe emotional, mental, physical, financial, and reputational harms.[23] After Washington's charges were dismissed, he was publicly ridiculed by District Attorney Tracey Cline who insisted local newspapers publish her conclusory, stigmatizing, and false statements surrounding his guilt, which she later republished and amplified in interviews with the media.[24] Washington asserted that the State's actions caused "irreparable harm to his reputation, emotional trauma, physical harm, and the loss of liberty, privacy, education, training, earnings, and earning capacity."[25]

Despite the egregious violation, the court held that Washington had already received an adequate remedy through the statute that mandated the dismissal of his charges.[26] In so concluding, the court stated that "an 'adequate remedy' exists when a plaintiff has access to court to raise the constitutional violation, and the court can provide some form of relief for that violation, even

19. *Id.* at 832, 898 S.E.2d at 673 (Earls, J., dissenting).

20. *Id.*

21. *See generally* Complaint & Demand for a Jury Trial, *Washington*, 385 N.C. 824, 898 S.E.2d 667 (No. 11CVS5051), 2011 WL 11545915 (shedding light on the concerning behavior of the State in directly disobeying court orders to test evidence and refusing to pursue a clear lead regarding a serial offender with a modus operandi identical to the crime of which Washington was accused). Washington desperately pleaded with the State to compare DNA and fingerprint evidence to this individual, and they unjustifiably did everything in their power to ensure that did not happen. *See generally id.* (discussing potentially exculpatory evidence ignored by the State).

22. *Washington*, 385 N.C. at 846, 898 S.E.2d at 682–83 (Earls, J., dissenting).

23. *Id.*

24. Complaint & Demand for a Jury Trial, *supra* note 21, ¶¶ 211–16.

25. *Id.* ¶ 218.

26. *Washington*, 385 N.C. at 831, 898 S.E.2d at 672. The North Carolina statute requires the court on motion of the defendant to dismiss the charges against them if it determines they have "been denied a speedy trial as required by the Constitution of the United States and the Constitution of North Carolina." N.C. GEN. STAT. § 15A-954(a)(3) (2023).

if plaintiff does not view that relief as complete."[27] Because state law provides the opportunity to raise a speedy trial violation in court and have one's charges dismissed, the court found that an "adequate remedy" already existed and barred *Corum* claims in the speedy trial context.[28]

II. THE *WASHINGTON* COURT'S FAILURE TO SEE THE BIGGER PICTURE

Though implied causes of action under the North Carolina Constitution are now formally referred to as *Corum* claims, the Supreme Court of North Carolina accepted them as a means of redressing constitutional injuries long before the 1992 *Corum* case.[29] The court's recognition of direct actions against the state is deeply rooted in the fact that, from its adoption in 1776, the North Carolina Declaration of Rights' "fundamental purpose" has been to protect North Carolina's citizens from the state's encroachment upon individual rights.[30] The *Corum* court recognized as much and, in holding true to this purpose, explained that whether greater or lesser relief is warranted to rectify a specific constitutional violation depends on both "the right violated and the facts of the particular case."[31] Thus, the court made clear that certain remedies in certain situations—such as the mere entry of judgment where private property is taken for public use—do not adequately compensate citizens, and more is required to "correct the State's violation" and to preserve the right itself.[32]

In defining "adequate remedy," subsequent cases established that a plaintiff must *at a minimum* have the opportunity to present their claim in court.[33] State law must also "provide for the type of remedy sought by the plaintiff" and, if it does, recovery cannot be barred by sovereign immunity.[34] For instance, in *Deminski ex rel. C.E.D. v. State Board of Education*,[35] the plaintiff sought monetary damages and injunctive relief for the State's violation of her

27. *Washington*, 385 N.C. at 829–30, 898 S.E.2d at 671.

28. *Id.* at 831, 898 S.E.2d at 672–73.

29. *See* Sale v. State Highway & Pub. Works Comm'n, 242 N.C. 612, 618–22, 89 S.E.2d 290, 296–99 (1955) (fashioning a common law remedy to redress a plaintiff's constitutional injury where private property was taken without just compensation and there were otherwise no avenues for compensation); Midgett v. N.C. State Highway Comm'n, 260 N.C. 241, 250–51, 132 S.E.2d 599, 608–09 (1963) (allowing plaintiff to bring a constitutional claim to redress his injury because, due to the statute of limitations, his "cause of action would have been barred before it accrued").

30. *See* Corum v. Univ. of N.C., 330 N.C. 761, 782, 413 S.E.2d 276, 290 (1992).

31. *See id.* at 784, 413 S.E.2d at 291.

32. *Id.* at 782–85, 413 S.E.2d at 289–91; *see Sale*, 242 N.C. at 618, 89 S.E.2d at 296.

33. Craig *ex rel.* Craig v. New Hanover Cnty. Bd. of Educ., 363 N.C. 334, 340, 678 S.E.2d 351, 355 (2009).

34. Deminski *ex rel.* C.E.D. v. State Bd. of Educ., 377 N.C. 406, 413, 858 S.E.2d 788, 794 (2021) (quoting *Craig*, 363 N.C. at 340, 678 S.E.2d at 356).

