

No. 22-2846

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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TONY FISHER, AKA KELLIE REHANNA,  
*Plaintiff-Appellant,*

v.

JORDAN HOLLINGSWORTH, ET AL.,  
*Defendants-Appellees.*

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On Appeal from the Decision of the  
United States District Court for the District of New Jersey  
No. 1:18-cv-16793 Before the Hon. Karen M. Williams, District Judge

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**BRIEF OF NEW JERSEY COALITION AGAINST SEXUAL ASSAULT AS  
*AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, *amicus curiae* New Jersey Coalition Against Sexual Assault certifies that it has no outstanding shares or debt securities in the hands of the public and that it does not have a parent company. No publicly held corporation has a 10% or greater ownership in *amicus curiae*.

/s/ Jessica Ring Amunson

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The New Jersey Coalition Against Sexual Assault (“NJCASA”) is a statewide advocacy and capacity building organization established in 1981. NJCASA is primarily engaged in advocating for policies to support sexual assault survivors, building sexual violence prevention and response capacities, and developing associated educational programming. As a core part of its work, NJCASA has engaged in legislative advocacy seeking expanded access for survivors of sexual assault to bring legal claims against their assailants in state and federal courts.

Of particular relevance to this appeal, NJCASA participated in the legislative process that culminated in the drafting and enactment of S477, a state law that expanded the civil statute of limitations for sexual assault claims, established a revival provision to enable survivors to bring otherwise time-barred claims for two years after the law’s effective date, and empowered courts going forward to grant equitable tolling to survivors where difficulties arising from their trauma has delayed their ability to bring claims. *See* N.J. Stat. Ann. §§ 2A:14-2a, 2A:14-2b (codified provisions of S477). NJCASA supported the passage of these critical legal

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<sup>1</sup> No party objects to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amicus* New Jersey Coalition Against Sexual Assault affirms that no party or counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its members, or its counsel has made any monetary contributions intended to fund the preparation or submission of this brief.

protections through sustained advocacy to key stakeholders and legislators. NJCASA also testified before the New Jersey Senate Judiciary Committee in support of the bill, bringing to bear studies NJCASA has conducted on the impacts of trauma. NJCASA's advocacy for these measures focused on the barriers sexual violence survivors often face in accessing the legal system.

In light of its organizational mission and extensive involvement in the drafting and passage of the statute at issue, NJCASA has a strong interest in the outcome of this case. NJCASA serves as *amicus curiae* to help ensure that this Court interprets New Jersey's revival and tolling provisions to allow survivors of sexual assault like Plaintiff-Appellant Kellie Rehanna to receive the law's full benefits.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

In 2019, the New Jersey State Legislature took a momentous step toward ensuring access to justice for survivors of sexual assault by passing S477. The bill made three major interventions in expanding sexual assault survivors' ability to get into court. First, it extended the statute of limitations for sexual assault claims from two to seven years for adults and, for minor victims, until the victim's 55th birthday (or seven years after discovering the injury and its cause, whichever is later). N.J. Stat. Ann. § 2A:14-2a. Second, it corrected for past injustices caused by the State's longstanding two-year statute of limitations by establishing a revival provision that allowed survivors to bring otherwise time-barred claims stemming from sexual



assault for two years following the law’s effective date. *Id.* § 2A:14-2b. And third, the bill empowered courts to toll the newly expanded statute of limitations for sexual assault claims based on barriers that survivors often face in coming forward and filing suit. In particular, the law provides that a court may toll the statute of limitations due to a “plaintiff’s mental state, physical or mental disability, duress by the defendant, or any other equitable grounds.” *Id.* § 2A:14-2a(b)(2).

As Appellant rightly argues, S477’s tolling and revival provisions apply to render her complaint timely. Binding Supreme Court precedent establishes that where, as here, a state’s general personal injury law supplies the statute of limitations for a federal claim, attendant state tolling and revival provisions apply unless they conflict with federal policy. *See Hardin v. Straub*, 490 U.S. 536, 539 (1989); *see* App. Br. at 27 (citing same). New Jersey’s revival and equitable tolling provisions advance, rather than conflict with, the purposes underlying *Bivens*, so the District Court was compelled to incorporate them. *See* App. Br. 39.

