No. 24-1725

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

E.R.,

Plaintiff–Appellant,

v.

Beaufort County School District,

Defendant–Appellee.

On Appeal from the United States District Court
for the District of South Carolina
Case No. 9:22-cv-04482
The Honorable David C. Norton

OPENING BRIEF OF PLAINTIFF-APPELLANT

Sean Ouellette
Shelby Leighton
Adele P. Kimmel
PUBLIC JUSTICE
1620 L Street NW, Suite 630
Washington, DC 20036
(202) 797-8600
souellette@publicjustice.net

Joshua Slavin
THE LAW OFFICES OF
JOSHUA E. SLAVIN
PO Box 762
Mount Pleasant, SC
josh@attorneycarolina.com

Counsel for Plaintiff-Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
INTRODUCTION 1
JURISDICTIONAL STATEMENT 3
STATEMENT OF THE ISSUE 3
STATEMENT OF THE CASE 3
I. Title IX and the Civil Rights Remedies Equalization Act 3
II. E.R.'s sexual abuse and the District's failure to respond 5
III. This lawsuit 8
SUMMARY OF THE ARGUMENT 11
ARGUMENT 13
I. The SCTCA's government-specific statute of limitations does not apply to Title IX claims 15
A. Applying the SCTCA violates the plain text of federal law. 15
B. Applying the SCTCA undermines federal policies 16
C. Applying the SCTCA would contradict circuit precedent 22
II. The South Carolina statute of limitations for sexual abuse claims governs E.R.'s sexual abuse claim 27
III. Even if the sexual abuse statute did not govern, the claim is timely under the general tort statute of limitations. 35
CONCLUSION 37
REQUEST FOR ORAL ARGUMENT 38

TABLE OF AUTHORITIES

Cases **Page(s)**

Atascadero State Hosp. v. Scanlon,
473 U.S. 234 (1985) 5

Barnes v. Gorman,
536 U.S. 181 (2002) 24

Battle v. Ledford,
912 F.3d 708 (4th Cir. 2019) 14

Beaufort Cnty. Sch. Dist. v. United Nat. Ins. Co.,
392 S.C. 506 (Ct. App. 2011) 33

Bonneau v. Centennial Sch. Dist. No. 28J,
666 F.3d 577 (9th Cir. 2012) 30

Bougher v. Univ. of Pittsburgh,
882 F.2d 74 (3d Cir. 1989) 23

Burnett v. Grattan,
468 U.S. 42 (1984) .... *passim*

Curto v. Edmundson,
392 F.3d 502 (2d Cir. 2004) 23

Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.,
526 U.S. 629 (1999) 1, 4

Dixon v. Chrans,
986 F.2d 201 (7th Cir. 1993) 18

Doe v. Bd. of Educ. of Prince George's Cnty.,
888 F. Supp. 2d 659 (D. Md. 2012) 26

Doe v. Crooks,
364 S.C. 349 (2005) 36

Doe v. Roe,
419 Md. 687 (2011) 28, 29

Doe v. Virginia Polytechnic Inst. & State Univ.,
400 F. Supp. 3d 479 (W.D. Va. 2019) 26

Doe-2 v. Sheriff of Richland Cnty.,
No. 21-1771, 2023 WL 4026090 (4th Cir. June 15, 2023) 36

Egerdahl v. Hibbing Cmty. Coll.,
72 F.3d 615 (8th Cir. 1995) 23

Felder v. Casey,
487 U.S. 131 (1988) 17, 18, 19

Franklin v. Gwinnett Cnty. Pub. Schs.,
503 U.S. 60 (1992) 4

Franks v. Ross,
313 F.3d 184 (4th Cir. 2002) 25

Hardin v. Straub,
490 U.S. 536 (1989) ..... *passim*

Isioye v. Coastal Carolina Univ.,
No. 17-cv-3484, 2018 WL 6682795 (D.S.C. Nov. 30, 2018) 26

Jackson v. Birmingham Bd. of Educ.,
544 U.S. 167 (2005) 5, 13, 17

Jersey Heights Neighborhood Ass'n v. Glendening,
174 F.3d 180 (4th Cir. 1999) 25, 35

Joubert v. S.C. Dep't of Soc. Servs.,
341 S.C. 176 (Ct. App. 2000) 20, 21

Kane v. Mount Pleasant Cent. Sch. Dist.,
80 F.4th 101 (2d Cir. 2023) 30

King-White v. Humble Indep. Sch. Dist.,
803 F.3d 754 (5th Cir. 2015) 23, 30

Lillard v. Shelby County Bd. of Educ.,
76 F.3d 716 (6th Cir. 1996) 23

M.H.D. v. Westminster Schs.,
172 F.3d 797 (11th Cir. 1999)... 23

McCullough v. Branch Banking & Tr. Co.,
35 F.3d 127 (4th Cir. 1994)... 27

Mooberry v. Charleston S. Univ.,
No. 20-cv-00769, 2022 WL 123005 (D.S.C. Jan. 13, 2022) 10, 23

Moore v. Greenwood Sch. Dist. No. 52,
195 F. App'x 140 (4th Cir. 2006) 23, 28, 31

Moriarty v. Garden Sanctuary Church of God,
334 S.C. 150 (Ct. App. 1999) 29

N. Haven Bd. of Educ. v. Bell,
456 U.S. 512 (1982)... 5

Nelson v. Univ. of Maine Sys.,
914 F. Supp. 643 (D. Me. 1996) 22

O'Hara v. Kovens,
625 F.2d 15 (4th Cir. 1980)... 14

Ott v. Md. Dep't of Pub. Safety & Corr. Servs.,
909 F.3d 655 (4th Cir. 2018).. 25, 28, 30

Purcell v. N.Y. Inst. of Tech.,
931 F.3d 59 (2d Cir. 2019) 22

RadLAX Gateway Hotel, LLC v. Amalgamated Bank,
566 U.S. 639 (2012).. 27

Reid v. James Madison Univ.,
90 F.4th 311 (4th Cir. 2024) 10, 23, 31

Repko v. Cnty. of Georgetown,
424 S.C. 494 (2018) 17

S.C. Dep't of Mental Health v. Hanna,
270 S.C. 210 (1978) 32

S.C. Farm Bureau Mut. Ins. Co. v. Oates,
356 S.C. 378 (Ct. App. 2003) 32, 33

Searcy v. S.C. Dep't of Educ.,
303 S.C. 544 (1991) 19, 21

Semenova v. Md. Transit Admin.,
845 F.3d 564 (4th Cir. 2017) 1, 14, 25, 27

Semtek Int'l Inc. v. Lockheed Martin Corp.,
531 U.S. 497 (2001) 16

Snyder-Hill v. Ohio State Univ.,
48 F.4th 686 (6th Cir. 2022) 29

Spencer v. Barnwell Cnty. Hosp.,
314 S.C. 405 (Ct. App. 1994) 32, 33

Sphere Drake Ins. Co. v. Litchfield,
313 S.C. 471 (Ct. App. 1993) 33, 34

Stanley v. Trs. of Cal. State Univ.,
433 F.3d 1129 (9th Cir. 2006) 15, 20, 22, 23

