

Supreme Court of New Jersey

Docket No. 089973

RUSSELL FORDE HORNOR,	:	CIVIL ACTION
<i>Plaintiff-Appellant,</i>	:	
vs.	:	ON APPEAL FROM A JUDGEMENT OF
	:	THE SUPERIOR COURT OF NEW
UPPER FREEHOLD REGIONAL	:	JERSEY, APPELLATE DIVISION
BOARD OF EDUCATION d/b/a UPPER	:	
FREEHOLD REGIONAL SCHOOL	:	Docket No. A-0366-22, Civil Action
DISTRICT; ALLENTOWN HIGH	:	
SCHOOL; NEW JERSEY FUTURE	:	Sat Below:
FARMERS OF AMERICA; AND	:	
CHARLES J. HUTLER, III,	:	HON. ALLISON E. ACCURSO, J.A.D.,
	:	HON. FRANCIS J. VERNIOIA, J.A.D., and
<i>Defendants-Respondents.</i>	:	HON. ARNOLD NATALI, J.A.D.

AMICUS CURIAE BRIEF OF *CHILD USA* IN SUPPORT OF PLAINTIFF-APPELLANT URGING REVERSAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i>	1
PRELIMINARY STATEMENT	2
STATEMENT OF FACTS AND PROCEDURAL HISTORY	4
ARGUMENT	5
I. NEW JERSEY CASE LAW AND LEGISLATIVE HISTORY CONFIRM THAT THE 2019 AMENDMENTS WERE INTENDED TO ELIMINATE ALL TCA IMMUNITIES FOR PUBLIC ENTITIES IN CHILD SEXUAL ABUSE CASES	5
A. New Jersey Case Law Supports the Revival of All Child Sexual Abuse Claims Against Public Entities.....	7
B. The Legislative History of the 2019 Amendments Evidences Intent to Revive All Child Sexual Abuse Claims Against Public Entities	11
II. THIS COURT SHOULD AFFIRM THAT PUBLIC ENTITIES MAY BE VICARIOUSLY LIABLE FOR CHILD SEXUAL ABUSE PERPETRATED BY THEIR EMPLOYEES UNDER THE “AIDED-BY AGENCY” DOCTRINE	14
III. THE 2019 AMENDMENTS REFLECT DELAYED DISCLOSURE SCIENCE AND ADDRESS NEW JERSEY’S COMPELLING INTEREST IN CHILD PROTECTION.....	18
CONCLUSION	26

TABLE OF AUTHORITIES

Cases

<u>Doe v. Estate of C.V.O.</u> , 303 A.3d 678, 687 (N.J. Super. Ct. App. Div. 2023)....	6, 7
<u>E.C. by D.C. v. Inglima-Donaldson</u>	8, 9, 10
<u>Frugis v. Bracigliano</u> , 177 N.J. 250, 268 (2003)	17
<u>Gaines v. Bellino</u> , 173 N.J. 301, 313-14 (2002)	16
<u>Hardwicke v. American Boychoir School</u> , 188 N.J. 69 (2006).....	8, 16, 17
<u>Hoefers v. Jones</u> , 672 A.2d 1299, 1308 (N.J. Super. Ct. Ch. Div. 1994).....	23
<u>J.L. v. J.F.</u> , 722 A.2d 558, 567 (N.J. Sup. Ct. App. Div. 1999).....	8
<u>Jones v. Jones</u> , 576 A.2d 316, 322 (N.J. Sup. Ct. App. Div. 1990), certif. denied, 585 A.2d 412 (N.J. 1990)	8
<u>Lehmann v. Toys “R” Us, Inc.</u> , 132 N.J. 587, 619 (1993)	15, 16
<u>Nw. Bergen Cnty. Utils. Auth. V. Donovan</u> , 143 A.3d 290 (2016)	12
<u>O’Connell v. State</u> , 795 A.2d 857 (N.J. 2002).....	9
<u>Packingham v. North Carolina</u> , 137 S. Ct. 1730, 1736 (2017).....	23
<u>R.L. v. Voytac</u> , 971 A.2d 1074 (N.J. 2009).....	21
<u>State v. Berger</u> , 134 P.3d 378, 382 (Ariz. 2006).....	23
<u>Stogner v. California</u> , 539 U.S. 607, 610, 632–33 (2003).....	22
<u>V.R. v. Bergen County Prosecutor’s Office</u> , No. 23cv20605, 2024 WL 3874052 (D. N.J. Aug. 19, 2024).....	11
<u>W.S. v. Hildreth</u> . 287 A.3d 421 (N.J. 2023), <u>aff’g</u> 268 A.3d 1038, 1040–41 (N.J. Super. Ct. App. Div. 2021).....	6, 10, 11

Statutes

A.R.S. §§ 12-542; 12-502	22
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N.J.S.A. § 2A:14-2a	5, 22
N.J.S.A. § 2A:14-2b	6, 22
N.J.S.A. § 59:8-3(b)	6
N.J.S.A. §§ 59:2-1.3(a)	5, 6, 7
N.J.S.A. §2A:14-2a	5
N.J.S.A. §59:2-1.3	2, 3, 9, 18
N.J.S.A. §59:8-3(b)	5
N.J.S.A. §59:8-8(a)	14
N.J.S.A. §2A:30B-6	5
N.J.S.A. §2A:61B-1	5
Pub. Law 2019, c. 120, § 10	5, 6
Pub. Law 2019, c. 239, § 2	7
Pub. Law 2019, c. 239, §§ 1–2	7

Other Authorities

Restatement 2d § 219(1)	15
Restatement 2d § 219(2)	15
Restatement 2d §219(2)(d)	15, 17
Angelakis, I., Gillespie, E.L., Panagioti, M., <u>Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis</u> , PSYCHOLOGICAL MEDICINE 1-22 (2019).....	26
<u>At the Heart of Gold: Inside the USA Gymnastics Scandal</u> (HBO 2019).....	25
Bessel A. van der Kolk M.D., et al., <u>Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society</u> (2006)	21
D. Finkelhor et al., <u>Sexually Assailed Children: National Estimates and Characteristics</u> , US Dept. of Justice, Office of Justice Programs (2008)	21