*Amicus* NJCASA was involved at every stage in the passage of these provisions and can therefore offer this Court additional clarity on the sound evidence-based policy considerations underlying them. As NJCASA can attest, the legislation was designed to respond to the well-documented impacts of sexual assault—including the additional months or years many survivors need to bring suits due to the mental and physical health impacts of their trauma, duress by the

assailants, structural hostility to their claims, and other systemic barriers to reporting. Through its work with survivors and rape crisis centers, *amicus* has directly witnessed how these barriers operate to prevent survivors from pursuing and achieving justice. NJCASA, as well as other advocacy groups, constituents, and survivors themselves, testified before the Legislature about precisely these problems. And New Jersey enacted the law to fix them.

In light of New Jersey’s policy decision to allow sexual assault survivors additional time to bring legal claims in courts—and under binding Supreme Court precedent requiring federal courts to incorporate such judgments—the District Court was wrong to declare Appellant’s claims time-barred. This Court should reverse.

### **ARGUMENT**

In rejecting Appellant’s claims as time-barred, the District Court wrongly substituted its own policy judgments for that of the New Jersey Legislature. This Court should reverse the District Court’s misapplication of the law and give New Jersey’s equitable tolling and revival provisions their intended effect of removing the barriers that prevent survivors from obtaining civil remedies.

NJCASA writes as *amicus* to stress two important contextual considerations that bear on this Court’s decision. *First*, it is particularly important for federal courts to respect New Jersey’s revival and equitable tolling provisions in light of the extensive empirical research on the myriad barriers survivors face in coming

forward. And *second*, in enacting S477, the New Jersey Legislature took these very studies and policy considerations into account and determined that equitable tolling and revival are necessary to ensure that survivors of sexual assault can vindicate their rights. The District Court erred in nullifying the Legislature’s sound judgment. If affirmed, the resulting rule would close the courthouse doors to victims of sexual assault who, after overcoming numerous barriers, seek to enforce their federal rights.

**I. Revival And Equitable Tolling Provisions Are Key Policy Interventions To Correct Barriers Survivors Face In Reporting Sexual Abuse.**

Federal courts applying state statutes of limitations are bound to incorporate attendant tolling and revival provisions for good reason; these provisions embody the “State’s wisdom”—its “value judgment” as to the proper balance between, on one hand, a defendant’s interest in repose and, on the other, a prospective plaintiff’s ability to effectuate her rights. *Johnson v. Ry. Exp. Agency, Inc.*, 421 U.S. 454, 463-64 (1975); *see Hardin*, 490 U.S. at 538-39 (describing a state statute of limitations as reflecting “the State’s judgment on the proper balance between the policies of repose and the substantive policies of enforcement embodied in the state cause of action” (quotation marks omitted)). Having worked with legislators in enacting S477, *amicus* is well-positioned to speak to those judgments.

When New Jersey enacted S477, it made the determination that survivors need more time to pursue their claims. Several aspects of that policy judgment inform this Court’s consideration of this appeal. For one, equitable tolling and revival are

important policy tools that states commonly use to address situations where the longstanding statute of limitations has proved insufficient to protect victims' ability to bring valid claims. For another, equitable tolling and revival provisions ameliorate several specific barriers that sexual assault survivors tend to face in attempting to pursue a claim including stigma, mental health issues, retaliation, and institutional barriers within the criminal legal system. Finally, these protections are especially important to high-risk populations, including transgender and incarcerated individuals like Appellant, as well as survivors of child sexual abuse.

**A. Equitable Tolling And Revival Provisions Operate To Remove Barriers To Courts For Survivors.**

Equitable tolling and revival provisions function to ensure that claimants who have had insufficient time to pursue otherwise valid claims are able to get into court.