Stokes v. Stirling,
64 F.4th 131 (4th Cir. 2023) 36

Templeton v. Bishop of Charleston,
No. 18-cv-02003, 2021 WL 4129223 (D.S.C. Sept. 9, 2021) 34

Thompson v. Comm'r,
866 F.2d 709 (4th Cir. 1989) 35

Town of Duncan v. State Budget & Control Bd., Div. of Ins. Servs.,
326 S.C. 6 (1997) 32, 34

United States v. May,
855 F.3d 271 (4th Cir. 2017) 36

V.E. v. Univ. of Maryland Baltimore Cnty.,
No. 22-cv-02338, 2023 WL 3043772
(D. Md. Apr. 21, 2023) 26

Varnell v. Dora Consol. Sch. Dist.,
756 F.3d 1208 (10th Cir. 2014).......... 30

Washington v. Univ. of Maryland, E. Shore,
No. 19-cv-2788, 2020 WL 5747199
(D. Md. Sept. 24, 2020) 23, 31

Wilmink v. Kanawha Cnty. Bd. of Educ.,
214 F. App'x 294 (4th Cir. 2007) 10, 24, 27, 31

Wilson v. Garcia,
471 U.S. 261 (1985).......... 13

Statutes

12 W.V. Code, § 29-12A-6.......... 24

20 U.S.C. § 1681(a).......... 3

20 U.S.C. § 1687(1) 3

20 U.S.C. § 1687(2).......... 3

28 U.S.C. § 1291 3

28 U.S.C. § 1331 3

42 U.S.C.A. § 2000d–7(a)(1).......... 4

42 U.S.C.A. § 2000d–7(a)(2).......... 2, 4, 12, 15

Rehabilitation Act Amendments – Conference Report, 132
Cong. Rec. 15100-01, 1986 WL 786454 (1986) 5, 16

S.C. Code Ann. § 15-3-530.......... 9, 35, 36

S.C. Code Ann. § 15-3-530(5) 13

S.C. Code Ann. § 15-3-555..........*passim*

S.C. Code Ann. § 15-3-555(a) 27

S.C. Code Ann. § 15-78-20(a) 16

S.C. Code Ann. § 15-78-20(f) 17

S.C. Code Ann. § 15-78-80(c) 21

S.C. Code Ann. § 15-78-80(d) 21

S.C. Code Ann. §15-78-110 10

S.C. Code Ann. § 15-78-200 17

Other Authorities

H.R. Res. 190, 98th Cong., 1st Sess. (1983) 3

S. Rep. No. 100-64, (1987), *as reprinted in* 1988
U.S.C.C.A.N. 3 .... *passim*

S. Res. 149, 98th Cong., 1st Sess. (1983) 3

INTRODUCTION

As a high school student in the Beaufort County School District (the "District"), E.R. was sexually assaulted four times. When other students found out, they shamed and harassed her for having sex with one of the boys who raped her. She repeatedly reported the sexual assaults and harassment to the school district, but school staff refused to help. Instead, one staff member told her she should not report her rape to police because it would impact her assailant's football scholarship. With nowhere else to turn, E.R. withdrew from in-person classes and, after a period of homeschooling, she transferred to a different school.

E.R. sued the District under Title IX of the Education Amendments of 1972, which provides a right to sue federally funded schools for sex discrimination, including deliberate indifference to sexual abuse. *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 633 (1999). Because Title IX does not include a statute of limitations, courts adopt the state-law time limit that best fits the claim at hand. *See*, *e.g.*, *Semenova v. Md. Transit Admin.*, 845 F.3d 564, 567 (4th Cir. 2017). But courts may not adopt a state rule that conflicts with federal law or policy. *Burnett v. Grattan*, 468 U.S. 42, 48, 53 (1984).

The decision below bucks that command: in dismissing E.R.'s claim, the district court applied a state statute of limitations that conflicts with both the text of federal law and the policies behind it. Federal law mandates that Title IX's remedies must be available against public schools "to the same extent" as they are against private schools. 42 U.S.C.A. § 2000d–7(a)(2). But the district court ruled that Title IX's remedies are not available against public schools for the same period of time as they are against private schools. Below, the District did not dispute that E.R.'s claim would be timely if she had sued a private school. But because E.R. sued a *public* school, the district court applied the shorter two-year limitations period for claims under the South Carolina Tort Claims Act ("SCTCA"). In direct conflict with federal law, the SCTCA is designed to place special limits on remedies against state entities. Still, based on that conflicting state law, the court ruled that Title IX gives South Carolina students less time to sue public schools than private ones.

The decision below conflicts with the text of federal law, Supreme Court precedent and the policies behind Title IX. It should be reversed.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. § 1331 because E.R.'s Title IX claim raised a federal question. The district court entered judgment of dismissal on July 9, 2024, which disposed of all the claims below. JA027. E.R. filed a timely notice of appeal on August 2, 2024. *See* JA028; JA004 (acknowledging the filed notice of appeal on the district court's docket). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

In South Carolina, is a student's Title IX sexual abuse claim against a public school subject to a shorter statute of limitations than a similar claim against a private school?

STATEMENT OF THE CASE

I. Title IX and the Civil Rights Remedies Equalization Act

Title IX is a landmark civil rights statute with a sweeping goal: "to eliminate discrimination on the basis of sex . . . throughout the American educational system." H.R. Res. 190, 98th Cong., 1st Sess. (1983); S. Res. 149, 98th Cong., 1st Sess. (1983). To do so, it prohibits sex discrimination in all schools that receive federal financial assistance, including both public and private schools. 20 U.S.C. § 1681(a); 20 U.S.C. § 1687(1), (2)

(defining covered entities to include public schools). To enforce that prohibition, the Supreme Court has read the statute to create a private cause of action for damages against educational institutions that show "deliberate indifference" to sexual harassment—including sexual abuse—in their programs. *Davis*, 526 U.S. at 633. Congress expressly "validat[ed]" that remedy through an amendment in 1986. *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 78 (1992) (Scalia, J. concurring)

In that same 1986 amendment, called the Civil Rights Remedies Equalization Act ("CRREA"), Congress made two things clear. First, public schools lack sovereign immunity for claims under Title IX and its sister statutes (the Rehabilitation Act, Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act). 42 U.S.C.A. § 2000d–7(a)(1). Second: "In a suit against a State for a violation" of Title IX or the other listed statutes, "remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State." 42 U.S.C.A. § 2000d–7(a)(2).

