RUSSELL FORDE HORNOR, Plaintiff-Appellant, v. UPPER FREEHOLD REGIONAL BOARD OF EDUCATION d/b/a UPPER FREEHOLD REGIONAL SCHOOL DISTRICT; ALLENTOWN HIGH SCHOOL; NEW JERSEY FUTURE FARMERS OF AMERICA; ALLENTOWN FUTURE FARMERS OF AMERICA; AND CHARLES J. HUTLER, III, Defendants-Respondents.	SUPREME COURT OF NEW JERSEY DOCKET NO.: 089973 Civil Action On Motion for Leave to Appeal from Superior Court of New Jersey, Appellate Division, Docket No. A-0366-22 Sat Below: Hon. Allison E. Accurso, P.J.A.D. Hon. Francis J. Vernoia, J.A.D. Hon. Arnold L. Natali, Jr., J.A.D.

PLAINTIFF-APPELLANT'S BRIEF IN RESPONSE TO OTHER AMICI CURIAE

On The Brief:
Gabriel C. Magee, Esq.
Attorney ID # 017052011
Magee@BRattorneys.com
John W. Baldante, Esq.
Attorney ID # 031391983
Baldante@BRattorneys.com
Jamie L. Hutchinson, Esq.
Attorney ID # 008532010
Hutchinson@BRattorneys.com
BALDANTE & RUBENSTEIN, P.C.
89 North Haddon Avenue, Suite D
Haddonfield, NJ 08033
(856) 424-8967
Attorneys for Plaintiff-Appellant
Russell Forde Hornor

Date Submitted: July 16, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITY

OTHER REFERENCES

PRELIMINARY STATEMENT

The three additional amicus briefs of New Jersey Defense Association ("NJDA"), New Jersey State League of Municipalities and New Jersey Institute of Local Government Attorneys ("NJSLM/NJILGA"), and Northfield Board of Education and Northfield School District ("NBOE") submitted in opposition to Plaintiff-Appellant's position should all be rejected by this Court. All three essentially repeat the same flawed position taken by the Appellate Division and Respondents, utilizing nearly identical arguments.

As detailed below and in Plaintiff-Appellant's prior submissions, this Court should reject these arguments for the same reasons that it rejects those of the Appellate Division and Respondents, that is, they are contrary to the plain language of the amendments to § 59:2-1.3(a); contrary to the clear legislative intent behind the CVA; and result in differing standards of liability that fail to fully protect children from the dangers and harms of child sexual abuse.

COUNTERSTATEMENT OF PROCEDURAL HISTORY AND FACTS

Plaintiff-Appellant relies on the statement of procedural history and facts from its prior submissions, incorporated here by reference, adding only the following:

Amici briefs were submitted by New Jersey Coalition Against Sexual Assault and Child USA in support of Plaintiff-Appellant's position. The Attorney General of New Jersey submitted an amicus brief which also supports Plaintiff-Appellant's position that the historic changes to our law under the Child Victims Act ("CVA") which amended the Tort Claims Act ("TCA") such that a public entity may now be held vicariously liable for the acts of child sexual abuse committed by an employee. However, the Attorney General's amicus brief goes on to request that this Court limit that vicarious liability in a manner with which Plaintiff-Appellant strongly disagrees. A separate Response Brief on behalf of Plaintiff-Appellant to the Attorney General has been submitted.

Three amicus briefs have been submitted in opposition to Plaintiff-Appellant's position by the following entities: New Jersey Defense Association; New Jersey State League of Municipalities and New Jersey Institute of Local Government Attorneys; and the Northfield Board of Education & Northfield School District. This consolidated Response Brief is respectfully submitted with respect to all three of these amici briefs.

ARGUMENT

Response to Amicus Brief of New Jersey Defense Association

NJDA's arguments mirror those of the Appellate Division and Respondents and they should be rejected for the same reasons, as fully detailed in Plaintiff-Appellant's prior submissions.

NJDA urges this Court to take a very narrow view of the TCA based on the Appellate Division's position that a specific predicate liability for vicarious liability for acts of child sexual abuse must be located before liability can be imposed. (NJDAb at 5-8). Just like the Appellate Division and Respondents, NJDA completely fails to explain how to square this with the plain language of the amendments to 59:2:1-1.3(a)(1), which now impose vicarious liability on a public entity for a "willful, wanton or grossly negligent act" of child sexual abuse committed by an employee. NJDA apparently fails to recognize that its position makes this amendment a total nullity. Nor does NJDA explain how it is possible, under this narrow view, that a public entity may be held liable for damages from the sexual abuse of a child that arise from the negligent hiring, retention or supervision of a public employee, when no predicate liability for these acts exists in the TCA.