In the context of claims where plaintiff-victims tend to face substantial challenges pursuing litigation—and doing so quickly—equitable tolling becomes important. It exists to prevent situations where “mechanistic application of [the] statutes of limitations would ... inflict obvious and unnecessary harm upon individual plaintiffs without advancing [the] legislative purposes.” *Price v. N.J. Mfrs. Ins. Co.*, 867 A.2d 1181, 1185 (N.J. 2005) (quotation marks omitted). The equitable tolling provision at issue in this case, N.J. Stat. Ann. § 2A:14-2a(b)(2), operates just this way. The provision states that the statute of limitations may be tolled because of a “plaintiff’s mental state, physical or mental disability, duress by

the defendant, or any other equitable grounds.” *Id.* This language specifically recognizes that survivors often experience debilitating psychological distress after their assault and that defendants in these cases often try to prevent survivors from coming forward. When a sexual assault survivor has managed to overcome these obstacles and files a civil claim, New Jersey’s equitable tolling scheme can prevent the statute of limitations from being one more barrier to that survivor finally being heard.

Revival provisions play an important complementary policy role. Because New Jersey’s previous regime gave survivors insufficient time to pursue their claims—and equitable tolling was not clearly available to correct for that injustice—the New Jersey Legislature enacted a revival provision, N.J. Stat. Ann. § 2A:14-2b, to give survivors two years to bring previously time-barred claims. Such revival provisions are important policy tools for states; they are “recognized as the best way to give survivors access to justice and expose hidden predators.” *Child Sex Abuse Statute of Limitations Reform*, Child USA (2023), <https://childusa.org/sol>. At least twenty-seven states and territories have passed revival provisions for at least some sex abuse claims. *Id.* New Jersey’s revival provision, in tandem with its equitable tolling scheme, offers sexual assault survivors who have been locked out of courthouse doors two important avenues to bring their claims at last.

## **B. Barriers Arise For Sexual Assault Survivors At Every Stage Of Raising Claims.**

*Amicus* NJCASA advocated for revival and tolling policy prescriptions, in particular, based on what the organization knows from the survivors it serves.

To contextualize the scale of the problem, crimes of sexual violence are highly prevalent yet severely under-reported and under-enforced. Over half of women and almost one in three men have experienced sexual violence involving physical contact, and one in four women have experienced completed or attempted rape. *See* Nat'l Ctr. for Injury Prevention & Control, Div. of Violence Prevention, *Fast Facts: Preventing Sexual Violence*, Ctrs. for Disease Control & Prevention (June 22, 2022), <https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html> (“*Fast Facts*”). In 2018 alone, over 700,000 people reported being raped. *See* Rachel E. Morgan, & Barbara A. Oudekerk, *Criminal Victimization, 2018*, U.S. Dep’t of Just., Bureau Just. Statistics 4 (Sept. 2019).

In 2019, *amicus* NJCASA conducted a state-wide sexual violence needs assessment to deepen the organization’s understanding of the barriers survivors face in getting the support they need. Survivors told NJCASA the stories behind the data and confirmed what research has shown time and time again. Survivors face a host of obstacles to seeking remedies and at every stage—from initially deciding to disclose their assault to pursuing legal remedies. These barriers explain why revival and equitable tolling policies are important to sexual assault survivors.

***Mental health challenges.*** As *amicus* well knows from its work with both survivors and rape crisis centers, almost all survivors of sexual violence experience trauma and many continue to experience it long after their assault. *See Victims of Sexual Violence: Statistics, Rape, Abuse & Incest Nat'l Network Studs.* (2023), <https://www.rainn.org/statistics/victims-sexual-violence>. About one-third of survivors continue to experience Post-Traumatic Stress Disorder (“PTSD”) nine months after being raped, and one third of women who are raped contemplate suicide. *Id.* The traumatic impacts of sexual violence are varied and well-documented: Long-term outcomes include not only PTSD and suicidal thoughts and behavior, but also “depression, eating disorders, sexual dysfunction, alcohol and illicit drug use,” and other chronic issues. *See* Nicole P. Yuan, Mary P. Koss, & Mirto Stone, *In Brief: The Psychological Consequences of Sexual Trauma*, Nat'l Online Res. Ctr. on Violence Against Women 11 (Mar. 2006). Given these myriad mental-health challenges, survivors are often not in a position to file and pursue a civil court case until a significant time after their assault. Revival and equitable tolling provisions are thus important to ensuring that survivors' claims do not become stale while they are experiencing acute mental distress.

