

SUPREME COURT OF NEW JERSEY
A-33/34/35-25 (091468)

JESSICA GARCIA,

Plaintiff-Respondent/Cross-
Appellant,

v.

UNION CITY BOARD OF
EDUCATION, d/b/a UNION CITY
HIGH SCHOOL, a/k/a HIGH HALL
HIGH SCHOOL,

Defendant-Appellant/Cross-
Respondent,

and

FRANCISCO REALPE and
PIVOTAL DEVELOPMENTS, LLC,

Defendants.

JANE DOE,

Plaintiff-Respondent/Cross-
Appellant,

v.

UNION CITY BOARD OF
EDUCATION, d/b/a/ UNION CITY
HIGH SCHOOL, a/k/a HIGH HALL
HIGH SCHOOL,

Defendant-Appellant/Cross-
Respondent,

On Appeal of an Order of the
Superior Court of New Jersey,
Appellate Division
Docket Nos. A-002404-24,
A-000338-25

Civil Action

Sat Below:

Hon. Joseph L. Marczyk, J.A.D.
Hon. Lisa A. Puglisi, J.A.D.

Date submitted: July 13, 2026

and

FRANCISCO REALPE and
PIVOTAL DEVELOPMENTS, LLC,

Defendants.

**BRIEF OF AMICUS CURIAE THE AMERICAN CIVIL LIBERTIES
UNION OF NEW JERSEY IN SUPPORT OF PLAINTIFFS**

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PRELIMINARY STATEMENT

In 2019, the New Jersey Legislature enacted laws implementing an unequivocal intent to provide retroactive relief for personal injuries suffered by victims of sexual abuse. The Legislature recognized that because sexual abuse – particularly of minors – represents an event that could traumatize its victim for decades, those responsible – including public employers – would be subject to retroactive civil liability under an extended statute of limitations. This overarching policy effectively controls disposition of all issues on this appeal.

Defendant’s arguments in these cases share a common thread: the perceived unfairness of “retroactively” saddling school districts with civil liability for the sexual abuse of students by teachers. To that end, Defendant argues that the Legislature’s 2019 extension of the statute of limitations so as to permit sexual abuse claims by victims that would otherwise be time-barred does not apply to Plaintiffs’ Law Against Discrimination (“LAD”) claims.

To press this argument, Defendant (1) ignores the plain language of the 2019 amendments which expressly apply the extended limitations to every action at law, notwithstanding any other statute; (2) minimizes the effect of the 1990 modification of the LAD which made prominent its role in personal injury relief at law; and (3) ultimately rests entirely on the slender, if not nonexistent, reed that because this Court previously held that there must be a single statute

of limitations for all claims under the LAD, the Legislature can never set a different statute of limitations for any sub-set of claims under the LAD. These arguments are refuted by a common sense reading of the 2019 amendments, and the liberal application mandated of the LAD.

If, as will be shown, the extended statute of limitations applies to Plaintiffs' LAD claims against Defendant and because Defendant has not challenged the applicability of the extended statute of limitations to it as to Plaintiffs' vicarious liability claims, the result as to the other issues before this Court should be preordained. Denying full retroactivity of this Court's decisions in *Hornor v. Upper Freehold Regional Board of Education*, 263 N.J. 120 (2026), recognizing vicarious liability claims against school districts for sexual abuse of child victims, and *L.W. ex rel. L.G. v. Toms River Regional Schools Board of Education*, 189 N.J. 381 (2007), recognizing hostile environment claims against school districts under the LAD by students who experienced sexual assault, is tantamount to denying applicability of the extended statute of limitations on claims such as those, effectively obliterating a major purpose behind the 2019 amendments.

Neither *Hornor* nor *L.W.* enunciated "new principles of law" of the sort that come close to justifying deviation from the presumption of retroactive application of judicial decisions. Neither of these cases overruled controlling

precedent. On the contrary, the key ruling in *Hornor* – that the 2019 amendments eliminated immunity of public entities for sexual abuse by their employees even outside the scope of employment – was simply a matter of statutory construction of a new statute. Further, the rulings in both cases were the direct offsprings of a trio of decisions, which clearly foreshadowed the results in those cases. It is not surprising then that in each of the cases where the Court first addressed a vicarious liability claim against a school district for sexual abuse or a hostile environment claim under the LAD, it applied what Defendant would characterize as a “new principle of law” to the party in the case before it, without even a hint that the ruling should be prospective only.

Nor is there any unfairness in retroactive application of those cases. Rather, it represents acknowledgement of a legislative choice, expressly recognized in the 2019 amendments, to elevate the rights of victims of sexual abuse – particularly child victims – over the finances of public entities, including school districts. For all intents and purposes, it is not *Hornor* and *L.W.* as to which Defendant is seeking to bar retroactive application, it is the extended statute of limitations.

Amicus therefore requests that this Court rule that the extended statute of limitations in the 2019 amendments apply to LAD claims and that both *Hornor* and *L.W.* merit full retroactive application.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus relies on the statement of facts and procedural history as set forth by Plaintiffs in their merits brief, submitted to this Court on June 1, 2026.

