

IN THE SUPREME COURT OF PENNSYLVANIA

No. **13 EAL 2019**

NICOLE B., individually and on behalf of N.B.,
Petitioner,

v.

SCHOOL DISTRICT OF PHILADELPHIA,
JALA PEARSON,
JASON JOHNSON,
Respondents.

**BRIEF OF EDUCATION LAW CENTER PENNSYLVANIA, JUVENILE
LAW CENTER AND PUBLIC INTEREST LAW CENTER,
AS *AMICI CURIAE* IN SUPPORT OF
APPELLANT NICOLE B. PETITION FOR ALLOWANCE OF APPEAL**

Petition for Allowance of Appeal from the Order of the Commonwealth Court entered on December 17, 2018 at No. 868 C.D. 2018, which affirmed the Order of the Honorable Frederica A. Massiah-Jackson in the Court of Common Pleas of Philadelphia County, April Term 2014, No. 3745

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STATEMENTS OF AMICI CURIAE

The **Education Law Center-PA** (“ELC-PA”) is a non-profit legal advocacy organization dedicated to ensuring access to a quality public education for all children in Pennsylvania. For over 40 years, ELC-PA has advocated on behalf of the most at-risk students — children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBT students, and children experiencing homelessness. Our priority areas include ensuring all students have equal access to safe and supportive schools and the full range of services and programs they need to succeed. We work to eliminate systemic inequalities that lead to disparate educational outcomes based on race, gender, sexual orientation, gender expression, disability status, and other categories.

Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research,

consistent with children’s unique developmental characteristics, and reflective of international human rights values.

The Public Interest Law Center (the “Law Center”) is one of the original affiliates of the Lawyers’ Committee for Civil Rights Under Law. The Law Center uses high-impact legal strategies to advance the civil, social, and economic rights of communities in the Philadelphia region facing discrimination, inequality, and poverty. We use litigation, community education, advocacy, and organizing to secure their access to fundamental resources and services. The Law Center has a long history of representing children to ensure their rights to education. We were counsel in the landmark decision *Pennsylvania Ass’n for Retarded Children v. Commonwealth of Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972), which led to the Congressional passage of the initial version of the Individuals with Disabilities Education Act. The Law Center remains a vigorous advocate for Pennsylvania children’s rights to a quality and inclusive public education. We devote substantial resources to protect children from discrimination including in school settings. Through advocacy and litigation — including litigation under Pennsylvania’s anti-discrimination statute at issue in this case — the Law Center helps to ensure the civil rights of school-age children, especially those children who are marginalized by social factors and thus are more susceptible to inequities.

Amici seek to participate in this case to explain why the protections of the Pennsylvania Human Relations Act (“PHRA”), 43 Pa. Stat. and Cons. Stat. Ann § 953 (West) are vital for students who have experienced discrimination and why minority tolling is necessary to ensure meaningful access to the Act’s protections. Absent minority tolling, many students will be unable to assert their rights under the PHRA, increasing the likelihood of continuing discriminatory conduct in schools.

STATEMENT OF CONCURRENCE IN PRELIMINARY MATTERS

Amici concur in the statements made by Appellant Nicole B.,¹ regarding the Statement of Jurisdiction, the Order in Question, the Statement of the Scope and Standard of Review, the Statement of the Questions Involved, and the Statement of the Case.

SUMMARY OF THE ARGUMENT

This case concerns an eight-year-old boy, N.B., whose pleas to his school to intervene and protect him from increasingly violent racial and sexual harassment went unanswered. Because of his school’s inaction, he was forced to endure regular verbal harassment, multiple physical assaults, and rape. Without the benefit of equitable tolling or the Minority Tolling Statute, N.B. and many Pennsylvania

¹ Throughout this brief, Appellant mother of the student will be referred to as Nicole B., while the student victim of discrimination will be referred to as N.B.

citizens who are victimized as children will face insurmountable barriers to asserting their rights under the PHRA. Without access to the PHRA, they will not be able to hold their schools accountable under state law for willfully turning a blind eye to their torment.

This Court should stay true to the principles of the PHRA and the Minority Tolling Statute: to deter discrimination on the basis of race, sex, and other innate characteristics and to ensure that all individuals, including those discriminated against as children, have access to justice. Adhering to the legislative intent of these statutes is necessary to ensure that children have safe places in which to learn. Harassment, left unaddressed, is often extremely damaging. Students who are harassed are more likely to struggle in school, and more likely to avoid school altogether—leading to absenteeism, truancy, and dropping out. They are also more likely to suffer from depression, anxiety, and other health consequences.