D. Finkelhor, et. al., <u>Prevalence of child exposure to violence, crime, and abuse: Results from the Nat'l Survey of Children's Exposure to Violence</u> , 169(8) JAMA PEDIATRICS 746 (2015).....	19
<u>Delayed Disclosure of Child Sexual Abuse</u> , CHILD USA, https://childusa.org/wp-content/uploads/2020/03/delayed-disclosure-childUSA-1.jpg	21
Delphine Collin-Vézina et al., <u>A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse</u> , 43 CHILD ABUSE NEGL. 123 (2015)	20
Elizabeth J. Letourneau et al., <u>The Economic Burden of Child Sexual Abuse in the United States</u> , 79 CHILD ABUSE NEGL. 413 (2018)	26, 27
G. Moody, et. al., <u>Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender</u> , 18(1164) BMC PUBLIC HEALTH (2018)	19
Gail Hornot, <u>Childhood Trauma Exposure & Toxic Stress: What the PNP Needs to Know</u> , J. PEDIATRIC HEALTHCARE (2015)	26
Governor's Statement Upon Signing Senate Committee Substitute for Senate Bill No. 477 (May 13, 2019)	6, 10
Grant BJ, Wilkerson S, & Henschel M., <u>Passing the Trash: Absence of State Laws Allows for Continued Sexual Abuse of K-12 Students by School Employees</u> , 28(1) J. CHILD SEX ABUSE 84 (2019)	2
Hamilton, M., <u>We Failed Our Children for Too Long: The Case for SOL Reform</u> , THE ADVOCATE, J. OF THE OKLA. ASS'N FOR JUST., 23 (Nov. 4, 2016).....	21
<u>Jeffrey Epstein: Filthy Rich</u> (Netflix 2020)	25
<u>Legislative Fiscal Estimate to the Senate Committee Substitute for S. 477</u>	13
M. Stoltenborgh, et. al., <u>A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World</u> , 16(2) CHILD MALTREATMENT 79 (2011).....	19
<u>Making the Case: Why Prevention Matters</u> , PREVENTCHILDABUSE.ORG	24
Michelle Elliott et al., <u>Child Sexual Abuse Prevention: What Offenders Tell Us</u> , 19 Child Abuse Negl. 579 (1995)	24

N. Pereda, et. al., <u>The prevalence of child sexual abuse in community and student samples: A meta-analysis</u> , 29 CLINICAL PSYCH. REV. 328, 334 (2009).....	20
Patrick J. O'Leary & James Barber, <u>Gender Differences in Silencing following Childhood Sexual Abuse</u> , 17 J. CHILD SEX. ABUSE 133 (2008).....	21
Perryman Group, <u>Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment</u> , (2014).....	26
<u>Preventing Adverse Childhood Experiences</u> , CDC.GOV	24
<u>Preventing Child Sexual Abuse</u> , CDC.gov (last visited Feb. 22, 2022).....	19
Ramona Alaggia et al., <u>Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)</u> , 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019).....	20
Rebecca Campbell, Ph.D., “ <u>The Neurobiology of Sexual Assault: Explaining Effects on the Brain</u> ,” NAT’L INST. OF JUSTICE (2012)	21
<u>Statement to S. Comm. Substitute for S. 477 (Mar. 7, 2019) (Committee Statement)</u>	12, 13
Stephanie Innes, <u>Enrollment in Arizona’s Medicaid program hits record 2M adults and children</u> , AZCENTRAL.COM (Jul. 14, 2020 at 1:10 PM).....	26
U.S. DEP’T OF ED., Office of the Under Secretary, <u>Educator Sexual Misconduct: A Synthesis of Existing Literature</u> , Washington, D.C., (2004), available at https://www2.ed.gov/rschstat/research/pubs/misconductreview/report.pdf	2
U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-11-200, SELECTED CASES OF PUBLIC AND PRIVATE SCHOOLS THAT HIRED OR RETAINED INDIVIDUALS WITH HISTORIES OF SEXUAL MISCONDUCT 17, 26 (2010).....	3

STATEMENT OF INTEREST OF *AMICUS CURIAE*

CHILD USA is an interdisciplinary non-profit think tank dedicated to preventing child abuse and neglect and ensuring access to justice for survivors. CHILD USA's mission is to employ in-depth legal analysis and cutting-edge social science research to develop evidence-based solutions and information needed by policymakers, courts, youth-serving organizations, media, and the public to increase child protection and the common good.

CHILD USA is the leading organization in the United States to track and study child sexual abuse statutes of limitations ("SOLs") as part of its Sean P. McIlmail SOL Reform Institute and has spearheaded the national movement to align SOLs with the well-established science of delayed disclosure. It has also advised Congress and state governors, legislatures, and courts on the constitutionality of revival laws for child sexual abuse and has submitted amicus briefs in high-impact cases across the country defending revival laws and addressing complex immunity issues, including those involving charitable and governmental entities.

CHILD USA's interests in this case arise directly from its mission to ensure that all survivors of child sexual abuse—regardless of the institutional setting in which the abuse occurred—have equal access to civil justice. Of particular concern is any judicial interpretation that frustrates the Legislature's express intent to hold

public entities accountable for enabling the sexual abuse of children. CHILD USA respectfully submits this amicus curiae brief to assist the Court in interpreting the scope and application of N.J.S.A. §59:2-1.3, and to underscore the importance of equitable accountability for all institutions entrusted with the care of children.