ARGUMENT

I. The Extended Statute of Limitations Provided in the 2019 Amendments Is Applicable to LAD Claims Based on Sexual Abuse.

N.J.S.A. 2A:14-2(b)(a), adopted as part of the 2019 amendments to the Child Victims Act (“CVA”),¹ provides:

Notwithstanding the statute of limitations provisions of N.J.S.[A.] 2A:14-2, section 2 of P.L.2019, c. 120 (C.2A:14-2a), section 1 of P.L.1964, c. 214 (C.2A:14-2.1), or any other statute, an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c. 7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c. 109 (C.2A:61B-1), that occurred prior to the effective date of P.L.2019, c. 120 (C.2A:14-2a et al.), and which action would otherwise be barred through application of the statute of limitations, may be commenced within two years immediately following the effective date.

There are two ways of addressing the issue of whether this provision applies to the LAD, both leading to the same conclusion. First, as the Appellate Division held, there is the plain language of N.J.S.A. 2A:14-2(b)(a), which in no uncertain terms applies the extended statute of limitations to every “action at

¹ Amicus ACLU-NJ relies on the thorough summaries by this Court of the history leading up to the 2019 amendments in *Hornor*, 263 N.J. 147-49; and *W.S. v. Hildreth*, 252 N.J. 506, 512-14 (2023).

law for an injury resulting from the commission” of any crimes of a sexual nature as defined in specific statutes, including the CVA, without further qualification.

Second, there is the plain language that applies the extended statute of limitations “[n]otwithstanding the statute of limitations provisions . . . of *any* other statute.” N.J.S.A. 2A:14-2(b)(a) (emphasis added). While the LAD itself, of course, contains no express statute of limitations, in *Montells v. Haynes*, 133 N.J. 282, 285 (1993), this Court provided for a two-year statute of limitations for all LAD claims. That this is a judicially-created provision is inconsequential in light of the express overarching legislative directive that the statute of limitations provided in section 2 of *L. 2019, c. 120* apply to “any civil action” for personal injury based on sexual abuse. N.J.S.A. 2A:61B-1(b). “When all is said and done the matter of statutory construction . . . will not justly turn on literalisms, technisms or the so-called formal rules of interpretation; it will justly turn on the breadth of the objectives of the legislation and the commonsense [sic] of the situation.” *Jersey City Chapter of the Prop. Owners Protective Ass’n v. City Council*, 55 N.J. 86, 100 (1969), *quoted with approval in Aponte-Correa v. Allstate Ins. Co.*, 162 N.J. 318, 323 (2000).

Third, the New Jersey LAD provides also in no uncertain terms, specifically in connection with the availability of damages for people suffering

“personal hardships” as a result of discrimination, that the Act “be liberally construed in combination with other protections available under the laws of this State.” N.J.S.A. 10:5-3. Construing the LAD to be subject to the extended statute of limitations created by the CVA would appear to fall solidly within this directive.

Defendant’s first misstep in arguing to the contrary is caused by its reliance on *Shaner v. Horizon Bancorp.*, 116 N.J. 433 (1989), as if its holding that the LAD was primarily an equity-based statute is still the law. (Umb19-21).² In *Shaner*, the Court wrestled with the issue of whether a plaintiff bringing an LAD claim was entitled to a jury trial. The Court based its denial of a right to trial by jury on an LAD claim on its perception that “when LAD actions are compared to traditional forms of litigation, they must be viewed more in the nature of an equitable than a legal cause of action,” 116 N.J. at 441, and that, “in providing an effective judicial cause of action extensive equitable forms of relief would not become incidental to purely legal forms of relief.” *Id.* at 442. Therefore, the Court concluded, “the exercise of a right to a jury trial in conjunction with a LAD-court action would appear inconsistent with the

² “Umb” refers to Defendant’s merits brief, submitted to this Court on May 1, 2026. “USa” refers to Defendant’s amended supplemental appendix, submitted to this Court on July 2, 2026. “Urb” refers to Defendant’s amended reply brief, submitted to this Court on July 2, 2026.

legislative intent.” *Id.* The whole of the opinion in *Shaner* was based on the Court’s view that the “LAD itself ‘does not indicate that the Legislature intended discrimination to be treated as a tort.’” *Id.* at 454 (quoting *Fuchilla v. Layman*, 109 N.J. 319, 333 (1988)).

That changed, however, precisely because of *Shaner*. A scant year later, the Legislature clearly indicated that it very much did intend claims for personal injury flowing from discrimination to be treated similarly to tort claims. It not only amended the law so as to provide for a jury trial in LAD cases, N.J.S.A. 10:5-13(a)(2)(a), but also expressly declared that “[a]ll remedies available in common law tort actions shall be available to prevailing plaintiffs [under the LAD] . . . in addition to any other [remedies] provided by [the LAD] or any other statute.” N.J.S.A. 10:5-13(a)(2)(b). Indeed, it went further, expressly finding that discrimination causes “personal hardships,” listing two dozen examples including “severe emotional trauma,” and stating unequivocally that it “intends that [compensatory and punitive] damages be available to all persons protected by this act and that this act shall be liberally construed in combination with other protections available under the laws of this State.” N.J.S.A. 10:5-3. The legislative history is clear that these changes were directly in response to *Shaner*. *Sponsor’s Statement to A. 2118* 2:48-49, 3:13 (L. 1990, c. 12); *Sponsor’s Statement to A. 2872* 4:45-48, 5:17 (L. 1990,

c. 12); *Assemb. Judiciary, Law & Pub. Safety Comm. Statement to A. 2872* 1 (L. 1990, c. 12).