35. 377 N.C. 406, 858 S.E.2d 788 (2021).

children's right to a sound basic education.[36] While state law provided for an administrative process to challenge the school's actions, it did not provide for the desired remedy of damages and injunctive relief, so the court held that no adequate remedy existed and that a *Corum* claim was available.[37] While the type of relief the plaintiffs sought in *Craig ex rel. Craig v. New Hanover County Board of Education*[38] aligned with that available through a common law negligence claim—monetary damages—they could still bring a *Corum* claim because their action was otherwise barred by sovereign immunity.[39] These cases reflect the necessity of carefully evaluating the harmony between the injury alleged and the remedy attainable through state law in order to honor the "spirit of [the court's] long-standing emphasis on ensuring redress for every constitutional injury."[40]

In *Washington*, however, by broadly and definitively construing "adequate remedy" as mere access to the court to raise a violation and potential for "some" form of relief,[41] the majority disregarded precedents' command that the remedy available be of the same "type" as is "sought by the plaintiff" in order to foreclose a *Corum* claim.[42] The court focused on the limitations set forth in *Corum* on the forefront, charting an inevitable path to legislative deference rather than first grounding its analysis in the right at issue, the harm done, and the type of relief sought.[43] This approach ultimately led it to adopt what its precedents deemed *necessary* as *sufficient* for finding an "adequate remedy."[44] As a result, it missed the bigger picture of *Corum*'s history and holding, and an opportunity to flesh out what truly constitutes meaningful redress for Washington's speedy trial violation.

36. *Id.* at 407, 858 S.E.2d at 790 (explaining that the violation resulted from the school's deliberate indifference to the children's ongoing harassment).

37. *Id.* at 414, 858 S.E.2d at 794.

38. 363 N.C. 334, 678 S.E.2d 351 (2009).

39. *Id.* at 342, 678 S.E.2d at 356–57.

40. *Id.* at 342, 678 S.E.2d at 357.

41. Washington v. Cline, 385 N.C. 824, 829–30, 898 S.E.2d 667, 671 (2024).

42. *See Deminski*, 377 N.C. at 414, 858 S.E.2d at 794.

43. *See Washington*, 385 N.C. at 828, 898 S.E.2d at 671 ("Although *Corum* . . . never specified what remedies could be considered adequate . . . [it] did provide some guidance . . . . '[T]he judiciary must recognize two critical limitations.'" (quoting Corum v. Univ. of N.C., 330 N.C. 761, 784, 413 S.E.2d 276, 291 (1992))).

44. *See, e.g.*, *Craig*, 363 N.C. at 340, 678 S.E.2d at 355. *Craig* stated: "[A] plaintiff must have *at least* the opportunity to enter the courthouse doors and present his claim." *Id.* (emphasis added). Compare this statement of what is necessary for an adequate remedy with the *Washington* court's conclusion that an adequate remedy simply "exists when the plaintiff has access to court to raise the constitutional violation, and the court can provide some form of relief for that violation." 385 N.C. at 829–30, 898 S.E.2d at 671.

A. *The Nature of the Speedy Trial Right*

If the *Washington* court had accepted *Corum*'s directive to evaluate the adequacy of the existing remedy in light of the nature of the particular right at issue, it should have found that speedy trial violations warrant greater relief than dismissal of a defendant's charges.[45] A central purpose of the speedy trial right is avoiding prejudice that results from the loss of evidence over time—namely witnesses or their memory recall—which can "impair a defendant's ability to present an effective defense."[46] Indeed, a key underpinning of the right to a speedy trial is the recognition that where there is prolonged delay between arrest and trial, a conviction may result from prejudice rather than actual guilt.[47] If a court recognizes that a conviction following a speedy trial violation is unreliable and upholds the fundamental tenet of criminal law that all are deemed innocent until proven guilty through a fair process,[48] such a defendant cannot be considered "guilty" in the legal sense of the word. In theory then, the dismissal of charges after a conviction merely treats a legally innocent person as innocent, curing the harm caused by the procedural deficits that could have tainted their trial's outcome. It essentially returns their procedural status to baseline, as if the delay and the trial never happened. Except, the delay did happen—and during that time, extended harms may have resulted that the speedy trial right is also meant to protect against. It uniquely serves discrete functions beyond procedural protections,[49] and thus dismissal alone cannot be considered an "incredibly meaningful" remedy when it only touches procedure.[50]

Beyond procedural prejudice, the speedy trial right guards against "major evils" incident to pretrial detention that "exist quite apart from actual or possible prejudice to an accused's defense."[51] It is these "major evils"—such as disrupted employment, financial harm, curtailed associations, and public condemnation[52]—that reach beyond the procedural harms addressed by

45. *See* Hoke Cnty. Bd. of Educ. v. State, 382 N.C. 386, 436, 879 S.E.2d 193, 225 (2022) ("The nature of the right and the extent of the violation dictate the appropriate nature and extent of the corresponding remedy. Accordingly, a longstanding violation of a fundamental constitutional right demands a remedy of equivalent magnitude." (citation omitted)).