While these irreconcilable inconsistencies do not seem to trouble the NJDA, they have been raised by Plaintiff-Appellant and are recognized by the NJAG. Moreover, the NJDA really adds nothing new to the arguments already made by the

Respondents, to which the Plaintiff-Appellant has already replied. Finally, the AG, a public entity itself, fully rebuts NJDA's position in Point I of its amicus brief, and agrees with Plaintiffs that this narrow focus on predicate liability is contrary both the plain language of the amended TCA, its history and purpose, and the Legislative intent behind the amendments. For these reasons, as well as all of the others raised by Plaintiff-Appellant in its prior submissions, NJDA's position and arguments should be rejected by the Court.

Response to Amicus Brief of New Jersey State League of Municipalities and New Jersey Institute of Local Government Attorneys

These amici also repeat the same arguments made by the Appellate Division and Respondents, and they should be rejected for the same reasons.

NJLM/NJILG also argue that a public entity cannot be held vicariously liable for acts of child sexual abuse because such acts are outside the scope of employment and there is no predicate liability for these acts within the TCA. (NJSLM/NJILGAb at 1-3). This argument is fully rebutted both by Plaintiff-Appellant and the New Jersey Attorney General, as well as New Jersey Coalition Against Sexual Assault and Child USA in their respective submissions, incorporated herein. The argument should be rejected for these reasons by this Court.

Plaintiff-Appellant also notes that NJLM/NJILG also submits an extremely flawed analysis of the Hardwicke case, which should also be rejected by this Court. (NJSLM/NJILGAb at 5-8). This analysis is similar to the one put forward by the AG

in support of its proposal to limit vicarious liability under Hardwicke, and like the AG, it mistakenly suggests that the facts related to the perpetrator there, Hanson, were necessary rather than sufficient to demonstrate aided agency and/or apparent authority. Plaintiff-Appellant rebuts this mistaken position in its response to Point II of the AG's amicus brief, and incorporates that argument here. (NJAGResponseb at 22-3).

From this NJLM/NJILG arrives at a flawed position that, like the AG's proposal, must fail because it violates the Legislature's intent behind the passage of the CVA by creating differing standard of liability for public and charitable entities. This flaw is highlighted here, as NJLM/NJILG's position would permit the imposition of vicarious liability upon Defendant Future Farmers of America, a charitable entity, while barring it against the public entity, Defendant Upper Freehold Board of Education. This repeats the same error committed by the Appellate Division and should be rejected.

Finally, it is also worth pointing out that NJLM/NJILG asks this Court to apply its flawed interpretation of Hardwicke to the "facts at bar" here. (NJSLM/NJILGAb at 8). It argues that doing so would result in the rejection of vicarious liability upon the public school at issue here. But this is flawed on its face, since this matter arises on a Motion to Dismiss and there are no "facts at bar," beyond the allegations raised the Complaint. Contrary to NJLM/NJILG's contentions, the Complaint in this matter

sufficiently alleges facts necessary to meet the pleading standard for a claim of vicarious liability under Hardwicke.

As such, the only issue is a question of law: whether a public entity may now be held vicariously liable for the acts of sexual abuse against a child committed by an employee, as a result of the CVA's amendments to the TCA. The AG's amicus brief Point I, as well as Plaintiff-Appellant's submissions, make it clear that the Appellate Division's decision answering this in the negative must now be rejected by this Court. NJLM/NJILG arguments should likewise be rejected.

Response to Amicus Brief of the Northfield Board of Education & Northfield School District

These amici make the same exact arguments that the above amici, the Respondents, and the Appellate Division make, and these should be rejected for the same reasons.

NBOE argues incorrectly that a public entity cannot be held vicariously liable for acts of child sexual abuse committed by its employee, despite the amendments to the TCA. These arguments are fully rebutted by Plaintiff-Appellant in its prior briefing and those arguments are adopted herein. Additionally, these arguments are also fully rebutted in Point I of the amicus brief submitted by the New Jersey AG, itself a public entity. That argument is incorporated here by reference.

While the foregoing is sufficient basis for the Court to reject NBOE's arguments, Plaintiff-Appellant also points out that NBOE appears to make an intentional point of improperly referring to the vicarious liability under Hardwicke, which was adopted by this Court over almost 20 years ago, as "strict liability." NBOE refers to vicarious liability in this way at every opportunity. (NBOEb at 1, 3, 7, 8, 9). NBOE does this, despite recognizing that "one of the central questions posed to the Appellate Court in Hornor was whether the employee's sexual assault of a student held the employer vicariously liable for such conduct . . . ." (NBOEb at 4). Thus, NBOE's repeated references to strict liability, instead of vicarious liability, seem intentional rather than accidental.