PRELIMINARY STATEMENT

There is an epidemic of child sexual abuse in our nation’s schools with **more than 4.5 million students, or 10% of school-aged children, subjected to sexual misconduct by a school employee sometime between kindergarten and 12th grade.**¹ This alarming number tracks a history of school officials sweeping educator sexual misconduct under the rug by permitting predatory teachers to quietly resign and find employment in other schools or districts—a practice known as “passing the trash” —without ever having to admit wrongdoing or revealing any misconduct to the public.² On average, educators accused of sexual abuse or misconduct are transferred to **three different schools** before they are reported to law enforcement.³

¹ U.S. DEP’T OF ED., Office of the Under Secretary, Educator Sexual Misconduct: A Synthesis of Existing Literature, Washington, D.C., (2004), available at <https://www2.ed.gov/rschstat/research/pubs/misconductreview/report.pdf>.

² Grant BJ, Wilkerson S, & Henschel M., Passing the Trash: Absence of State Laws Allows for Continued Sexual Abuse of K-12 Students by School Employees, 28(1) J. CHILD SEX ABUSE 84 (2019).

³ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-11-200, SELECTED CASES OF PUBLIC AND PRIVATE SCHOOLS THAT HIRED OR RETAINED INDIVIDUALS WITH HISTORIES OF SEXUAL MISCONDUCT 17, 26 (2010)

Tragically, it is estimated that a single teacher sexually abusing students can have up to **73 student victims**.⁴ The scope and systemic nature of this misconduct has created an emergency for lawmakers to redress, halt, and prevent.

Historically, a wall of ignorance and secrecy has been constructed around child sexual abuse, which has been reinforced by short SOLs and other procedural barriers that kept victims out of court. Short SOLs for child sexual abuse have played into the hands of the perpetrators and the institutions that coverup for them. Revival laws such as those passed by the New Jersey Legislature in 2019 recognize that society for too long did not understand the plight of those sexually abused as children and unfairly extinguished their rights long before they had the ability to report or seek justice for their abuse. To confront this injustice, New Jersey enacted sweeping reforms to the Child Sexual Abuse Act (“CSAA”) and the Tort Claims Act (“TCA”) in 2019 (collectively “the 2019 amendments”). These amendments significantly expanded access to justice for child sexual abuse victims and dramatically narrowed the scope of immunities available to public entities. Central among these reforms is N.J.S.A. §59:2-1.3, which unequivocally eliminates all immunities under the TCA for public entities in cases of child sexual abuse, including those that were previously time-barred or precluded by sovereign immunity. The Legislature enacted §59:2-1.3 to ensure that survivors of child sexual abuse could pursue civil justice on equal

⁴ ID.

terms—regardless of whether their abuse occurred in a public, private, or nonprofit institution. Yet the decisions of Appellate Division panels below frustrate this core legislative purpose by effectively reinstating immunity for public entities when their employees perpetrate sexual abuse, even if the abuse would otherwise give rise to liability under well-established agency principles of vicarious liability. If permitted to stand, these decisions will make it easier for public institutions in the state of New Jersey to escape liability for the most egregious breaches of their duties and it will send a message to our children that they must accept the risk of sexual abuse if they want to obtain an education. It will also deter victims from reporting sexual abuse, as many will not come forward if they see no viable path to justice. This outcome is, as a matter of public policy, wholly inconsistent with the Legislature’s noble purpose in enacting the 2019 amendments and a slap in the face to victims who continue to bear the physical, emotional, and financial burdens of these culpable institutions. Thus, this Court should reverse the decisions below and reaffirm that the 2019 amendments —particularly N.J.S.A. § 59:2-1.3—eliminate public entity immunity for vicarious liability under agency law principles, consistent with the Legislature’s mandate and New Jersey’s compelling interest in protecting children.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

For the purposes of this brief, Amicus adopts the facts and procedural history contained in the decisions of the Appellate Division below.

ARGUMENT

I. NEW JERSEY CASE LAW AND LEGISLATIVE HISTORY CONFIRM THAT THE 2019 AMENDMENTS WERE INTENDED TO ELIMINATE ALL TCA IMMUNITIES FOR PUBLIC ENTITIES IN CHILD SEXUAL ABUSE CASES

In May 2019, the New Jersey Legislature passed Chapter 120, which became effective December 1, 2019. Pub. Law 2019, c. 120, § 10. By passing Chapter 120, the Legislature amended several pieces of legislation, including New Jersey’s Tort Claims Act (“TCA”) and Child Sexual Abuse Act (“CSAA”). N.J.S.A. §§ 59:2-1.3(a); 59:8-3(b); 2A:14-2a; 2A:30B-6; 2A:61B-1. Notably, Chapter 120 enacted a new SOL for sexual abuse and exploitation tort claims. N.J.S.A. §2A:14-2a. Relevant here is the new SOL for child sexual abuse claims, which was extended to “thirty-seven years after the minor reaches the age of majority, or within seven years from the date of reasonable discovery of the injury and its causal relationship to the act, whichever is later.” *Id.* Importantly, Chapter 120 also revived expired child sexual abuse claims until the victim reaches age fifty-five, as well as opened a two-year revival window for expired child sexual abuse claims from December 1, 2019, until November 30, 2021. *Id.*; N.J.S.A. § 2A:14-2b.

As to the TCA, Chapter 120 eliminated public entity immunity and lifted the procedural requirements, such as the notice of claim prerequisite, for CSAA causes of action. N.J.S.A. §59:8-3(b) . Relevant here is §59:2-1.3(a)(1) which states that

“immunity from civil liability granted by [the TCA] to a public entity...shall not apply...” to CSAA causes of action arising from the “willful, wanton, or grossly negligent acts of the public entity or public employee.” Id.