As the author of the bill explained in the conference report, the amendment aimed to "ensure equalization of the remedies for violations"

of those civil rights statutes, such that they would each "be enforceable" to "the same extent" against "the States," "local government municipal bodies" and "private schools." Rehabilitation Act Amendments – Conference Report, 132 Cong. Rec. 15100-01, 1986 WL 786454 (1986).[1]

Shortly after it passed the CRREA, Congress directed that Title IX and its sister statutes should "be broadly interpreted to provide effective remedies against discrimination." S. Rep. No. 100-64, at 5 (1987), *as reprinted in* 1988 U.S.C.C.A.N. 3, 7. Consistent with that command, the Supreme Court has "consistently interpreted Title IX's private cause of action broadly" to achieve its remedial goals. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 183 (2005); *see N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1982) ("[I]f we are to give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language.").

II. E.R.'s sexual abuse and the District's failure to respond

E.R.'s Title IX claim arises from repeated sexual abuse she experienced as a 14- and 15-year-old student at Bluffton High School. In less

[1] Congress passed the CCREA in response to the Supreme Court's 1985 decision holding that one of Title IX's sister statutes, the Rehabilitation Act, did not strip states' sovereign immunity for suits under the statute. *See Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 246 (1985).

than two years, E.R. was repeatedly sexually assaulted by three older boys while the District did next to nothing to stop it.

During the 2016-2017 school year, when E.R. was a 14-year-old freshman on the school volleyball team, an older male athlete forced her to perform oral sex on him. JA006. E.R. disclosed the assault to her volleyball coach, who was also her guidance counselor. JA006. State law required him to report the assault to law enforcement, but he did not. JA006. Instead, he just told E.R. to "stay away" from the perpetrator. JA006. When word got out about the assault, other students bullied her about it. JA007. E.R.'s mother reported the harassment (including the sexual assault) to other school officials, but they did nothing about it. JA007. Instead, a school employee just told the perpetrator, "Don't do it again." JA007.

Later that same school year, an 18-year-old senior sexually assaulted E.R. outside school. JA007. Again, other students learned and harassed her about it. JA007. When E.R. complained about the assault, the senior retaliated at school. JA007. He put E.R. in a headlock and dragged her across the floor. JA007. E.R. and her mother reported the assault to the school resource officer, who verified it on surveillance

video, and to other District officials. JA007. Again, however, the District took no action against the assailant. JA007-008.

In August 2017, E.R. started her sophomore year of high school. JA008. That same month, a 19-year-old football player raped her two times. JA008. First, he raped her vaginally, causing her to bleed. JA008. Second, he raped her anally, causing her to pass out. JA008. At the time, her rapist was in a relationship with a senior girl. JA008. When she and her friends learned about the rape, they retaliated against E.R. by harassing her—and physically assaulting her—in the hallways. JA008. E.R. and her mother reported the rape and the harassment to school officials. JA008. Instead of taking action, one employee told E.R. not to report the rape to police because the assailant would lose his football scholarship. JA008. E.R.'s mother reported the rape to police, but based on what the school official said, E.R. refused to give a statement to the police. JA008. The District took no action against the rapist or his friends. JA008.

E.R. suffered mentally and academically as a result of the assaults and the District's failure to address them. JA008-009. She was diagnosed with Post-Traumatic Stress Disorder and Major Depressive Disorder. JA008. Her parents requested academic accommodations to address her

struggles in school. JA009. Although the school eventually gave E.R. a section 504 plan that outlined certain necessary accommodations, District employees failed to follow through with the plan. JA009.

Due to E.R.'s struggles in the aftermath of the sexual assaults and the harassment that flowed from them, and on E.R.'s doctor's recommendation, E.R.'s parents withdrew her from school to finish the fall semester from home through Medical Homebound Instruction. JA009. Even still, the District failed to deliver math instruction to E.R. as it was required to do. JA009. E.R. ultimately transferred to another high school. JA009.

III. This lawsuit

E.R. filed suit against the school district on November 4, 2022—under three years after she turned 18—for its deliberate indifference to the sexual abuse under Title IX. JA015; ECF No. 27-5.[2] The District moved to dismiss. JA016. It did not dispute that, if the allegations were true, the complaint stated a plausible claim that the District violated Title IX. ECF No. 27-7. Instead, it argued only that E.R. sued too late. *Id.*

[2] E.R. originally filed this case in South Carolina state court, but the District removed the case to federal court. *See* JA015-016.

The parties disputed what statute of limitations applies to E.R.'s claim. Both agreed that because Title IX does not contain a statute of limitations, the court should borrow the most appropriate statute of limitations from South Carolina law. *See* ECF No. 27-7 at 6-7; ECF No. 28 at 2. E.R. argued that because the claim arose from acts of sexual abuse, the most appropriate limitations period was South Carolina's statute of limitations for claims "arising out of an act of sexual abuse," which allows such claims to be filed any time before the plaintiff turns 27 years old. JA019-020; ECF No. 28 at 2-3 (citing S.C. Code Ann. § 15-3-555). In the alternative, she argued that the court should apply South Carolina's statute of limitations for general personal injury claims, which would have given her three years from her 18th birthday to file suit. JA019-020 & n.2; ECF No. 28 at 3 (referencing S.C. Code Ann. § 15-3-530).

The District did not dispute that E.R.'s claims would be timely under either the longer sexual abuse limitations period or the three-year personal injury limitations period; instead, it argued that neither of those limitations periods applied. ECF No. 30 at 5-7. Rather, it argued that the court should apply the shorter two-year limitations period under the SCTCA, which applies only to suits against the state or its political

subdivisions (like school districts) and only when the plaintiff fails to file a pre-suit "verified claim" with the entity defendant. ECF No. 27-7 at 9-10; JA023-025 (referencing S.C. Code Ann. §15-78-110). "At the hearing" on the motion to dismiss, "the parties agreed that if the District is correct about the application of the SCTCA's statute of limitations, E.R.'s claim is barred and must be dismissed; but if E.R. is correct" that either the sexual abuse or personal injury period applies, "her claim is timely filed" and her complaint must survive the motion to dismiss. JA020 n.2

The district court agreed with the District and dismissed E.R.'s claims. The court wrote that in certain cases, "[t]he Fourth Circuit has concluded that Title IX borrows the relevant state's statute of limitations for personal injury." JA018 (citing *Reid v. James Madison Univ.*, 90 F.4th 311, 319 (4th Cir. 2024), and *Wilmink v. Kanawha Cnty. Bd. of Educ.*, 214 F. App'x 294, 296 n.3 (4th Cir. 2007)). Even so, the court observed that "when determining which state statute of limitations applies to a particular Title IX case," courts in the Fourth Circuit "tend to draw factual distinctions where appropriate." JA018 (quoting *Mooberry v. Charleston S. Univ.*, No. 20-cv-00769, 2022 WL 123005, at *5 (D.S.C. Jan. 13, 2022)). In this case, the court continued, E.R. would have had to bring

any state-law tort claims under the SCTCA. As a "limited waiver of sovereign immunity," the SCTCA is the "exclusive civil remedy" for South Carolina state tort claims brought against state entities. JA023-024 & n.5. As a result, the court reasoned, SCTCA's two-year statute of limitations was the most appropriate to apply to E.R.'s Title IX claim. JA023 & n.5. It reached that conclusion even though it acknowledged that Congress "explicitly stated" in the CRREA "that a state shall not be immune from suit in federal court for violation of Title IX." JA025 n.5.