That legislation set the stage for *Montells*, where the Court addressed the issue of whether the applicable statute of limitations for LAD actions should be two years, six years, or one or the other depending on the circumstances of the case. In deciding that the two-year statute of limitations applied to all LAD actions, no matter how characterized, nowhere did the Court rely on its previously-held view that an LAD claim was primarily equitable in nature.³

In light of the post-*Shaner* legislative action, it was no longer possible for the Court to view LAD claims as essentially equitable in nature. Indeed, in *Lehmann v. Toys ‘R’ Us, Inc.*, 132 N.J. 587 (1993), the Court noted that the LAD’s dealing “primarily with equitable relief,” was a thing of the past, 132 N.J. at 616, observing that “the Legislature, in amending the LAD to allow ‘all remedies available in common law tort actions,’ implied that ‘common law rules of liability, including general principles of agency law’ should apply”, 132 N.J. at 617 (quoting *T.L. v. Toys ‘R’ Us, Inc.*, 255 N.J. Super. 616, 660 (App. Div.

³ The Court in *Montells* used the word “equitable” to describe claims under the LAD only once, and then in the paragraph describing how the trial court in the case under review relied on *Shaner* to conclude that a six-year limitation period was more appropriate for LAD claims because the purpose of the LAD claim was to provide equitable relief. *Montells*, 133 N.J. at 287. Nowhere else in *Montells* does the Court use the word “equitable” to describe an LAD claim.

1992) (Skillman, J.A.D., dissenting)). Accordingly, the Court strictly differentiated between equitable relief for which strict liability applies and liability for compensatory damages for which agency principles apply. 132 N.J. at 626. The Court emphasized the Legislature’s acknowledgement of the “personal hardships” suffered by victims of sexual harassment that were actionable under the LAD, including “physical and emotional stress” and “severe emotional trauma.” 132 N.J. at 609 (quoting N.J.S.A. 10: 5-3).

Accordingly, the *Montells* Court explained that in determining the appropriate statute of limitations it would focus on the “nature of the injury, not the underlying legal theory of the claim,” 133 N.J. at 291. It approached the issue by questioning whether the injuries sought under the LAD were more like an “injury to the person” under N.J.S.A. 2A:14-2, calling for a two-year limitations period, or “injury to the rights of another” under N.J.S.A. 2A:14-1, calling for six-years. *Id.*

In opting for the personal injury statute of limitations, the Court heavily relied on “the recent amendment to LAD,” which had primarily identified as LAD injuries “those injuries at common law [that] would be governed by the two-year personal-injury statute of limitations,” and expressly concluded “that the statute of limitations for personal-injury claims more closely comports with the purpose of LAD.” 133 N.J. at 292.

Montells thus represents a complete break from the Court’s view of the LAD expressed in *Shaner*, as a statute essentially equitable in nature – a break necessitated by the Legislature’s reaction to *Shaner*. Defendant’s primary argument – that the CVA expanded statute of limitations cannot apply to it because LAD claims are primarily equitable – is simply no longer the case.

Defendant’s argument that because *Montells* held that a single statute of limitations must apply to all LAD claims no matter how characterized, the CVA expanded statute of limitations cannot possibly apply to LAD claims (Umb23-24), is difficult to comprehend. The *Montells* ruling of a single limitations period was based on a concern that leaving uncertain the proper limitation period to apply in a given case would undercut “the prompt and efficient resolution of LAD claims.” 133 N.J. at 290-91. That concern is not implicated by the application of the extended limitations period, as the Legislature clearly defined the claims that are subject to it. Nothing in *Montells* suggests otherwise.

The single limitations period chosen by the Court in *Montells* is no different than the single limitations period chosen by the Legislature in N.J.S.A. 2A:14-2 for almost all personal injury claims. Nothing, except perhaps constitutional limitations (and none have been raised), prevents the Legislature from carving out certain claims for special limitations treatment – as it has done here with certain sexual misconduct claims in N.J.S.A. 2A:14-2(a) and N.J.S.A.

2A:14-2(b) or as it has done with other claims, such as medical malpractice claims for injuries sustained at birth. N.J.S.A. 2A:14-2.

II. There Is No Bar to Retroactive Application of Principles Laid Down in *Hornor* or *L.W.* to Defendant in These Cases.

Absent “sound policy reasons,” retrospective application of a judicial decision is the “traditional” rule. *Coons v. Am. Honda Motor Co.*, 96 N.J. 419, 425 (1984). While that tradition may be ignored when “prospective application may provide the fairest and most equitable disposition,” *Montells*, 133 N.J. at 295, such is not the case here.