Upon receipt of Senate Bill 477, which later became Pub. Law 2019, c. 120, § 10, the Governor requested that the Legislature amend Chapter 120 to rectify “an error” regarding public entity liability. Governor’s Statement Upon Signing Senate Committee Substitute for Senate Bill No. 477 (May 13, 2019) In fact, the Governor only signed Chapter 120 into law “with the assurance from the bill’s sponsors that it would introduce and swiftly pass a bill” to ‘clarify[] that public entities should be held to the same standard of liability that is applied to religious and nonprofit organizations’ because “applying a different standard would be unjustified.” Doe v. Estate of C.V.O., 303 A.3d 678, 687 (N.J. Super. Ct. App. Div. 2023) (citing W.S. v. Hildreth, 287 A.3d 421, 431 (N.J. 2023) (quoting Governor’s Statement Upon Signing Senate Committee Substitute for Senate Bill No. 477 (May 13, 2019))). Importantly, the Governor articulated the purpose of these amendments “was ‘to greatly increase[] the ability of victims of sexual abuse to pursue justice through the court system.’” Id. (quoting Governor’s Statement Upon Signing Senate Committee Substitute for Senate Bill No. 477 (May 13, 2019)).

To fulfill the Governor’s directive, the Legislature passed the Chapter 239 amendments in August of the same year. This second set of amendments clarified

the standard of liability for public entities under the TCA by amending Section 7 of Chapter 120, which, like Chapter 120, took effect on December 1, 2019. Pub. Law 2019, c. 239, §§ 1–2. With Chapter 239, the Legislature clarified that Chapter 120’s elimination of TCA immunity for damages “as a result of a sexual assault” included causes of action arising from a public entity’s or a public employee’s “willful, wanton or grossly negligent act,” and in child sexual assault actions, arising from the “negligent hiring, supervision, or retention of any public employee.” N.J.S.A. § 59:2-1.3(a). The Legislature expressly stated that this new liability standard applied to “any cause of action filed on or after [December 1, 2019], as well as any cause of action filed prior to that effective date that has not yet been finally adjudicated or dismissed by a court.” Pub. Law 2019, c. 239, § 2.

Thus, when read as a whole, the 2019 amendments allow a child sexual abuse victim to bring a claim against a public entity or public employee until they reach age fifty-five, or during the two-year revival window, without concern for the TCA’s procedural requirements or limitations on liability. As discussed below, this conclusion is supported by New Jersey case law, as well as the Legislature’s intent in passing the Amendments.

A. New Jersey Case Law Supports the Revival of All Child Sexual Abuse Claims Against Public Entities

Since the enactment of the 2019 Amendments to the CSAA and TCA, New Jersey courts have consistently upheld plaintiffs’ rights to hold public entities accountable for their child sexual abuse claims.⁵ For instance, in E.C. by D.C. v. Inglima-Donaldson, the plaintiff was sexually abused from 2015 to 2016 by a teacher hired by the board of education. 268 A.3d 1029, 1031 (N.J. Sup. Ct. App. Div. 2021). The plaintiff filed an action against the board of education based on vicarious liability, which survived the board’s motion for summary judgment. Id. at 1032. On appeal, the court considered whether the plaintiff could hold the board of education accountable as a passive abuser for its employee’s negligence pursuant to the amended TCA. Id.

The court noted that with the 2019 amendments, the Legislature “address[ed] the fact that victims might also encounter sexual misconduct involving public

⁵ New Jersey courts have a history of considering the public policy implications in child sexual abuse cases and have often construed the law favorably for the child victim. See Hardwicke v. Am. Boychoir Sch., 845 A.2d 619, 631 (N.J. Sup. Ct. App. Div. 2004), aff’d as modified, 902 A.2d 900 (2006) (criticizing the trial court’s interpretation of the CSAA because it would allow the public entity school to avoid liability in a child sex abuse action); J.L. v. J.F., 722 A.2d 558, 567 (N.J. Sup. Ct. App. Div. 1999) (reversing the trial court’s dismissal of plaintiff’s child sex abuse claims on SOL grounds, reasoning that should the child plaintiff’s “horrific allegations be true, it might not be equitable to permit defendant to benefit from a strict adherence to the statute of limitations”); Jones v. Jones, 576 A.2d 316, 322 (N.J. Sup. Ct. App. Div. 1990), certif. denied, 585 A.2d 412 (N.J. 1990) (reversing the trial court’s dismissal of plaintiff’s child sex abuse claims on SOL grounds, noting that New Jersey has a “long history of instances” of declining to uphold a time limitation “when some conduct on the part of the defendant . . . has rendered it inequitable”).

entities and public employees.” Id. (citing N.J.S.A. §§ 2A:14-2(a); 2A:30B-6; 2A:61B-1 and 59:8-3(b)). It additionally recognized “the Legislature’s stated desire to expand the rights of victims of sexual assaults and other sexual misconduct,” and thus decided to “consider the meaning and scope of N.J.S.A. §59:2-1.3(a) as illuminated by” that intent. Id.

In analyzing public entity liability under the amended TCA, the court noted that “it is not our role to ‘rewrite a plainly-written enactment of the Legislature []or presume that the Legislature intended something other than that expressed by the way of the plain language.’” Id. at 1034 (quoting O’Connell v. State, 795 A.2d 857 (N.J. 2002)). It explained that the plain language of § 59:2-1.3 clearly states that a public entity’s immunities are disabled even where the willful, wanton or grossly negligent conduct is committed by a public employee instead of by the public entity itself. Id. The Court recognized its plain reading was supported by the Legislature’s intent, which was “undoubtedly” to “make plaintiff’s pursuit of a remedy realistic rather than illusory,” by creating a lower bar “to the disabling of Tort Claims Act immunities for public entities.” Id. at 1035 (highlighting in Footnote 6 the OLS’s analysis of the 2019 amendments’ heightened liability and additional fiscal impact to public entities). Moreover, the Court pointed out that this interpretation was in line with the Governor’s request that the Legislature amend Chapter 120 to clarify

public entity liability. *Id.* (quoting Governor’s Statement Upon Signing Senate Committee Substitute for Senate Bill No. 477 (May 13, 2019)).

