

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

No. 27 EAP 2025

L.F.V., a minor, by her legal guardians KIMBERLY VARANO and JOSEPH
VARANO, and KIMBERLY VARANO and JOSEPH VARANO in their own
right,

Plaintiffs-Appellees,

v.

SOUTH PHILADELPHIA HIGH SCHOOL AND THE SCHOOL DISTRICT OF
PHILADELPHIA,

Defendants-Appellants.

**BRIEF OF *AMICUS CURIAE* CHILD USA IN SUPPORT OF PLAINTIFFS-
APPELLEES**

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STATEMENT OF INTEREST OF CHILD USA AS AMICUS CURIAE

Amicus Curiae, CHILD USA, is an interdisciplinary nonprofit think tank fighting for the civil rights of children. Our mission is to pair in-depth legal analysis with cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors.

CHILD USA's interests in this case are directly correlated with its mission to protect the rights of children and eliminate barriers to justice for victims of child sexual abuse. CHILD USA is uniquely positioned to provide this Court with current research and analysis regarding Pennsylvania's state tort immunity exception for child sexual abuse claims, the compelling public interest in permitting all sexual assault claims to proceed against local agencies, the public safety impacts of removing state tort immunity for sexual abuse claims, and the national landscape on state tort immunity for sexual abuse claims.

No counsel to the parties authored this brief in whole or in part nor has any person contributed money that was intended to fund in the preparation or submission of this brief.

PRELIMINARY STATEMENT

Child sexual abuse (“CSA”) rarely occurs in isolation. In institutional settings, particularly schools, CSA arises in environments marked by power imbalance, reliance on authority, and systemic breakdowns in supervision, access, and response. For this reason, courts and legislatures nationwide recognize that sexual abuse is often enabled not by an institution’s formal relationship to a perpetrator, but by institutional acts or omissions that create conditions of access, opportunity, and unchecked risk.

This reality is especially pronounced in child serving institutions. Schools exercise daily control over student supervision, physical spaces, and enforcement of safety protocols. When negligence in those settings allows sexual abuse to occur, whether committed by an employee, student, volunteer, or another third party, the resulting harm is inseparable from institutional failure. Treating such abuse as purely individual misconduct improperly obscures the systemic conditions that place children at foreseeable risk and undermines efforts to prevent future harm.

Pennsylvania’s legal framework reflects this understanding. By recognizing that institutional negligence can enable sexual abuse through acts or omissions, the Commonwealth aligns with a broader national shift toward prevention oriented accountability and one that does not allow institutions charged with protecting

children to evade accountability simply because the abuse was committed by a non-employee.

That alignment frames this case. CSA is a foreseeable risk in child serving environments when supervision fails, access is uncontrolled, and warning signs go unaddressed. In those settings, the most consequential question is not who signs the perpetrator's paycheck, but whether the institution charged with children's safety took reasonable steps to protect them from harm. Allowing public institutions to evade accountability whether the abuse is committed by a student, volunteer, visitor, or other third party weakens prevention, conceals institutional failures, and leaves foreseeable risks to children uncorrected. The General Assembly and the subsequent decisions of the Philadelphia Court of Common Pleas and the Commonwealth Court of Pennsylvania rejected that outcome, applying an approach consistent with how courts nationwide assess institutional responsibility for sexual abuse in child-serving environments.

ARGUMENT

Affirmance is appropriate where, as here, the decisions below are consistent with Pennsylvania's predominant public policy and compelling interest in protecting children from abuse. *See Pittsburgh Action Against Rape v. Dep't of Pub. Welfare*, 120 A.3d 1078, 1081 (Pa. Commw. Ct. 2015); *P.R. v. Department of Public Welfare*,

569 Pa. 123, 801 A.2d 478, 483 (Pa. 2002); *see also In re M.Y.C.*, 230 A.3d 500, 510 (Pa. 2020); *D.P. v. G.J.P.*, 146 A.3d 204, 211 (Pa. 2016).

As argued below, permitting claims alleging institutional failures that exposed children to foreseeable sexual abuse to proceed on the merits advances Pennsylvania's compelling interest in protecting children. That result accords with the reality that CSA is a national public-health crisis and reflects the growing national trend that institutional accountability turns on duty, supervision, and foreseeability, rather than employment status.

I. Child Sexual Abuse Is a National Public Health Crisis That Demands Institutional Accountability

CSA is a pervasive and indiscriminate national public health crisis affecting millions of children each year.¹ In the United States, at least one in four girls and one in twenty boys is sexually abused before reaching adulthood.² An extensive body of research establishes that the trauma experienced by survivors of CSA is distinguishable in both severity and duration from many other forms of victimization.

¹ See *Preventing Child Sexual Abuse*, CDC.gov, available at <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; 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).