SUMMARY OF THE ARGUMENT

E.R.'s Title IX claim is governed by South Carolina's general statute of limitations for sexual abuse claims or, in the alternative, the State's general statute of limitations for other tort claims. The SCTCA's shorter two-year time limit conflicts with federal civil rights law and policy, which provide that federal courts may not adopt state law rules that would place special limits on suits against government entities.

I. When a federal court adopts a state-law limitations period to fill a gap in a federal statute, it may not select a rule that conflicts with federal law or policy. *Burnett*, 468 U.S. at 48, 53. The SCTCA conflicts with both. First, it conflicts with the text of federal law, which provides that

Title IX's remedies must be available "to the same extent" against public entities as they are against private ones. 42 U.S.C.A. § 2000d–7(a)(2). Second, it conflicts with the policies behind Title IX, which aim to provide plaintiffs with equal and effective remedies against both public and private defendants. Both Supreme Court and circuit precedent reinforce that courts must select the best-fit statute of limitations based on the substance of the claim the plaintiff asserts and not based on the status of the defendant as a public or private entity. *See infra* Parts I.B & I.C.

II. Thus, rather than the SCTCA, the most appropriate state statute of limitations for E.R.'s claim arising out of sexual abuse is the state statute of limitations that governs claims "arising out of" sexual abuse. S.C. Code Ann. § 15-3-555. That statute reflects "the State's judgment on the proper balance between the policies of repose and the substantive policies of enforcement" in sexual abuse cases, *see Hardin v. Straub*, 490 U.S. 536, 538 (1989), in which manipulation by abusers, repressed memories, and other psychological and social factors so often delay victim's complaints. *See infra* Part II. It also serves the policies behind Title IX, which call for the "broadest" application possible "to provide effective

remedies against discrimination." S. Rep. No. 100-64, at 5 (1987), *as re-printed in* 1988 U.S.C.C.A.N. 3, 7; *see Jackson*, 544 U.S. at 183.

Because E.R.'s Title IX claim "arises out of" sexual abuse, as the South Carolina courts have construed that phrase, § 15-3-555 applies to her claim. And since E.R. filed suit before she turned age 27, her complaint was timely filed under that statute. *See* S.C. Code Ann. § 15-3-555.

III. If the sexual abuse-specific limitations period does not apply, South Carolina's three-year statute of limitations for other personal injury claims would govern because, unlike the SCTCA, it does not privilege government defendants. *See* S.C. Code Ann. § 15-3-530(5). The District has not disputed that E.R.'s claim would be timely if § 15-3-530(5) applies. Accordingly, her claim is not time-barred.

ARGUMENT

When a federal law creates a federal claim but omits a limitations period, like Title IX does, courts "adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so." *Wilson v. Garcia*, 471 U.S. 261, 266–67 (1985). In such cases, the Supreme Court has long understood Congress's silence to mean that it intends to "defer to 'the State's judgment on the proper balance between the policies of

repose and the substantive policies of enforcement embodied'" in the state-law rules that best fit the claim at issue. *Hardin*, 490 U.S. at 538, 542 & n.10. So courts ordinarily "borrow the state statute of limitations that applies to the most analogous state-law claim," *Semenova*, 845 F.3d at 567, along with its "coordinate tolling rules." *Hardin*, 490 U.S. at 539.

But federal courts may not adopt a state statute of limitations that is "inconsistent with federal law" or policy. *Battle v. Ledford*, 912 F.3d 708, 714-15 (4th Cir. 2019). After all, federal law only adopts state rules "to assist in the enforcement of [the] federal remedy." *Id.* at 714. Because "State legislatures do not devise their limitations periods with national interests in mind," federal courts must ensure the rules they adopt do not reflect "particular state concerns [that] are inconsistent with, or of marginal relevance to, the policies informing" the federal law. *Burnett*, 468 U.S. at 52-53 (citation omitted); *accord O'Hara v. Kovens*, 625 F.2d 15, 18 (4th Cir. 1980) ("[T]o subject the federal implied right to the statute of limitations provided by state law," there "must be a commonality of purpose between the federal right and the state statutory scheme.").

Rules that provide special protection to state government defendants (as the SCTCA does) conflict with federal law and policy. *See infra*

Part I. In choosing the best-fit state statute, "[t]he essential inquiry . . . is the nature of the harm alleged, not the identity of the named defendant." *Stanley v. Trs. of Cal. State Univ.*, 433 F.3d 1129, 1135 (9th Cir. 2006). So instead of the SCTCA's government-specific rule, the Court should apply the state statute of limitations that best fits the nature of E.R.'s claim: the rule for claims that arise from sexual abuse. Otherwise, it should apply the state's general time limit for personal injury claims. Under either of these two periods, E.R.'s claim is timely.

I. The SCTCA's government-specific statute of limitations does not apply to Title IX claims.

Applying the SCTCA's abbreviated limitations period to Title IX claims would conflict with the text of federal law, the policies behind Title IX, and both Supreme Court and circuit precedent.

A. Applying the SCTCA violates the plain text of federal law.

First, applying a more restrictive limitations period to claims against state-run schools violates the plain text of federal law. Under the CRREA, Title IX's remedies must be "available to the same extent" against public institutions as they are against private ones. 42 U.S.C.A. § 2000d–7(a)(2). If a remedy is available for three years against private entities but only two years against public ones, it is not available "to the

same extent" against the public entity as it is against the private one. That is because the "expiration of the applicable statute of limitations . . . bars the [plaintiff's] remedy." *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 504 (2001). This case drives that home: because the district court applied the SCTCA's two-year limitations period, E.R. could not pursue remedies against a public school district that she could have pursued against a private school. That violates Congress's explicit directive to equalize Title IX's remedies against both private and public schools.

B. Applying the SCTCA undermines federal policies.

Second, the purpose of the SCTCA—to provide special protection to state entities—is flatly "inconsistent" with a core purpose of Title IX and federal civil rights law: to provide equal and effective federal remedies against both private and public schools. *Burnett*, 468 U.S. at 53.