Indeed, it is the opposite. The decisions in *Hornor* and *L.W.* do not “establish a new principle of law, either by overruling clear past precedent on which litigants may have relied . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed.” *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106 (1971), *quoted with approval in Coons*, 96 N.J. at 427.

The decisions in *Hornor* and *L.W.* in no way represent breaks with precedent. *Hornor*’s principal holding is simply one of statutory construction of a new statute. Further, both cases are rooted firmly in the seminal decision in *Lehmann* and their holdings were clearly consistent with other cases: *Abbamont v. Piscataway Township Board of Education*, 138 N.J. 405 (1994), and *Hardwicke v. American Boychoir School*, 188 N.J. 69 (2006).

Moreover, in expanding the statute of limitations for the commencement

of causes of action for civil liability arising out of sexual abuse, the Legislature in no uncertain terms determined where the equities lie: in favor of victims of sexual abuse, particularly child victims. Denying retrospective application of this Court's rulings that a school district may be subject to liability vicariously for sexual abuse claims (as in *Hornor*) or under the LAD for hostile environment claims by students relating to sexual abuse (as in *L.W.*) is counter to that express legislative policy and undermines the whole purpose of constructing a regimen for retroactive claims that was at the core of the 2019 amendments.

While this Court is "reluctant to penalize behavior that was not previously understood or intended to be wrongful," it "cannot deny legal redress to the victims of discrimination and harassment merely because the perpetrators may be unaware of the illegality of their conduct." *Lehmann*, 132 N.J. at 602. Here, this Court need not stretch the bounds of fairness either for the victims of the sexual abuse in these cases or for the Board as the employer of the perpetrator of that sexual abuse. The Legislature has made the choice as to where the equities lie.

A. There is no basis to deviate from the traditional rule of complete retroactivity as to the decision in *Hornor*.

1. *Hornor* did not set forth a “new rule of law” for purposes of prospective application of the rule that school districts may be subject to vicarious liability for sexual abuse.

In *Hornor*, this Court ruled that a school district can be subject to vicarious liability for sexual abuse of a minor committed by one of its teachers. It so ruled because it determined that, since the amendments to the CVA in 2019, public entities were no longer covered by any of the immunities under the New Jersey Tort Claims Act (“TCA”) that would otherwise have protected them from vicarious liability for acts of sexual misconduct by public employees, including that the misconduct was “beyond the scope of employment.” 263 N.J. at 152.

This was not a “new principle of law” within the meaning of *Montells* or *Coons*. There was no “overruling clear past precedent on which litigants may have relied” *Coons*, 96 N.J. at 427 (quoting *Chevron*, 404 U.S. at 106-07). It was simply a matter of statutory construction, i.e., that the “plain language” of the newly-enacted N.J.S.A 59:2-1.3(a)(1) made it “clear that for cases governed by that statute, the Legislature intended to eliminate all immunities that the TCA otherwise confers on public entities and public employees in civil actions.” *Hornor*, 263 N.J. at 150-51. “The Legislature plainly intended,” the Court continued, “that in the discrete category of sexual assault and sexual misconduct claims governed by that provision, no TCA immunity will apply.”

Id. at 151. That includes, the Court emphasized, the specific immunities contained in N.J.S.A. 59:2-1(a), i.e., the “scope of employment” immunity. *Id.* at 152.

In that this was the first time the Court was called upon to construe the 2019 amendments, *Hornor* could not possibly represent a break with precedent. The only authority which Defendant cites that had previously directly addressed the issue of the effect of N.J.S.A. 59:2-1.3(a) on the TCA’s “scope of employment” provision, N.J.S.A. 59:2-2, are the Appellate Division opinion in this very case and an unpublished United States District Court decision, *K.J. v. J.P.D.*, No. 1:20-cv-14177, 2022 WL 4596717 (D.N.J. Sept. 30, 2022) (USa1-13). This is hardly the stuff that clear contrary precedent is made of. Nor would this authority have increased its value had the *K.J.* decision been approved for publication. As this Court has said, “[t]hat a separate and parallel system of federal courts issued a ruling that reached a contrary conclusion does not make our holding ‘new.’” *In re Contest of Nov. 8, 2011 Gen. Election of Off. of N.J. Gen. Assembly*, 210 N.J. 29, 70 (2012).

Second, and of overriding significance from a precedent perspective, the Court’s holding in *Hornor* was heavily based on “this Court’s decision in *Hardwicke*, and the authority on which the Court relied in that decision,” 263 N.J. at 130, namely *Lehmann* and *Abbamont*. In *Hardwicke*, the Court ruled that

the Charitable Immunity Act did not bar suits for vicarious liability against non-profit organizations for willful acts of sexual misconduct by their employees, barring only such vicarious liability suits if based on negligence. 188 N.J. at 99. In amending the CVA in 2019, the legislative history is clear that the Legislature's intent was to give victims of sexual abuse, whose claims arose prior to the August 8, 2006 decision date of *Hardwicke*, the protections of that decision retroactively. *Hornor*, 263 N.J. at 147 (quoting *S. Judiciary Comm. Statement to S. Comm. Sub. for S. 477 2* (L. 2019, c. 120)). Subsequently, the Legislature further amended both the TCA so as, in the words of the Sponsor's Statement to the bill enacted as *L. 2019, c. 239*, and codified at N.J.S.A. 59:2-1.3(a), to establish “‘new liability standards in sexual abuse lawsuits filed against public entities and public employees’ that ‘are identical to the liability standards applied to non-profit organizations’” *Hornor*, 263 N.J. at 149 (quoting *Assemb. Budget Comm. Statement to A. 5352* (L. 2019, c. 239)).