² 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).

As children, sex abuse victims often fear the negative repercussions of speaking out, such as disruptions in family stability, loss of close relationships, or involvement with authorities.³ This is a crime that typically occurs in secret, and many victims of sexual violence assume no one will believe them.⁴ Additionally, CSA victims may struggle with psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma of sexual victimization.⁵ Victims may also develop a variety of coping strategies, such as denial, repression, and dissociation, to avoid recognizing or addressing the harm they suffered.⁶

Trauma studies further demonstrate that the effects of sexual abuse extend far beyond the initial harm, contributing to chronic physical and mental health

³ 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), available at <https://pubmed.ncbi.nlm.nih.gov/25846196/>.

⁴ See *Myths and Facts About Sexual Assault*, Cal. Dep't of Just., https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx (last visited Nov. 9, 2023); National Child Traumatic Stress Network Child Sexual Abuse Committee, *Caring for Kids: What Parents Need to Know about Sexual Abuse*, Nat'l Ctr. for Child Traumatic Stress 7 (2009), available at https://www.nctsn.org/sites/default/files/resources/factsheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf.

⁵ 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), available at <https://pubmed.ncbi.nlm.nih.gov/29333973/>.

⁶ G.S. Goodman et al., *A prospective study of memory for child sexual abuse: New findings relevant to the repressed-memory controversy*, 14 Psychol. Sci. 113–8 (2003), available at <https://pubmed.ncbi.nlm.nih.gov/12661671/>.

conditions, increased risk of suicide, and significant long-term societal costs.⁷ Many victims do not disclose abuse until adulthood, if ever,⁸ particularly when abuse occurs in institutional environments where fear of disbelief or retaliation is acute.

These realities are not incidental to institutional settings; they are exacerbated by them. When public agencies charged with protecting children are insulated from accountability for negligence, unsafe conditions persist, perpetrators remain unidentified, and opportunities for prevention are lost. High-profile institutional abuse scandals across schools, youth programs, and religious organizations repeatedly demonstrate that abuse flourishes where institutions lack accountability. **Indeed, many of the most devastating CSA scandals in modern American life share a common feature: an organization's failure to supervise, implement safeguards, respond to warning signs, or control access to children.** In this context, immunity doctrines that prevent negligence claims from being heard on the merits do more than allocate litigation risk. These doctrines shape institutional incentives, determine whether dangerous practices are exposed, and directly affect whether future abuse is prevented.

⁷ 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), available at <https://pubmed.ncbi.nlm.nih.gov/25846196/>.

⁸ *Delayed Disclosure of Child Sexual Abuse*, CHILD USA, <https://childusa.org/wp-content/uploads/2020/03/delayed-disclosurechildUSA-1.jpg>

Civil accountability is therefore a central mechanism of prevention. Because CSA frequently remains undisclosed for years, accountability through negligence claims serves to expose systemic failures, encourage reform, and deter future harm. When the law prematurely forecloses claims at preliminary stages, entities responsible for child safety remain opaque, unsafe practices persist, and the risk of repeat abuse increases. Conversely, permitting negligence claims to be heard on the merits encourages institutions to adopt and enforce basic child-protection measures, including adequate supervision, access controls, reporting protocols, training, and timely intervention.

Accountability does more than provide redress after the fact. It serves an essential preventive function by exposing previously hidden abuse and the institutional failures that allowed it to occur. Across jurisdictions, negligence claims have exposed previously unknown predators⁹ and institutional enablers who would otherwise remain hidden, thereby interrupting cycles of abuse that persist in secrecy. By bringing institutional failures into the open and subjecting practices to scrutiny, accountability catalyzes reform, informs public understanding of grooming behaviors and risk factors, and prompts the development of safeguards that prevent abuse before it occurs.¹⁰

⁹ Michelle Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 Child Abuse Negl. 579 (1995).

¹⁰ See generally, *Making the Case: Why Prevention Matters*, [preventchildabuse.org](https://preventchildabuse.org/resource/why-prevention-matters/), <https://preventchildabuse.org/resource/why-prevention-matters/> (last visited Nov. 9, 2023);

Institutional accountability also aligns responsibility with harm. The costs of child sexual abuse are profound and long-lasting, yet they are borne overwhelmingly by victims and their families.¹¹ Permitting negligence claims shifts a small portion of these costs away from children and onto the institutions whose failures enabled the abuse. Negligence claims that advance through discovery and litigation incentivize abusive institutional actors to invest in supervision, training, and protective protocols. This alignment of cost and responsibility reflects a national understanding that prevention depends not only on moral obligation, but on accountability structures that discourage institutional neglect.