1. Title IX and the SCTCA serve opposite ends. While Congress sought to abolish state sovereign immunity for Title IX claims and to "equaliz[e]" its remedies against public and private institutions, 132 Cong. Rec. 15100-01, 1986 WL 786454 (1986), the SCTCA sought to reestablish sovereign immunity and place special limits on suits against state entities. *See* S.C. Code Ann. § 15-78-20(a) (finding that the state

should face more limited liability than private entities); *Repko v. Cnty. of Georgetown,* 424 S.C. 494, 501 (2018) (explaining that the SCTCA reestablished sovereign immunity, subject to limited exceptions, after the state high court largely abolished it). And while both Congress and the Supreme Court have instructed courts to construe Title IX "broadly" to ensure that students have "effective remedies" against all covered schools, S. Rep. No. 100-64, at 7, *as reprinted in* 1988 U.S.C.C.A.N. 3, 9; *Jackson*, 544 U.S. at 183 (same), the SCTCA instructs courts to construe it narrowly "in favor of *limiting* the liability of the State," S.C. Code Ann. § 15-78-20(f) (emphasis added); S.C. Code Ann. § 15-78-200 (same).

The Supreme Court has repeatedly held that state statutes that provide special protection to government entities conflict with the purposes of federal civil rights law. In *Felder v. Casey*, the Court reasoned that a state tort claims statute's SCTCA-like goal—"to minimize [state] governmental liability"—was "manifestly inconsistent with the purpose" of another federal civil rights statute, 42 U.S.C. § 1983. 487 U.S. 131, 141, 143 (1988). Moreover, because the state "law's protection extend[ed] only to governmental defendants," it inappropriately "discriminate[d] in a manner detrimental to the federal right." *Id.* at 144-46. For those

independent reasons, the Court declined to apply the state statute's procedural requirements (including its short statutory deadline) to the plaintiff's federal discrimination claim. *Id.* at 153. Similarly, in *Burnett*, the Court declined to adopt a state statute of limitations in part because the law's similar state-protective purpose—to "minimize[e] the diversion of state officials' attention from their duties"—conflicted with § 1983. 468 U.S. at 54–55; *see also Dixon v. Chrans*, 986 F.2d 201, 205 (7th Cir. 1993) (declining to apply a state tolling exception that shortened the time to bring suit because it applied only to claims against certain state officials).

Just like in *Felder* and *Burnett*, the SCTCA's state-protective raison d'être is "manifestly inconsistent with the purposes of the federal statute" at hand. 487 U.S. at 141. To be sure, unlike § 1983, which applies only to state actors, Title IX applies to both public and private entities. But just like § 1983, Title IX seeks to provide students with equal and "effective remedies" against state institutions for civil rights violations. S. Rep. No. 100-64, at 7, *as reprinted in* 1988 U.S.C.C.A.N. 3, 9. The SCTCA's purpose to limit remedies against the state is equally at odds with that goal.

2. Reinforcing the conflict, the SCTCA's two-year statute of limitations turns on a pre-suit notice-of-claim requirement that serves no

federal purpose. Specifically, the two-year deadline applies only when the plaintiff fails to file a statutorily defined "claim" with the defendant entity that complies with a list of state-law requirements. *Searcy v. S.C. Dep't of Educ.*, 303 S.C. 544, 546-47 (1991) (citing S.C. Code Ann. §§ 15-78-100(a), 15-78-110, 15–78–80, & 15–78–90(b)). Otherwise, the plaintiff has *three* years to sue. *Id.* at 547. Like the SCTCA as a whole, this two-tiered limitations structure is designed to provide special protections to state defendants: it seeks "to encourage a person first to seek [a resolution] by a route other than litigation" and to give the government entity special "protection against fraudulent claims." *Id.* at 547.

i. In *Felder*, the Supreme Court held these same state interests—"protecting against stale or fraudulent claims" and "facilitating prompt settlement of valid claims"—were also "inconsistent" with the purposes of the federal civil rights laws and refused to apply a similar state notice-of-claim requirement to § 1983. 487 U.S. at 137, 150. The same is true here. At best, the purposes of such state administrative requirements have "marginal relevance" to Title IX. *Burnett*, 468 U.S. at 53. The Ninth Circuit refused to adopt a state tort claims act's statute of limitations for a similar reason: if the act governed, Title IX's statute of limitations

"would vary based on the state's response to a [notice of claim] requirement that does not apply to the [Title IX] claim, and potentially cannot be constitutionally applied to the claim." *Stanley*, 433 F.3d at 1135.

ii. As a practical matter, applying the SCTCA's strict notice-of-claim requirements to Title IX claims would hobble the federal statute's goal to provide effective remedies because it would lay traps for unwary students and mire sexual abuse survivors and courts in litigation over technical state-law requirements that have no relevance to Title IX.

To know which time limit applied to a given Title IX claim, litigants and courts would need to determine whether the student's pre-suit claim showed "strict compliance" with a detailed list of state-law requirements. *Joubert v. S.C. Dep't of Soc. Servs.*, 341 S.C. 176, 189 (Ct. App. 2000). Courts would need to scrutinize the pre-suit communication to determine whether it sufficiently set forth "the circumstances which brought about the loss," "the extent of the loss," "the time and place the loss occurred," "the names of all persons involved if known," and "the amount of the loss." *Id.* (quoting S.C. Code Ann. § 15–78–80(a)). They would also need to determine whether the plaintiff submitted the notice to the correct entity through the correct method within the correct time. If the plaintiff

did not send the claim by certified mail, the court would need to decide whether she demonstrated "compliance with the provisions of law relating to service of process." S.C. Code Ann. § 15-78-80(c). And it would need to determine whether the claim was "received within one year after the loss was or should have been discovered." S.C. Code Ann. § 15-78-80(d).

"[S]trict compliance" with these requirements "is mandatory"; "[s]ubstantial compliance is not sufficient." *Joubert*, 341 S.C. at 189 (citation omitted). Even seemingly formal and detailed communications have failed to meet the rigorous standards South Carolina courts have set. *See id.* at 188-89 (holding that plaintiff's formal objections to challenged conduct during state court hearing, written interrogatory answers, deposition testimony, and court petition concerning the challenged conduct were not "verified claims" under the act); *Searcy*, 303 S.C. at 547-48 (holding that student's written accident claim and accident report did not qualify because they were not made under oath).

While such fastidious threshold requirements may serve the "particular state concerns" behind the SCTCA, they are "inconsistent with, or of marginal relevance to" a key purpose behind Title IX: to ensure that students have effective remedies for sex discrimination, including sexual

abuse, regardless of whether the defendant is a state-run or private institution. *Burnett*, 468 U.S. at 52-53. For that reason as well, the district court erred in applying the SCTCA to a Title IX claim.

C. Applying the SCTCA would contradict circuit precedent.

The district court's decision to apply the SCTCA not only contradicts Title IX's text and Supreme Court case law; it also breaks from precedent in most federal circuits, including in this one.