***Stigma.*** Fear of social stigma and negative social reactions is a threshold barrier to survivors even disclosing their assault. Almost 20% of survivors NJCASA heard from have never told anyone about their experiences of sexual violence. *See*

*Centering Survivors: A Report from the New Jersey Statewide Sexual Violence Needs Assessment*, N.J. Coal. Against Sexual Assault 21, 32 (2021) (“*Centering Survivors*”). Even where a survivor only discloses to a person they know personally, negative social reactions have been linked to self-blame, problem drinking, and PTSD. *Id.* at 20-21, 32. Apprehension about anticipated stigma thus often prevents survivors from disclosing instances of assault for substantial periods of time—all while the statute of limitations is ticking, creating a need for revival and equitable tolling provisions. Meanwhile, stigmatization itself when survivors do report feeds into mental health issues they are already facing.

***Fear of retaliation.*** Even when survivors may be mentally ready to begin pursuing remedies against their assailants, they may not be able to come forward for fear of retaliation. In the U.S. Department of Justice’s recent survey of female victims of sexual violence, the single most cited reason that survivors chose not to report to the police was fear of retaliation. See Michael Planty et al., *Special Report: Female Victims of Sexual Violence, 1994-2010*, U.S. Dep’t of Just., Bureau Just. Statistics 7 (Mar. 2013). As the equitable tolling provision recognizes, duress by putative defendants can be particularly powerful in preventing sexual assault survivors from bringing claims against their assailants.

***Criminal responses are slow and often fail survivors.*** While many survivors choose not to pursue criminal remedies at all, as discussed below, when they do,



survivors are frequently met with additional hurdles that further complicate their ability to bring timely civil claims. For context, only 18.2% of survivors NJCASA surveyed indicated they had reported any assault to the police. *Centering Survivors* 13, 21. Lower socioeconomic status and education level are linked with decreased likelihood of reporting. See Anne P. DePrince et al., *Social Reactions and Women's Decisions to Report Sexual Assault to Law Enforcement*, 26 *Violence Against Women* 399 (2019). Those survivors who do report spend significant time liaising with police, aiding with any criminal investigation, and waiting to find out if an arrest or prosecution are forthcoming—all the while, the statute of limitations on these survivors' civil claims remains pending.

In many cases, waiting on criminal process is for naught. In cases where a victim makes a report to the police, only one in five cases results in an arrest. Melissa S. Morabity, Linda M. Williams & April Pattavina, *Decision Making in Sexual Assault Cases: Replication Research on Sexual Violence Case Attrition in the United States*, Nat'l Crim. Just. Ref. Serv. at III (Feb. 2019). That makes the availability of civil remedies on an elongated timeline all the more critical.

***Civil remedies are especially important.*** In light of the systemic failings of the criminal legal system to address sexual assault, accessible and available civil remedies are key for sexual assault survivors. Also, civil remedies offer important solutions for survivors' real-world problems, allowing survivors to keep the process

in their hands (rather than a prosecutor's) and providing a means for financial compensation for physical and mental damages. The Center for Disease Control and Prevention estimates that the lifetime cost of rape is \$122,461 per survivor, including medical costs, lost productivity, criminal justice activities, and other costs. *See Fast Facts*. As NJCASA noted while advocating and urging others to advocate for S477, civil suits “hold abusers accountable directly to survivors, rather than the state” and “forces perpetrators and those who caused the abuse to pay for the harm they caused or permitted.” *Support Survivors*, N.J. Coal. Against Sexual Assault (2019).<sup>2</sup> As these data show, civil remedies remain critical to survivors. Equitable tolling and revival are the policy interventions that make these remedies achievable.