Students of color and students who fail to conform to sex stereotypes, including those who are or are perceived to be lesbian, gay, bisexual, and/or transgender (LGBT), are particularly likely to experience harassment.

Unfortunately, while these students are particularly vulnerable to student-to-student harassment, their harassment in school is often taken *less* seriously than the bullying of their white, straight, gender-conforming counterparts—which can lead to tragic consequences, as in the case of N.B.

The Commonwealth Court misinterpreted equitable tolling jurisprudence and the Minority Tolling Statute in a way that leaves many children without access to the protections of the PHRA when their schools fail to keep them safe. This Court should grant certiorari to clarify that a child who is discriminated against during his minority is not barred from obtaining justice.²

ARGUMENT

A. The Availability of Minority Tolling is a Critical Protection for Children Who Are Subject to Discriminatory Harassment in School.

The protections of the PHRA are vitally important for N.B. and children like him throughout the Commonwealth. Children who experience unaddressed harassment at school often suffer severe, lifelong consequences. As *Amici* have observed, many schools fail to intervene when they are notified about ongoing student-to-student harassment. Oftentimes, when parents and students call ELC-PA seeking help with harassment, they have already tried all avenues of relief outside of the court system—from reporting it to administrators, to their school districts, to

² While the Commonwealth Court decided the matter on the issue of minority tolling, the merits of this case address whether the PHRA recognizes claims of indirect discrimination against school districts that fail to address student-to-student harassment. We urge that it does. Currently, there is a split among Courts of Common Pleas concerning this question. See *Juanita J.W. v. Sch. Dist. of Phila.*, No. 2169 (Phila. Ct. Com. Pl. May 30, 2018) (finding that the PHRA recognizes unaddressed student-to-student harassment as a cause of action); *Nicole B. v. Sch. Dist. of Phila.*, No. 3745 (Phila. Ct. Com. Pl. Aug. 7, 2017) (finding that the PHRA does not recognize unaddressed student-to-student harassment as a cause of action). This Court's guidance on this issue is also needed.

their school boards—to no avail. The judicial system is the only mechanism left for many families to redress their child’s harassment, which is why it is vital that our court system fulfills its obligation to hold schools accountable for allowing discriminatory environments to flourish. This obligation is particularly important at this time, as instances of discrimination and racial harassment have increased in our schools. *See, e.g.,* Rebecca Klein, *Schools See Major Uptick in Racial Harassment, New Data Suggests*, Huffington Post (Feb. 23, 2018), <https://bit.ly/2FC6Jg3> [hereinafter Klein, *Schools See Major Uptick*].

Failing to allow for minority tolling of PHRA claims would bar many individuals who are victimized in childhood from seeking relief under the statute. This would not only be turning a blind eye to the intent of the PHRA and the Minority Tolling Statute, but to the lived experiences of all students who are assaulted and harassed. *See Foti v. Askinas*, 639 A.2d 807, 809 (Pa. Super. Ct. 1994) (stating that legislature enacted the Minority Tolling Statute to “protect the rights of minors”); *Pa. Human Relations Comm’n v. Chester Sch. Dist.*, 233 A.2d 290, 296–99 (Pa. 1967) (construing the PHRA broadly to effectuate its purposes).

1. The pervasiveness and negative impact of school-based discrimination demonstrates the importance of the PHRA to our K–12 students.

Children who experience discrimination and harassment while in school deserve access to a system wherein they can hold their schools accountable and

address the myriad of harms that might have arisen from their school's actions and inactions which impact them, and others. *See, e.g.,* Am. Psychological Ass'n, *Stress in America: The Impact of Discrimination* (2016), <https://bit.ly/2yqOGDk> (“[D]iscrimination-related stress is linked to mental health issues, such as anxiety and depression, even in children.”).

Unaddressed repeated harassment such as N.B. experienced is a particularly damaging form of discrimination. As we have observed in our work and as is supported by multiple research studies, students who are harassed are at an increased risk of absenteeism and poor academic performance, including attaining lower grade-point averages and levels of engagement in the classroom than their non-harassed peers. *See, e.g.,* James Gruber et al., *Sexual Harassment, Bullying, and School Outcomes for High School Girls and Boys*, 22(1) *Violence Against Women* 1(2015) (those who experience sexual harassment suffer worse outcomes than those who are bullied but not sexually harassed). The impact of being harassed extends beyond schoolhouse doors, resulting in long-lasting negative mental and physical health outcomes. *See, e.g.,* Jim Duffy et al., *Psychological Consequences for High School Students of Having Been Sexually Harassed*, 50(11-2) *Sex Roles* 811 (2004).