Hardwicke established another principle of relevance to the decision in *Hornor*: that a charitable organization could be vicariously liable for an employee's intentional acts of sexual misconduct, even if such acts were outside the scope of the employee's employment. *Hardwicke*, 188 N.J. at 101. In reaching that conclusion, the Court relied on (1) *Lehmann*'s adoption of the framework of agency law to hold a private employer vicariously liable for

abusive acts by an employee outside the scope of employment, if the employer had delegated the authority to the employee to control the work environment, *id.* at 102, and (2) the Court’s extension of the *Lehmann* holding to claims against public entities brought under the Conscientious Employee Protection Act (“CEPA”), N.J.S.A. 34:19-1 to -8 in *Abbamont*, 138 N.J. at 417. 188 N.J. at 102. Thus, long before *Hornor*, the law was pointing in the direction that public employers might be vicariously liable for abusive acts by their employees outside the scope of employment.

Further, even the specifics of the standards articulated by this Court in *Hornor* that a plaintiff must satisfy to establish vicarious liability of a public school in cases of this sort were foreshadowed.⁴ As the Court stated in *Lehmann*, agency principles “are sufficiently well-established to provide employers with notice of their potential liability” 132 N.J. at 619. Although the Court in

⁴ The Court laid down the following elements that must be proved for a plaintiff to succeed on a claim for vicarious liability against a public entity whose employee committed acts of sexual misconduct as defined in the CVA:

- (1) The school gave the employee who allegedly committed sexual abuse . . . the authority to control the student’s educational environment.
- (2) The school employee’s exercise of that authority resulted in the sexual abuse or sexual misconduct; and
- (3) It reasonably appeared that the school employee’s sexual abuse of or sexual misconduct against the student was tacitly approved by the school.

[*Hornor*, 263 N.J. at 157.]

Hornor modified the *Lehmann* test to fit more neatly into the school setting, those modifications were not at odds with past precedent, but in line with the spirit of *Lehmann* – such as equating “supervisors,” whose conduct is the basis for liability in an employer-to-employee sexual abuse situation, to teachers and coaches, whose “exercise of the authority to control the student’s educational environment resulted in the sexual abuse,” in the school situation. *Hornor*, 263 N.J. at 155-56.

One of those “well-established” agency principles was that a “master is not subject to liability for the torts of his servants acting outside the scope of their employment” unless the master intended the challenged conduct, was negligent or reckless or the conduct violated a “non-delegable duty of the master,” *Lehmann*, 132 N.J. at 619 (quoting Restatement (Second) of Agency § 219 (1958)). In *Lehmann*, the Court noted that “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 above-noted exceptions. 132 N.J. at 619-20. The Court noted examples directly relevant to the school setting, such as where the “employer delegates the authority to control the work environment to a supervisor and that supervisor abuses that delegated authority.” *Id.* at 620. It is not a stretch to apply this language to the authority given to a teacher or school

coach, which is precisely how this Court approached the issue in *Hornor*. 263 N.J. at 155-56.⁵

Beyond that, the *Hornor* Court’s modifications of the *Lehmann* standards were actually more favorable for the public schools, such as tethering liability “to a determination that, under the totality of the circumstances, it reasonably appeared that the school employee’s sexual abuse or other sexual misconduct involving the student was tacitly approved by the school,” thus focusing on the “knowledge and culpability of school officials” and not simply on the alleged wrongdoer’s employment status as a teacher. 263 N.J. at 156-57.

The *Hornor* Court’s ruling that a public entity like a school district could be vicariously liable for the intentional sexual misconduct by an employee, even

⁵ Justice Fasciale penned a thorough dissent in *Hornor*, setting forth a statutory construction of the TCA different than that adopted by the majority that would retain the “scope of employment” immunity, but hold a school district vicariously liable if the abuse “stemmed directly from the teacher’s in loco parentis authority – granted by virtue of the employment relationship – and occurred during the effectuation of that authority . . . and therefore subject to the district’s control.” *Hornor*, 263 N.J. at 205 (Fasciale, J., dissenting). Even under the dissent’s construction, Defendant might be subject to vicarious liability for Realpe’s actions as Realpe was Plaintiff Garcia’s assistant softball coach and assaulted her in his school office after softball practice. Realpe was Plaintiff Doe’s gym teacher and assaulted her in a locker room during an after-school event. *Garcia v. Union City Bd. of Educ.*, Nos. A-2404-14, A-0338-25 (App. Div. Nov. 17, 2025) (slip op. at 3-4). *Compare with Hornor*, 263 N.J. at 206-07 (Fasciale, J., dissenting) (Concluding that sexual abuse of plaintiff Simpkins occurred within scope of employment when student’s teacher abused student during school hours, on school grounds, and subject to the district’s control.)

if outside the scope of employment, was not in any way an unforeseen “new principle of law.” It was simply a statutory construction of a new law, that itself had been foreshadowed by the *Lehmann/Abbamont/Hardwicke* trilogy, and adopted standards in sync with those cases.