46. United States v. Marion, 404 U.S. 307, 320 (1971).

47. *See* Akhil Reed Amar, *Sixth Amendment First Principles*, 84 GEO. L.J. 641, 661 (1996) (explaining that much of the Sixth Amendment "was designed to reduce the risk that a noose would be wrapped around an innocent neck" and that the Speedy Trial Clause of that Amendment can be read as "prohibiting situations where an extended accusation period itself could substantially increase the likelihood of an innocent man being erroneously convicted").

48. *See* Russell M. Gold, *Paying for Pretrial Detention*, 98 N.C. L. REV. 1255, 1259 (2020).

49. Amar, *supra* note 47, at 649 (explaining the "three major and distinct interests" protected by the Speedy Trial Clause).

50. Washington v. Cline, 385 N.C. 824, 831, 898 S.E.2d 667, 672 (2024).

51. *Id.* (quoting *Marion*, 404 U.S. at 320).

52. *Marion*, 404 U.S. at 320.

dismissal. These harms persist even when a defendant is out of jail on pretrial release, as he is forced to carry on day-to-day through a "cloud of anxiety, suspicion, and often hostility" while painfully awaiting his long-delayed trial.[53] Such conditions, compounded with employer unwillingness to interview people involved in the criminal justice system, make it difficult for defendants to find a job during that time.[54] Not only does unemployment impede defendants' efforts to carry on a normal life during the prolonged delay, but it also exacerbates their financial burden. These distinct substantive harms merely begin to scratch the surface of all those that accompany a speedy trial violation and demonstrate the inadequacy of a procedural solution as a one-size-fits-all remedy.[55]

The nature of the speedy trial right also counsels toward *Corum* claim availability when compared to other rights for which these claims have been accessible. In *Corum*, it was relevant to the court's inquiry that the right at issue—freedom of speech—was "equal, if not paramount, to the individual right of entitlement to just compensation for the taking of property."[56] In light of the court's appraisal of the comparative importance of the rights, it determined "free speech should be protected *at least* to the extent that individual rights to . . . property are protected."[57] Because the court had previously allowed a direct action against the State for violation of the latter right, it concluded a direct action must also be available for the former.[58] That line of reasoning can be extended here, as the speedy trial right's value may in some respects surpass the two compared in *Corum*. This is because, in addition to guarding against the numerous harms mentioned above, and unlike rights protecting speech or property, the speedy trial right protects against prolonged restraint of an individual's *physical* liberty.[59] It is difficult to imagine a more grievous intrusion by the state, and thus one more worthy of redress, than that which curtails a person's ability to move about freely. Nevertheless, the court has barred *Corum* claims in the speedy trial context but allowed them to proceed for violations of rights that have far more attenuated ties to physical liberty.[60] Such a result is

53. Barker v. Wingo, 407 U.S. 514, 533 (1972).

54. TERRY-ANN CRAIGIE, AMES GRAWERT, CAMERON KIMBLE & JOSEPH E. STIGLITZ, BRENNAN CTR. FOR JUST., CONVICTION, IMPRISONMENT, AND LOST EARNINGS 13 (2020), https://www.brennancenter.org/media/6676/download [https://perma.cc/3VUL-GDDC].

55. *See* Amar, *supra* note 47, at 650 ("If . . . distinct legal interests under[lie] the Speedy Trial Clause, it would be odd that . . . only one possible remedy . . . exists.").

56. Corum v. Univ. of N.C., 330 N.C. 761, 782, 413 S.E.2d 276, 289 (1992).

57. *Id.* (emphasis added).

58. *Id.*

59. Barker v. Wingo, 407 U.S. 514, 537 (1972) (White, J., concurring) ("[E]very defendant will either be incarcerated pending trial or on bail subject to substantial restrictions on his liberty.").

60. *See, e.g.*, *Corum*, 330 N.C. at 783, 413 S.E.2d at 290 (free speech); Deminski *ex rel.* C.E.D. v. State Bd. of Educ., 377 N.C. 406, 414, 858 S.E.2d 788, 794 (2021) (sound basic education); Tully v.

inconsistent with both precedent and basic intuitions about our most fundamental rights.

B. *The Violation at Hand*

In addition to the nature of the right generally, the court in *Washington* should have considered the facts of Washington's case in particular to determine what remedy was "necessary to right the wrong" and "correct the State's violation."[61] Instead, it relied on and adopted the United States Supreme Court's characterization of dismissal as "unsatisfactorily severe"[62] to categorically conclude that it is an "incredibly meaningful remedy" for *all* speedy trial violations.[63] However, the facts of Washington's case reveal the value of *Corum*'s flexible approach—in some factual circumstances, dismissal alone is insufficient to "right the wrong."[64] The infringement and resulting harms in this case underscore and vindicate each foundational reason for the speedy trial right's existence, demonstrating that the violation at issue is uniquely suited for a *Corum* claim.