Students who are gender-nonconforming and students of color are more likely to experience harassment in school compared to less oppressed student peer

groups. See James Gruber et al., *Comparing the Impact of Bullying and Sexual Harassment Victimization on the Mental and Physical Health of Adolescents*, 59(1-2) *Sex Roles* 1 (2008); Andre Perry et al., *Schools Need to Step Up to Fight A Rise in Suicides Among Black Children*, Hechinger Rep. (Dec. 18, 2018), <https://bit.ly/2Bqhbnb> (“Black children are more likely to be bullied in schools.”). While these students are particularly vulnerable, ELC-PA’s numerous conversations with youth, parents, and service providers reveal a disturbing trend of school teachers and administrators taking the harassment of gender non-conforming and LGBT students of color *less* seriously than the bullying of their white, straight, cisgender counterparts. Too many teachers and administrators view the harassment of these students as normal, and thus are less likely to intervene when they are mistreated by their peers. Our anecdotal evidence is supported by national data. See GLSEN, *Shared Differences: The Experiences of Lesbian, Gay, Bisexual, and Transgender Students of Color in our Nation’s Schools* xi–xii (2009), <https://bit.ly/2DbNtEq> (only a fifth of LGBT students of color report that school personnel regularly intervene when biased remarks are made and less than half of LGBT students of color reported effective intervention when they informed personnel of harassment).

The importance of assuring that children have access to the protections of the PHRA is particularly important at this moment in time, as incidents of

harassment in schools are increasingly common, nationally and statewide. *See, e.g.,* William Bender et al., *Racial Incidents Rock Area Schools. Now What?*, Philly.com (Oct. 21, 2017), <https://bit.ly/2iOtvIg> (reporting that the Anti-Defamation League received an increase in complaints of bias-related incidents in 2017 compared to prior years); Klein, *Schools See Major Uptick* (reporting in 2017 the Department of Education's Office of Civil Rights saw a 25% increase in racial harassment complaints compared to 2016). ELC-PA has also observed an increase in instances of discrimination in Pennsylvania schools and in the number of students and guardians calling to seek assistance with incidences of harassment. Now more than ever, it is imperative that our students have access to the PHRA to redress the serious harm that can manifest due to experiencing all forms of discrimination, particularly unaddressed harassment, in school.

2. Many children would not be able to avail themselves of the protections of the PHRA absent minority tolling.

If a child is to have meaningful access to the protections of the PHRA, tolling on the basis of the youth's status as a minor must apply. To hold otherwise would unfairly bar individuals from accessing justice. Minors have limited agency to identify and address the discrimination they experience, and no control over whether their claim is heard during their minority. *See* 23 Pa. Stat. and Cons. Stat. Ann. § 5101 (West) (barring minors from bringing most legal claims on their own behalf). Young people may not have a parent or guardian capable or

knowledgeable enough to bring a claim on their behalf for any number of reasons, none of which justify barring that child from accessing the courts.

Many of our most vulnerable young people do not have the benefit of an active parent or guardian who would bring claims on their behalf. *Amici* are attorneys and advocates for unaccompanied homeless youth (those who are not in the physical custody of a parent or guardian),³ youth in the foster care system, and youth whose parents are themselves minors—all of whom are particularly harmed by a standard that requires an active, knowledgeable, and proactive parent or guardian to timely pursue legal claims on their behalf. There are significant and growing numbers of children in foster care and youth experiencing homelessness in Pennsylvania. See Anna Shaw-Amoah et al., *Students Experiencing Homeless in Pennsylvania: Under-Identification and Inequitable Enrollment* 1, 5 (2018), <https://bit.ly/2Maz8Li> (noting that in 2016–17 the Pennsylvania Department of Education identified close to 25,000 K–12 students who were experiencing homelessness, reflecting a significant increase over the past ten years; and *under-identification* of students experiencing homelessness is a persistent problem); Kids Count Data Ctr., *Children in Foster Care*, <https://bit.ly/2CpN0Nu> (last visited Jan. 16, 2019) (reporting that 16,086 children in Pennsylvania were in foster care in

³ Unaccompanied homeless youth are young people experiencing homelessness who are not in the physical custody of a parent or guardian. 42 U.S.C. § 11434a(6).