2. Policy and fairness dictate full retroactive application of *Hornor*.

First and foremost is the clear legislative intent to ensure that victims of sexual abuse, particularly those who were under majority age at the time of the abuse, are provided the fullest possible panoply of remedies, including retrospective application of new laws. Indeed, that was a major, if not predominant, purpose of the 2019 amendments.

In the first round of amendments to the Child Victims Act in 2019, the Legislature expanded the rights of victims of sexual abuse under the age of 18, by extending the statute of limitations for bringing sexual abuse-based claims against private and public entities to allow claims for sexual abuse and sexual assault against a minor to be brought any time up to the later of the date the minor reaches the age of 55, or seven years after reasonable discovery of the minor’s right to bring a claim, N.J.S.A. 2A:14-2a, and in any event up to two years after the effective date of the amended statute. N.J.S.A. 2A:14-2b. The same year, the Legislature added N.J.S.A. 59:2-1.3(b) to the TCA, providing that “[e]very action at law involving a public entity or public employee” in such

claims could be brought during the two-year period after the effective date of the amendment as set forth in N.J.S.A. 2A:14-2b, “notwithstanding that the action would otherwise be barred through application of the statute of limitations.” This was done, as Governor Murphy observed when signing the first bill into law, despite the potential of “massive financial liabilities” of those public, private, and non-profit entities subject to suit, but because “sexual abuse . . . often leaves trauma lasting a lifetime.” *Governor’s Signing Statement to S. Comm. Sub. for S. 477* (L. 2019, c. 120). The legislative history could not be clearer:

This substitute bill would extend the statute of limitations in civil actions for sexual abuse claims, as well as create a two-year window for parties to bring previously time-barred actions based on sexual abuse. The bill would also expand the categories of potential defendants in civil actions, and for some actions permit retroactive application of standards of liability to past acts of abuse for which liability did not previously exist.

[*S. Judiciary Comm. Statement to S. Comm. Sub. for S. 477, supra*, at 1.]

Although the original amendments did not include standards for liability for public entities as they did for non-profit organizations, the Legislature quickly passed a bill doing just that, establishing “new liability standards in sexual abuse lawsuits filed against public entities and public employees . . . identical to the liability standards applied to non-profit organizations”

Sponsor's Statement to A. 5392 2-3 (L. 2019, c. 120). This bill was codified as N.J.S.A. 59:2-1.3(a)(1).

A prime example of this legislative plan was its express provision for child victims of sexual abuse by employees of non-profit organizations who were victimized pre-*Hardwicke* to be provided the benefit of that ruling. “The bill’s amendment to the Charitable Immunity Act, *to be applied retroactively*, recognizes the current interpretation and scope of organizational liability based on *Hardwicke*.” *S. Judiciary Comm. Statement to S. Comm. Sub. for S. 477*, *supra*, at 2 (emphasis added). The subsequent amendment of the TCA rendering public entities such as Defendant subject to the same standards of liability as non-profit organizations meant that the Legislature intended that such public entities are also subject to the same standards retroactively. Thus, a ruling that the holding in *Hornor*, that school districts may be vicariously liable for sexual abuse by their employees only prospectively from the date of the *Hornor* decision forward, would turn the entire legislative plan on its head.

Nor do the equities favor prospective treatment. As demonstrated, the *Hornor* holding was clearly foreshadowed by the *Lehmann/Abbamont/Hardwicke* trilogy. Indeed, in *Lehmann*, this Court observed that “common sense suggests that sexual harassment at the workplace is foreseeable,” and that, vicarious liability of an employer can be shown by the

employer’s “failure to have in place well-publicized and enforced anti-harassment policies, effective formal and informal complaint structures, training, and/or monitoring mechanisms.” 132 N.J. at 621.

The Legislature was aware of the consequences of retroactive liability. In its Legislative Fiscal Estimate accompanying the bill that would become N.J.S.A. 59:2-1.3(a), the Office of Legislative Services (“OLS”) predicted “that the bill will expose the State, school districts, and local units of government to civil claims that may result in added legal defense expenditures and substantial settlements and judgments against affected governments.” Legislative Fiscal Estimate [First Reprint] Senate, No. 3739, S. 3739 (June 24, 2019). For public entities that self-insure, the Estimate continued, “[e]ach individual settlement or judgment could produce expenditures in the several hundred of thousands of dollars, if not millions of dollars,” and for those that purchase insurance, “annual liability insurance premiums for all local governmental units and school districts that do not self-insure will increase, perhaps even substantially.” *Id.* at 1. The OLS was aware that “[s]chool districts may be the most exposed to the filing of additional tort claims if the bill were enacted, given the nature of their responsibilities,” noting that over the five year period preceding the 2019 amendments 465 teaching applicants and employees had been disqualified from teaching either for sexual offenses or child abuse. *Id.* at 3.