Ultimately, the Court decided the board of education could be held liable for the negligent actions of its employee under the amended TCA, finding that to hold otherwise would “make more difficult if not insurmountable a plaintiff’s pursuit of a remedy provided in N.J.S.A. 59:2-1.3(a)(1).” *Id.* As such, the Court held that, taken together, the 2019 amendments allow victims of sexual assault to hold public entities liable in negligence as “passive” abusers. The court thus made it abundantly clear that the Legislature’s intent in enacting the 2019 amendments to the TCA was to allow a greater number of plaintiffs to bring claims against public entities for child sexual abuse.

The *Inglima-Donaldson* opinion built upon precedent expanding public entity liability set by the courts in *W.S. v. Hildreth*, 287 A.3d 421 (N.J. 2023), *aff’g* 268 A.3d 1038, 1040–41 (N.J. Super. Ct. App. Div. 2021). In *Hildreth*, the courts considered an issue central to the 2019 amendments’ effect on public entities under the TCA: whether a child sexual abuse claim against a public entity that accrued prior to the 2019 amendments’ enactment but timely filed in accordance with the newly extended SOL for child sexual abuse claims, was nevertheless barred by the TCA’s notice of claim requirement. *Id.* Ultimately, the courts sided with plaintiff and construed the 2019 amendments as eliminating the TCA procedural notice

requirements for all child sex abuse claims timely filed under the amended SOL. Id. at 1046–47; see also V.R. v. Bergen County Prosecutor’s Office, No. 23cv20605, 2024 WL3874052 (D. N.J. Aug. 19, 2024). As this Court remarked, finding otherwise would mean that the Legislature “intentionally resuscitated child sexual abuse claims against public entities” only to have those claims dismissed outright because the victim failed to file a notice of claim within the ninety days of the original accrual date. Id. at 432. Such an outcome “would be senseless.” Id.

The case law makes clear that New Jersey courts interpret the 2019 amendments to apply broadly to *all* child sexual abuse claims brought before the victim’s fifty-fifth birthday or within the two-year revival window—including claims asserting vicarious liability against public entities. This interpretation is consistent with the Legislature’s intent and Governor’s explicit directive that public and private entities be on equal footing in child sexual abuse cases.

B. The Legislative History of the 2019 Amendments Evidences Intent to Revive All Child Sexual Abuse Claims Against Public Entities

When the Legislature passes a bill that amends several statutes, courts “must attempt to harmonize the provisions of all statutes that the Legislature has enacted affecting the subjects involved.” Nw. Bergen Cnty. Utils. Auth. V. Donovan, 143 A.3d 290 (2016). Simply put, to properly ascertain the Legislature’s intent in passing one statutory amendment, the court should look to the Legislature’s intent

in passing the legislation as a whole. Accordingly, an analysis of the Legislature’s intent in passing Senate Bill No. 477 (“S.477”), which became Chapter 120, in its entirety is necessary to determine the Legislature’s intent in amending the TCA.

First and foremost, the Legislature expressly stated that S.477 meant to “extend the statute of limitations in civil actions for sex abuse claims, as well as create a two-year window for parties to bring previously time-barred actions based on sex abuse. **The bill would also expand the categories of potential defendants in civil actions.**” Statement to S. Comm. Substitute for S. 477 (Mar. 7, 2019) (Committee Statement) (emphasis added). As to applicability, S.477’s provisions would apply “to lawsuits which could be filed beginning on December 1, 2019, the bill’s effective date.” Id. These lawsuits were specifically intended to include “any child victim of past abuse who is under the age of 55 years when the bill takes effect, or who will reach 55 years of age sometime after the bill takes effect, and who is aware of the injury and its cause,” or who filed during the two-year revival window. Id. at Sections 2, 9. Thus, the Legislature clearly communicated its intent that *all* of S. 477’s provisions apply to lawsuits filed by child victims under age fifty-five on December 1, 2019, or who filed during the two-year revival window.

To clarify S.477’s effect on the TCA, the Legislature wrote Section 8 of the Committee Statement, which explains that the bill,

“**eliminates** the [TCA’s] two-year statute of limitations period . . . for bringing a sexual abuse lawsuit against a public entity, as well as any

of the act's procedural requirements, such as the 90-day period for filing notice of a claim of liability against a public entity for such lawsuits; the process of filing a lawsuit with service upon the public entities would thus be the same as when suing a private organization. **Public entities would also be subject, just like a private organization, to the new, extended statute of limitations periods for child and adult victims of abuse."**

Id. (emphasis added). The logic follows that, as a provision of S. 477, the Legislature intended its elimination of substantive immunity and the notice of claim requirement to apply to all lawsuits timely filed after December 1, 2019, pursuant to the newly extended statute of limitations or two-year revival window.

This intent is reaffirmed by the March 29, 2019, Legislative Fiscal Estimate to the Senate Committee Substitute for S. 477 (Fiscal Estimate). In the Fiscal Estimate, the Office of Legislative Services ("OLS") explicitly notes that,

"because the two-year window for parties to bring previously time-barred actions; the State, school districts, and local units of government are likely to face an elevated number of claims that will have to be defended in the first few years after the bill's enactment. Once these retroactive, previously impermissible claims will have been adjudicated or settled, the count of additional cases filed as a result of this bill will normalize."

(emphasis added). The OLS's analysis clearly evidences that the Legislature intended S.477 to allow child sexual abuse victims to bring lawsuits against public entities during the two-year revival window unencumbered by the substantive or procedural barriers of the prior TCA. Had this not been the Legislature's intent, the OLS would not have expected case numbers against public entities to rise so

substantially, as all cases where the minor did not bring a notice of claim decades ago would still be barred or prohibited by sovereign immunity. See N.J.S.A. §59:8-8(a). Such an interpretation would render the two-year revival window essentially meaningless for child sexual abuse victims with claims against public entities, as it would revive their right to sue while still enforcing the TCA’s far more restrictive notice of claim requirement—or barring their claims entirely.