2016 as compared to 16,049 in 2015 and 14,840 in 2014). In *Amici*'s experience, youth who are unaccompanied or in foster care have often experienced significant trauma and are in crisis, so are primarily concerned with how to meet their basic needs—not finding guardians to file timely lawsuits on their behalf. Children in foster care are also disproportionately identified as children with disabilities—they are between 2.5 and 3.5 times more likely to receive special education services than their non-system involved peers. See Nat'l Working Grp. on Foster Care & Educ., Legal Ctr. for Foster Care & Educ., *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care* (2018), <https://bit.ly/2FsN8Qd>. It is especially harmful to effectively deny relief from discrimination to these at-risk students.

Even those young people who have an active parent or guardian do not have the same ability as adults to bring a claim within the statute of limitations because of children's relative difficulty in evaluating, recognizing, or alerting others to a potential legal claim. See, e.g., *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (holding "children are constitutionally different from adults," due in part to their inability to assess consequences). As science and the courts have recognized, children's brains have not yet fully developed, so they cannot comprehensively assess the long-term consequences of their actions. See Am. Acad. of Child &

Adolescent Psychiatry, *Teen Brain: Behavior, Problem Solving, and Decision Making* (2016), <https://bit.ly/2F0s2rr>.

Particularly in cases of sexual abuse, children are less capable than adult plaintiffs to independently identify violations and pursue legal claims because children have unique coping mechanisms that “enable them to withstand the emotional trauma they experience” but make it more difficult to be able to file a claim within the standard statute of limitations, such as: “denial, dissociation, repression, and amnesia.” See Gregory G. Gordon, *Adult Survivors of Childhood Sexual Abuse and the Statute of Limitations: The Need for Consistent Application of the Delayed Discovery Rule*, 20 *Pepperdine L. Rev.* 1359, 1366 (1993), <https://bit.ly/2AMA4kP> [hereinafter Gordon, *Adult Survivors*]. The reports of sexual abuse of minors by Larry Nassar and Catholic priests illustrate how children are less likely to alert adults to potential legal claims. See, e.g., Laurie Goodstein et al., *Catholic Priests Abused 1,000 Children in Pennsylvania, Report Says*, N.Y. Times (Aug. 14, 2018), <https://nyti.ms/2PaX8iM>; Brian Armen Graham, *‘I was molested by Dr. Larry Nassar’: how the gymnastics sexual abuse scandal unfolded*, *Guardian* (Jan. 27, 2018), <https://bit.ly/2JOWFQq>.

Pennsylvania case law recognizes that in cases such as N.B.’s, where a parent is aware of an instance of discrimination against her child but fails to file a claim within the statute of limitations, it is fundamentally unfair to hold children

responsible for the inaction of their parents. *See S.J. by & through B. v. Gardner*, 167 A.3d 136 (Pa. Super. Ct. 2017) (applying Minority Tolling Statute to a case filed by the minor's parents outside of the statute of limitations but before the minor reached the age of eighteen). Those who discriminate against children should not escape liability simply because the children's parents failed to file a claim within the time bar, and children who are the victims of discrimination should not be barred from relief because of a mistake, or the absence, of a parent or guardian.

B. The Minority Tolling Statute Applies to PHRA Claims As A Matter of Law.

Pennsylvania lawmakers recognized that it is unfair to prevent children from accessing justice merely because they are harmed during their minority, as evidenced by the passage of the Minority Tolling Statute which ensures that a young person's right to access the courts is protected in a variety of circumstances. *See* 42 Pa. Stat. and Cons. Stat. Ann. § 5533 (West) (minority tolling statute); *S.J.*, 167 A.3d at 139 (statute of limitations for torts and other claims is tolled until victim turns eighteen). Consistent with how courts in the Third Circuit and Massachusetts view similar circumstances, our courts must apply the Minority Tolling Statute to instances where the failure to file an administrative complaint within the statute of limitations would otherwise bar a civil suit, in order to fulfill the statute's promise of securing access to justice for children.

Federal courts have considered a plaintiff's minority when granting equitable tolling in a number of analogous circumstances. For example, prior to the enactment of a statute of limitations that expressly put the Individuals with Disabilities Education Act claims outside of the reach of the minority tolling statute, some federal courts applied Pennsylvania's Minority Tolling Statute to such claims—claims which generally require the exhaustion of administrative remedies. *See Chambers v. Sch. Dist. of Phila. Bd. of Educ.*, No. CIV.A. 05-2535, 2014 WL 5343679, *2 (E.D. Pa. Oct. 21, 2014).