Procedurally, the State's violation completely obstructed Washington's ability to put on an effective defense. While the State stalled, he lost both circumstantial and direct evidence of his innocence.[65] He was unable to demonstrate to the jury that his charges were "shaky and ill-examined" from the start,[66] based almost entirely on grossly inadequate pretrial identification evidence.[67] When he attempted to question witnesses and highlight the many deficiencies in the State's case—such as the victims' initial description of their attacker, which he claimed "categorically eliminated [him] as a plausible suspect"—no one could remember the details.[68] Instead, witness testimony relied entirely on reports that omitted exculpatory information.[69] For these reasons and more, the North Carolina Court of Appeals found the five-year

City of Wilmington, 370 N.C. 527, 533–35, 810 S.E.2d 208, 213–15 (2018) (enjoyment of fruits of one's own labor); *see also* Sale v. State Highway & Pub. Works Comm'n, 242 N.C. 612, 618, 89 S.E.2d 290, 296 (1955) (private property).

61. *Corum*, 330 N.C. at 784–85, 413 S.E.2d at 291.

62. *Barker*, 407 U.S. at 522.

63. Washington v. Cline, 385 N.C. 824, 831, 898 S.E.2d 667, 672 (2024) ("Dismissal of the charges is, of course, an incredibly meaningful remedy. Indeed, the Supreme Court of the United States has referred to dismissal for a speedy trial violation as an 'unsatisfactorily severe remedy' because 'it means that a defendant who may be guilty of a serious crime will go free, without having been tried.'" (quoting *Barker*, 407 U.S. at 522)).

64. *Corum*, 330 N.C. at 784, 413 S.E.2d at 291.

65. Complaint & Demand for a Jury Trial, *supra* note 21, ¶¶ 195–210.

66. *Washington*, 385 N.C. at 833, S.E.2d at 674 (Earls, J., dissenting).

67. Complaint & Demand for a Jury Trial, *supra* note 21, ¶¶ 206–10.

68. *Id.* ¶¶ 199–205.

69. *Id.*

delay caused by the State's "repeated neglect and underutilization of court resources"[70] resulted in "actual particularized prejudice" to Washington.[71]

Separate from the procedural deficiencies—and similarly troubling—are the myriad substantive harms Washington suffered incident to the violation of his speedy trial right. In the time before trial, he spent over a year in jail, lost his job, suffered significant economic loss, was separated from his young child, and was restrained by conditions of his pretrial release for five painstaking years.[72] He and his family also suffered extreme public scorn long after his conviction was overturned.[73] As Justice Earls's dissent in *Washington* points out, several years' worth of harms simply "cannot be cured" by the criminal remedy of dismissal.[74] While dismissal may rectify procedural unfairness, it does not begin to address the past deprivation of liberty and corresponding financial and reputational injury that only civil remedy could salve. Accordingly, dismissal does not align closely enough with the injuries in need of redress to deem it an "adequate remedy" and withhold *Corum* relief.[75]

The relevance of the procedural-substantive harms distinction, and a shortcoming of the majority's opinion, is best illustrated by a hypothetical. Imagine a situation identical to that of Washington's case apart from one important factor—the trial results in an acquittal. In this hypothetical, the defendant has still been incarcerated, lost his job, suffered extreme economic and reputational harm, experienced prolonged separation from his family, and had his liberty restrained for five years due to the State's egregiously neglectful delay of his trial. The hypothetical defendant has moved the trial court to dismiss his charges due to the violation of his speedy trial right, and his motion has been wrongfully denied. While his defense at trial was not so fatally tainted by prejudice as to result in a conviction, he may nevertheless have experienced a loss of evidence or witnesses during the delay. Under the balancing test used to determine whether there has been a deprivation of the right to a speedy trial, this hypothetical defendant's argument would likely prevail.[76] Under the

70. State v. Washington, 192 N.C. App. 277, 284, 665 S.E.2d 799, 804 (2008).

71. *Id.* at 292, 665 S.E.2d at 808; *see also* Complaint & Demand for a Jury Trial, *supra* note 21, ¶¶ 195–98.

72. Washington v. Cline, 385 N.C. 824, 846, 898 S.E.2d 667, 682 (2024) (Earls, J., dissenting).

73. *Id.* at 846–47, 898 S.E.2d at 682–83.

74. *Id.* at 834, 898 S.E.2d at 674.

75. *Cf.* Copper *ex rel.* Copper v. Denlinger, 363 N.C. 784, 788–89, 688 S.E.2d 426, 429 (2010) (withholding a *Corum* claim where the available yet untapped remedy of the statutory right to appeal a school suspension directly aligned with the alleged deprivation of procedural due process in the suspension).