Thus, it is inconsistent with the Legislature’s intent and its own estimation of S.477’s effect to conclude that the 2019 amendments to the TCA confer substantive immunity to public entities facing claims based on child sexual abuse. The Legislature acted expressly to abrogate those bars in the context of sexual abuse cases. Any attempt to reimpose immunity through a narrow reading of the statute would undercut its purpose and create a double standard between public and private institutions.

II. THIS COURT SHOULD AFFIRM THAT PUBLIC ENTITIES MAY BE VICARIOUSLY LIABLE FOR CHILD SEXUAL ABUSE PERPETRATED BY THEIR EMPLOYEES UNDER THE “AIDED-BY AGENCY” DOCTRINE

This Court has long relied on the Restatement (Second) of Agency § 219 to define the circumstances under which an employer may be held liable for the tortious acts of its employees. See Lehmann v. Toys “R” Us, Inc., 132 N.J. 587, 619 (1993). While §219(1) addresses liability for conduct within the scope of employment,

§219(2) recognizes key exceptions. Of particular significance here is §219(2)(d), which imposes liability where “the employee was aided in accomplishing the tort by the existence of the agency relationship.” This “aided by agency” theory has proven especially important in cases involving abuses of power—such as institutional sexual abuse, workplace harassment, and retaliation—where the employee’s position of authority, access, or trust is not incidental to the misconduct but central to how it occurs.

In *Lehmann*, this Court considered the standards governing employer liability in the context of workplace sexual harassment. Applying the principles set forth in § 219, this Court held that an employer may be held liable for a hostile work environment created by a supervisor. *Id.* at 620. As the Court explained, “even in the more common situation in which the supervisor is acting outside the scope of his or her employment, the employer will be liable in most cases for the supervisor’s behavior under the exceptions set forth in § 219(2).” *Id.* The *Lehmann* Court emphasized that the employer, as the party with authority and control over the workplace, bears the primary responsibility for preventing foreseeable harm, including by implementing effective policies, training, and oversight mechanisms. *Id.* at 617. Because sexual harassment is a well-recognized workplace risk, the absence of such measures may be compelling evidence of employer negligence. *Id.* at 621; see also *Gaines v. Bellino*, 173 N.J. 301, 313–14 (2002) (same).

Although *Lehmann* addressed workplace harassment, the Court’s reasoning applies with equal force to sexual abuse in schools—a harm that arises from similar dynamics of unchecked authority, lack of supervision, and institutional complacency. Just as *Lehmann* recognized that foreseeability can be established through general awareness of risk, the same principle holds true here, where sexual abuse by school employees is a widely documented and persistent danger. Lehmann, 132 N.J. at 621; Hardwicke v. American Boychoir School, 188 N.J. 69, 102 (2006). Indeed, the risk that a school employee might sexually abuse a student is at least as foreseeable as the risk of workplace harassment—if not more so—given the developmental vulnerability of children and the broad authority school personnel exercise over them. And as this Court has expressed, “[n]o greater obligation is placed on school officials than to protect the children in their charge from foreseeable dangers, whether those dangers arise from the careless acts or intentional transgressions of others.” Frugis v. Bracigliano, 177 N.J. 250, 268 (2003); see also Abbamont v. Piscataway Twp. Bd. of Educ., 138 N.J. 405 (1994) (explaining that public school boards have a non-delegable duty to safeguard their staff and students).

The same considerations that informed this Court’s analyses in *Lehmann* and *Abbamont* were expressly extended in *Hardwicke*, which squarely addressed the application of § 219(2)(d) to CSAA claims. The question before the Court in *Hardwicke* was whether the Charitable Immunity Act shielded the defendant, a

private school, from vicarious liability for sexual abuse perpetrated by a teacher. 188 N.J. at 100-102.. Applying the “aided by agency” doctrine under §219(2)(d), this Court held that it did not. As this Court explained, the “aided-by-agency” doctrine is designed to “impose [] responsibility on those in the best position to know of the abuse and stop it.” *Id.* at 102. Thus, *Hardwicke* confirms that when institutional authority is central to an employee’s ability to commit abuse, vicarious liability is appropriate under § 219(2)(d).

The reasoning in *Hardwicke* applies with equal force to public school officials. When the Legislature enacted N.J.S.A. §59:2-1.3 in 2019, it unambiguously abrogated immunity under the TCA for child sexual abuse claims, thereby placing public entities on equal footing with their private and charitable counterparts under principles established in *Lehmann* and *Hardwicke*. The statute applies “[n]otwithstanding any provision of the [TCA] to the contrary,” and covers claims involving “willful, wanton, or grossly negligent” conduct. *Id.* It does not limit liability under § 219(2)(d) in any way.

Thus, the School District’s position—that it cannot be held liable because the teacher acted outside the scope of their employment—fundamentally misapprehends both the plain text and underlying purpose of § 219(2)(d) and § 59:2-1.3. The question is not whether the abuse was authorized, but whether the employee’s official role aided in its commission. Here, the teacher’s ability to isolate, groom,

and control students arose directly from the legitimacy and access granted by their public position. The abuse of power was not incidental to their job—it was made possible by it. To read §59:2-1.3 narrowly—excluding liability under § 219(2)(d)—would restore the very two-tiered system the Legislature sought to dismantle, and it would allow public entities to evade responsibility when the power they delegate becomes the instrument of abuse. Holding public entities accountable under § 219(2)(d) is not only doctrinally sound—it is essential to achieving justice for survivors and protecting children from further harm.