This policy logic is longstanding and widely recognized. As this Court has observed, “immunity tends to foster neglect while liability tends to induce care and caution.” *Flagiello v. Pennsylvania Hospital*, 208 A.2d 193, 202 (Pa. 1965) (quoting *Georgetown Coll. v. Hughes*, 130 F.2d 810, 824 (D.C. Cir. 1941)). That principle has particular force in cases involving child safety. Children do not choose the institutions that supervise them, cannot meaningfully assess risk, and often cannot exit unsafe environments. Schools, by contrast, control the physical space, supervision, and access conditions that shape children’s daily safety.

Preventing Adverse Childhood Experiences, CDC.gov, available at <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

¹¹ Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 Child Abuse Negl. 413 (2018).

Contrary to the foundation of Appellant's primary argument, institutional accountability in child serving environments does not depend on whether the perpetrator is an employee. In institutional settings, foreseeable perpetrators include students, volunteers, visitors, contractors, parents, and employees. The duty at the center of these cases is not derived from an employment relationship, but from an institution's obligation to exercise reasonable care in protecting children entrusted to it. Conditioning accountability on payroll status would therefore immunize foreseeable CSA risk, leaving institutional failures concealed and children exposed to preventable harm. Where children depend on institutions for protection and cannot assess or escape risk, safeguarding child safety through meaningful institutional accountability is paramount.

II. Courts Nationwide Assess Institutional Accountability for Sexual Abuse Based on Duty, Supervision, and Foreseeability and Not the Perpetrator's Employment Status.

The Commonwealth Court of Pennsylvania correctly affirmed the order of the Philadelphia Court of Common Pleas. Together, those rulings reflect a growing national trend permitting institutional negligence claims for CSA to be heard on the merits when the abuse is perpetrated by non-employees. Across jurisdictions, courts have converged on a shared analytical approach. Specifically, rather than focusing on the formal relationship between an institution and a perpetrator, courts examine whether the institution owed a duty of supervision and protection, exercised control

over the environment, and failed to take reasonable steps to guard against foreseeable harm. *E.g.*, *Frugis v. Bracigliano*, 177 N.J. 250, 268, 827 A.2d 1040 (2003); *L.E. v. Plainfield Public School District*, 194 A.3d 105 (N.J. Super. Ct. App. Div. 2018); *Bell v. Board of Education*, 687 N.E.2d 1325 (N.Y. 1997); *J.H. v. Los Angeles Unified Sch. Dist.*, 183 Cal. App. 4th 123 (Ct. App. 2010); *M.W. v. Panama Buena Vista Union Sch. Dist.*, 110 Cal. App. 4th 508 (Ct. App. 2003); *Collins v. Sch. Bd. of Broward Cty.*, 471 So. 2d 560 (Fla. Dist. Ct. App. 1985); *Doe by Roe v. Orangeburg Cty. Sch. Dist.*, 329 S.C. 221, 495 S.E.2d 230 (Ct. App. 1997). This approach reflects how sexual abuse occurs in real-world settings, particularly schools, where institutions control access, supervision, and safety conditions regardless of who commits the abuse.

New Jersey has articulated this analysis with particular clarity. In *Frugis v. Bracigliano*, 177 N.J. 250, 268, 827 A.2d 1040, 1050 (2003), the New Jersey Supreme Court explained that the school-child relationship is not voluntary; it is compelled by law. Children are required to attend school, and parents are required to transfer their supervisory role during school hours. *Id.* As a result, school officials assume the role of guardians of the children in their care, and “no 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.” *Id.*

Relying on *Frugis*, the court in *L.E. v. Plainfield Public School District* held that governmental immunity did not bar a negligence claim arising from student-on-student sexual assault on school grounds. 194 A.3d 105, 111-14 (N.J. Super. Ct. App. Div. 2018). The court made clear that liability turned not on the perpetrator's status as a student rather than an employee, but on whether the school breached its duty of supervision and protection in the face of foreseeable risk. *Id.* That supervisory duty, the court emphasized, extends to preventing unwanted sexual encounters between students. *Id.*; see also *In L.W. v. Toms River Regional School Board of Education*, 915 A.2d 535 (N.J. 2007) (holding schools may be found negligent in instances of student-on-student harassment).