76. In North Carolina, the *Barker* four-factor balancing test is used to determine whether one's right to a speedy trial under the Sixth Amendment and Article I of the North Carolina Constitution has been violated. *Washington*, 192 N.C. App. at 282, 665 S.E.2d at 803. The court considers "(1) the length of the delay; (2) the reason for the delay; (3) defendant's assertion of his right to a speedy trial;

Washington court's broad, categorical bar on *Corum* claims in the speedy trial context, he is "left with *no remedy* for his alleged constitutional injuries."[77]

The hypothetical defendant has no charges left to dismiss, so he has neither "access to court to raise the constitutional violation" nor the potential for "some form of relief for that violation."[78] Such a result does not fulfill even the bare minimum requirements for "adequate remedy" that North Carolina precedents have so clearly set out.[79] The *Washington* court fails to address this tension in holding that it simply "reject[s] the use of *Corum* claims in speedy trial cases because the law already provides an adequate remedy."[80] This conclusion illustrates the cursory nature of the court's evaluation of the remedy needed to truly redress the substantive harms involved in these violations. It also demonstrates the importance of an inquiry into the facts of the specific case when determining whether adequate remedy—or in the hypothetical defendant's case, remedy at all—exists.

It is possible the *Washington* court had not contemplated a scenario like this when it categorically barred *Corum* claims in speedy trial cases, and its holding was instead meant to reject such claims only where dismissal was still possible. But if that were the case, the court should have said so rather than employing its rigid language. It is also possible that the court would still find *Corum* claims unavailable in even this context. Given the court's narrow focus on the procedural protections of the speedy trial right, it may deem the hypothetical defendant's claim moot, pointing to acquittal as a functional equivalent of dismissal. This argument ignores that acquittal does nothing at all to address the violation of the defendant's constitutional right.[81] Acquittal is not a remedy, let alone an "adequate remedy," because it is not done for the *purpose* of redressing a harm; it is merely the disposition of the case. While it may be more immediately apparent in the hypothetical defendant's case that serious constitutional harms are left without redress absent the availability of a *Corum* claim, the same is equally true in Washington's case. Identical substantive harms, enough on their own to make the case for a speedy trial violation, are in both instances unrectified.

and (4) prejudice to defendant resulting from the delay." *Id.*; Barker v. Wingo, 407 U.S. 514, 530–32 (1972). None of the factors are regarded as a "necessary or sufficient condition to the finding of a deprivation of the right to a speedy trial," State v. McBride, 187 N.C. App. 496, 498, 653 S.E.2d 218, 220 (2007), and they instead are all "considered together . . . after a careful balancing of the facts," *Washington*, 192 N.C. App. at 282, 665 S.E.2d at 803.

77. *Washington*, 385 N.C. at 829, 898 S.E.2d at 671 (quoting Craig *ex rel.* Craig v. New Hanover Cnty. Bd. of Educ., 363 N.C. 334, 340, 678 S.E.2d 351, 356 (2009)).

78. *Id.* at 829–30, 898 S.E.2d at 671.

79. *See, e.g.*, *Craig*, 363 N.C. at 340, 678 S.E.2d at 355.

80. *Washington*, 385 N.C. at 831, 898 S.E.2d at 672.

81. For an example of a case where a defendant was acquitted but was still able to pursue a subsequent claim for damages for the violation of his speedy trial right, see *Bramhall v. Cyprus Credit Union, Inc.*, No. 2:19-cv-00477-RJS-DAO, 2021 WL 4473412, at *7 (Utah Dist. Ct. Sept. 30, 2021).

III. THE AVAILABILITY OF *CORUM* CLAIMS FOR SPEEDY TRIAL VIOLATIONS IS NECESSARY TO ENSURE ADEQUATE PROTECTION OF THE RIGHT TO A SPEEDY TRIAL

The majority and dissent in *Washington* agree that the primary objective of *Corum* claims is the *protection* of fundamental rights.[82] The word "protection" implies action taken to prevent harm, so an "adequate remedy" must not only meaningfully heal the injured plaintiff, but also sufficiently "deter future violations" of the right.[83] Thus, the remedy should "pack[] enough sting" to compel the state to avoid substantial delay in trying future cases.[84] *Washington* provides a good example of how the existing dismissal "remedy" does not get the job done. The state actor primarily responsible for the violation continued to proudly and publicly condemn Washington after his conviction was overturned, showing a flagrant lack of remorse, accountability, or intent to change past practices even after dismissal.[85] The continued torment and character attacks promulgated by the state's agents and amplified by the media make it clear that Washington was the only one who suffered any real consequences after his so-called "remedy" was implemented.[86]

Civil remedies may thus be essential to adequately secure the speedy trial right.[87] The potential that defendants will sue for damages would likely incentivize the state to invest in better training and supervision of prosecutors on the forefront.[88] This is because, by ensuring prosecutors exercise elevated care in requesting continuances and promptly testing evidence, the state can reduce the risk of violations and, as a result, minimize overall costs. Presumably, state actors would be wary of repeating actions that previously led to the state being held publicly accountable and forced to pay damages. This contrasts the current situation where state actors can downplay the occurrence of speedy trial violations as merely a procedural technicality, continuing to point to the

82. *Washington*, 385 N.C. at 834–35, 898 S.E.2d at 674–75 (Earls, J., dissenting); *see also* Egbert v. Boule, 142 S. Ct. 1793, 1806–07 (2022) ("[T]he focus is whether the Government has put in place safeguards to 'prevent[t]' constitutional violations 'from recurring.'" (quoting Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 71, 74 (2001))).