In this context, that public school entities might have insured themselves better against the new risks created by the 2019 legislation is a factor the Legislature obviously took into consideration.⁶ Even if Defendant was not on notice of its potential for liability for its tacit approval of student sexual abuse by its teachers – a notion that is not necessarily reasonable – that is not a strong enough reason for prospective application when matched against the potential loss of claims of child victims, who were not in a position to rely one way or another on the absence of a “new principle of law.”

In short, the Legislature made a choice in 2019 to favor victims of sex abuse over the coffers of public entities such as school districts. This Court must respect that choice. There is no basis to limit *Hornor* to prospective applicability.

B. There is no basis to deviate from the traditional rule of complete retroactivity as to the decision in *L.W.*

1. *L.W.* did not set forth a “new rule of law” for purposes of prospective application of the rule that school districts may be subject to liability under the LAD for creating a hostile environment that facilitated sexual abuse.

The same argument holds true as to the lack of basis for limiting the presumptively retrospective effect of *L.W.* on Plaintiffs’ LAD claims as is the case vis a vis *Hornor*. In *L.W.*, in the context of student-to-student sexual harassment, this Court explicitly extended the *Lehmann* test for hostile

⁶ Amicus ACLU-NJ is unaware whether Defendant maintained insurance that covers the claims at issue in this case.

environment claims under the LAD based on sexual misconduct to “the workplace and in the school setting,” and that there is “no need to impose a separate standard because the discrimination is in a school.” *L.W.*, 189 N.J. at 405. *See C.V. ex rel. C.V. v. Waterford Twp. Bd. of Educ.*, 255 N.J. 289, 296 (2023) (describing effect of *L.W.*).

Again, there was a clear statutory basis for the ruling, beginning with the LAD itself, whose “broad statutory language is clear.” *L.W.*, 189 N.J. at 389-90. Equally important, it was the policy behind the LAD that was the bedrock of the decision. “[T]his act shall be liberally construed in combination with other protections available under the laws of this State. . . . the more broadly [the LAD] is applied the greater its antidiscriminatory impact.” *Id.* at 400 (citation modified) (quoting *Ptaszynski v. Uwaneme*, 371 N.J. Super. 333, 345 (App. Div. 2004), *cert. denied*, 182 N.J. 147 (2004)).

As was the case in *Hornor*, the 1993 decision in *Lehmann* provided the case law foundation for the *L.W.* decision. In *Lehmann*, the Court established the standards for liability under the LAD for a hostile work environment that facilitated sexual misconduct, but noted that it had been settled since at least 1990 that allegations of a sexually hostile work environment could support an LAD claim. 132 N.J. at 601-02 (citing *Erickson v. Marsh & McLennan Co.*, 117 N.J. 539, 555-57 (1990)). In *L.W.*, the Court focused on the basis for such

liability as discussed in *Lehmann*, “when the employer has actual or constructive knowledge of the harassment and fails to take effective measures to end the discrimination.” 189 N.J. at 403.

The Court in *L.W.* did not point to any state court authority contrary to the proposition that the LAD applies to hostile environment claims in the school setting. Nor could there be, as the LAD protects against discrimination in settings other than the workplace. N.J.S.A. 10:5-4 (protecting against discrimination on the basis of sex for “all persons” using public accommodations); *Godfrey v. Princeton Theological Seminary*, 196 N.J. 178, 195-96 (2008). Public schools are expressly included in the definition of “place of public accommodation” in N.J.S.A. 10:5-5(1). *L.W.*, 189 N.J. at 401.

The only argument posed by the school district in *L.W.* as to whether *Lehmann* provided the applicable standard for a hostile environment claim against a school district was its position that the “deliberate indifference” standard of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), was the appropriate standard. 189 N.J. at 404. In summarily rejecting the school district’s argument, and applying the *Lehmann* standard in the school setting, this Court simply stated, “[w]e find no need to impose a separate standard because the discrimination is in a school.” *Id.* at 405. The Court noted, additionally, a number of other reasons Title IX was inapplicable, such as the

fact that it prohibited only recipients of federal funds from discriminating against students based on sex, making Title IX an even less worthy basis for supporting an argument that there was a body of precedent that *L.W.* was distinguishing. In any event, as noted above, this Court does not consider contrary federal precedent as a basis for characterizing a ruling by this Court as “new” law. *In re Contest of Nov. 8, 2011 Gen. Election of Off. of N.J. Gen. Assembly*, 210 N.J. at 70.

Contrary to the implication in Defendant’s observation that Plaintiffs had failed to identify a single pre-2007 case recognizing an LAD hostile environment claim against a school board for sexual abuse by one of its teachers, (Urb27), that is probably very much because such claims were a “given” after *Lehmann*. A reported Appellate Division opinion demonstrates that point.