As the Ninth Circuit put it, when choosing the most analogous state statute of limitations, "[t]he essential inquiry . . . is the nature of the harm alleged, not the identity of the named defendant." *Stanley*, 433 F.3d at 1135. Consistent with that rule, courts have repeatedly refused to apply defendant-specific limitations periods to Title IX. *See id.* (holding that state tort claims act time limit did not govern Title IX claim); *see also Purcell v. N.Y. Inst. of Tech.*, 931 F.3d 59, 63 (2d Cir. 2019) (holding that time limit applicable only to colleges and universities did not govern Title IX claim); *Nelson v. Univ. of Maine Sys.*, 914 F. Supp. 643, 649 (D. Me. 1996) (holding that government-specific state tort claims act limitations period did not apply to Title IX claim). Other circuits have applied the same limitations period—the "state's statute of limitations for personal

injury" claims—to Title IX claims regardless of whether the defendant was a private or public school. *Reid*, 90 F.4th at 319 (collecting cases).[3]

This Circuit's law differs from others' in only one respect: instead of applying a uniform time limit to all Title IX claims in a state, this Court selects the state rule that best fits the *type* of Title IX claim the plaintiff asserts: that is, it "draw[s] factual distinctions where appropriate." JA018 (quoting *Mooberry*, 2022 WL 123005, at *5). In doing so, however, this Court's decisions have still turned on "the nature of the claim" at issue, not the identity of the defendant. *Washington v. Univ. of Maryland, E. Shore*, No. 19-cv-2788, 2020 WL 5747199, at *4 (D. Md. Sept. 24, 2020). In a Title IX case alleging employment discrimination, for example, the Court held that South Carolina's one-year statute of limitations for employment discrimination claims applied. *Moore v. Greenwood Sch. Dist. No. 52,* 195 F. App'x 140, 143 (4th Cir. 2006). But in a Title IX case closer

---

[3] *See King-White v. Humble Indep. Sch. Dist.*, 803 F.3d 754, 759 (5th Cir. 2015) (public school district); *Curto v. Edmundson,* 392 F.3d 502, 503–04 (2d Cir. 2004) (same); *Stanley*, 433 F.3d at 1134 (public university); *Bougher v. Univ. of Pittsburgh,* 882 F.2d 74, 77–78 (3d Cir. 1989) (same); *Lillard v. Shelby County Bd. of Educ.,* 76 F.3d 716, 729 (6th Cir. 1996) (public school district); *Egerdahl v. Hibbing Cmty. Coll.,* 72 F.3d 615, 618 (8th Cir. 1995) (public college); *M.H.D. v. Westminster Schs.*, 172 F.3d 797, 803 (11th Cir. 1999) (public school district).

to this one, where the plaintiff alleged sexual assault in a public school, and she did not point to a state statute that specifically governed sexual abuse claims, the Court applied the state statute of limitations that generally governs tort claims. *Wilmink*, 214 F. App'x at 296 & n.3. Importantly, the Court applied the general tort limitations rules—the ones applicable to private defendants—even though the defendant was a state entity and the state tort claims act set more specific, less-forgiving limitations rules for claims against government defendants. *Id.*[4]

The Court has followed the same claim-specific—not defendant-specific—approach in its published decisions. Take the Court's decisions under two of Title IX's cousins, the Rehabilitation Act and the ADA, which both cover disability discrimination. The "remedies for violations" of those statutes are "coextensive" with Title VI and Title IX, and they are interpreted consistently with one another. *Barnes v. Gorman*, 536 U.S.

[4] Although West Virginia's government claims limitations period and its general tort limitations period are both two years, they follow different tolling rules: under the general tort rules, a minor's claim is tolled until he turns 18, *Wilmink*, 214 F. App'x at 296, but under the government-specific rules, his claim is tolled only until his twelfth birthday, 12 W.V. Code, § 29-12A-6. The Court in *Wilmink* applied the general rule, not the government-specific one. *See* 214 F. App'x at 296.

181, 185, 189 & n.3 (2002). In ADA and Rehabilitation Act cases alleging *employment* discrimination, this Court applies the state's statute of limitations for employment-related disability discrimination claims. *Ott v. Md. Dep't of Pub. Safety & Corr. Servs.*, 909 F.3d 655, 660 (4th Cir. 2018). In a case alleging *public accommodation* discrimination, in contrast, the Court held that the state's employment discrimination statute did not apply because it did not provide a remedy for the "type" of discrimination the plaintiff alleged—"discrimination in the provision of public services" (there, discrimination on a public bus). *Semenova*, 845 F.3d at 567-68. Because there was no specific state statute of limitation that governed such a claim, the Court held that the best fit was the longer statute of limitations for "general civil actions." *Id.* at 567-68. Again, even though the defendant was a public entity, the Court did not look to the state tort claims act that controlled claims against the government. *See id.*[5]

[5] The same is true in cases applying Title IX's other cousin, Title VI: There as well, the Court has applied the state's general personal injury statute of limitations, rather than the state's government claims act, when there was no more specific statute addressed to the harm at issue. *See Franks v. Ross*, 313 F.3d 184, 194 (4th Cir. 2002); *Jersey Heights Neighborhood Ass'n v. Glendening*, 174 F.3d 180, 187 (4th Cir. 1999).

District courts have followed suit: for Title IX claims against public schools, they have applied the most analogous state statute of limitations for tort claims against private defendants, even when the state had a more specific limitations period for claims against government defendants. *See Doe v. Virginia Polytechnic Inst. & State Univ.*, 400 F. Supp. 3d 479, 496 (W.D. Va. 2019) (holding that Virginia's "general statute of limitations for personal injury claims" applied to Title IX claim that did not involve sexual abuse); *see also V.E. v. Univ. of Maryland Baltimore Cnty.*, No. 22-cv-02338, 2023 WL 3043772, at *2 (D. Md. Apr. 21, 2023) (same in Maryland), *aff'd*, No. 23-1955, 2024 WL 4563857 (4th Cir. Oct. 24, 2024); *Isioye v. Coastal Carolina Univ.*, No. 17-cv-3484, 2018 WL 6682795, at *4 (D.S.C. Nov. 30, 2018), *R&R adopted*, No. 17-cv-03484, 2018 WL 6676296 (D.S.C. Dec. 19, 2018) (holding that "South Carolina's limitations period for personal injury claims" applied to Title IX claim based on sexual misconduct when the plaintiff did not argue that the sexual abuse-specific period applied); *Doe v. Bd. of Educ. of Prince George's Cnty.*, 888 F. Supp. 2d 659, 664 (D. Md. 2012) (same in Maryland).

II. The South Carolina statute of limitations for sexual abuse claims governs E.R.'s sexual abuse claim.

Instead of the SCTCA, therefore, the Court should select the statute of limitations that best fits the substance of E.R.'s claim—that the school was deliberately indifferent to acts of sexual abuse. JA011. South Carolina law prescribes a specific limitations period for such claims "arising out of an act of sexual abuse": "six years" after the victim turns 21. S.C. Code Ann. § 15-3-555(a). That statute is the best fit here.