83. *See Washington*, 385 N.C. at 835, 898 S.E.2d at 674 (Earls, J., dissenting).

84. *Id.*; *see* Allen, *supra* note 2, at 121 ("'[C]riminal defendants as a class need some additional basis upon which to compel the government to try them promptly.' North Carolina should provide this additional basis in some constitutional form." (quoting WAYNE R. LAFAVE, JEROLD H. ISRAEL & NANCY J. KING, CRIMINAL PROCEDURE § 18.3 (3d ed. 2000))).

85. *Washington*, 385 N.C. at 846–47, 898 S.E.2d at 682.

86. *Id.* at 846–47, 898 S.E.2d at 682–83.

87. Other courts with *Corum* analogues have held that civil remedies are "necessary and appropriate to ensure the full realization of" the constitutional rights at issue. *See, e.g.*, Brown v. State, 674 N.E.2d 1129, 1139, 1141 (N.Y. 1996) (holding damages are a "necessary deterrent" for unlawful search and seizure); *see also* Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 397 (1971).

88. *See* Richard H. Fallon, Jr., *Bidding Farewell to Constitutional Torts*, 107 CALIF. L. REV. 933, 975 (2019).

defendant as the blameworthy party.[89] While honoring the speedy trial right is already somewhat incentivized by the governmental and societal interest in reducing the opportunity for defendants to negotiate down their pleas, commit other crimes, escape in the time before trial, or have their charges ultimately dismissed,[90] the possibility of civil suit would nevertheless be an additional, powerful deterrent and by deduction better protect the speedy trial right. This additional deterrent is especially valuable given that the perceived harshness of the mandatory dismissal remedy discourages courts from finding speedy trial violations at all in the vast majority of claims.[91] Thus, the resulting infrequency of dismissal as a consequence of speedy trial violations further diminishes its deterrent force.[92]

Some may question whether more relief is really needed, or is even feasible, in light of the social and fiscal costs of allowing damage recovery for additional constitutional rights.[93] However, there is good reason to believe that enhancing protections for the speedy trial right under the North Carolina Constitution is both sound and workable. For one, the North Carolina Constitution offers richer and more robust protections for individual rights compared to the United States Constitution.[94] It thus allows courts to be "creative and original" in protecting its provisions without being "bound by constructs of constitutional doctrines used by the United States Supreme Court."[95] For this reason, the Supreme Court of North Carolina often reiterates that "[w]e give our Constitution a liberal interpretation in favor of its citizens with respect to those provisions which were designed to safeguard the liberty and security of the citizens."[96] To embody this principle in the speedy trial context by recognizing *Corum* claims would not result in impracticable administrability issues. As mentioned, it is very rare for courts to find speedy trial violations in the first instance,[97] making an unmanageable and fiscally draining influx of speedy trial *Corum* claims unlikely. Besides, any minimal

89. *See Washington*, 385 N.C. 846–47, 898 S.E.2d at 682.

90. *See* Barker v. Wingo, 407 U.S. 514, 518–20 (1972).

91. Sonja B. Starr, *Sentence Reduction as a Remedy for Prosecutorial Misconduct*, 97 GEO. L.J. 1509, 1514–15 (2009).

92. *Id.*

93. *See* Fallon, *supra* note 88, at 975 (noting that concerns about expanding damage recovery for constitutional violations include "unanticipated drains on the public fisc" and "social costs that would accrue if prospects of retrospective damages liability deterred courts from expanding the recognized scope of constitutional rights").

94. James G. Exum, Jr., *Dusting off Our State Constitution*, 33 N.C. ST. BAR Q. 6, 6–8 (1986).

95. *Id.* at 8.

96. Corum v. Univ. of N.C., 330 N.C. 761, 783, 413 S.E.2d 276, 290 (1992); *see also, e.g.*, State v. Harris, 216 N.C. 746, 764–65, 6 S.E.2d 854, 866 (1940).

97. *See* Starr, *supra* note 91, at 1514–15.

burden that recognition of these claims might impose should be viewed as a necessary byproduct of justice.[98]

IV. THE ROAD AHEAD

Moving forward, courts should take advantage of the flexible framework of *Corum* to seize future opportunities to adequately protect important individual rights.[99] This approach is especially warranted in light of the recent drawing back of federal protection for fundamental rights, which could leave citizens without adequate redress at either the state or federal level.[100]

When faced with a potential *Corum* claim, the court should properly account for the nature of the right at stake and the specific facts of its violation,[101] and then extend its analysis beyond a cursory, deferential look at what protections already exist to address it.[102] The court should utilize the *Washington* dissent's approach, carefully investigating the match between the available remedy, the particular injury suffered,[103] and the solution needed to adequately deter future violations of the right.[104] Where there is a mismatch between the existing options and what is needed to truly "right the wrong,"[105] the court should exercise its inherent constitutional power to allow a *Corum* claim to proceed. Recognizing *Corum* claims notwithstanding the existence of some existing statutory remedy would not constitute the judicial overstepping the *Washington* court expressed such concern about. Indeed, the court has revealed its willingness to overrule the legislature and cost the state millions by providing for enforcement of individual rights when it is property at stake.[106] It is not such a jump to demand at least equivalent treatment of rights that touch our deepest personal liberties, such as the right to a speedy trial.[107]

98. *See* Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 411 (1971) (Harlan, J., concurring).