III. THE 2019 AMENDMENTS REFLECT DELAYED DISCLOSURE SCIENCE AND ADDRESS NEW JERSEY’S COMPELLING INTEREST IN CHILD PROTECTION

New Jersey’s 2019 amendments acknowledge that victims of child sex abuse often take decades to disclose their abuse. The revival window in the CSAA and the amendments to the TCA, correct the injustice of New Jersey’s historically unreasonably short SOLs and other procedural barriers that blocked child sexual abuse victims’ access to courts and kept the public uninformed.

A. Child Sexual Abuse Uniquely Prevents Victims from Bringing Timely Claims Under Unreasonably Short SOLs

Child sexual abuse is a national public health crisis, with 3.7 million children sexually abused every year.⁶ In the United States, at least one in five girls and one in thirteen boys is sexually abused before they turn eighteen.⁷

An extensive body of evidence establishes that childhood sex abuse victims are traumatized in a way that is distinguishable from victims of other crimes. Many victims of child sex abuse suffer in silence for decades before they talk to anyone about their traumatic experiences. As children, child sex abuse victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of relationships, or involvement with the authorities.⁸ These victims may also struggle to disclose their experiences due to effects of trauma and psychological

⁶ See Preventing Child Sexual Abuse, CDC.gov (last visited Feb. 22, 2022), <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; see also D. Finkelhor, et. al., Prevalence of child exposure to violence, crime, and abuse: Results from the Nat'l Survey of Children's Exposure to Violence, 169(8) JAMA PEDIATRICS 746 (2015).

⁷ G. Moody, et. al., Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender, 18(1164) BMC PUBLIC HEALTH (2018); M. Stoltenborgh, et. al., A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World, 16(2) CHILD MALTREATMENT 79 (2011); N. Pereda, et. al., The prevalence of child sexual abuse in community and student samples: A meta-analysis, 29 CLINICAL PSYCH. REV. 328, 334 (2009).

⁸ Delphine Collin-Vézina et al., A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse, 43 CHILD ABUSE NEGL. 123 (2015).

barriers such as shame, self-blame, or fear, as well as social factors such as gender-based stereotypes or stigma regarding victimization.⁹

Additionally, disclosing sexual abuse to the authorities for criminal prosecution or an attorney in pursuit of civil justice is a difficult and emotionally complex process, which involves the victim knowing that he or she was abused; being willing to identify publicly as a sexual abuse victim; and deciding to act against their abuser. It is hardly surprising then that one study found 44.9% of male victims and 25.4% of female victims of child sex abuse delayed disclosure by more than twenty years.¹⁰ In another study of victims of abuse in Boy Scouts of America, 51% of victims disclosed their abuse for the first time at age fifty or older.¹¹ An estimated 70% of child sexual assault victims never report abuse to the police.¹² Victims, therefore, often need decades to process the abuse they suffered, much less to report it.¹³

⁹ Ramona Alaggia et al., Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016), 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019).

¹⁰ Patrick J. O'Leary & James Barber, Gender Differences in Silencing following Childhood Sexual Abuse, 17 J. CHILD SEX. ABUSE 133 (2008).

¹¹ Delayed Disclosure of Child Sexual Abuse, CHILD USA, <https://childusa.org/wp-content/uploads/2020/03/delayed-disclosure-childUSA-1.jpg>

¹² D. Finkelhor et al., Sexually Assaulted Children: National Estimates and Characteristics, US Dept. of Justice, Office of Justice Programs (2008), <https://www.ojp.gov/pdffiles1/ojjdp/214383.pdf>.

¹³ R.L. v. Voytac, 971 A.2d 1074 (N.J. 2009); Rebecca Campbell, Ph.D., The Neurobiology of Sexual Assault: Explaining Effects on the Brain, NAT'L INST. OF

Moreover, cultures of secrecy paired with unreasonably short SOLs and other time restraints shielded organizations from public scrutiny and discouraged victims from disclosing abuse. The Boston Globe’s 2002 Spotlight investigative report uncovered rampant sexual abuse in the Catholic Church, and an alarming number of institutional scandals have since emerged, with more institutions and perpetrators publicly named each year.¹⁴

Until 2019, child sex abuse victims in New Jersey only had until age twenty or two years from discovering their claim to file a civil suit against their abusers and other defendants. N.J.S.A. §§2A:14-2; 2A:61B-1(b) (West 1992). As detailed above, nearly all victims fail to bring claims within such an unreasonably short timeframe. To remedy the problem, the Legislature passed Chapter 120, which retroactively and prospectively extended the civil SOL to age fifty-five or seven years from discovery, whichever is later. N.J.S.A. § 2A:14-2a (2019). It additionally opened a two-year window permitting victims of child sex abuse in New Jersey to assert otherwise time-barred civil claims—from December 1, 2019, through November 30, 2021. N.J.S.A. § 2A:14-2b (2019). Importantly, procedural

JUSTICE (2012), <https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobilityWebinar.pdf>; Bessel A. van der Kolk M.D., et al., Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society (2006).

¹⁴ Hamilton, M., We Failed Our Children for Too Long: The Case for SOL Reform, THE ADVOCATE, J. OF THE OKLA. ASS’N FOR JUST., 23 (Nov. 4, 2016).

requirements under the TCA were also eliminated for lawsuits filed during this window, or pursuant to the extended statute of limitations, allowing public entities to be sued in the same manner as private organizations for claims of child sexual abuse. Committee Statement at Section 8.

Because a law to revive a previously time-barred *criminal* prosecution violates the Ex Post Facto Clause of the United States Constitution, filing a civil claim using a revival provision is the sole redress for many child sex abuse victims whose claims unjustly expired. See Stogner v. California, 539 U.S. 607, 610, 632–33 (2003). By passing Chapter 120, the New Jersey Legislature recognized the injustice of short time restraints and took a reasonable step to address this issue, providing long-denied access to justice to victims of child sexual abuse and greatly reducing the present danger to New Jersey’s children.