Also, while generally a plaintiff must exhaust administrative remedies prior to commencing an action in district court under the Federal Tort Claims Act (FTCA), federal courts consider a plaintiff's minority and have not dismissed FTCA claims where the plaintiff was a minor at the time she was harmed by the defendant and the minor failed to file an administrative complaint within the two-year statute of limitations such that an administrative complaint would be time-barred at the time the plaintiff commences her civil suit. As long as the plaintiff commences a civil action within two years of reaching the age of majority, courts have permitted these cases to proceed. *See, e.g. Santos ex rel. Beato v. United States*, 559 F.3d 189, 192 (3d Cir. 2009) (finding that plaintiff's minority, in conjunction with other factors, constitutes a basis for equitable tolling); *Albright v. Keystone Rural Health Ctr.*, 320 F. Supp. 2d 286, 291 (M.D. Pa. 2004) (holding

plaintiff's minority and the difficulty in determining defendant's federal status warranted equitable tolling). Here, N.B.'s minority, in conjunction with the traumatizing sexual nature of the harm he suffered warrant tolling of the statute of limitations.⁴

Massachusetts also applies their analogous minority tolling statute to their anti-discrimination law. *See, e.g., Bills v. Bobby's Food Enters., Inc.*, No. 972314C, 1998 WL 1184157, at *1-2 (Mass. Super. Ct. Feb. 5, 1998). In *Bills*, the Superior Court of Massachusetts found “[t]here is no sound reason why minority should not toll” the statute of limitations for filing a complaint with the Massachusetts Commission Against Discrimination. *See id.* The time period in which to file a complaint was not a “jurisdictional prerequisite” but “a statute of repose subject to limitations of . . . equitable tolling.” *Id.* Thus, because the anti-discrimination statute did not specifically address the issue of minority tolling, it was not inconsistent to apply the minority tolling statute to it. *Id.* The court noted that the legislature could have specified that it did *not* wish minority tolling to apply to anti-discrimination claims—and in the absence of such a specification, courts should assume it was the intent of the legislature that minority tolling *should* apply to such claims. *Id.* This reasoning applies with equal force to the PHRA.

⁴ For discussion of how the sexual nature of the harm justifies equitable tolling, *see infra* Section C.1.

Accordingly, we urge this Court to ensure that children in Pennsylvania have meaningful access to justice and apply our minority tolling statute to the PHRA.

C. Equitable Tolling, Which Encompasses Tolling on the Basis of Minority and the Nature of the Harm Caused by the Defendant, Provide Independent Bases Authorizing PHRA Claims To Proceed.

As noted by the lower court, equitable tolling may apply to PHRA claims “where extraordinary circumstances prevent the plaintiff from asserting his rights”. *See Uber v. Slippery Rock Univ. of Pa.*, 887 A.2d 362, 366 (Pa. Commw. Ct. 2005). Both enduring sexual abuse due to the action or inaction of the defendant and a plaintiff’s minority at the time he was discriminated against are extraordinary circumstances that justify the use of equitable tolling, as demonstrated by federal jurisprudence. Federal case law is significant as the PHRA is read as identical to its federal counterparts absent authority requiring a different reading. *Fogleman v. Mercy Hosp., Inc.*, 283 F.3d 561, 567 (3d Cir. 2002).

1. Equitable tolling applies to cases like N.B.’s where the relevant harm the plaintiff endured was sexual abuse.

Even when the plaintiff was not victimized as a minor, federal courts have tolled the statute of limitations where the plaintiff suffered sexual abuse, as the nature of the offense and its impact constitute an extraordinary circumstance. *See, e.g., Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999), *as amended* (Mar. 22, 1999) (finding plaintiff was entitled to equitable tolling where the sexual abuse she

suffered rendered her unable to file her Title VII claim within the statute of limitations).