99. Anita Earls, *Tar Heel Constitutionalism: The New Judicial Federalism in North Carolina*, 133 YALE L.J.F. 855, 865 (2024) (citing Harry C. Martin, *The State as a "Font of Individual Liberties": North Carolina Accepts the Challenge*, 70 N.C. L. REV. 1749, 1751 (1992)).

100. *See* Egbert v. Boule, 142 S. Ct. 1793, 1809 (2022).

101. *See* Fallon, *supra* note 88, at 972.

102. *See* Earls, *supra* note 99, at 869 (explaining that the lack of an alternative remedy as a prerequisite for a direct constitutional claim is not present in several other states, and the justification for the requirement in North Carolina courts comes from a fundamentally conservative view of the role of the judiciary and deference to other branches of state government).

103. *See* Fallon, *supra* note 88, at 963.

104. Washington v. Cline, 385 N.C. 824, 835, 898 S.E.2d 667, 674 (2024) (Earls, J., dissenting).

105. Corum v. Univ. of N.C., 330 N.C. 761, 784, 413 S.E.2d 276, 291 (1992).

106. Earls, *supra* note 99, at 870 ("[T]he Court enforced an individual right grounded in common law and not found in any specific constitutional text, overruling a choice the North Carolina General Assembly had made about how property owners could address a decline in property values.").

107. *See supra* notes 56–60 and accompanying text.

A. Askew v. Kinston*: A Case for Optimism*

Despite the court deviating from this suggested approach in *Washington*, a more recent *Corum* case indicates that the court is still willing to entertain a flexible framework moving forward for other constitutional rights. In *Askew v. City of Kinston*,[108] handed down just three months after *Washington*, Justice Earls, writing for a unanimous court, vacated the North Carolina Court of Appeals' decision that a *Corum* claim could not proceed in light of an available administrative process.[109] In *Askew*, African American plaintiffs brought an action against the city of Kinston, North Carolina, alleging that it violated their due process and equal protection rights in condemning their properties through a racially discriminatory scheme.[110] The plaintiffs sought a declaratory judgment, injunctive relief, and monetary damages for the violation of these constitutional rights.[111]

The North Carolina Court of Appeals determined that it did not have subject matter jurisdiction to hear the *Corum* suit because the plaintiffs had not taken advantage of the administrative remedies available to them.[112] These untapped administrative remedies, conferred by state statute,[113] included the ability to petition the superior court for review of the condemnation order.[114] In other words, the *Askew* plaintiffs had access to court to "raise the constitutional violation," and the potential to have the condemnation order reversed or to obtain injunctive relief, thereby protecting their properties from demolition.[115] By the *Washington* court's standards, this would appear to constitute an "adequate remedy" even though it did not provide an avenue for obtaining the full relief the plaintiffs sought.[116]

Interestingly, the *Askew* court did not subscribe to *Washington*'s categorical approach. Rather, it specified that "whether the review and relief afforded by the administrative process is an effective stand-in for a direct constitutional suit" is a "case-by-case inquiry," and not the "blanket jurisdictional mandate"

108. 386 N.C. 286, 902 S.E.2d 722 (2024).

109. *Id.* at 304, 902 S.E.2d at 735.

110. *Id.* at 292, 902 S.E.2d at 727.

111. *Id.*

112. *Id.* at 287, 902 S.E.2d at 724.

113. N.C. GEN. STAT. § 160A-429 (repealed 2019).

114. *Askew*, 386 N.C. at 290, 902 S.E.2d at 726.

115. Washington v. Cline, 385 N.C. 824, 829–30, 898 S.E.2d 667, 671 (2024); *Askew*, 386 N.C. at 290–91, 902 S.E.2d at 726–27.

116. *See Washington*, 385 N.C. at 829, 898 S.E.2d at 671 ("[A]n adequate remedy is one that meaningfully addresses the constitutional violation, even if the plaintiff might prefer a different form of relief."). The *Askew* court explained that the administrative remedy available may align with part of what plaintiffs sought through their *Corum* claims, specifically, the quashing of their condemnation orders, but that the alleged discrimination injury would require a "different species of relief." 386 N.C. at 296, 902 S.E.2d at 730.

that the North Carolina Court of Appeals treated it as.[117] Notably, it also specifically emphasized that the "'power to fashion an appropriate remedy' turns on 'the right violated and the facts of the particular case,'"[118] and that "different rights 'protect persons from injuries to particular interests.'"[119] On remand, the North Carolina Court of Appeals was explicitly instructed to consider these principles when assessing whether or not the administrative process "meaningfully addresses the constitutional violation."[120] This command is a refreshing departure from the *Washington* court's definition of adequate remedy, and it may be a sign that the categorical, one-size-fits-all approach will not go far.