In *Wilson v. Parisi*, 268 N.J. Super. 213 (App. Div. 1993), plaintiff had brought a suit seeking damages for sexual harassment against a school board employee and against the school board itself vicariously under the LAD for maintaining a hostile environment. While the plaintiff’s non-LAD claims had been dismissed, the LAD claim had not been. Not only did the Appellate Division, as apparently had the Law Division, treat the viability of the LAD claim as a given, but, relying heavily on *Lehmann*, the Appellate Division used the viability of the LAD claim to buttress the non-LAD claims. As then Judge

Coleman wrote:

Sexual harassment which meets the *Lehmann* standard “strikes at the [victim's] basic emotional security.” . . . Where the sexual harassment meets the *Lehmann* test, we perceive no reason to require physical injury before permitting a victim to seek damages for intentionally inflicting emotional distress. Again, we emphasize that such a claim is intertwined with the LAD claims.

[268 N.J. Super. at 218 (citation modified).]

As is the case with *Hornor*, the decision in *L.W.* does not constitute a “new principle of law” that could support prospective only application. For that reason alone, there is no bar to the retrospective application of any rule of law in *L.W.* to Plaintiff’s hostile environment claim under the LAD in this case.

2. Policy and fairness dictate full retroactive application of *L.W.*

If, as demonstrated above, the 2019 amendments to the CVA apply to Plaintiffs’ LAD claims, then the same policy, fairness, and equity considerations applicable as to *Hornor* apply to the issue of retroactivity of *L.W.* Holding that LAD hostile environment claims could not be based on conduct that occurred prior to the 2007 decision in *L.W.* would effectively eliminate the extended statute of limitations as applied to LAD claims. Even more incongruously, it would result in giving victims of sexual abuse prior to 2006 in *non-profit* organizations a greater right to relief than given to victims of sexual abuse prior to 2007 in *public* entities, because the 2019 amendments extended the statute

of limitations to cover those abused prior to the *Hardwicke* decision in 2006. This is directly contrary to the legislative mandate that public entities be subject to the same scope of liability for sexual abuse by their employees as are non-profit organizations for theirs.

Beyond this, there are factors specific to LAD claims that buttress the argument for retroactivity. First is the statutory and judicial mandate that the LAD be liberally construed to meet its goal of preventing discrimination. Second is the existence of the *Lehmann/Abbamont/Hardwicke* trilogy, all of which likely predated the acts of sexual misconduct in these cases, which occurred in the spring of 2004. *Lehmann* was issued in 1993, *Abbamont* in 1994, and while this Court's opinion in *Hardwicke* was not issued until 2006, the Appellate Division opinion in the case, *Hardwicke v. American Boychoir School*, 368 N.J. Super. 71 (App. Div. 2004), which was affirmed by this Court, was issued on March 26, 2004, only five days into spring of that year.

Of these cases, *Lehmann* is the most relevant to that issue, because from 1993 on, it was clear that employers could be liable specifically under the LAD for maintaining a hostile environment that facilitated sexual misconduct. There was no reason for any employer – especially school districts, given their charge – to assume that they could avoid liability if, as set forth in *Lehmann*, they maintained an oppressive and hostile environment. That *Lehmann* spoke in terms

of liability only vis a vis actions by “supervisors” should not have made a difference in terms of any school districts’ conduct. Certainly, school districts had to have known – even without the benefit of *Lehmann* – that they had to take appropriate steps to avoid sexual abuse of their students by their teachers. There is no basis in policy, fairness, or equity to limit *L.W.* to prospective application.

III. If the Court Chooses to Articulate Standards to Govern School Employee-to-Student Sexual Abuse Claims Under the LAD, It Should Rule that Such Claim Can Be Proved Under Either the *Lehmann* Agency Standard or the *L.W.* “Reasonable Student” Standard.

Plaintiffs have asked this Court to use this case to establish standards to govern hostile environment claims under the LAD based on school district employee-to-student sexual abuse, and suggest application of the *Lehmann* agency standards, i.e., liability flows from the district or the employee’s creation of a hostile environment, including negligence principles. *Lehmann*, 132 N.J. at 624, 626. Defendant suggests (if the Court reaches this issue) application of the *L.W.* standard, based on the perspective of “a reasonable student [’s]” consideration of whether the environment was “sufficiently severe or pervasive enough” to create a hostile environment. *L.W.*, 189 N.J. at 402.

To paraphrase this Court in *Lehmann*, in addition to the life-long emotional and psychological injuries caused by sexual abuse identified by the Legislature in the 2019 amendments, sexual abuse operates to “discredit” people

by treating them as “sexual object[s] rather than as . . . credible” students, “undermin[ing their] self-confidence and interfer[ing] with [their] . . . potential to advance and succeed.” 132 N.J. at 615. The effect must be even more devastating if at the hands of a trusted mentor. Given the extraordinary ramifications, amicus suggests that the standards for LAD hostile environment sexual abuse claims be as broad as possible and may be based on either the *Lehmann* agency standard or by the *L.W.* student perspective standard.

CONCLUSION

For the reasons set forth above, this Court should rule that (1) the extended statute of limitations set forth in N.J.S.A 2A:14-2b applies to LAD claims; and (2) the decisions in *Hornor* and *L.W.* be given full retroactive application.

Respectfully submitted,



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