### **C. Certain High-Risk Groups Are Particularly Affected By These Barriers.**

In addition to the barriers survivors face generally, certain groups of survivors are both more vulnerable to sexual violence in the first instance and more likely to face additional barriers to pursuing remedies after it has occurred. Appellant's particular case exemplifies the additional barriers that come at the intersection of LGBTQ+ status and incarceration. Beyond the facts of this case, this Court's ruling will apply to other high-risk populations, including child victims of sexual abuse. *Amicus* advocated for S477—and the legislature enacted it—knowing that its revival

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<sup>2</sup> [https://njcasa.org/wp-content/uploads/2018/10/Civil-Statute-of-Limitations\\_1018.pdf](https://njcasa.org/wp-content/uploads/2018/10/Civil-Statute-of-Limitations_1018.pdf).

and equitable tolling provisions would be particularly important for these high-risk groups.

***1. Appellant's Case Underscores the Particular Issues LGBTQ+ And Incarcerated Survivors Face.***

Individuals like Appellant are especially at risk for sexual violence as a result of their LGBTQ+ status and incarceration.

As to sexual orientation and gender identity, research confirms what NJCASA has seen in its own data—LGBTQ+ individuals are at heightened risk for sexual violence. In a 2015 study of over 27,000 respondents who identified as transgender, trans, genderqueer, non-binary, and other identities on the transgender identity spectrum, the National Center for Transgender Equality found that nearly half of respondents had been sexually assaulted. *See* Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, Nat'l Ctr. for Transgender Equality 198 (Dec. 2016) (“*U.S. Transgender Survey*”). Gay and lesbian individuals are more than twice as likely to experience rape or sexual assault than straight individuals. *See* Jennifer L. Truman & Rachel E. Morgan, *Violent Victimization by Sexual Orientation and Gender Identity, 2017-2020*, U.S. Dep't of Just. Bureau of Just. Statistics 3 (June 2022). And gay men are almost twice as likely as heterosexual men to experience sexual violence other than rape. Nat'l Ctr. for Injury Prevention & Control, Div. of Violence Prevention, *The National Intimate Partner and Sexual Violence Survey:*

*2010 Findings on Victimization by Sexual Orientation*, Ctrs. for Disease Control & Prevention 1 (Jan. 2013).<sup>3</sup>

As to incarceration, being held in prison exacerbated Appellant's risks. From 2016 to 2018, there were over 50,000 allegations of sexual victimization in federal and state prisons. Emily D. Buehler, *Special Report: Sexual Victimization Reported by Adult Correctional Authorities, 2016-2018*, U.S. Dep't of Just., Bureau of Justice Statistics 4 (June 2021). Individuals who openly identified as LGBTQ experienced abuse from other inmates at a 10 times higher rate than those inmates who identified as straight/cisgender. Allen J. Beck et al., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12*, U.S. Dep't of Just., Bureau of Just. Statistics 18 (May 2013). Survivors who are assaulted in prison also experience additional trauma from continuing to remain in the prison setting.

In pursuing remedies, Appellant also faced exceptional challenges, again for reasons relating to her marginalized identities. Transgender individuals are more often mistreated by law enforcement, with over 58% of respondents to one study reporting some form of police mistreatment in the past year. *See U.S. Transgender Survey* 14. As Appellant recounts, in her particular case, a Bureau of Prisons ("BOP") captain explicitly threatened that both her rapist and the BOP itself would retaliate against her if she filed a lawsuit or spoke out. *See App. Br.* 43. Incarcerated

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<sup>3</sup> [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_sofindings.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_sofindings.pdf).

survivors like Appellant also face barriers to care like lack of privacy, confidentiality challenges, and power imbalances. As Appellant explains, after she was raped, she experienced not only “extreme trauma” that left her in “a constant break from reality” but also “continual trauma” from remaining in the same environment in which she was raped. App. Br. 16. These are exactly the type of situations that S477 was meant to address.