B. The Chapter 120 Amendments Address New Jersey’s Compelling Interest in Child Protection

The Chapter 120 amendments to the CSAA and TCA also serve Arizona’s “compelling” interest in child protection. E.g., Packingham v. North Carolina, 137 S. Ct. 1730, 1736 (2017); Hoefers v. Jones, 672 A.2d 1299, 1308 (N.J. Super. Ct. Ch. Div. 1994) (noting the “duty to protect infants and those of legal disability unable to protect themselves” is “the fundamental principle guiding our courts in promoting a child’s welfare and best interests It is the state’s quintessential

compact with its citizens, an organic precept of decency of inherent constitutional dimension,” and “is a preeminent promise of human kind, binding one generation to another that those who cannot protect themselves will be protected; that those who need care will receive; and that the powers of the state, administratively, legislatively, and through its courts, will be utilized to oversee that promise.”), aff’d, 672 A.2d 1177 (N.J. Super. Ct. App. Div. 1996). Three important public purposes are served by the Legislature’s enactment of the 2019 amendments. They: (1) identify previously unknown child predators and the institutions that shield them; (2) shift the cost of abuse from victims to those who caused the abuse; and (3) educate the public to prevent future abuse.

First, the amendments facilitate the identification of previously unknown child predators¹⁵ and the institutions that shield them, who would otherwise remain hidden. The decades before a victim is ready to disclose give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public. Unfortunately, unidentified predators continue abusing children; for example, one study found that 7% of offenders sampled committed offenses against forty-one to 450 children, and the longest time between offense and conviction was thirty-six years.¹⁶ Through the 2019 amendments, the Legislature empowered

¹⁵ Michelle Elliott et al., Child Sexual Abuse Prevention: What Offenders Tell Us, 19 CHILD ABUSE NEGL. 579 (1995).

¹⁶ Id.

victims to identify New Jersey's hidden child predators and the institutions that endanger children, which helps prevent those predators from further abusing children and allows the public to develop policies to inhibit new abuse from occurring in the long-term.¹⁷

Second, the amendments help to educate the public about the dangers of child sexual abuse and how to prevent such abuse. When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the media publish investigations and documentaries that enlighten communities about the insidious ways child molesters operate to sexually assault children, as well as the institutional failures that enabled their abuse.¹⁸ Because the Chapter 120 amendments permit an increased number of child victims to come forward, they shed light on the prevalence of child sexual abuse, which allows parents and other guardians to become better equipped with the tools necessary to identify abusers and responsible institutions, while empowering the public to recognize grooming and abusive behavior. Indeed, SOL reform not only provides access to justice previously withheld from victims of child sexual

¹⁷ See generally, Making the Case: Why Prevention Matters, PREVENTCHILDAUSE.ORG (last visited February 22, 2022), <https://preventchildabuse.org/resource/why-prevention-matters/>; Preventing Adverse Childhood Experiences, CDC.GOV (last visited Feb. 23, 2022), <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

¹⁸ E.g., Jeffrey Epstein: Filthy Rich (Netflix 2020); At the Heart of Gold: Inside the USA Gymnastics Scandal (HBO 2019).

abuse; it prevents further abuse by fostering social awareness while encouraging institutions to implement accountability and safe practices.

Third, the cost of child sexual abuse to victims is enormous,¹⁹ and they, along with the State of New Jersey, unjustly carry the burden of this expense.²⁰ The estimated lifetime cost to society from child sexual abuse cases that occurred in the U.S. in 2015 is \$9.3 billion, while the average cost per non-fatal female victim was estimated at \$282,734.²¹ Average costs per victim include but are not limited to \$14,357 in child medical costs, \$9,882 in adult medical costs, \$223,581 in lost productivity, \$8,333 in child welfare costs, \$2,434 in costs associated with crime, and \$3,760 in special education costs.²² Costs associated with suicide deaths are estimated at \$20,387 for female victims.²³ These staggering costs gravely affect

¹⁹ See M. Merricka., et al., Unpacking the impact of adverse childhood experiences on adult mental health, 69 CHILD ABUSE & NEGLECT 10 (July 2017); Angelakis, I., Gillespie, E.L., Panagioti, M., Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis, PSYCHOLOGICAL MEDICINE 1-22 (2019); Gail Hornot, Childhood Trauma Exposure & Toxic Stress: What the PNP Needs to Know, J. PEDIATRIC HEALTHCARE (2015); Perryman Group, Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment (2014).

²⁰ While one in four Arizonans receive Medicaid, sex abuse victims likely disproportionately receive support due to the crippling effect of trauma. Stephanie Innes, Enrollment in Arizona's Medicaid program hits record 2M adults and children, AZCENTRAL.COM (Jul. 14, 2020 at 1:10 PM), <https://www.azcentral.com/story/news/local/arizona-health/2020/07/14/enrollment-arizonas-medicaid-program-hits-record-2-million/5429518002/>.

²¹ Elizabeth J. Letourneau et al., The Economic Burden of Child Sexual Abuse in the United States, 79 CHILD ABUSE NEGL. 413 (2018).

²² Id.

²³ Id.

victims and also impact the nation's health care, education, criminal justice, and welfare systems.²⁴ Revived child sexual abuse cases that result in awards and settlements will not only equitably shift some of the costs away from victims and onto the abusers, but they will also save the State money by reducing expenditures on public services.

As a result, the Legislature's 2019 amendments not only remedy the long-standing injustice to child sexual abuse victims barred from bringing their claims under unreasonably short time restraints but also serve New Jersey's compelling interest in keeping its children safe and preventing future child sexual abuse.

CONCLUSION

For these reasons, *Amicus Curiae* CHILD USA respectfully requests this Court reverse the decisions of Appellate Division panels below and hold that the "aided-by-agency" theory of vicarious liability applies to public entities for claims of child sexual abuse.

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²⁴ Id.