1. In selecting which statute of limitations applies to the plaintiff's federal claim, the "specific statute" most "closely applicable to the substance of the controversy at hand controls over a more generalized provision." *McCullough v. Branch Banking & Tr. Co.*, 35 F.3d 127, 132 (4th Cir. 1994) (citation omitted); *cf. RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining that Congress ordinarily intends that "the specific governs the general") (citation omitted). Section 15-3-555's sexual abuse provision is most "closely applicable to the substance" of E.R.'s claim here. *McCullough*, 35 F.3d 1at 132. As in *Wilmink* and *Semenova*, South Carolina's discrimination-specific statutes do not cover sex discrimination in education, so they do not fit the claim at hand. *Semenova*, 845 F.3d at 567. But unlike in those cases, South

Carolina's general tort statute of limitations is not the closest fit, either, because the state has designated a more specific limitations period for claims that arise from sexual abuse. Just as the more specific limitations period trumps the general one when claims concern employment, *see Ott*, 909 F.3d at 660; *Moore*, 195 F. App'x at 143, the closer-fit statute must also apply when the claim concerns sexual abuse.

That is as it should be, because § 15-3-555 reflects "the State's judgment on the proper balance between the policies of repose and the substantive policies of enforcement" in sexual abuse cases. *See Hardin*, 490 U.S. at 538. Child sexual abuse victims face special impediments to justice that many other tort victims do not. Section 15-3-555 is one of many state statutes that grew from an "evolving understanding of childhood sexual abuse" and the psychological and social factors that cause victims to delay filing lawsuits until well into adulthood. *Doe v. Roe*, 419 Md. 687, 695-96, 704 (2011) (citations omitted). As the South Carolina Court of Appeal explained shortly before the legislature passed § 15-3-555: "Many, if not most, survivors of child sexual abuse develop amnesia that is so complete they simply do not remember they were abused at all," and "[s]urvivors who repress their memories of sexual abuse and then recover

them many years later—when they are finally able to confront them—are effectively blocked from seeking legal redress for their injuries by traditional statutes of limitations." *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 161, 163 (Ct. App. 1999). Even when they recall the abuse, survivors often face pressure not to pursue the matter or "experience serious mental health problems caused by the sexual abuse" that make it hard to gather evidence, retain counsel, and file a lawsuit, *Doe*, 419 Md. at 696, as E.R. faced, *see* JA008. No doubt with those barriers in mind, South Carolina weighed victims' interests against defendants' and struck a reasonable balance in § 15-3-555. Federal courts should adopt that balance for Title IX sexual abuse cases filed in South Carolina unless it conflicts with federal law or policy. *See Hardin*, 490 U.S. at 538.

2. No federal law or policy conflicts with the balance South Carolina has struck for sexual abuse claims. To the contrary, giving sexual abuse victims a few years more to come forward and file suit based on the unique obstacles they face furthers "Title IX's broad remedial purpose" to "provide[ ] relief broadly to those who face discrimination on the basis of sex in the American education system." *Snyder-Hill v. Ohio State Univ.*, 48 F.4th 686, 699 (6th Cir. 2022) (citation omitted); S. Rep. No.

100-64 (1987), at 5, *as reprinted in* 1988 U.S.C.C.A.N. 3, at 7 (stating that Title IX should be given the "broadest interpretation" "to provide effective remedies against discrimination"). Like the tolling rule the Supreme Court adopted in *Hardin*, § 15-3-555's extended limitations period "enhances the [victim's] ability to bring suit and recover damages for [her] injuries." 490 U.S. at 543. In doing so, it serves Title IX's goals.

Some circuits, it is true, have applied the state's general statute of limitations for tort claims to all Title IX claims and declined to make exceptions for sexual abuse claims for the sake of uniformity and predictability.[6] But this Court has already rejected the one-size-fits-all approach that underpins those decisions: in this circuit, the statute of limitations for Title IX and its cousins already varies based on the facts of the case. *Supra* Part I.C; JA018; *Ott*, 909 F.3d at 660 (holding that one state statute of limitation applied to a Rehabilitation Act claim "involving a commuter bus," but a different state statute of limitation applied to a Rehabilitation Act claim in the employment context (citing *Semenova*, 845

[6] *See Kane v. Mount Pleasant Cent. Sch. Dist.*, 80 F.4th 101, 108 (2d Cir. 2023); *Varnell v. Dora Consol. Sch. Dist.*, 756 F.3d 1208, 1213 (10th Cir. 2014); *Bonneau v. Centennial Sch. Dist. No. 28J*, 666 F.3d 577, 579 (9th Cir. 2012); *King-White*, 803 F.3d at 761.

F.3d at 566); *Washington*, 2020 WL 5747199, at *4 (noting that this Court has applied one state time limit to "a student's [Title IX] sexual assault claim" and a different one to a teacher's Title IX employment claim (citing *Wilmink*, 214 F. App'x at 296 n.3, and *Moore*, 195 F. App'x at 143)).

Just as calls for uniformity did not overcome the specific balance that states struck in those other contexts, they do not require this Court to reject the balance the state has struck in the sexual abuse context, either—especially not when it advances the strong federal interest in ensuring that victims have enough time to vindicate their rights.

3. As noted above, *Reid* and *Wilmink* are not to the contrary. Both applied the state's general statute of limitations for personal injury claims, which is correct when a more specific state rule does not govern the particular type of claim at issue. In both cases, the plaintiffs did not dispute that the general personal injury rule governed, and they did not point to a more specific limitations period that applied to their claim. *See Reid*, 90 F.4th at 318 ("With no argument to the contrary, we consider this two-year [personal injury] statute of limitations applicable to Reid's Title IX claim, as well."); *Wilmink*, 214 F. App'x at 296 n.3 ("[P]laintiff has never argued it is inappropriate to borrow West Virginia's [personal

injury] statute of limitations with respect to her federal claims."). So neither case forecloses the conclusion that South Carolina's more specific statute of limitations for claims "arising out of sexual abuse" applies to E.R.'s Title IX claim arising out of her sexual abuse.

4. And there can be no dispute that E.R.'s claim "aris[es] out of sexual abuse." S.C. Code Ann. § 15-3-555. Under South Carolina law, the term "arising out of" has two ordinary meanings: more broadly, it means "'incident to,' 'flowing from,' or 'having connection with' as well as 'causal relation to,'" *Town of Duncan v. State Budget & Control Bd., Div. of Ins. Servs.*, 326 S.C. 6, 13 (1997) (citation omitted); more "narrowly," it means "caused by." *S.C. Farm Bureau Mut. Ins. Co. v. Oates*, 356 S.C. 378, 382 (Ct. App. 2003) (citation omitted). "A remedial statute" like § 15-3-555 "should be liberally construed in order to effectuate its purpose." *See S.C. Dep't of Mental Health v. Hanna*, 270 S.C. 210, 213 (1978); *Spencer v. Barnwell Cnty. Hosp.*, 314 S.C. 405, 408 (Ct. App. 1994) ("In considering a remedial act designed to protect a class of persons or the public at large, the courts liberally construe the act to carry out its purposes."). Since § 15-3-555 is a remedial statute, designed "to protect a class of persons" (sexual abuse victims) from an injustice by giving them a more

reasonable window to recover compensation from those responsible, the broader definition should apply here. *Spencer*, 314 S.C. at 408.