***2. Survivors Of Child Sexual Abuse Also Face Special Barriers To Pursuing Remedies.***

This Court’s ruling will also affect the availability of civil remedies for another group of survivors that face especially acute challenges in coming to court: survivors of child sexual abuse. As *amicus* has emphasized throughout its advocacy, delays in disclosure are heightened for victims of child sexual abuse because these victims often take years to process the extent of their trauma. A national survey of female survivors of child sexual abuse found that nearly half did not disclose for over five years after their rape and 28% of respondents had never disclosed their rape to anyone before the research interview. *See* Daniel W. Smith et al., *Delay in Disclosure of Childhood Rape: Results from a National Survey*, 24 *Child Abuse & Neglect* 273 (2000). Given these stark facts, it is understandable why New Jersey determined that two years is often insufficient to bring a civil claim in court. The ability of these survivors—as well as Appellant—to bring their claims in federal civil rights actions hangs in the balance in this appeal.

## II. New Jersey Passed S477 To Protect Survivors Like Appellant.

These evidence-based concerns are not simply academic justifications for revival and equitable-tolling provisions; they were the precise reasons the New Jersey Legislature passed S477 with the strong support of *amicus* and similar organizations working with survivors of sexual assault.

State Senator Joseph Vitale, a co-sponsor of the bill, introduced it with the following statement: “Every single day we tell [survivors] that unless they can disclose their assault or abuse to those around them and face their rapist or abuser within two years, their trauma doesn’t matter. Even though they may suffer for the rest of their lives, their suffering only matters for a period of two years.” *Hearing on S477 before the Senate Judiciary Committee* at 0:06:10 – 0:06:28 (Mar. 7, 2019) (Statement of Sen. Joseph Vitale).<sup>4</sup> The legislature was informed that New Jersey’s longstanding policy represented the “worst-in-the-nation statute of limitations”—that was why New Jersey needed to extend it, provide for a revival period, and allow for equitable tolling by courts. *Id.* at 0:05:13 – 0:05:22. Other legislators agreed that the two-year statute of limitations was “arbitrary” and unfair, given the impact that trauma can have on the ability of survivors to hold their abusers accountable; a revival period, in particular, would “allow responsibility to be taken for these acts

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<sup>4</sup> <https://www.njleg.state.nj.us/archived-media/2018/SJU-meeting-list/media-player?committee=SJU&agendaDate=2019-03-07-13:00:00&agendaType=M&av=A>.

that had occurred in the past.” *Id.* at 0:09:00 – 0:09:14 (Statement of Sen. Nicholas Scutari).

Following the bill’s introduction, NJCASA was the first organization to testify in its favor, urging the legislature to pass common-sense, data-informed reform. NJCASA highlighted that 80% of other states had already expanded their statutes of limitations for sexual assault since 2002 based on the well-documented after-effects of traumatic and violent crime that prevent survivors from bringing their claims within the two-year statute of limitations. *Id.* at 0:12:00 – 0:13:45. The organization’s then-Executive Director stated: “By the time many survivors discover they would’ve had the option to pursue civil action, the clock has run out” in New Jersey. *Id.* at 0:13:40 – 0:13:45. Thanks to NJCASA’s testimony, the Committee was also aware of the financial impact of sexual assault and how civil remedies uniquely allow “perpetrators to be held responsible for the financial impact of the crimes they’ve committed.” *Id.* at 0:15:05 – 0:15:36. All told, the bill was a product of years of advocacy and work by survivors, advocates, policymakers, and stakeholders. *Id.* at 0:16:49 – 0:17:00.

In addition to NJCASA’s evidence-based support, the Legislature heard hours of testimony directly from survivors. Consistent with the organization’s data and experience, many survivors described the trauma they experienced and the corresponding years it took them to report the abuse they faced. *Id.* 2:27:36 –

2:29:16; 2:31:25 – 2:31:48. Others described the particular importance of expanding civil remedies, given that often prosecutors choose not to bring criminal charges in sexual assault cases and, all the while, the clock is ticking on a survivor’s ability to bring civil claims. *Id.* at 1:28:00 – 1:29:05. The conclusion was clear: “Two years is not enough.” *Id.* at 1:29:29 – 1:29:32.