It is improper for NBOE to repeatedly make this representation, despite knowing that the imposition of liability under Hardwicke is vicarious, not strict. Under Hardwicke, the application of vicarious liability is *contingent* upon a fact-based determination that the employer stands *in loco parentis* to children and delegated the authority to supervise children to the perpetrator, who then used either his/her apparent authority or aided-agency in accomplishing the sexual abuse of the victim. Hardwicke v. Am. Boychoir Sch., 188 N.J. 69, 101-2 (N.J. 2006). In addition, it is important to remember that vicarious liability here is only imposed pursuant to remedial legislation enacted to eradicate a specific systemic societal problem, namely child sexual abuse, which already limits the application of Hardwicke and

219(2)(d). Contrary to NBOE's repeated assertions, this liability is not strict, but rather contingent on a fact specific determination.

Under Hardwicke, this Court chose to impose vicarious liability as the appropriate tool to balance the protection of children from horrific acts of child sexual abuse against the imposition of liability for such acts on the entities that are in the best position to detect, prevent, and stop these acts. Id. at 102. NBOE's disingenuous and repeated referrals to strict liability appears to be nothing more than fear mongering that ignore this Court's prior decisions, as well as New Jersey's important public policy of protecting children.

NBOE also argues, incorrectly, that N.J.S.A. § 59:2-1.3(a)(1) does not remove a public entity's immunity for acts of willful, wanton or grossly negligent acts of child sexual abuse committed by public employees. (NBOEb at 7-8). This argument has already been rejected by the Appellate Division and should not be considered here. E.C. by D.C. v. Inglima-Donaldson, 470 N.J. Super. 41, 53 (App. Div. 2021) ("We conclude that . . . [59:2-1.3(a)(1)] . . . sensibly and reasonably imposes an obligation on a plaintiff to show the "willful, wanton or grossly negligent" conduct of only the public entity "or" public employee, but not both — just as the statute expressly declares.).

Confusingly, NBOE goes on to recognize that Governor Murphy instructed the Legislature to amend 59:2-1.1(a) such that the liability for a public entity for acts of child sexual abuse is equivalent to that of private and charitable entities. NBOE then illogically states this somehow shields public entities from vicarious liability under Hardwicke. (NBOEb at 9). This is obviously incorrect, since the school in Hardwicke was a private, charitable entity and this Court specifically held that the CIA did not bar plaintiff's claims there. Hardwicke, 188 N.J. at 94-99. NBOE/NSD's argument is, at best, misguided and should be rejected.

In its final argument, NBOE goes on to try to convince this Court that Hardwicke is no longer applicable because it was based on the version of the CSAA that existed in 2006, which contained the "within the household" provision," which has now been eliminated. Logically, it does not follow that the elimination of the "within the household" provision, which expands liability under the CSAA, somehow negates Hardwicke.

More importantly, the CSAA is immaterial here with respect to vicarious liability. The Court's decision did not make claims of vicarious liability pursuant to 219(2)(d) contingent on passive abuser liability under the CSAA, as NBOE appear to confusingly suggest. Rather, the Court made it clear that a plaintiff may bring claims of vicarious liability for acts of child sexual abuse under 219(2)(d) pursuant to common law claims, separate and apart from any CSAA claims:

> The considerations that informed our analyses in Lehmann and Abbamont apply equally to claims predicated on facts indicating child abuse. As stated earlier, *supra* at 90-91, 902 A.2d at 913, the CSAA recognizes the vulnerability of children and demonstrates a legislative intent to protect them from victimization. In our view, common-law claims based on child abuse are supported by the same compelling rationale. The CSAA imposes responsibility on those in the best position to know of the abuse and stop it; application of section 219 of the *Restatement* to plaintiff's common-law claims advances those goals.

Hardwicke, 188 N.J. at 102. Additionally, the Court explicitly stated that "Plaintiff can pursue his statutory cause of action and any common-law claims he may have that are based on willful, wanton or grossly negligent conduct, and/or negligent hiring, supervision and retention." Id. at 99 (emphasis in original). Thus, the removal of the within the household provision has no impact upon Plaintiff's vicarious liability claims under Hardwicke, which are common-law claims based on willful, wanton and grossly negligent conduct. For this additional reason, NBOE's argument should be rejected.

Respectfully submitted,

/s/ Gabriel C. Magee
Gabriel C. Magee, Esq.
John W. Baldante, Esq.
Jamie L. Hutchinson, Esq.
Attorneys for Plaintiff-Appellant Russell Hornor