In any event, the statute applies to E.R.'s claim under either definition. The South Carolina Court of Appeals has held that even under the narrower definition, a claim that a defendant negligently supervised someone who abused the plaintiff is a claim "arising out of acts of abuse" because the plaintiff would have no claim but for the abuse. *S.C. Farm Bureau Mut. Ins. Co.*, 356 S.C. at 383; *see also Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 473-74 (Ct. App. 1993) (holding that because the employer's "separate acts of negligence" in supervising employee and customers who assaulted the plaintiff were "not actionable without the assault and battery," the negligence claim was one "'arising out of' assault and battery"). Thus, under the District's own insurance policy, claims that the District negligently supervised a teacher who sexually abused the plaintiffs were claims "arising out of . . . sexual abuse." *Beaufort Cnty. Sch. Dist. v. United Nat. Ins. Co.*, 392 S.C. 506, 529 (Ct. App. 2011).

So too here. E.R. alleges that she suffered psychological, physical, and educational harm because the school district showed deliberate indifference her sexual abuse and to the harassment she experienced

because of that sexual abuse. JA011-012. That claim certainly has a "connection with" sexual abuse. *Town of Duncan*, 326 S.C. at 13. Moreover, her injuries would not have occurred but for the abuse, and her claim would "not actionable without" it. *Sphere Drake*, 313 S.C. at 474. So even under the narrower definition, E.R.'s claim arose out of sexual abuse. *See Templeton v. Bishop of Charleston*, 18-cv-02003, 2021 WL 4129223, at *8 (D.S.C. Sept. 9, 2021) (holding that § 15-3-555 applied to negligent supervision claim against institution because it arose out of sexual abuse); JA023 (finding that "E.R.'s Title IX cause of action is most closely analogous to the tort of negligent supervision under South Carolina law"). That conclusion aligns with the policy behind laws like § 15-3-555—to ensure that victims who experience sexual abuse, and suffer from the associated trauma and stigma that delays the filing of claims, have adequate time to seek compensation for their injuries. *See supra* pp. 28-29.

Accordingly, as the limitations period that best fits E.R.'s claim, § 15-3-555 applies. And because she sued within six years of her 21st birthday, E.R.'s claim was timely filed. *See* S.C. Code Ann. § 15-3-555.

III. Even if the sexual abuse statute did not govern, the claim is timely under the general tort statute of limitations.

If the sexual abuse-specific limitations period did not apply, South Carolina's general three-year personal injury limitations period would govern. *See* S.C. Code Ann. § 15-3-530. As this Court has explained, as a general matter, a claim of sex discrimination is essentially a tort or personal injury claim. *See Thompson v. Comm'r*, 866 F.2d 709, 712 (4th Cir. 1989) ("[S]ex discrimination actions in general are tort or tort-type actions and damages awarded for violation of that right are damages for personal injuries."). Like the sexual-abuse limitations period, but unlike the SCTCA, § 15-3-530 is consistent with federal law because it does not favor claims against the government. *See supra* Part I. So, setting aside the State's more specific statute that targets the particular harm the plaintiff experienced, *see supra* Part II, the three-year period for general tort claims would apply to E.R.'s claims. *See Jersey Heights*, 174 F.3d at 187 (holding, where the parties did not identify a closer-fit statute, that "the personal nature of the right against discrimination justifie[d] applying the state personal injury limitations period").

The District has not disputed that E.R.'s claim would be timely under the three-year limitations period, *see* ECF No. 30, Def.'s Reply in

Supp. Mot. to Dismiss, at 5-6; ECF No. 36 at 3; *supra* pp. 9-10, so it has waived any argument to the contrary. *See United States v. May*, 855 F.3d 271, 275 (4th Cir. 2017) (holding that because appellee failed to make an argument below, the argument was "waived on appeal"); *see also Stokes v. Stirling*, 64 F.4th 131, 139 (4th Cir. 2023) ("Enforcing waiver and forfeiture rules against appellees reflects the principle that we 'apply [these] rules on a consistent basis' so that they 'provide a substantial measure of fairness and certainty to the litigants who appear before us.'" (quoting *United States v. Holness*, 706 F.3d 579, 592 (4th Cir. 2013)).

In any event, E.R.'s claim is timely under the general three-year rule. E.R.'s claim accrued while she was under 18 years old, and her minority "is not a part of the time limited for the commencement of the action," meaning that under the general rule, E.R. "had three years" to "bring a timely lawsuit" after she turned 18. *Doe-2 v. Sheriff of Richland Cnty.*, No. 21-1771, 2023 WL 4026090, at *5 n.3 (4th Cir. June 15, 2023); *see also Doe v. Crooks*, 364 S.C. 349, 352-53 & n.7 (2005) (ruling that, when statute of limitations under § 15-3-530 was six years, before being shortened to three, plaintiff who was abused as a minor had six years

after his 18th birthday to file suit). Because E.R. sued within three years of her 18th birthday, her claim was timely filed.

CONCLUSION

Because the district court applied the wrong statute of limitations to E.R.'s claim, this Court should reverse the dismissal of E.R.'s complaint and remand for proceedings consistent with its opinion.

/s/ Sean Ouellette
Sean Ouellette
Shelby Leighton
Adele P. Kimmel
PUBLIC JUSTICE
1620 L Street NW, Suite 630
Washington, DC 20036
(202) 797-8600
souellette@publicjustice.net

Joshua Slavin
THE LAW OFFICES OF
JOSHUA E. SLAVIN
PO Box 762
Mount Pleasant, SC
josh@attorneycarolina.com

Counsel for Plaintiff-Appellant

REQUEST FOR ORAL ARGUMENT

This case presents a pure legal question of high importance—what statute of limitations applies to Title IX sexual abuse claims—that could impact many other cases. If this Court affirms the ruling below, victims of sex discrimination in South Carolina, and other states with stricter limitations rules for government defendants, will have less time to file Title IX claims against public institutions than against private ones. As explained above, this state of affairs would conflict with federal law. E.R. believes that oral argument would aid the Court in deciding this issue.

CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(g)(1) and Circuit Rule 32, I certify that this brief:

(i) complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7) because it contains 7,907 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f)); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Word for Office 365, Version 2305, set in Century Schoolbook 14-point type.

December 4, 2024

/s/ Sean Ouellette
Sean Ouellette

CERTIFICATE OF SERVICE

I certify that on December 4, 2024, this brief was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system.

December 4, 2024

/s/ Sean Ouellette
Sean Ouellette