The bill was passed by the full Senate with overwhelming support—by a vote of 32 to 1—and it passed the Assembly unanimously. *Bill S477 Scs*, N.J. Legislature (2018-2019), [www.njleg.state.nj.us/bill-search/2018/S477](http://www.njleg.state.nj.us/bill-search/2018/S477). The law’s enactment was touted as a resounding victory for survivors—a key intervention enabling them to get through the courthouse doors on important claims of sexual abuse. As one legislator noted: “Because those who have been sexually abused often suppress their memories for years or don’t connect their injuries to their abuse, they need much more time to file a civil action. This new law gives them that time.” *Governor Murphy Signs Legislation Extending the Civil Statute of Limitations for Sexual Abuse Claims in New Jersey*, Governor Phil Murphy (May 13, 2019) (Statement of Assemblymember Annette Quijano).<sup>5</sup> Other lawmakers explained that “[s]exual abuse survivors often struggle for years to come to terms with their abuse,” stating: “we must allow victims the time to realize the damage that has been done to them both physically and mentally.” *Id.* (Statement of Assemblywoman Vainieri Huttle).

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<sup>5</sup> <https://www.nj.gov/governor/news/news/562019/approved/20190513c.shtml>.



As *amicus* recognized that day, S477 marked “the beginning of a new chapter in the long fight for expanding access to justice for survivors of sexual assault.” *Gov. Murphy Signs Sexual Assault Civil Statute of Limitations Reform into Law*, N.J. Coal. Against Sexual Assault (May 13, 2019).<sup>6</sup>

This law represented a major victory for survivors of sexual assault and a chance to finally have their claims heard. As Appellant explains, when it comes to policy decisions regarding the revival and equitable tolling provisions that apply to a state’s general personal injury statute of limitations, the proper role of a federal court is to defer to the state’s sound judgments. Equitable tolling and revival are policy interventions designed to ensure that the statute of limitations does not unfairly prevent plaintiffs from pursuing valid claims. Given the myriad barriers that survivors of sexual assault face in disclosing their abuse, reporting it to authorities, and pursuing civil claims, New Jersey was well supported in determining that these interventions were necessary to allow them access to the courts.

In the decision below, the District Court turned a blind eye to New Jersey’s policy and Appellant’s hardship. Affirming the judgment below would slam the federal courthouse doors to survivors like Appellant once again, in contrast to what New Jersey determined was the appropriate statute of limitations for claims like

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<sup>6</sup> <https://njcasa.org/news/gov-murphy-signs-sexual-assault-civil-statute-of-limitations-reform-into-law-2>.

those of Appellant. If the District Court's decision is allowed to stand, survivors who have experienced rape, and the debilitating trauma that comes with it, could be left without recourse when they seek to enforce federal rights.

### CONCLUSION

For the foregoing reasons, this Court should find Appellant's claims timely and reverse the judgment of the District Court.

April 24, 2023

Respectfully submitted,

/s/ Jessica Ring Amunson

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## CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 29(a)(4) and 32(g), and Local Rules 28.3(d) and 31.1(c), the undersigned counsel for *amicus curiae* certifies as follows:

1. I am a member of the bar of this Court.
2. This brief complies with the type-volume limitation of Rule 29(a)(5) because the brief contains 4480 words, excluding the parts of the brief exempted by Rule 32(f).
3. This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because the brief was prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.
4. The text of the electronic brief is identical to the text in the paper copies.
5. A virus detection program, Palo Alto WildFire, has been run on the file and no virus was detected.

I understand that a material misrepresentation may result in the Court's striking the brief and imposing sanctions.

April 24, 2023

Respectfully submitted,

/s/ Jessica Ring Amunson

## **CERTIFICATE OF SERVICE**

I hereby certify that that on April 24, 2023, I electronically filed the foregoing brief with the Clerk of the Court using the appellate CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished via CM/ECF.

April 24, 2023

Respectfully submitted,

/s/ Jessica Ring Amunson