B. *But the Speedy Trial Right . . . What Now?*

While the *Washington* court was quite clear in its ruling that *Corum* claims are not available for speedy trial violations, the *Askew* court's emphasis on the importance of "disaggregat[ing] . . . the constitutional harms alleged" and "examining the contours, injuries, and theories underpinning each"[121] in order to accord "every injury its proper redress"[122] alludes to a promising carveout. It suggests that the distinct procedural and substantive harms of a speedy trial violation might receive the separate relief they are due after all, perhaps if a plaintiff brings an independent *Corum* claim based on due process violations.[123]

If the opportunity does resurface to fill the remedial gap for speedy trial violations, considerations such as the length of undue delay, level of financial and reputational harm caused, and malice demonstrated by the state should hold sway. On this point, a line must be drawn regarding what the court should *not* consider. In *Washington*, the seriousness of the defendant's charges and the fact that he was convicted seeped into several parts of the majority's analysis despite

117. *Askew*, 386 N.C. at 287, 902 S.E.2d at 724.

118. *Id.* at 293, 902 S.E.2d at 728 (quoting Simeon v. Hardin, 339 N.C. 358, 373, 451 S.E.2d 858, 869 (1994) (quoting Corum v. Univ. of N.C., 330 N.C. 761, 784, 413 S.E.2d 276, 291 (1992))).

119. *Id.* (quoting Carey v. Piphus, 435 U.S. 247, 254 (1978)).

120. *Id.* at 304, 902 S.E.2d at 735 (quoting *Washington*, 385 N.C. at 829, 898 S.E.2d at 671).

121. *Id.* at 294, 902 S.E.2d at 729.

122. *Id.* (quoting *Washington*, 385 N.C. at 828, 898 S.E.2d at 670).

123. *Id.* at 294, 902 S.E.2d at 728 ("If a plaintiff brings distinct *Corum* actions for the violation of distinct constitutional rights, courts may not lump those claims together."). Thus, the court would not be able to dismiss *Corum* claims regarding other constitutional violations merely because they occurred in the same instance as the speedy trial violation, which the court has deemed has an adequate remedy at state law. In *Askew*, the claims were to be treated separately, despite having "shared constitutional origins," because they "raise[d] different injuries, and envision[ed] different modes of relief." *Id.* at 294, 902 S.E.2d at 729. The North Carolina Constitution's Law of the Land Clause, which guarantees that "[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land," may be a promising avenue for a plaintiff who wishes to bring a *Corum* claim to remedy the substantive harms of a speedy trial violation. N.C. CONST. art. I, § 19. An in-depth analysis of the viability of that approach is beyond the scope of this Recent Development.

a lack of relevance to their task.[124] Such factors should not be considered in fashioning relief for a speedy trial violation,[125] as any reliance on these factors presupposes the integrity of a conviction, which the dismissal remedy itself reveals is fatally damaged by the prejudice that may permeate trials after undue delay.[126]

Even if those who have had their charges dismissed are not able to use a *Corum* claim to obtain relief, hope may persist for individuals whose trial resulted in an acquittal. As suggested above,[127] a plaintiff who was acquitted may still have a viable claim for relief even under the *Washington* court's bare-minimum definition of "adequate remedy," as no remedy at all exists in those situations. Perhaps if presented with such a scenario and forced to confront the acquitted plaintiff whose myriad substantive harms are left without redress, the court will reconsider its holding in *Washington* that dismissal is a catch-all remedy for both the procedural and substantive harms of speedy trial violations. At the very least, it should embrace the chance to clarify that its ruling more narrowly bars *Corum* claims only where dismissal of charges is still an available remedy for a speedy trial violation.

CONCLUSION

In establishing *Corum* claims, the Supreme Court of North Carolina provided reassurance to those wronged by the state that they would have their constitutionally guaranteed rights vindicated. In *Washington v. Cline*, the court walked that reassurance back, focusing more on the prudential limitations set out by *Corum* than its substantive goal of protecting individuals from State encroachment on their rights. By broadly construing what constitutes an "adequate remedy," and failing to consider the nature of the speedy trial right or the facts of its violation, the court defied the spirit of its precedents, stripped *Corum* claims of meaningful protection, and minimized the time-honored and foundational guarantee that "[w]here there is a right, there is a remedy."[128]

124. *Washington*, 385 N.C. at 826, 831, 898 S.E.2d at 669, 672.

125. *But see* Amar, *supra* note 47, at 669–70 (proposing that remedies for speedy trial violations should depend in part on whether or not the accused was convicted).

126. The harm may actually be greater where there is a conviction as opposed to acquittal, considering the additional stain on one's reputation, potentially unfounded in real guilt. Moreover, convictions followed by prison time result in additional long-term economic disparity as formerly imprisoned individuals earn substantially less over their careers than they would have had they not been imprisoned. *See* CRAIGIE ET AL., *supra* note 54, at 6–7.

127. *See supra* text accompanying notes 76–81.

128. *Washington*, 385 N.C. at 825, 898 S.E.2d at 668.

Moving forward, a more wholistic and nuanced evaluation—such as that proposed in *Askew*—will allow the court to fashion a remedy more in tune with the particular harm imposed and the relief that justice demands.

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