Equitable tolling is appropriately applied under the Civil Rights Act where a plaintiff is prevented from timely filing a claim due to the wrongful conduct of the defendant or due to extraordinary circumstances beyond the plaintiff's control. *Stoll*, 165 F.3d at 1242. In *Stoll v. Runyon*, the plaintiff had produced “more than sufficient evidence to establish equitable tolling on both grounds as a matter of law” where repeated acts of assault and sexual abuse caused by the defendant rendered the plaintiff “so broken and damaged” that she could not defend her rights, as evidenced by psychological effects of the trauma impairing her daily functioning. *Id.*

Plaintiffs alleging discrimination resulting in childhood sexual abuse should receive special consideration for equitable tolling. *See Gordon, Adult Survivors*, at 1360 (“[V]ictims of childhood sexual abuse are often unable to file lawsuits until many years after the abuse has ended.”). The Pennsylvania legislature has recognized the unique needs of survivors of childhood sexual abuse by setting a longer statute of limitations period for civil claims involving childhood sexual abuse than for other intentional torts. *See* 42 Pa. Stat. and Cons. Stat. Ann. §§ 5524, 5533 (West).

In this case, equitable tolling should apply to allegations of discrimination where a school district failed to intervene in the ongoing, severe harassment of N.B., and allowed the abuse to escalate to the point of rape. *See* Appellant's Third Am. Compl. (TAC) ¶¶ 15–59 (describing the harassment and assaults N.B. endured and the opportunities the school had to intervene). The trauma N.B. suffered as a result of the school's indirect discrimination caused him to develop post-traumatic stress disorder and intense anxiety. TAC ¶ 81. He also began hearing voices telling him to sexually assault other people and has attempted to commit suicide on multiple occasions. TAC ¶¶ 85–89. He has trouble engaging in everyday activities, including playing sports and sleeping. TAC ¶¶ 82–83. Under federal anti-discrimination law, even absent minority tolling, equitable tolling would be available to N.B. because the nature of the trauma he endured amounts to an extraordinary circumstance.

2. A plaintiff's status as a minor at the time he was harmed is an extraordinary circumstance that warrants equitable tolling.

The plaintiff's status as a minor at the time he incurred harm is an extraordinary circumstance that warrants equitable tolling, particularly where such harm entails the violation of the right to be free from unlawful discrimination under the PHRA. *See* 43 Pa. Stat. and Cons. Stat. Ann § 953 (West). The lower court pointed to Superior Court cases for the proposition that tolling on the basis of a plaintiff's minority can never be a basis for equitable tolling. However, this Court

has never decided this issue, those cases are not binding upon this Court or the lower court, and those cases are distinguishable from the instant case as they did not involve the PHRA. *See Redenz by Redenz v. Rosenberg*, 520 A.2d 883 (Pa. Super. Ct. 1987) (refusing, in the context of a personal injury claim, to find that the plaintiff's minority at the time of the alleged harm justified equitable tolling); *DeSantis v. Yaw*, 434 A.2d 1273 (Pa. Super. Ct. 1981) (finding a statute of limitations constitutional even though it barred a minor's suit in trespass).

To hold that our Minority Tolling Statute does not apply to the PHRA would create the perverse result that Pennsylvania minors would benefit from Pennsylvania's Minority Tolling Statute when bringing claims under federal anti-discrimination law, but not when bringing a claim under their own state law. Federal courts hearing Title IX and Title VI claims recognize the need to toll the statute of limitations so that plaintiffs who were minors at the time of the discrimination have meaningful access to the protections of the Civil Rights Act. Thus, these courts invariably apply the relevant state's minority tolling statute. *See, e.g., Varnell v. Dora Consol. Sch. Dist.*, 756 F.3d 1208, 1213 (10th Cir. 2014) (applying New Mexico's minority tolling statute to plaintiff's Civil Rights Act claim); *Gaudino v. Stroudsburg Area Sch. Dist.*, No. 3:CV-12-2159, 2013 WL 3863955, at *6 (M.D. Pa. July 23, 2013) (applying Pennsylvania's Minority Tolling Statute to a Title IX claim). In these cases, courts held that tolling the

statute of limitations was imperative to ensure that individuals victimized during their youth could vindicate their rights as adults.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari to remedy this issue and clarify that minority tolling is applicable to the PHRA.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Per Pa.R.A.P. 531(b)(1)(ii) and 531(b)(3), I hereby certify that this *Amici Curiae* Brief in Support of a Petition for Allowance of Appeal contains 4,488 words, exclusive of the supplementary matter as defined by Pa.R.A.P. 2135(b). In preparing this certificate, the word count feature of Microsoft Word was relied upon.

CERTIFICATE OF COMPLIANCE

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

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 16th day of January 2019, a true and correct copy of the foregoing *Amici Curiae* Brief in Support of a Petition for Allowance of Appeal was served on the below listed individuals by first-class mail.

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