New York applies the same analysis. In *Bell v. Board of Education*, the New York Court of Appeals made clear that institutional liability for sexual assault does not turn on the identity of the perpetrator, but on whether the harm was a foreseeable result of the institution's failure to supervise and protect. 687 N.E.2d 1325, 1326-27 (N.Y. 1997). There, the court permitted a negligence claim to proceed against the Board of Education after a student was raped by non-student minors during a school supervised field trip to a nearby park. The court explained that "when the intervening, intentional act of another is itself the foreseeable harm that shapes the duty imposed, the defendant who fails to guard against such conduct will not be relieved of liability." *Id.*

Since *Bell*, New York has consistently allowed negligence claims to be heard on the merits where institutional acts or omissions enabled sexual abuse by non-employees. In *Doe v. Department of Education of the City of New York*, 54 A.D.3d 352, 862 N.Y.S.2d 598, 599-600 (App. Div. 2008), the court held that a school could be liable for negligent supervision if a sexual assault on school grounds was foreseeable. Similarly, in *Murray v. Research Foundation of the State University of New York*, 723 N.Y.S.2d 805, 807-08 (App. Div. 2001), the court allowed a claim where a student was sexually abused by a non-employee after the school permitted unsupervised, closed-door meetings, reasoning that criminal acts by third parties may be a reasonably foreseeable consequence of circumstances created by institutional negligence.

Courts in other jurisdictions have reached the same conclusion by grounding institutional accountability in the duty to supervise and protect students from foreseeable harm. California has recognized institutional liability where failures of supervision or protection enabled sexual abuse by non-employees in school related settings. *See, e.g., J.H. v. Los Angeles Unified Sch. Dist.*, 183 Cal. App. 4th 123, 196 (Ct. App. 2010); *M.W. v. Panama Buena Vista Union Sch. Dist.*, 110 Cal. App. 4th 508, 675 (Ct. App. 2003). Florida courts likewise hold that schools owe a duty of reasonable supervision and may be liable where negligent oversight allows sexual abuse to occur. *Collins v. Sch. Bd. of Broward Cty.*, 471 So. 2d 560, 564 (Fla. Dist.

Ct. App. 1985). South Carolina has similarly permitted liability where, in a student-on-student sexual assault case, the school left students unsupervised giving rise to foreseeable sexual assault. *Doe by Roe v. Orangeburg Cty. Sch. Dist.*, 329 S.C. 221, 495 S.E.2d 230, 232 (Ct. App. 1997).

Taken together, these cases reflect a consistent national trend to permit survivors of childhood sexual abuse to access our court system and litigate cases on the merits. As illustrated above, courts in multiple jurisdictions treat the dispositive issue as whether the institution breached its duty to supervise and protect children against foreseeable risks, not the abuser's employment status. That approach is grounded in the realities of CSA, where abuse by students, volunteers, and other third parties is a common mechanism of harm in schools and child-serving environments.¹²

Here, the decisions of both the Philadelphia Court of Common Pleas and the Commonwealth Court of Pennsylvania align with this national trend. Indeed, by allowing the claims to proceed, those courts recognized that the allegations plausibly assert institutional negligence and warrant evaluation on the merits. In doing so,

¹² L. Assini-Meytin et. al, *Preventing and responding to child sexual abuse: Organizational efforts*. Child Abuse & Neglect, 112 (2021); J. Saul et. al., *Preventing Child Sexual Abuse Within Youth-serving Organizations: Getting Started on Policies and Procedures*. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control; (2007), available at <https://stacks.cdc.gov/view/cdc/7538>; see also V. Irwin et. al, *Report on Indicators of School Crime and Safety: 2022*, National Center for Education Statistics, U.S. Dept. of Ed. & Bureau of Justice Statistics, Office of Justice Programs, U.S. DOJ, available at <https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2023092>.

Pennsylvania joined a growing body of courts nationwide that decline to treat a perpetrator's employment status as dispositive at the threshold and instead permit claims to move forward where institutional acts or omissions are alleged to have enabled the abuse.

That alignment preserves the preventive function of negligence law, promotes transparency, and ensures that foreseeable risks to children are not left unaddressed. *See* Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 7(a); W. Keeton, D. Dobbs, R. Keeton, D., Owen, Prosser and Keeton on Torts 4, at 25-6 (5th ed. 1984). Simply put, by focusing on institutional acts and omissions rather than perpetrator identity or employment status, the decisions below place Pennsylvania squarely in line with how courts nationwide assess institutional responsibility for sexual abuse, especially in child-serving environments.

CONCLUSION

For the foregoing reasons, Amicus Curiae CHILD USA respectfully requests that the judgment of the Commonwealth Court of Pennsylvania be affirmed.

Respectfully submitted,

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I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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WORD COUNT CERTIFICATION

I hereby certify that the above brief complies with the 7,000-word count limit of Pa.R.A.P. 531(b)(3). Based on the word count feature of the word processing system used to prepare this brief, this document contains 3,097 words.

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in their own right,

Plaintiffs-Appellees,

v.

SOUTH PHILADELPHIA HIGH SCHOOL AND
THE SCHOOL DISTRICT OF PHILADELPHIA,

Defendants-Appellants.

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Sworn to before me on May 4, 2026

/s/ Robyn Cocho

Robyn Cocho

Notary Public State of New Jersey

No. 2193491392828

Commission Expires January 8, 2027

/s/ Elissa Diaz

Job # 392828